
Critical Analysis of the Ethical Use of Artificial Intelligence (AI) by Legal Practitioners in South Africa: Comparative Lessons from Germany and France¹

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Abstract: This study critically analyses the ethical use of Artificial Intelligence (AI) by legal practitioners in the South African courts. The study uses doctrinal research methodology to examine primary and secondary sources. It explores the intersection between emerging technologies and professional ethics, raising key questions about lawyers' honesty, responsibility, and accountability in an era where algorithmic tools are increasingly used in litigation. An analysis of existing South African statutory frameworks reveals a regulatory gap. This study proposes the inclusion of AI-specific standards in professional regulations. The paper compares the application of AI in the South African courts with that in the European Union countries, specifically Germany and France. The study concludes that reform is urgently needed to preserve judicial integrity and uphold public confidence in the legal system.

Key Words: Legal Ethics; Artificial Intelligence; Legal Practitioners; Professional Responsibility; Hallucinated Citation; Courts; Plagiarism; Cheating; Germany; France; South Africa.

Introduction

Artificial Intelligence is increasingly reshaping the way lawyers practise and the way courts receive legal submissions. In South Africa, as elsewhere, AI-driven tools such as large language models are being deployed

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to draft pleadings, generate case summaries, and even suggest relevant precedent.² Although these tools promise efficiency and broader access to legal knowledge, they also pose serious risks if practitioners fail to verify their outputs.³ Among the most concerning risks is the phenomenon of hallucination, where AI fabricates authorities that do not exist. This is not a speculative risk; it has already materialised in the South African courts.⁴ However, AI has become an unavoidable presence in modern courtrooms, but these tools should enhance rather than replace human judgment.⁵

The paper argues that the central research question addressed in this study is: to what extent does the existing South African ethical and regulatory framework effectively govern the use of AI by legal practitioners in court proceedings?

While recent jurisprudence demonstrates a judicial willingness to sanction AI-related misconduct, a gap remains in the legal literature regarding whether current professional rules adequately account for the unique risks posed by AI-driven tools, or whether more explicit ethical guidance is necessary. There is also a notable gap in comparative analysis linking concrete judicial responses to AI misuse with underlying legal cultures. Limited attention has been paid to how common law and civil law traditions may differ in their experiences and responses to the ethical risks posed by AI in litigation.

² MULEYA, P. Can Machines Argue the Law? Reassessing AI's Role in Legal Opinions and Heads of Argument under POPIA. *De Rebus* [online]. 2025-05-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/can-machines-argue-the-law-reassessing-ais-role-in-legal-opinions-and-heads-of-argument-under-popia/>.

³ THALDAR, D., S. MBATHA, M. BOTES and P. ESSELAAR. Responsible AI Use in South African Legal Practice: A Call for Ethical Guidelines. *De Rebus* [online]. 2025-07-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/responsible-ai-use-in-south-african-legal-practice-a-call-for-ethical-guidelines/>.

⁴ See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 86 – 87; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 86 – 89.

⁵ MOKGOBU, A. Chief Justice Maya Urges 'Careful Handling' of AI in Courts. In: *Jacaranda FM* [online]. 2025-09-04 [cit. 2025-11-04]. Available at: <https://www.jacarandafm.com/news/news/chief-justice-maya-urges-careful-handling-ai-courts/>.

The study argues that although the manifestations of risk differ across legal systems, the duty of verification and professional accountability remains constant. Analysing the South African jurisprudence alongside international and comparative perspectives, the study demonstrates that AI should enhance, rather than erode, the integrity of judicial proceedings.

Although this study is grounded in the South African jurisprudence, the ethical challenges examined are not specific to that jurisdiction. Courts across jurisdictions are increasingly confronted with AI-generated submissions, fabricated authorities, and unverified legal analysis. These challenges raise fundamental questions about professional responsibility, judicial trust, and the integrity of the procedural process, which are equally relevant to common law and civil law systems. By analysing the South African case law in dialogue with international regulatory developments, particularly within Europe, this article seeks to contribute to broader comparative debates on how different legal cultures should respond to the ethical risks posed by artificial intelligence in litigation.

1 How the South African courts have dealt with the ethical use of AI by legal practitioners

The landmark case of *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others*, demonstrates the judiciary's growing concern with this issue.⁶ Counsel for the applicant relied on several cases that, upon investigation, were revealed not to exist in any law report or database.⁷ These authorities had been produced by an AI system and included without verification in the heads of argument.⁸ The court condemned this conduct, stressing that legal practition-

⁶ See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

⁷ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 20 – 22.

⁸ MOYO, A. Lawyers Face Probe for Using 'Hallucinating' GenAI in Court. In: *ITWeb* [online]. 2025-07-02 [cit. 2025-11-04]. Available at: <https://www.itweb.co.za/article/lawyers-face-probe-for-using-hallucinating-genai-in-court/Pero3MZ3221qB6m>; and AI in Legal Research under Scrutiny after Fake Case Citations. In: *Moonstone Information Refinery* [online]. 2025-01-13 [cit. 2025-11-04]. Available at: <https://www.moonstone.co.za/ai-in-legal-research-under-scrutiny-after-fake-case-citations/>.

ers owe an ethical duty to ensure that all authorities cited are genuine.⁹ The High Court further referred the matter to the Legal Practice Council.¹⁰

The study argues that the facts of the Mavundla case illustrate both the promise and peril of AI in legal practice. This decision signalled that the duties of honesty and integrity imposed on practitioners by the Legal Practice Act (LPA) and the Code of Conduct¹¹ remain unaltered by technological advances.

The paper submits that the decision in Mavundla went beyond condemning the specific conduct. It served as a broader warning to the profession. The court stressed that time pressures, technological convenience, or ignorance of AI's limitations could never excuse a failure to verify legal sources.¹² By referring counsel to the LPC for investigation, the court signalled that professional regulation must adapt to the challenges posed by AI, and that practitioners must not treat new technologies as shortcuts that undermine their ethical duties.¹³

Mavundla is not an isolated incident. The case of *Parker v. Forsyth NO and Others* marked one of the earliest judicial encounters in South Africa with AI hallucinations.¹⁴ The Johannesburg Regional Court addressed a similar issue, where counsel submitted case authorities that were later found to be non-existent, also generated by ChatGPT.¹⁵ Although the court in this case stopped short of referring the matter for disciplinary proceedings, it nevertheless imposed a costs order as a sanction. It emphasised that practitioners had been careless in relying on AI without

⁹ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 37 – 39.

¹⁰ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 37 – 51.

¹¹ Legal Practice Act No. 28 [2014].

¹² MATTHEE, J. and G. STOPFORTH. AI in the Courtroom: The Dangers of Using ChatGPT in Legal Practice in South Africa. In: *The Conversation* [online]. 2025-11-04 [cit. 2025-11-04]. Available at: <https://doi.org/10.64628/AAJ.6cq6mrtgp>.

¹³ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

¹⁴ *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20.

¹⁵ *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 86 – 87.

verification.¹⁶ The court further stressed that even preliminary reliance on unverified authorities risks misleading the opposing party and undermining the fairness of proceedings.¹⁷

In *Van der Berg v. General Council of the Bar of South Africa*, the court also held that a legal practitioner's duty is not only to the client but also to the court.¹⁸ Importantly, the court emphasised that reliance on AI does not relieve counsel of responsibility, nor does delegation to a candidate attorney absolve a supervising practitioner from accountability.¹⁹

More recently, in *Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others*, the Gauteng Division confronted the use of fabricated authorities in urgent application proceedings.²⁰ The court rejected attempts to distinguish the case from *Mavundla* on the grounds that the fabricated cases were not ultimately relied upon in oral argument.²¹ It stressed that the very act of including hallucinated authorities in written submissions violates Rule 57.1 of the LPC Code,²² which obliges practitioners to avoid misleading the court.²³

¹⁶ *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 92 – 93.

¹⁷ *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20.

¹⁸ *Case of Van der Berg v. General Council of the Bar of South Africa* [2007-03-22]. Judgement of the Supreme Court of Appeal of South Africa, 2007, 270/06, para 16; and *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, para 38.

¹⁹ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 45 – 46.

²⁰ *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 86 – 89.

²¹ *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 90 – 92.

²² See *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

²³ *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 90 – 92.

The paper, therefore, argues that this cautious yet firm stance by the courts was further developed in the *Northbound Processing* case.²⁴ As in *Mavundla*, the court referred the matter to the LPC for disciplinary investigation, thereby reinforcing a consistent judicial message of zero tolerance. The jurisprudence emerging from *Mavundla*, *Parker*, *Van der Berg* and *Northbound* points to an urgent need for reform. While Rule 57.1 and the LPA provide a framework to discipline misconduct,²⁵ they do not explicitly account for AI-related challenges.²⁶ Without clearer standards, the profession risks inconsistency and the erosion of trust in the judicial system. These cases demonstrate that the South African courts are no longer treating AI misuse as a novelty, but rather as an ethical breach rooted in established professional duties.²⁷

The paper submits, therefore, that when read together, *Mavundla*, *Parker*, and *Northbound* establish a continuum of judicial response.²⁸ *Parker* imposed costs as a warning; *Mavundla* introduced disciplinary referral and highlighted supervisory responsibility. *Northbound* extended this principle, closing the door to attempts at distinguishing minor or technical breaches. Together, these cases illustrate a consistent judicial philosophy: AI does not diminish the practitioner's ethical obligations, and verification of all sources remains essential.²⁹

²⁴ *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

²⁵ *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

²⁶ *Van der VYVER*, C. Guidelines for Responsible AI Integration in Legal Practice. *De Rebus* [online]. 2025-05-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/guidelines-for-responsible-ai-integration-in-legal-practice/>.

²⁷ *MAHOMED*, N. and *S.-N. SIDDIQI*. Another Episode of Fabricated Citations, Real Repercussions: South African Courts Show No Tolerance for AI-hallucinated Cases. In *Cliffe Dekker Hofmeyr* [online]. 2025-07-04 [cit. 2025-11-04]. Available at: <https://www.cliffedekkerhofmeyr.com/en/news/publications/2025/Practice/Employment-Law/combined-employment-and-knowledge-management-alert-4-july-Another-episode-of-fabricated-citations-real-repercussions-South-African-courts-show-no-tolerance-for-AI-hallucinated-cases>.

²⁸ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

²⁹ These lessons are globally relevant; they resonate with emerging case law in the United Kingdom, see *Case of Ayinde v. London Borough of Haringey*, and *Hamad Al-Haroun v. Qa-*

2 Ethical duties under the LPA and LPC Code

The ethical framework governing legal practitioners in South Africa predates the advent of AI, yet its principles remain readily applicable to the challenges posed by these technologies. The LPA establishes the Legal Practice Council as the regulatory authority and requires practitioners to act with honesty, integrity, and competence.³⁰ Section 36 empowers the Legal Practice Council to regulate conduct, while the Code of Conduct codifies duties owed by practitioners.³¹ The Code of Conduct, adopted under the LPA, provides detailed guidance, with Rule 57.1 being particularly relevant.³² The rule states that a legal practitioner must take all reasonable steps to avoid misleading the court, whether directly or indirectly, on matters of fact or law.³³ This includes ensuring that papers filed contain accurate references and that authorities cited genuinely exist.

In the AI context, Rule 57.1 requires practitioners not only to avoid deliberate deception but also to verify the accuracy of AI-generated outputs.³⁴ The duty of verification is a core responsibility of legal practitioners.³⁵ Rule 18.3 of the Code of Conduct reinforces this by requiring lawyers to supervise the work of staff and candidate legal practitioners.³⁶ This principle applies equally to the use of artificial intelligence.

³⁰ *National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin); and other jurisdictions confronting AI-generated pleadings.

³¹ *Legal Practice Act No. 28* [2014].

³² See Section 36 of the *Legal Practice Act No. 28* [2014], which requires the Legal Practice Council to develop and publish a code of conduct that sets the standard of professional conduct for all legal practitioners and candidate legal practitioners.

³³ *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

³⁴ See Rule 57.1 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

³⁵ OLIPHANT, M. The Ethical Imperative of Verifying AI-generated Content in Legal Practice. *De Rebus* [online]. 2025-08-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/the-ethical-imperative-of-verifying-ai-generated-content-in-legal-practice/>.

³⁶ Van ECK, M. Expanding Ethical and Professional Guidelines: The Use of Artificial Intelligence in the Legal Profession. *De Rebus* [online]. 2025-09-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/expanding-ethical-and-professional-guidelines-the-use-of-artificial-intelligence-in-the-legal-profession/>.

³⁷ See Rule 18.3 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

AI cannot replace the practitioner's obligation to check, review, and take responsibility for the information provided to courts or clients.³⁷ Ultimately, the practitioner remains accountable for ensuring accuracy and integrity in all aspects of legal practice.³⁸ Negligent reliance on fabricated authorities is as culpable as deliberate fabrication because the effect on judicial proceedings is the same. The duty of supervision also plays a critical role.³⁹ The LPA requires that candidate attorneys work under the oversight of a principal, and the courts have made clear that principals are responsible for verifying the accuracy of submissions prepared by juniors, even when AI tools are involved.⁴⁰

The study argues that these duties also serve a constitutional function. The fairness of trials, the principle of legality, and the rule of law all depend on courts being able to rely on the authenticity of authorities presented to them. When practitioners fail to uphold these standards, they do not merely breach professional ethics; they jeopardise the constitutional right to fair hearing and a fair trial⁴¹ and erode public confidence in the judiciary.

In civil law jurisdictions, although judges determine the law *ex officio*, practitioners' submissions still shape judicial understanding. Misleading AI-generated content can, therefore, compromise procedural efficiency, equality of arms, and institutional trust.

The study argues that, although arising in a South African context, the cases offer comparative insights. Civil law jurisdictions, particularly

³⁷ South African Courts Weigh in on the Ethical Use of Artificial Intelligence in Legal Practice. In: *VDMA Law* [online]. 2025-08-06 [cit. 2025-11-04]. Available at: <https://vdmalaw.com/2025/08/06/south-african-courts-weigh-in-on-the-ethical-use-of-artificial-intelligence-in-legal-practice/>.

³⁸ Van ECK, M. Expanding Ethical and Professional Guidelines: The Use of Artificial Intelligence in the Legal Profession. *De Rebus* [online]. 2025-09-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: <https://www.derebus.org.za/expanding-ethical-and-professional-guidelines-the-use-of-artificial-intelligence-in-the-legal-profession/>.

³⁹ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, para 48; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

⁴⁰ See *Legal Practice Act No. 28* [2014]; and *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 48 – 49.

⁴¹ See Section 35(3) of the *Constitution of the Republic of South Africa Act No. 108* [1996] (hereinafter referred to as the "Constitution").

in Central Europe, are often regarded as less susceptible to certain risks posed by AI-assisted legal reasoning due to the *iura novit curia* principle, under which courts bear primary responsibility for determining and applying the law. While this principle is most explicitly articulated in civil law systems, the South African courts similarly retain ultimate authority over the identification and application of the law, albeit within a mixed legal tradition. However, as this analysis will demonstrate, the ethical risks associated with AI transcend traditional legal frameworks.

The article submits that, beyond professional ethics, these duties serve a constitutional purpose. Accurate filings protect the fairness of trials, uphold the principle of legality, and preserve public trust in the judiciary. While civil law courts have the authority to determine the law *ex officio*, they nonetheless depend on structured submissions from parties. Unverified AI content may misrepresent facts, distort arguments, or increase judicial workload, demonstrating that ethical duties are not exclusive to common law systems.

3 Regulatory gaps and international perspectives

3.1 Domestic regulatory gaps

While the preceding discussion focuses on the South African regulatory and judicial responses, these developments must be understood within a broader comparative context. The ethical challenges posed by AI in litigation are global in nature, and South Africa's experience offers a useful case study rather than a jurisdictional endpoint. Examining how other legal systems conceptualise professional responsibility in the age of AI enables a clearer assessment of whether existing frameworks are adaptable or whether new regulatory models are required.

Despite the strong judicial stance in the cases discussed above, South Africa lacks AI-specific regulation in legal practice.⁴² The Legal Practice Act and Code of Conduct provide a general ethical framework, but they were drafted before AI became prominent in the profession. While Rule 57.1 obliges practitioners not to mislead the court, it does not expressly mention AI-generated content. This creates uncertainty about whether the existing rules are sufficient to prevent systemic abuses.

⁴² BERNSTEIN, D. and D. RAMJEE. AI Watch: Global Regulatory Tracker – South Africa. In: *White & Case* [online]. 2024-12-03 [cit. 2025-11-04]. Available at: <https://www.white-case.com/insight-our-thinking/ai-watch-global-regulatory-tracker-south-africa>.

The Protection of Personal Information Act (POPIA) raises further concerns.⁴³ AI tools often process sensitive client data when drafting legal submissions or opinions. Confidentiality remains vital when using AI, and to uphold confidentiality, legal practitioners must comply with POPIA by using secure or anonymised AI systems to protect client data.⁴⁴

The concern is: What happens when practitioners input confidential information into AI systems hosted on third-party servers? Such conduct may amount to a breach of the POPI Act.⁴⁵ Yet current jurisprudence is silent on this dimension. Similarly, the Electronic Communications and Transactions Act (ECTA) regulates electronic transactions but does not anticipate the role of AI in generating legal documents.⁴⁶

South Africa's National Artificial Intelligence Policy Framework of 2024 outlines a vision for the responsible development of AI in the country.⁴⁷ However, it is aspirational rather than binding, as it is still under development. The courts must currently rely on general ethical rules, which were never designed with AI-specific risks in mind. This regulatory lag leaves gaps in enforcement and consistency.

3.2 Comparative lessons from Germany and France

Comparative experience offers useful guidance. The European Union's AI Act categorises AI applications into risk levels, imposing strict obligations on high-risk uses, such as those in legal services.⁴⁸ Under this framework, legal AI tools would require transparency, accountability, and human

⁴³ *Protection of Personal Information Act No. 4* [2013].

⁴⁴ STEWART, K. Responsible AI Use in South African Legal Practice: A Call for Ethical Guidelines. In: *Polity* [online]. 2025-10-29 [cit. 2025-11-04]. Available at: <https://www.polity.org.za/article/responsible-ai-use-in-south-african-legal-practice-a-call-for-ethical-guidelines-2025-10-29>.

⁴⁵ See *Protection of Personal Information Act No. 4* [2013].

⁴⁶ *Electronic Communications and Transactions Act No. 25* [2002].

⁴⁷ *South Africa National Artificial Intelligence Policy Framework* [online]. 1st ed. Pretoria: Department of Communications and Digital Technologies, 2024. 13 p. [cit. 2025-11-04]. Available at: <https://www.dcdt.gov.za/sa-national-ai-policy-framework/file/338-sa-national-ai-policy-framework.html>.

⁴⁸ *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)*. OJ EU L, 2024/1689, 2024-07-12.

oversight to ensure effective use.⁴⁹ Similarly, the OECD AI Principles emphasise fairness, accountability, and transparency as non-negotiable standards.⁵⁰

The paper argues that, moreover, UNESCO has consistently stressed the importance of aligning AI with human rights and ethical values. If incorporated into the South African law, such standards could help close the regulatory gaps exposed in Mavundla, Parker, and Northbound Processing.

The Divisional Court's decision in *Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC*, marks the first direct judicial censure of legal practitioners who relied on unchecked generative AI to draft procedural documents.⁵¹ Heard together under the Hamid jurisdiction, the cases revealed how practitioners submitted pleadings and statements riddled with fictitious case law, legal inaccuracies, and unverified content.⁵² The Court condemned the conduct as misleading, negligent, and contrary to duties owed to the administration of justice.⁵³ Wasted costs, referrals to regulators, and strong judicial criticism followed.

This approach resonates with the reasoning in *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal* case, where the High Court similarly highlighted the dangers of de-

⁴⁹ CHEONG, B. Ch. Transparency and Accountability in AI Systems: Safeguarding Wellbeing in the Age of Algorithmic Decision-making. *Frontiers in Human Dynamics* [online]. 2024, vol. 6, p. 2 [cit. 2025-11-04]. ISSN 2673-2726. Available at: <https://doi.org/10.3389/fhumd.2024.1421273>.

⁵⁰ AI Principles. In: *Organisation for Economic Co-operation and Development* [online]. 2025 [cit. 2025-11-04]. Available at: <https://www.oecd.org/en/topics/ai-principles.html>. These principles resonate strongly with *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P. In this case, the lack of verification and accountability led to the fabrication of authorities. Had South Africa adopted similar binding frameworks, practitioners might have been required by law to disclose their use of AI or certify the authenticity of AI-generated content.

⁵¹ *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin).

⁵² *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin).

⁵³ See *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin), para 73.

ploying AI-generated content in litigation without proper scrutiny.⁵⁴ In both instances, the judiciary emphasised that generative AI does not exempt lawyers from their professional obligations. Whether in South Africa or the United Kingdom, the principle is consistent: legal representatives remain wholly responsible for the accuracy and integrity of documents filed in their name, regardless of whether they were drafted by a person or a machine.

The study submits that these international examples provide a comparative framework relevant to both South African and European legal contexts, demonstrating how AI efficiency can coexist with the protection of fundamental rights. AI-driven tools are increasingly being used in courts for sentencing, evidence analysis, and case prediction, raising concerns about fairness and bias.

Article 6 of the ECHR and Article 14 of the ICCPR guarantee fair trials, requiring transparency, equal treatment, and reasoned judgments.⁵⁵ The ICC Code of Judicial Ethics mandates judicial independence, efficiency, and impartiality.⁵⁶ AI bias or overreliance may undermine these principles in both common law and civil law systems. Even where the court formally determines the law, AI-generated misinformation can compromise the procedural integrity and fairness of the process.

Germany and France provide instructive examples for South Africa in regulating AI within the legal system. A useful comparative perspective may be drawn from Germany, a civil law jurisdiction within the European Union that is actively modernising its civil justice system while maintaining strict constitutional limits on the use of artificial intelligence in adjudication. The German reforms prioritise procedural digitalisation, such as mandatory electronic filing, electronic case management, video hearings, and online procedures, rather than the automation of judicial decision-making.⁵⁷ This sequencing reflects an understanding that efficiency and

⁵⁴ See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08], Judgement of the High Court of South Africa, 2025, 7940/2024P.

⁵⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms* [European Convention on Human Rights] [1950-11-04], Article 6; and *International Covenant on Civil and Political Rights* [ICCPR] [1966-12-16], Article 14(1).

⁵⁶ *Code of Judicial Ethics* [online]. 1st ed. The Hague: International Criminal Court, 2022. 4 p. [cit. 2025-11-04]. ISBN 92-9227-372-8. Available at: <https://www.icc-cpi.int/publications/official-journal/code-judicial-ethics>, Articles 3 and 7.

⁵⁷ GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: <https://www.nortonrosefulbright.com>

access to justice may be enhanced through technology without displacing the human exercise of judicial power. The German experience, therefore, demonstrates that digital transformation in civil proceedings need not entail the delegation of legal reasoning to artificial intelligence, particularly in systems where judges bear an active responsibility for determining and applying the law.⁵⁸

Notably, the German constitutional law imposes clear limitations on the role of artificial intelligence in courts. Article 103(1) read in conjunction with Article 97(1) of the German Basic Law ensures a fair trial and judicial independence.⁵⁹ As a result, AI systems may not be able to issue judgments or binding orders. Instead, artificial intelligence is cautiously deployed as a supportive tool. For example, in case management or the generation of non-binding settlement proposals in mass claims involving repetitive factual patterns.⁶⁰ This distinction between adjudication and assistance preserves the values of judicial independence, transparency, and accountability, which are equally central to South Africa's constitutional framework. The German approach thus offers a valuable lesson for South Africa: AI may be constitutionally acceptable when used to facilitate efficiency and access to justice, but not where it undermines the judge's duty to independently ascertain the law, provide reasons, and ensure a fair trial.

While the German courts have primarily adopted AI for handling mass and standardised claims, its use remains limited to decision-support tools, with final judicial decision-making retained by human judges, in line with the civil law principle of "*iura novit curia*".⁶¹ This ap-

com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany.

⁵⁸ GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany>.

⁵⁹ *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany] [1949-05-23], Articles 97(1) and 103(1).

⁶⁰ GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany>.

⁶¹ HÖSCH, A., M. SCHRADER and P. G. ZICKERT. The Evolving Role of AI in German Dispute Resolution. In: *Hengeler Mueller News* [online]. 2025-01-30 [cit. 2025-11-04]. Available at: <https://hengeler-news.com/en/articles/the-evolving-role-of-ai-in-german-dispute-resolution>.

proach is reinforced by the EU Artificial Intelligence Act,⁶² which classifies judicial AI systems as high-risk and subjects them to strict oversight and risk-management requirements.⁶³

The study, in contrast, argues that South Africa currently lacks a binding framework specific to AI for courts and legal practitioners. The German experience demonstrates how AI may enhance efficiency without undermining judicial independence or fair trial rights. It, therefore, offers valuable regulatory guidance for South Africa's evolving approach to AI in the legal profession.

France provides a complementary perspective on AI integration in the legal sector. Rather than adopting standalone legislation, France implements the EU AI Act. On the other hand, it is developing sector-specific guidelines,⁶⁴ such as proposed amendments to the Intellectual Property Code,⁶⁵ and CNIL's AI Action Plan, to regulate generative AI, protect data privacy, and ensure accountability.⁶⁶ The French courts have explored the use of AI in legal analysis and case law consistency through various projects, consistently reaffirming that AI remains a supportive tool and should not replace human judgment.⁶⁷ Similarly, recent rulings and expert discussions stress transparency, verifiability, and due process when

⁶² Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). OJ EU L, 2024/1689, 2024-07-12.

⁶³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). OJ EU L, 2024/1689, 2024-07-12, Article 6.

⁶⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). OJ EU L, 2024/1689, 2024-07-12, Article 6.

⁶⁵ Loi n° 92-597 du 1^{er} juillet 1992 relative au code de la propriété intellectuelle (partie législative) [1992-07-01]. Journal Officiel de la République Française, 1992, n° 0153.

⁶⁶ Artificial Intelligence: The Action Plan of the CNIL. In: *CNIL – Commission Nationale de l'Informatique et des Libertés* [online]. 2023-05-16 [cit. 2025-11-04]. Available at: <https://www.cnil.fr/en/artificial-intelligence-action-plan-cnil>.

⁶⁷ KHAMITOVA, D. and S. SACHDEV. AI and Arbitration: A Perspective from France. In: *Clyde & Co* [online]. 2025-07-31 [cit. 2025-11-04]. Available at: <https://www.clydeco.com/en/insights/2025/08/ai-and-arbitration-a-perspective-from-france>.

AI assists in case preparation, reflecting the principle that adjudication and arbitration remain human-led.⁶⁸ An example is the case of *Comité Social et Économique de la société de MetLife Europe DAC v. MetLife Europe DAC*, Tribunal judiciaire de Nanterre, *Ordonnance de référé*.⁶⁹ The court emphasised that AI surveillance systems should not be implemented in the workplace without first engaging employee representatives, reinforcing the principles of transparency and stakeholder consultation standards that are equally relevant when AI tools are employed to assist in arbitration case preparation.⁷⁰

The paper submits that for South Africa, the French approach demonstrates how AI can enhance efficiency in legal proceedings while safeguarding fairness, accountability, and judicial independence, offering lessons for developing a structured regulatory framework for AI in courts and law firms. South Africa can learn valuable lessons from both Germany and France on the ethical application of AI by legal practitioners and courts.

4 Commentary on the ethical application of AI

Ka Mtuze and Morige argue that South Africa currently lacks deliberate AI legislation. That, instead, regulation is fragmented and applied by coincidence rather than intention.⁷¹ Their commentary reinforces the view that existing statutory frameworks, such as the LPA,⁷² the POPI Act,⁷³ and

⁶⁸ KHAMITOVA, D. and S. SACHDEV. AI and Arbitration: A Perspective from France. In: *Clyde & Co* [online]. 2025-07-31 [cit. 2025-11-04]. Available at: <https://www.clydeco.com/en/insights/2025/08/ai-and-arbitration-a-perspective-from-france>.

⁶⁹ *Ordonnance de référé du Tribunal judiciaire de Nanterre n° RG 24/01457* [2025-02-14].

⁷⁰ *Ordonnance de référé du Tribunal judiciaire de Nanterre n° RG 24/01457* [2025-02-14].

⁷¹ SNAIL KA MTUZE, S. and M. MORIGE. Towards Drafting Artificial Intelligence (AI) Legislation in South Africa. *Obiter* [online]. 2024, vol. 45, no. 1, pp. 161-179 [cit. 2025-11-04]. ISSN 2709-555X. Available at: <https://doi.org/10.17159/obiter.v45i1.18399>. This argument resonates with the reasoning in *Mavundla*, where the court had to rely on Rule 57.1 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337 to sanction conduct involving AI, despite this rule not being designed to regulate algorithmic tools; see *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

⁷² *Legal Practice Act No. 28* [2014].

⁷³ *Protection of Personal Information Act No. 4* [2013].

the ECT Act,⁷⁴ provide general ethical norms but were not drafted with generative AI or hallucinated authorities in mind.⁷⁵

Batool⁷⁶ and Ali Khan⁷⁷ note that a common challenge across jurisdictions is the absence of consistent monitoring frameworks and the lack of clear, binding rules on accountability.

The study argues that these comparative studies support the concern that unverified reliance on AI can undermine the integrity of legal proceedings. Transparency, accountability, and fairness must be foundational principles in regulating AI in legal practice, rather than secondary considerations.

Wang argues that AI-driven tools pose systemic risks to professional responsibility, particularly where practitioners abdicate their duty of independent judgment to machine outputs.⁷⁸ Similarly, Pietropaoli emphasises that liability issues arise when lawyers rely on AI-generated materials without adequate scrutiny, leading to potential miscarriages of justice.⁷⁹

The article argues and submits that these commentaries and interventions highlight a global consensus: while AI offers opportunities for efficiency, its use in law must be carefully balanced against enduring principles of honesty, responsibility, and accountability.

⁷⁴ *Electronic Communications and Transactions Act No. 25* [2002].

⁷⁵ SNAIL KA MTUZE, S. and M. MORIGE. Towards Drafting Artificial Intelligence (AI) Legislation in South Africa. *Obiter* [online]. 2024, vol. 45, no. 1, pp. 161-179 [cit. 2025-11-04]. ISSN 2709-555X. Available at: <https://doi.org/10.17159/obiter.v45i1.18399>.

⁷⁶ BATOOL, A., D. ZOWGHI and M. BANO. AI Governance: A Systematic Literature Review. *AI and Ethics* [online]. 2025, vol. 5, no. 3, pp. 3265-3279 [cit. 2025-11-04]. ISSN 2730-5961. Available at: <https://doi.org/10.1007/s43681-024-00653-w>.

⁷⁷ KHAN, A. A., M. A. AKBAR, M. FAHIMIDEH, P. LIANG, M. WASEEM, A. AHMAD, M. NIAZI and P. ABRAHAMSSON. AI Ethics: An Empirical Study on the Views of Practitioners and Law-makers. *IEEE Transactions on Computational Social Systems* [online]. 2023, vol. 10, no. 6, pp. 2971-2984 [cit. 2025-11-04]. ISSN 2329-924X. Available at: <https://doi.org/10.1109/tcss.2023.3251729>.

⁷⁸ WANG, W. An Analysis of the Feasibility of Artificial Intelligence to Replace Lawyers. *Advances in Politics and Economics* [online]. 2023, vol. 6, no. 2, pp. 161-172 [cit. 2025-11-04]. ISSN 2576-1390. Available at: <https://doi.org/10.22158/ape.v6n2p161>.

⁷⁹ PIETROPAOLI, I., I. ANASTASIADOU, J.-P. GAUCI and H. MacALPINE. *Use of Artificial Intelligence in Legal Practice* [online]. 1st ed. London: British Institute of International and Comparative Law, 2023, pp. 11-14 [cit. 2025-11-04]. Available at: <https://www.biicl.org/publications/use-of-artificial-intelligence-in-legal-practice>.

5 Legal culture, AI hallucinations and the principle of *iura novit curia*

The ethical risks associated with AI-generated court filings extend beyond adversarial legal systems. In many Central European jurisdictions, the civil law tradition is characterised by the principle of *iura novit curia*. According to this principle, the court bears primary responsibility for determining the applicable law. At first glance, this principle may appear to mitigate the dangers posed by fabricated or inaccurate legal authorities submitted by legal practitioners.

However, this assumption requires careful qualification. Even within civil law systems, courts rely on parties' submissions to structure disputes, identify relevant statutory provisions, and contextualise legal arguments.⁸⁰ AI-generated hallucinations may, therefore, distort the factual and legal matrix presented to the court, increase judicial workload, and undermine procedural efficiency.⁸¹ In complex litigation, urgent proceedings, or cases involving comparative or international law, the uncritical submission of AI-generated material may still compromise fairness and judicial integrity. Moreover, contemporary civil law practice increasingly incorporates adversarial elements, including written argumentation, expert opinions, and comparative jurisprudence.⁸² In such contexts, the ethical concern is not limited to misleading the court on the law, but extends to broader issues of institutional trust, equality of arms, and professional reliability.

The article argues, therefore, that the risk posed by AI, manifests differently across legal cultures, but it does not disappear. While the urgency and regulatory response may differ between common law and civil law systems, the underlying ethical principle remains constant: legal practitioners must retain responsibility for the accuracy, authenticity,

⁸⁰ ROM, M. C., M. HIDAKA and R. BZOSTEK WALKER. *Introduction to Political Science* [online]. 1st ed. Houston: OpenStax, 2022, pp. 345-349 [cit. 2025-11-04]. ISBN 978-1-951693-56-5. Available at: <https://openstax.org/details/books/introduction-political-science>.

⁸¹ Van ECK, M. AI 'Hallucinations' Are Threatening the Administration of Justice in SA. In: *Daily Maverick* [online]. 2025-07-15 [cit. 2025-11-04]. Available at: <https://www.dailymaverick.co.za/opinionista/2025-07-15-ai-hallucinations-are-threatening-the-administration-of-justice-in-sa/>.

⁸² HASNEZIRI, L. The Adversarial Proceedings Principle in the Civil Process. *European Journal of Marketing and Economics* [online]. 2021, vol. 4, no. 1, pp. 88-91 [cit. 2025-11-04]. ISSN 2601-8667. Available at: <https://doi.org/10.26417/548nth20i>.

and verification of all materials submitted to court, regardless of whether the court formally determines the law *ex officio*.

6 Towards reform: universal ethical standards for AI in litigation

The jurisprudence emerging from case law demonstrates that existing ethical rules can be applied to AI misuse. However, it also exposes the limits of frameworks not specifically designed for algorithmic technologies.⁸³ Rather than proposing reforms confined to the South African practice, this study advances principles capable of application across legal systems, subject to contextual adaptation.

First, jurisdictions should adopt explicit professional standards that require legal practitioners to verify all AI-generated content before submitting it to the court. Whether in common law or civil law systems, the duty of verification is central to maintaining judicial trust and procedural integrity.

Second, legal practitioners should be required to disclose the use of AI in preparing court filings where such use materially affects the content submitted. Disclosure promotes transparency without prohibiting innovation and allows courts to assess submissions with appropriate caution.

Third, supervisory obligations must extend to the use of technological tools. Principals and senior practitioners should be responsible not only for the work of junior lawyers but also for the systems and technologies deployed within legal practice.

Finally, judicial training and institutional awareness are essential. Courts must understand both the capabilities and limitations of AI in order to respond proportionately to misconduct and develop effective procedural safeguards.

While the precise form of regulation will differ between common law and civil law traditions, these principles reflect a shared ethical foundation. AI should enhance access to justice and efficiency, but only if constrained by clear professional accountability.

⁸³ *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

Conclusions and recommendations

The jurisprudence emerging from *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal*, reinforced by *Parker v. Forsyth* and *Northbound Processing*, establishes a clear principle: AI does not absolve legal practitioners from their ethical duties. Fabricated case law, whether introduced negligently or intentionally, constitutes a breach of Rule 57.1 and undermines judicial integrity.

Yet these cases also expose the limits of South Africa's regulatory framework. The Legal Practice Act and existing codes of conduct provide a foundation, but they lack provisions specific to AI. Comparative jurisdictions such as Germany and France offer valuable lessons on proactive regulation. South Africa must seize this moment to codify clear duties, enhance supervisory obligations, and provide training for both practitioners and judges.

The recommendations are, therefore, threefold. First, amend the Code of Conduct to include AI-specific rules requiring disclosure, verification, and accountability. Second, strengthen supervisory responsibilities by mandating firm-level AI policies and LPC oversight. Third, develop judicial training and court rules that anticipate AI misuse.

By adopting these reforms, South Africa can transform the cautionary tale of Mavundla into a catalyst for ethical innovation. AI can enhance the efficiency of legal practice, but only if harnessed responsibly. The judiciary has sounded the alarm; it is now for legislators, regulators, and the profession to respond. In doing so, the legal system can ensure that AI remains a tool of justice rather than a threat to its very foundation.

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