

**OURMedia III- Strengthening Citizens' Communication
Barranquilla, Colombia**

19-21 May 2003

**Regulatory options to guarantee more democratic media and information
technologies**

By

Lumko Mtimde

Councilor

Independent Communications Authority of South Africa

Chairperson, friends and colleagues

Let me first thank OURMedia for inviting me on behalf of ICASA to this important conference. ICASA¹ appreciates the opportunity to interact with various academics, activists, practitioners and policy makers and experts.

One of the central themes of communications policy discussions in recent years is how to enable citizens to have greater influence and control over the process of public communication. In the information society, the ability to define what information is and shape the flow thereof has become a form of political self-determination. The central issue in the debates of the new world of information and communication order has been the democratization of communication to guarantee the public the right to communicate.

We should therefore not underestimate the role of communications and media in the process of development and as an instrument for the citizen's active participation in a democracy.

¹ www.icasa.org.za – an independent communications regulator in South Africa established in terms of the Constitution Act No. 108 of 1996 (as amended) and the ICASA Act of 2000

Political and educational systems need to recognize their obligations to promotion of their citizens' critical understanding of the phenomena of communication.²

Historical development of broadcasting in South Africa

South African broadcasting traces its history back to at least 18 December 1923, when South African Railways made its first 'wireless' broadcast in Johannesburg by the Western Electric Company.³ Similar inventions were carried out in Cape Town and Durban in 1924. The three entities or services operated separately within a limited coverage and low revenue, which made radio unprofitable. These services were later combined in 1927 to form African Broadcasting Company, which was, later changed to establish the South African Broadcasting Corporation⁴.

At first the new national radio service's broadcast was only conducted in English but the then government promulgated an Act⁵ that prescribed the mandatory usage of Afrikaans broadcasting service. In 1937 comprehensive transmission in both the then official languages became a reality. During the forties and sixties there was an introduction of programme services for some of the African languages. On the television front the first service was launched on 5 May 1975 and during the eighties three additional television services were introduced.

South African broadcasting system existed for decades as one of the most politicized broadcasting system in the world. The politicization of the

² UNESCO Declaration issued in 1982 at the International Symposium on Media Education, Grunwald, Germany

³ IBA Triple Inquiry Report, 1995

⁴ SABC, the South African National Public Broadcaster, for more information visit www.sabc.co.za

⁵ Radio Act of 1926. This Act has been repealed in 1976 and in 1999.

broadcasting system was institutionalized and manifested itself at a variety of levels including:

- Policy determination and regulation;
- Service provision;
- Employment practices and recruitment; and
- Content production.

In line with the apartheid⁶ philosophy, service provision was meant to favour the advantaged according to the criteria of colour, class, geographic location and language. Apart from disseminating racial stereotypes and fragmenting the South African population on racial lines under the apartheid policy of 'divide and rule', content provided by the system was often political, particularly, the coverage of news and political events. The hallmarks of this broadcasting system were political censorship and the dissemination of the White Minority regime's propaganda on all services. This was partly acknowledged by the then SABC editor-in-chief of television news; Mr. Johan Pretorius who stated that "It would be naïve to deny that the Corporation followed a fairly strict government of the day line."⁷

The democratization of the South African Broadcasting System

The events that took place between the late 80's and 1994 set in motion a new process that saw the introduction of new players and the regulation of broadcasting system, which led to the birth of the Independent Broadcasting

⁶ A system of racial separation that historically served white South Africans and in 1980s it became a severe burden on economic growth and political stability. It was internationally declared a crime against humanity.

⁷ Johan Pretorius, "The role of the electronic media and state media during the transition period", Cape Town 1992

Authority⁸ that is task mandated and tasked with the responsibility of regulating broadcasting activities in the public interest.

However, our broadcasting system is still shackled by some elements of our unfortunate heritage bequeathed to South Africans by political system which denied great majority services we were rightfully entitled to.

In this regard most South Africans do not enjoy the right to hear their languages used on-air despite the Constitutional dispensation that bestows the right to language choice and the right to impart and receive information. This right has not been given effect and meaning, more so, in respect of people in rural and some non-urban areas. For example if you live in some rural areas, like mine⁹, the only broadcasting service available to you is the language radio service of the SABC.

It was the first time in 1994 in the history of broadcasting in South Africa, that we have a broadcasting policy based on universal access, diversity and democratisation of the airwaves, nation building, education and strengthening the moral fibre of society.¹⁰ The Policy is underpinned by Constitutional principles of freedom of expression, equality, language equity, cultural diversity and non-racialism.

Our new broadcasting policy and laws tries to redress issues like inequality in access, inequality in frequency allocation, inequality in language, cultural and educational programming, lack of diversity and choice in services and lack of empowerment for the historically disadvantaged.

⁸A broadcasting regulating body established in terms of IBA Act No. 153 of 1993. For further information visit www.iba.org.za . It was subsequently merged with SATRA in 2000, to form ICASA.

⁹ Mvenyane village, located in the Alfred Nzo District Municipality (Umzimvubu Municipality) near Kokstad in the Eastern Cape

¹⁰ These values are now enshrined in the Objects of the IBA Act of 1993 (as amended).

The commitment to address such imbalances can be traced in the White Paper on Broadcasting, IBA Act, Broadcasting Act¹¹ and the Broadcasting Amendment Act¹².

In South Africa, broadcasting is viewed as one of the most viable mediums and mechanisms, resource or support structure that can provide both formal and informal education, which will build an information society and help narrow and, hopefully, eradicate information and technological gaps between the rural and urban community, the haves and the have nots, the advantaged and disadvantaged.¹³

Fostering Democratic Principles and Values

The IBA, Broadcasting Act and Broadcasting Amendment Act recognize three tiers of broadcasting services namely, Public; Commercial and Community broadcasting service. Collectively, they seek to provide more diversity of service to all segments of the South African population.

The Broadcasting Amendment Act¹⁴ provides two measures to achieve the further expansion and diversity of services. Firstly, it seeks to (among other) facilitate the licensing of additional subscription television services. The conditions for licensing are being relaxed in order to fast track the process and open the pay sector to more robust competition. We hope this will promote the emergence of new and specialised operators targeting the various interests and markets in the commercial broadcasting sector.

¹¹ Broadcasting Act No. 4 of 1999. The Act is a direct result of the White Paper on Broadcasting policy and amended some sections of the IBA Act.

¹² Broadcasting Amendment Act No. 64 of 2002

¹³ Mtimde L., Community Radio and Information Society, AMARC Conference, Kathmandu, Nepal, February 2003

¹⁴ Broadcasting Amendment Act No. 64 of 2002

Secondly, the Act seeks to increase the choice of services for ordinary South Africans who cannot afford the current pay services. To achieve this, the Act provides for the establishment and licensing of two regional television services. These regional services will usher in television broadcasting in the ten other official languages that are currently under-represented in our broadcasting system. Some of these languages will be aired on television for the first time indicating the significance we attach to this Amendment Act.

A well-founded broadcasting system should ensure pluralism in the provision of news, views and information. It should give wide and enlightening choices to the citizens (the public) and thereby contribute significantly to an effective and vibrant democracy.¹⁵ Such a system should enhance and protect the fundamental rights of the citizens as enshrined in the Constitution. However, the question that needs to be posed is whether the broadcasting system has delivered on the desired objectives and whether the regulatory framework is enabling.

Public Broadcasting service

Today, the SABC's national television network comprises three full-spectrum free-to-air channels, two pay-TV channels aimed at audiences in Africa, Bop-TV and 21 public sound broadcasting services. Combined, the free-to-air broadcasting services broadcast in 11 languages via the terrestrial signal distribution network provided by SENTECH¹⁶ and a satellite signal.

As stated earlier the Broadcasting Amendment Act mandates the SABC to apply to ICASA for two additional regional television channels that will focus specifically on all the marginalized official languages in the country, as they are currently not

¹⁵ White Paper on Broadcasting Policy, 1998

fairly represented. This is in line with the requirements of the Constitution, which encourages the usage of all official languages.

The SABC plays a central role in the implementation of public obligation policies and programmes as part of its public mandate. Over the past year the SABC has made giant strides towards achieving universal access as reflected by the fact that from 83% a year ago, the reach of SABC 1 has expanded to cover 89% of the country; the SABC 2 footprint now extends to 91%, up from 85% last year; and SABC 3 is at 77%.¹⁷

The SABC has made good progress towards achieving the critical goal of universal access through its services via terrestrial broadcasting networks. Although satellite transmission has gone some way towards alleviating the lack of electronic media services in areas of broadcasting transmission, it is extremely costly.

Public broadcasting is the main source of news and opinion and will continue to be so for the near future. For this reason, it is important that public broadcaster should, without undue interference, dedicate itself to serving the function of informing citizens about matters of public interest. In the context of globalisation, it must challenge the pressures to open public interest broadcasting to what is referred to as market forces, which may turn broadcast media into a commercial commodity.

“It is clear that public broadcasting is under threat world wide by the countervailing pressures of competition from the private sector, digitisation and the consequent fragmenting of the audience, as well as the omnipresent spectre

¹⁶ A public signal distributing company providing broadcasting signal distribution, digital multimedia and telecommunication services. For more information visit www.sentech.co.za .

¹⁷ Dr. Ivy Matsepe-Casaburri, Minister of Communications, Parliamentary Media Briefing, Cape Town, February 2003. For further information visit www.docweb.pwv.gov.za .

of funding problems. There may be the temptation by some to cast aside the basic principles of public broadcasting in order to effectively compete in this new environment. This is where, sometimes, public broadcasters find themselves in the maw of confusion, where instead of preoccupying themselves with market reach, they opt for market share. Broadcasters should never be dictated to by the needs of the advertisers to the detriment of the needs of the audience.”¹⁸

Critical for the SABC this year, is the completion of its editorial and programming policy development process. The Board has already approved draft policies and these were publicized for public comments. The conclusion of this process will see the SABC's role as a public broadcaster, defined in more detail, clarifying how it will contribute to our Constitutional and broadcasting goals, and providing a basis for evaluating its performance.

Another important objective for the SABC is to comply with the local content targets for its broadcasting services, which are set by ICASA, through the South African Music Content Regulations, 2002.¹⁹ This effort will go a long way in promoting local talent and stimulating the South African television production industry. By so doing the South African community would be able to see their opinions, ideas, values, attitudes and artistic creativity and cultural diversity reflected on the public broadcasting services.

The SABC will continue to increase the local content on all its radio and television services, towards achieving the new increased targets set by ICASA, which come into effect in August 2003. An important part of this project is to increase services in the indigenous languages.

¹⁸ Mandla Langa, Chairperson, ICASA, Campaign for Public Service Broadcasting in Southern Africa, 2000

¹⁹ ICASA is empowered by Law to conduct public processes through Public Hearings, which generate ideas from the public, in order to provide regulatory framework – in the form of Regulations. Licensees have to comply with these Regulations, License Conditions and the Law.

The ultimate objective of these broadcasting laws is to ensure that the public broadcaster provides relevant public broadcasting service that strives to achieve, amongst other, the following principles:

- Access for all;
- Representation of diverse social interests;
- Serve the public sphere;
- Commitment to the education of the public;
- Provide quality programming as opposed to ratings; and
- Freedom to produce challenging or controversial programming content.

Commercial Broadcasting Service

There are two types of commercial broadcasters operating in South Africa at present namely, commercial free-to-air radio and television together with subscription television, delivered both terrestrially and by Direct to Home satellites. Commercial broadcasters compete with community and public broadcasting service for advertising revenue, which is their sole source of income. As a result commercial broadcasters prioritise issues of market share and targeting specific listeners and audience.

An often mistaken belief is that public interest broadcasting can only be achieved through public broadcasting services and that the commercial broadcasting must be allowed a free reign. This leads to many broadcasting interest groups mistaking a broadcasting licence as a licence to print money. The commercial broadcasters should be able to balance public objectives and profit-making motivation, as most of our citizens do not have the financial resources to purchase either commercial terrestrial or satellite services. These broadcasters also use frequencies which are public resources.

ICASA understands that the commercial broadcasting sector plays a far more fundamental role in the broadcasting system and believes that there is a need to create conducive conditions to stimulate investment, growth and provide for employment opportunities.

The IBA Act, Broadcasting Act and Broadcasting Amendment Act requires all operators to hold a licence and compete under similar conditions. This will establish certainty that will foster investment in services and infrastructure. The requirement that all operators must hold licence and to shoulder licence conditions even in the converged future, if our culture is to be protected and celebrated. A delicate balancing act is definitely required.

To assist with the balancing act, the regulator imposes terms, conditions and obligations to ensure public good is the cornerstone of the broadcasting system. This will ensure that all South Africans are provided with relevant broadcasting service and not just a few with money. The service should be provided in the languages that are understood and to reflect the life and cultural diversity inherent in the country.

Commercial broadcasters have a key role to play in the forging of a new South African identity. A healthy and vibrant broadcasting industry can play an important role in building nationhood by reflecting the rich cultural, language, religious and regional and metropolitan diversity within the framework of national unity.²⁰

²⁰ White Paper on Broadcasting Policy, 1998

Community Broadcasting Services

Community broadcasting and in particular radio was made possible by the arrival of democracy in South Africa and its growth has largely mirrored that of our fledging democracy.²¹ Whilst community radio has expanded considerably over the past years, community television has not yet been introduced to this sector save for Trinity Broadcasting Network that was 'grandfathered'²². A number of expressions of interests were received from the public regarding community television. ICASA hopes to provide a regulatory framework for Community Television in the new financial year.

The community broadcasting sector is a new phenomenon in South Africa. It is based on the premise that community broadcasting is for the community, by the community, through the community. This sector must ensure community participation in the ownership, control and decision-making processes.²³

The community broadcasting sector has an important role to play in nation building, the recognition of a diverse range of cultures, needs and aspirations and the delivery of all of the languages within relevant communities. Not only is this sector important in providing communities with mechanisms to discuss developmental and education issues relevant to them, but offers an opportunity of reflecting themselves and connecting with the broader South Africa.

The prime objective and vision of community broadcasting and its related activities is to promote development of a sense of community whilst addressing the particular needs of communities.

²¹ Alan Fransman – Community Radio Stations as Democratic Institutions, NCRF AGM, 1998

²² Any person who was providing a broadcasting service prior to the promulgation of the IBA Act was deemed to be licenced on condition that he/she lodges an application to that effect to the IBA.

²³ As required in terms of Section 47 of the IBA Act No. 153 of 1993 (as amended) and Section 32 of the Broadcasting Act No. 4 of 1999

A vibrant community broadcasting industry can make an immeasurable contribution towards achieving those goals and the improvement of the living standards of all South Africans.

The basic objective of community broadcasting is to meet the broadcasting needs of a community or communities living in a specific geographic area at the local level. Community broadcasting services should be free-to-air, as in case of public broadcasting services.

In 1995, the then IBA granted about 100 temporary community sound broadcasting licences as a pilot project. These licences are being phased out and replaced by the four-year community sound broadcasting licences and ICASA has already licensed 76. We are currently finalising the licensing process. In terms of community television, the Broadcasting Act requires of ICASA to conduct an investigation into the viability and impact of community television.

Common amongst community broadcasters is lack of access to funds. Unfortunately, the pursuit of advertising revenue can place strains on the delivery of a truly community service. Many, however, who do not have access to funds, are living from hand to mouth. However, it should be noted that in the final analysis, the responsibility for funding rests with the community broadcasting sector.²⁴

Government decided to establish the Media Development and Diversity Agency²⁵ (MDDA) in a bid to assist development and sustainability of sectors like community broadcasting. Fundamental to the philosophy of the MDDA is that it

²⁴ More information about efforts by the sector to support its development can be found at www.ncrf.org.za, www.amarc.org/africa, www.ifrb.org.za, www.acb.org.za and www.nab.org.za. These are sector organizations representing the community radio sector in South Africa.

²⁵ Media Development and Diversity Agency No. 14 of 2002. This law was born from an initiative of the community media sector, endorsed at the Community Media 2000 Conference held in Cape Town, 1995.

will not involve itself in content. Rather it aims at overcoming the barriers to media development which have helped preserve the imbalances that still exist - lack of access to resources; training; education; literacy, amongst others. By helping overcome such barriers to media development, the MDDA should promote a climate conducive to greater media diversity.

The MDDA's primary function is to provide and facilitate funding and other support, including training and capacity-building to community media that serve the interests of various marginalised communities throughout the country. It will also provide some support to small commercial media and fund research that is relevant to media development and diversity.

The MDDA does not have regulatory powers. It has no capacity to encroach on the authority of the regulatory bodies that do operate in the media sector, such as ICASA, the Competition Commission and so on. It will be funded by the Government, the private sector and other donors.

The legislative and regulatory framework as established by the South African laws provides for a further enabling environment for the development of this sector. The legislative categorization of the broadcasting industry into three tiers, as mentioned above, result into differentiated fee structure. For example, Community Radio applicants pay as less as R3000 application fee, compared to R30 000 by Commercial Radio. License fee is R1200 once off, as compared to Commercial Radio (for example) pays 1% of annual turnover, less agency fees and other deductions to a maximum of 20%. Same differentiation applies to licence issuing fees, amendment fees and license renewal fees.²⁶ Community Radio is allowed to generate funds through membership fees, grants / donations, sponsorship and advertising, or by any combination of the abovementioned.

²⁶ 1 US \$ = R7.50 (May 2003)

The above is based on the recognition of the nature and role played by the community radio sector and the socio-economic reality of most grassroots communities.

ICT for Sustainable development and democracy

The rapid changes in the broadcasting, telecommunications and information industries are also changing traditional regulatory and service boundaries. Networks are emerging which carry TV interactive data as well as traditional telephone or recent mobile services. The previously separate industries are converging on a number of fronts.

In a bid to acclimatize within the rapid and all-embracing ICT development and convergence of technologies, government, after thorough consultation with stakeholders, took a decision to merge the IBA and South African Telecommunications Regulatory Authority (SATRA) in 2000, to establish the Independent Communications Authority of South Africa²⁷ herein referred to as ICASA.

The merger was informed by, amongst others, the fundamental change that the world is undergoing in the way we live, including the way we do business, interact socially, learn and acquire knowledge and entertain ourselves. Also the global information society is evolving rapidly with the convergence of telecommunications, broadcasting and information technology.²⁸

²⁷ Established in terms of ICASA Act 13 of 2000

²⁸ Mauritius Conference on Access to ICT for all,- “The challenges of the Information Society in Africa”, ICTA, 3-5 April 2003, Mauritius

The information age presents both broadcasters and citizens with facilities like fax, telephone, computers, cell phones and Internet to receive and exchange information, which is critical in participation in global dialogues. However, these facilities are not exploited to their maximum capacity due to skewed distribution of resources, lack of proper infrastructure and under-development.

For example, it has been established in a survey conducted by Network Wizards²⁹ which states that the information available on the Internet is dominated by material originating from US, Europe and Asia, with Africa generating only around 0.4 percent of global content. If South Africa is excluded, Africa generates a mere 0.02 percent of global Internet content. Furthermore, according to the UNDP³⁰, 80 percent of the language used on the web sites is English, although less than one in ten people worldwide speak the language. Again the issue of population, distance and time in relation to rural and remote areas can determine access to basic communications with affordable access to ICT's compared to cities.

Secondly, using Telkom's³¹ 2002 figures, South Africa has a teledensity of 11.4 percent representing a significant increase over the 1997 figure of 9.6 percent. However, due to lack of financial resources most citizens can not afford to retain the connection and usage of telephones. It would therefore be futile to celebrate the number of telephone lines that are being installed if consumers are unable to use and maintain. Within this context ICASA concluded a Settlement Agreement³² with Telkom on the Rate Regime³³. In terms of the Agreement Telkom was to introduce a "lifeline services" in terms of which, instead of being

²⁹ Economic Commission of Africa, Africa Development Forum, 1999

³⁰ UNDP, Human Development Report, 2000

³¹ TELKOM is the Public Switched Telecommunications Network operator in South Africa. For further information visit www.telkom.co.za

³² Concluded on or about June 2002

³³ Regulations that guides the approval of fees and charges which may be levied by a licensee in respect of the provision of a telecommunications service.

disconnected from the network, customers who have not paid will have limited access and will only be able to receive and make emergency calls. However, consumers would still not be able to use the facility to impart information and access Internet.

Since adaptation and utilization of the ICTs is constrained by, amongst other, inadequate infrastructure, limited human resource capacity, the absence of national policy (in some cases) and low ICT literacy, it is required of us to prioritise or focus on human capital or capacitation, organizations and processes or policies in tackling some of the challenges, rather than solely on technologies. We need to deal with issues of ownership and control of information production and dissemination, software development, use of local languages and choice of technology. Research and development strategies have to be adopted through programmes like NEPAD, which will ensure that the developing countries like South Africa adapt and use technologies that suit our situations. Otherwise, we will be receivers of technology and fail to meet our economic demands, like HRD, growth, etc. In the long-term, we will be victims of cyber warfare or cyber terrorism under the disguise of cyber security.

Within this context it would be prudent to borrow from some words of wisdom from Mr. Kofi Annan³⁴ who recently stated that - "If harnessed and directed properly, information and communication technologies (ICT) have the potential to improve all aspect of our social, economic and cultural life."

South Africa still needs to redress past imbalances in relation to access in broadcasting, telecommunications and information services. This requires regulation to be maintained with the objective of increasing access and broadening choice for the under-served within the country.

³⁴ The Secretary-General of the United Nations

However, we recognise that the balance of forces is against us because in the past few years, information and communications technologies have been pouring into the developing countries, including South Africa. We do not have much choice but to adapt and utilise these potent forces, as resistance would result in further marginalizing us thus preventing our participation in global issues or dialogues.

Conclusion

There have been significant achievements in our goal to free the airwaves and give our people access to information devoid of state propaganda. The achievements in broadcasting have not only given people access to diversity in the sources of news and entertainment, but have also created new entrepreneurs in media. The 6 privatised SABC regional radio stations and 14 new commercial radio stations have created new business opportunities for people who never had access to media ownership in the past.

South Africa has democratized the broadcasting system and one can submit that our system is making strides in creating a better life for all our people, through enabling legislative and regulatory framework.

Thank you

19 May 2003