

CHAPTER 6

DEALING WITH THE REBELS (PART II): THE TRIALS

The creation of the Special Court and the position of special magistrates, as well as the processes as outlined in Chapter 5, set the scene for the court cases against the Natal rebels suspected of high treason. Concurrently, and interwoven into this, several other legal processes dealing with the calling of witnesses, applications for bail, and the eventual trial and conviction or acquittal by either the Special Court, special magistrate, magistrate, or military court, took place. This chapter will unpack these events and also in the final instance attempt to explain why the Natal rebels found themselves in the position they did.

6.1 Witnesses in the rebel trials

Reliable witnesses are central to any court case for both the prosecution and the defence. The trials of the Natal rebels proved no different and the crown subpoenaed large numbers of witnesses. The extent is borne out by the number of witnesses called in the following treason cases: Regina vs FM and TG Colling - 34 witnesses; Regina vs JC and IJM Buys - 30 witnesses; Rex vs JG Döhne - 17 witnesses; Rex vs AC, H and TC Vermaak - 20 witnesses; Rex vs NM and JCP Dekker - 21 witnesses, Rex vs PJ, IJM and HG Jordaan - 20 witnesses;¹ Regina vs NJ, JJ, NJ (jnr), DIP Degenaar - 14 witnesses; and Regina vs JJA Prozesky - 15 witnesses.²

The summoning of these thousands of witnesses by the crown placed a heavy financial burden on the Natal Government. Dalzel Turnbull, the clerk of the peace in Dundee, alone examined upwards of 900 witnesses between 1 September 1900 and 15 March 1901. During this process some suspected rebels appeared several times for evidence to be taken against them, for instance DC Uys appeared 11 times and A Pelster, JM van Rooyen, PJ de Waal and AG Spies nine times.³ All these witnesses had to be paid under rule 35 of the Special Court and in line with the Witness Expenses Act 8 of 1898,⁴ with men receiving 15/ per day and women 8/6.⁵ This proved to be a costly affair. In the case against LJR and MAS Kritzingner in the Zululand Supreme Court for instance the crown called 21 witnesses who had to be paid £36.17.8 in total.⁶

Remuneration of witnesses not only had a gender but also a racial bias with African witnesses, despite the key role they played in the trials, received vastly different treatment from whites. In the first case against suspected rebels, namely the one against the three Boers brothers of Ladysmith, 15

1. PAR, AGO I/7/44: Lists of witnesses for the crown, Rex vs JG Döhne, AC, H and TC Vermaak, NM and JCP Dekker and PJ, IJM and HG Jordaan, no date.

2. PAR, AGO I/8/73: List of rebel cases awaiting trial at Newcastle, 27.7.1900-28.8.1900.

3. PAR, AGO I/8/79: Application for extra remuneration by D Turnbull, 15.4.1901.

4. PAR, AGO I/8/80: Letter Attorney-General H Bale to crown prosecutor, Eshowe, 11.7.1901.

5. PAR, AGO I/8/77: Regina vs JH D'Arcy, pp.308-310.

6. PAR, AGO I/8/83: List of witnesses in Regina vs LJR and MAS Kritzingner, 29.6.1900-19.7.1900.

African witnesses were called to testify. Since they had no money, the men could not get to the Supreme Court in Pietermaritzburg. The Klip River district magistrate therefore had to issue them with third class train tickets, the cost of which was to be recovered when they received their witness fees.⁷ During the Special Court sessions held at Dundee African witnesses were accommodated in the compound of J Galbraith at the rate of 1/6 per day, while in Estcourt they resided in cattle sheds in the shunt yard. In Ladysmith, William Illing, a loyalist and key witness against numerous rebels, provided the African witnesses with accommodation. To reduce costs the rate of 1/6 per day for accommodation was soon lowered to 1/. African witnesses were also provided with mealie meal, which was handed out late in the afternoon, and cooking utensils which included “kaffir pots” for which a sixpence was subtracted. This arrangement not only managed to secure the “regular attendance of natives at the court” but also served as a way to save money because these expenses were deducted from the witness fees paid to Africans.⁸

The treatment of European witnesses contrasted starkly to that of their African counterparts.⁹ Food vouchers were provided;¹⁰ travelling costs were covered; they received substantially higher fees; and were treated more leniently as is illustrated by the case of RG Barrow. He had to act as a witness against JA Nel and received £4 to travel from Durban to Dundee. Barrow, described as a “decrepit old man, a refugee, and quite penniless” never made it to Dundee. Instead, he returned to the Lords Ground Refugee Camp in Durban where he proceeded to spend £3. After a protracted process the authorities eventually managed to recover the outstanding £1 from him.¹¹ Although they were paid more than African witnesses, two rebels who had completed their prison sentences, CJH Posselt and CL Labuschagne, believed that their witness fees were too little. The men were earning 10/ per day as ditch diggers in the Pietermaritzburg Concentration Camp and had to temporarily give up their work when called upon to testify for the crown in Dundee. They complained that they were out of pocket to the amount of £1.18. Their grievance resulted in a lengthy correspondence on how much they actually lost as a result of their absence. Eventually, several months later, they were each paid 12/. This left the dissatisfied men grumbling and the Natal Police worried, because the treatment the two had experienced would make it difficult to secure witnesses in future from the ranks of time-expired rebels.¹²

Witnesses called by the defence for the rebels had to be compensated by the latter, a costly affair which few could afford. A point in case is Rebel James D’Arcy who could not pay for witnesses. An

7. PAR, 1/LDS 3/1/16: Letter magistrate Klip River district to Attorney-General H Bale, 4.6.1900.

8. PAR, AGO I/8/77: Minute paper pertaining to the accommodation of African witnesses for the Special Court, 17.1.1901-8.2.1902.

9. The evidence provided by witnesses were underpinned by physical evidence such as agricultural implements. PAR, CSO 1675: Enquiry magistrate Upper Tugela on what to do with implements collected as evidence, 3.5.1901.

10. PAR, AGO I/8/82: Minute paper vouchers for food supplied to M and J Potgijter, 16.11.1901.

11. PAR, AGO I/8/78: Minute paper regarding witness fees paid to RP Barrow, 4.2.1901-5.2.1901.

12. PAR, AGO I/8/83: Application by CFH Posselt and JCL Labuschagne for increased witnesses’ expenses, 24.10.1901-9.1.1902.

appeal to the Natal Government to pay his witnesses failed and left his witnesses in a quandary for failing to comply with their subpoenas could mean that they were in contempt of court. One witness, Salomon de Jager, therefore appeared at his own expenses to testify on behalf of D'Arcy. Afterwards he did, however, approach Attorney Hellett, who acted on behalf of D'Arcy, to secure some funding to compensate him for his expenses.¹³

Summoning witnesses was not always easy for the defence or prosecution. James Anderson of Dundee, the attorney for Hendrik and Johannes J Davel as well as Daniel Jacobus de Waal, requested the Supreme Court that a commission be appointed to take the evidence of Dr CJ Douglas of Dannhauser, a material witness in their defence.¹⁴ This application was made because Douglas was about to depart for Ireland on 15 August 1900.¹⁵ Attorneys Renaud and Robinson in an equally extreme case asked when their client, TP Pretorius, would receive his indictment since they wanted to serve subpoenas on witnesses in Pretoria and Lourenco Marques.¹⁶ Although these were exceptional cases, there were also other instances when, especially members of the British military, had to be traced to testify. Examples of these are Lieutenant Ivo Barrett of the 2nd Lancashire Fusiliers who had to testify in the case against AGJ, GJB and HW Boers;¹⁷ Major THB Foster and Military Interpreter G Baumann who had to testify against JG Döhne;¹⁸ and Captain Wylie of the Durban Light Infantry who had to testify against JH Hattingh.¹⁹

Locating military witnesses and getting them to testify proved a labourious task that did not always meet with the satisfaction of the civil authorities. A point in case was the difficulty experienced in getting two members of the VCR to testify against BG Meyer. Their commander, Colonel Evans, stated that his unit was under orders to move at an hour's notice and that they could be away from their base at Dundee for up to a month. Under these circumstances he could not grant the men leave to remain behind. The only option left to the civil authorities was to postpone the case until the witnesses were available. As a result the case against Meyer only took place in March 1902, four months after the initial request was made.²⁰ This was not a unique incident as the military generally proved to be an unreliable and indifferent partner in the prosecution of Natal rebels, resulting in Attorney-General Labistour having to request Governor McCallum to pressurise the army to secure military witnesses.²¹ The apathy of the military in providing witnesses could possibly be blamed on

13. PAR, AGO I/7/15: Regina vs JH D'Arcy, pp.308-310.

14. PAR, AGO I/8/78: Letter Lt-Col D Henderson to GOC, Natal, 31.3.1901.

15. PAR, AGO I/8/73: Application by J Anderson for the appointment of a commission to take the evidence of CJ Douglas, 8 and 10.8.1900.

16. PAR, AGO I/8/80: Letter Renaud and Robinson to Attorney-General H Bale, 6.6.1901.

17. PAR, AGO I/8/71: Letter Attorney-General H Bale to Prime Minister AH Hime, 29.5.1900.

18. PAR, AGO I/8/79: Minute paper Attorney-General H Bale to GOC, Natal, 9.5.1901.

19. PAR, 1/LDS G/1/1/1 Clerk of the peace letter book: Letter VM Brady to registrar, 7.10.1901.

20. PAR, AGO I/7/37: Minute paper regarding members of the VCR wanted as witnesses, 18.12.1901-12.8.1902.

21. PAR, AGO I/8/84: Minute paper Attorney-General GA de R Labistour to Governor HE McCallum, 10.2.1902.

the fact that, unlike in the Cape Colony, they were not allowed to try Natal rebels but had to hand them over to the civil authorities thereby leaving them without a vested interest in the process.²²

In other circumstances, especially when the suffering of people could be directly related to the apprehended rebels, witnesses were easier to come by. Such was the case when news of the arrest of GJ Kok of Garnet and PJ Meyer of Kilburn near Rorke's Drift, broke. The shopkeeper at Rorke's Drift and his wife instantaneously offered to testify against the two men. According to them, Meyer assumed a leadership role, while Kok assisted in the looting of their store.²³

Comparatively few English Natalians testified against the suspected rebels simply because most of them had fled the Klip River county prior to the Boer invasion. As a result it was mostly Africans, loyalist Afrikaners, Germans, Indians and Coloureds who acted as key witnesses. In his memoirs JC Vermaak gives his own explanation of why and how this happened. The rebels were brought from prison to court under insults from Africans and Englishmen, to hear the depositions against them:

Daar het geen Engelse teen ons verklaar nie, as net `n paar van die allerlaagste tiepe, maar Boere, Kaffers en Kleurlinge is daarvoor gebruik. Dit is kenmerkend by die Engelse dat hulle die vuil werk nie self doen nie as hulle ander kan kry om dit vir hulle te doen nie. Hulle is diplomatiek so aangelê, en jammer om te sê dat die Boere geredelik daarvoor te vinde is. In ons geval het hulle die paar lojale C.L. Pieters, Theunis, Paul en Gert Strydom daarvoor gebruik. Dit is lojale wat geweier het om die wapen op te neem teen die Engelse. Hulle is deur die Boere toegelaat om vry te beweeg in die distrik.²⁴

The Special Court and special magistrate often relied very heavily on African witnesses to prove the accusations of high treason. Afrikaners and their defence often doubted the ability of Africans to deliver reliable evidence. In the case against Hermanus A Potgieter which depended exclusively on African witnesses, the defence argued: "...that the evidence of natives is entirely unreliable, and should be rejected. It is said that they tell lies, not from motive any or desire to injure the person against whom they give evidence, but because they cannot help it." Judge William Smith dismissed this generalization and chose to accept the evidence given by the Africans in court, saying that the problem was not with the African witnesses but with the manner in which their depositions were compiled. He furthermore severely criticised the prosecution for "gathering immaterial details" which caused the in-court statements by Africans to differ from their original depositions.²⁵

22. PAR, PM 87: L of C orders No. 244, 4.7.1900.

23. PAR, 1/DUN 3/1/9: Letter shopkeeper Rorkes Drift to Magistrate RH Beachcroft, 10.4.1901.

24 VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.28, 1941.

25. *Natal Witness*, 24.1.1901. Potgieter never really accepted his conviction and in late 1902, early 1903, unsuccessfully tried to have the case against him reopened. PAR, AGO I/8/89: Correspondence between HA Potgieter and the office of the attorney-general, 14.11.1902-21.5.1903; PAR, PM 118: Letter secretary to the prime minister to HA Potgieter, 21.5.1903.

Smith's verdict did little to alter the perceptions of rebels regarding African witnesses. Reverend August Prozesky believed that the men from his mission station who had testified against him could not be blamed for doing so because the magistrate threatened them with severe punishment if they did not testify as the others had.²⁶ JC Vermaak placed yet another slant on the use of African witnesses when he claimed that compensation played a role in convincing Africans such as Mapinjane to testify against the Afrikaners. By the end of the war he had apparently become fairly wealthy from all the witness fees.²⁷ It is questionable if the African witnesses really gained much in terms of money from their testimonies. Someone like Niletshe, who testified in rebel trials at Pietermaritzburg, Ladysmith and Harrismith earned roughly £4 for his testimonies. In fact, he ended up complaining that he was paid too little.²⁸ The motivation to act as a witness was probably not to make money, but rather the hope to gain economic and political power. At the same time the African witnesses faced immense pressure from their Afrikaner landlords and in Weenen county, for example, most trials against rebels failed because African witnesses on which the cases depended could not be located.²⁹

Suspected rebels were also called upon as key witnesses. *De Natal Afrikaner*, as a result, raised the legitimate issue of witnesses incriminating themselves while giving evidence. The newspaper regarded this as unfair practice and against the law and urged the Special Court to prohibit the prosecution from using self-incriminatory evidence against the witnesses when they were themselves eventually tried.³⁰ The attorney-general responded by pointing out that witnesses could refuse to answer questions that were likely to incriminate them and many of the witnesses availed themselves of this legal privilege.³¹

As the treason trials progressed it became common practice to use rebels who had served their time, as well as imprisoned rebels, as witnesses.³² Subpoenaing imprisoned rebels proved to be time-consuming and administratively cumbersome. A request was therefore made that the sheriff of the Special Court forward the necessary documentation to the commissioner of police timeously because prisoners sometimes had to travel from Eshowe to Dundee, Newcastle, and Ladysmith. The sheriff was also instructed to procure prepayment for all expenses involved in the escort and conveyance of

26. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 26.9.1900, p.33.

27. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.29, 1941.

28. PAR, 1/DUN 3/1/12: Documentation regarding complaints by African witnesses that they were underpaid, 5.2.1903-23.3.1903.

29. PAR, CSO 1658: Request by CJ van Rooyen that the order instructing him to report to the police on a weekly basis be revoked, 4.9.1901.

30. *De Natal Afrikaner*, 18.9.1900.

31. PAR, CSO 1658: Note by Attorney-General H Bale in response to the article of 18.9.1900 in *De Natal Afrikaner*, 22.9.1900.

32. *Natal Witness*, 6.6.1901.

prisoners not subpoenaed by the crown.³³

Under the rule of law the identification, investigation and arrest of suspects are totally reliant on reliable witnesses. The latter concept, in terms of witnesses, was where the Natal Afrikaners and the judiciary differed greatly in terms of whom they believed. The sentiment expressed by the convicted rebel, JC Vermaak, possibly best encapsulates the dilemma: He had sympathy with the judges who had to determine who was lying: the witnesses for the accused or the witnesses for the state. Vermaak thought he knew the answer, many people were innocently sentenced for deeds they had not committed.³⁴

6.2 The question of bail for suspected rebels

Within due legal process bail is one of the key principles. Although suspected rebels were able to apply for bail under Rule 103 of the Special Court,³⁵ the military, the Natal Government, and the Special Court were adamant that: "Bail is on no account admissible for rebels."³⁶ As a result legal representatives for suspected rebels such as Anderson, and Carter and Robinson initially tried in vain to have their clients released on bail.³⁷

Magistrate DG Giles of Upper Tugela was, however, prepared to grant bail under certain circumstances. In August 1900, in terms of Law 18 of 1845, he released Philip Bester on bail because his wife was very ill and CCJ Bester since the charges against him allowed for bail. Both these men owned farms in the area and had returned to Natal from the OFS with their families and livestock. Giles did, however, refuse to grant bail to Natal Afrikaners who were suspected of looting or who had taken up arms. His action landed him in hot water with Bale and Prime Minister AH Hime. Hime, who did not interpret Law 18 in the same way Giles had, seethed and sarcastically commented: "The judges of the Supreme Court appear to doubt whether they have the power to release on bail, and I am rather surprised that you should have thought that you had the power. Please do not release any prisoners charged with treason on bail."³⁸ This ended any magisterial initiatives in granting bail to suspected rebels.

In isolated cases the Special Court veered from the adopted principle and granted bail to applicants. Renier Dannhauser (JP) of Newcastle, was released on 27 August 1900 on £500 bail and two sureties of £250 each on the condition that he resides in Newcastle and reports to the Natal Police

33. PAR, AGO I/8/80: Minute paper regarding the summons of rebel prisoners as witnesses, 12.7.1901-17.7.1901.

34. Foy Vermaak private collection: Letter JC Vermaak to CT Vermaak alias Miss C Herzog, 24.3.1901.

35. PAR, 1/LDS 3/1/1/16: Letter Magistrate RM Bennett, Klip River district, to Mrs H Labuschagne, 5.10.1900.

36. PAR, 1/DUN 3/1/8: Note to magistrate Dundee, 7.7.1900.

37. PAR, 1/LDS G/1/1/1 Clerk of the peace letter book: Letter HEK Anderson to Carter and Robinson, 22.5.1900; PAR, AGO I/8/71: Letter Attorney-General H Bale to AR Pierson, 31.5.1900.

38. PAR, CSO 1655: Minute paper considering the release on bail of certain Natal Afrikaners, 20.8.1900-27.8.1900.

daily between 10:00 and 12:00. This release was partially based on humanitarian grounds because his wife was dying and actually passed away soon afterwards.³⁹ Dannhauser was allowed to return to his farm in March 1901.⁴⁰ In January 1902 he was eventually charged with treason but acquitted. Despite being found innocent the Natal Government saw fit to cancel his commission as justice of the peace, a position he had held since October 1897.⁴¹ During this time bail was also granted to the very ill JA Nel, the 15-year-old HJ Strydom, and a German HGP Volker, who had deserted from the Boer ranks. Their bail conditions were similar to those of Dannhauser, with the exception that they had to reside in Dundee, and that Volker had to pay bail of £1 000 and supply two sureties of £500 each.⁴²

The measures by the military and civil authorities to deny bail, except in extreme cases, proved to be counter-productive as it meant that the various prisons remained overcrowded. TF Carter, who represented a large number of suspects from the Klip River county, requested Attorney-General Bale to liaise with the military to arrange bail for his clients, some of whom had been imprisoned for several months in seriously overcrowded jails, so that they could return to their farms. Bale who admitted that the prisons were overcrowded and that the delay to bring suspected rebels to trial was considerable, in following the war-time chain of command, requested the military to grant bail. Lt-Gen Hildyard was willing to do so on the condition that each individual case was based on merit and that the suspected rebel prisoners incarcerated in the Pietermaritzburg Prison, when granted parole or bail, could not reside north of Pietermaritzburg.⁴³ The Special Court was thus able to grant bail to 52 suspects, refusing another 104. Those refused included the so-called ringleaders.⁴⁴ This ruling in itself was a reversal from an earlier decision that allowed some suspected rebels on bail to reside on farms north of Pietermaritzburg.⁴⁵

The fact that the conditions of bail forced applicants to reside in Pietermaritzburg caused problems because many had nowhere to stay within the city. Consequently JM and PWJH Hattingh asked permission to reside on the farm Rama near Estcourt, while 13 suspected rebels withdrew their bail applications since they could not afford to live away from home.⁴⁶ Another ten indicated that they would only consider bail if they did not have to reside in Pietermaritzburg but in the Mooi River or

39. PAR, AGO I/8/73: Application for release on bail by R Dannhauser, 27.8.1900.

40. PAR, AGO I/8/78: Application to allow R Dannhauser to return to his farm, 26.3.1901.

41. PAR, CSO 1699: Correspondence regarding the cancellation of the commission of justice of the peace held by R Dannhauser, 27.2.1902-13.3.1902; *Natal Witness*, 27.2.1902.

42. PAR, AGO I/8/73: Applications for bail by HJ Strydom, HGP Volker and JA Nel, 27.8.1900. At the same opportunity HAJ Davel and JJ Webb were denied bail.

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

44. PAR, AGO I/8/75: Letter Attorney-General H Bale to registrar Special Court, 13.12.1900.

45. PAR, AGO I/8/74: Letter Chadwick and Millar to Attorney-General H Bale, 10.11.1900.

46. PAR, AGO I/8/77: Minute paper regarding the conditions pertaining to certain bail applications, 3.1.1901.

Greytown areas.⁴⁷ All this meant that the attempt to alleviate the pressure on the prison system by releasing Afrikaners, against whom little evidence existed, failed because many of the men who were granted bail were forced to reject it since they could not afford to reside in the capital.⁴⁸

When suspected rebels became aware that bail was more readily granted many applied for it. The authorities in turn generally tended to grant bail to applicants who did not have a strong case against them such as LJ Potgieter, BC Labuschagne, BA and MJ Bester, all of Ladysmith, and A and JS Jansen of Dundee. All these men were eventually acquitted.⁴⁹ Those against whom hard evidence existed, like JJ Webb, JJ Meyer, and HAJ Davel, were mostly denied bail.⁵⁰ Humanitarian reasons too, more so than before, tended to sway the authorities to release suspects on bail. TR Dannhauser (son of Renier), already imprisoned for six months without trial, had been suffering with a throat ailment for 18 years. This fact was confirmed by the medical practitioner attached to the Pietermaritzburg Prison. Dannhauser was subsequently released on bail of £500 and two sureties of £250 provided by CJ Labuschagne (MLC) and Jan Hattingh of Blue Bell, Estcourt.⁵¹ IC and TR Boshoff were likewise released on medical advice. During their seven months in prison, while awaiting trial, they had lost 20 pounds each and suffered from pleurisy and dyspepsia respectively and both from depression.⁵²

Making bail in itself proved to be a difficult economic matter. The men who could not afford it had to take out a loan, sometimes up to a £1 000, and get people who were willing, to provide sureties. To those without means, or rich family or friends, like LW Meyer, P de Jager, and PJ and LH de Wet, bail remained an illusion.⁵³

Between late 1900 and early 1901 the conditions of bail were radically altered by the military when they issued an order that no suspected rebel on bail or parole would be allowed to reside in the Ladysmith or Dundee areas.⁵⁴ The military also considered it necessary to move suspected rebels on

47. PAR, AGO I/8/75: Minute paper registrar Special Court to Attorney-General H Bale regarding suspected rebels who could not afford to reside in town, 24.12.1900.

48. PAR, AGO I/8/75: Letters LP Bezuidenhout, CJH Laas, BJ van Greuning and CM, LP, and PJ de Jager to governor central prison, Pietermaritzburg, 12.11.1900.

49. PAR, AGO I/8/75: Application for bail by LJ Potgieter and BC Labuschagne, 19.11.1900; AGO I/8/74: Application for bail by BA and MJ Bester, 8.11.1900; AGO I/8/75: Application by A and SJ Jansen for change of residence under their bail bonds, 4.12.1900.

50. PAR, AGO, 1/8/73: Application for bail by JJ Webb, JJ Meyer and HAJ Davel, 22.8.1900.

51. PAR, AGO I/8/75: Correspondence regarding the release of TR Dannhauser on bail, 27.11.1900-7.12.1900.

52. PAR, AGO I/8/73: District surgeon advises that IC and TR Boshoff be released on bail, 18.9.1900-22.9.1900.

53. For some of the applications for bail by suspected Natal rebels see: PAR, AGO I/8/74: Application for bail by I and J Meyer, 20.10.1900; AGO I/8/80: Application for bail by TJ Pretorius, 11.5.1901; AGO I/8/80: Application for bail by JM van Rooyen, 20.6.1901; AGO I/8/72: Application for bail by NJ Degenaar, 9.7.1900; AGO I/8/83: Application for bail by LW Meyer, 10.1.1902; AGO I/8/81: Application for bail by PJ Kemp, 2.10.1901; AGO I/8/75: Application for bail by JA Eksteen, 21.11.1900; AGO I/8/74: Application for bail by BJ Nel, 14.11.1900.

54. PAR, AGO I/8/77: Minute paper regarding the conditions pertaining to certain bail applications, 3.1.1901. This process was started much earlier in an informal fashion by the commandant of Dundee, Lt-Col RW Evans, who were encouraging Natal Afrikaners on bail to reside in districts such as Greytown. PAR, AGO I/8/75: Letter CA de R

bail, such as JH Ries, AA and JJ Maritz and WL and SJ Meyer, from Dundee to Pietermaritzburg because of the formation of a town guard for defensive purposes with which the suspects could interfere.⁵⁵ The removal of suspected rebels on bail from Ladysmith to areas south of Estcourt was based on the fact that of a large group of suspected rebels on bail and parole were residing in close proximity to the Tin Town POW Camp. Ladysmith, like Dundee, therefore had to be cleansed of suspicious characters for security reasons.

The military's decision angered the Natal civil authorities who felt offended because the order was not communicated to them directly but to the registrar of the Special Court. The concern was not only that they were being marginalised but also based on the serious impact this decision would have on the conditions of bail bonds agreed to by the Special Court.⁵⁶ Attorney-General Bale argued that the removal of suspects from the area conditional to their bail bonds would relieve the sureties of their liability. Although Bale conceded that the military could, under Martial Law, remove the suspects on bail to any place they pleased, it would render their bail bond inoperative. Bale thus suggested that the military require the men in question to report to some officer on a daily basis. Technically it also meant that the Natal Afrikaners on bail could be rearrested in case of a breach of their terms of bail, even though it may not be their fault. The sentiments of the Natal Government on the matter was spelt out clearly to the military: "...it is very undesirable that there should be any apparent conflict between the Military and Civil Power. Your action will probably occasion the Government considerable inconvenience and may interfere with the administration of justice which is the duty of both Departments to secure."

The military, represented by of Lt-Col Sim, defended their reasons for the removals on the grounds of security. Sim offered a military solution to the objection that the removal could hamper the process of dispensing justice - the men in question could be arrested under Martial Law. He also reiterated the military policy on the matter: "I shall be obliged if it can be arranged that during the war no suspected on bail are (is) allowed to live north of Estcourt." Although the emphasis fell on men on bail, the military order soon extended this order to all suspicious Afrikaners, including convicted rebels who had served their sentences or had paid their fines; Afrikaners charged with high treason but had been acquitted; and any undesirable person. All in all the high-handed manner of the military won the day and the Natal Police were instructed to facilitate the removal of the

Labistour to Attorney-General H Bale, 29.11.1900; AGO I/8/75: Application by A and JS Jansen to move from Dundee to Greytown under their bail bonds, 4.12.1900.

55. PAR, 1/Dun 3/1/19: Letter commandant Dundee to magistrate Dundee, 20.11.1900.

56. It was not always convenient or easy for the Special Court to alter bail bonds. CM Vermaak managed to have his bail bond changed to move from Pietermaritzburg to reside with his father-in-law at New Hanover. PAR, AGO I/8/75: Minute paper altering the bail bond conditions for CM Vermaak, 12.12.1900. Others found it more difficult and JJ Nel were denied permission to spend Christmas at his father's house outside Greytown. PAR, AGO I/8/75: Request by JJ Nel to spend Christmas with his father, 20.12.1900.

Afrikaners in question from Dundee to Pietermaritzburg and from Ladysmith to south of Estcourt.⁵⁷

With matters surrounding bail dealt with, preliminary examinations conducted, indictments and subpoenas issued, the list of witnesses compiled, and the necessary documentation forwarded to the prosecution, the trials of the rebels could start in the Special Court and before the special magistrate.

6.3 The Natal rebel trials

6.3.1 High treason trials conducted by the Special Court and special magistrate

Between 16 September 1900 and 14 March 1902 the Special Court sat on 11 occasions, four times in Dundee, two times in Newcastle, two times in Pietermaritzburg, and once each in Eshowe, Estcourt and Ladysmith.⁵⁸ Apart from the ordinary recesses taken by the court to allow investigations against rebels to continue, the process only ground to a temporary halt once. This was during a brief postponement of the trial against Jurie Johannes Kemp of Zuurfontein, Dundee, on orders from Henry Bale “until the title of the new monarch”, who was to succeed Queen Victoria, was made known.⁵⁹

The first of the 276 rebels to be convicted by the Special Court⁶⁰ was Philip Rudolf Vermaak of Vermaak’s Kraal near Helpmekaar in the Dundee district. The trial which took place at the Masonic Hall in Dundee before Smith, Broome and Mason, the commissioners of the Special Court, lasted from 6 to 14 September 1900. Vermaak was charged with 19 counts of high treason, to all of which he pleaded not guilty. The prosecutors were Attorney-General Bale and Charles Tatham, while Advocates TF Carter, E Jukes, J Anderson, and CA de R Labistour appeared for Vermaak. The crown called 36 witnesses: 14 African, 12 British, six Afrikaners and four German. In turn the defence called 28 witnesses: 18 Afrikaners, eight British and two of other groupings, a total of 64. The evidence against Vermaak ran to 484 pages. PR Vermaak was eventually found guilty on 14 counts of high treason and sentenced to three years imprisonment and a fine of £1 500 or a further two years in prison, a punishment described as lenient by Bale.⁶¹ In contrast the fourth rebel to be tried by the Special Court, JC Vermaak the brother of PR Vermaak, declared the verdict a farce and said that no attention was paid to the witnesses for the defence.⁶²

The judgement in PR Vermaak’s case set certain benchmarks by which the trials that followed were

57. PAR, AGO I/8/76: Minute paper containing extensive correspondence on the removal of Afrikaners on bail from Dundee and Ladysmith, 24.12.1900-31.1.1901.

58. PAR, AGO I/7/1-1/7/38: Judgements and sentences of Natal rebels by the Special Court, pp.1-875.

59. PAR, AGO I/8/77: Enquiry by Attorney-General H Bale for reasons for the postponement of the case against JJ Kemp, 23.1.1901-4.2.1901; WM, Dagboek van Johannes Christoffel Buys: Deel 2, p.3, 23.1.1901.

60. For a summary of the convictions for high treason by the Special Court see Appendix A, cases 1-276.

61. Cd. 420: Further correspondence with regards to the affairs in South Africa, pp.99-106; PAR, AGO I/7/1: Regina vs PR Vermaak, pp.1-7; PAR, CSO 2838: Index of evidence against PR Vermaak, pp.1-484.

62. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.29, 1941.

judged. The following arguments which claimed that Vermaak was not responsible for acts of treason were rejected by the court: “(1) Owing to the British evacuation of the District of Dundee in October last, and its occupation by the forces of the South African Republic, the prisoner became, or *bone fide* believed himself to have become a burgher of that Republic, and so bound to obey the commands of its officers or agent; and (2) He committed the acts under compulsion.” Under international law Vermaak could not have changed his allegiance in the circumstances disclosed, while the claims of compulsion were regarded as discontinuous and not of such a nature as to produce a reasonable and substantial fear of immediate death or serious bodily harm.⁶³

Hereafter, the above-mentioned legal arguments repeatedly failed in the Special Court who worked from the principle that: “Compulsion was no legal ground for defence”⁶⁴ since no Natal Afrikaner, in the view of the Special Court, suffered in person or property for refusing to take up arms.⁶⁵ In essence the Special Court was punishing those Afrikaners who did not want to serve but who were forced to “for a lack of moral fibre.”⁶⁶ This decision also ruled out other forms of compulsion offered as defence, including that of JJ Webb who declared that he took up arms because he was influenced by the Vermaaks for whom he was a tenant farmer;⁶⁷ JJ Nel who blamed his father-in-law, TR Boshoff, for coercing him into joining the Newcastle Commando;⁶⁸ and JH Ries of Dundee who joined because his refusal to do so gave his brother-in-law, Commandant Steenkamp, so much bother that he relented.⁶⁹

Similarly claims that the withdrawal of the British forces, and the subsequent lack of protection⁷⁰ from the Natal Governments, forced Afrikaners to commit high treason,⁷¹ or that the Natal Government had not advised them what to do, were rejected.⁷² The ruling of the Special Court was that lack of protection did not count because Afrikaners were expected to obey the laws of the Colony of Natal which meant that they could not become involved with the Republican

63. Cd. 420. Further correspondence with regards to the affairs in South Africa, pp.99-106; PAR, AGO I/7/2: Regina vs PR Vermaak, pp.1-7; PAR, CSO 2838: Index of evidence against PR Vermaak, pp.1-484; *Natal Witness*, 7.9.1900-21.9.1900.

64. PAR, AGO I/7/3: Regina vs PJ Meyer, pp.59-61; *Natal Witness*, 6.10.1900 and 15.11.1900.

65. PAR, AGO I/7/4: Regina vs TP Lezar, pp.71-74; *Natal Witness*, 12.10.1900.

66. PAR, AGO I/7/22: Rex vs A Wellmann, pp.401-403; *Natal Witness*, 9.3.1901.

67. PAR, AGO I/7/3: Regina vs JJ Webb, pp.52-53; *Natal Witness*, 28.9.1900.

68. *Natal Witness*, 6.6.1901.

69. PAR, AGO I/7/19: Rex vs JH Ries, pp.352-355; *Natal Witness*, 15.2.1901.

70. The protection from the British forces did not always translate into practice. At least two Afrikaners, JC Vermaak and Jan de Waal, cited the reason for them joining the Boers as the arrests and humiliation they had to endure from those who had to protect them. See, NAR, J Ploeger collection, A 2030 vol 20: Notes from a pamphlet entitled *The people of Holland to the people of Great Britain and the great civilized world*, p.9; VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.6, 1941.

71. PAR, AGO I/7/1: Regina vs JC Vermaak, pp.8-11; *Natal Witness*, 26.9.1900.

72. PAR, AGO I/7/6: Regina vs HW (snr), WH (jnr) and IJ Boshoff, pp.128-129; AGO I/7/1: Regina vs JC Vermaak, pp.8-11; *Natal Witness*, 26.9.1900.

administration as either smallpox guards, policemen or in any other capacity. At the same time, illustrating the dilemma they found themselves in, the court stated they were also required to “obey the ordinary laws of the conquering forces as relates to the preservation of order, commission of crime and so on.”⁷³ With the adoption of these principles the legal defence of almost all the Natal rebels crumbled.

The above-mentioned arguments were rejected despite some of the rebels hiring advocates and lawyers such as TF Carter of Ladysmith, CA de R Labistour of Dundee, Jas Anderson of Newcastle, Eugene Renaud of Durban and others for their defence. Part of the problem lay in the fact that none of the hired legal minds spoke Dutch, and could by military order initially only visit their clients if an officer or government official was present. TF Carter and Jas Anderson were hired again and again by Afrikaners, many of whom were clients prior to the war, to defend them. Carter rewarded the faith placed in his ability and defended rebels even before the military court held in Harrismith in May and June 1902. Both men tirelessly pursued matters such as the right to visit their clients, the overcrowded nature of the prisons, and the fact that bail was not granted.⁷⁴ Through no fault of their own these men hardly ever managed to sway the Special Court which prompted a convicted rebel, JC Vermaak, to comment that it soon became clear that it did not help to have a strong defence.⁷⁵ Vermaak’s criticism is supported by the fact that only 37 of the cases brought before the Special Court were either discharged or acquitted, or as in the case of EOL du Bois (jnr) had a *Nolle Prosequi* entered against his name.⁷⁶ Despite his cynicism Vermaak publically thanked his legal defence, consisting of Anderson and Carter, “for the way in which they have done their work.”⁷⁷

At least in the case of Attorney Labistour it seems as if his motivation for taking rebel cases was less than professional or honourable but merely a means to make money to pay his board and lodging in the Dundee Royal Hotel and to keep his practice running. Labistour even declared: “...while I realise that there is a great deal of money to be made out of those Rebels defences, yet I find myself unable to place heart and soul into their cases, which, however, I am afraid I cannot afford (much as I would wish) to decline to take up, although to my mind the only respectable way would be to advise them to plead guilty and throw themselves upon the mercy of the court.”⁷⁸

73. PAR, AGO I/7/9: Rex vs JL and AI Marais, pp.233-235; *Natal Witness*, 20.12.1900.

74. PAR, 1/DUN 3/1/8: Telegram AAG Intelligence to OC Troops, Dundee, 30.5.1900.

75. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.29, 1941.

76. PAR, AGO I/7/1-1/7/38, *passim*; *Natal Witness*, 27.3.1901 and 19.4.1901. Being acquitted did not necessarily meant suspects were off the hook. The military authorities gave instructions that some of those acquitted must report to the Natal Police on a weekly basis. The movements of such people were also restricted by a military order issued on 28 August 1901. PAR, CSO 1658: Request by CJ van Rooyen that the order instructing him to report to the police on a weekly basis be revoked, 4.9.1901.

77. *Natal Witness*, 5.10.1900; Foy Vermaak private collection: Letter JC Vermaak to CT Vermaak alias Miss C Herzog, 24.3.1901.

78. PAR, AGO I/8/72: Letter CA de R Labistour to Attorney-General H Bale, 30.7.1900.

Not all suspected rebels were in a financial position to afford legal assistance, but thanks to the Afrikaners of the Umvoti county money was collected for their defence.⁷⁹ Even those who could afford lawyers and advocates were possibly deterred by rumours that the services of the advocates were very costly and that NJ Degenaar of Newcastle was charged £400 only to secure his bail.⁸⁰ This sounds highly unlikely and is probably confused with the bail granted to Degenaar. Those who could not afford legal assistance, and who attempted to somehow conduct their own defence, did not find matters easy. AC Vermaak applied, on behalf of himself and his two sons, for a copy of the evidence against them. The assistant-magistrate of Dundee refused to do so on the grounds that: "If we had to supply everyone with a copy of the evidence against them it would take a clerk all his time to do this, and he would not be able to do his ordinary work." Vermaak was informed that he had to make his own arrangements to get copies of the evidence against them. He did so and he wrote to Attorney-General Bale stating: "I understand it is a right that every prisoner has of having a copy of the evidence against him. We can't afford a lawyer and shall be glad to receive the evidence."⁸¹ The Vermaaks must have received copies of the evidence against them for the authorities generally had no objection in supplying it to lawyers acting on behalf of the rebels.⁸²

One of the predicaments faced by the Special Court was dealing with the substantial number of Afrikaners residing in Natal, but who were burghers of either one of the Republics. The benchmark case was that of Bernardus Johannes Badenhorst of Kempenveldt, Dundee. Badenhorst, a Transvaler, only settled in Natal in 1898 after his marriage to a Miss Kemp. When commandeered he joined the Natal Commando at Helpmekaar. The question the court had to answer was whether a burgher residing in Natal was amenable to the laws of Natal.⁸³ As the basis of their legal argument the crown quoted from Chitty's translation of the *Law of nations* which stated: "In those countries in which every foreigner may freely enter the Sovereign is supposed to allow him to enter only upon the tacit condition that he subjects himself to the law - I mean the general laws made to maintain good order, and which have no relation to the title of the citizen or of the subject of the State."⁸⁴ Based on this the verdict of the court was simple - burghers did not have to acquire a legal domicile to be subject to the laws of Natal. Badenhorst was therefore guilty of treason because he waited for his countrymen to arrive before joining them. Had he, as was his legal right and what was expected of him, crossed into the Transvaal at the outbreak of the war, he would not have been guilty of

79. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, pp.4-5, 1941; PAR, AGO I/8/78: Letter FM Colling to TG Colling, 4.4.1901.

80. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 1.9.1900, pp.276-277.

81. PAR, AGO, 1/8/79: Correspondence AC Vermaak requesting a copy of the evidence against him and his sons, 24.4.1901-29.4.1901.

82. PAR, AGO I/8/72: Request Carter and Robinson for the depositions upon which NJ Degenaar were arrested, 6.8.1900.

83. PAR, AGO I/7/5: Regina vs BJ Badenhorst, pp.106-108; *Natal Witness*, 5.10.1900 and 31.10.1900.

84. PAR, AGO I/7/4: Regina vs JA Prozesky, pp.65-69; *Natal Witness*, 18.10.1900.

treason.⁸⁵ In this Badenhorst was not alone. Amongst others C van Zyl Lotz,⁸⁶ JG Wiggill,⁸⁷ DC Uys,⁸⁸ LJ de Jager,⁸⁹ JM Maritz,⁹⁰ LW Eksteen and JW Rall all claimed to be burghers of the Republics. In the case of Eksteen he was a citizen of the OFS who merely trekked to Natal every year with his sheep. This was, however, proof enough for the court that he owed loyalty to Natal.⁹¹ Claims by Rall that he was a Free Stater were rejected on a technical matter. His defence failed to prove that he was a burgher because they did not present the OFS citizenship laws to the court.⁹² *Bona fide* burghers with no connection to Natal were invariably acquitted.⁹³

Former Natal residents likewise found it difficult to escape charges of high treason before the Special Court as it reserved the right to punish them. John Albertus van Rooyen was sought because: “He was at one time a resident of Natal, was a candidate for a seat in the Parliament, belonged to a local Volunteer Corps, and apparently did not take the oath of allegiance or become a burgher until a few days before the outbreak of hostilities, and it is very doubtful whether the requisite steps were taken.” This uncertainty was confirmed by the military authorities in Harrismith and⁹⁴ Van Rooyen, who came to prominence when he threatened to shoot some Natal Volunteers,⁹⁵ was sentenced to 18 months imprisonment and a fine of £1 000 or a further 18 months in prison.⁹⁶

Roughly 10% of the 409 convicted rebels were not Afrikaners. An estimated 19 of these were English, 14 African, six German and two Irish. The English who were convicted of treason fell into four broad categories; those like John Craig and JG Wiggill who had resided in the Republics for long periods; men like FJT Brandon and JP Burns who were married to Afrikaner women; traders such as John Torpey and JW Gowthorpe who did business with the Boers and Afrikaners; and those who were commandeered and forced into duty including T and MC Collyer, GH Shorter and JC Donovan. Because of this involvement suspected Natal rebels in prison were dissatisfied with the small number of English rebels arrested. They consequently proceeded to inform the authorities of the identity of non-arrested English rebels. As a result some arrests were carried out most of whom were released, according to Reverend Prozesky, because the authorities argued that “they could not have acted differently to the way they did.” He found this argument objectionable since “there should

85. PAR, AGO I/7/5: Regina vs BJ Badenhorst, pp.106-108; *Natal Witness*, 5.10.1900 and 31.10.1900.

86. PAR, AGO I/7/14: Regina vs C van Zyl Lotz, pp.114-116; *Natal Witness*, 2.11.1900.

87. PAR, AGO I/7/26: Rex vs JG Wiggill, p.535.

88. PAR, AGO I/7/23: Rex vs DC Uys, p.413; *Natal Witness*, 12.3.1901.

89. PAR, AGO I/7/22: Rex vs LJ de Jager, pp.415-420; *Natal Witness*, 15.3.1901.

90. PAR, CSO 1682: Petition by JM Maritz stating that he was a burgher from the ZAR, 31.7.1901-12.9.1901.

91. PAR, AGO I/7/23: Rex vs LW Eksteen, p.445; *Natal Witness*, 20.3.1901.

92. PAR, AGO I/7/23: Rex vs JW Rall, pp.470-471; *Natal Witness*, 22.3.1901.

93. PAR, AGO I/7/1-1/7/38: Rex vs HF Lezar, CP van der Merwe, CJS Dauth, AF Nel, ICJ Vermaak, *passim*.

94. PAR, AGO I/8/81: Minute paper relative to JA van Rooyen, 2.8.1901-9.8.1901.

95. *Natal Mercury*, 17.10.1899.

96. PAR, AGO I/7/30: Rex vs JA van Rooyen, pp.719-729; *Natal Witness*, 6.11.1901.

surely be one law for all.”⁹⁷ His view was shared by a Newcastle chemist, John William Gowthorpe, who was found guilty of high treason and fined £20 for serving free food and drinks to Boers, former clients of his from across the Buffalo River. What especially annoyed Gowthorpe was that apart from himself and John Torpey no other traders were prosecuted, despite the evidence by amongst others the local MLA, FAR Johnstone, and Albert Dunton a shopkeeper, who testified: “...all shopkeepers who were in Newcastle during the Boer occupation were compelled to by the enemy to keep open their stores and sell their goods at a fixed price.”⁹⁸ In its verdict against Gowthorpe the Special Court showed little sympathy for someone caught in the middle and made it clear: “Unless the state requires its subjects to evacuate the territory occupied or likely to be occupied by the enemy, individuals may, as far as permitted by the enemy, pursue their ordinary occupations, so far as they not assist the enemy. Thus a trader may carry on his ordinary business, but a gunsmith or armourer, supplying goods to the enemy would fall within the prohibition.”⁹⁹ According to the court, the line which Gowthorpe had crossed, was that he had not rendered an act of hospitality to old friends but to members of the enemy.¹⁰⁰

Afrikaners faced similar dilemmas on numerous occasions. The principles on which the Special Court based its decisions in such cases were neither black nor white. When Boers called on Natal Afrikaners and received food and drink the court did not necessarily deem the man of the house to be guilty of treason. Similarly, if blood relatives from the Republics came to visit it did not necessarily constitute an act of treason. The difference arose when the Boers were willingly supplied with goods without it being requested. TR Boshoff of Newcastle therefore crossed this line when he supplied Commandant Muller with bread and two slaughter cattle. He was sentenced to eight months imprisonment and a fine of £200.¹⁰¹

The six Germans found guilty of treason were literally divided down the middle. Volker, Wellmann and Fröhling were commandeered by the Boers and resisted furiously. Volker eventually fled across the Tugela River to escape his predicament. In the opposite camp were the Prozeskys and George Teichmann. JJA Prozesky served as a magistrate and native commissioner and commandeered Africans to perform duties along the Tugela line. He even referred to himself as an Afrikaner. His son, JGP Prozesky, amongst other duties, became the clerk to the Newcastle justice of the peace shortly after the Boer invasion.¹⁰²

The two Irishmen, JJ Hoolahan (known as Hooligan by the Boers and Natal Afrikaners) and JH

97. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 13.8.1900, p.252.

98. *Natal Witness*, 17.10.1900. For Gowthorpe the shame of being convicted of treason was unbearable and not long afterwards he committed suicide.

99. PAR, AGO I/7/4: Regina vs JW Gowthorpe, pp.76-79; *Natal Witness*, 11.10.1900, 17.10.1900 and 20.10.1900

100. *Natal Witness*, 7.1.1901.

101. *Natal Witness*, 7.1.1901 and 6.6.1901.

102. PAR, AGO I/7/1: Rex vs HGP Volker, pp.12-16; AGO I/7/4: Regina vs JA Prozesky, 117-119; AGO I/7/22: Rex vs A Wellmann, pp.401-403.

D'Arcy, both of whom had previously served with the Cape Mounted Rifles, joined the Boer cause to settle old scores with the British. The fact that they had previously worn the "Queen's Uniform" and in the case of D'Arcy, fought at Spioenkop and Platrand, explains the heavy sentences passed on them.¹⁰³ The role of the Africans convicted of high treason in the war is less clear and extensive research yielded little information on their roles.

The heaviest sentences imposed by the Special Court were on those who took active part in military operations, the so-called "willing and active partisans";¹⁰⁴ those who were regarded as rebel leaders; and those who attempted to influence fellow Natal Afrikaners to take up arms. Such men included DC Uys who was sentenced to five years imprisonment and a fine of £250 or a further 9 months in prison;¹⁰⁵ LJ de Jager who was sentenced to five years imprisonment and a fine of £5 000 or a further five years imprisonment;¹⁰⁶ and JJ van Tonder who received a five years prison sentence.¹⁰⁷ Also in line for heavy sentences were those who took part in active military combat against the Imperial forces such as CJ Pieters who served for nine days with the ZAR Artillery at the Siege of Ladysmith, GP Kemp who took part in the raid on the Wasbank Station on 25 October 1900 alongside the Russian, Captain Pokrovsky,¹⁰⁸ and JJ Dekker who had been active since the early part of the war and who continued to raid into Natal from across the Buffalo River.¹⁰⁹ Comparatively heavy sentences were also imposed on the men who ignored the various proclamations to surrender, such as the one issued by Kitchener on 7 August 1901, those Natal Afrikaners who remained in the field, and those who looted property alongside the Boers.¹¹⁰

The heaviest single sentence imposed on a Natal rebel was that given to Christiaan Stephanus Botha of Drycut, Newcastle. Botha was well educated, formerly employed by the Natal Government as magisterial clerk in Umvoti and Newcastle, a member of the Road Board and chairman of the Natal Wol Maatschappij. He was elected field-cornet for Newcastle on 29 November 1899, and proceeded to issue commandeering orders and hand out arms, and was commandant of the Newcastle Commando which participated in the attack the Nqutu Magistracy. On 15 May 1900, he left with his family for the ZAR where he continued his military activities for ten days and it was later reported

103. PAR, AGO I/7/24: Rex vs JJ Hoolahan, pp.524-527; AGO I/8/15: Regina vs JH D'Arcy, pp.308-310; *Natal Witness*, 25.1.1901.

104. *Natal Witness*, 15.11.1900.

105. PAR, AGO I/7/23: Rex vs DC Uys, p.413; *Natal Witness*, 12.3.1901

106. PAR, AGO I/7/22: Rex vs LJ de Jager, pp.415-420; *Natal Witness*, 15.3.1901.

107. PAR, AGO I/7/33: Rex vs JJ van Tonder, pp.822-828; *Natal Witness*, 3.3.1902.

108. A Davidson, and I Filatova, *The Russians and the Anglo-Boer War 1899-1902*, pp.41-42.

109. PAR, AGO I/7/18: Rex vs CJ Pieters, pp.343-344; AGO I/7/25: Rex vs GP Kemp, pp.566-569; AGO I/7/30: Rex vs JJ Dekker, pp.736-744.

110. PAR, PAR AGO I/7/26: Rex vs AJ and PH Nel, pp.611-612; *Natal Witness*, 23.8.1901; *De Natal Afrikaner*, 27.8.1901.

that 100 Natal rebels under his command were deployed “at line Wakkerstroom-Utrecht.”¹¹¹ He was eventually captured under arms at Hlangape Bush in October 1901. Botha fell into the small group of Natal Afrikaners¹¹² who, in the words of historians Brookes and Webb: “... had responded to the call of blood and joined their invading brethren.”¹¹³ Botha’s statement to the Special Court: “All I have to say is this. That your lordships will kindly bear in mind that I am an Africander, and what I did I was prompted to do by my nationality” clearly explained why he had joined the Boers.¹¹⁴ His confession swayed the court who sympathetically declared that but for the fact that he was an Afrikaner he would have received the death sentence.¹¹⁵ The threat of a death sentence, a reversal from the previous undertaking by Governor Hely-Hutchinson,¹¹⁶ gives an indication of the severity with which the Special Court and the Natal Government viewed Botha’s crime.¹¹⁷

Unlike in the Cape Colony where 44 rebels were executed for high treason, none were executed in Natal. Graham Jooste and Abrie Oosthuizen, in their book on the execution of the Cape Rebels, erroneously state that one or two Natal Afrikaners suffered the same fate after being tried by a military court.¹¹⁸ The sole Natal Afrikaner to have had the death penalty imposed on him was IM Kok,¹¹⁹ but this was later reversed. The only other report of a Natal Afrikaner receiving the death penalty is impossible to substantiate and is possibly nothing more than a rumour. On 30 November 1899 the *Natal Mercury* reported that “a Natal Africander Judah Potgieter was arrested by the British authorities for displaying undue hospitalities to Boer commandos. Potgieter’s farm is near a British Camp. After a summary trial by court martial he was shot. He asked permission to communicate with his wife. His message was that she should send him down a coffin which had been stored on his farm for many years past. His request was granted.”¹²⁰

The lightest sentence imposed by the Special Court, that of one day, was given to 17-year-old ME Smit, 15-year-old HJ Strydom, 17-year-old GM Dekker and LW Eksteen. Although a humanitarian concern for the age of the first three rebels prompted such a light sentence, they did in fact serve a much longer sentence. Strydom and Smit for example, by the time they were finally sentenced had

111. PAR, GH 522: Summary of intelligence report for Natal week ending, 26.5.1900.

112. PAR, AGO I/7/2: Regina vs FJ de Jager, pp.45-46.

113. EH Brookes and C de B Webb, p.210.

114. PAR, AGO I/7/34: Rex vs CS Botha, p.784; *Natal Witness*, 21.2.1900 and 24.2.1902.

115. PAR, AGO I/7/34: Rex vs CS Botha, p.784; AGO I/8/83: Minute paper Natal rebel CS Botha, 7.1.1902; PAR, PM 26: Request for a permit by IM Botha to assist with the defense of his brother CS Botha, 15.2.1902; *Natal Witness*, 24.2.1902.

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

117. PAR, GH 562: Minute paper commandant Durban to Prime Minister AH Hime, 5.10.1901.

118. G Jooste, and A Oosthuizen, *So het hulle gesterf. Gedenkboek van teregstellings van Kaapse Rebelle en Republikeinse Burgers tydens die Anglo-Boereoorlog 1899-1902*, p.252.

119. PAR, AGO I/8/84: Report on the conviction of J Kok, IM Kok and CJ Cronjé, 20.3.1902-20.6.1902.

120. *Natal Mercury*, 30.11.1899. JC Vermaak mentions that a rebel from Helpmekaar, Jan van der Linde, was murdered after being captured. Vermaak himself admits that no further detail are available. VTR, JC Vermaak collection, 03/19979: Letter JC Vermaak to Professor Uys, 3.11.1955.

already spent eight months in prison. Eksteen too had already spent nine months in prison by the time he was convicted.¹²¹

Other cases in which the Special Court tended to pass lenient sentences were those involving rank and file members of the rebel forces;¹²² Afrikaners who had given assistance to fellow British subjects;¹²³ those who left the “protection of their sovereign” to proceed to one of the Republics;¹²⁴ and those who pleaded guilty, like CJ Smit, AS Boshoff, DJ van Niekerk and JLH Botha.¹²⁵ The news that those who pleaded guilty received lighter sentences caused some rebels to change their initial pleas from not guilty to guilty from one court session to the next. The rumours of lenient sentences being passed spread and the gaoler at Newcastle Prison could inform the authorities, during March 1901, that two-thirds of those awaiting trial intended pleading guilty.¹²⁶

A high proportion of those convicted of high treason were young men which caused Judge Mason to comment in the case against AM Pitzer and NJ Robbertse: “...it is apparent that the strength of the rebel cause in Natal, if I may use the phrase, rested upon young men of about their age...evidence exist that the young men took up arms and the old men did not.”¹²⁷ Mason’s observation is supported by the comments of some young rebels who appeared before the Special Court. CJS Hattingh explained that he was compelled by his father to join and if he had refused he would have received a thrashing as part of the deal. He maintained that the decision was made for him, saying “I (had) no idea what was right or wrong.”¹²⁸ JF Kemp, who carried the flag for the Natal Commando to Helpmekaar,¹²⁹ and PC Cronjé whose father, CP Cronjé, was an officer in the Newcastle Commando, likewise claimed that they were coerced into joining by their fathers.¹³⁰ This also applied to Arnoldus G Boers whose 17-year-old son died in battle. Boers had apparently taken his son to the Boers to fight in the place of a burger.¹³¹

Dominee DF Bosman of the DRC in Newcastle whose 17-year-old son, Lindley, was convicted as a rebel, denied the argument put forward by the Special Court that fathers had compelled their sons to

121. PAR, AGO I/7/15: Rex vs HJ Strydom, p.313; AGO, 1/7/23: Rex vs LW Eksteen, p.445; AGO I/7/30: Rex vs GM Dekker, pp.703-706; AGO I/7/9: Regina vs ME Smit, pp.195-196.

122. PAR, AGO I/7/18: Rex vs CFH Posselt and JCL Labuschagne, p.348; *Natal Witness*, 16.2.1901.

123. PAR, AGO I/7/27: Rex vs GJ Jordaan, pp.617-618; AGO I/7/27: Rex vs CL van Breda, p.776; PAR, AGO I/8/78: Letter Lt-Col D Henderson to GOC, Natal, 31.3.1901.

124. PAR, AGO I/7/21: Rex vs AG Spies, p.386; AGO I/7/25: Rex vs JA du Plessis, p.543; *Natal Witness*, 4.4.1901.

125. PAR, AGO I/7/22: Rex vs PJ de Waal, pp.372-373; AGO I/7/23: Rex vs DC Uys, p.413; *Natal Witness*, 27.3.1901 and 6.6.1901.

126. PAR, AGO I/8/78: Letter Clerk of the Peace GL Fraser to Attorney-General H Bale, 5.3.1901.

127. PAR, AGO I/7/31: Rex vs AM Pitzer and NJ Robbertse, p.771; *Natal Witness*, 15.11.1901.

128. PAR, AGO I/7/30: Rex vs CJS Hattingh, p.874; *Natal Witness*, 15.3.1902.

129. PAR, AGO I/7/26: Rex vs GP, JF, and JS Kemp, pp.567-569; *Natal Witness*, 8.6.1901.

130. PAR, AGO I/7/24: Rex vs PC Cronjé, pp.506-507; *Natal Witness*, 29.3.1901.

131. *Natal Witness*, 9.6.1900.

join. Instead he listed three reasons why young Natal Afrikaners took-up arms: firstly they were commandeered to fight by the Boers and had very little choice in the matter because they were deserted by the Natal Government; secondly young men were possibly seeking adventure as “fostered by the stirring tales of your own writers”; and thirdly there was the existence of racial and ethnic tension, a line of defence not used during the treason trials. According to Bosman, insults such as “Natal Boers”, “Dirty Dutch, who can be frightened away by soap and water”, “It is high time that the Dutch are wiped off the face of the earth” and “Rather a kaffir than a Dutchman” which were aimed at Natal Afrikaners long before the war started were “more calculated to damp than intensify the ardour of our loyalty.”¹³² The following patronising extract from the *Natal Witness* published less than a month after Bosman’s comments serves to underpin his argument concerning derogatory and dehumanising comments: “My! but he was a queer karl! He drink two cups of coffee a day only and washed himself all over every morning. Ach! Such nonsense! If the Lord intended His people to wash all over every day, why did He ordain that they should wear clothes? Thus says Minnie, an Afrikaner girl, to the *Daily News* special correspondent.”¹³³

Spending lengthy terms in prison awaiting trial was the experience of most Afrikaners. The Special Court stated that it did take this into consideration when passing sentence but it is unclear how this can be substantiated because, for example, AM Cronjé who had already spend nine and a half months in prison, received a further eight months,¹³⁴ while DJ and DL van Niekerk, who were both already imprisoned for 10 months, received a further eight months each.¹³⁵

Natal rebels convicted of high treason faced three possible sentences: imprisonment, fines and disenfranchisement. The 14 rebels found guilty of both high treason and theft received a prison sentence which included hard labour and fines.¹³⁶

Natal Afrikaners, convicted of high treason by the Special Court and sentenced to a prison sentence, were transferred to the central prison in Pietermaritzburg, and later also to Eshowe. On arrival they were stripped naked and weighed before all marks and scars on the body were recorded. When this rudimentary medical examination was completed the convicted rebel was issued with prison clothes marked NCD (Natal Convict Department). Shoes were selected from numerous pairs stored in a cupboard.¹³⁷ Their prison term would then commence.¹³⁸

Fines imposed by the Special Court on the rebels were meant to be in accordance with their

132. *Natal Witness*, 18.6.1900 and 25.10.1900. *De Natal Afrikaner*, 29.5.1900, also picked up on the comments by Bosman but excluded his description of the insulting remarks Afrikaners had to endure.

133. *Natal Witness*, 7.8.1900.

134. PAR, AGO I/7/7: Rex vs AM Cronjé, p.426; *Natal Witness*, 20.3.1901.

135. PAR, AGO I/7/24: Rex vs DL and DJ van Niekerk, p.481 and pp.499-501; *Natal Witness*, 27.3.1901.

136. *Natal Witness*, 16.1.1901. For a complete list of those found guilty of theft and high treason see Appendix A.

137. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, pp.30, 1941.

economic status. This could not always satisfactorily be determined and during the trial of FJ de Jager of Kemp's Hoek, Dundee, Judge Smith explained that: "I may say in considering the amount of fine to be imposed upon prisoners here, we endeavour to fix the amount, having regard, in some proportion to the amount of the estate a prisoner possesses. In many cases the information at our disposal as to the means is of the most meagre description, and we can hardly do more than form a guess as to the means." Apart from a three year prison sentence De Jager was also fined £500 or a further year imprisonment.¹³⁹ The Special Court was, however, reluctant to impose fines on the poor. When fines were imposed on them, as in the case of TP Lezar of Affgrond South, Newcastle who was given a prison sentence and fined £250, the court decreed that the money could not be recovered by force.¹⁴⁰ Imposing heavy fines on wealthy rebels was done with greater assurance. Lodewyk de Jager who owned 40 700 acres in Natal and the Transvaal was therefore fined £5 000.¹⁴¹

Fines imposed by the Special Court could be paid proportionally and sentences would be reduced in accordance with the amount paid.¹⁴² This happened to FDJ Havemann who was sentenced to 15 months imprisonment and a fine of £250 or a further 12 months. He served eight months and paid £83.6.8 which meant he did not have to serve the final four months of the additional sentence.¹⁴³ Paying the fines imposed caused controversy in some cases. Of the 23 rebels sentenced by the Special Court on 19 October 1900, only HAI Davel, HGP Volker, and JW Gowthorpe paid immediately. Since the fines imposed in these cases were not optional, the Natal authorities set about assisting the sheriff of the Special Court to recover the penalties. Government records show that most of the convicted rebels in question - men such as PR Vermaak, JC Vermaak, LW Meyer, and CF Marais were either well-to-do or had wealthy parents and "(would) pay at once if pressed." Economic conditions of wartime Natal, however, made it difficult for the families of many of the convicted men to scrape the money together. This pressure was nevertheless kept up by the issuing of writs to everybody who was not regarded as dirt poor or had a fine of £50 or less imposed on him.¹⁴⁴

In regard to the payment of fines both PR and AC Vermaak complained that their cattle were being impounded by the sheriff with the view of selling them, because they had not paid their fines.¹⁴⁵ Lodewyk de Jager faced similar threats regarding his landed property. He claimed that although he did not have enough money in Natal to pay his fine, he had £5 000 in the Transvaal. The problem,

138. For a detailed account of the imprisonment of Natal rebels see Chapter 10.

139. PAR, AGO I/7/2: Regina vs FJ de Jager, pp.45-46; *Natal Witness*, 27.9.1900.

140. PAR, AGO I/7/4: Regina vs TP Lezar, pp.71-74; *Natal Witness*, 12.10.1900 and 15.11.1900.

141. PAR, AGO I/7/22: Regina vs LJ de Jager, pp.415-420; *Natal Witness*, 15.3.1901.

142. PAR, AGO I/7/26: Rex vs RJ Vermaak, p.592.

143. PAR, AGO I/8/85: Minute paper regarding the release of FDJ Havemann, 1.9.1902-27.10.1902.

144. PAR, AGO I/8/77: Return of convicted rebels on whom fines have been imposed since the establishment of the Special Court, 17.11.1900.

145. PAR, AGO I/8/78: Invasion losses claim by AE Vermaak on behalf of AC Vermaak, 26.3.1901-29.4.1901.

however, was that the military authorities prohibited the withdrawal of a sum of money greater than £20 per month from accounts held in the Transvaal. De Jager therefore appealed to the court not to force him to mortgage his land in Natal, or sell it under execution in order to levy the fine imposed. He was, nevertheless, willing to have an interdict placed upon the selling and mortgaging of his property in Natal for one year or until he was able to transfer the money from the Transvaal to pay his fine. The Natal authorities strongly opposed this application brought by Carter and Robinson on the basis that “the way he behaved disentitled him to any special consideration.” The court subsequently granted a stay of execution for two months.¹⁴⁶

Confiscating rebel property in lieu of outstanding fines, within the economic systems in place at the time, caused much controversy as is illustrated by the following case. JJ and BJ van Greuning and GH Shorter worked the farm Spectacle Spruit, Newcastle, in partnership. The three men were arrested over a period of time and the first to be convicted was Shorter, who was sentenced to one year imprisonment and a fine of £100. When he could not pay the fine a horse and 195 bags of mealies were seized by the sheriff. In the words of their legal representative: “It cannot be reasonably contended that the Government were within their rights in seizing and disposing of property belonging to others for the fine of a rebel.”¹⁴⁷

The Natal Afrikaner society hotly debated the purpose of these fines. In Newcastle it was rumoured that the fines levied would be used to pay compensation to the English who had suffered losses due to the Boer invasion,¹⁴⁸ while Ds WP Rousseau of Pietermaritzburg claimed that the fines were used to cover the maintenance costs of the imprisoned rebels.¹⁴⁹ Both these assumptions were wrong - the fines were handed out as a punitive measure. A total amount of £30 310 was imposed in fines on the Natal rebels, but only £27 037 of this was paid. The outstanding amount could not be collected because the Afrikaners in question had no property from which the fines could be recovered.¹⁵⁰

A punitive measure all convicted rebels suffered was disenfranchisement. According to paragraph 12 of the Royal Charter of 15 July 1856 any person convicted of treason lost the right to vote. With a substantial number of rebels convicted, the Natal Government issued circular No. 34 in 1901 asking for a census of the number of people whose names appeared on the voters roll who had been convicted of treason. The preliminary replies from the various magistrates yielded the following statistics: Newcastle - 99; Dundee - 37; Ladysmith (Klip River district) - 23; Upper Tugela - 11; Estcourt/Weenen - seven; Zululand - two; Umvoti (Greytown) - one; Kranskop - one. In especially

146. PAR, AGO I/8/78: Application by Carter and Robinson on behalf of LJ de Jager for an order to stay execution in connection with his fine, 14.3.1901-16.3.1901.

147. PAR, CSO 1745: Letter Hathorn and Co to colonial secretary, 26.10.1903.

148. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 24.5.1900, p.77.

149. NAR, Caption to photograph of rebels taken in the Pietermaritzburg Prison, 1.2.1902.

150. PAR, PM 42: Question by McIntosh to prime minister on the value of fines imposed on rebels, 25.6.1903.

Klip River county the political impact of disenfranchisement on both Afrikaners and the candidates they normally supported must have been severe since 159 possible voters were removed.

The mere removal of these men from the voters roll was not enough for the magistrate of Ixopo who feared that the convicted rebels could, when released, take up residence in another electoral district and cast their vote there. He, therefore, as a measure to prevent this from happening, requested that the names and addresses of the removed rebels be published in the *Government Gazette* and in pamphlets to be sent to all magistrates, field-cornets and other South African Governments.¹⁵¹ The magistrate of Newcastle wanted to extend this even further and enquired whether the names of suspected rebels still in the field could be removed from the voters roll as well. The response that the government could not provide an answer but that the magistrate could act on his discretion bearing in mind that names could be removed on suggestion by political agents and individuals, was a diplomatic and politically shrewd one.¹⁵² This was, however, not done very successfully and the government had to send out Circular No. 38 of 1902 to query names of 15 convicted rebels that still appeared on the Dundee voters roll by May 1902.¹⁵³

In spite of the hard work done by the Special Court, the number of cases pending remained very high. Although the 52 convictions for less serious cases of high treason handed down by Special Magistrate Forder,¹⁵⁴ and the 56 handed down by ordinary magistrates helped to alleviate the pressure, some suspected rebels were still spending up to nine months in prison awaiting trial. This concerned Attorney-General Bale who wanted to prevent that “a reaction and feeling should gain ground that we are persecuting or martyring.” To alleviate these pressures, and speed up the trials, Bale wanted even more cases, especially comparatively trifling ones, such as Afrikaners doing police work, fleeing to the Transvaal, and receiving the enemy into their homes, to be tried by Special Magistrate Forder. His argument was purely pragmatic - if a special magistrate was not employed “we shall never be able to overtake the work.”¹⁵⁵

Bale therefore suggested that the Natal Cabinet should consider altering the legislation so as to increase the jurisdiction of magistrates in terms of passing sentences from six months to one year imprisonment and from a £20 to a £100 fine. In the event of the cabinet fearing that this would place

151. PAR, CSO 1675: List with number of voters in each electoral district convicted of treason, 3.5.1901-10.5.1901.

152. PAR, CSO 1683: Correspondence regarding the removal of suspected rebels still in the field from the voters roll, 9.8.1901.

153. PAR, AGO I/7/44: Circular No. 38 of 1902 asking for return of names of convicted rebels appearing on the 1901 voter's roll, 16.5.1902; PAR, 1/DUN 3/1/10: Minute paper magistrate, Dundee to PUS, 11.5.1902.

154. For some of the cases that appeared before Special Magistrate Jas Forder see: PAR, AGO I/8/79: Letter Clerk of the Peace D Turnbull to Attorney-General H Bale, 7.5.1902; 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 peace letter book: Telegram HEK Anderson to magistrate Upper Tugela, 21.11.1900.

155. PAR, AGO I/8/76: Letter Attorney-General H Bale to PUS CJ Bird, 12.12.1900.

an undue amount of power in the hands of magistrates, Bale suggested that a Special Court of Magistrates be appointed.¹⁵⁶ His suggestions were rejected and the various courts were never quite able to catch up with either the work, even though some trials took place under the rules of the Special Court after the war had ended on 31 May 1902.¹⁵⁷

The uphill battle fought by the various courts in trying to deal with the large number of suspected rebels is borne out by the statistical analysis provided from time to time. When Sir William Smith resigned as president of the Special Court at the end of March 1901, there were still more than 300 rebels to be caught and tried. On 12 July 1901, Henry Bale could report that 326 rebels had been charged, 282 convicted, 44 discharged, and the same number awaiting trial.¹⁵⁸ The comprehensive inventory compiled by Sub-Inspector WE Earle on 12 September 1901, indicated the scope of the amount of work still awaiting the courts. Of the estimated 867 rebels, 307 were convicted; 108 had been acquitted or released on parole; 11 were deceased (three in action and eight in custody); two were released to give evidence; 20 were awaiting trial; 12 were on bail; seven were in the Transvaal and not yet handed over; four were handed over to the military; 14 were deported in error; and 382 were unaccounted for.¹⁵⁹ By 1 March 1902, 596 suspected rebels were dealt with while an estimated 363 were still unaccounted for.¹⁶⁰ In April 1902, the Special Court completed its final session and the remaining cases were remitted to Special Magistrate Forder for trial.¹⁶¹ The Special Court was finally dissolved by the governor of Natal on 11 March 1903.¹⁶²

Throughout the rebel trials the populace of Natal was kept informed by the various newspapers of the process. The *Natal Witness*,¹⁶³ *Times of Natal*, *De Natal Afrikaner*, *Natal Advertiser* and the *Natal Mercury* amongst others, acted as the public watchdogs and formed public opinion by bringing their readers every single detail surrounding the treason trials. Important cases, especially during the

156. PAR, AGO I/8/78: Minute paper Attorney-General H Bale to Prime Minister AH Hime, 25.3.1901.

157. PAR, PM 38: Proclamation dissolving the Special Court, 11.3.1903.

158. *Natal Witness*, 12.7.1901.

159. PAR, GH 1449: Summary of Natal rebels compiled by Sub-Inspector WE Earle, 12.9.1901.

160. PAR, AGO I/8/84: Memorandum Attorney-General GA de R Labistour to CIO, 1.3.1902.

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

162. PAR, PM 38: Proclamation dissolving the Special Court, 11.3.1903.

163. *Natal Witness*, 7.8.1900, 28.8.1900, 8.9.1900, 11.9.1900, 12.9.1900, 13.9.1900, 15.9.1900, 17.9.1900, 18.9.1900, 19.9.1900, 21.9.1900, 21.9.1900, 26.9.1900, 27.9.1900, 28.9.1900, 5.10.1900, 6.10.1899, 12.10.1900, 18.10.1900, 19.10.1900, 20.10.1900, 24.10.1900, 25.10.1900, 27.10.1900, 29.10.1900, 30.10.1900, 31.10.1900, 2.11.1900, 15.11.1900, 16.11.1900, 24.11.1900, 26.11.1900, 29.11.1900, 30.11.1900, 4.12.1900, 5.12.1900, 6.12.1900, 11.12.1900, 12.12.1900, 14.12.1900, 18.12.1900, 20.12.1900, 21.12.1900, 22.12.1900, 24.12.1900, 7.1.1901, 9.1.1901, 10.1.1901, 14.1.1901, 16.1.1901, 18.1.1901, 21.1.1901, 22.1.1901, 24.1.1901, 25.1.1901, 1.2.1901, 4.2.1901, 6.2.1901, 7.2.1901, 8.2.1901, 11.2.1901, 15.2.1901, 16.2.1901, 19.2.1901, 21.2.1901, 22.2.1901, 25.2.1901, 26.2.1901, 28.2.1901, 9.3.1901, 12.3.1901, 15.3.1901, 18.3.1901, 19.3.1901, 20.3.1901, 21.3.1901, 22.3.1901, 27.3.1901, 28.3.1901, 29.3.1901, 30.3.1901, 1.4.1901, 4.4.1901, 12.4.1901, 16.4.1901, 17.4.1901, 19.4.1901, 6.6.1901, 7.6.1901, 8.6.1901, 10.6.1901, 11.6.1901, 29.6.1901, 8.8.1901, 9.8.1901, 22.8.1901, 23.8.1901, 30.8.1901, 5.9.1901, 23.9.1901, 26.10.1901, 28.10.1901, 31.10.1901, 1.11.1901, 2.11.1901, 4.11.1901, 6.11.1901, 8.11.1901, 15.11.1901, 16.11.1901, 29.11.1901, 6.2.1902, 7.2.1902, 8.2.1902, 21.2.1902, 22.2.1902, 24.2.1902, 27.2.1902, 28.2.1902, 1.3.1902, 3.3.1902, 4.3.1902, 5.3.1902, 6.3.1902, 8.3.1902, 11.3.1902, 15.3.1902, 17.3.1902, 18.3.1902.

early months of the trials, filled columns of these jingoistic newspapers since the proceedings were reported verbatim. The reports were so thorough that the Natal authorities preferred to forward the newspaper articles on the trials, especially those carried by the *Natal Witness*, to the Colonial Office in London rather than the official court documentation.¹⁶⁴ The newspapers were also the only real mouthpiece in which the Natal community could voice their critical views. They were at times joined by editors who expressed either satisfaction or dissatisfaction with specific sentences and the perceived leniency of the courts. A point in case is the *Dundee and District Advertiser* which commented: “Rebellion in South Africa needs no bolstering by the imposition of ridiculously light sentences”, while the *Natal Witness* of 15 November 1900, viewed the judgement passed on John Hendrik Hattingh as a “smart sentence.”¹⁶⁵

In contrast to the power of the colonial authorities, as symbolised by the newspaper reports, the Special Court and the Imperial Army, stood the powerless Natal Afrikaner rebels, whose sole support amongst the spectators and participants in the unfolding drama, was their families and fellow Natal Afrikaners.¹⁶⁶ Especially the women - wives, sisters and mothers would form the frontline of moral support, always present for the sitting of the Special Court.¹⁶⁷

Like their menfolk in the dock, they believed the key to it all was the following extract from an unknown Roman-Dutch law book which came to the attention of those rebels in the Eshowe Prison: “A citizen is excused if he is hindered by external fear or under terror, however, unjustifiable, for though a firm man ought not to be prevented by fear from doing his duty, all men are not virtuous. for the power of the Sovereign ought to be able to protect against any evil those whose obedience it commands. If the Sovereign is unable to do this he cannot exact obedience or punish refusal.”¹⁶⁸

The point of view and emotions of the Natal authorities were exactly the opposite. To them the exercise was largely successful. They had managed to deal with the transgressions of their citizens with minimum interference from the Imperial Government, enforcing their political autonomy in the process. It seems to matter little to the Natal Government that: “...if a state gives a citizen protection it has a claim on his allegiance, and if he gives it his allegiance its is bound to give him protection”, something neither the Natal nor the Imperial Governments could offer to especially Klip River county Afrikaners for a period of 188 days between October 1899 and May 1900.¹⁶⁹

164. See for example: PRO, CO 179/220: Despatch No. 296, 8.11.1901; Despatch No. 300, 6.11.1901; Despatch No. 311, 16.11.1901; Despatch No. 323, 6.12.1901.

165. *Dundee and District Advertiser*, 29.1.1902.

166. PAR, HF Schoon collection, A 72: Dairy entry, 21.8.1900, p.426.

167. PAR, HF Schoon collection, A 72: Dairy entry, 22.10.1901, p.710.

168. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 6.2 1901, p.484.

169. R West, *The meaning of treason*, p.414.

Within the bigger historical picture the plight of Natal Afrikaners could be equated to that of other minority groups caught up in a war between their country of residence and their country of origin/fatherland/country or allegiance. Invariably they were also viewed as the enemy and treated as such.¹⁷⁰

6.3.2 The trial of Natal rebels by military court

As a result of the Natal Government's decision to conduct the high treason trials of its subjects, only three Natalians were initially tried by military courts. The first of these, and the first Natalian to be found guilty of treason, was John Torpey, a Newcastle trader who had formerly resided in the OFS for 20 years. During the Boer occupation of Newcastle, Torpey, like many other businessmen did a roaring trade with the Boers. In his case he used the abandoned mill of Walsh as a business venture. Shortly after the relief of Newcastle he was brought before a military court and sentenced to five years in prison with hard labour and a fine of £100 or a further year imprisonment. Torpey regarded the sentence as extremely harsh, especially since Natal Afrikaners who committed graver acts of treason only received a few months imprisonment, while hard labour was only added when they were found guilty of theft. He consequently, supported by a petition signed by 71 Natal rebels, appealed to Lord Kitchener for a reprieve of his sentence. This was denied by both the military, who regarded his case as "a bad one", and Governor McCallum, who refused to entertain any application for remission as long as the war dragged on.¹⁷¹ In April 1902 Torpey again asked for remission of his sentence and it was again rejected.¹⁷²

MP and GW de Jager, of Pietermaritzburg and Durban respectively, were the only other two men to be sentenced for high treason by a military court prior to the constitution of the Special Court. The De Jagers, both Republican burghers, one a cattle dealer and the other employed by the ZAR customs service in Durban, were determined to join the Boers. MP de Jager was originally arrested by a column under General Yule between Dundee and Ladysmith and imprisoned in Ladysmith during the siege, before being ordered to remain in Pietermaritzburg. In a second attempt to reach the Boer lines the men passed through Umvoti and were assisted by LL Nel and LC Hansmeyer¹⁷³ to cross the Tugela River. They did not get much further for they were arrested by African scouts and handed over to the UMR.¹⁷⁴ Both were found guilty of breaching Martial Law; for ignoring orders to remain in Pietermaritzburg; and for attempting to enlist with the enemy. A military court under Maj-

170. An example from the Second World War which serves to prove this point is the treatment of Japanese-Americans by the USA. See, W Ng, *Japanese American internment during World War II: A history and reference guide*, and R Daniels, *Prisoners without trial: Japanese Americans in World War II*.

171. PAR, GH 502: Correspondence pertaining to the request by J Torpey for remission of sentence, 17.6.1901-24.7.1901; *De Natal Afrikaner*, 5.6.1900.

172. PAR, PM 28: Petition by J Torpey asking for a remission of his sentence, 25.3.1902-25.4.1902.

173. Louis Hansmeyer was found guilty by the Special Court of high treason and fined £20 or 4 months imprisonment.

174. PAR, 1/KRK 3/1/3: Letter Prosecutor H Anderson to magistrate Kranskop, 21.5.1900; PAR, AGO I/8/70: Papers relating to the arrest of MP and GW de Jager, 7.5.1900-12.5.1900.

Gen Wolfe-Murray sentenced them to six months imprisonment and a fine of £50 each, or a further one month imprisonment.¹⁷⁵

In October 1901, the commandant of Durban, Colonel O'Neill, suggested an alternative to the costly and time-consuming trials of Natal rebels by the Special Court. He proposed that the rebels still in the Republics be tried by military courts. Governor McCallum supported O'Neill's proposal, claiming that the public also did. McCallum's canvassing for a change in the system was based on two reasons: the "easy life in prison" experienced by the sentenced rebels, and the fact that the rebels still in the field had had ample opportunity to surrender, but because they had not done so should be classified as "undesirables" and should, for the sake of law and order, be banished to Bermuda and other "convict establishments."

McCallum's hard-line suggestion did not please the Natal Government who argued in favour of their creation, the Special Court:

...so far as Ministers are aware, the decisions of the Court have given general satisfaction. Ministers do not therefore consider that it would be desirable to make any change in the existing system. It should be borne in mind that in the Cape Colony there have been fresh outbreaks of rebellion, and that Cape rebels have, since the commencement of hostilities, joined the enemy from time to time, but, except as regards those rebels who took up arms at the commencement of the War, none of the Natal Boers have, so far as is known, gone over to the enemy.¹⁷⁶

It was also pointed out that the Special Court was instituted at the insistence of Joseph Chamberlain. In addition the Natal Government argued that it would be a poor reflection on the commissioners of the court if it was now announced that the court was not a proper tribunal for the trial of rebels.¹⁷⁷

Governor McCallum, however, did not let the affair rest and raised the matter of how best to deal with the estimated 300 Natal rebels still in the field with Lord Milner during the latter's visit to Natal in November 1901.¹⁷⁸ When Milner adopted the same point of view as the Natal Government, McCallum decided to influence the process more directly. In conversation with the president of the Special Court, he "took the opportunity of giving him a hint that, considering the heavy sentences which were now being passed by Military Courts in the Cape Colony, it would not be out of place if a somewhat greater severity

175. PRO, WO 108/302: Extracts from the proceedings of the military court in Natal, 1900; PAR, PM 87: Sentences imposed by the military court on MP and GW de Jager, 29.6.1900-2.7.1900.

176. One report exists on three Natal rebels with the surname of Adendorff who had served time in prison for high treason and then apparently rejoined the Boers. The men were arrested by the military and taken to Harrismith. No further information could be located regarding this accusation which indicates that it was possibly a rumour. NAR, PMO 52: Telegram GOC, Natal to provost marshal, 3.12.1901.

177. PAR, GH 562: Minute paper regarding the suggested trial by court martial of rebels captured outside Natal, 7.10.1901-3.11.1901.

178. PRO, CO 179/220: Letter Governor HE McCallum to Colonial Secretary J Chamberlain, 5.11.1901; *Natal Witness*, 26.10.1901.

characterized the sentences in this Colony.”¹⁷⁹ Prime Minister Hime apparently impressed the same opinion on the president. As a result McCallum had the satisfaction to report that his interference had resulted in heavier sentence being passed on specifically two rebels, JA van Rooyen who was sentenced to 18 months imprisonment and a fine of £1 000 or a further 18 months in prison, and JJ Dekker who was sentenced to seven years imprisonment.¹⁸⁰

The mind of the Natal Government regarding the feasibility of trying rebels apprehended outside the Colony by court martial was at face value changed by a single incident. Four suspected rebels, HA and LJ Dreyer, and two Robbertse, captured near Barberton, were handed over to the Natal authorities in August 1901 and July 1901 respectively. On 29 November 1901, the Natal CID telegraphed the provost marshal asking if evidence could be supplied by the military regarding the charge of “surrender under arms” brought against these men. The military’s response was curt: “Evidence cannot now be produced and, as there was no doubt as to the Burghership of the men, it will be best instead of wasting more time to give them the benefit of the doubt and send them away as prisoners of war.” In the meantime the preliminary examination against the four men had taken place and their cases were postponed awaiting the military evidence which, was not forthcoming. In such cases the Natal authorities estimated that the lack of military evidence would result in a sentence of maximum five months rather than two years, for the men were then merely guilty of leaving Natal for the Republics. The matter was eventually referred to the new attorney-general for Natal, GA de R Labistour, with the request that further investigations be suspended so that the four suspects could be deported by the military.¹⁸¹ No evidence could be found on what happened to these men except that HA Dreyer was fined £10 or 3 months imprisonment. The light sentence in itself was a vindication of the concerns of the Natal authorities.

The bungling of the above-mentioned case, because of the failing by the military to supply the necessary evidence, moved the issue of rebel trials from the political to the legal sphere. Attorney-General Labistour suggested to Prime Minister Hime that the military should try all Natal rebels caught or surrendering outside of Natal by court martial since this “might prove more satisfactory than for this government (Natal) to take them over and then apply to the military for evidence.” The Natal Government adopted this suggestion without any resistance and via the office of General McCallum, approached Lord Kitchener with the proposal made by Labistour. Kitchener agreed on condition that a “Bill of Indemnity” was passed to protect the military. The Natal Government conceded and passed Law No. 35 of 1902 which safeguarded the military against any post-war prosecution by rebels.¹⁸² Kitchener then, without delay, issued an order on 10 January 1902, relaying

179. At this stage military courts in the Cape Colony were imposing prison sentences on rebels for periods likely to extend beyond the duration of the war. NAR, PMO 52: Telegram GOC, Natal to provost marshal, 3.12.1901.

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

181. PRO, CO 179/222: Telegram provost marshal to GOC, Natal, 7.1.1902.

182. PRO, 179/222: Correspondence concerning the trial of Natal rebels by the military, 29.11.1900-4.1.1902; PAR,

the details to the appropriate officers, and informing them that such trials could only take place with reference to the army head quarters.¹⁸³ The district police officers of the Natal Police were simultaneously informed of the arrangement.¹⁸⁴

When prompted by the governor, Prime Minister Hime revealed the real reasons for capitulating and accepting a more power-orientated approach towards the rebels. The civil authorities were finding it increasingly difficult to obtain evidence because of the lapse of time between the trials and the actual crimes of high treason. In addition it was expensive to maintain the Special Court;¹⁸⁵ inconvenient to the Natal Government; and the ruling which allowed the military to try rebels by court martial would enable the court to wind up its affairs within three months when the pending cases against the last 43 rebels in custody were completed. Members of the court, like Mr Broome, could then return to their ordinary civil duties.¹⁸⁶

The decision to allow the military to try rebels arrested outside Natal, which effectively ended the protection the authorities gave their Afrikaner subjects against Martial Law, worried some rebels who were still in the field and who wanted to surrender. They feared that they would be more severely punished by the military. Lt-Gen Lyttelton, the GOC for Natal, suggested to Lord Kitchener that “if they really wanted to come in they will get comparatively lenient sentences.”¹⁸⁷ With this Kitchener concurred on condition that the rebels were only guilty of rebellion. Lyttelton was, however, warned against issuing precise statements of possible punishment without consultation with the army headquarters.¹⁸⁸

The comparatively lenient sentences Lyttelton had promised proved to be false as Johannes Christoffel Boshoff of Newcastle, the first rebel to be sentenced under the new arrangement, found out. He was sentenced to 18 months imprisonment and a fine of £100 or a further six months in prison for attempting to communicate with the Boers on two occasions. Rebels subsequently arrested received even harsher sentences. On 13 February 1902, a military court in Standerton, sentenced J and IM Kok and CJ Cronjé, all three of Dundee, to six years imprisonment each. IM Kok became the first Natal rebel to be sentenced to death for having two soft-nosed expanding bullets in his

AGO I/8/83: Correspondence concerning the trial of Natal rebels by the military, 29.11.1900-4.1.1902.

183. NAR, PMO 2: Telegram GOC, Natal, to provost marshal, Pretoria, 4.2.1902.

184. PAR, AGO I/8/83: Letter chief commissioner police to district police officer, 3.1.1902.

185. Already in October 1900, concerns were expressed about the expenses incurred because of the treason trials. PAR, AGO I/8/76: Minute paper accounting officer, attorney-general's department, EW Baxter to Attorney-General H Bale, 15.11.1900.

186. PRO, 179/222: Correspondence concerning the trial of Natal rebels by the military, 29.11.1900-4.1.1902; PAR, AGO I/8/83: Correspondence concerning the trial of Natal rebels by the military, 29.11.1900-4.1.1902.

187. PRO, WO 108/116: Letter Lt-Gen N Lyttelton to Col I Hamilton, 14.2.1902.

188. PRO, WO 108/116: Letter Col I Hamilton to Lt-Gen N Lyttelton, 18.2.1902.

bandolier. Lord Kitchener eventually commuted his death sentence to a prison sentence.¹⁸⁹ Philip Jacobus Meyer of Dundee received an equally harsh sentence, five years imprisonment and a fine of £2 000 or a further three years imprisonment from a military court sitting at Volksrust. In his case the fine was scrapped by the army headquarters.¹⁹⁰ A year later, in an attempt to prove his innocence, Meyer unsuccessfully tried to locate the depositions made against him which he claimed he was denied during his trial.¹⁹¹ A group of eight Natal rebels was also sentenced by a military court at Harrismith over the six week period just before and after peace was signed. The heaviest sentence by this court was imposed on CJ van der Merwe of Vaalbank, Estcourt, who was sentenced to be imprisoned for ten years.¹⁹²

All in all the military courts convicted 15 Natal rebels of high treason after they were granted jurisdiction in late 1901. Their sentences were generally much harsher than those passed by the Special Court. On average the 15 rebels tried by the military received sentences of four years and four months each. Although the heavy sentences must have pleased the Natal Government, the process proved to be as expensive as the sessions of the Special Court with £100 expended on the case of PJ Meyer alone.¹⁹³

Once the war ended Attorney-General Labistour moved swiftly to end the trial of rebels by military court, especially after the army, in violation of the order that they had to try rebels outside of Natal, brought three rebels to Newcastle to be tried. By 9 September 1902 the trial of rebels by military court had ceased and the seven untried prisoners were handed over to the Natal authorities to be tried by magistrates under the rules of the Special Court.¹⁹⁴

Securing the records of the Natal rebels tried by the military courts serve to illustrate the ongoing tension between the army and the civil authorities and highlight the vastly different organizational cultures they represented. The attorney-general, on 18 September 1902, forwarded the following minute: "It is imperative that the military authorities should send in at once all records referring to Natal rebels tried by Military Courts. They have already been asked to do this but the request has not been complied with."¹⁹⁵ Despite the shortcomings in the relationship as outlined above it did, to a

189. NAR, PMO 44: Correspondence regarding Natal rebels, J Kok, IM Kok, CJ Cronjé, ZJ Lombard and GJW van Niekerk, 26-27.1.1902; NAR, PMO 44: Correspondence regarding J Kok, 29.1.1902; PAR, AGO I/8/84: Report on the conviction of J Kok, IM Kok and CJ Cronjé, 20.3.1902-20.6.1902.

190. PAR, AGO I/7/37: Confirmation of sentence imposed on PJ Meyer, 13.5.1902.

191. PAR, AGO I/8/89: Letter Griffen and Muller to attorney-general, 9.4.1903.

192. PAR, AGO I/7/37: Proceedings of military court against CJ van der Merwe, JA Oosthuysen (snr), JA Oosthuysen (jnr), JR Oosthuysen, JP Zietsman, NJ van der Westhuizen, JT Truscott, JHF Meyer, 14.5.1902-20.6.1902.

193. PAR, AGO I/8/86: Request that the accounting officer be informed of the costs involved in military court trials, 15.5.1902-24.5.1902.

194. PAR, AGO I/8/85: Minute paper indicating that trial by military court had to cease and prisoners had to be handed over to the civil authorities, 22.8.1902-7.9.1902.

195. VS Harris, p.44.

certain extent serve its purpose, namely to dispense justice to rebels apprehended outside the Colony.

6.4 Appeals to the Privy Council

Of the 409 Natal Afrikaners convicted of high treason very few were happy with the sentences passed on them. Initially there was talk that a large number of convicted rebels would collectively appeal to the highest court, Privy Council in London, against their sentences.¹⁹⁶ In the end only two, Lodewyk de Jager of Wasbank and Jan Lodewyk Marais of Meyershoek near Ladysmith, took their appeal to the Privy Council.¹⁹⁷

In his interpretation of events Marais stated that the Klip River county were annexed by the Republican forces and that he was compelled into service at Elandsplaagte. He was forced to remain at the Boer laager for eight days and was then, under protest, allowed to return home to perform the duties of a policeman. When the Boers retreated he remained on his farm and was subsequently arrested by the military, tried for treason, and sentenced to a fine of £200 and one year imprisonment.¹⁹⁸

Eugene Renaud, Marais' maverick counsel,¹⁹⁹ argued that the Special Court was not properly constituted and that his client was entitled to be tried by the laws of England because Roman-Dutch law had no standing in Natal since the area had been secured for Britain in 1824 by Lieutenant Farewell. When the Voortrekkers arrived they as British subjects, occupied the territory as bearers of English law. Ordinance 12 of 1845 thus only gave the Roman-Dutch Law credence "until such time as Her Majesty should have given some charter or form of government to the Colony." This expired when Natal secured some form of self-government in 1856. Arguments that the courts in Natal had been applying Roman Dutch Law for 60 years were rejected by Renaud who commented: "The practice is bad, and it is never too late to reform it."²⁰⁰ On the basis of this curious argument Renaud appealed to the Privy Council against the sentence imposed on Marais.²⁰¹ The six members of the judicial committee of the Privy Council dismissed Renaud's arguments declaring that Roman-Dutch Law did indeed apply to Natal and that the Special Court was properly constituted.²⁰² The appeal

196. Foy Vermaak private collection: Letter JC Vermaak to CT Vermaak alias Miss C Herzog, 24.3.1901.

197. The Colling brothers also wanted to take their case to the Privy Council but could not find the money to do so. PAR, AGO I/8/78: Letter FM Colling to TG Colling, 4.4.1901.

198. *The Times*, 25.7.1901.

199. Renaud was not afraid to take up cases other legal minds would shy away from. Amongst others, he represented King Dinizulu during the Bambatha Rebellion. A Duminy and B Guest, (eds.), *Natal and Zululand from earliest times to 1910. A new history*, p.395.

200. *Times of Natal*, 7.12.1900.

201. PRO, CO 179/218: Notice of appeal in the matter of JL Marais, 6.5.1901; PRO, CO 179/221: Appeal case, Special Court sentence passed on JL Marais, 25.6.1901.

202. PAR, AGO I/8/79: Verdict of the judicial committee of the Privy Council, 24.7.1901.

process apparently ended up costing Marais £2 000.²⁰³

Lodewyk de Jager²⁰⁴ was sentenced to a fine of £5 000 and five years imprisonment. He paid his fine, served his sentence and was released on 13 March 1903, when the sentences of all the imprisoned rebels were remitted. In 1907 De Jager, with the financial assistance of fellow Natal Afrikaners, took his case to the judicial committee of the Privy Council claiming that a victory for him would be a victory for all convicted Natal rebels.²⁰⁵ De Jager argued that he was a Transvaal citizen and could therefore not be convicted of high treason.²⁰⁶ His correspondence with the under-secretary of state of the ZAR, regarding the “oorlogsbelasting” he had to pay, was also put forward as proof that he regarded himself as a Transvaal burgher. Based on this evidence he was instructed to pay his outstanding income tax and enlist with a field-cornet in the Vryheid district.²⁰⁷ This was not the view of the judicial commission of the Privy Council. Their counter argument, an argument also used by the Special Court was that: “It is an old law that an alien resident within British territory owes allegiance to the Crown, and may be indicted for treason, though not a subject. Some authorities affirm that this duty and liability arise from the fact that while in British territory he receives the King’s protection.” Based on this principle De Jager’s appeal was dismissed, in the presence of General Louis Botha, on 9 May 1907.²⁰⁸

6.5 Concluding comments

In total 409 Natal Afrikaners were convicted of high treason by seven different kind of courts. Of these the Special Court, specifically created for the purpose, passed sentence on 276 rebels or just more than 67% of those found guilty. This was a clear vindication for the creation of the court. The other courts constituted to deal with the rebels passed sentences as outlined in Table 6.1 below. Despite their subservience to Martial Law the Natal Government generally managed to maintain their independent stance of judging their subjects on their own terms. All in all the Natal authorities could, if one considers the mammoth task they faced, be satisfied with the manner in which the rebel

203. OE Prozesky private collection, Diary of JJA Prozesky: Diary entry, 6.2.1901, p.485.

204. LJ de Jager was an exceptionally wealthy man who owned 11 700 acres in Natal and 29 000 acres in the Transvaal. For further documentation surrounding the attempts by Lodewyk de Jager to convince the Privy Council of his point of view see the Sarie Mehl private collection, Waterkloofrif, Pretoria. Mehl, the current owner of Wasbank Manor, the Natal abode of De Jager, is his great grand daughter.

205. VTR, JC Vermaak collection, 03/2553/1: Memoirs of JC Vermaak, p.35, 1941.

206. LJ de Jager only on 23 June 1899 asked the secretary of state of the ZAR not to consider him as resident outside of the Republic. Despite this request he continued to reside in Natal. NAR, SP 207 SPR 4724/99: Letter LJ de Jager to secretary of state, 23.5.1899. One of the sons of De Jager, Lodewyk Johannes (jnr), of the Vryheid district, who was never charged with treason, for some unknown reason also wanted to prove that he was a burgher of the Transvaal. PAR, AGO I/8/87: Affidavits regarding the citizenship of LJ de Jager (jnr), 27.10.1902.

207. NAR, SSA RA 1970/99: Correspondence between LJ de Jager and the under secretary of state of the ZAR, 29.3.1899-17.6.1899.

208. PAR, AGO I/8/115: Appeal by LJ de Jager to the judicial committee of the Privy Council, 14.3.1907-9.5.1907; *The Standard*, 10.5.1907.

trials were conducted.²⁰⁹

Table 6.1: Number of Natal rebels convicted of high treason per court

<u>Type of Court</u>	<u>No. of rebels convicted</u>
Special Court	276 (67%)
Special Magistrate	52 (13%)
Magistrate	41 (10%)
Military Court	18 (4%)
Special Court - trial by magistrate	16 (4%)
Supreme Court	4 (1%)
High Court of Zululand	2 (0.5%)
TOTAL	409

The reasons why the various courts convicted rebels, as indicated in the court documents, and summarised in Appendix A, does not necessarily reveal the whole truth. It is likely that almost all Natal Afrikaners who resided in the area occupied by the Boers had in one way or another compromised their loyalty to the crown by, as the *Natal Witness* described it, joining “hands in a struggle false in its foundation, cruel and wicked in its action and suicidal in its certain result.”²¹⁰ Only a little over 500 of the estimated 90% Afrikaners of the Klip River county suspected of having taken part in the rebellion were arrested.²¹¹ An estimated 350 Natal Afrikaners, who were possibly just as guilty, managed to evade arrest while others could not be linked to the available evidence. Proof of this is contained in the name list drawn up by the Natal Police of Natal Afrikaners suspected of treason: of the 19 Natal Afrikaners with the surname of Adendorff who were suspected of treason, only nine were convicted; six Natal Afrikaners with the surname of Spies were suspected of treason and only one was convicted; ten Afrikaners with the surname of Uys were suspected and only three found guilty of treasonable deeds and nine with the surname of Wessels were suspected but none were convicted.²¹²

The vast majority of the convicted rebels originated from the districts occupied by the Boers. (Table

209. *Dundee Commercial Advertiser*, 12.3.1902.

210. *Natal Witness*, 20.3.1900.

211. VS Harris, pp.32-34.

212. PAR, ZA 33: Names of British subjects in Natal who are suspected of disloyalty, circa 1900.

6.2) These districts were not only isolated from the centres of political and economic power in Natal but, also bordered on the Republics and were thus greatly in their sphere of influence. There was furthermore a positive correlation between the duration of the occupation of certain districts and the number of rebels found guilty of high treason, with the Newcastle district topping the list. It was in the districts in close geographical proximity to the Republics that a combination of fear of Boer punishment, and pressure of Boer occupation, forced Natal Afrikaners to enlist.²¹³ The crude commandeering system, pursued in an inconsistent manner and based on deception, was implemented because of the resistance of the vast majority of the Natal Afrikaners to become involved on the Republican side in a military capacity.²¹⁴ The majority of Natal Afrikaners from the northern districts did not choose the traumatic path of rebellion, it was forced upon them. Within this context the phrase coined by historian Verne Harris “reluctant rebels” rings perfectly true.²¹⁵

Table 6.2: Number of rebels convicted per district

<u>District</u>	<u>No. of rebels convicted by Special Court</u>	<u>No. of rebels convicted by other courts</u>	<u>Total</u>
Newcastle	91	59	150
Dundee	110	20	130
Ladysmith (Klip River division)	34	18	52
Upper Tugela	21	9	30
Proviso B and Zululand	4	14	18
Estcourt	10	4	14
Weenen	4	5	9
Durban	2	1	3

213. PAR, AGO I/7/22: Rex vs A Wellman, pp.401-403; *Natal Witness*, 9.3.1901; AGO I/7/24: Rex vs DL van Niekerk, pp.499-501; *Natal Witness*, 27.3.1901.

214. PAR, 1/DUN 1/5/2/1: Evidence of FDJ Havemann during the preliminary hearing of CF Hatting; Evidence of CF Hatting during the preliminary hearing of same, 26.9.1900.

215. VS Harris, p.1.

Kranskop		1	1
Greytown		1	1
Pietermaritzburg		1	1
TOTAL	276	133	409

The Natal Government continued to prosecute rebels after peace was signed. In fact, the post-war treason cases were so numerous that the magistrate of Dundee requested and received the help of an assistant magistrate.²¹⁶ Some of the suspected rebels like F, PR and DM van der Cracht and William Cheney of Pietermaritzburg, who was fined £3 for high treason, were POWs who had returned from overseas camps.²¹⁷ A further eight Natal Afrikaners, AM Muller, JJ Meyer, G Teichmann, JJ Potgieter, JJ Swart, WH Hattingh, WH and JC Brooks, were convicted of high treason by various magistrates between 31 May and 31 December 1902.²¹⁸ Eleven Natal Afrikaners were charged with high treason in 1903. The charges against all the men, except for that against NJJ Dreyer of Ladysmith, were dropped. Dreyer was fined £20 or two months in prison. His case brought down the curtain on rebel trials.²¹⁹

216. PAR, CSO 1724: Request by Magistrate M Matthews, Dundee, that Stainbank be appointed assistant magistrate, 6.2.1903-20.2.1903.

217. PAR, AGO I/7/37: Rex vs William Cheney, pp.977-979.

218. PAR, PM 35: List of persons convicted of high treason since July 1902, 17.11.1902.

219. PAR, 1/DUN 1/4/2/2: Natal rebels note book, 1901-1903.