Paper laid by Hon. Hashim Kamau on. 23/3/23

Mfai PCA Ch(p) 23/3/23

GOVERNMENT OF NAIROBI CITY COUNTY

SHAURI KWA UAMINIFU

THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY
(SECOND SESSION)

NCCA APPROVED
23 MAR 2023
Sign: ....
HON. SPEAKER

NCCA/TJ/PL/2023(10) **23rd MARCH, 2023**

PAPER LAID

SUBJECT: COMMITTEE REPORT

Pursuant to Standing Order 196, I beg to lay the following Paper on the Table of the Assembly, today Thursday, 23rd March, 2023.

— **THE REPORT OF THE SELECT COMMITTEE ON PUBLIC INVESTMENTS ON THE CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENT OF THE NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED FOR THE YEAR ENDED 30TH JUNE, 2018.**

(The Chairperson, Select Committee on Public Investments)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

Notice of Motion given on 23/3/23 by Hon. Hashim Kamau

M/for PCA Ch(PJ) 23/3/23

GOVERNMENT OF NAIROBI CITY COUNTY

SHAURI KWA UAMINIFU

THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(SECOND SESSION)

NCCA APPROVED
23 MAR 2023
Sign:..........
HON. SPEAKER

NCCA/TJ/M/2023(04) **23RD MARCH, 2023**

NOTICE OF MOTION

SUBJECT: Adoption of Report

Hon. Speaker, I beg to give notice of the following Motion: -

THAT, this Assembly adopts **THE REPORT OF THE SELECT COMMITTEE ON PUBLIC INVESTMENTS ON THE CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENT OF THE NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED FOR THE YEAR ENDED 30TH JUNE, 2018,** laid on the Table of the Assembly today, Thursday, 23rd March, 2023.

(The Chairperson, Select Committee on Public Investments)

Copies to:
The Speaker
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Hansard Editor
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The Press

COUNTY GOVERNMENT OF NAIROBI CITY

NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY - SECOND SESSION

THE SECOND REPORT OF THE SELECT COMMITTEE ON PUBLIC INVESTMENTS ON THE

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENT OF NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED FOR THE YEAR ENDED 30TH JUNE 2018

MARCH 2023

TABLE OF CONTENTS

ABBREVIATION

PIC	Public Investments Committee
NCSWC	Nairobi City Water and Sewerage Company
CCN	City Council of Nairobi
FY	Financial Year
Non-Revenue Water	NRW

ANNEXES;

a) NCWSC financial statement for the year ended 30th June 2018;

b) NCWSC Management written responses; and

c) Minutes of the meetings with NCWSC Management.

d) List of adoption

1.0. PREFACE

Mr. Speaker,

It is my pleasure to present to this House, on behalf of the Public Investments Committee (PIC), and by Standing Order 204(5), the report of the Public Investments Committee's findings on the Report of the Auditor-General on the Financial Statements of Nairobi City Water and Sewerage Company Limited for the fiscal year ended **30th June 2018**.

The report of the Auditor General was tabled on the floor of the Assembly on **4th June 2019** and thereafter committed to the Public Investment Committee under 229(8) of the Constitution of Kenya for scrutiny and reporting to the County Assembly within 90 days.

1.1. Mandate of the Committee

The Committee derives its mandate from Standing Order 204(5), which states that: -

"The County Public Investments Committee shall be responsible for the examination of the working of e County Public Investments".

The Standing Order 204 (5) further mandates the Committee to;

a) Examine the reports and accounts of the County Public Investments;

b) Examine the reports, if any, of the Auditor General on the County Public Investments; and

c) Examine, in the context of the autonomy and efficiency of the County Public Investments, whether the affairs of the County Public Investments are being managed by sound financial or business principles and prudent commercial practices.

The main objective of the Committee is to ensure that Nairobi City Water and Sewerage Company Limited (NCWSC) is run in a fiscally sound manner.

1.2. Committee Membership

The Committee comprises the following members: -

1. **Hon. Hashim Kamau, MCA** - **Chairperson**
2. **Hon. Dan Oria, MCA** - **Vice-Chairperson**
3. Hon. Peter Imwatok, MCA
4. Hon. Musango Maithya, MCA
5. Hon. Thuo Fiunifu, MCA

6. Hon. Anthony Kimemia, MCA
7. Hon. Stephen Ndegwa, MCA
8. Hon. Evans Nyangicha, MCA
9. Hon. Malyun Abdi, MCA
10. Hon. Hellen Awour, MCA
11. Hon. Antony Maragu, MCA
12. Hon. Jared Akama Ondieki, MCA
13. Hon. John Rex Omolleh, MCA
14. Hon. Samson Ochieng Jera, MCA
15. Hon. Tricer Jeptoo Ayabei, MCA
16. Hon. Eric Kiogora, MCA
17. Hon. Peter Maina Mwangi, MCA
18. Hon. Jeremiah Themendu, MCA
19. Hon. Brian Itenya, MCA
20. Hon. Deonysias Mwangi, MCA
21. Hon. Farhia Daud Aden, MCA
22. Hon. Virginia Waitherero, MCA
23. Hon. Grace Kaheti, MCA

Allow me, Mr. Speaker to thank the entire Membership of this Committee for its hard work and commitment that made the taking of evidence and production of this Report a success.

1.3. Background

The Audit Report of the Auditor General on the Financial Statements of Nairobi City Water and Sewerage Company Limited for the year ended 30th June 2018 was tabled on the floor of the Assembly on **Tuesday 4th June 2019** after which it stood committed to the Public Investment Committee for scrutiny and reporting within 90 days under Article 229(8) of the Constitution of Kenya.

NCWSC was incorporated in December 2003 under the Companies Act, CAP 486. It is a wholly-owned subsidiary of the Nairobi City County Government- previously owned by the defunct City Council of Nairobi (CCN). It has its headquarters at Kampala Road, Industrial Area with six administrative regional offices. The

Company's formation arose from the enactment of the Water Act 2002, which created new institutions to manage water resources and services in Kenya. The Company took over the provision of water and sewerage services within Nairobi and its environs hitherto provided by the Water & Sewerage Department (WSD) of the erstwhile City Council of Nairobi.

It was the mandate of the Auditor–General to examine and audit the financial statements of Nairobi City Water and Sewerage Company limited as provided by Article 229(7) of the Constitution of Kenya and transmit them to the County Assembly for the necessary action as required by Article 229 (8) of the Constitution.

This Report contains findings and other relevant details on the Report of the Auditor-General on the financial statements of Nairobi City Water and Sewerage Company Limited for the year ended 30th June 2018.

1.4. Evidence taken during the session

The Committee held a number of sittings in which Members interrogated the Acting Managing Director and various Departmental Heads on Audit Queries raised by the Auditor General.

The Audit report submitted by the Auditor-General included queries on various aspects of the financial operations of the NCWSC and they included the following: -

1)Failure to Disclose Material Uncertainty about Going Concerned;

2)Trade and Other Receivables;

3)Amounts Due to Related Parties;

4)Property, Plant, and Equipment;

- Water Infrastructure Assets
- Encroachment on Company's Land

5)Budget Performance – Under Collection of Revenue;

6)Budget Performance – Under Absorption of Capital Expenditure Budget;

7)Non-Revenue Water;

8)Gap Detections on Revenue Generated through the Customer Management System

9)Construction Projects;

10) Kasarani Sports View Sewer Reticulation;

11) Proposed Sewer Extension in Utawala Area;

12) Termination of Director Contracts;

13) Payment of Allowances to Nairobi City County Assembly Members;

14) Employees in Acting Positions for more than Six Months;

15) Non-Payment of Audit fees; and

16) Non-existence of a Board of Directors.

While taking evidence, the Committee was guided by the existing procedures and modalities of operations of the Nairobi City County Assembly derived from the Constitution of the Republic of Kenya, Acts of National Parliament, Nairobi City County Assembly Standing Orders, and international standards, conventions, practices, and rulings.

Section 226(1) (5) of the Constitution stipulates that: -

> ***"If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not".***

The Committee now calls on the Management of the Company to take notice of the Constitutional dispensation whereby the Nairobi City County Assembly through the Public Investments Committee is mandated to examine the Accounts of every County Investment entity and act prudently to safeguard public funds from loss, failure to which they would be personally liable for any financial loss or impropriety.

1.5. Responsibilities of Accounting Officers

Section 149 of the Public Finance Management Act, 2012 outlines the responsibilities of Accounting Officers for the County Government and categorically states that; -

"An Accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is –

a) Lawful and authorized; and

b) Effective, efficient, economical, and transparent.

In this report, the Committee has applied various provisions of the Public Finance Management Act, 2012, the County Government Act, and Article 226 (5) of the Constitution to recommend the investigation and surcharging of various persons that may have been responsible for the loss of public funds.

1.6. Appreciation

The Committee would like to thank all the officers from NCW&SC who appeared before it and provided valuable insights into the issues raised by the Auditor General.

Finally, **Mr. Speaker,** the Committee wishes to record its appreciation for the exemplary services rendered by officers from the Office of the Auditor General, Office of the Clerk of the County Assembly, and indeed Members of the Public Investment Committee. Their commitment and devotion to duty have made the work of the Committee and the production of this report successful.

Mr. Speaker,

On behalf of the Committee, I now wish to table the report and urge the House to adopt it and the recommendations therein.

SIGNED………………………… **DATE** 23/03/23

HON. HASHIM KAMAU (CHAIRMAN)

2.0. CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENT OF NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED FOR THE YEAR ENDED 30TH JUNE 2018.

2.1 Failure to Disclose Material Uncertainty about Going Concern Water Infrastructure Assets

During the financial year that ended on 30 June 2018, the Company recorded a net operating loss of Kshs. 634,895,405 (2017: a net operating loss of Kshs. 295,911,7498), which depleted further the revenue reserve from negative Kshs. 3,005,132,991 as of 30 June 2017 to negative Kshs. 4,524,091,163 as of 30 June 2018. The current liabilities balance of Kshs. 4,536,415,303 exceeded the current assets balance of Kshs. 3,167,964,349 and thus, resulting in a negative working capital of Kshs. 1,368,450,954 as of 30 June 2018.

The precarious financial situation described above is an indication of the existence of material uncertainty, which may cast significant doubt on the Company's ability to continue as a going concern and to meet its obligations as and when they fall due. The financial statements have been prepared on a going concern basis on the assumption that the Company will continue to receive financial support from the Nairobi City County Government and its creditors. However, this material uncertainty about going concerned and any mitigating measures put in place by the Company`s directors to reverse the undesirable precarious financial position have not been disclosed in the notes to the financial statements.

The Managing Director admitted to the Audit findings and submitted that: -

1) The tariff under which the company operates is not reflective/ adaptive of the environment and as such when there were long delays to increase the charges that increase liabilities. The company would continue to ensure fiscal discipline and improve the billing through enhanced meter reading and automation; and

2) The Management initiated the tariff review to increase/expand the revenue hence reversing the negative working capital and improving the company liquidity position. In addition, the company in conjunction with other water companies was in consultation with the Water Services Regulatory Board WASREB to change the current tariff regime to an index-based tariff i.e. the

tariff would reflect the current Macro-Economic condition and review yearly unlike the current operating tariff that is reviewed after three years.

The Committee observation:

The Committee noted that the water tariff was last reviewed in 2015 hence inadequate to cover the cost of operations.

The Committee recommends that: -

The management should initiate the process of tariff review to ensure that Company operations are adequately funded. The various programs to reduce non-revenue water should be enhanced to improve sustainability.

2.2 Trade and Other Receivables

The statement of financial position reflects a net balance of Kshs. 2,510,067,254 against trade and other receivables as of 30 June 2018. The balance includes long outstanding trade receivables amounting to Kshs. 549,615,629.06 as shown below:

Account	Amounts Kshs
KRA receivable	478,001,144.53
IDA receivable	5,935,309.00
Postal Corporation of Kenya	64,069,175.53
EACC	350,000.00
Other receivables	1,260,000.00
Totals	**549,615,629.00**

Although specific provisions have been made for all known doubtful debts, the recoverability of the above amounts in full appears to be uncertain given that they have been outstanding for more than one year.

Further, in the audit report for 201,6/2017 reference was made to the amount of Kshs.478, 001,144.53 due from KRA in respect of claims receivable on unassessed lodgments. No explanations were provided for the failure to resolve this matter with KRA in the year under review.

The Managing Director admitted to the audit findings and submitted that: -

The Company would continue to engage the Kenya Revenue Authority for them to refund the amount and they are in the process of hiring a consultant to follow up. The Company would recommend to the Board the write-off for the amount that is not recoverable.

Committee observation: -

1) The amounts due from the KRA were material and have been outstanding for more than two years.
2) The amounts due from Postal the corporation of Kenya are under court process.

The Committee recommends that: -

1) The company should ensure that all debts be recovered before the end of FY 2019/20;
2) The management must provide a progress report on the commitment to debt recovery. This would mean the establishment of debt recovery units within the firm to ensure an efficient and effective mechanism of debt recovery;
3) The management should put a clear policy framework in place to guide the management on criteria for debt recovery, procedures for how some debts are written off, and terms of penalties for violations thereon.

2.3 Amounts Due to Related Parties

The statement of financial position as of 30 June 2018 reflects current liabilities and non-current liabilities balances of Kshs. 1,146,615,016 and Kshs. 3,619,665,878 in respect of amounts due to related parties. As disclosed in Note 25 to the financial statements the amounts were due to *Athi Water Services Board* (AWSB) for the lease fee as of 30 June 2018.

Although the management explained that the lease fee was based on an arbitrary figure during tariff settings by AWSB, the lease agreement was not provided for audit review and therefore, the basis upon which the lease fee was determined could not be ascertained.

The Managing Director admitted to the audit findings and submitted that: -

The Constitution of Kenya does not anticipate the flow of money from the County Government or its Agent to the National Government. The amount due in the related party was set and imposed on the Company without any regard to the Water Act and was not payable as all water assets were developed by the City Council of Nairobi (Nairobi City County) gave all the rights to the company to provide Water and Sewerage services in the City.

Committee observation: -

1) The Committee noted that the problem has been recurring for the last 3 to 4 financial years; and
2) The Committee observed that; the firm is not obliged to pay anything to Athi Water since all assets belong to it. In the same breath, it was further noted that the firm entirely relies on Athi Water for the infrastructures and therefore entered into an agreement with Athi Water.

The Committee recommends that: -

1) Athi Water Services Board (AWSB) should account for the amounts received for the period 2007 – 2016;
2) The Company should stop any further payments to Athi Water Services Board pending review of the Tripartite agreement;
3) Valuation be done on the assigned assets to give the current value of the assets and an agreement be put in place to guide on the payments of lease fee taking into account the value of the leased assets;
4) All the assets should be repossessed to the Company since it is a County Government Corporation mandated to provide water and sewerage services to the County residents as per the constitution; and
5) The NCWSC should cooperate with other parties to ensure that the Tripartite Agreement (agreed by the NCWSC, Athi Water, and the defunct City Council) is reviewed because it had been long overdue since meaningful considerations were made. This is essential in fostering clear assignments of roles and responsibilities among all parties involved. Therefore, upon review of the said agreement, the Management must furnish the Committee report on the reviewed agreements.

2.4 Property, Plant, and Equipment

2.4.1 Water Infrastructure Assets

The statement of financial position reflects the property, plant, and equipment balance of Kshs. 2,949,972,964 as of 30 June 2018. The balance includes buildings, plant and machinery, and equipment valued at Kshs. 63,790,389, Kshs. 586,591,708 and Kshs. 224,595,626, respectively comprising improvements to the water and sewerage transmission works and other infrastructure belonging to the defunct Nairobi City Council, but otherwise assigned to the Nairobi City Water and Sewerage Company Limited. However, the parcels of land including dams on which the expansion and improvements had been carried out have never been disclosed or reflected in the financial statements under review.

The audit also revealed that some other water infrastructure assets of undetermined values including land, dams, water pipelines, sewer systems, and water treatment plants owned by the Nairobi City Water and Sewerage Company Limited and used in revenue generation have not been disclosed or included in the financial statements.

The Managing Director admitted to the audit findings and submitted that: -

As reported in 2016-17 and previous audit responses, the company maintains an asset register for assets acquired as per the Tripartite Agreement, Handover deed, Agency Agreement, and Service Provision Agreement. The SPA gives the company the right to develop/acquire property, plant, and equipment for delivery of water and sewerage services within Nairobi.

The tripartite agreement signed on the 5th of April 2004 between the City Council of Nairobi and the Company Clause 1.2.2 and 1.2.3. guides on how the capital improvement was to be conducted. The period for the agreement was five years and may be extended by mutual agreement.

The tripartite agreement was never reviewed and the company has continued with the same arrangement however with the new dispensation the company will be able to acquire all the assets leased by Nairobi City County, which will be recognized in the asset register after the transfer, is done by the County Government of Nairobi City.

Committee observations: -

1) The Nairobi City County Government is yet to transfer the Water Infrastructure Assets. i.e. dams, treatment plants, and land, to the Nairobi City Water and Sewerage Company; and
2) An agreement by both Company and the County Government on how to manage the assets would spur efficiency. To this end, the Committee has confirmed that both Policy and Bill regarding the Water issues in Nairobi had been forwarded to the Assembly for consideration.

The Committee recommends that:

1) The Company should disclose all its assets before the end of the Financial Year 2019/2020;
2) The company should allocate some financial resources for a baseline survey for establishing all the Company's assets to enable efficiency in the process of assets/infrastructure transfer by the County Government particularly the Chief Officer responsible for Lands within a stipulated timeframe before the end of Financial Year 2019/2020;
3) The Company should agree on how to manage the County assets. Therefore, the Management should initiate a process of coming up with a sound legal framework. This would enable an effort to provide a legal agreement for ratification by the aforementioned parties. Thus the Managing Director should together with the Chief Officer responsible for Lands appoint a task force with clear duties to carry out a fact-finding mission and produce a report which would then inform a legal agreement for ratification by the aforementioned parties; and
4) The Managing Director should actively participate in giving out sound views in the consideration of the Nairobi City County Water Bill, 2019 which would enable the enactment of the same into law and thereby assist in the operationalization of the same.

2.4.2 Encroachment on Company's Land

As previously indicated in the audit report for 2016/2017, various parcels of land belonging to the Company meant for expansion, storage, water, and sewerage treatment works had been encroached on by private developers. The affected parcels of land include:

1) Loresho Water Reservoir (Nairobi Block 90/587) which was subdivided into six sub-plots-block 90/596 (currently where the reservoir is located), 90/591, 90/592, 90/593, 90/594, and 90/595. The five blocks were subsequently transferred and issued out to new owners. This was irregular as the original block of land was reserved for future waterworks expansion;
2) Kariobangi North Sewerage and treatment work where the land was allocated to several groups including Kariobangi Sewage Farmers Self-help Group, Provincial Administration (chief's camp), Our Lady of Fatima Secondary School, Alice Nursing Homes and Kariobangi Catholic Church for Polytechnic construction. Records relating to allocation, survey, and subdivision of the land have, however, to date not been made available for audit review. Consequently, the purported subdivision and allocation can still not be verified;
3) Encroachment on LR No.13119/2 –Booster Station II. The parcel of land is situated off Kabete Road where water from Ruiru Dam is pumped into Kabete treatment works for redistribution. The information available indicates that a complaint had been lodged by the Company in June 2007 concerning the encroachment. However, records of the land have still not been made available for audit review. Consequently, the status of resolution on the reported encroachment cannot be established; and
4) Ruiru Dam - Kabete pipeline transmission has been encroached upon at Good Shepherd and Kiangima area. The structures under construction have been erected on top of 16'' and 24'' pipes at AV (Air Valve) number 42 (Good Shepherd area), 9",12" and 24" pipes between wash out 38 and AV (Air Valve) number 38 (Kiangima area).

Given the circumstances described above, the completeness, accuracy, and ownership of property, plant, and equipment balance of Kshs. 2,949,972,964 as of 30 June 2018 could not be confirmed.

The Managing Director admitted to the audit findings and submitted that: -

1) The Company wrote to and appeared before the National Land Commission seeking repossession of the land that had been grabbed by private developers;

2) The Company continues to pursue the issue with the NLC, the County Government, and the regulator. In addition, the Company had drafted a Policy and Bill, which proposes formal transfer and ownership of water assets to the Company; and

3) The Policy and Bill had been submitted to the County Government for enactment. The Company was also pursuing the Cabinet Secretary for Water on implementation of section 53 of the Water Act, 2016. The issue of Land was also discussed with the Sectorial committee for water where it was agreed a motion would be introduced in the Assembly to compel all parties involved to act (NCCG, NCWSC, and National Government).

Committee Observations: -

1) The parcels of land in areas under discussion were indeed encroached on by private developers;

2) The firm had shown laxity in repossessing the lands under discussions where it was alleged that some officers were colluding with the said private developers thus frustrating the process of repossessing the said grabbed lands. However, the Committee while on a fact-finding visit noted that in the Loresho area some efforts have been made towards repossessing the grabbed lands from land grabbers;

3) Most areas visited by the Committee were not captured as encroached areas; and

4) Most of the parcels of land owned by the County Government were not well protected in terms of lack of required perimeter walls and lack of required legal documents.

The Committee recommends that:

1) The Chief Officer responsible for Lands should recall, review and if necessary, revoke all title deeds obtained illegally before the end of the Calendar year 2020. In addition, the management to liaise with the Chief Officer for lands concerning the issuance of Title Deeds and any other related tasks.

2) The County and the Company should put in place measures to safeguard any property that falls under the firm's jurisdiction from encroachment which should be reserved for expansion, storage, and treatment works.

3) The officers who were alleged to have colluded with the land grabbers be investigated, and charged before the Court of Law. The Committee had therefore directed the Managing Director to do a letter to the Directorate of Criminal

Investigation (DCI) or Ethics and Anticorruption Commission (EACC) for thorough investigations thirty (30) days after the adoption of the Recommendations this Report by the County Assembly.

2.5 Budget Performance – Under Collection of Revenue

During the financial year ended 30 June 2018, Nairobi City Water and Sewerage Company Ltd had an approved budget of Kshs. 10,761,000,000 for operating revenue. The statement of comprehensive income for the year ended 30 June 2018, however, reflects an operating income of Kshs. 8,478,139,252. This implies that an amount of Kshs. 2,282,860,748 or 21% of the budgeted revenue was not realized, an indication that the Company did not use the public resources at its disposal efficiently and effectively to collect the revenue.

The Managing Director admitted to the audit findings and submitted that: -

In the Financial Year 2017/2018, there was a general drop in the production of water caused by adverse weather conditions. The erratic rain patterns resulted in the up-scaled rationing program that is ongoing to date. The budgeted amount for the FY 2017/2018 was based on a regular water volume production projected at 202 million M3. However actual production for the period was 172 million M3 representing a drop of 14%. Further water billed was 106 million M3, representing a drop of 19% compared to the budget.

Committee observations: -

1) The Committee noted, the Management did not indicate steps for mitigating the effects of unfavorable climatic conditions
2) The Management must adopt an automated system of revenue collection to minimize the leakages and loss of revenue;
3) There is a need to benchmark with other best-performing Cities around the World to adopt modern technologies aimed at increasing the water supply; and
4) The management ought to have reported on weather forecasts concerning rain expectations. This would enable the preparation of budget appropriations.

The Committee recommends that:

1) The Management is obliged to plant more trees, particularly in the water catchment areas. This will mitigate the impacts of adverse weather conditions;

2) The Management should prioritize investment in how to maximize the groundwater for instance in drilling several boreholes;
3) The Management to adopt an automated system of revenue collection to minimize the leakages and loss of revenue;
4) The Management should benchmark with other best-performing Cities around the World to adopt modern technologies aimed at increasing the water supply; and
5) The Company should adopt a *'home-water based sensitization strategy'* on ways to conserve and minimize water wastage. This is aimed at sensitizing the users, especially the households on the necessity to reduce the wastage of water.

2.6 Budget Performance – Under Absorption of Capital Expenditure Budget

During the financial year ended 30 June 2018, Nairobi City Water and Sewerage Company Ltd had an approved budget of Kshs. 16,339,360,000 comprising of operating expenditure of Kshs. 9,927,866,000 and capital expenditure of Kshs. 6,471,494,000. Although the statement of comprehensive income for the year under review reflects operating including finance costs totaling Kshs. 9,113,034,657 or a 92% budget absorption, the assets movement schedule reflects additions of Kshs. 1,030,262,148 only on capital expenditure. The latter situation, therefore, means that only 16% of the capital expenditure budget was absorbed. Failure to execute 84% (Kshs. 5,441,231,852) of the capital expenditure budget resulted in an ineffective delivery of water and sewerage services to the residents of Nairobi City County.

The Managing Director admitted to the audit findings and submitted that: -

During the financial year under review, the country was faced with severe drought, which resulted in a decline in water, produced hence the decline in revenue.

Committee observations: -

1) Bureaucracies have resulted in low absorption of funds allocated for development expenditure and hence it was observed that strict compliance with the Public Finance Management (PFM) Act, 12 would ensure efficient implementation and timely completion of projects; and
2) Non-payment of contractors; -these were exhibited by the slow implementation of projects.

Committee recommends that: -

1) The management should strictly adhere to PFM Regulations regarding project timelines; and
2) The management should adopt a proper and actionable plan to realize and achieve objectives as set out in the company's strategic plan.

2.7 Non-Revenue Water

During the year under review, the Company produced a total volume of 172,767,812 cubic meters (m3) of water. Out of this volume, 106,803,022 cubic meters (m3) were billed to customers. The balance of 65,964,740 cubic meters or approximately 38% of the total volume produced represented Non-Revenue Water (Unaccounted for Water).

The Non-Revenue Water (NRW) is 13% over and above the allowable loss of 25% as provided for in the Water Services Regulatory Board guidelines.

The Managing Director admitted to the audit findings and submitted that: -

The company would continue to address the NRW through several interventions as shown below;

i. The company shall improve the carrying capacity of Ngethu-Gigiri transmission mains by overhauling all the Air Valves; and carrying out interconnections to the three (3) pipes at Gatundu and Ngorongo.
ii. The company is supplying water to Kibera through water chambers, which are all metered.
iii. Continuous identification of illegal connections in the network by either disconnecting or regularizing
iv. Proactive replacement of faulty meters.
v. Ensuring timely repair of leaks and bursts.
vi. Carrying out census, tagging, and Geo-referencing of all meters and metered points to improve meter reading and billing.
vii. Installation of more accurate flow meters to replace all mechanical meters for high consumers.

viii. Installation of 700 Automated Meter Reading Systems (AMRs) for large consumers

ix. Establishment of fifty-three (53) District Metered Areas (DMA) within the entire county and addressing all customer service irregularities identified through the Customer Survey Identification

x. Procure and Install production meters for accurate measurements

xi. Install regional bulk meters to help analyze water losses per region

xii. Use Mobile technology for meter reading, disconnection, and other technical operations

xiii. Procure and enhance the usage of portable water meter testing kits, special seals, and related accessories.

xiv. Automate existing Meter Test Bench and Increase capacity by procurement of additional modern bench for diameters above DN50 to DN150 Plus construction of a new Test Bench Building.

xv. Metering of all company utilities and fire hydrants.

xvi. Continue meter replacement in line with meter management policy.

xvii. Carry out flow Audit on the transmission lines.

Committee Observations: -

1) The Committee noted that there was laxity in following up on water leaks and timely repairs;
2) The water pipes in place were of inferior quality and obsolete, thus need for replacement; and
3) The firm has been persistently grappling with the challenge of Non-Revenue Water (NRW), and it appeared that the work plans were never implemented.

The Committee recommends that: -

1) The firm should refrain from the use of materials otherwise deemed as health hazards. Any County infrastructure be free of asbestos which is one the toxic substances;
2) The Management should adopt a policy on the use of ***modern*** water pipes. This would not only promote efficiency but also adaptability to ever-changing

technology. Hence, the Management should replace old and obsolete water pipes;

3) The Management should put up measures on how to identify, report, investigate, and punish water cartels. Water cartels are among another deviant group of people who constantly commit Economic crimes and must thus pay punitive fines once caught. The management should thus collaborate with other investigative agencies such as EACC and DCI to reduce water shortage as occasioned by notorious water cartels;
4) The management should embrace and adopt regular audits of water connections to detect illegal connections; and
5) The Managing Director should within sixty (60) days of the adoption of this report submit a status progress report to the Assembly on actions taken to implement the above proposals by the Managing Director to address this matter as stated before the Committee.

2.8 Gap Detections on Revenue Generated through the Customer Management Systems

The Company's revenue data is generated through a Customer Management System. An analysis of the data generated through the system revealed several gaps in the system-generated bill numbers contrary to Section 2.4.1. of the Nairobi City Water and Sewerage Company Ltd Commercial Operations Policy,2015. A summary of the missing gaps is shown in the table below:

Gap Detection Summary	
Month and year	Missing Records/ Amount Kshs
July 2017	1,039,838
August 2017	845,199
September 2017	1,028,848
October 2017	978,736
November 2017	951,760
December 2017	1,224,785
January 2018	1,316,485
February 2018	1,176,441

March 2018	1,337,200
April 2018	1,143,868
May 2018	1,567,343
June 2018	1,061,161
Total	13,671,664

The Managing Director admitted to the audit findings and submitted that: -

1) The disparity in receipt values was caused by the use of an oracle database object called a sequence. Sequences are database objects from which multiple users can generate unique integers. The sequence generator generates sequential numbers, which can help to generate unique primary keys automatically; and coordinate keys across multiple rows or tables. In the case of CMS, the receipt module has a sequence that enables the caching of up to 50 values per session. Therefore, when a user is making a transaction that requires a receipt entry, the user will cache the values depending on the number of threads the user is using, hence for instance the batch that generates receipts from Agent transactions and can use 10 threads on one session that means it can cache up to 50 * 10 values (500).
2) If more than one cashier is generating a receipt, then the values cached will depend on the number of cashiers. Preventing the jumping of values can only be possible; if only one thread and one user are doing the receipting at any given time and all other users wait for the transaction to complete before they can generate a new receipt which will severely affect the receipt process.

Committee Observations: -

1) Use of the oracle database program also known as 'Sequence' was seen as the prime cause for variance in the results as explained by the management.

The Committee recommends that: -

1) The Company should adopt simple and accessible methods of revenue collection as opposed to complex and inefficient use of programs otherwise known as 'sequence' and;

2) The management further is advised to upgrade its billing system

2.9 Construction Projects

2.9.1 Kasarani Sports View Sewer Reticulation

Nairobi City Water and Sewerage Company awarded tender no. NCWSC/24/2013 for Kasarani Sports View Sewer Reticulation to a contractor at Kshs.24, 523,677.51.

The scope of the works involved the construction of DN 225 sewerage reticulation 1300m within the Kasarani Sports Drive estate near ICIPE. The works started on 27 February 2014 and were due for completion within 153 calendar days from the commencement of the project. In October 2014, the contractor abandoned the site and gave a go-ahead to the Company to terminate the contract citing unavoidable circumstances. The contract was terminated on 16 October 2018 vide letter Ref No. NCWSC/SCD/24/13/Vol.III/5584/BKK/rbm. The engineer's report on the status of the project dated 28 July 2016 shows that the contractor had been paid Kshs. 13,860,545.94 which was 56.52%of the contract sum. The engineers' report also indicated the project to have been abandoned at a 74% completion level. An Audit inspection of the project on 5 February 2019 revealed anomalies as follows:

i) There had been no activity on site after the contractor abandoned the project;

ii) Works had been left in a deplorable condition with gaping manholes, and open trenches which posed danger to residents;

iii) The Company had not recovered liquidated damages after the termination of the contract; and

iv) Consequently, it was not possible to ascertain that value for money had been realized in respect of the expenditure of Kshs. 13, 860, 545. 94.

The Managing Director admitted to the audit findings and submitted that: -

Kasarani Sports View Sewer Reticulation Project was a unit rate contract based on measured works hence the contractor was only paid for work done before abandoning the site.

Pending works financial valuation has been done to ascertain the cost of completing the project in-house and whose source will be the retention money held as well as part of the balance of the contract sum. Completion of these works is in progress and hence the project's utility value is going to be realized by the public.

Committee observations: -

During one of its fact-finding site inspections, the Committee members found that in-house projects were being completed.

Committee recommends that: -

The work which can be done internally, should not be outsourced because it is not economical and easy to supervise the projects.

2.9.2 Proposed Sewer Extension in Utawala Area

Nairobi City Water and Sewerage Company awarded tender no. NCWSC/41/2015 for Sewer Extension in Utawala to a contractor at Kshs. 144,075,079. The scope of the works involved DN225-450 sewer extension to Serve Utawala Estate, AP&GSU training Schools. The works started on 26 September 2016 and were due for completion on 30 April 2018. However, the contractor suspended works on 5 March 2018 due to non-payment. A status report dated 30 June 2018 shows that the contractor had been paid Kshs. 33,884,674.81 with unpaid certificates amounting to Kshs. 40,328,902.50. The project had been done 55% at the time the contractor suspended works. The Audit revealed that the performance bond of Kshs. 14,475,017 issued by CFC Stanbic Bank expired on 12 Nov 2017. Consequently, clause 28 of the Condition of Contracts regarding submission of a valid performance bond security became inoperative. It was valid for 573 days from 19 April 2016 to 12 Nov 2017. However, the Contractor continued with work until 5 March 2018 when he suspended work due to non-payment of certificates. Further, the Company may incur extra costs in payment of accrued interest of Kshs. 1,628,634 due to delayed payment of certified works.

The Managing Director admitted to the audit findings and submitted that: -

In a letter dated 19th December 2017 granting the contractor extension of time, the employer instructed the contractor to submit among other things the renewed performance bond. However, the contractor was yet to submit the renewed performance bond.

The Management further reported that all payments due were subject to 10% retention, giving the Company sufficient in the execution of the contract as a remedial measure. However, NCWSC is in the process of clearing the outstanding payments owed to the contractor for the resumption of work.

Committee observations: -

1) The Management tends to take too long in the termination of contracts, particularly in cases where the contractor abandons work.
2) It was further observed that the contractors tend of abandoning projects hence due diligence should be carried out before the award of works
3) The committee requested further responses concerning the details of the contractor vis-a-vis the amounts paid and the valuation report. In the consideration of said responses the Committee observed as follows;
   - **i)** Twenty (25) firms were issued with the tender documents, out of which only fourteen (14) bidders submitted their bids for the said tender; and
   - **ii)** The said bidders were; - Fairview engineering & construction, Kalonji Building Constructors Ltd, Bashash Construction Ltd, Fadhers Investment Ltd, Thwama Building Services, Lirona Construction Ltd, Columbia Developers 'K' Ltd, Insta-Pumbs Engineering Ltd, Digital Construction Ltd, Jagwe Enterprises Ltd, Funan Construction, Tisco Construction Ltd, Hanamal Construction Ltd, and Afri Link.

Committee recommends that: -

1) The Management should observe the timeline for projects; and
2) The Management should adopt a proper and actionable plan to realize and achieve objectives as set out in the Company's strategic plan.

2.10 Termination of Directors' Contracts

Examination of human resource records revealed that the management-terminated contracts of three functional directors vide termination letters dated 17 August 2017 contrary to the Employment Act 2007 Section 45 (1) and (2). The three directors were in charge of Commercial Services, Human Resources, Administrative Services, and Finance and Strategy. The three filed lawsuits at the Employment and Labor Relations

Court under ELRC No 1726 of 2017, Petition No 32 of 2018, and Petition No. 118 of 2018, respectively upon the termination of their contracts.

The ruling of one of the cases- ELRC No. 1726 was delivered on 13 November 2017 quashed his dismissal and reinstated him. Alternatively, he was to be paid for the full contract ending 11 September 2017 and for the full contract term commencing 11 September 2017. The other two cases are still pending in court. The claims by the three directors amounting to Kshs.186, 204,338.60 is as tabulated below:

Director In-charge of	Claims Kshs.
Commercial Services	53,757,039.00
HR & Administrative Services	70,299,083.60
Finance & Strategy services	62,148,216.00
Total	**186,204,338.60**

In addition, the Company incurred expenditures totaling Kshs. 484,400 in respect of legal fees as per the internal memo from the legal department dated 8 October 2017-Ref LEG/394/2017.

The Managing Director admitted to the audit findings and submitted that: -

All three cases were in court and the company waits for the Judicial ruling that would determine whether the contract for staff was terminated in line with the provisions of the law or not. However, the company should ensure termination of staff is always done within the confines of the law.

Committee observations: -

1) It was unlawful terminating the contracts of staff and this should never happen again. Employment Act 2007 section 45 (1) provides that ***'No employer shall terminate the employment of an employee unfairly'***

   Further, Section 45 (5) of the Employment Act 2007 explicitly provides; -

   In deciding whether it was just and equitable for an employer to terminate, the employment of an employee, for the purposes of this section, a labor Officer, or the Industrial Court shall consider -

(a) The procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee, and the handling of any appeal against the decision;

(b) The conduct and capability of the employee up to the date of termination;

(c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;

(d) The previous practice of the employer in dealing with the type of circumstances which led to the termination; and

(f) The existence of any previous warning letters issued to the employee.

Violation of any of these laws would drastically lower the productivity of the firm.

2) Staff appraisal plays a key role in an institution and is important not only to the professional growth of any officer but also key in the productivity of a given institution.

3) The Committee also noted that the NWSC and its staff do not enjoy immunity from political interferences. The Committee thus advised that the management devise ways in delineating the administration of staff affairs from politics. The Committee advised that in consideration of staff appraisal and other rewards performance and discipline must be taken into account.

Committee recommends that: -

1) The Company should adhere to laid out procedures in the Company's Policy when filling in the senior positions. This would protect professionalism from politics particularly unlawful termination of contracts, especially for senior management officers. Senior management officers should not be appointed by the political class but rather be based on the highest level of professionalism.; and
2) Each department should formulate and adopt the mechanism for Staff Performance Appraisal and set relevant targets with respective departmental officers.

2.11 Payment of Allowances to Nairobi City County Assembly Members

Examination of expenditure documents revealed that a total of Kshs. 33,264,115 was irregularly paid to members of the county assembly in form of allowances to carry out legislative and oversight duties. In addition, the Company did not provide any authority to support the payment of the allowances to members of the county assembly.

The Managing Director admitted to the audit findings and submitted that: -

The Company has a budget for stakeholders. The purpose of the budget is to enable the Company to engage the stakeholders on issues that affect the Company. Any allowances paid to the Members of the County Assembly are duly authorized.

Committee observations: -

1) The Company has a budget provision to cater to stakeholder expenses;
2) The Company engages members of the County Assembly as stakeholders on matters of proposed regulations amongst other matters; and
3) Expenditure incurred was duly authorized and supported.

Committee recommends that: -

1) Public participation is an integral part of the effective planning of water service provision. In this regard, engagement with the Members of the County Assembly is essential.
2) Continual engagement with the County Assembly results in effective service provision and provides a qualitative feedback mechanism to the Company.

2.12 Employees in Acting Positions for than Six months

Examination of the expenditure and the human resource records revealed that; several employees have been in an acting capacity for a period exceeding six months contrary to the Company's Human Resource Policy as indicated below:

P/F No	Acting Appointment Date	Confirmed Date	No. of Days in Acting Capacity
02675	05/09/2016	1/08/2017	1 year
02807	16/08/2016	1/08/2017	1 year
02615	16/08/2016	1/08/2017	1 year
08939	17/08/2017	None	1 year 6 months
18693	17/08/2017	None	1 year 6 months
17289	02/03/2018	None	11 months
13200	18/08/2017	None	1 year 5 months
19402	18/08/2017	None	1 year 5 months
18888	12/02/2016	None	1 year 11 months

09059	01/12/2015	None	3 years
01903	02/03/2017	None	1 year 9 months

The Managing Director admitted to the audit findings and submitted that: -

1) Four positions in top management levels i.e. Managing Director (13200), Director Human Resource and Administration Services (19402), Director Finance and Strategy (18693), and Director Commercial Services (17289) are vacant since 17th August 2017. Four staff members were appointed to serve in acting positions one of them as the acting Director of Technical Services because the substantive holder of the position was appointed to the acting Managing Director.
2) All staff appointed in acting positions have continued to act since then. As per the Company policy, the Board could only fill these vacant positions. The operations of the Board were suspended in September 2017. In this case, therefore, the positions should remain vacant until a Board is in place to fill them.
3) For the other vacant positions, the company has carried out suitability interviews and confirmed the acting staff. Any positions falling vacant in the future shall be filled in compliance with the policy.

Committee observations:-

Due to the absence of the said Board, there was no authority to confirm the said vacant positions. However, by the time this Audit Query was being considered by the Committee, the Board had already been constituted.

Committee recommends that:-

The newly constituted Board should either fill the vacant positions or confirm those in acting capacities taking into account requisite competence and qualifications as per the Human Resources (HR) Policy.

2.13. Non – Payment of Audit fees

Trade and other payables balance of Kshs. 2,845,143,931 as of 30 June 2018 including an outstanding audit fees balance of Kshs. 25,951,293 that has accumulated over seven years contrary to the requirement of Section 41 (c) of the Public Audit Act, 2015.

The Managing Director admitted to the audit findings and submitted that: -

The company was striving to pay its obligations as they fall due. The payment was delayed due to depressed revenues.

Committee observations:-

1) The Management response was unsatisfactory. Failure to pay the audit fees fully for seven long years was incomprehensible and it was not only an abdication of responsibility but also an offense; and
2) The firm must pay the audit fee under the requirement of Section 41 (c) of the Public Audit Act, 2015. Non-payment of the said fees has been the trend the management has failed to resolve over several years.

Committee recommends that:-

The Management should expedite payment of the outstanding debts for audit fees before FY 2020. The Firm must commit to paying to clear all pending debts concerning audit fees and further pay the said fees timely under the requirement of Section 41 (c) of the Public Audit Act, 2015.

2.14 Non-existence of Board of Directors

Examination of records relating to the Company's governance revealed that the board of directors' operations was suspended vide the letter ref: **NCC/CS/LOM/1067/2017** dated 27 September 2017. As a result, there has been a lack of formulation of the Company's new policies, procedures, and execution of the functions of the board contrary to section 79(1), Water Act 2016.

The Managing Director admitted to the audit findings and submitted that: -

The shareholder of the Company, the Nairobi City County Government, is in process of appointing a Board of Directors.

Committee observations: -

1) Although it took several years for the County Government to appoint a Board of Directors, the Committee has noted that the Board of Directors was finally constituted; and
2) Nonetheless, in the future there is a need for a clear direction and notifications before the term of tenure for the Board expires. This would avoid incidences of a power vacuum, which might cripple the operations of the Company.

Committee recommends that: -

1) Any other tasks that were pending before the NWSC be finalized and approved by the newly constituted Board; and
2) The Management should formulate regulations, policies, and procedures regarding the challenges to the operations of the Company and forward them to the County Assembly for approval.

3.0 RECOMMENDATIONS

Hon. Speaker, following the findings and observations recorded by the Committee in the course of scrutinizing the Auditor General's report on the financial statement of Nairobi Water and Sewerage Company Limited for the year ended 30th June 2018, the committee urges this Assembly to resolve as follows;

1) The Managing Director should report in writing within 60 days after adoption of this report on the implementation of the recommendations passed by the County Assembly as per the Public Audit Act 2015;
2) The management must provide a progress report on the commitment to debt recovery. This would mean the establishment of debt recovery units within the firm to ensure an efficient and effective mechanism of debt recovery;
3) The management should put a clear policy framework in place to guide the management on criteria for debt recovery, procedures for how some debts are written off, and terms of penalties for violations thereon;
4) The Company should stop any further payments to Athi Water Services Board pending review of the Tripartite agreement;
5) All the assets should be repossessed to the Company since it is a County Government Corporation mandated to provide water and sewerage services to the County residents as per the constitution;
6) The NWSC should cooperate with other parties to ensure that the Tripartite Agreement (agreed by the NWSC, Athi Water, and the defunct City Council) is reviewed because it had been long overdue since meaningful considerations were made. This is essential in fostering clear assignments of roles and responsibilities among all parties involved. Therefore, upon review of the said agreement, the Management must furnish the Committee report on the reviewed agreements;
7) The company should allocate some financial resources for a baseline survey for establishing all the Company's assets to enable efficiency in the process of assets/infrastructure transfer by the County Government particularly the Chief Officer responsible for Lands within a stipulated timeframe before the end of Financial Year 2019/2020;

8) The Company and the County Government should agree on how to manage the County assets. Therefore, the Management should initiate a process of coming up with a sound legal framework. This would enable an effort to provide a legal agreement for ratification by the aforementioned parties. Thus the Managing Director should together with the Chief Officer responsible for Lands appoint a task force with clear duties to carry out a fact-finding mission and produce a report which would then inform a legal agreement for ratification by the aforementioned parties;

9) The Managing Director should actively participate in giving out sound views in the consideration of the Nairobi City County Water Bill, 2019 which would enable the enactment of the same into law and thereby assist in the operationalization of the same;

10) The Chief Officer responsible for Lands should recall, review and if necessary, revoke all title deeds obtained illegally before the end of the Calendar year 2020. In addition, the management is to liaise with the Chief Officer for lands concerning the issuance of Title Deeds and any other related tasks;

11) The County and the Company should put in place measures to safeguard any property that falls under the firm's jurisdiction from encroachment which should be reserved for expansion, storage, and treatment works;

12) The officers who were alleged to have colluded with the land grabbers be investigated, and charged before the Court of Law. Accordingly the Committee directed the Managing Director to do a letter to the Directorate of Criminal Investigation (DCI) or Ethics and Anticorruption Commission (EACC) for thorough investigations;

13) The Management is obliged to plant more trees, particularly in the water catchment areas. This will mitigate the impacts of adverse weather conditions;

14) The Management should prioritize investment in how to maximize the groundwater for instance in drilling several boreholes;

15) The Management to adopt an automated system of revenue collection to minimize the leakages and loss of revenue;

16) The Management should benchmark with other best-performing Cities around the World to adopt the modern technologies aimed at increasing the water supply;
17) The Company should adopt a *'home-water based sensitization strategy'* on ways to conserve and minimize water wastage. This is aimed at sensitizing the users, especially the households on the necessity to reduce the wastage of water;
18) The management should strictly adhere to PFM Regulations regarding project timelines;
19) The management should adopt a proper and actionable plan to realize and achieve objectives as set out in the company's strategic plan;
20) The firm should refrain from the use of materials otherwise deemed as health hazards. Any County infrastructure be free of asbestos which is one the toxic substances;
21) The Management should adopt a policy on the use of ***modern*** water pipes. This would not only promote efficiency but also adaptability to ever-changing technology. Hence, the Management should replace old and obsolete water pipes;
22) The Management should put up measures on how to identify, report, investigate, and punish water cartels. Water cartels are among another deviant group of people who constantly commit Economic crimes and must thus pay punitive fines once caught. The management should thus collaborate with other investigative agencies such as EACC and DCI to reduce water shortage as occasioned by notorious water cartels;
23) The management should embrace and adopt regular audits of water connections to detect illegal connections;
24) The Managing Director should within sixty (60) days of the adoption of this report submit a status progress report to the Assembly;
25) The Company should adopt simple and accessible methods of revenue collection as opposed to complex and inefficient use of programs otherwise known as 'sequence';

26) The Company should adhere to laid out procedures in the Company's Policy when filling in senior positions. This would protect professionalism from politics particularly unlawful termination of contracts, especially for senior management officers. Senior management officers should not be appointed by the political class but rather be based on the highest level of professionalism.;

27) Each department should formulate and adopt the mechanism for Staff Performance Appraisal and set relevant targets with respective departmental officers;

28) Public participation is an integral part of the effective planning of water service provision. In this regard, engagement with the Members of the County Assembly is essential;

29) Continual engagement with the County Assembly results in effective service provision and provides a qualitative feedback mechanism to the Company;

30) The newly constituted Board should either fill the vacant positions or confirm those in acting capacities taking into account requisite competence and qualifications as per the Human Resources (HR) Policy;

31) The Management should expedite payment of the outstanding debts for audit fees before FY 2020. The Firm must commit to paying to clear all pending debts concerning audit fees and further pay the said fees timely under the requirement of Section 41 (c) of the Public Audit Act, 2015;

32) Any other tasks that were pending before the NWSC be finalized and approved by the newly constituted Board; and

33) The Management should formulate regulations, policies, and procedures regarding the challenges to the operations of the Company and forward them to the County Assembly for approval.

MINUTES OF THE 12TH SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY SELECT COMMITTEE ON PUBLIC INVESTMENTS HELD ON THURSDAY, 23RD MARCH, 2023 AT 11:00 AM IN COMMITTEE ROOM 11.

MEMBERS PRESENT

1. **Hon. Hashim Kamau, MCA – Chairperson**
2. **Hon. Dan Oria, MCA – Vice-Chairperson**
3. Hon. Antony Kimemia, MCA
4. Hon. Samson Jera, MCA
5. Hon. Virginia Waitherero, MCA
6. Hon. Musango Maithya, MCA
7. Hon. Farhia Daud, MCA
8. Hon. Brain Itenya, MCA
9. Hon. Hellen Awour, MCA
10. Hon. Grace Kaheti, MCA
11. Hon. Thuo Fiunifu, MCA
12. Hon. Evans Nyangicha, MCA
13. Hon. Malyun Abdi, MCA
14. Hon. Tricer Jeptoo, MCA
15. Hon. Deonysias Mwangi, MCA
16. Hon. Peter Maina, MCA
17. Hon. Jared Akama, MCA

MEMBERS ABSENT

1. Hon. Peter Imwatok, MCA
2. Hon. Stephen Ndegwa, MCA
3. Hon. Antony Maragu, MCA
4. Hon. Eric Kiogora, MCA
5. Hon. Rex Omolleh, MCA
6. Hon. Jeremiah Themendu, MCA

SECRETARIAT

1. Mr. Abdi Mohamed – Clerk Assistant

MIN.022/SC-PIC/MARCH/2023: PRELIMINARIES

The agenda for the day was as follows:

1. *Preliminaries (prayers & adoption of the Agenda);*
2. ***Consideration and adoption of Committee report on the Auditor General's report on the Financial Statements of the Nairobi City Water and Sewerage Company for the year ended June 2018;***
3. *Any other business; and*
4. *Adjournment.*

The agenda was read and adopted as proposed by Hon. Peter Maina, MCA, and seconded by Hon. Samson Jera, MCA.

MIN.023/SC-PIC/MARCH/2023 – CONSIDERATION AND ADOPTION OF COMMITTEE REPORT ON THE AUDITOR GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF THE NAIROBI CITY WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED JUNE 2018;

Hon. Samson Jera, MCA and Hon. Farhia Daud, MCA took Member through the Committee recommendation on the said report, As follows;

1) The Managing Director should report in writing within 60 days on the implementation of the recommendations passed by the County Assembly as per the Public Audit Act 2015;
2) The company should ensure that all debts be recovered before the end of FY 2019/20;
3) The management must provide a progress report on the commitment to debt recovery. This would mean the establishment of debt recovery units within the firm to ensure an efficient and effective mechanism of debt recovery;
4) The management should put a clear policy framework in place to guide the management on criteria for debt recovery, procedures for how some debts are written off, and terms of penalties for violations thereon;
5) The Company should stop any further payments to Athi Water Services Board pending review of the Tripartite agreement;
6) All the assets should be repossessed to the Company since it is a County Government Corporation mandated to provide water and sewerage services to the County residents as per the constitution;
7) The NWSC should cooperate with other parties to ensure that the Tripartite Agreement (agreed by the NWSC, Athi Water, and the defunct City Council) is reviewed

essential in fostering clear assignments of roles and responsibilities among all parties involved. Therefore, upon review of the said agreement, the Management must furnish the Committee report on the reviewed agreements;

8) The Company should disclose all its assets before the end of the Financial Year 2019/2020;
9) The company should allocate some financial resources for a baseline survey for establishing all the Company's assets to enable efficiency in the process of assets/infrastructure transfer by the County Government particularly the Chief Officer responsible for Lands within a stipulated timeframe before the end of Financial Year 2019/2020;
10) The Company and the County Government should agree on how to manage the County assets. Therefore, the Management should initiate a process of coming up with a sound legal framework. This would enable an effort to provide a legal agreement for ratification by the aforementioned parties. Thus the Managing Director should together with the Chief Officer responsible for Lands appoint a task force with clear duties to carry out a fact-finding mission and produce a report which would then inform a legal agreement for ratification by the aforementioned parties;
11) The Managing Director should actively participate in giving out sound views in the consideration of the Nairobi City County Water Bill, 2019 which would enable the enactment of the same into law and thereby assist in the operationalization of the same;
12) The Chief Officer responsible for Lands should recall, review and if necessary, revoke all title deeds obtained illegally before the end of the Calendar year 2020. In addition, the management is to liaise with the Chief Officer for lands concerning the issuance of Title Deeds and any other related tasks;
13) The County and the Company should put in place measures to safeguard any property that falls under the firm's jurisdiction from encroachment which should be reserved for expansion, storage, and treatment works;
14) The officers who were alleged to have colluded with the land grabbers be investigated, and charged before the Court of Law. Accordingly the Committee directed the Managing Director to do a letter to the Directorate of Criminal Investigation (DCI) or Ethics and Anticorruption Commission (EACC) for thorough investigations;

areas. This will mitigate the impacts of adverse weather conditions;

16) The Management should prioritize investment in how to maximize the groundwater for instance in drilling several boreholes;
17) The Management to adopt an automated system of revenue collection to minimize the leakages and loss of revenue;
18) The Management should benchmark with other best-performing Cities around the World to adopt the modern technologies aimed at increasing the water supply;
19) The Company should adopt a *'home-water based sensitization strategy'* on ways to conserve and minimize water wastage. This is aimed at sensitizing the users, especially the households on the necessity to reduce the wastage of water;
20) The management should strictly adhere to PFM Regulations regarding project timelines;
21) The management should adopt a proper and actionable plan to realize and achieve objectives as set out in the company's strategic plan;
22) The firm should refrain from the use of materials otherwise deemed as health hazards. Any County infrastructure be free of asbestos which is one the toxic substances;
23) The Management should adopt a policy on the use of *modern* water pipes. This would not only promote efficiency but also adaptability to ever-changing technology. Hence, the Management should replace old and obsolete water pipes;
24) The Management should put up measures on how to identify, report, investigate, and punish water cartels. Water cartels are among another deviant group of people who constantly commit Economic crimes and must thus pay punitive fines once caught. The management should thus collaborate with other investigative agencies such as EACC and DCI to reduce water shortage as occasioned by notorious water cartels;
25) The management should embrace and adopt regular audits of water connections to detect illegal connections;
26) The Managing Director should within sixty (60) days of the adoption of this report submit a status progress report to the Assembly;
27) The Company should adopt simple and accessible methods of revenue collection as opposed to complex and inefficient use of programs otherwise known as 'sequence';
28) The Company should adhere to laid out procedures in the Company's Policy when filling in senior positions. This would protect professionalism from politics particularly

management officers should not be appointed by the political class but rather be based on the highest level of professionalism.;

29) Each department should formulate and adopt the mechanism for Staff Performance Appraisal and set relevant targets with respective departmental officers;
30) Public participation is an integral part of the effective planning of water service provision. In this regard, engagement with the Members of the County Assembly is essential;
31) Continual engagement with the County Assembly results in effective service provision and provides a qualitative feedback mechanism to the Company;
32) The newly constituted Board should either fill the vacant positions or confirm those in acting capacities taking into account requisite competence and qualifications as per the Human Resources (HR) Policy;
33) The Management should expedite payment of the outstanding debts for audit fees before FY 2020. The Firm must commit to paying to clear all pending debts concerning audit fees and further pay the said fees timely under the requirement of Section 41 (c) of the Public Audit Act, 2015;
34) Any other tasks that were pending before the NWSC be finalized and approved by the newly constituted Board; and
35) The Management should formulate regulations, policies, and procedures regarding the challenges to the operations of the Company and forward them to the County Assembly for approval.

Thereafter, the Committee adopted the report as proposed by Hon. Peter Maina, MCA and seconded by Hon. Musango Maithya, MCA

MIN.024/SC-PIC/MARCH/2023 – ANY OTHER BUSINESS

There was no other business.

MIN.025/SC-PIC/MARCH/2023 - ADJOURNMENT

There being no other business, and the time being 12:01 p.m. the Chairperson adjourned the meeting to a later date.

.... 28/3/22 ....

Chairperson **Date**