



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
FIRST SESSION (2013)

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THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE APPROVAL FOR APPOINTMENT OF HON. JUSTICE (RTD)
BARNABAS ALBERT SAMATTA, HON. LADY JUSTICE A.E.N MPAGI-
BAHIGEINE AND HON. JUSTICE JOSEPH ASOKA NIHAL DE SILVA AS
FOREIGN JUDGES MEMBERS OF THE JUDGES AND MAGISTRATES
VETTING BOARD

18TH JUNE, 2013

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

ADOPTION OF REPORT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER

DATE: 17th - June - 2013.

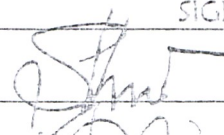

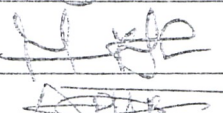
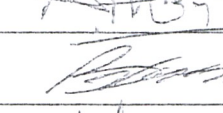

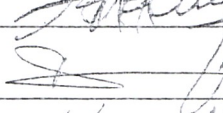
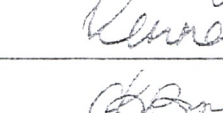
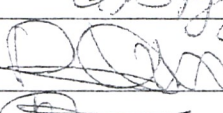

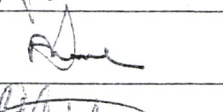
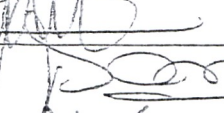




	NAME	SIGNATURE
1	SAMUEL CHEPIONIA	
2	NSC - KOSTINAP	
3	JOHN MUNIWE	
4	HOSS CHEBOI	
5	DAUL K. BII	
6	BENSON MUTURA	
7	Fatuma Ibrahim	
8	JOHN M. WAKARINDO	
9	PETER KISUMU	
10	KENNETH OKOTH	
11	NJORGE BANYA	
12	BEN MUMMANI	
13	Bishop R. Mutemi	
14	Wairimu Ndirangu	
15	John Ogo Alwani	
16	Ng'eno @ Uana	
17	WILLIAM CHEPUNO	
18	T. J. Kajwang	
19	HON NJOROGE	
20	Hon Mohamed Abdi Haji	



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1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on approval for appointment of Foreign Judges as members of the Judges and Magistrates Vetting Board nominees, Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N. Mpagi-Bahigeine of Uganda and Hon. Justice Asoka Nihal De Silva of Sri Lanka.

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. Hon. Samuel Chepkonga.M.P,.....Chairperson
2. Hon. Priscilla Nyokabi, M.P.....Vice-Chairperson
3. Hon. Muriithi Waiganjo, M.P
4. Hon. Ndirangu Waihenya, M.P
5. Hon. Florence Kajuju, M.P
6. Hon. Kang'ata Irungu.M.P
7. Hon. Benson Mutura,M.P
8. Hon. Olago Aluoch, M.P
9. Hon. John Njoroge M.P
10. Hon. William Cheptumo, M.P
11. Hon. Njoroge Baiya, M.P
12. Hon. Mohamed Abdi, M.P
13. Hon. Kangongo Bowen, M.P
14. Hon. Sammy Koech, M.P
15. Hon. Moses Cheboi, M.P
16. Hon. Paul Bii, M.P
17. Hon. Charles Gimose.M.P
18. Hon. Johanna Ngeno,M.P
19. Hon. Boniface Otsiula, M.P
20. Hon. David Ouma Ochieng.M.P
21. Hon. Neto Agostinho, M.P
22. Hon. Dr.Christine Olumbaka,M.P
23. Hon. Kaluma Peter, M.P
24. Hon. Fatuma Ibrahim, M.P
25. Hon. Ben Momanyi Orori, M.P
26. Hon.Munuve Mati John, M.P
27. Hon. Ken Okoth,M.P
28. Hon.T.J Kajwang',M.P
29. Hon.Mutua Mutemi,M.P

1.2 Mandate of the Committee

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:

- 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 their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments 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 may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights

1.3 Nomination of foreign Judges as Members of the Judges and Magistrates Vetting Board

Pursuant to section 9(13), of the Vetting of Judges and Magistrates Act (No.2 of 2011), H.E the President, forwarded to the Clerk of the National Assembly, the names of Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N.Mpagi-Bahigeine of Uganda and Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka vide letter dated 27th May, 2013 for consideration by the Departmental Committee on Justice and Legal Affairs and for approval by the National Assembly for appointment as Foreign Judges Members of the Judges and Magistrates Vetting Board.

On Tuesday 4th June, 2013, the Honourable Speaker in a Communication to the House, informed the House that the Clerk of the National Assembly had by a letter dated 27th May, 2013 by H.E the President received the names of Hon. Justice (Rtd) Barnabas Albert Samatta, Hon. Lady Justice A.E.N.Mpagi Bahigeine and Hon. Justice Joseph Asoka Nihal De Silva and directed that the names and Curricula vitae of the said nominees be referred to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House on or before Tuesday 18th June, 2013.

1.4 Committee Meetings

The Committee held three sittings during which the said nominees Curricula vitae were considered by the Departmental Committee on Justice and legal Affairs on Tuesday 11th June, 2013 starting at 9.00 a.m and were considered in accordance with the Public Appointments (Parliamentary Approval) Act No.33 of 2011 and the enabling Act for appointment as Foreign Judges Members of the Judges and Magistrates Vetting Board. During Consideration of their profiles, the foreign nominees were neither present nor engaged professionally.

The Committee was concerned that the prevailing circumstances seem to have restricted members from physical conduct with the Judges thus considered the suitability by perusing their Curricula Vitae. The Committee during its first sitting resolved to invite members of the Judges and Magistrates Vetting Board to share with the Committee what they knew about the process for the identification and nomination of foreign Judges.

1.5 Acknowledgements

- a. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.
- b. The Chairperson of the Committee takes this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and Commitment to Public Service under tight schedules which enabled us to complete the task within the stipulated period.
- c. The Committee wishes to record its appreciation for services rendered by the staff of the National Assembly attached to the Committee. Their efforts and input made the work of the Committee and production of this Report possible.
- d. Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and recommend this report on the nomination of Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N.Mpagi-Bahigeine of Uganda and Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka to the House for adoption pursuant to Standing Orders of the National Assembly and other enabling provisions of the Law.

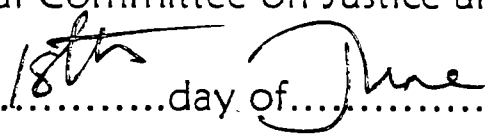
Thank you.

Signed.....

Hon. Samuel Chepkon'ga, M.P

(Chairperson)

Departmental Committee on Justice and Legal Affairs

Dated this..........day of.....2013

2.0 BACKGROUND

2.1 ESTABLISHMENT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The Departmental Committee on Justice and Legal Affairs is one of the Departmental Committees established under Standing Order No.216 (1) with the Mandate to consider for approval by the House, appointments of Foreign Judges members of the Judges and Magistrates Vetting Board under section 9(13) of the Vetting of Judges and Magistrates Act, No.2 of 2011. The said provision requires H.E the President to nominate and with the approval of the National Assembly, appoint three distinguished non-citizen serving or retired judges, each of whom should have served as a Chief Justice or Judge of a superior court in the Commonwealth to be members of the Board. Sub-section (8) of section (9) of the Vetting of Judges and Magistrates Act, No.2 of 2011 provides that;

“The National Assembly shall, within fourteen days of the receipt of the nominees under subsection (7), consider all the nominations received and may approve or reject any nomination” and Section 7(10) of the Public Appointments (Parliamentary Approval) Act 2011, provides that;

“Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly”.

The Judges and Magistrates Vetting Board was established pursuant to section 23 of the sixth schedule of the Constitution of Kenya 2010 and under section 6(1) of the Vetting of Judges and Magistrates Act, No.2 of 2011. Its membership is provided for in section 7 and qualifications of nominees for appointment as set out in section 8 of the same Act.

2.2 APPOINTMENT PROCESS OF FOREIGN MEMBERS OF THE JUDGES AND MAGISTRATES VETTING BOARD

On the appointment process, the Committee held a meeting with Members of the Vetting Board led by the Chairperson and Senior Council Mr. Sharad Rao, Vice-Chairperson, Ms Roselyn Odede and the Chief Executive Officer Mr. Reuben Chirchir.

- The Vetting of Judges and Magistrates Act 2011 give effect to Section 23(1) of the Sixth Schedule of the Constitution 2010. The statute provides the

mechanisms and procedures for the vetting of all Judges and Magistrates who were in office on the date of promulgation of the Constitution 2010.

- The Judges and Magistrates Vetting Board (the Board) is established under Section 6 of the Vetting of Judges and Magistrates Act No. 2 of 2011 which came into force on 21st March, 2011 (The Act) with the objective of vetting Judges and Magistrates in order to restore public confidence in the judiciary
- The composition of the Board is provided for in sections 7 and 9 of The Vetting of Judges and Magistrates Act, 2011.

S.7 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).*

S.9 (13) the President, in consultation with the Prime Minister and subject to the approval of the National Assembly shall, in respect of the vacancies in the Board under section 7(b), appoint three distinguished non-citizen serving or retired judges, each of whom has served as a Chief Justice or judge of a superior court in the Commonwealth, to be members of the Board.

The powers that accrued to the President and the Prime Minister are now exercisable by the President.

- The inclusion of foreign judges in the Board was as a result of consultation with the stakeholders (Kenya Judges and Magistrates Association) during the drafting of the legislation to enhance fairness and transparency in the vetting process. The process of appointment of non-Kenyan members (foreign judges) is consultative and takes a long time to be concluded.
- Unlike for the local members who were sourced through a competitive process, the identification of non-Kenyan members (eminent Commonwealth Judges) was done through consultation within

government, the Commonwealth Secretariat, the Africa Union and the Panel of Eminent Persons. Through this process three eminent judges from the commonwealth were nominated and presented to parliament for approval before formal appointment. Initially Hon Chief Justice Georgina Wood of Ghana, Lord Justice Stephen Sedley from the UK and Hon Justice Louise Otis from Canada were identified, approved and formally appointed through gazette notice.

- Due to the elaborate process of nomination, approval and appointment, the process took a long time such that by the time of appointment, the two judges initially identified had taken up other assignments. They therefore declined to take up the appointment with the Board. Lord Justice Stephen Sedley from the UK and Hon Justice Louise Otis from Canada declined to take up the appointment because they had taken up other assignments.
- As a result, the government again had to do further consultations to identify two other eminent judges namely; Hon Justice Albie Sachs from South Africa, and Hon Justice Fredrick Chomba from Zambia, who were recommended to the President. The names were approved by parliament before formal appointment. The two retired judges took up there assignments in January 2012. The judges had offered to serve in the Board for a period of one year as it was anticipated that the whole process would be concluded within one year
- The three non-Kenyan members (foreign Judges) have served the Board with distinction. The Board greatly benefited from their input to the process in that they input the best practices from their jurisdictions and their wide experience from the commonwealth in general.
- Section 17 of the Judges and Magistrates Vetting Act 2011, provides that any sitting of the Board for vetting purposes must include a non-citizen. The Board therefore must have a non-citizen to be able to carry out vetting.

The vetting of magistrates cannot proceed in the absence of a non-citizen judge. The Boards progress will be greatly hampered unless the appointments are made. Further to ensure uniformity of processes the presence of non-Kenyan members must be maintained in the Board.

2.3 APPOINTMENT OF NEW NON-KENYAN MEMBERS

a. When the three non-Kenya members of the Board (Judges) expressed their desire to leave after one year of service, the government through a similar consultative process identified eminent judges from the commonwealth to replace the outgoing judges.

b. The three Judges identified are; **Hon Lady Justice Alice Mpagi-Bahigeine former Deputy Chief Justice of Uganda, Hon Justice Joseph Asoka Nihal De Silva former Chief Justice of Sri-Lanka, Hon Justice Barnabas Albert Samatta former Chief Justice of Tanzania.** The three are eminent retired judges who had served diligently within the judiciary of their respective countries. The nominees are persons of pristine credentials. The

c. The President in exercise of powers conferred upon him by section 9 (13), of the Vetting of Judges and Magistrates Act, No. 2 of 2011, forwarded three names of foreign Judges to the Speaker for onward transmission to the National Assembly for consideration to be members of the Vetting Board.

d. A letter from H.E the President to the Speaker of the National Assembly dated 27th May, 2013, indicated that His Excellency the President had nominated the Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N. Mpagi-Bahigeine of Uganda and Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka to be considered for appointment as the Deputy Chief Justice of the Republic of Kenya.

e. On June 4, 2013, the Honourable Speaker in a communication to the House referred the names and Curricula Vitae of the three nominees to the Departmental Committee on Justice and Legal Affairs for consideration and

directed the Committee to submit its report and recommendations to the House for consideration on June 18, 2013.

f. The Public was expected to participate in the consideration process through submission of memoranda (affidavit) on the suitability or otherwise of the nominees. On June 6th, 2013, the Clerk of the National Assembly placed an advertisement in the print media notifying and inviting the public to submit memoranda by June 11th, 2013 on the suitability or otherwise of the said nominees pursuant to section 6(9) of the public Appointments (parliamentary Approval) Act 2011.

g. The Committee resolved that since the nominees are foreign Judges and not practically possible to invite them within the stipulated time, it was prudent to peruse their Curricula Vitas for consideration of their suitability to be appointed as foreign Judges Members of the Judges and Magistrates Vetting Board. The Committee was also persuaded by the precedent set by the tenth Parliament where the immediate former foreign Members were considered without appearing before the Committee for Vetting.

3.0 CONSIDERATION OF THE NOMINEES FOR APPOINTMENT AS MEMBERS OF THE JUDGES AND MAGISTRATES VETTING BOARD

In considering the nominees Curricula Vitae, the Departmental Committee on Justice and Legal Affairs examined the nominees against the following criteria;

- Academic qualifications
- Employment record
- Professional affiliations
- Knowledge of the relevant subject based on their profiles
- Overall suitability for the position

In addition to the above criteria, Committee members undertook electronic research on the nominees at the date of this report. The information gathered is consistent with the information obtained from the curricula vitae.

4.0 COMMITTEE'S OBSERVATIONS

During its sitting held on Thursday 13th June, 2013, the Committee considered the curricula vitae of the three nominees.

4.1 Hon. Justice (Rtd) Barnabas Albert Samatta

The Committee having considered the curriculum vitae of Hon. Justice (Rtd) Barnabas Albert Samatta during its sitting, made the following observations on his nomination:-

i). That Hon. Justice (Rtd) Barnabas Albert Samatta was born in Tanzania on 20th July, 1940 and is a Tanzanian. He has over forty (40) years legal experience.

ii). He holds a Bachelors degree in Law (LL.B) (Hons) from the University of East Africa and subsequently studied African Customary law at the School of Oriental and African Studies, University of London.

iii). He served as Chief Justice of Tanzania in 2000-2007 and recently in 2012 he was appointed Co-Chairman of the London-based company, EEE Mediation Ltd, which was established specifically to address the need for more effective way of addressing an anticipated surge in disputes involving Africa's oil, minerals, land, water and environment.

iv). He has previously served as State Attorney, Assistant legal adviser to the Tanzania delegation to the General Assembly to the United Nations, Senior state Attorney, Director of public prosecutions, Judge of the High Court of Tanzania, Judge of the High Court of Zimbabwe, Principal Judge of the High Court of Tanzania, Chairman of the Advocates Committee, Chairman of the Council of Legal Education in Tanzania (Mainland), Vice-Chairman of the Southern Africa Judges Commission (an association whose members are Chief Justices in the region), Chancellor of Mzumbe University, Chairman of the appointments Committee, a committee responsible for advising the President of the United Republic of Tanzania on appointments of the Chairman, Vice-

Chairman, Commissioners and assistant Commissioners of the Human Rights and Good Governance Commission, and Justice of Appeal of Tanzania.

v). On Membership and honors, he has served as a member of the Judicial Service Commission, honorary lecture in forensic medicine at the University of Dar es Salam, Member of the Judicial System Review Commission, awarded honorary life membership in the Wilshire Bar Association of the United States of America, member of legal task force which undertook an indepth study of the legal sector in Tanzania under the Tanzania Financial and Legal Management Upgrading Project and member of the Judicial integrity group, an independent international body, comprising of six Chief Justices and two Senior Judges who adopted Bangalore Principles of Judicial Conduct and Principle of Conduct for Judicial Employees.

vi). In 2011, a felicitation volume, Rule of Law vs. Rulers of Law: Justice Barnabas Albert Samatta's Road to Justice, was published by the School of Law, University of Dar es Salaam, "to celebrate him as an example of an ethical lawyer whose integrity cannot be questioned, making him a worthy model for the younger generation to emulate and draw inspiration from".

vii). The Committee by majority, found the nominee suitable and qualified for appointment as a foreign Judge member of the Judges and Magistrates Vetting Board.

4.2 Hon. Lady Justice A.E.N.Mpagi-Bahigeine

The Committee having considered the curriculum vitae of Hon. Lady Justice A.E.N Mpagi-Mahigeine during its sitting, made the following observations on her nomination:-

i). **Hon Lady Justice Alice Mpagi-Bahigeine** is a retired judge having served as a judge for over 25 years in her country, Uganda. She was born in 1942

ii). Lady Justice Alice Mpagi-Bahigeine graduated with a n LLB degree from University of London (Holborn College of Law) in 1967. She is a Barrister –At-Law-Cray's Inn.

iii). She has previously served in private practice with M/S Madihana and Company Advocates, Magistrate grade one, Chief Magistrate, Deputy Registrar of the High Court of Uganda, Judge of the High Court, Court of Appeal of Uganda, Chaired the Committee of Inquiry into the Ministry of Justice, member of the Judicial reform Commission, founder Chairperson of FIDA-Ugandan chapter and retired from the Judiciary of Uganda having rose through the ranks to the office of Deputy Chief Justice.

iv). The nominee has participated in a number of conferences and Seminars, namely;

- Women Lawyers Convention in Wellington New Zealand and San Diego in the United States of America.
- Presented a Paper to the United Nations General Assembly, Sixth Committee on decolonisation.
- First World Summit on 'Women and the Many dimensions of Power' in Montreal Canada.
- Participated in the 'USA Visitors Programme' whose theme was 'Judiciary and the Constitution'
- Conference of Peace and Justice in Barcelona
- Seminar on Human Rights and Democracy
- Workshop on the applicability of the environmental law to our circumstances in Mombasa.
- Seminar on Independence of the Judiciary in Mauritius
- FIDA Conferences in Nigeria, Ghana, Mexico and Brazil
- Judicial Colloquium on the application of International Human Rights Law at the Domestic level in Arusha Tanzania.

- East African Judges Conference on the application of international and Regional Instruments and how they relate to gender issues.
- Symposium on Human Rights i.e. 'The Coming of International Human Rights Law' in Gibraltar
- Environmental Law Symposium in Uganda
- Seminar on the role of Precedents at appellate level in judicial systems and effects of international human rights law in National Legal Systems.

v). The Committee by majority found the nominee suitable and qualified for appointment as a foreign Judge Member of the Judges and Magistrates Vetting Board.

4.3 Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka

The Committee having considered the curriculum vitae of Hon. Justice Joseph Asoka Nihal De Silva during its sitting, made the following observations on his nomination:-

i). The Hon. Justice Joseph Asoka Nihal De Silva was born on 17th May 1946 and is a Sri Lankan Citizen. He was called to the Bar as an Attorney-at law in 1972 and has over forty (40) years of legal experience.

ii). He holds a Bachelor of Laws (LL.B) from the University of Ceylon-Colombo, Master of Laws (LL.M) from the University of Colombo, Post-graduate Diploma in international criminal justice from the University of Illinois, Diploma in international trade law, drafting course on Commercial and legal Documents at the University of London, course in environmental law at IDLI in Rome and followed a course in Court Management and Judicial ethics in Judicial service Commission in Sydney Australia.

iii). He has previously served as a Crown counsel in the Attorney General's Department, Senior Crown Counsel, Deputy Solicitor General, Senior Deputy Solicitor General, Judge of appeal and president of that court, Judge of the Supreme court of Sri Lanka, Chief Justice of Sri Lanka, Judge of the International Criminal Tribunal on Rwanda (ICTR), visiting lecturer in criminal law and procedure at the University of Ceylon, administrative law lecture at the Sri Lanka Law college, head of Judicial training institute in Sri Lanka,

Chairman of the Judicial Service Commission and presided over Court Martial proceedings in Sri Lanka.

iv). The nominee has been a member of the ICTR, member of the Council for legal Education and attended several professional training, seminars and conferences in relevant fields. These are;

- Law Asia Conference in New Delhi
- Conference of Narco-terrorism in Montreal Canada
- International Terrorism in Chicago
- Sustainable development seminar in Rio de Janeiro and Nairobi
- International trade Law in Bali –Indonesia
- Refugees Conference in Geneva
- Refugees Conference in New Delhi
- Delivered key note address at the Cambridge University on Economic Crimes
- Commonwealth Chief Justices Conference held in Hyderabad-India
- Judicial forum on Money Laundering and Economic Crime, conducted by Commonwealth Secretariat in London.

v).The Committee by majority found the nominee suitable and qualified for appointment as a foreign Judge Member of the Judges and Magistrates Vetting Board.

vi). The Committee observed that it is in the best interest of the Country and Public at large that the activities of the Board should not be paralysed by the absence of three foreign Judges.

vii).The Committee noted that the tenth Parliament approved foreign nominees to the Vetting Board based on documentation; without inter-Personal interaction either by way of physical attendance or electronic process. The Committee observed that in future appointments involving foreign personalities, the attendance (physical or electronic) of the Individuals to be approved before the relevant House Committee should be facilitated.

5.0 RECOMMENDATIONS OF THE COMMITTEE

THAT Pursuant to section 9 (13) of the Vetting of Judges and Magistrates (Amendment) Act, 2011 and Standing Order 199; and in order to enable the vetting process to proceed to conclusion, the Committee recommends that:-

This House approves the Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N.Mpagi-Bahigeine of Uganda and Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka for appointment by H.E the President as Members of the Judges and Magistrates Vetting Board.

-END-

ANNEXTURES

1

Minutes

- i). Minutes of the 16th Sitting held on 17th June, 2013
- ii). Minutes of the 15th Sitting held on 13th June, 2013
- iii). Minutes of the 14th Sitting held on 11th June, 2013

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON 17TH JUNE, 2013 IN
COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE AT 2.30 P.M

PRESENT

Hon. Samuel Chepkong'a, MP – Chairperson
Hon. Ndirangu Waihenya, MP
Hon. Moses Cheboti, MP
Hon. Paul Bii, MP
Hon. Kaluma Peter, MP
Hon. Ben Momanyi Orori, MP
Hon. Mutua Mutemi (Bishop), MP
Hon. John Njoroge Chege, MP
Hon. Njoroge Baiya, MP
Hon. Johana Ngeno, MP
Hon. T.J. Kajwang', MP
Hon. Ken Okoth, MP
Hon. William Cheptumo, MP
Hon. Munuve Mati John, MP
Hon. Benson Mutura, MP
Hon. Mohamed Abdi Haji, MP
Hon. Muriithi Waiganjo, MP
Hon. Olago Aluoch, MP
Hon. Neto Agostinho, MP
Hon. Fatuma Ibrahim Ali, MP

ABSENT WITH APOLOGY

Hon. Sammy Koech, MP
Hon. Dr. Christine Ombaka, MP
Hon. Kang'ata Irungu, MP
Hon. Boniface Otsiula, MP
Hon. Kangongo Bowen, MP
Hon. Charles Gimose, MP
Hon. Florence Kajuju, MP
Hon. David Ouma Ochieng, MP
Hon. Priscilla Nyokabi, MP

NATIONAL ASSEMBLY

Abenayo Wasike.....Committee Clerk
Felista Karanja.....Parliamentary Intern

IN ATTENDANCE

Hon. Githu Muigai.....Attorney General
Mr. Tom Odede.....State Counsel
Ms Joan M. Chesoni.....State Counsel

MIN.NO.77/2013

OPENING PRAYER

The meeting started with a word of prayer

MIN.NO.78/2013..... MEETING WITH THE ATTORNEY GENERAL

The Attorney General met the Committee and responded to requests for statements sought by members of Parliament through the Chairman of the Legal Affairs Committee.

The Attorney General submitted the attached brief containing responses for:

- Statement on the Otieno Mak'Onyango Case-Request by Hon. John Waluke
- Statement on Appointment of the Chairperson and the Members of the Teachers Service Commission-Request for statement by Hon. Ibrahim Abdi Saney.
- Statement on Kenyan case at the ICC-Request for Statement by Hon. James Opiyo Wandayi.

On the appointment of the Chairperson and the Members of Teachers service Commission; the A.G stated that:

- In the view of the decision of National Assembly to reject the first list of nominations and the subsequent nullification of the second list by the High Court, the proper course to be adopted is for the President to draw a fresh names of nominees from the short list made by the Selection Panel under notice in the

gazette and proceed to constitute a new selection panel to consider the application

On the Otieno Mak'Onyango case; the A.G stated that:

- Judgment of the suit was delivered on 15th June, 2012, in favour of the Plaintiff. The Court stated that the claims for violation of fundamental rights were a claim against the state and awarded the Plaintiff Kshs. 20,000,000/- (Kshs. Twenty Million) for violation of his fundamental rights against the office is yet to receive the settlement funds from the Ministry as advised.
- The successor of the Ministry of Provincial Administration and Internal Security that is the Ministry of Interior and Coordination of National Government be tasked with the question as to when the settlement of the claim will occur.
- The A.G confirmed that Hon. Mak'Onyango will be paid in full and his office has never frustrated the Judgment creditor.

On the Kenyan Case at the ICC; the A.G stated that:

- Kenya remains committed to its obligations under the Rome statute having voluntarily negotiated, signed, ratified and domesticated the Rome Statute. Kenya has been actively engaged in the activities of the Court and promptly paid its assessed contribution to the Court.
- In addition, The Republic has fully cooperated with the ICC in the following manner:
 - a) Fully domesticating the Rome Statute through the International Crimes Act, 2008;
 - b) The Government has also facilitated the work of the ICC investigators in Kenya by facilitating collection of evidence through enactment of the International Crimes Procedures for obtaining Evidence Rules 2010;
 - c) Appointment of a judge of the High Court to preside over taking of statements by Government Officials; mechanisms. This was a collective decision of AU member states.

d) The Government has the capacity and preparedness to investigate and prosecute the three ICC cases if referred back to Kenya.

- The political, legislative as well as democratic landscape has changed since the promulgation of the constitution.
- There are plans to have an international crimes division of the High Court.

The A.G undertook to provide clarifications to the Committee by close of business on Tuesday 18th June, 2013.

The A.G also promised to involve the Committee in international engagements concerning his office.

MIN.NO.79/2013

CONFIRMATION OF THE MINUTES

Minutes of previous meetings were confirmed as follows:

- Fourteenth sitting held on Tuesday 11th June, 2013 were proposed by Hon.Mutua Mutemi and seconded by Hon. Peter Kaluma
- Fifteenth sitting held on Wednesday 13th June, 2013 were proposed by Hon. Ken Okoth and seconded by Hon. Moses Cheboi.

MIN.NO.80/2013

ADOPTION OF THE COMMITTEE REPORT

The Hon. T.J. Kajwang' proposed adoption of the Report and was seconded by Hon. Moses Cheboi.

Members of the Committee by Majority adopted the Report on the Nomination of the three Foreign Judges as Members of the Judges and Magistrates Vetting Board as follows;

THAT Pursuant to section 9 (13) of the Vetting of Judges and Magistrates (Amendment) Act, 2011 and Standing Order 199; and in order to enable the vetting process to proceed to conclusion, the Committee recommends that:-

This House approves the Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N.Mpagi-Bahigeine of Uganda and Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka for appointment by H.E the President as Members of the Judges and Magistrates Vetting Board.

MIN.NO.81/2013

ADJOURNMENT

The meeting was adjourned 5.20 pm.

Signed..........

Chairperson

Date........

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS HELD ON 13TH JUNE 2013 IN COMMITTEE ROOM
SEVEN PARLIAMENT BUILDINGS AT 2.30 P.M

PRESENT

1. Hon. Samuel Chepkong'a, MP – Chairperson
2. Hon. Priscilla Nyokabi, MP – Vice Chairperson
3. Hon. Muriithi Waiganjo, MP
4. Hon. Ndirangu Waihenya, MP
5. Hon. Mohamed Abdi Haji, MP
6. Hon. Kangongo Bowen, MP
7. Hon. Moses Cheboi, MP
8. Hon. Paul Bii, MP
9. Hon. David Ouma Ochieng, MP
10. Hon. Kaluma Peter, MP
11. Hon. Fatuma Ibrahim Ali, MP
12. Hon. Ben Momanyi Orori, MP
13. Hon. Mutua Mutemi (Bishop) , MP
14. Hon. Boniface Otsiula, MP
15. Hon. Sammy Koech, MP
16. Hon. John Njoroge Chege, MP
17. Hon. Njoroge Baiya, MP
18. Hon. Charles Gimose, MP
19. Hon. Johanna Ngeno, MP
20. Hon. T.J. Kajwang', MP
21. Hon. Ken Okoth, MP
22. Hon. Neto Agostinho, MP
23. Hon. Dr. Christine Ombaka, MP
24. Hon. William Cheptumo, MP
25. Hon. Munuve Mati John, MP
26. Hon. Olago Aluoch, MP
27. Hon. Kang'ata Irungu, MP

28. Hon. Florence Kajuju, MP

29. Hon. Benson Mutura, MP

NATIONAL ASSEMBLY

Abenayo Wasike.....Committee Clerk

Felista Karanja.....Parliamentary Intern

IN ATTENDANCE - JUDGES AND MAGISTRATES THE VETTING BOARD MEMBERS

1. Mr. Sharad Rao, S.C.....Chairperson
2. Ms. Roselyn Odede.....Vice-Chairperson
3. Mr. Reuben Chesire..... Chief Executive Officer

MIN.NO.70/2013

PRAYERS

The meeting started with a word of prayer

MIN.NO 71/2013

REMARKS BY THE CHAIRMAN

The Chairman led members of the Committee in introduction and welcomed Members of the Vetting Board and briefed them on the subject matter of their invitation which was consideration of the foreign Judges Nominated by H.E for appointment to the Judges and Magistrates Vetting Board.

- The Chairperson informed the Board that the Committee resolved to invite them to share with the Committee whatever information they may have on the recruitment process of the three nominees whose names were forwarded to the Departmental Committee for consideration.
- The Chairperson noted that members were fully aware that the Board was not the appointing authority though deemed it prudent to engage them as interested parties.
- He stated that the Committee's interest is to be briefed on the nomination process that was followed in nominating the three retired foreign justices as members of the Judges and Magistrates Vetting Board.
- He further stated that the task before the Committee is unique because the nominees will not appear before the Committee for vetting hence necessitating such methods to determine their s

MAGISTRATES VETTING BOARD

The Chairman of the Board submitted that he was grateful to have the opportunity to interact with the Departmental Committee on Justice and Legal affairs on matters pertinent to the core objectives of the Board.

He submitted a written brief to the Committee and briefly highlighted the same as follows:

- The three foreign Judges did not apply for appointment as members of the Board but rather were invited and persuaded to take up the vacant positions on the Board.
- The Vetting process is not going on at the moment because of vacancies in the slots reserved for foreign elements of the Board.
- The Board contacted them after learning about their nomination and the three Justices confirmed their readiness to take up the positions if confirmed by Parliament.
- The Board is convinced the three are articulate and credible enough to move the vetting process forward.
- The Chairman stated how the process of identification, recommendation and nomination of the non-Kenyan persons to serve as members of the Board was conducted in accordance with the Judges and Magistrates Vetting Board.
- The Vetting of Judges and Magistrates Act 2011 give effect to Section 23(1) of the Sixth Schedule of the Constitution 2010. The statute provides the mechanisms and procedures for the vetting of all Judges and Magistrates who were in office on the date of promulgation of the Constitution 2010.
- The Judges and Magistrates Vetting Board (the Board) is established under Section 6 of the Vetting of Judges and Magistrates Act No. 2 of 2011 which came into force on 22nd March, 2011 (The Act) with the

objective of vetting Judges and Magistrates in order to restore public confidence in the judiciary.

- The inclusion of foreign judges in the Board was as a result of consultation with the stakeholders (Kenya Judges and Magistrates Association) during the drafting of the legislation to enhance fairness and transparency in the vetting process. The process of appointment of non-Kenyan members (foreign judges) is consultative and takes a long time to be concluded.
- The identification of non-Kenyan members (eminent Commonwealth Judges) was done through consultation within government, the Commonwealth Secretariat, the African Union and the Panel of Eminent Persons.
- Section 17 of the Judges and Magistrates Vetting Act 2011, provides that any sitting of the Board for vetting purposes must include a non-citizen. The Board therefore must have a non-citizen to be able to carry out vetting. The vetting of magistrates cannot proceed in the absence of a non-citizen judge. The Boards progress will be greatly hampered unless the appointments are made. Further to ensure uniformity of processes the presence of non-Kenyan members must be maintained in the Board.
- When the three non-Kenya members of the Board (Judges) expressed their desire to leave after one year of service, the government through a similar consultative process identified eminent judges' from the commonwealth to replace the outgoing judges.
- The three Judges identified are; **Hon Lady Justice Alice Mpagi-Bahigeine** former Deputy Chief Justice of Uganda, **Hon Justice Joseph Asoka Nihal De Silva** former Chief Justice of Sri-Lanka, **Hon Justice Barnabas Albert Samatta** former Chief Justice of Tanzania. The three are eminent retired judges who had served diligently within the judiciary

of their respective countries. The nominees are persons of pristine credentials.

- The 10th Parliament adjourned *sine die* leading to the last general elections before the proposed names of the non-Kenyan members of Board were considered. Therefore the matter had to wait for the 11th Parliament to convene before consideration.
- While the country went through the transition period, the term of the non-Kenyan Board members expired and they departed to their respective countries. This left the Board with only six Kenyan members. As a result the Board cannot constitute vetting panels until the new non-Kenyan members are brought on board.
- The interviews of magistrates has temporarily been stopped awaiting the appointment of three non-Kenyan members (foreign judges). The Board has however utilized this period to collect information, do the necessary investigations and compile reports in readiness for resumption of vetting interviews.
- The temporary cessation of vetting has caused anxiety among the magistrates as they await the interviews to resume. The approval of the three nominees (foreign judges) will enable the Board to resume the vetting interviews and conclude the process as soon as visible.
- The Chairman of the Board appreciated the critical role played by the Departmental Committee on Justice and Legal Affairs to enable them accomplish their legal mandate.
- The Committee thanked the Chairman and his team for appearing before the Committee at short notice and noted that their contribution will add a lot of value to the Committee in consideration of the three non-Kenyan citizens for appointment as members of the Vetting Board.

MIN.NO.73/2013 CONSIDERATION OF NOMINEES TO THE JUDGES AND
MAGISTRATES VETTING BOARD

The Committee perused the Curricula Vitas of the following three nominees as forwarded by H.E the President vide letter dated 28th May, 2013:

1. Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania
2. Hon. Lady Justice A.E.N.Mpagi-Mahigaine of Uganda
3. Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka

MIN.NO.74/2013 COMMITTEE'S OBSERVATION

COMMITTEE'S OBSERVATIONS

During its sitting held on Thursday 13th June, 2013 in committee room seven, Parliament Buildings at 2.30 p.m. the Committee considered the curricula vitas of the three nominees.

Hon. Justice (Rtd) Barnabas Albert Samatta

The Committee having considered the curriculum vitae of Hon. Justice (Rtd) Barnabas Albert Samatta during its sitting, made the following observations on his nomination:-

- i). That Hon. Justice (Rtd) Barnabas Albert Samatta was born in Tanzania on 20th July, 1940 and is a Tanzanian. He has over forty (40) years legal experience.
- ii). He holds a Bachelors degree in Law (LL.B) (Hons) from the University of East Africa and subsequently studied African Customary law at the School of Oriental and African Studies, University of London.
- iii). He served as Chief Justice of Tanzania in 2000-2007 and recently in 2012 he was appointed Co-Chairman of the London-based company, EEE Mediation Ltd, which was established specifically to address the need for

more effective way of addressing an anticipated surge in disputes involving Africa's oil, minerals, land, water and environment.

iv). He has previously served as State Attorney, Assistant legal adviser to the Tanzania delegation to the General Assembly to the United Nations, Senior state Attorney, Director of public prosecutions, Judge of the High Court of Tanzania, Judge of the High Court of Zimbabwe, Principal Judge of the High Court of Tanzania, Chairman of the Advocates Committee, Chairman of the Council of Legal Education in Tanzania (Mainland), Vice-Chairman of the Southern Africa Judges Commission (an association whose members are Chief Justices in the region), Chancellor of Mzumbe University, Chairman of the appointments Committee, a committee responsible for advising the President of the United Republic of Tanzania on appointments of the Chairman, Vice-Chairman, Commissioners and assistant Commissioners of the Human Rights and Good Governance Commission, and Justice of Appeal of Tanzania.

v). On Membership and honors, he has served as a member of the Judicial Service Commission, honorary lecture in forensic medicine at the University of Dar es Salam, Member of the Judicial System Review Commission, awarded honorary life membership in the Wilshire Bar Association of the United States of America, member of legal task force which undertook an indepth study of the legal sector in Tanzania under the Tanzania Financial and Legal Management Upgrading Project and member of the Judicial integrity group, an independent international body, comprising of six Chief Justices and two Senior Judges who adopted Bangalore Principles of Judicial Conduct and Principle of Conduct for Judicial Employees.

vi). In 2011, a felicitation volume, Rule of Law vs. Rulers of Law: Justice Barnabas Albert Samatta's Road to Justice, was published by the School of Law, University of Dar es Salaam, "to celebrate him as an example of an ethical lawyer whose integrity cannot be questioned, making him a worthy model for the younger generation to emulate and draw inspiration from".

Vii). The Committee by majority , found the nominee suitable and qualified for appointment as a foreign Judge member of the Judges and Magistrates Vetting Board.

i). Hon Lady Justice Alice Mpagi-Bahigeine is a retired judge having served as a judge for over 25 years in her country, Uganda. She was born in 1942

ii). Lady Justice Alice Mpagi-Bahigeine graduated with a n LLB degree from University of London (Holtorn College of Law) in 1967. She is a Barrister –At-Law-Gray's Inn.

iii). She has previously served in private practice with M/S Mbolijana and Company Advocates, Magistrate grade one, Chief Magistrate, Deputy Registrar of the High Court of Uganda, Judge of the High Court, Court of Appeal of Uganda, Chaired the Committee of Inquiry into the Ministry of Justice, member of the Judicial reform Commission, founder Chairperson of FIDA-Ugandan chapter and retired from the Judiciary of Uganda having rose through the ranks to the office of Deputy Chief Justice.

iv). The nominee has participated in a number of conferences and Seminars, namely:

- Women Lawyers Convention in Wellington New Zealand and San Diego in the United States of America.
- Presented a Paper to the United Nations General Assembly, Sixth Committee on decolonisation.
- First World Summit on 'Women and the Many dimensions of Power' in Montreal Canada.
- Participated in the 'USA Visitors Programme' whose theme was 'Judiciary and the Constitution'
- Conference of Peace and Justice in Barcelona
- Seminar on Human Rights and Democracy
- Workshop on the applicability of the environmental law to our circumstances in Mombasa.
- Seminar on Independence of the Judiciary in Mauritius
- FIDA Conferences in Nigeria, Ghana, Mexico and Brazil

- Judicial Colloquium on the application of International Human Rights Law at the Domestic level in Arusha Tanzania.
- East African Judges Conference on the application of international and Regional Instruments and how they relate to gender issues.
- Symposium on Human Rights i.e. 'The Coming of International Human Rights Law' in Gibraltar
- Environmental Law Symposium in Uganda
- Seminar on the role of Precedents at appellate level in judicial systems and effects of international human rights law in National Legal Systems.

v). The Committee by majority, found the nominee suitable and qualified for appointment as a foreign Judge Member of the Judges and Magistrates Vetting Board.

Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka

The Committee having considered the curriculum vitae of Hon. Justice Joseph Asoka Nihal De Silva during its sitting, made the following observations on his nomination:-

- i). The Hon. Justice Joseph Asoka Nihal De Silva was born on 17th May 1946 and is a Sri Lankan Citizen. He was called to the Bar as an Attorney-at law in 1972 and has over forty (40) years of legal experience.
- ii). He holds a Bachelor of Laws (LL.B) from the University of Ceylon-Colombo, Master of Laws (LL.M) from the University of Colombo, Post-graduate Diploma in international criminal justice from the University of Illinois, Diploma in international trade law, drafting course on Commercial and legal Documents at the University of London, course in environmental law at IDLI in Rome and followed a course in Court Management and Judicial ethics in Judicial service Commission in Sydney Australia.
- iii). He has previously served as a Crown counsel in the Attorney General's Department, Senior Crown Counsel, Deputy Solicitor General, Senior Deputy Solicitor General, Judge of appeal and president of that court, Judge of the Supreme court of Sri Lanka, Chief Justice of Sri Lanka, Judge of the International Criminal Tribunal on Rwanda (ICTR), visiting lecturer in

criminal law and procedure at the University of Ceylon, administrative law lecture at the Sri Lanka Law college, head of Judicial training institute in Sri Lanka, Chairman of the Judicial Service Commission and presided over Court Martial proceedings in Sri Lanka.

iv). The nominee has been a member of the ICTR, member of the Council for legal Education and attended several professional training, seminars and conferences in relevant fields. These are;

- Law Asia Conference in New Delhi
- Conference of Narco-terrorism in Montreal Canada
- International Terrorism in Chicago
- Sustainable development seminar in Rio de Janeiro and Nairobi
- International trade Law in Bali –Indonesia
- Refugees Conference in Geneva
- Refugees Conference in New Delhi
- Delivered key note address at the Cambridge University on Economic Crimes
- Commonwealth Chief Justices Conference held in Hyderabad-India
- Judicial forum on Money Laundering and Economic Crime, conducted by Commonwealth Secretariat in London.

v).The Committee by majority, found the nominee suitable and qualified for appointment as a foreign Judge Member of the Judges and Magistrates Vetting Board.

MIN.NO.75/2013

ANY OTHER BUSINESS

Members agreed to meet on Monday 17th June, 2013 at 2.00 PM for adoption of the Report and thereafter meet the Hon. Attorney General at 2.30 PM.

MIN.NO.76/2013

ADJOURNMENT

There being no other Business, the meeting was adjourned at 4.20 PM.

Signed.....

Chairperson

Date.....

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON 11TH JUNE 2013 IN
COMMITTEE ROOM FIFTH FLOOR, CONTINENTAL HOUSE AT 10.00 A.M

PRESENT

1. Hon. Samuel Chepkong'a, MP - Chairperson
2. Hon. Priscilla Nyokabi, MP - Vice Chairperson
3. Hon. Muriithi Waiganjo, MP
4. Hon. Ndirangu Waihenya, MP
5. Hon. Mohamed Abdi Haji, MP
6. Hon. Kangongo Bowen, MP
7. Hon. Moses Cheboi, MP
8. Hon. Paul Bii, MP
9. Hon. David Ouma Ochieng, MP
10. Hon. Kaluma Peter, MP
11. Hon. Fatuma Ibrahim Ali, MP
12. Hon. Ben Momanyi Orori, MP
13. Hon. Mutua Mutemi (Bishop) , MP
14. Hon. Boniface Otsiula, MP
15. Hon. Sammy Koech, MP
16. Hon. John Njoroge Chege, MP
17. Hon. Njoroge Baiya, MP
18. Hon. Charles Gimose, MP
19. Hon. Johana Ngeno, MP
20. Hon. T.J. Kajwang', MP
21. Hon. Ken Okoth, MP
22. Hon. Neto Agostinho, MP
23. Hon. Dr. Christine Ombaka, MP
24. Hon. William Cheptumo, MP
25. Hon. Munuve Mati John, MP
26. Hon. Olago Aluoch, MP

ABSENT WITH APOLOGY

1. Hon. Kang'ata Irungu, MP
2. Hon. Florence Kajuju, MP
3. Hon. Benson Mutura, MP

NATIONAL ASSEMBLY

Abenayo Wasike.....Committee Clerk

Felista Karanja.....Parliamentary Intern

The meeting started with a word of prayer

The Committee adopted the agenda of the meeting as follows:

- Prayers
- Consideration of Nominees to the Judges and Magistrates Vetting Board
- Consideration of Constitution of Kenya (Amendment) Bill 2013
- Any other Business

The Committee's agenda was to peruse the Curricula Vitas of the following three nominees as forwarded by H.E the President vide letter dated 27th May, 2013:

1. Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania
2. Hon. Lady Justice A.E.N.Mpagi-Mahigeine of Uganda
3. Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka

The Committee deferred Consideration and determination of the suitability of the three nominees and observed as follows:

- The Committee noted that the lack of physical presence of the nominees has deprived them an opportunity to interact and interrogate them on their suitability.
- The Committee observed that it is important to be informed on the nomination process of foreign Judges to the Vetting Board.
- The Committee was concerned that reliance on Curricula Vitas of the nominees without additional information was not sufficient to determine the suitability of the Nominees.

The Committee therefore, resolved that:

- The Secretariat should urgently invite the Chief Executive Officer of the Vetting Board for deliberation on the nomination process.
- The Chief Executive Officer (Mr. Reuben Chirchir) to appear before the Committee on Thursday 13th, 2013 at 2.30 pm.

- In future nominations of such nature, a researcher should automatically be seconded to the Committee to do background information on the nominees.
- The Committee should have an opportunity to conduct respective professional bodies and other affiliations for further information on their suitability.

MIN.NO.68/2013 CONSTITUTIONAL (AMENDMENT) BILL, 2013

The Sub-Committee that was tasked to come up with a draft Bill comprised of the following members:

- a). Hon. T.J Kajwang.....Convener
- b). Hon. Paul Bi
- c). Hon. Peter Kaluma
- d). Hon. Fatuma Ibrahim
- e). Hon. Florence Kajuju

Sub-Committee's Report

- The Bill seeks to amend the provisions of Article 260 of the Constitution in so far as interpretation of 'state office' is concerned.
- The Clauses proposed for amendment under Article 260 are;
Clause (d) Member of Parliament,
Clause (e) Judges and Magistrates
Clause (h) Member of a County Assembly
- The amendment is meant to entrench the doctrine of separation of powers between the three arms of government as envisaged in the constitution.
- The Convener reported to the Committee that they have met progress and tabled a draft Bill for consideration by the Committee.
- The Committee was informed by the Convener that this amendment is by Parliamentary initiative under Article 256 of the Constitution and thus not within the purview of amendments requiring a referendum.
- The amendment can be introduced in either house of Parliament and must be passed in both houses by at least two thirds of all members of that House in second and third readings.
- The Committee was informed that the objects of the Bill are not unique as it is obtained in Jurisdictions such as Philippines.

- Members read the Bill and commended the Committee for a job well done.

On the Bill, the Committee therefore resolved that:

- The Bill should be sponsored by the Committee and Published under the name of the Chairperson.
- The Convener to improve on the Bill and submit to the Committee for further action at the next sitting.
- To seek Comment from the Judiciary on the proposed amendment Bill.

MIN.NO.59/2013

ADJOURNMENT

There being no other Business, the meeting was adjourned at 11.20 a.m to Thursday 13th June, 2013 at 2.50 pm.

Signed..........

Chairperson

Date.....18th June, 2013.....

2

Curriculum Vitae (CVs)

- Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania
- Hon. Lady Justice A.E.N.Mpagi-Bahigeine of Uganda
- Hon. Justice (Rtd) Joseph Asoka Nihal De Silva of Sri Lanka

Hon. Justice (Rtd)

Barnabas Albert

Samatta of Tanzania

ABRIDGED CURRICULUM VITAE

1. PERSONAL PARTICULARS

FULL NAME : BARNABAS ALBERT SAMATTA

DATE OF BIRTH AND PLACE : NG'OMBO VILLAGE,
MBINGA DISTRICT,
TANZANIA; 20TH JULY,
1940

NATIONALITY : TANZANIAN

RELIGION : CHRISTIAN

MARITAL STATUS : MARRIED, WITH FOUR
CHILDREN

LANGUAGES : NYANJA, SWAHILI AND
ENGLISH

POSTAL ADDRESS : P.O. BOX 9004,
DAR ES SALAAM,
TANZANIA

TELEPHONE : 0713 - 321254

2. EDUCATION

1950 - 1952 : NG'OMBO PRIMARY SCHOOL,
MBAMBA BAY

1953 - 1954 : KILOSA MIDDLE SCHOOL,
MBAMBA BAY

1955 - 1956 : SONGEA SECONDARY SCHOOL

1957 - 1962 : TABORA BOYS' SECONDARY

SCHOOL

- 1963 - 1966 : UNIVERSITY OF EAST AFRICA
AWARDED LLB (HONS)
DEGREE
- 1966 APRIL TO JUNE : SCHOOL OF ORIENTAL AND
(STUDYING AFRICAN AFRICAN STUDIES,
CUSTOMARY LAW UNIVERSITY OF LONDON

WORKING EXPERIENCE

- 1966 - 1971 : STATE ATTORNEY
- 1967 - : ASS STANT LEGAL ADVISER TO
THE TANZANIA DELEGATION
TO THE GENERAL ASSEMBLY
OF THE UNITED NATIONS
- 1971 - 1972 : SENIOR STATE ATTORNEY
- 1972 - 1973 : DIRECTOR OF PUBLIC
PROSECUTIONS
- 1973 - 1983 : JUDGE OF THE HIGH COURT
OF TANZANIA
- 1984 - 1987 : JUDGE OF THE HIGH COURT
OF ZIMBABWE
- 1988 - 1997 : PRINCIPAL JUDGE OF THE
HIGH COURT OF TANZANIA
- 1988 - 1997 : CHAIRMAN OF THE
ADVOCATES COMMITTEE
- 1988 - 1997 : CHAIRMAN OF THE COUNCIL
OF LEGAL EDUCATION (a

body which regulates and controls the legal profession in Tanzania (Mainland)

- 1997 – 2000 : JUSTICE OF APPEAL OF TANZANIA
- 2000 – 2007 : CHIEF JUSTICE OF TANZANIA
- 1989 – 2000 : MEMBER OF THE JUDICIAL SERVICE COMMISSION
- 2000 – 2007 : CHAIRMAN OF THE JUDICIAL SERVICE COMMISSION

4. ADDITIONAL PARTICULARS

- 1973 : APPOINTED HONORARY LECTURER IN FORENSIC MEDICINE AT THE UNIVERSITY OF DAR ES SALAAM
- 1974 – 1977 : MEMBER OF THE JUDICIAL SYSTEM REVIEW COMMISSION (commonly known as the Msekwa Commission, a body which was appointed by the President of the United Republic of Tanzania to review the whole legal sector in the country and recommend how the sector's performance could be improved)
- 1977 : AWARDED HONORARY LIFE MEMBERSHIP IN THE WILSHIRE BAR ASSOCIATION (USA)
- 1993 – 1996 : MEMBER OF A COMMISSION BETTER KNOWN AS LEGAL TASK FORCE, which undertook

an indepth study of the legal sector in Tanzania (including Zanzibar) under the Tanzania Financial and Legal Management Upgrading Project

2000 – TO DATE

MEMBER OF THE JUDICIAL INTEGRITY GROUP, an independent international body comprising of six Chief Justices and two senior Judges which ~~drafted~~ ^{developed} Bangladesh Principles of Judicial Conduct and Principles of Conduct for Judicial Employees

2003 – 2007

VICE CHAIRMAN OF THE SOUTHERN AFRICAN JUDGES COMMISSION (an organization whose members are chief justices in the region)

2000 – 2007

CHAIRMAN OF THE APPOINTMENTS COMMITTEE, an organ established under Article 129(4) of the Constitution of the United Republic of Tanzania. This Committee is responsible for advising the President of the United Republic on appointments of the Chairman, Vice Chairman, Commissioners and Assistant Commissioners of the Human Rights and Good Governance Commission

2009 -

Chancellor of Mzumbe University

2012

Co-Chairman of the London-based company, EEE Mediation Ltd, which has been established specifically to address the need for more effective way of addressing an anticipated surge in disputes involving Africa's oil, minerals, land, water and environment

Hon. Lady Justice

A.E.N.Mpagi-

Bahigeine of Uganda

CURRICULUM VITAE

NAME: Alice Elizabeth Nansikombi Kizza Mpagi-Bahigaine
 NATIONALITY: Ugandan
 DATE OF BIRTH: 24th July 1942
 PLACE OF BIRTH: Namirembe, Bukesa, Kyadondo.
 RESIDENTIAL ADDRESS: Plot No. 1 Circular Drive off Martyrs' Close-
 Ntinda (Ministers' Village)
 POSTAL ADDRESS: P.O.Box 7085.
 Kampala, Uganda

SCHOOLS AND INSTITUTIONS ATTENDED

MENGO PRIMARY SCHOOL	1954
(Primary Leaving Certificate)	
GAYAZA HIGH SCHOOL	1955-1960
(Ordinary level certificate)	
KINGS' COLLEGE BUDO	1961-1962
(Higher School certificate)	
MAKERERE UNIVERSITY	1963-1964
HOLBORN COLLEGE OF LAW	1964-1967
(LL.B (London))	
COUNCIL OF LEGAL EDUCATION	1967-1969
[Barrister-At-Law (GRAY'S INN)]	

PROFESSIONAL CAREER

PRIVATE PRACTICE WITH M/S
MBOJANA (RIP) AND
COMPANY 1970-1971
MAGISTRATE GRADE ONE Nov 1971 -Sept 1973
CHIEF MAGISTRATE 1973 – 1985
DEPUTY REGISTRAR-HIGH COURT 1986
HIGH COURT JUDGE 1987- 1997
JUSTICE OF APPEAL 1997 TODATE
DEPUTY CHIEF JUSTICE 5th January 2009 To-Date

CHAired THE COMMITTEE OF INQUIRY
INTO THE MINISTRY OF JUSTICE Whose Recommendations were wholly
adopted -1985

MEMBER OF THE COMMISSION Judicial Reform under the chairmanship of Sir
Harold Platt (RIP).The recommendations were
enthusiastically implemented including the
current reforms in the civil procedure Rules.

ONCE A MEMBER OF THE JUDICIAL TRAINING COMMITTEE, Under the
Chairmanship of Hon. Mr. Justice Seaton JSC (RIP).

FOUNDER CHAIRPERSON FIDA 1972

CONFERENCES AND SEMINARS ATTENDED

WOMEN LAWYERS CONVENTION In Wellington New Zealand and San Diego in USA	1973
UNITED NATIONS GENERAL ASSEMBLY, to the sixth Committee on Decolonization	Presented a paper
FIRST WORLD SUMMIT "WOMEN AND THE MANY DIMENSIONS OF POWER" Montreal Canada June 1990	JUNE 1990
PARTICIPATED IN THE USA VISTORS PROGRAME Whose Theme was "Judiciary and the Constitution"	1991
CONFERENCE ON PEACE AND JUSTICE In Barcelona	MAY 1988
SEMINAR ON HUMAN RIGHTS AND DEMOCRACY In Sweden at the Raoul walleberg Institute of Human rights and Humanitarian law-Lund	MAY 1988
WORKSHOP ON THE APPLICABILTY OF THE ENVIROMENTAL LAW TO OUR CIRCUMSTANCES In Kenya Mombasa	1998
SEMINAR ON INDEPENDENCE OF THE JUDICIARY in Mauritius, Pot Louis	1998

FIDA CONFERENCES ATTENDED;
in Nigeria, Lagos. Ghana, Kumasi. Mexico and Brazil, Acapulco

2002

ATTENDED A JUDICIAL COLLOQUIUM
ON THE APPLICATION OF INTERNATIONAL
HUMAN RIGHTS LAW AT THE DOMESTIC LEVEL
in Arusha Tanzania

SEPT 2003

EAST AFRICAN JUDGES CONFERENCE
ON THE APPLICATION OF INTERNATIONAL
AND REGIONAL INSTRUMENTS AND HOW
THEY RELATE TO GENDER ISSUES.

SYMPOSIUM ON HUMAN RIGHTS
" THE COMING OF INTERNATIONAL HUMAN RIGHTS LAW"
IN GIBRALTAR,

SEPT 2004

ENVIROMENTAL LAW SYMPOSIUM
AT ENTEBBE BOTANICAL GARDENS HOTEL

SEPT 2005

CONFERENCE ON ENVIROMENTAL
MENTAL SECURITY WITH ISSUES
RESULTING FROM TRAN-BOUNDARY
ENVIROMENTAL CRIMES.
In Seychelles, Mahe Island

23rd Nov- 3rd Dec 2009

ROUNDTABLE CONFERENCE
ON SENTENCING IN CAPITAL OFFENCES
at Entebbe

13th - 15th June 2010.

RETREATE AT PARAA SAFARI LODGE
Examined the role of precedents at appellate level in judicial systems
and effects of international human rights law in National Legal systems

6th-10th June 2010

Hon. Justice (Rtd)

Joseph Asoka Nihal

De Silva of Sri Lanka

CURRICULUM VITAE
OF

JOSEPH ASOKA NIHAL DE SILVA

Senior Legal Advisor to Excellency the President &
Former Chief Justice of Democratic Socialist Republic of Sri Lanka

7/4 Sunset Wing, Trillium Residences, Colombo - 5 Sri Lanka
(R) +94 112 685572, (M) +94 772 515970,
(E) asokadesilva2004@yahoo.com

Personal Information

- Nationality : Sri Lankan
- Language Proficiency : Fluent in Sinhala and English
- Date of Birth : 17th May 1946

Academic Qualifications

- Bachelor of Laws (LLB) - University of Ceylon- Colombo, Faculty of Laws
- Master of Laws (LLM) - University of Colombo, Faculty of Laws
- Post graduate Diploma in International Criminal Justice, University of Illinois
- Diploma in International Trade Law
- Followed a drafting Course- University of London on commercial and Legal Documents
- Followed a course in environmental law at IDLI in Rome
- Followed a course in Court Management and judicial ethics in Judicial Service Commission Sydney Australia

Additional Academic Qualifications

- Visiting lecturer criminal law and procedure university of Ceylon Colombo 1986- 1990
- Administrative law lecturer Sri Lanka law college 1982-1992

Special Experience in the Relevant Field

- Head of Judicial Training Institute Sri Lanka -2009-2011
- Member of the Council Legal Education 2009-2011
- Chairman of the Judicial Services Commission 2009-2011
- Also as a member of the Attorney General's Department functioned as a judge advocate in several Court Martial proceedings

Professional Training

- Law Asia Conference New Delhi- 1985
- Conference of Narco-terrorism in Montréal Canada - 1987
- International Terrorism in Chicago 1987
- Sustainable development seminar in Rio de Janeiro in 1990 and in Nairobi in 1992,
- International Trade Law in Bali - Indonesia 1997
- Refugees Conference in Geneva - 1998
- Refugees Conference in New Delhi- 2000.
- Delivered a Key note address at the Cambridge University on Economic Crimes 2010
- Commonwealth Chief Justices Conference held in Hyderabad India 2010
- Judicial forum on Money Laundering and Economic Crime, conducted by the Commonwealth Secretariat in London- 2011

After completing primary and secondary education entered the University of Ceylon and obtained Bachelor of Laws (LLB) degree in 1970, and called to the bar as an Attorney-at-Law (Advocate) 1972. Appointed as a crown counsel in the Attorney General's Department in 1974 and promoted as senior Crown Counsel in 1981, and thereafter elevated to the position Deputy Solicitor General in 1988, and was the most Senior Deputy Solicitor General at the time of appointment to the court of appeal which is the second highest court in the island.

Commenced the judicial career as judge of the Court of Appeal, 1995, and was the president of that court in the year 2001, the same year, I was appointed to the supreme court of Sri Lanka which is the apex court in the island.

Reached the highest position in the Sri Lankan judiciary namely the Chief Justice in 2009, and after serving for two years retired from that position on the 19th of May 2011.

While serving in the Supreme Court, the former Secretary General of the United Nations His Excellency Kofi Annan appointed me to be a permanent member of the International Criminal Tribunal for Rwanda (ICTR) in the year 2004.

Having served for four years, I reverted back to Sri Lanka in 2008, to accept the position of Chief Justice in Sri Lanka. However, the Security Council of the United Nations granted permission to continue to work in ICTR on a part-time basis to conclude the judgment in a case known as military II.

While serving in the ICTR, I presided over and successfully completed trials involving six (6) senior military officials and a military chaplain of the Rwandan army. The final judgment was delivered on 17th of May 2011, on the eve of my retirement.

I certify that the above information is correct.

Justice Joseph Asoka Nihal de Silva

3

Correspondence

- Letter from H.E the President to the Speaker of the National Assembly dated 27th May, 2013
- Letter from Clerk of the National Assembly to Chief Executive Officer of the Judges and Magistrates Vetting Board.

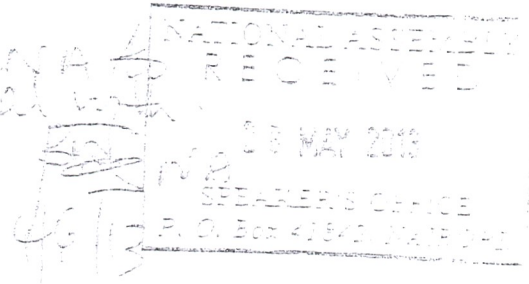


STATE HOUSE
P.O. Box 40550
NAIROBI, KENYA

27th May 2013

Mr. Justin N Muturi, MP
Speaker of the National Assembly
Parliament Buildings
NAIROBI.

*Noted. CNA
delivered*



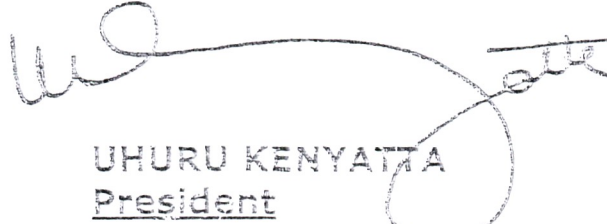
**APPOINTMENT OF FOREIGN JUDGES AS MEMBERS OF THE
JUDGES AND MAGISTRATES VETTING BOARD**

IN EXERCISE of Powers conferred upon me by section 9 (13), of the Vetting of Judges and Magistrates Act, No. 2 of 2011, I hereby forward three names of foreign Judges for onward transmission to the National Assembly for consideration to be members of the above Board.

1. Hon. Justice (Rtd) Barnabas Albert Semalta of Tanzania
2. Hon. Lady Justice A.E.N. Mpagi-Mahigeine of Uganda
3. Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka

Their Curricula Vitas are attached hereto.

ISSUED UNDER HAND AND SEAL


UHURU KENYATTA
President

Copy to:

Mr. Justin Bundi
Clerk of the National Assembly
Parliament Buildings
NAIROBI.

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

CLERK'S CHAMBERS

National Assembly
Parliament Buildings
PO Box 41842-00100
NAIROBI, Kenya

Telegraphic Address
'Bunge', Nairobi
Telephone +254 20 2221291
Fax: +254 20 2243694
E-mail: clerk@parliament.go.ke

KNA/DC-I/CORR/2013/12

Mr. Reuben Chirchir
Chief Executive Officer,
Judges and Magistrates Vetting Board
Anniversary Towers
NAIROBI

June 11th, 2013



Dear *Mr. Chirchir*,

RE: NOMINATION OF FOREIGN JUDGES AS MEMBERS OF THE JUDGES AND MAGISTRATES VETTING BOARD

The Departmental Committee on Justice and Legal Affairs is established by Standing Order 216 of the Standing Orders of the National Assembly and mandated, among other functions, "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*"

The Departmental Committee on Justice and Legal Affairs received the Curricula Vitae of **Hon. Justice (Rtd) Barnabas Albert Samatta of Tanzania, Hon. Lady Justice A.E.N Mpagi Mahigeine of Uganda and Hon. Justice Joseph Asoka Nihal De Silva of Sri Lanka** for consideration to be appointed as members of the Judges and Magistrates Vetting Board. The Committee is under obligation to consider their suitability for appointment and submit its report to the House for approval soon thereafter.

At its sitting held on June 11th, 2013 the Committee resolved to invite you for deliberation on the nomination process of the aforesaid nominees. This is therefore to invite you to a sitting of the Committee to be held on **Thursday 13th June, 2013 at 2.30 p.m in Committee Room 7, Parliament Buildings.**

Yours

Michael Sialai

For: Clerk of the National Assembly