

Further reply to the question of Judge Bennouna

Replying orally to the question put by Judge Bennouna, counsel for Niger stated the following at the hearing on the afternoon of 17 October¹:

“This may be an appropriate time to reply to Judge Bennouna’s question [slide of the sketch-map showing the line of the frontier]. For the record, that question reads as follows: ‘To what extent and for which section(s) do each of the Parties agree to refer to the 1960 IGN map to establish the course of the frontier between them?’

[*Annex A*] The sketch-map which is now being shown marks in red the portions of the boundary line shown on the IGN France map which are followed by Niger, and in yellow those which are not.

This sketch-map therefore shows that the first section in which the boundary shown on the map is followed by Niger is the one which runs from the Tao astronomic marker to the site of the former ‘tripoint’ between Dori, Tillabéry and Say *cercles*. The only exceptions in this section are the sites of Petelkolé and Oussaltan. The second section in which the boundary that appears on the 1960 map is followed by Niger runs from the Gouina frontier point to the beginning of the Botou bend. Niger will provide in writing, before the deadlines set by the Court, additional information about the reasons for which it does not adopt the other portions of the boundary line shown on the IGN France map.”

The additional information which follows is divided into two parts: the Téra sector and the Say sector.

The Téra sector

With respect to the Téra sector (between the starting point of the disputed line and the former tripoint of the *cercles* of Dori, Tillabéry and Say), the points of disagreement between the boundary claimed by Niger and that adopted by the IGN map are as follows.

If the IGN line is traced from its starting point at the astronomic marker of Tong-Tong, the following points will be noted.

The starting point of the Burkina Faso-Niger boundary is not in dispute between the Parties: it is the Tong-Tong astronomic marker. The co-ordinates of that marker are given as the starting point of the disputed sector of the frontier in Article 2 of the Special Agreement of 24 February 2009. They are as follows: latitude 14° 25' 04" N; longitude 0° 12' 47" E. Since the starting point indicated on the IGN map is situated further east, it should therefore be disregarded, at the express wish of the Parties.

Furthermore, from this point, the IGN line adopts a shape very broadly curved towards the west. [*Annex B*] That curve is unusual. Both the 1927 texts and the Delbos/Prudon sketch-maps, and the official new frontier map, adopt, in the section between Tong-Tong and Tao, a line which is straight or very slightly curved. Niger’s archival research, however, brought to light the existence of a marker installed at Vibourié² by mutual agreement (Record of Agreement of 13 April 1935) between Administrator Garnier (Dori *cercle*) and Assistant Deputy Lichtenberger (Téra

¹CR 2012/26, pp. 35-36, para. 5.

²See MN, pp. 92-93, para. 6.20; CMN, pp. 63-64, para. 2.1.4.

Subdivision)³; this agreement was approved by the Governor of Niger, of which the two *cercles* had formed part since the dissolution of Upper Volta⁴. Considering that this marker must have the force of law between the Parties, the broken line which runs from Tong-Tong to Tao, passing through the Vibourié marker — the co-ordinates of which are the following: 14° 21' 44" N, 0° 16' 25" E — therefore replaces the IGN line in this sector.

From that marker, the frontier runs in a straight line to the Tao astronomic marker (co-ordinates: 14° 03' 02.2" N, 00° 22' 52.1" E).

From there, the frontier follows the 1960 IGN line (Téra sheet) as far as the tripoint of the former boundaries of the *cercles* of Say, Tillabéry and Dori (co-ordinates: 13° 29' 08" N, 01° 01' 00" E), with two exceptions.

The first exception is the village of Petelkolé⁵ [*Annex C*].

The frontier line has to deviate slightly to the west from the IGN line in the vicinity of Petelkolé in order to include the frontier post between Niger and Burkina Faso. That post is situated entirely within Niger territory, on the Ouagadougou-Dori-Téra-Niamey road. The frontier point is situated slightly further to the west, at the end of the stretch of the new Téra-Dori road constructed by Niger, two kilometres from Petelkolé. The frontier line thus deviates from the IGN line to follow the three points with the following co-ordinates: it leaves the IGN line at the point with co-ordinates 14° 01' 55" N; 00° 24' 11" E and runs in a straight line west of Petelkolé to the frontier point on the new Téra-Dori road (co-ordinates: 14° 00' 04.2" N, 00° 24' 16.3" E). It then passes through the point with co-ordinates 13° 59' 03" N, 00° 25' 12" E, before running in a straight line to rejoin the IGN line at the point with co-ordinates 13° 58' 38.9" N, 00° 26' 03.5" E.

The frontier then follows the IGN line as far as the break in the line of crosses north of Ihouchaltane (Oulsalta on the 1960 IGN map, Sebba sheet), at the point with co-ordinates 13° 55' 54" N, 00° 28' 21" E [*Annex D*].

Ichoultane is the second exception⁶: this place was recognized as belonging to Niger during the colonial period. It is a group of Logomaten encampments of the Kel Tamajirt tribe, of the Tinguéréguédesch *groupement* of the rural municipality of Bankilaré.

The frontier line skirts the hamlet of Oussaltane Ihouchaltane (Oullsalta), passing through the point with co-ordinates 13° 54' 42" N, 00° 26' 53.3" E, then through the point with co-ordinates 13° 53' 30" N, 00° 28' 07" E, before returning to the IGN line (at the point with co-ordinates 13° 53' 24" N, 00° 29' 58" E), which it follows as far as the tripoint of the former boundaries of the *cercles* of Say, Tillabéry and Dori (co-ordinates: 13° 29' 08" N, 01° 01' 00" E).

The Say sector

With respect to the Say sector, the boundary claimed by Niger between the point that was the former tripoint of the *cercles* of Dori, Tillabéry and Say and the point where the Gouina frontier marker is situated deviates from the line shown on the IGN map. On the other hand, the line claimed by Niger is the same as that shown on the IGN map between that frontier marker and the beginning of the Botou bend.

³Record of Agreement dated 13 April 1935, MN, Ann. C 56.

⁴OTL 693 AP of 17 May 1953, as stated in the *Description of Tillabéry cercle*, prepared in 1941 by Mr. Leca, MN, Ann. C 65.

⁵CMN, pp. 65-67, para. 2.1.7.

⁶See CMN, para. 2.1.8., and CR 2012/26, pp. 38-39, para. 9.

The reasons why the line claimed by Niger does not follow the line shown on the IGN map in the above-mentioned part of the Say sector were set out in detail by Niger in its written pleadings. They can be summarized as follows.

- With regard to the meeting point between the sectors of Téra and Say, the IGN map shows a sinuous boundary line which reaches the village of Bossébangou from a north-westerly direction and leaves it in a general east-westerly direction, following the course of the River Sirba. In Niger's view, that line has no legal basis. It is true that the text of the *Arrêté* of 31 August 1927, as amended by the Erratum of 5 October of the same year, describes the boundary between the colonies of Upper Volta and Niger in this area as passing through “the River Sirba at Bossebangou”. However, Niger explained in detail both in its written pleadings and in its oral argument that the text of the Erratum on this point was affected by a factual error⁷. It cannot, therefore, constitute a valid legal basis for the line adopted by the IGN in this area. Nor does that line reflect in any way the reality on the ground, as it could have been observed by the IGN cartographers during the surveys which they carried out in 1958-1959. In fact, there is nothing in the case file to attest to the existence of *effectivités* which would indicate that the portion of territory which was attributed to Upper Volta by the line shown on the IGN map in that area had at any time belonged to that colony. On the contrary, all the maps from the colonial period show that portion of territory as belonging, throughout the entire colonial period, to the Colony of Niger. [Annex E] The sinuous line adopted by the IGN, following the Sirba after the village of Bossébangou, does not appear on *any* of those maps.
- The course of the boundary as shown on the IGN map in the sector known as “the four villages” sector is also unsubstantiated in Niger's view. It could, at first sight, appear to be founded on the text of the Erratum of 31 August 1927, which states that, after passing through the village of Bossébangou, the boundary “almost immediately turns back up towards the north-west, leaving to Niger, on the left bank of that river, a salient which includes the villages of Alfassi, Kouro, Tokalan, and Tankouro”. However, the line shown on the IGN map appears to be based on the positions of those above-mentioned villages, which still existed in 1958-1959, *as they were at that time*. However, it is well established that several of those villages were relocated after 1927. It is known that Alfassi, among others, was moved for health reasons⁸. [Annex F] Niger has done its best to identify, using maps from that period, the location of the four villages *at the time of the adoption of the Erratum*. Nevertheless, it is clear that the line adopted by the IGN makes it impossible to leave to Niger, pursuant to the text of the Erratum, on the left bank of the River Sirba, a “salient which includes the [four] villages” in question, as they were located in 1927 [Annex G].
- Moreover, this also explains why the line claimed by Niger, in the section where it changes direction in order to run, following an east-south-east direction (under the terms of the Erratum), towards the beginning of the Botou bend, also departs from the line adopted by the IGN as far as the Gouina frontier point. According to the maps from the colonial period, this point where the boundary changes direction is situated by Niger slightly further west and north of that which appears on the IGN map, as shown on the sketch-map reproduced opposite page 114 of Niger's Memorial [p. 111 in the English version] [Annex H]. However, it should be noted that, in this section, the line claimed by Niger is very close to that shown on the IGN map.

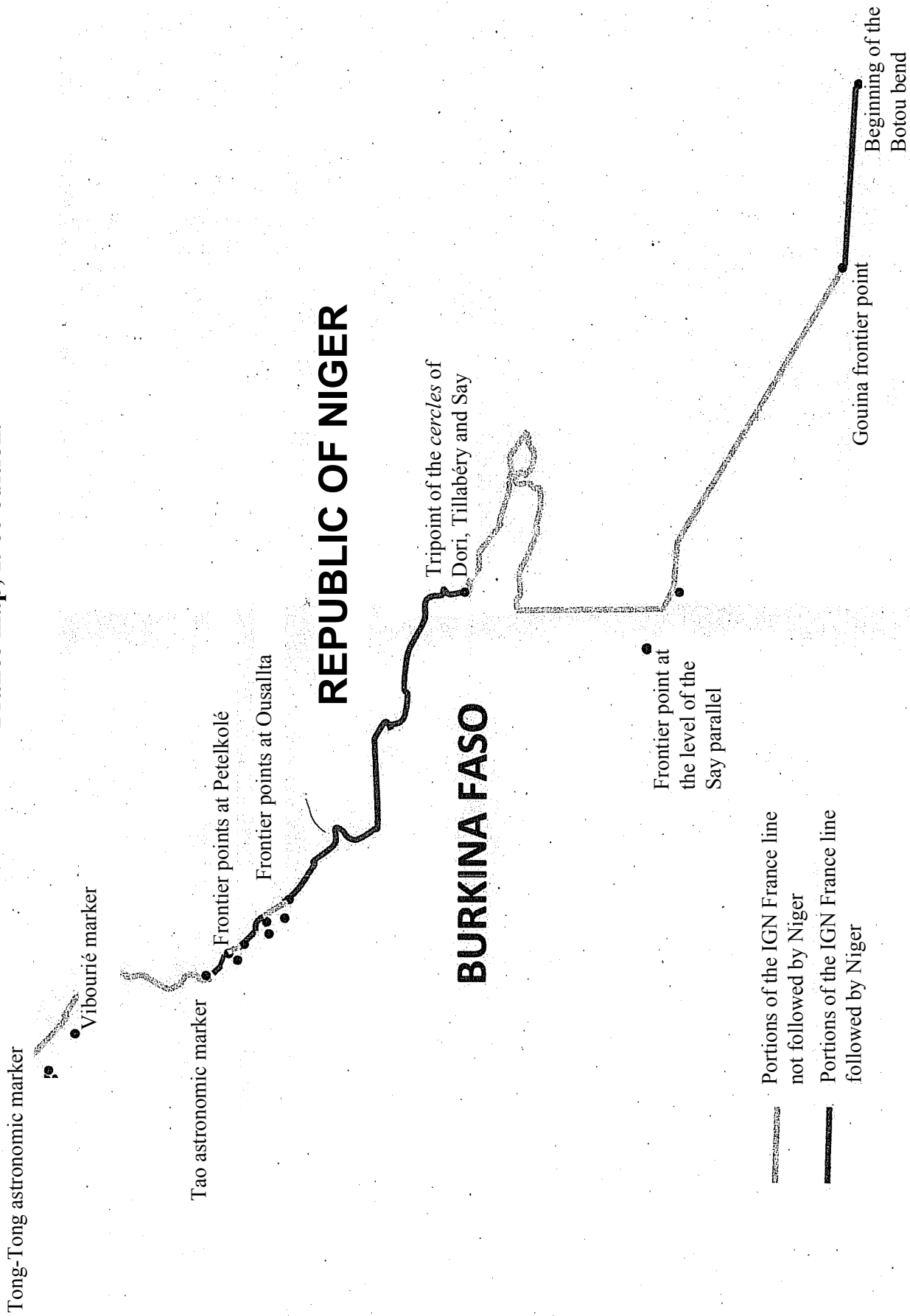
⁷MN, para. 7.14 *et seq.*; CMN, para. 2.2.2. *et seq.*

⁸See MN, para. 7.28 *et seq.*, and references.

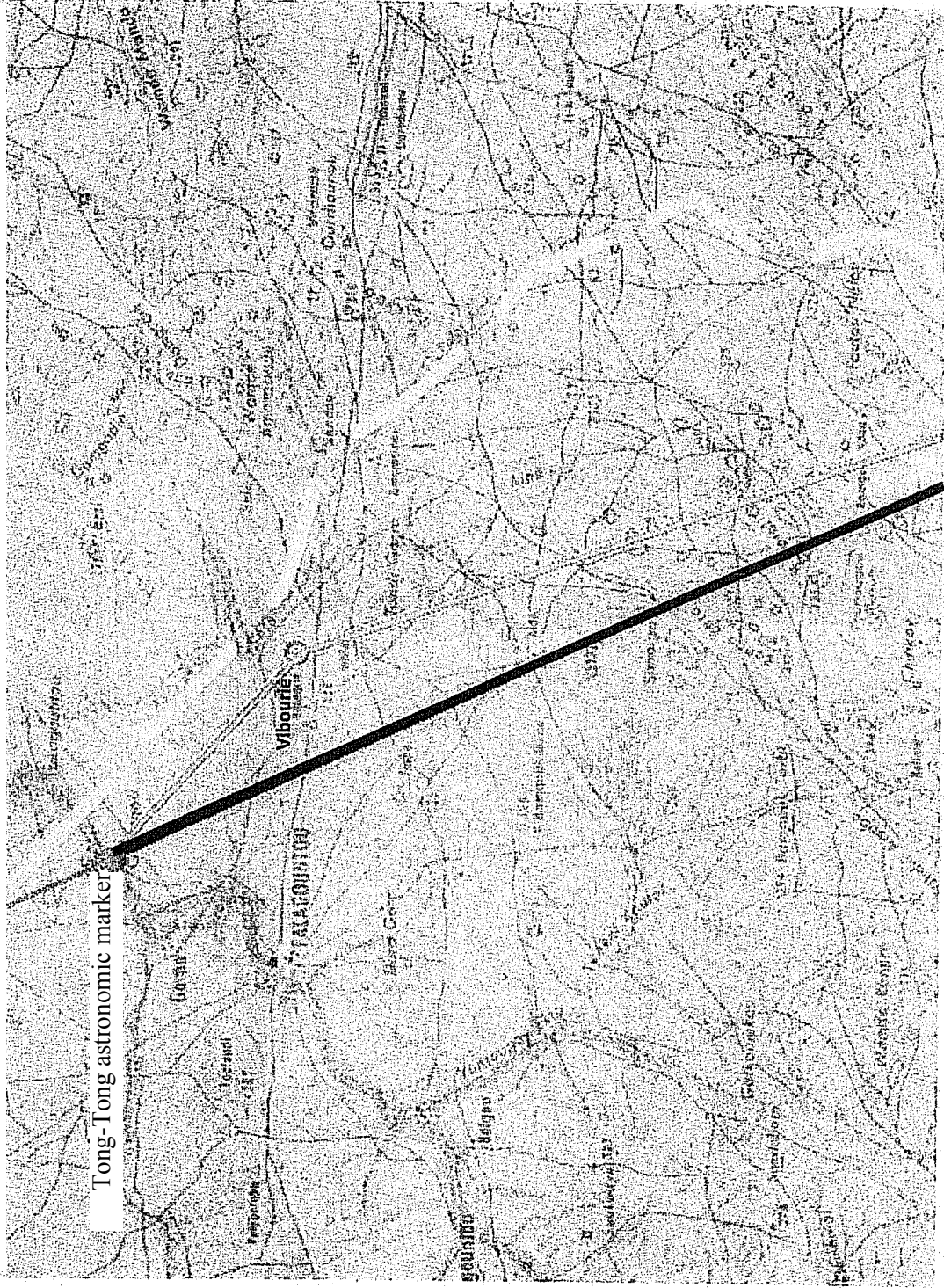
LIST OF ANNEXES

- A. Slide shown during the presentation of Professor Jean Salmon of 17 October 2012 on the boundary in the Téra sector [judges' folder, tab 21, No. 1: The course of the boundary shown on the IGN map]
 - B. Slide shown during the presentation of Professor Jean Salmon of 12 October 2012 on the boundary in the Téra sector [judges' folder, tab 19, No. 6: Extract from a map showing the IGN line from the Tong-Tong marker]
 - C. Line claimed by Niger in the vicinity of Petelkolé
 - D. Line claimed by Niger in the vicinity of Ousalta
 - E. Slide shown during the presentation of Professor Pierre Klein of 12 October 2012 on the boundary in the Say sector [judges' folder, tab 20, No. 8: Enlarged extract from the 1927 new frontier map]
 - F. Labitte sketch-map showing the relocated villages [MN, Ann. C 39]
 - G. Extract from the Blondel/La Rougery map showing the villages of the salient mentioned in the Erratum (Alfassi, Kouro, Tokalan) [Extract from MN, Ann. D 9; slide shown during the presentation of Professor Pierre Klein of 12 October 2012 on the boundary in the Say sector (judges' folder, tab 20, No. 14); and CMN, Figure No. 15, p. 89]
 - H. Sketch-map of the traditional salient and the salient as shown on the IGN map as reproduced opposite page 114 of the Memorial of the Republic of Niger [p. 111 of the English version]
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Course of the frontier as shown on the 1:200,000-scale IGN
France map, 1960 edition.

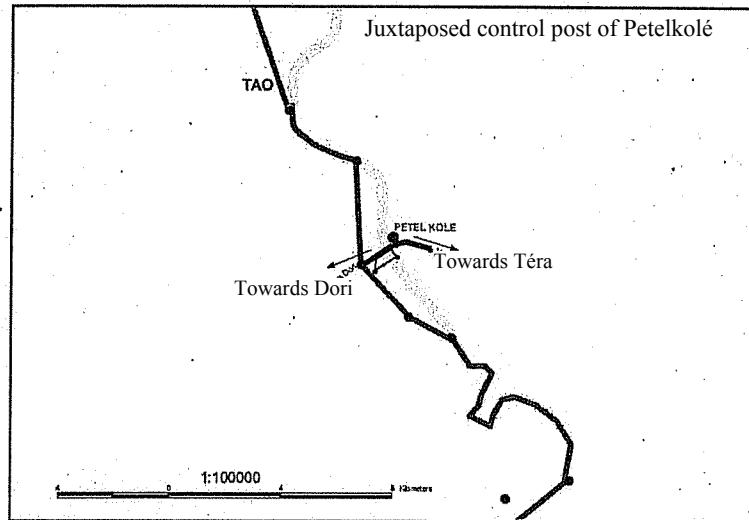


Extract from a map showing the 1960 IGN line from
the Tong-Tong marker



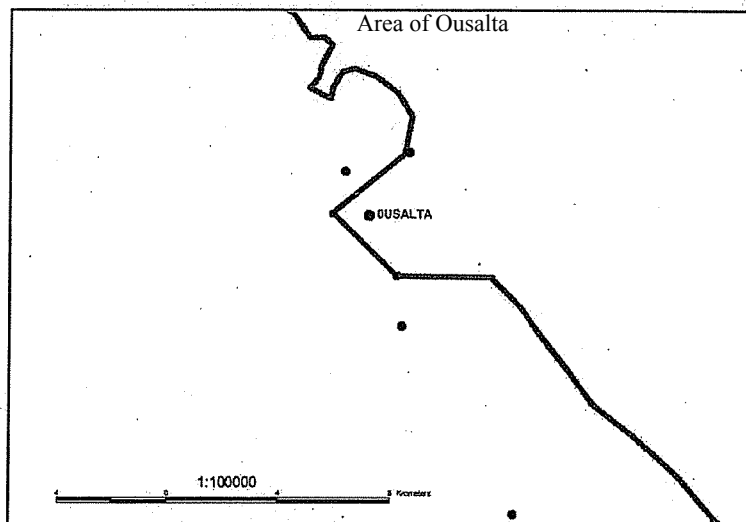
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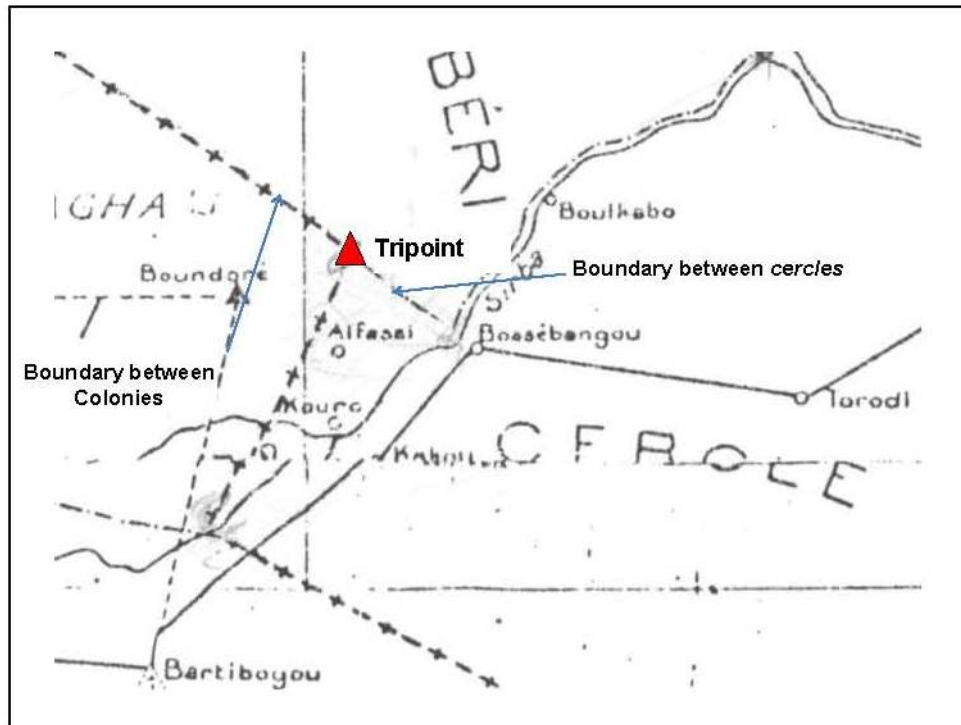
For the Téra sector:
Line claimed by Niger in the vicinity of Petelkolé

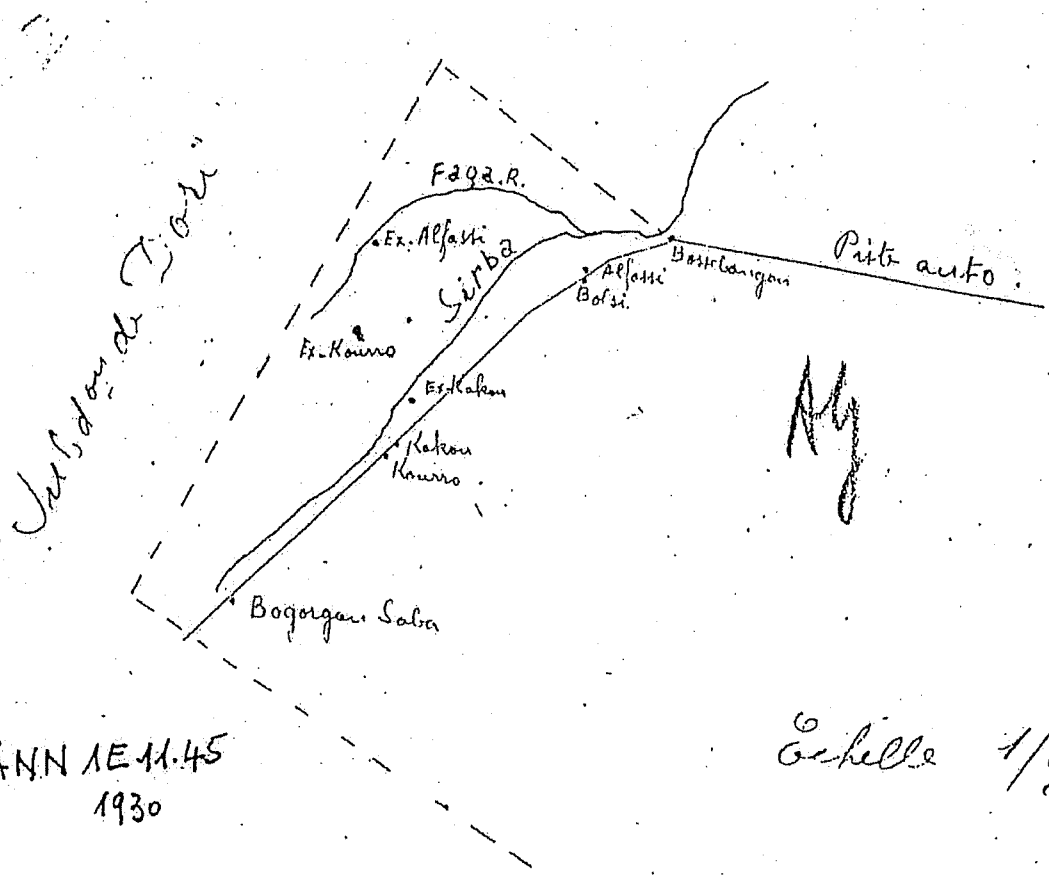


Line claimed by Niger in the vicinity of Ousalta

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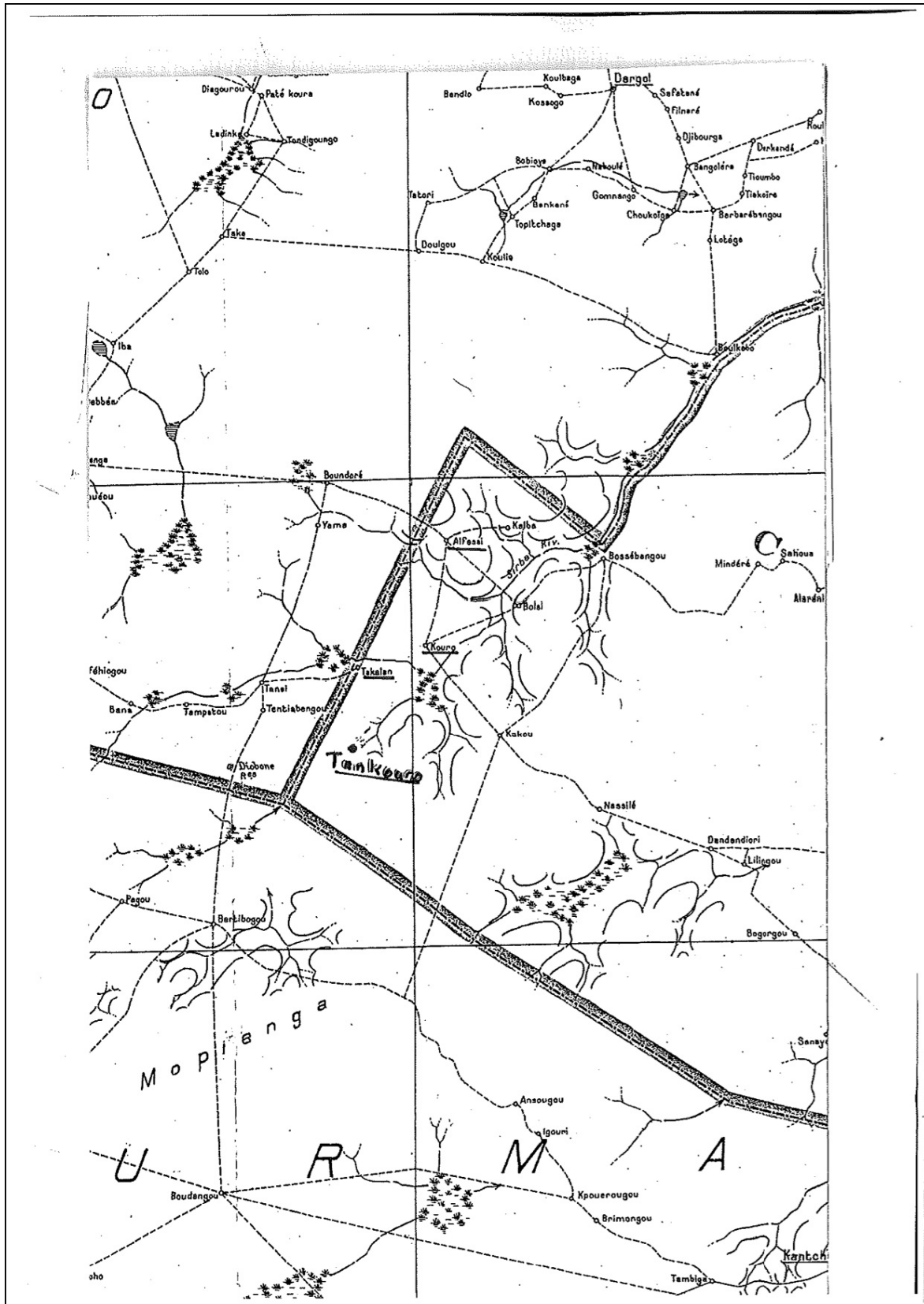




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Figure 15: The four villages of the salient attributed to the Colony of Niger by the Erratum of 5 October 1927 (MN, Anns., Series D, No. 9)



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