

9th November 2013

**PRESS STATEMENT ON THE ARRESTS AND PROSECUTION OF EIGHTY-FOUR
PEOPLE FOR ADVOCATING FOR THE RESOLUTION OF THE CONFLICT
ARRISING OUT OF THE ABROGATION OF THE BAROTSELAND AGREEMENT
1964 AND THE NEED FOR INTERVENTION AND RESOLUTION OF THE SAME.**

Introduction.

The recent arrest of eight-four (84) people in Barotseland on a charge of treason felony by the Zambian state security agents acting under direct orders of President Sata is a continuation of futile, unrealistic and desperate measures experienced under previous administrations to stem the tide of an unstoppable march by the people of Barotseland to correct a mistake of history caused by the first post-independence government of Dr. Kenneth David Kaunda. It is unfortunate that rather than learn a lesson from his predecessors' miss-steps over the matter of the Barotseland Agreement 1964, President Sata has opted to prolong the ***Ostrich 'head in the sand'*** stance which has, over and over, proven to be an ineffective tool that only serves to escalate the crisis much to the embarrassment of government in particular, and the people of this country in general.

It should be put on record, for the umpteenth time, that the matter of Barotseland is a political cum legal problem requiring deployment of calmness, seasoned brains and wisdom for its resolution. This is not a problem solvable by flexing of muscles or unleashing of military arsenals because the Barotseland Agreement 1964 and its predecessor agreements is deeply embodied in the structure of Zambia as a unitary state such that he who sets out to cause damage to the treaty inflicts the said damage on the state and its people.

Barotseland and Zambia

Zambia is referred to as a unitary state on account of its composition from two territories, ie, the Barotseland-Northwestern Rhodesia and the North-Eastern Rhodesia, that were merged in 1911 to form the Protectorate of Northern Rhodesia. That merger was preceded by a treaty and several concessions between King Lewanika of Barotseland and the British colonial administration which defined the status of Barotseland as a semi-autonomous region within Northern Rhodesia. On this account Northern Rhodesia was a hybrid territory held together by treaty.

The colonial agreements between King Lewanika and the British Crown were due for termination at independence, thereby creating a situation where Northern Rhodesia was to dissolve into its former constituent territories to be granted independence separately. To prevent this situation, the Barotseland Agreement 1964 was signed to take the place of the expiring colonial agreements so that Northern Rhodesia could be granted independence as ***‘one country’*** and ***‘one nation’***, as is aptly provided for under paragraph 3 of the pre-amble to the Barotseland Agreement 1964. The new agreement carried forward the provisions for Barotseland regional autonomy in the post colonial Northern Rhodesia styled as the Republic of Zambia. Accordingly Zambia, just like its forerunner jurisdiction called Northern Rhodesia, was established as a hybrid nation held together by treaty. The unilateral termination of the Barotseland Agreement by the government of Zambia, therefore, set into motion the disintegration of the unitary state that was created by the independence instruments. Any partnership constituted by a legal agreement cannot continue to subsist if one party unilaterally abrogates the partnership agreement. On this account, it can never be a treasonable offence to talk about the separation of Barotseland from Zambia.

Politicization of State Security Agencies.

The current spate of arrests has occurred at the instigation of President Sata, usually in total disregard of professional opinion of state apparatus and common logic. In this respect we can point to the President’s laughable claims of the existence of a 9,000 strong Barotse army composed of retired soldiers and

policemen in the Lukulu District which he made at the graduation ceremony of army officers in Lusaka on 30 November 2012, as a pretext for the deployment of a large contingent of Zambia army personnel and military aircraft into Barotseland in the hope of intimidating Barotse Activists into submission. That action was followed by secret arrests of a number of people whose prosecution has progressed under total media blackout, with most of them being acquitted by the courts of law and no conviction secured to date. Later, the President in a public outburst made at Limulunga attempted to incite the then Police Command for Western Province to arrest the immediate past Ngambela of Barotseland, Clement Wainyae Sinyinda and several other people for being a danger to the Litunga as well as agitating for the separation of Barotseland from Zambia. However, that ill conceived Presidential directive was not immediately effected by the professional command but was achieved after changes to the command and excessive pressure from the political establishment.

Fishing for Evidence

The 84 people arrested on treason charges have been in custody for more than two months and have appeared for mention in the subordinate courts six times, awaiting committal to the High Court, but instructions from the Director of Public Prosecutions (DPP) in this respect are not forthcoming. What has occurred so far is the discharge of 31 of these people on *nolle prosequi* because the DPP is unable to find sufficient grounds to proceed with their prosecution. This scenario arises from the fact that their arrests were politically engineered and not based on professional investigations and recommendations. Clearly, the state was too quick to arrest these people and now when they are in custody the DPP is unwilling and unable to make a decision on the remaining 53. As already pointed out, the list of people who have been arrested and charged with treason on the matter of Barotseland since independence extends to several A4 pages, but not a single one has ever been successfully prosecuted, let alone convicted.

What is most distressing in this irresponsible government action against citizens is its blanket application to include people who should have been spared the ordeal, knowing that it is an issue of brinkmanship rather than one driven by proven acts

of lawlessness by the targeted individuals. Among the victims of this diabolical action are the aged, defenceless juveniles and women as well as a severely disabled person who has to be lifted and carried around by police both in court and prison. Surprisingly, this disabled person was arrested and charged for matching along the streets in celebration of Barotseland independence. There is one other individual who clearly is mentally ill and is unlikely to understand the charges, let alone stand trial and follow the proceedings. The juveniles have been appearing in court without their guardians and in open court. The youngest of these is fourteen and their education has been terribly disrupted.

The State is well aware that most of the accused are represented but on the 1st November 2013 when they appeared Counsel was not told in which courts they were appearing and the cases were simultaneously called in different courts thereby denying the accused persons legal representation in this very serious charge. How can they be given a fair trial when they are brought before courts without even their lawyers being advised as to which courts they are appearing in. It is clear that the State does not care for the Rights of the individuals charged to a fair trial.

It is highly shameful that a well established state administrative structure can sink so low as to use its most disadvantaged citizens as fodder for its war machinery in unwinnable contest against a well grounded cause.

History, Ideals and Concepts cannot be Gunned Down.

The Barotseland Agreement 1964 stands as the core of the foundation stone for the Unitary State of Zambia. Recorded history is clear on this account and no amount of political juggling, hypocrisy and misinterpretation of the true origins of the national slogan of '*one-Zambia, one-Nation*' will erase this fact even though the issues may temporally be clouded.

The approach by the government of President Michael Sata to turn Barotseland into a military zone and have the people therein used for target practice by trigger-happy police and military personnel is of no use in as far as the issue of Barotseland autonomy goes. To this end President Sata is advised to immediately

withdraw his forces from Barotseland, cease arbitrary arrests of defenceless citizens and engage in Statesman-like dialogue with the people of Barotseland who are prosecuting their legitimate cause by peaceful means.

We further demand that President Sata should immediately release and publish the Roger Chongwe Commission Report on Barotseland, a Commission he himself set up.

Trial of Treason Accused.

It is hoped that the current acts of delinquency by government to detain people on treason charges will not proceed to trial. However, should this be the case the defence team has been instructed to call the following personalities as defence witnesses:-

- i) His Excellency Mr. Michael Chilufya Sata, will be Defence Witness No. 1 (DW1) – to shed light on his membership of the Linyungandambo organization which he conferred on himself at Mongu's Blue Gums grounds during his campaign for Republican Presidency where he undertook to honour the Barotseland Agreement 1964. At the same campaign rally he acknowledged the agreement as a legal and binding document as was quoted by various media houses. The defence team shall seek to find out how the objectives of Linyungandambo have changed between that time and now and when the President resigned his membership of the organization.
- ii) The Barotse Royal Establishment (DW2) – to shed light on the happenings during the period preceding the convening of the Barotse National Council of 26 March 2012. The defence team will particularly seek to know how the Privy Council of Barotse Chiefs, chaired by the Litunga on 25 March 2012 handled the vetting of the

agenda and submissions to the Barotse National Council, what specific directions were given to the Ngambela and how the subsequent resolutions of the National Council were handled. The defence team will seek to establish whether the Barotse National Council was a project of Barotse Royal Establishment or a personal agenda by Mr. Clement Wainyae Sinyinda, and who the Barotse District Chiefs attending the National Council were representing.

- iii) Hon Inonge Wina, MP (DW3) - to shed light on the Blue Gums meeting where President Sata made his promises on Barotse autonomy, a meeting on which she presided. She will also be asked to explain why she is missing in action to protect the 84 people arrested for treason when she was hyper active when the Rupiah Banda administration arrested people on the same charges in 2011, to the extent of making false claims of monetary help to detainees and their families.
- iv) Hon. Nathaniel Mubukwanu, MP(DW4)- to explain why he is missing in action in helping to alleviate the suffering of the 84 detainees, most of whom are from his constituency, when he was a leading figure in sympathizing and giving material help in respect of the 2011 arrests.
- V) Dr. Roger Chongwe, SC (DW5) - The Chairman of the Commission of Inquiry set up by President Sata to look into the issue of Barotseland, who will explain the findings of the Commission and its recommendations.

Other witnesses will include His Honour the Vice President Dr. Guy Scott, MP and the Minister of Defence, Honourable Geoffrey B. Mwamba, MP who will explain why they signed a circular letter condemning former President Rupiah Bwezani Banda for arresting and prosecuting some Barotse activists following the 14 January 2011 disturbances in Mongu.

The closing defence witness will be the First Republican President, **Dr. Kenneth David Kaunda**, who will explain his role in negotiating for the Barotseland Agreement 1964 and why he signed it. He will also interpret the consequences of its termination by his government in 1969. The defence team will further inquire into the letters that President Kaunda wrote to the Ngambela and the Litunga in 1991 wherein he undertook to set into motion the implementation of the agreement upon his return to office after the elections of that year.

Persecution of Detainees

We wish to warn President Michael Sata to desist from treating the people of Barotseland as children of a lesser god by denying them basic protection offered by the constitution amidst the crisis created by his own administration over the matter of the Barotseland Agreement. In this respect, the President should exercise maximum restraint in refraining from abuse of state apparatus set up for the protection of citizens and allow professional determination of all issues surrounding the matter.

We particularly wish to sound a timely warning to one Police Senior Superintendent **Leon Mweemba Ngulube, Service No. 1803** who has assigned himself the role of torturer of the detainees ever since their arrest. His actions of physical molestation of the detainees, both in prison and court grounds, are on record and he should be aware that he is a sure candidate for prosecution for violation of human rights, even at the Hague. Let him know that the time of reckoning is surely coming when none of his current superiors will be able to do anything to save him from the consequences of his criminal conduct. He should also not forget that the society within which he resides includes people who hold those he is molesting dear.

The Prosecution and Prison authorities should pay attention to the fact that relocation of detainees from the areas of arrest where they are naturally

domiciled denies them basic services to which they are entitled. A notable feature of this fact is that they are short of body clothing material as most of them are stuck with attire that they were wearing at the time of arrest, as a result of the long distance of their point of detention from their homes. Meanwhile, those who were recently discharged by the court via nolle prosequi had no means of returning to their districts but they were just thrown onto the streets of Lusaka. To this end, we wish to record heartfelt gratitude to Honourable Charles Milupi, President of the Alliance for Democracy and Development (ADD), who happened to be in attendance in court at the time of their release and hired a bus as well as providing other necessities for them.

CONCLUSION

The actions of government highlighted in the foregoing paragraphs point to gross abuse of human rights and are aimed at breaking the spirit of the Barotse people in order to prevent them from pursuing their legitimate claim. As a matter of fact the government, in a desperate attempt to shut off moral and spiritual support for the detainees from society, has denied some people visitation access to the detainees. Notable among these are the Members of Parliament from Barotse constituencies, being areas of the detainees' arrest, who have been blocked from visiting Mwembeshi prison. A delegation of the United Party for National Development (UPND), led by its President Hakainde Hichilema, was also blocked from seeing the detainees on 22nd October 2013.

We are particularly disturbed by the loud silence from civil society and the church mother bodies who are usually vocal in checking government excesses in matters such as this one. We urge them to come on board and help alleviate human suffering arising out of government's careless handling of this important national issue.

Finally, it is important to point out that though the current arrests and prosecution of people over this matter may be an unnecessary venture by government, it nonetheless brings with it immense financial pressure on the detainees and their families to meet costs of legal representation and material support. To this end an appeal is made to the general public, business houses and non governmental bodies charged with promotion of human rights to help

mobilize financial support to ensure that those who are suffering abuses by the state over this matter find justice.

Gen Malimba N. Masheke (Rtd)

Charles L. Milupi

Muliokela Wamunyima

Hon. Mulumemui Imenda, MP

Joseph Mulyata

Samuel Mulozi

Henry Mwalye

Mutungulu Wanga

Margan Muunda
David Kasumba

Mulwendwe Kajulo Muzungu

George Mpombo

BERNARD CHANGALA

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ANTONIO, Carlos MP



BANDA, Isaac MP

BANDA, Nicholas MP

BANDA, Whiteson MP



BELEMU, Ephraim MP

CHIKUSU, Dr Patrick MP

CHINGIMBU, Danny MP

CHIPUNGU, Kenneth MP

CHISANGA, Sydney MP



CHITUWO, Brig-General Dr Brian MP

CHUNGU, Mrs Annie M. MP



HABEENZU, Munji MP



HAMUDUDU, Highvie H. MP



HAMUDULU, Kennedy MP



HAMUSONDE, Boyd MP

KAINGU, Liwanga Michael MP

KALILA, Dr Christopher MP



KALIMA, Ms Victoria MP

KATAMBO, Michael MP

KATUKA, Stephen MP



KONGA, Kenneth MP

KUNDA, Howard MP



LIVUNE, Derick MP



LUBEZHI, Moono MP

LUFUMA, Ambrose MP

LUNGWANGWA, Professor Geoffrey MP

MALAMA, Mushili MP



MAZOKA, Mrs Christine MP




MBEWE, Allan MP

MBULAKULIMA, Mwansa MP

MILAMBO, Austin MP



MIYANDA, Clive MP



MIYUTU, Chinga MP

MONDE, Greyford MP

MOOYA, Vitalis MP

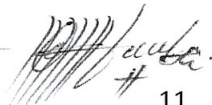
MUCHIMA, Elijah MP



MUFALALI, Likando MP



MULOMBA, Oliver Chinyama MP



MULUSA, Lucky MP

MUNTANGA, Request MP

MUSOKOTWANE, Dr Situmbeko MP

MUTATI, Felix MP

MUTETEKA, Moses MP

MUTELO, Misheck MP

MWALE, Vincent MP

MWANZA, Humphrey I. MP

MWEETWA, Cornelius MP

MWIIMBU, Jacob Jack MP

NAMUGALA, Ms Catherine MP

NDALAMEI, Mundia MP

NGOMA, Levy Joseph MP

NKOMBO, Gary MP

NTUNDU, Brian M. M. MP

PANDE, Kabinga J. MP

PHIRI, Mtolo MP

SAYIFWANDA, Mrs Sarah MP

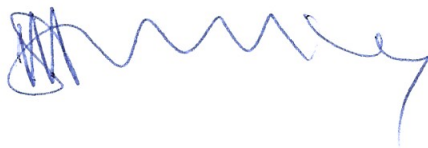
SHIKAPWASHA, Lt-Gen. Ronald MP

SIANGA, Siyauya MP



SIMBAO, Kapembwa N. MP

SIMFUKWE, Mwalimu MP



SING'OMBE, Edgar M. MP