

## CHAPTER 5

### DEALING WITH THE NATAL REBELS (PART I): REACTIONS, ARRESTS, IDENTIFICATION, INVESTIGATIONS AND EARLY TRIALS

The Natal rebels hardly feature in the historiography of the Anglo-Boer War. *The Times history of the war in South Africa* dismisses the rebellion in one sentence,<sup>1</sup> while the *Natal Witness* of 25 April 1900 correctly points out that: “though the ranks of the enemy had been swelled by a few of the local Dutch, Natal’s proportion of rebels is infinitely small compared with that of the sister colony (Cape Colony).”<sup>2</sup> Despite its size, the rebellion in Natal was a war-related event of gigantic proportions for both the Natal community and the Natal authorities. It was to spark debates, both in private and in public, about the kind of punishment that should be meted out to rebels; who should decide on the punishment; and the right of the Colony of Natal to make autonomous decisions about judicial matters involving its subjects. These debates ran concurrently with processes such as the identification and arrest of rebels, and the passing of legislation to create structures for trying of these rebels.

#### 5.1 Rounding up the rebels

When the Natal Army under Buller started to mobilise on 11 May 1900, the arrest and prosecution of rebels was a secondary military objective. Buller in fact, had two months earlier even expressed some sympathy with the rebels’ plight and felt that “they really seem to have been more sinned against than sinning.”<sup>3</sup> In a telegram on 11 March 1900, Buller informed Governor Walter Hely-Hutchinson of his views on how the rebels should be treated who, according to African intelligence sources, were returning to their farms. He suggested that they should be allowed to go back to their farms and that the Natal Government should treat them as suspects and have the police investigate them. Only once a case was built against them should they be arrested. At the same time he abdicated military involvement in dealing with the rebels because, he had neither the men nor the time to perform the required duties. The Natal authorities accepted these recommendations and instructed the police to intensify the gathering of information against suspected rebels.<sup>4</sup>

On 1 May 1900, several days before the Natal Army advanced northwards, Buller made his policy regarding the Natal rebels public by issuing a conciliatory proclamation. In it he stated that some of the Natal Afrikaners were misled into taking up arms, and having realised their error they were keen to redeem themselves. If they did do so, by laying down their weapons, he undertook to present their cases to the civilian authorities for more “considerate treatment” than extended to those who

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1. LS Amery (ed.), *The Times History of the war in South Africa 1899-1902, Vol VI*, p.62. *The standard encyclopedia of Southern Africa, Vol 9*, pp.260-261, fares no better and does not even acknowledge the existence of Natal rebels.

2. *Natal Mercury*, 25.4.1900.

3. PAR, PM 17: Telegram General R Buller to Governor W Hely-Hutchinson, 17.5.1900.

4. PAR, CSO 2587: Telegram General R Buller to Governor W Hely-Hutchinson, 11.3.1900.

remained in the field after he had issued his proclamation.<sup>5</sup> The contents of Buller's proclamation infuriated the Natal authorities who felt that he "had no business issuing such a proclamation without consulting the Governor of Natal." The second paragraph especially, which promised to give the same consideration to rebels as surrendered burghers, displeased the Natal Government for it bound them against their will. The government, possibly for the sake of diplomacy, did not confront Buller about his proclamation.<sup>6</sup>

When the Natal Army finally advanced from Ladysmith via Helpmekaar to Dundee, several suspected rebels were arrested, principally by the advance parties of the Natal Carbineers under Colonel Greene and Captain Lyle. These arrests soon spread to Dannhauser and Newcastle. Some suspected rebels, like TR Boshoff and JJ Nel, surrendered of their own accord<sup>7</sup> and received passes that allowed them to return to their farms for the time being.<sup>8</sup> The nature of these passes worried Captain Foxon of the Natal Carbineers who also wanted the height, age, and general appearance of the Afrikaner, to whom the pass was issued registered on it. He was worried that any burgher could use such a pass to enter Natal illegitimately by pretending to be the person to whom the pass was issued. In the end nothing came of his legitimate concern.<sup>9</sup>

In the wake of these advance parties came the major body of Buller's force which swept the Klip River county clean of its Afrikaner residents. Between 10 and 21 May 1900, 72 suspected rebels either surrendered or were arrested. A further 40 were arrested or surrendered between 22 and 26 May 1900. In the period 27 to 31 May 1900 another 50 suspected rebels either surrendered or were apprehended, bringing the total to 162 within 21 days. In early June another four were caught. During the period 10 October 1899 to 4 August 1900 the military arrested a total of 251 people in Natal for treasonable offences. Of these 96 were handed over to the civilian authorities, 105 were released, 15 were allowed to go on parole, 17 were tried by a military court and 18 were kept in custody by the military.<sup>10</sup> The above-mentioned mopping up of rebels in the Klip River county was done with great efficiency, simply because all the local Afrikaners were arrested as suspects.<sup>11</sup>

The prisons in Dundee and Newcastle could soon no longer hold all the rebel prisoners and on 30 May, 1 June and 7 June a total of 74 suspected rebels were transferred to the central prison in Pietermaritzburg. Once Pietermaritzburg could no longer accommodate all the suspected rebels, George Teichmann, PJ Meyer and others were imprisoned onboard the *Catalonia* outside the Durban

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5. PAR, GH 532: Proclamation issued by General R Buller, 11.5.1900; *De Natal Afrikaner*, 15.5.1900.

6. PRO, CO 179/212: Minute paper regarding the proclamation of General R Buller, 1.5.1900-13.6.1900.

7. *Natal Witness*, 6.6.1900.

8. *Natal Witness*, 25.5.1900.

9. PAR, 1/DUN 3/1/8: Letter Captain Foxon to magistrate Dundee, 3.7.1900.

10. PAR, AGO I/8/75: Disposal of treason cases in Natal, 10.10.1899-4.8.1900.

11. PAR, AGO I/8/70: Enquiry by Prime Minister AH Hime on the number of rebels arrested, 1.3.1900-3.6.1900.

harbour.<sup>12</sup> The reasons given by the military for sending rebel suspects from the Newcastle and Dundee districts to prison in Pietermaritzburg and on board the *Catalonia* in the Durban harbour were the dangers of having so many prisoners close to the front, the crowded nature of the local prisons, and the anticipation of further arrests.<sup>13</sup> All these measures proved insufficient because of the sheer number of suspects, consequently some were allowed to reside in Newcastle with family members or in a hotel on condition that they reported to the police twice a day.<sup>14</sup> The poorest Afrikaners ended up taking lodgings in the vestry of the Newcastle DRC.<sup>15</sup>

On arriving in Newcastle Buller, true to his earlier policy statement that the civil authorities had to deal with the rebels, requested that the magistrates and their staff be returned at once to administer the surrendering Afrikaners.<sup>16</sup> By then Magistrates P Hugo of Dundee, and JO Jackson of Newcastle, both in exile in Southern Natal, were already, with the assistance of the Criminal Investigation Office (hereafter CIO), busy compiling lists of suspected rebels. Hugo admitted that his list was mostly based on hearsay from Dundee residents who were present in Pietermaritzburg, but nevertheless put forward the names of 84 suspected rebels. Jackson likewise compiled a list of 55 names with the assistance of some former Newcastle residents.<sup>17</sup> By 24 May 1900, the magistrates court in Newcastle was again functional and in a position to receive suspected rebels.<sup>18</sup> In the most southerly Klip River county district, Ladysmith, 146 Afrikaners were suspected of treason,<sup>19</sup> six of which were in prison.<sup>20</sup>

Only once the Klip River county was cleared of Natal Afrikaners, and the magistrates had started their investigation, did Buller issue orders regarding the treatment of rebels. These strategically issued orders decreed that all British subjects in the Klip River county would be required to register with the magistrates in their districts. On registration they had to sign either declaration A or B. Declaration A was intended for those rebels suspected of taking up arms and these signatories were required to hand over their horse, arms, and ammunition and to sign a declaration stating: "I was forced by the Queen's enemies to take up arms against Her Majesty's Troops, and that a rifle and ammunition were issued to me." The suspects who fell in this category could proceed to their farms on condition that they could be summoned at a later stage. They were also not allowed to

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12. PAR, AGO I/7/46: Lists of Natal rebels capture between 10.5.1900 and 4.6.1900, as well as incriminating documents compiled by Lt-Col AE Sandbach.

13. PAR, AGO I/8/70: Letter Clerk of the Peace GL Fraser, Newcastle, to Attorney-General H Bale, 2.6.1900.

14. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 24.5.1900, p.206.

15. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 30.5.1900, pp.212-213.

16. PAR, PM 17: Telegram General R Buller to Governor W Hely-Hutchinson, 17.5.1900.

17. PAR, CSO 2588: Request to Magistrates P Hugo and JO Jackson to compile name lists of suspected rebels, 5.5.1900.

18. *Natal Witness*, 24.5.1900.

19. PAR, 1/LDS 3/3/14: List of suspected Natal rebels, 1900.

20. PAR, AGO I/7/42: List of those in Klip River county against whom there is some evidence, 16.6.1900.

communicate with, or assist the Boers.<sup>21</sup> If they claimed that they had handed their rifles to the Boers they were imprisoned until it could be proven that there were no arms on their farms. Natal Afrikaners within this group would eventually stand trial as rebels. Declaration B applied to British subjects who were required to bring two trustworthy witnesses before a magistrate to prove that they had remained absolutely loyal. The livestock of both classes were not to be interfered with unless required by the director of supplies or director of transport for military purposes. In such cases a receipt was issued by the officers or their representatives. Large numbers of livestock were not allowed near the borders with the Republics where it could act as bait to the commandos.<sup>22</sup>

Buller's orders, like his proclamation of 1 May 1900, angered the Natal Government. This time Attorney-General Henry Bale confronted Buller and complained that the orders were in conflict with his own orders of 30 November 1899. Bale was also concerned that the oath in which the suspected rebels declared that they were forced to take up arms by the enemies of the Queen, would serve to prejudice the prosecution, and may even place the onus to disprove the statement, upon the crown. Under normal judicial circumstances the onus was on the prisoner to prove that he was compelled to take up arms. Even though Buller was prepared to apologise if his "non-legal" mind had prejudiced the process, he still believed that the onus was on the rebels to prove their innocence.<sup>23</sup>

The fears of the Natal authorities were, to a certain extent, allayed by Lt-Col AE Sandbach who informed the rebels who were expecting to be released after handing in their weapons, in terms of Buller's proclamation,<sup>24</sup> that "each case must be considered on its merits and it is unadvisable on military grounds to release some of the suspected rebels on parole and the civil government must start the trials as soon as possible."<sup>25</sup>

This spat between the civil and military authorities on how to deal with the Natal rebels was only the first of a series of such disagreements. The issue regarding the investigation of the rebels initially arrested by the military especially caused conflict between the two groups. What made things more difficult for the Natal Government was that under Martial Law they were required to cooperate with the military in matters regarding the rebellion. Although the military's activities under Martial Law were monitored through the agencies of the magistrates and the attorney-general, this collaboration was not always as close as the government would have wished.<sup>26</sup> Against this backdrop of simmering tension the Natal authorities also had to deal with another kind of pressure regarding the

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21. PAR, AGO I/7/42: Declaration A and B as issued by the British military, 25.5.1900.

22. PAR, 1/LDS 1/7/8: Orders General R Buller as relayed by Lt-Col AE Sandbach on the treatment of residents of Northern Natal, 28.5.1900.

23. PAR, AGO I/8/71: Minute paper Attorney-General H Bale relative to the form of oath Natal rebels had to sign, 29.5.1900-1.6.1900.

24. PAR, CSO 1673: Petition A Jansen to the governor of Natal for the release of LW Meyer, 4.4.1901.

25. PAR, 1/DUN 3/1/8: Letter Lt-Col AE Sandbach to provost marshal, 15.6.1900.

26. VS Harris, p.44.

rebels - the demands of the Natal public that justice be served.

## 5.2 Public reaction towards the rebels

Advice from grassroots level to the Natal Government on how to deal with the suspected rebels started to pour in soon after war broke out. On the back of a series of anti-Republican jingoistic meetings held in especially Pietermaritzburg, the *Times of Natal*, called upon all Natalians to gather as much evidence as possible against suspected Natal rebels and to forward it to the PUS.<sup>27</sup> A similar pragmatic suggestion was made by William W Cato who recommended that the scouts and Natal Police investigate the activities of Natal Afrikaners.<sup>28</sup> Juxtaposed against the calls for the judicial process to run its course were those who sought revenge. One such person who referred to himself as “Fear God - Honour the King”, in a letter to the *Times of Natal*, ferociously attacked disloyal Afrikaners, describing them as “semi-human beings” who openly declared themselves as rebels and send their sons to take up arms against the Queen. He demanded “the punishment of the disloyal...but it should be accomplished after Republican methods, so that the traitors among us might have that republican justice their hearts desires so longingly.” By this the correspondent meant execution in a similar fashion as the “three men who had never raised a rifle against the Republic in Potchefstroom” during the Anglo-Transvaal War.<sup>29</sup> Equally vengeful was CH Mitchell who stated that: “No one in Natal wishes to see indiscriminate shooting of rebels, but we do expect that those who have deliberately taken up arms against Government should suffer confiscation of their property and disfranchisement.”<sup>30</sup>

Other home-front contributors to the debate raging in the Natal newspapers were more objective. “A Northern Refugee” made it clear that it would be unfair if suspected Natal rebels were to be examined or tried by someone who held a bitter grudge against Afrikaners, as it would be equally unfair to appoint magistrates who were sympathetic to the Boer cause to rebel cases. The correspondent concluded by stating: “We want to live here in the Colonies at peace with our neighbours, and, if anyone of us is accused of wronging the community in which he lives, we don’t wish it to be suggested that he did not get a fair trial.”<sup>31</sup> The omni-present Winston Churchill, who had recently returned to Natal after his dramatic escape from Pretoria, added his voice to the call for British justice when he wrote: “I read your newspapers and the report of recent meetings, industriously and all reveal the same spirit: ‘Give them a lesson they will never forget.’ ‘Make an example.’ ‘Condign punishment.’ ‘Our turn now.’ These are the phrases or ideas which occur. It is the spirit of revenge. It is wrong, first of all because it is morally wicked; and secondly, because it is

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27. *Times of Natal* as quoted by *De Natal Afrikaner*, 13.10.1899.

28. PAR, CSO 1632: Letter WW Cato to Prime Minister AH Hime, 3.11.1899.

29. *Times of Natal*, 14.10.1899.

30. *Natal Witness*, 29.3.1900. The letters columns of all the daily Natal newspapers such as *Natal Mercury*, *Natal Witness*, *Times of Natal* and the *Natal Advertiser* were flooded with letters generally calling for revenge.

31. *Natal Witness*, 27.3.1900.

practically foolish. Revenge may be sweet but is also most expensive.” By the term expensive Churchill meant that revenge would not secure lasting peace. He therefore idealistically suggested that suspected Natal rebels should be allowed to return to their farms and urged them to “live there upon your best behaviour until the Queen’s pleasure concerning you be made known.” Churchill believed that if the message was: “Come and stand your trial and may God have mercy upon your souls” then the rebels would return to the Boer lines and continue with war.<sup>32</sup>

The *Natal Witness* responded by rejecting in a lead article, Churchill’s conciliatory sentiments and made the newspaper’s point of view very clear: “These rebels got into that position of their own free will, and the law which may rescue them from that position will not be an administration of justice. We do not hesitate to say that we do want to see the rebels in both Colonies given a lesson which they will never forget, and that any plea, however, eloquently urged, or from whatever quarter it may come, must be peremptorily rejected.”<sup>33</sup> An avalanche of letters followed in the wake of Churchill’s statement of which eight responses appeared in the 31 March 1900 issue of the *Natal Witness* alone. “20 Years Colonist” blamed the “silliness” of his argument on Churchill’s youth, GR Deare warned colonists to remain vigilant and united “to counteract any misrepresentations that are certain to be made by more or less influential persons and corporate bodies in this country as well as at home.” “G.A.” in turn considered the “impertinent effort to become the self-appointed advisor of our destiny a piece of preposterous presumption.” “G.A.” made it clear that he also questioned the intention of the Natal Government and the civil courts to deal with the rebels in a satisfactory manner. He, therefore suggested a court composed of military officers and “level-headed Colonists whose loyalty is well known” to dispense justice. “Pro Patria” of Pietermaritzburg likewise doubted the willingness of the Natal Government to effectively deal with the rebels. He or she even called for “long terms of imprisonment...disfranchisement...confiscation of property...the Dutch language be not recognised...the annexation of the southern districts of the Free State and Transvaal (and) granted to men of English descent colonial or otherwise.”

Amongst the emotionally, vengeful and sometimes irrational responses were two sane voices, ironically enough the only two correspondents who did not write under pseudonyms. CF Lowen pointed out that the failure to charge the rebels would mean a great injustice to Africans, colonists and loyal Natal Afrikaners alike, while WJ O’Brien suggested prosecution rather than persecution.<sup>34</sup> The debate started by Winston Churchill continued outside the columns of the newspapers. Attorney-General Henry Bale<sup>35</sup> was urged by WC Perry “to hunt up criminals”,<sup>36</sup> while the Lower

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32. *Natal Witness*, 29.3.1900.

33. *Natal Witness*, 31.3.1900.

34. *Natal Witness*, 31.3.1900 and 2.4.1900.

35. Henry Bale was knighted for his role in dealing with the rebels. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 11.12.1914, p.371.

36. PAR, PM 17: Letter WM Perry to Prime Minister AH Hime, 3.4.1900.



Tugela Division Association, at a meeting held at Stanger, urged the Natal Government to bring “rebels and traitors to justice.”<sup>37</sup> A similar call, “that rebels shall be dealt within accordance with the Governor’s proclamation”, was forwarded on behalf of the Mid-Illovo Farmer’s Club,<sup>38</sup> while others urged the government to take immediate action to obtain evidence against suspected rebels.<sup>39</sup>

In an attempt to reverse the negative tide of public criticism and to explain the governments intention’s concerning the rebels, Bale invited two of his political opponents to inspect the documents relating to the apprehension of suspected rebels. Apparently the two critics were satisfied that the government was doing its duty.<sup>40</sup> It is uncertain if the remainder of the unhappy English colonists were equally satisfied with the Natal Government’s treatment of the rebels.

### 5.3 The response of the Natal Government to rebellion

Although the rebellion did not catch the Natal Government totally by surprise, its preventative measures were wholly inadequate. The government’s first reaction was to swiftly issue several proclamations to suppress the rebellion.<sup>41</sup> Suspecting that the proclamations were being ignored, and disregarding the possibility that they may not have reached the people they were aimed at, the Natal authorities requested Attorney-General Bale, who felt that no precedent existed for such a step, to prepare a draft proclamation that would allow the Natal Government to confiscate movable and immovable property of Natal Afrikaners who had been captured as POWs while fighting for the Boers, of those who died on the battlefield, and of the fathers who had sons on commando. In the proposed proclamation Governor Hely-Hutchinson prohibited the registrar of deeds to register the sale, transfer or mortgage of any of the properties registered in the names of Natal Afrikaners in the above-mentioned categories.<sup>42</sup>

The possible confiscation of rebel property, as a punitive measure for committing high treason, was one of the key questions, not only faced by the Natal Government, but also the military. An enquiry by General Redvers Buller to the War Office about how severely he should deal with Afrikaners guilty of treason, received the following answer: they are “not entitled to favourable consideration” and should be punished severely. This could include possible forfeiture of property and/or deportation.<sup>43</sup> When some of the names of suspected rebels became known, Attorney-General Henry

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37. PAR, CSO 1644: Request by the Lower Tugela Division Association to the colonial secretary regarding the punishment of rebels, 4.4.1900.

38. PAR, CSO 1643: Resolution by the Mid-Illovo Farmers’ Club forwarded by JW Montgomery, 19.4.1900.

39. PAR, AGO I/7/42: Minute paper in which Rethman, Tatham and Leuchars urged the government to collect evidence against rebels, 17.5.1900.

40. *Natal Witness*, 26.5.1900.

41. See for example, PAR, NCP 6/1/1/52: Proclamation No. 106 issued by Governor W Hely-Hutchinson, 15.10.1899; *Natal Witness*, 16.10.1899; *Times of Natal*, 16.10.1899.

42. PAR, CSO 2581: Draft proclamation suggesting that it is the intention of the Natal Government to confiscate the property of rebellious Natal Afrikaners, 21.10.1899.

43. PRO, WO 1767: Telegrams exchanged between General R Buller and the War Office, 11.12.1899.

Bale requested the registrar of deeds to determine if any property was registered in the names of LJR Kritzinger jnr, JJ Uys, JJ van Rooyen, Isaac van Rooyen, DC Uys and LP Uys. The registrar reported that JJ Uys owned 1 000 acres, DC Uys 8 209 acres and one erf, Isaac van Rooyen 2 982 acres, and JJ van Rooyen 3 acres in Greytown.<sup>44</sup>

Bale despite this enquiry did not view matters as black and white when it came to punishing high treason in economic terms. Quoting from the *Groot Placaat Boek, Vol 6, p.577*, published on 1 May 1732, he indicated that the Netherlands had abolished confiscation of property altogether in the case of treason. Similarly in England, Acts 33 and 34 abolished the confiscation and forfeiture of property for the same crime. Bale, however, contextualised the abolishment of confiscation by stating that this did not apply to the property of rebels taken in the course of hostilities which would under international law, belong to the government.<sup>45</sup>

Although Bale noted that “the principal punishment (for high treason) is doubtless that of death” he also argued against this because he viewed the death penalty to be very similar to confiscation. He cited examples where either a fine or imprisonment was imposed, at the discretion of the court, for crimes such as bestiality, robbery and rape which too were punishable by death. In the light of the above he made his opinion very clear: “I am therefore of the opinion that a fine may be imposed as the punishment for High Treason.” Bale was, however, also quick to point out that the court should be informed that fines were not the only way to punish treason and that the “primary punishment” was still death or imprisonment.<sup>46</sup>

Rumours that the confiscation of property belonging to rebels was being considered, caused a stir in certain sectors of the economy. The Newcastle, Dundee and Charlestown Vigilance Committee were concerned that as pre-war creditors to suspected rebels they would not be compensated should rebel properties be confiscated and sold.<sup>47</sup> MJ Farrell, on behalf of the Brazil Syndicate which held the mineral rights and the rights to purchase some of the farms in the Newcastle district owned by suspected rebels, voiced his clients' concern that they would forfeit their rights should the farms be confiscated. In its response the Natal Government expressed regret that it was unable to advise on the matter because the authorities themselves were unsure of what steps to take.<sup>48</sup>

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44. PAR, AGO I/7/40: List of Natal Afrikaners owning property and who had been recognised as fighting with the Boers, 15.11.1899-11.12.1899.

45. PAR, Zululand Administration (hereafter ZA) 33: Copy of the opinion of Attorney-General H Bale on the crime of high treason, 1899-1900.

46. PAR, ZA 33: Copy of the opinion of Attorney-General H Bale on the crime of high treason, 1899-1900. From time to time some Natal officials used the term “political offenders” when referring to high treason. See for example: PAR, CSO 2873: Invasion Losses Enquiry Commission: Claim by JH Dekker, 5.12.1901.

47. PAR, PM 17: Enquiry by James Hastie, chairman Vigilance Committee, regarding debt payments out of proceeds of confiscated property, 9.5.1900-4.6.1900.

48. PAR, CSO 1637: Enquiry by MJ Farrell on what steps the Brazil Syndicate should take to protect their mineral rights, 9.1.1900-19.1.1900.



Despite the above-mentioned economic fears and the opinion of the attorney-general, the Natal Government forged ahead with proposed legislation to sanction the official confiscation of property as a punishment for treasonable offences.<sup>49</sup> Such thinking did not find favour with the Colonial Office or Secretary of State Joseph Chamberlain. He instructed Bertram Cox to obtain the opinion of the Law Officers' Department at the Royal Courts of Justice. Their report echoed the opinion earlier expressed by Attorney-General Bale, namely that neither under Roman Dutch Law nor international law could the Natal Government be justified in confiscating landed property for the crime of high treason. It would also be contrary to the principles of justice to pass a law which would sanction retrospective action for the purpose of inflicting such punishment. Rebels could, however, be tried by Martial Law or treated as POWs. After the expiration of the war such rebels could then be tried for treason.<sup>50</sup>

Although the intervention of the Colonial Office ended the idea of confiscating the property of rebels, the pressure on the Natal Government to adopt such measures did not cease. Under the guidance of Yonge, the member for Melmoth within the Legislative Assembly, a campaign was launched to have the landed property of the rebels confiscated and the culprits disenfranchised.<sup>51</sup> Prime Minister Hime's response, to what was no longer the government's intention, was a guarded one: "It is not the intention of the Government to introduce a bill to provide for...the confiscation of the landed property owned by rebels...persons who have been convicted of Treason are not qualified to vote for the election of Members of the Assembly; that confiscation is not one of the punishments recognised by the Law of this Colony or of England."<sup>52</sup> This response was criticised by the *Natal Advertiser* which went on to make the draconian suggestion that whole districts should be disenfranchised simply because it envisaged that not all suspected rebels would be successfully prosecuted. The newspaper, clearly unaware of the intervention of the Colonial Office, was equally critical of the fact that rebel property could not be confiscated.<sup>53</sup>

Hime's unpopular but firm stand did, however, halt the momentum of those in favour of confiscating rebel property for some time. In mid-1901, under Governor Henry McCallum, the possibility of confiscating the land of the Natal Afrikaners, this time that of the approximately 382 not yet apprehended, was raised again. The elaborate process followed to determine which of these men owned land only served to highlight the difficulties that would have been faced if confiscation was decided upon as a punitive measure for high treason. Many Afrikaner farms were for example not registered in the deed's office because they were transferred from one family to another without

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49. PAR, GH 1445: Minute paper Governor W Hely-Hutchinson to Prime Minister AH Hime, 21.11.1899.

50. PAR, CO 179/216: Opinion on the confiscation of the property of rebels, 25.1.1900.

51. *Natal Legislative Assembly Debates*, 22.8.1899.

52. PAR, PM 17: Response to the question of disenfranchisement and confiscation posed by Yonge, 1.6.1900.

53. *Natal Advertiser*, 7.6.1900.

official records. The problems were exacerbated by the problems with addresses and the large number of Afrikaners with the same surnames and initials who resided in the same area. To gain clarity the assistance of the surveyor-general and the district police officers was called in. This did not necessarily shed more light on the ownership question as the police did not have a register of land-ownership. The investigation process which started on 2 September 1901 was concluded only in December 1901 with the tentative deduction that 82 of those not yet arrested owned land in Natal. Although some of the men like Dirk van Rooyen of Leo Kop, Newcastle, and PH and HN Schoeman of the Ladysmith district owned thousands of acres it was decided not to confiscate their land.<sup>54</sup> The reason offered by Governor McCallum, apart from the fact that the cabinet had informed him that this was not possible under the existing legislation, was that only a small proportion of the men were land owners.<sup>55</sup> This was untrue because 20% of those still to be apprehended did own land. In reality the governor suffered a defeat at the hands of the Natal Cabinet who had been down this path before.

Apart from the proclamations issued and the extreme position taken on the confiscation of property the Natal Government did not seem to have any real ideas on how to deal with the rebellion. Part of the problem was the uncertainty about what constituted high treason, what punishment should be meted out to the offenders and by whom.

The military, however, thought they knew. Quoting from *Roman Dutch Law* by Van der Linden, they contested that high treason was a “crime committed by those who, with hostile intention, disturb, injure, or endanger the Independence or security of the State: e.g. by bringing the State into subjection to a Foreign Power...the punishment for this Crime is generally Death, and the manner and mode of execution is generally according to the greater or less degree of aggravating circumstances.”<sup>56</sup>

A circular memorandum, issued by Lord Kitchener on the behalf of Lord Roberts, should have helped to provide both clarification and direction in matters regarding treason: Everybody involved in investigating treasonable charges were urged to guard against political and personal bias and to, neither exhibit a feeling of sympathy towards the Boers, nor sell articles to them which they otherwise might have taken by force. Treasonable offences which were to be verified by impartial witnesses included: preaching sedition and advising inhabitants to take up arms; giving information on troop movements; carrying arms against the British Army; and more specifically taking part in an attack on the British forces. The argument that the Boers had annexed a certain district and that the inhabitants were forced to enlist were not to be accepted as a valid reason for committing treason. In exceptional cases the commanding officer could, after a preliminary investigation, impose a death penalty. Under such circumstances he had apply for instructions from the commander-in-chief to

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54. PAR, GH 1449: Name lists of Natal Afrikaners not apprehended, and the land they owned, 2.9.1901-12.12.1901.

55. PRO, CO 179/220: Letter Governor HE McCallum to Colonial Secretary J Chamberlain, 8.11.1901.

56. NAR, Archives of the Provost Marshal's Office (hereafter PMO) 2: Extract from *Roman Dutch Law*, p.202, by Van der Linden, certified by Lt-Col NM Poole, no date.

arrange a trial for the offender before a commission existing of a judge of the supreme court and four commissioned officers.<sup>57</sup> Kitchener's memorandum was, however, never used as either the point of departure, or the guiding principles, in dealing with high treason.

This can partially be explained in that Natal possessed a comprehensive treason law, Law No. 3 of 1868, to deal with high treason as outlined by Kitchener. This was in line with the law of the United Kingdom in relation to treasonable offences. This law contained an extensive definition of treason comprising: "overt acts or deeds" as well as treasonable acts by publishing or "open and advised speaking" of traitorous "compassings, imaginations, inventions, devices, or intentions."<sup>58</sup> Law No. 3 of 1868, however, made no provision for the confiscation of the landed property of those found guilty of treason. When reviewing this law in August 1899 the Natal Legislative Assembly rejected the idea to amend it to allow for the confiscation of property.<sup>59</sup> All in all Law No. 3 of 1868 lacked real judicial power to deal with rebels within a context vastly different from when it was passed 31 years before. This was reflected in the 1900 report of the magistrate for the Ladysmith district who commented as follows: "I am of opinion that it would have been a kindness to these people had there been a stringent Rebellion Act in force; many would have hesitated to join the enemy had such an action jeopardised the safety of their landed property."<sup>60</sup>

The Imperial authorities were very sceptical of this legislation and the ability of the Natal authorities to deal with the rebels fairly. They feared that local courts, using a jury system, would treat the rebels harshly. The Imperial Government, furthermore, desired a reasonably similar treatment of rebels in Natal and the Cape Colony, and to this end an "Imperial Special Commission" to try the rebels in both the colonies was suggested.<sup>61</sup>

The Natal Government, however, were determined to show their independence by dispensing justice on its subjects and insisted that they would deal with the rebels with a minimum "interference from the Imperial Government" by means of a commission. In the light of this the Natal reaction to the suggestion of the Imperial Government was filled with some indignation: "Ministers are of the opinion that the existing system of administration of justice in this Colony is adequate for the trial of rebels and that the appointment of a judicial commission would be construed as a reflection upon the impartiality of our tribunals."<sup>62</sup> The Natal Government also made it clear that it was not possible to treat rebels in Natal and the Cape Colony in a similar fashion since, unlike some districts in the Cape

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57. PAR, CSO 2591: Circular memorandum issued by Lord Kitchener, 3.2.1900.

58. PAR, NCP 7/1/14: *Natal Government Gazette*, 22.9.1868.

59. *Natal Legislative Assembly Debates*, 22.8.1899.

60. PAR, NCP 8/1/11/3/2: Annual report magistrate Klip River district, 1900.

61. PRO, CO 179/211: Telegram Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 12.5.1900.

62. *Ibid.*

Colony, no district in Natal had suffered a revolt from the majority of its inhabitants.<sup>63</sup> Hely-Hutchinson therefore informed Joseph Chamberlain and High Commissioner Alfred Milner that “the circumstances in the Cape Colony and in Natal differ considerably and that to require uniformity of treatment of rebels would not be advisable.”<sup>64</sup>

The Natal Government was, however, not united in its point of view. Ministers Moor and Smythe, who represented the districts of Weenen and Estcourt with their large number of Afrikaner voters, supported the appointment of a judicial commission because they felt that the juries would be swayed by race feelings. The other four ministers considered such an appointment inadvisable for the following reasons: a commission would be viewed as a discredit to the impartiality and competency of the judges in the Natal courts; the public would view the appointment of such a commission as an admission that ordinary courts would pass sentences that are too severe, and it would reinforce the belief amongst the public in Natal that the government wanted to let rebels off as easily as possible; and the belief that the necessary legislation would not be passed by Parliament would gain ground. To the majority in the cabinet Hely-Hutchinson made it clear that the failure to appoint such a commission in Natal might fail to secure the appointment of such a commission in the Cape where juries were most likely to acquit rebels. The governor also drew the cabinet’s attention to the fact that if the rebel trials were moved from the Dutch Districts it would not look good, and that the number of court cases were too numerous to be handled by the Supreme Court. These arguments, however, failed to sway the majority of the cabinet, and consequently the only real firm decision taken was for Henry Bale to prepare legislation that would allow magistrate courts to try less serious rebel cases.<sup>65</sup>

It is thus clear that the Natal Government, not only managed to hold out against the pressure to have rebels tried by a commission to save the situation in the Cape Colony, but also that they would not easily be convinced to sacrifice their sovereignty and independence of the judiciary, which was gained in 1893, when responsible government was introduced.<sup>66</sup>

Joseph Chamberlain, the Colonial Office, High Commissioner Milner and Governor Hely-Hutchinson all continued to place pressure on the Natal Government to agree to the appointment of a special commission. On 24 April 1900, the Natal Government’s resistance crumbled and the four dissident voices joined Moor and Smythe in agreeing to appoint a special commission for the trial of rebels in Natal. This change of opinion took place because of the immense pressure applied on the Natal Cabinet to ensure that “justice shall be done to rebels in the other parts of South Africa” but

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63. PRO, CO 179/211: Minute paper Prime Minister AH Hime to Governor W Hely-Hutchinson, 3.3.1900.

64. PAR, CSO 2588: Telegram Colonial Secretary J Chamberlain to Governor W Hely-Hutchinson, 31.3.1900.

65. PAR, GH 1302: Letter Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 14.4.1900.

66. PRO, CO 179/211: Letter Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 23.4.1900; PAR, GH 1302: Letter Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 23.4.1900.

also because the first rebel trials were on the verge of starting in Natal. This change of mind led to the decision to compromise on the following two conditions: the Cape Colony was to undertake to introduce, and endeavour to pass, a bill to provide for the appointment of a similar commission in the Cape Colony; and the majority of the commissioners for the Natal Court were to be appointed from the local bench and bar.<sup>67</sup> Attorney-General Bale made it clear that he only agreed to the appointment of a commission with great reluctance, and that he wanted to explain the reasons in full for a bill “so unusual and revolutionary in character” that it could only be justified on political grounds in the Natal Parliament.<sup>68</sup>

Once the principle of a special commission, that would dispense with the jury system and ensure uniformity of procedure and equality of punishment between Natal and the Cape Colony, was accepted the negotiations and planning of the implementation thereof could start. As a first step Attorney-General Bale corresponded with his Cape Colony counterpart on the draft bill.<sup>69</sup> A problem, however, arose with the suggestion that British judges were to be employed as members of the commission. The mere idea of introducing British judges for the rebel trials had the judiciary in Natal up in arms. They argued that it would be costly, that the British judges were not acquainted with the procedure of law in Natal, had no knowledge of African customs and habits which was essential since many of the witnesses would be Africans,<sup>70</sup> and that it was a negative reflection on the impartiality and capacity of local judges and lawyers.<sup>71</sup> In the face of pressure from the motherland the Natal Government eventually also relented on this issue,<sup>72</sup> and Sir William Smith from Britain was appointed as judge president. After eight months, however, he requested to be relieved of his duties,<sup>73</sup> and with the consent of Joseph Chamberlain, he was replaced by a local member of the bench, AW Mason, which meant that the entire bench of the Special Court then consisted of Natalians, thus handing the Colony the power it desired.<sup>74</sup>

#### **5.4 The creation of the Special Court**

With most of the ideological matters surrounding the judicial manner in which rebels were to be dealt with settled, the Natal Government could move ahead to deal with the large number of suspects. A Special Court that would consist of the original agreed-upon special commission, was

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67. PRO, CO 179/208: Telegram Prime Minister AH Hime to Governor W Hely-Hutchinson, 24.4.1900; Letter Governor W Hely-Hutchinson to J Chamberlain, 25.4.1900.

68. PRO, CO 179/208: Minute paper by Attorney-General H Bale on the commission to try rebels, 20.4.1900.

69. PAR, GH 1302: Telegram Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 11.5.1900.

70. PAR, GH 1302: Telegram Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 30.5.1900.

71. PRO, CO 179/208: Minute paper by Attorney-General H Bale on the commission to try rebels, 20.4.1900.

72. PAR, GH 1302: Telegram Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 11.5.1900.

73. PAR, AGO I/8/78: Minute paper Attorney-General H Bale to minister of lands and works, 27.3.1901.

74. PAR, AGO I/8/78: Minute paper regarding the appointment of AW Mason as judge president of the Special Court, 1.4.1901-2.4.1901.

established to do so.<sup>75</sup> Act 14 of 1900, that created a Special Court, “to make provision for the better and more speedy trial of persons accused of treason, and for the appointment of acting Judges of the Supreme Court” was passed without much trouble by the Natal Parliament.<sup>76</sup> The act was promulgated on 31 July 1900, and came into effect the next day. The first section of the act provided the working definitions of treason which were to be used to judge the suspected rebels:

- (a) *Crimen perduellionis*<sup>77</sup>
- (b) *Crimen laesae majestatis*<sup>78</sup>
- (c) Offences under Law 3 of 1868
- (d) Sedition
- (e) Every attempt to commit, and every solicitation to commit, and every kind of criminal participation in, treason.

In terms of its constitution the Special Court was to consist of three special commissioners who were qualified judges, to be appointed by Governor Hely-Hutchinson, and to be paid from the Consolidated Revenue Fund of the Colony of Natal. Although the Special Court had to try all treason cases, the following provision was included in Act 14 of 1900 so as to speed up the process and to deal with minor treasonable offences - the attorney-general could remit some treason cases to trial by a magistrate without jury, and the accused in these cases could appeal to the Special Court.<sup>79</sup> In a radical turnabout, the passing of Act 14, and especially the fact that no jury would be involved, was welcomed by the normally very critical Natal newspapers.<sup>80</sup> The publication of the act was followed by the publication of supporting legislation namely, Act 15 of 1900, which would serve: “To indemnify the Governor of the Colony of Natal and the Officer Commanding Her Majesty’s Forces in Natal, and all persons acting under their authority and in good faith in regard to acts during the existence of Martial Law.”<sup>81</sup>

Once the Special Court was established, Governor Hely-Hutchinson, appointed the following judges as commissioners: Sir William Smith of England as president, Judge AW Mason, and Magistrate Broome from the Natal judiciary. The *Natal Witness* lauded the men appointed to the panel and declared that they would “form an admirable jury.”<sup>82</sup> The trio of gentlemen proceeded to produce the

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75. PAR, GH 1456: Minute paper Prime Minister AH Hime to Governor W Hely-Hutchinson, 20.4.1900.

76. PAR, NCP 6/1/1/53: *Natal Government Gazette*, 31.7.1900, containing Proclamation No. 56 of 1900.

77. Meaning high treason.

78. Meaning treason and lesser offences against the crown.

79. PAR, NCP 6/1/1/53: *Natal Government Gazette*, 31.7.1900, containing Act 14 of 1900; NCP 5/3/8: Colony of Natal Acts, Parliament of the Colony of Natal, 4<sup>th</sup> session, second Colonial Parliament, 1900, Act 14 of 1900; *Natal Witness*, 24.5.1900.

80. *Natal Witness*, 26.5.1900; *The Standard*, 19.5.1900.

81. PAR, NCP 6/1/1/53: *Natal Government Gazette*, 31.7.1900, containing Act 15 of 1900.

82. *Natal Witness*, 7.8.1900.



“Rules of the Special Court”, a document consisting of 13 parts and 28 pages. The various parts dealt with matters such as sessions of the court, prosecution and indictment, subpoenas, trials, execution of judgements; appeals; applications for bail and release; and a miscellaneous section which explained affidavits, the tasks of the sheriff, registrar and the shorthand writers and how the documents generated by the trial were to be handled. To adhere to the regulations of the 13 parts 23 forms had to be completed amongst which were indictments; counts of theft; charges under Law 3 of 1868; notice of trial and summons; subpoena on witnesses; warrants of imprisonment; warrants of fines; warrants of discharge on payment of fines; writs of execution; notices of appeal; writs of appeal; instruction for prison returns; warrants of release on bail or on conditions; bail bonds with sureties and bail bond with personal securities.<sup>83</sup> Within this context the “Rules of the Special Court” were set to generate enormous volumes of documents. After some minor alterations it was published.<sup>84</sup>

Although the constitution of the Special Court and the appointment of the committee of judges was welcomed by the public, the fact that the attorney-general could remit some treason cases to trial by a magistrate without jury did not receive all-round support. The *Natal Witness* was quite outspoken: “Treason has always been regarded as the highest crime for which a man can be indicted, but to allow a trial by a magistrate is to reduce it to the same level as cases of petty felony.”<sup>85</sup> “An ex-Magistrate” had even stronger reservations and made it clear that magistrates had no experience of treason trials which therefore could pose difficult demands beyond the training of magistrates. Magistrates could also be accused of bias when trying individuals from their district. To protect, both the suspected rebels and the magistrates involved, “An ex-Magistrate” suggested that special magistrates be appointed to try the less serious cases of treason.<sup>86</sup> This idea found favour with Attorney-General Bale who agreed to appoint magistrates, other than those who accepted the preliminary examination, to try the less serious cases.<sup>87</sup> As a result, Magistrate James Forder who was briefed to try less serious treason cases under the rules of the Special Court, was appointed to this position.<sup>88</sup> The maximum sentence he could impose was six months imprisonment and a fine of £20. Rebels sentenced by the special magistrate had the right to appeal to a higher court, in this case, the Special Court.<sup>89</sup>

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83. PAR, AGO I/7/46: Rules of the Special Court, 27.8.1900; PRO, CO 179/213: Rules of the Special Court, 27.8.1900.

84. PAR, AGO I/8/73: Letter Attorney-General H Bale to registrar Special Court, 29.8.1900.

85. *Natal Witness*, 26.5.1900.

86. *Natal Witness*, 30.5.1900.

87. PAR, AGO I/8/73: Letter Attorney-General H Bale to colonial secretary, 17.9.1900.

88. For the judgements delivered by Magistrate J Forder, see: PAR, 1/LDS 1/6/2/2/1: Natal rebels note book, 1901-1902; PAR, 1/DUN 1/4/2/1: Natal rebels note book, November 1900; PAR, 1/DUN 1/4/2/2: Natal rebels note book, 1901-1903; PAR, 1/LDS G/1/1/1: Clerk of the peace letter book: Telegram HEK Anderson to magistrate Upper Tugela, 21.11.1900.

89. VTR, JC Vermaak collection, 03/19979: Letter JC Vermaak to Professor Uys, 3.11.1955.

This was not the end of the problems which confronted the trials of rebels in magistrate courts. The rules of the Special Court did not deal with the drawing up of complaints in cases remitted to magistrates. Consequently Bale requested the commissioners of the court to alter the rules of the court to make this possible. The commissioners made it clear that they were not empowered to do this since all treason cases remitted to magistrate courts fell under Act 22 of 1896 and needed to be treated as such.<sup>90</sup>

With this settled, the Special Court and special magistrate were ready to assume the daunting task of trying hundreds of suspected Natal rebels. The Special Court functioned until late March 1902 when it started to wind down. By then one of its stalwarts, Broome, had vacated his position and the sheriff, Mr Borgnis, had very little work to do and was needed by the Natal Police. Deputy Sheriff Gough was prepared to take over his duties, including the collection of fines. The president of the Special Court, Judge Mason, resigned on 24 April 1902 as he was about to take his leave in the United Kingdom.<sup>91</sup> In April 1902 the Special Court dissolved and the remaining cases were remitted to Special Magistrate Forder for trial.<sup>92</sup>

Although the Natal Government was subtly convinced by the Colonial Office to conform in matters regarding the confiscation of property and the acceptance of a Special Court, it continued to cling to its political and judicial independent line regarding the trial of rebels by the law of the Colony. The Natal Government was even prepared to sacrifice peace to ensure that Natal rebels were tried for treasonable offences. In this they had the support of High Commissioner Alfred Milner, even though he had, according to Thomas Pakenham a different agenda, namely "to knock the bottom out of the 'great Afrikaner nation' for ever and ever Amen." In the light of this, neither the Natal Government nor Milner would support the peace negotiations between Botha and Kitchener planned for 28 February 1901 at Middelburg in the ZAR. The willingness of Kitchener to negotiate amnesty for the Natal and Cape rebels carried little support with Milner who would, allow peace to derail his own plans. In the end Milner, as well as the Natal Government, had their way and prospects of peace faltered on the rebel issue.<sup>93</sup>

### **5.5 The Supreme Court and Zululand High Court trials of Natal rebels**

Before the Special Court and special magistrate could assume their duties, the rebel cases brought before the Supreme Court in Pietermaritzburg and the Zululand High Court needed to be concluded. The inception of the cases against the three brothers Boers, AG, GJB and HW, A Fuhri, PR Buys, WMJ van Rooyen, and others already under way in the Supreme Court in Pietermaritzburg, and against MA and LJR Kritzingen before the Zululand High Court, went back to the period before the constitution of the Special Court when the Natal Government deemed the Supreme Court the most appropriate institution to deal with rebels. These cases therefore fell outside the jurisdiction of Act

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90. PAR, AGO I/8/74: Minute paper Attorney-General Bale requesting a change in the rules of the Special Court, 26.10.1900-5.11.1900.

91. PAR, CSO 1700: Minute paper regarding the constitution of the Special Court, 17.3.1902.

92. PAR, CSO 1702: Letter Judge AW Mason to Governor HE McCallum, 18.4.1902.

93. T Pakenham, pp.488-502.

14 of 1900 and needed to be concluded before the commencement of the sittings of the Special Court.<sup>94</sup>

The first Natal Afrikaners to be tried outside a military court for high treason were the above-mentioned Boers brothers, Arnoldus Gerhardus, Gerhardus Johannes Bernardus, and Hendrikus Wouterus<sup>95</sup> of the Spioenkop area near Ladysmith. The three men were tried in the Supreme Court in Pietermaritzburg, during June 1900, by Judge Finnemore and a jury with Attorney-General Henry Bale prosecuting. In a concluding statement of 90 minutes, which was applauded by the packed crowd, Bale asked the court to find GJB and HW Boers guilty of treason for actively assisting the Republicans in operations in the Klip River and Upper Tugela districts, and for helping in repairing a canon. The jury agreed and sentenced the men to five years imprisonment with hard labour and a fine of £250 or a further one year imprisonment. Arnoldus Gerhardus was acquitted,<sup>96</sup> but was refused permission by both the military, and the civil authorities, to return to his farm because of the military situation in the vicinity of his home.<sup>97</sup> He eventually received permission to return to his farm on 14 September 1900, only to be ordered south of the Tugela River on 11 October 1900 by the military.<sup>98</sup>

The case in the Supreme Court against the Boers brothers was followed by that against the 33-year-old Philip Rudolph Buys (jnr) and Albertus Fuhri of Weenen. Both men were arrested as suspected rebels and tried before Justice Finnemore and a jury of nine men, with Attorney-General Henry Bale and RF Morcom prosecuting. Buys and Fuhri were charged on two counts: that they had joined the Boers on 20 November and accompanied them south to Mooi River; and that they had taken horses from an African, Usapo. Buys pleaded not guilty to the charges and in his testimony he gave an account of his dealings with the invaders. The Boers had come to his farm and invited him and Fuhri to the laager. Here they met with General Piet Joubert who asked them if they could provide the commando with horses. Both declined as they had no horses to spare and because the Natal Government had warned them against supporting the invaders. Fuhri had, however, indicated that he was willing to sell a horse. Having failed to secure their unequivocal support, the two Natal Afrikaners were warned that if they were hiding horses and livestock belonging to English Natalians they would get into trouble. This scared Buys who was doing exactly that for Ralph Whittaker, and

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94. PAR, NCP 6/1/1/53: *Natal Government Gazette*, 31.7.1900, containing Act 14 of 1900; NCP 5/3/8: Colony of Natal Acts, Parliament of the Colony of Natal, 4<sup>th</sup> session, second Colonial Parliament, 1900, Act 14 of 1900; *Natal Witness*, 24.5.1900.

95. HW Boers first came to the attention of the military and civil authorities just prior to the war when he complained of the destruction of the wire fencing on his farm by soldiers. PAR, 1/LDS 3/1/1/16: Letter magistrate Klip River district to HW Boers, 10.10.1899.

96. *Natal Witness*, 10-12.6.1900; PAR, AGO I/7/42: Regina vs AGJ, GJB and HW Boers, 5.6.1900.

97. PAR, CSO 1650: Application of permission by TF Carter on behalf of AG Boers to return home, 18.6.1900-30.6.1900.

98. PAR, HF Schoon collection, A 72: Dairy entries, 14.9.1900, p.447 and 11.10.1900, p.483.

his brother-in-law, Richard Horner.<sup>99</sup> After the men were questioned on the whereabouts of the British forces and answered unsatisfactorily, they were allowed to return home on condition that they had to report to the laager on a regular basis. They were warned that if they failed to report their property would be damaged. Buys' evidence, which was verified by the evidence of several African witnesses as well as Whittaker and Horner, was rejected by the jury who favoured the testimony of Herbert Blake, the local justice of the peace who had been taken prisoner by the Boers, and an African who placed Buys at the Battle of Willow Grange. After a short deliberation the jury found Buys guilty of high treason and sentenced him to three year's imprisonment and a £250 fine or an additional year in jail.<sup>100</sup> In so doing Buys became the third Natal Afrikaner, and the first south of the Tugela, to be sentenced as a rebel. Fuhri was acquitted on both charges.<sup>101</sup>

The agenda behind the Buys/Fuhri trial, and possibly all other trials taking place in the Supreme Court, was best summed up by the council for the defence, TF Carter, in his opening statement as reported by the *Natal Witness*:

He (Carter) asked why this case was not tried by the Court, which, in the course of two or three days would be in existence, especially appointed for trying this class of case? He believed that such a question had been asked in the House, and the reply had been given that delay would be involved if all prisoners were made to wait for trial by that Court. Such a delay would have been distinctly beneficial to the prisoners, for they could have obtained more witnesses. Dinizulu, the Irish Fenians, Jameson and Willoughby were all tried for treasonable offences by special courts, and in nearly every case of a political trial, it was the universal custom to appoint a Special Court to deal with the accused. He complained that in this case there had been undue haste in the prosecution. Was it because the government had been accused of lukewarmness, and that this was a kind of counterblast to the statements that had been made? He did not know if that was so, but he could not find any other reason than what he called a political reason. He had never heard the Attorney-General impart so much warmth and heat into any as he had in the present case. In this case there seemed to be a striving after a conviction, because it would show a good start, and the tail and the ruck would come in for their deserts.<sup>102</sup>

In Zululand, MAS and LJR Kritzinger were tried for high treason in the Zululand High Court during June 1900. The Natal authorities wanted to proceed with the case while the Chief Commissioner and Civil Magistrate Saunders suggested that the case be delayed and tried under the newly constituted

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99. *Natal Witness*, 9.6.1900 and 15.6.1900; PAR, AGO I/8/71: *Corpus Dilecti* in the case of the Boers brothers, 1.6.1900; PAR, AGO I/7/1: Treason trial of AGJ, GJB and HW Boers, 5.6.1900.

100. Buys later claimed that he suffered materially during his arrest. Via his attorney he expressed his dissatisfaction at losing his horse, saddle, bridle and mackintosh, valued at roughly £40, when he was arrested and requested that it be returned to him or that he be compensated for it. The subsequent investigation revealed that Trooper RG Jones was instructed by General Barton to hand the horse over to the remount department. An extensive investigation into the matter seems not to have favoured Buys, partially because Jones did not ask for a receipt when delivering the horse.

PAR, MJPW 77: Correspondence concerning the horse and other effects belonging to PR Buys, 13.8.1900-5.10.1900.

101. *Natal Witness*, 13.6.1900 and 15.6.1900; PAR, AGO I/7/1: Regina vs PR Buys and A Fuhri, June 1900.

102. *Natal Witness*, 13.6.1900.

Special Court. The Natal authorities, however, did not relent and MAS and LJR (Louis) Kritzinger were tried by the Zululand High Court in Eshowe and sentenced to a £50 and £100 fine respectively.<sup>103</sup>

In the end, “the good start” referred to by Carter culminated in seven cases involving eleven Natal Afrikaners being tried in the Supreme Court. Of these six were found guilty, two were acquitted and the case against HA, JJ and GC Potgieter was transferred to the Special Court on request of their lawyer, TF Carter, who must have felt that this court would give his clients a fairer treatment.<sup>104</sup>

In conducting this small number of cases before the Supreme Court, the Natal Government managed to convince the rabid English colonists that they intended to punish the rebels, and on a political level it drove home the argument that the Natal judiciary could deal with the rebels, independently from the motherland. Not surprisingly, the verdict of Governor Hely-Hutchinson was that the juries involved were fair and that the sentences imposed by the Supreme Court were moderate.<sup>105</sup>

This was not the perception the Boers brothers and Buys had of the sentences meted out to them. The Boers brothers petitioned the Natal authorities on four occasions and Buys once for a remission of the sentence of hard labour passed on them and which they had to carry out “with the native convicts in the streets of Eshowe.” The basis of the argument, as set out by TF Carter, was that the sentences imposed on them for high treason were more severe than that subsequently handed down by the Special Court, and the afore mentioned court did not inflict hard labour as a punishment for high treason. Their argument was supported by Attorney-General Bale who had to admit that the three men’s sentences were “more severe than sentences for like offences imposed by the Special Court.” He therefore recommended that they be treated mercifully. These requests were time and time again rejected by the governor of Natal.<sup>106</sup> Only in June 1902, after the war had ended, did the authorities relent and were the Boers brothers and Buys relieved of the sentence of hard labour imposed on them.<sup>107</sup>

Several other processes, which continued into 1903, ran concurrently to the trials in the Supreme

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103. PAR, ZA 33: Enquiry into the advisability of prosecuting rebel cases outside of the constituted Special Court, 1.6.1900-21.6.1900.

104. PAR, AGO I/8/72: Minute paper regarding the treason trials of HA, JJ and GC Potgieter, 12.7.1900-4.8.1900.

105. PRO, CO 179/213: Letter Governor W Hely-Hutchinson to Colonial Secretary J Chamberlain, 25.8.1900. For a detailed summary of the cases that were tried by the Supreme Court and the High Court in Zululand see: PRO, CO 179/213: Return of cases of treason dealt with by Supreme Court of Natal and the High Court of Zululand up to and including 4.8.1900.

106. PAR, CSO 1673: Petition by HW and GJB Boers for remission of sentence, 21.12.1900; CSO 1673: Petition by HW and GJB Boers for remission of sentence, 19.4.1901; CSO 1692: Petition by HW and GJB Boers for remission of sentence. 4.12.1901; CSO 1673: Petition by HW and GJB Boers and PH Buys that they be granted the privileges of other Boer prisoners, 20.12.1900.

107. VTR, JC Vermaak collection, 03/2609: Lys van Natal rebelle wat gevonniss en tereg gestaan het, 17.4.1954.

Court. Natal Afrikaners who escaped arrest by the Natal Army were investigated, arrested and identified so that they could eventually be tried by either, the Special Court, or the special magistrate.

### **5.6 Investigating and arresting the Natal rebels**

Investigations into rebel activities in Northern Natal started well before the Boer occupation ended. District officers of the Natal police were instructed to keep a record of Natal Afrikaners suspected of disloyalty as early as 30 September and 3 October 1899.<sup>108</sup> The instruction was underpinned by Attorney-General Henry Bale's request on 30 November 1899, that information of treasonable acts and utterances be obtained.<sup>109</sup> Later these records were supplemented by evidence from refugees from Northern Natal and from African spies who exploited the poor security measures taken by the Republican forces. As a result, Charles Tatham, clerk of the peace, attorney, member of the UMR and parliamentarian for Greytown, was able to inform Bale, weeks before the Natal Army attacked the Boer positions on the Biggarsberg, that he had enough evidence to arrest 25 Afrikaners from Helpmekaar and several from Wasbank.<sup>110</sup>

Once Natal was cleared of the Boers by Buller's Natal Army, Tatham and Inspector Clarke of the Natal Police became the driving forces behind the initial investigations against suspected Natal rebels arrested by the military. By 11 June 1900 the pair had already drawn up a list with the names of 212 suspected rebels from the Dundee district, as well as witnesses, especially African, to testify against them. They, however, failed to achieve the same success in the Newcastle district, because most of the Africans had accompanied the fleeing Natal Afrikaners.

Despite the initial success Inspector Clarke had no illusion about the process ahead: "The persecution of rebels will be a lengthy business and a very expensive one but I have not doubt for a moment that every rebel will eventually be brought to justice...I am sorry we cannot make more rapid progress with the work but I have been working 15 or 16 hours every day since I left PMB."<sup>111</sup> Clarke's sentiments were echoed by the clerk of the peace for Newcastle, GL Fraser, who complained that it was impossible to obtain depositions at short notice because of the size of the district and the fact that Afrikaners from all over the division were being arrested by the military.<sup>112</sup>

A glimpse into the process, replicated in the trial of approximately 500 rebels, is provided by the case of the three Colling brothers, Frederick Moolman, Thomas George and Joseph Lombaard

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108. PAR, MJPW 116: Letter MJPW AH Hime to Chief Commissioner of Police Inspector Campbell, 9.1.1900.

109. PAR, AGO I/8/69: Minute paper Attorney-General H Bale to Prime Minister AH Hime on gathering information on treasonable acts and utterances, 30.11.1899.

110. PAR, AGO I/7/42: Letter C Tatham to Attorney-General H Bale, 11.5.1900.

111. PAR, AGO I/7/42: Letter Inspector Clarke to Attorney-General H Bale, 11.6.1900.

112. PAR, AGO I/8/72: Application by NJ Degenaar to be released on parole or bail, 15.7.1900.



Odendaal. Firstly intelligence was gathered by the Natal Police and their assistants who were labelled the “Brotherhood of the Holy Judas Iscariot” by Reverend Prozesky.<sup>113</sup> Once this was accomplished suspects not in prison were arrested and the preliminary examination against them could begin. The first two Colling brothers were arrested and imprisoned on 1 August 1900 and the third brother on the 18<sup>th</sup>. Evidence was taken against the men between 2 August and 24 September 1900. Joseph Lombaard Odendaal was considered innocent and released on 27 August. The remaining two brothers were committed for trial after the necessary indictments, subpoenas, papers to the prosecution, and the list of witnesses were filed on 1 October 1900.<sup>114</sup> FM and TG Colling were eventually sentenced on 11 January 1901, five months after their arrest.

The outlined process and the possibility of a fair trial were initially seriously hampered by the lack of evidence against the large number of suspected rebels arrested by the Natal Army. Investigations proved that many Afrikaners were arrested by the military without any validation and detained merely on their depositions. As a result, the onus was placed on the Natal Police to gather the necessary information. This inevitably meant that an already elaborate process became bogged down. On 18 October 1900, a worried Attorney-General Bale complained that the number of prisoners against whom no evidence had been taken was unduly large. He also felt that it would be unfair to keep the men in prison for a period exceeding three months without any evidence against them and that it “(could) only be justified, if justified at all, by extreme necessity”. Bale was, however, also under pressure to speed up the proceedings because the newspapers were criticising the slow prosecution rate. At the same time he was afraid that a critical Special Court would order the release of the suspects if steps were not immediately taken to justify their arrests. Such a step would, according to Bale, do an immense amount of injury to the administration of justice in Natal.<sup>115</sup> He thus set a process in motion which could deal with the legacy created by the military. The number of assistant magistrates at Newcastle, Dundee, Estcourt and Ladysmith were doubled, the services of Charles Tatham was maintained, the clerks of the peace were paid for overtime, while the names of the suspected rebels in custody were forwarded to the police officers in the districts where the men came from.<sup>116</sup>

In the meantime the Natal Police did everything in their power to come up with the necessary evidence, working their horses so hard that they became unfit for use. A major problem faced by the police was that the military had moved large numbers of the suspected rebels from Newcastle, Dundee and Ladysmith to prisons in Pietermaritzburg and Durban. The preliminary examinations could therefore not start until these rebels were returned to, for example, the Newcastle jail.

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113. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 24.5.1900, p.316.

114. PAR, 1/LDS 1/6/2/1/1: Preliminary proceedings in cases of alleged high treason, 8.1900-10.1900.

115. PAR, AGO I/8/75: Preparation of a complete list of rebels in prison arrested for treason, 9.10.1900-8.3.1901; AGO I/7/75: Letter Attorney-General H Bale to CIO, 25.10.1900.

116. PAR, AGO I/8/75: Preparation of a complete list of rebels in prison arrested for treason, 9.10.1900-8.3.1901.

Furthermore, it seemed unlikely that room would become available in the Klip River county prisons since convicted rebels were kept in the local prison until they had testified in other cases, while new arrests were brought in on a daily basis. A pressurised and unsympathetic Bale immediately rejected the reasons offered for the slowness of the process and urged the CIO to press ahead with the investigations.

At this stage, roughly five months after the blanket arrests of the Klip River county Afrikaners, the Newcastle Prison was seriously overcrowded because convicted rebels were imprisoned alongside a group of Afrikaners who had surrendered voluntarily,<sup>117</sup> in all likelihood because they felt no charges could be brought against them. Overcrowded prisons, the arrival of hot and humid summer weather together with the small chance of prospective evidence convinced Henry Bale that bail should be granted to the imprisoned rebels. He explained: "I am aware that there is a danger of the prisoners influencing or intimidating Native witnesses, but in the interests of humanity it seems undesirable that men should be kept in Goal until they are brought to trial."<sup>118</sup> The GOC for Natal, Lt-Gen Hildyard, had no objection as long as it was understood that the suspects could not move north of Pietermaritzburg.<sup>119</sup>

The decision to release the suspected rebels, who had little or no evidence against them, did not endear the Natal authorities, the Natal Police or the attorney-general's office to the jingoistic Natal public who used the *Natal Witness* to vent their discontent with the decision. Bale took this in his stride and commented that "the public will not be influenced by my opinion or yours, or even by the difficulties of the position. If, for any reason, evidence cannot be collected, then the men must be released. Everything must be done to avoid a scandal. The government must not be accused of cruelty if it be found hereafter that there is no evidence against some of those who have been in prison for many months." Inspector Clarke was less accommodating in accepting the criticism and in a self-imposed mission undertook to trace "the origin of abusive articles" by finding the persons who directed these attacks. This threat to investigate paid off because the Pietermaritzburg newspapers reverted to a form of self-censorship by refusing to publish articles critical of the manner in which the rebel issue was managed.<sup>120</sup>

By middle December 1900, the situation had hardly improved and for the next two months Bale continued to place pressure on the CIO to gather evidence against the Afrikaners initially arrested by the military. On 18 February 1901, Bale could finally declare that some evidence existed against the incarcerated suspects, and he urged the clerks of the peace to proceed with the preliminary examinations. Again he declared his unwillingness to keep the suspects in prison unless a case could

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117. PAR, AGO I/8/75: Correspondence regarding a list of persons charged with high treason, 23.10.1900-25.10.1900.

118. PAR, AGO I/8/75: Letter Attorney-General H Bale to minister of lands and works, 22.10.1900.

119. PAR, AGO I/8/75: Preparation of a complete list of rebels in prison arrested for treason, 9.10.1900-8.3.1901.

be brought against them. JR Lindt and PA Rensburg who were both summarily released, fell in this category.<sup>121</sup>

Other suspects arrested by the Natal Army were less fortunate. JF and LP de Jager, A Eicker, HJ Maritz and LJ van Ede who were imprisoned in Newcastle were such examples. On 21 May 1900, a year after their arrest, they complained that they were being remanded every seven days on the charge of high treason. Although the Special Court had had two sittings in Newcastle during this period, and the special magistrate three, they were not tried. The men complained that their families were suffering and that the suspense and anxiety was affecting their physical and mental health. They therefore asked Henry Bale why they were “specially picked out for this treatment...” This was exactly the kind of situation Bale had crusaded against and he angrily confronted the CIO: “Will you please inform me what evidence there is against these men and why their cases have not been dealt with? Is it true that they have been under arrest since 21 May last as stated and if so why were their names not included in the list supplied by you of men against whom no evidence had been taken?”

The CIO only respond five months later, offering the following excuse for the overlong imprisonment of the five Afrikaners: “I suspect that these papers have been overlooked when rebels have been committed for trial.” The office of the attorney-general was then informed that the culprit was Inspector Petley who had neglected his duties, and that Inspector Mardall would see to it that the cases were concluded.<sup>122</sup> The quintet were eventually sentenced on 1 June 1901, by Special Magistrate Forder, to five months imprisonment each, except for HJ Maritz who was fined £15 or sentenced to 3 months imprisonment. In reality all the men except Maritz, effectively served just more than 17 months, making a mockery of the system which was set up to have less serious cases tried by the special magistrate.<sup>123</sup> The feeling of resentment towards the British at such injustice is best summed up by one of Reverend Prozesky’s diary entries: “Old Aveling once asked me where all the devils went which came out of the 2 000 swine which rushed into the sea and drowned. I said I do not know, nothing has been revealed to us about that...He said the devils have entered into the English nation.”<sup>124</sup>

Investigations against and arrests of other rebels continued concurrently with the struggle to clear the books of suspected rebels. Suspects who had remained in Natal were systematically sniffed out

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120. PAR, AGO I/8/75: Letter Attorney-General H Bale to MJPW, 31.10.1900.

121. PAR, AGO I/8/75: Preparation of a complete list of rebels in prison arrested for treason, 9.10.1900-8.3.1901.

122. PAR, AGO I/8/79: Petition from five prisoners asking that their case be dealt with without delay, 6.4.1901-26.9.1901.

123. Numerous other Natal Afrikaners shared a similar experience. MJ van der Westhuysen of the farm Lincoln, Newcastle, who had surrendered on 21.5.1900 were, for example, fined £20 on 20.12.1900, seven months after his arrest by the military. PAR, AGO I/7/74: Enquiry by TF Carter regarding the charges against MJ van der Westhuysen, 5.11.1900.

124. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 1.9.1900, pp.276-277. See Matthew 8, 28-33;

by the Natal Police. LJ Muller of Doornkraal and HB Cronjé of Mielietuinhoek in the Klip River district were arrested by the police on 17 June 1900 and 22 August 1900 respectively.<sup>125</sup> Others such as Barend Labuschagne and his two sons BC and J, and TC Engelbrecht and his three sons surrendered to the Upper Tugela magistrate.<sup>126</sup> In December 1901 the Natal Police were still arresting suspected rebels like RK Sandsbury, C van der Leeuw, W Portsmouth, and G Byloo and numerous others as they attempted to account for more than 350 Natal rebels.<sup>127</sup> Rebels arrested in late 1901 and 1902 seem to have had a better chance to escape serious punishment because the Natal Police and clerks of peace found it difficult to collect evidence for crimes which had taken place up to two years earlier. A point in case is illustrated by Clerk of the Peace Fraser of Newcastle who complained that he could only interview one witness each in the cases against J Terblanche, PJ Swart and J Strydom.<sup>128</sup>

The investigations, arrests and prosecutions took place under constant pressure exerted by the Natal Government, Attorney-General Bale and later Attorney-General Labistour on the overworked court staff, clerks of peace and the Natal Police to speed up the preliminary examinations.<sup>129</sup> In this process they called, on a monthly basis, for lists which mapped out the progress made in the apprehension and conviction of rebels.<sup>130</sup> On 3 September 1900 the names of 742 suspected rebels appeared on these lists. Of these 297 were arrested while 445 were still at large.<sup>131</sup> A month later the number of names on the list had risen to 839 of which 342 were arrested while 497 were unaccounted for. The initial success in apprehending rebels then slowed down dramatically and five months later 486 suspected rebels were still at large.<sup>132</sup>

Under such political pressure the Natal Police were bound to commit judicial errors. Sergeant Horne of Upper Tugela was reprimanded by Clerk of the Peace HEK Anderson of Ladysmith for arresting Afrikaners, in this case BA and MJ Bester, without sufficient evidence. Horne was advised to: "In future please get the evidence first and it will be for the magistrate to decide whether there is sufficient to justify an arrest. I am at a loss to understand how you managed to get a warrant for the arrest of these boys in the absence of evidence. If these boys were not put in goal by or at the request

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Mark 5, 1-20; Luke 8, 26-39 for the relevant texts.

125. PAR, AGO I/8/83: Applications for bail by HB Cronjé and LJ Muller, 8 and 10.11.1900.

126. PAR, CSO 1655: Report by Magistrate HJ Colenbrander on Natal Afrikaners who surrendered in the area, 16.8.1900.

127. PAR, AGO I/8/83: Applications for bail by RK Sandsbury, C van der Leeuw, G Byloo and W Portsmouth, 10.1.1902; PAR, AGO I/8/83: List of suspected rebels awaiting trial in the Newcastle Prison, 27.12.1901.

128. PAR, AGO I/8/84: Report by Clerk of the Peace GL Fraser on pending treason cases, 7.4.1902.

129. The rise of Labistour was nothing but meteoric. In July 1900 he unsuccessfully approached Henry Bale about the vacant position of assistant clerk of the peace at Dundee. Little more than a year later he was the attorney-general. PAR, AGO I/8/72: Letter CA de R Labistour to Attorney-General H Bale, 30.7.1900.

130. See for example, PRO, CO 179/213: Extract from CIO record on Natal rebels, 3.9.1900.

131. PRO, CO 179/213: Extract from CIO records of Natal rebels, 3.9.1900.

132. PAR, AGO I/7/44: Name lists of rebels not yet apprehended, 22.3.1901.

of the military and you see no chance of getting evidence against them they should be discharged.”<sup>133</sup> The Besters were eventually granted bail and ultimately acquitted of all charges against them.<sup>134</sup>

To speed up the apprehension of suspects, Attorney-General Bale, despite the fact that he did not find it proper, asked the Natal Cabinet for its opinion on the idea of advertising for evidence against rebels. The ministers rejected the suggestion with contempt.<sup>135</sup> The cabinet also rejected the request by “zealous officials” in Dundee who wanted to offer a £50 reward to “neighbouring natives” for the arrest of Kok, a notorious rebel, who regularly crossed the Buffalo River to loot in the Helpmekaar area. Their rejection was based on three factors: fear that a reward would encourage Africans to trump up charges; that it was unacceptable to involve Africans in the manner suggested; and on the belief that the Natal Police were capable enough of dealing with the matter in the ordinary manner.<sup>136</sup>

Although it was not their primary task the military continued, especially during the guerrilla phase of the war, to assist the Natal Police and the civil authorities in rounding up suspected rebels. Particularly those who, in an attempt to escape the clutches of the law, had fled to the Republics were more likely to be arrested by the military. One such group consisting of WH Boshoff,<sup>137</sup> MW Krogman, and AW Krogman, all of the Klip River district, were arrested in August 1900 by the military in the Harrismith area.<sup>138</sup> The military continued to conduct such arrests well into 1902, and groups or individual rebels such as W Zietsman and PJ Kemp, were, for example, arrested by Rimington’s Scouts in the Transvaal,<sup>139</sup> and handed over to the Natal authorities for trial.<sup>140</sup>

Cooperation between the Natal authorities and the military regarding rebels who fell into the latter’s hands was not always amicable.<sup>141</sup> In March 1901 a group consisting of 20 rebels surrendered to the military in the Vryheid district. Suspects like these benefited from the fact that a lengthy period of time had elapsed since the Boer occupation of the Klip River county, as witnesses could in the meantime have forgotten what had transpired, or may have left the area to seek work elsewhere. The

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133. PAR, 1/LDS G/1/1/1: Letter HEK Anderson to magistrate Upper Tugela, 21.8.1900; Letter HEK Anderson to Sergeant Horne, 11.9.1900. Arresting suspected rebels without a warrant was not uncommon and several Afrikaners mentioned that, either the Natal Carbineers or the Natal Police, had arrested them without the required documentation. Nothing much came of the complaints in this regard since Martial Law allowed for the detention of suspects. See, PAR, AGO I/8/74: Application for bail by HN Raath, 29.10.1900.

134. PAR, AGO I/8/74: Application for bail by BA and MJ Bester, 8.11.1900.

135. PAR, AGO I/8/70: Enquiry by Attorney-General Bale if the Natal Cabinet would approve of the advertisement for evidence against rebels, 23.4.1900.

136. PAR, AGO I/8/72: Request by the Dundee magistrate that a reward be offered for the arrest of Kok, 23.7.1900.

137. PAR, AGO I/8/75: Application for bail by WH Boshoff, 21.11.1900.

138. PAR, AGO I/8/74: Applications for bail by MW Krogman, AW Krogman, BA Bester and MJ Bester, 10.11.1900.

139. PAR, AGO I/8/81: Application for bail by PJ Kemp, 27.9.1900.

140. PAR, AGO I/8/83: List of untried prisoners charged with treason in the Dundee Prison, 27.12.1901.

141. NAR, PMO 39: Telegrams Provost Marshal Lt-Col RM Poole and GOC, Natal regarding the surrender of N and P Swart near Ermelo, 3.11.1901-4.12.1901.

burden of proof therefore shifted to military witnesses. Attorney-General Bale was, for this reason, quick to request the military to secure witnesses who could testify whether the Natal Afrikaners had actually fought and if they were armed when they surrendered.<sup>142</sup> With the assistance of the GOC Natal, orders were issued to officers in command instructing them to gather evidence on the spot when Natal rebels were apprehended. The names of witnesses, who could testify about the circumstances under which the capture or surrender took place and whether the rebel carried arms, were to be especially noted. Consequently lists with the names of suspected rebels who had been unaccounted for were forwarded to the provost marshal and military governor in Pretoria, the administrator in Bloemfontein, and to the superintendents of concentration camps in the two Republics.<sup>143</sup>

It is difficult to determine the success of the orders which were issued. They did, however, failed to ensure the swift transfer of arrested rebels to the civil authorities. A point in case is the events surrounding Vincent Botha, (age 15) the son of leading rebel CS Botha, of Drycut, Newcastle, RA Ramage (age 24) of Ladysmith, Coenraad Cornelius Johannes (age 57) and Barend Christoffel Swamers (age 17) of Warden, Newcastle, who were prisoners in the Tin Town POW Camp in Ladysmith. When their presence was reported to the civil authorities, the line of command passed the matter down to Inspector Clarke of the Natal Police. Clarke recommended that Botha not be charged because of his age but rather be deported “to broaden his views” and that Ramage and BC Swamers, despite the fact that the latter was an imbecile, be charged. CCJ Swamers had in the meantime died in the Ladysmith Hospital. It required lengthy correspondence between the military and civil authorities before Botha, Ramage, and Swamers were handed over to the Natal Police.<sup>144</sup>

A reason for the conflict between the military and the Natal civil authorities, regarding the handing over of suspected rebels, lies in the different organisational cultures the groups represented. While the civil authorities generally applied the law when dealing with suspected rebels, the military employed force, which they could legitimately do under Martial Law. The Volunteer Composite Regiment (hereafter VCR) especially, described by the *Natal Witness* as “the cream of Natal’s fighting element”, employed forceful methods to flush out Natal rebels. When the guerrilla phase of the war gained momentum and the authorities struggling to apprehend the hundreds of rebels still on a free footing, the VCR, under Colonel GR Blomfield, started to use tactics reminiscent of the total war experienced by the Transvaal and the OFS. For example, on 27 October 1900, the VCR participated in the burning of farms of “unsurrendered Natal rebels.” A similar exercise took place on 9 March 1901, when all available men of the VCR were ordered to destroy farm equipment and crops belonging to Afrikaners in far Northern Natal. Military historian Mark Coghlan, quoting from

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142. PAR, AGO I/8/79: Minute paper surrender of Natal rebels at Vryheid, 28.3.1901-9.4.1901.

143. PAR, AGO I/8/78: Request by Attorney-General H Bale for military co-operation in obtaining evidence and witnesses in connection with rebels, 29.3.1901-28.5.1901.

144. PAR, PM 25: Minute paper by staff officer for POWs providing the names of alleged rebels, 3.12.1901-17.12.1901.



the unpublished diary of Trooper Nicholson, graphically explains two events on the day: “We managed to finish two big fields of good mealies during the day.” The other fatigue had to destroy wood and burn a wagon. On one farm, women “pleaded with Captain Crompton that their husbands would come in at once and surrender if we would save the wagon. Duty is inexorable, however, and we had to burn the wagon.”<sup>145</sup>

The efforts of both the military and civilian establishments, to investigate and arrest suspected rebels, were only partially successful for some 350 Natal rebels were still in the field by November 1901.<sup>146</sup> Little impact was made in apprehending suspected rebels after this date, not only because of the time which had elapsed since the Boers had occupied parts of Natal, but also because the rebels in question had managed to blend into what was left of the Republican societies.

### 5.7 Identifying the real rebels

One of the aspects that hampered both the military and the Natal civil authorities in the process of investigating and arresting suspected rebels was the difficulty they had in identify the Natal rebels. This was mainly because extended families residing in the same area and carrying the same name and initials were suspected of treasonable deeds. In Dundee Inspector Clarke complained that 18 Vermaaks were suspected of treason, making identification, the gathering of evidence, and prosecution difficult.<sup>147</sup> Similarly evidence offered to Attorney-General Bale, regarding LJR Kritzinger junior and senior of Melmoth, the former then still at large, proved to be very confusing as it did not distinguish between the two men.<sup>148</sup> The “loose way” in which suspected rebels were referred to, bothered and puzzled the lawyer Evert Jukes. In a memorandum to the attorney-general he pointed out that sweeping statements such as “Jordaan and all of his name” would leave everybody in the dark regarding the true identity of the suspects. Jukes also complained that in many instances only surnames were given, while Christian names and initials at times also served no purpose in identifying a person. As example he quoted the case of a suspected rebel who was referred to as Gideon J Kok, Gideon Kok or GK Kok. Jukes admitted that he was unsure if this was one and the same person or three different men.<sup>149</sup> The concerns expressed by Jukes became a reality when J van Staden was arrested in Utrecht by the military. This proved to be a case of mistaken identity because Van Staden was confused with the real suspect, his much older cousin with the same name, of the farm Donker in the Newcastle district.<sup>150</sup>

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145. MS Coghlan, pp.342-343. According to Coghlan similar military exercises by the VCR took place on 9.3.1901, 25.3.1901, 28.3.1901, 22 and 29.8.1901, 11 and 29.10.1901 and 25.11.1901.

146. PRO, CO 179/220: Letter Governor HE McCallum to Colonial Secretary J Chamberlain, 8.11.1901.

147. PAR, AGO I/7/42: Letter Inspector Clarke to Attorney-General H Bale, 11.6.1900.

148. PAR, AGO I/7/42: Extracts from documents relating to LJR Kritzinger forwarded to Attorney-General H Bale, 19.4.1900.

149. PAR, AGO I/8/71: Memorandum regarding suspected rebels by E Jukes, 21.5.1900.

150. PAR, AGO I/8/84: Report on pending treason cases by clerk of the peace, Newcastle, 7.4.1902-15.4.1902. To the anger of the president of the Special Court, Judge AW Mason, Van Staden was handed back to the military to in all

The inability to positively identify rebels troubled the Natal authorities who were concerned that the military did not have the necessary procedures in place to positively identify rebels arrested in the OFS and the Transvaal. Such rebels could attach themselves to a commando and provide a fictitious name and address when captured. They would then be deported as POWs. This meant that only those Natal rebels honest enough to give their real names would be arrested. Rebels like CS Botha, whose farm was heavily mortgaged, had no incentive to return home and could therefore readily alter their identities to escape arrest.<sup>151</sup>

A way in which the civil authorities attempted to prevent rebels from evading prosecution by using false identities was to employ former residents of the Dutch Districts to identify them. One such person was John Guthridge, the sanitary contractor for Dundee, who had resided in the town for 28 years and was present during part of the Boer occupation.<sup>152</sup> Guthridge, who had previously identified 17 rebels while employed at the De Jagers Drift Refugee Camp, was dually appointed at the rate of £1.12.6. per day to point out rebels in the Volksrust Concentration Camp.<sup>153</sup> A similar role was fulfilled in the Newcastle district by AJ Debenham, a former rebel suspect.<sup>154</sup> Debenham was so successful in his identification of suspected rebels that the large number of Newcastle Afrikaners convicted of treason was attributed to his efforts.<sup>155</sup> Other claims about information regarding treasonable activities, such as that offered by Walter Greenfield, a former resident of Dundee, proved to be less profitable.<sup>156</sup>

Using residents of the Klip River county to identify rebels did not guarantee success as the case of Lucas Wilhelmus Meyer of High Ridge II proved. His lawyer brought it to the attention of the authorities that Meyer had been imprisoned for seven months without any preliminary examination. The request that he be released set a lengthy correspondence in motion during which it emerged that the case against him was delayed because the authorities were uncertain about his identity. The matter was only settled two months later when the authorities, after investigating every single Meyer in the Klip River county, determined the true identity of Meyer and that he belonged to the Klip River district and not to the Newcastle district. Thereafter the case against Meyer was pursued with great haste. It seems that he was acquitted after spending nine months in prison as no record of him being found guilty could be located.<sup>157</sup>

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likelihood become a POW. PAR, AGO I/8/84: Questions by Judge AW Mason on the handing over of J van Staden to the military, 17.4.1902-23.4.1902

151. PAR, AGO I/7/42: Minute paper clerk of the peace Newcastle on the identification of rebels, 19.4.1900-5.5.1900.

152. PAR, AGO I/7/42: Statement by J Guthridge, no date.

153. PAR, AGO I/8/80: Suggestion by Clerk of Peace D Turnbull that J Guthridge be appointed to identify rebels, 20.6.1901-10.8.1901; PAR, CSO 2873: Invasion Losses Enquiry Commission: Claim by JH Dekker, 5.12.1901

154. PAR, 1/8/84: Minute paper clerk of the peace Newcastle on the identification of rebels, 19.4.1900-5.5.1900.

155. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, pp.4-5, 1941.

156. PAR, AGO I/8/73: Statement by W Greenfield regarding rebels, 1.9.1900-24.9.1900.

157. PAR, AGO I/8/74: Request by LW Meyer to be released on parole, 12.12.1900-23.2.1901.

### **5.8 Concluding comments**

With the necessary legislation and courts in place, and hundreds of suspected rebels arrested both by the military and the Natal Police, the authorities were ready to start with the treason trials to be conducted by either the Special Court or the special magistrate. To reach the situation outlined above was a mammoth task, and the Natal Government could, with good reason, take pride in their achievement. With a small but competent and dedicated group of officials at the helm, they managed to defend the autonomy of the Colony against the Imperial authorities, negotiate principles along which they wanted to dispense justice to suspected Natal rebels, generally please the jingoistic and prejudiced, and stood firm in numerous differences with the military on how suspected rebels should be treated. All of this, however, took place while the people whose fate these processes would determine, the Natal Afrikaner, were, like so many times before in the history of Natal, on the outside looking in.