Energy & Petroleum Regulatory Authority

ENERGY AND PETROLEUM REGULATORY AUTHORITY (EPRA)

WHISTLEBLOWER PROTECTION POLICY

October 2024

Quality Energy. Quality Life

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This plan is issued under the authority of:

NAME:	DANIEL KIPTOO BARGORIA, MBS, OGW
TITLE/POSITION:	Director General
SIGNATURE:	
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Director General's Word

FOREWORD

Corruption destroys public confidence, threatens enterprises development, hampers economic growth and undermines good governance. Whistle blowing is important in anticorruption initiatives as it deters unethical behavior, encourages transparency and accountability.

Whistle blowers play an important role and require protection against victimization and retaliation. This policy makes potential whistle blowers appreciate the role that they can play in combating and preventing corruption without necessarily having a direct obligation and enhances good citizenship.

The Authority is committed to whistle blowing and whistle blowers protection. Towards this, mechanisms have been developed to support implementation. This policy provides guidelines, structures and systems to encourage whistle blowing. It is envisioned that the policy, together with other internal tools, will enable the Authority to effectively combat and prevent corruption.

As such, this policy is developed as a welfare measure to protect and safeguard the rights of whistle blowers who disclose any information. Employees are expected to familiarize themselves with the provisions of this policy.

Daniel Kiptoo Bargoria, MBS, OGW

Director General

ACRONYMS/ABBREVIATIONS

CPC	Corruption Prevention Committee
CPP	Corruption Prevention Plan
DG	Director General
EACC	Ethics and Anticorruption Commission
EPRA	Energy & Petroleum Regulatory Authority
IAO	Integrity Assurance Officers
IAOC	Integrity Assurance Officers Committee
KWPA	Kenya Witness Protection Agency

DEFINITION OF TERMS

Code of Conduct and Ethics	The Specific Code of Conduct and Ethics developed by a public body pursuant to Part II or the General Code of Conduct and Ethics established pursuant to Part III, of the Public Officer Ethics Act No. 4 of 2003.
Economic crime	An offense involving dishonesty under any written law providing for the maintenance of protection of the public revenue.
Informant	Person who gives information to another.
Whistleblower	A person(s) who exposes any kind of information or activity that is deemed illegal, unethical, or not correct.
Whistleblowing	The act of reporting an observed/perceived unethical misconduct of employees, and stakeholders of the Authority by an employee or other person to appropriate authority.
Witness	A person who needs protection from a threat or risk which exists on account of his agreeing to give, evidence.

1.0 INTRODUCTION

1.1 Policy Statement

The Authority is committed to maintenance of high ethical standards in the delivery of services to the public by providing mechanisms that enable employees, stakeholders and the general public to report any malpractice, to protect any person, who acting in good faith, discloses information of improper conduct. The Authority commits to protect anyone who submits any reports on any suspected violations as per Witness Protection Act of 2016.

The Authority has put in place processes that foster a culture that encourages transparency and accountability in all its operations. Thus, this Policy has been developed to encourage reporting of improper conduct by employees and other stakeholders and protection of the whistleblower. It promotes good governance in EPRA and ensures that whistleblowers are protected from discrimination, victimization and retaliation.The Policy shall guide the Authority in providing an environment that protects the inherent rights of the whistleblowers as envisioned in the Constitution of Kenya and other legislative and regulatory provisions.

1.2 Policy Objectives

The objectives of this Policy are to:

a) Encourage reporting of improper, unethical, or inappropriate behavior at all levels of the Authority;
b) Ensure confidentiality of all matters reported to the Authority.
c) Protect persons who make the disclosures from any detrimental consequences.
d) Provide fair treatment to both the whistleblower and the accused.
e) Manage disclosures of improper conduct in an appropriate and timely manner.
f) Help promote and develop a culture of openness, accountability, and integrity.
g) Provision of a transparent confidential process to enable whistleblowers to report genuine concerns about bribery, corruption and unethical practices
h) Enforce procedures for reporting, investigating, assessing and acting on allegations of impropriety and unethical behavior.

1.3 Mandate of EPRA in relation to Whitleblower Protection

The Energy and Petroleum Regulatory Authority (EPRA) is established under the Energy Act, 2019 with a mandate of inter alia technical and economic regulation of Kenya's electricity, renewable energy, coal and petroleum sectors. The Authority is devoted to enhancing good corporate governance through provision of structures and mechanisms that facilitates all parties to share information. The policy demonstrates the Authority's commitment to prevention, detection and execution of appropriate action to ensure protection of whistleblowers in collaboration with relevant Government agencies.

1.4 Policy Principles

The Implementation of this policy shall be guided by the following principles;

a) Good governance, integrity, transparency and accountability.
b) Equality, equity, human rights and non-discrimination.
c) Confidentiality shall be maintained in handling all reported cases.
d) In addressing reported cases, the Authority shall apply non-discrimination policy in accordance with the law.

1.5 Purpose of the Policy

The policy aims to provide protection to whistleblowers to enable them report genuine concerns about bribery, corruption and unethical practices.

1.6 Application of the Policy

This Policy will be applied in tandem with any regulatory or legal framework.

1.7 Scope of the Policy

This Policy covers the protection of whistleblowers, reporting framework, roles and responsibilities and review of the policy.

2.0 POLICY AND LEGAL FRAMEWORK

2.1 Introduction

The policy and legal framework for whistle-blowers encompasses all laws, regulations and policies for addressing cases of whistle-blowing in the Authority. The Witness Protection Act of 2016, provides for the protection of witnesses in criminal cases and other proceedings.

2.2 Legal Instruments

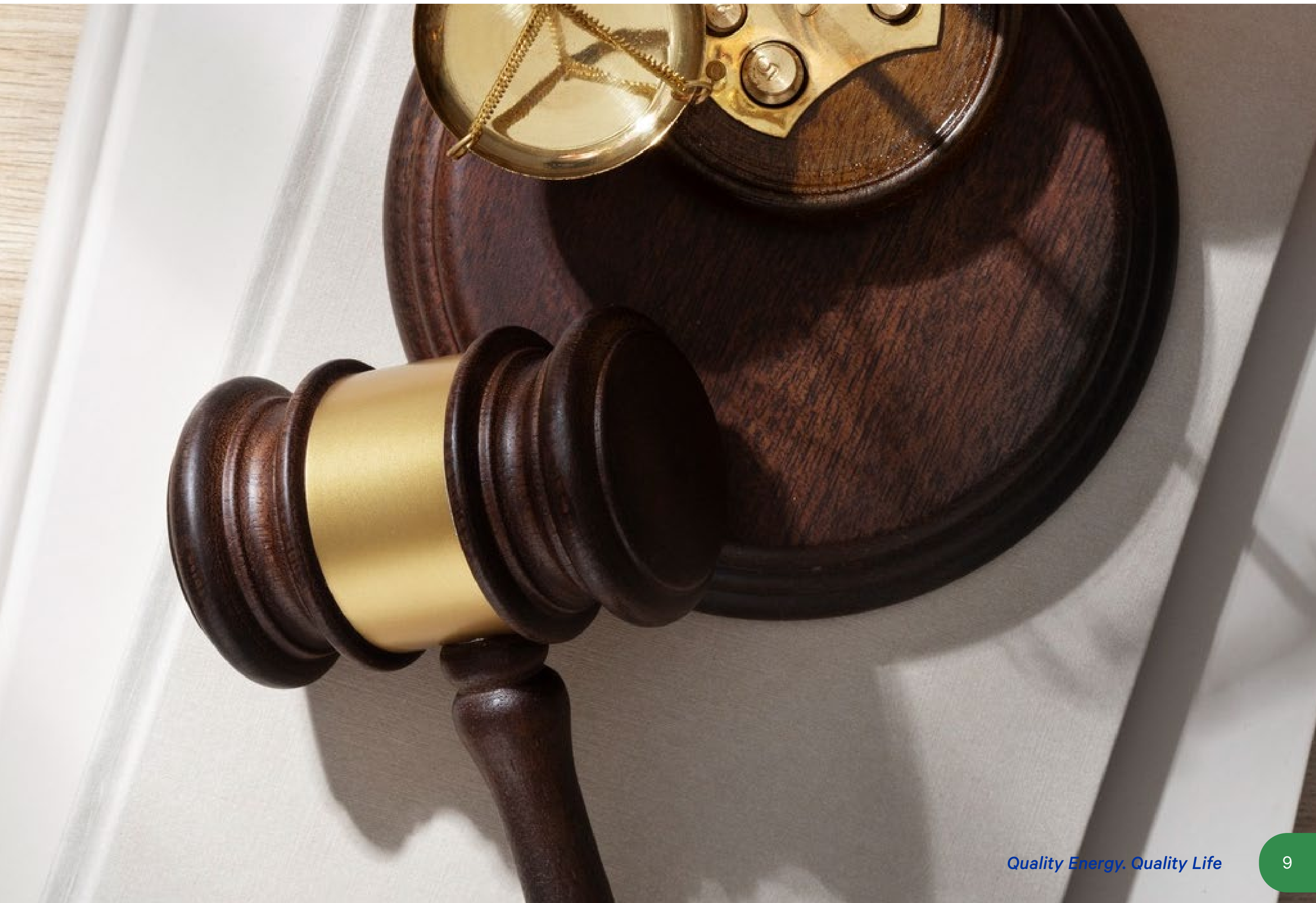
This policy is anchored on the provisions of the Witness Protection Act No. 16 of 2016 and the following legal instruments:

a) The Constitution of Kenya, 2010.
b) Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
c) Leadership and Integrity Act, No. 19 of 2012. Cap 182
d) Bribery Act, No. 47 of 2016.
e) Any other applicable laws and regulations.

2.3 Policies to Govern Conduct of Employees

The Authority has the following policies to govern the conduct of employees:

a) The Corruption Prevention Policy;
a) Human Resource Policies and Procedures manual; and
a) Code of Conduct and Ethics.



3.0 INSTITUTIONAL FRAMEWORK

The institutional framework for whistleblower protection will include the following:

3.1 Board of Directors

a) Providing Resources to manage the whistleblower scheme.
b) Approve whistleblower protection policy.

3.2 Management

a) Allocate resources for whistleblower protection;
b) Implementing whistleblower protection policy;
c) Take prompt and decisive action on all reported cases reported; and
d) Provide resources for training and sensitization on whistleblower protection.

3.3 Whistle-blower

The whistleblower will be expected to:

a) Act in good faith while making an allegation and avoid malicious and vexatious allegations. In the event that the whistleblower provides information that is false, malicious, vexatious, he will be liable for disciplinary action under the HR manual or criminal liability under the law or both.
b) Provide evidence in their possession related to the allegation and support the process of investigations as much as possible.
c) Take reasonable precaution for personal security.

3.4 CPC and IAOC

The functions of the Committees shall include:

a) In processing the information received, the Committees shall ensure maintenance of confidentiality and protection of the whistleblower identity.
b) Where necessary make security arrangements to protect the whistleblower in collaboration with relevant Government Agencies.
c) Sensitize staff and stakeholders on the provisions of the policy.

3.5 Stakeholders

Stakeholders have a major role to play in supporting the Authority achieve its mandate. Where a stakeholder has reasonable grounds to suspect fraud, corruption or other malpractices, they may report as provided for in this policy.

3.6 Employees

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. Employees are expected to:

a) Report any form of suspected corruption as provided for in this policy;
b) Raise such concerns in good faith with the true belief that malpractice has occurred;
c) Ensure that issues raised are not done in malice or vexation or otherwise intended to meet objectives other than public interest.

3.7 Other Agencies

The Authority shall collaborate and co-operate with relevant Government Agencies in in protection of whistleblowers, informants and witnesses. Such agencies will include:

a) The Ministry of Energy and Petroleum;
b) Law Enforcement Agencies;
c) Ethics and Anti-Corruption Commission (EACC);
d) The Office of the Director of Public Prosecution;
e) National Police Service;
f) The Judiciary; and
g) Witness Protection Agency.

The collaboration and cooperation may include:

a) Joint planning;
b) Sharing of information and best practice in the industry;
c) Mutual consultation on the most effective strategies;
d) Peer review; and
e) Capacity building for employees, directors and third parties in the industry.

4.0 PROTECTION OF WHISTLEBLOWERS

4.1 Introduction

The Authority recognizes the difficulty that whistleblowers, their family and associates may face in voicing concerns and assures them of support and confidentiality during the whistleblowing process. Protection measures will be undertaken in collaboration with other relevant Government Agencies. The measures will include:

a) Protection from victimization and retaliation of an employee;
b) Protection of persons mistakenly believed to be whistleblowers;
c) Maintaining confidentiality of all matters raised as well as concealing the identity of the whistleblower if a matter is not raised anonymously.
d) Where necessary, to protect the identity of the whistleblower, use of pseudo names or serial number shall be used.
e) Protection under this Policy does not confer protection from disciplinary action arising out of false or malicious allegations made by a whistleblower knowing it to be false or with a malicious (mala fide) intent.
f) Whistle-blowers and informers, who make any protected disclosures, which have been subsequently found to be mala fide or malicious and whistleblowers or informants who make frequent 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.

4.2 Protection of the Identity of the whistleblower

a) The Authority undertakes to protect the identity of persons making corruption disclosures against any reprisals and detrimental action.
b) The confidentiality of the Whistleblowers shall be maintained and information that might identify the person making the disclosures will not be released. However, if there is need to release such information, this will be first discussed with the concerned person.
c) Anonymous reporting is allowed. Concerns expressed anonymously shall be considered at the discretion of the EACC.

4.3 Protection through the Witness Protection Programme

a) Where a whistleblower or informant is a witness in court and is threatened,the matter shall be referred to the Kenya Witness Protection Agency (KWPA).
b) Protective action undertaken by the agency depends on the level of threat.
c) Some of the actions taken to protect witnesses include:
    i. Redaction of identifying information from the witness statement;
    ii. Use of pseudonyms;
    iii. Protecting the identity of the witness;
    iv. Provision of separate waiting room during court appearances;
    v. Voice distortion;
    vi. In camera or closed court sessions;
    vii. Use of concealing witness box;

viii. Limiting face to face interaction with the accused;
ix. Limiting witness exposure to public and media;
x. Relocation;
xi. Physical and armed protection;
xii. Use of video link; and
xiii. Change of identity.

5.0 REPORTING FRAMEWORK

5.1 Introduction

a) A report may be made verbally, or in writing to either the Integrity Office or to management, or by dropping the complaint to the Corruption Reporting Box. Management will then liaise with Integrity Section on the reports.

b) Where report is made orally, the person receiving the disclosure shall record the report in writing. Persons making reports are encouraged to provide the description of the parties involved in the impropriety, details of the impropriety and particulars of documentary evidence if any.

c) Whistle blowers will be encouraged to give their contacts to facilitate feedback.

5.2 Details to be included in a Disclosure

The Whistleblower is expected to disclose as much information as possible to the receiving person to enable thorough enquiry. This should include:

a) nature of the disclosure;

b) person(s) involved;

c) area/section where the action took or will take place;

d) date and time when the incident took place;

e) evidence in support of the allegation(s);

f) names of possible witnesses in support of the allegation (s); and

g) any other pertinent information.

5.3 Reporting Channels

The Authority has put in place reporting channels to facilitate whistleblowing by both internal and external stakeholders. Whistleblowers can send reports through any of the following channels:

a) Corruption Reporting Box – Reports on alleged corruption may be dropped in the Corruption Reporting Box. The box is placed in an appropriate location where any report of alleged corruption can easily be dropped in privacy. The keys to the box shall be in the custody of at least two (2) officers who shall be members of the Corruption Prevention Committee. The box shall only be opened in the presence of at least three (3) officers who are members of the Corruption Prevention Committee.

b) EPRA's dedicated Corruption hotline – call toll free at 1551.

c) Website – the link provided in the EPRA website will direct the reports to EACC.

d) In person reporting - Any individual with evidence of corruption can report to the IAOC, CPC, DG or any other relevant Authorities.

e) Email – integrity@epra.go.ke; integrity@go.ke;

f) Letters - marked "CONFIDENTIAL" may be sent through the following address:

The Director General
Energy & Petroleum Regulatory Authority
Eagle Africa Centre
P.O. Box 42681 – 00100 Nairobi
Tel: 0709 336 000 or

Ethics and Anti-Corruption Commission

P.O. Box 61130-00200

Nairobi, Kenya

Tel: 0202717318

Email: eacc@integrity.go.ke or report@integrity.go.ke

5.4 Procedure upon Receit of a Disclosure

Upon receipt of disclosure, the CPC shall:

a) Acknowledge receipt of the reported violation or suspected violation within 24 hours.
b) Consider the disclosure and assess whether it falls within the scope of this Policy.
c) Determine whether the investigations are necessary and, if so, the form of investigation to be undertaken.
d) Refer the matter to the relevant agency.
e) Close the matter.
f) Notify the whistleblower about the action taken within 30 days.

5.5 Procedure for Investigation of a Disclosure

a) Initial assessment shall be made to determine whether the concerns raised warrant any action.
b) Where the matter is to be the subject of an internal inquiry, the CPC will then consider how that investigation should be conducted. This consideration will include determining:
   i. who should undertake the investigation;
   ii. the procedure to be followed;
   iii. 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
   iv. the scope of the concluding report.
c) An accurate report will be prepared with all necessary details relating to the incident.
d) If the matter warrants further action, it shall be referred to the appropriate office.
e) The complainant, shall be given feedback on the allegations raised within a period of six (6) weeks.

5.6 Timelines

The person undertaking the investigation will deliver the report to the CPC and/or other relevant agency within three months from the date of commencement of investigations.

5.7 Record of Outcomes

A record of all disclosures and any subsequent actions taken will be made by the CPC, who will retain such material in accordance with the Authority's Records Management Policy.

5.8 External Disclosures

If, having exhausted this procedure, the whistleblower is not satisfied with the Authority'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

5.9 Confidentiality

a) All matters raised by whistleblowers will be treated with the utmost confidentiality.

b) The content of an enquiry including the identities of the parties to the whistleblowing process will remain confidential.

6.0 MONITORING, EVALUATION AND REVIEW OF THE POLICY

The Authority shall ensure continuous monitoring and evaluation of the implementation of this Policy through the CPC. The Policy will be reviewed after every three (3) years or on need basis in tandem with changes in legislation and other emerging issues.

REFERENCES

1. Access to Information Act, No. 31 of 2016.
2. Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
3. Bribery Act, No. 47 of 2016.
4. Constitution of Kenya, 2010.
5. Data Protection Act No 24 of 2019
6. EPRA Human Resource Policy & Procedures Manual (June 2021).
7. Leadership and Integrity Act, No. 19 of 2012. Cap 182
8. National Ethics and Anti-Corruption Sessional Paper No. 2 of 2018.
9. Public Finance Management Act, No. 18 of 2012.
10. Public Officer Ethics Act, No. 4 of 2003.
11. Public Procurement and Asset Disposal Act, No. 33 of 2015.
12. Witness Protection Act, 2016 (Act No. 45 of 2016).

EPRA WHISTLEBLOWER PROTECTION POLICY

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Energy & Petroleum Regulatory Authority
Eagle Africa Center, Longonot Road., Upperhill
P.O Box 42681-00100, Nairobi | Tel: 0709 336 000

www.epra.go.ke EPRA Kenya @EPRA_Ke EPRA_Kenya

Design: Apex Porter Novelli | Email: info@apn.co.ke