

Hon Speaker
20/11/23

RECORDS SECTION
COUNTY ASSEMBLY OF BUNGOMA
20 NOV 2023
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P. O. Box 1886 50200, BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

THIRD COUNTY ASSEMBLY

SECOND SESSION

PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

REPORT

ON

**AUDITOR GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF
THE BUNGOMA COUNTY TRADE AND DEVELOPMENT FUND FOR THE
PERIOD ENDED 30TH JUNE, 2021.**

Clerk's Chambers
County Assembly Buildings
PO BOX 1886,
BUNGOMA, KENYA.

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
28 NOV 2023
TABLED
By: *Hon Ngang'o*

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
28 NOV 2023 October, 2023
NOTICE ISSUED
By: *Hon Ngang'o*

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CHAPTER ONE

1.1 Mandate of the committee

Mr. Speaker Sir,

The Public Accounts and Investments Committee is a Select Committee established under Standing Order No. 209 of the Bungoma County Assembly standing orders. Standing Order 209(5) provides that, the functions of the Public Accounts and Investments Committee shall be to-

(a) Pursuant to the provisions of Article 185(3) of the Constitution, exercise oversight over the County Executive Committee and any other County Executive organ.

(b) Pursuant to Article 229(7) and (8) of the Constitution, examine the reports of the Auditor-General on the Annual Accounts of the County Government.

(c) Examine special reports, if any, of the Auditor-General on County Government Funds.

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

(e) Exercise oversight over County Public Accounts and Investments.

Article 195 of the Constitution of Kenya, 2010 provides that-

(1) A County Assembly or any of its committees has power to summon any person to appear before it for the purposes of giving evidence or providing information.

(2) For the purpose of clause (1), an Assembly has the same powers as the High Court to-

(a) Enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) Compel the production of documents; and

(c) Issue a commission or request to examine witnesses abroad.

In this regard, it must be emphasized that the oversight function of this House as carried out through Committees elevates it to a status akin to that of a High Court. The exercise of this unique quasi-judicial function is expected to strictly adhere to and apply the principles of natural justice and fair hearing, and that every process or action taken by

the House or its Committees must be seen by all to be above board taking into account the fact that decisions of this House bear the element of finality.

Section 19 of the County Assemblies Powers and Privileges Act, 2017 on examination of witnesses states that;

Where a County Assembly or a Committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the County Assembly or the committee may-

(a) Cause such witness to be examined on Oath; and

(b) Require the witness to produce any document, paper, book or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.

1.2 Committee membership

The Public Accounts and Investments Committee as currently constituted comprises of the following members:

- | | |
|----------------------------|------------------|
| 1. Hon. Everton Nganga | Chairperson |
| 2. Hon. Timothy Chikati | Vice-chairperson |
| 3. Hon. Stephen Kaiser | Member |
| 4. Hon. Benard Kikechi | Member |
| 5. Hon. John Wanyama | Member |
| 6. Hon. Everlyne Mutiambu | Member |
| 7. Hon. Alfred Mukhanya | Member |
| 8. Hon. Violet Makhanu | Member |
| 9. Hon. Jerusa Aleu | Member |
| 10. Hon. Metrine Nangalama | Member |
| 11. Hon. Anthony Lusenaka | Member |

1.3 Guiding principles on the audit queries

In the execution of its mandate aforesaid, the committee has been guided by core constitutional and statutory principles on Public Finance Management, as well as established customs, traditions, best practices and usages. These principles include:-

1. Constitutional principles on public finance

Article 201 of the Constitution of Kenya, 2010 enacts fundamental principles that ***“...shall guide all aspects of public finance in the Republic...”*** These principles include;

(a) there shall be openness and accountability, including public participation in financial matters;

(d) Public money shall be used in a prudent and responsible way; and

(e) financial management shall be responsible, and fiscal reporting shall be clear.

The provisions of section 117 (1) & (2) of the County Governments Act,2012 on standards and norms for public service delivery state that;

(1)A County Government and its agencies shall in delivering public services-

(a)Give priority to the basic needs of the public;

(b) Promote the development of the public service institutions and ensure that all members of the public have access to basic services.

(2)Public services shall be equitably delivered in a manner that accords to-

(a) Prudent, economic, efficient, effective and sustainable use of available resources;

(b) continued improvement of standards and quality;

(c) Appropriate incorporation of the use of information technology; and

(d) Financial and environmental sustainability.

Audit of public accounts

According to Article 229(4) of the Constitution of Kenya 2010, within six months after the end of each financial year, the Auditor General is required to examine, audit and Report in respect of that financial year, on-

(a)The Accounts of the National and County Governments;

(b)The accounts of all funds and authorities of the National and County Governments and express an opinion in the report; and ascertain whether money appropriated by Parliament or the relevant County Assembly and disbursed;-

- i. Has been applied for the purpose for which it was appropriated or raised.
- ii. Was expended in conformity with the authority that governs it.
- iii. Was expended effectively, efficiently, economically and transparently as provided for under Section 149 of the Public Finance Management Act, 2012; and the said Audit reports shall then be submitted to Parliament or the relevant County Assembly.

Article 229(8) of the Constitution provides that, within three months after receiving an audit report, Parliament or the County Assembly shall debate and consider the report and take appropriate action.

Further and without prejudice to the foregoing, Section 34 of the Public Audit Act,2015 provides that the Auditor-General may, upon request or at his or her own initiative, conduct periodic Audits which shall be pro-active ,preventive and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in state organs and public entities.

Direct personal liability

Article 226(5) of the Constitution is emphatic 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 Public Accounts and Investments Committee has hoisted high these Constitutional provisions as the basis for holding each individual, Public Officers directly and personally liable for any loss of public funds under their watch. The Committee has and will continue to invoke these provisions in its recommendations to hold those responsible; personally accountable. This is also intended to serve as a deterrent measure.

Obligations of accounting officers

Section 149(1), of the PFM Act, 2012 stipulates 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 lawful and authorized; effective, efficient, economical and transparent.”*

This provision also obligates accounting officers designated as such to various County Government entities to appear before the Public Accounts and Investments Committee of the County Assembly to respond to queries relating to their respective departments.

Section 156 of the PFM Act, 2012 provides that;

(1) If an accounting officer reasonably believes that a public officer employed by a county government entity has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall-

(a) Take appropriate measures to discipline the public officer in accordance with regulations; or

(b) Refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(2) If the County Executive Committee Member for Finance reasonably believes that an accounting officer has engaged in improper conduct within the meaning of sub-section (4), the County Executive Committee Member for Finance shall-

(a) Take appropriate measures to address the matter in accordance with laid down procedures; or

(b) Refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(3)The measures referred to in sub-section (2) (a) include the County Executive Committee Member for Finance revoking the designation as accounting officer.

(4)For the purposes of this section, a public officer engages in improper conduct if the officer-

(a) Contravenes or fails to comply with this Act or any regulation in force;

(b) undermines any financial management procedures or controls;

(c) Makes or permits an expenditure that is unlawful or has not been properly authorized by the entity concerned; or

(d) Fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for.

This section of the law further empowers the appointing authority to discipline errant accounting officers, which could include revoking their appointments. This provision has sealed a longstanding loophole that has previously seen accounting officers continuously commit or preside over fiscal indiscipline and malpractice in their departments with impunity without sanction.

The County Public Accounts and Investments Committee strongly holds the view that these provisions of the law were intended to be fully deployed to operationalize the principles set out under Article 201 of the Constitution stated hereinabove and to ensure prudent and responsible management of public resources. The Committee has accordingly invoked these provisions in recommending varying disciplinary actions against persons or public officers who bear responsibility for breach of the law and/or are responsible for the loss or wastage of public resources.

The County Public Accounts and Investments Committee places a premium on these principles, among others, and has been guided by them in the entire process that has culminated into the production of this report.

The Committee further derives its powers from the Public Procurement and Assets Disposal Act 2015, the Public Procurement and Assets Disposal Regulations 2006, the Public Finance Management Act 2012, the Public Finance Management (County Governments) Regulations 2015, the County Governments Act, 2012 and the Constitution of Kenya 2010.

1.4 Confidentiality undertaking by the committee

To enhance the integrity of the committee and its work, members of the Public Accounts and Investments Committee have signed a confidentiality undertaking in accordance with Bungoma County Assembly Standing Order No 98. In relation to the provisions of the said standing order (98), members have undertaken that in relation to the Audit report on Bungoma County Trade Development Loans Fund for the FY 2021/2022, no member of the Committee shall refer to the substance of the proceedings touching on the subject matter which shall include any evidence or documents presented to the committee and any information under discussion or deliberation at its meetings before it is tabled in the County Assembly.

1.5 Procedure adopted by the committee

The fund administrator together with the chief officer, County department of Trade, Energy and Industrialization were subjected to thorough interrogation by the Committee on several issues touching on the Fund and the Committee also critically analyzed the duo's oral submissions.

Hon. Speaker Sir, This report contains the responses submitted both in written and orally by the executive department of trade, energy and industrialization before the committee and observations and recommendations of the Committee that were arrived at by consensus.

1.6 Acknowledgment

In conclusion, Honorable Speaker sir, the Committee wishes to express its gratitude to the Offices of the Speaker and the Clerk of the County Assembly for the support rendered to it in the quest of discharging its mandate and compiling of this report.

The Committee further wishes to thank the fund administrator and the chief officer for dutifully appearing before it and also for their cooperation.

Allow me, Honourable Speaker, to applaud each single Honourable Member and the secretariat of this key Committee for their dedication and exemplary work which made the interrogation of the said financial statements and production of this report a success.

I congratulate you all, distinguished Colleagues.

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

SIGNED  **DATE** 17/11/2023

**HON. EVERTON S NGANGA, MCA- EAST SANGALO WARD
(CHAIRMAN, PUBLIC ACCOUNTS AND INVESTMENT COMMITTEE).**

CHAPTER TWO

Report of the Auditor general on the financial statements of Bungoma County Trade Development Loans Fund for the year ended 30th June 2021.

Audit query

1. Undisclosed material uncertainty relating to sustainability of services

The statement of financial position reflects a balance of Kshs. 115,679,790 in respect to current portion of long term receivables from exchange transactions arising from loan disbursements to beneficiaries since 2014 when the fund was established. However review of the schedules supporting the amount revealed that the last time loans were issued was in 2019. At that time, there were outstanding loans amounting to kshs 104,189,595 which were expected to have been repaid by the end of 2020. This indicates that the fund is not in a position to disburse new loans and that there are challenges in effecting recoveries. This has not been disclosed in the financial statements.

In the circumstances, continued sustainability of the fund is doubtful.

Management Response

We do acknowledge the concerns made concerning the going concern of the fund .We are however trying our level best to insure the funds regulation is gazette within this financial year. We have also organized a round table stakeholders meeting to review the strategy on enforcement of loan recovery .We however suffered a major setback when the government offered amnesty for loan repayment during the covid19 period as many of the of the business had been closed down.

Committee's Observations

The Committee observes that Management had failed to recover outstanding loans dating back from 2014 since they became due for recovery amounting to Kshs. 104, 189,595 as reported in the report of the Auditor General.

It was also observed that failure to recover the loans that are outstanding since they became due for recovery as indicated in the audit report and as agreed to by

management, implied that the amount of funds available for further loaning to qualified borrowers during the said period were adversely affected.

Committee's Recommendations

1. That for the purposes of the fund sustaining service delivery for trade development loans, through disbursement of low interest loans to qualified borrowers which is its core business, the Management through the Accounting Officer should as a matter of urgency scale up recovery efforts of all loan repayments that are due as indicated in the audit report; and a corresponding compliance report be submitted to the County Assembly within 60 days from the date of adoption of this report.
2. The CECM to evaluate and assess the long-term receivables with a view of ascertaining bad and doubtful debts in order to make a provision for the same in the financial statements; to mitigate the effects of uncertainty in recovering the amounts. Data validation exercise for the verification of the loans to be concluded in three months from the adoption of this report and a report on the same submitted for confirmation to the County Assembly sector committee.
3. The CEC Member should fast track the review of regulations to consider provision of securities for loans advanced and insurance of the loan facilities. Loan repayments enforcement to be enhanced.

2. Unsupported property, plant and equipment.

The statement of financial position and as disclosed in Note 6 to the financial statements reflects property, plant and equipment balance of kshs 297,297 as at 30th June 2021. However, ownership documents for the assets were not provided for audit review. Further, although management explained that the assets were acquired by the county Executive of Bungoma through the Department to date, it was explained why the assets are being reflected in the financial statements of the fund.

Further the balance was not supported by a fixed asset register showing details relating to nature or type of asset, date of acquisition, cost, supplier, unique identification

number, current value, current location, user, accumulated depreciation and net book values,

In the circumstances, the accuracy, ownership, valuation, and completeness of the property, plant and equipment net book value of kshs 297,297 could not be confirmed.

Management response

The assets listed were not acquired by the county trade loan fund as mentioned neither are they managed by the fund .The assets are yet to be handed over to the fund .The only reason why they are listed as assets of the fund is because they are mostly used by the funds .We have however requested the ministry to transfer the ownership of the assets to the fund as recommended and put up an asset register as well.

Committee Observations

1. No ownership documents for the ICT equipment were provided to the committee for verification
2. The ICT equipment was acquired by the County Ministry of Trade, energy and industrialization and has not been transferred to the fund.

Committee Recommendations

The ICT equipment should be reflected in the county executive financial statements and not the funds unless when the same will be officially transferred with ownership documents to the fund.

3. Intangible Assets

The statement of financial position, and as disclosed in note 7 to the financial statements, reflects an intangible assets balance of kshs 8,484,228.

However, although management has indicated that the assets were acquired in 2018/2019 by the county executive through the department of trade, it was not explained why the assets are reflected in the financial statements of the fund instead of financial statements of the county executive.

Management response

These intangible assets were acquired by the department and issued to the fund for usage, they still remained as the assets of the ministry until when the fund will be able to maintain them because they have an annual software assurance which currently the fund cannot finance.

We are also in the process of data validation to ensure the loan management system is fully deployed to all wards since it is web based, We however captured the existence of the intangible assets as a fund asset since its majorly used by the fund.

We will however request the ministry to officially hand over the fund as advised.

Committee Observations

1. No ownership documents for the intangible asset were provided to the committee for verification.
2. The Intangible Assets were acquired by the County Ministry of Trade, energy and Industrialization and has not been transferred to the fund even though is fully used by the fund.

Committee Recommendations

The intangible Assets should be reflected in the County Executive financial statements main Account and not the funds unless when the same will be officially transferred with ownership documents to the fund.

4. Current portion of long term receivables from Exchange Transactions

The statement of financial position and as disclosed in Note 5 to the financial statements reflects a balance of kshs.115,775,298 relating to current portion of long term receivables from exchange transactions which comprises of kshs.13,770,097 and kshs.102,005,201 relating to interest receivable and current loan repayments due respectively.

However, the amounts differ with those reflected in the supporting delinquency reports as shown below;

Description	Amounts in the Financial Statements (kshs)	Amounts in supporting Reports (kshs)	Variance (kshs)
Interest receivable	13,770,097	7,948,057	5,822,040
Current loan repayments due	102,005,201	102,569,040	(563,839)
Total	115,775,298	110,517,097	5,258,201

In addition, analysis of the delinquency reports revealed that 5,865 loan beneficiaries loaned an amount of kshs 139,781,991 were in arrears amounting to kshs 110,517,098 as at 30th June 2021, despite the loans having matured as at that date. No explanation was provided on why management did not invoke the default and breach of terms clause in Regulations 21(1)(a) of the Bungoma County Trade Development Loans Fund Regulations, 2014 which empowers management to institute recovery as a civil debt. Further analysis of the list of defaulters revealed that one hundred and eighty –eight (188) defaulters are staff of the County Executive of Bungoma, who collectively were in arrears amounting to Kshs.4,728,004.

Management Response

We acknowledge the variance as stated .This is due to the fact that there was an error from the delinquency report obtained from the system .This is due to the missing data in the system upon migration to the automated process .We are however carrying out an intensive data validation exercise in all the wards to ensure all the loan beneficiaries details are captured correctly.

Some of the reasons was duplicate loan account, erroneous ID numbers which are the unique identities, Incorrect loan balances recorded.

Committee Observations

1. The department availed a sample of loan repayment arrears list which showed that most of the businesses have since been closed, with others not traceable after

relocation to other areas. The recoverability of the loans is in doubt since the rate of repayment is at a very slow rate with most of the loans almost doubtful.

2. The fund administrator has not reconciled the material differences between the manual and the system loan balances thus the variances of Kshs. **5,258,201** cannot be resolved.
3. It was observed that management did not table evidence for committee verification on failure to institute recovery measures against 188 County Executive staff who benefited from the loans through check-off system

Committee Recommendations

1. A data validation exercise for reconciliation of the loan variances between the manual and system balances to be concluded within a month's time, and a report on the reconciliation of Kshs. **5,258,201** to be provided to the Assembly oversight committee on Trade energy and industrialization for scrutiny and further verification.
2. Regulation 21 of the Bungoma County Trade Development Loans Fund Regulations, 2014(revised) 2019 stipulates that-

If in the opinion of the unit there has been or is likely to be any breach of or failure to comply with any condition or term of repayment in respect of a loan, the unit may forthwith;-

- a) Recover the loan from the beneficiary as a civil debt under the Debts (summary recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount then remaining unpaid together with interest thereon.
- b) Enforce or realize any security relating thereto

The committee therefore recommends that the department carries out a thorough data validation exercise so as to know the possible recoverable amount and institute recovery through civil debts. Employees of the County Government who were beneficiaries to the trade loans to be recovered immediately from the

payroll. A corresponding compliance report to be submitted to the County Assembly within 60 days from the date of adoption of this report.

3. The CECM to evaluate and assess the long-term receivables with a view of ascertaining bad and doubtful debts in order to make a provision for the same in the financial statements; to mitigate the effects of uncertainty in recovering the amounts.
4. The CEC Member should fast track the review of regulations to consider provision of securities for loans advanced and insurance of the loan facilities. Loan repayments enforcement to be enhanced.

5. Cash and Cash equivalents

The statement of financial position reflects cash and cash equivalents balance of kshs 3,931,515 which includes kshs 341,717 relating to mobile money transfer balances not recorded in the cash book. However, the reconciling item has remained outstanding since 2019/2020, contrary to Regulation 90(3) of the PFM Act. 2015, which requires accounting officers to ensure that any discrepancies noted during bank reconciliation exercises are investigated immediately and appropriate action taken, including updating the relevant cash books. In the circumstances the accuracy and completeness of the cash and cash equivalents balance of kshs 3,931,515 could not be confirmed.

Management Response

The said amount remained outstanding during the transfer of funds from mpesa collection Account from the utility to working account which is a mirror/settlement account for the collection account. We evidenced and availed the email correspondence to Safaricom requesting for the statement for the same during audit since we were informed that we couldn't access the mpesa statements for the fund beyond 6 months. We are however yet to receive the working account.

Committee Observations

The Mpesa statements were provided to the Committee for verification on the kshs 341,717

Committee Recommendations

Regulation 90(3) of the PFM Act, County government Regulations, 2015, requires Accounting officers to ensure that any discrepancies noted during bank reconciliation exercises are investigated immediately and appropriate action taken, including updating the relevant cash books. The fund administrator is therefore urged to always ensure this is done timeously before final accounts are concluded.

6. Unresolved prior year Audit Matters

In the audit report of the previous year, a number of issues were raised. However, management has not resolved the issues nor disclosed all the prior year matters as provided by the Public Sector Accounting Standards Board template.

Management response

No management response

Committee's observation

The Committee observes that the department did not provide a status report of the implementation of prior year matters for the year ended June 2021 as reported by the Auditor General. This amounts to negligence by the Accounting Officer.

Committee's recommendations

The Committee notes that Section 53 of the Audit Act obligates the relevant Accounting Officer of a state organ or public entity to within three months after Parliament has considered and made recommendations on the audit report, to—

- (a) Take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or
- (b) Give explanations in writing to the Parliament on why the report has not been acted upon.

(2) Failure to comply with the provisions of subsection (1), the Accounting Officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

The Committee thus directs the Fund Administrator to provide to the County Assembly a report on the implementation of the prior year audit matters to date, within a period of one 30 days from the date of adoption of this report.

7. Failure to gazette the Funds Regulations

The county Government of Bungoma Established the Bungoma County Trade development loans fund vide county assembly approval in a special sitting of 15 December, 2014. However although procedural requirements had been obtained up to the passage of the regulations by the county assembly, the regulations had not been gazette by the time of the Audit to give effect to the establishment of the fund. This is contrary to Article 199(1) of the constitution which provides that county legislation does not take effect unless published in the gazette. In the circumstances the management was in breach of law.

Management Response

The department has made tremendous effort in ensuring the regulations have been gazetted as evidenced by the revised copy of the regulation submitted to the Kenya Law reforms and the controller of budget .This process has however been majorly hampered by lack of funds to carry out stakeholders engagement and public participation as required before the amendment of the regulation we are however in the tail end of the gazettelement since we have already done the stakeholders engagement and submitted the regulation back to the controller of budget for concurrence before its forwarded to the Assembly for ratification and finally to the government printers for gazettment. We do hope to finalize on the gazettment of the regulation before the end of the current financial year.

Committee observations

The committee observes that the fund operated without gazetted regulations rendering its activities not anchored in law during the year under review. The committee further notes efforts that have been put in place to gazette the regulations and plans to review the same so as to address the problems of loan recovery among others.

Committee recommendations

Article 199 (1) of the constitution mandates all county legislation to only take effect once gazetted in the Kenya gazette. The Public accounts committee urges the sectorial committees of the Assembly to be vigilant in their oversight roles in ensuring implementation of programs within ministries operate within requisite legal provisions.

The department on trade, energy and industrialization should halt operations until the reviewed trade loan regulations are gazette.

8. Lack of budget for the fund

The Management did not provide a budget for the fund to support the balances in the statement of comparison of budget and actual amounts. Consequently, the source of the balances reflected in the statement of comparison of budget and actual amounts could not be confirmed. This is contrary to section 149(2)(h) of the PFM Act 2012, which states that in carrying out a responsibility imposed by subsection (1) an accounting officer shall in respect of the entity concerned, prepare estimates of expenditure of the entity in conformity with the strategic plan. In the circumstances management was in breach of law.

Management response

The fund activities are mainly carried out as budgeted in the main budget of the department after presentation of our estimates during the budget making process. This is due to the fact that the fund has not yet attained self-sustainability .Most of the expenses such as staff cost, office Rent, Stationery, Fuel for field activities, insurance & maintenance for motor vehicle, capacity building of both the staff & entrepreneurs, review of regulations, and annual software assurance is still being budgeted in the main

ministry since the 3% administrative fee is not sufficient to facilitate for all this expenses.

We are however allowed to spend on the general administration of the fund from time to time as approved by the committee and other authorities when need arises for betterment of the fund operations .

Committee's Observations


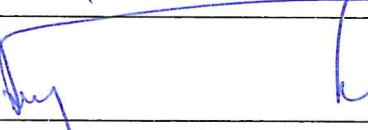
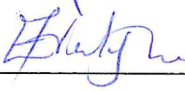

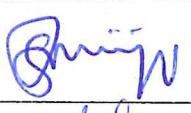
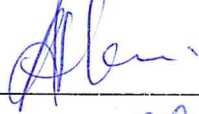

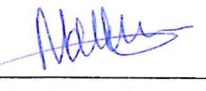
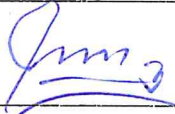

The Fund didn't have approved budget estimates to guide its operations during the year, neither did the fund have an active fund management committee that is supposed to approve this estimates. The Public Accounts committee notes governance gaps in the management of the fund during the year under review.

Committee's Recommendation

The Funds Administrator should always ensure that there are program budget estimates for the fund to be approved by the County Assembly. The Accounting officer, pursuant to the provisions of section 149(2) (h) of Public Finance Management Act, 2012 should always prepare budgets as guided by the National treasury and County Treasury.

ADOPTION SCHEDULE

We the undersigned members of the Public Accounts and Investment Committee affix our signatures adopting this report with the contents therein.

	MEMBERS NAME	DESIGNATION	SIGN
1	Hon. Everton Nganga	Chairperson	
2	Hon. Timothy Chikati	Vice Chairperson	
3	Hon. Everlyne Mutiembu	Member	
4	Hon. Metrine Nangalama	Member	
5	Hon. Stephene Kaiser	Member	
6	Hon. Jerusa Aleu	Member	
7	Hon. Anthony Lusenaka	Member	
8	Hon. Violet Makhanu	Member	
9	Hon. Bernard Kikechi	Member	
10	Hon. Alfred Mukhanya	Member	
11	Hon. John k. Wanyama	Member	

REPORT OF THE AUDITOR-GENERAL ON BUNGOMA COUNTY TRADE DEVELOPMENT LOANS FUND FOR THE YEAR ENDED 30 JUNE, 2021

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment, and the internal controls developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations, and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012, and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Bungoma County Trade Development Loans Fund set out on pages 22 to 41, which comprise of the statement of financial position as at 30 June, 2021, and the statement of financial performance, statement of changes in net assets, statement of cash flows, and the statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Bungoma County Trade Development Loans Fund as at 30 June, 2021, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with Bungoma County Trade Development Loans Fund Regulations, 2014 and the Public Finance Management Act, 2012.

Basis for Qualified Opinion

1. Undisclosed Material Uncertainty Related to Going Concern

The statement of financial position reflects a balance of Kshs.115,775,298 in respect to current portion of long-term receivables from exchange transactions arising from loan disbursements to beneficiaries since 2014 when the Fund was established. However, a review of the schedules supporting the amount revealed that the last time loans were issued was in 2019. At that time, there were outstanding loans amounting to Kshs.104,189,595, which were expected to have been repaid by the end of 2020. This indicates that the Fund is not in a position to disburse new loans and that there are challenges in effecting recoveries. This has not been disclosed in the financial statements.

In the circumstances, continued sustainability of the Fund is doubtful.

2. Unsupported Property, Plant and Equipment

The statement of financial position and as disclosed in Note 6 to the financial statements reflects property, plant and equipment balance of Kshs.297,297 as at 30 June, 2021. However, the ownership documents for the assets were not provided for audit review. Further, although Management explained that the assets were acquired by the County Executive of Bungoma through the Department of Trade in 2018/2019 and have remained with the Department to date, it was not explained why the assets are being reflected in the financial statements of the Fund.

Further, the balance was not supported by a fixed assets register showing details relating to nature or type of asset, date of acquisition, cost, supplier, unique identification number, current value, current location, user, accumulated depreciation and net book values.

In the circumstances, the accuracy, ownership, valuation and completeness of the property, plant and equipment net book value balance of Kshs.297,297 could not be confirmed.

3. Intangible Assets

The statement of financial position and as disclosed in Note 7 to the financial statements reflects an intangible assets balance of Kshs.8,484,228. However, although Management has indicated that the assets were acquired in 2018/2019 by the County Executive through the Department of Trade, it was not explained why the assets are reflected in the financial statements of the Fund instead of financial statements of the County Executive.

Report of the Auditor-General on Bungoma County Trade Development Loans Fund for the year ended 30 June, 2021

In the circumstances, the accuracy of the intangible assets balance of Kshs.8,484,228 could not be confirmed.

4. Current Portion of Long-Term Receivables from Exchange Transactions

The statement of financial position and as disclosed in Note 5 to the financial statements reflects a balance of Kshs.115,775,298 relating to current portion of long-term receivables from exchange transactions which comprises of Kshs.13,770,097 and Kshs.102,005,201 relating to interest receivable and current loan repayments due respectively. However, the amounts differ with those reflected in the supporting delinquency reports as shown below;

Description	Amount in the Financial Statements (Kshs.)	Amounts in Supporting Reports (Kshs.)	Variance (Kshs.)
Interest Receivable	13,770,097	7,948,057	5,822,040
Current Loan Repayments Due	102,005,201	102,569,040	(563,839)
Total	115,775,298	110,517,097	5,258,201

In addition, analysis of the delinquency reports revealed that 5,865 loan beneficiaries loaned an amount of Kshs.139,781,991 were in arrears amounting to Kshs.110,517,098 as at 30 June, 2021, despite the loans having matured as at that date. No explanation was provided on why Management did not invoke the default and breach of terms clause in Regulation 21(1)(a) of Bungoma County Trade Development Loans Fund Regulations, 2014, which empowers Management to institute recovery as a civil debt.

Further analysis of the list of defaulters revealed that one hundred and eighty-eight (188) defaulters are staff of the County Executive of Bungoma, who collectively were in arrears amounting to Kshs.4,728,004. No explanation was provided for the failure to recover these loans from the staff of the County Executive.

In the circumstances, the accuracy and recoverability of the current portion of long-term receivables of Kshs.115,775,298 could not be confirmed.

5. Cash and Cash Equivalents

The statement of financial position reflects cash and cash equivalents balance of Kshs.3,931,515 which includes Kshs.341,717 relating to mobile money transfer balances not recorded in the cashbook. However, the reconciling item has remained outstanding since year 2019/2020, contrary to Regulation 90(3) of the Public Finance Management (County Governments) Regulations, 2015, which requires accounting officers to ensure that any discrepancies noted during bank reconciliation exercises are investigated immediately and appropriate action taken, including updating the relevant cash books.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.3,931,515 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Bungoma County Trade Development Loans Fund Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

Unresolved Prior Year Audit Matters

In the audit report of the previous year, a number of issues were raised. However, Management has not resolved the issues nor disclosed all the prior year matters as provided by the Public Sector Accounting Standards Board template.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Failure to Gazette the Fund's Regulations

The County Government of Bungoma established Bungoma County Trade Development Loans Fund vide County Assembly approval in a special sitting of 15 December, 2014. However, although procedural requirements had been obtained up to the passage of the Regulations by the County Assembly, the Regulations have not been gazetted to date to give effect to the establishment of the Fund. This is contrary to Article 199(1) of the Constitution, which provides that county legislation does not take effect unless published in the Gazette.

In the circumstances, Management was in breach of the law.

2. Lack of Budget for the Fund

The Management did not provide a budget for the Fund to support the balances in the statement of comparison of budget and actual amounts. Consequently, the source of the

balances reflected in the statement of comparison of budget and actual amounts could not be confirmed. This is contrary to Section 149(2)(h) of the Public Finance Management Act, 2012, which states that in carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned prepare estimates of expenditure of the entity in conformity with the strategic plan.

In the circumstances, Management was in breach of the law.

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Fund's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to terminate the Fund or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the Fund's financial reporting process, reviewing the effectiveness of how the Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015, and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015, and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the Fund's policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Fund to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Fund to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.



CPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

22 July, 2022