

**Barotse National Freedom Alliance
(BNFA)**

Position Statement

To

His Excellency Mr. Edgar C. Lungu
President of the Republic of Zambia

On the Matter of Actualization
Of

Barotseland Statehood

April 22, 2015

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1. Introduction

Your Excellency, we take this opportunity to communicate with you pursuant to our letter of 26th January 2015 and developments in its aftermath. In this respect, we refer specifically to follow up contacts Your Excellency made with our Chairman General through a delegated emissary on 27th January 2015 and your telephone call to the Chairman General on 28th January 2015. In these initial contacts Your Excellency had indicated desire to establish meaningful dialogue with the political groups seized with the Barotseland question promising that your administration shall be different from your predecessors by pursuing open engagement towards final resolution of the issue of Barotseland based on the expressed will of the people. You further undertook to kick-start this process on your return from Addis Ababa after attending the Summit of Heads of State of the African Union.

Contrary to the foregoing, the statement Your Excellency made in Addis Ababa challenging us to pinpoint the boundaries of Barotseland, state whether all tribes in Barotseland, particularly the Nkoya, are supportive of an independent state of Barotseland and alluding to a possible referendum on the basis of Scotland signalled that your covert overtures prior to departure for the summit were not genuine. Further, the second message delivered by your emissary after Your Excellency's return from Addis Ababa indicating your inability to start dialogue on account of the fact that all the people of Barotseland are unanimous on the call for independence, as opposed to a situation where others should be calling for the restoration of the Barotseland Agreement 1964, spoke volumes of the fact that your earlier overtures were not sincere. Accordingly, the long silence since your return from Addis Ababa does not surprise us. Nonetheless, your public statement in the Ethiopian capital cannot go unchallenged and this has prompted this submission to Your Excellency and, through you, to the public at large. As pointed out in our letter of 26th January 2015 we have a rich background on the evolution of Barotse autonomy within the framework of the Republic of Zambia and our quest to reverse the injustice that the government has caused the people of Barotseland by mutilating their status as a self governing territory is not without foundation.

It is needless to belabour the fact that the genesis of the unitary state of Zambia lies in the formative stages of its forerunner jurisdiction, the Northern Rhodesia Protectorate, which was an amalgamation of two distinct territories. These territories are the Barotseland-North-Western Rhodesia and the North-Eastern Rhodesia, the former having been built around the treaty of alliance between King Lewanika of Barotseland and the British Monarch signed in 1900. Meanwhile, the amalgamation of these territories for administrative convenience only were preceded by negotiations between the British government and King Lewanika leading to a memorandum of 24 November 1910 in which Barotseland's status within the joint jurisdiction of Northern Rhodesia was spelt out.

2. Entrenchment of Barotse Autonomy in Northern Rhodesia

The statute that created Northern Rhodesia, the *Northern Rhodesia Order-in-Council of 17 August 1911*, clearly spelt out the limitations of the Northern Rhodesia government in respect of Barotseland as is reflected at section 40 of the said statute. As the governance of Northern Rhodesia evolved over the years, leading to the creation of an elective Legislative Assembly, so did Barotseland develop its own legislative body to exercise authority in those spheres of governance that were reserved for the Litunga and his people by the Lewanika treaty and concessions. To this effect Barotseland established the Barotse National Council, also known as the *Katengo Council*, in 1945. In 1953 Barotseland was declared a Protectorate, within the Protectorate of Northern Rhodesia. A perusal of the *Northern Rhodesia Constitution of 1962*, as indicated at Articles 56, 57 and 80, defines the limited power of the Northern Rhodesia Legislative Council in respect of Barotseland. This status of Barotseland, as a self-governing territory of Northern Rhodesia, prevailed until independence in 1964.

3. Establishment of the Republic of Zambia as a Unitary State

In conformity with the doctrine of Privy of Contract, the treaty and all concessions between the Litunga and Her Majesty the Queen of the United Kingdom were due for termination at independence, on account of the fact that the latter's jurisdiction over Northern Rhodesia was ceasing. This situation was to render the amalgamation of the territories comprised in Northern Rhodesia invalid, as well as disengage the Protectorate of Barotseland from the jurisdiction of the successor authority to Her Majesty's government in Northern Rhodesia. To save Northern Rhodesia from disintegration the Barotseland Agreement 1964 was signed by the transitional government of Northern Rhodesia then led by Kenneth David Kaunda as Prime Minister, and the Litunga of Barotseland, Sir Mwanawina III. The intent of that Agreement was to preserve Northern Rhodesia as a unitary jurisdiction as it converted into the Republic of Zambia, as well as retain Barotseland's status as an autonomous territory therein. The power sharing arrangements and the limitations of the Zambian government in respect of exercise of power in Barotseland, were spelt out in that Agreement. The constitutive statutes of the Republic of Zambia, namely the *Zambia Independence Act 1964* and the *Zambia Independence Order 1964*, acknowledged and set out to preserve the provisions of the Barotseland Agreement at Sections 1 and 8 for the former and Section 20 for the latter.

As a way of validating the narration in the foregoing sections, we provide herewith extract copies of the following documents for ease of reference:

- i. [The Lewanika Concession of 1900](#)
- ii. [The Barotseland-Northwestern Rhodesia Order-in-Council 1899](#)
- iii. [The Amalgamation Memorandum of 1910](#)

- iv. [The Northern Rhodesia Order-in-Council 1911](#)
- v. [The Northern Rhodesia \(Barotseland\) Order-in-Council 1953 and 1963](#)
- vi. [The Northern Rhodesia Constitution 1962](#)
- vii. [The Barotseland Agreement 1964](#)
- viii. [The Zambia Independence Act 1964](#)
- ix. [The Zambia Independence Order 1964](#)

The authoritative position of the Barotseland Agreement 1964, as clearly demonstrated by the foregoing, is that it was the foundation of the unitary state of Zambia and the only bedrock upon which rested the jurisdiction of the Zambian Government over selected affairs pertaining to Barotseland. Its unilateral termination by the Zambian government, therefore, not only reinstates the precarious situation that Northern Rhodesia found itself at the threshold of its independence but, more importantly, frees Barotseland from Zambia and its governance and administrative structures.

4. Acceptance of the unilateral abrogation of the Barotseland Agreement 1964

It is a matter of public record that the people of Barotseland have, since the treacherous action by the government of Zambia in mutilating the Barotseland Agreement 1964 through unorthodox amendments of the Constitution of Zambia in 1969, striven over the years to have that action reversed so as to restore legitimacy to the status of Zambia as a unitary state, as well as recover their rights of autonomy. These overtures have, at best been met with ridicule from the Zambia government and, at worst led to repressive actions against the proponents of Barotseland autonomy. To this end a perusal of the reports of all the **Commissions of Inquiry** set up by government at various stages to solicit for views of the public during amendments to and reviewing of the Constitution of Zambia, prove that the people of Barotseland have put up spirited submissions in favour of reinstatement of the Barotseland Agreement 1964 in the Constitution of Zambia. In between the Commissions of Inquiry political action by various segments of Barotse society to build up pressure for the respect of Barotseland's rights have been met with brute, naked force by the Zambian government.

It was against that background that the peoples of Barotseland, through the March 2012 Barotse National Council (BNC), resolved to accept the repudiation of the Barotseland Agreement 1964 and, thereby, set in motion the process of separating the territories of Barotseland and the rest of Zambia.

5. Prevailing Status of Barotseland

By unilaterally abrogating the Barotseland Agreement 1964, the government of Zambia surrendered whatever responsibilities and legal status it may have acquired over the territory of Barotseland, while the acceptance thereof by Barotseland put in motion the process of separating the territory of Barotseland from the rest of Zambia. Thus, presently, the government of Zambia has no legal claim on Barotseland. In this regard, we advise Your Excellency to constitute a working party to work with us the modalities of disengaging Zambia from Barotseland in the shortest possible period.

6. Boundaries of Barotseland

The territory of Barotseland shall comprise all the areas that immediately before mid-night 23rd October 1964 were comprised in the former Barotseland Protectorate as defined by ***the Northern Rhodesia (Barotseland) Order-in-Council of 1953 and 1963*** and the ***Lewanika Concession of 1909*** relating to the area covered by the Kafue National Park up to the Kafue river, together with other areas as may from time to time be declared as such, subject to inhabitants' consent.

The boundaries of Barotseland have two settings, the first being Barotseland without the areas covered by the ***Lewanika Concessions*** and the other is of Barotseland as existed before the said Concessions.

Barotseland with concessions, comprised in the former Barotseland Protectorate, is free to proceed to full statehood because it arose out of the reserved territory (the Barotse Reserve) which was precluded from rulership of the colonial authority by King Lewanika's concessions. This is why it later acquired the status of protectorate within the protectorate of Northern Rhodesia to emphasize its self-governing status. As alluded to above this status was maintained by the Barotseland Agreement 1964, the only link between this territory and the Zambian government, and its termination freed the former to become a separate state with fully fledged government structures.

The Barotseland existing prior to concessions takes care of the provisions of the 1900 and 1909 concessions as well as the Balovale excision of 1941. The ***Lewanika Concession of 1900*** placed the Butoka territory to the south and north-east of Sesheke district into the hands of the colonial administration of Northern Rhodesia while the ***1909 Concession*** did the same to the areas north and east of the Barotse Reserve. By virtue of the Barotseland Agreement 1964, the Zambian government inherited these concessions and, by virtue of unilateral termination of that Agreement, the same government disinherited itself of the said concessions and the subject areas.

The areas under concessions remain the property of the Litunga and their fate is to be determined by the Barotse government, upon formal constitution of Barotseland as an independent state. There are different options in which these areas may be claimed as dictated by their current geopolitical status. The Butoka area comprises the present districts of Kazungula, Livingstone, Kalomo, Itezhi-tezhi and Namwala. These are populated areas and it goes without saying that the inhabitants thereof

have a say on what happens to the territory. Therefore, Barotseland's reclaim of these areas can only be sustained if the concerned people choose to go that way through a referendum restricted to them only. These are areas that are covered by the 1900 concession.

The 1909 concession is in regard to the Kafue National Park as lying west of the Kafue River. Here there are no people to consult over its return to Barotseland, save for a few poachers who have no right to be in the area. Therefore, this area's return to Barotseland is immediate and straight forward. There can be no valid counter claim by anyone.

Meanwhile, the matter relating to the areas comprised in the Copperbelt, Central and Lusaka Provinces needs to be understood within the context of which they became part and parcel of the territory of the former Barotseland-Northwestern Rhodesia. These areas were transferred to the Suzerainty of King Lewanika by the British government for administrative convenience, after determining that the arrangement was better than placing them under North-Eastern Rhodesia or, in the alternative, creating a third jurisdiction called 'North-Central Rhodesia'. The linkage of these areas with Barotseland is, therefore, via the agreements that the British government signed with King Lewanika, which agreements were succeeded by the Barotseland Agreement 1964.

As affirmation to the foregoing position on areas under concession we attach the following documents, to be read with those listed under section 3 above;

- i. [The Lewanika Concession of 1909](#)
- ii. [The Balovale Excision agreement of 1941](#)
- iii. [1920 Map of Northern Rhodesia extracted from the *Minerals of Northern Rhodesia* by Maxwell Stamp and Associates \(page 408\)](#)

7. Nkoya people

As may be seen from the definition of the former Barotseland Protectorate the Nkoya people in what is the former Mankoya district, now called Kaoma District, are within the boundary of the Barotseland with concessions, because that part of the territory has never been put on concession to anyone. The history of Nkoya migration into Barotseland is well documented since their arrival as refugees in flight from the Humbu war and Musokantanda raids during the reign of King Mwananyanda Liwale in the late 1790s.

The Nkoyas are not a special people in Barotseland save for the fact that they are among the minority tribes that constitute the Barotse nation. According to the 2010 Census of Population Statistics of the Republic of Zambia, the Nkoyas constitute a paltry 14% of the total population in Kaoma; (with present Luampa and Nkeyema districts) and 4.7% of the entire population of Barotseland. We do not accept that the Nkoya speaking people should receive special treatment to reign dominant against 95.3% of the more than 30 linguistic and tribal groups united into the nation of Barotseland.

In January 1994, His Majesty the late Litunga Ilute Yeta had said the following to the late President FTJ Chiluba:- “...*Barotseland is a kingdom even as of now.....and in a kingdom you cannot find a chief who is independent of the King, because such a situation is untenable*”. This was in reference to the Nkoyas of Mwene Mutondo and Mwene Kahare whom the government had protected from disciplinary action against them for gross insubordination. The Nkoya people of Kaoma district are an integral part of the Barotse nation and, therefore, they belong to the larger Barotse family under the undisputed rulership of His Majesty the Litunga. Like any other group, the Nkoya are free to settle in the Kingdom of Barotseland as they have been welcomed before or relocate elsewhere outside Barotseland if they so wish.

Meanwhile, we are alive to the fact that it has been the policy of the government of Zambia to frustrate the Litunga’s disciplinary action against erring Nkoya and Mbunda chiefs as a way of perpetuating its unholy policy of political divide and rule tactics in Barotseland. Therefore, it does not come as a surprise that you have brought up this issue.

We conclude by asseverating vehemently, that the Nkoya speaking people do not merit a special agenda in any discussions related to the extrication of Barotseland from the illegal Zambian rule.

8. Call for a Referendum along the Scotland Lines

Drawing a parallel between Scotland and Barotseland, without considering the status of the respective union treaties forming up the United Kingdom and Zambia, is erroneous.

Her Majesty’s Government of the United Kingdom has, at all times, respected the terms of the 1707 Treaty of Union and all laws and statutes in either kingdom are not contrary to or inconsistent with the terms of these articles of the treaty (Article XXV), thereby providing the UK government jurisdiction over Scotland and a legal mandate to conduct the Referendum. The Zambian government on the other hand unilaterally abrogated the Barotseland Agreement 1964 and violated all its terms, despite a similar clause (8), which stated, “***The government of the Republic of Zambia shall take such steps as may be necessary to ensure that the laws for the time being in force in the Republic are not inconsistent with the provisions of this Agreement.***”. Therefore, the Zambian government has stripped itself of the legal mandate to administer Barotseland and its associated territories. Consequently, the President of Zambia has no stake in Barotseland to talk about or conduct a referendum therein. It is only the people of Barotseland themselves who can determine to hold a referendum as a way of conforming with modern global tenets for establishing sovereignty, and the referendum question in this respect cannot be on independence but should revolve on the constitutional arrangements to be adopted by the new state. Therefore, it is the Transitional Administration of Barotseland that shall determine and administer a Referendum if it must be held.

9. Default offer of Independence to Barotseland by the Government of Zambia

The decision to separate Barotseland from Zambia was in actual fact done by the Zambian government through, firstly, the enactment of the ***Local Government Act No. 69 of 1965***. This was done with impunity in violation of the Barotseland Agreement 1964 (special reference to Clause 4(2), 4(3)(f) and 8), the Zambia Independence Act 1964 (special reference to Section 8) and the Zambia Independence Order 1964 (special reference to Section 20). When a party to an Agreement violates the terms therein, it frees the other from the obligations of the said Agreement. This position is affirmed by Articles 60 and 70 of the ***Vienna Convention on the Law of Treaties***, to which Zambia is a signatory. In this respect, the unitary state of Zambia was in effect stillborn. Secondly and more importantly, the Zambian government chose to terminate whatever responsibilities and legal status it may have acquired over the territory of Barotseland through the enactment of the Constitution of Zambia (Amendment No.5) Act 33 of 1969, an action taken without the consent of Barotseland the other party to the Agreement that was terminated by that constitutional amendment.

In view of the foregoing, the Zambian government has no mandate to engage the people of Barotseland in any manner other than that of working out the disengagement process.

10. International Arbitration

The action taken by the Ngambela to lay the issue of the questionable mandate of the government of Zambia over Barotseland before the African Commission on Human and Peoples Rights (ACHPR) in November 2012 is not only in line with the sovereign rights of the people as established by the Barotse National Council held on 27th March 2012, but conforms to established norms for resolving such issues as provided by various international conventions including the Charter of the African Union and its Subordinate Organs. On the other hand, the duplicity displayed by the government of the Republic of Zambia in reaction, ranging from denying the existence of this petition when the opposition bench in Parliament raised the issue to pretending not to have received communication on the matter from the ACHPR also conforms to the Zambian government's established stance of dishonesty and hypocrisy ever since the signing of the Barotseland Agreement 1964.

We need to state that if the issue of Barotseland is too complicated for Zambian politicians to handle, the sensible option is to allow impartial international bodies to deal with the matter. This way, no particular individual shall feel accountable for the eventual demise of the failed unitary Zambian state because history shall have taken its full course as determined by logic and legality. To this end, we welcome the action taken by the government to request for more time to respond to the Barotseland petition before the ACHPR and hope Your Excellency's administration shall depart from the ineptitude of the previous one in taking full advantage of the two months extension granted by the Commission, which expires on 5th May 2015 to submit

counter evidence and facilitate speedy resolution of the matters lying before the Commission. We, on our part, pledge to do our level best in facilitating pacific settlement of the matter of actualization of Barotseland statehood.

11. Endorsement

We, the undersigned present the foregoing matters for Your Excellency's urgent consideration and action


CLEMENT WAINYAE SINYINDA)
CHAIRMAN-GENERAL)



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DEPUTY CHAIRMAN-GENERAL)
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MUNGANDI MUNGANDI)
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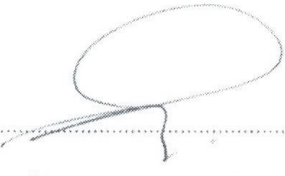


KANYAMBI MUKONDA)
DEPUTY TREASURER)



MUYAWA LIUWA
COMMITTEE MEMBER

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GILBERT NALUMINO
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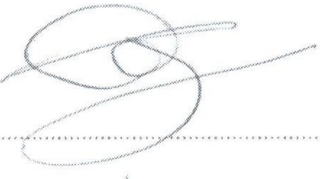
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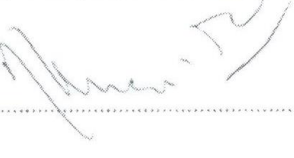
MWANGALA BATUNDA
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