

REPUBLIC OF KENYA



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REPORT

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CLERK-AT THE-TABLE:	INJIPU

OF

THE AUDITOR-GENERAL

ON

**OFFICE OF THE DATA PROTECTION
COMMISSIONER**

**FOR THE YEAR ENDED
30 JUNE, 2022**





OFFICE OF THE DATA PROTECTION COMMISSIONER

Annual Report and Financial Statements
For the Period Ended
30th June, 2022

Prepared in accordance with the Accrual Basis of Accounting Method under the
International Public Sector Accounting Standards (IPSAS)

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1. Key Entity Information and Management

a. Background information

The Office of the Data Protection Commissioner was established in November 2020 as an Independent State Office pursuant to the Data Protection Act, 2019. The Office is domiciled in Kenya with provisions for establishment of thirteen regional offices across the country as per the Data Protection Act, 2019 and the approved organization structure.

Vision

“To enhance trust and build transparency of data protection in Kenya”

Mission

“Protect personal data in Kenya through compliance, enforcement, public awareness and institutional capacity development”

Core Values

- 1) Collaboration and Teamwork
- 2) Ethical organisational practices
- 3) Transparency and accountability
- 4) Inclusive and accessible
- 5) Organisational effectiveness

b. Principal Activities

Mandate

The Mandate of the Office of Data Protection Commissioner as derived from the Data Protection Act 2019 includes:

- 1) Regulate the processing of personal data.
- 2) Ensure that the processing of personal data of a data subject is guided by the principles set out in section 25 of the Act.
- 3) Protect the privacy of individuals.
- 4) Establish the legal and institutional mechanism to protect personal data; and
- 5) Provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

Functions

The Functions of ODPC is derived from Section 8 of the Data Protection Act, 2019 of 25th November 2019 and include:

- 1) To oversee the implementation of and be responsible for the enforcement of the Data Protection Act.
- 2) To establish and maintain a register of data controllers and processors.
- 3) To exercise oversight on data processing operations, either of own motion or at the request of a data subject and verify whether the processing of data is done in accordance with the Data Protection Act.
- 4) To promote self-regulation among data controllers and data processors.
- 5) To conduct an assessment, on its own initiative of a public or private body, or at the request of a private or public body for the purpose of ascertaining whether information is processed according to the provisions of this Act or any other relevant law.
- 6) To receive and investigate any complaint by any person on infringements of the rights under this Act.
- 7) To take such measures as may be necessary to bring the provisions of the Data Protection Act to the knowledge of the public.
- 8) To carry out inspections of public and private entities with a view to evaluating the processing of personal data.
- 9) To promote international cooperation in matters relating to data protection and ensure country's compliance on data protection obligations under international conventions and agreements.
- 10) To undertake research on developments in data processing of personal data and ensure that there is no significant risk or adverse effect of any developments on the privacy of individuals.
- 11) To perform such other functions as may be prescribed by any other law or as necessary for the promotion of the objectives of the Data Protection Act.

c. Key Management

The Office day-to-day management is under the Data Commissioner who is the Accounting and Authorized Officer as per the Data Protection Act, 2019.

The Data Commissioner is assisted by three (3) Deputy Data Commissioners and a team of seven senior managers.

d. Fiduciary Management

The key management personnel who held office during the financial period ended 30th June, 2022 and who had direct fiduciary responsibility were:

No.	Designation	Name	Reporting Date
1.	Data Commissioner	Immaculate Kassait	Existing
2.	Deputy Data Commissioner Corporate Services	Festus Musyoki	16 th June 2022
3.	Deputy Data Commissioner Registration & Compliance	Rose Mosero	1 st July 2022
4.	Deputy Data Commissioner Complaints & Investigations	Oscar Otieno	1 st July 2022
5.	Head of Finance	Wycliffe Muli	Existing
6.	Head of Supply Chain Management	Andrew Kiarie	1 st July 2022
7.	Assistant Data Commissioner, Research & Strategy	Augustus Munywoki	Existing

e. Fiduciary Oversight Arrangements

The Office is mandated to constitute seven (7) committees as part of her governance and administrative structure responsible for fiduciary oversight arrangements. These committee includes;

- Senior Management Committee
- Data Protection Compliance and Enforcement Committee
- Dispute Resolution Committee
- Human Resource Management Advisory Committee
- Budget Implementation Committee
- Performance Management Committee
- Audit Committee

At national level, the institutions charged with fiduciary oversight arrangements of the Office of Data Protection Commissioner includes Parliamentary Committees and Office of the Auditor General.

f. Headquarters

Office of the Data Protection Commissioner
P.O. Box 30920 - 00100
Britam Towers
Hospital Road, Upper hill
Nairobi, Kenya

g. Contacts

Telephone: (254)796954269/0752896867

E-mail: info@odpc.go.ke

Website: www.odpc.go.ke

h. Bankers

National Bank of Kenya

P.O. Box 72866-00200

Nairobi, Kenya

i. Independent Auditors

Auditor General

Office of the Auditor General

Anniversary Towers, University Way

P.O. Box 30084

GPO 00100

Nairobi, Kenya

j. Principal Legal Advisor

The Attorney General

State Law Office

Harambee Avenue

P.O. Box 40112

City Square 00200

Nairobi, Kenya

2. Management Team



IMMACULATE KASSAIT, MBS

DATA COMMISSIONER

Ms. Immaculate Kassait, MBS is Kenya's first Data Commissioner. She has extensive experience in Governance, women's Rights and public service and has played a key role in the establishment of several projects in Kenya and abroad.

Prior to her appointment as the Data Commissioner, she worked at the Independent Electoral and Boundaries Commission, where she was in-charge of Voter Registration Elections and Operations from 2010-2020. She also served as the Chairperson of the Taskforce on Development of the Data Protection Regulations, 2021.

In 2006, she was instrumental in the setting up of the first domestic Observation Programme for the Commonwealth secretariat while working at Institute for Education in Democracy (IED).

Ms. Kassait is an advocate of the High Court of Kenya and holds a Bachelor's Degree from Makerere University, a Post Graduate Diploma from Kenya School of Law and an Executive Global Master in Business Administration from USIU Africa.

She is among the two Building Resources in Democracy in Governance and Elections (BRIDGE) accrediting experts in Kenya.

In 2021 she was recognised amongst the top 25 Women in Digital in Kenya and is a member of the Law Society of Kenya, East Africa Law Society and FIDA Kenya.



ROSE MOSERO, HSC

**DEPUTY DATA COMMISSIONER, COMPLIANCE
AND REGISTRATION**

Ms. Mosero, HSC, is the Deputy Data Commissioner, Compliance and Registration at the Office of the Data Protection Commissioner.

Prior to assuming this role, she worked with the Office as a Legal, Policy and Regulatory Advisor and Data Protection Expert after being seconded from the Ministry of ICT, Innovation and Youth Affairs (Kenya).

At the Ministry of ICT, Innovation and Youth Affairs (Kenya), she served as a Legal, Policy and Regulatory Advisor to the Office of the Cabinet Secretary.

Ms Mosero served as a member of the Taskforce which developed the Data Protection Regulations for Kenya and was involved, in her advisory capacity, in the development of the Kenyan Data Protection Act, 2019.

She is a dually registered lawyer having been admitted as an Australian Legal Practitioner and an Advocate of the High Court of Kenya. She has more than eight years of legal experience.

Rose is a Certified Information Privacy Professional (CIPP) and Certified Information Privacy Manager (CIPM) from the International Association of Privacy Professionals where she sits on the Advisory Board.

She is also a Fellow of Information Privacy having been conferred that designation by the International Association of Privacy Professionals in recognition of her expertise in the field of Privacy and Data Protection.



FESTUS MUSYOKI

DEPUTY DATA COMMISSIONER, CORPORATE SERVICES

Mr. Musyoki has over 14 years' experience in corporate services having worked in various organizations as a senior manager including National Environment Management Authority, Nursing Council of Kenya, British High Commission, Micro and Small Enterprise Authority prior to joining the ODPC on 16th June 2022 as a Deputy Data Commissioner, Corporate Services.

He holds a Master of Business Administration and Bachelor of Commerce (finance) both from the University of Nairobi and is a Certified Public Accountant of Kenya and a member of Institute of Certified Public Accountant of Kenya.

He is well skilled in Senior Management, Financial Planning and Modelling, Corporate Governance and Project Management among others.

At ODPC, Festus is charged with overseeing the operations of finance, human resources, administration and corporate communication divisions of the Office.



OSCAR OTIENO

DEPUTY DATA COMMISSIONER, COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT

Mr. Otieno is an Audit and Investigations professional with over 17 years of working experience both in the Private Sector and the Public Sector.

Currently he works at the ODPC as the Deputy Data Commissioner - Complaints, Investigations and Enforcement. Oscar holds a Master of Business Administration (MBA)

from the University of Nairobi. He is a graduate of Egerton University with a Bachelor of Science in Computer Science.

He also has experience in the private sector having worked in the Banking Industry (Standard Chartered Bank) and as a Consultant in Performance Improvement in IT Effectiveness at PricewaterhouseCoopers (PwC - Kenya). He is a Certified Information Systems Auditor (CISA) and a Microsoft Certified Systems Engineer (MCSE).

In the Public Sector, he worked as a Forensic Investigator with Ethics and Anti-Corruption Commission (EACC) and later as a Manager of Internal Investigations within the Strategic & Intelligence Operations Department of Kenya Revenue Authority (KRA).



AUGUSTUS MUNYWOKI

**ASSISTANT DATA COMMISSIONER,
RESEARCH AND STRATEGY**

Mr. Munywoki is an Economist with over Seventeen years of working experience in the Public Sector.

Prior to his appointment as Assistant Data Commissioner - Research and Strategy, Mr Munywoki was an Economist at the Ministry of ICT, Innovation and Youth Affairs.

He has a Bachelors' Degree in Economics from the University of Nairobi and is a finalist in Masters of Economics from the same University. He has also undertaken senior management course in China and Kenya School of Government.



WYCLIFFE MULI

PRINCIPAL ACCOUNTANT

Mr. Muli is an Accountant by profession with over ten years of working experience in the Public Sector. Prior

to his appointment as Principal Accountant, Mr Muli worked in the County Government of Machakos, National Treasury and Ministry of ICT, Innovation and Youth Affairs as an Accountant.

He has Bachelors' Degree in Commerce from the KCA University and is a finalist in Masters of Finance and Accounting from the same University.

He has also undertaken senior management course at Kenya School of Government and He is a Certified Public Accountant of Kenya and a member of the Institute of Certified Public Accountants of Kenya.

3. Report of the Data Commissioner



It is with great pleasure that I present to you the Annual Report and Financial Statements for the financial year 2021/2022 for the Office of the Data Protection Commissioner. This report has been prepared under Section 81(1,2,3,4) of the Public Finance Management Act, 2012 which requires the Accounting Officer for a national government entity to prepare financial statements in respect of the entity. The report

presents an overview of the financial and key non-financial performance for the year ended 30th June 2022, it provides key achievements of the office, implementation challenges and recommendation as reported in the detailed financial statements together with the commentary notes and comparative analysis for the key items.

During the period under review, the Office was allocated a total of Ksh250 Million which was fully absorbed (100 percent) towards the identification and partitioning of office space at Britam Towers, Development of five (5) Human Resource Policy Documents, Recruitment of ODPC staff; a total of forty-six (46) officers were deployed/recruited in which seven (7) were deployed from the Ministry of ICT, Innovation and Youth Affairs while thirty-nine (39) were recruited under phase I.

The Office acquired an Enterprise Resource Planning System (ERP) to automate business processes of the Office and improve service delivery to the public, developed and operationalized an interactive website and email system to facilitate customer service, in partnership with the Kenya School of Government the Office developed and launched a joint curriculum programme on Data Protection, developed and launched a three year Strategic Plan which gives a roadmap of going concern strategy, developed and gazetted three sets of Data Protection Regulations, bought two vehicles for the Data Commissioner and staff and took part in the International Data Privacy Day celebrated on 28th January 2022 among others.

However, the Office experienced several challenges including Inadequate staffing and delay in exchequer releases from the National Treasury through the State Department of ICT and Innovation therefore affecting the timeliness in budget execution and implementation.

Going forward, the Office recommends creation of the reserve fund on data protection as envisaged in the Data Protection Act, 2019 to supplement exchequer funding and fast-tracking the recruitment of necessary staff during the 2022/2023 financial year.

The Office is proud of the accomplishments outlined in this year's report and those that we expect in the near future. The milestones achieved have been made possible by our various stakeholders who have supported our efforts through the multiagency approach model adopted by the Office.

We will continue to strive towards achievement of our mandate and attainment of our strategic mission of protecting personal data in Kenya through compliance, enforcement, public awareness and institutional capacity development. As we celebrate the progress and milestones achieved over the last one year, we focus with a lot of zeal on the opportunities awaiting this ever evolving and dynamic data protection sector.

We thank you most sincerely for your support and commitment.



.....
IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

4. Statement of Performance against Predetermined Objectives for FY 2021/22

4.1 Programme Performance Review 2019/20 – 2021/22

The 2019/20 – 2021/22 programme performance review highlights the achievements of planned targets since the office establishment on 17th November 2020. During the period under review the office implemented three programmes as follows;

- 1) Institutional Capacity Development.
- 2) Regulatory Services
- 3) Awareness Creation

4.2 Review on delivery of planned outputs.

During the period under review the Office completed the identification and partitioning of office space at 12th and 13th Floors of Britam Towers, Five (5) Human Resource Policy Documents were developed and approved by Public Service Commission, Salaries and Remuneration Commission and the Data Commissioner to facilitate staff recruitment, a total of forty six (46) officers were deployed/recruited in which Seven (7) are deployed from the Ministry of ICT, Innovation and Youth Affairs while thirty nine (39) are recruited under phase I. The Office Acquired an Enterprise Resource Planning System (ERP) to automate business processes of the office and improve service delivery to the public, Developed and operationalized an interactive website, Developed and gazetted three sets of data protection regulations and developed and launched a three-year strategic plan for the Office among other deliverables.

Table 2 below provides analysis of programmes target and actual target achievements for the financial year 2021/22;

Pillar	Key Output	Key Performance Indicator	Achievements
Institutional Capacity Development	Functional Office Space	% Completion of Office Space	Functional Office Space in Place at 12th and 13th floor of Britam Towers
	HRM Policy Documents	No. of Approved HRM Policy Documents	The following HR Policy Documents were approved: Organization structure and staff establishment; Career Guidelines; Human Resource Manual; Salary and grading structure; Job descriptions
	Staff	No. of staff recruited/deployed	Out of the total 46 staff, 7 were deployed from the Ministry of ICT while 39 were recruited under phase 1

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Pillar	Key Output	Key Performance Indicator	Achievements
	ICT Automation and Infrastructure	% of automation of ODPC services	ERP system, emails and website operational
	Strategic Plan	Monitoring and evaluation reports	A three-year strategic plan developed and under implementation
	International Co-operation on Data Protection	Membership	Kenya is a Member of two International Associations of Data Protection; Common Wealth Thread Network; African Network of Data Protection Authorities
	Collaborations on Data Protection	No. of Collaborations established and signed	The Office of Data Protection Commissioner has collaborated with Kenya School of Government, GIZ and the British Government in fulfilment of its mandate
Regulatory Services	Data Protection Regulations	% Completion of development of data protection regulations	The following three sets of Data Protection Regulations were developed and gazetted; Data protection (General Regulations) 2021; Data Protection (Compliance and Enforcement) Regulations 2021; Data Protection (Registration of Data Controllers and Data Processors) Regulations 2021
	Data Protection Guidelines	No. of Data Protection Guidelines developed and issued	The following Data Protection Guidelines were developed and issued; Guidance notes on consent; Guidance consent on data protection impact assessment; Guidance note on processing of personal data for electoral purposes, Guidance note on registration of data controllers and data processors 2022/23; Complaints manual
	Data Protection Advisories	% of Advisories issued against request from data controllers and data processors	12 advisories were issued against 12 requests

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Pillar	Key Output	Key Performance Indicator	Achievements
	Data Impact Assessment Reports	% of reviewed data protection impact assessment report against submissions from data controllers and data processors	Four (4) Data Impact Assessment Reports reviewed against 4 submissions from data controllers and data processors
	Complaints Received, Investigated and Resolved	% of complaints resolved against complaints received.	Received 618 Complaints from data subjects. Out of the received Complaints, 433 had been investigated and resolved 100%. 185 complains were pending investigation with a view of resolving them in collaboration with other relevant government agencies.
	Training on Data Protection	No. of Data Controllers and Data Processors trained	Data Protection Curriculum developed and approved for implementation. Eight (8) Data Controllers and Data Processors were trained
	Data System Audit Framework	% Completion of Data System Audit development	Data System Audit framework developed for monitoring compliance by Data Processors and Controllers
	Dispute Resolution	% Completion of development of alternative dispute resolution framework	Alternative Dispute Resolution framework developed awaiting publication
Awareness Creation	Public awareness	No. of Public awareness programmes conducted	12 media awareness campaigns conducted to data processors, controllers and subjects to enhance compliance capacity
		No. of key messages on Data Protection developed and disseminated	A total of nine key messages on Data Protection developed and disseminated

5. Management Discussion and Analysis

Section A(i): The Office Operational and Financial Performance

During the year under review, the Office utilized part of the allocated resources to undertake the following key operational priorities.

i) Data Protection Regulations

The Office finalized the development of the following three (3) sets of Data Protection Regulations which were acceded by the National Assembly and gazetted as per the Law and will be effected by 14th July, 2022.

a) Data Protection (General) Regulations, 2021

These set out the procedure that will be adopted by the Office of the Data Commissioner in registering Data Controllers and Data Processors as per the Data Protection Act, 2019.

b) Data Protection (Compliance and Enforcement) Regulations, 2021

These outline the enforcement provisions, the procedures on exemptions of certain provisions of the Data Protection Act, 2019 as well as the requirements of carrying out the Data Protection Impact Assessment.

c) Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021

These set out the procedures for enforcement of the rights of the data subjects as well as elaborating on the duties and obligations of the Data Controllers and data processors.

ii) Automation of Data Protection Services

Development and deployment of Enterprise Resource Planning (ERP) to functionally automate finance, procurement and human resource operation completed. The system has also a module for registration of Data Controllers and Data Processors as well as Complaints Handling as a stop-gap measure through Customer Relationship Management System.

iii) Strategic Plan

The Office of the Data Protection Commissioner with Support from the UK Government through the Digital Access program developed a three (3) year Strategic Plan. The Strategy Plan was launched on 29th January, 2022 and its under implementation to enhance personal data protection in the Country.

iv) HRM Policy Documents and Staff Recruitment

During the period under review, the Office developed and obtained approvals for the following Human Resource Policy Documents;

- a) Organization Structure and Staff Establishment
- b) Career Guidelines
- c) Human Resource Manual
- d) Job Description for ODPC staff
- e) Grading and salary structure

The Office undertook phase 1 staff recruitment of thirty-nine (39) positions during the financial year. The process was still on-going as at the end of reporting period. The job advert was placed in media on 2nd February 2022.

v) Curriculum Development

The Office of Data Protection Commissioner partnered with Kenya School of Government and developed a training Curriculum on Data Protection for both the public and the private Sector. The Curriculum has eight (8) Units to be delivered in 30 hours. The aim of the Curriculum is to improve the competencies of participants in data protection for awareness and compliance with the law.

The Data Protection Curriculum was launched on 29th January, 2022 and so far trained several persons to enhance their capacity in ensuring compliance with Data Protection Laws.

vi) Complaints Resolution

The Office of Data Protection Commissioner received a total of 618 Complains from data subjects as at the end of reporting period. Out of the received Complaints, 433 had been investigated and resolved 100%. However, 185 complains are being investigated with a view of resolving them in collaboration with other relevant government agencies.

vii) Data Protection Advisories

During the period under review, the Office received 12 requests for advisories in relation to implementation of the Data Protection Act, 2019, and had subsequently issued the 12 service advisories to Data Controllers and Data Processors in public and private sector on the provisions of the Act to ensure compliance with the provisions of Data Protection Act, 2019.

viii) Data Protection Guidance Notes

The Office had issued three (3) Data Protection Guidance Notes to facilitate compliance with Data Protection laws provisions as at the end of reporting period. These Guidance Notes are;

- i. Conducting Data Impact Assessment
- ii. Seeking Consent from Data Subjects;
- iii. Processing of Personal Data for Electoral Purposes.

ix) Public Awareness on Personal Data Protection

The Office has held (twelve) 12 public awareness campaigns targeting Data Controllers, Data Processors as well as Data Subjects to enhance their capacity to comply with Data Protection Laws and complains reporting by Data Subjects.

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SECTION A(ii)

Programme Performance Report for the FY 2021/22 (as at 30th June, 2022) (Non-financials)

Programme: Personal Data Regulation Services

Outcome: Enhanced Privacy of individuals

Programme	Sub - Programme	Delivery Unit	Key Output	Key Performance Indicator	Target(s)	Actual	Variance	Remarks
ICT Infrastructure Development	E-Government Services	ODPC	Personal Data Regulation Services	% Implementation of Organization Structure and Staff Establishment	100	100	0	The Office has completed phase one of the recruitment/deployment exercise for the targeted 46 staff.
				% automation of Data Protection Services	100	100	0	Development and deployment of Enterprise Resource Planning (ERP) System is completed.
				% registration of Data Controllers and Data Processors	-	-	-	Registration of Data Controllers and Data Processors scheduled to begin on 14 th July in compliance with the Data Protection Regulations. The Office has developed the registration procedure in readiness to the enforcement of Data Protection Regulations in

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Programme	Sub - Programme	Delivery Unit	Key Output	Key Performance Indicator	Target(s)	Actual	Variance	Remarks
				No. of Data Protection Regulations developed and issued	3	3	0	relation to registration of Data Controllers and Data Processors. Three (3) set of Data Protection Regulations acceded by National Assembly and gazetted on 31 st January, 2022. The regulations are; i. Data Protection (General Regulations 2021); ii. Data Protection (Registration of Data Controllers and Data Processors) Regulations 2021 iii. Data Protection (Enforcement and Compliance) Regulations 2021
				No. of Data Protection Guidance Notes Issued	2	3	+1	The Office has issued three (3) Data Protection Guidance Notes to facilitate compliance with Data Protection laws provisions. These Guidance Notes are; <ul style="list-style-type: none"> • Conducting Data Impact Assessment • Seeking Consent from Data Subjects;

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Programme	Sub - Programme	Delivery Unit	Key Output	Key Performance Indicator	Target(s)	Actual	Variance	Remarks
				% of Data Breach Complainants reported and investigated	100	70	-30	<ul style="list-style-type: none"> Processing of Personal Data for Electoral Purposes. <p>The Office received a total of 618 complains out of which 433 Complainants related to processing of personal data for electoral purposes have been investigated and resolved 100%. Investigations on the remaining 30% (representing 185 complains) are ongoing in collaboration with relevant government agencies in compliance with Data Protection Act and Regulations.</p>
				Development of Policy Documents	6	9	+3	<p>The Following Policy Documents have been developed and approved for implementation;</p> <ul style="list-style-type: none"> Organization Structure Staff Establishment Grading and Salary Structure Career Progression Guidelines Human Resource Manual Code of Conduct

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Programme	Sub - Programme	Delivery Unit	Key Output	Key Performance Indicator	Target(s)	Actual	Variance	Remarks
								<ul style="list-style-type: none"> Data Protection Curriculum Strategic Plan Service Charter Alternative Dispute Resolution Framework <p>The over achievement is due to financial support from Communications Authority of Kenya, European Union, UK Government, Open Institute Amnesty and GIZ.</p>
				No. of Awareness campaigns conducted	8	12	+4	<p>12 public awareness campaigns held targeting Data Controllers, Data Processors as well as Data Subjects.</p> <p>The over achievement is due to financial support from Communications Authority of Kenya, European Union, UK Government, Open Institute Amnesty and GIZ.</p>
				No. of Personal Data Processing Systems Audited	-	-	-	<p>Auditing of Data Processing Systems for all Data Controllers and Data Processors will commence once the Data Protection Regulations take effect on 14th July 2022 as</p>

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Programme	Sub - Programme	Delivery Unit	Key Output	Key Performance Indicator	Target(s)	Actual	Variance	Remarks
				No. of Inspections of Data Controllers and Data Processors conducted	-	-	-	Inspections of Data Controllers' and Data Processors' Data Processing Systems will commence once the Data Protection Regulations take effect on 14th July 2022 as directed by the National Assembly.
				% completion of portioning of Office Space	50	50	0	The Office has acquired and completed the portioning of phase 1 of the Office Space at 12 th and 13 th Floor of Britam Towers.

SECTION B: The Office compliance with statutory requirements

The Office has complied 100% with all policy and legal provisions including but not limited to the Public Finance Management Act, 2012 of prudent utilization of resources, Data Protection Act, 2019 on submission of Annual Report and relevant government circulars on submission of timely reports. During the period under review there was no court case involving the Office.

SECTION C: Key projects and investment decisions the entity is planning/implementing.

The Office had no development projects during the period under review, however the Office is implementing the following Key programmes as per its mandate and the Strategic plan.

- 1) **Institutional Capacity Development** - which aims to build the capacity of the data protection institution and partnership to enhance data processing operations.
- 2) **Regulatory Services** - which aims to establish policy and Legal framework to safeguard private data.
- 3) **Awareness Creation** - which aims to equip stakeholders with adequate knowledge on the Provisions of the Data Protect Act,2019 and any subsidiary legislation on Data Protection.

SECTION D: Major risks facing the entity.

The Office did not experience any risk arising from Operational Risks, Market Risks, Capital Risk, Credit risks, Liquidity risks. The Office was in the process of preparing risk management framework as at the end of reporting period.

SECTION E: Material arrears in statutory/financial obligations

The Office had no loan default, pending bills, tax default, outstanding staff and pension obligations/actuarial deficit on pension schemes and loan redemption to the National Exchequer as required by PFM Act.

SECTION F: The entity's financial probity and serious governance issues

The Office has no outstanding financial improbity as reported by internal audit, external auditors, or other National Government Agencies providing oversight.

6. Environmental and Sustainability Reporting

ODPC as a responsible government entity has mainstreamed its environmental sustainability goals within all its operation areas as part of its corporate strategy to enhance the core mandate. The Office, therefore, continues to comply with applicable environmental laws and regulations in the public sector.

The Office exists to transform lives of its employees and Kenyans in general by developing and implementing environmental and sustainability strategies. To promote this, the Office has put in place the following:

i) Sustainability strategy

A strategic situational scan was carried out to understand the operational environment for the ODPC. Considering the newness of the institution, conducting SWOT analysis was considered premature and may be based on assumptions rather than facts/evidence. Nonetheless, an assessment of the environment was conducted using **Critical Success Factor Analysis (CSFA)** techniques. The outcomes of the CSFA were used in the identification of the priority key result areas, the strategic focus areas, strategic objectives and strategies.

In addition, the situational scan aimed at taking stock of the institution's functional resources, capacity and opportunities. The design and success of a new strategy for the organization depends on the strategic fit between the internal and the external conditions. A summary of the Critical Success Factor Analysis is presented in Table below;

Issues	Impact on the Strategic Direction
Existence of a legal framework on the establishment of the ODPC with a clear mandate	Strategic environment for implementation of the legal provisions of The Act at both levels of government
Clear Data Protection Regulations	Enhanced enforcement and compliance of The Act
Adequate budgetary allocation by the National Treasury, support from other	Effective delivery of public projects and programs on data protection

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Issues	Impact on the Strategic Direction
government departments, agencies, county governments and development partners	
Human resource capacity	Capacity to respond to data protection processes
Dynamic and agile administrative structure	Capacity to adopt to highly dynamic data protection environment
National government investments in the infrastructure and systems to keep pace with the dynamics of the 4 th Industrial Revolution	Enabling a digital ecosystem that promotes data protection
Strong goodwill and positive reception of the ODPC by all stakeholders	Attracts partnerships and establish collaboration & networks
Government digitization programs	Leverage on the digitization program to entrench data protection
Standard operating procedures	Effective service delivery through quality Standard Operating Procedures (SOPs)
Cooperation with other countries and multinationals on data protection	Leveraging experiences on data protection
Digital skills for professional and individuals on data protection	Enhanced capability and capacity to handle data protection tasks
Complacency, level of understanding, and familiarity with data protection processes and usage	Enforcement mechanisms for self-regulation
Disseminating information and knowledge on the provisions of the Data Protection Act	Enhanced understanding and levels of awareness on the data protection
Data protection skills, trust, positive attitude, and culture	Ability to protect data, share data to authorized controllers/processors and sense of data protection
Fourth Industrial Revolution (4IR) and associated rapid technological changes leading to a high rate of technological redundancy	Increased reliance on the 4IR and assimilation into the digital economy and establishment of a framework for adopting new and emerging technologies

Issues	Impact on the Strategic Direction
Policies and procedures for setting-up register of data controllers and data processors	Accessible and well-regulated register of data controllers and data processors
Personal data is scattered across multiple applications, devices, locations and storage	Data aggregation and centralization framework
Data protection infrastructures and systems to coordinate data controllers, data processors, and data subjects	Coordinated monitoring of data controllers, data processors and data subjects
Big data storage and management that clash with the principles of data minimisation	Data centre positioning in the country
Alignment and compliance with data privacy laws of different countries and compliance to International & Regional conventions	Established collaboration framework on the international and national conventions
Enforcement of the rights and obligations of the public on data protection	Well informed citizenry on data protection
Data capture forms/documents disposal legal framework	Data archiving and protection for future references
The reluctance of data Superpowers (e.g., Facebook) to adhere to data protection regulations	Establish adherence mechanisms and references/arbitration mechanism
Lack of unified data regulations leading to difficulty in enforcing the data protection Act	Harmonize existing and subsidiary policies to create a uniform approach to the data-centric landscape in line with data protection requirements
Increased cyber hygiene breaches may cause personal data loss and business disruptions	Strengthening and entrenching the cyber hygiene programmes
Working with the devolved levels of Government	Faster delivery of services and enhanced data protection inclusivity
Integrated technological infrastructure and data management systems	Enhanced interoperability and data sharing for effective data protection

Further, the Office has put in place measures to complement exchequer funding through collection of A-in-A in registration of Data Controllers and Data Processors.

ii) Employee welfare

The Office has an elaborate recruitment policy that provides for a structured framework for the management of human resources processes of recruitment, selection appointment, development and promotions. The policy emphasizes the need to take into consideration the ODPC's commitment to diversity to represent the face of Kenya. It is the policy of ODPC to provide continuous high-quality training and development to staff to improve their skills and competencies that will contribute to improved organizational performance.

During the period under review, the Office developed all the necessary Human Resources Policy Documents such as HRM Manual which spells out the various employee issues such salaries, medical, OSHA, WIBA insurance covers, provision of Airtime, Office space and working tools. In addition, the Office has initiated pension and car mortgage schemes for all staff.

Further the Office has undertaken training needs assessment with a view of building staff capacity through training as well as ensuring proper allocation of duties through the performance contracting framework

iii) Market place practices

a) Responsible competition practice.

The Office has developed and gazetted 3 sets of Data Protection Regulations which outlines penalties and fines for failure to comply with the provisions on ensuring that the rights of data subjects are safeguarded. In addition to providing for institutional framework through which data subjects can lodge complaints against data controllers and data processors for personal data breach.

b) Responsible Supply chain and supplier relations

The main objective for supply chain function is to improve processes, service delivery to stakeholders for sustained economic development. Supply Chain plays a pivotal role in timely procurement of quality goods, works and services. The procurement process is guided by the Public Procurement and Assets Disposal Act 2015, relevant regulations, policy and procedures and best practices in the industry.

During the period under review, the Office complied 100% with the provisions of Public Procurement and Assets Disposal Act 2015 and Regulations in matters of procuring goods and services. This has ensured good working relationships between the Office and various suppliers. In addition, the Office has ensured prompt payment for goods and services and as at 30th June 2022 the office had no pending bills.

c) Responsible marketing and advertisement

The Office has an interactive website where it engages stakeholders in addition to ensuring that all social media accounts are active. Further the Office has ensured that any information of public interest such as job adverts, tenders is placed at both print and electronic media for public awareness.

d) Product stewardship

The largest client of the Office is the general citizens who are the data subjects and therefore the office seeks opinion of citizens while developing regulations and strategic Plans.

e) Corporate Social Responsibility / Community Engagements

The Office has developed a Corporate Social Responsibility plan and plans to roll it out during the 2022/2023 financial year. However, during the period under review the Office sponsored the Law Society of Kenya Annual Conference and the 9th edition of Afro-Cities Conference.

7. Report of the ODPC Management

The management submit their report together with the financial statements for the year ended June 30, 2022, which show the state of ODPC's affairs.

i) Principal activities

The principal activities of the Office are:

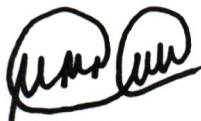
- 1) Regulate the processing of personal data.
- 2) Ensure that the processing of personal data of a data subject is guided by the principles set out in section 25 of the Act.
- 3) Protect the privacy of individuals.
- 4) Establish the legal and institutional mechanism to protect personal data
- 5) Provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

ii) Results

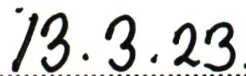
The results of the Office for the year ended June 30, 2022, are set out on page 1 to 5.

iii) Auditors

The Auditor-General is responsible for the statutory audit of ODPC in accordance with Article 229 of the Constitution of Kenya and the Public Audit Act 2015. The Auditor General continues in office in accordance with the Constitution of Kenya.



.....
Immaculate Kassait, MBS
Data Commissioner



.....
Date
Nairobi

8. Statement ODPC Management Responsibilities

Section 81 (1) of the Public Finance Management Act, 2012 requires that, at the end of each financial year, the Accounting Officer for a National Government Entity shall prepare financial statements in respect of that entity. Section 81 (3) requires the financial statements so prepared to be in a form that complies with relevant accounting standards as prescribed the Public Sector Accounting Standards Board of Kenya from time to time

The Data Commissioner is responsible for the preparation and presentation of the Office's financial statements, which give a true and fair view of the state of affairs of the Office for and as at the end of the financial year ended on 30th June 2022. This responsibility includes: (i) maintaining adequate financial management arrangements and ensuring that these continue to be effective throughout the reporting period; (ii) maintaining proper accounting records, which disclose with reasonable accuracy at any time the financial position of the entity; (iii) designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements, and ensuring that they are free from material misstatements, whether due to error or fraud; (iv) safeguarding the assets of the entity; (v) selecting and applying appropriate accounting policies; and (vi) making accounting estimates that are reasonable in the circumstances.

The Data Commissioner accept responsibility for the Office's financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgements and estimates, in conformity with International Public Sector Accounting Standards (IPSAS), and in the manner required by the PFM Act, 2012 and the Data Protection Act, 2019. The Data Commissioner is of the opinion that the Office's financial statements give a true and fair view of the state of the Office's transactions during the financial period, and of the Office's financial position as at that date. The Data Commissioner further confirms the completeness of the accounting records maintained for the Office, which have been relied upon in the preparation of the Office's financial statements as well as the adequacy of the systems of internal financial control.

Nothing has come to the attention of the Data Commissioner to indicate that the Office will not remain a going concern for at least the next twelve months from the date of this statement.

Approval of the financial statements

The Office of the Data Protection Commissioner's financial statements were approved on 27th September 2022 and signed by:



.....
Immaculate Kassait, MBS
Data Commissioner



.....
CPA Festus Musyoki
Deputy Data Commissioner, Corporate Services

REPUBLIC OF KENYA



Enhancing Accountability

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HEADQUARTERS
Anniversary Towers
Monrovia Street
P.O. Box 30084-00100
NAIROBI

REPORT OF THE AUDITOR-GENERAL ON OFFICE OF THE DATA PROTECTION COMMISSIONER FOR THE YEAR ENDED 30 JUNE, 2022

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for the intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Opinion

I have audited the accompanying financial statements of Office of the Data Protection Commissioner set out on pages 1 to 23, which comprise of the statement of financial position as at 30 June, 2022, and the statement of financial performance, statement of

changes in net assets, statement of cash flows and the statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, the financial statements present fairly, in all material respects, the financial position of Office of the Data Protection Commissioner as at 30 June, 2022, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Public Finance Management Act, 2012 and the Data Protection Act, 2019.

Basis for Opinion

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Office of the Data Protection Commissioner Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects an equal amount of budgeted receipts and actual on comparable basis of Kshs.250,000,000. However, the Office of the Data Protection Commissioner spent Kshs.174,869,448 against an approved budget of Kshs.250,000,000 resulting to an under-expenditure of Kshs.75,130,552 or 30% of the budget.

The underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and governance were not effective.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the Data Commissioner's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of intention to terminate the Data Commissioner or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the Data Commissioner's financial reporting process, reviewing the effectiveness of how the Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Data Commissioner's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Data Commissioner to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Data Commissioner to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.


CPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

25 April, 2023

*Office of the Data Protection Commissioner
Annual Report and Financial Statements for the year ended June 30, 2022.*

10. Statement of Financial Performance for the year ended 30 June 2022

		2021-2022	2020-2021
	Notes	Kshs	Ksh
Revenue from non-exchange transactions			
Transfers from Other Government Entities	6	250,000,000	-
Total Revenue		250,000,000	-
Expenses			
Employee costs	7	22,221,566	-
Depreciation & amortization expense	8	2,611,052	-
Use of Goods and Services	9	150,036,830	-
Total expenses		174,869,448	-
Surplus for the period		75,130,552	-

The Financial Statements set out on pages 1 to 22 were signed by:



.....
CPA Wycliffe Muli
Head of Finance
ICPAK M/No: 19134



.....
Immaculate Kassait, MBS
Data Commissioner



.....
CPA Festus Musyoki
Deputy Data Commissioner
Corporate Services
ICPAK M/No: 9775

11. Statement of Financial Position as at 30 June 2022

	Notes	2021-2022	2020-2021
		Kshs	Ksh
Assets			
Current assets			
Cash and cash equivalents	10	25,756,034	-
Deposit Account-Retention money		1,389,438	-
Total Current Assets		27,145,472	-
Non-current assets			
Property, plant and equipment	11	35,986,967	-
Intangible Assets	12	13,387,551	-
Total Non-Current Assets		49,374,518	-
Current Liabilities			
Payables-Retention money	14	1,389,438	-
Total Current Liabilities		1,389,438	-
Total Assets		75,130,552	-
Represented by:			
Accumulated Surplus		75,130,552	-
Total Net Assets and Liabilities		75,130,552	-

The Financial Statements set out on pages 1 to 22 were signed by:



CPA Wycliffe Muli
Head of Finance
ICPAK M/NO: 19134



CPA Festus Musyoki
Deputy Data Commissioner
Corporate Services
ICPAK M/No: 9775



Immaculate Kassait, MBS
Data Commissioner

12. Statement of Changes in Net Assets for the year ended 30 June 2022

	Accumulated Surplus	
As At 1st July, 2021	-	-
Surplus for the Period	75,130,552	-
As At 30th June, 2022	75,130,552	-

13. Statement of Cash Flows for the year ended 30 June 2022

	Notes	2021-2022	2020-2021
		Kshs	Kshs
Cash flows from operating activities			
Receipts			
Transfers from other Government Entities	6	250,000,000	-
Total Receipts		250,000,000	-
Payments			
Employee costs	7	22,221,566	-
Use of Goods and Services	9	150,036,830	-
Total Payments		172,258,396	-
Net cash flows from operating activities	13	77,741,603	-
Cash flows from investing activities			
Purchase of Property and Equipment		(38,598,019)	-
Purchase of Intangible Assets		(13,387,550)	-
Net cash flows used in investing activities		(51,985,569)	-
Net increase in cash & cash equivalents		25,756,034	-
Cash & cash equivalents at Period Start	10	0	-
Cash and cash equivalents at Period End	10	25,756,034	-

14. Statement of Comparison of Budget & Actual amounts for the year ended 30 June 2022

Description	Original Budget Kshs	Adjustments Kshs	Final Budget Kshs	Actual on Comparable basis Kshs	Variance Kshs	%
Revenue from non-exchange transactions						
Transfers from Other Government Entities	250,000,000	-	250,000,000	250,000,000	0	100
Total Revenue	250,000,000	-	250,000,000	250,000,000	0	100
Expenses						
Employee costs	22,221,566	-	22,221,566	22,221,566	0	
Depreciation and amortization expense	2,611,052	-	2,611,052	2,611,052	0	
Use of Goods and Services	225,167,382	-	225,167,382	150,036,830	75,130,552	33
Total expenses	250,000,000		250,000,000	174,869,448	75,130,552	33
Surplus for the period	0	-	0	75,130,552		

Note to the Budget:

The variance of 33% between the original budget on the use of goods and services is due to capital expenditure of Kshs. 51,985,570 as shown in notes 11&12 and unrepresented invoices from Becan Construction Limited for the Office partitioning at Britam Towers and Agile Business Solutions for ERP system amounting to Kshs 23,144,982 as at 30th June 2022. The total expenditure (inclusive of capital expenditure) for the Office during the period under review was Kshs 226,855,018 which translates to 91% absorption rate with an effective variance rate of 9%.

15. Notes to the Financial Statements

1. General Information

General Information

The Office of the Data Protection Commissioner was established in November 2020 as Independent State Office pursuant to the Data Protection Act, 2019. The ODPC is wholly owned by the Government of Kenya and is domiciled in Kenya with no branches currently.

Statement of Compliance and Basis of Preparation

The financial statements have been prepared on a historical cost basis except for the measurement at re-valued amounts of certain items of property, plant and equipment, marketable securities and financial instruments at fair value, impaired assets at their estimated recoverable amounts and actuarially determined liabilities at their present value. The preparation of financial statements in conformity with International Public Sector Accounting Standards (IPSAS) allows the use of estimates and assumptions. It also requires management to exercise judgement in the process of applying the *ODPC's* accounting policies. The areas involving a higher degree of judgement or complexity, or where assumptions and estimates are significant to the financial statements, are disclosed in Note 5 of these financial statements.

The financial statements have been prepared and presented in Kenya Shillings, which is the functional and reporting currency of the *ODPC*.

The financial statements have been prepared in accordance with the PFM Act, the State Corporations Act, and International Public Sector Accounting Standards (IPSAS). The accounting policies adopted have been consistently applied.

2. Adoption of New and Revised Standards

- a) New and amended standards and interpretations in issue effective in the year ended 30 June 2022.

IPSASB deferred the application date of standards from 1st January 2022 owing to Covid 19. This was done to provide entities with time to effectively apply the standards. The deferral was set for 1st January 2023.

b) **New and amended standards and interpretations in issue but not yet effective in the year ended 30 June 2022.**

Standard	Effective date and impact:
<p>IPSAS 41: Financial Instruments</p>	<p>Applicable: 1st January 2023:</p> <p>The objective of IPSAS 41 is to establish principles for the financial reporting of financial assets and liabilities that will present relevant and useful information to users of financial statements for their assessment of the amounts, timing and uncertainty of an Entity’s future cash flows.</p> <p>IPSAS 41 provides users of financial statements with more useful information than IPSAS 29, by:</p> <ul style="list-style-type: none"> • Applying a single classification and measurement model for financial assets that considers the characteristics of the asset’s cash flows and the objective for which the asset is held; • Applying a single forward-looking expected credit loss model that is applicable to all financial instruments subject to impairment testing; and • Applying an improved hedge accounting model that broadens the hedging arrangements in scope of the guidance. The model develops a strong link between an Entity’s risk management strategies and the accounting treatment for instruments held as part of the risk management strategy. <p>The standard has no impact on ODPC</p>
<p>IPSAS 42: Social Benefits</p>	<p>Applicable: 1st January 2023</p> <p>The objective of this Standard is to improve the relevance, faithful representativeness and comparability of the information</p>

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Standard	Effective date and impact:
	<p>that a reporting Entity provides in its financial statements about social benefits. The information provided should help users of the financial statements and general-purpose financial reports assess:</p> <p>(a) The nature of such social benefits provided by the Entity. (b) The key features of the operation of those social benefit schemes; and (c) The impact of such social benefits provided on the Entity's financial performance, financial position and cash flows.</p> <p>The standard has no impact on ODPC</p>
<p>Amendments to Other IPSAS resulting from IPSAS 41, Financial Instruments</p>	<p>Applicable: 1st January 2023:</p> <p>a) Amendments to IPSAS 5, to update the guidance related to the components of borrowing costs which were inadvertently omitted when IPSAS 41 was issued. b) Amendments to IPSAS 30, regarding illustrative examples on hedging and credit risk which were inadvertently omitted when IPSAS 41 was issued. c) Amendments to IPSAS 30, to update the guidance for accounting for financial guarantee contracts which were inadvertently omitted when IPSAS 41 was issued.</p> <p>Amendments to IPSAS 33, to update the guidance on classifying financial instruments on initial adoption of accrual basis IPSAS which were inadvertently omitted when IPSAS 41 was issued.</p> <p>The Standard has no structure on ODPC</p>
<p>Other improvements to IPSAS</p>	<p>Applicable 1st January 2023</p> <ul style="list-style-type: none"> • IPSAS 22 Disclosure of Financial Information about the General Government Sector. <p>Amendments to refer to the latest System of National Accounts (SNA 2008).</p> <ul style="list-style-type: none"> • IPSAS 39: Employee Benefits <p>Now deletes the term composite social security benefits as it is no longer defined in IPSAS.</p>

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Standard	Effective date and impact:
	<ul style="list-style-type: none"> • IPSAS 29: Financial instruments: Recognition and Measurement <p>Standard no longer included in the 2021 IPSAS handbook as it is now superseded by IPSAS 41 which is applicable from 1st January 2023.</p> <p>The standard has no impact on ODPC</p>
IPSAS 43	<p>Applicable 1st January 2025</p> <p>The standard sets out the principles for the recognition, measurement, presentation, and disclosure of leases. The objective is to ensure that lessees and lessors provide relevant information in a manner that faithfully represents those transactions. This information gives a basis for users of financial statements to assess the effect that leases have on the financial position, financial performance and cashflows of an Entity.</p> <p>The new standard requires entities to recognise, measure and present information on right of use assets and lease liabilities.</p> <p>The Standard has no impact on ODPC</p>
IPSAS 44: Non-Current Assets Held for Sale and Discontinued Operations	<p>Applicable 1st January 2025</p> <p>The Standard requires,</p> <p>Assets that meet the criteria to be classified as held for sale to be measured at the lower of carrying amount and fair value less costs to sell and the depreciation of such assets to cease and:</p> <p>Assets that meet the criteria to be classified as held for sale to be presented separately in the statement of financial position and the results of discontinued operations to be presented separately in the statement of financial performance.</p> <p>The standard has no impact on ODPC</p>

3. Early adoption of standards

The Entity did not early – adopt any new or amended standards in year 2021/2022.

c) Summary of Significant Accounting Policies

a) Revenue recognition

i) Revenue from non-exchange transactions

Transfers from other government entities

Revenues from non-exchange transactions with other government entities are measured at fair value and recognized on obtaining control of the asset (cash, goods, services and property) if the transfer is free from conditions and it is probable that the economic benefits or service potential related to the asset will flow to the ODPC and can be measured reliably. Recurrent grants are recognized in the statement of comprehensive income. Development/capital grants are recognized in the statement of financial position and realised in the statement of comprehensive income over the useful life of the assets that has been acquired using such funds.

ii) Budget information

The original budget for FY 2021-2022 was approved by the National Assembly on June 2021. Subsequent revisions or additional appropriations were made to the approved budget in accordance with specific approvals from the appropriate authorities. The additional appropriations are added to the original budget by the ODPC upon receiving the respective approvals in order to conclude the final budget. Accordingly, the ODPC recorded additional appropriations on the 2021-2022 budget following the governing body's approval.

The ODPC's budget is prepared on a different basis to the actual income and expenditure disclosed in the financial statements. The financial statements are prepared on accrual basis using a classification based on the nature of expenses in the statement of financial performance, whereas the budget is prepared on a cash basis. The amounts in the financial statements were recast from the accrual basis to the cash basis and reclassified by presentation to be on the same basis as the approved budget. A comparison of budget and actual amounts, prepared on a comparable basis to the approved budget, is then presented in the statement of comparison of budget and actual amounts.

In addition to the Basis difference, adjustments to amounts in the financial statements are also made for differences in the formats and classification schemes adopted for the presentation of the financial statements and the approved budget.

A statement to reconcile the actual amounts on a comparable basis included in the statement of comparison of budget and actual amounts and the actuals as per the statement of financial performance has been presented under section xxx of these financial statements.

b) Property, plant and equipment

All property, plant and equipment are stated at cost less accumulated depreciation and impairment losses. Cost includes expenditure that is directly attributable to the acquisition of the items. When significant parts of property, plant and equipment are required to be replaced at intervals, the ODPC recognizes such parts as individual assets with specific useful lives and depreciates them accordingly. Likewise, when a major inspection is performed, its cost is recognized in the carrying amount of the plant and equipment as a replacement if the recognition criteria are satisfied. All other repair and maintenance costs are recognized in surplus or deficit as incurred. Where an asset is acquired in a non-exchange transaction for nil or nominal consideration the asset is initially measured at its fair value.

c) Intangible assets

Intangible assets acquired separately are initially recognized at cost. The cost of intangible assets acquired in a non-exchange transaction is their fair value at the date of the exchange. Following initial recognition, intangible assets are carried at cost less any accumulated amortization and accumulated impairment losses. Internally generated intangible assets, excluding capitalized development costs, are not capitalized and expenditure is reflected in surplus or deficit in the period in which the expenditure is incurred.

The useful life of the intangible assets is assessed as either finite or indefinite.

d) Inventories

Inventory is measured at cost upon initial recognition. To the extent that inventory was received through non-exchange transactions (for no cost or for a nominal cost), the cost of the inventory is its fair value at the date of acquisition.

After initial recognition, inventory is measured at the lower of cost and net realizable value. However, to the extent that a class of inventory is distributed or deployed at no charge or for a nominal charge, that class of inventory is measured at the lower of cost and current replacement cost. Net realizable value is the estimated selling price in the ordinary course of operations, less the estimated costs of completion and the estimated costs necessary to make the sale, exchange, or distribution. Inventories are recognized as an expense when deployed for utilization or consumption in the ordinary course of operations of the ODPC.

e) Provisions

Provisions are recognized when the ODPC has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Where the ODPC expects some or all of a provision to be reimbursed, for example, under an insurance contract, the reimbursement is recognized as a separate asset only when the reimbursement is virtually certain. The expense relating to any provision is presented in the statement of financial performance net of any reimbursement.

f) Nature and purpose of reserves

The ODPC creates and maintains reserves in terms of specific requirements.

g) Changes in accounting policies and estimates

The ODPC recognizes the effects of changes in accounting policy retrospectively. The effects of changes in accounting policy are applied prospectively if retrospective application is impractical.

h) Foreign currency transactions

Transactions in foreign currencies are initially accounted for at the ruling rate of exchange on the date of the transaction. Trade creditors or debtors denominated in foreign currency are reported at the statement of financial position reporting date by applying the exchange rate on that date. Exchange differences arising from the settlement of creditors, or from the reporting of creditors at rates different from those at which they were initially recorded during the period, are recognized as income or expenses in the period in which they arise.

i) Related parties

The ODPC regards a related party as a person or an ODPC with the ability to exert control individually or jointly, or to exercise significant influence over the ODPC, or vice versa. Members of key management are regarded as related parties and comprise the directors, the CEO and senior managers.

j) Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and cash at bank, short-term deposits on call and highly liquid investments with an original maturity of three months or less, which are readily convertible to known amounts of cash and are subject to insignificant risk of changes in value. Bank account balances include amounts held at the Central Bank of Kenya and at various commercial banks at the end of the financial year. For the purposes of these financial statements, cash and cash equivalents also include short term cash imprests and advances to authorised public officers and/or institutions which were not surrendered or accounted for at the end of the financial year.

k) Comparative figures

There were no comparative figures since this was the first reporting time.

l) Subsequent events

There have been no events subsequent to the financial year end with a significant impact on the financial statements for the year ended June 30, 2022.

d) Significant Judgments and Sources of Estimation Uncertainty

The preparation of the ODPC's financial statements in conformity with IPSAS requires management to make judgments, estimates and assumptions that affect the reported amounts of revenues, expenses, assets and liabilities, and the disclosure of contingent liabilities, at the end of the reporting period. However, uncertainty about these assumptions and estimates could result in outcomes that require a material adjustment to the carrying amount of the asset or liability affected in future periods. State all judgements, estimates and assumptions made:

4. Estimates and assumptions

The key assumptions concerning the future and other key sources of estimation uncertainty at the reporting date, that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year, are described below. The ODPC based its assumptions and estimates on parameters available when the consolidated financial statements were prepared. However, existing circumstances and assumptions about future developments may change due to market changes or circumstances arising beyond the control of the ODPC. Such changes are reflected in the assumptions when they occur. IPSAS 1.140

5. Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions is included in Note 40.

Provisions are measured at the management's best estimate of the expenditure required to settle the obligation at the reporting date, and are discounted to present value where the effect is material.

Note 6: Transfers from Other Government entities	2021-2022	2020-2021
	Kshs	Ksh
Recurrent grants from State department for ICT	250,000,000	-
Total	250,000,000	-

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Note 6 B: Transfers from Ministries, Departments and Agencies (MDAs)

Name of the Entity sending the grant	Amount recognized to Statement of Financial performance	Amount deferred under deferred income	Amount recognized in capital fund.	Total transfers 2021-2022	2020-21
	Kshs	Kshs	Kshs	Kshs	Ksh
State Dept for ICT	250,000,000	-	-	250,000,000	-
	250,000,000	-	-	250,000,000	-

Note 7: Employee Costs	2021-2022	2020-2021
	Kshs	Ksh
Basic Salary and Allowances	22,221,566	-
Employee costs	22,221,566	-

Note 8: Depreciation Expense	2021-2022	2020-2021
	Kshs	Ksh
Property, plant, and equipment	2,611,052	-
Total	2,611,052	-

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Note 9: Use of Goods and Services	2021-2022	2020-2021
	Kshs	Ksh
Advertising, Printing Awareness & publicity campaigns	8,391,244	-
Hospitality supplies and services	31,509,963	-
Communication, supplies and services	1,289,248	-
Domestic Travel and Subsistence	28,332,509	-
Fuel, oil and Lubricants	864,000	-
Foreign Travel & subsistence	4,762,660	-
General Printing and stationery	5,876,585	-
Rent expenses	25,021,200	-
Motor vehicle maintenance	190,000	-
Specialized materials and supplies	458,650	-
ICT Accessories and consumables	120,000	-
Training/Workshops	7,601,872	-
Contracted services and other expenses	1,218,000	-
Repairs and Maintenance-buildings	34,335,343	-
Bank charges	65,556	-
Audit fee	-	-
Total	150,036,830	-

Note 10: Cash and Cash Equivalent	2021-2022	2020-2021
	Kshs	Ksh
Cash at Bank-Recurrent	25,756,034	-
Cash at Bank-Deposit	1,389,438	-
Total	27,145,472	-

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Note 10 b: Analysis of Cash and Cash Equivalent	2021-2022		2020-2021
	Branch	Kshs	Ksh
National Bank of Kenya - 01071238862200	Harambee	25,756,034	-
National Bank of Kenya - 01071238839200	Harambee	1,389,438	-
Total		27,145,472	-

Note 11: Property & Equipment				
	Motor Vehicle	ICT Equipment	Furniture & Fittings	Total
Rate	16.67%	30%	12.5%	
Cost at 1st July 2021				-
Additions	23,162,788	4,500,384	10,934,847	38,598,019
Disposals				-
Cost at 30th June 2022	23,162,788	4,500,384	10,934,847	38,598,019
				-
Depreciation				-
As 1st July 2021				-
Charge for the period	1,252,566	675,058	683,428	2,611,052
				-
As at 30th June 2022	1,252,566	675,058	683,428	2,611,052
				-
NBV 30th June 2022	21,910,222	3,825,326	10,251,419	35,986,967

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Note 12: Intangible Assets – Work in Progress	2021-2022
	Kshs
Cost as at 1st July 2021	-
Additions	13,387,551
Cost as at 30th June 2022	13,387,551

Note 13: Cash Generated from Operations	2021-2022	2020-2021
	Kshs	Kshs
Surplus for the year before tax	75,130,552	-
Adjusted for:		
Depreciation	2,611,052	-
Net cash flow from operating activities	77,741,604	-

Note 14: Deposit Account

The Deposit account has a balance of Kshs 1,389,439 as at 30th June 2022 which is retention money held for Becan Construction Co. Ltd for the office partitioning contract at Britam Towers.

Note 15: Depreciation Rates

Depreciation rates used are as per ODPC Finance policy. Motor vehicles have been depreciated on prorata basis (three months) while Furniture and ICT equipment have been depreciated for 6months.

Type of Fixed Asset	Rate of Depreciation
Buildings	2.50%
Plants and Equipment	10.0%
Furniture and Fittings	12.50%
Telecommunication Equipment	12.50 %
Motor Vehicles	16.67%
Computers and accessories	30.0%

e) Financial Risk Management

The ODPC's activities expose it to a variety of financial risks including credit and liquidity risks and effects of changes in foreign currency. The ODPC's overall risk management programme focuses on unpredictability of changes in the business environment and seeks to minimise the potential adverse effect of such risks on its performance by setting acceptable levels of risk. The ODPC does not hedge any risks and has in place policies to ensure that credit is only extended to customers with an established credit history.

The ODPC's financial risk management objectives and policies are detailed below:

i) Credit risk

The ODPC has exposure to credit risk, which is the risk that a counterparty will be unable to pay amounts in full when due. Credit risk arises from cash and cash equivalents, and deposits with banks.

The Management sets the ODPC's credit policies and objectives and lays down parameters within which the various aspects of credit risk management are operated.

ii) Liquidity risk management

Ultimate responsibility for liquidity risk management rests with the ODPC's management, who have built an appropriate liquidity risk management framework for the management of the ODPC's short, medium and long-term funding and liquidity management requirements. The ODPC manages liquidity risk through continuous monitoring of forecasts and actual cash flows.

Financial Risk Management

iii) Market risk

The ODPC has put in place an internal audit function to assist it in assessing the risk faced by the ODPC on an ongoing basis, evaluate and test the design and effectiveness of its internal accounting and operational controls.

a) Interest rate risk

Interest rate risk is the risk that the ODPC's financial condition may be adversely affected as a result of changes in interest rate levels. The ODPC's interest rate risk arises from bank deposits. This exposes the ODPC to cash flow interest rate risk. The interest rate risk exposure arises mainly from interest rate movements on the ODPC's deposits.

Management of interest rate risk

To manage the interest rate risk, management has endeavoured to bank with institutions that offer favourable interest rates.

Fair value of financial assets and liabilities

a) Financial instruments measured at fair value.

Determination of fair value and fair values hierarchy

IPSAS 30 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources; unobservable inputs reflect the ODPC's market assumptions. These two types of inputs have created the following fair value hierarchy:

- Level 1 – Quoted prices (unadjusted) in active markets for identical assets or liabilities. This level includes listed equity securities and debt instruments on exchanges.
- Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (that is, as prices) or indirectly (that is, derived from prices).
- Level 3 – inputs for the asset or liability that are not based on observable market data (unobservable inputs). This level includes equity investments and debt instruments with significant unobservable components. This hierarchy requires the use of observable market data when available. The ODPC considers relevant and observable market prices in its valuations where possible.

iv) Capital Risk Management

The objective of the ODPC's capital risk management is to safeguard the ODPC's ability to continue as a going concern. The ODPC capital structure comprises of the following funds:

	2021-2022	2020-2021
	Kshs	Kshs
Retained Earnings	75,130,552	-
Total Funds	75,130,552	-
Total Borrowings		
Less: Cash and Bank Balances		
Net Debt/ (Excess Cash and Cash Equivalents)		
Gearing	0%	

f) Related Party Disclosures

Nature of related party relationships

Entities and other parties related to the ODPC include those parties who have ability to exercise control or exercise significant influence over its operating and financial decisions. Related parties include management personnel, their associates and close family members.

Government of Kenya

The Government of Kenya is the principal shareholder of the ODPC, holding 100% of the ODPC's equity interest. The Government of Kenya has provided full guarantees to all long-term lenders of the ODPC, both domestic and external.

Other related parties include:

- i) The Parent Ministry.
- ii) Key management.

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Related party transactions	2021-2022	2020-2021
	Kshs	Kshs
Transactions with related parties		
a) Grants /transfers from the government		
Grants from national govt	250,000,000	-
Total		
b) Key management compensation		
Compensation to key management	22,221,566	-

g) Events after the Reporting Period

There were no material adjusting and non- adjusting events after the reporting period.

h) Ultimate And Holding ODPC

The ODPC is an Independent State Office under the Ministry of ICT, Innovation and Youth Affairs. Its ultimate parent is the Government of Kenya.

i) Currency

The financial statements are presented in Kenya Shillings (Kshs).

j) Approval of Financial Statements

The Financial Statements set out on pages 1 to 22 were approved and signed on behalf of the Office of the Data Protection Commissioner by:



CPA Wycliffe Muli
Head of Finance
ICPAK M/No: 19134



Immaculate Kassait, MBS
Data Commissioner



CPA Festus Musyoki
Deputy Data Commissioner,
Corporate Services
ICPAK M/No: 9775

5. Appendix

Appendix 1: Implementation Status of Auditor General's Recommendations

ODPC did not have pending matters with the Office of the Auditor General.

Appendix II: Projects implemented.

ODPC had no Capital Project in the year under review.

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Appendix III: Transfers from Other Government Entities

Name of the MDA/Donor Transferring the funds	Date received as per bank statement	Nature: Recurrent/Development/Others	Total Amount - KES	Statement of Financial Performance	Where Recorded/recognized				Total Transfers during the Year
					Capital Fund	Deferred Income	Receivables	Others - must be specific	
SDICT	7-Sep-21	Recurrent	20,833,333	SFP					20,833,333
SDICT	7-Sep-21	Recurrent	20,833,333	SFP					20,833,333
SDICT	17-Sep-21	Recurrent	20,833,334	SFP					20,833,334
SDICT	17-Nov-21	Recurrent	20,833,333	SFP					20,833,333
SDICT	6-Jan-22	Recurrent	20,833,333	SFP					20,833,333
SDICT	25-Jan-22	Recurrent	20,833,334	SFP					20,833,334
SDICT	28-April-22	Recurrent	20,833,333	SFP					20,833,333
SDICT	18-May-22	Recurrent	20,833,333	SFP					20,833,333
SDICT	18-May-22	Recurrent	20,833,333	SFP					20,833,333
SDICT	23-Jun-22	Recurrent	20,833,333	SFP					20,833,333
SDICT	23-Jun-22	Recurrent	20,833,334	SFP					20,833,334
SDICT	23-Jun-22	Recurrent	20,833,333	SFP					20,833,333
Total			250,000000						250,000000

Appendix V: Reporting of Climate Relevant Expenditures

ODPC had no expenditure under climate change during the reporting period.

Appendix VI: Disaster Expenditure Reporting Template

ODPC had no expenditure under disaster reporting during the period under review.