



# Newsletter

ISSUE 001 | DEC 2022

INAUGURAL NEWSLETTER

## The Dawn of Personal Data Protection in Kenya



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## FOREWORD

It gives me great pleasure to present to you the inaugural Office of The Data Protection Commissioner (ODPC) newsletter which is part of our commitment to improving communication with our external and internal stakeholders with an aim of providing timely information on the key operations at the office.

The publication of this 1<sup>st</sup> Issue comes at a time when the office is marking two years since it was established and operationalized.

It has been an exciting journey for the ODPC since the enactment of the Data Protection Act, 2019 and over the period a lot of milestones have been met towards enhancing a data protection culture in the country. Despite some challenges, our staff have collaboratively braved these moments in order to meet ODPC's objectives of safeguarding the rights of citizens to their protection of personal data and privacy.

Some of the key milestones achieved by the Office include; development and approval of the Data Protection Regulations, Development of the Data Protection Curriculum, the launch of our inaugural strategic plan, commencement of the registration of Data Controllers and Processors, issuance of Advisories as well as the development and issuance of guidance notes.

In 2022, the office issued its first Enforcement and Penalty notice setting the stage for compliance and enforcement journey as the "mwananchi watchdog". In the same year, the ODPC also joined the Global Privacy Assembly, an International Conference of Data Protection and Privacy Commissioners, just to highlight a few.

The inaugural ODPC newsletter therefore gives an overview of our journey and is a testament of our commitment to serve the public by protecting their privacy, as contemplated in the Act. Moving forward, it is my hope that this publication will improve your understanding and importance of Data Protection related laws, its role towards the growth of the digital economy, technological advancement, and subsequently how they contribute to the national developmental agenda.

I hereby invite you to read our newsletter and we look forward to your feedback.

*Immaculate Kassait.*  
DATA COMMISSIONER

This inaugural issue introduces the Office of the Data Protection Commissioner as the regulator of personal data protection following the enactment of the Data Protection Act, 2019 and the ensuing regulations. In this issue, we take a look at the Data Protection in Kenya through the lens of the regulator, the Office of the Data Protection Commissioner (ODPC), by observing its journey since its establishment following the enactment of the Data Protection Act in Kenya in November 2019.

## Enactment of the Data Protection Act, 2019

The Constitution of Kenya, 2010 guarantees every person the right to privacy which includes the right not to have the privacy of their communications infringed and information relating to their family or private affairs unnecessarily required or revealed.

With the rapid advancement of technology and its role in growing the digital economy, the use of data is inevitable. Globally, organizations are increasingly relying on data to position their business, understand markets to leverage on production, predict consumption in order to grow their business and run operations. This increased reliance on personal data as the engine for com-

merce calls for robust data governance, responsive regulation and a concerted effort to enhance data privacy of individuals in a manner that will not stifle the growth of digital economy or innovation, and encourage a culture of data protection compliance in Kenya.

Cognizant of this need, the Government of Kenya, through the Data Protection Act, 2019 established the Office of the Data Protection Commissioner whose mandate is to regulate the processing of personal data.



### Immaculate Kassait Becomes Kenya's 1<sup>st</sup> Data Commissioner

Exactly a year after the Act was enacted, the first Data Commissioner, Immaculate Kassait, MBS was appointed on 17<sup>th</sup> November 2020 paving way for the establishment and operationalization of the Office of the Data Protection Commissioner.



*Data Commissioner Immaculate Kassait, MBS swearing oath of office*



*Data Commissioner Immaculate Kassait signs Leadership and Integrity Code of Conduct witnessed by Augustus Munywoki*

## 2021/22 YEAR IN REVIEW:



## ODPC DEVELOPS GUIDANCE NOTES, REGULATIONS, POLICIES, STRATEGIC PLAN AND CURRICULUM

### 1. Celebrates 100 Days with the Launch of Guidance Notes

In a bid to offer guidance for various entities processing personal data to ensure compliance with the DPA, ODPC developed and issued for implementation five Data Protection Guidance Notes; Guidance note on consent to guide data controllers and data processors in seeking consent from data subjects, guidance note on data protection impact assessment to guide data controllers and data processors in carrying out data protection impact assessment, guidance note on processing of personal data for electoral purposes to guide data controllers and data processors during processing of personal data for electoral purposes, guidance note on registration of data controllers and data processors to guide data controllers and data processors in applying for registration and the complaints manual to assist data subjects lodge data breach complaints to the Office of Data Commissioner.

[Read Guidance Notes Here...](#)

### 2. ODPC Develops Data Protection Regulations

In order to operationalize the provisions of the Act the Government through the Ministry of Information, Communication and Digital Economy (then Ministry of Information, Communication and Technology (ICT), Innovation and Youth Affairs) on 15th January 2021 gazetted a taskforce to develop Data Protection Regulations. The taskforce developed three sets of regulations which were gazetted in January 2022 and approved on February, 2022.

The **three** regulations are:

- i. **General Regulations, 2021** – It sets out the procedures for enforcement for the rights of the data subjects as well as elaborating on the duties and obligations of the data controllers and data processors.
- ii. **Registration of Data Controllers and Data Processors Regulations, 2021** – It sets out the procedures that will be adopted by the Office of the data commissioner in registering data controllers and data processors as per the Act.
- iii. **Complaints Handling and Enforcement Procedures Regulations, 2021** – It outlines the complaints handling procedures as well as enforcement provisions for non-compliance.



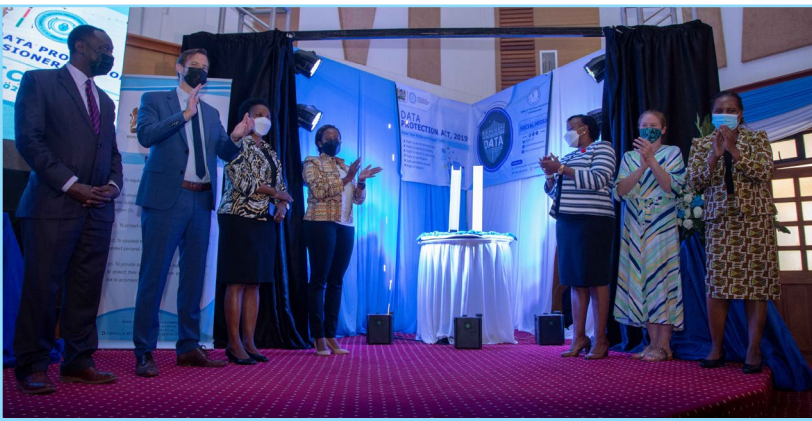
### 3. The Launch of Strategic Plan

On January 28th, 2022, the Office of the Data Protection Commissioner launched its first three-year strategic plan for 2022-2025. The strategic plan, which was developed with support from the UK Government through the Digital Access program is a road map by ODPC that ensures programs, projects and strategic interventions are prioritized and implemented as planned.

The **STRATEGIC PLAN** is anchored on three key areas of excellence:

- i. **Institutional Capacity Building** which aims to build the capacity of the data protection institution and promote partnerships to enhance data processing operations.
- ii. **Regulatory Services** which are designed to establish policy frameworks to safeguard private data
- iii. **Awareness Creation** which will equip stakeholders with adequate capacity on data protection to promote self-regulation.

[Download the Strategic Plan](#)



### 4. Kenya Becomes the 1<sup>st</sup> Country in Africa to Develop an Elaborate Data Protection Curriculum

The Office of Data Protection Commissioner in Collaboration with Kenya School of Government developed and launched for implementation, Personal Data Protection Curriculum on 28th January, 2022. Kenya entered in the history book as the first Country in Africa to develop an elaborate curriculum to train Data Controllers and Data Processors both in the Public and the Private sector. The Data Protection Curriculum aims to improve the competencies of participants in data protection for awareness and compliance with the law.

### 5. Celebrating Data Privacy Day; January 28, 2022

During the annual Data Privacy Day, the Office of the Data Protection Commissioner called upon the stakeholders in both Public and Private Sectors to collaborate with the office as it strives to regulate and promote practices that ensure Data Protection Laws are adhered to.



### 6. OTHER ACHIEVEMENTS - 2021/2022

- The office developed internal policies, SOP's and manuals
- As part of its commitment to provide services to its citizens, the office developed the Service Charter which identifies the core services and sets out standards that the Office commit in serving the customers.
- The Office approved the Human Resource Policy Documents and Instruments which paved way for the recruitment of staff.

## 7. Commencement of Registration of Data Controllers and Data Processors

On July 14, 2022 the Office of the Data Protection Commissioner commenced the registration of data controllers and data Processors.

The procedure for registration of data controllers and data processors is provided under the Data Protection (Registration of Data Controllers and Data Processor) Regulations, 2021.

As at 15th December 2022, the office had received 3,052 applications, which were at various stages while 1,018 entities had been issued with registration certificates.



[\(View Updated Register\)](#)

## 8. ODPC Receives 1,794 Complaints

The Data Protection (Complaints and handlings procedures) Regulations came into effect on February 14 paving way for data subjects to file personal data breach complaints to the office. As at 15th December, 2022 the office had received over 1,794 complaints, including 1,114 that were dismissed.



Some of these dismissals are attributed to filing complaints on behalf of others without demonstrating authority to act on behalf of those complainants, complainants reporting anonymously without including respondent details, duplicated complaints, complaints not within the office’ mandate and complainants evading a contractual obligation like not repaying loans.



## 9. ODPC issues 1<sup>st</sup> Enforcement, Penalty Notices

As at 15th December, 2022, the Office of the Data Protection Commissioner had issued three enforcement notices to entities that had breached data protection laws.

The penalty notices were issued pursuant to Section 62 and 63 of the Data Protection Act, 2019 (Act) and Regulation 20 and 21 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

In exercise of the Powers of the ODPC, the Data Commissioner directed the entities to outline specific measures it will take to mitigate or eliminate the breach/ contravention and to rectify and/or put in place structures within which the measures shall be implemented within 30 days.

[Read More...](#)

# Speak Up!

## ODPC is here to help!

Do you suspect your personal data has been mishandled? Report to us via;

- » email
- » website or
- » visit our office at Britam Towers

**>> FILE A COMPLAINT!**

[www.odpc.go.ke](http://www.odpc.go.ke)

## 10. Study Tour to European Data Protection Authorities

ODPC staff embarked on a study tour to various European Data Protection authorities, a program that was organized by GIZ.



During the two week-long tour, the staff led by Data Commissioner, Immaculate Kassait, MBS held interactive sessions with representatives from various data protection authorities to explore and discuss role of privacy in the current society created by emerging technologies.



## 11. Kenya joins the Global Privacy Assembly

Kenya was accredited to join the Global Privacy Assembly during the 44th Session held from 25th -28th October 2022 in Istanbul Turkey.

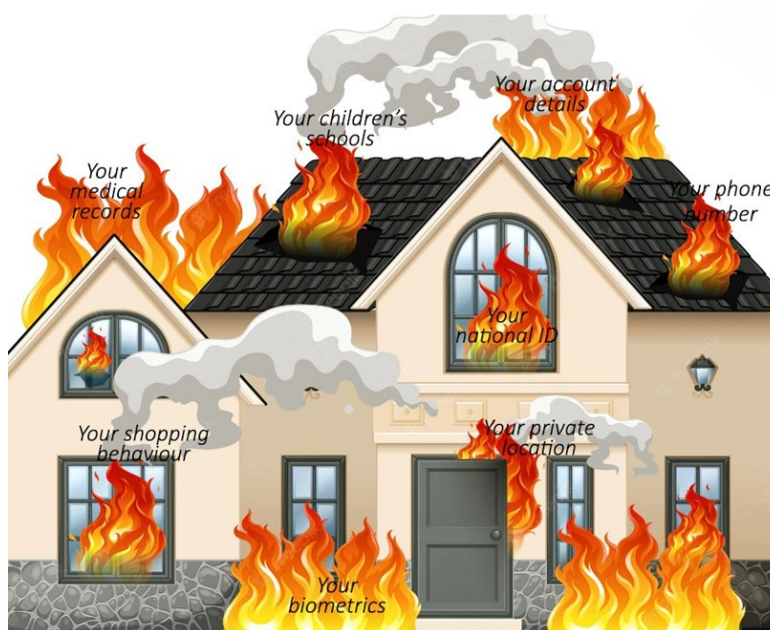
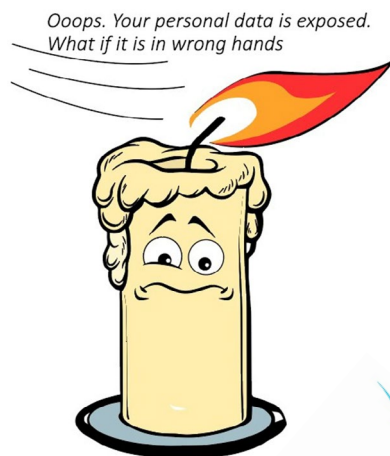
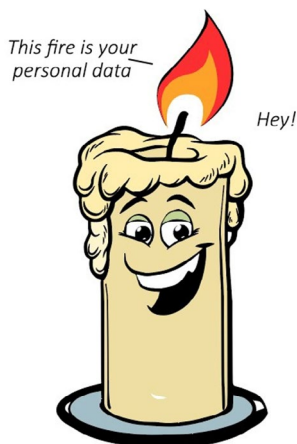
The Global Privacy Assembly is an International Conference of Data Protection and Privacy Commissioners. The Assembly seeks to provide leadership at international level in data protection and privacy.

The office has also established international co-operations with FCDO, Commonwealth Common Thread Network, African Network of Data Protection Authorities, GIZ and EU.



# FUN PAGE

## Protect your Personal Data Always!



Always be careful before sharing your personal data.

Ask:

- Who is collecting your personal data?
- Why are they collecting your personal data?
- For how long do they intend to keep your personal data?





# IN PICTURES...

## Stakeholder Engagements with other Entities to Chart Ways of Protecting Data



Data Commissioner Immaculate Kassait, MBS at the 20<sup>th</sup> Anniversary of the Kenya Internet Exchange Point



Data Commissioner, Immaculate Kassait, MBS. during a stakeholder engagement with IEBC



ODPC Staff and the Kenya School of Government during the Data Protection Curriculum validation meeting



Immaculate Kassait, MBS during the General Assembly of the Network of African Data Protection Authorities



At the World Consumer Rights Day to promote a culture of Data Protection and the importance of protection of personal data



Deputy German Ambassador, Mr. Thomas Wimmer (Left), British Embassy Representative (2<sup>nd</sup> from left), Data Commissioner, Immaculate Kassait, MBS (Center), CAS Maureen Mbaka (2<sup>nd</sup> from right), and Kenya School of Government Director General, Prof. Ludeki Chweya, during the ODPC Strategic Plan and Data Protection Curriculum Launch

## ODPC Staff Training Organized by GIZ, European Union and ODPC



## ODPC Mid-Year Review - 2022





## OFFICE OF THE DATA PROTECTION COMMISSIONER

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BRITAM TOWERS, UPPERHILL  
P.O BOX 30920-00100 G.P.O NAIROBI  
info@odpc.go.ke | 0796954269

[www.odpc.go.ke](http://www.odpc.go.ke)