



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1394 OF 2023

DETERMINATION ON THE SUO MOTU INVESTIGATION BY THE OFFICE OF THE DATA PROTECTION COMMISSIONER ON THE OPERATIONS OF THE WORLDCOIN PROJECT IN KENYA BY TOOLS FOR HUMANITY CORPORATION, TOOLS FOR HUMANITY GMBH & WORLDCOIN FOUNDATION

(Pursuant to Sections 8 (c) & (f), 9(1)(a), 56 and 57 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. Article 31 (c) of the Constitution of Kenya recognizes the right to privacy which encompasses the right not to have information relating to one's family or private affairs unnecessarily required or revealed. Consequently, in an effort to further guarantee the same, the *Data Protection Act, 2019* (hereinafter "the Act") was enacted.
2. The Office of the Data Protection Commissioner (hereinafter "the Office") is a regulatory office established pursuant to Sections 5 & 6 of the Act and is mandated with the responsibility of regulating the processing of personal data; ensuring that the processing of personal data of a data subject is guided by the principles set out in Section 25 of the Act; protecting the privacy of individuals; establishing the legal and institutional mechanism to protect personal data and providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.
3. Section 9(1)(a) of the Act provides that the Office shall have the power to conduct investigations **on its own initiative**, or on the basis of a complaint made by a data subject or a third party.
4. On 2nd August, 2023, the Office instituted investigations, being Investigation No. ODP/INV/1394/2023 on its own initiative and taking cognizance of the public

18/

interest generated by the operations of Tools for Humanity Corporation, Tools for Humanity GmbH (Hereinafter "TFH") and Worldcoin Foundation (Hereinafter "Worldcoin") under the "Worldcoin Project".

5. This Determination is premised on the provisions of Regulation 14 of the *Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021* which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.
6. The investigations encompassed a review of the literature and correspondence submitted by TFH and Worldcoin, recorded statements, interviews, site visits and the investigation report of the multi-Agency Team constituted under Section 9(2)(b) and 59 of the Act.

B. NATURE OF THE INVESTIGATION

7. The investigation relates to the processing of personal data and sensitive personal data belonging to Kenyan citizens and residents by TFH and Worldcoin Foundation under the Worldcoin Project. According to the Worldcoin [Whitepaper](#)¹, the Worldcoin Project aims at creating a globally-inclusive identity and financial network, with the potential of considerably increasing economic opportunity, scaling a reliable solution for distinguishing humans from Artificial Intelligence ('AI') online while preserving privacy, enabling global democratic processes, and showing a potential path to AI-funded Universal Basic Income ('UBI').
8. TFH has developed three consumer facing products as part of the project. These include;
 - (i) Worldcoin token (WLD) – blockchain & cryptocurrency.
 - (ii) World App – a mobile application product of TFH.
 - (iii) WorldID – the unique global user identifier.
9. WorldID and Worldcoin are a product of Worldcoin Foundation whereas WorldApp has been developed by TFH with the Intellectual Property having been transferred to Worldcoin Foundation.
10. According to TFH, the process begins with a user engaging with the orb operator partner. The user, then downloads the WorldApp on their phone, walks through the consent screens, reviews and accepts the privacy notice and terms and conditions. If the user opts in to 'data custody', they manually agree to a consent form, whereafter a QR Code is generated. The Orb takes a picture of the user and processes the uniqueness of the iris into a numeric code (Iris Code), confirming

¹ <https://whitepaper.worldcoin.org/>

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that they are human and that they are unique to the platform thereby generating a WorldID. This then allows the user to obtain a portion of the Worldcoin tokens.

11. From their statements, the Worldcoin Project in Kenya commenced in May, 2021. The Project has since collected the following data from Kenyan data subjects; Iris Scan, Facial Images, Name, Email address, Phone number, Date of birth, Country of residence, Address Book contacts, feedback and correspondences Inferred data (age range, skin color, and gender), Geolocation Data (GPS, IP address, Wi-Fi access point, Cell tower information), Device information.
12. The purpose of the investigation was to determine whether the processing of the above personal data was done in accordance with the Act and Regulations. The investigations relate to allegations that: -
 - i) The Respondents irregularly and unlawfully continued to process sensitive data belonging to Kenyans despite this Office issuing a cease-and-desist letter on 30th May, 2023; and continues to process personal data contrary to the cessation directive issued by this Office by letter dated 2nd August, 2023.
 - ii) Failure to obtain proper consent for the processing of sensitive personal data and for the transfer of sensitive personal data out of Kenya.
 - iii) The Respondents' lack of clarity on the location of the personal data and sensitive personal data collected under the Worldcoin Project belonging to Kenyans and Kenyan residents.
 - iv) Failure by Worldcoin Foundation to provide the Office with the details of transfers of the personal data out of Kenya for this Office to determine whether the same complies with Sections 48 and 49 of the Data Protection Act, 2019 as read with Regulation 40 of the Data Protection (General) Regulations, 2021.
 - v) Failure by Worldcoin Foundation to conduct a Data Protection Impact Assessment (DPIA) in respect of the processing activities for which they are data controller.

C. SUMMARY OF THE RELEVANT FACTS AND EVIDENCE

13. On or about 21st May 2021, TFH began collecting and processing personal data in Kenya for purposes of developing a machine learning algorithm to establish a "Proof of Personhood" protocol. From the Data Protection Impact Assessment submitted to this Office, the aim was to develop an algorithm that can differentiate between a real human and fake (i.e. non-human) irises as well as differentiate one real human iris from those of people who have already signed up to the protocol.

14. The Office initially contacted Worldcoin on or about 19th April, 2022, *vide* a letter to the CEO, informing them that the Office was aware that they were collecting sensitive personal data from persons resident in Kenya, and transferring the same out of Kenya. The Office further requested for information on the lawfulness of the activities in Kenya.
15. The Office and TFH exchanged various correspondence, including a review of a Data Protection Impact Assessment (DPIA), for phase 1 and 1.5 submitted by TFH, between 17th June, 2022 and 15th July, 2023.
16. Certificates of registration as data controllers were issued to Tools For Humanity GmbH and Tools For Humanity Corporation on 15th September 2022 and 18th April 2023 respectively.
17. TFH continued collecting the sensitive personal data until 30th May 2023, when the Office raised concerns on the processing of sensitive personal data by TFH and directed TFH to cease the processing of personal data.
18. TFH responded by a letter dated 16th June, 2023 providing clarification on the concerns raised by the Office and confirmed that they suspended collection of facial images and iris images from Kenyans for 14 days. In contrast, TFH stated in their letter that if they did not hear from the ODPC by the close of business on Friday, 23rd June, 2023, they would assume that they had clarified and addressed the ODPC's concerns with their processing activities.
19. TFH subsequently transferred controller responsibilities to Worldcoin Foundation.
20. The Worldcoin Token WLD (ECR-20) on Ethereum Mainnet was launched on July 24, 2023. This saw an upsurge in the Worldcoin Project activities in Kenya, thereby necessitating the Office to issue a cautionary statement to the public to ensure they receive proper information before disclosing any personal or sensitive data on 28th July 2023.
21. On 2nd August, 2023 the ODPC wrote to TFH and reiterated the contents of the letter dated 30th May 2023, directing the immediate cessation of collection of personal data by TFH and safe restriction of further processing of the collected data. Moreover, TFH was also required to securely store all collected data and prohibiting the processing of this data.
22. The Cabinet Secretary, Ministry of Interior and National Administration suspended any operation relating to the Worldcoin project on 2nd August, 2023 due to concerns over the secure storage of data that includes scans of a user's iris; that offering crypto in exchange for data "borders on inducement"; inadequate

information on cybersecurity safeguards; and placing large amounts of private data in the hands of a private business.

23. On the same day the Office, together with the Communications Authority of Kenya issued a joint statement that they have undertaken preliminary review and there are legitimate regulatory concerns among them obtaining consumer consent in return for a monetary award bordered on inducement.

24. A Multiagency team was established on 2nd August 2023 to further conduct investigations on the operations of the Worldcoin project. It includes members from:

- i. Office of the Data Protection Commission (ODPC),
- ii. Central Bank of Kenya (CBK)
- iii. Communications Authority (CA),
- iv. National Computer & Cybercrime Coordination Committee (NC4),
- v. Ministry of Information, Communications & Digital Economy, and
- vi. Academia- Multi Media University (MMU).

25. On 9th August 2023, the Office instituted a Miscellaneous Application to the High Court of Kenya seeking preservation orders for the expeditious preservation of Kenyans personal data including traffic data that TFH was handling. The Preservation Orders were issued on 15th August, 2023.

26. In conducting the investigations, the Office, through the Multiagency team, interviewed and recorded statements from the following persons –

Name	Date of Interview	Role	Location
[REDACTED]	11.08.23	Chief Legal Officer and Corporate Secretary	California, USA (via Teams/Webex)
[REDACTED]	11.08.23	Data Protection Officer	Germany (via Teams/Webex)
[REDACTED]	11.08.23	VP Engineering, Protocol	California, USA (via Teams/Webex)
[REDACTED]	11.08.23	Head, Trust and Safety	New Jersey, USA (via Teams/Webex)
[REDACTED]	15.08.23	CEO, Sense Marketing Ltd	ODPC Boardroom
[REDACTED]	15.08.23	Managing Director, EXP Marketing	ODPC Boardroom
[REDACTED]	25.08.23	Independent Consultant - TFH	ODPC Boardroom
[REDACTED]	25.08.23	Independent Consultant - TFH	ODPC Boardroom
[REDACTED]	25.08.23	Data Subject	Huduma Centre, Thika

27. The Office, through the Multiagency team further sought the professional assistance of the following entities/persons in the course of the investigations;
- i. Ministry of Foreign & Diaspora Affairs through the Cabinet Secretary
 - ii. Ministry of Information, Communications & Digital Economy
 - iii. Principal Secretary, State Department for ICT and the Digital Economy
 - iv. Director General, National Intelligence Service
 - v. A specialist, academic and industry player in Artificial Intelligence and Blockchain technologies.
28. On 25th August 2023, the Office visited the Directorate of Criminal Investigations (DCI) – Serious Crime Unit where a demonstration of the Orb (biometric verification device) was inspected and examined. This was done in the presence of TFH Local representatives, DCI Officers and the Multiagency team.
29. The World App application is available on the Google Play Store and any Kenyan can download the application and register. Though one cannot claim the free Worldcoin tokens since it requires one to first scan his / her iris, and there is currently no Orb device that is activated in Kenya.

D. ISSUES FOR DETERMINATION

- i. Whether TFH & Worldcoin were registered as Data Controllers in Kenya.
- ii. Whether TFH and Worldcoin obtained proper consent for the processing of sensitive personal data.
- iii. Whether the transfer of personal data outside Kenya by TFH & Worldcoin was in compliance with Sections 29(d) of the Act and Regulation 23(e) of the Data Protection (General) Regulations as read with Sections 48 & 49 and Regulation 40 of the Data Protection (General) Regulations.
- iv. Whether Worldcoin conducted a Data Protection Impact Assessment on the processing activities for which they were the data controller as required under Section 31 of the Act as read with Regulations 49, 50 & 51 of the Data Protection (General) Regulations, 2021.
- v. Whether TFH continued processing Kenyans' sensitive personal data after the cease-and-desist letter of 30th May, 2023 and whether this impeded the Data Commissioner in the exercises of her powers under Section 9 of the Act.

E. ANALYSIS AND DETERMINATION

i. Whether TFH & Worldcoin were registered as Data Controllers in Kenya.

30. In addressing this issue, it is important for this Office to, from the onset, distinguish 'Registration' and 'Licensing'.
31. 'Registration' is defined by the Black's Law Dictionary as the act of recording or enrolling. To 'register' means to enter into a public registry. On the other hand, 'License' is defined as permission, usually revocable, to commit some act that would otherwise be unlawful.
32. By dint of Section 18 (1) of the Act, no person shall act as a data controller or data processor unless registered with the Data Commissioner. Upon successful registration, the entity is issued with a certificate of registration and entered into the register of data controllers and data processors pursuant to Section 21 of the Act.
33. In this context, this Office does not therefore license data controllers and data processors. The mandate of the Office as prescribed in the Act is to register data controllers and data processors.
34. Section 19(2) of the Act sets out the particulars required for purposes of registration as follows –
- (a) a description of the personal data to be processed by the data controller or data processor;*
 - (b) a description of the purpose for which the personal data is to be processed;*
 - (c) the category of data subjects, to which the personal data relates;*
 - (d) contact details of the data controller or data processor;*
 - (e) a general description of the risks, safeguards, security measures and mechanisms to ensure the protection of personal data;*
 - (f) any measures to indemnify the data subject from unlawful use of data by the data processor or data controller; and*
 - (g) any other details as may be prescribed by the Data Commissioner.*
35. In addition to the above, Regulation 5 the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 requires the application to be in Form DPR 1 and be accompanied by, *inter alia*, the registration fees, a copy of the entity's' establishment documents, particulars of the data controllers or data processors.

36. From a review of the documents available to the Office during the investigations, this Office finds that Tools for Humanity GmbH applied for registration as data controllers pursuant to Section 19 of the Act and paid for the same on 24th August 2022. Upon review of the application, a certificate of registration was issued on 29th September, 2022 in accordance with Section 19(4) of the Act.
37. Further, Tools for Humanity Corporation applied for registration as data controllers pursuant to Section 19 of the Act and paid for the same on 29th September 2022. Upon review of the application, a certificate of registration was issued on 18th April 2023.
38. Once an entity has met the threshold required for registration and has demonstrated the particulars contained in Section 19 (2) as read with Regulation 5 of the Registration Regulations, the Office is required to issue that entity with a certificate of registration and enter the entity into the register of data controllers, maintained by the Office under Section 21 of the Act. This is distinguishable from 'licensing' which connotes legal/official permission to operate.
39. On the other hand, Worldcoin Foundation, which, by TFH's letter of 11th August, 2023 assumed data controller responsibility over TFH's operations in Kenya around the time of the launch of WLD, that is 24th July, 2023, is not registered with this Office as a data controller, and is yet to be issued with a certificate of registration as data controller or have the name entered into the register of data controllers and data processors.
40. Consequently, this Office finds that Worldcoin Foundation has been acting as data controller in Kenya in a manner that contravenes Section 18(1) of the Act, in respect of the personal data processed since it took over controller responsibility over the Worldcoin project from TFH, on or about 24th July, 2023.

ii. Whether TFH and Worldcoin obtained proper consent for the processing of sensitive personal data.

41. Section 2 of the Act defines "consent" as any manifestation of **express, unequivocal, free, specific** and **informed** indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.
42. The Conditions for Consent are espoused in Section 32 of the Act and include that:-

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- a. A data controller shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.
 - b. A data subject shall have the right to withdraw consent at any time.
 - c. The withdrawal of the consent shall not affect the lawfulness of processing based on prior consent before its withdrawal.
 - d. In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.
43. Consent must bear an expression of autonomy. Following from this Office's Guidance Note on Consent, the element 'free' implies real choice and control for data subjects. Where the data subject has no real choice, feels compelled to consent or will endure negative consequences if they do not consent, then consent will not be valid. Further where a data subject is unable to refuse or withdraw her consent without detriment, then the consent will not be valid.
44. In the instant investigation, consent was relied upon by TFH to collect biometric data and to transfer the biometric data out of Kenya. In particular, the provision of Worldcoin tokens was conditional on provision of consent to process biometric data.
45. This Office therefore finds that TFH and Worldcoin placed themselves in a position of innate economic influence by issuing Worldcoin tokens, a cryptocurrency that is convertible to fiat money/legal tender. This introduced an element of influence upon the data subject's expression of their free will.
46. Further, Regulation 4 of the Data Protection (General) Regulations, 2021, provides that where the processing of personal data is on the basis of the consent in accordance with Section 32 of the Act, the data controller or data processor is mandated to, in seeking consent prior to the processing, inform the data subject of, among others:
- (a) the identity of the data controller or data processor;*
 - (b) the purpose of each of the processing operations for which consent is sought;*
 - (c) the type of personal data that is collected and used;*
 - (d) information about the use of the personal data for automated decision making, where relevant;*

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- (e) the possible risks of data transfers due to absence of an adequacy decision or appropriate safeguards;*
- (f) whether the personal data processed shall be shared with third parties;*
- (g) the right to withdraw consent; and*
- (h) the implications of providing, withholding or withdrawing consent.*

47. For the consent to be 'informed', the consent by the data subject must be based on an understanding of the processing activities and its implication on the rights of the data subject.
48. In relying on consent for the collection of biometric data, TFH ought to have been cognizant of the socio-economic realities in Kenya, when operationalizing their consent mechanisms. From this Office's investigations, the consent mechanisms relied on by TFH were not inclusive, out of context and oblivious of Kenya's socio-economic posture.
49. Appreciating the scope of the activities of TFH and Worldcoin in Kenya, the consent ought to have been simplified, unbundled, with the use of diagrammatic representations of the requirements and conditions for consent. For instance, for a user to read and understand the risks of the transfer of personal sensitive personal data in the Worldcoin Foundation Biometric Data Consent Form, they would have to scroll to the very end of the form.
50. On 30th May 2023 this Office informed TFH that following a review of the processing activities undertaken by TFH, TFH's correspondence and the Office's interactions with the TFH team/agents in various shopping malls, there was no proof that the consent obtained by TFH was valid, informed and specific. To this end, this Office directed TFH as follows –
- a. Immediate cessation of collecting sensitive personal data, including the collection of all facial recognition data and iris scans. This cessation was to be implemented without delay and would include all ongoing and future data processing activities;
 - b. Safely restrict further processing of collected data, specifically facial recognition data and iris scans, by ensuring the same are securely stored and any further processing is restricted. Measures were to be implemented to prevent unauthorized access, use, or disclosure of this data;
 - c. TFH to provide proof that its agents obtain valid, express, informed and specific consent from all subscribers located in Kenya;

- d. TFH to provide details of the processing contract entered into with all agents who collect personal data on behalf of TFH.
51. TFH responded by a letter dated 16th June, 2023 providing clarification on the concerns raised by the Office and confirmed that they suspended collection of facial images and iris images from Kenyans for 14 days. However, in their letter, TFH indicated that if they did not receive a response to their letter by close of business Friday, 23rd June, 2023, they will assume that they have clarified and addressed the OPDC's concerns with their processing activities.
52. Despite the above cease and desist letter, TFH continued to process personal data contrary to the cessation directive issued by this Office by letter dated 2nd August, 2023. In so doing, this Office finds that TFH acted in a manner that impeded the Data Commissioner in the exercises of her powers under Section 9 of the Act.
53. From the statement of Peter Mwangi Nyaga, it was noted that the orb operators downloaded the Worldcoin App into his phone and accepted the Terms and Conditions on his behalf, without explaining to him the Terms and Conditions of opening an account and how his data that was collected by the Orb would be used.
54. While TFH stated that they provided third-party operators with the training modules on how to use the orb and how to address any privacy-related user questions, the same was not adhered to. This fact was also observed by this Office during the course of the investigations, where orb operators would assist data subjects in downloading the World App and accepting the Terms and Conditions and Consent on behalf of the users.
55. It is thus clear to this Office that TFH did not put in place a mechanism to ensure their orb operators did not assist users in signing up for the World ID and consenting to the biometric data collection and transfer.
56. On this basis, this Office finds that the involvement of the third-party orb operators interfered with and prejudiced the validity of TFH's reliance on consent for the processing of biometric data.
57. From the totality of the above, this Office finds that the consent obtained by TFH and Worldcoin in the Worldcoin Project was invalid for non-compliance with Section 32 of the Act as read with Regulation (4) of the Data Protection (General) Regulations.

iii. **Whether the transfer of personal data outside Kenya by TFH & Worldcoin was in compliance with Sections 29(d) of the Act and Regulation 23(e) of the Data Protection (General) Regulations as read with Sections 48 & 49 and Regulation 40 of the Data Protection (General) Regulations.**

58. The duty to notify under Section 29 (d) of the Act obliges a data controller to, before collecting personal data, inform the data subject of the third parties whose personal data has been or will be transferred to, including the details of the safeguards adopted.

59. Regulation 23(e) of the Data Protection (General) Regulations, 2021 requires a data controller or data processor to develop, publish and regularly update a policy reflecting their personal data handling practices. This policy shall include obligations or requirements where personal data is to be transferred outside the country, to third parties, or other data controllers or data processors located outside Kenya and where possible, specify such recipients.

60. TFH & Worldcoin provided this Office with the following locations of Kenyan data

Data Type and Controller¹	Location
<i>Iris Code</i> (Worldcoin Foundation)	United States
<i>Face and Iris Images</i> (Worldcoin Foundation)	General/default: Either the EU (Italy) or South Africa, depending on latency at time of sign-up. Temporary training: EU (Germany and Poland) and/or United States.
<i>Wallet Address - World ID</i> (Worldcoin Foundation)	United States and public blockchain
<i>World App Account Data³</i> (TFH)	United States
<i>Wallet address - WLD and other digital asset transactions</i> (TFH)	United States and public blockchain

61. Worldcoin Foundation is not registered as a data controller in Kenya and thus did not provide the Office with the details of transfers of the personal data out of Kenya for this Office to determine whether the same complies with Sections 48 and 49 of the Data Protection Act, 2019 as read with Regulation 40 of the Data Protection (General) Regulations, 2021.

62. Section 48 of the Act sets out the conditions for transfer of personal data out of Kenya as follows –

(a) the data controller or data processor has given proof to the Data Commissioner on the appropriate safeguards with respect to the security and protection of the personal data;

(b) the data controller or data processor has given proof to the Data Commissioner of the appropriate safeguards with respect to the security and protection of personal data, and the appropriate safeguards including jurisdictions with commensurate data protection laws;

(c) the transfer is necessary—

(i) for the performance of a contract between the data subject and the data controller or data processor or implementation of precontractual measures taken at the data subject's request;

(ii) for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another person;

(iii) for any matter of public interest;

(iv) for the establishment, exercise or defence of a legal claim;

(v) in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or

(vi) for the purpose of compelling legitimate interests pursued by the data controller or data processor which are not overridden by the interests, rights and freedoms of the data subjects.

63. The general principles for transfers of personal data out of the country are espoused in Regulation 40 of the Data Protection (General) Regulations and require that a data controller or data processor who is a transferring entity shall before transferring personal data out of Kenya to ascertain that the transfer is based on—

(a) appropriate data protection safeguards;

(b) an adequacy decision made by the Data Commissioner;

(c) transfer as a necessity; or

(d) consent of the data subject.

64. Where the transfer is based on the consent of the data subject, Regulation 46 of the Data Protection (General) Regulations provides that a transfer or a set of transfers of personal data to another country shall take place only on the condition that the data subject—

(a) has explicitly consented to the proposed transfer; and

(b) has been informed of the possible risks of such transfers.

65. Explicit consent should be given after a complete, forthright, and clear disclosure as to the type of data collected, the purpose of collection, its security, and why the consent is important. Once the data subject has read and appreciated the risks of transfer of sensitive personal data, they need to do more than just tick a box. The data subject must give an express statement of consent.

66. TFH and Worldcoin have not demonstrated that they fulfilled the conditions for explicit consent, that is, they either obtained express statements of consent such as written statements, or that data subjects filled an electronic form, sent an email, uploaded a signed consent form, appended a digital signature on the form, gave an oral statement of consent or conducted a two-stage verification.

67. Moreover, as hereinbefore stated, the consent relied upon by TFH and Worldcoin was tainted by the fact that the orb operators assisted users during the process of registration and verification.

68. Additionally, Section 49 (1) of the Act provides that the processing of sensitive personal data out of Kenya shall only be effected upon obtaining consent of a data subject **and** on obtaining confirmation of appropriate safeguards.

69. It is not in doubt that TFH and Worldcoin were, as part of the Worldcoin Project, transferring sensitive personal data out of Kenya.

70. This Office finds that the transfer of Kenyan data subject's sensitive personal data out of Kenya was unlawful as the consent was invalid. Additionally, TFH and Worldcoin did not obtain confirmation of appropriate safeguards from this Office, contrary to Section 49(1) of the Act, for purposes of the sensitive personal data being transferred out of Kenya.

iv. Whether Worldcoin conducted a Data Protection Impact Assessment on the processing activities for which they were the data controller as required under Section 31 of the Act as read with Regulations 49, 50 & 51 of the Data Protection (General) Regulations, 2021.

71. Section 31 (1) of the Act provides that where a processing operation is likely to result in high risk to the rights and freedoms of a data subject, by virtue of its nature, scope, context and purposes, a data controller or data processor shall, prior to the processing, carry out a data protection impact assessment.
72. By dint of Section 31(5) of the Act, The DPIA report shall be submitted sixty days prior to the processing of data.
73. By virtue of the nature of the processing activities under the Worldcoin project, a DPIA ought to be conducted and submitted to this Office 60 (sixty) days prior to processing. Indeed, TFH submitted a DPIA to this Office on or about 17th June, 2022 for the processing operations for which they were the data controllers.
74. Vide their letters dated 11th August, 2023, TFH informed this Office that Worldcoin Foundation assumed controller responsibility for the Worldcoin project and related data processing activities when Worldcoin launched on 24th July, 2023. Worldcoin Foundation now independently determines the purposes and means of the processing activities carried out in relation to World ID.
75. The purpose of a DPIA is to demonstrate the implementation of the data protection principles to ensure data subjects retain control over their personal data. By dint of Section 25 of the Act, it is the data controller's obligation to process personal data in accordance with the principles of data protection envisaged therein.
76. This is especially so, in appreciation of the background of the duty of a data controller to implement appropriate technical and organizational measures which are designed to implement the data protection principles in an effective manner; and to integrate necessary safeguards for that purpose into the processing.
77. Worldcoin Foundation was therefore enjoined by Section 31 of the Act to either submit a DPIA and/or demonstrate to this Office that the DPIA submitted by TFH addressed a set of similar processing operations that presented similar high risk and that the technical and organizational measures implemented by Worldcoin were similarly designed to effectively implement the data protection principles.

78. In taking over the controller responsibilities of the Worldcoin Project, including in determining the purposes and means of the processing activities, without conducting a DPIA, Worldcoin Foundation, this Office finds that Worldcoin Foundation acted in violation of Section 31 of the Act.

F. FINAL DETERMINATION

79. In consideration of all the facts of the complaint and evidence tendered, the Data Commissioner makes the following final determination: -

- i. Tools for Humanity Corporation and Tools for Humanity GmbH are hereby found liable for breach of the Data Protection Act, 2019 and the attendant Regulations.
- ii. An Enforcement Notice to issue as against Tools for Humanity Corporation, Tools for Humanity GmbH and Worldcoin Foundation for the breach espoused in (i) above.
- iii. Parties have the right to appeal this Determination.

DATED at **NAIROBI** this 6th day of September 2023.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**



PRELIMINARY INVESTIGATION REPORT ODPC/CONF/1/6/2 VOL 1 (64)

Dated 1st September 2023

MULTIAGENCY INVESTIGATION REPORT ON THE OPERATIONS OF WORLDCOIN IN KENYA

1.0 INTRODUCTION

The attention of the public was drawn to a company that was collecting Iris data of Kenyans in various locations, with a promise of rewarding them with cryptocurrency that can be converted to legal tender.

Pursuant to the powers of the Office of the Data Protection Commissioner (the ODPC), the ODPC in collaboration with other government agencies initiated an investigation into the operations of the entity known as Worldcoin.

2.0 ISSUES FOR CONSIDERATION

This investigation sought to determine:

- (i) Whether the company was legally operating in Kenya and how it was registered.
- (ii) The nature of the data that the company was collecting, where the data was being stored and how it was being processed.
- (iii) The security of the data that was being collected.
- (iv) The number of Kenyans whose data has been collected.
- (v) The purpose of collecting the data.
- (vi) Whether the consent to collect sensitive personal data was sufficient.

3.0 THE TASKFORCE'S JURISDICTION

In carrying out its investigations the Multiagency team derives its mandate from Article 10 (1), Article 238 and Article 31 (c) and (d) of the Constitution of Kenya, Section 8(1) (a) (f) (k), Section 9 (1) (a) (c) (d) (e) (f) (g) (h) and Section 56 and 59 of the Data Protection Act, 2019, Regulation 4 (1), 13(1)(2)(3) and 14 (1) of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

4.0 BACKGROUND

Tools For Humanity (TFH) was established in 2019 with an aim of developing global digital ID. The company has developed three consumer facing products as part of the project. These include;

- (i) Worldcoin token (WLD) – blockchain & cryptocurrency.
- (ii) WorldApp – a mobile application product of TFH.
- (iii) WorldID – the unique global user identifier.

WorldID and Worldcoin are a product of Worldcoin Foundation whereas WorldApp has been developed by TFH with the Intellectual Property belonging to Worldcoin Foundation. Worldcoin Foundation is the sole shareholder of Worldcoin Assets Limited.

A User is issued a World ID which is verified by Orbs. The Orbs are operated by TFH.

The company carried out the first Beta test in Africa which aimed at learning and refining its three products named above.

TFH has two business entities;

- (i) TFH Corporation registered in the US, and
- (ii) TFH GmbH registered in Germany.

Each entity is registered as a Data Controller with ODPC.

The company has been operating in Kenya since May 2021.

5.0 SUMMARY OF EVENTS

The Multiagency team received various documents from the company. Upon analysing the documents and recording statements from officials of TFH in the presence of their legal counsel Bowmans – Coulson Harney Advocates LLP, the following were established;

1. On or about 21st May 2021, TFH began collecting and processing personal data for purposes of developing a machine learning algorithm to establish a “Proof of Personhood” protocol. The aim was to develop an algorithm that can differentiate between a real human and fake (i.e. non-human) irises as well as differentiate one real human iris from those of people who have already signed up to the protocol. *(See project definition in Data Protection Impact Assessment (DPIA) submitted by TFH to ODPC marked as annexure A1)*
2. On 19th April, 2022, the ODPC wrote to the CEO, Worldcoin informing them of the fact the ODPC was aware that they were collecting sensitive personal data from persons resident in Kenya and transferring the same out of Kenya. The ODPC further requested for information on the lawfulness of the activities in Kenya. *(see letter referenced ODPC/DPC/11/1/3 marked as annexure A2)*
3. On 21st April 2022, the ODPC received a letter from Bowmans Coulson Harney Advocates LLP, indicating that they have been retained to act for TFH, and requesting for an extension of time to submit the requested information. *(see letter referenced ODPC/DPC/11/1/3 marked as annexure A3)*
4. On 17th June 2022, TFH submitted a Data Protection Impact Assessment (DPIA) in relation to the Worldcoin project, Kenya rollout (Phase 1- Machine Learning Training, and Phase 1.5 – New opt-in process). *(See Data Protection Impact Assessment (DPIA) submitted by TFH to ODPC marked as Annexure 1 and a forwarding letter referenced AI/6217798 marked as annexure A4)*
5. On 23rd June 2022, the ODPC sought preliminary clarification on the contents of the DPIA submitted by TFH. *(see letter referenced Dated 23rd June 2022. Marked as annexure 5A)*
6. On 15th July 2022, Worldcoin responded to the letter dated 23rd June 2022 giving more clarifications on the questions raised on the DPIA. *(see letter referenced AI/6217798 marked as annexure A6)*
7. TFH GmbH applied for registration as data controllers and paid for the same on 24th August 2022. *(see invoice application number PINV-590 marked as annexure A7)*

8. TFH Corporation applied for registration as data controllers and paid for the same on 29th September 2022.

(See invoice application number; PINV-1295 marked as annexure A8)

9. The ODPC issued certificates of registration as data controllers to TFH GmbH and TFH Corporation on 15th September 2022 and 18th April 2023 respectively.

(see certificates serial numbers 00379 and 01945 respectively, marked as annexure 9)

	Company Name	Jurisdiction	Certificate Date
1.	TFH Corporation	USA	18 th April 2023
2.	TFH GmbH	Germany	15 th September 2022

10. TFH submitted a Schedule of Processing Activities (as at 16 June 2023) which highlighted the legal basis for collecting biometric data from users.

(see schedule marked as annexure A11)

11. On 30th May 2023, the ODPC raised concerns on the processing of sensitive personal data by TFH and directed TFH to cease the processing of personal data.

(see letter ref ODPC/11/11/8 marked as annexure A7)

12. TFH responded by a letter dated 16th June, 2023 providing clarification on the concerns raised by the ODPC and confirmed that they suspended collection of facial images and iris images from Kenyans for 14 days. TFH indicated that if they did not receive a response to their letter by close of business Friday, 23rd June, 2023, they will assume that they have clarified and addressed the ODPC's concerns with their processing activities.

(see letter dated 16th June, 2023 marked as annexure A12)

13. The Worldcoin Token WLD (ECR-20) on Ethereum Mainnet was launched on July 24, 2023. On 25th July 2023, the Worldcoin Foundation applied for registration as a data controller. *(See TFH Letter referenced AI/6217798 dated 11th August 2023 (page 7 of 13) marked as annexure A18 and annexure A38)*

14. On 28th July 2023 the ODPC issued a cautionary statement to the public to ensure they receive proper information before disclosing any personal or sensitive data.

(see statement marked as annexure A13)

15. On 2nd August, 2023 the ODPC reiterated the contents of the letter dated 30th May 2023, and directed as follows;

- Immediate cessation of collecting personal data
- Safe restriction of further processing of the collected data, requiring TFH to securely store all collected data and prohibited processing of this data.

(See letter referenced ODPC/11/11/8 marked as annexure A14)

16. On 2nd August 2023, the Cabinet Secretary Ministry of Interior suspended any operation relating to Worldcoin project due concerns over the secure storage of data that includes scans of a user's iris; that offering crypto in exchange for data "borders on inducement"; inadequate information on cybersecurity safeguards; and placing large amounts of private data in the hands of a private business.

17. On 2nd August 2023, ODPC and Communications Authority of Kenya issued a joint statement that they have undertaken preliminary review and there are legitimate regulatory concerns among them obtaining consumer consent in return for a monetary award bordered on inducement.

(See statement marked as annexure A15)

18. A Multiagency team was established on 2nd August 2023 to further conduct investigations on the operations of the Worldcoin project. It includes members from;

- i. Office of the Data Protection Commission (ODPC),
- ii. Central Bank of Kenya (CBK)
- iii. Communications Authority (CA),
- iv. National Computer & Cybercrime Coordination Committee (NC4),
- v. Ministry of Information, Communications & Digital Economy, and
- vi. Academia (MMU).

(see letters and email marked as annexure A16),

19. On 9th August 2023, the Lead Investigator made a Miscellaneous Application to the High Court of Kenya seeking preservation orders for the expeditious preservation of Kenyans personal data including traffic data that TFH was handling.

(see Miscellaneous Application No. E315 of 2023 marked as annexure A35)

20. The Multiagency team conducted background research on the operations of TFH and issued summons to the representatives who appeared before the taskforce on 11th August 2023.

(see letters and email marked as annexure A17)

21. TFH responded to the summons to Enter Appearance served on their counsel Bowmans Coulson Harney Advocates LLP giving an overview of Worldcoin, chronology of their engagements with ODPC in Kenya and information on documents requested by the Multiagency team.

(See TFH Letter referenced AI/6217798 dated 11th August 2023 (page 7 of 13) marked as annexure A18)

22. On 11th August, The Multiagency team met with TFH representatives and their Counsel via remote video conference and in-person (hybrid meeting). Herein, questions were put to TFH where they gave their responses in a statement that was taken by the TFH Chief Legal Officer Thomas J. G. Scott under affirmation of their Counsel Bowmans Coulson Harney Advocates LLP.

(See statement by Thomas J. G. Scott dated 11th August marked as annexure A19)

23. On 14th August 2023, the Multiagency team wrote to the following seeking assistance in the Worldcoin Investigations;

- i. Cabinet Secretary – Ministry of Foreign & Diaspora Affairs through the Cabinet Secretary – Ministry of Information, Communications & Digital Economy and Principal Secretary, State Department for ICT and the Digital Economy *(See letter referenced ODPC/CONF/1/5 (332) dated 14th August marked as annexure A24)*
- ii. Principal Secretary, State Department for ICT and the Digital Economy *(See letter referenced ODPC/CONF/1/7/2 VOL1(20) dated 14th August marked as annexure A21)*
- iii. Director General, National Intelligence Service *(See letter referenced ODPC/CONF/1/7/2 VOL1(20) dated 14th August marked as annexure A22)*
- iv. Mr. John Walubengo, MSc, CDPSE, CISA ICT Lecturer/Consultant - Multimedia University of Kenya (MMU). A specialist and industry player in Artificial Intelligence and Blockchain *(See letter referenced ODPC/CONF/1/7/2 VOL1(21) dated 14th August marked as annexure A23)*

24. On the same date of 14th August 2023, the Multiagency team summoned representatives of Sense Marketing Limited and EXP Kenya Limited to come and shed light on their involvement on the Operations of Worldcoin in Kenya. *(See summons dated 14th August marked as annexure A25a-b)*

25. On 15th August 2023, the representatives from Sense Marketing Limited and EXP Kenya Limited appeared before the Multiagency team and recorded statements indicating their role in the Operations of Worldcoin in Kenya. *(See statements dated 15th August marked as annexure A26 & A27).*
26. From the Statement of Kelvin Olende, the Managing Director / CEO of Sense Marketing, TFH would pay his company in Crypto dollars using the Worldcoin Registration Dashboard for Orb Operators. *(See statements dated 15th August marked as annexure A27).*
27. On 15th August 2023, the Multiagency team summoned Wangechi Mwangi and Rael Mwendu Kilonzo. The former had been named as the TFH Local Representative and that she had recruited the latter to assist her in conducting field and marketing operations of TFH and Worldcoin in Kenya. The summons were later forwarded to Waweru Gatonye & Company Advocates after Bowmans – Coulson Harney Advocates LLP indicated that they were not on record for the two through an email communication. Further summons were issued dated 21st August 2023. *(See summons and email communication marked as annexure A28a-g)*
28. On the same date of 15th August 2023, the ODPC received Preservation Orders in line with the Miscellaneous Application to the High Court of Kenya that was filed on 9th August 2023. *(See Court Orders marked as annexure A36)*
29. On 21st August 2023, the Multiagency team wrote to the Director of the Directorate of Criminal Investigations requesting the Directorate to make available to the Multiagency team the Orb (biometric verification device) for purposes of inspection and examination. This was for purposes of confirming whether the data collection and processing by Worldcoin was conducted in accordance with the law. *(See letter referenced ODPC/CONF/1/5/ Vol 1 (376) dated 21st August 2023 marked as annexure A29)*
30. On 23rd August 2023, through a memo, the Multiagency team sought clarification from the Compliance & Registration Directorate of the ODPC whether TFH complied with the cease & desist letter of the ODPC dated 30th May 2023 and whether there has been any subsequent meeting after the said letter. The team also wanted to understand the registration process that was used to register TFH. *(See memo dated 23rd August 2023 marked as annexure A30)*

31. On the same day 23rd August 2023, after analysing the documents provided by TFH and the statements from the parties involved, the ODPC gave TFH a notice to show cause why their certificate should not be varied or cancelled. This was due to inconsistencies on the exact location where Kenyans data were held. *(See letter referenced ODPC/CONF/1/5/ Vol 1 (389) dated 23rd August 2023 marked as annexure A34)*

32. On 25th August 2023, the Multiagency team interviewed and recorded the statements of the following;

- i. Wangechi Mwangi – an independent consultant of TFH Corp.
- ii. Rael Mwendé – Market Operations Specialist at TFH
- iii. Peter Mwangi Nyaga – a complainant in the Worldcoin case.

(See statements dated 25th August 2023 marked as annexure A31, A32 & A33)

The Multiagency team further visited the Directorate of Criminal Investigations (DCI) – Serious Crime Unit where a demonstration of the Orb (biometric verification device) was inspected and examined. This was done in the presence of TFH Local representatives, DCI Officers and the Multiagency team.

33. The World App application is available on the Google Play Store and any Kenyan can download the application and register. Though one cannot claim the free Worldcoin tokens since it requires one to first scan his / her iris, and there is currently no Orb device that is activated in Kenya. *(See test screenshots marked as annexure A37 and the statement of Wangechi Mwangi marked as annexure A32)*

6.0 FINDINGS

1. Whether the company was legally operating in Kenya and how it was registered.

- (i) TFH Corporation, TFH GmbH, Worldcoin Foundation and Worldcoin Assets Limited are not registered as foreign companies operating in Kenya.
- (ii) The companies are registered in the following jurisdictions;

	Company Name	Jurisdiction
1.	TFH Corporation	State of Delaware, USA
2.	TFH GmbH	Germany
3.	Worldcoin Foundation	Cayman Island
4.	Worldcoin Assets Limited	British Virgin Islands

This is as per the Registration documents provided and the Worldcoin Foundation Terms and Conditions.

- (iii) TFH Corporation and TFH GmbH are registered data controllers in Kenya. The Data Protection Act, 2019 does not require a company to be registered in Kenya for it to be registered as a data controller.
- (iv) The registration certificates were issued inline with Section 18 and 19 of the Data Protection Act after the two entities provided the particulars listed in Section 19(2) of the Act. This was also in line with the Regulations and Guidance Notes on Registration of Data Controllers and Data Processors.
- (v) Worldcoin Foundation applied for registration as a data controller on 25th July 2023 through registration application number INST-754780F826E. Worldcoin Assets Limited has never applied for registration as a data handler.
- (vi) TFH have partnered with the following local institutions;

	Agency Name	Engagement Type
1.	Sense Marketing	Orb Operator
2.	Interactive Marketing Communications Kenya Ltd	Orb Operator
3.	Platinum DE Plus Ltd	Orb Operator
4.	Deluxe Automobiles	Orb Operator
5.	Clema Creatives Solutions Limited	Orb Operator
6.	Kanuni Enterprise	Orb Operator
7.	Nilsa Holdings Ltd	Orb Operator
8.	Key Marketing	Orb Operator
9.	Chip-two Entreprises	Orb Operator
10.	Cryptohub Limited	Orb Operator
11.	Sleemark Consulting	Orb Operator

12.	EXP Limited	Experiential Marketing
13.	Hezron Gikang'a	Other
14.	Tell `Em Public Relations	Other
15.	American Chamber of Commerce - Kenya	Other
16.	Blockchain Association of Kenya	Other
17.	Strathmore University	Other
18.	Nairobi City County	MoU on Blockchain, not publicly announced

2. The nature of the data that the company was collecting, where the data was being stored, and how it was being processed.

(i) The nature of the data that was being collected and their storage is as shown in the table below in each of the three project phases;

	Phase	Data collected	Storage
1.	Phase 1 and 1.5	1. Iris images 2. Facial images 3. Inferred data (age range, skin color, and gender) 4. Name, phone number, email address, public wallet address 5. Geolocation	AWS cloud services based in the nearest regional servers based in Italy and South Africa (<i>from the DPIA</i>); European Union and United States (<i>from the biometric consent form</i>)
2.	Phase 2	1. Iris images 2. Facial images 3. Inferred data (age range, skin color, and gender) 4. Name, phone number, email address, public wallet address 5. Geolocation	AWS cloud server in Virginia, United States (<i>from their statement</i>) Either South Africa or EU (Germany)(<i>from the letter written to ODPC dated 11th August 2023 pg. 12</i>)

From the presentation at DCI, it was noted that the Orb device equally takes a User's temperature data to prove whether one is alive or dead.

(ii) There was no DPIA conducted on phase 2 of the project as required by the Data Protection Act, 2019 although they collected and processed the data.

(iii) Although the ODPC issued directives on 30th May 2023 to TFH to cease processing of personal data, the same was not adhered to. They however responded and indicated that if they would not receive a response from the

ODPC by 23rd June 2023, they would assume that they had addressed all the concerns on the processing activities.

3. The security of the data that was being collected.

- (i) The Orb has a camera with a high-power processor. User registers on the App and either opts in/opts out to data custody. The Orb takes a picture of their face and each iris. The images are stored in RAM and processed using local neural-networks. Images do not leave device. Images are processed locally to check for fraud – i.e., confirm it is actually a human being. Images of the iris are processed into an iris code and sent to the back-end to verify the uniqueness of the individual via TLS. Once there is a response, the person is either successfully registered or not. Iris image is only retained if user actively opts-in and requests TFH to retain such data.
- (ii) By default (i.e. If users do not opt into data custody), images only exist in RAM and are never stored (in nontechnical terms: “deleted”). If opted in to data custody, images are stored on an encrypted SSD and, using a second layer of one-way encryption for each individual image, sent to the back-end server. Subsequently, Data Custody images are deleted from the Orb.
- (iii) The back-end is on AWS (Amazon Web Services) and that is where the data is stored, with Amazon’s security controls and additional security controls imposed by TFH. A user can request the data to be deleted. AWS servers (backend) used are mainly in US East 1 – Virginia, US, which is ISO 27001 certified. Data custody images are stored on localized S3 buckets on AWS.
- (iv) Data subject can request for the data to be availed to them through the access request mechanism detailed in the Biometric Data Consent Form and Privacy Notice. TFH indicated that despite government request for a “list of all registered users in Kenya,” in this circumstance, it (TFH) has no obligation to grant such a broad government request for the personal data of so many Kenyans. They further indicated that this request would violate the privacy of such registered users, and would be a violation of TFH’s obligation to users under the company’s Privacy Notice. They upheld that such requests are treated on a case by case basis.

4. The number of Kenyans whose data has been collected.

According to the statement of the TFH Chief Legal Officer Thomas J. G. Scott, approximately 500,000 Kenyans had registered as users of WorldApp. On the supplementary documents requested by the Multiagency team, TFH indicated that the precise number of verified Kenyan users were 508,569. These numbers can only be verified by the Multiagency Team upon being given access to the Worldcoin Servers hosted by Amazon Web Services.

5. The purpose of collecting the data.

According to the statement of the TFH Chief Legal Officer Thomas J. G. Scott, TFH collects data to build a global network of individuals who would share in a particular cryptocurrency that could be used for universal basic income. A pre-condition emerged for the need for an identity layer (World ID) to preserve the integrity of the system to ensure an individual could not collect a global universal basic income more than once. From a review of the documents received from TFH by the Multiagency team, the purposes for collection of the data is as follows –

PHASE	PURPOSE OF COLLECTION
Phase 1 & 1.5	<p>Iris Images –</p> <ul style="list-style-type: none">• Fraud prevention – determining the uniqueness of a person• Internal audit on the validity and quality of the iris code• Internal record in case of dispute concerning the eligibility to claim tokens• Improving the performance of the cameras• Generating and improving the accuracy of the iris code• Development and enhancement of the algorithm• General corporate operations and due diligence. <p>Facial images –</p> <ul style="list-style-type: none">• Fraud prevention – i.e., a presentation attack on the orb; and• Detecting liveness of the data subject <p>Inferred data –</p> <ul style="list-style-type: none">• Quality assurance to strengthen the algorithm to prevent bias and discrimination against certain groups of data subjects.

	<ul style="list-style-type: none"> • Equitable distribution of the tokens in order to monitor whether some groups are signing up at greater rates (i.e. high rates among ages 16-25 or low rates among women) and adjust accordingly. • Anomalies in the orb's uniqueness check in order to monitor for anomalies (i.e. the orb suggests that two people are the same, but they are different skin colors) and possible fraud 		
Phase 2	User downloads WorldApp but does not Agree to Biometric Data Consent Form	User agrees to Biometric Data Consent Form, but Does Not Opt into Data Custody	User agrees to Biometric Data Consent Form and Opts into Data Custody
	<ul style="list-style-type: none"> • No Data Collected at Orb. Data used for – • Calculating Iris Codes; • Comparing one Iris Code against other Iris Codes; and • Security and fraud prevention. This includes: • Detecting whether a user is a living human being which includes checking whether the detected faces temperature matches the range of normal human body temperatures; - Detecting whether a signup 	<ul style="list-style-type: none"> • Data Collected at Orb. (irises, eyes and face) • Data temporarily stored and locally processed. • Data deleted after the orb creates the Iris Code based on iris image. • Image data is not retained nor transferred to TFH databases. • Iris Data is not transferred out of the orb 	<ul style="list-style-type: none"> • Data Collected at Orb. • Data Transmitted and stored on server in the European Union and the United States. • Data used for training algorithms. • Data used to automatically upgrade Iris Code in the event TFH update their algorithm that calculates Iris Codes; • Optimizing and improving the Iris Code and Derivatives calculation; • Labeling the collected data; • Using data to train and select labeling staff; • Developing and training algorithms to recognize, segment and differentiate among images of human irises and faces; • Test the algorithms against the human labeled results;

	<p>shows an unaltered, unobstructed, natural human iris which includes checking whether the face changes during the sign-up; and</p> <ul style="list-style-type: none"> • Detecting whether the person has already appeared in front of the Orb which includes processing locally stored Derivatives of face images. 		<ul style="list-style-type: none"> • Detecting and removing bias from our algorithms (such as training on algorithmic fairness by labeling the approximated gender, age range, and skin color); • Developing, training, and testing a system to detect whether a user is a human presenting a real human eye and whether a signup is valid; • Developing, training, and testing models that use artificial iris images for further training of algorithms; • Developing, training, and testing models that improve the Orb performance and user experience; and Training and evaluating personnel who work on these systems.
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6. Whether the consent to collect sensitive personal data was sufficient

In the statement of PMN, a complainant in this matter, he stated that the Worldcoin staff downloaded the Worldcoin App into his phone and accepted the Terms and Conditions without explaining to him the Terms and Conditions of opening an account and how his data that was collected by the Orb would be used.

From the statements of TFH Local Representatives Wangechi Mwangi and Rael Mwendu, it is not clear why TFH would grant free WLD Tokens (World coins) for Users who opted to provide their iris data. Rael stated that this was a contract under Terms & Conditions of the Project.

This therefore meant that the consent was not freely given by the users as required in the Conditions of consent under Section 32 of the Data Protection Act as read with Section 4 of the Data Protection (General) Regulations, 2021.

7.0 RECOMMENDATIONS

The multiagency taskforce makes the following recommendations;

1. The current suspension on operations of TFH in Kenya to continue for a period of 12 months from the date of this report or the Data Commissioner lifts the directives in the letters dated 2nd August 2023 or until the data controller proves to have met the following conditions, whichever is later;
 - i. Open their systems for a Systems Security Audit to ascertain the type of Kenyans data processed and the number of Kenyans involved. This is inline with Section 23 of the DPA. The Multiagency Team through the lead agency to prepare a Mutual Legal Assistance (MLA) request to US Department of Justice through the Kenya Attorney General to access the Kenyan data held in AWS Servers in Virginia USA should TFH not provide access.
 - ii. A high-level security audit of the code base (base code) be conducted by the Multiagency team.
 - iii. TFH to carry out a Data Protection Impact Assessment (DPIA) on Phase 2 of their project and submit to the ODPC for review.
 - iv. TFH to provide clarity on data storage.
 - v. TFH to register / incorporate a subsidiary company in Kenya with the Business Registration Services (BRS).
 - vi. TFH to establish a physical office for the subsidiary that can be held accountable of their actions / inactions in Kenya
 - vii. TFH to simplify their consent in line with the conditions of consent under Section 32 of the Data Protection Act as read with Section 4 of the Data Protection (General) Regulations, 2021
2. The Registration Certificates for TFH Corporation and TFH GmbH to be cancelled by ODPC in line with Section 22 of the Data Protection Act, 2019 as read with Regulation 16 of the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 which provides for cancellation and variation of a certificate of registration for the following reasons;

- i. Continuing to process Kenyans sensitive personal data despite a cease and desist directives from ODPC through a letter dated 30th May 2023.
- ii. Having not carried out a Data Protection Impact Assessment (DPIA) for the second phase contrary to the requirements of Section 31 of the Data Protection Act, 2019.
- iii. Inconsistencies on the exact location where Kenyans' data are stored.

The two organizations can reapply for their certificates of registration as data controllers / data processors after the period under suspension mentioned in recommendation 1 above.

3. Worldcoin project to apply to a registered Kenyan Regulatory Sandbox Program (preferably Capital Markets Authority sandbox) which allows for the project's products, solutions and services to be tested before roll out to the Kenyan market. Within this Sandbox Program, technical teams to be drawn from;
 - i. Communications Authority (CA),
 - ii. The National Computer and Cybercrimes Coordination Committee (NC4),
 - iii. Office of the Data Protection Commission (ODPC),
 - iv. Central Bank of Kenya (CBK), and
 - v. Artificial Intelligence (AI) & Blockchain Industry Players / Academia.
4. ODPC to follow up with Google LLC and Apple Inc to request pull down of the WorldApp from the Kenyan Region until recommendations number 1 to 3 are fully and satisfactorily met.
5. Legal reforms on the following aspects of the law;
 - i. Inclusion of Data localization requirements for large scale processing of sensitive personal data by Private and Public entities in the Data Protection Act, 2019.
 - ii. Amendment of the Data Protection Act, 2019 to remove the limit on the amount in Penalties and Administrative fines that the Data Commissioner may impose under the Act.
 - iii. The proposed private member bill on Capital Markets (Amendment) Bill 2023 that proposes to widen the 'securities' definition to capture cryptocurrencies and possibly crypto assets should be fast tracked.
 - iv. The Companies Act, 2015 to be amended to require companies conducting commercial activities of significant impact to national security and economy to have a physical office in Kenya.

6. The Office of the Attorney General in collaboration with Central Bank of Kenya and Capital Markets Authorities to develop and strengthen the legal and regulatory framework for Virtual Assets such as Cryptocurrencies. To this end, cryptocurrency systems should be designated as critical information infrastructure in accordance with section 9 of the Computer Misuse and Cybercrimes Act 2018.
7. The Lead Agency to forward the list of companies that dealt with TFH to Kenya Revenue Authority (KRA) for profiling of any future payments made through virtual assets such as cryptocurrency. This is in line with the Finance Act 2023 that introduces tax on the income derived from the transfer or exchange of digital assets (such as crypto currency transactions) at a rate of 3% effective 1st September 2023.

