



**BEING THE COMMUNIQUE FROM THE  
PERCHSTONE & GRAEYS 2025  
EMPLOYMENT & LABOUR LAW PRACTICE GROUP  
BREAKFAST MEETING HELD  
AT LAGOS ORIENTAL HOTEL, LAGOS  
ON JUNE 13, 2025**

**T H E M E :**

**EMPLOYMENT DATA & AI –  
NAVIGATING PRIVACY RIGHTS  
FOR THE WORKPLACE**

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## 1.0. Introduction

The Employment & Labour Practice Group Breakfast Meeting, themed: “*Employment Data & AI: Navigating Privacy Rights in the Workplace*” brought together stakeholders across the legal, judicial, labour and human resources sectors to discuss the intersection of AI, employment and data protection with a focus on practical solutions and policy recommendations. The rise of Artificial Intelligence (AI) and digital tools in the workplace is reshaping employment dynamics across Nigeria. From performance monitoring and biometric verification to communication tracking and automated decision making, AI is increasingly being deployed to manage human capital. While these technologies promise efficiency and innovation, they also raise concerns around employee privacy, surveillance, consent and data privacy.

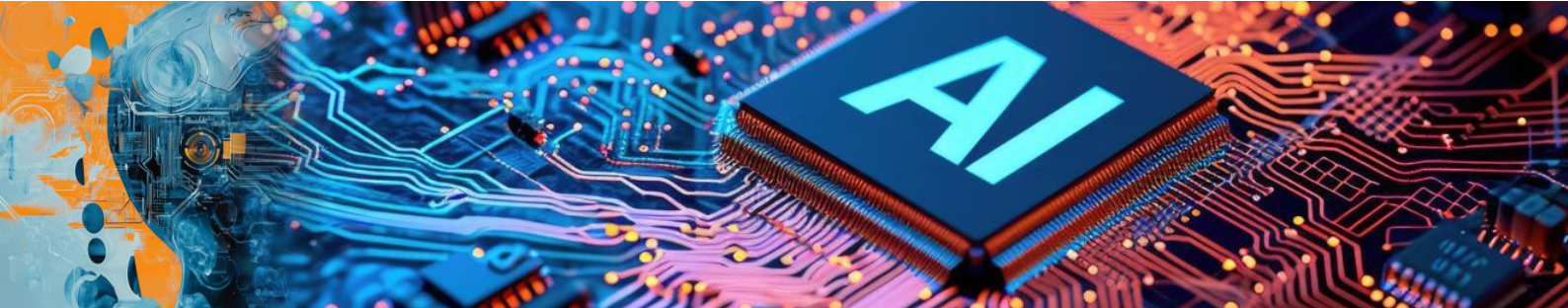
The recent enactment of the Nigeria Data Protection Act (NDPA) emphasizes the country’s commitment to safeguarding personal data, however its application in the employment context especially as it relates to AI-driven tools remains complex and evolving. The meeting featured keynote addresses and panel discussions that centred on the nature of employee data, its potential ethical and privacy risks, legal requirement of obtaining consent, role of the National Industrial Court of Nigeria in interpreting and enforcing employee data rights and the cybersecurity responsibilities of employers in safeguarding sensitive employment data

This report summarizes the highlights of the keynote address, key insights from the panel discussion and major takeaways from the deliberations with a view to informing future legal, institutional and organizational responses to data privacy challenges in the AI-driven workplace.

## 2.0. **OPENING REMARKS - MR. EGHOBAMIEN, SAN**

Mr. Eghobamien, SAN highlighted the transformative role of Artificial Intelligence in modern workplace environments, noting how organizations increasingly rely on diverse applications that generate substantial data repositories used for critical human resource functions including recruitment processes and employee performance evaluations. He illustrated the following areas as a critical for legal framework requirements.





- The need for comprehensive legislation governing who owns employee-generated data, how it can be legally utilized, and the boundaries of permissible data processing activities within employment relationships
- Urgent requirement for legal frameworks addressing the scope and limitations of predictive monitoring systems, establishing clear parameters to prevent institutional overreach while ensuring appropriate regulatory oversight mechanisms are in place
- Development of sophisticated legal protocols for conducting discovery processes in blended workspace models, optimizing the intersection between traditional legal procedures and modern distributed work arrangements to maximize effectiveness and compliance
- Creation of advanced legal structures addressing the complex intersection of creative work, intellectual property ownership rights and the emerging influence of Artificial Intelligence technologies requiring sophisticated regulatory approaches that account for AI's role in content creation, decision-making processes and the evolving nature of workplace innovation and ownership paradigms.

### 3.0. KEYNOTE ADDRESS – HONOURABLE JUSTICE J.D. PETERS

Hon. Justice Peters (Presiding Judge, National Industrial Court of Nigeria, Ibadan Judicial Division) in his keynote address highlighted the following:

- Transformation that artificial intelligence (AI) has brought to modern workplaces. AI-powered systems are now used to track employee performance, predict behaviours, assist in hiring decisions and monitor remote workers. While these technologies promise improved efficiency and insight, they also raise serious concerns about privacy, consent and fairness. He noted that trust between employers and employees must remain central even as workplaces become more digitized.
- The COVID-19 pandemic rapidly increased remote work adoption, prompting employers to deploy extensive digital surveillance tools such as keystroke loggers, GPS tracking, email monitoring and CCTV systems to oversee their workforce. While employers have valid concerns about maintaining productivity and safeguarding confidential business information, Justice Peters stressed that any workplace monitoring practices must comply with established legal frameworks and ethical standards. This shift has created a tension between legitimate business interests and employee privacy rights that requires careful balance within appropriate regulatory boundaries.
- Employee privacy faces significant erosion as surveillance extends beyond traditional workplace boundaries into homes and personal devices blurring the work-life divide, emphasizing that surveillance practices must be transparent, proportionate and



specifically designed to address legitimate business needs rather than constituting overreach.

- He stated that The Labour Act and Factories Act — main pieces of labour legislation — were not designed for today's data-driven workplace. The Nigeria Data Protection Act (NDPA) 2023 represents progress requiring employers (as data controllers) to process employee data lawfully, fairly and securely. However, the Act does not specifically address modern workplace concerns such as AI decision-making, employee surveillance or digital monitoring policies. Despite these gaps, the Nigerian Constitution provides a foundational guarantee of privacy with Section 37 protecting the privacy of citizens including their homes and communications. The courts have interpreted this broadly to include the workplace. In the case of *Nwali v. EBSIEC*, the Court of Appeal emphasized that the right to privacy encompasses a wide range of personal and professional aspects of a citizen's life.

He raised the following issues for further reflection;

- Consent in employment relationships and whether the idea of freely given consent is often unrealistic as employees may feel compelled to agree to data collection out of fear of losing their jobs especially in economies with high unemployment.
- **Algorithmic decision-making** as AI systems are now being used for hiring or performance evaluation thus making it difficult for employees to understand or challenge decisions that affect them thus undermining due process and fairness.
- Notably, he stressed the importance of **proportionality** in surveillance where employers must ensure that any monitoring is necessary and minimally intrusive. For instance, tracking access to sensitive systems may be reasonable, but constant monitoring of breaks or personal messages crosses ethical lines.
- Fourth, there is the risk of **data bias and discrimination**. AI systems can replicate societal biases if trained on skewed historical data resulting in discriminatory outcomes in hiring or promotion.

Justice Peters offered practical recommendations viz;

- Development of clear data privacy policies by employers where it is communicated openly with employees especially about monitoring tools and their purposes.
- Limited surveillance for necessary business operations and workplace safety.
- Adoption of employee-friendly software by employers and involvement of workers in decisions regarding the implementation of monitoring systems.
- Training of Data Protection Officers to evaluate the labour-related impacts of AI and data processing.





- Broader institutional reforms where The Federal Ministry of Labour of Employment and the Nigeria Data Protection Commission collaborate to issue specific guidelines on workplace data practices.
- Labour unions and employers' associations to include digital rights in collective bargaining agreements.

Ultimately, he reiterated that technology must serve human dignity—not diminish it. While AI and data technologies offer significant benefits, they must be deployed responsibly. Employees are not just data points; they are individuals with rights that deserve protection. He concluded by quoting Dr. Kate Crawford, an AI ethics researcher:

***“When artificial intelligence enters the workplace, surveillance can feel seamless – but privacy must never become optional.”***

#### 4.0. PANEL DISCUSSION

The panel discussed the intersection of Employment Data, AI and privacy rights. The speakers explored the legal and ethical implication of the usage of employee data

##### 4.1. Honourable Justice J.D. Peters (Presiding Judge, National Industrial Court of Nigeria, Ibadan Judicial Division)

Justice Peters in this discourse addressed vital issues relating to the protection of employee data, vicarious liability of employers, judicial treatment of damages in labour disputes and the jurisdictional authority of the National Industrial Court of Nigeria (NICN).

#### • Consent Framework and Economic Coercion Dynamics

Justice Dele-Peters articulated a sophisticated analytical framework for evaluating employee data privacy consent, establishing critical interrogatories that examine the authenticity, voluntariness, timing, and purpose-specificity of consent mechanisms. His Lordship identified Nigeria's elevated unemployment rates as a structural factor that potentially compromises genuine consent, particularly among junior-level employees who operate within asymmetrical power dynamics and lack equivalent bargaining capacity. The Justice raised fundamental questions regarding data repurposing, questioning whether information collected for specified objectives could lawfully serve alternative purposes without additional consent, thereby establishing potential grounds for legal contestation and highlighting the importance of purpose limitation principles in employment data processing.

#### • Vicarious Liability Jurisprudence and Precedential Analysis

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Addressing employer accountability for employee-initiated data breaches, Justice Dele-Peters referenced the seminal UK Supreme Court decision in *WM Morrison Supermarkets PLC v. Various Claimants* (2020) which established restrictive parameters for vicarious liability by requiring close connection between wrongful acts and assigned duties, alongside demonstration that employee actions furthered employer business interests. His Lordship confirmed the absence of comparable precedents within the National Industrial Court of Nigeria's jurisprudence, noting that the centralized judicial portal maintains comprehensive records of NICN decisions, and no ruling has yet addressed employer liability for employee-led data breaches within Nigerian industrial relations law.

- **Judicial Remedies and Damages Assessment Philosophy**

Justice Peters categorically refuted allegations of judicial conservatism in damages awards, demonstrating progressive judicial approaches through his adjudication of an electrocution case involving electricians, where he awarded ₦350,000,000—a sum subsequently increased by appellate review. His Lordship observed the diminished role of civil society organizations and human rights groups in contemporary litigation, suggesting evolving dynamics in rights-based advocacy. He referenced international precedents, including Indian jurisprudence regarding CCTV installation in restrooms, emphasizing that employer-controlled environments must maintain minimum privacy standards, particularly in sensitive spaces, while acknowledging these perspectives as personal judicial philosophy.

- **Jurisdictional Authority and Institutional Mandate**

Addressing constitutional jurisdiction under *Section 254C* and the *Gongola v. State precedent*, Justice Peters affirmed the National Industrial Court's exclusive competence over employment-related matters, encompassing pre-employment rights, employment relationships and ancillary labour issues. His Lordship emphasized that NICN's jurisdiction derives from constitutional conferment and receives reinforcement through its mandate to implement international best practices, thereby establishing comprehensive authority that precludes jurisdictional encroachment by other courts and ensures specialized expertise in employment law adjudication.

#### 4.2. **Mallam Ahmed Ladan Gobir (President and Chairman Governing Council, Chartered Institute of Personnel Management Nigeria)**

Mallam Gobir emphasized the increasing reliance on data and AI technologies in the post-pandemic workplace and the urgent need for ethical safeguards;





- COVID-19 and remote work transitions have accelerated AI adoption across workplace systems, creating unprecedented employee data collection volumes that require regulatory attention.
- AI recruitment, performance evaluation, and termination tools risk perpetuating systemic bias against protected characteristics including race, gender, age and disability status without proper oversight mechanisms.
- Recommend implementation of routine statistical testing across diverse employee demographics and establishing employee feedback mechanisms to assess real-world AI impact on workforce wellbeing.
- Condemned workplace surveillance in private spaces like restrooms as gross violations of employee trust and dignity regardless of technological capabilities or justifications
- Emphasized that employee-employer relationships must maintain fundamental human and ethical foundations despite advancing AI capabilities
- Highlighted critical need to modernize Nigeria's 20-year-old Labour Act expressing frustration with National Legal Advisory Council inactivity in addressing digital workplace realities
- Cited a U.S. hospital case where robotic nurse replacements reduced patient recovery rates demonstrating irreplaceable value of human empathy and interpersonal connection in workplace environments

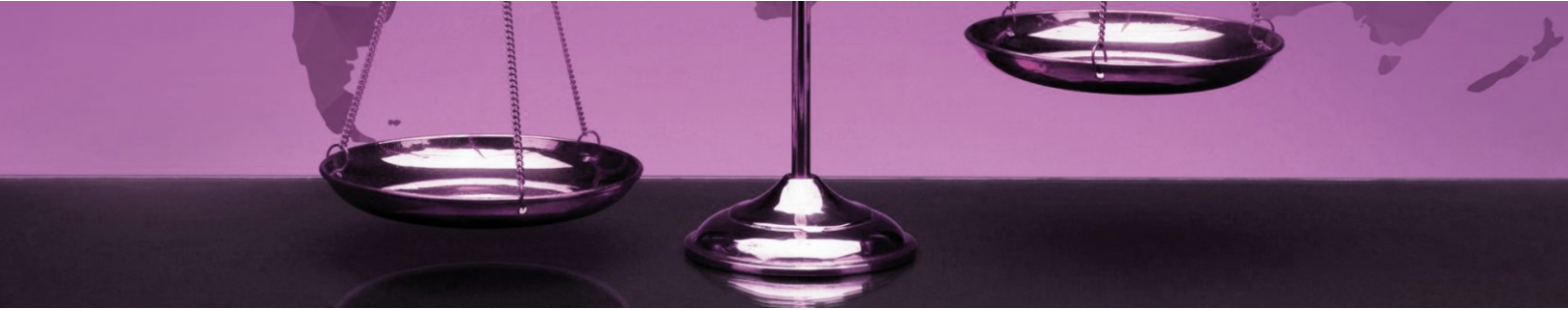
Mallam Gobir closed with a widely quoted address delivered at a prior HR Leaders' Conference in Mumbai:

***“As workplace technology evolves, finding the ethical balance between data-driven insights and employee privacy rights is not merely a compliance exercise. It is a strategic imperative... The future workplace requires a shift from viewing privacy as a limitation to recognizing it as the essential foundation for ethical AI deployment and responsible data stewardship.”***

#### **4.3. Dr. Aderonke Adegbite (Associate Professor at Law, Lead City University, Ibadan)**

Dr. Aderonke emphasized that while engaging with international labour and human rights standards offers valuable guidance, the nation must prioritize meaningful domestication over wholesale legal transplantation. An effective legal reform requires careful adaptation of global instruments to reflect Nigeria's national values, cultural contexts, historical realities and current developmental stage ensuring that adopted laws serve local needs rather than merely satisfying international compliance expectations.

- Emphasized that legal transplantation, when done without contextual adaptation, risks ignoring socio-economic realities, legal pluralism and indigenous dispute



resolution traditions. This is especially evident in labour and human rights law where community, family and workplace relationships are deeply cultural.

- Reiterated the need to pay more attention to international legal frameworks that are adaptable across different cultural and legal contexts. This implies preferring instruments that account for regional diversity, as opposed to technocratic frameworks dominant in EU jurisprudence.
- She stressed that the International Labour Organization (ILO) has emerged as a more culturally sensitive source of International Labour Standards as its conventions and soft law instruments (such as recommendations, memoranda of understanding, and resolutions) offer flexible and progressive guidance that align more closely with the realities of the Global South.

Dr. Adegbite concluded her remarks by highlighting the imperative of building Nigeria's institutional capacity to engage meaningfully with global standards, particularly in the domains of employment law, artificial intelligence and human rights. Nigeria's integration of international standards should be deliberate and rooted in its unique legal heritage and socio-economic realities—not merely a response to external pressures. With targeted reform and strategic capacity development, Nigeria can align with global norms while preserving its sovereignty and promoting inclusive development.

#### **4.4. Comrade Benson Upah (Head of Information and Public Affairs, Nigeria Labour Congress)**

Comrade Benson Upah expressed concern that trade unions particularly the Nigerian Labour Congress have not fully achieved their mandate in safeguarding workers' rights amid evolving workplace dynamics. He called attention to the widening gap between legislative protections and the lived experiences of workers in the digital age.

- Highlighted the asymmetry of power during recruitment where employees often accept employment terms without meaningful negotiation. He noted that this leaves workers exposed and without adequate contractual protection.
- He decried the increasing surveillance of employees warning that such practices have corrosive effects not just within the workplace but also on families and communities. The overreach of workplace monitoring undermines personal dignity and mental well-being.
- Furthermore, he noted the absence of robust legal safeguards for workers against the misuse of artificial intelligence and personal data. Employees who raise objections to unethical practices are frequently punished rather than protected.
- He emphasized the urgent need for enforceable legal protections for employees who report data breaches or unethical practices. In many instances, whistleblowers are dismissed rather than shielded. He called for the activation of a functional Labour Advisory Council to address these emerging concerns systematically.



- While acknowledging that the integration of AI into workplace systems is inevitable, Comrade Upah emphasized that its implementation must be rooted in strong ethical principles. He invoked Hilton's warning against the unreflective adoption of AI technologies, advocating instead for clear ethical benchmarks and protective standards to ensure that the dignity and rights of workers are not sacrificed in the pursuit of efficiency.


#### 4.5. Mr. Stanley Eluwa (Human Resources & Corporate Services Director, Promasidor Nigeria Limited)

Mr. Steve opened the discussion with the example of *Derek Mobley v. Workday*, where an African American male brought a discrimination suit following a series of unsuccessful job applications attributed to algorithmic bias. This case served as a springboard for the reflections offered by Mr. Eluwa who underscored the dual nature of AI as both a tool of efficiency and a source of potential systemic bias viz;

- He issued a critical warning against the dangers of automated decision-making in essential human resources functions, specifically highlighting the risks associated with allowing AI systems to independently manage timekeeping, performance evaluations, and succession planning processes.
- Emphasized that artificial intelligence fundamentally lacks the sophisticated capacity to contextualize complex human behaviour patterns, making professional validation an indispensable component of any AI-assisted HR decision-making framework to prevent unjust outcomes and ensure fair treatment of employee. Also, the applied "Garbage In, Garbage Out" principle, stressing that AI effectiveness depends entirely on training data quality and logical framework integrity.
- Identified the risks from indiscriminate cloud-based data storage, requiring clear employee communication regarding data collection purposes, retention periods and grievance mechanisms
- Furthermore, he proposed regular staff training and communication initiatives like "HR and You" newsletters to maintain data rights awareness and policy understanding.
- Conclusively he emphasized that AI should enhance rather than replace human judgment, with all employee welfare decisions meeting fairness, accuracy, and ethical justification standards.

#### 5.0. CALL TO ACTION: KEY RECOMMENDATIONS

- ##### 5.1
- Stakeholders, including the Nigerian Labour Congress, are urged to advocate for comprehensive updates to national labour laws. Reforms must reflect technological realities—particularly around AI, data privacy, and evolving workplace dynamics—and align with international best practices.

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- 5.2 Collective Bargaining Agreements should be given explicit legal recognition, ensuring that negotiated worker protections are binding and enforceable in all sectors, particularly in technology-driven workplaces.
- 5.3 Employers must ensure that the deployment of AI—especially in recruitment, performance assessment, and employee monitoring—strictly complies with the **Nigeria Data Protection Act (NDPA)** and the **2025 General Application and Implementation Directive (GAID)**. Automated decision-making without human oversight is prohibited unless specific lawful exceptions apply.
- 5.4 Given the power imbalance in employer-employee relationships, consent should not be relied upon as the legal basis for processing employee data. Instead, organizations should use **contractual necessity, legal obligation, or legitimate interest**, supported by a **Legitimate Interest Assessment** as required by law.
- 5.5 Employers are legally required to maintain transparent data processing policies, inform employees of their rights (including data access, correction, and deletion), and conduct **routine privacy audits**. Data collected for recruitment or other temporary purposes must be deleted or de-identified once no longer needed.
- 5.6 Organizations must apply enhanced protective measures when handling data belonging to vulnerable individuals, in accordance with the **NDPC Vulnerability Index and Guide**.
- 5.7 Regulators and civil society must take a firm stance against rogue employers and untrained HR personnel who exploit data protection gaps. Enforcement mechanisms must be strengthened, with penalties for breaches of privacy and misuse of employee data.
- 5.8 The judiciary must embrace a progressive, rights-based approach in interpreting labour and data protection laws. Judges, lawyers, and policymakers should receive targeted training in AI, digital rights, and comparative law.
- 5.9 Employees and organizations are encouraged to make use of the NDPC's complaint resolution system, which offers a faster and more accessible alternative to traditional litigation for addressing data protection breaches.

6.0. **CONCLUDING REMARKS - MS. IBUKUNOLUWA OWA, HEAD, REGULATIONS UNIT, NIGERIAN DATA PROTECTION COMMISSION.**

- Emphasized the legal imperatives governing the use of Artificial Intelligence (AI) in the workplace. She noted that the deployment of AI—particularly in recruitment, performance evaluation, and employee training—must fully comply with the **Nigeria Data Protection Act (NDPA)**. Specifically, **Sections 34 and 37** impose enforceable obligations relating to fairness, transparency, and the requirement for human oversight in automated decision-making processes.
- She further highlighted the **2025 General Application and Implementation Directive (GAID)**, which sets out clear regulatory expectations for emerging technologies, including AI. Employers are required to adopt transparent data





management practices that clearly communicate to employees how their data is collected, processed, and the rights available to them—particularly the right to deletion once the data is no longer needed.

- She clarified that consent is generally not a valid legal basis for processing employee data due to the inherent power imbalance in employer-employee relationships. Instead, she advised reliance on more appropriate bases such as contractual necessity, legal obligation, or legitimate interest, the latter of which must be supported by a Legitimate Interest Assessment.
- While **Section 45** of the NDPA permits certain derogations for reasons of public safety or national interest, Ewa stressed that such exceptions must be accompanied by strict safeguards. She also underscored the need for special consideration and protection of vulnerable data subjects, as outlined in the Commission’s Data Subject Vulnerability Index.
- Conclusively, she encouraged stakeholders to make use of the Commission’s complaint resolution mechanisms which offer a more accessible and expedited alternative to litigation in addressing data protection breaches.

## 7.0. CONCLUSION

The meeting concluded with a consensus that employee rights and organizational interests are fundamentally interconnected and mutually dependent. As Human Resource professionals, the imperative lies in establishing a strategic equilibrium between these competing priorities, with particular emphasis on championing comprehensive employee privacy protections, ensuring informed consent protocols, and implementing robust data security frameworks that safeguard sensitive personnel information while maintaining operational effectiveness.



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