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The AI National Policy: South Africa's initial step to establish an AI policy and regulatory framework

10 April 2024 *5 min read*

At the AI Government Summit on 5 April 2024, the Department of Communications and Digital Technologies ("**DCDT**") launched South Africa's Artificial Intelligence ("**AI**") Planning Discussion Document ("**Discussion Document**") with the purpose of the Discussion Document being to initiate discussion between the public and private sector to facilitate AI innovation and along with that, the development of a national AI policy that will set out the government's position on the adoption of AI in South Africa, government-led AI initiatives and a proposed regulatory framework and/or principles guiding the use and development of AI in South Africa.

This is a positive initial step, as once a national policy is adopted as a White Paper, it would inform the legal framework and principles upon which the appropriate governance or regulatory instruments or any new legislation to regulate AI (which the Discussion Document seems to propose, including by providing various proposed dates by when specific AI 'regulations' should be passed) is likely to be based.

The DCDT working together with an AI Expert Advisory Council (to be peopled with AI experts) will work to define the AI strategy to be embodied in the national AI policy. The DCDT proposes that the Artificial Intelligence Institute of South Africa shall guide the DCDT in its implementation and development of the national AI policy and any AI specific regulation. Whilst the approach to the regulation of AI is not conclusively set out in the Discussion Document, it seems that the DCDT intends to develop and implement some form of AI regulation (as alluded to in the keynote address by the Minister of DCDT during the launch of the Discussion Document at the AI Government Summit).

Even though the development of national AI policy through the publication of the Discussion Document is in the early stages, it provides some initial insights into the government's proposed approach to addressing the adoption of AI in South Africa. Some of the key proposals are:

- a national strategy for AI to advance economic growth, with a particular focus on key sectors, including manufacturing, agriculture, military capabilities, energy transition, healthcare and the automotive sector;
- developing and implementing a tailored regulatory approach to AI in South Africa over the period of 2025 to 2027, which can take guidance from other legal systems and approaches adopted globally, for example the European Union's AI Act, but should ultimately address the South African context and infrastructure capabilities;
- ensuring that ethical considerations relating to AI use are appropriately addressed under the legal framework which is ultimately adopted or is included as guiding principles for the national AI policy – to guard against and mitigate any harms resulting from the deployment of AI in South Africa. Some of the harms to be addressed include:
    - anti-competitive behaviour arising from the concentration of AI models between a small number of technology players;
    - risks associated with robotic or autonomous devices that use AI to make decisions;
    - social risk arising from job losses;
    - existential risks resulting from loss of control of AI models that pursue goals detrimental to humanity; and

- risks of enhanced criminal behaviour or other dangerous outcomes resulting from AI designed for military purposes (used without appropriate controls); and

- the need for investment by government to implement targeted initiatives, such as:
  - ensuring that education and training ecosystems suitably cater for AI literacy skills to address future AI skills requirements;
  - developing or investing in locally developed AI solutions, including through supporting and investing in tech start-ups in South Africa; and
  - upgrading and maintaining the public data architecture systems across key identified sectors and to mobilise e-government services utilising AI.

Critically, the Discussion Document appears to have been published as a rough draft. It is repetitive, has conflicting provisions and is not sufficiently advanced, specific or practical in clarifying and setting a clear policy approach and informed plan to offer meaningful guidance on the way forward. It is largely styled as a list of options, initial thoughts and information from other sources and recordals of developments in AI use and governance and regulation in other countries including, for example, suggesting that the persons charged with regulating or creating AI governance frameworks or laws "*should consider disclosure requirements around the use of AI techniques*".

Optimistically the Discussion Document does signal that policy and legislative developments for the use and adoption of AI in South Africa are on the horizon and it is hoped that a reworked Discussion Document is published which is a substantive AI policy plan and includes considered input from key stakeholders from the private and public sectors and relevant AI bodies, such as the AI Expert Advisory Council, and provides specific direction for South Africa, taking into account the learnings from other jurisdictions around the globe, including from a regulatory perspective and in implementing effective mechanisms to foster and encourage the development and use of AI while striking a balance to manage the potential harms and ethical risks which have arisen with the proliferation of AI in all aspects of business and society.



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