



GDC WHISTLE BLOWING POLICY

JUNE 2020

FORWARD

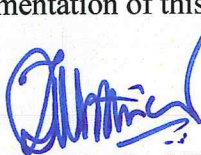
In any public institutional setting officers are tasked with the use and management of allocated resources in an economic and sustainable manner for the benefit of the public. Similarly, those with authority in these institutions should allocate opportunities and manage human resources in an equitable and fair manner to the effect. Notably, if GDC's mandate is not executed in line with the aforementioned and relevant legislated provisions, the public, including employees have the inherent right to bring attention to the same.

Employees are often the first to realize that there may be something seriously wrong within the Company. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the management of GDC. They may fear harassment or victimization. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion or malpractice. As such, this Policy is developed as a welfare measure to protect and safeguard the rights of the staff who disclose any and all forms of information.

This Policy makes it clear to employees that they can express their concerns without fear of victimization, subsequent discrimination or disadvantage. The Policy is intended to encourage and enable GDC employees to raise serious concerns within the Company rather than overlooking a problem or blowing the whistle outside.

This Policy will supplement GDC's code of conduct & ethics, grievance procedures and other statutory reporting procedures. Where this policy is in conflict with an Act enacted by Parliament, then the Act will take precedence.

It is our hope and expectation that this Whistle Blowing Policy will help in providing guidelines to all staff in raising their concerns about any aspect of GDC's work environment and we look forward to working with everyone who shares our ambition and commitment towards the implementation of this Policy.



ENG. JARED O. OTHIENO
MANAGING DIRECTOR & CEO

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LIST OF ACRONYMS AND ABBREVIATIONS

AUCPCC	African Union Convention on Preventing and Combating Corruption
BOD	Board of Directors
CID	Criminal Investigation Department
CPC	Corruption Prevention Committee
EACC	Ethics & Anti-Corruption Commission
EMU	Efficiency Monitoring Unit
GDC	Geothermal Development Company Limited
IAO	Integrity Assurance Officers
KENAO	Kenya National Audit Office
MD&CEO	Managing Director & Chief Executive Officer
PSC	Public Service Commission
UNCAC	United Nations Convention Against Corruption
WPA	Witness Protection Agency

DEFINITION OF TERMS

“Commission” refers to the Ethics and Anti-corruption Commission Corruption.

“Code of Conduct” refers to the set of rules outlining the social norms, religious rules and responsibilities of, and or proper practices for all GDC staff.

“Defamation” refers to false or unjustified injury of the good reputation of another.

“Department” refers to the Human Resource Services.

“Economic Crime” refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage.

“Investigator” refers to an officer tasked to look into whistle blowing allegations.

“Retribution” refers to recompense, reward, dispensing or receiving of reward or punishment.

“Reprisal” refers to the act or practice of using force against another person to obtain redress of grievances.

“Sexual Harassment” refers to unwelcome sexual advances, requests for sexual favours, and other verbal or physical harassment of a sexual nature.

“State Officer” refers to a person holding a state or public office.

“Whistle Blower” refers to a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization.

“Witness” refers to a person who has, or claims to have, or is thought by someone with authority to compel testimony, to have knowledge relevant to an event or other matter of interest.

1. INTRODUCTION

GDC is committed to ensuring the highest possible standards of care and highest possible ethical standards in delivering the services it provides to all its stakeholders. To this end, this Policy shall facilitate the achievement of corporate goals by creating a work environment that is supportive and equitable to all employees and ensuring accountability and efficiency in execution of duties and usage of allocated resources. The Policy shall provide an environment that respects inherent rights of the people as envisioned in the Constitution of Kenya and other regulatory provisions in the workplace while complying with legislative and regulatory guidelines.

This Policy demonstrates GDC's commitment to recognize and take action with regard to malpractice and illegal acts or omissions by employees and other stakeholders. This Policy is aimed at reducing corruption and promoting good governance in GDC while ensuring that any person who is a witness to a crime is protected from discrimination or disciplinary action.

1.1 Policy Statement

GDC is committed to the highest possible standards of openness, integrity and accountability. Consequently all GDC employees and stakeholders who have integrity concerns about any aspect of the Company's operations shall come forward and voice them.

1.2 Purpose

This Policy aims at providing a transparent and confidential process for dealing with integrity concerns without fear of suffering retribution or reprisal. It protects the employee on the following issues resulting from any form of information disclosure;

- i. Threat to breach of confidentiality.
- ii. Threat from claims of defamation.
- iii. Threat of loss of employment or any other form of employment discrimination.

1.3 Considerations in Policy Formulation

1.3.1 Accountability

In line with the Constitution of Kenya and other relevant provisions, state officers and GDC as a whole should execute its mandate while using public resources economically and equitably. As such if at any given point stakeholders are of the view that the same is not being executed as required, it is their right to voice their concerns/report/raise awareness of the malpractice. This can be done through various means including whistle blowing.

1.3.2 Confines of Confidentiality in Line with the Law

As aforementioned, it is the inherent right of the public including employees of public institutions to voice their concerns over any and all malpractices in management of public resources. Institutions/organizations should not limit the same through confidentiality agreements. This is in line with legal provisions as detailed herein.

1.3.3 Fair Treatment of Employees

GDC should follow the spirit of the law to the letter by giving fair treatment on promotions and other opportunities available to employees who have disclosed any form of information on the officers of the company and/or operations of the Company even if after investigations it may turn out not to be true as long as there is no proof of malice.

1.3.4 Disclosure of Information without Threat of Defamation

If at any given point there is whistle blowing by an employee or any other stakeholder of the Company, threat of defamation should not be an option. Legally this is considered as a ground for intimidating people to desist from whistle-blowing.

2. LEGAL FRAMEWORK

2.1 Constitution of Kenya 2010

The Constitution vests power and resources to the people of Kenya. In exercise of duty as a state officer, one must conduct himself/herself in a manner that is consistent with the purpose and objects of the Constitution and demonstrate respect for the people of Kenya and economic use of public resources¹. State officers in conducting their duties should endeavour to protect the economic interests of the public², therefore, there shall be openness and accountability which includes public participation in financial matters and use of resources³.

A person who contravenes the aforementioned provisions shall be subject to disciplinary procedures from relevant offices which may be instituted through court procedure or anonymous means (whistle blowing)⁴.

The Constitution grants every person the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas⁵ which may include use of media or any other reporting and/or communication channel⁶

2.2 United Nations Convention against Corruption (2003)

Article 33 provides that each state shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authority. This provision has been addressed by the herein below legislation i.e Anti-Corruption and Economic Crimes Act 2003 and Witness protection Act chapter 79 Laws of Kenya.

The convention further requires whistle-blowers to have reasonable grounds to suspect the wrongdoing and thus, their reports should be protected even if they are mistaken.

¹ Article 73 of the constitution

² Article 46 of the constitution.

³ Article 201 of the constitution

⁴ Article 75 of the constitution

⁵ Article 33(1)(a) of the constitution

⁶ Article 34 (2)(a) of the constitution

2.3 African Union Convention of Preventing and Combating Corruption

Article 5(5) & (6) requires the Government to enact and enforce mechanisms that protect informers from reprisals through other measures inter alia;

- i. Enact and enforce legislation that protect identity of informers;
- ii. Put in place other measures that ensure citizens report instances of mismanagement of funds, resources and any other form of injustices without fear of consequences

2.4 Anti- Corruption and Economic Crimes Act, 2003

The Act protects the rights and interests of informants through:

- i. Making provisions that deter taking disciplinary action or procedure against a person or an investigator who has disclosed information⁷.
- ii. Making provisions that in prosecution for economic crime or any proceeding under the Act, a witness shall not be required to identify, or provide information that might lead to the identification of, a person who assisted or disclosed information to the Commission or an investigator⁸.
- iii. Requiring the court to ensure that information that identifies or might lead to identification of a person who assisted or disclosed information to the Commission or an investigator is removed or concealed from any documents to be produced or inspected in connection with the proceeding⁹.

2.5 Witness protection Act Chapter 79 Laws of Kenya

This Act establishes Witness Protection agency responsible for protecting witnesses on behalf of the state¹⁰. The Act provides for anonymity and criminalises disclosure of witness identity or location.¹¹

⁷ Section 65(1) of the Anti- Corruption and Economic crimes Act 2003

⁸ Section 65(3) of the Anti- Corruption and Economic crimes Act 2003

⁹ Section 65(4) of the Anti- Corruption and Economic crimes Act 2003

¹⁰ Section 3(a) Witness Protection Act chapter 79 Laws of Kenya

¹¹ Section 23 witness protection Act

2.6 Penal Code Chapter 75 Laws of Kenya

This Act identifies intimidation and molestation of witnesses as an offence punishable by imprisonment of up to a term of three (3) years¹².

2.7 Sexual Offences Act

This Act Provides for special hearing proceedings for witnesses who might be prone to intimidation.

¹² Section 238 of the Penal Code.

3. POLICY FRAMEWORK

3.1 Scope

3.1.1 Application

This Policy applies to all staff and officers of GDC, including permanent and temporary employees and all its stakeholders.

3.1.2 Areas of Coverage

The policy categorises various crimes and/or malpractices that should they have occurred or are on the pipeline, the same can be brought to the attention of the public or such other relevant authority as detailed herein:

- i. Economic crimes: this will include;
 - a) Suspected fraud or corruption.
 - b) Breach of the standing financial rules and regulations.
- ii. Unfair employee practises;
 - a) A breach of code of conduct/ethics.
 - b) Showing undue favour to a job applicant or selected employees.
- iii. Sexual harassment.
- iv. Other regulatory non-compliances;
 - a) Damage to the environment.
 - b) Disregard for legislation.
 - c) Where evidence may be concealed or destroyed.
 - d) Where there has been a previous disclosure of the same information.

3.2 Principles

This Policy is guided by five key principles:

- i. All concerns raised will be treated fairly, in confidence and objectively.
- ii. The Company will not tolerate any form of harassment or victimization of anyone raising a genuine concern.
- iii. Any individual making a disclosure will retain his/her anonymity unless he/she agrees otherwise.

- iv. The Company will ensure that any individual raising a concern is aware of who is handling the matter
- v. The Company will ensure that no one is at risk of suffering any form of retaliation as a result of raising a concern. This assurance will not however be extended to anyone who maliciously raises a matter that turns out to be untrue.

3.3 Whistle Blowing Procedures

Employees and other stakeholders privy to the content of this policy may report suspected cases of fraud, corruption and other forms of malpractices to any of the following authorities;

3.3.1 Internal Reporting Mechanism

When one has a complaint, an issue or concern to raise they may utilize the following channels;

- a. Report to immediate supervisor.
- b. If the discussions with the immediate supervisor are fruitful, the case shall be investigated and resolved forthwith.
- c. If the discussions with the immediate supervisor are not fruitful OR if inappropriate OR highly confidential, they may report directly using the confidential channels illustrated in this policy.
- d. If they wish to forward their complaints/issues/concerns directly to external agencies or the internal mechanisms are believed not to be exhaustive, they may do so as outlined in this policy hereunder.

3.3.2 External Reporting Mechanism

The aforementioned procedure is meant to give everyone an effective way to raise a concern within the Company (if possible, resolve it internally). However, if one is still unhappy after using the procedure, and getting a final written response, they are entitled to channel their concern to other relevant agencies which may include:

- i. The Kenya National Audit Office (KENAO);
- ii. Efficiency Monitoring Unit (EMU);

- iii. Ethics & Anti-Corruption Commission (EACC);
- iv. Criminal Investigation Department (CID);
- v. Witness Protection Agency;
- vi. The Ombudsman Office;
- vii. Public Service Commission; and
- viii. A relevant professional or regulatory body;

3.3.3 Anonymous Allegations

- 3.3.3.1 All complaints must contain as much information as possible to allow for proper assessment. To the extent possible, any complaint should be factual rather than speculative or conclusive.
- 3.3.3.2 Anonymous allegations will be considered based on the following factors;
 - a. The seriousness of the issues raised;
 - b. The credibility of the concern and likelihood of confirming the allegation from an attributable source; and
- 3.3.3.3 Whenever possible, this policy encourages the complainant to provide their contact information as they file the allegations.
- 3.3.3.4 If the staff member prefers to remain anonymous, then, she/he can report through the confidential reporting hotline, corruption boxes or the anticorruption email; anticorruption@gdc.co.ke

3.3.4 Untrue Allegations

If a staff member makes an allegation in good faith but if is not confirmed by the investigation, no action will be taken against him/her. If however, an employee makes the allegations frivolously, maliciously or for personal gain, disciplinary action may be taken against him/her.

3.3.5 Confidentiality

- 3.3.5.1 All matters raised by concerned employees will be treated with utmost confidentiality.

3.3.5.2 All correspondence entered into the whistleblowing process is absolutely confidential whether the person making the disclosure wishes to remain anonymous or not.

3.3.5.3 The content of an investigation, including the identity of the parties to it, will remain confidential and may only be disclosed with the consent of the complainant.

3.3.6 Safeguards

GDC is committed to good practice and high standards and endeavours to be supportive to all its employees. GDC recognizes the difficulty that employees may face in voicing concerns and assures them of support and confidentiality during the investigation process. GDC will not tolerate any harassment or victimization and will protect all its staff who raise concerns in good faith. Where GDC concludes that false or malicious allegations have been made, it may be necessary to take action and the applicable disciplinary procedures.

GDC will not retaliate and will not allow any retaliation or discrimination by its employees of any kind against any employee who submits a complaint in good faith. Specifically, GDC will not discharge, demote, suspend, threaten, harass or in any other manner discriminate or retaliate against any employee who lawfully provides information to the authorities regarding any conduct which the employee reasonably believes constitutes a violation of the law or participates in or otherwise assists with a proceeding relating to such potential violations by GDC or its employees.

3.4 Responsibilities

7.4.1 All employees have a responsibility to ensure that the best possible standards of care are achieved and to act in accordance with the GDC code of conduct & ethics. Employees are advised to;

- a. Report to an appropriate staff member as outlined in this procedure, any concerns that something is happening which might compromise the rules contained in the GDC code of conduct & ethics.

- b. Raise concerns in good faith with the true belief that a malpractice has occurred.
- c. Not raise concerns with any malicious intent or vexatious nature.
- d. Raise concerns with an appropriate officer as outlined in the Anti-Corruption Policy.

7.4.2 Employees may report suspected cases of fraud and corruption to any of the following;

- a. Immediate Supervisor
- b. Head of Department
- c. Manager Human Resource Services
- d. Regional Managers
- e. General Manager, Human Resource & Administration
- f. Managing Director & CEO
- g. Board of Directors
- h. Integrity Assurance Officers (IAO)
- i. Corruption Prevention Committee (CPC)

7.4.3 Heads of Departments or whoever receives the information have a duty to;

- i. Treat concerns in a confidential manner.
- ii. Take staff concerns seriously.
- iii. Consider them carefully and undertake an investigation.
- iv. Understand the difficult position a member of staff may be in.
- v. Seek appropriate advice.
- vi. Take appropriate action to resolve the concern or refer it on to an appropriate person.
- vii. Keep the member of staff informed of the progress.
- viii. Monitor and review the situation.
- ix. Inform their seniors.
- x. Ensure that individuals who genuinely report concerns are not penalized in any way.

4. POLICY IMPLEMENTATION, MONITORING AND REPORTING

- 4.1 The Human Resource Services department shall be responsible for the maintenance and operation of this policy.
- 4.2 Records of (all written statements along with the results) any investigations relating thereto shall be kept in a secured file in the Human Resource Services department for the mandatory six (6) years as required by law.
- 4.3 This policy is subject to monitoring and shall be reviewed by the Human Resource Service department.

5. REVIEW DATE

This Policy may be reviewed after two (2) years or as and when necessary.

6. EFFECTIVE DATE

This policy comes to effect on this **SECOND** day of **JUNE 2020**.

