

Artificial Intelligence Regulation in South Africa

In many industries in South Africa, there has been a massive drive towards incorporating artificial intelligence (AI) and machine learning (ML) into business and products to streamline operations, analyse user behaviour and determine or predict potential purchasing behaviour. However, as technology advances at a rapid pace, policymakers and laws have struggled to keep up.

This is according to Fatima Ameer-Mia, director in the technology, media and telecommunications practice at commercial law firm, Cliffe Dekker Hofmeyr, who points out that in 1942, the American writer Isaac Asimov set out "The Three Laws of Robotics" in his science-fiction story known as *I, Robot*.



Fatima Ameer-Mia, director in the technology, media and telecommunications practice at commercial law firm, Cliffe Dekker Hofmeyr

Ameer-Mia explains that Asimov's Three Laws of Robotics are:

1) A robot may not injure a human being or, through inaction, allow a human being to come to harm (the "First Law");

2) A robot must obey orders given to it by human beings except where such orders would conflict with the First Law (the

"Second Law"); and

3) A robot must protect its own existence as long as such protection does not conflict with the First or Second Law (the "Third Law").

Despite this fictional set of laws, the question remains as to whether there are actually any laws that regulate robots and, specifically, AI in South Africa.

Firstly, what is AI?

AI or artificial intelligence is essentially a computer or software system that uses algorithms to make it possible for machines to learn from experience, adjust to new inputs and perform or simulate human-like behaviour or tasks, explains Ameer-Mia.

How should AI be governed?

"This is an issue which policymakers around the world are currently facing and grappling with – how does one regulate AI without stunting its possibilities?" she says.

Ameer-Mia points out that "regulation" broadly refers to a rule or directive made and maintained by an authority which controls an activity or process.

"Yet there is no universally agreed definition or understanding of what AI is which makes it incredible difficult to regulate," she says.

"It is for this reason that the main issue, globally, is that policymakers do not understand AI and as such have been reluctant to regulate it. And in many instances as the saying goes, no regulation is better than bad regulation."

In the face of this conundrum, Ameer-Mia explains that the general approach is for countries to adopt national AI "strategies" - each of which focuses to a varying degree on research, talent development, education, ethics, standards, regulation and infrastructure to name a few.

At present, of the 23 countries that have formally adopted national AI strategies, she points out that there are only two African nations on that list, namely Kenya and Tunisia.

Are there any specific laws relating to AI in South Africa?

South Africa has not yet formalised any policy documents or entered bills to parliament for the regulation of AI.

"However, in April 2019, the President appointed members to the Presidential Commission on the Fourth Industrial Revolution ("4IR Commission"), which will assist the government in taking advantage of the opportunities presented by the digital industrial revolution," says Ameer-Mia.

Fatima Ameer-Mia, Director in the Technology, Media & Telecommunications practice.JPG

She goes on to say that the task of the 4IR Commission, which will be chaired by the President, is to identify relevant policies, strategies and action plans that will position South Africa as a competitive global player.

Ameer-Mia concludes that this suggests the government is committed to adopting strategies to equip South Africa for the Fourth Industrial Revolution.

"The recently appointed Communications Minister Stella Ndabeni-Abrahams welcomed the first 4IR Commission meeting on Saturday the 8th May 2019. Ndabeni-Abrahams said that the 4IR Commission has committed to produce the strategy document to guide South Africa's 4IR vision by March 2020. This will be preceded by a broad consultative process with

relevant stakeholders,” she says.

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