

LAND JUSTICE AND HISTORY IN MAU NAROK

This paper was presented to the Maasai community at the Season's Hotel in Narok, Kenya, in August, 2008

The violence that shook Kenya following the presidential election in December 2007, offered more evidence that Kenya's present is ensnared in its past, especially in conflict over who owns the right to ancestral lands. History suggests that the conflicts between ethnic communities involved in the violence have resulted from colonial and neo-colonial land policies that have afforded some more dominant Kenyan communities access to the ancestral lands of others without reciprocity. Though the roots of land conflict first took to soil under colonialism, Independence has seen a continuation of the same approach to ancestral land established under the British, leading commentators such as Elija Sempeta, lawyer and land rights activist, to claim shortly before his untimely death, that "independence [is] a myth."¹ Nowhere does this claim have more potential validity than in Sempeta's home of Maasailand.

This paper investigates the loss of one particular piece of Maasai ancestral homeland in order to add to our understanding of the roots of larger land conflicts in Kenya and other post-colonial states. The land under study is a place called Mau Narok, widely understood to encompass "some of the best agricultural land in Kenya,"². Mau Narok is a 30,000 acre headwater that forms the shape of a boot dipping down into northern Maasailand from Nakuru district and grazing the southern Mau Forest, one of Kenya's main watersheds. The Maasai community organized resistance to the colonial and post-colonial appropriation of this land since 1913. Members of the Maasai community, especially those descended from families evicted from Mau Narok decades ago, have believed throughout that time that Mau Narok was taken

illegally even under British law. In this paper, we rely primarily on archival sources, of the British colonial and then independent Kenyan governments, to explore the validity of this claim.

The ancestral homeland of the Maasai people, Olosho le Maa, stretched some 700 miles from what would be northern Kenya into central Tanzania, and 400 miles from East to West, including the land that is now Nairobi. The Maasai first encountered the British in their territory in the mid-19th century, as Europeans began to leave the coastal port areas and move inland in search of strategic trade routes. The British established the East African Protectorate to control the headwaters to the Nile, and began construction of a railroad in 1895, to link Mombassa with Lake Victoria. As the railroad cut through East Africa, it encountered the Maasai people who at that time, in the words of a British colonial administrator, “had practically half the Protectorate to roam over.”³ The British established as their capital Nairobi, a Maa name meaning “place of cool water,” and they set their sights on the most fertile part of the region for settlement and agriculture. These lands happened to be primarily in the land of the Maasai people and their neighbors to the East, Kikuyu farmers whose homeland was based around Mount Kenya.

Maasai people at Mau Narok first lost their land to British settlers as a consequence of the 1911 Agreement that forced Maasai people off of most of their homeland and onto a Native Reserve in southern Kenya. The 1911 “Agreement” was one of two drafted by the British government and thumb-printed by Maasai representatives to legalize the seizure of much of the watererd parts of Maasailand, and the subsequent removal of Maasai people from those areas. A legal framework existed to declare East Africa a “protectorate” of the Crown, but since 1833, protectorates were defined as foreign countries, as sovereign entities, and British law gave “the imperial power little more than *political jurisdiction* over the territory.”⁴ Land had to be “acquired by conquest or agreement, treaty or sale with the indigenous people.” But East African

communities traditionally owned land communally, and as a British administrator said, “for treaties to be anything more than an empty mockery, it would be necessary that they should be signed by several thousand petty chiefs and headmen.”⁵ To solve the problem, the British Foreign Office abandoned its “legalistic approach” and assumed a new policy through the Indian Land Acquisition Act, passed in 1897 “despite severe doubts in the Foreign office as to the legality of such an action.”⁶ Through the “Foreing Jurisdiction Act of 1890 the Crown assumed the right to dispose of ‘waste and unoccupied land in protectorates where there was no settled form of government and where land had not been appropriated either to the local sovereign or to individuals.”⁷ This development cleared the way for the British Government to draft the 1904 Agreement through which “approximately 11,200 Maasai and over two million stock lost their land to 48 Europeans,” and the 1911 Agreement, which led to the forced removal of 20,000 Maasai people and 2.5 million stock from their home in the north to an expanded but environmentally inferior Southern Reserve, the borders of which roughly coincide with current Maasai land.⁸

The 1911 move in particular was never “agreed” to by the whole of the Maasai people, who vacated their homes in Laikipia at gunpoint, a move that in the words of Maasai leadership in 1962, “involved the giving up of good land by the Masai for their present poor land.”⁹ Maasai people had challenged the legality of the 1911 Agreement in a 1913 lawsuit against the Crown “for the restoration of Laikipia, for the general enforcement of the treaty of 1904, and for damage and loss suffered during the various moves.”¹⁰ The suit was dismissed by a British court on the grounds that “the treaty of 1904, being a compact between two sovereign states, was not cognizable by any British Court.”¹¹ Having rendered Maasai people impotent in any further claims, the colonial government then took a variety of steps to officially settle the land.

The 1911 Agreement was drafted to annex some of the most valuable lands in British East Africa for the exclusive development and benefit of European settlers. One of those settlers was Edward Powys Cobb, a British immigrant who petitioned the government around the time of his arrival in Kenya in 1907 for 30,000 acres of the Maasai drought reserve at Mau Narok.

Mau Narok is the name given to an area of land that once was part of a blanket of forest, the southern edge of the Mau Forest, Kenya's largest water catchment area. The borders of Mau Narok has never been inscribed on land; as the trees have been felled to create land for settler agriculture, the original borders that were delineated by the forest have become erased. The Maasai community contends that Mau Narok abuts another area, Mau Nanyukie, to the north, and the border between the two demarcates the line drawn by the 1911 Agreement which separated settler land to the north from the Masai Reserve to the south. While the exact historical borders of Mau Narok encompassed an area larger than the 30,000 acres taken by Powys Cobb, we use "Mau Narok" in this paper to refer to those particular 30,000 acres as is consistent with current usage.

Pressure to excise Mau Narok and other like land from the Masai Reserve came from Powys Cobb and other settlers, not directly from the British government. European settlers wielded a great degree of power over the government of colonial Kenya. British settlers were "some of the most aristocratic immigrants" in British colonies and they "influenced colonial decision-making, using political ties back in London—many fathers, brothers, and uncles sat in the House of Lords..." Settlers controlled the Colonial Legislative Council, Leg Co, which represented large landowners. "From the start settlers made strident demands on the British colonial government and were quite successful in gaining concessions..." including low-interest loans, government crop subsidies and land leases tailored to their desires.¹² In 1910, a letter

from the then colonial governor summed up that relationship: “A large body of settlers takes the view that their rights in the country have been gradually won by pressure and struggle against a Government whose resistance has been professedly due to its position as guardian of native rights.”¹³ In the struggle over Mau Narok, Maasai would be caught between the competing agendas of the administrators that represented the Crown and its agreements, and the settlers who perpetually sought more and better land.

The documented history is rife with evidence that British settlers like Powys Cobb typically enjoyed the upper hand in regard to colonial administrators. One example is found in a request by the Agricultural District Commissioner to help the colonial government trade out land guaranteed to the Maasai under the 1911 Agreement, in the interest of European settlers who had squatted on the land. The Purko clan of the Maasai community had been promised “control of at least 5 square miles” of the land for Eunoto, or warrior graduation ceremonies, under the 1904 Agreement.¹⁴ In 1911 it was reiterated:

...that nothing in this agreement contained shall be deemed to deprive the Masai tribe of the rights reserved to it under the agreement of August ninth one thousand nine hundred and four aforesaid to the land on the slopes of Kinopop [sic] whereon the circumcision rites and ceremonies may be held.¹⁵

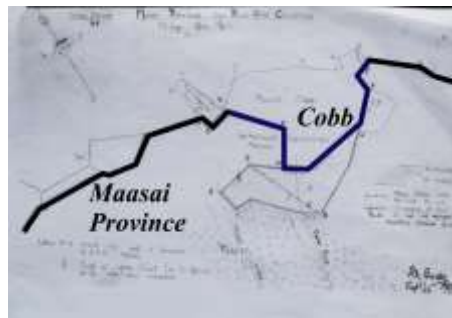
Despite these guarantees, Kinangop was taken by colonial authorities shortly after the move from Laikipia in 1911. Cobb was asked to allow the Eunoto ceremony to take place on “his land,” to help the administration justify the seizure of Kinangop. Cobb agreed, but on the condition that in exchange he would charge what he called, “a nominal rent.”¹⁶ This agreement occurred long before Cobb even had received paper title to Mau Narok, but even then, the colonial government seems to have been beholden to him and not the other way around.

Throughout most of the colonial era, there were three borders at Mau Narok. The first was the border shown to Maasai leadership at the time of the 1911 Agreement, which appears to have placed all of Mau Narok within the Maasai Reserve. The second border was drawn by a colonial government administrator, and agreed to by Powys Cobb, in the mid 1920s, and it identified roughly half of the land claimed by Powys Cobb as belonging within the Masai Reserve. The third border was the current “boot” shape of the 30,000 acres, drawn by Powys Cobb, but kept hidden from the Maasai community; it only existed on paper from 1916, when the land was first surveyed, and contested by the Maasai community at that time. It was recreated by a second survey initiated by Powys Cobb in 1928 but continued to exist on paper only until the late 1940s, because Maasai people occupied most of the land he claimed until that time. Powys Cobb was able to gain title to 30,000 acres of the land that the Maasai community had been promised in the 1911 Agreement because of his political power in the colonial government and because he kept the Maasai community in the dark. While he did not immediately occupy all of the land, which would have exposed his surveyed border to the Maasai community, he gradually took possession over time.

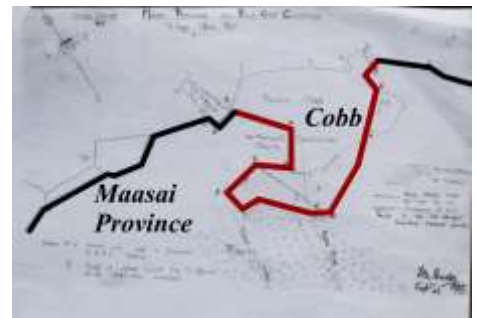
1926 Map drawn by H.E. Bader to indicate the “Storrs-Fox” border of the Masai Reserve¹⁷



Border of Masai Reserve understood by the Maasai community



The “Storrs-Fox” border



Powys Cobb's titled land

Powys Cobb's influence with the colonial government is reflected in the fact that the 1911 Agreement was actually drafted to construct the borders of the Masai Reserve, not around the needs of thousands of Maasai people, nor around the plans of the colonial administration, but on the desires of a single British settler. With the assistance of colonial administrators, in 1907, Cobb selected the most fertile part of the region for his exclusive use, namely the headwaters of vital streams in the region, buffered by ample forests, a place vital to Maasai people's access to water.¹⁸ Because Powys Cobb could not be granted the land until it was "legally" alienated from the Maasai people, the 1911 Agreement was worded vaguely to ensure that Powys Cobb's "promised land" would not be interfered with by the boundary of the Masai Reserve.¹⁹ The area in question had apparently not yet been surveyed. According to a copy^[3] of the 1911 Agreement, the northern border of the Masai Reserve would be drawn:

to the south-western boundary of the land set aside for Mr. E. Powys Cobb, and by a straight line drawn from the north-eastern boundary of the said land to the highest point of Mount Suswa.²⁰

Powys Cobb did not receive title to the land until 1922 though he later acknowledged that he had been squatting there since 1907.²¹ The colonial administration made no attempt to clarify the border between the Masai Reserve and Cobb's land, essentially allowing Powys Cobb himself to officially establish the northern border of the Masai Reserve, recognized by the British government in 1922, and read backwards onto the 1911 Agreement.

The land that Powys Cobb claimed, however, had already been included within the Masai Reserve at the time of the 1911 Agreement. The British government understood that drought reserves needed to be included in the Masai Reserve created in 1911, to avoid repeating mistakes made in the aftermath of the 1904 Agreement and move of Maasai people to Laikipia. In 1904, a colonial administrator acknowledged, "The Masai will never give us serious trouble so long as

we treat them fairly, and do not deprive them of their best and favorite grazing grounds.”²² But, after the 1904 move to Laikipia, some Maasai communities were left, in the words of Norman Leys, a sympathetic colonial administrator, without “grazing land and of permanent streams.” As a result, “each year until 1907 the colonial government was compelled either to enlarge the Laikipia reserve southwards or to allow the Masai to occupy the untenanted land alienated to Europeans.”²³ And while the move to the Southern Reserve after 1911 was forced, the terms of the move were negotiated. In May 1910, the British called a conference to discuss the proposed move with Maasai leadership, and Ole Gilisho, a leader of Maasai at Laikipia, expressed dissatisfaction with the land allocated for them in the south. He was told to assemble a group to inspect the new area. When they reported “that the proposed area was too small and that there was insufficient water,” Leys concluded that “such statements were unlikely to induce the Secretary of State to consent to the removal of the tribe from Laikipia.”²⁴

As a result of Ole Gilisho’s report, according to colonial sources, Maasai people were told that Mau Narok would be included in the Masai Reserve at the time of the 1911 Agreement. The discrepancy between the border Cobb claimed, and the border shown to Maasai communities, was revealed in 1916, when Mau Narok was first surveyed. The Narok District Annual Report of 1916-1917 states that:

During the year the land on Mau Narok promised to Mr. Cobb was surveyed, and the masai [sic] were again told that it was to be a farm and excluded from the reserve. This caused a good deal of dissatisfaction, Masikondi and other elders maintaining [sic] that they had been promised the whole of Mau Narok at the time of the move and making allegations against the government of a breach of faith.”²⁵

Because the vast majority of the 30,000 acres continued to be occupied by Maasai villages after this conversation between Olol Masikondi and colonial administrators, it is likely that Maasai

leadership felt reassured that their understanding of the border had been confirmed. The communities were able to share the land with Cobb's small homestead, as they had access to water and forest and grazing for the present. Powys Cobb did not have the means to occupy and develop the entire boot, and so he held onto his title and bided his time.

Meanwhile, the colonial government was aware that Cobb held title to land understood to be within the Masai Reserve. But it avoided dealing with what amounted to Cobb's illegal appropriation of Maasai land until forced to intervene, and when it did weigh in, it acknowledged that Cobb did not own land within his titled claim.

The colonial government avoided conflict at Mau Narok between Powys Cobb and the Maasai community by refusing to clearly define the border that separated Cobb's farm from the Masai Reserve. Even after the 1916 survey, no serious attempt was made to identify the border through markers on the ground. H.E. Bader, District Commissioner for Narok wrote of Mau Narok, in 1926:

that the profusion of beacons actual and alleged which appear[ed] to be dotted indiscriminately over a large area rendered impossible for one who is not a qualified surveyor o[r] armed with the impedimenta of his office, to say where the boundary line between the Masai Province and Mr. Cobbs farm runs.²⁶

The colonial government may have allowed Cobb to put survey markers where he chose, but when pushed to commit itself, it did not uphold Cobb's claim to the boot. And in the mid 1920s, Cobb himself was forced to admit that the portion of his claimed land in question was, in fact, not his. In one example from 1926, Lumbwa (Kalinjen) employees of Mr. Cobb were caught trespassing on land well within the borders of Cobb's farm as identified by the 1916 survey map, but considered by the Maasai community to be part of the Masai Reserve. When confronted with the news of his employees' arrests, "Mr. Cobb assured [administrators] that the Manyatta in which the Lumbwa (who were employees of his) were found was on his land."²⁷ Asking to see

the land in question, the administrators, “. . . went to the boundary of Mr. Cobb’s farm, when Mr. Cobb admitted that the Manyatta was not on his farm.”²⁸ Cobb’s duplicity, and seeming authority, as to the whereabouts of his farm’s border reveals how little the colonial administration knew about the exact location of the Reserve boundaries. Cobb was called to give evidence in this case, and his employees were arrested; Cobb himself faced no consequences despite the fact that his employees were clearly carrying out orders that he had given.

Later, on July 15th 1926 Cobb accused six Maasai people of trespassing on his farm.^{29[3]} The defendants claimed that the area where they were found was on the Masai Reserve, and that they had been taking cattle to the area for at least three years without any complaint from Cobb. The case went to court and the Maasai were convicted based on the testimonies of one of Powys Cobb’s employees and a European Police Constable, both of whom insisted that the six Maasai people were walking on Cobb’s land. But both witnesses had no knowledge of the borders of that land except on the word of Powys Cobb. District Commissioner Bader, saw the injustice of the ruling and he called for an appeal. Unlike Maasai community members, Bader had access to administrative files, and he used them to argue that the border of the Masai Reserve existed well north of the boot outlined in Cobb’s claim. Bader showed that in 1923 the southern border of Mau Narok was defined by a colonial administrator, Mr. Storrs-Fox. He claimed that at that time, Powys Cobb and the surrounding Maasai communities agreed to this border; Bader also drew a map of the location of “Storrs-Fox line.” This line bisects the “boot” and locates almost half of the land currently known as Mau Narok within the Masai Reserve. Bader noted that, for three years, “Mr. P. Cobb did not dispute the boundary as indicated to the Maasai by Mr. Storrs-Fox.”^{30 31} By August 23rd of that year the six Maasai were acquitted based on a judge’s ruling

^[3] The names of the six Maasai include: Sentoni Ole Langoe, Godidis Ole Lamungem Sadelon Ole Suru, Terat Ole Serat, Kibigorwar Ole Teganya, and Kinye Ole Todoki.

that in the initial case there had been “illegal and incompetent evidence” and that “the best evidence was not before the Learned Magistrate concerning the Boundary line between Mr. Powys Cobb’s farm and the Masai Reserve.”³² It can be surmised, given District Commissioner Bader’s findings and grounds for appeal, that the “best evidence” at the time regarding the boundary was the Storrs-Fox line.

Despite this ruling, the “Storrs-Fox line” does not appear in the documented record after 1926 and it was not thereafter treated as a legal ruling on borders created in the 1911 Agreement. The boundary that separated Mau Narok from the Reserve became ambiguous again, and this served to benefit Powys Cobb. For example, Cobb was able to build a sawmill in an area clearly demarcated as part of the Masai Reserve,³³ he was given permission to cut wood from “the Masai forest,”³⁴ and he was granted remission from his rent for two years after claiming that Maasai communities were occupying up to 4/5ths of “his farm” during a drought.³⁵ In an attempt to bolster his claims to Mau Narok, Cobb encouraged the 1928 O’Farrell Survey of his farm, which “...placed intervisible iron beacons along the entire length of the farm boundaries with the Masai reserve.”³⁶ This one attempt, by the colonial administration, to clarify the boundary was an isolated act. And as that boundary differed from the one understood by the Maasai community, and upheld in court, the surveyed border quickly fell back into disarray. Throughout the decades after the placement of these beacons, officials in the Narok region regularly acknowledged that “...the boundary is a purely artificial one – an undemarcated line with beacons hidden by the grass – it is not surprising that trespass at least takes place.”³⁷ As late as 1953, in a discussion between the colonial administrators and Maasai people, the Director of Surveys, while looking at the boundary between the Masai Reserve and Powys-Cobb’s land, admitted “...the boundary with the Masai Land Unit is badly overgrown and consequently not

readily visible on the ground.”³⁸ In response, District Commissioner Hosking agreed that, “...there is nothing to indicate the exact position of the boundary.”³⁹

Border conflicts only intensified between Powys Cobb and the Maasai community as Cobb continued to claim use of more and more land within the Reserve. Maasai communities were also being forced by colonial administrators to move their villages away from the border at Powys Cobb’s land, deeper within the Reserve, a policy that was acknowledged by the Provincial and District Commissioners to be illegal.⁴⁰ By the 1950s, the colonial government policy toward these conflicts had changed; a new generation of administrators stood firmly with Powys Cobb and actually used the conflict to extract revenue from the Maasai community. Conflict in this era was expressed mainly through cattle theft, arrests, heavy fines and trespass. Administrators frequently changed the legal definition of trespass by Maasai, or their stock, on settlers’ land and employed the illegal use of heavy fines against the Maasai.^{41[4]} In 1957 and 1958 alone, Maasai community members had paid in fines 12,860Ksh and 17,930Ksh respectively.⁴² These fines were in fact illegal, and this was known to the colonial administration. In the later year, the Superintendent of Police in Ngong acknowledged in a letter to his Commissioner:

It should be noted that these payments made by the Masai are purely voluntary, and do not have the backing of the law and to antagonize the Masai unduly or unfairly would almost certainly ‘kill the goose that lays the golden eggs.’⁴³

^[4] In November of 1949 the District Commissioner of Narok defined for Cobb and the Maasai that trespass as a punishable offense “...only applies to trespass by stock, not by casual travelers.” In this meeting the Maasai agreed not to trespass under two conditions, “...that the boundary should be marked...” and that the administration, “allow Masai to cross with donkeys the narrow part of [Cobb’s] farm to collect wood from the forest in Masai.” Six months later, still without any sign of plans for a fence, the same Commissioner was baffled at the interpretation by the Maasai regarding the definition of trespass, that the “[Maasai] define trespass as entry by beast only and persons walking on the Mr. Cobb’s land were not considered trespassers.” In the eight-month time-span between when trespass was originally defined, there were only two cases of animal trespass.

The conflict around Powys Cobb's border increased and intensified as the threat of independence loomed: Maasai lost cattle to disease and theft, arrests of Maasai at Mau Narok were more frequent, and resisters were shot and killed.^{44[5]} Ilmorani, warriors, in particular, became such a common scapegoat that other cattle thieves began to take advantage of their negative reputation. In one proven case, among several others cited, a farmer's non-Maasai employees "...had bought red ochre and smeared it about the place in such a way that it [was] inevitable that both the police and farmers would automatically blame the Moran Masai of the District for [the] theft."⁴⁵ Maasai ilmorani were soon viewed as the perpetrators of all criminal activity, and the colonial administration issued Pass Laws,⁴⁶ patrolled the buffer zone between farms and the Reserve with attack dogs⁴⁷ and gave settlers, including Powys Cobb, the right to shoot Maasai at will.⁴⁸

Eventually, the colonial administration sought to entirely abolish Moranhood, or warriorhood. Once they are initiated at the time of puberty, Maasai boys enter an intensive period of education in the culture and training in skills such as herding, and during this time they are responsible for defending the community from wildlife and other threats. Moranhood posed a threat itself to colonial authorities. The Narok District Commissioner described Moranhood as, "organized crime which includes murder, assault, theft, disobedience of orders of administration and elders and general indiscipline."⁴⁹ The administration devised Moran labor camps and training schools in an attempt to destroy warrior training and in the process also undermine local resistance to colonial acquisition of land . A commissioner at the time explained that once

^[5] Colonial administrators acknowledged that the "...Masai could easily refuse to pay compensation. They [the Maasai] could counter by citing many cases of poaching game in the Reserve by Mau Narok farmers, timber stolen from their forests, members of their tribe being shot and cases of trespass." The Southern Provincial Commissioner, K.M. Cowley, encouraged this kind of violence against Maasai, saying "We are trying to...[dispel] the current impression in the Rift that we are indifferent to the misdemeanours of our 'painted savages.' As you know I am anything but indifferent and should welcome a few more incidents like the one where Rift police caught up with a band of Masai and shot three dead when they resisted."

Moranhood had been eradicated and the Maasai community was fractured that “[the Maasai] will become men of property and responsibility; thus falling into a class more easy to control and ‘sanction.’”⁵⁰

Maasai people were not fully driven off of Mau Narok until the 1950s, through the implementation of development schemes that did not include them, as will be discussed below. This happened long after the deaths of Ole Gilisho and Ole Masikonde and the elders who had known first hand the promised border of the 1911 Agreement. Still, the community retained the memory of the injustice perpetrated by Powys Cobb. They garnered all of their resources to see that knowledge included in the drafting of Kenya’s constitution. As the European settlers left Maasailand, Maasai people asked the British government to honor its treaty with them.

The era of Kenyan Independence brought hope to the Maasai and all other Kenyan communities that ancestral land would be returned to the communities who had been displaced by European settlement. As Kenya entered into the process of transferring power from the colonial government and constructing a new constitution, one of the top priorities for Maasai leadership was the reclamation of Mau Narok. Maasai. Their greatest fear was that independence would bring a government even less responsive to demands for legal recourse over land claims than the British had been. Under the umbrella of the Masai United Front (MUF) a constituent organization of the Kenyan African Democratic Union (KADU) party and the leadership of Hon. Justus Ole Tipis, Maasai people developed and articulated a position on land rights and sent a delegation to the 1962 Lancaster House Constitutional Convention in London. Their demands were ultimately rejected and Mau Narok and other lost portions of Maasailand were bought and settled by other communities. At the end of the process, Maasai delegates had to content

themselves with having held onto the then current border of the Masai Reserve, as it had been constructed under colonial Kenya.

The approach of the MUF had three main features. First, they demanded that the British Government honor the 1904 and 1911 Agreements and treat them as binding treaties between the Maasai people and the British Government. This would do three things: 1) It would give force to the Maasai demand that their land continue to be treated separately in independent Kenya, no small feat considering that land hunger was driving the political landscape. The Agreements had reserved Maasailand for the ‘exclusive use’ of the Maasai and forbade “European or other settlers” from taking land in the reserves. 2) More importantly, a recognition of the Agreements could imply a recognition of the Maasai people as a sovereign political entity, and thereby force the British Government to intervene on behalf of Maasai land rights in the constitutional process. 3) Finally, Maasai leadership argued that the treaties specified a temporary arrangement. Since the treaties had alienated the majority of Maasailand from the Maasai community only for the purpose of European settlement, as settler families returned to Europe all of former Maasailand would logically and morally be returned to the Maasai community and the borders of Maasailand be expanded to the full extent of Olosho le Maa to the Kenyan/Tanzanian border.

This strategy recognized that Maasai people, a marginalized community with little educational and financial resources and less political clout, were threatened in the constitutional process by the other native Kenyan communities that had organized the dominant KANU government and who had as their prime concern the interest of the Central Kenyan communities. Ignored by KANU, the MUF believed that forcing recognition from the British government, and particularly recognition of the 1904 and 1911 Agreements, provided them with their best chance at inclusion in the constitutional process. As early as July 1960, John Keen, long-standing

advocate of Maasai rights and officer of the MUF threatened to bring the issue of the Agreements to the International Court of Justice under the United Nations.⁵¹

The second feature of the Maasai strategy was to expand the boundaries of the Masai Reserve by demanding the return of land that had been illegally appropriated after 1911, in violation of the 1911 Agreement. They identified 11 separate claims, the first five of these were “Land claimed by the Masai as falling within the Treaty area” including: “Land in Ngong West of Mbagathi River”; “Land South of Athi River Railway Station”; “Land Between Mt. Suswa and Farm 1769”; “Kinangop,” and “Mau Narok.” Other claims included “Land admittedly within the Treaty area which has been taken, or re-settled, in breach of the Treaties,” including: Olpusimoru in the Mau Forest “taken from the Masai about the year 1948”; Ukarih; Olenkuruoni, which was set aside for “the Dorobo, a section of the Masai,” but settled by Kikuyu people in the 1940s; and areas of Kilgoris in the Trans Mara which had been leased to the Luo people for ten years ending 1959. The two final claims were for Magadi, where a lake had been excised from the Reserve for mining purposes without the consent of the Maasai, and Lolgoren, where Maasai land had been taken for a gold mine. These claims were summarized in a document submitted to the Constitutional Conference committee in London.⁵²

The Maasai United Front sought land to alleviate the suffering of Maasai people, especially present in the face of recent droughts and flooding, but also to enable the survival of Maasai culture. Meeting the Secretary for the Colonies in Nairobi in November 1961, Ole Tipis thanked the British government for “famine relief” in light of the “present catastrophe,” but he continued to stress:

most strongly that the policies which the British have pursued towards the Masai, have directly led to the present situation. The chief cause of the present situation is that the Masai were forced to leave the best watered lands they had...since most of the Maasai were pushed to marginal areas of

rainfall, whenever the rains fail they are the first to suffer. It is difficult to imagine how the Masai who are left will recover...⁵³

Tipis claimed that Maasailand had been “grossly ignored” in development undertaken by “both Her Majesty’s and the Kenya Governments....[T]hese two Governments have relentlessly pursued a policy of extraction towards what was left of the Masai lands” through the parceling out of land and “legal tricks.”⁵⁴ Elsewhere, he advocated the return of land to unify all Maa speaking people in one shared home, “governed by one local Masai authority” as the “scattering” of ILmokokodo, Sampur, ILtiamus, Sebei and ILwuasi Nkishu, for example, and the severing of Kenyan and “Tanganyika” Maasai, was a “classic example of divide and rule” that had left the Maasai people minute minorities everywhere, “...cleverly excluded from statistical reports which give a false impression of the tribe.”⁵⁵

One of the specific pieces of land that the MUF considered to be crucial to the future of Maasai people was the 30,000 acre parcel carved out of the northern area of the Reserve at Mau Narok. The MUF argued that the border was ambiguously drawn, and that the accepted boundary had been defined by a colonial administrator after 1917, “without consultation or agreement with Maasai representatives.” MUF called upon the Crown to “re-settle” the area “in conformity, as far as possible, with the terms of the 1911 Treaty.”⁵⁶

Even though armed with the Agreements, documentation of land rights violations, and legal representation, Ole Tipis and the MUF entered the constitutional arena knowing that they were facing an uphill battle. The Maasai had lost more of its ancestral land than any other community, and most others would see their land returned, especially those from central Kenya. As pastoralists that had shunned colonial education and culture, the Maasai community was without friends among politically influential Kenyans and return of the claimed Maasai land was

not championed by any representative to the constitutional process. The Masai United Front aligned with the KADU party because it represented all “marginal” communities, including European settlers because it had no other option for inclusion in the constitutional process. But Maasai communities were even marginal within KADU. The colonial government in Kenya was also non-committal. Kenya’s Governor since 1959, Sir Patrick Renison, who had shown himself to be primarily concerned with protecting the European settler community, agreed that the issue should be dealt with after independence.⁵⁷

The Maasai delegation seems to have seen its best hope in gaining the support of the British government, but that was also to be a lost cause: the very thing Maasai leadership feared most, the loss of Maasailand to Kikuyu agricultural settlement, was exactly what the colonial office in Britain envisioned. The Secretary of State for the Colonies Rt. Hon. R. Maulding, was told in a briefing prior to his meeting with Maasai delegates in 1961, “The basic problem presented by the Maasai is similar to that presented by the other minority tribes and groups as independence approaches, namely how to meet their fears of being dominated by the majority tribes, particularly the Kikuyu, and in particular, losing their land.”⁵⁸ The Crown acknowledged that “the Kikuyu covet the areas of Maasailand which are suitable for mixed farming,” lands which were also the best grazing pastures.⁵⁹ But that transfer of land to Kikuyu farmers was a key component of the plan for Kenya’s post-colonial economy, then being developed by the British themselves. Their plans were heavily influenced by Mau Mau, an independence movement based in Kikuyu communities, which had led to horrific backlash by the colonial government and the massive suffering of that community, which was contained in reserves in Central Kenya. By the early 1960s, the British government recognized that the Kikuyu community needed to be subdued and rewarded by providing land to Kikuyu “loyalists” who had

helped defeat the Mau Mau freedom fighters. As Kikuyu people were farmers, and many had squatted on Maasailand in the White Highlands and Rift Valley during the period of colonial occupation, the loyalists among them would be allowed to resettle there and make those regions productive for Kenya, and ultimately for the Crown.

This transfer of Kikuyu people to Maasailand was a key component in the larger British colonial agenda of “overhauling the colony’s African political economy and transforming it into the basis for continued British rule,”⁶⁰ To recreate the land as uninhabited and available to “all Kenyans,” administrators were reminded that “the basic tenet of the Kenyan Government’s land policy” was “non-racial and non-tribal,” and that land “be regarded as an economic asset,” which could be redistributed by the government, unhindered by local community rights.⁶¹

If the British government provided a poor opportunity for alliance, the KANU party offered even less hope. The party was led in 1962 by the Kenya Group, a Kikuyu led elite, with personal ties both to former colonial chiefs and to the British government. Jomo Kenyatta stood at its head, with Peter Mbiyu Koinange at his right hand. While both men had been detained and were credited with Mau Mau leadership, historians have challenged that interpretation.⁶² Recent work on the Mau Mau movement suggests that instead of the “oath-taking revolutionary” of myth, Kenyatta was:

instead a mission-education politician who had preached moderate reform and who “wanted a piece of the colonial pie” and to be accepted like the rest of the African colonial elite, and he sought the social and economic privileges that went along with acceptance.⁶³

Both men behaved as robber barons after they were installed in government in 1963, and became, through their appropriation of land, part of a class of extremely wealthy Kenyans with major land holdings acquired during the Kenyatta presidency. The KANU party was more

invested even then the British government in claiming Maasai lands for landless Kikuyu farmers, as the Kikuyu community—the dominant ethnic community in Kenya, formed the basis of KANU’s constituency. Tom Mboya, secretary-general of KANU, though not part of the Kikuyu inner circle, and a man unwilling to personally benefit from the post Independence plunder of land, was no more sympathetic to Maasai land rights than his colleagues, as resettlement of Kikuyu farmers in Maasailand was a crucial component of his own vision of restructuring Kenya’s economy to participate in exporting agricultural crops to the global market. ⁶⁴

British representatives to the development of the Kenyan constitution in London, seeing that Maasai claims were opposed to their own interests, and feeling no political pressure to deal with Maasai leadership on an equal basis, decided to keep the MUF leadership in the dark while engaging the Crown machinery to undermine the legal arguments for Maasai political sovereignty and land rights. The MUF first petitioned the British government in the Fall of 1960, but no official response was delivered until 1963, long after the Constitution was drafted and approved. The efforts of the MUF were not completely in vain, and it is possible that the existing Reserve, what is Maasailand today, might have been absorbed into a unified Kenya without the efforts of Ole Tipis and the others. But hopes of reoccupying the lands appropriated under colonialism, of reclaiming Mau Narok and the other homelands and providing for a unified Maasai community, were lost long before the first meeting between the Crown and the Maasai delegates.

The British position on the Maasai claims was established before the first of four meetings with Maasai delegates, and those meetings appear to have been only undertaken for show. The first meeting occurred between the British Secretary of State for the Colonies and

Maasai delegates in Nairobi in late 1960.^[6] Prior to the meeting, the Secretary had been briefed on the Crown's position, and he faithfully repeated the script which he had been handed. The Secretary was advised to: 1) express sympathy for recent droughts and flooding that had plagued the Eastern area of the Masai Reserve and remind the delegates that Britain had provided aid; 2) encourage the delegates to bring their land claims to the constitutional conference in London; and 3) inform the delegates that no decision has been reached about formal Maasai participation at the conference.⁶⁵ In language and tone, the Secretary's words mirrored the official position that would be repeated by the Crown and the Kenyan colonial government for the next three years.⁶⁶

When informed that the MUF, officially invited or not, would be sending a delegation to London for the 1962 Lancaster House Conferences, the British conferees quickly agreed that they would not recognize Maasai Treaty rights, but would instead negotiate an agreement between the Maasai and the independent Kenyan government. They recognized, though, that "the Maasai would have no confidence that the successor government would give effect to its obligations in the same way as the British Government has done" and therefore "they would probably regard this as of little value to them."⁶⁷ The conferees decided that Maasai land rights would be protected in a bill of rights, preventing the Kenyan government from arbitrarily seizing land, recognizing that this would not protect the Maasai with crucial "control of transfers of their land to non-Maasai." They would recommend that the Constitution contain "machinery" to see

^[6] The Meeting was held at Government House, Nairobi, on November 27, 1960. Present at this meeting were: Secretary of State Rt. Hon. R. Maudling; Sir Patrick Renison, Acting Governor of Kenya; K.M. Cowley, Provincial Commissioner for Southern Province, and other colonial administrators. The Maasai delegation from Narok included: Mr. J.K. Ole Tipis; Mr. Kaashu Ole Sumbulo; Mr. Moses Ole Lemein; Mr. Ole Nkumam; Mr. M.P. Nampaso; Mr. Paul Rurumban; Mr. James Naeku; Mr. Punyua; Mr. Sampuerap; Mr. Ole Nkuyayu; Mr. Ole Masikonde; Mr. Sironik; and Mr. Ole Masiar; and from Kaijiado: Mr. S.S. Oloitipitip; Mr. J.T. Mpaayei; Mr. M.M. Ole Ncharo; Mr. G.K. Ole Kipury; Mr. J.C. Lekimani; and Mr. S.S. Ole Paita. The 18 Maasai delegates to that meeting included leadership from both the Narok and Kaijiado areas of Maasailand, and appear to have included both politically elected and traditional leadership. Following Ole Tipis, all Maasai people spoke in turn. They advocated a regional constitution and all agreed that paramount was the survival of Maasai people as a "Tribe."

that Maasai people were represented on local land control boards. As to Maasai claims to their original lands in the Rift Valley, the briefing was clear: “Whatever the strength of their original claims to these lands, we do not admit that this present claim has any foundation.” The underlying argument for denying Maasai land rights was not based on a notion of what was just, but instead on the British development agenda for post-colonial Kenya, as bluntly stated: “[I]t would be contrary to public policy for the Masai, who have not developed their own land, to be given the right to carry their primitive agricultural practices to other land in Kenya, which is urgently required for re-settlement and which ought in the general interest of Kenya to be utilized to the maximum possible extent.”⁶⁸

While only the British delegates to the Conference were at this pre-meeting session, it quickly became clear that they were in control of the Constitutional process in regard to Maasai land claims. The Maasai delegates arrived in London and undertook three separate meetings with the Constitutional Conference Committee.^[7] The first meeting was taken with Maasai delegates making their case. The delegates said that land was forcibly taken in 1904 and 1911 and should be returned. They were especially keen to see drought reserves such as Mau Narok returned, and they educated the conferees that in all of Maasailand, only three areas of high potential existed: Kilimanjaro, Mau Forest, and Ngong, and that these were crucial to the well being of Maasai communities.⁶⁹ Mr. Konchellah pointed out that, regarding the settlement schemes, other

^[7] These meetings also included the following: The Maasai delegates were led by Ole Tipis, and also included Mr. J.I.H. Ole Konchellah, Mr. Ole Sein, Mr. P. Ole Lemein, Dr. Likiman, Mr. Partasio Ole Nambaso, Mr. John Ole Tamenno, Mr. John Keen (Ole Kedampi), (observer), and R.L. McEwen (Legal Advisor.) One member of the Maasai delegation, Mr. P. Rurumban was refused admittance to the meeting on the grounds that he was a member of the Samburu tribe, but then allowed to attend as an observer.) The meeting was chaired by Hon. Hugh Fraser, MP for the first half and Rt. Hon Reginald Maulding, MP, for the second, and was attended by three other representatives of the Crown, the Kenyan Colonial Governor, two other British Kenyan officials, and six representatives of the KADU political party, including Mr. Ngala and Mr. Towett of the Commission of Lands, and KANU representatives including Jomo Kenyatta and Bruce McKenzie, the colonial and soon-to-be independent governments’ Minister for Agriculture (Ed. Ogot, B.A., Ochieng, W.R. Decolonization and Independence in Kenya 1940-1993, Nairobi EAEP, 1995 p70). [[Lancaster House, Music Room S.W. 1 on Wed. 21st of March 1962 5pm (Pg. 45)]]

communities were being resettled on their traditional lands including the Kikuyu, Nandi, Nyeri, and Kericho. “This was clearly right and the Maasai would never complain about this or claim lands belonging to other [sic] tribespeople. But, by the same principle, no African who was not a member of the Maasai should be resettled on lands traditionally belonging to the Maasai.”⁷⁰

The Maasai delegation continued to present its position at the second meeting with the Conference. After it concluded, the delegates pushed for clarification from KADU and KANU representatives about how Maasai land rights would fair under their respective governments. Mr. Ngala, speaking for KADU, said that, “It would be quite wrong for Masai land to come under the jurisdiction of other tribal authorities or the central Government or Central Land Board.”⁷¹ Jomo Kenyatta, however, speaking for KANU showed his alliance with the British rather than the Maasai people. He “made it clear that [KANU] recognized the rights of the Masai in their Reserve, but felt that they could not be expected to go beyond this until Her Majesty’s Government had stated their own position clearly.” Tom Mboya, said that KANU certainly supported “development” in Maasailand, but suggested that funding would have to come from the British. Ole Tipis said that KANU’s position was not acceptable.⁷²

The Maasai delegation clearly felt concerned at the conclusion of the second meeting, made worse because MUF funds were running low and the delegation could no longer afford to stay in London.⁷³ Ole Tipis sent a telegram to the colonial Secretary expressing frustration, writing, “Masai were coerced into making suicidal treaties with British Government stop Now they suffer famine disaster as result stop we will fight by all possible means any unjust decision by government regarding our lands.”⁷⁴

Meanwhile, the British Government set to work discrediting the “Treaty” status of the Maasai Agreements. Two British government lawyers were consulted, and they agreed that,

while the Agreements were found to be “treaties” in a 1913 British Court, they were not actually treaties at all, but merely “agreements of a political nature.”⁷⁵ First, “the annexation of Masailand in 1920, with the rest of the Colony, destroyed the Protectorate basis on which the Agreements rested. Her Majesty cannot have treaty relations with Her subjects.” And second, “In any case, there are some grounds for contesting the 1913 decision; it is probably [sic] that in the Agreements the Masai ceded so much of whatever sovereignty they originally held as to destroy their legal personality in international law.” The lawyers did not address obvious questions about how a “treaty” might be nullified through the determinations of only one party.⁷⁶

At the third meeting at Lancaster House, the worst fears of the Maasai delegation were realized. The Secretary of State said that the British government “regarded the 1904 and 1911 Agreements as binding both on Her Majesty’s Government and on the Masai people. There could be no doubt regarding their authenticity.”⁷⁷ But, rather than affording the Maasai people political rights as a people, the Agreements, locked them into the then currently recognized boundaries of the Masai Reserve. The KANU party representatives supported this decision. John Keen walked out of the meeting at the end of the Secretary’s statement. And Ole Tipis expressed his disappointment with the way their “case had been handled.” He said that the Secretary’s decision “was a complete betrayal of those who had suffered most and been more generous than others.” He said, “The Maasai are only claiming their own land.”⁷⁸ Mr. Konchellah of the Maasai delegation reminded the Secretary that “the land originally occupied by other tribes was to be returned to those tribes,” but that Maasai land “was to be placed in a common pool and to be distributed by the Central Land Board.” He said that, “The Masai would never agree to this and would fight for their rights to such land and would refuse to be dominated or enslaved” and that, “the Masai would never forget their right to such land.”⁷⁹

In 1962, as in 1913, the British Government interpreted the legal status of the 1904 and 1911 Agreements to serve a short-term political agenda. The treaty status of the Agreements was abrogated without the involvement or ruling of an international or even British Court of law, only by the actions of individual representatives of the British government. Maasai people and their lawyers were not included in nor informed about the process of this determination, which was reached in secret, outside of the official Constitutional Convention process. The Crown's disregard of its own law, its dismissal of "Treaties" recognized in British court, and its unwillingness to define the meaning of the very terms that it used, such as "political agreement," showed the powerlessness of Maasai delegates. Without access to the process underway in London which was to determine Kenya's future, Maasai leadership posed no threat to this process. No other Kenyan community or party was interested in holding the British Government responsible for the obligations it had incurred under the Maasai Agreements.

Having decided that it was free of legal obligation, the Crown decided that it might have had a "moral" obligation to the Maasai people. It would not advocate on their behalf with the Kenyan government, as that would put "the Maasai in a special position, above even the European and Asian communities."⁸⁰ But it would ensure that Kenya honor Maasai rights to the existing Reserve. "For the time being," Maasailand would "likely remain for some time communally owned and under customary law and not registered to individuals," and that some protection would be afforded through "the Special Trust Land Ordinance and the Control Boards which may eventually be set up..." But, the Crown concluded, "it is difficult to see how this position can be legally prolonged after Independence."⁸¹

In regard to Mau Narok, in the summer of 1962, the British Government finally denied, in writing, that Mau Narok was included in the Masai Reserve in the 1911 Agreement. However,

“Secret” memos suggest that the British could not support that denial with any real evidence. Lawrence Brown, the Lands administrator charged with investigating the claim, acknowledged, “I have not been able to trace from the records in this [Ngong Lands] office actual agreement by the Masai to this section of the boundary,” though he had “exhausted all material available” in government files in Ngong and Narok. However, he was “fairly certain” that “they” were “consulted by the Officer-in-Charge of Masai on every possible occasion” based on “all that I have read.” In reality, there was no paper trail that showed definitively where the 1911 border ran. Brown himself stated that:

I have not been able to find the 1920/21 Annual Report, but in the file at Ngong I found notes to the effect that the Lands Department had let him (Powys-Cobb) select all the best water and grazing and that the Masai had said that they were promised this land at the time of the Masai move. This appears to indicate that the Masai knew which piece of land was referred to in the Treaty.⁸²

“Independence” offered no redress to the appropriation of Mau Narok under colonialism, and that theft would be re-enacted as the ink dried on the Kenyan Constitution. While the Lancaster House Conference had created the means for Mau Narok to be transferred to other communities, that process was actually carried out by the Kenyatta administration some time thereafter.

In the mid-1960s, Mau Narok was re-appropriated by the Kenyatta Administration. The stage was set during the 1950s as the colonial government developed land consolidation and agricultural policies that were maintained almost unchanged into and through the transfer of power to an “independent” Kenya. Those policies relied on loans of foreign capital, and so Kenyan land continued to be controlled economically by European entities even as the British lost direct political power in Kenya. Thus Kenya became “the archetype of dependent peripheral capitalism” and Kenyan wealth left the country through loan repayment, and through foreign and

elite Kenyan control of land development.⁸³ This policy directly and severely impacted Mau Narok. As part of the valuable agricultural land that would be vacated by British settlers, Mau Narok was highly sought after for the development of export-based agriculture. The policy was carried forward by President Kenyatta under the same Minister of Agriculture that had served the British, Bruce McKenzie. Before Independence, Mau Narok was purchased from Cobb by the government and broken into 29 farms to sell to Europeans. But Maasai people were further locked out of the land after 1963, as the Kenyan government allowed the farms to be consolidated into large holdings of 10,000 acres or more. The Kenyan government then gave the land to personal friends of President Kenyatta, especially to Simeon Nyachae and Peter Mbiyu Koinange, two of the most politically powerful men in Kenya. The history of Mau Narok in this era suggests that Maasai delegates were right to worry that the Maasai community could be more marginalized under a KANU led government than it had been even under British colonization.

The British had begun to develop land schemes in Kenya, in the new global shift to economic neo-colonialism that was born after the Second World War. The British and other European governments turned to the colonies to help mitigate post-war economic crises. In contrast, Kenya's wartime economic growth had "converted the settlers into a powerful economic force" and they promoted the development of an export based economy.⁸⁴ The European Agricultural Settlement Board (EASB) was therefore created in 1946, to settle veterans of "British or Dominion Nationality" on farms in the Kenyan White Highlands, to provide loans and to buy unproductive farms for resale.⁸⁵ A second push for agricultural development came in the form of the Mau Mau war, which was fueled by land hunger in Central Kenya, as the Kikuyu Reserve became overcrowded and land there overused and less productive. Mau Mau attacks on European settlers beginning in 1952 led to a frenzy of land sales, and abandoned farms and

equipment caused a plunge in land values. Outgoing settlers led by the “Kenya Coalition” demanded that they be compensated for their farms, and threatened to run the economy into the ground if their farms were not bought in full by the Crown.⁸⁶ And in fact, after colonial rule officially ended in 1963, the Kenyan government incurred 12.5 million pounds in loans from the British government to buy land from the departing settlers at market value.⁸⁷

The colonial government’s version of neo-colonial land policy was the late 1953 Swynnerton Plan, a five-year overhaul of Kenya’s agricultural and land allocation policy which would lead, in Maasailand, to the creation of the group ranch system and individualization of land tenure.⁸⁸ The Plan promoted consolidation of land into large scale farms, which would be developed through loans from the World Bank and European and U.S. governments. The funds would be used to buy off the out-going settlers, to subsidize the Kenyan land market to protect land values for those Europeans that remained in the Highlands, and to appease landless Central Kenyans through settlement schemes. All of this would be accomplished without sacrificing the Crown’s control over agricultural development.⁸⁹ But while loans were secured to provide land for native Kenyans, they were really only available for large scale agriculture..⁹⁰ These loan schemes deliberately advantaged some Africans over others, to create a “yeoman” class of certain communities and create the illusion of a return of Kenyan land to Kenyans. Kenyan land and farmers were thus, in the words of an East African historian, “captured... for the World Bank and the capitalist world system.”⁹¹ This development of an economy of rich land owners was not an accident, but part of the original plan. R.J.M. Swynnerton, Kenya’s Assistant Director of Agriculture, said that through his plan, “former Government policy will be reversed and able, energetic or rich Africans will be able to acquire more land, and bad or poor farmers less,

creating a landed and landless class.” This, he said, was “a normal step in the evolution of a country.”⁹²

In the early 1950s, the new land policy reinforced racial segregation, by means of separate land policies, institutionalized in 1955 in “Scheduled” and “Non-scheduled” land “roughly correspond[ing] with the European and African areas of Kenya.”⁹³ However, once “independence” seemed inevitable, such blatant racial segregation was downplayed while separate land development was carried forward under a different guise. In 1960, “European” was dropped from the EASB, renamed as the “Land Development and Settlement Board,” without “destroying the existing structure” of its policies. This new authority was to be “so clearly above distinction of race that it would be secure against possible attacks in the future.”⁹⁴ The Land Development Settlement Board (LDSB) was charged with 1) streamlining the development of Native lands and 2) resettling high-potential areas of the ‘White Highlands’ with a class of farmers selected by the national government and working under “sound landlord and tenant legislation.”⁹⁵ The LDSB sought to attract what was referred to as “the better kind of African,”⁹⁶ selected through an application process based on “full tribal particularities” and other “details.”⁹⁷ The most likely candidates, according to the plan, were Africans that already owned or managed farms. “The Kikuyu are the tribe most likely to come forward for settlement but some Luo, Abaluhya, Nandi and Kipsigis may do so as well” and the plan noted, “in Kikuyuland...some might cash in on this.”⁹⁸

In short, the goal of Kenya’s agricultural policy at the time of independence was not to tear down the discriminatory system of separate development, nor to distribute land equitably to all Kenyans. Rather, the policy was designed to maintain the segregation of land, but to replace

most departing Europeans with elite, already wealthy Kenyans who would occupy large scale farms, and smaller landed peasants, primarily of the central Kenyan communities.⁹⁹

These policies were not in the hands of the departing Europeans. Many in the Rift Valley and White Highlands, were “interested in dividing up their farms into small holdings and selling these to their [Maasai, Kalenjin, etc.] African employees,” but that possibility was vetoed by the colonial administration, and the LDSB. Its later incarnation, the Central Land Board (CLB), was used to block those sales.¹⁰⁰ One of these departing Europeans was the wife of Powys Cobb, who continued to live at Mau Narok and even her efforts to return her farm to the Maasai community were prevented by the Kenyatta government.

Mau Narok, because of its rich soil, was seized upon for agricultural development beginning in the 1950s, a boon for Powys Cobb. Despite significant assistance from the colonial government, Cobb, like other European farmers, struggled in the 1920s and 1930s with limited crop yields and a weak market, Cobb himself describing this era as “dismal” and “heartbreaking.”¹⁰¹ In 1952 Cobb retired and sold all but 5,000 acres of Mau Narok to the EASB, which set about dividing the land into 29 separate farms for sale to other Europeans.¹⁰² (The specifics of these purchases are lost in missing files in the Kenya Ministry of Lands.) Nearly 5,000 acres was retained for Cobb’s wife Ethel, who continued to live at Mau Narok for the next 12 years.¹⁰³

In 1964, Ethel Powys Cobb decided to return to England and to transfer the remaining 5,000 acres of “her farm” to the Maasai community that had lived on the land. She developed a plan for the transfer with Maasai community members, including Justus Ole Tipis, which involved giving the land to six Maasai families, who would be expected to use modern farming techniques to cultivate the land and who would inspire their neighbors in the Masai Land Unit. A

portion of the farm would also be set-aside for the Agricultural and Animal Husbandry Institute that would train local people in modern agricultural practices. Ole Tipis said that he had “the names of six Maasai leaders who would immediately take up this farm if the Government is prepared to give them financial assistance as well as advice and technical know-how. The six gentlemen are on their part prepared to contribute their share of financial requirement.”¹⁰⁴ Ethel Cobb wrote to Bruce McKenzie and told him of the plan.¹⁰⁵ She asked to meet him, and offered to provide 10,000 British pounds, and to remain financially involved with the Institute if it were built on her land. Apparently, her intention was to follow resettlement protocols and transfer the land through the Kenyan government.¹⁰⁶

But McKenzie dismissed the plan out-of-hand, refusing to open Mau Narok to Maasai farmers. McKenzie never gave a valid or legal reason for refusing the transfer, saying only that the “Masai in Mau...[were] lacking in a progressive attitude to land development.”¹⁰⁷ Several years later the Kenyan Government found a more ‘suitable’ buyer: G. Class, a German citizen. On July 13th 1967 through Kenya Farming Limited, Class bought 4,296 acres of Mau Narok for a quarter of a million Kenyan shillings.¹⁰⁸

McKenzie’s statement that Maasai attitudes hindered their involvement in agriculture reflected the larger plan in motion; Mau Narok would not be returned to Maasai ownership because it was targeted for low-density, large-scale wheat production, as wheat became the centerpiece of government agricultural policy in the region in the mid to late 1960s. Wheat had been grown in Kenya in the 1950s and before, but its cultivation was limited primarily to the White Highlands in Uasin Gishu and Nakuru.¹⁰⁹ Wheat development was promoted by the British government which was eager to safeguard its previous investments in Kenya, through the development of large low-density farms to be owned by Europeans or wealthy African Kenyans.

By 1967 these farms produced a crop surplus large enough to begin exporting wheat to Uganda and Tanzania which boded well for further investment. Bruce McKenzie worked vigorously throughout the changing of the guard in Kenya's administration to all of the settlement scheme boards under his executive control and he personally championed large-scale agricultural development.¹¹⁰

The wheat boom of 1967 was the result of McKenzie's push for agricultural development and farming practices in Mau Narok and other areas that had, since the mid-1950s, been encroaching into the Masai Reserve through sharecropping. Under sharecropping, European farmers developed private arrangements with their Maasai neighbors to provide machinery, seeds and training to turn their land to wheat; Maasai sharecroppers would receive two bags of wheat per acre farmed or 20% of the total crop.¹¹¹ By the late 1960s, sharecroppers "from outside the Mau Narok area" moved in and began contracting with Maasai people to use their land. Wheat cultivation rapidly expanded at this point, and without literacy and other means to represent their interests in contract negotiations, Maasai sharecroppers faced greater exploitation. By 1967, 25,000 acres of the Masai Land Unit was growing wheat through sharecropping. That year saw the surplus of wheat, but serious conflicts arose, as Maasai land owners were swindled, and government investigations found it "abundantly clear that the charges of bribery and corruption amongst [non-Masai] sharecroppers were well founded." Not wanting to lose the profit being made from wheat growing in Maasailand, the government tried to regulate sharecropper contracts and subsidized machinery through the Tractor Hire Service, to enlarge the scope of wheat growing in Maasailand. But that only created more problems, as conflicts erupted with the mostly Kikuyu tractor drivers. In 1967, demanding back payment and citing other grievances, Maasai community members at Mau Narok rose up in protest, and virtually shut down wheat

production there. In October 1967, Maasai leadership Justus Ole Tipis, Ole Lemien and Ole Konchella called in Bruce McKenzie and demanded an end to sharecropping in Maasailand. McKenzie instructed the Kenyan Farmers Association to freeze 75% of the value of the 1967 crop boom until a settlement was reached between the sharecroppers and the farmers.¹¹² The government understood that it needed to end the abuse of Maasai land owners and laborers, but at the same time did not want to lose the 25,000 acres of productive wheat farms that was bringing profit to the Kenyan economy.

To respond to this dilemma, the Ministry of Agriculture changed course in the former White Highlands and set out to turn Maasai people themselves into farmers there, or in the words of a Ministry of Agriculture report, to enable “the early and complete conversion of the Maasai peoples and their traditional territorial holdings to optimum economic usefulness within the Nation.”¹¹³ This goal was to be facilitated by a new agency created in 1968, the Masai Agricultural Development Organization (MADO), under the umbrella of the Central Agricultural Board and the general management of Andrew Mercer of the World Bank. Using World Bank loans and other investment, Mercer’s job was to: pay contractors to harvest the 1968 crop; develop processing, water, transportation and other infrastructure to enable further wheat development in the region; build a “Farmers Training Center” for Maasai farmers; and streamline land titles in Maasailand to add 33,000 acres to land being cultivated for wheat every year, until all 1.5 million acres of “good wheat potential land in Narok district” was cultivated. The estimated cost was 600 million Kenyan shillings.¹¹⁴ MADO would supersede all other government agencies and be “entirely responsible for Agricultural development in the Masailand.”¹¹⁵ Mercer assured the Narok District Agricultural Committee that the aim of his organization “was to help the Masai and that no cent from MADO would go out of the district”

but would be used for development in Maasailand.¹¹⁶ By July, 1968, 56 Maasai farmers were signed up to produce wheat on farms ranging from 50 to over 700 acres in size.¹¹⁷

But MADO was terminated after five short months by the Provincial Commissioner for the Rift Valley, Simeon Nyachae. MADO did not have the support of the Maasai community; Ole Tipis and other Maasai leadership said that the Maasai community had not been consulted in MADO's creation, and that Maasai farmers were not actually being given loans.¹¹⁸ Nyachae reported that "the Masai had stopped progress [on wheat growing] and MADO had been interpreted as a 'Big Fish which swallows others.' The Masai had rejected MADO and suspended all its activities..."¹¹⁹ But more needs to be understood about Nyachae's role in the death of MADO, because the end of MADO was part of a larger trend to consolidate power over agricultural development in Maasailand in his office of the Provincial Commissioner. And, Nyachae's personal interest also must be considered, as he himself came out of this period of turbulence owning more than 10,000 acres of the most prime land at Mau Narok, a part of the former Powys Cobb estate.

Thanks to a biography of Nyachae, based on sources not available through government archives, we have an opportunity to gain insight into the ways that Kenyatta era government administrators came to control and profit from Maasailand. Simeon Nyachae was well positioned in 1968 to influence the development of wheat in Maasailand, to have an insider's knowledge into the profit potential from wheat farming there and how to best acquire them. As his biographer sums it up, "In addition to benefiting personally from the large transfers of land from European to African hands, Simeon Nyachae had an administrative role in the process." Nyachae had been "recalled from England" in 1964 by President Kenyatta to be District Commissioner of Nyandarua, and "thrown into the midst of the land reform frenzy." As PC for the Rift Valley

after 1965, though Nyachae had “no direct responsibility for administering the settlement schemes,” he oversaw law enforcement and the adjudication of land disputes. He also served as the Chair of the Provincial Agricultural Board Rift Valley Province beginning in 1968.¹²⁰ And Nyachae had another asset: a personal relationship with Jomo Kenyatta, as previously noted. Provincial Commissioners had tremendous power under Kenyatta—they were the “iron frame upon which [he] built his political control of the country” and “[PCs] were his effective proconsuls, supervising and controlling regional developments in much the same way as their colonial predecessors had done.” The Rift Valley contained much of the former European settled areas and therefore the settlement schemes. As PC, Nyachae was responsible for determining which Maasai families “had traditional occupancy rights to the land” so that they would benefit from the scheme. Nyachae’s influence only expanded and deepened over time. He became chair of Kenya’s Wheat Board after 1972, and Chair of the National Cereals and Produce Board in 1980, and eventually Chief Secretary under President Moi.¹²¹

Two examples illuminate Nyachae’s consolidation of power over agricultural development in Maasailand. First, Nyachae undermined and ultimately eliminated MADO by engaging in a fight with Andrew Mercer of the World Bank. In June 1968, Nyachae wrote a letter to Permanent Secretary of Agriculture and Animal Husbandry, S.B. Ogembo, complaining that MADO was failing because it was not including Maasai communities in wheat development schemes. Nyachae said, “To treat [sic] masailand as if it were State land and in effect to go ahead without consulting the land owners, will no doubt cause political and social repercussions from the masai people.”¹²² His advice was to work through him, as the ‘man on the ground’ who knew how to navigate local acceptance. If the Ministry wanted to “open up new areas for [wheat] development” in Maasailand, it had to “seek opinion of field officers, who are more conversant

with ground problems, instead of assuming that people in remote areas could be directed in the manner some official in Nairobi may theoretically consider to be sound.”¹²³ In writing this letter, Nyachae had dropped a bomb on the Ministry of Agriculture and specifically MADO. Mercer, the person most directly under attack from Nyachae, responded with outrage. He claimed that Nyachae had “deliberately distorted” the situation.¹²⁴ Mercer said that Nyachae had been in on the Ministry’s decision to keep the Maasai community in the dark, and this was done for “certain political reasons.”¹²⁵ The Ministry admitted later that it did not inform Maasai farmers about MADO to delay giving them the opportunity to reject it until the 1968 crop was planted.¹²⁶

While Nyachae appeared to be protecting Maasai people from MADO, other conflicts muddy the water. One of these was a disagreement between Mercer and Nyachae over land adjudication. Wheat schemes depended on Maasai farmers obtaining loans to develop their land, but loans were hindered in Maasailand as lending institutions wanted private titles for collateral. Mercer wanted to secure titles by “Enkutoto,” or group land ownership, which would empower communities to be responsible for loan repayment. He said that “such divisions already [have] traditional councils” that would manage wheat development locally. It would seem that Mercer wanted to work with Maasai communities and their existing social structures. But according to Mercer, Nyachae privately supported allotting Maasai land by individual title. Nyachae, he said, “has at various committee meetings indicated his view that individual Masai have specific land rights and he could see no reason for this organization not entering into specific agreements with individuals...”¹²⁷ F.E. Charnley, Agricultural Commissioner of Lands, likely influenced by Mercer, was against individual allotment, as he was concerned to prevent “a land grab by the wealthier and more sophisticated Masai.” When land was allotted, he said, that “the full rights and interests of all the people must be taken into account.” He came to this conclusion after

“several meetings with the Narok County Council and prominent Masai leaders from Narok district.”¹²⁸ Individual title would also make it easier for the profits of wheat growing in Maasailand to be realized by outsiders.

Nyachae’s most serious accusation was that the Ministries of Land and Agriculture were conspiring to ‘set apart’ land inside the Masai Land Unit for growing wheat without the consent of Maasai communities.¹²⁹ DC Mlamba, Permanent Secretary of Agriculture, adamantly denied the charge, and insisted that Nyachae “produce evidence in writing to prove” the claim. He suggested that Nyachae be disciplined for his unfounded accusation. Mlamba counter-charged that Nyachae had deliberately undermined the Ministry’s work in Maasailand, that he did not “sell” MADO to Maasai communities. Mlambo attacked Nyachae’s “holier than thou attitude with regard to the Masai wheat development scheme,” and suggested that Nyachae, who presented himself as the champion of Maasai interests, had “come out clear all along.”¹³⁰ Nyachae responded with a personal attack. “Mr. Mlambo must be having mental sickness” that “the silly man” did not know that officials in his ministry had been “involved in discussing the question of setting apart some areas of Maasailand for wheat growing.” Taking the high ground, Nyachae lectured Mlambo that he, the PC, was responsible to look out for his Maasai constituents. Mlambo should be grateful, he argued, because “without my intervention and the support of the Vice-President, his ministry would now not be operating a single tractor in Masailand.”¹³¹ If government administrators were quietly discussing a take-over of some areas of Maasailand, Nyachae may have been a whistleblower, as he presented himself in his letter to Charnley, or he may have been personally involved with a take-over as Mlamba’s letter implies. Or, there may have been no plot, and Nyachae’s challenge was intended to stop rumors from making community members suspicious. In any event, MADO was ended in July, and the

Ministry of Agriculture ceded control over development in Maasailand personally to Simeon Nyachae. Mlamba said, “If all the help the Provincial Administration in Rift Valley can give this Government is further unprincipled and ungovernmental criticism, then we in Agriculture shall gleefully say, “Goodbye Masai.”¹³² Though it was not under his jurisdiction, Nyachae nevertheless effectively put a stop to MADO within a month of his letter to Charnley.¹³³

Nyachae also had influence as PC over land adjudication in Maasailand, and he used his position to solidify his own power to make the final determination over land disputes. With the failure of MADO, the Ministry of Agriculture moved more actively into land adjudication.

According to a September 1968 Ministry of Agriculture report:

it is imperative that the system of land tenure in Mau Narok be regularized as soon as possible. Unless this is done, attempts by individuals or groups to grab large acreages of land will continue to frustrate both Governments’ efforts to develop the Narok district and also people’s wish to see that their area is developed same as other parts of Kenya.¹³⁴

Nyachae recognized problems with land adjudication, especially the “noticeable change of attitude among the Masai on the ownership and value of land” in the recent past, disapproval by “the more enlightened Masai” of Kikuyu and other “acceptees” who hoped to benefit from Maasai land disbursement, and clan and family “clashes.” In light of these problems, Nyachae advocated “firm and urgent action.” As the final arbitrator, Nyachae suggested an amendment to the Group Representative Act to “give the Arbitration Committees power to make binding decision whenever it deemed it appropriate and particularly in cases connected with section, clan and family interest.”¹³⁵ He personally arbitrated between Maasai land owners and “the predominantly Kikuyu” tractor contractors over terms of leases. His biographer claims that Nyachae worked tirelessly “to protect the Maasai,” which observation apparently came from interviews with Nyachae himself. If Nyachae were in fact promoting the interest of Maasai

farmers, he was not successful. The Tractor Hire Service continued to operate in Maasailand, and continued to receive government subsidy, and profits continued to leave the area.¹³⁶

Simeon Nyachae, the man who now farms the land carved out of Maasailand by Powys Cobb a century ago, is a very wealthy man, and he built his wealth through government connections and power. In the 1970s he was a shareholder in nine companies, according to a survey of Registrar of Companies, and the list expanded to “at least a dozen” by 1987.¹³⁷ His biographer also reports that he is in partnership with members of Kenyan Asian communities, which resulted at the time because the ‘Africanization of Commerce’ provision limited the ability of non-Africans to own business without African partners. “Senior government officials such as Nyachae were generally favored for these joint ventures because their names helped to clear the way in getting government approvals and licenses, even if no direct influence was ever exerted.” It is also significant to note that “Nyachae never acquired any property or businesses in Central Province, despite his long stay there as provincial commissioner.” His biographer explained that, “He believed that to do so would create conflict because of the intense Kikuyu interest in both land and commerce.”¹³⁸ In strong contrast to this, Nyachae’s acquisition of Maasailand was facilitated by the relative powerlessness amongst Maasai people in their own region, making under-the-table land grabs a common occurrence.

In 1969, shortly after MADO’s demise, Simeon Nyachae came to personally benefit from the original appropriation by Powys Cobb of 30,000 acres of Maasailand at Mau Narok, as he himself acquired a significant portion of that land, which was “a reasonable drive from his provincial headquarters.” His biographer reports that “President Kenyatta personally helped to arrange both the purchase and the loan.” After this first acquisition known as Sansora Farm, Nyachae obtained two additional farms at Mau Narok, and today he is a “large wheat producer.”

His biographer states that “these enterprises are all managed for him by trained personnel seconded by the government Agricultural Development Corporation.” Nyachae pays for these services, “but as there are not enough good ADC managers to go around for all who want them, influence sometimes plays a part in acquiring one.”¹³⁹

Nyachae stands as one wealthy Kenyan government administrator that came into possession of Maasai land during the first years of Kenyan independence. There are others, but comparable documentary evidence is lacking. However we can surmise from limited evidence that Nyachae’s story is not unique.

For example, a second 5,000 acre parcel of Cobb’s land at Mau Narok is in the possession of the family of Peter Mbiyu Koinange, a member of Kenyatta’s inner circle and like Nyachae, a wealthy Kenyan who acquired property and built personal wealth during the mid 1960s. Koinange was a detainee and then parliamentary representative from Limuru and later served as Minister of State in the Office of the President under Kenyatta; he was educated in elite universities in the U.S. and also lived in Britain. Like Nyachae, Koinange was on the Agricultural Board for Rift Valley Province, and so was involved in the transfer of lands under settlement schemes.¹⁴⁰ Koinange is one of the most prominent citizens of Kenya’s history, and yet he has left a scant paper trail, so little is known publicly about the extent of his property holdings.

But, some information is known about Mbiyu Koinange in the Maasai community at Mau Narok that is not part of his public record. Moses Ole Mpoie, and other Maasai people from Mau Narok, report that Mbiyu Koinange showed an interest in the same 4,200 acres that Ethel Cobb wanted to sell to the Maasai community in 1964. Ethel Cobb eventually sold that land in 1967 to G. Class, a European living today in Germany. In private interviews, Class has confirmed that he

was approached and asked to sell his land in 1976. When he refused, he was immediately deported by the Kenyatta government, given 24 hours to leave the country, with no time to dispose of his land. Mbiyu Koinange, the powerful Minister for Internal Security at the time and therefore head of immigration, acquired his farm shortly thereafter. The Koinange family continues to occupy and profit from the land, which produces wheat. But, Class claims that he still retains legal title to the land. Class attempted to sell the land to a Maasai NGO, Olmaroroi Trust Ltd, and Maasai community members actually occupied a portion of the land for two years until they were removed by the government in 2005.

In the details of the loss ancestral homeland by the Maasai community under colonial and independent eras one can see several themes important to understanding the larger dynamics and legacy of colonialism in Kenya. First, one can see the continuity of land policy between the colonial and post-colonial eras, as land appropriated to meet agendas of the colonial government's land policies were transferred, not to the ownership of the land's original inhabitants, but to meet the agendas of the independence government's neo-colonial land policies. In that sense, men like Simeon Nyachae and Mbiyu Koinange took the place of Powys Cobb and became the new colonial settlers. Second, the history of Mau Narok shows the means through which land has been transferred in Kenya, through quasi governmental organizations, such as MADO, that create the opportunity to divest a community's right to land in the name of the public good as a first step to transferring that land to private ownership of influential individuals. Third, this history shows that not just any land can be used to compensate indigenous communities for the loss of land, such as those that contain headwaters that are strategically necessary for the utility of other, drier land, and therefore the survival over time of a

community. The pre-colonial world in Kenya was organized around watersheds, not national or reservation boundaries, and those borders expressed an intelligent knowledge and use of the entire landscape. Finally, this history provides context for violence that can be ignited at times of stress, providing a different explanation for such violence than “tribal animosity” or “tribalism.” Maasai people watch the wealth of their land bled out of their community while they continue to exist in extreme poverty. The history of Mau Narok reveals the seedbed of conflict in the daily, ever present awareness of injustice and lack of recourse.

NOTES

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¹¹ Ibid

¹² Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain’s Gulag in Kenya*, (NY: Henry Holt, 2005) 8-9

¹³ Leys, *Kenya*, 108

¹⁴ Copy of the 1904 Agreement located in the Ukamba Province Report on the Boundary of the Masai and Kikuyu Reserves from 1912-1915, p.3, Kenya National Archive, DC/MKS10A/5/1

¹⁵ The agreement confuses the Eunoto ceremony with the Enkipaata ceremony, the graduation of boys into warriorhood. Copy of the 1911 Agreement located in the Ukamba Province Report on the Boundary of the Masai and Kikuyu Reserves from 1912-1915, p.62 Kenya National Archive, DC/MKS10A/5/1

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¹⁸ Hughes, “Rough Time in Paradise” EN 30

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- ²³ Leys, *Kenya*, 102
- ²⁴ Leys, *Kenya*, 108
- ²⁵ Narok District Annual Report, 1916-1917, p.4, Kenya National Archive, DC/NRK/1/1/1
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