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Date 7 April, 1994

The Constitutional Review Commission  
M O N G U

Ladies and Gentlemen

BAROTSELAND AGREEMENT, 1964

Very many things have been said about the Barotse Land Agreement, 1964 but very few people have bothered to address the Constitutional Review Commission in a manner addressing the terms of the Agreement itself. In this submission, I will attempt to provide some information which, probably, lead the Kwunga Constitutional Review Commission to say something like this that the solution to the Barotse Land Agreement can be found only in the terms of that Agreement.

2. The Barotse Land Agreement, 1964 is an agreement which was signed in London, England, on the 18th May, 1964 between Dr Kenneth David Kaunda, then Prime Minister of Northern Rhodesia on behalf of the Government of Northern Rhodesia on the one part and Sir Mwanawina Lewanika K.B.E., then Litunga of Barotse Land acting on his own behalf, his heirs and successors, his Council and Chiefs and all the people of Barotse Land on the other part and the Agreement was signed also by the Right Honourable Duncan Sandys M.P., the Queen's Principal Secretary for Commonwealth Relations and for the Colonies to signify the approval of Her Majesty's Government in the United Kingdom of the arrangements being entered into by all those concerned.

3. The idea was that the treaties and agreements which were then in existence, i.e. those signed in 1900, 1909 and 1954 to mention the most significant ones only,

were to be replaced by The Barotseland Agreement, 1964 related to interests in land granted by King Lewanika to the British South Africa Company and subsequently to the Government of Northern Rhodesia after the 1st April, 1924. The obligations of the Northern Rhodesia Government to Barotseland which were the subject of provisions of Section 20 of the Zambia Independence Order 1964 were, as a matter of fact, the continuing obligations arising from the treaties and agreements under which Her Majesty's Government in Northern Rhodesia had been assisting Barotseland economically, financially and administratively.

4. The following observations are worth making;

- (a) All the parties to the Agreement were in authority, sane and reasonable;
- (b) The Agreement was to have come into effect on 24th October, 1964;
- (c) The Queen's representative, the Governor of Northern Rhodesia appointed Dr. Kaunda to be Prime Minister of Northern Rhodesia under Article 69 of the Northern Rhodesia (Constitution) Order In Council and the Prime Minister was acting under powers vest in the Governor by Article 72 of the Constitution;
- (d) Sir Mwanawina III was Litunga of the Barotseland Protectorate declared as such by Her Majesty and by virtue of the powers vested in the Queen by the provisions of the Foreign Jurisdictions Act 1890 and as such became a protectorate when Northern Rhodesia was created the Northern Rhodesia (Barotseland) Order in Council of 1953. Sections 2 and 3 of that order refers.
- (e) The Right Honourable Duncan Sandys needs no comment.

5. It is wise to remember that Barotseland was prior to the Agreement a self governing and an independent sovereign nation properly constituted <sup>and</sup> capable of signing treaties. Thus, when the Litunga signed the Barotseland Agreement, 1964 he was not signifying the surrender of that sovereignty to any outside power or to the successor state, the Republic of Zambia. The sovereignty of

of Barotseland was, as a matter of fact, the very basis for the Agreement as illustrated by paragraphs 2 and 3 of the preamble in the Appendix of the Barotseland Agreement, 1964 which reads as follows :-

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

And whereas, having regard to the fact that all treaties and other agreements subsisting between Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland and the Litunga of Barotseland will terminate when Northern Rhodesia becomes an independent sovereign republic and Her Majesty's Government in the United Kingdom will thereupon cease to have any responsibility for the Government of Northern Rhodesia, including Barotseland, it is the wish of the Government of Northern Rhodesia and of the Litunga of Barotseland to enter into arrangements concerning the position of Barotseland as part of the Republic of Zambia to take the place of the treaties and other agreements hitherto subsisting between Her Majesty the Queen and the Litunga of Barotseland".

6. It is clear then that there was no intention whatsoever to change the status of Barotseland or that of the Litunga even when Zambia became a sovereign and unitary state. The treaties and agreements made between Her Majesty's Government and King Lewanika were the basis on which Barotseland was declared a Protectorate in 1953. A preamble in the Northern Rhodesia (Barotseland) Order In Council states :-

"AND WHEREAS it is expedient that the said territory of Barotseland should be declared to be, and should be styled the Barotseland Protectorate....."

Section 41 of the Northern Rhodesia Order In Council 1924 was similar to Section 112 of the Northern Rhodesia (Constitution) Order In Council, 1963. In the same manner, the then Prime Minister in a written speech delivered in Lealui, the Litunga's summer capital, on 6th August, 1964 stated that :-

"I should now like to turn to the Barotseland agreement which was reached in London in May and I wish to give an assurance that it is the Government's full intention that the Barotseland Agreement will be honoured fully after independence. I believe the Agreement reached

in London was an honourable Agreement from the point of view of both the Central and the Barotseland Government....."

7. The Barotseland Agreement, 1964 was breached by the President of the Republic of Zambia in the period 1965 to 1970 by a number of Acts of Parliament. Protests by the Barotse were expressed in a number of ways :

- (a) the President was petitioned
- (b) the Members of Parliament who were held responsible for failure to effectively represent the people of Barotseland all lost their seats in the Parliamentary elections that followed
- (c) The response of the people of Barotseland to the 17th June, 1969 Referendum was, according to Times of Zambia June 19th and 20th a clear "NO"
- (d) Six Barotse people were arrested and detained for openly speaking against the Government over the Barotseland Agreement, 1964 and a high-powered campaign was mounted to silence opposition
- (e) For one reason or another, perhaps including the Barotseland Agreement, 1964, a State of Emergency was declared there and then and it became utterly impossible for anyone to oppose the Government.
- (f) Not all has been told as within the same breath a One Party State was created and everyone, and effectively so, had to follow the Party line.

8. Despite all this, negotiations between the Central Government and the Barotse Royal Establishment continued. This will help to explain the reason why the former President, Dr. Kaunda offered to amicably resolve the issue of the Barotseland Agreement, 1964 in March 1991.

9. Section 11(2) of the Constitution of Zambia Act No. 27 of 1973 stated :

"11(2) The transfer and vesting of all rights, liabilities and obligations to or in the President on behalf of the Government of Zambia by virtue of Section twenty (20) of the Zambia Independence Order, 1964, is for avoidance of any doubt hereby confirmed"

Further, Section 12 of the same Constitution of Zambia Act No. 27 of 1973 confirmed the obligations of the President. It reads :

"12. All rights, obligations and liabilities of the President or any public officer on behalf of the Government of the Republic of Zambia before the

commencement of this Act shall, on and after the commencement of this Act, be rights liabilities and obligations of the President or such public officer, as the case may be, on behalf of the Government of Zambia."

10. As regards the breaches and what would appear to be the ultimate purported abrogation of the Barotseland Agreement, 1964, there is an element of doubt in my mind that any breach or purported abrogation would be valid. Indeed, from a layman's view point, the breaches and purported abrogation has no effect on the Barotseland Agreement, 1964. The reasons are :

- (a) It would seem doubtful to me that Parliament would have jurisdiction or power to enact a law whose effect would either breach or abrogate the Agreement because the Barotseland Agreement, 1964 forms part of the obligations inherited by the President of the Republic of Zambia under the succession provision of Section 20 of the Zambia Independence Order 1964 which states :
- (a) Her Majesty in respect of the Government of Northern Rhodesia; and
  - (b) The Governor of Northern Rhodesia or the holder of any other office under the Crown in respect of the Government of Northern Rhodesia on behalf of that Government

shall, from the commencement of this Order, be rights, liabilities and obligations of the President on behalf of the Government of Zambia and subject to the provisions of any law, shall be enforceable by or against the President accordingly."

- (b) Since Section 20 of the Zambia Independence Order was neither amended nor repealed by any Act of Parliament it would follow that the Barotseland Agreement, 1964 was never abrogated. It is noteworthy that while the Zambia Independence Act 1964 and the Zambia Independence Order 1964

were both repealed by Section 3 of the Constitution of Zambia Act No. 27 of 1973, the provision of Section 20 of the Zambia Independence Order 1964 were served and confirmed by Section 11(2) of the Constitution of Zambia Act No. 27 of 1973 which reads :

"11(2) The transfer and vesting of all rights, liabilities and obligations to or in the President on behalf of the Government of Zambia by virtue of Section twenty (20) of the Zambia Independence, 1964, is for avoidance of doubt, hereby confirmed"


Further, Section 12 states :

"12 All rights, liabilities and obligations of the President or any public officer on behalf of the Government of the Republic of Zambia before the commencement of this Act shall, on and after the commencement of this Act, be rights, liabilities and obligations of the President or such public officer, as the case may be, on behalf of the Government of Zambia."

11. In any event, one cannot legislate against one's own contractual obligations because that in itself is merely a breach of the agreement which does bring the agreement to an end.

12. It is strongly submitted that the Review Commission should find it right and proper for the Barotseland Agreement, 1964 to be included in the Constitution of the Republic of Zambia.

Ladies and Gentlemen,  
I remain yours truly,

  
Yeta IV  
L I T U N G A