



UNIVERSITY OF NAIROBI



WHISTLEBLOWING POLICY

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FOREWORD

The University of Nairobi is committed to upholding institutional integrity and accountability in accordance with the national values and principles of governance as per the provisions of the Constitution of Kenya, 2010. This is reflected in the University's core values of accountability, transparency, good governance, teamwork, equity and fairness, honesty and integrity.

The University has formulated this policy on Whistleblowing to help deepen these values within our community. The University recognizes that Whistleblowing enhances achievement of good governance practices; it is an effective way of detecting corruption and other malpractices. This Policy also recognizes that Whistleblowing acts as an early warning system to enhance preemptive action.

Accordingly, this Policy demonstrates the University's commitment to recognize and take action in respect of corruption and malpractice by members of the University community. This Policy sets out the organizational approach and obligation to the detection and prevention of corruption and malpractice within the University of Nairobi. It provides a procedure for the making of good faith disclosures; protection of those who make such disclosures from reprisals; and a mechanism for appropriate investigation of and response to such disclosures.

This policy is benchmarked with and informed by international best practices, the Constitution of Kenya, 2010, national legal and policy frameworks, and the University of Nairobi Statutes.

STEPHEN G. KIAMA, PhD
VICE-CHANCELLOR

DEFINITION OF TERMS

In this policy unless the context otherwise requires:

“*confidential information*” includes:—

- (a) information about the identity of:
 - (i) a whistleblower; and
 - (ii) a person against whom a whistleblower has made a disclosure of improper conduct;
- (b) information disclosed by a whistleblower;
- (c) substance of an investigation

“*corruption*” – corruption means the misuse or abuse of University office for private gain. Circumstances that would constitute corruption include:

- (a) Bribery
- (b) Embezzlement
- (c) Misappropriation or diversion of public property and public funds
- (d) Abuse of functions
- (e) Misuse of cash or University resources
- (f) Illicit enrichment
- (g) Obstruction of justice and concealment
- (h) Practicing of nepotism, tribalism, clannism
- (i) Practicing discrimination on the basis of religion, gender or disability
- (j) Improper reporting of time (timecard, sick or vacation leave reporting)
- (k) Activities causing environmental pollution and degradation
- (l) Inversion and distortion of social values including soliciting for and giving sexual and assorted favours
- (m) Negligence of professional ethics
- (n) Electoral fraud including election manipulation or vote rigging, and
- (o) Any other acts of corruption as defined in the Anti-Corruption and Economic Crimes Act, 2003.

“*designated office*”- means an independent office mandated by the Vice Chancellor to implement this policy and carry out any other functions under this policy.

“*detrimental action*” refers to any adverse action taken by the University, or any individual doing work for or on behalf thereof against a whistleblower and includes:

- (a) action causing physical, emotional and psychological injury, loss or damage;
- (b) intimidation or harassment;
- (c) reprisal which includes retaliatory acts such as to harass, discriminate, threaten, demote, discipline, suspend, dismiss or otherwise disadvantage the individual, adversely affect the individual’s employment, enrolment, working conditions or learning conditions, or deny the individual a benefit or threat to take any of the foregoing measures as a direct result of the individual, in good faith, disclosing a perceived malpractice.
- (d) interference with the lawful employment, livelihood or freedom of any person, discrimination, discharge, demotion, suspension, disadvantage, termination or adverse treatment in relation to a person’s employment, career, profession, trade or business or

- the taking of disciplinary action, or any other discriminatory action that would curtail the exercise of rights protected by this Policy;
- (e) a threat to take any of the actions referred to in paragraphs (a) to (d).

“*disclosure*” means any written or oral submission of information reporting alleged malpractice and which in the reasonable belief of a person, tends to show one or more of the following:

- (a) An unlawful, corrupt, or irregular use of public funds or public resources;
- (b) An act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment;
- (c) An act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial;
- (d) An act, omission, or course of conduct that constitutes an offence;
- (e) An act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

“*good faith*” means honestly intended action based on a reasonable belief and is evident when the report is made without malice and the individual has a reasonable basis to believe that the report is substantially true.

“*malpractice*” means improper, illegal, or negligent professional activity or treatment.

“*protected disclosure*”- means a disclosure that relates to any of the matters covered under the definition of disclosure above, has been made in good faith and in accordance with the procedure established by this policy:

- (a) it relates to one of the broad categories of malpractice covered under the definition of disclosure above;
- (b) the disclosure has been made in good faith;
- (c) the disclosure has been made according to the procedure established by this policy.

“*public interest*” means considerations affecting the welfare of the general public and includes but is not limited to the following matters:

- (a) freedom of thought and expression;
- (b) the proper management of the University;
- (c) public health and safety;
- (d) security;
- (e) the prevention and detection of crime and fraud; and
- (f) the economic wellbeing of the University.

“*suspect*” means a person against whom a disclosure has been made.

“*the University*” means the University of Nairobi

“*University community*” means the Council, academic, administrative and support staff, students, contractors or any agents of the University.

“*whistleblower*” means a person who reports in good faith and on reasonable grounds to the Designated Office any facts concerning corruption or malpractice at the University in accordance with this policy.

“*whistleblowing*” means the disclosure in good faith by a person to the competent authorities, which the person reasonably believes, is evidence of corruption or malpractice and in accordance with this Policy.

1.0 INTRODUCTION

The University aims to foster a culture of integrity, responsibility, transparency and accountability. Whistleblowing promotes such accountability by allowing for the disclosure, by any person, of information about misconduct while at the same time protecting the person against sanctions of all forms.

This Policy has been developed to enable the University community to make disclosures of corruption or malpractice without fear of intimidation or reprisal. The policy is in tandem with other policies in the University that promote transparency and accountability.

1.1 Policy Statement

- (1) The University embraces good faith Whistleblowing.
- (2) The whistleblower will suffer no adverse repercussions as a result of making a disclosure of corruption or malpractice.

1.2 Justification

Fear of reprisals, detrimental actions and inaction – lead to reluctance by staff, students, and other members of the university community to report corruption or malpractice. The University whistleblowers need to be protected to effectively reduce corruption and malpractices in the University.

2.0 SCOPE AND APPLICABILITY OF THE POLICY

2.1 Scope

This Policy sets out the framework for the disclosure of information, which is in the public interest and in particular information on corruption or malpractices, as specified in the Policy. The Policy includes types of corruption and malpractice covered, procedures for reporting and investigation of disclosures, protections, incentives, and sanctions.

2.2 Applicability

The policy covers disclosures made by members of the University community.

3.0 GOAL AND OBJECTIVES

3.1 Goal

The goal of this policy is to create an enabling environment and a culture of disclosing corruption or malpractice in good faith while at the same time offering protection to the whistleblower.

3.2 Objectives

The main objectives of the Policy are:

- (a) To provide avenues for members of the University community to make disclosures of corruption or malpractice.
- (b) To provide a clear procedure for handling good faith disclosures.
- (c) To enable University Management to be informed at an early stage about acts of corruption or malpractice.

- (d) To reassure members of the University community that they will be protected from reprisal, unfair treatment or other detrimental actions for disclosures made in good faith in accordance with this policy.
- (e) To foster a culture of transparency, accountability and integrity.

4.0 GUIDING PRINCIPLES

The Policy shall be guided by the following principles:

- (a) The principles of good governance, integrity, transparency and accountability.
- (b) The principles of equality, equity, human rights and non-discrimination.
- (c) The principles of natural justice.

5.0 TYPES OF CORRUPTION AND MALPRACTICE

This Policy covers the disclosure of information which, in the reasonable belief of the person making it, is in the public interest, and tends to show one or more acts of corruption or malpractice as defined in this policy:

Examples of corruption and malpractice disclosures, which may fall within these categories and thus covered by this policy include but are not limited to:

- (a) financial malpractice or impropriety, fraud, bribery, stealing or corruption;
- (b) irregularities in the hiring or promotion of staff;
- (c) academic and examination malpractices such as the production, citation, or other use of fraudulent research data, breach of intellectual property, plagiarism, cheating in examination and impersonation;
- (d) professional malpractice;
- (e) Practicing of nepotism, tribalism, clannism;
- (f) Inversion and distortion of social values including soliciting for and giving sexual and assorted favours;
- (g) obstruction or frustration of academic freedom;
- (h) irregular procurement of goods and services;
- (i) irregular resource allocation; and
- (j) falsification of data or documents.

6.0 PROCEDURE FOR DEALING WITH DISCLOSURES

6.1 Reporting

6.1.1 Who can make a disclosure

Disclosures may emanate from members of the University community who have a reasonable belief that there is corruption and malpractice.

6.1.2 Procedure for making a disclosure

Acts of corruption or malpractice may be disclosed orally, through phone, in writing, or through electronic media. All reports shall be sent directly to the designated office.

The disclosure should contain the following details: the alleged corruption or malpractice, the identity of individuals and significant dates, locations or events, where applicable. It is important that individuals disclose information at the earliest opportunity.

6.1.3 Action following disclosure

Upon receipt of disclosure, the Designated Office shall:

1. Acknowledge receipt of the reported violation or suspected violation within 24 hours.
2. Will consider the disclosure and assess whether it falls within the scope of this Policy and determine whether:
 - (i) investigations are necessary and, if so, the form of investigation to be undertaken.
 - (ii) refer the matter to another university body under appropriate policies.
 - (iii) refer the matter to the Police.
 - (iv) close the matter.

The Designated Office shall notify the whistleblower about the action taken within 30 days.

6.1.4 Procedure for investigation of disclosures

Where the designated office decides to investigate, the procedure shall be as follows:

Where the matter is to be the subject of an internal inquiry, the designated office will then consider how that investigation should be conducted. This consideration will include determining:

- (a) who should undertake the investigation;
- (b) the procedure to be followed;
- (c) the point at which the person or persons against whom the disclosure is made, will be informed as to the nature of that disclosure; and
- (d) the scope of the concluding report.

6.1.4 Timeliness

The Designated Office will deliver the report to the Vice Chancellor and/or other relevant agency within three months from the date of commencement of investigations.

6.1.6 Record of outcomes

A record of all disclosures and any subsequent actions taken will be made by the Designated Office, who will retain such material in accordance with the University of Nairobi Records Management Policy.

6.1.7 External Disclosures

If, having exhausted this procedure, the whistleblower is not satisfied with the University's response and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true, he/she is at liberty to take the matter further by raising it with the appropriate agencies established by law such as:

- (a) Commission on Administrative Justice
- (b) Kenya National Commission on Human Rights
- (c) Ethics and Anti- Corruption Commission

7.0 ANONYMOUS DISCLOSURES

Whistleblowers making disclosures under this policy are encouraged to reveal their identity. Anonymous disclosures may prove difficult to investigate but will be considered at the discretion of the University. In exercising this discretion, the Designated Office will take into account the following:

- (a) seriousness of the issues raised;
- (b) credibility of the information disclosed; and
- (c) likelihood of confirming the information from other sources.

8.0 CONFIDENTIALITY

The University shall treat disclosures made under this policy with utmost confidentiality. The substance of an investigation including the identities of the parties will remain confidential and may only be disclosed in the following circumstances:

- (a) Where the law requires disclosure;
- (b) The whistleblower has waived his/her right of confidentiality;
- (c) The identity of the whistleblower or substance of disclosure is already publicly known; and
- (d) The information is given on strictly confidential basis for the purpose of obtaining professional advice.

9.0 PROTECTION FOR WHISTLEBLOWERS

If a member of staff makes a disclosure in conformity with this Policy, the member may not:

- (a) be dismissed from employment;
- (b) have salary increases or employment related benefits withheld;
- (c) be transferred or reassigned;
- (d) be denied a promotion that the employee otherwise would have received; or
- (e) be demoted.

If a student makes a disclosure in conformity with this Policy, the student may not:

- (a) be suspended or expelled from the University;
- (b) have financial aid or other benefits withheld;
- (c) be harassed by lecturers, employees or other students;
- (d) be denied enrollment in classes;
- (e) have their grades reduced; or
- (f) be subject to any other form of discrimination.

If any other member of the University community makes a disclosure in conformity with this policy, the University will not subject them to detrimental action.

Any member of the University community who takes the above detrimental action against a whistleblower will be subject to disciplinary action up to and including termination of services or expulsion from the university as appropriate.

10.0 PROTECTION OF THE SUSPECT

In the interest of natural justice, the suspect will be presumed innocent and will be accorded the right to be heard. The suspect will be taken through a fair due process.

11.0 WITHDRAWAL OF PROTECTION

The University may revoke the whistleblower protection conferred under this Policy if it is of the opinion, based on its investigation or in the course of its investigation finds that:

- (a) the whistleblower has participated in the corruption or malpractice disclosed;
- (b) the whistleblower willfully made in his/her disclosure of corruption or malpractice a material statement which he knew or believed to be false or did not believe to be true;
- (c) the disclosure of corruption or malpractice is malicious or baseless;
- (d) the disclosure of corruption or malpractice principally involves questioning the merits of government policy, including policy of a public body.

If the whistleblower protection has been revoked, the Designated Office will give a written notification to that effect to the whistleblower.

12.0 INCENTIVES

The designated office will develop a program for rewarding a whistleblower by giving non-monetary awards and commendations.

13.0 SANCTIONS

- i) A whistleblower who does not act in good faith or makes an allegation without having reasonable grounds for believing it to be substantially true, or makes it maliciously, will be subject to disciplinary proceedings.
- ii) Any person who condones corruption or malpractice through willful suppression or concealment of relevant information or interferes with the investigation will be disciplined.

14.0 LEGAL FRAMEWORK

This policy will be guided by the relevant legal and policy frameworks, which include:

- (a) Constitution of Kenya, 2010
- (b) Anti-Corruption and Economic Crimes Act, 2003
- (c) Commission on Administrative Justice Act, 2011
- (d) Ethics and Anti-Corruption Commission Act, 2011
- (e) Fair Administrative Action Act, 2015
- (f) Leadership and Integrity Act, 2012
- (g) Official Secrets Act (Cap 187)
- (h) Penal Code (Cap. 63)
- (i) Public Officer Ethics Act, 2003
- (j) Public Procurement and Asset Disposal Act, 2015
- (k) Proceeds of Crime and Anti-Money Laundering Act, 2009

- (l) Public Audit Act, 2015
- (m) Public Finance Management Act, 2012
- (n) Universities Act, 2012
- (o) Witness Protection Act, 2006
- (p) Leadership and Integrity Code
- (q) Mwongozo Code of Conduct
- (r) University of Nairobi Rules and Regulations Governing Student Conduct
- (s) University of Nairobi Service Charter
- (t) University of Nairobi Staff Code of Conduct, 2003
- (u) University of Nairobi Statutes

15.0 OBLIGATIONS

The designated office will:

- (a) Receive all disclosures;
- (b) Investigate disclosures;
- (c) Maintain confidentiality;
- (d) Protect whistleblowers who have made disclosures in good faith from any sanctions, retaliation or reprisals resulting from such disclosure; and
- (e) Recommend rewards.

16.0 COMMITMENT

The University will:

- (a) Ensure that the principles of natural justice apply to all investigations of matters covered under the Policy to ensure fairness for both the discloser and the person who is subject to the disclosure;
- (b) Ensure that the rights of the whistleblower who is the subject of, or is in some way associated with, a disclosure is safeguarded;
- (c) Ensure interests of the whistleblower are protected to ensure there will be no reprisals or retaliatory action against the whistleblower;
- (d) Promote an environment of openness and accountability; and
- (e) Sensitize the university community on this policy.

17.0 ACCOUNTABILITY

The Vice Chancellor will be responsible for the implementation of this Policy.

18.0 IMPLEMENTATION

The University will provide a conducive environment for the implementation of this Policy

19.0 POLICY REVIEW

This policy will be reviewed after every five (5) years or as need may arise.