

Ghana

Lom Nuku Ahlijah, Integri Solicitors & Advocates, Accra – Ghana

1. What is the understanding or definition of AI in your jurisdiction?

Artificial Intelligence (AI) is still an evolving subject in Africa in general and in our jurisdiction in particular, and as such no statutory definition has been provided to describe activities that ought to fall within the scope of artificial intelligence. Generally, however, AI involves the use of computer systems to equip machines with human-like qualities such as visual perception, the ability to reason and speech recognition, among others, for the performance of tasks that would usually require human intelligence. The United Nations Educational, Scientific and Cultural Organisation's (Unesco) survey¹⁹⁴ on artificial intelligence needs in Africa defines AI as the combination of technologies that enable machines capable of imitating certain functionalities of human intelligence, including such features as perception, learning, reasoning, problem solving, language interaction, and even producing creative work.

The researchers surveyed several jurisdictions in Africa including Ghana and the findings indicate that there is little to no policy, legislative or regulatory position in any of the countries surveyed.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms etc), are there already actual AI tools or use cases in practice for legal services? If yes, are these AI tools different regarding: (1) independent law firms; (2) international law firms; and (3) in-house counsel; and what are these differences?

Most law firms in Ghana are independent law firms. Only a handful can be characterised as international law firms. There are also firms with international affiliations. There are no known AI tools that are in use in the legal services sector.

A few of the big law firms in Ghana make use of law firm management software systems that help with the management of case files, managing client details, billing and other accounting functions, among others. The use of such tools is, however, not widespread as most law firms still use manual systems to perform the aforementioned functions. In-house counsel in most legal departments of companies will typically not have access to any systems purposely for their legal work except where the specific company employs AI tools in the company's operations.

194 Unesco, *Artificial Intelligence Needs Assessment Survey in Africa* (2021).

3. What is the current or planned regulatory approach on AI in general?

There is no known legal or regulatory framework around AI in Ghana. However, there are some regulations that cover aspects of the scope of AI. In the banking sector, for instance, there is the use of AI tools in electronic money transactions. The regulatory framework governing such use is mainly for the particular industry, and not AI as a developing concern for the jurisdiction. However, there is no regulatory framework governing the use of AI in these sectors.

4. Which are the current or planned regulations on the general use of AI or machine learning systems?

There is no regulatory regime on the general use of AI in the jurisdiction. However, considering the pervasive nature of AI in almost every industry, there is bound to be the need to make rules and regulations governing the use of AI in the very near future to forestall situations where there is damage but no known remedy provided for such damages.

In the Unesco report, the government of Ghana indicated its clear interest in developing policy and regulatory framework for AI in Ghana. This is particularly important in Ghana given that in 2019 Google established its first AI office in Africa there. However, to date no concrete steps have been taken by the government or the legislature to regulate the AI space.

Data protection and privacy

AI technology largely thrives on and requires a lot of data. In Ghana, there is a constitutional right to the protection of a person's privacy.¹⁹⁵ A person's data cannot therefore be taken and used for any purpose without that person's consent. In this regard, the Ghanaian courts are inclined to protect a person's privacy and punish the use of data without express consent.¹⁹⁶ The development of AI technology will therefore thrive when there is a way to gather and use data without infringing on the right to people's privacy in Ghana.

Intellectual property law

The Copyright Act 2005 of Ghana (Act 690),¹⁹⁷ which is the main legislation that governs intellectual property in Ghana, recognises and protects computer

¹⁹⁵ Constitution of Ghana 1992, Art 18(1).

¹⁹⁶ *Raphael Cubagee v Michael Yeboah Asare, K Gyasi Company Ltd, Assembly of God Church* (2018) JELR 68856 (SC).

¹⁹⁷ Copyright Act 2005 (Act 690).

programs and software.¹⁹⁸ Computer programs and software are usually developed to work on the basis of AI technology. At the same time, the Act punishes any attempt to circumvent a technological protection measure applied by a holder of intellectual property right. Even though there are no express AI terms used in this piece of legislation, it makes way for AI to thrive while protecting its users thereof.

5. Is free data access an issue in relation with AI?

Companies that make use of AI tools will typically build a database of their client's personal details to aid with the personalisation of the service rendered to the client. The provisions contained in the Data Protection Act 2012 place some obligations on companies and people regarding the use of personal information gathered from clients. For instance, Section 18 of the Data Protection Act 2012 ('Act 843') provides: 'A person who processes personal data shall ensure that the personal data is processed, without infringing the privacy rights of the data subject in a lawful manner and in reasonable manner.'¹⁹⁹

In addition, Section 20 of Act 843 requires that, save for certain stated exceptions, the consent of every data subject is obtained before the processing of any personal data in respect of the data subject. The Act further provides that the data subject is allowed to object to the use of their personal data and where a data subject objects to the processing of personal data, the person who processes the personal data shall stop the processing of the personal data.²⁰⁰

What this means is that firms must comply with the provisions of the Data Protection Act in their gathering and use of clients' personal data in AI systems.

As stated, the effective development and use of AI systems in all aspects of the economy will depend on access to accurate personal data. The lack of access to accurate personal data of most of the Ghanaian population is one factor that is likely to negatively affect AI development and use. This is because the Ghanaian government does not have a working database that accurately captures personal biodata of the population. This deficiency is already impeding the efforts of the police and other security services in solving crimes.

However, in 2019, with the introduction of the National Identification Card,²⁰¹ popularly known as the Ghana card, the government commenced efforts to build a database to capture biodata. When registering for the card people give biometric, residential, educational and employment data, among others. Measures were put in place to ensure that most Ghanaians are registered on this database. All Ghanaians and non-Ghanaians who are at least 15 are required to register to be issued with a Ghana card. The card will eventually be required for use in all transactions.

198 *Ibid*, s 1.

199 Data Protection Act 2012 (Act 843) s 18.

200 *Ibid*, s 20(2) and (3).

201 National Identification Authority Act 2006 (Act 707) s 1 and 2; National Identity Register Act 2008 (Act 750) s 3.

The database built from the Ghana card registration can effectively be tapped into for use in AI systems. There is still a need, however, for the development of a legislative regime to regulate the use of information gathered from this and other databases in the use of AI systems.

6. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

There are no court decisions on the provision of legal services using AI, nor are there known decisions concerning other sectors that are directly applicable to the use of AI in the provision of legal services. The AI regime is not fully developed in Ghana and there is scant writing if any on the use of AI. Ghana is still very rooted in manual operations in the provision of legal services. It is mostly presumed that the profession is steeped in and preserved in antiquity. AI therefore has made few in-roads in the provision of the legal services.

A recent case in front of the Ghanaian Supreme Court, *Raphael Cubagee v Michael Yeboah Asare, K Gyasi Company Ltd, Assembly Of God Church*,²⁰² gives an indication of the position the court is likely to take if it is called upon to pronounce on the use of AI systems in the provision of legal services. The decision in the *Cubagee* case primarily reinforced an individual's constitutionally guaranteed right to privacy. The principle espoused in that case was essentially to discourage the use of a person's personal information or data of any form without first obtaining the person's consent. Consequently, any attempt to use personal information in AI systems for the provision of legal services will require the requisite consent to be obtained.

7. What is the current status – planned, discussed or implemented - of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

The legal profession in Ghana is regulated by the Legal Profession Act 1960 (Act 32) as well as the Legal Profession (Professional Conduct and Etiquette) Rules 2020. Act 32, which was passed in 1960, contains no provisions on the use of AI. Even though the Legal Profession Rules contain no provisions on the use of AI systems in the conduct of the legal profession, they contain provisions that reiterate the lawyer's duty of confidentiality to the client. Thus, notwithstanding the absence of express provisions on the use of AI systems in the legislation governing the legal profession, practitioners ought to be guided by the duty of confidentiality in the use of clients' data in AI systems.

²⁰² See n 3 above.

8. What is the role of the national bar organisations or other official professional institutions?

The Ghana Bar Association has made no input in the development and use of AI systems in the practice of the legal profession. It is, however, envisaged that the association will willingly join the discourse when discussions for the development of AI legislation commence.

The UN Global Pulse, the Ministry of Communications for Ghana and the Data Protection Agency, with support from Germany, hosted a session and a subsequent workshop on developing an ethical AI framework in African economies during the 1st African Region Data Protection and Privacy International Conference. There was a general consensus that there is a need to develop and implement an ethical and regulatory framework. The Ministry declared a need for laws as well as a policy to unlock the value of data to maximise the use of AI while limiting possible dangers.