

AC/2000/089

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT NO. 34 OF 1995.

EUGENE ALEXANDER DE KOCK 1ST APPLICANT

(AM 0066/96)

DOUW GERBRANDT WILLEMSE 2ND APPLICANT

(AM 3721/96)

DAVID JACOBUS BRITS 3RD APPLICANT

(AM 3745/96)

WILLEM ALBERTUS NORTJE 4TH APPLICANT

(AM 3764/96)

IZAK DANIEL BOSCH 5TH APPLICANT

(AM 3765/96)

JOHANN HENDRIK TAIT 6TH APPLICANT

(AM 3922/96)

NICHOLAS JOHANNES VERMEULEN 7TH APPLICANT

(AM 4358/96)

MARTHINUS DAVID RAS 8TH APPLICANT

(AM 5183/96)

DECISION

The above Applicants are seeking amnesty mainly for the conspiracy and murder of the following members of the Chand family:

1. Sam Chand;
2. Hajira Chand;
3. Redwan Chand;

4. Amina Chand; and

5. Imran Chand

6. Poding Pule

The facts and evidence, briefly stated, are as follows. Sam and Hajira were an exiled couple and Pan Africanist Congress ("PAC") supporters.

At the time of the occurrence of the incident in 1990 they were based in Botswana. The Chands had left South Africa in the 1960's and lived in Botswana wherefrom they assisted APLA cadres to infiltrate into the country to carry out military operations on its behalf. Redwan, Amina and Imran aged 26, 23 and 17 respectively were their children who lived with them and allegedly also supported the PAC. To this end they worked as guides for APLA cadres crossing the border between Botswana and the Republic of South Africa. Poding Pule worked as their gardener and a security guard at the premises.

After the hearing of evidence in this matter, the Supreme Court of Appeal (Vide *Veenendaal vs Minister of Justice et al: Case No. 317/97*) issued a judgment that the Amnesty Committee has no power to grant amnesty in respect of offences committed outside the borders of the Republic of South Africa. We have no choice but to abide the decision.

It accordingly follows that in the main we shall concern ourselves with the crime of conspiracy to kill the victims, which crime was committed in the Republic of South Africa and executed in Gaborone. There are other statutory and common law crimes that flow from the incidents and those we shall specify hereunder.

Returning to the facts of the case, in 1990 De Kock, who was the Vlakplaas Commander, was summoned by his superior, Brigadier Nick van Rensburg, to his office. At that stage De Kock was on "special leave" as the Harms Commission of Inquiry which investigated alleged gross human rights violations and cross-border operations by members of the South African Forces was in progress. Van Rensburg told De Kock that he wanted him to carry out an attack on a house belonging to the Chands in Botswana. This was to be done as a matter of urgency.

He also told him that in the past few months a large group of PAC Cadres had infiltrated the country through Botswana. They had done so with the assistance of the Chands. De Kock says at that stage he knew the Chands to be working for the Directorate of Covert Operations of the military intelligence unit of the South African Defence Force.

Previously and a few months before, his (De Kock's) unit had collaborated with the Directorate in the arrest of four armed PAC cadres and Tony Oosthuysen from DCC wanted the four men to be killed. De Kock says he was told by Oosthuysen that the Chands were double agents and were involved in the infiltration of cadres, but this was a "controlled operation". It was the policy of the DCC to allow cadres to come into the country and monitor them. He says this was creating problems for the South African Security Police because in many cases such cadres would never be traced again once they were inside the country. It was because of this problem that Van Rensburg gave the order that the transit house be destroyed and the infiltration stopped. He testified that the order was given in the presence of Brigadier Schoon.

In the same meeting the "problem" of an askari by the name Ngqulunga was discussed and it was decided that he was to be "silenced".

Both Van Rensburg and Schoon deny having had such a meeting and giving such an order to De Kock. For our purposes it is not necessary to make a finding on the matter. In our view it is clear that De Kock *bona fide* believed that he was acting on behalf of the South African Security Police when he carried out the operation. It was the duty of the Security Police to maintain law and order in the Republic of South Africa and the Vlakplaas Unit was created specifically to deal with insurgency and to counter any possible attack on the Security Forces and civilians.

After the meeting, De Kock had a meeting with Ras and gave him the order to investigate the exact location of the Chands' house, with the view to destroy it. Investigations by Ras revealed that the house was about one and a half kilometres away from the border and further inquiries by De Kock from the head of C2, Naude, revealed that about 76 heavily armed PAC cadres had come through that point. These cadres had also been "lost" and were at large in South Africa. The operation was to be carried out in such a manner that an impression would be created that it was a PAC attack on the Chands. DCC (Oosthuysen) was not supposed to know about the mission and no askaris or black police were to be involved. There was no information about minor children staying with the Chands and the order was to kill every person found there. They went there expecting resistance from PAC cadres and the Botswana Defence Force ("BDF") as the house was very close to the border. They also expected that every occupant of the house at the time would have some association with the armed struggle against the government of the day.

On the day of the attack, late at night, De Kock ordered the unit members who are Applicants herein, to take scorpion machine pistols, AK-47s and explosives of approximately 30 to 40 kg. The explosives were going to be used to destroy the house. Three of them went to check the situation at the border post and came back to report that BDF members were there. Using binoculars, they confirmed that nothing had changed regarding the target. They then decided not to use the border post and jumped over the fence to get to the Chands' house. As they approached the house the security guard came out and addressed them in some language they could not understand. He was shot dead on the spot and some of them, with the exception of De Kock, proceeded into the house where they shot everyone. Accidentally, De Kock had fallen on a ditch and injured his knee.

After shooting all the occupants, bombs and explosives were placed in the house and as they were crossing the borders back to South Africa they heard a loud explosion. They all went to Empangeni in KwaZulu-Natal where they spent two days. The aim was to create an alibi in the event of an investigation into the incident. There can be no doubt that the Applicants acted on behalf of the South African Security Police, of which they were members. They clearly acted with a political objective, namely to stop APLA infiltration into the country by using Botswana borders. They also appear to have given a full disclosure of all the relevant facts.

In the result amnesty is **GRANTED** to all the Applicants for the following offences arising from the attack in the Chands' house, in respect of:

1. The conspiracy to commit murder in respect of all the persons that were killed in the attack;
2. Conspiracy to commit malicious injury to property;
3. Contravention of the provisions of the Explosives Act 26 of 1956;
4. Any statutory offence relating to the border control and illegally crossing the borders of the Republic of South Africa;
5. Defeating the ends of justice; and
6. For any offence or delict flowing from the incident.

The next-of-kin of the deceased are hereby referred to the Reparation and Rehabilitation Committee for consideration as victims in terms of the Act. It is further recommended that the other panel of the Amnesty Committee reconsider its decision in the light of the new evidence that has arisen regarding the ages of Redwan; Amina and Imran as well as the role they allegedly played to render assistance to APLA cadres.

SIGNED at CAPE TOWN on this day of 2000

_____ JUDGE A WILSON

_____ ADV N SANDI

_____ MR J B SIBANYONI

