



The Republic of Uganda

INSPECTORATE OF GOVERNMENT

REPORT ON INVESTIGATIONS INTO ALLEGED IRREGULARITIES IN THE APPOINTMENT OF THE MD NATIONAL WATER AND SEWERAGE CORPORATION, COMPLAINT HQT/15/4/13

Contents

1. Background	1
2. Objectives	2
3. Scope.....	3
4. Methodology	3
5. Law Applicable.....	4
6. Findings	4
6.1 Circumstances leading to the vacancy of the position of MD at National Water and Sewerage Corporation	4
6.2 Circumstances leading to the withdrawal of KPMG	5
6.3 The Role of the Public Service Commission in the recruitment exercise.....	12
6.4 Whether the recruitment exercise was conducted fairly and transparently, and in accordance with the NWSC Act.....	16
6.4.1 Alteration of the Selection Criteria at Short Listing	16
6.4.2 Conflicting Instructions to KPMG and PSC	20
6.4.3 Alleged unfairness of the NWSC Board Interviews vis-à-vis the PSC Interview Process	23
6.4.4 Alleged Political Interference and/or Influence Peddling	29
7. Final Conclusions	37
8. Recommendations.....	39

1. Background

In November 2011 the post of (MD) at the National Water and Sewerage Corporation (NWSC) fell vacant when the contract of the former MD, Dr. William Muhairwe, expired. The NWSC Board of Directors at the time resolved not to renew the contract but instead opted to call for applications from suitably qualified Ugandans. Subsequently, the Board resolved to contract KPMG, a management consultants' firm to carry out the recruitment on their behalf.

The Board was then expected to select the most suitable candidate according to the provisions of the NWSC Act, after preliminary interviews carried out by KPMG. However, before the process could be completed KPMG withdrew their services. The Board then sought the assistance of the Public Service Commission (PSC) to carry out the recruitment.

In the interviews conducted by the PSC, Eng. Dr. Silver Mugisha emerged as the best candidate while Eng. Alex Gisagara, was returned as the second best. The Board went on to conduct another interview of the best three candidates from the PSC interviews from which Eng. Gisagara emerged as the best candidate.

On 2nd August 2012 the Board wrote to the Minister for Water and Environment at the time, Hon. Maria Mutagamba, informing her about the results of the interviews and that Eng. Gisagara had emerged as the best candidate. On the 4th of August 2012, Hon. Mutagamba wrote to His Excellency the President and requested for the "security vetting" of both Eng. Gisagara and Eng. Mugisha. However, in the same letter she informed the President that Eng. Mugisha was returned as the best candidate by the PSC but after a due diligence exercise as recommended by the PSC, the Board returned Eng. Gisagara as the best candidate.

The matter remained in abeyance until 7th September 2012 when it was raised with the President by the new Minister for Water and Environment, Hon. Prof. Ephraim Kamuntu. On 24th February 2013, the President wrote to the Minister to advise that the correct thing to do in the circumstances would be to appoint the candidate who had emerged best at the PSC interviews. The President went on to state that Eng. Dr.

Silver Mugisha may be the better candidate since he was “a new broom” to the Water Corporation. He also recommended that the Board be castigated for interfering with the work of a professional body leading to its withdrawal from the assignment and for ignoring the recommendations of PSC and imposing their own candidate.

The term of office of the members of the Board that initiated the recruitment exercise came to an end on 31st August 2012 before the appointment of the MD was concluded. A new Board was appointed and took office on 1st February 2013. The lapse of time led to the lodging of a complaint with the Inspectorate of Government wherein the current Board of Directors was accused of failing to expeditiously appoint an MD for the Corporation. There were also allegations that the recruitment process was marred by irregularities in that the previous Board seemed to have been biased towards one of the candidates. Further that the delay bordered on influence peddling *“that may have a bearing on corruption.”*

In a separate complaint to the Inspectorate, it was alleged that the previous Board of NWSC carried out further interviews on top of the PSC interview where they manipulated the results by awarding higher scores to Eng. Alex Gisagara, so making Eng. Silver Mugisha lose the job. It was further alleged that the Corporation Secretary leaked a fraudulent resolution to Parliament in favour of appointing Eng. Alex Gisagara before the resolution was made on 31st August 2012.

The Inspectorate therefore decided to investigate the complaints.

2. Objectives

- i) To establish the circumstances leading to the vacancy of the position of MD NWSC.
- ii) To establish the circumstances that led to KPMG withdrawing from the recruitment exercise.
- iii) To establish the role of the Public Service Commission in the recruitment exercise.

- iv) To establish whether the recruitment exercise was conducted fairly and transparently and in accordance with the provisions of the NWSC Act, and the role of the current Board of Directors in the process.
- v) To make appropriate recommendations based on the findings of the investigation.

3. Scope

The investigations focused on the recruitment of the MD NWSC and the allegations of wrong doing on the part of the Board of Directors and the Corporation Secretary, from November 2011 to the time that the current board of directors took office and restarted the process, as well as the allegations of influence peddling or political influence.

4. Methodology

The methods used were in-depth interviews with the persons involved in the process and analysis of documents related to it.

The following people were interviewed:

- i. Mrs. Christine Nandyose Kasirye, Former Chairperson NWSC Board of Directors;
- ii. Mr. Ganyana Miiro, former Vice Chairperson NWSC Board;
- iii. Mr. Victor Kobel, former Board Member;
- iv. Ms Sarah Walusimbi, Corporation Secretary NWSC;
- v. Mr. David Ssebabi, former Board Member NWSC;
- vi. Eng. Sottie Bomukama, former Board Member NWSC;
- vii. Dr. WanaEtyem, former Board Member NWSC;
- viii. Mr. David Kyambadde, former Board Member NWSC;
- ix. Mr. William Okecho, Chairperson NWSC Board;
- x. Ms. Ziria Ndifuna, Board Member NWSC;
- xi. Ms. Ruth Asiimwe Kanyaraju, Board Member NWSC;
- xii. Mr. Daniel Luliro Nadhomi, Board Member NWSC;
- xiii. Dr. Cecilia A. Oyet, Board Member NWSC;
- xiv. Mr. Dennis Mwebaze Nduhura, Board Member NWSC;
- xv. Eng. Richard Cong, Board Member NWSC;

- xvi. Eng. Alex Gisagara, Candidate for position of MD and Ag. MD of NWSC;
- xvii. Eng. Dr. Silver Mugisha, Candidate for position of MD and employee of NWSC.

The following documents were retrieved and perused:

- i) Various sets of Minutes of Meetings of the Board of Directors of NWSC;
- ii) Contract between NWSC and KPMG dated 3rd April, 2012
- iii) The NWSC Human Resource Handbook, August 2012
- iv) The Public Service Commission Report of the Selection Exercise Administered to Applicants for the Post of Managing Director, National Water and Sewerage Corporation
- v) Score sheets for each of the applications during the Board Interviews
- vi) Personal files of Engineers Mugisha and Gisagara with NWSC
- vii) Series of correspondence related to the recruitment process

5. Law Applicable

- i. The Constitution of the Republic of Uganda, 1995(as amended);
- ii. The Inspectorate of Government Act, 2002;
- iii. The National Water and Sewerage Corporation Act, Cap 317.

6. Findings

6.1 Circumstances leading to the vacancy of the position of MD at National Water and Sewerage Corporation

Section 16 of the NWSC Act provides that the Board of Directors shall appoint the MD who shall serve for a period of five years. But unlike section 8 (1) which provides that the Board of Directors appointed under the Act shall serve for a term of three years and shall be eligible for reappointment for another term, the Act is silent about the eligibility of

an incumbent MD for re-appointment. Therefore, when the contract of the former MD, Dr. William Muhairwe, expired on 17th November 2011, the Board opted not to renew it but instead advertised the position for recruitment of a new MD. Dr. Muhairwe had served NWSC for a period of 13 years, from 9th November 1998 to 11th November 2011.

According to Minute 3.0 of the Special Board Meeting held on the 18th October 2011, the Chairperson stated that she communicated to the Minister about the pending expiry of the MD's contract. That the Minister had in turn sought the Solicitor General's opinion about the possibility of renewing the contract but the Solicitor General in his response stated that,

“Dr. Muhairwe’s contract was a fixed contract and did not have a renewal clause. This meant that once it expired, Dr. Muhairwe’s legal relationship with NWSC would automatically be severed with no obligation imposed on the employer to renew.”

However, it appears that according to the law, the Board had the discretion to either renew the contract or not since it is apparent that they renewed the contract before. The Board opted not to renew the contract and in a Special Board Meeting held on the 8th of November 2011, under Minute 8(i), resolved to recruit a new MD.

6.2 Circumstances leading to the withdrawal of KPMG

On 31st January 2012 a Special Board Meeting was called to discuss an action plan for the recruitment of a new MD. Under Minute 6 it was agreed that given the sensitivity of the matter, the services of an external consultant be sought.

On 9th February 2012, the Board sat and considered terms of reference for the engagement of a consultant. According to Minute 6 (vii) the Board instructed the Corporation Secretary to ensure that all the required procurement procedures are followed as is required by the Public Procurement and Disposal of Assets Act (PPDA Act) and the Regulations thereunder. Following the lawful procurement of a consultant, by Minute

12 (ii) (g) of the 22nd March 2012, the Board resolved to approve Management's request to award the contract for recruitment of a new MD to KPMG.

NWSC then entered into a contract with KPMG on 3rd April 2012. The agreement provided that KPMG's bid document would form part of the agreement. The background to the assignment contained in the bid provided for the scope of work and it was stated that the consultant would be expected to focus on systematic recruitment with objectives including providing assistance to the NWSC Board to clarify on queries from prospective applicants, developing short listing criteria, and assessing and short listing qualifying applicants. In the description of the methodology to be adopted for the assignment (page 34 of the bid) it was stated that,

"On receipt of the job applications from NWSC, we will develop the screening criteria that will include the inherent requirements of the position and discuss them with you. We will receive and code applications, summarise the applications and shortlist candidates that meet the minimum criteria set. We shall then discuss the initial shortlist with NWSC and agree on a final shortlist of 4-6 candidates to sit for the initial interviews."

KPMG therefore participated in the opening of the applications and conducting the short listing exercise. They presented a report to the Board in its meeting held on 25th April 2012. The report showed that out of the 30 applicants, only 4 candidates had been shortlisted. The Board then resolved to,

"...instruct the Consultant to review the short listing of candidates under the revised interpretation of experience at senior management level from 8 to 5 years and come up with a new shortlist of candidates."

The Board also instructed the consultants to consider reciprocity when considering engineers who were registered with professional engineering registration bodies outside Uganda that were similar to the Uganda Engineers Registration Board, who would then also be considered as

registered engineers. The consultants were also to carry out a due diligence with the relevant bodies and Ministries to ensure that all candidates were authentic and duly registered members of professional bodies to which they claimed to be members. It was agreed that another meeting would be convened on 4th May 2012 to consider and approve the revised shortlist of candidates.

On 4th May 2012, Edger Isingoma, the Engagement Partner for KPMG, appeared with Ruth Rusongoza the Project Manager to present the report of the proposed candidates for short listing following the revision of the criteria for short listing in the previous Board Meeting. They presented a list of six (6) candidates and one other possible candidate. The reason for not short listing the possible candidate was the ranking of his Master of Science Degree which was obtained from a Russian University in comparison with a Master of Science Degree of Makerere University. The list of candidates shortlisted by KPMG was as follows:

- i) Patrick ByabakamaKaberenge
- ii) Alex Gisagara
- iii) Keith Kalyegira
- iv) Silver Mugisha
- v) John GendaWalala
- vi) Harrison Mutikanga

The members of the Board pointed out that in previous interviews by PSC where the status of Master of Science Degrees obtained in Russia was questioned they were equated to a Second Bachelors Degree of Makerere University and not to a Master's Degree in Civil Engineering.

The Board therefore tasked the Consultants to seek appropriate clarification from the relevant authorities on whether the Russian Master of Science Degree could be equated to a Master of Science Degree of Makerere University and advise the Board. They also requested them to seek clarification as to whether registration as an Engineer with the Engineers Registration Board of Zambia was similar to registration with the Uganda Engineers Registration Board because this would enable the Board to establish the eligibility of one of the candidates. The Board then resolved and instructed the Consultant to submit the list of the names

proposed for the final shortlisting to the Chairperson for confirmation and approval before writing to the candidates.

The recruitment of the MD was next discussed in a Special Board Meeting held on 24th May 2012 whose Minutes are **Annex 1** hereto. In an unexpected turn of events and in the absence of a representative from KPMG, the Chairperson made a presentation under Minute 10.2 referred to as ***“Presentation of the Chairperson’s Report on the Selection Exercise by the Consultant (KPMG) and the Independent Review Committees (Management Committee and the Public Service Commission)”***.

The Chairperson circulated the report and gave a brief background to it by outlining why she took on the responsibility of verifying the summarised details of all the applicants for the post. She explained that it was to satisfy *“any doubting Thomas that none of the deserving candidates had been left out of the shortlist that had been compiled and submitted to the Board by KPMG.”* She also informed the Board that the verification exercise had been conducted by two teams: one constituted by the Management Committee of NWSC comprised of the Corporation Secretary, the Acting Human Resource Officer and the Principal Human Resource Officer, and another from PSC.

The Chairperson went on to inform the Board that she had also taken on the responsibility of verifying the status of the qualifications and grades obtained by applicants from foreign universities. Further that she had taken up the responsibility of verifying whether the Zambia Engineers Registration Board was similar to the Uganda Engineers Registration Board.

In her presentation, the Chairperson read out the lists of persons recommended for short listing by KPMG (6 and one possible candidate) the Select Management Committee of NWSC (5 and 3 possible candidates), and the PSC (5 and three other possible candidates). The Board decided to disregard the list as proposed by the Select Management Committee and endorsed the list recommended by the PSC. They also decided to consider the additional candidates who had been proposed for inclusion on the list proposed by PSC, on a case by case basis.

After going through the list of candidates recommended by PSC and the other possible candidates, the Board resolved to forward the names of six candidates approved by it for short listing. The Board also assigned to the Chairperson the tasks of writing to the Executive Director National Council of Higher Education about equating the Russian Master of Science Degree to that of Makerere University, and to the Zambia Engineers Registration Board over whether it was similar to the UERB. Thereafter she would take appropriate action about one of the candidates to whom the questioned qualifications related, Dan Kibuuka Kyobe.

By letter dated 10th May 2012 (**Annex 2**), the Chairperson of the Board consulted the Secretary UERB; she also consulted the National Council of Higher Education (NCHE) for guidance by letter dated 25th May 2012 (**Annex 3**). UERB replied on 23rd May 2012 (**Annex 4**) stating that the Engineering Registration Board of Zambia is the equivalent of the UERB on account of Zambia being a Commonwealth country. And by letter dated 14th June 2012 (**Annex 5**), NCHE wrote to confirm that Eng. Kyobe's Degree could be equated to a Master's Degree in Engineering obtained in Uganda.

On the basis of the advice from NCHE and UERB, the Board Chairperson submitted a list of seven (7) applicants to KPMG as the candidates approved for short listing by the NWSC Board as follows:

- i) Patrick Byabakama Kaberenge
- ii) Alex Gisagara
- iii) Silver Mugisha
- iv) John Peter Mujuni
- v) Harrison Mutikanga
- vi) Keith Kalyegira
- vii) Dan Kibuuka Kyobe

KPMG did not accept the amended shortlist on the grounds that the inclusion of additional names contravened their professional standards. In a letter dated 21st June 2012 (**Annex 6**) where the firm terminated the engagement one of the Partners stated as follows:

“The inclusion of additional names in the shortlist as communicated in your letter of 15 June 2012 is not consistent with our professional standards as this could put to question the integrity of the entire process. As a result, we are unable to continue with the recruitment process beyond the short listing stage. In addition, this recruitment could not qualify to be in any way associated with KPMG.”

According to the Minutes of the Board Meeting held on the 22nd June 2012(**Annex 7**), the Chairperson of the Board informed the members that KPMG did not accept the amended shortlist submitted on behalf of the Board and terminated the contract.

The Board was divided on whether the 7th candidate qualified to be included in the shortlist. While some members sided with the Chairperson who took it upon herself to verify his qualifications, others expressed the view that he did not qualify according to criteria set in the advertisement and agreed upon with KPMG. In his interview with Inspectorate Officers, one of the members of the previous NWSC Board commented about the final shortlist in the following manner:

“Before the board could reconvene to review the response from NCHE in regard to the eligibility of Mr. Kyobe, the Chairperson wrote to the Consultants instructing them to continue with the recruitment exercise based on the shortlisted candidates who now numbered seven; the seventh being Mr. Dan Kyobe, the Engineer with a Master’s Degree from the former USSR and unverified registration purportedly obtained from Zambia where he previously worked. It was also instructive to note that a search on the web site of the Engineering Council of Zambia did not list him as a registered Engineer in Zambia. The candidate was therefore being shortlisted when he did not merit it.”

However, the Board’s final stand on the resignation of KPMG was reflected in the Minutes of 22nd June 2012 was that as the Board of NWSC, they drew their powers to execute their mandate, without undue interference, from the NWSC Act. And that subject to the Act, the Board may by virtue of paragraph 10 of the Schedule thereto regulate their own

procedures. It was thus stated in the Minutes of the Meeting of 22nd June 2012 that,

“On the basis of that mandate, the Board could take an independent and objective decision in exercise of its discretion and powers. Therefore on the basis of that mandate, the Board was not bound to follow the Consultant’s recommendations to the letter, but could use its discretion to add, remove, or disregard the Consultant’s recommendation and come up with its own independent decisions.”

The board members were also of the view that they complied with all the required procedures and had reached the final stage of selecting the final shortlist of candidates through *“an objective and transparent process and by consensus.”* The Board therefore resolved to accept KPMG’s resignation and to request the PSC to assist the Board to conduct preliminary interviews and administer psychometric tests to the candidates whose names were to be submitted to PSC as shortlisted by the Board.

Observations and Conclusion

This list submitted to KPMG by the Board was different from that recommended by KPMG in a manner that disregarded their opinion as the Consultant. While the KPMG list had 6 persons the amended list had seven candidates. The one possible candidate who could have qualified according to KPMG, Sonko Kiwanuka, was not included. Instead, the Board included Dan Kibuuka Kyobe and John Peter Mujuni whom KPMG were of the view did not qualify according to the set criteria.

The list was also contrary to what KPMG had been instructed to come up with in the terms of reference in that while the TOR requested for a list of four to six candidates, this list had seven. The acts of the Board also disclosed to KPMG that the Board had no confidence in them as a Consultant. It could also be inferred from the trend of events that the board members had preferred candidates that they felt the Consultant had to interview. KPMG’s independence was thus placed in jeopardy.

While the power to appoint the MD for NWSC is indeed vested in the Board by s.16 of the NWSC Act, it was highly irregular for the

Chairperson of the Board to take over the role of the Consultants when she approached the PSC to carry out a parallel process of short listing candidates. She in effect recruited another consultant to carry out part of the process of recruitment parallel to KPMG.

The Chairperson also led the Board to instruct her to carry out another task that KPMG had initially been instructed to carry out when she informed them that she had taken on the tasks of consulting UERB and NCHE on equating the qualifications of some of the candidates. This all amounted to breach of the terms of the contract by which the role of short listing candidates had been specifically assigned to KPMG as the Consultant and at a fee.

It was irregular, if not illegal, for the Board to purport to add two names to the shortlist and remove one candidate shortlisted by the Consultant because it amounted to varying the criteria for recruitment after applications had already been received. It meant that the applicants whose names were included after equating qualifications to the Uganda equivalents received an unfair advantage over potential applicants who obtained similar qualifications from universities outside Uganda but did not apply.

It is therefore our finding that KPMG was within its rights and made a correct assessment of the situation when they withdrew from the recruitment process. Without prejudice to the findings of the Board that the candidates that were added to the shortlist may have had the requisite qualifications for the post, the Board in a manner that may be perceived as high handed, interfered in the recruitment process contrary to the agreement with KPMG that they (KPMG) would assess and shortlist the candidates to be interviewed.

6.3 The Role of the Public Service Commission in the recruitment exercise

As already shown above, it seems that the decision to retain PSC to participate in the recruitment process was not initiated by the Board but by the Chairperson. According to the Minutes of the Board Meeting held on 4th May 2012, it was expected that by the next meeting, KPMG would

have implemented the instructions of the Board to seek clarification from the relevant authorities about the M.Sc. Degrees from Russian Universities and registration of one of the candidates with the Zambia Engineers Registration Board.

It was also expected that KPMG would have submitted a final list of shortlisted candidates to the Board Chairperson for confirmation and approval before writing to them. Instead, the Chairperson returned with information that she had undertaken the process of verifying the findings and recommendations of KPMG. After that the Board clothed her with the mandate to go on and carry out the role of the Consultants to verify the questioned qualifications of some of the candidates and then submit a list to KPMG. The Consultants did not take kindly to this interference and resigned, which left the Board with limited options of the course to take in carrying out the recruitment within the planned period of six months.

Therefore, following the resignation of KPMG, at a meeting held on 22nd June 2012, the Board resolved to formally request the Public Service Commission to assist it to conduct the preliminary interviews and administer the psychometric tests to the shortlisted candidates. According to Minute 10.1 of that meeting, PSC was expected to submit the list of successful candidates to the Board for final interviews by the Board.

However, the decision seemed to have been reached in an environment tinged with discord and acrimony. In his self-recorded statement one Board member stated thus:

“The board was concerned that the Chairperson could make such a fundamental decision unilaterally without the consent of the board but because of the division and tension in the Board arising from the inclusion of the candidate who obviously did not meet the minimum requirement, (sic) it was agreed that Public Service Commission continues under the same terms as KPMG was contracted to do, save for the cost of the service.”

It was on that basis that the Chairperson of the Board wrote to the Chairman PSC (**Annex 8**) to inform him of their decision. Because she had already brought them on board to carry out a short listing exercise parallel to KPMG, she requested that PSC

“...continue with the recruitment process on behalf of the Board to come up with a final list of candidates for consideration by the Board for appointment to the position of MD of NWSC.”

The PSC subsequently invited these seven candidates that the Board agreed to shortlist, out of which six turned up for the interviews, namely:

- i) Dr. Eng. Harrison Mutikanga
- ii) Dr. Eng. Silver Mugisha
- iii) Eng. Daniel K. Kyobe
- iv) Eng. Alex Gisagara
- v) John Peter Mujuni and
- vi) Patrick Byabakama Kaberenge

PSC took the candidates through a written competence test to establish the candidates' levels of knowledge in the areas of performance management, environmental management, international procurement, stakeholder management and water supply management. This was followed by an 'in-tray exercise' to test the candidates' ability to think through and deal with challenges arising in a normal work setting. The final interview was an oral one and meant to test the candidates' understanding of the demands of the job.

Of the six candidates interviewed, three emerged as the best with the following scores:

i) Eng. Dr. Silver Mugisha	-	69.32 %
ii) Eng. Alex Gisagara	-	61.97 %
iii) Patrick Byabakama Kaberenge	-	60.47%

In their report following the exercise and the covering letter (**Annex 9**) PSC recommended that the Board takes the best candidate given that there was only one vacancy available. They further recommended that the Board conducts "due diligence" on the three candidates in order to establish their competence to manage 'interpersonal relationships'.

Observations and Conclusions

However, it is important to note that while the PSC is charged with the function of recruiting and appointing persons in the public service of Uganda under Article 166(1) (b) of the Constitution, among other functions, the mandate of the Commission does not ordinarily include appointment of persons employed by parastatals established by Acts of Parliament, such as NWSC. PSC only exercises control over public servants whose salaries are drawn from the Consolidated Fund and who are described by Articles 166(1) (b) and 175 of the Constitution.

The employees of NWSC are excluded from the description of public servants by virtue of the fact that their salaries are drawn from funds raised by NWSC from goods and services that they provide. These funds are described under Section 26(b) of the NWSC Act and are excluded from the Consolidated Fund by virtue of Article 153(2)(b) of the Constitution. The NWSC Board therefore could not be bound by the results of the PSC interviews.

It was also clear from the deliberations of the Board as reflected in Minute 9.0 of the Meeting held on 9th July 2012 (**Annex 10**) that this was not what was planned. In that meeting, the Chairperson informed the Board that she indicated to PSC that after the preliminary interviews, the Commission would send the names of the best performing candidates to the Board Chairperson of NWSC for the next stage of the recruitment process to take place.

It is therefore our finding that PSC's involvement in the recruitment of the MD of NWSC was not based upon a legal requirement but rather the discretion of the NWSC Board which has the overall authority over appointment of the MD. It was also not meant to be the final interview process from which the NWSC Board would appoint a candidate to take the office of MD. The NWSC Board was therefore definitely not bound by the results of the PSC interview; they were free to depart from them after exploring the needs of the corporation and carrying out the final interviews as had been planned.

6.4 Whether the recruitment exercise was conducted fairly and transparently, and in accordance with the NWSC Act.

6.4.1 Alteration of the Selection Criteria at Short Listing

It will be recalled that following the Board's resolution not to renew Dr. Muhairwe's contract, on 31st January 2012, a Special Board Meeting was called to discuss an action plan for the recruitment of a new MD. It was resolved in that meeting that a consultancy firm be hired to carry out the recruitment and KPMG was properly identified under the provisions of the PPDA Act to take on the assignment.

According to the agreement (**Procurement Ref: NWSC-HQRS/SRVCS/11-12/157648**) which was signed between KPMG and NWSC on the 3rd April 2012 (**Annex 11**), the bid document presented by KPMG was to be part of the agreement together with the Special and General Conditions of Contract bound with it, **Annex 12&13**, respectively. The General Conditions of Contract further provided that the Statement of Requirements (**Annex 14**) would form part of the contract documents and this actually constituted the terms of reference set out for KPMG. The fee for providing the services was stated to be shs. 47,792,000/=.The scope of work for the Consultant was defined in the terms of reference as follows:

- 1) Assist the Board of the Procuring and Disposing Entity to clarify queries from prospective applicants;
- 2) Assist the Board of the Procuring and Disposing Entity in developing short listing criteria;
- 3) Assist the Board of the Procuring and Disposing Entity to assess and shortlist qualifying applicants
- 4) Develop the interview procedures and modules;
- 5) Assist the Board of the Procuring and Disposing Entity to coordinate the venue of interviews, scheduling and timing;
- 6) Guide the Board on composition of the interviewing panel;
- 7) Participate in conducting preliminary interviews of shortlisted candidates and take minutes of the interview proceedings;
- 8) Conduct psychometric tests for the shortlisted applicants that will have passed the preliminary interviews before recommendation to the board for consideration;

- 9) Make recommendations on the final short list of at least four (4) to six (6) persons to the NWSC Board of Directors for further consideration;
- 10) Develop and recommend the final interview criteria and relevant templates for the NWSC Board's consideration;
- 11) Any other appropriate and related terms connected to the consultancy;
- 12) Carry out due diligence on the successful candidate(s);
- 13) Prepare and submit a report to NWSC on the whole recruitment process.

According to the advertisement for the post that was published in the East African of 13th to 19th February 2012 (**Annex 15**), the qualifications and experience required of the desired candidates were specified as follows:

“The post carries great responsibility that calls for a mature person with high integrity and leadership qualities. Candidates must have at least 15 years of experience in a big organization, most of which must have been at senior managerial level. The applicant must hold an advanced degree from a recognized University or institution in any of the following fields:

- a) Water Supply and Sewerage Services*
- b) Engineering*
- c) Commerce and industry*
- d) Environment Management*
- e) Business Management*
- f) Public finance, Banking or Economics*

Membership to a recognized professional body will be an added advantage. Engineers applying must be registered with the Uganda Engineers Registration Board or similar body.

Anybody below 40 years need not apply.”

KPMG embarked on the recruitment and went through a process of short listing on the basis of criteria that had been agreed upon with the Board. They presented the initial shortlist in a Board Meeting held on 25th April 2012. The members of the board were then concerned that only 4 of the 30 applicants had been shortlisted after strict adherence to the short

listing criteria agreed to by the Board. The Board then thought that the Consultant should be more flexible and not take the requirement with regard to the period of experience in a management position to be mandatory at 15 years. They thus resolved to:

“...instruct the Consultant to review the shortlisting of candidates under the revised interpretation of ‘experience at senior management level’ from 8 years to 5 years.”

The board also resolved that the criteria for relevant qualifications be reviewed to take reciprocity between jurisdictions into account by considering engineers registered with professional bodies similar to the Uganda Engineers Registration Board.

The Board discussed the issue of reciprocity further at their meeting held on 4th May 2012. The niggling issue was whether a Second Degree in engineering obtained from a University in Russia was equivalent to the Master of Science Degree obtained from Makerere University. The issue of registration of one of the applicants with the Engineers Registration Board in Zambia was also before the Board. The Consultant was therefore tasked to seek appropriate clarification from the relevant authorities on these two issues to enable the Board make decisions about the concerned applicants. The consultant was to submit the final shortlist to the Board Chairperson for approval before writing to the applicants.

The Consultants reviewed the short listing criteria as agreed with the Board and went back and revisited their draft shortlist. They then came up with a shortlist of six candidates whom they presented to the Board in a report submitted on 7th May 2012.

At the next meeting held on 24th May 2012, the Board did not hear from the Consultant, save from their report submitted on 7th May 2012. Instead the Board Chairperson presented a *“Report on the Selection Exercise by the Consultant (KPMG) and the Independent Review Committees (Management and the Public Service Commission).”* She then informed the members of the Board that she took on the tasks that had been assigned to the Consultant to consult with the relevant authorities about reciprocity of registration with the Engineers Registration Board of

Zambia, and the equating of 2 different categories of Master's Degrees in Engineering obtained from 2 different Universities in Russia.

In her report, the Chairperson presented two shortlists as alternatives to the final short list that had been presented by the Consultant; one from a NWSC Committee and another from PSC. The lists included some candidates that had not been shortlisted by the Consultant. After considerations of the list from PSC vis-à-vis the one from KPMG, the Board came up with a different shortlist including two candidates that had not been shortlisted by the Consultant. They also resolved that another candidate, also not shortlisted by the Consultant, be included on the list after ascertaining his registration with the Zambia Engineers Registration Board, which was eventually done. This is the shortlist that led to the resignation of KPMG.

Observations and Conclusion

There is no doubt that the criteria for short listing deferred from what had been advertised to call for applications. The proceedings of the Board reflect the fact. And in their independent review of the short listing exercise prior to their intervention, PSC noted the following:

- i) The advertisement was not specific with regard to the required work experience
- ii) The advertisement was not specific on the required academic qualifications. Candidates were required to possess “an advanced degree” but this was not clarified in the advertisement
- iii) The short listing criteria adopted by the board and KPMG introduced a number of key competencies that were not included in the advertisement;
- iv) Though the short listing criteria tried to qualify some of the requirements above, some competencies that were not or could not be easily evaluated at that stage were included such as high integrity and commercial work experience
- v) Proof of experience at senior management level could not be verified where candidates did not provide documentary evidence.

In their report, PSC advised the Board to either stick to the criteria of selection laid out in the advertisement and invite only 5 candidates that they were of the view qualified, or re-advertise the post. This was not done and the Board went on to grapple with the already compromised process.

It is therefore our finding that that the disagreements among the board members over this recruitment and the resignation of KPMG sprung from the failure to come up with definitive criteria for selection of the desired candidates for the post right from the inception of the process. Further that the change of the criteria for selection that departed from the criteria included in the advertisement compromised some applicants and also may have resulted into other possible contenders not applying for the position at all, leading to a process that could neither be considered to be fair or transparent.

Any further consideration of the current process for the recruitment of the MD for NWSC would have to take the shortcomings of the advertisement that was used in the exercise into account.

6.4.2 Conflicting Instructions to KPMG and PSC

KPMG withdrew their services under the circumstances detailed in 6.2 above and summarised in 6.4. The Board then requested the assistance of PSC to continue with the recruitment. According to the Corporation Secretary of NWSC and some members of the previous Board interviewed by the Inspectorate, the terms upon which PSC was requested to carry out the exercise were the very same terms upon which KPMG had been tasked to assist the Board in the recruitment process. What is not clear on review of the documentation and the record of interviews is whether these terms were ever officially or otherwise communicated to the Chairman of the PSC.

In her letter to the Chairman PSC dated 28th June 2012 (**Annex 16**), the Board Chairperson referred to a submission dated 7th May 2013 in respect of review and verification of summarized details of applicants and a report on the same dated 15th May 2012. She then went on to state:

“This is to inform you that the special meeting of the Board of Directors of NWSC held on 24th June 2012 resolved that the preliminary interview of the short listed candidates be conducted by Public Service Commission.

The purpose of this letter is to request you to continue with the recruitment process on behalf of the board to come up with a list of candidates for consideration by the board for appointment to the position of Managing Director.”

She then promised to provide them with the short list of candidates to be interviewed at a later date. On 29th June 2012, the Chairperson again wrote to the Chairman PSC (**Annex 17**). She presented the list of candidates to be interviewed, their applications for the post and their curricula vitae. There seems to have been no further communication to inform about the terms of reference or about the course that NWSC envisaged the recruitment process to take.

On the other hand, in a letter dated 4th July 2012 (**Annex 18**) PSC wrote to the Board Chairperson of NWSC to inform her about the “*Proposed Programme and Budget for Technical Support to National Water and Sewerage Corporation.*” In that letter PSC laid down the proposed selection methods to be used. NWSC made no reply to explain protest or guide PSC. Therefore, PSC went ahead and carried out the recruitment process in the manner that they laid out in their letter to NWSC.

According to the Public Service Commission *Report of the Selection Exercise to Applicants for the Post of Managing Director National Water and Sewerage Corporation* (**Annex 19**) the Commission used the three methods in the selection process that were laid down in **Annex 18** as follows:

Written Competence Test: Under this test, the candidates were given a three hour written examination to assess their knowledge about the job and the ability to function as a Chief Executive. The areas assessed were Human Resource Management, Public Finance, Corporate Governance, and Water and Environmental Management. The test was also said to have captured awareness of

both the external and internal institutional environments which were critical for institutional leadership.

In-tray Exercise: This was administered to assess the candidates' ability to think fast and relay information about any scenario to a group of stakeholders. It was also meant to assess general conceptualization, competence, logical and systematic thinking, judgment ability, articulation of issues and voice projection.

Oral interview: This was aimed at discussing the job context with the candidates to ascertain experiential knowledge, appreciation of job demands, risks and threats, leadership maturity and communication.

After the exercise by letter dated 19th July 2012 (**Annex 20**) PSC forwarded their report to the NWSC Board "*for information and appropriate action.*" The three candidates identified as the best were:

1. Eng. Dr. Silver Mugisha,
2. Eng. Alex Gisagara and
3. Mr. Patrick Byabakama Kaberenge.

The Public Service Commission process of selection was detailed and at the end of it, the Commission declared that they had identified the best candidate as Eng. Dr. Mugisha who did well on most of the exercises administered. They therefore recommended that he be appointed as the MD. It seems it is for that reason that the Commission recommended that on top of their interviews the Board only conducts due diligence on the best candidate to establish inter-personal relationships. This scenario raises the question why the Board chose to ask the candidates further technical questions apart from conducting the "*due diligence*" recommended by the PSC.

Observations and Conclusion

In the original plan for the recruitment exercise which was laid out in the terms of reference to KPMG, the board planned and KPMG had agreed with them, that the board would carry out the final interviews of the candidates selected in the preliminary interviews. However, PSC does not

seem to have followed this plan because they carried out what appeared to be a comprehensive selection exercise which returned one of the candidates as the best and recommended that he be appointed the MD. This is probably because PSC either did not receive the terms of reference that had been agreed upon by the Board and KPMG or simply ignored them and did what they were used to doing as the body that ordinarily recruits for the civil service.

On the other hand, the NWSC Board was still following the plan agreed upon with KPMG. They believed that the Chairperson, who had on her own initiative brought PSC into the process but which was later ratified by the Board, had communicated the same terms to PSC. The result was confusion where the candidates and other reviewers of the process thought that the Board deliberately carried out a second series of interviews in order to change the result of the PSC interviews and come up with their own preferred candidate as the best.

On their part, the Board members were only following a plan that had been agreed upon at the beginning of the recruitment process and reduced into terms of reference to be followed by KPMG. They therefore seem to have proceeded with their plan thinking that PSC understood their role as a body that had been brought on board to replace KPMG to carry out preliminary interviews on the same terms.

It therefore is the finding of the Inspectorate that the instructions given to PSC were not clear; they did not properly reflect the process as envisaged by the Board of Directors. The results declared by PSC about their process contributed to the controversy generated over the recruitment of the MD of NWSC.

6.4.3 Alleged unfairness of the NWSC Board Interviews vis-à-vis the PSC Interview Process

In a Special Board Meeting held on 27th July 2012 the Board Chairperson communicated the results of the PSC exercise to the Board who took note of them and appreciated the efforts of PSC. And though the Minutes of that meeting (**Annex 21**) did not note the resolution of the Board to conduct further interviews of the candidates, in the Minutes of

the Board Meeting held on 1st August 2012, specifically to interview the candidates (**Annex 22**), it was stated in Minute 3.0 that at the Board Meeting held on 27th July 2012, the Board resolved to conduct further interviews of the top three candidates identified in the PSC Report.

It was also stated in the same minutes that it was agreed at the previous Board Meeting that each board member, except the Chairperson, would set two technical questions making a total of 12 questions. And that out of these 12 technical questions that had to be submitted by each of the Board members on the day of the interviews, the Board Chairperson would randomly select two questions that each candidate would be required to respond to. The third question that the candidates would be required to respond to was to be personal and related to interpersonal skills, ethics and Board interaction.

At the Board Meeting held on 1st August 2012, the two questions to be asked of each of the candidates were randomly selected from 12 envelopes that were produced by members of the board as had been agreed (Minute 4.1 of 1/08/2012). The questions were recorded in detail as part of the Minutes.

According to Minute 4.3, it was further agreed that candidates' scores would be tallied and a weight of 50% accorded to the PSC interviews. The interviews before the Board would also carry a weight of 50% after which an average score would be computed from the two scores.

As to whether it was fair of the Board to ask technical questions of the candidates in the board interviews, especially in view of the fact that the candidates had already been taken through detailed technical exercises by PSC, differing views were expressed about both the PSC selection process and the final interviews by the board. It is pertinent that those views be explored here.

With regard to the PSC selection process, Hon Prof Kamuntu expressed his views about it in his letter to H. E. the President dated 7th September 2012 (**Annex 23**). In his opinion, the PSC carried out its work in accordance with clause 166 (1) (b) and (f) of the Constitution of Uganda. He was also of the view that the process was comprehensive, carried out by an independent body and that the standards adhered to were

consistent with normal procedures for recruiting high level civil servants including Permanent Secretaries.

And according to Eng. Mugisha who made a self-recorded statement before IG officers (**Annex 24**) and who was the best candidate according to PSC, he was initially comfortable that using professional bodies (PSC and KPMG). Further that this would have prevented the exploitation of the coordinating role of the Corporation Secretary who structurally reports to the Ag. MD, also a candidate for the post, and could easily bias the selection process. He therefore seems to have had no complaints about the PSC process.

However, according to Eng. Alex Gisagara, the Ag MD, the PSC process was flawed. In his self-recorded statement before the Inspectorate dated 6th June 2013 (**Annex 25**) he stated several reasons to support his view including that:

- i) Scoring of the written competence test revealed malpractice by PSC officers who conducted the exercise. The highest scored candidate, Eng. Mugisha, scored 14/20 and the rest of the candidates scored less than 9/20 yet all candidates had proven experience at senior management level; there was no justification for scoring only one candidate more than double the marks awarded to the rest of the candidates;*
- ii) On a question about environmental management, one of the candidates was scored 19/20 as though he was the person who had prepared the question and the marking scheme. One of the candidates already at a senior management level scored only 2/20, which indicated bias and disregard of ethical practice;*
- iii) The overall scores for written exercises revealed that while the leading candidate scored 71% all other candidates scored an average of 51% and below, reflecting a 20% difference between the highest scored candidate and the rest; and*
- iv) While PSC was tasked to conduct psychometric testing for the shortlisted candidates, PSC administered in-tray exercises which*

were subjective. This was against good practice for such high profile interviews that require transparency because psychometric tests are scored on-line and candidates are required to answer more than 140 questions to assess their ability to think fast and make critical decisions involving logical thinking and judgment ability.

In a self-recorded statement dated 17th May 2013, one of the members of the previous board of NWSC was also uncomfortable with the results of the PSC recruitment process. He was first of all uncomfortable with the fact that the Chairperson, who had of her own motion brought PSC on board and more or less singlehandedly led the Board to accept them as the body to replace KPMG as a consultant, tried to have the Board interview the qualifying candidates without first being apprised about their scores on the PSC interviews. In his view, the Chairperson did not want to release the results of the PSC interviews to the rest of the Board yet she and her Deputy knew what they were because,

“The tally sheet for the Public Service Commission marks showed a very disturbing disparity on one of the written questions dealing with water supply, a purely technical issue on which one would not expect such (an) outcome. On that particular question, Dr. Mugisha got 19/20 while Eng. Gisagara got 7/20. As a Water Engineer and someone who had supervised these two people when they were both working as junior engineers under my tutelage in NWSC in the 1990’s, I found it incredible. Worse still the board was never given the chance to review the scripts so as to satisfy itself on the marking. ...questions that have high variations in scores are scrutinized for fairness in marking but the Board was not accorded this opportunity yet PSC was doing this on our behalf and we had every right to access all the interview documents.”

Going on to the question whether the Board interviews were biased in favour of a particular candidate, according to Eng. Mugisha, as one of the candidates, the Board interviews comprised of biased questions that differed from candidate to candidate. This was further compounded by the fact that both the board and PSC interviews were given a weight of 50% of the total score for each candidate. And while the PSC process

comprised of three instruments, the Board interview was one. In his view, *“This act brought in a ‘standalone’ element of unfairness in the process.”*

The other candidate that was interviewed was of the view that the Board interview was comprehensive and covered a wide spectrum of knowledge of such a large institution. They addressed the understanding of the demands of the job of a managing director and so he raised no issues with regard to the manner in which they were conducted.

A review of the questions asked of the candidates as detailed in the Board Minutes of 1st August 2012 showed that the technical questions asked of the candidates were a fair reflection of what was required of the winning candidate on assuming office. They were also asked of candidates across the board and so no overt foul play or biasness could have resulted in administering the technical questions.

Going on to the individual or questions tailored for each of the particular candidates, which were attached to the Minutes, two of the questions that were asked of Eng. Mugisha (**Annex 25A**) tended to link him to the former MD and so insinuate that he was likely to have the same leadership style as the previous MD, as follows:

“You used to be part of Dr. Muhairwe’s Kitchen Cabinet, thinking through strategies and bringing them to top management and forcing them through. What is your comment about that?”

“You used to be close to Dr. Muhairwe, can you tell us how you will ensure that Dr. Muhairwe does not come back to manage NWSC while you are there?”

“You are highly associated with Dr. Muhairwe who used to harass staff. How will you overcome this problem of harassing staff?”

The other questions asked of him related to his moral standing in his employment with NWSC, accountability issues and interaction with the Board.

With regard to Eng. Gisagara, he was questioned about his *“democratic leadership style”* which was said to be flexible and likely to have no impact on staff, and how he was going to overcome this challenge. He

was also asked about the major strategic changes he had implemented while he was serving as Acting MD. The final question seemed to be more technical than personal; his role in the construction of a NWSC pipeline that collapsed. The personal questions asked of the third candidate were all benign, bearing no connection to his moral turpitude or relationships with NWSC staff or the corporation itself.

Observations and Conclusion

Contrary to what had been planned with KPMG and what should have been expected by the NWSC Board, PSC administered an in-tray exercise and other instruments and not psychometric tests. There is a wide range of difference between the expected psychometric tests and the in-tray exercise and other instruments that were administered.

Psychometric testing can measure a number of attributes including intelligence, critical reasoning, motivation and personality profile. An interview process can be fairly subjective and although employers will normally assess skills and experience fairly accurately, much can still be left to gut instinct regarding aligned values. A psychometric test aims to provide measurable, objective data that can give one a better all-round view of a candidate's suitability.

It is also argued that psychometric testing offers some 'scientific' credibility and objectivity to the process of recruiting. It perhaps provides a more fair and accurate way of assessing a candidate, as all applicants will be given a standardised test. Had standardised psychometric tests that had been requested been administered to the candidates, the wide disparities in scores noted above would have been avoided.

In addition to the above, the members of the previous board of NSWC had interacted with some of the applicants for the post for a long time. One of them had known both Eng. Silver Mugisha and Eng. Alex Gisagara right from the time they were recruited into NWSC. Board members therefore had pre-conceived views about these two candidates and therefore could not be objective in assessing them.

Members of the Board also knew about the relationships between the former MD and the candidates. Some could have had some 'axes to grind' with the former MD and took that out on Eng. Mugisha whom they

seem to have perceived as one of his confidantes. They therefore asked him questions that put him in a defensive position. Some were actually derogatory of his relationship with the former MD. The Board members had also worked with Alex Gisagara as the Acting MD for more than one year.

Board members were therefore prejudiced by this prior interaction with the two candidates and it is what led to the very subjective and personalised questions that they asked the candidates. This subjective process, of course, could not be perceived to be fair to either of the two candidates.

In conclusion, both the PSC and Board interviews were manifestly unfair to the candidates because they lacked the required levels of objectivity required in a recruitment process for a managerial position at such a high level.

6.4.4 Alleged Political Interference and/or Influence Peddling

At the end the Board Meeting held on 1st August 2012, the Board resolved to approve and submit Eng. Alex Gisagara's to the Hon Minister for Water and Environment for appointment as MD since he was the best candidate with a score of 69.31%. This was reflected in Minute 4.11 of the Minutes of the Special Meeting held on 1st August 2012 and reduced into a formal resolution by the Corporation Secretary which was dated 2nd August 2012 (**Annex 26**). By letter dated 2nd August 2012 (**Annex 27**), the Chairperson of the NWSC Board, Mrs Nandyose Kasirye forwarded the Board's decision to appoint Eng. Gisagara to the Minister for Water and Environment, Hon. Maria Mutagamba, for her attention and consideration.

However, according to minutes of a Board Meeting held on 31st August 2012 (**Annex 28**), there was some disquiet among members of the Board about how the resolution dated 2nd August 2012 had found its way to Parliament. According to the Corporation Secretary, this resolution which was on file in her office could have leaked to the Parliamentary Committee on Natural Resources at the time when the Policy Statement for NWSC was presented to Parliament. She explained that this was

because the cabinet in which files with Board minutes were kept was not locked.

Because they were informed about the Board's resolution, the Committee summoned the Board to explain why they had not appointed the MD in spite of a resolution having been passed to appoint Eng. Gisagara. This was the reason why the members of the Board raised their concerns about the particular resolution at this board meeting.

The members of the board were also concerned about the same resolution having been signed only by the Corporation Secretary and not by the Chairperson as well. They complained that the resolution as extracted by the Corporation Secretary did not reflect what had been resolved by the Board about the appointment of the MD at the meeting of 1st August 2012. They then instructed the Corporation Secretary to re-write their resolution "clearly" as follows:

"At its meeting held on 1st August 2012, the Board resolved to send results of the best 3 candidates to the Hon Minister of Water and Environment for further guidance. The scores of the 3 candidates were as follows:

<i>1. Eng. Alex Gisagara</i>	<i>- 69.31</i>
<i>2. Eng Silver Mugisha</i>	<i>- 69.16</i>
<i>3. Mr. Patrick Bybakama Kaberenge</i>	<i>- 61.74</i>

The Board further resolved to communicate the successful candidate after response from the Hon. Minister."

According to the Corporation Secretary the position that the Board insisted that she reflects by the alleged correction was not what was agreed upon in the meeting held on 1st August 2012. She referred to the Board Chairperson's letter of 2nd August 2012 to the Minister (**Annex 26**) as having clearly stated what had been agreed upon by the Board, i.e. that they had resolved to appoint Eng. Alex Gisagara as the MD.

Upon receipt of the Chairperson's letter, Hon Maria Mutagambathen wrote to H.E the President on 4th August 2012 (**Annex 29**). She informed him that the Board had recommended Eng. Alex Gisagara for

appointment as MD after conducting a due diligence exercise but she also requested him to direct “security vetting” of the best two candidates.

This seems to have been the real source of the fear and inability to stand by past decisions displayed by the Board members; the fact that their decision to appoint Eng. Gisagara leaked to Parliament or the public before they received a response from the Minister about whether their choice of candidate was acceptable to her or not.

However, before the Minister received a response from the President, she was transferred to another Ministry and Hon. Prof Ephraim Kamuntu became the Minister for Water and Environment. When he took office Hon Kamuntu took up the matter by writing to the President on 7th September 2012 (**Annex 29**). In his letter Hon. Kamuntu indicated that he had reviewed the entire recruitment process and he was therefore submitting a brief to the President to enable him provide guidance based on “accurate facts”. He went on to point out the following as key issues, among others:

- i) The Board of NWSC had insisted that KPMG add more names of candidates to the short list that KPMG had prepared at the preliminary stage, and that as a result KPMG withdrew from the process. Hon. Kamuntu expressed the opinion that the Board seemed to have favoured candidates who were not shortlisted in the KPMG inception report.
- ii) Public Service Commission recommended that the Board consider the best candidate, Eng. Dr. Mugisha, for appointment in line with s.16 of the NWSC Act but it had also recommended that the Board could in addition conduct due diligence of the top three candidates to establish their ability to manage interpersonal relationships.
- iii) Hon. Kamuntu subsequently observed, among other things, that:
 - a) The Public Service Commission carried out its work in accordance with Clause 166, 1(b) and (f) of the Constitution.

- b) The Public Service Commission interviews were comprehensive, independent and consistent with the normal procedures for recruitment of high level civil servants.

Hon. Kamuntu then advised that the best candidate interviewed by PSC be appointed on the grounds that the PSC is more experienced and professional than the Board of NWSC.

His Excellency the President eventually responded to Hon. Kamuntu's letter on 24th February 2012 (**Annex 30**). In his letter the President deplored the Board's interference with KPMG's work and their having ignored the recommendations of the PSC. The President then gave the requested guidance as follows:

"The correct thing should be to appoint Eng. Silver Mugisha who scored highest according to the Public Service Commission. Besides I understand that Eng. Silver Mugisha is new to the Water Corporation. A new 'broom' may be necessary."

On receipt of the letter, Prof. Ephraim Kamuntu, wrote to the current Chairperson of the Board, Hon William Okecho, on 4th March 2012 (**Annex 31**). He reiterated the President's concerns and recommendations and requested the Board to act according to the President's recommendation.

In a letter to the Inspector General of Government dated 22nd April 2013 (**Annex 32**), the current Chairperson of the Board, Hon William Okecho, reported that in a meeting held on 19th April 2013, the Board resolved to appoint Eng. Dr. Silver Mugisha, based on the PSC recommendations. He made no mention of the interview process by the previous Board which had earlier recommended that Engineer Alex Gisagara be appointed to the same position.

Hon William Okecho, was interviewed about the Board's position on the guidance from the Minister. He then informed Inspectorate Officers that the Board decided to appoint Eng. Dr. Silver Mugisha after receiving prior guidance from the Hon. Minister for Water and Environment, and

after consideration of the “Report of the Selection Exercise administered to applicants for the position of MD, National Water and Sewerage Corporation issued by Public Service Commission.”He again did not mention that subsequent to the PSC Report, the previous Board carried out their own assessment which returned Eng. Gisagara as the best candidate and their resolve to appoint him as MD.

On 10th June 2013, the Inspectorate of Government wrote to the Minister of Water and Environment to request him to comment about allegations that there was political interference in the recruitment of the MD NWSC. The Hon Minister was also requested to inform the Inspectorate about his role in the process. He responded in his letter dated 14th June 2013 (**Annex 33**).

In his letter, Hon. Kamuntu argued that the position of the Board reflected in the Minutes of 19th April 2013 that they appointed Eng. Mugisha as the MD of NWSC was final and he did not have the power to change it. In his arguments in support of that position, Hon. Kamuntu referred to Sections 24 and 31(1) of the NWSC Act. He argued that the said provisions require the Board to notify the Minister of the appointment of the MD and to act in accordance with written directions from the Minister concerning the appointment.

Hon Kamuntu’s arguments seemed to indicate that he was strongly in favour of appointing Dr. Silver Mugisha and that he might have attempted to influence the Board to declare him as their appointee. A review of the NWSC Board Minutes of 19th April 2013 which he referred to in his letter showed that before the meeting, the Board received a **“briefing from the Hon Minister”** in which it was emphasized that the guidance given by the Minister on the appointment of Eng. Mugisha as MD had not changed. In his Communication to the Board, the Chairperson stated that the Board in its deliberations on the matter was to consider the guidance and act accordingly.

While it is true that the Minister’s guidance given to the Board originated from His Excellency the President, it is important to note that not all the facts about the recruitment, as they have been exposed by this investigation, were laid before him. The President was never properly

apprised about how the previous Board came to interview the candidates after the PSC interviews, as happened on 1st August 2012.

In addition to the above, H. E. the President's letter revealed that there was a source or sources who misinformed him or his office that Eng. Silver Mugisha was new to NWSC. This was of course not true because while Eng. Gisagara had been with NWSC for 22 years in various senior positions, Eng. Mugisha had been with the Corporation for 19 years. During the course of this investigation H. E. the President informed this office that indeed he had been misinformed and had given his guidance on the basis of incomplete facts.

Going back to the law, according to Section 16 of the NWSC Act, the appointment of the MD is the sole responsibility of the Board of Directors. In fact contrary to Hon. Kamuntu's interpretation of Sections 24 and 31 of the Act, there is no legal requirement under the NWSC Act for the Board to revert to, notify or even seek guidance from the Minister about the appointment of the MD. Neither is there a requirement for the Board to comply with written directions from the Minister in respect of the matter.

A simple reading of Section 24 of the NWSC Act reveals that the only matters that the Board is obligated to notify the Minister about concern those that prevent or significantly affect the achievement of objectives of the Corporation and/or the financial targets spelt out in the Corporate Plan. It is clear that what were envisaged under Section 24 NWSC Act were matters that constitute threats to the NWSC Corporate Plan. The delay or failure to appoint a Managing Director of the Corporation was a situation envisaged and provided for under Section 17 of the Act which caters for appointment of an Acting Managing Director. This could not therefore be construed as a threat requiring notification to the Minister under Section 24 of the Act.

Likewise Section 31 of the Act cannot be construed as granting the Minister power to give written directions concerning the appointment of the Managing Director. Section 31 concerns matters of general policy, i.e matters specified under the Action Plan and other strategies for the management of water in Uganda. The appointment of a Managing Director does not fit within the ambit of "*general policy*" envisaged under

Section 31 of the Act because it is actually a matter of law as is evident from Section 16 of the NWSC Act.

In addition, if the appointment of the Managing Director was a matter of general policy, Section 31 would require the Minister to lay the question of the appointment before Parliament within 15 sitting days. There is no evidence to suggest that the Minister took such action.

It is therefore clear that sections 24 and 31 of the NWSC concern the requirement for the Board to report threats to the Board's Corporate Plan to the Minister and for the Minister to give directives on matters of general policy, respectively. In both cases, the stated provisions of the law have nothing to do with the appointment of the MD.

According to Minutes of the 1st Special Meeting of the current Board of Directors held on 12th April 2013 (**Annex 34**) it was evident that the Board was not acting independently with regard to the appointment of the MD. It was also apparent that they acted under pressure from Hon. Kamuntu. According to MIN4/SB/2013, the members laid out 3 options:

- 1) To go by the directive of the Hon. Minister of Water and Environment and appoint Eng. Dr. Silver Mugisha;
- 2) Take cognizance of the fact that the Board was a new Board in which case the Board could start the process of recruiting a new MD once again under its own terms and direction; and
- 3) The Board could exercise its mandate as provided under Section 16 of the NWSC Act and act independently to make an independent and objective decision without taking into account the Minister's guidance.

Observations

It is clear from the options above that the Board was under pressure from the Hon. Minister and that their own objectivity and independence was compromised especially given that the Minister is responsible for appointing the members of the board. This was apparent from the Minutes of the Board Meeting held on 12th April 2013 where one of the members cautioned the rest by citing a proverb in Kinyankore to the

effect that: *“If you defy the owner of the house, you defy (him) while you are packing your bags.”*

This is further reflected in the subsequent minutes of the Board Meeting of 19th April 2013 quoted above, where the Board resolved to appoint Dr. Silver Mugisha. The choice of Dr. Mugisha was referred to in the Minutes of 12th April 2013 as ***“the directive from the Hon. Minister of Water and Environment.”*** This reveals that the Board felt like they had no say in the matter. The minutes in question may not have been approved and endorsed at the time this report was prepared but they still proved useful in determining the trend of the deliberations of the Board.

It is also apparent from the deliberations of the Board, as reflected in the Minutes of the meeting held on 12th April 2013 and 19th April 2013 that the Board had misgivings about continuing with the process but was under pressure to appoint a particular candidate. This was in spite of all the apparent irregularities and inconsistencies that had plagued the process.

The Minister’s preference for Eng. Dr. Silver Mugisha failed to take into account the fact that there was no evidence that the process conducted by the Public Service Commission was formally approved by the former Board and that it had been the result of the Board actively interfering with the recruitment process leading to the withdrawal of a credible consultant KMPG. The conduct of the former Board both before and after the Public Service Commission interviews rendered the entire process suspect and necessitated the new Board to comprehensively and independently review the whole process and then make a fair and transparent decision on the way forward to leave no room for controversy.

General Observations about the Recruitment Process

The previous board fell short of the expected standards of transparency in determining crucial criteria such as weighting of the candidates’ results and the questions to be asked. This in our view compromised the final result especially given that the difference between Eng. Gisagara and Eng. Dr. Mugisha had gone from Mugisha leading with a margin of

about 7% in the PSC interviews to Gisagara leading on the overall average by less than 1%.

One further critical observation lies in the fact that both the minutes of 1st August 2012 and 31st August 2012 to date remain unsigned. In fact, none of the minutes of the Board relating to the recruitment and appointment of the MD were actually signed. This would mean that from a strictly legal perspective, no proper record exists of the Board ever having decided to appoint either Eng. Gisagara or Eng. Mugisha.

The entire recruitment process was fraught with irregularities and generally lacked the transparency expected in a process involving the recruitment of the MD NWSC. It is clear that once KPMG withdrew from the process, the Board abandoned the terms of reference that were guiding the process and opted to conduct the recruitment in an *ad hoc* manner with some of the interview criteria being developed in the middle of the process.

7. Final Conclusions

From the discussion above, the following irregularities stand out in the recruitment process:

- 1) The interference of the Board in trying to amend the advertised criteria to accommodate more people on the shortlist that had already been generated by KPMG. KPMG was right to withdraw from the recruitment process as the Board had indeed interfered in a manner that tended to give an advantage to candidates who had not originally qualified for the shortlist.
- 2) The absence of any clear terms of reference guiding the recruitment process once KPMG pulled out as evident from the confusion wrought by the report from PSC as well as the apparently biased and unfair questions that were asked of the candidates that qualified for consideration by the NWSC Board.
- 3) The absence of signed Board Minutes to validate the Board decision to engage the Public Service Commission to conduct

interviews of the shortlisted candidates and the decisions conflicting decisions taken by the two boards to appoint Alex Gisagara, and then Silver Mugisha.

- 4) Furthermore, the Hon Minister's conclusion that the PSC's role in the recruitment of the MD of NWSC was in accordance with Article 166(1) (b) and (f) of the Constitution was erroneous. PSC's role in this matter was based solely upon the Board's decision to delegate its mandate to them to participate in the recruitment.
- 5) In addition, the process that led to the Board bringing the PSC on Board reflected interference with the work of KPMG who had been lawfully contracted to carry out the preliminary phase of the recruitment. Once the Board lawfully engaged KPMG they were bound to accept the shortlist compiled by them, except if there was evidence to show that KPMG had not adhered to the terms of reference. Therefore, it seems the Board compromised the process right from the outset.
- 6) The attempt by the previous board to amend its decision of 1st August 2012 to notify the Minister that Eng. Gisagarawas identified by the Board as best candidate to instead reflect that the Board had resolved to forward three names to the Minister for consideration; this amounted to the Board abdicating its responsibility and leaving it to the Minister to choose the best candidate irrespective of the interview results.
- 7) The manner in which s.16 of the Act is couched shows that the provision is mandatory. The MD is to be appointed by the Board, and both the Act and NWSC Handbook place no obligation upon the Board to consult with the Minister of Water and Environment before appointment of the MD.
- 8) The Minister's function is limited to appointing the Board under Section 8 of the NWSC Act. It was therefore strange that the Board seemed to reverse its decision of the 1st August 2012 and replace it with another resolution on the 31st of August 2012.

This apparently cast more doubt on how the previous board went about selecting a new MD for NWSC.

8. Recommendations

It should be noted that NWSC is a key strategic corporation responsible for the supply of clean water to the entire country. The process of recruitment of the MD cannot therefore be left open to question in terms of transparency and fairness.

As has been revealed in the findings of this investigation the process of appointment of the MD NWSC that was initiated by the previous Board of Directors was fraught with irregularities and controversy and cannot be relied upon to determine who should be appointed in this sensitive position without inviting even more controversy and legal challenges and causing further delay.

It is therefore recommended as follows:

1. That in the interests of transparency and fairness, and clearing up any doubts and controversies caused as a result of the manner in which the impugned recruitment process was managed, the current NWSC Board of Directors *does* conduct a fresh recruitment process right from the beginning.
2. That the recruitment process is carried out by a private independent consultant sourced according to the PPDA Act and Regulations in order to ensure maximum fairness, transparency and independence. The Board is therefore advised to ensure that a fresh procurement is initiated in order to secure an independent consultancy firm for the recruitment.
3. That a new advertisement is drafted by the Management and Board of NWSC in consultation with the Consultant in line with the provisions of the NWSC Act in order to ensure that the criteria set for the initial identification of candidates are clear and leave no room for manipulation or conflict in the process of shortlisting candidates for interviews.

4. That the current Board takes special care to ensure that all minutes of its deliberations are formally and properly signed in order to avoid legal challenges to the decisions of the Board arising from unsigned minutes.
5. That The Board ensures that it safeguards and maintains its legal mandate as the authority that appoints the MD and stands its ground where it has made lawful decisions. Unnecessary political participation and interference should to be avoided in order to ensure that even persons that do not have political 'godfathers' are given a chance to secure employment in high level managerial positions as is required by Article 42 of the Constitution of the Republic of Uganda, which insures citizens' rights to just and fair treatment in administrative decisions.