

For the attention of:
Mr. Michael Chilufya Sata
President of the Republic of Zambia
State House
Lusaka
Republic of Zambia

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Paris, 28 April 2014

**RE. : CHALLENGE TO SIGN A PERMANENT COURT OF ARBITRATION SUBMISSION
AGREEMENT, RESPONSE TO LETTER FROM ZAMBIAN MINISTRY OF JUSTICE DATED
8TH APRIL 2014**

Dear President Michael Chilufya Sata,

On behalf of our clients, the Barotse National Freedom Alliance and the people of Barotseland, we wish to thank you for your letter dated 8th April 2014, received from your Minister of Justice, Mr. Wynter Kabimba, which responds to our letter proposing the peaceful settlement of the Barotseland issue via a PCA arbitration to be held in The Hague.

As you are aware, hundreds of Barotseland representatives have already signed this arbitration agreement, and we await your signature so that this matter can be dealt with in accordance with the law.

In response to our letter, Mr. Kabimba states that Zambia is a unitary state under the current constitution, and he questions the identity of our clients:

We are unable to give a response to the issues raised in your letter in the absence of any particulars identifying your clients, whether or not these constitute natural persons or a corporate entity in view of Zambia being a unitary state under the current constitution.

With respect to the issue of Zambia being a unitary State, this is in fact one of the primary issues that we respectfully submit must be determined via the PCA arbitration process that our clients have proposed.

This PCA arbitration process would give Zambia the opportunity to set forth its legal basis for arguing that Barotseland forms a part of the unitary State of Zambia, and to argue its position that the municipal law of Zambia validly abrogated the Barotseland Agreement 1964. We wish to stress that the submission to arbitration would in no way pre-judge the issue of Barotseland's legal status, but would give Zambia the opportunity to be vindicated if its position were correct. The Permanent Court of Arbitration, established by the 1899 Convention for the Pacific Settlement of International Disputes, is governed by international law and exists to resolve disputes involving combinations of States, State entities, intergovernmental organizations, and private parties. It is a highly-appropriate forum to determine the legal status of Barotseland under public international law, peacefully, and it would be unfortunate if you rejected this opportunity for Zambia to peacefully resolve the Barotseland issue.

There are many reasons to believe that Zambia's position is incorrect as a matter of law concerning Barotseland, which is our clients' position. To argue that the Barotseland Agreement 1964 did not mean what it said would not only be inconsistent with the express provisions of the Barotseland Agreement itself, but it would also be contrary to the rule of *pacta sunt servanda* (the sanctity of treaties), which forms an integral part of international law and is as old as international law itself. International law is far older than Zambia, but not as old as Barotseland. In any event, it is our clients' position that under public international law Barotseland ceased to be part of Zambia upon termination of the Barotseland Agreement 1964, which will remain their position should you be unwilling to resolve this matter via international arbitration.

Concerning the identity of our clients, you will note that the signatories of the PCA arbitration agreement have not hidden their identities. They come from a broad swathe of Barotse civil society, including members of the BNFA, other activist groups, and individuals from the BRE. In addition to their names, they have provided their identification details, their professions, and they have signed the arbitration agreement. Indeed, it is on record that many of these signatories have already been illegally arrested and prosecuted over the issue of Barotseland in the past.

If your question concerns the legal existence of the BNFA as a Zambian corporate entity, then our clients' position is that this question is wholly irrelevant. When the government of South Africa refused to legally recognize the existence of the Pan-African Congress and the African National Congress, did the organizations cease to exist? Of course not. The BNFA is recognized as the legitimate umbrella organization of all activist groups of Barotseland, and the primary claim of our clients is that Zambia's jurisdiction no longer extends to Barotseland. Hence, the relevant law to determine the legal status of the BNFA is Barotse law, not Zambian law. Moreover, it will be inconsistent on your part to hold that you do not recognize Barotse

civil society organisations seeing that you had a meeting with their leaders on 28th December 2011 at State House in their capacity as representatives of the said organisations. It is also a matter of record that prior to that meeting you had asked one of these organisations to nominate a member to sit on the Commission of Inquiry you had set up to investigate various aspects of the Barotseland problem and the said nominee was validly appointed by you as a Commissioner.

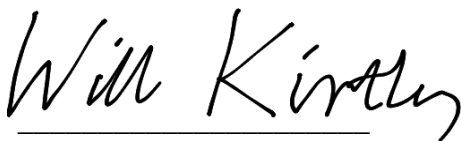
If the Zambian government holds a separate position on these matters, then it should support its position on the basis of legal argument before a neutral arbitral tribunal.

Our clients do not require a response from you, but merely challenge you to sign the Submission Agreement.

We understand that Zambia has refused to respond to the African Commission on Human and Peoples' Rights in Banjul with respect to its violations of Barotse rights. No doubt, it will again fail to do what is right and in the long-term interests of Zambia with respect to PCA arbitration. This will be a shame, however, since it would be historic for two African entities to peacefully resolve such an issue on their own.

The BNFA's offer to you to append your signature to the arbitration agreement will lapse two months from the date of our initial correspondence on behalf of our clients, i.e. by **28th May 2014**.

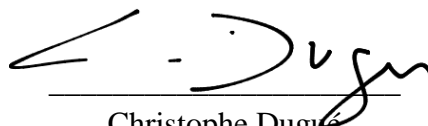
Sincerely yours,



William Kirtley
Dugué & Kirtley AARPI



Sylvana Q. Sinha



Christophe Dugué
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Encls. - Letter from the Ministry of Justice