



WHISTLE BLOWER'S PROTECTION POLICY

DECEMBER 2015

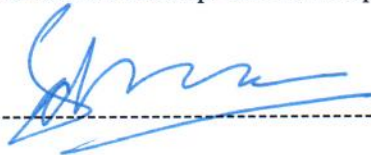
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Preamble

- 1.1 NACC Stakeholders, Clients and Members of Staff at all levels may often be the first ones to realize when NACC has incurred losses or is potentially exposed to risk of loss arising from fraud, misappropriation of resources, misconduct, dishonest, unethical or improper activity by any member of staff. However, they may not express their Concerns openly for fear of being discriminated against, labeled negatively, harassed or victimized. In these circumstances, they may find it more convenient to ignore their Concern rather than officially report the matter.
- 1.2 The NACC is committed to the highest possible standards of openness, probity and accountability. In line with this commitment, NACC expects employees and other stakeholders that it deals with, who have legitimate Concerns regarding any potential risks exposure, arising from fraud, misappropriation of resources, misconduct, dishonest, unethical or improper activity from staff or any collusion between staff and stakeholders to come forward and raise those concerns. It is recognized that most cases will have to be handled on a confidential basis to protect the Whistle Blower.
- 1.3 This policy document makes it clear that all stakeholders and members of staff are invited to channel all their Legitimate Concerns to NACC without fear of victimization, subsequent discrimination or victimization. This policy is intended to encourage and enable stakeholders and members of staff employees at all levels to raise Legitimate Concerns through the established channels within NACC, rather than overlooking a problem or blowing the whistle outside.
- 1.4 The policy applies to all NACC Board Members, Staff Members and Stakeholders, including suppliers of goods and service providers.
- 1.5 The policy provides further detailed procedures that complement those set out in the NACC's Code of Conduct and Ethics and NACC Ant Corruption Policy.
- 1.6 Where this policy is in conflict with an Act enacted by the Parliament of Kenya, Laws of Kenya, or Government Policy then the Act, Law or Government Policy will take precedence over this policy.
- 1.7 Where a complainant requires further protection beyond this policy, the provisions of the Witness Protection Act 2010 shall apply.
- 1.8 Responsibility for ensuring compliance with the policy rests with the NACC Head, Internal Audit and Risk Management, who is also responsible for ensuring that the policy is reviewed and up-dated as appropriate.

Signed



Date

21/6/2016

Nduku Kilonzo Ph.D
DIRECTOR NACC

Definitions

The definition of the key terms used in this Policy is provided below. Capitalised terms not defined herein shall have the meaning assigned to them under the NACC Code of Conduct and Ethics (herein after referred to as the Code).

“Employee” means an employee of the NACC.

“Code” means the NACC Code of Conduct and Ethics.

“Protected Disclosure” means any communication made in good faith that discloses or demonstrates information that may evidence unethical or improper activity.

“Whistle Blower” means an Employee or any stakeholder making a Protected Disclosure under this Policy.

“Whistle Blowing” Making a disclosure in public interest or exposing alleged misconduct, dishonest, and illegal activities occurring in NACC

1.0 Background

- 1.1 The **NATIONAL AIDS CONTROL COUNCIL** is committed to ensuring that all its operations and engagements with stakeholders are conducted with the highest possible level of professionalism, accountability, fairness and transparency by up-holding the values and principles outlined in its Code of Conduct and Ethics. Any actual or potential violation of the Code, regardless of the perceived degree, would be a matter of serious concern for the NACC. The role of stakeholders and employees in pointing out such violations of the Code cannot be underestimated.
- 1.2 Whenever stakeholders and staff members become aware of such violations they will be expected to report the matter, with the assurance that the matter will be treated with the seriousness and confidentiality it deserves.
- 1.3 This Whistle Blowers Protection Policy has been based on the Witness Protection (Amendment) Act 2010 enacted by the Parliament of Kenya to protect Whistle Blowers, who acting in good faith, disclose information about the NACC and its activities or those of any of its customers, stakeholders, Board Members or employees which genuinely might be considered as violations of the Code.
- 1.4 This policy has also been developed in line with the Mwongozo Code of Governance for State Corporation and NACC Anti-Corruption Policy.
- 1.5 This policy and the procedure therein have been developed to facilitate stakeholders and staff members who report genuine concerns to the attention of appropriate offices within the NACC to ensure that remedial action is taken promptly without any delay.

2.0 Purpose

This policy is designed to;

- a) Support NACC's values of integrity, professionalism, accountability, diversity and flexibility as articulated in NACC Strategic Plan 2015 to 2019 and NACC Code of Conduct and Ethics.
- b) Ensure that NACC stakeholders and employees have an opportunity to raise genuine concerns without fear of suffering retaliatory action, discrimination, harassment or victimization.
- c) Provide a transparent and confidential process for dealing with Concerns regarding malpractice or any unethical behavior as spelt out in the NACC Code of Conduct and Ethics, Leadership and Integrity Act (LIA), Public Officers Ethics Act and any other relevant policies that guide NACC operations.

3.0 Principles

This policy is guided by five key principles:

- a) **Fairness:** Fairness and appropriateness of response complains on fraudulent or unethical conduct that is genuine.
- b) **Protection:** Freedom to raise genuine Concern without fear of harassment, discrimination and victimization.
- c) **Confidentiality:** Information on any individual making a Disclosure will be kept confident unless he/she agrees otherwise
- d) **Transparency and feedback towards the persons raising the Concern:** The NACC will ensure that any individual raising a concern is aware of who is handling the matter and that feedback is provided as appropriate.
- e) **Legitimacy of Concern:** This policy supports all genuine Concerns and does not cover any issues that are raised maliciously and those based on falsehood.

4.0 Scope

4.1 This policy applies to all NACC Employees, Board Members and Stakeholders and covers, inter alia:

- a) Suspected fraud or corruption.
- b) Criminal offences that have or are likely to be committed.

- c) Disregard for the relevant legislation and regulations governing Conduct and Ethics for NACC Staff and Board Members, including Public Officers Ethics Act, 2003, Leadership and Integrity Act, 2012 Mwongozo Code Of Governance for State Corporations.
- d) Breach of the Code.
- e) Damage to the environment
- f) Misuse of public property
- g) Breach of the rules and regulations governing financial management, recruitment and procurement.

4.2 The policy applies to situations that may arise when normal/regular channels of reporting are not appropriate.

- a) Where evidence may be concealed or destroyed.
- b) Where there has been a previous disclosure of the same information, but there has been no evidence of action or the observed violation continues unabated.

5.0 Responsibilities

5.1 All persons with Concerns have a responsibility to ensure that the highest possible standards of care are upheld with regard to raising Concern (Whistle Blowing) under this policy. In particular, the following needs to be observed:

- a) Legitimacy of the Concern and Good Faith: All Concerns should demonstrate accuracy and be backed up by reasonable evidence. They should also be driven by utmost good faith and should not have malicious intent.
- b) Use of Appropriate Channels: Reporting is through any of the channels outlined in Section 5.2 below.

5.2 Reporting Channels: Whistle Blowing may be channeled through the following:

- a) Director NACC
- b) Chair of Complaints Committee
- c) Secretary of Complaints Committee
- d) Head, Internal Audit and Risk Management
- e) Deputy Directors and Heads of Divisions
- f) Regional HIV Coordinators
- g) Integrity Committee Members
- h) Integrity Assurance Officers (IAOs)

Where the Whistle Blower feels uncomfortable to report the detected Concern through any of the above channels, then he /she should report to the Chair or any Member of the Board or use the

confidential reporting channels that include (but not limited to); hotline, telephone, box, email of NACC or other channels provided by law.

5.3 Receiving and Processing Reported Concern

Whoever receives the information on the Concern as outlined in Section 5.2 above, has a duty to:

- a) Appreciate and take into consideration the challenging position of a Whistle Blower and treat the information provided in a confidential manner.
- b) Take Concern seriously and take appropriate action to resolve the Concern without delay to extent possible
- c) Refer the Concern to an appropriate person/office where necessary.
- d) Monitor and review the Situation as appropriate
- e) Provide feedback as appropriate to the Whistle Blower.
- f) Ensure that individuals who raise genuine Concerns are protected against harassment, victimization and discrimination.

6.0 Safeguard

- 6.1 The NACC is committed to good practice and high standards and wants to be supportive of all Stakeholder and Employees. NACC will not tolerate any harassment or victimization of Whistle Blowers and will protect persons who raise Concern in good faith. However, where the NACC finds out that false or malicious allegations have been made, appropriate remedial action will be taken, as guided by disciplinary procedures, for members of staff, or other appropriate action in case of Board Members and other stakeholders.
- 6.2 The NACC will not victimize or discriminate against a genuine Whistle Blower, and neither will it allow any such discrimination or victimization by any of its staff or Board Members. Specifically, the NACC will not discharge, demote, suspend, threaten, harass or in any other manner discriminate or penalize any Employee or Stakeholder who lawfully provides information to the authorities regarding any misconduct which the Whistle Blower reasonably believes constitutes a violation of any Law.

7.0 Eligibility for Protection

All Employees and Stakeholders of the NACC are eligible to make Protected Disclosures under the Policy. The protected Disclosures may be in relation to matters concerning the NACC.

7.0 Disqualification of Protection

- 7.1 While under this policy, genuine Whistle Blowers are accorded complete protection from any kind of unfair treatment, harassment, discrimination or victimization, as set out herein, any abuse of this protection will warrant disciplinary action for members of staff and as appropriate for other stakeholders.
- 7.2 Protection under this Policy does confer protection from disciplinary action arising out of false or malicious allegations made by a Whistle Blower knowing it to be false or with a malicious (*mala fide*) intent.
- 7.3 Whistle Blowers, who make any Protected Disclosures, which have been subsequently found to be *mala fide* or malicious and Whistle Blowers who make three (3) or more Protected Disclosures, which have been subsequently found to be frivolous, baseless or reported otherwise than in good faith, will be disqualified from Protection under this Policy.

8.0 Protection

- 8.1 No unfair treatment will be meted out to a Whistle Blower by virtue of his/her having reported a Protected Disclosure under this Policy. The NACC, as a policy, shall not condone any kind of discrimination, harassment, victimization or any other unfair treatment against a real or perceived Whistle Blower. Complete protection will, therefore, be given to a genuine Whistle Blower against any unfair practices such as retaliation, threat or intimidation of termination/suspension of service, disciplinary action, transfer, demotion, refusal of promotion, or the like including any direct or indirect use of NACC systems and mechanisms to obstruct the Whistle Blower's right to continue to perform his duties/functions including making further Protected Disclosure. The NACC will take steps to minimize difficulties, which the Whistle Blower may experience with regard to Protected Disclosure. Thus, where the Whistle Blower is required to give evidence in criminal or disciplinary proceedings, the NACC will arrange for the Whistle Blower to receive the relevant advice about the procedure and other appropriate support.
- 8.2 A Whistle Blower may report any violation of Clause 9.1 above to the NACC Chairperson, Director NACC or Head, Internal Audit and Risk Management. The Director shall constitute a committee to investigate the same and recommend suitable action to the Director for appropriate action. The identity of the Whistle Blower shall be kept confidential to the extent possible and permitted under law.
- 8.3 Any Stakeholder or Employee assisting in the said investigation shall also be protected to the same extent as the Whistle Blower.

9.0 Confidentiality and Anonymity

- 9.1 The NACC will protect the confidentiality of all matters raised by the Whistle Blower. In case of any breach of confidentiality by any of the persons named in Section 5.2, the Whistle Blower may take the appropriate action under the NACC's grievances procedures.
- 9.2 All correspondence entered into the whistle blowing process are confidential, whether a person making the disclosure wishes to remain anonymous or not.

10.0 Anonymous allegations

- 11.1 This policy encourages Stakeholders and Employees raising concern to provide their names and contact details to facilitate follow-up and feedback. To the extent possible, all Concerns should be factual and be supported by evidence, rather than being speculative or presumptive; and should contain as much information as possible to allow for proper assessment. Concerns expressed anonymously are less powerful but will be considered at the discretion of the NACC. In exercising this discretion, the factors to be taken into account shall include:
- a) The seriousness of the issues raised
 - b) The credibility of the Concern and
 - c) The likelihood of confirming the allegation from reputable independent sources.

11.0 Untrue allegations

Where a Whistle Blower makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against him/her. If however, the Whistle Blower makes the allegation frivolously, maliciously or for personal gain, disciplinary or other appropriate action may be taken against him/her. The Investigating officer/agency referred to in section 13.2, will decide based on the evidence available to the complainant at the time of making the complaint, whether the complaint is malicious or not.

12.0 Whistle Blower's Procedures

12.1 Raising a Concern

- 12.1.1 A stakeholder or employee may raise a Concern orally, (i.e. face to face or over the phone) or in writing. Where one writes, one should mark the envelope 'private and confidential' and if the Concern is of a serious nature, hand deliver the envelope

to the person one wishes to report the matter to. If one wishes to discuss the matter orally, he or she should indicate this in the submission and include a telephone number at which he/she might be contacted by the NACC Chair, Director or Head, Internal Audit and Risk Management.

13.1.2 Whichever method the Whistle Blower chooses, he/she should give as much information as possible. He/She should identify or provide evidence of the following to the extent that this detail is known:

- a) The areas of concern
- b) Sequence of events
- c) The section or location of the alleged behaviour.
- d) The key persons involved in the alleged behaviour.
- e) The nature of the alleged incident.
- f) The time period over which the alleged incident occurred.
- g) An estimate of the monetary value, where relevant, associated with the alleged incident.
- h) Documentary evidence in support of the alleged incident.
- i) Names and roles of other stakeholders and Employees who may support the Whistle Blower's Concern.
- j) Whether this is the first instance the issue has been observed and/or reported.
- k) In case this is not the first time, details of previous occurrence and reporting

13.1.3 The person(s) receiving the Concerns will be required to record the Concern in a confidential manner and investigate the allegations thoroughly. The Whistle Blower will receive an initial response within ten (10) working days, including details of any further action to be taken and a written feedback within seven (7) working days of the completion of the investigation where appropriate.

13.1.4 Although a Whistle Blower will not be expected to prove beyond reasonable doubt the truth of an allegation, he/she will need to demonstrate that there is a reasonable ground for the Concern.

13.1.5 The Whistle Blower may raise the matter jointly with another concerned person who has similar Concern and who would support the allegations.

13.1.6 A Whistle Blower will be advised to invite a colleague or another person of his/her choice to be present during any meetings or interviews in connection with the

Concern raised if (she/he) deems fit. In this case, identity of the Whistle Blower can remain undisclosed when the Concern is first raised but he/she may have to be involved personally when further investigation and clarification is being conducted.

13.2 Response and investigation

- 13.2.1 A person named in Section 5.2, who receives a Concern shall first decide whether to carry out an investigation and determine which procedures are appropriate to use. He/she shall forward the complaint in writing to the Director NACC and copy the Head Internal Audit.
- 13.2.2 If it is decided that the matter should be taken further under these procedures the Concern will be:
- a) Investigated by the Head, Internal Audit and Risk Management
 - b) Investigation report referred to above presented to the Director for further action.
 - c) The report is further presented to the Audit and Risk Management Committee
 - d) Report submitted to the Full Board for approval of the required actions which should include:
 - i. Referred to the Kenya National Audit Office (KENAO).
 - ii. Referred to the Police (Criminal Investigation Department)
 - iii. Ethics and Anti-Corruption Commission (EACC)
 - iv. The subject of an independent inquiry.

A whistleblower may be interviewed by the person investigating the matter.

- 13.2.3 In order to protect the rights of individuals accused of a possible malpractice, enquiries will be made to decide whether an investigation is appropriate. Some Concerns may be resolved by agreed action without need for an investigation. If urgent action is required, this will take place before an investigation is undertaken.

13.3 Response to the Whistle Blower

- 13.3.1 The person to whom the Whistle Blower has raised his/her Concern will contact him/her in writing within 10 working days detailing the following:
- a) Acknowledge that the Concern has been received.
 - b) Indicate how the NACC intends to deal with the matter.

- c) Give an estimate of how long it will take to provide a final response.
- d) Provide any feedback to the Whistle Blower
- e) Inform the Whistle Blower whether further investigation will take place and if not, why not.

13.3.2 The amount of contact a Whistle Blower will have with the people considering the matter will depend on the type of concern, the potential difficulties of the investigation and availability of information. Wherever possible, the Whistle Blower will be informed of the final outcome of any investigation.

13.3.3 The NACC will take steps to minimize any difficulties the Whistle Blower may experience in the course of investigations related to a concern. For example, if required to give evidence in a criminal or disciplinary proceedings, the NACC will arrange for the Whistle Blower to receive appropriate support.

14.0 WHERE THE WHISTLE BLOWER IS NOT SATISFIED WITH THE NACC'S RESPONSE.

14.1 This procedure is meant to give everyone an effective way to raise a legitimate Concern within the NACC (if possible resolve it internally). However, if the whistle blower is still unhappy after using the procedure (and getting a final written response) he/she is entitled to consider taking the concern elsewhere. This may include:

- a) The Kenya National Audit Office (KENAO)
- b) A relevant professional or regulatory body.
- c) A relevant voluntary organization.
- d) Efficiency Monitoring Unit (EMU)
- e) Ethics Anti-Corruption Commission (EACC)
- f) Directorate of Criminal Investigation (DCI)

15.0 THE RESPONSIBLE OFFICER

15.1 The Head, Internal Audit and Risk Management shall be the "**Contact Person**" for the purposes of maintenance and operation of this policy.

15.2 Records of (all written statements along with the results) any investigations relating thereto shall be kept on a separate secured file in the Head, Internal Audit and Risk Management office for seven years. It is illegal and against the NACC's Policy to destroy any audit records that may be subject to or related to an investigation by the NACC.

15.3 This procedure is subject to monitoring and shall be reviewed by the Head, Internal Audit and Risk Management