

1934

KENYA

1934

23034/10

CO 533/442

23034

Land Commission.

Masai Claim to the Mbe Lone & Chyule Triangle

Previous

CLOSED
UNTIL

Open file

1951

Subsequent

38005/35

Reg 297 9/10

Reg 299 10

Reg 298 10

Sir C. B. ... 11.10

R. 304

297 17/10

Production

Hand:
Landforms
Oceanic chain
Igneous
Ophiolite Triangles

1. Prof. G. E. V. Buxton (S.O.) _____ 22 Oct 32

Encls. a note on the specific claim to the igneous
Ophiolite Triangles especially ^{any} irregularities which might be avoided
in submitting it may be pointed out

We are hardly in a position (nor is it
necessary) to comment on this. ? Copy to
you. in short annual deep says
that the name has been submitted by
Dr. Clarence Buxton

I will tell Dr. Buxton that we
had no criticism of the form of his
name, - have sent it out as it
stands.

J.P. Buxton
10/10.

So please (to no one honest in Canada)
J. E. W. Hook
10-10

Perhaps the Director
will be able to
get through some
papers before
writing the press
note.

I enclose - not for the Government
correspondence which says Buxton left
with me in 1931. It contains a voluminous
controversy with Dr. J. E. W. Hook who is
in partnership with Dr. J. P. Buxton and
settles with the latter. It may
be material to note that the N.L.T.
Board had decided at ^{a moment} ~~that~~ ^{that} ~~the~~ ^{the}
Buxton's intention long before the
wherein membership of the
Commission was thought of.

As per record. With 11.10.32

2 To Blaine Boston (land.) also 16/10/34

By air mail
16/10/34

3 To Kenya (Conf) — Cons 16/10/34
(w/c memorandum) 16/10/34

Receipts in
accordance with
the following
copy enclosed

227.36.

C. O.

23034/10

3³

Mr. ~~Frederick~~ 12/10 fr.
Mr.
Mr.

Kenya
Approved by No 3
38003/55
Air Mail

Mr. Parkinson.
Mr. Tomlinson.
Sir C. Bottomley.
Sir J. Shackburgh.
Perm. U.S. of S.
Party. U.S. of S.
Secretary of State.

16 OCT 1934

Sir

I have rec. to transmit

for you cover a copy of
by Mr. Clarence Austin
a memorandum relating to
the Kenya Land Commission
recommendation on the subject
of the Mile Zone

DRAFT.

84

Kenya
govt.
copy (3)

~~copy sent Austin~~
~~20~~

2 dft.

(Sgd.) P. CUNLIFFE-LISTER.

23034/10

Kenya

O. D.
R 13 OCT
D. 13

C. O.

Mr. Buxton 17/10/44

Mr.
Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

15 OCT 1944

Dear Buxton

Your note about
the Mile Zone is
being sent out by
air mail. We had
no criticism to make
of its form.

Yours sincerely

DRAFT.

Clarence Buxton Esq.

SZ

2 d/ks.

(Signed) L. B. FREESTON

REGENT 7200.

4/6/34

15
THE BATH CLUB,
10, BERKELEY STREET, W.J.

Dear Freestone

Answer 2
Herewith my letter
on the Masai claim.
I should be grateful
if you would write
my attention to any
irregularities which
might be avoided in
submitting it.

Yrs sincerely

Chas South

7
Fraser & Neave; letter re: 1931

My recollection is that I advised
Major Austin that if he wanted to
go further he must do it locally - &
that I told him I should do nothing
on his letter.

500. 11.10.34

Belaroulin
6/9/31 Newcastle P. Lochu 110

Dear Sir Cecil,

My wife & I will be
returning to London on

Sept. 14th & our boys

go back to School on

Sept. 18th we shall de-

part in Kenya on the

2nd Oct. As you

kindly suggested that

we might meet again

before the end of my

leave I am sending

you this information -

When I saw you in

the C.O. he spoke of

a matter concerning the
Masai boundary, & you
invited me to write a
short note which might
be kept as an anonymous
statement for information
in the C.O. file.

Before doing so I thought
it advisable to ascertain
the position from the
A.C. for it seemed
from his letter to be ^{of 9th April} that
the question might be
decided in favour of
the Masai during April.
I feel I must quote
an extract from his
reply

"I did my best over the
Mile Zone but did not have

as much success as I
had hoped. The Central
Lands Trust Board de-
-cided by a majority
(me being in the minority)
to recommend that the
Zone should not be added
to the Masai Reserve. The
matter however is not
yet ended as I do not
know what Govt will
do with the recommendation
& am still entirely con-
vinced that it ought to
be added to the Reserve
& have every intention of

fighting for it so long
as I can. I was very
disappointed at the
Board's decision.

As I happen to have
some papers with me
on the subject I enclose
them. They are rather
empty, but the nearest
fraction of what Govt has
had from both sides - The
intrinsic ^{potential} value of the land
is of some concern to the
Kisumu. It is doubtful if
it would be of any value
to the European, but its
economic importance is
negligible as compared with
its political significance.
It is on a matter of this

10 5
Govt. that you find the
sharp divergence of
opinion - the White
Dominion ideal & the
Trusteeship ideal - Both
parties have appealed
to Govt since 1926 fairly
insistently & with increasing
frequency - Govt has
invariably avoided giving
a decision on some pretext
or another. That, in
my experience is typical
& one of the most serious
features of the Kenya
situation - It leads
to endless waste of time,
distrust & irritation.

You may remember when
you visited Meru that
a question arose over
their Reserve boundary.
Eventually Govt agreed
to rectify the boundary
but only after much
unnecessary trouble,
mostly for the district
officers.

Before returning I
should be most grateful
for your advice. I
will condense into a
short note the facts
regarding the boundary
but I shall also like

you to see the kind
of information which has
been put before Govt &
the period which has
elapsed there inat-
ant than a decision
on this particular matter
is the future policy
& constitution of Kenya
& F.A. which should
Some how obviate the
difficulties which arise
from a conflict of the
ideals That for the
moment leaves at the
base activities & activities
of persons & so on. No one
can deny that the situation
is complicated by the fact

have interests | out
there - whether they live
there or not. They are
not necessarily rogues though
there are some crooks
amongst them, but even
the best are not dis-
interested, & the best of
all are not men with
means & leisure to study
native affairs in a spirit
of trusteeship.

Forgive this letter which
has proceeded further than
I intended when I began.
With kindest regards,

Yours faithfully

C. E. Burton

CONFIDENTIAL:

The Kenya Land Commission came to Kisii where I gave evidence in regard to South Kavirondo, and Limuru. I informed the Commission that I wished to give evidence on the Masai claim to the Mile Zone and Ghyalw' triangle, but the Chairman's illness prevented another meeting at Kisii with him in the chair. The Secretary of the Commission did not attend at Kisii.

The preliminary statement which I read is appended. I was not called as a witness and the evidence which is printed under my name was not given before the Commission. Its inclusion without reference to me, and without other evidence given at the time, is a breach of the usual procedure, and the omission of the statement which I did make is a serious reflection on the manner in which the enquiry into this claim was conducted.

For the following reasons I disagree with the recommendations of the Commission in paras. 680-682:

1. The railway offers the most satisfactory boundary from every point of view except that of the settlers north of the line, who want to use the land in the Mile Zone for their squatter labour.
2. The cost of erecting, even in the ^{inter} visible cairns on a "give and take" line and maintaining them would exceed the value of the land for white settlement.
3. In para. 1981 the Commissioners' view of a discrepancy between the map illustrating the area claimed for white settlement in 1929 and the wording of the

copy to Kenya (3)

The Committee's recommendation is not tenable because Sir David Frank, the Governor, stated in 1902 with a view to dealing with Hon. G.S., that the land has never been the subject of reservation made to Government that the Nile land should be allocated for white settlement. It therefore appears that the Government correctly illustrated the findings of the Subcommittee which was unaware at that time that the Nile zone was reserved only in the Nyanza district. *The oversight probably date from the time of their report to para 690*

- 4. Not for the manner in which the argument is presented in para. 686, reference to the equity of the Nandi claim might be reserved as inadvisable at this stage. Attention should be directed, in justice to the Nandi, to the failure of the Government to provide the road of access between the two Reserves and the Kiungu circumlocution area.

As it can be shown and has been so evidenced, that the Laitokit were the Lugbara who did move to Laikipia and after the 1911 treaty were returned from Laikipia to settle in the Ngorigalshi hills, the latter part of para. 686 is inaccurate. The Laitokit were never consulted. Long before 1911 they had inhabited the area north of Kilimanjaro. The Laitokit is not a section but a "Gulata" within most sections of the tribe. It has no territorial significance.

The Commissioners in para. 678 make a point of the certificate that the Nandi had full knowledge of the contents of the 1911 treaty. On the other hand they are ready in para. 686 to conclude that the certificate to the 1906 agreement was valueless as the boundaries were so vague and ill-defined. It is nowhere stated that the Governor in 1912 specifically mentioned the railway as the boundary of the Reserve at Aika River. Mr. [Name] was in charge of the Nandi from 1912 to 1922

has not stated when, where or to whom the announcement was made explaining the Mile 2000 boundary. Mr. Horne explained it in 1925 to the Masai Local Native Council and undertook to represent their claim. There is no evidence that he did so.

I earnestly request that before these recommendations of the Kenya Land Commission are accepted by Government, the points contained herein and those submitted by me in the papers referred to in para. 1 of my preliminary statement to the Land Commissioners may be reconsidered.

I would also invite attention to the aspect of this claim in relation to the development of the Masai (vide Memorandum submitted by me in 1931).

C. W. Buxton
Dist. Officer Kenya
on leave
4/10/34

MASAI CLAIM to the MILE ZONE and CHYULU TRIANGLE.

His Excellency instructed me to give evidence on the Masai claim if I had anything to add to what had been recorded.

The papers before this Land Commission do not contain copies of

- (a) My letter to H.E. Sir Edward Grigg commenting on the Majority Report of the Sub-Committee of Executive Council.
- (b) My statement before another Sub-Committee of Ex.Co. explaining the circumstances in which certain cattle were moved from the Masai Reserve to land rented or owned by Capt. F.O.B. Wilson, contrary to quarantine regulations.
- (c) My letter to H.E. Sir Joseph ^{Byrne} ~~Byrne~~ requesting an interview.

I have seen a newspaper report of the Memorandum prepared by the Ulu settlers, and also the précis of the papers prepared by your Secretary. I would like to state that:

- (a) The Surveyors of the Uganda Railway reported that the Railway defined explicitly the boundary between the Masai and Akikha countries and recommended the alignment, inter alia, on this ground.
- (b) That the Ulu Settlers in 1897 through the Convention of Association recommended that the Mile Zone should be fenced and the Game Reserve made contiguous with Masai Reserve and the Mile zone alienated to Europeans. They now recommend that the mile zone should be retained as a game reserve. Their reasons for doing so are

(1) danger of ^{M.S.P.} ~~loss~~ but the baselessness of this anxiety is explained in Kenya despatch No. 299 of 25th. May.

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(ii) danger of disease, but see papers referred to in (b) supra.

I have seen a reprint of the questions and answers, which have been asked in Parliament in regard to Capt. F.O.B. Wilson's farms and would make the following comment on the ~~Waka~~ claim to the Mile Zone. If the ~~Waka~~ have, or advance, no claim to land now owned or occupied by Capt. F.O.B. Wilson a fortiori they can have no claim to land south of the Railway and separated from their main reserve by the land alienated north of the Railway.

C. W. Buxton
N.C.
J. Kavinonda
Circia Oct 1932

District Commissioner's Office,

Kajiado,

22nd April 1930.

To His Excellency the Governor
Lt. Col. Sir Edward W.M. Grigg-
K.C.M.G., K.C.V.O., D.S.O., M.C.

through The Hon. Colonial Secretary
The Senior Commissioner, Ngong.

Your Excellency,

I have the honour to refer to the report (No. NLND. 1/2/5 IV of the Sub-Committee of Executive Council) which deals with the Masai claim to the land, South of the line between Athi and Kiboko rivers and to the Chulu triangle:

2. The minority report of the Senior Commissioner Ngong gives the points which were brought forward by or on behalf of the Masai. The majority report makes such comments on some of these points that I feel bound to invite your Excellency's attention to them.

3. Para 9 page 2. The decision to include the Chulu triangle in the Masai reserve was made by the Governor-in-Council. The Sub-Committee suggest that it was a departmental decision resulting from correspondence between Mr. Browne and Sir Henry Belfield and further that the Masai and the Officer in charge were not concerned prior to the decision. The important fact, according to the Sub-Committee, is that the decision, which was conveyed to the Officer in charge, was not communicated to the Masai. It would appear from Mr. Sandford's history that the approved boundary was not gazetted as the services of a surveyor were not available. It seems reasonable to suppose that the officer in charge was awaiting the gazette notice before promulgating the decision. If the objection amounted to an extension of land for the Masai, it is inexplicable why the Governor

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of this gift was not impressed on them as that date was early in the war and the loyalty of the Masai was of some consequence.. The fact of non promulgation is contradicted to some extent by the agreement in connection with the Simba trading site to which reference is made later.

In view of this agreement and other evidence I submit with respect that this point which is repeated in recommendation II page 5 is casual.

4. para 10 page 2. The last part of this paragraph is, I respectfully submit, misleading. The evidence shows that the Masai have been in occupation of the area since 1904 according to European evidence and earlier according to Masai. They have been evicted three times as stated but on each occasion they protested and returned with the consent of Government. They persisted in trespassing there last year in accordance with your Excellency's instructions to the Hon. Colonial Secretary para 1 (c) of 8th October 1929. In the circumstances the adverse comment is unfair to the Masai.

5. Para 11 and 12 pp. 2 and 3. I would earnestly request that the exact nature of this "clerical error" which has never been corrected may be examined. It is a serious matter if a duly gazetted decision of Government in agreement with a tribe living under its protection is set aside on such ^{grounds} a-pretent. There has evidently been a misunderstanding. It appears that the Masai and the Administration regarded the Railway at this point and presumably elsewhere between Simba and Athi River as their boundary subject to the right of the Railway administration to make use of the land for any purely Railway purpose within a mile of the existing track. It was never supposed that land in the Railway zone could be alienated. The Masai were assumed to have a conventional title under which their consent

to the alienation of land for a trading centre would be necessary. I fail to understand how the inaccuracy of Mr. Sandford's ^{map} ~~waga~~ postulates a clerical error.

It is more probable that the ^{my} survey took place and the position of Simba trading centre was guessed, ^{at by some} ~~at by some~~ ^{one who had never been there.}

6. para 15 page 4. The naivete of Seggi's evidence is not very clear to me. He was party to the agreement with Government regarding the Simba trading centre and concluded that the boundary had not left the line up to that point. The next index point on the boundary of which he was aware was the Ghulu Hills. The suggestion to Government (not to the Masai) that the Kibeke river would make the best boundary in that neighbourhood was put forward by me and not by the Masai. They do, as a matter of fact, use most of that area at certain seasons. If Government considered that it would be justified in fencing a straight line from Simba Station to the Ghulu Hills I doubt if the Masai would raise any particular objection though I should like to examine the ground again before giving a considered opinion.

7. para 15 page 4. The reflection on the Masai witnesses " whose statements the sub-committee is unable to accept " is unfair. It implies that certain witnesses were deliberately kept away, who might have given evidence damaging to the Masai claim. The notice of the meeting (copy attached) reached me on January 10th. The only Masai, other than native councillors, who received warning were those living near Kiu as others could not have reached the meeting place in time. Although 200 Masai came to Kiu they were given no opportunity of meeting the Committee (excepting Seesi, Juma and Lengemejik) in spite of the invitation given by your Excellency on October 7th

1929. If the evidence of the Masai witnesses to the 1911 treaty is of importance I hope that they will be called before Executive Council. The last time some of them gave evidence regarding the treaties was before the Court of Appeal for Eastern Africa when it was held that "there is here no legal contract as alleged between the Protectorate Government and the Masai signatories of the agreements, but the agreements are, in fact, treaties between the Crown and the representatives of the Masai, a foreign tribe living under its protection"

Case which went

8. The position with regard to the Masai has changed since then. The position with regard to the land between their reserve and the railway has also changed since it became crown land available for alienation.

9. Your Excellency has promised to see the Masai after receiving the report of the Sub-Committee. I would earnestly request that your Excellency will give me an interview at the same time, and in this hope I will reserve further comments.

E. B.

I have the honour to be,
Your Excellency's,
Obedient Servant,

Dis. Secy / Commissioner

Handwritten notes:
1/16/30
17th Jan 1930
Thurs

Chief Commissioner's Office,
Mafjale,
17th January, 1930.

MAFAI BOUNDARY.

Evidence given by Major D. H. V. Burton M.C., District Commissioner, Mafjale before a Select Committee of Executive Council at Kisumu, January 15th, 1930.

The subject into which this Committee is enquiring was brought to my notice shortly after I assumed responsibility for the Masai of the Mafjale District.

The Chief Veterinary Officer, at the instigation of the Ulu Settlers, complained that the Masai were trespassing in the Nile zone, between Athi River and Sultan Hamud. Consequently upon this complaint I received instructions to prosecute the trespassers as there was a danger of disease spreading from the dirty to a clean area by the agency of cows used by Masai and sand carriers. These cows were in contact with Masai cattle in the normally clean railway zone and re-crossed the railway into the clean settled area. Mr. Scott-Little in a report which he appended to that of the Agricultural Commission noted a like danger in regard to Masai cattle near Nile water holes (the Asogwa Mafjale pools).

The heading over report which my predecessor was submitted the following information "The boundary line is as follows: (1) From the Nile zone to the Athi River. It is impossible for any one but a trained Surveyor to decide where the boundary line is at any given point. (2) From the Athi River to the Nile zone. Not yet demarcated, as trespassers would not reasonably be prosecuted while there was doubt about the actual boundary line, I requested that the Surveyor General would arrange for the survey and demarcation. The Surveyor General would do so but expressed anxiety regarding

hostile demonstration by the Masai. Sent. Report of Assistant District Commissioner... the Masai that demonstration was about to take place.

3. Complaints were immediately made to... Masai, who asserted that their representatives... Railway between At... river... miles East of... The... it... studied the... I... 18th... to the... A... of the... 19th... in... and... 4.

4. The... I saw the Acting Chief Native... last year and... postponed... (a) the... (b) the... followed the... Masai... and... not be regarded... happened to be... circumstances the only... The... 19th... 19th... 19th...

5. During the past year since... was introduced by the... the Masai have been... concerned about this... The

subject has been brought up as one of first importance by them at every meeting of the local native council at Maitso and Ngong, as well as at special interviews with the Ag. Governor and His Excellency. In my Intelligence report for ^{Dec 1929} ~~last month~~ it is reported "Several questions were asked notably at the local native council meetings at Laitekitor and Kajia regarding the Nile Zone boundary and the visit of the Committee of the Native Council, which will advise His Excellency on this matter. This subject has been uppermost in the minds of the natives particularly of the Kaputiei and Laitekitor since the demarcation was attempted over than a year ago. The effects of the drought have shown the Masai the precariousness of their position in present circumstances, and they are more anxious than ever regarding the Simba area which at the moment has the highest value in the whole district."

6. The first impression which I got on going into this matter was that very little interest seemed to have been taken in the boundaries of the Eastern portion of the Masai Reserve. As in the case of the inter-territorial boundary, straight lines had been drawn between distant points indicating a lack of detailed knowledge or thorough investigation. Further the present boundary had been disregarded. The Masai had used the area up to the Railway continuously, though on three occasions they were moved back from the Simba water holes, in 1927 by Mr. Dent, 1928 by Mr. Deck and 1927 by Mr. Paithorpe. On each of these occasions the Masai appear to have protested and they were allowed to return. Indeed had the boundary not been disregarded the Kaputiei would have been left with hardly any permanent water.

They normally depend on Simba, Many Gadet, Loungush and Shanyu Akhi pools in the dry weather.

J. I. Hume writes: "The Masai claim to have supplied it by the flowing rivulets to which the 150 square miles in dispute are entitled."

a) The Masai have been in the East from time immemorial grazing the land up to the railway between the River Turkana & the Kikuyu river 9 miles east of Dada Station. Prior to the construction of the line they grazed north of this area. In March 1916 the boundaries of the Reserve were reconsidered & the Provincial Council approved the boundaries as including all the land now claimed excepting the mile zone between the River & Kikuyu Station (approx) & in addition a further portion between Maitai Station the north easterly summit of the Kikuyu range & the Kikuyu river. This boundary though approved was not gazetted owing to the difficulty of obtaining a Provera to demarcate it. In 1916 appeared a Gazette notice opening a "Trading Centre" in the Masai Reserve at Simex with near the Railway "with the consent of Leppi Ngaroya & the Gali'sha on behalf of the Paramount chief & the representatives of the Masai tribe". It is clear from this that the authorities at that time regarded the Simex later as being within the Masai Reserve. The Masai therefore claim a prescriptive right to have this land included within their reserve in spite of the treaties of 1804 & 1811. At a meeting at Ngong ~~Feb 35~~ 1812 the Governor told the Masai that the boundary followed down the Kikuyu River to the Railway.

the answer to question by the Commission for Land Settlement & Local Gov.

Q. By the Hon Chief Native Commissioner - Can you give any reason why the treaty boundaries should be altered

A. If the evidence which I have given does not provide reasons I am afraid I cannot. The treaties, it seems to me here made in the interests of white settlement in the Rift Valley & Laikipia. The effect of the boundaries on the Masai of the Eastern portion does not appear to have received those much consideration. The treaty boundaries has been varied in the Rombos as a result of further investigation & for the reasons which I have already given I consider that it should be varied in his case of the white zone & Simba area & that the merits of his claim should be considered without prejudice. The treaty was apparently entered into in 1915.

The 1866 boundaries certainly exclude the area claimed but it is more difficult to believe that the Masai willingly ceded their rights to this land which they certainly occupied at various seasons of the year than to believe that the boundary was adopted after thorough investigation and with full explanation to the Masai).

(b) When the Railway was originally begun a Mile Reserve was reserved on either side of it to secure for the British tax payers some return for their outlay but the S/N explained in a subsequent despatch that this reservation was not intended to deprive Natives of their interests in land adjoining the Railway. The land question had not arisen at that time and no Native rights in it were threatened. So soon as White Settlement began in the highlands (that is West of Nairobi) the Native reserves were immediately gazetted to within 100 ft. of the track wherever they impinged on the Railway. In the case of the Masai this was not done at that time because White Settlement was not threatening their reserve East of Nairobi.

(c) The boundaries of the South East portion of the Masai Reserve have been frequently varied by the treaties and gazetted notices and in 1915 the Governor in Council agreed to the inclusion of the area in question excepting the Mile Reserve. The interests of the British tax payers in that area seem to have been preserved as a matter of course in each treaty or gazette notice but no steps were taken to warn the Masai who have always regarded the Railway as their boundary and have been left in undisturbed possession of the area. The Mile Reserve rights of the British tax payers seem to have been surrendered progressively since except between Sultan Hamud and Athi Rivers. The former Commissioner Nyong written on the

27th August last year "I have no knowledge whatever of any explanation having been made to the Masai about the Wile Bone."

(4) The treaties of 1904 and 1911 might refute their claim to a prescriptive right were it not that this right is claimed by sections of the Masai to whom the 1904 agreement does not appear to have applied the Ngaitici, Mutapoto and Lotokitich. The country they occupied extended 100 miles East of the 1904 treaty boundary but they were not removed and were probably not considered at the time. In view of the variations from the treaties in regard to the Kinnagoop reserve, the connecting route between the Northern and Southern reserves and the alienation of land South of the Ngaitici River it would not be just or wise to raise the treaty boundary as an objection to this Masai claim to have land which they have always used included in their reserves.

The treaties have varied in effect set aside by the Court of Appeal in 1912 & the altered status of the Masai.

(5) The provision of alternative water within the present gazetted boundaries would not compensate for the land. The Masai will not agree to move. Any attempt to move them from that area would be a cause of deep resentment which could certainly make the administration of the tribe more difficult. The Masai of this district have during the last two years shown that they are willing to spill stock, produce grain and have their children educated. To take from them, at this stage in their development, land which they have undoubtedly good reason to regard as their own, will tend to produce thatullen apathy and opposition to any sort of development or progress so lamentably noticeable amongst the Masai of the North District who have never forgotten the move from Lokinda.

6. The point dealing with the economics of the situation and the Administration and Veterinary

inconvenience of the present gazetted boundary is not relevant to the Maori claim. It will be considered later if arguments are brought against the Maori claim based on such considerations..

9. Since the submission of these points there have been other expression of opinion including claims put forward or reiterated by Settlers to have the Mile Some and Sixte area reserved for alienation to Europeans, and on behalf of the Maori, at any rate as squatters of farms North of the Railway. The position would therefore appear to be that a piece of unalienated Crown Land is claimed by three parties whose interests in this respect conflict. The arguments brought against the Maori claim which seemed to me to deserve attention were these:-

(a) that they had ample land and did not require the further use of the Mile Some and Sixte area,

(b) that they had never been in doubt about their boundary which was a treaty boundary and their presence in the Mile Some and Sixte area showed a deliberate and characteristic defiance of Government,

(c) that the Maori like other pastoral tribes invariably fill any area allotted to them, waste the land and their stock assets by over stocking, (from a mere pride in numbers) and then ask and expect to be given more land.

10. Regarding (a) of the preceding paragraph I would say that during last year the Maori of this District have lost an immense proportion of their stock from starvation in spite of the grazing concessions allowed to them which included an area on the Western side of the Waikaiti, the Mile Some and Sixte area, the land between the Banks and Brown Group, Waikaiti Territory up to the Forest line from the Gashiki to the Waikaiti - excepting the Waikaiti Forest station area, above the

forest on Kilimanjaro by a track from Mstuet to a westward limit of Ol Moleg. I cannot give the total losses for the year but during the months of August and September some 50,000 fresh hides passed through Kajiado Station. If the Masai were rigorously confined within their boundaries the congestion after a very brief period would present a grave situation. Even with the concessions granted this year the situation has been far from satisfactory as was evidenced by the concentration at Ngong and the unfortunate Mbagathi incident. Supposing the demarcation of the Mile Zone had taken place a year ago and an attempt had been made to exclude the Masai from that area, a situation would have arisen in which Masai cattle by the thousand would have died of starvation while a traditional grazing ground of theirs would have remained unused with grass and water as you see it now. It would have been difficult at that time in such circumstances to convince the Masai or I believe any one else that the Masai had ample land and did not require the use of the Mile Zone and Simba area.

11. Regarding (b) The Senior Commissioner has said, and after exhaustive enquires I have found nothing to give grounds for a contrary opinion, that the Mile Zone has never been explained to the Masai in a way that they have appreciated its significance. I believe they have always regarded the Railway as their boundary. I am absolutely convinced that they never at any time thought that land would be alienated for farms between their reserve and the Railway. Whatever the position may appear on paper the Masai would feel that a breach of faith had occurred and that land had been taken from them. They would not regard the rectification of their boundary to include the Mile Zone and Simba as an extension to their reserve and though that would appear on paper to be the position,

it would not actually be so, for they have always been there. I base this statement on the numerous complaints, the evident anxiety and resentment which have been expressed to me by various Masai since this question was introduced a year ago.

12. Regarding (c) may I invite your attention to part 1 of the evidence I gave before the Agricultural Commission. Until the Masai have a fair chance of disposing of surplus stock I do not see how they can be blamed. This point is one to which great attention is being paid in the education of the Masai and there is no reason to despair of its result though it may be a year before the Masai are to adopt individual ownership of land, and on it on that basis. On a personal basis it will always be possible to ensure the fullest economic development and scientific use of land, control of disease etc. The main objection to this point is a general argument against the actual extension of pastoral areas if it is a question of balancing pastoral and agricultural areas on a ~~the~~ economic basis, but in view of the transitional nature of this policy by the Masai, it would not seem a sufficient reason for leaving the Masai.

13. This Committee has seen the mile zone and timber area but if the significance of this land and water to the Masai is to be appreciated it would be necessary to visit other parts of the Reserve which are used as alternative grazing grounds by the Kaputiei, Maitokitok and Matapetu Masai. At the moment the grazing in the area we visited yesterday is probably superior to any anywhere else in the Reserve. It has not been touched ~~xxxx~~ because rains continued to the end of last month, so that the Masai have been able to graze out on the Njiri desert. During the next two months they would concentrate at the permanent watering places including

Simba, J. J. Let, Longman and the Stony Athi pools. The Committee has not had time to follow the itinerary which I suggested but I would ask that its return journey may be via Ngong and that the variations in the grazing between here and Ngong may be appreciated. The cattle we saw yesterday were at Ngong 2 or 3 months ago. They have grazed their way down to Simba. You will realize that it is impossible to estimate the value of that area by a cursory visit to it alone at a time when it has not been touched after excellent rains. I would like this Committee to see the same area in two months time, or to have seen it between May and October last year.

14. Although I have further evidence to give on the economic, administrative and veterinary aspects of this claim I would prefer to leave those points until the ^{rights} Masai claim to this piece of unalienated Crown land has been considered. After an exhaustive study of all available documents and a knowledge of the conditions in this district I have no doubt whatever this land, both because of the mis-understanding which has led them to regard it as theirs and because in present circumstances they need the water and grazing. A refusal of their claim will appear to them as a breach of faith.

15. I therefore give as my considered opinion that the area in question should be included in the Masai Reserve. It is also on record that Mr. Hemsted Senior Commissioner Masai from 1911 - 1913, Mr. Horne Senior Commissioner Masai 1923 - 1926, Mr. Deck Acting Senior Commissioner 1925 and since 1928 have expressed the same opinion. Mr. Campbell also supported this view in March 1927.

The following is a list of the various concessions
given in the course of the negotiations with the

Question ...
has for from 1880 it is to be certain that
water within the said concession constituting the
1904 treaty?

Answer ... to the ...

Question ...

Answer Yes. There is evidence that they ...
This fact is attested by those who have been ...
there and by those, European, present there ...
then there when the railway was ...
and after ...

Question The Hon. Secretary ...
and ... complaint about their ... before?

Answer It is recorded in the minutes of the
Local Administrative Council ... in April ...
that the President stated ...
of a special ...
It is also a ...
went to ...
was to leave the ...
visitors ... to investigate their complaint.

Question By the Hon. ...
Government and Settlement. Can you account for the
apparent disregard of any representation made on
behalf of the ... by Administrative Officers

Answer No. The records of the representations
by Administrative Officers with regard to the ...
concession and railway zone show that after ...
years dispute it was ... by the Hon. ...
in ... that the ...
Railway Zone should be included in the ...
A month later in the final ...

October 1976 it was excluded from the Reserve. The Senior Commissioner was told by the Commissioner of Lands that the decision was due to a clerical error which would be corrected. I have tried for some months to get the correction inserted in the gazette but without success.

Question By Major Joyce of Wilkes Hill. When were the Provisional and final boundaries gazetted?

Answer In October 1911 and 1912.

Question By the Hon. Chief Native Commissioner. The Certificates giving the names of those who explained the treaties to the Maori are very definite. What reasons have you for saying that the Maori did not understand?

Answer It would not be easy even now to explain the position of a boundary running in a straight line south from Athi River Station for 80 or 90 miles, or from Ol Wendus to Ohulu a matter of 20 miles. Even yesterday we were uncertain of the whereabouts of the boundary on the Athi Katatema Road. I do not see how it is possible for the Maori, who presumably did not understand English, to appreciate the position or significance of the treaty boundaries.

Question. You say the treaty should have attached to the Waitkitoi, Katapote or Kaputiei Maori, but the signatures of their representatives are appended. How do you account for that?

Answer It seems to me incredible that the Waitkitoi for instance should have given away all their water and grazing. I cannot believe that either they or the Katapote or Kaputiei intended to part with traditional grazing grounds and water. I believe the Maori agreed to give up their grazing grounds and water in the Rift Valley and on ~~land~~ the treaties of 1904 and 1911. Interest was focussed in these areas and I do not think straight line boundaries would have been adopted if a careful investigation

of the Eastern portion of the Masai Reserve had been made, Unless the Maitokitok, Matapato and Kaputiki Masai had been shown on the ground the positions of their boundaries, I cannot believe they understood them.

Question. By the Hon. Commissioner of Lands. Is it not astonishing that men like Sir Charles ^{FR} ... Mr. Hollis, Mr. Healey and others should have stated as they do that the Masai understood without satisfying themselves on the point?

Answer I can only repeat that in the circumstances it would seem to me almost impossible for the Masai to understand and that I find it more astonishing that the Masai should have agreed to give up the area which now they claim.

Question By Major Joyce of Kilima Kiu. Do you consider the quarantine regulations necessary or effective?

Answer The question is not in ^{my} opinion relevant to the enquiry and should be addressed to a Veterinary Office I have represented to the Chief Veterinary Officer that the present quarantine boundary is meaningless. I would prefer to see the quarantine notice revoked as the quarantine is inefficient and prevents auctions sales for Masai stock along the Railway particularly at Athi River. I will reserve further evidence on this subject.

Question By Hon. Conway Arvey. Has not Government given the Masai 3 water bores in compensation for the Simba water?

Answer In May 1928 a boring plant was expected at Simba but had not arrived when I took charge of the district in October of that year. The water boring superintendent came to Simba in November to select sites and I was informed by the Senior Commissioner Ngona that the Masai would have to pay and that a ^{guarantee} for payment should be obtained before boring started. The Masai were

naturally sceptical about their being prepared to put up money or promise payment until they had seen results. There was a danger of an impasse as well as the delay in getting work started through a short cut of foreman. I therefore suggested that Government should guarantee the cost. The instructions to prosecute the trespassers had recently been received and I further urged without consulting the Masai, that Government should compensate them for the loss of Simba water by presenting them with 3 bore holes. A sum of \$1750 was provided for this purpose and three successful bores have been made. At the moment two of them together produce on the surface, with an average wind about 8,000 gallons. At the third there is at present a hand pump. Water lies at 300 ft.. In connection with these bores and their influence on the boundary question may I quote para. 3 (c) of my letter of 4th August addressed to the Private Secretary to His Excellency which reads "A supply of 67,000 gallons of water per die has been struck at Katatema near Simba and if similar amounts are struck at other bores it may be argued that alternative water has been supplied. These underground supplies of water ~~are~~ great potential value but until the cost of pumping and distribution has been arranged for, they in no way serve as alternatives to 100,000 gallons on the surface and would not be regarded by the Masai as compensation. The Masai have expressed unqualified readiness to pay for the water boring, as was originally intended when it was arranged that a water boring plant should be sent to the Simba area in May 1978. They are not prepared to drop their claim to the land whatever potential supplies of water may be found.

Question By the Hon. Conway Davies. Have the Masai objected to the road and fuel controls south of the line?

Answer/

Answer Yes, frequently, but to me and the Senior Commissioner, but owing to the existence of the Nile zone, it is difficult to control the activities of sand and fuel contractors. Masai rights cannot be safeguarded while those of the Railway or the Government are ignored. Quantities of fuel and sand have been taken from the Nile zone and Masai to serve during the past 14 months without payment of royalties or rent; or any contribution on fuel contractors to replace so many a road for every square mile of concession. The matter has been represented verbally in para. 7 of my letter to the Senior Commissioner on 17th August and follows: "The question of the Masai claims to all or part of these royalties and rents can be dealt with later. It is of first importance that the amount should be collected and I will proceed myself to investigate this matter when the Railway zones are within my jurisdiction. At present I am ignorant," and in my Intelligence report for last month "where a concern has been expressed concerning the sand and fuel concessions between Atai River and the Nile zone. There is no doubt that the Masai are being deprived of potential assets. No check can be placed on their activities in the Nile zone in the absence of a definite boundary and their activities are regarded with suspicion and resentment by the Masai."

Question Various settlers asked questions regarding the economic use of the land by the Masai and implied that it would produce more if given out as farms.

Answer The retention of the present boundary could only be justified even if the rights of the Masai were disregarded by an argument based on economics. The demand for fresh meat and dairy produce is increasing rapidly every year. The Masai must have access to the Railway if they are to meet the demands from the Mombasa and Nairobi markets. This would be made difficult by the alienation

and it is... for Tribal Detachments to patrol... to Wicaco River to see that... Railway Line or... belonging to... working in the..."

Question... could the... be prepared to exchange... the area they..."

Answer... I think it... the Southern... and... water in... if the..."

Question... Can you give any reason... the treaty... altered

Answer... If the evidence... provide reasons... the treaties, it... ^{in cases}... settle... arise on the... of the... to have received... the treaty boundary has been varied... further investigation, and for the reasons... I have already given... that it should... the case of the... and... the merits of this... should be considered... Governor in Council in 1913... the treaty boundary.

District Commissioner's Office,

Kajiado,

9th April 1930.

The Senior Commissioner,
Ngong.

Copy to Commissioner of Police
through Senior Commissioner, Ngong.

Ref. letter No. S.500/66 of 5th March
addressed by Commissioner of Police to Hon.
Chief Native Commissioner.

I feel it my duty to comment on the above mentioned letter.

Para 4. I do not require any more police in this district but would again request that the Ngong guard be furnished by the Nairobi Unit.

Para 5. The marauding activities of the Masai as depicted in Mr. Hebley's book should be compared with the stock thieving activities of the Masai during 1929/30. These with knowledge of the Masai realize that inherited tendencies to stock raiding develop more acutely at certain times and that the present age of moran who had been most law abiding till 1929 reached that stage last year and should pass through it by the end of the present year. The situation was aggravated by the most drought conditions which have been known for 30 years. Although I agree that something definite should be done to solve the Masai problem, I consider that the remedy is to be found in constructive policy and education. I should deprecate the expense of ^{any} repressive measures, and should distrust their results.

Para 6. I have no comment to make on (A) and (B).

Ref. (C) My views on this incident are expressed in my minute to the Hon. Attorney General

which

which I must refer to the Hon. Colonial Secretary in view of this letter from the Commissioner who is ^{of course} justified in making such a comment in view of the Magistrate's finding, *with which I disagree*

(D) As an interim comment I would invite attention to my letter of 9th April to the Supdt. of Police Machakos. I attribute this trouble very largely to circumstances which could have been prevented. The question of jurisdiction and responsibility in the mile zone has remained in practice vague in spite of many representations from this Office. The stock of Walmabe, Masai and several Indian fuel contractors have been mixed up in the mile zone and for some distance into the Masai Reserve. The Masai headman (Lengemejik) of this location gets 10/- a month. Until a month ago he had no Tribal Retainer to assist him.

(E) In this case it seems to me that the grievance is with the Masai. A very valuable estate, on the Kinangop was virtually taken from them in spite of double treaty obligations. The land bought for them in exchange for this valuable estate, ^{who as he made as is} postulated wholesale trespass if it was to be used at all in the dry season because the Kodong river ceased to flow short of the ^{head} boundary and the gullies on Susua prevented stock ^{which were} using the only grazing at that season available.

from getting to the Kodong river without trespassing along the base of Susua. Police were withdrawn fromajiats to check trespass which were made inevitable when the new boundary was fixed. I cannot regard this as an instance of Masai lawlessness but will refrain from further comment.

(F) You will see by my letter No. L & C. 17/10/1 of 19th March addressed to the District Commissioner

Yet that nothing in the nature of wholesale raid took place. There were 5 separate stock thefts in one of which five Masai attacked and killed 1 Kikuyu. In the other 4 cases 8 or 9 Masai in all, in parties of 1 2 or 4 collected ^{steal} cattle which were not being herded.

Para 7.

I would like ~~the Commissioner of Police to~~ ^{to see the figures which}

justify this statement. His statistics of crime show the Masai are more lawless than other tribes or that the cost of the Police unit at Narak and Kajjidi is greater in proportion to the size of the area and numbers of population than ~~be~~ elsewhere in the Colony. The Masai levy feroc was paid for separately. *He refers to a volume of crime in the area*

Para 9.

In commenting on this paragraph I would refer also to para 5 and indeed the tenor of the whole letter. As a result of murders and stock thefts which occurred in 1922 it was considered by Legislative Councillors that "it is high time that something definite were done to restrain effectively the marauding activities of these people." The Masai Enquiry Committee was appointed by Government to make recommendations to this end. Although the position was very much more serious in 1922 than it has been during 1929, the Committee did not recommend the establishment of a mobile force in Nairobi. I should suggest that more definite effect be given to its recommendations before other remedies are tried. The Hon. Chief Native Commissioner in his letter regarding Mr. Ryland's ^{posting} appointment stated that if the moran gave trouble the native authorities should deal with it in the first instance and that additional regular police should be called in if the native authorities were overpowered. The development of the powers of the native authorities was a point to which I attached great importance as you will see by reference to my letters on the subject of Policy, Tribal Retainers and Estimates.

Cost of Police units

I also admit the position is unsatisfactory but I think it must be met in the following ways e.g.

- (a) The adoption of a definite policy of indirect rule by developing the native authorities, paying and staffing them adequately and supervising their work more continuously. This can only be done by releasing administrative officers from a good deal of routine and departmental work and by providing funds for direct services in reasonable proportion to the native hut and poll tax.
- (b) The early termination of the mile zone and quarantine boundary farms by including the land up to the Railway in the Masai Reserve.
- (c) The implementing of the recommendation of the Masai Enquiry Committee and Agricultural Commission's reports particularly in regard to surplus stock so that the Masai may be led to a less nomadic mode of life.

(d) The early completion of the Bunete ceremonies as advised by the Najiado Local Native Council.

Para 11 (e) The only administrative action I propose is that Mitiha els Mbatian should be made to move from Rembe and live nearer Headquarters as his influence has been bad. All other action against the malefactors in this and other cases should in my opinion be purely judicial.

In conclusion I would quote "in extenso" para 10

"I can only ask for your support in this connection and would ask if you agree to press the matter in all the directions that I have indicated in this letter".

5th March 1930.

The Honourable,

The Chief Native Commissioner,
Nairobi.

With reference to the attached file which was left in my Office by the Provincial Commissioner, Ukamba, together with a verbal request that I should send extra Police assistance as requested by the District Commissioner, Voi, I have the honour to report as follows:-

2. I definitely cannot see my way to draw on any existing unit today for extra Police to deal with this situation. The units of the Force today have barely enough men to deal with the situation, to maintain law and order, to cope with traffic and to meet the volume of crime occurring in the settled areas of this Colony.

3. I have as is known no standing relief force at the Headquarters Depot as exists in most of the Colonies that I know of, a force which would be a typically fitted to take on a matter of this nature.

4. I have already applied to Government for such a force, but so far have not been successful in obtaining sanction for it. I therefore suggest that under the circumstances the Hon. the Provincial Commissioner Masai, should be asked to concentrate his Police in the area in question and for that purpose he should draw on the Police under his command at Narok, Kajjado and Ngong, and that he should despatch a number of these men to operate under the District Commissioner in that area and to deal with the situation.

5. I would like to take this opportunity of pointing out the very considerable trouble experienced during 1929/30 with the Masai tribe and I think it is high time that some thing definite were done to restrain effectively

effectively the marauding activities of these people.

6. (A) As is known in 1929 a Levy Force existed on the Naivasha boundary owing to the admitted lawlessness of the Masai in that area, but was withdrawn in October in spite of KMK protests from both the Provincial Commissioner, Nakuru and Naivasha, in addition to my own.

(B) Over and above this, I may point out the series of stock thefts which occurred in the Kikuyu area between the Kedong Valley and the Ngong Hills.

(C) The trespass and the truculent attitude of these Masai towards the Police Force of Nairobi in the recent invasion of the Mbagathi Area.

(D) A number of stock thefts in the Sultan Hamud/Athi Area where the Wakamba and Masai boundaries join.

(E) The wholesale trespass of the Masai in the Kedong Valley.

(F) Last but not least this almost wholesale raid by the Masai in the Voi area.

7. Although I have nothing to do with the Administration, I would point out that the conduct of this tribe definitely reacts on the criminal statistics of this Colony and the activities of this Force.

8. I would once more take this opportunity of asking that a mobile reserve of the Kenya Police be formed at a very early date. This I asked for in my letter B.526/2 of the 11th November, 1929, addressed to the Hon. Colonial Secretary.

9. Personally I feel that the conduct of the KMK Masai during the last 12 months would justify this mobile reserve being raised entirely at the expense of the Masai and being maintained at Headquarters, Nairobi, from whence they could proceed to any point or area along the Masai border where this troublesome tribes are defying law and order.

10. I can only ask for your support in this connection and would ask, if you agree, to press the matter in all the directions that I have indicated in this letter.

11. In conclusion I can only state that being directly responsible as I am for law and order in all parts of the settled areas of this Colony, I am not prepared to guarantee the safety of these areas if the men who are allocated for these areas are withdrawn for specific purposes such as this, and whilst I admit the position is unsatisfactory I think it must be met in three definite ways:- e.g.

(a) the provision of a mobile squad at the Depot as reserve.

(b) The drafting of Masai Police to the area concerned under an Administrative Office .

(c) The very strongest administrative action to be taken against the malefactors in this and other similar cases.

Sd/- R.G.B. Spicer
Commissioner of Police.

(a) The Masai have been in the habit from time immemorial of grazing the land up to the railway between Athi River Township and the Kiboko River east of Simba Station. Prior to the construction of the line they grazed north of this area. In 1918 appeared a gazette notice creating a Trading Centre in the Masai Reserve at Simba water near the Railway. It is clear from this that the authorities at that time regarded the Simba water as being within the Masai Reserve. The Masai claim a prescriptive right to have this land included within their Reserve in spite of the treaties of 1904 and 1911. C.P. Masai d'Arca

AP^m

Shown to HE to Masai
before Tumb 24
(I) Major F de V Joyce's

Notes on memo sent by C. W. K. Blaxton

re mile strip.

(1) It might equally be contended that the Masai used to graze the area north of the line now included in the Machakos area, as well as a good deal of the Wakamba Reserve.

(2) I take it the treaties of 1904 and 1911 did not give them the mile strip.

(3) Up till the time (? 18 months ago) when the Masai and other Reserve boundaries were gazetted very few officials seem to have known definitely where the boundary was. Is it intended that the laziness or ignorance of Administration Officers in the past should now give the Masai a prescriptive right to have this land included within their Reserve in spite of the treaties of 1904 and 1911.

Because a gazette notice appeared in the Gazette in 1918 opening a trading centre in the "Masai Reserve" at Sigba waterhole, I cannot agree that the authorities had any definite views and it certainly proves that they were very negligent.

White settlement has also suffered from the authorities neglecting to face the issue of a clear definition of "the highlands" e.g. Indians now hold freehold titles to 2 farms at Kiu.

① The Masai undoubtedly grazed north of the railway. Indeed they appear to have wandered over the Great part of East Africa since ~~they~~ outnumbered people found by the troops surrounding them. The area they now occupy was never supposed to form a military zone by any other force & it is less than the area in which they habitually lived so that the few stock ranching grounds.

② The reasons explained in subsequent pages show the same zone was not included in the Masai Reserve and was kept to secure the exports of the British tax payers who must be willing. The Masai would

③ Given access to the railway and where the 1904 ^{treaty} gave them access only came within 10 miles of the railway at the river. It had the attention of the people more attention to its matter. I believe that the area would have been included in the Masai Reserve & that the prescriptive claim would have been recognised. The Masai rather than the Europeans have reason to resent any negligence since they have been about their boundary.

(b) When the railway was originally begun a mile zone was reserved on either side of it to secure for the British tax payers some return for their outlay, ^{but} by the S/S explained in a subsequent despatch that this reservation was not intended to deprive natives of their interests in land adjoining the railway. The land question had not arisen at that time and no native rights in it were threatened. So soon as White Settlement began in the highlands (that is west of Nairobi) the native reserves were immediately gasetted to within 100 ft. of the track wherever they impinged on the railway. In the case of the Masai this was not done at that time because White Settlement was not threatening their reserve east of Nairobi.

Reserve

(b) This clearly proves that the ~~Reserve~~ ^{Reserve} was not originally gazetted to the railway line, and supports the argument in (a) that it

(2)

KILIMA KIU,
ULU.

was merely slackness on the part of the Administration, that they were allowed to graze outside their Reserves.

Major Joyce's comment

The inference appears to be that ~~the~~ ^{the} Masai Reserve should have included the mile zone, not that they should have been deprived of their right to use it.

(c) The boundaries of the south east portion of the Masai Reserve have been frequently varied by treaties and gasetted notices and in 1915 the Governor in Council agreed to the inclusion of the area in question, excepting the mile zone. The interests of the British tax payers in that zone seem to have been preserved, as a matter of course, in each treaty or gasetted notice but no steps were taken to warn the Masai who have always regarded the railway as their boundary and have been left in undisturbed possession of the area.

Main Toye's comment
(c) Again, whose fault was it that the Masai were not warned and were left in possession of the area?

There is no explanation of the delay in gasetting the boundary agreed to by the Gov. in Council in 1915 or of the subsequent variation from that notice

refute

(d) The treaties of 1904 and 1911 might ~~substantiate~~ their claim to a prescriptive right were it not that this right is claimed by sections of the Masai to whom the 1904 agreement does not appear to have applied the Kaputiei, Matapato and Laitokitok. The country they occupied extended 100 miles east of the 1904 treaty boundary but they were not removed and were probably not considered at the time. In view of the variations from the treaties in regard to the Kinangop reserve, the connecting route between the northern and southern reserves and the alienation of land south of the Mbagathi River it would not be just or wise to raise the treaty boundary as an objection to this Masai claim to have land which they have always used included in their reserve.

There might be a moral argument in favour of giving them this
the right of compensation for variations for treatment (i.e. that
variations were not agreed to by the bank) but it is not
but the reserve which is not a reserve. When all was said and done
given the fact of liquidation (2) it is a matter of public utility
burning that now taken since the bank's reserves were specified.
I should say the stock market capacity of the reserve was
increased by 25% at least.

(2) Although it is proposed to provide alternative water within the present gazetted boundaries it is doubtful if water will be found by boring and whether the grazing will be as good. It is still more doubtful if the Masai will agree to move. Any attempt to move them from that area would be a cause of deep resentment which would certainly make the administration of the tribe more difficult. The Masai of this district have during the last two years shown that they are willing to sell stock, produce whee and have their children educated. To take from them, at this stage in their development, land which they have undoubtedly good reason to regard as their own, will tend to produce that alien apathy and opposition to any sort of development or progress so far as they notice it amongst the Masai of the Mook district who have never forgotten the move of 1911-12.

Major Gordon

I disagree entirely that it is doubtful if water will be found by boring. Water has been found in valuable quantities in the out of the 15 boreholes that are in settled areas north of the railway parallel to the mile strip, and within 10 miles of it - in some cases within a mile or less. Why should we expect no successes the other side of the railway? Geologically, I should have thought that the lower country i.e. sea level catchment area, would be far more promising.

The sentence "it is still more doubtful if the Masai will agree to move" appears hardly worth producing as an argument. I doubt if the Wakamba herds used it effectively in old times when confronted with a Masai raiding party.

(1) There is no point in putting down bore holes except where they suit the Masai as by boring open areas for grazing & to allow for Masai at settlements of Masai. The bore at Katatoma has after 4 months work produced 350 gal. H₂O.

(2) According to Mr. Hilton Young Report it is of importance that both sides should feel that they have had a fair deal. (see news)

considerations, the rights of possession and the needs of present and future generations. If possession means effective occupation by a settled population that indeed creates a position which on grounds both of justice and expediency ought to be maintained" So far as I can ascertain the mile zone has a more settled population than any other part of the District except Laikikok.

It is part of an area which has been continuously occupied as far back as memory goes. It is on that ground that I believe that the Masai had every reason to suppose their reserve went up to the Railway.

19. I cannot too strongly emphasize my concurrence in the statement on page 50 of the Pioneer Union Report "that no immediate economic advantages can possibly compensate for the destruction of confidence of the native in British administration and that at the present stage whatever safe guards are adopted, the apparent alienation of land within the native reserves would come to be regarded as a breach of faith which would in fact destroy native confidence". The effect of the moves from the Rift Valley to Laikipia and then again from Laikipia to the Southern Masai Reserve to make way for White Settlement have not been forgotten by the Turko Masai. I believe that the alienation of the mile zone would be viewed in the same light. As the memorandum on policy which I am submitting with ~~XXXX~~ Local Native Council estimates will show, a development programme is advocated which will inter alia aim at getting the Masai do more themselves. Its success will depend principally on the degree of good will and co-operation which can be evoked in the Masai - The success of this policy will be jeopardized if the Masai are resentful of their treatment over the mile zone - I do not fear or anticipate hostile demonstrations but suppressed grievances.

The question as to whether the Masai believed or did not believe that the mile zone was in the reserve is important.

Two passages from the Closer Union Report explain why:-

"Native confidence in the justice of British rule is jeopardised by even a ~~remote~~ suspicion that the complete inviolability of their beneficial rights is in any circumstances whatever liable to infringement or modification" I maintain that the Masai not only misunderstood or were never properly informed about the limits of their reserve but that they had every reason to believe and to expect that their boundary did and would include the area in question.

18. I agree with Mr. Horne that it should have included the mile zone and will quote as my authority for this view the following passages from the Closer Union Report "The guiding principle is sometimes stated in the form that the natives must not be deprived of any lands which rightly belong to them and which may be required for the use not only of the present but of coming generations. Such a statement imports two

5x8
It is agreed that the alienation of the mile strip must not prevent Masai from having access for themselves, their produce or stock to the railway. Who has ever suggested such a possibility? It would not be difficult when surveying the farms to make definite reservations for roads of access and stock routes to the railway. To say that "it would be almost impossible for the Masai to have access to the railway if the mile strip were alienated" is ridiculous.

It is not seriously contended that the Masai in occupation of the mile strip will produce more from that mile strip than will white settlers farming the same land. It would be interesting to know in this connection what is the total output of ghee from the Masai in the N'gong and Kapjiab area, per year, per head of cattle and per square mile.

The Masai produce

*The Veterinary
Question*

William's reply to your enquiry is non committal and hardly does his department credit. The present position is quite clear - The clean and dirty areas in practice overlap. From Sanford's history page 61 ... I conclude that they have overlapped since 1916. They will continue to overlap until the mile zone is demarcated and fenced. I can see no difference between the dangers of contact in this zone and elsewhere along the boundary and I must express my surprise that the steps which were thought necessary elsewhere were not applied in regard to the mile zone. Posts, for instance, were established on the trade routes to prevent contact between them in the presence and those coming to the boundary with wagons. It was further suggested that if these arrangements were considered inadequate by the Veterinary Department that a strip of land a quarter of a mile wide across the road to the Massi border should be wired off and no cattle allowed to cross this strip. There is only one way to prevent the overlap in present circumstances and that is to make the railway the Quarantine boundary. It is not enough for William to say there would be no objection; his Department

should say if they are honestly concerned about the danger of contact that the railway must be made the quarantine boundary at once and that it must remain the boundary until such time as the mile zone is demarcated and fenced. A protest to such a proposal on the grounds that it would bring the infected herds right up to the boundaries of farms in the Machakos district would be disingenuous for that is where they are at present and the protest would be, in reality, against a measure which would prevent the daily contact between clean and infected cattle. That, it seems to me is the way the case should be presented to the Senior Commissioner Ukamba and his District Committee by the Veterinary Department. You will realize of course that contact does not only occur in the mile zone. The fuel contractors and sand contractors are penetrating with their clean cattle into the Masai Reserve. It is impossible to take action in any but most flagrant cases as the mile zone is not demarcated. I am bringing the matter up next week at Ngong. The danger is not confined to the mile zone, still less to the situation in the immediate vicinity of the railway.

It is the considered opinion of administrative officers on both sides of the line & of the Veterinary Dept. that the present Gazetted boundary is unsuitable. The present Senior Commissionaire Ukanta recommended in March 1927 that the whole Block should be included in the Masai Reserve on these grounds. It has been so recommended by the Sultan & present Senior Commissionaire Masai Province & by past & present District Commissionaires Kajias. The most serious aspect of the present situation is undoubtedly the loss which the Masai are suffering in revenue from fuel sand & stone royalties owing to the uncertainty of the present boundaries. The destruction of their small wooded area near Sultan Hamud is also a matter of some importance.

The Surveyor General is of the view that the cost of demarcating the boundary would be \$2000. To this must be added the cost of fencing, water boring & fire breaking before the land can be made available for development by white settlers. It is not a question of skill but of capital cost & circumstances which determine whether the economic argument favors the European or Masai occupation. Personally I doubt the

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Any shortage of grazing that exists as it does to-day in the

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END

Masai Reserve is due almost entirely to their annual grazing on the
which has been definitely proved in South Africa, as well as in
this country to reduce the carrying capacity of the land.

What efforts have the administration made in the past to help
the Masai to preserve their grazing and conserve their water?

The Masai themselves are too idle to work on such farms as the
administration have started. If their apathy on the subject goes
to such lengths as this Masai moral claim have the, to complain of
scarcity of water

An energetic system of land making with the use of the Government
their oxen trained to work about in a very few years stretch
area available for grazing. It is far more than compensation for
for the loss of any water that exists in the mile strip. If the Masai
are to advance, let it be done by a definite, systematic, systematic
plan, and with the main eye on improvement of their stock, which is a form of improvement which should be done.
It should surely not be necessary to give this tribe, which is
the richest in the country, and which occupies the largest area per
head of population, an extra 80 sq. miles of country which
never belonged to them by treaty, ^{and} which was not included in the
Reserve as gazetted in 1906.

The present state of the Masai reserve is a sad reflection on
the way it has been administered in the past, but I have no doubt
why, as a temporary palliative, ~~because~~ they should be given a
further area suitable for white settlement, especially when a
vigorous policy of water and grass conservation over the next few
years should nearly double the economic value of their present
Reserve.

Personally, I should be quite prepared to support the non-
alienation of those farms in the mile strip which give access to
water (e.g. Ulu, south of Kiu, and Simba) till say June 1930
which should give ample time for the replacing of those waters by
boring and damming. It would be understood that Government would
place one boring machine at the disposal of the D.C. Kajiado