

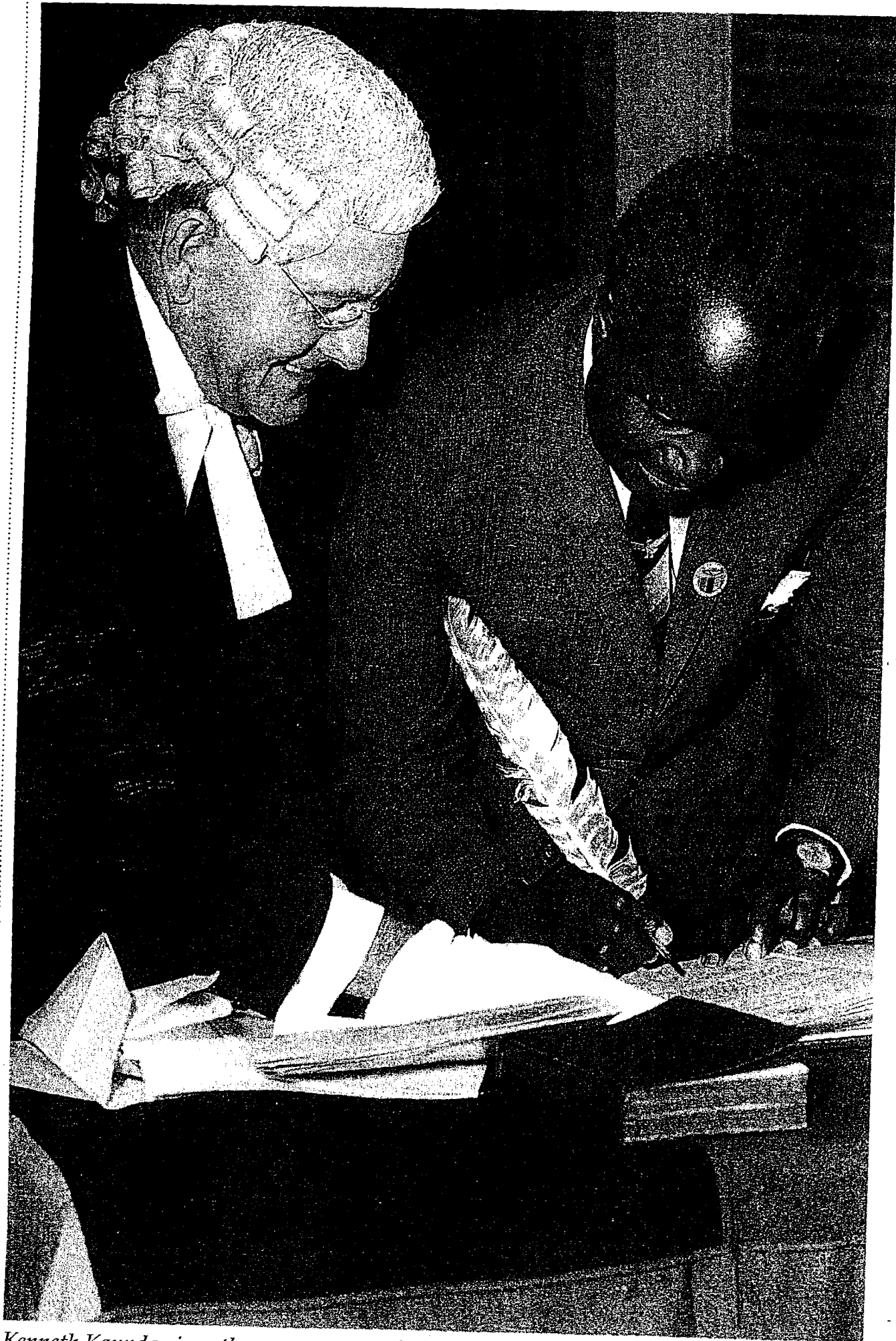


THE BAROTSELAND AGREEMENT 1964

*Presented to Parliament by the Secretary of State for Commonwealth Relations
by Command of Her Majesty
May 1964*

LONDON
HER MAJESTY'S STATIONERY OFFICE
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Cmd. 2366



Kenneth Kaunda signs the agreement unifying Barotseland and Zambia



THE BAROTSELAND AGREEMENT 1964

This Agreement is made this eighteenth day of May 1964 between KENNETH DAVID KAUNDA, Prime Minister of Northern Rhodesia, on behalf of the Government of Northern Rhodesia of the one part and SIR MWANAWINA LEWANIKA THE THIRD, K.B.E., Litunga of Barotseland, acting on behalf of himself, his heirs and successors, his Council, and the chiefs and people of Barotseland of the other part and is signed by the Right Honourable DUNCAN SANDYS, M.P., Her Majesty's Principal Secretary of State for Commonwealth Relations and the Colonies, to signify the approval of Her Majesty's Government in the United Kingdom of the arrangements entered into between the parties to this Agreement and recorded therein:

Whereas it is proposed that Northern Rhodesia shall become an independent sovereign republic to be known as the Republic of Zambia:

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:

And whereas on the sixteenth day of April 1964 a provisional agreement was concluded at Lusaka with this purpose and it is the desire of the Government of Northern Rhodesia and the Litunga, acting after consultation with his Council, to conclude a permanent agreement with this purpose:

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed between the said Kenneth David Kaunda, Prime Minister of Northern Rhodesia, on behalf of the Government of Northern Rhodesia and the said Sir Mwanawina Lewanika the Third, K.B.E., Litunga of Barotseland on behalf of himself, his heirs and successors, his Council and the chiefs and people of Barotseland as follows:-

1. Citation and commencement

This Agreement may be cited as the Barotseland Agreement 1964 and shall come into force on the day on which Northern Rhodesia, including Barotseland, becomes the independent sovereign Republic of Zambia.

2. The Constitution of Zambia

The Constitution of the Republic of Zambia shall include the provisions agreed upon for inclusion therein at the Constitutional Conference held in London in May 1964 relating to -

(a) the protection of human rights and fundamental freedoms of the individual;

(b) the judiciary; and

(c) the public service,

and those provisions shall have full force and effect in Barotseland.

3. Administration of Justice

(1) Subject to the provisions of this Agreement, the people of Barotseland shall be accorded the same rights of access to the High Court of the Republic of Zambia as are accorded to other citizens of the Republic under the laws for the time being in force in the Republic and a judge or judges of the High Court selected from among the judges who normally sit in Lusaka shall regularly proceed on circuit in Barotseland at such intervals as the due administration of justice may require.

(2) The people of Barotseland shall be accorded the same rights of appeal from decisions of the courts of the Republic of Zambia as are accorded to other citizens of the Republic under the laws for the time being in force in the Republic.

4. The Litunga and his Council

(1) The Government of the Republic of Zambia will accord recognition as such to the person who is for the time being the Litunga of Barotseland under the customary law of Barotseland.

(2) The Litunga of Barotseland, acting after consultation with his Council as constituted for the time being under the customary law of Barotseland, shall be the principal local authority for the government and administration of Barotseland.

(3) The Litunga of Barotseland, acting after consultation with his Council, shall be authorised and empowered to make laws for Barotseland in relation to the following matters, that is to say -

- (a) the Litungaship;
- (b) the authority at present known as the Barotse Native Government (which shall hereafter be known as the Barotse Government);
- (c) the authorities at present known as Barotse Native Authorities;
- (d) the courts at present known as Barotse Native Courts;
- (e) the status of members of the Litunga's Council;
- (f) matters relating to local government;
- (g) land;
- (h) forests;
- (i) traditional and customary matters relating to Barotseland alone;
- (j) fishing;
- (k) control of hunting;
- (l) game preservation;
- (m) control of bush fires;
- (n) the institution at present known as the Barotse Native Treasury;

- (o) the supply of beer;
- (p) reservation of trees for canoes;
- (q) local taxation and matters relating thereto; and
- (r) Barotse local festivals.

5. Land

(1) In relation to land in Barotseland the arrangements set out in the annex hereto shall have effect.

(2) In particular, the Litunga of Barotseland and his Council shall continue to have the powers hitherto enjoyed by them in respect of land matters under customary law and practice.

(3) The courts at present known as the Barotse Native Courts shall have original jurisdiction (to the exclusion of any other court in the Republic of Zambia) in respect of matters concerning rights over or interests in land in Barotseland to the extent that those matters are governed by the customary law of Barotseland:

Provided that nothing in this paragraph shall be construed as limiting the jurisdiction and powers of the High Court of the Republic of Zambia in relation to writs or orders of the kind at present known as prerogative writs or orders.

(4) Save with the leave of the court at present known as the Saa-Sikaló Kuta, no appeal shall lie from any decision of the courts at present known as the Barotse Native Courts given in exercise of the jurisdiction referred to in paragraph (3) of this article to the High

Court of the Republic of Zambia.

6. Civil Servants

All public officers of the Government of the Republic of Zambia who may from time to time be stationed in Barotseland shall be officers serving on permanent and pensionable terms.

7. Financial responsibility

The Government of the Republic of Zambia shall have the same general responsibility for providing financial support for the administration and economic development of Barotseland as it has for other parts of the Republic and shall ensure that, in discharge of this responsibility, Barotseland is treated fairly and equitably in relation to other parts of the Republic.

8. Implementation

The Government of the Republic of Zambia shall take such steps as may be necessary to ensure that the laws for the time being in force in the Republic are not inconsistent with the provisions of this Agreement.

9. Interpretation

Any question concerning the interpretation of this Agreement may be referred by the Government of the Republic of Zambia to the High Court of the Republic for consideration (in which case the opinion thereon of the Court shall be communicated to that Government and to the Litunga of Barotseland and his Council) and any such question shall be so referred if the Litunga, acting after consultation with his Council, so requests.

10. Revocation

The hereinbefore-recited Agreement of the sixteenth day of April 1964 is hereby revoked.

In witness whereof the parties hereto have hereunto set their hands in the presence of:-

[Signature]

Governor of Northern Rhodesia.

[Signature]
Ngambela of Barotseland.

Signed by the Right Honourable Duncan Sandys in the presence of:-

[Signature]

Parliamentary Under Secretary of State for Commonwealth Relations and the Colonies.

[Signature]
Prime Minister of Northern Rhodesia.

[Signature]

Litunga of Barotseland.

[Signature]

Her Majesty's Principal Secretary of State for Commonwealth Relations and the Colonies.

ANNEX TO THIS AGREEMENT

1. The Litunga and National Council of Barotseland have always worked in close co-operation with the Central Government over land matters in the past, have agreed that the Central Government should use land required for public purposes, and have adopted the same procedures as apply to leases and rights of occupancy in the Reserves and Trust Land areas, where applicable. At the same time, the administration of land rights in Barotseland under customary law and practice has been under the control of the Litunga and National Council in much the same way as customary land rights are dealt with in the Reserves and Trust Land areas.

2. In these circumstances it is agreed that the Litunga should continue to have the greatest measure of responsibility for administering land matters in Barotseland. It is however necessary to examine the position of land in Barotseland against the background of the Northern Rhodesia Government's overall responsibility for the territory.

3. The Barotse memorandum has indicated that Barotseland should become an integral part of Northern Rhodesia. In these circumstances the Northern Rhodesia Government will assume certain responsibilities and to carry these out they will have to have certain powers. So far as land is concerned, apart from confirmation of wide powers to the Litunga over customary matters, the position is as follows:-

(1) The Northern Rhodesia Government does not wish to derogate from any of the powers exercised by the Litunga and Council in respect of land matters under customary law and practice.

(2) The Northern Rhodesia Government would like to ensure that the provision of public services and the possibility of economic development in Barotseland are not hampered by special formalities.

(3) The Northern Rhodesia Government recognises and agrees that full consultation should take place with the Litunga and Council before any land in Barotseland is used for public purposes or in the general interests of economic development.

4. The position regarding land in Barotseland in an independent Northern Rhodesia should, therefore, be as follows:-

(a) There should be the same system for land administration for the whole of Northern Rhodesia including Barotseland, that is, the Government Lands Department should be responsible for professional advice and services with regard to land alienation in all parts of Northern Rhodesia and that the same form of document should be used for grants of land (i) for Government purposes and (ii) for non-Government and non-customary purposes. The necessary preparation of the title documents should be done by the Government Lands Department.

(b) The Litunga and National Council of Barotseland will be charged with the responsibility for administering Barotse customary land law within Barotseland.