



Paper tabled by
Vice-Chair Justice
& Legal Affairs
Committee (Hon. Benji)
on 14/12/01 at 2:30pm
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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE APPROVAL OF JUSTICE F. M. CHOMBA FROM ZAMBIA AND
JUSTICE ALBIE SACHS FROM SOUTH AFRICA FOR APPOINTMENT AS
MEMBERS OF THE JUDGES AND MAGISTRATES VETTING BOARD

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

DECEMBER, 2011

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs is a select committee established under Standing Order No. 198 with a mandate which include the following among others:-

- (a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (b) To Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation.*
- (c) To study and review all legislation referred to it;*
- (d) To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister: and*
- (f) To make reports and recommendations to the House as often as possible, including recommendation on proposed legislation.*

COMMITTEE MEMBERSHIP

The Committee comprises the following members: -

1. The Hon. Ababu Namwamba, M.P. **Chairperson**
2. The Hon. Njoroge Baiya, M.P. **Vice-Chairperson**
3. The Hon. Hussein Mohammed Abdikadir, M.P.
4. The Hon. Millie Odhiambo - Mabona, M.P.
5. The Hon. Amina Abdalla, M.P.
6. The Hon. Sophia Abdi, M.P.
7. The Hon. Olago Aluoch, M.P.
8. The Hon. Mutava Musyimi, M.P.
9. The Hon. Eugene Wamalwa, M.P.
10. The Hon. Isaack Ruto, M.P.
11. The Hon. George Omari . Nyamweya, M.P.

Mr. Speaker Sir,

On the 22nd November, 2011 you informed the House that H.E the President had after consultation with the Rt. Hon. Prime Minister nominated the following persons to be considered for appointment to the Judges and Magistrates Vetting Board pursuant to the provisions of Section 9(13) of the Vetting of Judges and Magistrates Act, 2011:-

1. Justice F. M. Chomba from Zambia
2. Justice Albie Asachs from South Africa

You then directed that the names and Curriculum Vitae (CVs) of the nominees be referred to the Departmental Committee on Justice and Legal Affairs for consideration prior to approval by the House.

As directed, the Committee took up the matter and put up paid advertisements in the dailies inviting members of the public to submit written memoranda on the suitability or otherwise of the nominees for appointment to the Judges and Magistrates Vetting Board.

Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for coverage of its proceedings during the vetting process.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report on the nomination to the Judges and Magistrates Vetting Board, to the House for adoption pursuant to the Communication from the Chair made on 22nd November 2011.

SIGNED.....

HON. NJOROGE BAIYA, M.P
VICE - CHAIRPERSON

DATE:14/12/2011.....

BACKGROUND

1. Parliament enacted the Vetting of Judges and Magistrates Act, 2011 which commenced on 22nd March, 2011. The Act was later amended and commenced on 19th May, 2011.
2. The Judges and Magistrates Vetting Board is established in Section 6 of the Vetting of Judges and Magistrates Act, 2011.
3. Section 7 of the Vetting of Judges and Magistrates Act, 2011, Act states that:-

The Board shall consist of nine members comprising a chairperson, a deputy chairperson and seven other members of whom-

- (a) Six shall be citizens of Kenya appointed in accordance with Section 9(1) to (12) and of whom, three shall be lawyers; and*
 - (b) Three shall be non-citizens of Kenya appointed in accordance with Section 9(13).*
4. The President in consultation with the Prime Minister pursuant to section 9(2) of the Vetting of Judges and Magistrates Act, 2011 as amended by the Vetting of Judges and Magistrates (Amendment) Act 2011 declared the vacancies in the office of Chairman and Members of the Judges and Magistrates Vetting Board and invited qualified applicants through Gazette Notice No. 5367.
 5. On 17th November ,2011, H.E the President, through a letter by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service forwarded the names of the following persons to be considered for appointment to the respective positions pursuant to section 9(13) of the Vetting of Judges and Magistrates Act, 2011 as amended by the Vetting of Judges and Magistrates (Amendment) Act 2011:-
 - i). Justice F.M.Chomba from Zambia-Member
 - ii). Justice Albei Sachs from South Africa

6. On 22nd November , 2011, the Honorable Speaker in a Communication to the House referred the names of the two non-citizens of Kenya nominees to the Departmental Committee on Justice and Legal Affairs for vetting and directed the Committee to submit its recommendations on the nominees to the House.

CONSIDERATION OF THE NOMINEES BY THE COMMITTEE

7. At a meeting held on 14th December, 2011, the Committee examined the Curriculum Vitae's of the two Candidates and were satisfied that the two non-citizens possessed the requisite experience, record and competency (copies of the C.V's attached)
8. Section 8 of the Judges and Magistrates Act, 2011 sets out the qualifications for appointment to the Judges and Magistrates Vetting Board. The qualifications are:-
 8. (1) *A person shall be qualified for appointment as a member if such person-*
 - (a) *holds a degree from a university recognized in Kenya;*
 - (b) *has at least fifteen years' distinguished post- qualification experience in their field of study; and*
 - (c) *satisfies the requirements of Chapter Six of the Constitution.*
 - (2) *A person shall not be qualified for appointment as the chairperson or deputy chairperson unless such person has at least twenty years' or an aggregate of twenty years' experience as a judge of a superior court, a distinguished legal academic, a judicial officer or other relevant legal practice in the public or the private sector in Kenya.*

RECOMMENDATIONS OF THE COMMITTEE

The Committee did not interview the two non-citizen of Kenya nominees nominated under Section 7 (b) of the Vetting of Judges and Magistrates Act, 2011. However, the Committee considered their curriculum vitae and recommends:-

- i). **THAT**, this House approves the appointment of Justice F.M.Chomba (Zambia)
- ii). **THAT**, this House approves the appointment of Justice Albie Sachs (South Africa)

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ALBIE SACHS - SOME EXTRA FACTS:

Academic Degrees:

BA and LLB, University of Cape Town (1951 - 1953; 1955-1956)

PHD, University of Sussex (1971)

Honorary Doctorates from the Universities of :

- Antwerp
- Cape Town
- Edinburgh
- London
- New South Wales
- Princeton
- Southampton
- Southern California
- Sussex
- Ulster
- York (Ontario)
- York (UK)
- Western Cape
- and the William Mitchell College of Law

Books published include:

- The Jail Diary of Albie Sachs (Collins)
- Stephanie on Trial (Harvil Press)

The above two books were dramatized by David Edgar for the Royal Shakespeare Company and filmed for the BBC.

- Justice in South Africa (Heinemann, Sussex University Press and University of California Press)
- Sexism and the Law (Free Press)
- Liberating the Law, Liberating the People (with Gita Honwana Welch) (Zed Press)
- Island in Chains (with Indres Naidoo) (Penguin Books and Random House)
- The Soft Vengeance of a Freedom Fighter (Harper-Collins; University of California Press)
- Protecting Human Rights in a new South Africa (Oxford University Press)
- Advancing Human Rights in South Africa (Oxford University Press)
- The Free Diary of Albie Sachs (with Vanessa September) (Random House)
- The Strange Alchemy of Life and Law (Oxford University Press) - winner of the Alan Paton Prize 2010

Honorary Bencher of Lincolns Inn

Member of the Appeals Commission of the International Cricket Council

Head of the Panel that chose the design for the logo for the 2010 Soccer World Cup -:

Awarded the Order of Luthuli in Silver by the President of the RSA for *excellent and selfless dedication to human rights activism and the struggle against apartheid* - 2006

15-year term on the Constitutional Court ended on 11 October 2009

Recipient of the Reconciliation Award from the Institute for Justice and Reconciliation- 2010

Recipient of the Ford's Theatre Lincoln Medal - 2010

CURRICULUM VITAE OF JUSTICE F.M. CHOMBA.

DATE OF BIRTH : February 2, 1936

NATIONALITY : Zambian by birth

MARITAL STATUS : Married to Elizabeth (nee') Mwansa since August 29, 1960 todate. Eight children born of the marriage.

EDUCATION AND PROFESSIONAL STATUS:

1951 – 1954 Kafue Training Institute – Std 6 Upper

1954 – 1958 Munali Secondary School – Cambridge School Certificate, First Division.

1959 First Year 6th Form, but had to leave owing to inability to pay School fees.

1962 – 1965 Law studies leading to qualification as Barrister-at-Law, called to the Bar as a Member of the Honourable Society of the Inner Temple, London in December, 1965.

December 1967 – called to the Zambian Bar as an Advocate and Solicitor of the High Court and Supreme Court of Zambia.

1979 – Admitted as State Counsel of the Supreme Court of Zambia.

EMPLOYMENT RECORD:

1959 – 1965: Clerical Officer in the Northern Rhodesia Civil Service.

1965 – 1970 : Magistrate Class II rising through the ranks to positions of Resident Magistrate, Senior Resident Magistrate, exercising administrative and judicial responsibilities as head of station at Chingola, Kitwe and Livingstone respectively.

Feb. 1970: Dec. 1973: Puisne Judge of the High Court at Ndola and later as Judge-in-Charge from 1971 to Dec. 1973.

1974: March 1977: Established the Commission For Investigations upon being appointed as Investigator-General (Ombudsman) in Jan. 1974 and led that institution until mid-March 1977.

March. 1977: June 1978: Supreme Court Judge, Zambia.

June 1978: Nominated to Parliament and appointed Minister of Legal Affairs and Attorney-General; incidental to that status, became Chief Legal Advisor to the Government.

October 1978: Elected to Parliament representing Mpika East Constituency (now Luangwa Constituency); reappointed Minister of Legal Affairs and Attorney-General.

December 1980 - April 1986: Minister of Home Affairs, a portfolio carrying responsibilities for the Zambia Police, Immigration, Citizenship, Prisons National Registration, etc.

Oct. 1983: Re-elected M.P. for Mpika East and reappointed Minister of Home Affairs.

May 1986 – 1987: Supreme Court Judge. During that period acted briefly as Chief Justice of Zambia for administrative convenience only.

1987 – Oct. 1991: Minister of Legal Affairs and Attorney-General.

1991: Appointed a Judge of the Preferential Trade Area of the Eastern and Southern African states (PTA)

October 1999 – October, 2005: Executive Director of the Zambia Institute of Advanced Legal Education on contract. This is the institution where university law graduates receive professional training leading to call as Barristers-at-Law.

EXPATRIATE APPOINTMENTS:

1992 – November 1993: Visiting Judge of the Supreme Court of Namibia.

November, 1993 – October 1994:

Justice of Appeal, Gambia Court of Appeal.

November 1994 – June 1999: President of the Gambia Court of Appeal.

Sept. 2000 – July 2010: Visiting Judge of Supreme Court of Namibia. Finally retired as a Judge in July 2010.

OTHER PUBLIC ENGAGEMENTS:

In December 1999 I was invited by the Zimbabwe Judicial College to give, and did give, a lecture to Zimbabwean Magistrates on the topic "The Role of a Magistrate in Changing Zimbabwe."

December 2002 – December 2010: Chairman, Judicial Complaints Authority – we set up the Authority from scratch and left it as a well established watchdog over judicial officers in the judiciary.

In or about 2002, upon invitation by the Government of Swaziland, I went to Mbabane and inquired into the dispute between the Judiciary of that country and the Government. I thereafter submitted my report to the Government.

May 2003 – appointed by Media Institute of Southern Africa (MISA) HQ in Windhoek as a one-man Commissioner to inquire and report on the leadership wrangles in the Zambia Independent Media Association, the Zambian Chapter of MISA. The report was submitted in due course.

Aug. 2005 – Aug. 2010: Judge of the Tribunal for the SADC region headquartered in Windhoek, Namibia.

PRIVATE LAW PRACTICE

1992 – 1993: Practised law briefly in a firm styled Mutinondo Chambers at Chester House, Cairo Road, Lusaka. However, I closed down the firm upon being appointed to the Judiciary of The Gambia.

2004 – todate: Certificated Arbitrator and a Member of the Zambia Arbitrators Association.

ATTENDANCE AT INTERNATIONAL CONFERENCES

1973: Human Rights Seminar, Dar es salaam, Tanzania, organised by the Human Rights Division of the United Nations.

1976: Seminar on “Human Rights in a One-Party State”, Dar es Salaam. Tanzania organised by the International Commission of Jurists. I was one of the resource persons.

1976: First International Conference of Ombudsmen, Edmonton, Canada.

1977: Human Rights Seminar, Monrovia, Liberia, sponsored by the International Commission of Jurists, leader of the Zambia delegation. The seminar was a sequel to the OAU Summit held in Monrovia earlier the same year at which a resolution

was made to draw up an African Charter on Human and Peoples' Rights.

1980: Commonwealth Parliamentary Association Conference, Lusaka. Leader of Zambian delegation and a resource person.

1982 – 1985: as Minister of Home Affairs attended various International Conferences on Trans-border Refugees, Geneva, Switzerland.

1986: International Judges' Conference, Massachusetts, USA.

1990: African Bar Association Conference, Abuja, Nigeria.

1995: Colloquium for Judges from all African countries, Accra, Ghana. Theme: "Intellectual Property."

1997: Ninth Annual Conference of the African Society on International and Comparative Law, Abidjan, Ivory Coast. Theme – "Legal Structures for Improving Compliance with the Rule of Law." Was one of the resource persons.

Oct. 1998: Conference on the Independence of the Judiciary, Mauritius, organised by the African Centre for Democracy and Human Rights Studies. Was one of the resource persons.

Mar. 2000: Seminar on "Migration Law and Policy in Southern Africa", organised by the International Organisation for Migration (IOM), Lusaka. I was one of the resource persons.

PUBLICATIONS

"Functions of the Investigator-General (Ombudsman) of Zambia" printed and published by the Zambian Government Printer, 1974.

"Human Rights in a One-Party State", published by the International Commission of Jurists, Geneva, 1976.

MISCELLANEOUS

July, 2000: Presented paper on the Zambian Public Order (Amendment) Act, 1996. Theme: "Developments from 1964 to 1996", organised by the Zambian Permanent Human Rights Commission, Lusaka.

Have also presented numerous papers in Zambia and The Gambia on various themes including "The Independence of the Judiciary", "Independence of the Judiciary in a Military Regime", "Intellectual Property", "Human Rights", etc.etc.

Have written and delivered several leading judgments in the High Court for Zambia, Supreme Courts of Zambia and Namibia and The Court of Appeal of the Gambia. These judgments have been published in the Law Reports of those countries.

SOCIAL, COMMUNITY AND RECREATIONAL ACTIVITIES

1990-1993: President of the Zambia YMCAs.

1983-1987: President of Lusaka Golf Club.

1998: Captain, Fajara Golf Club, The Gambia.

1968-1970: Member of Rotary Club of Livingstone, Zambia.

1970-1973: Member of Rotary Club of Ndola.

1996-2001: Member of the Advisory Committee of the African Centre for Democracy and Human Rights Studies, Banjul, The Gambia.

1970-1973: Member of Ndola Lawn Tennis Club. Honorary Life member since 1974.

1976 – todate: member of Lusaka Golf Club. Honorary Life Vice-President since 1987.

1993-1999: Member of Fajara Golf Club, Banjul, The Gambia.

1964: Secretary-General, Zambia Students' Union, United Kingdom.

Chairman of:

1971-1973 – Northmead Primary School Parent-Teachers Association, Ndola.

1975-1980 – Lusaka Girls' School Parent-Teachers Association.

1971-1973 - Ndola Nutrition Group

1994-June 1999 – National Council for Law Reporting, Banjul, The Gambia.

1999-2002 – Zambia Law Development Commission.

International Travel – have travelled widely in Africa, Middle East, Europe, North America, former Soviet Union, India, North Korea, West Indies, Australia and New Zealand.

Hobbies: Gardening, Fishing, Game Hunting, Golf, Reading.

Religious Denomination: Protestant, currently member of the United Church of Zambia (UCZ). Baptised in the Wesleyan Methodist Church,

presently a component of the UCZ. Member of the Mens Christian Fellowship (MCF)

Languages: Proficient in both spoken and written English; can speak/understand a number of Zambian languages.

DATED AT LUSAKA THIS 6TH DAY OF AUGUST, 2011.

MINUTES OF THE 72ND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, DECEMBER 14, 2011 IN COMMITTEE ROOM. NO. 7, PARLIAMENT BUILDINGS AT 1.00 P.M.

PRESENT

Hon. Njoroge Baiya (**Chairing**)
Hon. Olago Aluoch, M.P.
Hon. Eugene Wamalwa, M.P.
Hon. George Omari Nyamweya, MBS, M.P.
Hon. Abdikadir Mohammed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Mutava Musyimi, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Amina Abdalla, M.P.
Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE

Mrs. Consolata Munga
Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Deputy Director/Committees
Second Clerk Assistant
Third Clerk Assistant

MIN.NO.247/2011

CONSIDERATION OF NOMINEES TO THE VETTING OF JUDGES AND MAGISTRATES BOARD

The Committee was guided in the consideration process by Section 7(b) of the Vetting of Judges and Magistrates Act. The Committee reviewed and deliberated on, among others:

1. The nominee's educational background and personal details
2. The nominee's prior professional/Employment History
3. Honours and Awards
4. Public office, political activities and affiliations

The Committee reviewed the CVs for the following nominees:

- i. Justice F.M. Chomba from Zambia
- ii. Justice Albie Sachs from South Africa

MIN. NO. 248/2011

APPROVAL AND ADOPTION OF THE REPORT

The Committee considered the information on the nominees, made observations and adopted the report unanimously approving the nominees based on their prior experience, record and competency.

The Committee resolved to have the Vice-Chairperson, Hon. Njoroge Baiya, M.P., table this report and the one on the nominees to the Ethics and Anti-Corruption Commission in the House later this afternoon.

MIN. NO. 249/2011

ANY OTHER BUSINESS

The Committee resolved to discuss and finalize the exact dates of the proposed retreat to ensure all Members were present for the deliberations.

MIN.NO 250/2011

ADJOURNMENT

And there being no other business the Chair adjourned the sitting at fifteen minutes past one o'clock until a date to be determined.

Signed: 
(Chairperson)

Date: 14/12/2011

