

# ACERIS LAW LLC

## Office of the President

The Principal Private Secretary  
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By Courier

Geneva, 30 September 2021

**RE: Invitation to Sign PCA Submission Agreement**

Dear Mr. President,

We write on behalf of the Barotse National Freedom Alliance (“BNFA” or the “Client”) and its representatives, Ms. Mukwae Wabei Siyolwe, Chairperson-General, Mr. Maybin Mubita Sikwa, Deputy Chairperson-General, Mr. Katukula Mwiya, Secretary-General, Mr. George Mubita, Chairpersonn Diaspora, and Mr. Sinonge Lutangu, Chairperson Youth, regarding the resolution of the long-lasting issue of Barotseland’s disengagement from the Republic of Zambia (“Zambia”). In this respect, we hereby reiterate the invitation, addressed multiple times over the last decade by our Client to your predecessors, to sign a PCA Submission Agreement that would allow for an independent and impartial international arbitration tribunal to determine the current legal status of Barotseland under public international law.

Our Client notes your assumption of the Presidency of Zambia. Our Client, for some time, has been closely monitoring your position on the Barotseland Agreement 1964 (the “Agreement”) and, more particularly, that you have downplayed the unilateral abrogation of the Agreement by the Zambian Government in 1969 and the acceptance thereof by the Barotse in 2012. The BNFA has further followed how you speak about “*United Zambia*” and “*One Zambia One Nation*”, and how you misleadingly insinuate that all “*what the Barotse want is development*”. This is a matter that is best determined by an international tribunal.

It is clear to our Client, Mr. President, that you intend to follow in the footsteps of your predecessors, particularly the late President Kenneth Kaunda, to undermine Barotseland and continue suppressing and oppressing the Barotse. To our knowledge, there appears to be no modern country whose government abrogated the very agreement on which it was founded. Our Client notes that Barotseland has been and continues to be a self-governing territory. Our Client also states that it does not seek development from you or anyone else. Zambia came into being following the Barotseland Agreement 1964. Mr. President, if you believe that Zambia has a legitimate claim over the territory of Barotseland, we urge you to sign the enclosed PCA Submission Agreement immediately, so that this issue can be resolved once for all by an international and impartial international tribunal.

Our Client's position is as follows. The genesis of the unitary state of Zambia lies in the formative stages of its forerunner jurisdiction – the Northern Rhodesia Protectorate – which resulted from an amalgamation of two distinct territories - the Barotseland-North-Western Rhodesia and the North-Eastern Rhodesia - the former having been built on the basis of a treaty of alliance between King Lewanika of Barotseland and the British Monarch signed in 1900, and the latter out of a claim by the British Crown. Meanwhile, for administrative convenience only, the amalgamation of these territories was preceded by negotiations between the British Government and King Lewanika, leading to a memorandum of 24th November 1910 in which Barotseland's status within the joint jurisdiction of Northern Rhodesia was spelled out.

In conformity with the principle of *pacta sunt servanda*, the treaty and all concessions between the Litunga and Her Majesty the Queen of the United Kingdom were due to terminate at independence in 1964, on account of the fact that the latter's jurisdiction over Northern Rhodesia ceased. This situation was to render the amalgamation of the territories comprised in Northern Rhodesia invalid, as well as to 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 Government of Northern Rhodesia then led by Mr. Kenneth Kaunda, Prime Minister, Sir Mwanawina III, the Litunga of Barotseland, and Mr. Duncan Sandys, Her Majesty the Queen's representative. The intent of that Agreement was (1) to preserve Northern Rhodesia as a unitary jurisdiction as it converted into the Republic of Zambia, the basis of the unitary state of Zambia and the slogan "*One Zambia One Nation*" on the one hand, and (2) to retain Barotseland's status as an autonomous territory therein, on the other. The power-sharing arrangements and the limitations of the Zambian Government in respect of exercise of power in Barotseland were clearly spelled 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 in Sections 1 and 8 for the former, and in Section 20 for the latter.

The Barotseland Agreement 1964 was the very foundation of the unitary state of Zambia and the cornerstone 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 reinstated the precarious situation that Northern Rhodesia found itself at the threshold of its independence but, more importantly, freed Barotseland from Zambia and its governance and administrative structures.

The decision to separate Barotseland from Zambia was made by the Zambian Government via its founding President, Mr. Kaunda, first through the enactment of the Local Government Act No. 69 of 1965. This was done in violation of the Barotseland Agreement 1964 (special reference to Clauses 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 materially breaches 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.

Furthermore, the Zambian Government chose to terminate whatever responsibilities and legal status it could 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 the above-mentioned constitutional amendment. By unilaterally abrogating the Barotseland Agreement 1964, the Zambian Government forfeited whatever responsibilities and legal status it may have acquired over the territory of Barotseland.

It is a matter of public record that the people of Barotseland have, since the wilful action by the Zambian Government in mutilating the Barotseland Agreement 1964 through amendments of the Constitution of Zambia in 1969, striven over the years to have that action reversed so as to restore legitimacy of the status of Zambia as a unitary state, as well as to recover their rights of autonomy. These overtures have, at best, been met with ridicule by successive Zambian Governments.

To this end, a perusal of the reports of all the Commissions of Inquiry set up by the Government at various stages to solicit the 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 the 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 force and oppression by the Zambian Government, however.

It was against this background that the people of Barotseland, through the March 2012 Barotse National Council, 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. Mr. President, the BNFA expects you to respect the decision of the Barotse as your Government has no legal claim over Barotseland. The elections that are held in the territory of Barotseland unfortunately do not reflect this reality.

In view of the foregoing, Mr. President, our Client's position is that you have no mandate to engage the people of Barotseland in any manner other than that of working out the disengagement process. What remains is a peaceful dissolution of the unitary state of Zambia, allowing the Barotse their full self-rule and full human rights - freedom of assembly, freedom of speech, freedom of association - and to govern themselves. Our Client also requests you to release the Rodger Chongwe Commission of Enquiry Report. Finally, our Client respectfully requests, Mr. President, that you and your Government refrain from interfering in the governance of Barotseland and drawing any additional revenues from it.

Our Client is ready to engage with you at international fora, namely before an international tribunal constituted pursuant to the enclosed PCA Submission Agreement.

Our Client would therefore be grateful if you could sign and return the enclosed PCA Submission Agreement, after which the representatives of The People of Barotseland will provide you with a countersigned copy.

## Submission Agreement

We the parties, the Republic of Zambia and the People and Representatives of Barotseland, agree to submit all disputes, controversies and claims arising out of or in relation to the Barotseland Agreement 1964, or the existence, interpretation, application, breach, termination, or invalidity thereof, to be settled in accordance with the Permanent Court of Arbitration (PCA), Arbitration Rules 2012.

- (a) The number of arbitrators shall be three;
- (b) The place of arbitration shall be The Hague, Netherlands;
- (c) The language to be used in the arbitral proceedings shall be English.

Signed,

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\_\_\_\_\_  
His Excellency President Hakainde Hichilema, on behalf of the Republic of Zambia

date \_\_\_\_\_



\_\_\_\_\_  
The People of Barotseland

date \_\_\_\_\_

September 30, 2021