

THE WHISTLEBLOWER PROTECTION BILL, 2024

ARRANGEMENT OF SECTIONS

PART I-PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Application of the Act.
- 4—Object of the Act.

PART II –ADMINISTRATION

- 5—Administration of the Act.
- 6—Role of the Commission.
- 7—Powers of the Commission.
- 8—Co-operation with other agencies.
- 9—Immunity from legal proceedings.

PART III- FORMS OF IMPROPER CONDUCT AND REPORTING

- 10—Improper conduct to which this Act applies.
- 11—Manner of making a public interest disclosure.
- 12—Disclosure to be in writing.
- 13—Information to be included in a public interest disclosure.
- 14—Anonymous public interest disclosures.
- 15—Designated person.
- 16—Submission of a copy of written public interest disclosure to the Commission.

PART IV-PROTECTION OF WHISTLEBLOWERS

- 17—Whistleblower protection.
- 18—Confidentiality of the information disclosed pursuant to this Act.
- 19—Immunity from civil or criminal action.
- 20—Protection against reprisal.
- 21—Protection against workplace reprisal.
- 22—Protection against reprisal in relation to contracts.
- 23—Protection against physical harm.
- 24—Duty to establish and maintain whistleblower protection procedures.
- 25—Model procedures.
- 26—Information about the Act and procedures to be communicated.

**PART V—HANDLING OF REPORTS OF PUBLIC INTEREST DISCLOSURES AND
REPRISAL**

- 27—Action after receipt of a public interest disclosure.
- 28—Report on recommendations.
- 29—Complaints of reprisal.
- 30—Orders for relief.
- 31—Enforcement of Commission's orders.
- 32—Appeals to High Court.

PART VI – OFFENCES AND PENALTIES

- 33—Obstructing an investigation.
- 34—Engaging in reprisal.
- 35—False or misleading information.
- 36—General penalty.

PART VII—MISCELLANEOUS

- 37—Limits of disclosure.
- 38—Revocation of whistleblower's protection.
- 39—Review of the Commission's decisions.
- 40—Other obligations to report not affected.
- 41—Reward for whistleblowing.
- 42—Annual Report of a public or private entity to the Commission.
- 43—Annual Report of the Commission.
- 44—Referral by a Committee of Parliament.
- 45—Request for advice.
- 46—Power to make Regulations.

THE WHISTLEBLOWER PROTECTION BILL, 2024

A Bill for

AN ACT of Parliament to encourage and facilitate whistleblowing, provide for the procedure for the reporting of improper conduct in the public and private sectors; to provide for the protection of persons who make such reports against reprisals, and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I- PRELIMINARY

Short title.

1. This Act may be cited as the Whistleblower Protection Act, 2024.

Interpretation.

2. In this Act, unless the context otherwise requires—

“appropriate authority” in relation to a public entity means the individual or entity that has authority to institute disciplinary measures against a person found to have engaged in improper conduct under this Act;

“Attorney-General” means the Attorney-General appointed under Article 156 of the Constitution;

“Chief Officer” means a chief executive officer or the head of a public or private entity;

“classified information” means information of a particular security classification, the unauthorised disclosure of which would prejudice national security;

Cap. 7J.

“Commission” means the Commission on Administrative Justice established under section 3 of the Commission on the Administration of Justice Act;

“confidential information” includes—

(a) the identity or location of—

(i) a whistleblower or any other person who is entitled to protection in accordance with this Act;

(ii) a person to whom a whistleblower has made a public interest disclosure and who is under investigation by the Commission; or

(b) information which, if disclosed, may compromise the security of a person identified in paragraph (a);

“designated person” means a person or an institution authorized to receive public interest disclosure in accordance with section 15 of this Act;

“employee” has the meaning assigned to it by section 2 of the Employment Act 2007;

“enforcement agency” includes—

(a) any government department, agency or other body set up by the national or a county government, including a unit, section, division, department or agency of such ministry, department, agency or body, conferred with investigative or enforcement functions by any written law or having investigation and enforcement powers;

(b) a body established by law and conferred with investigative or enforcement functions; or

(c) a unit, section, division, department or agency of a body established by law having investigative or enforcement functions;

“improper conduct” means any of the activities referred to in section 10 or any other conduct which adversely affects the public interest;

“individually identifying health information” means information which is part of health information, including demographic information collected from an individual, which identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual;

“national security” has the meaning assigned to it under Article 238(1) of the Constitution;

“National Security Council” means the National Security Council established by Article 240(1) of the Constitution;

Cap. 7M.

“personal information” has the meaning assigned to it under section 2 of the Access to Information Act;

“private entity” means any person or organization, not being a public entity, and includes a voluntary organization, charitable organization, faith-based organization, religious-based organization, community-based organization, company, partnership, club and any other body or organization howsoever constituted, and includes—

- (a) a body which is incorporated under the laws of Kenya and which carries on business within or outside Kenya;
- (b) any other body corporate however established which carries on business, or part of business, in Kenya;
- (c) a charity, or an organization established for charitable purpose under the laws of Kenya or any other country;
- (d) a partnership which is formed under the law of Kenya and which carries on business, within or outside Kenya; or
- (e) any other partnership on a business, or part of a business, in Kenya;

“public entity” includes—

- (a) the Government, including the national or county government or any department, state organ, agency, service or undertaking of the national or county government;
- (b) the Parliament, a County Assembly or the Parliamentary Service Commission;
- (c) any corporation, council, board, commission, committee or other body which has power to act under and for the purposes of any written law relating to the national government or a county government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the

government or money raised by rates, taxes or charges in pursuance of any such law;

(d) a public educational institution; or

(e) any other body prescribed by Regulations for the purposes of this Act;

“public interest disclosure” means any disclosure of information regarding any improper conduct relating to or relevant to the welfare of the general public, made by a person who has reason to believe that the information concerned shows or tends to show that improper conduct has been committed, is being committed or is likely to be committed; relating to or relevant to the welfare of the general public

“reprisal” means—

(a) any action causing injury, loss or damage;

(b) intimidation, harassment or bullying;

(c) interference with the lawful employment, livelihood or freedom of any person, including by discrimination, demotion, suspension, disadvantage, termination or other 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 adversely affect the exercise of rights protected by this Act, and includes a threat to take any of the actions referred to in paragraphs (a) and (b) by any person, whether acting on their own or at the direction of any other person;

“whistleblower” means any person who has personal knowledge of or access to any data, information, fact or event constituting improper conduct and who makes a public interest disclosure of that information in accordance with this Act, or a person who assists such individual;

“whistleblower protection” means protection accorded to a whistleblower in accordance with this Act; and

“Witness Protection Agency” means the witness protection body established under section 3A of the Witness Protection Act.

Application of the Act.

3. (1) This Act shall apply to the public, public entities and private entities.

Object of the Act.

4. (1) The general object of this Act is to provide a framework for making public interest disclosures and for protection of whistleblowers.

(2) The specific objectives of this Act are to—

- (a) facilitate the disclosure and investigation of public interest disclosure relating to public or private bodies, which any person believes may be unlawful or dangerous to the public;
- (b) promote ethical conduct and integrity in public and private bodies;
- (c) promote management and investigation of public interest disclosures and reprisals;
- (d) enhance public confidence in the administration of public and private bodies;
- (e) strengthen the procedures and mechanisms for promoting the administration of justice;
- (f) facilitate public participation in dealing with improper conduct; and
- (g) establish a mechanism for rewarding and recognition of whistleblowers.

PART II- ADMINISTRATION

Administration of the Act.

5. (1) The Commission shall be responsible for the administration of this Act.

(2) In exercising any powers conferred under this Act or in implementing the provisions of this Act, the Commission shall be guided by the national values and principles provided for under Article 10 of the Constitution.

Role of the
Commission.

6. The Commission shall—

- (a) assist any person in meeting the obligations under this Act;
- (b) receive and investigate public interest disclosures;
- (c) receive and investigate complaints of reprisal; and
- (d) ensure protection of whistleblowers in accordance with this Act.

Powers of the
Commission.

7. (1) The Commission shall have power to do all things expedient or reasonably necessary for, or incidental to, the exercise of its general powers under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission shall have power to—

- (a) supervise, monitor and co-ordinate all efforts related to the implementation and enforcement of this Act;
- (b) subject to subsection (3), investigate public interest disclosures and complaints of improper conduct made to it under this Act, and recommend appropriate action including prosecution, if the public interest disclosure constitutes an offence under this Act or any other law;
- (c) determine whether a whistleblower is entitled to protection as provided in this Act;
- (d) refer requests for protection to the Witness Protection Agency;
- (e) undertake, in coordination and co-operation with the public and private sectors, a public awareness campaign on the provisions of this Act;
- (f) review whistleblower mechanisms, policies and procedures developed by public and private entities pursuant to the provisions of this Act; and
- (g) develop and implement incentive programs to encourage whistleblowing.

Cap. 79.

(3) The Commission may refuse to investigate a public interest disclosure or complaint of reprisal if, on preliminary investigation, the Commission determines that the allegation is frivolous, vexatious or made in bad faith:

Provided that the Commission shall communicate its decision under this subsection to the person making the public interest disclosure or the complaint, stating the reasons for the refusal.

(4) The Commission may develop procedures on the management and investigation of public interest disclosures made by the members of the Commission, its staff or other persons.

(5) The powers conferred on the Commission under this Act are in addition to the powers of the Commission under the Commission on Administrative Justice Act and any other applicable law.

Cap. 7J.

Co-operation with other agencies.

8. (1) In the exercise of its investigative powers under this Act, the Commission may work in co-operation with any other enforcement agency or such other person as it may deem appropriate.

(2) If the Commission shares information with any other enforcement agency or person under subsection (1), the provisions of this Act relating to protection of confidential information shall apply to that enforcement agency or person.

(3) Any person or enforcement agency to whom a request for co-operation is made by the Commission shall render such necessary assistance as may be required by the Commission, including undertaking an investigation into a complaint of improper conduct if the nature of that conduct falls within the expertise or mandate of that person or enforcement agency.

(4) Where any person or enforcement agency undertakes an investigation into improper conduct in accordance with subsection (3), that person or enforcement agency shall prepare a report and submit it to the Commission for further action and guidance in accordance with section 28.

Immunity from legal proceedings.

9. No person shall be held liable to any action, claim, suit or demand, whether criminal or civil, in respect of any public interest disclosure made or anything done or omitted to be done by him in

good faith in the exercise or purported exercise of a function conferred by or under this Act.

PART III - FORMS OF IMPROPER CONDUCT AND REPORTING

Improper conduct to which this Act applies.

10. The provisions of this Act shall apply in respect of improper conduct in public or private entities including but not limited to—

- (a) an act or omission which causes or leads to a substantial and specific danger to the life, health or safety of persons, or to the environment;
- (b) misappropriation of public funds or assets;
- (c) bribery, corruption or economic crimes as provided for under the Anti-Corruption and Economic Crimes Act, 2003 or any other written law;
- (d) a violation of human rights and fundamental freedoms as set out in Chapter Four of the Constitution;
- (e) offer, solicitation or acceptance of any gift or other advantage that might reasonably influence the exercise of official duties or responsibilities;
- (f) failure by a person to comply with any legal obligation to which that person is subject;
- (g) unfair discrimination contrary to Article 27 of the Constitution or any law made pursuant thereto;
- (h) deliberately concealing the fact that any of the actions in this subsection has occurred;
- (i) knowingly directing or counselling or abetting an individual to commit improper conduct set out in this subsection; or
- (j) a contravention of an Act of Parliament or of a County Assembly, or a regulation made pursuant thereto.

Manner of making a public interest

11. (1) A public interest disclosure as defined in this Act may be made by any person if that person has information that they

disclosure.

reasonably believe is evidence of improper conduct that has occurred, may have occurred or is likely to occur.

(2) The person making a public interest disclosure under subsection (1) may disclose such information relating to the misconduct to—

- (a) the supervisor, if the whistleblower is an employee, intern or volunteer of the concerned public or private entity;
- (b) the designated person of the concerned public or private entity, if any; or
- (c) the Chief Officer of the concerned public or private entity.

(3) Notwithstanding subsection (1), a whistleblower may make a public interest disclosure directly to an enforcement agency where—

- (a) there is a reasonable belief or fear on the part of the whistleblower that they may be subjected to dismissal, suspension, harassment, discrimination or intimidation in the place of employment;
- (b) there is a reasonable belief or fear that evidence relevant to the improper conduct may be concealed or destroyed;
- (c) the person to whom the public interest disclosure is ordinarily made is likely to frustrate the objective;
- (d) the impropriety is of an exceptionally serious nature so that expeditious action should be taken to deal with it;
- (e) the security of the whistleblower's place of residence under the prevailing circumstances is uncertain; and
- (f) there is need for security clearance of the person receiving the public interest disclosure, if the intended public interest disclosure touches on an issue of national security.

(4) For purposes of this section, a person may make a public interest disclosure directly to the Commission—

- (a) under the circumstances specified in subsection (3);
- (b) where no procedures have been established by the public or private entity in which the person is employed;
- (c) if a person has made a public interest disclosure in accordance with the procedures established under section 24 and an investigation in respect of the public interest disclosure has not been completed in accordance with those procedures;
- (d) if the person has made a public interest disclosure in accordance with the procedures established under this Act and the matter has not been resolved within the time periods established under those procedures or the Commission has determined that those procedures do not meet the criteria set under section 13;
- (e) if the person is dissatisfied with the final decision issued following a public interest disclosure made previously;
- (f) if the subject-matter of the public interest disclosure involves the supervisor, the designated person or the Chief Officer of the public or private entity where the person works;
- (g) if the person reasonably believes that a matter presents an imminent risk to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a public interest disclosure to another body or person;
- (h) if the person has reported misconduct in accordance with the procedures established under section 24 and is unable to complete the procedures because a reprisal has been taken or directed against the person;

- (i) if the person reasonably believes that a reprisal is likely to be taken or directed against them if the public interest disclosure is made to any other person or body; or
- (j) in such other circumstances as may be prescribed in regulations.

Disclosure to be in writing.

12. A public interest disclosure may be made orally or in writing provided that, where a whistleblower makes a public interest disclosure orally, the person to whom the public interest disclosure is made shall cause the public interest disclosure to be reduced into a written statement containing, as far as possible, the particulars specified in section 13.

Information to be included in a public interest disclosure.

13. (1) A public interest disclosure made under this Act shall contain as far as practicable—

- (a) the full name and contact information of the whistleblower, unless the public interest disclosure is made anonymously;
- (b) the nature of the improper conduct in respect of which the public interest disclosure is being made;
- (c) identifying details of the person alleged to have engaged in improper conduct, including the name and contact information if known;
- (d) the time and location where the alleged improper conduct is taking place, took place or is likely to take place;
- (e) identifying details of any other person who may have witnessed or have information regarding the improper conduct, including the name and contact information if available; and
- (f) if the public interest disclosure is related to the whistleblower's employment, whether the whistleblower remains in that same employment.

(2) The public or private entity concerned, an enforcement

agency or the Commission, may, where it is possible to do so, request such further information or particulars from the person making the public interest disclosure as may be required for investigation.

Anonymous public interest disclosures.

14. (1) A whistleblower may make an anonymous public interest disclosure to the Commission or other enforcement agency or to the Chief Officer of a public or private entity as the case maybe.

(2) The Attorney General may, in consultation with the Commission, make regulations on reporting of anonymous disclosures under this section.

Designated person.

15. (1) The Chief Officer of a public or private entity may designate a senior official to be the designated person for the purpose of managing public interest disclosures.

(2) If no designation is made under subsection (1), the Chief Officer of the entity concerned shall be the designated person for the purposes of this Act.

Submission of a copy of written public interest disclosure to the Commission.

16. Where a public interest disclosure is made to a person specified under section 11 (2) other than an enforcement agency or the Commission, the person receiving it shall submit a copy of the written public interest disclosure to the Commission within fourteen working days after receipt.

PART IV – PROTECTION OF WHISTLEBLOWERS

Whistleblower protection.

17. (1) A whistleblower shall be entitled to whistleblower protection under this Act as follows—

(a) confidentiality of the information disclosed pursuant to this Act;

(b) confidentiality of their identity;

(c) protection against reprisal; and

(d) immunity from civil or criminal liability in relation to making the public interest disclosure.

(2) For purposes of subsection (1) (a) and (c), protection shall be extended to any person who may be in need of protection—

- (a) by virtue of being related to a whistleblower;
- (b) on account of evidence given by the whistleblower; or
- (c) for any other reason which the Commission may consider sufficient.

(3) Subject to section 27, the protection in this section shall not be limited or affected in the event that the public interest disclosure does not lead to disciplinary action or prosecution of a person against whom the public interest disclosure has been made.

(4) Subject to section 38, the motive or intention of a whistleblower in making a public interest disclosure is not a consideration in whether the whistleblower or any other person is entitled to protection in accordance with this section.

(5) Upon determination by the Commission that a whistleblower has reasonable cause to believe that his or her life or property or the life or property of a member his or her family is endangered or likely to be endangered as a result of the public interest disclosure, the Commission may refer the matter to the Witness Protection Agency for the protection of the Whistleblower.

(6) This Act does not limit the protection conferred under any other written law to any person in relation to information given in respect of the commission of an offence.

Confidentiality of the
information disclosed
pursuant to this Act.

18. (1) A person who—

(a) makes or receives a public interest disclosure; or

(b) obtains confidential information in the course of investigation into such public interest disclosure,

shall not, without lawful excuse disclose such information or any part thereof, including the identity of anyone being investigated to any other person.

(2) A person to whom a public interest disclosure is made or transmitted under this Act shall not, without the consent of the whistleblower, and subject to subsection (3), disclose to another person, the identity of the whistleblower or any information from which the identity of the whistleblower may be directly or indirectly deduced.

(3) If any evidence in any civil, criminal or other proceedings in relation to this Act contains or relates to confidential information, the court, tribunal or other authority before which the proceedings are held shall, unless it considers that the interests of justice require otherwise—

(a) hold that part of the proceedings which relates to confidential information in camera; and

(b) make such order to suppress the publication of evidence given before the court, tribunal or other authority as, in its opinion, shall ensure that the confidential information is not disclosed, which may include but not be limited to—

(i) that the confidential information be redacted from any documentary evidence that forms part of the public record;

(ii) that no witness in the proceedings, including a whistleblower, shall be required to answer a question, give any evidence, or provide any information, which may lead to disclosure of confidential information; and

(iii) that no person involved in the proceedings shall, during the proceedings, ask a question or make a statement which may lead to disclosure of confidential information.

(4) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Immunity from civil or criminal action.

19. Subject to subsection 10(1) a whistleblower shall not be subject to any civil or criminal liability arising by way of administrative process including disciplinary action and no action, claim or demand may be taken or made against a whistleblower for making a public interest disclosure.

Protection against reprisal.

20. No person shall take detrimental action against a

whistleblower or any person related to or associated with the whistleblower for making a public interest disclosure.

Protection against
workplace reprisal.

21. (1) No employer, person acting on behalf of an employer or any other person may discharge, demote, suspend, transfer, threaten or harass, directly or indirectly, or in any other manner act adversely against the person in the work place for the reason that the person provided information in accordance with this Act.

(2) Subsection (1) shall apply in respect of any person whose terms or conditions of employment may be affected—

(a) by virtue of being related to a whistleblower; or

(b) because the person, being an employee, refuses to follow orders from senior employer or other person acting on behalf of an employer, which would cause the employee to violate this Act; or

(c) for any other reason which the Commission may consider sufficient.

(3) For the avoidance of doubt, a person who is an applicant for employment or a former employee shall be entitled to protection from workplace reprisal.

(4) A public or private entity who has received a public interest disclosure and who reasonably believes that the employee may be adversely affected on account of having made that public interest disclosure, shall, in consultation with that employee and if reasonably possible or practicable, be transferred from the post or position occupied by that employee at the time of making the public interest disclosure, to another post or position in the same division or other division of the employer or where the person making the public interest disclosure is employed by a government agency to another government agency.

(5) The terms and conditions of employment of a person transferred in terms of subsection (4) shall not, without the person's written consent, be less favorable than the terms and conditions applicable to that person immediately before the persons transfer.

Protection against
reprisal in relation to

22. (1) No person acting or purporting to act on behalf of any

contracts.

public or private entity shall—

(a) terminate a contract;

(b) withhold a payment that is due and payable under a contract; or

(c) refuse to enter into a subsequent contract,

because a party to the contract, or an employee of or person related to a party to the contract, is, has been or is found to be a whistleblower.

Protection against physical harm.

23. Upon determination by an enforcement agency or the Commission that the life or property of a whistleblower or that of his or her family or associated person is in danger as a result of the public interest disclosure, the enforcement agency or the Commission shall refer the matter to the Witness Protection Agency for their further action.

Duty to establish and maintain whistleblower protection procedures.

24. Within two years of the coming into force of this Act, every public or private entity shall establish and maintain, in accordance with this Act, written whistleblower protection procedures, appropriate to its size and the scale, and to the nature of its operations, for facilitating, managing and investigating reports of improper conduct by employees or any other person that that public or private entity is responsible for.

(2) The procedures established under subsection (1) shall include procedures—

(a) for receiving and reviewing public interest disclosures, including setting time periods for making recommendations to the concerned public or private entity or any other person on any corrective measures that should be taken;

(b) for referring a public interest disclosure to the Commission as soon as reasonably practicable if the designated person reasonably believes that the matter to which the public interest disclosure relates constitutes an imminent risk to the life, health or safety of individuals, or to the environment;

(c) for referring a public interest disclosure to an appropriate public entity if the public interest disclosure

would more appropriately be dealt with by that other public entity;

- (d) for reviewing and investigating public interest disclosures in accordance with the principles of procedural fairness and natural justice;
- (e) for investigating other forms of improper conduct if, during the investigation of a public interest disclosure, the designated person has reason to believe that another form of wrongdoing has been committed or may be committed;
- (f) for reporting an alleged offence if, during an investigation of a public interest disclosure, the designated person has reason to believe that an offence has been committed under an Act of Parliament or of a County Assembly;
- (g) respecting the confidentiality of information collected in relation to public interest disclosures and investigations, which procedures would apply unless there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment;
- (h) for protecting the identity of individuals involved in the public interest disclosure process, including an employee or a person making the public interest disclosure, individuals alleged to have committed the improper conduct and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;
- (i) procedures for reporting the outcomes of investigations of public interest disclosures;
- (j) for enforcement and follow-up of any disciplinary action or corrective measures taken or directed pursuant to this Act; and
- (k) respecting any other matter specified in the regulations.

(3) Every Chief Officer of a public or private entity shall submit to the Commission a copy of the procedures established pursuant to subsection (1).

(4) The Commission shall review the procedures submitted under subsection (3) to ensure compliance with this Act and the regulations.

(5) If the Commission determines that the procedures submitted under subsection (3) by a public or private entity do not meet the criteria set out in subsection (2), the Commission shall notify the Chief Officer of the concerned public or private entity and may, depending on the nature of operations of the public or private entity, notify the employees for whom the Chief Officer is responsible that any future public interest disclosures should be made directly to the Commission until the procedures meet the requirements of this Act and the regulations.

Model Procedures.

25. Where a public or private entity has not established its own whistleblower protection procedures as required under section 24, the model Whistleblower Protection Procedures set out in the First Schedule shall apply.

Information about the Act and procedures to be communicated.

26. Each Chief Officer of a public or private entity shall ensure that information about this Act and the procedures established under section 24 are—

- (a) published and publicized;
- (b) displayed at all physical locations where the office has a presence and on all digital platforms; and
- (c) widely communicated to the employees.

**PART V—HANDLING OF REPORTS OF PUBLIC
INTEREST DISCLOSURES AND REPRISAL**

Action after receipt of a
public interest
disclosure.

27. (1) When a public interest disclosure is made to a public or private entity, other than an enforcement agency, the person to whom it is made shall—

- (a) make a record of the time and place where the public interest disclosure is made;
- (b) where the public interest disclosure is not anonymous, give to the whistleblower an acknowledgment of receipt of the public interest disclosure in writing, within thirty days of receipt of the public interest disclosure and if doing so will not reveal the identity of the whistleblower and expose the whistleblower to reprisal;
- (c) keep the statement received confidential and in safe custody pending investigation of the public interest disclosure; and
- (d) if the reported misconduct falls within its administrative or legal mandate, investigate the matter.

(2) Where the public interest disclosure is made to a person or an entity that is not mandated to carry out the investigation, that person or entity may instead of recording the public interest disclosure as required under subsection (1), assist the whistleblower to make the public interest disclosure to the Commission or any enforcement agency.

(3) If, in the opinion of the concerned public, private entity or appropriate authority receiving the public interest disclosure, there is an imminent risk to the life, health or safety of individuals or to the environment, the concerned public or private entity or the enforcement agency shall, pending initiation and finalization of the investigation, refer the matter to the appropriate person or entity.

(4) Where a public interest disclosure touching on a public officer is made directly to the Commission, the Commission shall—

(a) unless the public interest disclosure implicates the Chief Officer of the public entity complained against, refer the matter to the Chief Officer of the concerned public entity seeking a written response on the matter within a period of thirty days of the notification;

(b) if upon the expiry of the thirty days' notice issued under paragraph (a), the concerned public entity shall not have responded, or if the Commission is dissatisfied with the response provided, the Commission shall proceed to investigate the public interest disclosure and conclude the matter as appropriate.

Report
recommendations. on

28. (1) If the investigation finds that—

(a) the public interest disclosure is not substantiated, the enforcement agency or the Commission shall where practicable, inform the whistleblower in a preliminary determination and seek the whistleblower's comments before finalizing the matter; or

(b) the improper conduct constitutes a criminal offence, the public entity or an enforcement agency shall refer the matter to the enforcement agency mandated to investigate the matter.

(2) If, after considering any information provided by the appropriate authority it appears to the Commission that insufficient steps or no action has been taken to give effect to the finding or recommendation as required under subsection (1)(b), the Commission may submit a report to the Cabinet Secretary responsible for that public entity, on the investigation, findings, recommendation and the response by the appropriate authority.

(3) The Commission shall, where practicable, inform the whistleblower of the result of the investigation or other action taken pursuant to subsection (1)(b).

Complaints of reprisal.

29. (1) A whistleblower may make a complaint to the Commission against any reprisal taken by any person against the whistleblower or against any person entitled to protection in accordance with this Act.

(2) A person is deemed to commit acts of reprisal if the person takes or threatens to take such acts of reprisal because—

- (a) a whistleblower has made a public interest disclosure;
- (b) the person believes that a whistleblower has made or intends to make a public interest disclosure; or
- (c) the person incites, instructs or permits another person to take or threaten to commit such acts for any reason under paragraphs (a) or (b).

Orders for relief.

30. (1) The Commission may upon receipt of information under this Act order the following interim and final reliefs necessary to remedy a violation of this Act—

- (a) reinstatement to a position lost as a result of workplace reprisal;
- (b) compensation for loss of income;
- (c) specific performance of contractual obligations;

(d) request for transfer to a different workstation;

(e) that any person specified in such order desist from contacting the whistleblower or any other person entitled to protection under this Act for such specified period as may be necessary in the circumstances; or

(f) referral of a whistleblower or any other person entitled to protection in accordance with this Act to the Witness Protection Agency, if the circumstances prescribed by section 3 of the Witness Protection Act apply.

Cap. 79.

(2) The Commission may apply to the High Court for any other order that may be reasonably necessary to remedy a violation of this Act.

Enforcement of
Commission's orders.

31. The Commission or any other person may apply to the High Court for enforcement of any order made in accordance with this Act.

Appeals to High Court.

32. (1) Any person aggrieved by the decision of the Commission to deny a request for protection or revoke an order for protection under this act may appeal to the High Court.

(2) The High Court may make an interim or final order with respect to the request made, and may also make such consequential orders as necessary to give effect to the order.

PART VI—OFFENCES AND PENALTIES

Obstructing an
investigation.

33. Any person who—

(a) without justification or lawful excuse, obstructs, hinders, assaults or threatens a person acting under this Act;

(b) deceives or knowingly misleads the Commission or a person acting under this Act, including creating any false record or other evidence;

(c) makes false accusations to the Commission or a person acting under this Act; or

(d) directs, counsels or causes, in any manner, a person to do anything set out in paragraphs (a) to (c),

commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year or to both.

Engaging in Reprisal.

34. Any person who engages in acts of reprisal commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years or to both.

False or misleading information.

35. Any person who deliberately and voluntarily gives false or misleading information in connection with a public interest disclosure commits an offence and is liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year or to both.

General penalty.

36. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.

PART VII– MISCELLANEOUS

Limits on disclosure.

37. (1) Nothing in this Act authorizes the disclosure of information specified under section 6(1) of the Access to Information Act 2016.

(2) Nothing in this Act authorizes the Commission or a public or private entity or a designated person to publicly disclose personal information or individually identifying health information unless, in the opinion of the Commission or a public or private entity or a designated person, it is necessary to disclose that information in order to carry out his or her duties and functions under this Act.

(3) Any person who knowingly discloses information whose disclosure is limited under this section, commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years or both.

Revocation of whistleblower's protection.

38. (1) The Commission may revoke the protection accorded to a whistleblower under this Act if it is determined that—

(a) in the public interest disclosure, the whistleblower

made a material statement which he or she knew or believed to be false;

(b) the information disclosed is frivolous or vexatious; or

(c) the public interest disclosure principally involves questioning the merits of policy, except that protection may exist for disclosing the probable adverse consequences of a policy in the public interest.

(2) Where whistleblower protection is revoked, the Commission shall give the whistleblower written notice to that effect, the reasons for the revocation and shall advise the Witness Protection Agency to take appropriate action.

Review of the
Commission's
decisions.

39. (1) A person aggrieved by a decision of the Commission to revoke whistleblower protection, may apply for a review of the decision within thirty days of receipt of the decision.

(2) An application for review shall be submitted in writing to the Commission and shall include information on—

(a) the basis upon which the decision is made;

(b) submissions in support of the request; and

(c) the relief or protection measure being sought.

(3) An application for review shall only be granted where the Commission is satisfied that—

(a) there are new facts or evidence that could not have been reasonably provided earlier; or

(b) the person seeking reconsideration was not afforded adequate opportunity to disclose information that could have affected the decision of the Commission.

(4) In reviewing its decision to deny relief or revoke whistleblower protection, the Commission may—

(a) make a determination on the substance of the

request without further information; or

(b) conduct further investigation.

(5) The Commission shall determine an application for review within a period of sixty days from the date of receipt of the application.

(6) Where the Commission rejects an application for review, the Commission shall notify the applicant of the rejection stating the reasons thereof.

(7) A person aggrieved by the decision of the Commission may appeal to the High Court.

Other obligations to
report not affected.

40. Nothing in this Act shall be construed as affecting the obligation of an employee or any other person under any other Act or regulation to disclose, report or otherwise give notice in relation to making of a public interest disclosure.

Reward for
whistleblowing

41. (1) A public, private entity or an enforcement agency may establish a scheme for the reward of a whistleblower for any public interest disclosure which leads to the detection of cases of improper conduct or prosecution of the person against whom the public interest disclosure was made or the person who commits the detrimental action.

(2) Within two years of the coming into force of this Act, the Commission shall make guidelines to operationalize this section.

Annual report of a
public or private entity
to the Commission.

42. (1) Subject to any limitations provided for under this Act or regulations, every public or private entity shall, three months after the end of each calendar year prepare and submit to the Commission a report on all public interest disclosures made to it in the preceding year:

Provided that the reports for public entities shall cover the preceding financial year.

(2) The report under subsection (1) shall include the following information—

(a) the number and nature of public interest disclosures received by the public or private entity, the number of

public interest disclosures acted on and the number of public interest disclosures not acted on by the public or private entity;

(b) the number of investigations commenced by the public or private entity as a result of such public interest disclosures;

(c) the status of investigations into the public interest disclosures taken up for investigations;

(d) in the case of an investigation that results in a finding of improper conduct, a description of the improper conduct and any recommendations made or corrective measures taken in relation to the improper conduct or the reasons as to why no corrective measure was taken;

(e) the average number of days taken by the public or private entity to determine the appropriate mode of disposal of public interest disclosures received by it; and

(f) the number of full-time staff of the public or private entity devoted to handling public interest disclosures and the total amount of funds expended by the entity for processing such public interest disclosures.

(3) The report under subsection (1) shall be included in the annual report of the public or private entity if the annual report is made available to the public, and where it is not, the Chief Officer of the public or private entity shall make the report under subsection (1) available to the public on request.

Annual Report of the
Commission.

43. (1) The Commission shall report annually to Parliament on the exercise and performance of the Commission of its functions and duties under this Act, setting out—

(a) the number of general inquiries forwarded to the Commission relating to this Act;

(b) the number of public interest disclosures received by the Commission under this Act, the number of public

interest disclosures acted on and the number of public interest disclosures not acted on by the Commission or by a public or private entity;

- (c) the number of investigations commenced by the Commission or reported by a public or private entity under this Act;
- (d) recommendations the Commission has made and whether the public or private entities to which the recommendations relate have complied with the recommendations;
- (e) the number of complaints of reprisal received, acted upon or not acted upon by the Commission or by a public or private entity;
- (f) any systemic challenges that lead to or encourage improper conduct;
- (g) a summary of the reports of public and private bodies on the public interest disclosures received and action taken, including action taken in response to reprisals;
- (h) an evaluation of the compliance level of public and private bodies with the provisions of this Act or its regulations; and
- (i) any recommendations that the Commission considers appropriate.

(2) The annual report under subsection (1) shall be submitted to the responsible clerk of Parliament for tabling before Parliament within two months of receipt if Parliament is in session or, within one month after the start of the next sitting of Parliament.

(3) Where it is in the public interest to do so, the Commission may publish a special report relating to any matter within the scope of the Commission's responsibilities under this Act, including a report referring to and commenting on any particular matter investigated by the Commission.

(4) The Commission shall make its report under sub-section

(1) available to the public.

Referral by a
Committee of
Parliament.

44. (1) A committee of Parliament may refer to an enforcement agency, for investigation and report, any petition or matter that is before the committee for consideration that may relate to improper conduct to which this Act applies.

(2) The enforcement agency shall pursuant to subsection (1)—

(a) subject to any special directions of the committee, investigate the petition or matter referred to it in so far as it is within the scope of the its mandate; and

(b) make any report to the committee that the enforcement agency considers necessary.

(3) Where a referral is made to an enforcement agency and the enforcement agency concludes that it does not have a mandate over the matter, it shall refer the matter to the entity that is mandated by law to act on the matter and the entity to which the matter is referred shall act on the request and provide a report to the Commission or the National Assembly, as the case may be.

Request for advice.

45. Any person, public or private entity may seek advice from the Commission on the implementation of this Act or a particular provision.

Power to make
Regulations.

46. (1) The Attorney-General may, in consultation with the Commission, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the subsection (1), the Attorney-General may make regulations—

(a) setting out the procedures to be followed by a public or private entity, designated persons or by the Commission in managing and investigating public interest disclosures and reporting the outcome of investigations, including setting time periods for action;

(b) providing for circumstances and procedures for making a public interest disclosure directly to the

Commission;

- (c) providing the form of instructions by the Commission for a public entity to investigate a public interest disclosure which has been made directly to the Commission pursuant to the provisions of section 11(4);
- (d) prescribing the procedure for making public interest disclosures by the employees of the Commission, including when an employee may make a public interest disclosure directly to the Chairperson or the Secretary of the Commission, or an external agency;
- (e) prescribing the procedure for referring a matter that constitutes a threat to national security or an imminent risk to life, health, safety of individuals or to the environment including persons to whom the matter may be referred and the time period for referring those matters;
- (f) designating persons or institutions which may receive public interest disclosures under this Act;
- (g) prescribing other information to be included in a public interest disclosure;
- (h) prescribing circumstances in which the Commission is not required to investigate a public interest disclosure;
- (i) prescribing the time periods for an investigation into the allegations raised in a public interest disclosure by the Commission or any other person or entity;
- (j) for the exemption of any person, class of persons, public entity, information, record or thing from the application of all or any part or provision of this Act;
- (k) prescribing the circumstances in which the Commission may investigate a complaint respecting a reprisal;

- (l) prescribing any information, document, matter or classes of information, documents or matters which should not be included in a public interest disclosure under this Act;
- (m) respecting the collection, use and public interest disclosure of information, including personal information and individually identifying health information, for the purposes of this Act;
- (n) prescribing forms for making complaints respecting reprisals, any request, notice, order, declaration or other matter under this Act;
- (o) providing for the service or delivery of any request, notice, order, direction, instruction, requirement or other thing lawfully done under this Act;
- (p) prescribing elements to be included in a procedure established in accordance with section 24 of this Act;
- (q) prescribing requirements, criteria or other elements to be included in the Whistleblower Reward Schemes;
- (r) prescribing circumstances for the protection of whistleblowers by the Witness Protection Agency;
- (s) providing for the manner of conducting public education on whistleblowing; and
- (t) prescribing any other matter incidental to the implementation of this Act.

FIRST SCHEDULE

MODEL WHISTLEBLOWER PROTECTION PROCEDURES FOR PUBLIC AND PRIVATE BODIES

PART 1 – PRELIMINARY

1. Introduction

In compliance with section 25 of the Whistleblower Protection Act and in keeping with the clarion call of encouraging whistleblowing of improper conduct, the [name of entity] has developed these Whistleblower Protection Procedures to provide for the procedure for the reporting of improper conduct and protection of persons who make such reports against reprisals.

Definitions

“Chief Officer” means the chief executive officer or the head of the [name of entity];

“disclosure” means any disclosure of information regarding any improper conduct, made by a person who has reason to believe that the information concerned shows or tends to show that improper conduct has been committed, is being committed or is likely to be committed;

“designated person” means a senior officer in the [name of entity] designated to receive, manage and investigate disclosures;

“employee” means a person employed for wages or a salary and includes an apprentice and indentured learner;

“improper conduct” means any of the activities referred to in paragraph 6 and any other conduct which adversely affects the public interest; and

“whistleblower” means any person who has personal knowledge of or access to any data, information, fact or event constituting improper conduct and who makes a disclosure of that information in accordance with the Whistleblower Protection Act, or a person who assists such individual; and

“Procedures” means the Whistleblower Protection Procedures for public and private entities.

2. Application

These Procedures shall apply to all employees or any person formally acting on behalf of the [name of entity].

3. Objectives

- (1) The general object of these Procedures is to encourage employees and other relevant stakeholders to report information relating to improper conduct and provide protection of whistleblowers.
- (2) The specific objectives of these Procedures are to—
 - (a) foster a culture of transparency, accountability and integrity in which the [name of entity] functions in an open, transparent and accountable manner;
 - (b) provide avenues for any person to make disclosures of improper conduct;
 - (c) contribute towards an ethical, open and safe working environment at the [name of entity];
 - (d) provide assurance that all disclosures will be handled seriously, treated as confidential and managed without fear of reprisal of any form;
 - (e) protect persons who report and disclose alleged improper conduct from reprisals, unfair treatment or other detrimental actions for disclosures made in good faith and accordance with the Whistleblower Protection Act and this Procedures; and
 - (f) outline the process and procedure to safely make a disclosure of improper conduct and how such disclosures will be processed and actioned. This includes what to disclose, how to disclose, who to disclose to, and the protection the whistleblower will receive.

4. Guiding Principles

These Procedures shall be guided by the principles of—

- (a) good governance, integrity, transparency and accountability;
- (b) Confidentiality;
- (c) equality, equity, human rights and non-discrimination; and
- (d) natural justice.

PART II- ADMINISTRATION OF THE WHISTLEBLOWER PROTECTION PROCEDURES

These Procedures shall be administered by the governing body or organ of the (*entity name*) and the Chief Officer who shall, where appropriate, appoint an ad hoc committee to investigate matters brought to the institution's attention through the whistle-blowing mechanism.

PART III – WHISTLEBLOWING PROCEDURE AND INVESTIGATION

5. Obligation to Make a Disclosure

Every employee has a duty to disclose any suspicious form of improper conduct as soon as possible using the reporting channels set out in these Procedures.

6. What to Disclose

Forms of improper conduct to be disclosed and reported in accordance with these Procedures include but are not limited to the following—

- (a) an act or omission which creates a substantial and specific danger to the life, health or safety of persons, or to the environment;
- (b) misappropriation of public funds or assets;
- (c) bribery and corruption or economic crimes as defined in the Bribery Act, 2016 and Anti-Corruption and Economic Crimes Act, 2003 respectively or any other written law;
- (d) a violation of human rights and fundamental freedoms as set out in Chapter Four of the Constitution of Kenya;
- (e) offer, solicitation or acceptance of any gift or other advantage which might reasonably be seen to influence the exercise of official duties or responsibilities;
- (f) failure by a person to comply with any legal obligation to which that person is subject;
- (g) unfair discrimination contrary to Article 27 of the Constitution of Kenya or any law made pursuant thereto;
- (h) deliberately concealing the fact that any of the above has occurred;
- (i) knowingly directing or counselling an individual to commit improper conduct mentioned in the Whistleblower Protection Act;
- (j) a contravention of an Act of Parliament or of a County Assembly, or a regulation made pursuant thereto; and

- (k) any other conduct which adversely affects the public interest.

7. Contents of a Disclosure

- (1) A disclosure shall provide as much detailed information as possible to facilitate full and proper investigation.
- (2) Details of a disclosure may include—
 - (a) the full name and contact information of the whistleblower, unless the disclosure is made anonymously;
 - (b) the nature of the improper conduct in respect of which the disclosure is being made;
 - (c) identifying details of the person alleged to have engaged in improper conduct, including the name and contact information if known;
 - (d) the time and location where the alleged improper conduct is taking place, took place or is likely to take place;
 - (e) identifying details of any other person who may have witnessed or have information regarding the improper conduct, including the name and contact information if available;
 - (f) if the disclosure is related to the whistleblower's employment, whether the whistleblower remains in that same employment; and
 - (g) any other information of relevance as may be required for investigation.

8. Confidentiality

- (1) All disclosures shall be kept strictly confidential.
- (2) The officers and appointed persons tasked with handling whistleblowers will be required to take oaths of secrecy and confidentiality in the form set out in Appendix I of this Schedule.
- (3) The oaths of secrecy and confidentiality shall be explained to them in terms of their expectations and implications.

9. Making a Disclosure

- (1) Any person who becomes aware of a suspected case of improper conduct may use the following available reporting channels to make a disclosure—

(a) Internal whistleblowing channels

Disclosures of improper conduct under the Procedures shall be made internally to the designated person in the form set out in Appendix II of this Schedule. Duly filled and completed form shall be made available to the designated person—

- (i) in person [*name, email, phone no*];
- (ii) by postal services to the designated person (*postal address and code*);
- (iii) by dedicated email created for that purpose (*email*);
- (iv) through a Hotline, a confidential service run by an independent third party (*email, number*); or
- (v) integrity box handled by the designated person.

(b) External whistleblowing channels

Where a whistleblower is not comfortable disclosing an alleged form of improper conduct through the internal channels established for such purposes or is not satisfied with the way the disclosure was or is being handled by the [*name of entity*] or if making a disclosure to the [*name of entity*] does not seem practical or possible, the whistleblower may make a public interest disclosure to the Commission on Administrative Justice.

- (2) Where practical a disclosure shall be acknowledged, recorded, and thoroughly reviewed by the designated person to determine whether an investigation is necessary.
- (3) In all disclosures received, the designated person shall maintain confidentiality or anonymity of the whistleblower and the information disclosed (unless explicitly waived by the whistleblower).

10. Investigation and Reporting

- (1) The designated person shall have the mandate to analyse and consider all disclosed cases and also conduct an investigation related to all disclosed cases of improper conduct.
- (2) In appropriate cases, the designated person will recommend to the Chief Officer to appoint an ad hoc committee to investigate certain reported cases of improper conduct.
- (3) The investigation process shall as far as possible enable the fair treatment of any person mentioned in the disclosure, as follows—
 - (a) disclosures will be handled confidentially and with discretion;
 - (b) matters reported will be assessed and considered for investigation;

- (c) any person implicated in the disclosure shall be appropriately informed of the investigation and allowed to provide evidence; and
 - (d) there will be a presumption of innocence throughout the investigation and subsequent disciplinary process, if any.
- (4) The whistleblower will be informed of the course of action taken not later than fourteen (14) working days from the date of acknowledgement of receipt of the disclosure.
- (5) At all times during the pendency of the case, the whistleblower shall be kept abreast of the progress made in investigations.
- (6) Whistleblowers (as informed and interested stakeholders) shall have a meaningful opportunity to provide input to subsequent investigations or inquiries. They shall have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence.
- (7) The designated person will report directly to the Chief Officer. Cases involving the chief officer, supervisor or the designated person of the [name of entity] shall be made directly to the Commission on Administrative Justice.
- (8) The designated person shall endeavour to ensure that investigations are carried out in strict compliance with the constitutional dictates of fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (9) Where upon conclusion of investigations the designated person—
- (a) determines that there is enough evidence to substantiate the matter disclosed, the designated person shall report the findings to the Chief Officer [*or his equivalent*] for appropriate disciplinary action against the person implicated; and
 - (b) deems it necessary to refer a disclosure to an appropriate public entity if the disclosure would more appropriately be dealt with there, the designated person may, through the Chief Officer, refer the matter to the relevant public entity for appropriate action as the circumstances of the case may demand.

PART IV – PROTECTION OF WHISTLEBLOWERS

11. Whistleblower Protection

- (1) Under these Procedures, a whistleblower shall be entitled to—
- (a) confidentiality of the information disclosed; and

- (b) protection against reprisal.
- (2) The protection in sub-paragraph (1) shall be extended to any person who may be in need of protection –
 - (a) by virtue of being related to a whistleblower;
 - (b) on account of evidence given by the whistleblower; or
 - (c) for any other reason which the Commission may consider sufficient.

12. Complaints of reprisals

- (1) Complaints of reprisals, with supporting information and documents, should be promptly sent by the alleged victim to the designated person. A whistleblower who believes that retaliatory action has been taken against him or her because they are whistleblowers should forward to the designated person all information and documentation available to support the complaint. Such reporting should be done as promptly as possible to ensure that the designated person is able to respond effectively.
- (2) The designated person upon receipt of a complaint of reprisal or threats of reprisals from the whistleblower will keep a confidential record of all such complaints and conduct a review of the complaint to determine if the action alleged to be reprisal or a threat of reprisal did take place.
- (3) If it appears, upon review, that the disclosure made by the whistleblower was a contributing factor in causing the action alleged to be a reprisal or a threat of reprisal, the designated person will inform the complainant, in writing, of the outcome of the review and will submit its recommendations on the case to the Chief Officer of the [name of entity].
- (4) If reprisal is established, the Chief Officer may, after taking into account the recommendations made by the designated person or other concerned officers, and after consultation with the complainant, take appropriate measures to amend the negative consequences suffered as a result of the retaliatory action. Such measures may include, but are not limited to the rescission of the retaliatory action, including reinstatement, and, if requested by the complainant, transfer to another office or function for which the individual is qualified. In appropriate cases, disciplinary action may be instituted against the retaliator subject to all relevant due process rights.
- (5) In appropriate cases, the Chief Officer may refer appropriate cases to the Commission on Administrative Justice, seeking for protection measures offered by the Witness Protection Agency.

- (6) The measures set out in these Procedures are without prejudice to the rights of a whistleblower who has suffered reprisal to seek redress through alternative mechanisms including courts of law.

13. Protective Measures against Workplace Reprisals

- (1) Reprisal constitutes misconduct, for which disciplinary or other appropriate action will be taken.
- (2) Reprisal against a whistleblower who has reported or provided information concerning acts of improper conduct, or who has cooperated with duly authorized audits or investigations or other oversight activities, is strictly prohibited. Such behaviour violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions.
- (3) These Procedures encourage a whistleblower to disclose all forms of improper conduct and in return, the [name of entity] undertakes to—
- (a) protect the whistleblower from all forms of reprisals, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. This includes protection from all types of harm including—
 - (i) dismissal;
 - (ii) probation and other job sanctions;
 - (iii) demotion from one's position;
 - (iv) punitive transfers without cause;
 - (v) victimization;
 - (vi) harassment;
 - (vii) reduced duties or hours;
 - (viii) withholding promotion;
 - (ix) loss of status and benefits; and
 - (x) threats of such actions.
 - (b) not to disclose the identity of the whistleblower and details of his disclosure except with the explicit consent of the whistleblower;
 - (c) institute in appropriate cases and through the Commission on Administrative Justice, protection measures offered by the Witness Protection Agency; and
 - (d) take appropriate action on reports of reprisals or victimization of whistleblower including punitive sanctions and punishment for any person who retaliates. Specifically, an act of reprisal, or interference with, a whistleblower's disclosure shall be considered misconduct, and perpetrators of reprisals shall be subject to

employment/professional sanctions and civil penalties in a court of law or established Tribunal with relevant jurisdiction.

**PART VI – THE WHISTLEBLOWER PROTECTION PROCEDURES
IMPLEMENTATION**

14. Communication and Sensitization

The Chief Officer shall be responsible for communicating and sensitizing all employees about these Procedures.

15. Review

These Procedures shall be reviewed after every five years or earlier as need arises.

APPENDIX I

(para.8)

OATH OF SECRECY

[Name of entity]

I.....[Name of designated person/Chief Officer], do solemnly affirm and swear in the name of almighty God that I will keep secret and shall not directly or indirectly disclose to any person or persons such confidential information and details of anonymous disclosures as shall be revealed or disclosed to me except as provided under the Whistleblower Protection Act, 2024. I also certify that I have read the contents of the Whistleblower Protection Act, 2024 and the Whistleblower Protection Procedures which have been made available to me by the [name of entity] on my appointment and, I have noted and understood the same. So help me God.

Signed.....

Date.....

Witnessed: -

Name.....Designation.....

Signature.....

Date.....

APPENDIX II

(Para.10)

WHISTLEBLOWER DISCLOSURE FORM

Please provide the following details for any suspected case of improper conduct or any such breach or suspected breach of law or regulation that may adversely impact the [entity name]. You may be called upon to assist in the investigation if deemed appropriate.

Please be guided by the guidelines in the Whistleblowing Protection Procedures

WHISTLEBLOWER CONTACT DETAILS (Optional if you wish to remain anonymous)	
Name	
Contact Number	
E-Mail Address	
SUSPECT'S DETAILS	
Name	
Designation/Title	
Ministry/Department/Agency/Company/ Organisation	
Phone Number	
E-Mail Address	
WITNESS (ES) DETAILS (if any)	
Name	
Designation/Title	
Ministry/Department/Agency/Company/ Organisation	
Phone Number	
E-Mail Address	
COMPLAINT: Briefly describe the improper conduct and how you know about it. Specify what, who, when, where and how. If there is more than one allegation, number each allegation and use as many pages as necessary.	
1. What was the improper conduct which occurred?	
2. Who committed the improper conduct?	

3. When did it happen and when did you notice it?
4. Where did it happen?
5. Is there any evidence that you could share?
6. Are there any other parties involved other than the suspect stated above?
7. Have you reported to any other enforcement agency?
8. Do you have any other details or information which would assist us in the investigation?
9. Any other comments?
Date.....
Signature.....
Whistleblower
Date.....
Signature.....
Receiving officer.

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide procedures for making public interest disclosures in public and private entities. The Bill seeks to encourage disclosure of information of public interest by providing a framework for protection of the people making such disclosures.

Part I of the Bill deals with preliminary provisions. It provides for definition of terms and scope of application of the Act. It also sets out the objectives of the Act.

PART II of the Bill provides for the administration of the Act. It provides that the Act shall be administered by the Commission on Administrative Justice in collaboration and co-operation with other agencies. It also sets out the roles and powers of the Commission in the implementation of the Act. The Bill also seeks to provide immunity from legal proceedings for a person making any disclosure under the Act.

PART III of the Bill sets out the nature of the improper conduct to which the Act applies. It provides the manner of making a public interest disclosure including anonymous disclosures and identifies the persons responsible for receiving the disclosures and information to be included in those disclosures.

Part IV of the Bill provides for mechanism for protection of the whistleblowers. It provides for confidentiality of information, immunity from liability and protection against reprisals of any form as a result of the disclosure. It also requires every private or public entity to establish and maintain written procedures for the investigation of disclosures of improper conduct made by employees or other persons. The policies and procedures are to be made in accordance with the size and nature of operation of the public or private entity. Model procedures are also set out under this Part that shall be applicable to any public or private entity until such entity has established its own procedures.

Part V of the Bill provides for the procedure of receiving and processing of public interest disclosures including investigation and making of recommendations on the findings. Complaints of reprisals are also dealt with in this Part including the orders of relief that the Commission may make under the Act. The orders include reference to the Witness Protection Agency, reinstatement to a position lost as a result of workplace reprisal, and compensation for loss of income among others.

Part VI of the Bill prescribes penalties for offences under the Act. The offences include breach of confidentiality of the information disclosed pursuant to the provisions of the Act, obstructing an investigation, engaging in acts of reprisals against a whistleblower, making false disclosures and disclosing of information whose disclosure is limited by the Act.

Part VII of the Bill contains miscellaneous provisions. It provides limits on disclosure under the Act and in particular, limits on the disclosure of information relating to national security, classified information under specified law, or personal health information except in certain circumstances. This Part also states the circumstances in which the whistleblower protection under the Act may be revoked and procedure for review and appeal. This Part also provides for an option for public and private entities to establish a scheme for the reward of whistleblowers for any public interest disclosure which leads to the detection of cases of improper conduct. It also contains the power of the Cabinet Secretary to make regulations.

Dated the....., 2024.

J.B.N MUTURI, EGH
Attorney- General.