

PRESIDENT EDGAR CHAGWA LUNGU'S NEW FOUND LOVE WITH THE BAROTSELAND AGREEMENT 1964

by the BNFA Executive Committee

In the preceding fortnight, the President of Zambia, Mr. Edgar Chagwa Lungu, has taken time to pay attention to the issue that he has done everything to ignore during his short term engagement as Republican President after the demise of President Michael Chilufya Sata whose term of office he was elected to complete. It is not the intention of this statement to delve into the real reasons for President Lungu's sudden high profile utterances on this matter even though the timing of his action in this respect is so inopportune as to render any genuine intentions on his part suspect. The objective of this statement is to add value to the debate ignited by the President through his action not only to call for publication of the text of the [Barotseland Agreement 1964](#) in the public news media, but counter his obvious efforts to misinterpret the original intentions of the Agreement and its current legal status as a binding treaty. His misleading stance that the [Agreement](#) is a private matter between himself as successor to the Presidency and His Majesty Lubosi Imwiko II as successor to the Litungaship also deserve special attention. The main elements of the President's crusade in this respect are hereunder subjected to analysis.

1. [BAROTSELAND AGREEMENT 1964](#) IS THE FOUNDATION UPON WHICH THE UNITARY STATE OF ZAMBIA WAS CREATED

These are the words uttered by President Lungu at his State House press conference and he is correct in his assessment of the role that the [Barotseland Agreement 1964](#) played in creating the Republic of Zambia out of the then British Protectorate of Northern Rhodesia. What President Lungu has neglected to disclose is that even Northern Rhodesia was a unitary arrangement of two territories, namely: Barotseland/North-western Rhodesia and North-Eastern Rhodesia that were originally established as separate administrative jurisdictions in 1899 and 1900, respectively. It is on record that the British Crown's influence and authority in Barotseland/North-Western Rhodesia arose out of the Concessions that King Lewanika signed with the British South African (Charter) Company in 1890 and 1900. On the other hand the acquisition of the territory of North-Eastern Rhodesia by the Crown was by means of sufferance and usage, implying that the Imperial power occupied the said territory by default having found no authoritative ruler of the area. Consequently, when it became necessary and convenient for the British to establish a common administration unit for two territories King Lewanika and his Council were engaged over the proposed merger leading to the Amalgamation Memo of 23 November 1910 that paved the way for the creation of an enjoined jurisdiction for the two territories within which Barotseland was to be governed as an autonomous region with reserved power on land, natural resources and native government. On this basis, the Northern Rhodesia Order-in-Council 1911 was promulgated on 17 August 1911 to establish Northern Rhodesia by merger of the two territories and setting out the governance structures and their powers. Section 40 of the Order established the limitations of the British administration in respect of Barotseland and affirmed that the terms and conditions set out in the Lewanika Concession of 1900 would continue to have full force and effect as Northern Rhodesia subsisted.

It follows, from the foregoing, that the Lewanika Concession was the basis upon which the government of Northern Rhodesia exercised its limited authority in Barotseland throughout the colonial period and

right up to the time of 'self-government' in January 1964 when Dr. Kenneth Kaunda became Prime Minister of Her Majesty's Government of Northern Rhodesia charged with the responsibility of steering the territory to independence. It should be emphasized at this point that all constitutional changes in respect of Northern Rhodesia had taken on board the special status of Barotseland. The major constitutional changes in this respect occurred in 1924 when Company Rule gave way to direct Crown Rule and in 1953 when the Federation of Rhodesia and Nyasaland encompassing Southern Rhodesia (Zimbabwe), Northern Rhodesia (Zambia) and Nyasaland (Malawi) was created. With the establishment of the Federation Barotseland was formerly declared a Protectorate within the Protectorate of Northern Rhodesia to set way for evolution of formal government structures comprised in a legislative council alongside the Litungaship.

Meanwhile, the dawn of independence in 1964 implied that the Lewanika Concession and other subsequent agreements between the Litunga and the British Crown would terminate on account of the latter's cessation of power and authority over Northern Rhodesia and its autonomous region of Barotseland. The consequence of this development was that Northern Rhodesia could not proceed to independence as a unified entity and its constituent territories would separate into two independent states. This was the dilemma that faced Prime Minister Dr. Kenneth Kaunda and his transition government of Northern Rhodesia. The alternative to separation was to sign a successor agreement upon which an independent Northern Rhodesia, styled as the Republic of Zambia, would hold together as one country. While the Nationalists in Northern Rhodesia and the British Government were desirous for Northern Rhodesia to proceed to independence as one jurisdiction the Litunga and the traditionalists in Barotseland were apprehensive that the new establishment in independent Northern Rhodesia will not be accommodative to Barotseland autonomy.

The matter was determined by way of elections to the legislative council of Barotseland which comprised twenty-five elective seats and twenty seats held by the Litunga's nominees, whereupon the pro-integration United National Independence Party (UNIP) won all the elective seats in a contest with the pro-separation Sicaba party and Harry Mwaanga Nkumbula's African National Congress (ANC), the latter also having been pro-integration. Nonetheless, when the Council convened to determine the way forward for Barotseland UNIP failed to secure a favourable motion for a non autonomous Barotseland in independent Northern Rhodesia as all its twenty-five Councilors joined their nominated counter parts in supporting autonomy through a new unity treaty to succeed the outgoing colonial concessions and agreements. Accordingly, negotiations ensued leading to the drafting and signing of the [Barotseland Agreement 1964](#) to pave way for the granting of independence to Northern Rhodesia as a unified entity in the name of the Republic of Zambia.

The fact that the [Barotseland Agreement 1964](#) was the sine quo non for the unitary State of Zambia, as signified by the 'One Zambia – One Nation' motto, is spelt out by the [Agreement](#) at paragraph 3 of its preamble wherein it is provided thus,

“And whereas it is the wish of the Government of Northern Rhodesia and of the Litunga of Barotseland, his Council, chiefs and the people of Barotseland that Northern Rhodesia should proceed to independence as one country and that all its people should be one nation”

At this point we need to highlight the fact that it was not the Litunga Sir Mwanawina III who made the decision to sign a new agreement to continue unification within Northern Rhodesia as it converted into the Republic of Zambia, but that this decision was made by the people of Barotseland through their

elected Legislative Council. The Litunga signed the [Barotseland Agreement 1964](#) as an expression of his people's will and did so in a representative capacity. To secure the people's acceptance of a unified Northern Rhodesia after independence the political establishment in Northern Rhodesia engaged the people of Barotseland in an electoral process.

On account of and pursuant to the signing of the [Barotseland Agreement 1964](#) on 18th May 1964 the British Parliament passed the Zambia Independence Act on 8th July 1964 to provide for the coming into being of the Republic of Zambia on 24th October 1964. Section 1 of that Act provided for the establishment of Zambia as an independent Republic by saying thus,

“On 24 October 1964 (in this Act referred to as the appointed day) the territories that immediately before the appointed day are comprised in Northern Rhodesia shall cease to be a protectorate and shall, together, become an independent republic under the name Zambia; and on and after that day Her Majesty shall have no jurisdiction over those territories”

The territories comprised in Northern Rhodesia are the ones that merged to form it in 1911, that is to say, Barotseland/North-Western Rhodesia and North-Eastern Rhodesia. Having been merged on account of the Lewanika Concession they were due for separation on cessation of that treaty because Her Majesty Queen Elizabeth II, successor to the Concession on the part of the British Crown, was to cease to have authority within Northern Rhodesia as comprised in its two constituent territories. However, on account of the [Barotseland Agreement 1964](#) which took the place of the Lewanika Concession, Northern Rhodesia would hold together as a unified jurisdiction after independence. That the intent of the Agreement was partly to provide for governance of Barotseland within Zambia is spelt out by paragraph 4 of the preamble to the [Agreement](#). This is the genesis of the national motto ‘One-Zambia, One-Nation’, signifying unity of territorial jurisdictions and not 73 tribes as per deliberate misinformation preached since independence.

2. NO SECESSION CLAUSE IN THE [BAROTSELAND AGREEMENT 1964](#): SO ZAMBIA TO REMAIN A UNITARY STATE

President Lungu has chosen to play ignorant on how the law operates in respect to agreements. His ‘discovery’ that there is no provision for secession in the [Agreement](#) and his feigned jubilation in this revelation cannot fool even the average mind. Firstly, he needs to be reminded that the Government of Zambia terminated the [Agreement](#) and, therefore, its provisions and non-provisions are of no consequence following its annulment. Secondly, the [Agreement](#) did not have a termination clause either and yet the Government exercised the option to terminate it by passing the Constitution of Zambia (Amendment) [Act No. 33 of 1969](#) which declared that all its provisions were to lapse from the time the amendment took effect. This action was taken notwithstanding Clause 8 of the [Agreement](#) which precluded its annulment by legislation by providing thus,

“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 this agreement”

By terminating the [Agreement](#) the government acted against the foregoing specific provision within the [Agreement](#). By terminating the [Agreement](#) the government lost all protection and safeguards that the said agreement offered against the actions of Barotseland. It is, therefore, nonsensical for President Lungu to seek protection against secession within the defunct agreement.

Notwithstanding the foregoing, it is necessary to point out that secession or separation is implied by the termination of an agreement. Any contract that fails to operate on account of the conduct of one of the parties to it frees the other party from its obligations under the said contract. [Barotseland Agreement 1964](#) was a unity accord between Barotseland and the rest of Zambia and was to be honored by the Government of Zambia as an act of consummating the expressed desire for a unified state and the refusal by government to honor it, as expressed in its termination, amounts to rejection of that unity by the government. When a unity accord fails to function there can be no unity and, therefore, in this case secession or separation has been created by the Government of the Republic of Zambia.

Having explained how the right of secession accrues to the people of Barotseland even when there was no secession clause in the [Barotseland Agreement 1964](#), we call upon President Lungu to pin point the termination clause within the [Agreement](#) upon which Government relied when it terminated the said [Agreement](#) in 1969. Alternatively, President Lungu should explain why Government has a right to terminate the Agreement in the absence of a termination clause while the people of Barotseland are denied the right of secession on the basis that the terminated [Agreement](#) had no secession clause.

3. TAKING THE MATTER OF TERMINATION TO HIGH COURT OF ZAMBIA

It is acknowledged that Clause 9 of the [Agreement](#) provided for all contentious matters relating to its implementation to be taken to the High Court for interpretation. Obviously, it should be understood that this option was to be available while the [Agreement](#) was in force. The High Court cannot enforce an [Agreement](#) that is barred by the Constitution. Unless President Lungu is suggesting an academic exercise in approaching the Court to reinstate the Constitution-barred Agreement we will have to simply assume that he is waffling for want of sensible things to say on the issue. The suggestion is, therefore, both ludicrous and laughable.

4. SECESSIONISTS' EFFORTS HAVE FAILED TO YIELD RESULTS

Yet again President Lungu seeks to downplay the role that the so called Secession Movement has played in getting the issue of Barotseland to its current status. It is a matter of record that the Government of Zambia has for the past 50 years resisted and held in contempt the calls by Barotseland to reinstate the [Agreement](#), going to the extent of declaring the document seditious material. As matters stand today, it is government or, to be specific, President Lungu who is leading the crusade for the restoration of the [Agreement](#) as an alternative to separation. It does not require the mind of a rocket scientist to determine the source of this new found value in restoring the [Agreement](#), assuming the expressed desire to honor it is genuine. President Lungu is perfectly at liberty to seek restoration of the [Agreement](#) but as for his feigned belief that the issue of separation has ceased to have a solid cause and basis we can only wish him and his co-believers the best of luck.

5. BOUNDARIES OF BAROTSELAND

President Lungu may not have dwelt on this point in the recent past but he raised it in Addis Ababa while addressing Zambians living in Ethiopia during the 2015 African Union Heads of States Summit. We find it necessary to dwell briefly on the matter because it is important. The territory of Barotseland is in two segments arising from the terms of the Lewanika Concessions of 1900 and 1909 wherein part of Barotseland was leased to the British South African (Charter) Company while the remainder was

reserved from direct interference by the colonial administration. The reserve became the autonomous part of Northern Rhodesia and eventually transformed into the Barotseland Protectorate in 1953 and that territory is comprised in what is today defined as the Western Province of Zambia. The areas under concessions include the present day Kafue national park, west of the Kafue River, districts of: Kazungula, Livingstone, Kalomo, Namwala, Itezahitezi and Zambezi. These areas were held and administered by the colonial administration on account of the 1900 and 1909 Concessions and this facility passed over to the Zambian government via the successor Barotseland Agreement 1964. When Barotseland becomes an independent state the status of the areas under concessions automatically reverts to Barotseland and the future of the populated ones shall be determined in accordance with the wishes of the inhabitants thereof.

6. DIALOGUE AS PRELUDE TO RESTORATION OF THE BAROTSELAND AGREEMENT 1964

Without casting doubt on President Lungu's intentions we want to point out that he has had enough time to cause restoration of the [Agreement](#), let alone commence dialogue over it. However, it is necessary to point out that Government did not consult the Litunga and people of Barotseland when it terminated the [Agreement](#) in 1969 but simply tabled a constitution amendment Bill in Parliament, despite objections from Lealui and the Barotse. In similar fashion, President Lungu could have simply tabled a Restoration Bill in Parliament or, better still, taken advantage of the recently concluded Constitution amendment process to deal with the issue. The people he needed to negotiate with on this score were his Members of Parliament and a few others from the opposition to support the Bill. Now that Parliament is dissolved it goes without saying, notwithstanding the Presidential power to recall a dissolved Parliament, that his restoration process is not earmarked for any time soon even if he was to be re-elected this August. Therefore, it is difficult to find any noble or honest intentions in his machinations and maneuverings in this regard.

In view of the foregoing it is necessary for any self respecting institution or personage to check any tendency towards undue excitement over the President's less than binding promises, devoid of any time span, to deal conclusively with this matter. Gullibility is a trade mark of fools.