

Barotse Native Courts and Native Authority Ordinances

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Throughout the colonial period the British Government upheld the Special Status of Barotseland as contained in the 1900 and 1909 Concessions with Lewanika.

Where and when modifications were necessary, the Litunga and his Kuta were consulted or informed. On September 1, 1936 an Agreement was signed between His Majesty King Edward VIII, (the Governor Sir Hubert Young signed on behalf of His Majesty King Edward VIII) and the the Litunga Yeta III to provide for the recognition of Native Authorities and to bring Barotse Native Courts within the Judicial System of the Governor assigned to Northern Rhodesia and Barotseland.

This article attempt to show that Barotseland was initially excluded from Native Authority Ordinances e under the jurisdiction of Northern Rhodesia due to differences arising for the Barotse Native Authority Ordinance No. 25 of 1936 and the Barotse Native Courts Ordinance No. 26 of 1936, which came in force on 1st January 1937. The Agreement was signed on 21st September 1936 between the British Crown and the Litunga Yeta III.

Let it be known that Barotseland comprised six districts namely Lealui (later Mongu-Lealui), Senanga, Sesheke, Mankoya, Kalabo and Balovale. The 1900 Reserved Area boundaries as extended in 1909, differed slightly from the boundaries of 1935 in that Machile in the South was given to the Southern Province, and Dongwe in the north was given to the Central Province now North Western Province. Furthermore in 1941 Balovale District currently Zambezi District was removed from Barotseland and joined to the then Central Province now North Western Province.

Barotse Native Authority

A Native Authority with the approval of the Governor could legislate and make Rules on any matter providing for the peace, good order and welfare of the natives. Similarly a Subordinate Authority could make Orders for the purposes specified in sub-sections to Section 8 of the Ordinance. All Orders, however, had to be reported at the earliest possible time to the Native Authority to which Subordinate Authority was subordinate as well as to the District Commissioner.

The Superior Native Authority at Lealui could make Rules and Orders for all districts in the Province. The Kuta at Lealui under the Litunga became the Superior Native Authority for the Province. Seven Subordinate Authorities were appointed at Nalolo, Libonda, Mwandu, Sesheke, Kaunga, Nawinda in Balovale and Naliele in Mankoya. The seven Subordinate Authorities were appointed at Kutas, which were already in existence as per Barotse tradition and under a chief or chieftainess in each of the six Districts of the Province.

Barotse Native Courts

The Barotse Native Courts Ordinance recognised the Litunga's Court at Lealui as the first Superior Court and Nalolo as the second Superior Court. The District Kutas were recognised as First Class Courts and they were courts of first instance and appeal except for courts at Nawinda and Naliele, which had appellate jurisdiction only. This was to allow the local courts under indigenous chiefs to hear cases in their respective areas and come to the District only on appeal. Second Class Courts were recognised at the Kutas of Silalo Indunas.

The District Officer in his capacity as a holder of a Subordinate Court had wide powers of review in criminal cases. He could suspend, reduce, annul or modify any sentence or decision of a Native Court. In criminal cases appeals from the Superior Court at Lealui went to the Provincial Commissioner, while in civil cases appeals went to the High Court.

In summary, the Barotse Native Authority System was in place in Barotseland until 1965 when the United National Independence Party (UNIP) Government through the Local Government Act (No. 69) of 15th October 1965 repealed the Native Authority Ordinance and established a new local government administrative structure based on Local Authorities directly under the control of the Central Government of Zambia.

In conclusion, Kenneth Kaunda's (KK) plan to wipe away Barotseland is from this historical incidence, when he was elected President of the United National Independence Party (UNIP), which was the successor to ZANC. In 1960 KK travelled to Mongu in the then Barotseland Protectorate with a large delegation of new UNIP leaders to pay a courtesy call on the Litunga Mwanawina Lewanika III, KBE. The Litunga did not only refuse to receive the UNIP delegation, but he invoked Order 8 of the Barotse Native Government Orders and Rules to ban the delegation from holding any public meetings. Order 8 relating to Public Meetings stated that, " No person shall hold a public meeting of any kind whether for religious or other purposes unless such person has first obtained written permission from the Native Authority (District Kuta) to do so".

This particular Order was used by the Barotse Native Government to deport, arrest and imprison nationalists in Barotseland. It is from this historical perspective that Kaunda in revenge deprived the people of Barotseland of their status to govern their own affairs. The termination of BA'64 by the UNIP government in 1969, following the death of Litunga Sir Mwanawina Lewanika III in 1968 is as a result of this historical incidence.

References

1. Richard Hall. Pall Mall Press London 1965 p.238
2. Annual Report, Barotse Province Sec 2/71 NAZ
3. Northern Rhodesia Order in Council 1924(a) 1924 No. 324 in A History of the Mineral Rights of Northern Rhodesia
4. Press 1967 p.212
5. Balovale Dispute 1936 – 1940 KDE 2/3/1 NAZ
6. Clay, Gervas. 1968. Your Friend, Lewanika, The Life and Times of Lubosi Lewanika Litunga of Barotseland 1842 to 1916. Chatto and Windus, London.