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TEMPLARS ThoughtLab

Legal Boundaries of AI-Driven Recruitment in Nigeria

Introduction

Several organisations around the globe are starting to integrate artificial intelligence (AI) in the recruitment of new hires. Some even totally rely on AI to screen résumés, assess candidates' skills, and conduct video interviews. For example, IBM uses AI for résumé parsing and skill-matching, while Google applies predictive analytics to forecast hiring success.[1] Also, multinational corporations such as Unilever, Deloitte, Shell, and BP now use AI to analyse facial expressions, tone of voice, and word choice during video interviews for new hires.[2]

In Nigeria, AI adoption in recruitment is still at an early stage but is quickly gaining traction, especially among tech-focused companies such as Jobberman which leverages AI for candidate-job matching,[3] and Andela which uses AI-powered coding assessments to evaluate software developers.[4] Likewise, beyond tech startups, other Nigerian corporations are starting to integrate AI in their recruitment processes. Flutterwave, for instance, uses AI-enhanced online assessments to evaluate candidates' aptitude and problem-solving skills during early screening stages.[5] However, despite the wide usage of AI tools in hiring, there are legal and ethical concerns around its adoption ranging from transparency issues, personal data breach concerns, fallibility of automated

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[1] IBM, 'HR and Talent in the Era of AI' *IBM* (26 July 2023). https://www.ibm.com/think/topics/ai-for-hr-talent? accessed 10 July 2025.
[2] Robert Booth, 'Unilever Saves on Recruiters by using AI to assess Job interviews' *The Guardian* (25 October 2019). https://www.theguardian.com/technology/2019/oct/25/unilever-saves-on-recruiters-by-using-ai-to-assess-job-interviews? accessed 10 July 2025
[3] Jobberman, "Hiring Algorithm,'' (13 July 2022) < https://www.jobberman.com/discover/hiring-algorithms > Accessed 10 July 2025.
[4] Andela, "Adaptive Hiring Lets You Put Every Project on the Front Burner," < https://www.andela.com/ > Accessed 10 July 2025.
[5] Nairaland Forum – Flutterwave Internship Experience: https://www.nairaland.com/5329676/flutterwave-internship accessed on 5 July 2025.

decision-making and risk of algorithmic bias [6]. Based on this backdrop, this article aims to discuss AI-driven practices in hiring with specific regards to *automated processing of personal data or automated decision-making* by organisations in screening of new hires. It examines the extent to which organisations can engage in e-recruitment or use AI tools for screening of new hires in Nigeria and provides compliance recommendations for organisations that make use of AI in their recruitment processes.

Risks of AI-Driven Recruitment
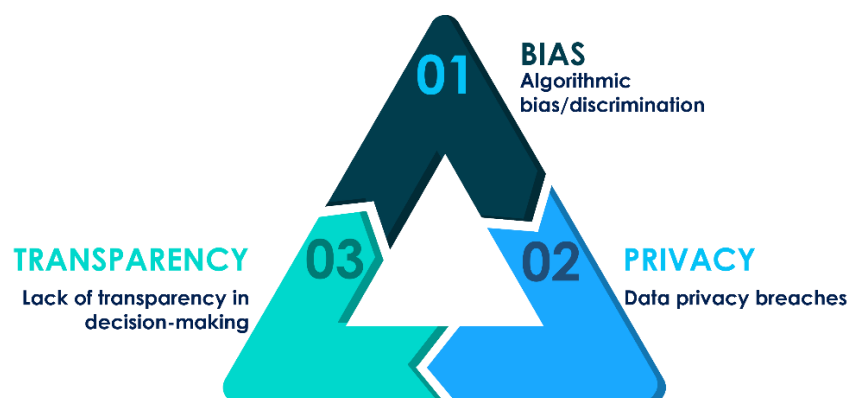
Does Nigerian Law Allow Use of AI Driven Tools for Screening of New Hires? – And To What Extent?

While there is no particular statute that primarily governs use of AI tools in Nigeria, the Nigeria Data Protection Act (**NDPA**) and the NDPA-General Application and Implementation Directive (**NDPA-GAID**)[7] which regulate the use of personal data in Nigeria contain provisions that protect individuals from being subjected to decisions that are solely made through automated means such as AI tools and which can have legal or significant consequences on the individuals.

Specifically, Section 37(1) of the NDPA provides that: "*A data subject[8] shall have the right not to be subject to a decision based solely on automated processing of personal data, including profiling, which produces legal or similar significant effects concerning the data subject*." This section of the NDPA is patterned after Article 22(1) of the EU's General Data Protection Regulation[9] (**GDPR**) which is similarly worded. Article 22 (1) equally states that: "*A data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her, or similarly significantly affects him or her.*"

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[6] Recently, companies like iTutorGroup and Workday have faced legal challenges over allegations that their AI tools discriminated based on age and race, respectively. See Daniel Wiessner, "Workday must Face Novel Bias Lawsuit over AI Screening Software," (16 July 22024) < Workday was accused of embedding biased algorithms that disadvantaged certain racial groups > accessed 10 July 2025.

[7] Nigerian Data Protection Act – General Application and Implementation Directive, 2025 (NDPA-GAID) issued by the Nigerian Data Protection on 20 March 2025.

[8] Section 65 NDPA, a "data subject" is any individual to whom personal data relates.

[9] This is a European Union law focused on data privacy and protection. It set guidelines for how organisations collect, process, and store personal data of individuals within the EU. It was passed into law on 25 May 2018.

The implication of this legislation is that organisations which are typically bound by the NDPA, should avoid profiling or automated processing of personal data that can affect their data subjects[10]/individuals. As relates to recruitment which is the focus of this article, a text Commentary[11] which analyses the relevant provisions of the GDPR identifies 'employment' as an item that falls within the ambit of Article 22 of the GDPR.[12] In explaining the provisions of the Article, it is stated that '*solely automated processing*' as used in the Article, implies a process that excludes meaningful human access or intervention and '*Legal or Similarly Significant Effects*' means decisions that can "*affect a person's legal rights/duties or have a significant impact on their circumstances (e.g. employment, education, credit score, pricing)*".[13] In other words, data processing activities that do not involve human oversight (e.g., use of AI tools) are regarded as '*automated*' and '*legal or similarly significant effects*' referred to in the Article includes decisions that can affect an individual's well-being such as the decision to employ the individual in an organisation or not. Also, the EU Council's recommendation on the final implementation of rules concerning automated decision-making in the GDPR explains what 'significantly affecting the interests, rights and freedoms of individuals' means in the context of the Article by giving a few examples, viz: '*automatic refusal of an on-line credit application or e-recruiting practices without any human intervention*'[14].

The above interpretations and explanations of key terms in Article 22 of the GDPR, indubitably shows that the provisions of Section 37 of the NDPA, like Article 22 of the GDPR, applies to organisations that engage in e-recruitment or use AI tools for profiling[15] and/or screening of individuals for employment and that employment and e-recruitment clearly fall within the ambit of Article 22 of the GDPR and Section 37 of the NDPA which is modelled on the GDPR.

It is important to note that, as with every general rule of law, the provisions of Section 37 of the NDPA allows for some exceptions. One of such exceptions is contained in Section 37(2)(a) which permits automated processing of personal data where it is *necessary* for entering into or performing a contract between the data subject and a data controller.[16] Other exceptions are contained in Sections 37(2)(b) and 37(2)(c). The former permits automated processing of personal data/automated decision-making where it is authorized by a written law which establishes suitable measures to safeguard the interests of data subjects, while the later permits processing of personal data where there is explicit consent from the data subject.[17]

Under Section 37(2)(a) of the Nigerian Data Protection Act, an exception to the general prohibition on automated decision-making may apply where it is necessary for an organization to assess a data subject prior to entering into a legally binding contract. In the recruitment context, this permits the use of AI tools to automatically screen candidates against essential eligibility criteria such as qualifications or experience, provided the screening is strictly necessary to determine contractual eligibility.

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[10] Section 65 NDPA a "data subject" is any individual to whom personal data relates.
[11] Kuner, C., Docksey, C., & Bygrave, L. A. (Eds.). (2020). The EU General Data Protection Regulation: A Commentary. Oxford University Press
[12] Kuner, C., Docksey, C., & Bygrave, L. A. (Eds.). (2020). The EU General Data Protection Regulation: A Commentary. Oxford University Press
[13] Kuner, C., Docksey, C., & Bygrave, L. A. (Eds.). (2020). The EU General Data Protection Regulation: A Commentary. Oxford University Press
[14] See Recital 58 of the EU Council Report on the GDPR, 2015
[15] Article 4(4) of the GDPR defines **profiling** as "*any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements*".
[16] We are of the opinion that this exception does not apply to recruitment interviews or screening of new hires by organisations. This is because interviewing for a role in an organisation does not amount to an action that is legally necessary for the execution or performance of a contract. Also, it is commonplace under Nigerian law to interpret the sections of the NDPA within a broader framework that protects data subject rights, especially in an employment setting where power asymmetries are pronounced.
[17] This aligns with Article 18(f) of the GAID, which further mandates that consent must be freely given, specific, informed and unambiguous. Therefore, Generic or implied consent buried in job application portals would not satisfy this threshold. Data controllers must obtain clear and express permission, specifically referencing the automated nature of the decision-making process.

However, this exception does not extend to fully automated decisions regarding the hiring or rejection of candidates without human involvement. In other words, while AI may assist in preliminary assessments, major and final decisions that establish or deny employment must involve meaningful human oversight.

Additionally, the exception may apply where automated processing of personal data is required for the performance of an existing contract between the organization and the data subject. This ensures that AI tools used in recruitment are limited to functions that support, rather than replace, human judgment in forming or executing employment relationships.

The exception under Section 37(2)(b) of the Nigerian Data Protection Act is unlikely to apply in practice under the current legal framework. This is because there is presently no legislation in Nigeria that expressly authorizes organizations to unilaterally process personal data in ways that significantly affect data subjects. Unless future laws explicitly permit such processing, reliance on this exception remains limited.

In contrast, the exception under Section 37(2)(c) is more practical and commonly applicable. It allows organizations to process personal data based on the informed and freely given consent of the data subject. For AI-driven recruitment, this means that any automated processing of personal data—such as profiling or decision-making—must be preceded by clear, transparent communication and genuine consent from the candidate. Consent must not be coerced or implied, and data subjects should fully understand the nature and implications of the processing before agreeing.

Despite the exceptions outlined in Section 37(2) of the Nigerian Data Protection Act, Section 37(3) introduces a critical safeguard: even where automated processing is permitted, organizations (as data controllers) must uphold the rights of data subjects. Specifically, individuals must be given the opportunity to request human intervention, express their views, and challenge decisions made through automated means. In the context of AI-driven recruitment—including profiling and e-recruitment—this means that automated decisions should never be final or immune to review, especially when they have the potential to affect the legal relationship between an organization and a candidate. Human oversight remains essential to ensure fairness, transparency, and accountability in recruitment processes that rely on AI technologies.

Furthermore, the NDPA-GAID bolsters the NDPA by providing that a data controller[18] or a data processor[19] who deploys or intends to deploy Emerging Technologies such as Artificial Intelligence, Internet of Things and Blockchain for the purposes of processing personal data of individuals should take into consideration the provisions of the NDPA, public policy, the NDPA-GAID, and other regulatory instruments issued by the Nigeria Data Protection Commission to safeguard the privacy of data subjects.[20] The NDPA-GAID also mandates data controllers or data processors (both of which are often organisations) who deploy or intend to deploy Emerging Technologies, to set forth technical and organisational parameters for the processing of data and design their Emerging Technology tools in a manner that ensures compliance with the threshold of data processing permitted by law[21] e.g., complying with the obligation not to subject data subjects to profiling or decisions that are solely based on automated processes.

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[18] Section 65 NDPA: "**Data Controller**" means an individual, private entity, public Commission, agency or any other body who, alone or jointly with others, determines the purposes and means of processing of personal data.
[19] Section 65 NDPA: "**Data Processor**" means an individual, private entity, public authority, or any other body, who processes personal data on behalf of or at the direction of a data controller or another data processor.
[20] Article 43 (1) of the NDPA-GAID, 2025. Data subjects include persons that are screened/interviewed for employment by organisations
[21] Article 43 (2) of the NDPA-GAID, 2025

Tips for Organisations with AI-Driven Recruitment Models

To maintain ethical hiring practices, we recommend that organisations deploying AI-driven tools in recruitment or employee-screening should, at a minimum, consider implementing the measures set out hereunder. These baseline considerations are intended to guide responsible use and do not do away with the need for further refinement based on the specific context or evolving regulatory expectations:

1. **Mandatory Human Oversight:** Organisations should ensure that their AI-driven hiring systems incorporate human intervention/oversight, especially in making decisions that can have significant consequences to individuals such as recruitment decisions.

2. **Transparent Disclosures:** Organisations should inform applicants when AI tools are used in the recruitment process, provide clear explanations of the applicants' rights regarding the procedure[22], and how decisions are reached and their possible consequences.

3. **Impact Assessments:** Organisations should conduct Data Privacy Impact Assessments to evaluate risks to data subjects' that may arise from use of AI tools[23] before utilizing such tools in their recruitment processes.

4. **Enhanced Consent Mechanisms:** Consent should be explicitly obtained from data subjects and not assumed[24]. Individuals/data subjects should receive clear, accessible information about how their data is processed. Under the NDPA, every data subject has the right to be informed (in clear and accessible terms) about the purposes of processing his or her personal data, the duration of such processing, the logic involved in any *automated decision-making* (especially where profiling is involved), and the consequences of such processing.

Conclusion

AI-driven recruitment is generally permissible under Nigerian law. However, its legality is subject to strict compliance with the provisions of Nigerian data protection regulations particularly the NDPA and the NDPA-GAID. Organizations leveraging AI in screening or profiling new hires in Nigeria must comply with these laws which protect the rights of data subjects, ensure transparency, and guarantee access to human oversight in decision-making. Where there is non-compliance, the organisation involved may face regulatory sanction or civil liability.

If you require any further clarification, do not hesitate to contact us.

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[22] Section 34 of the NDPA
[23] Section 28 of the NDPA; Articles 28, 41 and 43(4) of the NDPA-GAID mandate data controllers and data processors to conduct a Data Privacy Impact Assessment (DPIA) and to put in place mechanisms for continuous monitoring and evaluation, while taking into account the assessment of disparate outcomes of data and where a determination has been made that the emerging technologies are safe for use
[24] Section 65 of the NDPA