

**Universal Periodic Review – 28th Session –
Barotse National Freedom Alliance (BNFA)- Stakeholder Submission to the
Office of the High Commissioner for Human Rights regarding the Universal
Periodic Review of the Republic of Zambia during the 28th Session,
November 2017**



Barotse National Freedom Alliance (BNFA) was formed in 2012 as an umbrella organization of all activists' groups (Lunyungandambo, Barotse Freedom Movement, Movement for the Restoration of Barotseland, Barotse Imilemas, Barotse Youth league and others) but transformed itself into a mass organization in 2016 for the purpose actualizing the implementation of the Barotse National Council Resolutions of March 27, 2012, which enshrines the attainment of the human rights of the people of Barotseland.

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I. Introduction

1. This report, submitted by the Barotse National Freedom Alliance (BNFA), on the occasion of the 28th Session of the Universal Period Review during which the Republic of Zambia is under consideration, draws attention to human rights violations against Barotseland people. The report opens with a brief introduction followed by historical background. The review will outline the continued human rights violations by successive Zambian governments against the people of Barotseland's right to exercise self-determination, under the terms of the Barotseland Agreement 1964 (BA'64)¹. Further, the report highlights violations of the right of freedom of opinion and expression against provisions of the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR) signed and ratified by the Zambian government, as well as all other applicable instruments in the field of human rights law and public international law. This submission focuses on the incidents which took place since January 2012 and seek declarations that the Republic of Zambia should recognize the right to self-determination of Barotseland and sign the Permanent Court of Arbitration submission agreement.

II. Historical Background of Barotseland

1. Barotseland is a region between Namibia, Botswana, Zimbabwe, Zambia and Angola. It encompasses the entire Western Province of Zambia, parts of Southern and Central Provinces of Zambia and is the homeland of the Barotse. Silozi is the lingua franca and English is the other official language. The Barotse population was about 2 million in 2012. Barotseland was a separate African Kingdom for nearly five centuries, recognized as a nation and a subject of international law as well as a self-governing British protectorate during the colonial period². Barotseland joined the British colony of North Eastern Rhodesia to form the protectorate of Northern Rhodesia in 1911 for administrative convenience only via a treaty at Article 2, 6, 40³, which legally recognised its autonomy therein as a protectorate that happened to be within a larger protectorate, which was clearly articulated in Northern-Rhodesia-Barotseland-Order-in-Council-1953.⁴

¹ <http://bnfa.info/wp-content/uploads/2013/11/The-Barotseland-Agreement-1964.pdf>

² Barotseland was recognized by international law to the extent that it entered into treaties that protected its identity and autonomy early back in 1900 before Northern Rhodesia came into being.

³ <http://bnfa.info/wp-content/uploads/2014/02/Northern-Rhodesia-Order-in-Council-1911.pdf>

⁴ <http://bnfa.info/wp-content/uploads/2014/02/Northern-Rhodesia-Barotseland-Order-in-Council-1953.doc>

When becoming independent from British rule, Barotseland chose to be an integral part of Zambia via a successor treaty cited as the BA'64⁵ concluded between two parties: the government of Northern Rhodesia and the Litunga of Barotseland in his representative capacity with the approval of Her Majesty's government in the United Kingdom. On the basis of this Agreement, the unitary State of Zambia was set-up as per Independence Act.⁶ In support of our submission, we report the following incidents, policies and legislative changes that have been harming the Barotse community in the recent past.

III. Right to self-determination

1. The right to self-determination is infringed by the Republic of Zambia against the provisions of the BA'64 at Article 8⁷ and the International Covenant on Civil and Political Rights (ICCPR), which states, "*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*"⁸. Also, against the Declaration on the Granting of Independence to Colonial Countries and Peoples⁹, "*The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.*" In addition, "*All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"
2. The amendments enacted in the national legislation and in the Zambian municipal Constitution hinder the rights of the people of Barotseland. Since 1965 the Zambian government progressively began to abolish the territory's autonomy and self-rule in violation of the principle of self-determination as established in Article 1 of the ICCPR the above mentioned Article 8 of the BA'64. Successive Constitution and other legislative amendments contradicted the spirit of the BA'64 to which they were subservient—a party to an agreement cannot legislate against its obligations thereof.

⁵ Article 1 of the Barotseland Agreement 1964, see footnote 1.

⁶ <http://bnfa.info/wp-content/uploads/2013/11/Zambia-Independence-Act-1964.pdf>

⁷ Footnote 1

⁸ Article 1 of International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966 entry into force 23 March 1976, in accordance with Article 49. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁹ Declaration on the Granting of Independence to Colonial Countries and Peoples. Adopted by General Assembly resolution 1514 (XV) of 14 December 1960. Available at <http://www.un.org/en/decolonization/declaration.shtml>

3. In particular, the recent amendment of the municipal Constitution of Zambia¹⁰ in Lusaka on January 5, 2016 by President Edgar Lungu and the Parliament of Zambia was in blatant violation of the right to self-determination¹¹ of the people of Barotseland. The evidence of such violation is portrayed by the infraction of the traditional and customary laws of Barotseland as per **Part 1(1) of footnote 10.**

IV. Freedom of opinion and expression

1. According to Freedom House, Zambia is currently rated as a “partly free” country with a score of 4 out of 7¹². The two indicators of “political rights” and “civil liberties” show a decreasing trend that will be analysed in the Report coming out soon this year. The right to freedom of expression is acknowledged in several international conventions. The Universal Declaration of Human Rights states that *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”*. In addition to this, the African Charter on Human and Peoples' Rights also proclaims that *“Every individual shall have the right to express and disseminate his opinions within the law”*¹³. According to the Article 19 of the ICCPR, the right to freedom of expression can only be restricted when *“necessary to protect the rights or reputations of others, national security, public order, public health, or public morals”*.
2. Acting against international law, the Republic of Zambia performed several arrests and imprisonments of Barotse nationals and leaders in Barotseland in 2013¹⁴, in continued violation of the prohibition of any discrimination based on race, religion, political opinion, national and social origin¹⁵. Biased court decisions based on discriminatory grounds^{16, 17, 18, 19}) show the incomplete implementation of the

¹⁰ Government of Zambia Constitution of Zambia (Amendment) No. 2 of January 5, 2016

http://www.csprzambia.org/images/Constitution_of_Zambia_Amendment_2016-Act_No._2_0.pdf

¹¹ Universal Declaration of Human Rights, Chapter I, Purposes and Principles of Charter of the United Nations Art. 1.2. “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”

¹² <https://freedomhouse.org/report/freedom-world/2017/zambia>

¹³ Art.9 para. 2, African Charter on Human and Peoples' Rights, 1987

¹⁴ <https://www.lusakatimes.com/2013/09/27/former-barosteland-ngambela-clement-sinyinda-charged-with-treason/>

¹⁵ UN International Covenant on Civil and Political Rights. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹⁶ Art. 2 Universal Declaration of Human Rights 1948

¹⁷ In the High Court of Zambia held at Lusaka in the matter of the Barotseland Agreement 1964 and the matter of

provisions set up in the 2012 Zambia UPR. Although the Article 20 of the Bill of Rights in the Zambian municipal constitution guarantees the right to freedom of expression, the exercise of this right is highly inhibited as demonstrated by the following cases: In August 2013, 84 people were charged with treason, including a former Ngambela (Prime Minister) and now Leader of the BNFA Clement Wainyae Sinyinda²⁰ as well as a number of leading members of Barotse Independence Movements^{21, 22}. Hence arbitrary arrest and detention remain problems hindering the respect for the right to life, liberty and security of the persons²³. In its 2014 report on the human rights situation of the country²⁴, the Zambian Human Rights Commission stressed the critical situation regarding the arbitrary arrest or detention as included in the Working Group on Arbitrary Detention's document²⁵.

3. The 2016 Freedom House Report on Zambia²⁶ underlined the behaviour of the Police under the Public Order Act (1999) in accordance with the recommendation made in the Joint Submission for UPR second cycle to revise the Public Order Act²⁷. In this perspective, three leaders of the Barotse Imilemas (a youth group): Lutangu Sinonge, Saviour Mumbela and Siyunyi Mendai were arrested for merely carrying and displaying a flag with the logo of the UNPO and charged with seditious practice. This is in clear violation of the freedom of expression guaranteed by Article 2(a) of the BA'64 and is an evident judicial persecution of individuals exclusively based on these individuals' political views. They were subsequently discharged²⁸ in Kaoma Magistrate Court but the Zambian government has since appealed against the discharge in the High Court and has not given

interpretation of the said Agreement 1991/HP/1721

¹⁸ Dean Namulya Mung'omba Bwalya Kanyanta Ng'andu and Anti-Corruption Commission v Peter Machungwa Golden Mandandi and Attorney-General, Supreme Court's Appeal <http://www.acc.gov.zm/#>

¹⁹ Supreme Court at Lusaka (Civil Jurisdiction) Appeal NO.97/2012 SCZ/8/295/2012

²⁰ <http://barotselandpost.com/index.php/all-news/barotseland/item/2241-breaking-former-ngambela-clement-w-sinyinda-summoned-by-zambia-police>

²¹ <http://bnfa.info/wp-content/uploads/2013/12/BoD-31%E2%80%9494Treason-charge-Clement-Sinyinda-2013.docx>

²² List of 84 people arrest, High Court of Zambia in the matter of Section of 80 (1) (d) (2) of the criminal procedure code Chapter 88 of the Laws of Zambia 2013/HP <http://bnfa.info/wp-content/uploads/2013/12/BoD-24-Certificate-of-urgency-Clement-Sinyinda-and-83-others-2013.pdf>

²³ Article 3 Universal Declaration of Human Rights, 1948

²⁴ The State of Human Rights in Zambia, Human Rights Commission, 2014.

²⁵ <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

²⁶ Section on Associational and Organizational Rights.

²⁷ UPR Joint Submission on Zambia's civil and political rights by the Southern African Centre for the Constructive Resolution of Disputes, Hope for Human Rights, Anti-Voter Apathy Project, Transparency International Zambia, Federation for Trade Union in Zambia/Zambia Union of Financial Institutions and Allied Workers, Prisons Care and Counseling Association, Zambia Media Women Association, 2012

²⁸ <http://unpo.org/article/19292>

the UNPO flag back to its owners. These incidents reproduce the human rights violations presented in the previous UPR in 2012 according to which the Non-Governmental Organisations Act (2009) imperils freedom of association²⁹. The arrests are also in contrast with the acceptance by the Republic of Zambia of the recommendation made by the United States according to which the freedoms of assembly and expression should be guaranteed out of respect for the 2003 Supreme Court ruling stating that these freedoms are fundamental³⁰. Such a recommendation was also made by the United Kingdom (UK) in 2012 during the 2nd UPR cycle review. The UK stated that the Zambian Parliament should “*make the necessary legislative changes, including restricting the scope of the Public Order Act, to ensure the fullest possible freedoms of association and expression, and to ensure the police enforce these and other laws in a proportionate manner, including in Western Province*”³¹.

4. The arrest of four and imprisonment of three Barotse nationals in Kabwe on March 9, 2014 by the Zambian Police and the Kabwe High Court in March 9, 2016, respectively, was in continued violation of the freedom of assembly³², of speech and of expression and intimidation of the people of Barotseland for advocating independence and violation of principle of non-discrimination. The evidence mentioned above shows the ongoing incapability of the Zambian government to implement the recommendations issued by the UPR second cycle in 2008, “*the rights that are elucidated in all the human rights instruments that Zambia is a party to are enjoyed by people within the territory of Zambia*”³³.
5. Other recent events show violations of the rights of prisoners by the Zambian authorities. In December 2016, Barotseland nationals, Afumba Mombotwa, Likando Pelekelo and Inambao Kalima “*have been taken out of Mwembeshi prison in unknown and suspicious circumstances*”³⁴ according to an article by *The Barotseland Post*. The

²⁹ UN Universal Periodic Review 14th Session of the UPR Working Group Submitted 23 April 2012. Joint submission by CIVICUS: World Alliance for Citizen Participation NGO in General Consultative Status with ECOSOC and the Zambia Council for Social Development (ZCSD).

³⁰ https://www.upr-info.org/database/index.php?limit=0&f_SUR=193&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

³¹ https://www.upr-info.org/database/index.php?limit=0&f_SUR=All&f_SMR=193&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

³² Universal Declaration of Human Rights – Article 20

³³ HUMAN RIGHTS COUNCIL Working Group on the Universal Periodic Review Second session Geneva, 5-16 May 2008 National Report-Zambia available at:

³⁴ <http://barotselandpost.com/index.php/all-news/barotseland/item/2284-shocking-barotseland-imprisoned-leaders->

three detainees were arrested in 2014 and are undergoing a ten-year prison sentence with hard labour, in violation of Article 2 of the Forced Labour Convention enacted by the International Labour Organization in 1930 of which Zambia was a signatory in 1964.

V. Violation of territorial rights

1. The continued occupation of Barotseland since 27 March 2012 by the government of Zambia³⁵ is a violation of the right to self-determination of the people of Barotseland who have accepted the abrogation of the BA'64³⁶ through March 27, 2012 Barotse National Council (BNC) Resolutions³⁷. In the event that one of the parties conducts itself in a manner that is detrimental to the rights of the other party, the injured party has the right to either insist on compliance or release itself of its own obligations thereof, with attendant reparations. Barotseland pursued compliance in futility for 43 years and shifted to disengagement on March 27, 2012 at the conclusion of the BNC Resolutions.
2. The country's refusal to sign the Permanent Court of Arbitration submission agreement aimed to allow impartial arbitrators to peacefully determine the status of Barotseland following the Zambian government's unilateral abrogation of the BA'64 in 1969, Barotseland's declaration of self-determination and self-rule in 2012 and Zambia's continued occupation of Barotseland by late President Michael Sata³⁸ and current President Edgar Lungu^{39, 40} in 2015, respectively, in contradiction with the right to self-determination of the people of Barotseland is continued efforts to circumvent the legal process, continue the occupation and dismemberment of Barotseland territory.

VI. Conclusion

1. Although the Zambian Constitution at a national level officially recognizes the personal security, liberty and freedom of expression of every citizen in accordance with the international conventions, these

[feared-to-have-been-abducted-out-of-mwembeshi](#)

³⁵ The government of Zambia acting together with their agents in Barotseland, namely: Messrs. Edwin Lubosi Imwiko, Lubasi Nalishuwa, Mowa Zambwe, Nyambe Mwenda and Dominic Lisulo.

³⁶ <http://bnfa.info/wp-content/uploads/2014/11/Act-33-of-1969-Abrogating-the-Barotseland-Agreement-1964.pdf>

³⁷ <http://bnfa.info/wp-content/uploads/2013/12/BNC-Resolutions-27-March-2012.pdf>

³⁸ <http://bnfa.info/wp-content/uploads/2013/12/Annex-41-SubmissionAgreement-Sata.pdf>

³⁹ <http://bnfa.info/wp-content/uploads/2017/04/Annex-42-Cover-letter-to-submission-Agreement-Lungu-1-of-2.pdf>

⁴⁰ <http://bnfa.info/wp-content/uploads/2013/12/Annex-42-Submission-Agreement-Lungu-2-of-2.pdf>

rights are not guaranteed in practice. In particular, it is very problematic for the people of Barotseland to exercise their basic human rights within the framework of the Republic of Zambia, a situation which contravenes the provisions of Articles 60 and 70 of the Vienna Convention on the Law of Treaties. The evidence produced in this report clearly shows how the Zambia government use systematic human rights violations as a method to discourage the population of Barotseland from calling for the respect of its right to self-determination, as those who participate in campaigns or actions related to the movement for self-determination are severely repressed.

VII. Recommendations

Given the above-mentioned human rights situation in Barotseland, we strongly urge the Zambian authorities to consider the following recommendations:

- *Seek immediate intervention of international bodies together with the BNFA to monitor and provide periodic reports to the Human Rights Committee on a tri-annual basis, on the actualization of Barotseland's right to exercise self-determination;*
- *Respect the provisions of international conventions of which the Republic of Zambia is a party, such as the Universal Declaration of Human Rights, the African Charter and the ICCPR;*
- *Extend an invitation to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on Freedom of Expression and the Special Rapporteur on and Freedom of Assembly and Association regarding the implementation of the national and international legal instruments to guarantee the respect of the above-mentioned human rights provisions;*
- *Sign the Permanent Court of Arbitration submission to allow impartial arbitrators to peacefully determine the status of Barotseland following the Zambian government's unilateral abrogation of the BA'64 in 1969, Barotseland's declaration of self-determination and self-rule in 2012 and Zambia's continued occupation of Barotseland.*