



Trade Made Simple

KENYA TRADE NETWORK AGENCY

A Global Leader In Trade Facilitation

WHISTLE BLOWER PROTECTION POLICY

September 2023

FOREWORD

The Agency is committed to putting in place effective arrangements for staff to reporting any concerns about wrongdoing or breach of law in order to encourage the supply of information about the Agency's challenges and to deter untimely external disclosures before internal measures are exhausted.

The Agency's leadership wants to create a culture where whistleblowers feel confident that their concerns will be dealt with appropriately and that they do not fear retaliation for raising genuine and objective concerns.

In this regard, we have developed the Whistle Blower Protection Policy which outlines the recommended channels for whistle blowing that will facilitate the handling of any matters raised by staff.

All KenTrade staff are hereby encouraged to familiarize themselves with the contents of this policy and to adhere to the guidelines outlined herein.



David Ngarama
CHIEF EXECUTIVE OFFICER

TABLE OF CONTENTS

FOREWORD.....	2
ACRONYMS AND ABBREVIATIONS.....	4
1.0 INTRODUCTION	5
2.0 PURPOSE	5
3.0 APPLICABILITY/SCOPE.....	6
4.0 PRINCIPLES OF THE POLICY.....	6
5.0 LEGISLATIVE & ADMINISTRATIVE REQUIREMENTS /DOCUMENTS	7
6.0 DEFINITIONS AND TERMS	7
7.0 WHISTLE BLOWER RIGHTS UNDER THIS POLICY	8
8.0 RESPONSIBILITIES	8
9.0 REPORTING	9
10.0 UNFAIR TREATMENT AFTER WHISTLEBLOWING.....	14
11.0 HOW THE MATTER CAN BE REPORTED TO EXTERNAL PARTIES OR PRESCRIBED CONTACTS	14
12.0 POLICY REVIEW	15

ACRONYMS AND ABBREVIATIONS

KENTRADE – Kenya Trade Network Agency

BOD – Board of Directors

CEO – Chief Executive Officer

EACC – Ethics and Anti-Corruption Commission

PPRA – Public Procurement Regulatory Authority

CAJ – Commission on Administrative Justice

OAG – Office of the Auditor General

OHS – Department of Occupational Health & Safety

WPA – Witness Protection Agency

CPC – Corruption Prevention Committee

LIA – Leadership and Integrity Act

POEA – Public Officer Ethics Act

1.0 INTRODUCTION

- 1.1 KenTrade requires its Management and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of KenTrade they must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations. To this end, employees are required to be transparent and accountable in the use of resources entrusted to them by the Board. This Whistleblower Protection Policy demonstrates KenTrade's commitment to recognize and take action in respect of illegal, unethical or malpractices by its employees.
- 1.2 Noting that the Witness Protection (Amendment) Act, 2010 was enacted to protect whistle blowers, it is important to develop a whistle blowing policy to protect staff who act in good faith to disclose information about KenTrade and its activities, or those of any of its customers or relevant employees which might be considered as fraudulent or corrupt behavior.
- 1.3 All employees are encouraged to raise genuine concerns about possible improprieties and malpractices in the conduct of KenTrade business at the earliest opportunity and in an appropriate manner. Employees can raise their concerns at any time about an incident that happened in the past, is happening now or one they believe will happen in the near future.
- 1.4 Where this Policy is in conflict with an Act enacted by the Parliament of Kenya, then the Act will take precedence over this policy. If an employee requires further protection beyond this policy, the provisions of the Witness Protection (Amendment) Act, 2010 shall apply. Management shall ensure that the policy is in tandem with the above Act.

2.0 PURPOSE

- 2.1 This Policy has been developed to support and assist staff in bringing genuine concerns to the attention of appropriate people within the Agency who can initiate action into the matter raised. The policy is designed to;
 - a) Support the KenTrade core values of Customer Centric, Integrity, Excellence, Innovation and One KenTrade;
 - b) Ensure that employees can raise concerns without fear of suffering victimization or retribution; and

- c) Provide a transparent and confidential process of dealing with the concerns raised by employees.

3.0 APPLICABILITY/SCOPE

- 3.1 This Policy applies to all employees of the Agency, including permanent and temporary staff. It also covers customers, suppliers and those providing services under a contract with the Agency.
- 3.2 This Policy not only covers possible improprieties in matters of financial reporting but also matters relating to the following:
 - a) Suspected Cases of Fraud, Bribery and Corruption.
 - b) Disregard to the provisions of the Public Officer Ethics Act & Leadership & Integrity Act (POEA & LIA).
 - c) Breach of the Code of Conduct.
 - d) Criminal offences and any kind of illegal activity.
 - e) Any kind of Harassment or discrimination.
 - f) Sharing of confidential information.
 - g) Misrepresentation of financial data.
 - h) Showing undue favours over a contractual matter or to job applicants.
 - i) Conflict of interest.
 - j) Improper use of company assets.
 - k) Breach of contract.
 - l) Misuse of Authority.
 - m) Failure to comply with legal or regulatory obligations.
 - n) Miscarriage of justice.
 - o) Endangering the health and safety of an individual / individuals.
 - p) Endangering any element of the environment.
 - q) Concealment of any of the above or any wrong doing.
 - r) Other unethical conduct.

It should be noted that the above list is not exhaustive.

4.0 PRINCIPLES OF THE POLICY

- 1) All concerns raised will be treated fairly and properly.
- 2) The Agency shall not tolerate the harassment or victimization of anyone raising a genuine concern.
- 3) Any individual making a disclosure will retain his/her anonymity unless he/she agrees otherwise.
- 4) The Agency will ensure that any individual raising a concern is aware of who is handling the matter through timely provision of feedback.

- 5) The Agency will ensure that no one will be at risk of suffering any form of retribution as a result of raising a concern, even if he/she is mistaken. However, this assurance does not extend to someone that maliciously raises a matter that is known to be untrue.

5.0 LEGISLATIVE & ADMINISTRATIVE REQUIREMENTS / DOCUMENTS

- 1) The Kenya Constitution 2010
- 2) Leadership & Integrity Act, 2012
- 3) Public Officer's Ethics Act, 2003
- 4) Bribery Act, 2016
- 5) Public Procurement & Disposal Act, 2015
- 6) Public Finance Management Act, 2012
- 7) Witness Protection (Amendment) Act, 2010
- 8) Mwongozo Code
- 9) Corruption Prevention Policy
- 10) Disciplinary Policy and Procedures
- 11) Grievance Policy & Procedures
- 12) Prevention of Workplace Harassment Policy
- 13) Human Resource Policy & Procedures Manual
- 14) Any other relevant legislation

6.0 DEFINITIONS AND TERMS

- 6.1 **Whistleblowing'** is when someone reports suspected wrongdoing within an organization. Officially this is called 'making a disclosure in the public interest'. A person can report things that aren't right, are illegal or if anyone within an organization is neglecting their duties, including if someone's health and safety is in danger.
- 6.2 **Whistleblower (whistle-blower or whistle blower)** is a person who exposes any kind of information or activity that is deemed illegal, dishonest, or not correct within an organization that is either private or public.
- 6.3 **KenTrade** – The Kenya Trade Network Agency also referred herein as 'Agency'.
- 6.4 **Prescribed Contact** - A person, body or institution approved by the Agency that an employee can make a public disclosure to under this Policy.

7.0 WHISTLE BLOWER RIGHTS UNDER THIS POLICY

7.1 An employee of the Agency who raises a genuine concern that they believe to be reasonably true shall be entitled to the following protection rights as detailed herein:

- a) Right to protection against any form of retaliation and victimization.
- b) Right to non- disclosure of their identity (anonymity after disclosure) subject to the provisions herein.
- c) Right to confidentiality in the handling of the reported concern.
- d) Right to legal and other necessary support in handling the matter.
- e) Right to acknowledgement of their concern and to feedback on the matter raised.

8.0 RESPONSIBILITIES

8.1 All staffs are bound to ensure that the best possible standards of care are achieved and to act in accordance with their professional code of conduct and the Agency's Code of Conduct and Ethics.

8.2 Staff are encouraged to;

- a) Raise concerns in good faith with the true belief that a malpractice has occurred;
- b) Not raise concerns with any malicious intent;
- c) Raise concerns with an appropriate officer as outlined in this policy;
- d) Report any form of unethical behavior, contravention of the Agency's Code of Conduct and Ethics or raise any concerns that something happening is unethical or improper and might compromise the provisions of the Code of Conduct and Ethics.

8.3 Staff members and interested parties are encouraged to report incidences of malpractice to any of the following channels:

- a) Chairman.
- b) Chief Executive Officer.
- c) Secretary Corruption Prevention Committee.

If the staff member prefers to remain anonymous, then he/she can report through the following reporting channels;

- 1. Corruption Reporting Box (Located in the Agency's office locations).
- 2. Anonymous reporting link on the website.
- 3. Email: corruption@kentrade.go.ke

- 8.4 To the extent possible, any complaint should be factual rather than speculative or conclusory, and should contain as much information as possible to allow for proper assessment.
- 8.5 Recipients of reported cases have a duty to;
- a) Treat concerns in a confidential manner;
 - b) Take staff concerns seriously;
 - c) Consider them carefully including undertaking an investigation;
 - d) Seek appropriate advice;
 - e) Take appropriate action to resolve the concern or take it on to an appropriate person;
 - f) Keep the member of staff informed of the progress and monitor and review the situation;
 - g) Ensure that those who in good faith report suspected violations or misconduct are not penalized;
 - h) Establish an enabling environment which ensures that corrective measures are taken to address any operating procedures that may contribute to such violations.

9.0 REPORTING

9.1 Reporting Responsibility

This Whistleblower Policy is intended to encourage and enable employees to raise serious concerns internally so that KenTrade can address and correct inappropriate conduct and actions. It is the responsibility of all employees to report concerns about violations of KenTrade's code of ethics or suspected violations of laws or regulations that govern KenTrade's operations.

9.2 No Retaliation

- 9.2.1 It is contrary to the values of KenTrade for anyone to retaliate against any employee who in good faith reports an ethics violation, or a suspected violation of law, such as a complaint of discrimination, or suspected fraud, or suspected violation of any regulation governing the operations of the Agency.
- 9.2.2 An employee who retaliates against someone who has reported a violation in good faith shall be subject to discipline up to and including termination of employment.

9.3 Acting in Good Faith

- 9.3.1 Anyone filing a (written) complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation.
- 9.3.2 Any allegations that are unsubstantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense and necessary action will be taken against the reporter.

9.4 Confidentiality

- 9.4.1 Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept absolutely confidential to the extent possible, consistent with the need to conduct an adequate investigation.
- 9.4.2 Where concerns raised cannot be resolved without revealing the identity of the employee raising the concern (e.g. if evidence is required in court or at a disciplinary hearing), the identity of the employee (whistle blower) as a witness may have to be revealed. Employee's identities will not be disclosed without prior consent.

9.5 Handling of Reported Violations

- 9.5.1 The Chairman or the Chief Executive Officer (CEO) will **in confidence** notify the person who submitted a complaint and acknowledge receipt of the reported violation or suspected violation.
- 9.5.2 All reports will be promptly looked into or investigated and appropriate corrective action will be taken if warranted by the investigation or findings.

9.6 Reporting Procedure

- 9.6.1 If any employee believes reasonably and in good faith that a malpractice exists or is happening at the Agency, then he/she should report this as soon as possible. The earlier an employee expresses their concerns, the faster it is to take action.
- 9.6.3 An employee should report the matter to the following reporting channels:
- i. Secretary Corruption Prevention Committee or
 - ii. Chief Executive Officer (CEO)
- 9.6.4 If the above channels have been followed and the employee still has concerns or if the employee feels the CEO & Secretary are implicated

in the matter, they should contact the Chairman of the Board of Directors to raise the concern.

9.6.5 Employees may raise their concerns by telephone, in person or in writing. However, concerns raised via telephone and in person shall have to be confirmed in writing for record purposes. In reporting the concern, employees will need to provide the following information:

- The nature of your concern and why you believe it to be true.
- The background and history of the concern.
- The section or location of the alleged incident.
- Key personnel involved in the alleged incident.
- The time period over which the alleged incident occurred.
- Estimated monetary value, if appropriate, associated with the alleged incident.
- Documentary evidence in support of the alleged incident.
- Any other relevant information

9.7 Self Reporting

9.7.1 A case might arise where it is the employee that has participated in the malpractice that raises the concern. In such a case it is in the employee's interest to come into the open as soon as possible. The Agency cannot promise not to act against such an employee, but the fact that they came forward may be taken into account.

9.8 Action by the Agency after Reporting

9.8.1 The Chairman or the Chief Executive Officer (CEO) will respond to the employee concerns as quickly as possible. This shall include acknowledging receipt of the concerns and testing the concerns (testing the concerns is not the same as either accepting or rejecting them) to determine necessary further action.

9.8.2 The overriding principle for the Agency will be the public interest. In order to be fair to all employees, including those who may be wrongly or mistakenly accused, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

9.8.3 The investigation may need to be carried out under terms of strict confidentiality, i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. In certain cases however, such as allegations of ill treatment of others, suspension from work may have to be considered immediately. Protection of others is paramount in all cases.

- 9.8.4 Where appropriate, the matters raised may be:
- Investigated by management (via a committee) or Internal Audit,
 - Referred to the police,
 - Referred to the External Auditor (Office of the Auditor General),
 - Referred and put through to other Government Agencies such as:
 - i. Ethics & Anti-Corruption Commission (EACC),
 - ii. The Public Procurement Regulatory Authority (PPRA),
 - iii. The Commission on Administrative Justice (CAJ) etc,
 - Form the subject of an independent inquiry.
- 9.8.5 Within ten (10) working days of a concern being raised, the Chairman or the Chief Executive Officer (CEO) will **in confidence** write to the employee who reported:
- Acknowledging that the concern has been received,
 - Indicating how the Agency proposes to deal with the matter,
 - Supplying the employee with information on staff support mechanisms (if applicable),
 - Informing the employee whether further investigations will take place and if not, why not.
- 9.8.7 The amount of contact between an employee (whistleblower) and the officers considering/investigating the issues will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided by the employee. It is likely that the employee will be interviewed to ensure that their disclosure is fully understood.
- 9.8.8 A meeting can be arranged away from the workplace, if the employee wishes, and a colleague of their choice may accompany the employee in support.
- 9.8.9 The Agency will do what it possibly can to minimize any difficulties that an employee may experience as a result of raising a concern. For instance, if an employee is asked to give evidence in criminal or disciplinary proceedings, the Agency will arrange for the employee to receive legal advice and other necessary support inline with the Witness Protection Act.
- 9.8.10 Employees shall be assured that their disclosure has been properly addressed. Unless there are any legal reasons why this cannot be done, the employee (whistleblower) will be kept informed of the progress and outcome of any investigation.

9.8.11 The Chief Executive Officer or Chairman of the Board of Directors (as the case may be) is responsible for ensuring that all complaints about unethical or illegal conduct are investigated and resolved.

9.8.12 The CEO will advise the Board of Directors on all reported incidents and their resolution and will report at least quarterly to the Chairperson of the Audit & Risk Board Committee on compliance activities relating to accounting or alleged financial improprieties.

9.9 Anonymous Allegations

9.9.1 This Policy encourages employees to put their name(s) to the allegation whenever possible consequently anonymous allegations are discouraged.

9.9.2 This is because if the employee does not disclose their identity, it is not possible for the Agency to protect them or to give them feedback on the matter; therefore, this Policy is not ideally suited to concerns raised anonymously.

9.9.3 However, concerns expressed anonymously may be considered at the discretion of the Agency. In exercising this discretion, the factors to be taken into account shall include:

- The seriousness of the issue raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation from other sources.

9.10 Untrue Allegations

9.10.1 Employees are encouraged to as much as possible conduct some due diligence before reporting a concern. Nonetheless, if an employee makes a report in good faith and reasonably believing it to be true, but it is not confirmed by the investigation, the Agency will recognize the concern and no action will be taken against them.

9.10.2 If however, an employee makes an allegation frivolously, maliciously or for personal gain, appropriate action that includes disciplinary action shall be taken against them.

9.11 Complaints that don't count as whistleblowing

Personal grievances are not covered by this Policy, unless a particular case is in the public interest.

10.0 UNFAIR TREATMENT AFTER WHISTLEBLOWING

A Whistleblower can take a case of unfair treatment as a result of whistle blowing to the Commission on Administrative Justice (CAJ) if the Whistleblower believes that they have been treated unfairly because they reported a concern.

11.0 HOW THE MATTER CAN BE REPORTED TO EXTERNAL PARTIES OR PRESCRIBED CONTACTS

- 11.1 This Policy is intended to provide employees with an avenue within the Agency to raise concerns and the Agency hopes that employees will be satisfied with any action taken.
- 11.2 In the event that an employee is not satisfied with the action taken by the Agency, and they feel it is right to take the matter outside KenTrade; they can raise the concerns with a '**prescribed contact**' hence escalating the issue beyond the Agency.
- 11.3 The prescribed contact provides employees with a platform to make their public interest disclosure to an independent body that may be able to act on them.
- 11.4 The relevant prescribed contact shall depend on the subject matter of the disclosure and the following are the proposed *Prescribed Contacts*:
- i. The Office of the Auditor General (OAG);
 - ii. The nearest police station or law enforcement authority;
 - iii. Other relevant bodies prescribed by legislation such as –
 - a) The Secretary/Chief Executive Officer, Ethics & Anti-Corruption Commission (EACC).
 - b) The Director General, Public Procurement Regulatory Authority (PPRA).
 - c) The Secretary/Chief Executive Officer, Commission on Administrative Justice (CAJ).
 - d) The Director, Department of Occupational Health & Safety.
 - iv. Any other Government Agency within whose mandate the disclosure resides.
- 11.5 If an employee raises concerns outside the Agency, they should ensure that it is to one of these prescribed contacts. This Policy shall not protect an employee who makes a public disclosure to anyone else who is not a prescribed contact.
- 11.6 An employee will potentially qualify for the whistleblowing protection rights as if they had made a disclosure to the Agency if they report to

a prescribed contact. However, in order to qualify for this right, the employee must have a reasonable belief that:

- The matter falls within the remit or mandate of the prescribed contact,
- The information disclosed is substantially true;
- The concern raised is in public interest.

11.7 If an employee reports their concern to the media, the employee shall lose their whistleblowing protection rights under this Policy.

11.8 An employee should not disclose information that is confidential to the Agency or to anyone else, such as a client or contractor of the Agency, except to those included in the list of prescribed contacts above.

12.0 POLICY REVIEW

This Policy shall be reviewed every three years or as the need to review shall arise.

