

Could AI replace the human element in arbitration?

By [Frank Madikologa](#)

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South Africa is quickly becoming a [leading jurisdiction](#) in the arbitration sector, thus warranting an urgent call to assess the future of arbitration amidst the emergence of artificial intelligence (AI).



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Arbitration, as a means of dispute resolution, has long been encouraged and regarded as an essential component of the legal landscape in South Africa. However, with the rapid advancement of AI technologies, questions have arisen regarding the future role of human arbitrators and lawyers in this evolving landscape.

AI has already made significant strides in various fields including law. It is now used to analyse contracts and make recommendations based on past cases and legal precedent.

In arbitration, AI tools can [assist in tasks](#) such as document review, legal research, and even predict case outcomes based on historical data. These capabilities have led to speculation about the potential obsolescence of human arbitrators. However, a closer examination reveals a more nuanced picture.

The human element to arbitration

Firstly, it is essential to recognise that arbitration is not solely about applying legal principles in a less formalistic manner compared to the courts and/or cost effective measure. It is also about human judgment, empathy, and understanding the intricacies of human behaviour.

While AI can efficiently process vast amounts of information, it lacks the ability to comprehend the subtleties of human emotions and intentions. This human element is particularly crucial in the context of resolving disputes, where parties often seek not only a legally sound decision but also a sense of fairness and justice.

This therefore points to its inability to weigh the evidence at hand to reach an appropriate conclusion on disputed facts. Because AI does not possess the contextual understanding that humans possess, it would take many years for AI tools to be fed with data for [machine learning](#).

This data can be inaccessible because arbitration proceedings are private in nature and do not form part of public records unlike disputes that have been settled in a commercial court.



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Cultural competence

Moreover, South Africa's apartheid history and ongoing socio-economic disparities underscore the importance of sensitivity to cultural nuances and the lived experiences of its diverse population.

Although little has been published about the relationship between arbitration and African culture or custom, human arbitrators bring a level of [cultural competence and contextual understanding](#) that may be difficult to replicate through AI alone. This human interaction and communication are crucial to arbitration's effectiveness and may be challenging for AI to quickly replicate.

In South Africa, where access to justice remains a significant concern, AI-powered platforms can make arbitration more accessible and affordable, particularly for marginalised communities who may face barriers to traditional legal services. By leveraging technology, South Africa can work towards a more inclusive and equitable justice system. This needs to be cautioned against the risk of the adverse impact this may have on the development of the law if all disputes are settled through arbitration, especially commercial matters.

Indispensable input

In conclusion, while AI undoubtedly presents opportunities for enhancing the efficiency and accessibility of arbitration, as well as environmental sustainability concerns with regard to [Green Arbitration](#), the role of [human arbitrators remains indispensable](#) especially in jurisdictions like France and Netherlands that require that an arbitrator be a natural person.

In the complex and nuanced landscape of dispute resolution, human judgment, empathy, and cultural competence are irreplaceable. The future of arbitration in South Africa will likely involve a symbiotic relationship between human arbitrators and AI technologies, where each complements the strengths of the other to deliver fair, efficient, and accessible justice for all.

ABOUT THE AUTHOR

Frank Madikologa is a dedicated final year law student at the University of South Africa and a Legal Assistant & Researcher at Thulamela Chambers, Sandton. With a passion for justice and a keen interest in various legal disciplines, throughout his academic journey, he has demonstrated exceptional analytical skills and a strong commitment to understanding complex legal principles.

With a solid academic background, Frank has actively participated in moot court competitions, where they honed their advocacy skills and gained practical courtroom experience. He has also undertaken vacation work schemes at Cliffe Dekker Hofmeyr Inc and interviewed with Lawtons Africa, where they gained valuable insights into legal practice and

developed a deep understanding of legal procedures.

Driven by a desire to make a positive impact in society, Frank has engaged in pro bono work, providing legal assistance to underprivileged individuals and marginalized communities and volunteering for the Johannesburg Attorneys Association projects. He believes in using his legal knowledge to promote social justice and equality under the law.

As Frank nears the completion of his studies, he is eager to embark on a fulfilling legal career, where he can continue to advocate for justice and uphold the principles of the legal profession. With a strong foundation in both theoretical knowledge and practical experience, he is well-equipped to tackle the challenges of the legal profession and make meaningful contributions to the legal community.

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