

ARTIFICIAL INTELLIGENCE: CHALLENGES AND OPPORTUNITIES FOR ARBITRATION IN NIGERIA

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Abstract

This article examined Artificial Intelligence, looking at its challenges and opportunities for Arbitration in Nigeria. The paper aimed to highlight the opportunities for use of AI in Nigeria as well as discuss the threats an AI-compliant legal system poses to Nigerian Jurisdiction. To achieve this, discuss and content analysis approach was adopted. First, it looked at the overview of arbitration globally, global perception and use of AI in arbitration, AI, its types and applications, Arbitration and AI within the African context, and what the future holds for it. Secondly, it looked at arbitration within the Nigerian context. Thirdly it focuses attention on the prospects of AI in arbitration within the Nigerian legal system, its challenges as well as factors that have hindered its acceptance. The paper concludes with a summary and recommendations of what can be done to embrace the use of AI and its attendant benefits in the Nigerian legal system. Some of the recommendations include: There should be adequate and continuous awareness creation. Awareness of the benefits of embracing AI should be constantly highlighted in all legal fora in Nigeria; Rather than a total phase-out of the manual process, the use of AI should be done hand in hand with Manual especially as it concerns arbitration issues; There should be training and skills acquisition especially information technology skills among others.

Keywords: Artificial Intelligence, Arbitration, Nigeria

1. Introduction

Arbitration is a document-intensive field that requires arbitrators to spend countless hours on research and document review. However, due to an ever-growing demand for speed and efficiency, the present state of affairs cannot last¹, hence the need for artificial intelligence (AI). The AI conclusions are reported to be remarkably accurate and often at a cost significantly lower than the

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¹ Dhatri Shukla, (2021), Benefits of use of AI in Arbitration, VIA Mediation and Arbitration Centre, online at <https://viamediationcentre.org/readnews/NzY4/BENEFITS-OF-USE-OF-AI-IN-ARBITRATION>

countless hours an arbitrator would have to spend finding and attempting to analyze all the inputs. Thus, AI may serve to revolutionize the current disequilibrium in resources between parties who can afford the many lawyer hours such analysis may require and those who cannot.² Furthermore, Singh et al (2021)³, asserted that with the Covid-19 pandemic forcing all sectors to adopt flexible working styles, there has never been a time more significant than now where there is a new normal to understand the wonders that technology has to offer. Technology has kept businesses, offices, and all other entities up and running throughout the year. This applies to the arbitration sector as well. Worldwide lockdowns forced mostly all international arbitral institutions to adhere to remote forms of dispute resolution raising numerous questions as to the risks and benefits of the system.⁴

Several calls emanating from some sections favor a gradual replacement of the human factor in arbitrations by a sole machine-led regime. The desired result is a more efficient, well-calibrated, speedy system of arbitration devoid of biases and prejudices that very often are said to plague in-person arbitrations. While the global world has heeded this call and embraced the use of AI in arbitration, its acceptance and application in Nigeria are still low if not nonexistent. What could be the reason for this apathy towards the use of AI in arbitration in Nigeria? In this article, some answers are provided.

To achieve this, the papers firstly look at the overview of arbitration globally, global perception and use of AI in arbitration, AI, its types and applications, Arbitration and AI within the African context, and what the future holds for it. Secondly, it looks at arbitration within the Nigerian context. Thirdly it focuses attention on the prospects of AI in arbitration within the Nigerian legal system, its challenges as well as factors that have hindered its acceptance. The paper concludes with a summary and recommendations of what can be done to embrace the use of AI and its attendant benefits in the Nigerian legal system.

1.1. The growing use of Arbitration and the need for AI

Arbitration is an alternative to conventional litigation (alternative dispute resolution), used primarily for disputes of a commercial nature.⁵ It is a private mechanism for the settlement of

² Ibid

³ Sonal Kumar Singh, Anish Jaipurkar and Sayantika Ganguly (2021), India: Artificial Intelligence In Arbitration: Revolutionary Or Impractical. AKS Partners, Online at <https://www.mondaq.com/india/arbitration-dispute-resolution/1027248/artificial-intelligence-in-arbitration-revolutionary-or-impractical>

⁴ Ibid

⁵ Thomas E Carbonneau, Arbitration in a nutshell, 2nd edition, (West, 2009) (hereinafter Thomas E. Carbonneau, Arbitration in a nutshell) *see also* Emilia Onyema, The doctrine of separability under Nigerian Law, SOAS School of Law Legal Studies Research Paper Series, (Research Paper No 3, 2010) (hereinafter Emilia Onyema, The doctrine of separability under Nigerian Law)

disputes, which depends on the parties' agreement. Arbitration is preferred in international commercial transactions because it is seen as a fair option, cost-efficient, free of unnecessary publicity, neutral, and impartial, providing to the parties the expertise of the judges (arbitrators) in a specific field and giving them certain control over the procedure, which is not the case in national courts. It permits parties involved in international commercial transactions to avoid the potential bias in local courts.⁶ With a common law in place, arbitral proceedings can be simplified, and ambiguities reduced.

There are two kinds of arbitration: Institutional and ad-hoc arbitrations. Institutional arbitration is that which involves the monitoring by organizations that have their own sets of arbitration rules. In this type of arbitration, parties choose to submit their dispute to a specific institution which usually has stipulated rules to follow. Examples of such institutions are the likes of the International Chamber of Commerce (France), the American Arbitration Association (United States), the London Court of International Arbitration (United Kingdom), and the International Center for Settlement of Investment Disputes (World Bank).⁷

On the other hand, ad hoc arbitration involves a process in which parties create their procedures or apply the United Nations Commission on International Trade Law arbitration Model Law (hereinafter UNCITRAL Model Law). This arbitration is reputed to be flexible, cheap, and fast. This is one of the principles by which OHADA operates. While arbitration is fast-growing and getting international attention, it is also faced with challenges, some of the challenges and factors that have limited the growth of Arbitration as enumerated in several fora,⁸ which are generally regarded as key to growth are legislative reform, party autonomy, availability of expertise, confidentiality, neutrality, enforcement regions as well as time and cost inefficiencies with national courts amongst others. With these challenges that result in a delay in the arbitral process, it becomes imperative to look for ways that this important process could be simplified, hence the need to embrace Artificial intelligence (AI) tools.

2. Types and Applications of Artificial Intelligence

Artificial intelligence ("AI") refers to technologically created intelligence that can learn and process enormous amounts of data by using certain algorithms that compute much faster and with greater aptitude than human brains can manage.⁹ With the latest improvements in auto-learning

⁶ See Eric Teynier and Farouk Yala, *Un nouveau centre d'arbitrage en Afrique Sub-Saharienne*, at 1 (ACOMEX, Janvier-Fevrier 2011, n°37).

⁷ Jonathan Basha, 2011

⁸ Ibid n20

⁹ Kathleen Paisley and Edna Sussman, *Artificial Intelligence: challenges and opportunities for international arbitration*. NYSBA, New York Dispute Resolution Lawyer, Spring 2018, Vol 11, No 1, pp 35

and the self-improving properties of artificial intelligence, AIs have started to replace humans in several industries, thus reducing the “human error” in many of the procedures they are involved. AI has become such a useful facilitator around the world today that even conservative areas like the legal field are in the process of implementing it to the extent possible.¹⁰

Habib¹¹ documented that in 2018, academics at Oxford University evaluated the possibility of job automation based on nine skills that a robot would be required to perform: social perceptiveness, negotiation, persuasion, assisting and caring for others, originality, fine arts, finger dexterity, manual dexterity and the need to work in a cramped workspace. Therefore, it is predicted that humanoids will have the capacity to undertake jobs ranging from clerk to arbitrator. This mirrors some of the functions and types of AI tools we are expecting and thus how they can fit into our lives both professionally and otherwise.

It can be argued that the capacity to mimic human characteristics is the major characteristic of AI technologies. Using this characteristic for reference, all AI systems fall into any of the following categories¹²:

- i. Artificial Narrow Intelligence (ANI)
- ii. Artificial General Intelligence (AGI)
- iii. Artificial Super Intelligence (ASI)

2.1. Artificial Narrow Intelligence (ANI) / Narrow AI / Weak AI

Also known as Narrow AI, is around us. Unlike its counterpart, Artificial General Intelligence (AGI) and Artificial Super Intelligence (ASI), ANI has manifested right before our eyes. In previous decades, Narrow AI experienced many breakthroughs that contributed to the economic vitality of nations around the world. Narrow AI can either have limited memory or be reactive. The limited memory type is more advanced and enables machines to use historical data for decision-machine. On the other hand, when a Narrow AI is reactive, it has no data storage or memory capability. For this reason, it can respond to different stimuli without previous experience, just like the human mind. Most of the present-day AI is the limited memory AI as machines use stored data for deep learning.¹³

¹⁰ Ozeke, Herguner Bilgen, Artificial Intelligence in Arbitration- Current Uses and the Turkish Law Approach. Lexology (2021, April 16)

¹¹ Sadaff Habib (2021), The use of artificial intelligence in arbitration in Africa – inevitable or unachievable?. Beale & Company Middle East, Dubai. *Arbitration committee Publications*, online at https://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Publications

¹² Jeremiah Ajayi (2022, March 17), Artificial Intelligence in the Nigerian Legal Industry: A Threat or an Opportunity? Legalpedia online at <https://legalpediaonline.com/artificial-intelligence-in-the-nigerian-legal-industry/>

¹³ Ibid n12

Examples of Narrow AI include i) Drone robots; ii) Apple's Siri, Amazon's Alexa, and Microsoft's Cortana, among other virtual assistants; iii) Google's Rankbrain; iv) Social media monitoring tools; v) Facial and image recognition software; vi) Netflix recommendations; viii) Self-driving cars; and viii) Disease mapping tools.

2.2. Artificial General Intelligence (AGI) / Deep AI / Strong AI.

Artificial General Intelligence, otherwise known as strong AI/Deep AI, is a machine that can solve any task with its human-level intelligence. AGI has a human-like thinking and understanding capacity as it uses a framework known as the theory of mind¹⁴ AI. Theory of mind in the AI framework refers to the ability of AI to discern emotions, needs, thought processes, and beliefs. As a theory of mind-level AI, Deep AI is not merely about mimicking human actions. Instead, it involves training machines to understand humans accurately. Similarly, is observed that if AI researchers and scientists are to succeed at Deep AI, they must find a way to make machines program a wide range of cognitive abilities. Unfortunately, several difficulties, such as the inability to replicate essential functions of movement and sight, mar the quest for Deep AI. This is buttressed by the assertion of experts at the NSTC Committee on technology as they agreed that Deep AI seems impossible to achieve for the next decades.¹⁵

2.3. Artificial Super Intelligence (ASI).

Artificial Superintelligence is a hypothetical type of AI. At this stage, AI does not just understand or mimic human intelligence; it surpasses human intelligence. In the words of Nick Bostrom, the Swedish author of *Superintelligence: Paths, Dangers, Strategies*, defined ASI as

“An intellect that is much smarter than the best human brains in practically every field, including scientific creativity, general wisdom, and social skills.”

Although the entire concept of Artificial Intelligence means the ability of computers to mimic human thought, artificial superintelligence goes far further by creating a world where a computer has cognitive ability far superior to humans. For long, ASI has been the muse of most dystopian fictional works where robots are trying to overrun, threaten, or take over human civilization. Examples are i) *Ex Machina*, 2001: ii) *a Space Odyssey*, *Metropolis*, and *Interstellar*. It is argued that although it is difficult to imagine a world of advanced AI at the moment, it is clear that we still have a long way to get there as the present state of AI is still in its initial stage. Therefore, it is a bit too early to worry about the dangers of AI as there is a considerable amount of time to secure the safety of AI. However, for AI optimists, the fact that AI is barely in its elementary stage makes the future even more exciting.

¹⁴ ibid

¹⁵ ibid

3. AI and Arbitration in Africa

There has been promising development in Africa in recent years. These developments can be traced back to the organization for the Harmonization of Business Law in Africa ('OHADA') reforms. In late 2017, OHADA (a group of 17 African countries geared towards unifying business laws to boost investment) enacted the Uniform Mediation Act, the Uniform Arbitration Act ('UAA'), and Arbitration Rules for the Court of Justice and Arbitration ('CCJA'), all of which were introduced to attract investors and boost confidence in OHADA seated arbitrations. For AI to take a formative presence in arbitration it needs to be crystallized into the arbitration system to avoid and reduce uncertainties. Article 5 of the UAA requires that *the duties of an arbitrator may only be performed by a natural person*.¹⁶

Therefore, even if the parties to an arbitration agreement were to agree to refer their disputes to an AI system and were subject to the UAA, such an arbitration agreement could be unenforceable. On the other hand, and rather interestingly, the Lagos State Arbitration Law 2009 (the 'Act'), allows parties to freely agree on how their dispute is resolved, subject to those safeguards necessary for the *public interest*. The Act does not expressly require an arbitrator to be a natural person. This begs the question, if parties with the seat of arbitration in Lagos agree to resolve their arbitration through an AI system, would such a referral be recognized under the Act or would it be against the *public interest*? The Act is largely modeled on the UNCITRAL Model Law. Notably, the UNCITRAL Model Law is widely adopted by many African countries and across the globe with States often making certain amendments to fit the law with their overall framework.¹⁷

The UNCITRAL Model Law defines an arbitral tribunal as consisting of a sole arbitrator or a three-member tribunal. It does not specify that the arbitral tribunal should be a natural person. Does this give scope to an AI arbitral tribunal? Is this enough to ignore the reference to a *person* under the UNCITRAL Model Law when discussing challenging and appointing an arbitral tribunal, or is there scope to argue that person can and does include a natural and artificial person? If the latter interpretation is adopted, the Model Law and the Act would be thought-provoking and forward-thinking legal instruments, albeit might not have been within the contemplation of the drafters at the time.¹⁸

Furthermore, in the wake of the Belt and Road Initiative, Chinese and African stakeholders agreed to establish the China-Africa Joint Arbitration Centre ('CAJAC') in Johannesburg and in Shanghai to which trade and investment disputes arising between nationals of China and Africa could refer their disputes. The CAJAC Johannesburg Rules define a *Tribunal* similarly to the UNCITRAL

¹⁶ Habib (n11)

¹⁷ Habib (n11)

¹⁸ Ibid

Model Law, that is consisting of either a sole arbitrator or more arbitrators. Whilst the Rules do not make mention of the arbitrator being a natural person, Article 15.1 addresses the replacement of an arbitrator '[...] *if an arbitrator dies or becomes unable to perform his or her functions due to any reason beyond his control...*' It is unlikely that a machine can be assigned gender or would die. Therefore, the CAJAC Johannesburg Rules may be seen to refer to a natural person. However, Article 2.2 of the Rules allows parties to vary the Rules by agreement in writing. Arguably, a party can have its AI arbitrator, after all, subject of course to any mandatory laws applicable.

More recently, the Arbitration Foundation of South Africa ('AFSA') launched its new international arbitration rules for public comment. The rules do not define an arbitral tribunal to be a natural person but Article 6 (5) refers to the gender of the arbitral tribunal when being notified of a potential challenge. This could mean that the new arbitration rules do not leave room for an AI system as an arbitrator. Arguably, whilst there may be scope for parties to agree to AI as an arbitral tribunal, such scope may be limited under mandatory laws or due to public policy. Ultimately, whether or not AI is used, a party's goal is to obtain an enforceable arbitral award. A key instrument used in enforcing arbitral awards is the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Award (the 'Convention').¹⁹

Out of the 54 countries that make up the African continent, 33 have ratified the Convention. Ethiopia is the most recent African country to accede to the Convention and did so in early 2020. A country that is a signatory to the Convention is attractive to foreign investors and investment because of the perceived ease in enforcing a successful arbitration award between signatories to the Convention. A signatory to the Convention should implement it through its national legislation. This has typically been achieved in African countries through (i) adopting the Model Law, (ii) the UAA, and (iii) domestic legislation.

Article V (2) (b) of the Convention allows the State where enforcement of the award is sought to refuse enforcement where it contravenes its public policy. Public policy is often described as an *unruly horse* with its scope being vague and difficult to define. The public policy usually consists of principles that reflect the needs and values upheld by a society at a given time. A difficulty that often arises with countries adopting the Convention is the different interpretations of the Convention's public policy. Some countries, for example, Rwanda and Mozambique, may give it a wider interpretation while others such as Zimbabwe may give it a narrow interpretation. Also since the Convention does not make express reference to AI (arguably nor does it exclude it)

¹⁹ *ibid*

a party could argue that the use of AI itself is against public policy. Of course, it would be difficult for a party to raise this where it agreed to the AI process to begin with.²⁰

Caution should also be heeded where a State has implemented the Convention through the UAA. As discussed above, the UAA expressly requires the arbitral tribunal to be a natural person. There is no room to agree on an alternative AI system. A general point to note, only 11 of the 17 member states are signatories to both the UAA and Convention. So as a matter of enforcement, parties should consider which States are signatory to both to benefit from the ease of enforcement. Some states which are signatories to the Convention still have in place old archaic arbitration laws that may not fit in with the provisions of the Convention. For example, Botswana and Namibia have arbitration laws based.²¹

3.1. Arbitration in Nigeria

Arbitration in Nigeria is governed by the Arbitration and Conciliation Act which is modeled after the UN Commission on International Trade Law (UNCITRAL) on International Commercial Arbitration 1985 with minor modifications.²² It is a process by which parties to a dispute submit their cases to a neutral third party for settlement. This involves the reference of a dispute or difference between not less than two parties for determination in a judicial manner by a person or persons other than a court of competent jurisdiction. Its distinguishing characteristic is that the parties not only entered into such processes voluntarily but also have a great say in designing the process and how its outcome will be formalized. The arbitrator is either appointed by the parties or the court²³ of which the decision may be binding or non-binding (advisory). It binds the parties when they have pre-agreed that the arbitrator's decision is final.

4. Benefits of Use of AI in Arbitration Globally

There are many benefits to incorporating AI in arbitration. The use of machines could speed up contract review and establish the most suitable arbitration agreement; assist with appointing arbitrators; assist in scrutinizing arbitral awards and; transcription; assist in sifting through thousands of pages of documents to highlight those relevant to the proceedings. AI has assisted in resolving disputes faster and allowing the parties to settle. For example, eBay's online processes resolve 60m of disputes a year, and China has 'No Court Room' internet courts.²⁴

²⁰ Habib (n11)

²¹ Habib (n11)

²² (Funke, 2004).

²³ (Greg, 1997)

²⁴ Habib (n11)

Artificial intelligence, as one of the main drivers of emerging technologies, has already begun to ease our lives including in our professions. Lawyers, arbitrators, practitioners, and clients around the world are now aware of AI more than ever. Although AI-powered arbitration exists from a global perspective to our knowledge, it has not yet reached the extent that arbitration procedures can be solely conducted by AI without any human involvement. Today, AI is merely used as a tool to assist lawyers in arbitral procedures. Most commonly, AIs are now used to speed up paperwork and data analysis, but they may also handle different tasks based on each specific case.

While some AI does research and summarize legislation, others provide statistics based on their examination of precedents on the subject and analyze whatever input the parties provide in the case.²⁵ With each use of AI, the hours required for lawyers to complete paperwork and case review are substantially reduced. Likewise, the AI also helps clients by decreasing lawyers' billable hours and reducing the cost of legal consultancy services. Some of the most famous examples of AI tools include Lex Machina, Arbilex, Arbitrator Research Tool (ART), Liti-gate, and Arbitrator Intelligence. All of these tools fulfill the duty of analyzing vast amounts of digital data to reach certain statistics and conclusions based on that data and help the case at hand.²⁶ With ready-to-use and reliable statistics and concrete data from former cases presented by the AI, lawyers can build their case on a solid basis, and the possibility of success increases in high percentages. Overall, AI tools provide data-mining facilities which help ease preparations for arbitral proceedings.

Furthermore, as noted by Ozeke²⁷, Apart from AI tools, some AIs can also undertake certain duties for arbitrators where it is permitted in the legal system. Many questions and contradictions regarding the use of AIs in arbitration derive from the idea that an AI can act as an arbitrator and render awards. A non-human machine-based creation determining the destinies of legal cases for humans has caused hesitation from both a technical and moral perspective. There are many discussions and debates over AI acting as a judge and/or an arbitrator, such as the AI's responsibility in cases of breach of confidentiality and liability for its actions and ethical concerns. There is also a dilemma over who should be held responsible when an AI-generated error causes harm to others. Since AI cannot have rights or the capacity to act, therefore lacking the criminal capacity for its wrongful acts, this may give rise to convoluted situations.

Hence, any leak of information, faulty evaluation, or damages caused by an AI lead to a dead-end when it comes to claiming damages for such defects or negligence. Yet, for this article, we will set

²⁵ C. Sim, *Artificial Intelligence and Arbitration: Will artificial intelligence take over arbitration?* (2018), *Asian Journal of international arbitration*, p 9

²⁶ K. Paisley and E. Sussman, *Artificial Intelligence: challenges and opportunities for international arbitration* (2018) (11) (1). *NYSBA, New York Dispute Resolution Lawyer*.

²⁷ *Ibid*

aside the theoretical dilemmas and solely discuss the current and concrete uses of AI arbitrators and the readiness of the legal systems for such a proactive phenomenon.

The idea of an AI arbitrator can be broken down into three different possibilities:²⁸

- 1) AI completely replaces human arbitrators, does all of the work itself, and directly renders the award without any human effect or control mechanism;
- 2) AI arbitrators and human arbitrators work in a combined tribunal and the final decision is determined by a common decree that they come up with jointly. This way the procedure is not completely out of human reach but also remains as mechanical and computerized as possible. Therefore, any possible non-humane result can be prevented by the human arbitrators whereas possible human errors can be detected by the AI arbitrators; and
- 3) Human arbitrators are the ones actually in charge of rendering an award, but there are also AI arbitrators present in the role of an advisory resort so that the human arbitrators can *check their decisions*.²⁹

In today's practice, it mainly seems to be operating by the third version of the AI arbitrator as described above so the role is limited to the AI assisting human judges, similar to the case of lawyers, reviewed above. For example, the Colombian government implemented an AI called "Siarelis" in its legal system to resolve corporate disputes. Siarelis acts as a guide for judges by questioning the case and providing a legal opinion on the case depending on the merits³⁰. Likewise, Spain uses Jurimetria, "*a legal prediction tool that works upon the analysis of millions of court decisions*."³¹ Needless to say, judges, are free to disregard the AI's opinions and analysis.

Dhatri Shukla³² in his discussion of the benefits of AI listed several benefits to the legal profession as well as other professions. These include:

- a) The main use of artificial intelligence in arbitration today is to review increasingly vast amounts of digital arbitral data held by parties and their counsel to determine what is relevant to the particular case and then to analyze that data and present it more effectively. This use of AI to process arbitral data has, and will increasingly, help to correct the cost and time problems created by the digital data at issue in complex disputes today.

²⁸ Sim (2018)

²⁹ *ibid*

³⁰ Ozeke (2021)

³¹ *Ibid*

³² Shukla (n1)

- b) Expanding the use of AI to analyze arbitral awards to undertake actual legal reasoning and to provide reasoned advice about how companies and legal arguments have fared in the past, how arbitrators have decided issues, and how damages have been approached in similar cases.
- c) AI offers the potential of predicting results in advance including, for example- Chances of success generally, and with a particular decision-maker; Likely range of damages generally, and with a specific decision-maker; Timing to a decision; before a particular institution, and before a particular decision-maker; Likely costs to be incurred. It will help reduce uncertainty in any dispute resolution process.
- d) AIs could also be used to assess evidence, which consists of arbitration of determining the relevance and materiality of documents. AIs could present a summary of the pieces of evidence produced by the parties and in the context of discovery or the analysis of the important quantity of documents, AIs could be more efficient than humans and less prone to mistakes.
- e) AI may render the use of court reporters obsolete as the AI platform would be able to record the hearing via microphones and provide a real-time transcript with speaker identification for all concerned.
- f) Arbitrators spend a lot of time drafting standard sections of their arbitration awards, e.g., the parties, the procedural history, the arbitration clause, the governing law, the parties' positions, and the arbitration costs. Arbitrators may save time and parties' fees by delegating the drafting of such 'boilerplate' sections to AI machines.
- g) Appointments of robots would be less vulnerable to challenge on grounds of conflict of interest or bias. Presumably, also, their decision-making process would be less likely to be tainted by the very human weaknesses of bias, illogicality or just having a bad day.³³

4. Opportunities for use of Artificial intelligence in Arbitration in Nigeria

As can be deduced from the reviews, AI has a cogent role in upgrading the legal sector. Bearing this in mind, below is a list of areas through which AI can improve the Nigerian legal industry and arbitration in particular³⁴:

4.1. Automated Document Review

Legal practice is synonymous with lots of paperwork, and the manual approach of seeking out relevant information makes document reviews susceptible to human errors. Moreover, it wastes

³³ Shukla (n1)

³⁴ Jeremiah Ajayi (2022, March 17), Artificial Intelligence in the Nigerian Legal Industry: A Threat or an Opportunity? Legalpedia online at <https://legalpediaonline.com/artificial-intelligence-in-the-nigerian-legal-industry/>

the time and energy needed for crucial legal tasks. Be that as it may, AI makes document review less fallible. For example, ROSS Intelligence is an AI program that automates legal document review. The legal research platform provides a cognitive computation that uses natural language in analyzing legal documents.

Despite the intervention of cognitive computation in making paper review efficient, lawyers need to provide great strategy and analysis as today's AI is not sufficiently intelligent yet. Ergo, lawyers need to train AI software to help in identifying relevant aspects of a document. The synergy between lawyers and AI in reviewing documents will provide the most cost-effective and best services for their clients.

4.2. Risk Assessment

Assessing risks is among the responsibilities of a lawyer. Excellent risk assessment prevents pricey lawsuits. Regrettably, most lawyers and law firms are not good at risk assessment. Clients suffer the consequences of this deficiency. Fortunately, AI innovation can ameliorate this inefficiency. AI software such as TAR (Technology Assisted Review) tools is capable of predictive coding. This innovative feature can review information virtually, thereby helping lawyers with a more competent risk assessment. Armed with smart solutions such as TAR, lawyers can identify potential risks earlier than usual. In effect, an automated risk assessment will lead to the shrewd legal advisory of clients on potential disputes before they ensue.

In the instance of lawsuits, the availability of AI-driven applications will help law firms and lawyers discover information and data that need optimal protection quickly. The progress of competent risk assessment will enable law firms and lawyers to correctly assess risk outcomes while minimizing costs and protecting their reputation and clients'.

4.3. Prediction of Legal Proceedings Outcome

Sometimes, lawyers fail to pass the litmus test of outcome prediction, thereby leading to a backlog of cases in courts. This problem is a cankerworm eating up the fabrics of the Nigerian justice system. Nevertheless, the introduction of AI in the legal industry offers a solution to this problem. Unlike human lawyers, AI can accurately analyze data in a way that correctly envisages the conclusion of a legal dispute. At the University College, London, and the University of Pennsylvania, researchers decided to experiment with the aforementioned by applying AI software algorithms to the European Court of Human Rights' 584 cases. Surprisingly, the algorithms found a recurring trend in these cases, and this led to a 79% accuracy.³⁵ With the swift analysis of past litigation trials by AI programs, Nigerian lawyers will be more equipped to predict the conclusion

³⁵ Ajayi (n34)

of lawsuits correctly. The automation of dispute prediction will save the time and costs of clients, law firms, and courts.

4.4. Due Diligence Reviews

Due diligence is a crucial role for lawyers, especially those in the corporate sector. Due diligence provides clients with necessary information regarding their M & A processes and feasibility. Typically, due diligence processes involve preparation, setting objectives, and categorization of financial knowledge, among other useful information. All these make due diligence a tedious task. Time is never enough for due diligence processes as lawyers have to get documents and analyze each of them for relevant points. The material points form the basis for creating a due diligence report. Sometimes, the tiresome nature of due diligence affects the efficiency and morale of lawyers as they have to work late to meet the set target. In consequence, lawyers might make it costly, thereby decreasing clients' satisfaction and elongating the due diligence process.

Artificial Intelligence (AI) technology proffers a feasible solution to these problems. If implemented in due diligence processes, AI can automate the search for relevant document data for review. After it analyses the data, it will export the relevant points to Excel for a comparison review. Through this process, lawyers can further review the data in a comparable format. This automated process will not only ensure the document of document sorting, but it would also eliminate manual errors³⁶.

5. Challenges Associated with the use of Arbitration in Nigeria

5.1. Thinking that AI will end the legal practice in Nigeria (unemployment for Lawyers)

When a legal startup, Law Geex held a competition between an AI-powered algorithm and lawyers from reputable law firms such as Goldman Sachs and Alston & Bird, the AI matched the best-performing lawyer for accuracy. In terms of speed, the AI outmatched the lawyers completely. This outstanding advancement, among other innovations, has led lawyers to view Artificial Intelligence as an apocalypse coming to send lawyers to extinction. Indeed, AI does threaten certain aspects of legal practice. But, AI does not signify the end of the entire profession.

There are two reasons why AI does not mean the demise of legal practice. The first reason is the black box problem of AI. Despite the ability of AI to learn and improve services through data processing, no one, including programmers, can ascertain how AI arrives at a particular output. Although the input and output of AI have known variables, the process or the "black box" remains a mystery. Therefore, AI needs supervision. In terms of legal practice, a lawyer (who understands

³⁶ Ibid

and appreciates data bias, analytics, and processing issues) would have to review any data before an AI program works on it to avoid confusion. Since the black box problem is fundamental to inductive machine learning software processes, the likelihood of its solution in the foreseeable future is low. For this reason, lawyers will remain relevant in the age of AI disruption.³⁷ The work of lawyers, especially junior associates, will involve identifying and understanding data ready for processing, reviewing the results, and making necessary changes. As a result, there will be a higher premium on understanding clients' intentions and framework than the current emphasis on drafting techniques.

Another reason why AI disruption does not signify the demise of human lawyers is because of the nature of AI. Like other emerging technologies, AI is a tool. While technology is adept at reaching a destination, it is mediocre at determining the direction of such a destination. Similarly, AI software can help a client with specific tasks, but only lawyers can match a client's objectives to the desired outcome. Even if AI applications provide solutions that serve as alternatives to consulting lawyers, clients will eventually need the service of lawyers in understanding how automated legal work affects their goals. To this end, clients will not only need lawyers to analyze the automated legal work; but, lawyers will act as the ultimate guide in helping them achieve their stated goals. Because the legal practice is multifaceted, there are several levels of complexity involved in it. From transactional to litigation, the legal practice requires a certain level of creativity, reasoning, and complex input, which seems beyond the reach of computing technology in the meantime.³⁸

5.2 Lack of requisite skills needed for AI use

Artificial Intelligence is at its rudimentary stage; thus, there is no surety of the direction that it would take in the next thirty years. There is no certainty that robots would not lead to the complete demise of the legal profession. Hence, lawyers must build invaluable future skills. The acquisition of such skills would prevent a lawyer from being replaced if peradventure AI disrupts the legal profession. The requisite skill set includes, but is not limited to, the following³⁹:

i. Information Technology (IT) Skills

The legal profession is infamously reputable for its reticence and risk aversion. Particularly in Nigeria, many lawyers remain technologically incompetent. In the new gold standard era, clients will prefer lawyers that make use of the endless possibilities created by Artificial Intelligence. Possession of IT skills will enable a lawyer to provide cost-effective services. When using IT skills,

³⁷ *ibid*

³⁸ Ajayi (n34)

³⁹ *Ibid*

it is pertinent for lawyers to critique the results of AI solutions. A good IT-skilled lawyer can quickly identify AI ethical biases or incomplete data.

Among the repository of IT skills necessary for lawyers to learn, machine learning, coding, and programming take the lead. While lawyers do not need to become software developers, they need to know how to code. With Nigeria's tech sector growing at an exponential rate and also becoming Africa's biggest technology market, it is expected that more tech companies require legal services. This number will further increase as more Nigerians become tech-savvy. Therefore, IT skills will give a lawyer a competitive edge as it will enable him to communicate better with tech clients.

ii. Legal Design Thinking

At its core, legal design thinking means a multi-disciplinary approach aimed at understanding clients' needs and bearing them in mind throughout the process. With the digitalization of legal practice leading to high expectations from clients and higher cost pressure, design thinking will become a necessary skill for lawyers. Globally, design thinking is gradually incorporated into the legal profession.

Stanford University champions the innovative development as it has a lab known as the 'Legal Design Lab'. Also, a multinational law firm, DWF Ventures uses Legal Design to create a standard exhibiting how to benchmark contract management. The lab is a champion in building new models of access to the justice system. In the foreseeable future, legal design thinking shall be the driver for creativity, innovation, and change in the Nigerian legal industry.⁴⁰

The primary objective of legal design thinking is to develop client-centric solutions that answer a real need. The legal design thinking skill requires a lawyer to empathize, define, ideate, prototype, and test legal solutions to make sure that clients' needs. Consequently, the legal design process requires a high level of creativity as it encourages the spontaneity of ideas and open-mindedness. This skill is one that AI cannot possibly replace as it involves creativity and empathy; two vital skills that AI systems cannot provide presently and probably later.

iii. Project Management

In the era of AI in the legal sector, clients will prefer cost-effective lawyers who place a high premium on cost value, outcomes, and results. Correspondingly, project management becomes a relevant skill that protects lawyers from being rendered useless by AI. Generally speaking, project management means planning teamwork to achieve set goals within a speculated period. But in the legal context, project management means the utilization of project management principles in legal matters. Although the process seems simple enough for a lawyer to understand, there are

⁴⁰ Ajayi (n34).

techniques needed to master successful project management. These techniques include identifying the key stakeholders in a legal matter, documenting the scope of the work, setting out a budget, coordinating, monitoring deadlines, and an adequate review of the work done, costs, and results. It is argued that the key to the success of legal project management is the adaptation of core project management techniques to fit the requirement of legal matters.⁴¹

With the impending emergence of the new gold standard era, project management plays a vital role in legal service delivery more than ever. Clients have a considerable preference for lawyers who will provide legal services at lower costs but with more efficiency, transparency, and efficiency. In the United Kingdom (UK), project management has assumed dominance in the legal sphere. Likewise, Nigerian clients' demands for legal project management will significantly increase in the coming years as Artificial Intelligence makes the legal profession more client-centric. Thus, even a lawyer resists learning project management; he must have little knowledge about it if he must remain relevant.⁴²

iv. Negotiation and Dispute Resolution

Conflict is a lawyer's bread and butter. No matter how far Artificial Intelligence goes in automating the bulk of legal service delivery and the creation of robot lawyers, Dispute Resolution is possibly one skill that it cannot efficiently perform. Lawyers can handle conflict and negotiations better than any robot or AI-driven solution due to their first-hand understanding of human-related situations and the ability to brainstorm. Even as Artificial Intelligence advances, the ability to deduce the real intentions of concerned parties after reading statements eludes AI inventions, including robots.

Due to the demands of the legal profession, lawyers are well vast in negotiations. Notwithstanding, negotiation skill is one that a lawyer can improve. Through a deliberate decision to improve and the acknowledgment of shortcomings, the average lawyer can achieve win-win situations, achieving equilibrium between parties.

v. Problem Solving

Presently, AI has not been programmed to solve problems like humans. Unlike AI which performs tasks through cognitive computing, deep learning, neural network, and machine learning, humans can respond to unforeseen obstacles, analyze failures and mistakes, navigate obstacles, and understand the complexities of the problems. Lawyers concentrate the bulk of their efforts on finding the perfect answer to clients' problems. However, with the influx of lawyers, digitalization

⁴¹ Ibid

⁴² Ibid

of legal service delivery, and competition from non-legal professions, it is necessary to involve clients in problem-solving. In the new gold standard era, legal solutions will become increasingly iterative. On that account, lawyers must continually improve their problem-solving skills more than ever before.

vi. Creativity

With the automation of legal tasks and urgency for a client-centric approach, lawyers will need to “think outside the box”. A creative lawyer will survive, no matter how today’s AI becomes intelligent. Therefore, creativity is an in-demand skill that lawyers must develop. According to scholars, there are two types of creativity: i) “Big C” Creativity and ii) “little-c” Creativity⁴³

The “Big C” is a rare but ground-breaking kind of thinking. It is the type many imagine the moment they hear the word “creativity.” This type of creativity is a talent. On the other hand, “little c” creativity comprises thinking of small ideas that can make vast differences in our lives. While the first type of creativity is almost impossible to develop, “little c” creativity is a developable skill. Lawyers need to take steps to cultivate their creativity. Here are the recommended actions for nurturing creativity:

vii. Emotional Intelligence

Salovey and Mayer (1990) define emotional intelligence as any skill involving self-motivation, self-awareness, emotional management, empathy, and handling of relationships. Delving to the core, Daniel Goleman defines Emotional Intelligence in his 1995 masterpiece Emotional Intelligence as the ability of each person to recognize, understand, and manage emotions. Moving further, Goleman goes on to define emotional intelligence as the ability to identify, understand, and manage the emotions of others.

While the frontier skills of lawyers are notably analytical and logical, it is essential to note that these skills work together to solve the problems of a client – a real human. Hence, no matter how logical or analytical a lawyer can be, it is no doubt that emotions will always arise. As the legal practice becomes globalized, the hierarchies in the legal profession will become more collaborative and globalized than ever. Therefore, the development of self—awareness, proper management, and engagement with emotions are the coal and ice needed for relevance in the future law practice.⁴⁴

viii. Collaboration Skill

In a fast-paced world and technology age, clients now want faster, cheaper, and quality legal services. Rather than seeking the service of lawyers, clients are now driven to work with

⁴³ Ajayi (n34)

⁴⁴ Ibid

institutions like the Big Four, whom they believe, offer better alternatives. The AI disruption effect will further heighten the decentralization of the legal practice. Unlike the current practice obtainable in Nigeria, lawyers in the future practice will need to learn collaborative skills. Law schools focus more on oratory and writing skills.

Hence, most lawyers lack the skill to collaborate. In a technology-driven practice such as the Artificial Intelligence era, lawyers must learn to collaborate with other professionals such as accountants, technologists, and project managers. With AI solutions performing mundane tasks, cases become more complex. Moreover, with non-law firms offering legal services, lawyers will work in interdisciplinary teams. Consequently, a lawyer who wants to survive extinction in the AI era must learn to trust the wisdom of the group. Being an isolationist would not do the future lawyer any good.⁴⁵

7. Conclusion /Recommendations

It can be seen from the available literature that globally; law firms have started preparing themselves for the future of law. And this future will require the embrace and use of AI. Some are already in use. These are the likes of ROSS Intelligence, TAR tools, Kira Systems, and Leverton⁴⁶, Some notable firms such as Allen & Overy (with Fuse), Dentons, (with Nextlaw Labs), and Thomas Reuters (with their Elite offerings) have already embraced and invested in AI technologies – used to performs automated work allocation, predictive data modeling, transaction mapping, automated matter management, and expertise finding. However, while there is global acceptance, the release has been the case in Nigerian Jurisdiction.⁴⁷

But this has to change. It is pertinent to embrace the use of AI or at least to prepare for its use in Nigeria to secure the future of arbitration in Nigeria. While it may not be an easy task, given the legal system that Nigeria has inherited from its colonial masters, there is a need to consider the benefits and how the Jurisdiction can compete in the global space.

As Ajayi observed, Nigeria basking in the heritage of tradition handed over by Great Britain, the Nigerian legal industry has proven to be an unapologetic ambassador of her former colonial master's legacy. The Nigerian legal sector exhibits a certain level of non-challans towards accepting technological innovation. The 'threat' that innovation poses to the "noble" nature of the legal profession is the primary reason behind the unenthusiastic stance of many lawyers.⁴⁸ However these threats are surmountable as has been highlighted in this article.

⁴⁵ Ajayi (n34).

⁴⁶ Ozeke (2021)

⁴⁷ Ajayi (n34)

⁴⁸ Ibid

7.1. Recommendations

- i. There should be adequate and continuous awareness creation. Awareness of the benefits of embracing AI should be constantly highlighted in all legal fora in Nigeria. This way the threats and opportunities would be discussed and gray areas cleared.
- ii. Rather than total phase-out of a manual process, the use of AI should be done hand in hand with Manual especially as it concerns arbitration issues. It is argued that there are advantages of using AI, particularly in time-consuming and costly tasks such as document disclosure or dealing with large volumes of expert evidence⁴⁹, lawyers and arbitrators can better focus on the more human aspects of the case, that is the client's needs and effective dispute resolution.
- iii. There should be training and skills acquisition. As highlighted in this article, AI requires certain skills, top on the list is the information technology (IT) skills. All in the legal industry needs to be conversant with these skills.
- iv. There should be an investment in IT Infrastructure and the development of IT programs to retain talent to be ready if AI kicks off in arbitration.

⁴⁹ Ajayi (n34)