Afrokology and the right to communicate in Africa

Milton, V. and Mano, W.

This is an accepted manuscript of an article published by Taylor & Francis in Javnost - The Public (Journal of the European Institute for Communication and Culture), DOI: 10.1080/13183222.2021.1889830.

The final definitive version is available online:

https://doi.org/10.1080/13183222.2021.1889830

Title: Afrokology and the Right to Communicate in Africa

viola c. milton and Winston Mano

Abstract

This article argues for a reconstruction of communication rights theories from an African episteme and experience. It reviews the impact of key national, continental and international legal instruments as they pertain to communication rights in Africa, with a specific focus on South Africa and Zimbabwe. Using an Afrokological heuristic tool, it critically evaluates how the key legal instruments underpinning the right to communicate are developed and encountered in lived experience in decolonising Southern African contexts. We argue that an Afrokological orientation built on epistemological interconnectedness and conviviality may lead to insights otherwise not accessible. It can help awaken a new relational accountability that promotes respectful representation, reciprocity, and rights in communication policy processes in line with the lived experiences of those it is meant to benefit.

Key Words: Right to Communicate, Media Democracy, Freedom of Expression, Afrokology, Public Service Broadcasting, Decolonisation

Introduction

There are at least 14 key instruments, charters, protocols, resolutions or declarations governing the right to communicate in Africa. These instruments were adopted and in some cases modelled after international and continental bodies such as the United Nations [UN], the African Union [AU] and the Common Market for Eastern and Southern Africa [COMESA]. Some have come from significant conferences held under the auspices of international bodies (such as the United Nations Education, Scientific and Cultural Organisation [UNESCO]) or civil society bodies focusing on the media(such as Article 19). The 14 instruments – many of which have a particular focus on Africa – deal with various aspects of democratic media regulation. They are mainly embedded in the Universal Declaration of Human Rights (UDHR) as well as the African Charter of Human and People's Rights (ACHPR). Yet, the existence of these instruments does not mean that the right to communicate will miraculously manifest and endure in the African context. In fact, for this to happen and to be secured within Africa's emerging democracies, there is need for collaborative policy-making as well as transparent and sustained processes that

institutionalize the instruments to a point where they work as intended (Mano and milton 2020a). In other words, policy interventions aimed at identifying and mitigating the numerous obstacles that hinder the legal instruments' prospects are needed. To this end, this article evaluates existing instruments as they pertain to communication rights in Africa and ends with specific discussion on the situation in South Africa and Zimbabwe.

An enabling media regulatory environment is crucial for the right to communicate. In line with Afrokological insights, such an enabling context is dependent on relational accountability premised on the right set of legal instruments to undergird media freedom and the right to communicate in Africa (Mano and milton, 2021; milton and Mano 2020). This implies *reinterpreting* how instruments offer what citizens can expect from policy. There is a need to establish whether and how the right to communicate is adequately enshrined in policy frameworks and to what extent they leverage a commitment to the underlying principle of freedom of expression for both the media and individual citizens.

Following insights from the Afrokological toolkit advanced by milton and Mano (2021), this article considers schisms between discourses over the shape of the right to communicate originating non-locally and local experiences and practices on communication rights and the right to communicate in African contexts. There is a need to question whether or not the instruments undergirding the right to communicate sufficiently reflect the lived experience and knowledge of marginalised African communities. For many societies, communication rights provide the basis for framing appropriate questions around the nested issues of access, intellectual freedom, property rights, cultural and linguistic rights, and privacy in the evolving digital environment. The most fundamental question being how communicative opportunities can be assured and enhanced for everyone. Revisiting the right to communicate from an African vantage point using Afrokology can help address these nested issues.

We suggest that an Afrokological approach can be instructive in terms of delineating and expanding communication rights, specifically as it pertains to rethinking how instruments for the African context are developed and operationalised. In this respect, rather than asking if communication rights are feasible on the continent, we must explore what facilitates and constrains it. In practice, it is possible that varied understandings could lead to speaking at cross purposes, especially in contexts where rights discourses are tied to efforts to resist coloniality. This article therefore asks: "Who defines the right to communicate?" In doing

so, it aims to bring together the core legal and regulatory principles of media freedom and freedom of expression as articulated in key national, continental and international legal instruments.

A significant feature of the article is that it reproduces original and non-archived resource documents outlining "who" defines the right to communicate, "the conditions of its explication for African contexts and the impacts thereof as it pertains to communication rights in Southern Africa. This is a crucial corrective that can aid in dismantling the neo-liberal paradigm that has shaped media policy reforms in many developing countries. Chiumbu (2013: 65) notes how this framework has

> ...obscured the workings of power in a global political economy and disguised its ideological underpinnings. This masking does not leave room to problematize global structures directing knowledge production and media policy reforms....Without dismissing their utility, these approaches have made little or no effort to problematize the role of actors, ideas and interests in shaping the media and democratic agenda.

In this article, we argue that Afrokology provides a useful framework for rethinking policy-making and the development of legal instruments for the right to communicate in Africa.

The article departs from two interrelated standpoints. First, it acknowledges prevailing engagement and analysis of freedom of expression and the right to communicate within African contexts that has engendered the development of a plethora of policy instruments. It however acknowledges that while public policies and their supporting instruments are important, they are not self-executing. It is, therefore, not always clear *how* the instruments meant to support communication rights policies have been adopted outside of civil society, NGO and donor circles and whether there has been progress towards the accomplishments of the instruments. Secondly, and crucially significant from an Afrokological premise, is therefore the need to unpack the actual "lived experiences" of these instruments in practice. This is a less well-established practice in communication policy research circles. As such, the Afrokological lense that guides the focus here is on *how* the instruments are developed and *what their lived experience* is in diverse contexts.

Afrokology and the Right to Communicate

We anchor our explication of the legal instruments governing the right to communicate in Africa on Afrokology as a heuristic tool. Rethinking of the right to communicate in African

contexts involves “genuine sharing of strategies, resources and advice among policy-makers, practitioners and civic groups committed to working in the public interest” within and across borders (Mano and milton, 2020: 155). In this regard, our use of Afrokology in this article, draws on our explication thereof in the *Routledge Handbook of African Media and Communication* (Mano and milton 2021a; milton and Mano 2021b). We invoke Afrokology within the context of decoloniality, which considers how different worlds can coexist, not submitted in one reality, but in incommensurability (cf. Querejazu 2016: 2). In this sense, our use of Afrokology aims not just to move discussions away from the uncritical and wholesale embrace or complete rejection of received knowledges but to *identify the incompleteness* of dominant global North paradigms. This emphasis on pluriversality in the right to communicate is a key aspect of Afrokology’s connectedness to decoloniality, which includes conscious acts of reclamation and validation. As regards the right to communicate, this manifests in a double gesture: first, Afrokology demands a critical engagement with the incompleteness of existing legal instruments and their linkages with dominant global North knowledge frameworks and remnants of coloniality. Secondly, it demands commitment towards decolonising communication policymaking, i.e. delinking policy processes from these knowledge systems and reimagining present-futures of African media and communication policymaking.

In essence, these hold that Afrokology is deployed as a participatory, transdisciplinary and responsive framework underpinned by key values of conviviality and incompleteness, with emphasis on accommodating so-called “other” knowledges. This implies:

- A heuristic research strategy, not a theory or discipline, which in the context of this article, is developed specifically to investigate and document:
    - explore and reposition the interpretation of the structural context and policies affecting African media institutions in the public interest
    - the processes whereby communication rights policies and legal instruments can be informed by African lived realities
    - the relationships between human behaviour/action, systems of meaning, social organization, and/or patterns of belief.

- A toolkit to document and interpret African lived realities and for the critical exploration of the intersection between, in this case, legal structures and social justice (milton and Mano 2021).

It is in this context , that we mobilise Afrokology as a coalescing heuristic tool to underpin the right to know in the context of decoloniality. Our conceptual framework also draws from Nyamnjoh's (2018:11) concept of "conviviality" which puts a premium on, amongst others, "diversity, tolerance, trust, equality [and], inclusiveness". As such, invoking the concept allows us to unpack more innovative ways of making the right to know more intelligible to African life. In doing so, we identify how Afrokology can help awaken a new relational accountability that promotes respectful representation, reciprocity, and rights in communication policy processes in line with the lived experiences of those it is meant to benefit (milton and Mano 2021). An Afrokological lense encourages a "convivial approach" that acknowledges incompleteness in existing policy making frameworks. This, inevitably, draws, one's attention is to the imbalance in power in the process of policy negotiation in developing societies. To this end, Afrokology champions integrating and perhaps even renegotiating knowledge and ideologies underpinning existing instruments.

The main drivers of policy reform need to be informed by and cater to social action as a prerequisite for effective praxis. Therefore, it is not out of place to focus on *how* the instruments were developed as a pathway towards problematizing "the role of actors, ideas and interests in shaping the media and democratic agenda" (Chiumbu 2013: 65). Ultimately, this requires grappling with the often neglected questions of power in communication policy-making. It is our view that an Afrokological orientation built on epistemological interconnectedness and conviviality may lead to insights otherwise not accessible. This then, necessitates a focus also on the lived experiences of the instruments in different African contexts.

Regulating the Right to Communicate in Africa

Our impact assessment of the regulatory instruments underpinning the right to communicate in South Africa and Zimbabwe is part of a larger project with an overall objective to strengthen national legal frameworks for information and communication rights, and to align them more succinctly with the lived experiences of public interest in African contexts. To assess the impact, we explored the extent to which there is a shared understanding and interpretation of the instruments. We are concerned with the experience of individuals and

institutions in relation to the right to communicate as it pertains to public service broadcasting and digital rights in these specific Southern African contexts, in order to aid relational accountability. The methodology used for this impact assessment is based upon documentary analysis and interviews. The former derives from an examination of the legal and regulatory texts available in South Africa and Zimbabwe, and monitoring of current trends in the media through reports produced by different media monitoring institutions with both local and global ties. Semi-structured interviews were conducted in each country with around 10 influential decision-makers, media professionals, activists and other civil society representatives. While we might for sake of clarity reference some of these interviews, they are not a key feature of our discussion below.

In the African context, both media freedom and freedom of expression are assisted through the adoption of "common understandings" in at least 14 key existing global and continental Instruments, Charters, Protocols and Declarations. These instruments articulate the general regulatory principles that underpin the right to communicate in Africa. To aid our discussion of the neo-liberal paradigm that has shaped the development of these instruments, we list the instruments in Figure 1 below, indicating also which of the instruments were developed specifically for and/or by Africans:

KEY INTERNATIONAL AND AFRICAN INSTRUMENTS PROTECTING THE RIGHT TO COMMUNICATE	
Universal Declaration of Human Rights (UDHR)	
African Charter of Human and People's Rights (ACHPR)	
CHARTERS, PROTOCOLS AND DECLARATIONS ON DEMOCRACY AND FREEDOM OF EXPRESSION	**DEVELOPED FOR AND/OR BY AFRICANS (X)**
The Windhoek Declaration (1991)	X
The Johannesburg Principles (1995)	X
The SADC Protocol (2000)	X
The African Charter on Broadcasting (2001)	X
The African Principles of Freedom of Expression Declaration (2002, revised in 2019)	X
The Access to the Airwaves Principles (2002)	

The Dakar Declaration (2005)	
The Africa Democracy Charter (2007)	X
The Table Mountain Declaration (2007)	X
UNESCO's Media Development Indicators (2008)	
Resolution 169 (2010)	
Pan-African Parliament Resolution to Protect Media Freedoms (2012)	X
The Midrand Call to Action (2013)	X
The African Declaration on Internet Rights and Freedoms (Resolution 362[LIX] 2016)	X

FIGURE 1: **KEY INTERNATIONAL AND AFRICAN INSTRUMENTS PROTECTING THE RIGHT TO COMMUNICATE** (cf. Limpitlaw 2016, 44-)

The above Instruments, Protocols and Charters emanate from protracted processes of negotiation involving amongst others civil society organisations, policy makers, stakeholders from industry and other interested parties from different African contexts, as well as donor agencies from the global North These instruments are aimed at strengthening media pluralism in order to democratize information in transitional democracies across the continent. As illustrated in Figure 1 above, the Universal Declaration of Human Rights (UDHR), and the African Charter of Human and People's Rights (African Charter) form an overall guiding framework for each of the declarations. The UDHR ostensibly provides international benchmarks, while the African Charter attempts to reflect an understanding of the local exigencies within the African context.

Article 19 of the Universal Declaration of Human Rights states that all people have the right *to be able to communicate*. This right is underscored by Article 9 of the African Charter, which similarly enshrines the right to receive and impart information by all Africans, with an additional caveat that these fall "within the law". The Preamble to the African Charter stresses that there are other emphases that attempt to qualify these rights in ways that give more weight to duties, obligations and the observance of the African context:

> Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights (African Charter Preamble 4).

The above excerpt from the African Charter is indicative of the emphasis placed by African bodies on establishing the right to communicate as part of a broader explication of rights in relation to African lived realities. This aligns with the ontological underpinnings of Afrokology that challenges misrepresentation and historical marginalisation of African worldviews, thought, knowledge and aesthetics.

Afrokology holds that ostensibly universal concepts (such as for example the right to know) ought to be viewed from multiple perspectives to engage with diverse socially constructed realities that impact on social justice (ibid). For instance, the African Charter recognises the inherent tension between cultural rights and political rights. In fact, it is quite specific in that it incorporates both civil and political rights as well as economic, social and cultural rights throughout the text. There is a clear affirmation of the interdependence and interrelation of both categories of rights. This, is a response to demands for recognition and justice from the formerly colonised. It testifies to attempts to connect communication rights with broader national development efforts in Africa. The historic focus and privileging of civil and political rights, at the expense of socio-economic rights within the human rights framework, has resulted in economic, social and cultural rights being relegated to the margins at both the international human rights law and domestic constitutional frameworks (Moyo 2013: n.pag.). The attempt by the African Charter to emphasise the interdependence and interrelation of different categories of rights is therefore a critical corrective even though in a decolonial context, much of it is not yet sufficiently operationalised.

Translating the instruments highlighted in Figure 1 into understandable frameworks, remains a major challenge. For instance, the African Commission had to adopt the "Declaration of Principles on Freedom of Expression in Africa" in 2002 in order to allay concerns about constant violations of freedom of expression and information throughout the continent.This was in spite of the development of instruments and declarations such as the Windhoek Declaration of 1991, the Johannesburg Principles (1995), the SADC Protocol (2000) and the African Charter on Broadcasting (2001). In fact, the 2002 adoption was needed despite the already existing mention of freedom of expression also in the African Charter. The Declaration of Principles on Freedom of Expression in Africa serves as a reference point for

assessing African countries' records at the African Commission. It is also a strong reference point for jurisprudence in Africa. Yet, what remains missing from these efforts towards establishing a protocol for freedom of expression within African contexts, is an analysis of the role of actors, ideas and interests in shaping the media and democratic agenda.

In Africa, attempts to benchmark local regulations within international frameworks is testimony to the demands and lobbying involved in the conception of these instruments. Local and international actors are involved in crafting the instruments which inevitably raises questions about the frameworks through which the instruments were developed and the asymmetrical power and resources between Northern donor agencies and sponsors and partners in Africa who could be seen as largely participating in policymaking processes as 'resource-poor' recipients and implementers (Mano and milton 2020). As a case in point, we argue in an article on civil society participation in public service broadcasting that the 2013 Midrand Call to Action is a good example of how calls to action and charters do not necessarily translate to reform (ibid). The event had the support of the Pan African Parliament and managed to bring together continental stakeholders as well as donor agencies from the Northern hemisphere. As participants in the event, we have argued before that, with a few notable exceptions, the experts from the North framed and dominated the policy conception phase and African stakeholders were largely included at the operationalisation stage and as implementers (ibid). This perception of asymmetrical power relationships is corroborated by Chiumbu (2013) who argues for decolonizing media reform and development aid. Phiri & Fourie (2011) similarly uncovered the uneven power dynamics between Open Society Initiative for Southern Africa (OSISA) and civil society in Zambia.

Citing the example of OSISA, Phiri and Fourie (2011) showed that media development organisations' external agendas tended towards structuring the development of a media agenda in Southern Africa in ways that alienated African perspectives, in favour of OSISA's focus on libertarianism. The problem here is that liberalism has its own limitations in the African context and often raises tensions when imposed on African frameworks. In regards to this, Phiri & Fourie (2011: 94) concludes that

> It is at the coal-face of the struggle between these two diverse worldviews that donor organisations like OSISA take the side of liberalism against the African philosophy of [for example] *ubuntu*. Taking sides is a part of the process of Westernising the

> African continent. In that regard, Africa is slowly being incorporated into the North-Atlantic (or Western) value systems and socio-economic practices.

In essence, this research uncovered how power relations operate in strategies for media development and how these in turn impact on the shape and nature of media policy in African contexts. We similarly argued with regard to the Midrand Call to Action that one outcome of this asymmetrical power relations is that, while the conference succeeded as an event with a publishable outcome, conditions on the ground for PSB in Africa remain mostly unchanged (Mano and milton 2020). Hence there is a lingering question about how to enhance the relevance, interpretation and impact of the above-mentioned legal instruments in African contexts. Yet, as alluded to by Izak Minnaar (2020), while local interpretations and definitions can be a strength for relexicalising the right to communicate, it could also be a slippery slope. In practice, it is possible that varied understandings could lead to speaking at cross purposes, especially in contexts where rights discourses are tied to efforts to resist coloniality.

Minaar (2020), a key contributor and participant in pan-African communication policy processes, explains how the African policy-making process is delicately negotiated among actors setting limits and exerting pressures in a continual, variable struggle between different "sides", whose positions are often provisional and interwoven. Responding to an interview question about the process through which the African Declaration on Internet Rights and Freedoms came about, he observed:

> My perception is that without civil society involvement, that it will be very difficult for the African Commission to get its work done. Much of the initiatives [...] came about from representations by civil society which ended up in the form of submissions and proposals to the African Commission, where there were discussions about balancing the interests of the states and civil society to try to see what should be done and how it should fit into the broader African multilateral frameworks and then they would come up with, let's just say, carefully formulated resolutions that would be acceptable to African states but would incorporate the proposals and interests of civil society that I mentioned" (Interview with authors, Johannesburg, 12 February 2020).

Minnaar's explanation of the intricate process of policy-making points to a disconnect between civil society organisations' inputs (often skewed towards viewpoints of donor agencies as explained by Phiri and Fourie (2011) above) and African frameworks and the core agenda of African states. In essence, Minnaar is laying out how African policy-

negotiation could lead to policy goals being neutralized into manageable and non-threatening or only superficially threatening forms. Hence, benchmarking the African contexts within the aforementioned regulatory instruments, operates within frameworks that might on the one hand be captured by Western value systems and socio-economic practices, while on the other hand attempting to avoid falling prey to authoritarian states who have their own sets of value systems geared towards usurping media into the state apparatus. A comprehensive discussion hereof falls outside the purview of this article, but can be found in Mano and milton (2020).

Looking at instruments listed in Figure 1, it is clear that there is indeed a tacit attempt towards benchmarking the African context without losing the principles of democratic media regulation and communication rights as espoused by Article 19. To illustrate, the Declaration of Principles on Freedom of Expression in Africa (2019) accentuates freedom of the press and other media; independent media; diversity and pluralism in the media; professional media; protecting journalists' sources; access to information; commitment to transparency and accountability; commitment to public debate and discussion; availability of local content and ensuring that states do not use their advertising power to influence content (Limpitlaw 2016, 46-61). It however also goes further in that it focuses on specific pressure points in the African context. So, for example, the 2019 Declaration "....consolidates developments on freedom of expression and access to information guided by hard-law and soft-law standards drawn from African and international human rights instruments and standards, including the jurisprudence of African judicial bodies" (African Commission on Human and Peoples' Rights 2019: n.pag.) The African Charter on Broadcasting goes further in that it explicitly delineates its *theoretical* conceptualisation of PSB in Africa. It differentiates clearly between public broadcasting (owned by the public and accountable to it, *through parliament or the national assembly* - our emphasis) and state broadcasting (controlled by the state or the government of the day, representing the viewpoint of the government and accountable to the executive). Ordinarily, both public and state broadcasters are funded out of public funds. The African Charter on Broadcasting (UNESCO 2001) unequivocally states that public service broadcasting in Africa must be independent from the government and political interests, and their editorial independence as well as their operational independence should be guaranteed by law. PSB, it argues, should be accountable only to parliament - the representatives of the people to whom it is ultimately accountable - and it should be protected from political and commercial pressures (ibid). Finally, the African Charter on Broadcasting (UNESCO 2001)

is adamant that public broadcasters that are (part) funded by advertising should not allow advertisers to influence programme content.

The above commitments and definitions were reinforced by the 2013 Midrand Call to Action in its clarion call for African broadcasters to transform from state to public broadcasters. Both the African Charter on Broadcasting and the Midrand Call to Action have at their core, a commitment towards universal access to information. However, as will become evident below, centering African frameworks in the right to communicate requires acknowledging and recognizing other ways of knowing (milton and Mano 2021). At issue is the need to move away from a prestige economy towards a relevance economy in our approach to communication policy-making in Africa. This will mitigate the situation whereby many countries either do not endorse the continental instruments or pay lip service to the application thereof.

Benchmarking of African contexts does not always adequately consider nuances of African lived realities. For instance, the undue power arising from the nuance of multi-party systems with an overwhelming two-third majority for so-called struggle-parties within most African countries (and most definitely in South Africa and Zimbabwe) is not adequately accounted for in the African Charter on Broadcasting and the Midrand Call to Action. As will be illustrated in the next section, the underlying assumption of bipartisan policy-making and enforcement encapsulated in these instruments, has time and again proven to be a false assumption.

The quest for the right to communicate, supported by underpinnings from various continental and international legal instruments, together with provisions in national Constitutions, is yet to result in locally relevant African frameworks that define and guide collective communication rights. Bound by commercial, corporate, political and union interests, as well as other restrictions, communication rights in contemporary African societies tend to resist societal demands and participation. In addition, the depth of material, political and organisational poverty in Southern African communities accentuates the need for a human face for communication rights in these contexts. Hence, an Afrokology approach to communication rights, establishes that these rights in African contexts can remain viable only if it balances economic, social and political factors. The primary goal of communication policy is to serve the well-being of all communication publics, especially the disadvantaged

and the marginalised. The test for communication rights discourses in Africa is to meet the needs of communication publics in a socially just manner, without depriving the communication ecosystem of its health. An Afrokological approach to communication policy reform in African contexts, beyond regulatory mechanism, argues that technical solutions cannot suffice to address problems that are multifaceted and politically complex. It argues instead that the right to communicate stands at the intersection of local and international socio-economic and political factors, making it mandatory for reform actors to be innovative and collaborative in their approach (Mano and milton, 2020).

Regearing the above initiatives in terms of the Afrokological approach, could emphasise and deepen relational accountability based on the lived experiences of these instruments. What is needed, is strategic participation which could lead to better compliance with the spirit of the Freedom of Expression instruments. Strategic participation is focussed on relevance, voice and power. It is about "making intelligible" the *contexts* of policymaking processes for those it is meant to serve. An Afrokological policymaking process is therefore necessary as it unsettles asymmetrical power relations in the design and implementation of the instruments. A collaborative process informed by Afrokology could genuinely engage all stakeholders in ways that recognise a pluriverse of knowledge and experience. This could ensure an accommodating environment for independent, transparent and credible regulation. Such an approach will allow for a reconstruction of theories on communication rights from an African episteme and experience. In the next and final section we briefly unpack some aspects of the lived experience of these instruments within the South African and Zimbabwean contexts.

Testing the African Charter on Broadcasting and the Midrand Call to Action against the lived experience of Communication Rights in South Africa and Zimbabwe

In Figure 1we identified several key charters, instruments and protocols focussing on communication rights in Africa. From these, one could identify the following key principles undergirding universal access to information as it pertains to broadcasting in the African context:

Broadcasting Principles

National frameworks for the regulation of broadcasting must be set down in law;
There must be independent regulation of broadcasting;
A pluralistic broadcasting environment with a three-tier system for broadcasting i.e. public, commercial and community is desirable;
There is need for public as opposed to state broadcasting services;
Availability and nature of community broadcasting services;
Equitable, fair and transparent processes for licensing; universal access to broadcasting services;
Equitable access to broadcasting signal distribution and other infrastructure and
Regulating broadcasting content in the public interest.

Figure 2: Key principles undergirding universal access to information for broadcasting in Africa (Limpitlaw 2016: 4).

From the above it can be ascertained that the broadcasting principles emphasise in essence universalism, diversity, independence, security, and transparency. While these are plausible, the real policy and legislative challenge in most African countries has been *how to* set up meaningful mechanisms, especially for inclusive participation and universal access. With this in mind, it should be clear that, normatively viewed, a study of Charters, Declarations and Protocols on freedom of expression and broadcasting produced in, for and by Africa suggests that - on paper at least - freedom of expression, with some caveats, means the same thing for Africans as what is generally understood throughout the world under the term. As Gazibo (2019: 8) observes, "...Africans are not so different from other people around the world when it comes to the degree to which they value democratic ideals and principles". This view is supported in the current South African and Zimbabwean Constitutions as far as communication rights are concerned.

Broadcasting in Africa has, however, emerged from colonial contexts as sites of struggle between groups fighting for power. This has far-reaching implications for the viability and relevance of the aforementioned instruments and their concomitant principles. While the Constitutions of South Africa and Zimbabwe take special care to emphasise, delineate and protect the right to communicate, in reality, under paranoid governments communication rights can be stifled. This is most visible in the frequent shutdowns of broadcasting and internet in times of political crises within some African countries and also in the more subtle changing or interpretation of policy to benefit the political elite. In order, therefore, to test the viability and relevance of the African Charter on Broadcasting beyond mere theoretical relevance, we offer a limited, selective example from the public service broadcasting context to illustrate how misrecognition of local exigencies can neutralise the usefulness of the instruments and even the constitutional provisions for broadcasting equality and social justice.

Public Service Broadcasting and the Right to Communicate

The right to communicate in African contexts is linked to notions of participation, dignity and emancipation which aligns with relational accountability as underscored by tenets of Afrokology. The delineation of public service broadcasting (PSB) in both the South African and Zimbabwean Constitutions, is congruent with universally accepted core goals (Barr 2000, 66). Their public service frameworks correspond with those which have been highlighted in Figure 2 and are consistent with basic PSB principles from the Reithianian beginnings of public service broadcasting in the United Kingdom. Both South Africa and Zimbabwe follow the British model whereby the government ostensibly keeps at a distance and broadcasting mainly relies on self-regulation and internal control. What the African-developed charters add to the ethos, is a defined commitment towards a participatory PSB environment that pays specific attention to emancipation, human dignity and dialectical processes of voice and listening. This commitment is geared towards ensuring deeper participation for especially marginalized communities. However, lived experience on the ground intervenes in how these core tenets of the right to communicate align with the instruments in Figure 1. For example, Reith's core elements of a national, non-commercial service that is directly funded through license fees and by government are still important aspects of the services provided by the BBC. However, funding, as we will show, remains one of the most contested aspects of PSB

within the Southern African contexts of South Africa (cf. Louw and milton 2012, milton and Fourie 2015; milton 2018) and Zimbabwe (Mano 2009; 2016; Windrich 2010). As will be discussed below in both South Africa and Zimbabwe, forms, modes, and practices of broadcasting ostensibly remain open, however the threat of regressive and authoritarian practices is ever-present.

As stipulated in the broadcasting principles outlined in Figures 1 and 2, South Africa and Zimbabwe subscribe to a three-tiered licensing structure for broadcasting services (i.e. public, commercial and community). In theory, this structure is meant to facilitate a range of different voices and audience choices on air. In South Africa, community broadcasting is especially discernable in radio broadcasting, with minimal inroads in the digital television environment (Soweto TV and CapeTV for example). However, the full implication and impact of a predominantly commercial funding model in the country, is that South Africa effectively does not have a working 3 tier system of broadcasting as its broadcasting policy demands (ETV, 2009, Teer-Tomaselli 2008). Similarly, the Broadcasting Services Act of 2001 authorises the Broadcasting Authority of Zimbabwe (BAZ) to issue multi-level licenses that include commercial and community broadcasting. However, the BAZ board is approved and answerable to the President and the Minister of Information and this in reality has meant issuance of licences along partisan lines. In both countries, community broadcasting is not adequately defined, with strict restrictions on the broadcast of news and current affairs.. In both South Africa and Zimbabwe, the existing community radio stations rarely fulfill their "community purposes" as they tend to compete with the public broadcasters for sponsorship and advertisements from the same market. In South Africa, this situation is exacerbated by the fact that many so-called community radio stations are in fact owned by the public broadcaster. In both countries therefore, the right to communicate is undermined by vaguely defined legal instruments. As argued earlier in the article, it should therefore be clear that parliamentary oversight of the right to communicate (as opposed to for example ministerial oversight), does not necessarily give rise to responsible decision making in the public interest. This problem arises especially in contexts where the incumbent or ruling parties enjoy a two-third majority, such as is the case in South Africa and Zimbabwe. In addition to this, if the lived experience of broadcasters in African contexts with minimal funding and lack of resources is marginalised in the development of instruments and charters, it could further exacerbate the erosion of broadcasting in the public interest.

The right to communicate through PSB requires well-resourced broadcasters. In the African context this has remained a challenge due to historic and legalistic lacunae in the instruments. While the instruments seem to help establish public broadcasting institutions, blurred lines remain between political party and parliamentary oversight. This means that it is often governments who control broadcasting policy and resources, rather than parliament. As a result, the transformation from state to public broadcasters has frequently been beset by precarious funding mechanisms arising from a model that is not fully fit for the settings in the African context.

Licence fee funding is considered to be more stable and predictable than other forms of funding as it allows public broadcasters to invest in programming or operational improvements, because they can be confident about their revenue for the term of the license agreement (Price and Raboy 2001). This, however, is not the experience in Southern Africa. In South Africa and Zimbabwe for example, increased competition in the broadcasting landscape, comes at a time when the public service broadcasters are struggling to engender a culture of licence fee payments. South Africa and Zimbabwe's particular socio-cultural and economic contexts have made it difficult for any systematic collection of License Fee Revenue as evidenced from annual reports for the two broadcasters. Although compulsory for all broadcasting gadget owners, licence fees in South Africa bring less than a third of the revenue, with close to two thirds coming from advertising and other commercial sources. In addition, in Zimbabwe, since colonial days, audiences have developed a culture of withholding payment of television license fees as a sign of protest against what was widely considered to be colonial institutions. Withholding of licence fee payment persists to this day as a symbolic gesture of resistance to public service institutions that are considered to be out of sync with their publics. In South Africa for example, in spite of numerous appeals by the South African Broadcasting Corporation (SABC) to viewers' sense of morality as well as more strong-armed tactics such as threats of exorbitant fines for non-payers, it would appear that their efforts are not yielding the desired results. Ferreira (2019) points out that the percentage of South Africans who believe that not paying for their SABC TV Licence fee is wrong, keeps falling - down to just 40 percent in 2019, which constitutes a 9 percent plunge from 49 percent in 2018. As of October 2019, the SABC is experiencing a fee evasion rate of 69% of the known TV licence holders not paying their licence fees. This means that most South Africans have stopped paying the television licence fee as mandated by law, with the crisis-riddled public broadcaster owed billions in outstanding licence fees (BusinessTech

2019). Thus, while license fee-revenue does in fact tax all users equally, in South Africa, as is the case in Zimbabwe, license fees are simply not providing the dividends needed to sustain the broadcasters, as exorbitant amounts are spent to try and chase down licence fee collections (Ferreira 2019). Comparatively, in the UK, which also obligates people to have TV licences if they own a TV, licence numbers have increased from 24.7 million in 2008 to 25.8 million in 2017, according to the BBC licensing body (ibid).

While non-payment in South Africa appears to be a spontaneous decision by individuals, in Zimbabwe, the Combined Harare Residents' Association (CHRA) in 2013 mobilised listeners and viewers against ZBC's obligatory licence fee payment. They reasoned that audiences were not obliged to pay "for very poor or non-existent services or for a product that they are being asked to consume against their will and which commodity they may, after all, not consume at all because it is not palatable"(Samukange 2013: npag.). Jessie Majome, a Harare West legislator from an opposition party, took this a step further when she filed a case against the ZBC in the Constitutional Court in 2014. Majome argued that the broadcaster was in breach of the instruments in the country's 2013 Constitution by forcing her to pay for a TV and Radio license. She accused the ZBC of being openly biased in favour of the ruling ZANU PF and as a member of the opposition, did not want to pay licence fees because the ZBC "impertinently disdained" her views and those of at least "half if not the majority of people in the country" through its "heavily biased programming" (ibid). Majome specifically wanted the Concourt to declare as unconstitutional sections of the Broadcasting Services Act that obliged viewers and listeners to pay public broadcasting license fees. She wanted the court to declare that non-compliance with the said sections did not constitute a criminal offence. Even though she lost the case, it highlighted a major failing in the service provided by the ZBC.

The above illustrate that public service broadcasters with limited funding, such as SABC and ZBC, are vulnerable to manipulation by vested interests. Licence fees are linked to the ability of the broadcasters to uphold public interest in their programming. Clearly, the failure to uphold the right to communicate through public service broadcasting in South Africa and Zimbabwe has a cascading impact on the governance, performance, and independence of the broadcasters. Thus, the very instruments that are meant to secure broadcasting independence have not offered the required safeguards. It is within this complex context that we believe an Afrokological approach recognising historicity, intersectionality and transdisciplinarity can

bring nuance and a more critical perspective to communication policy processes and the right to communicate. We set out our vision in the last and final section.

Concluding Insights

Afrokology as we have argued above, demands that the right to communicate be situated within the overlapping interests and issues congruent with lived conditions in the changing African context. Although this article is far from exhaustive, it provides a preliminary review of some of the debates around communication rights instruments and the links between media policy, communication rights, public participation, democracy and public interest. We have argued that our use of Afrokology here, is premised on decolonial epistemological conviviality, which demands that we re-imagine the right to communicate with a focus on historical transdisciplinary expertise. This involves bringing together actors from different domains of expertise who can think through the right to communicate from their contexts in order to bring more plural forms of knowledge to bear. Figure 3 below illustrates how the confluence of overlapping factors can shape and surround the right to communicate in Africa:

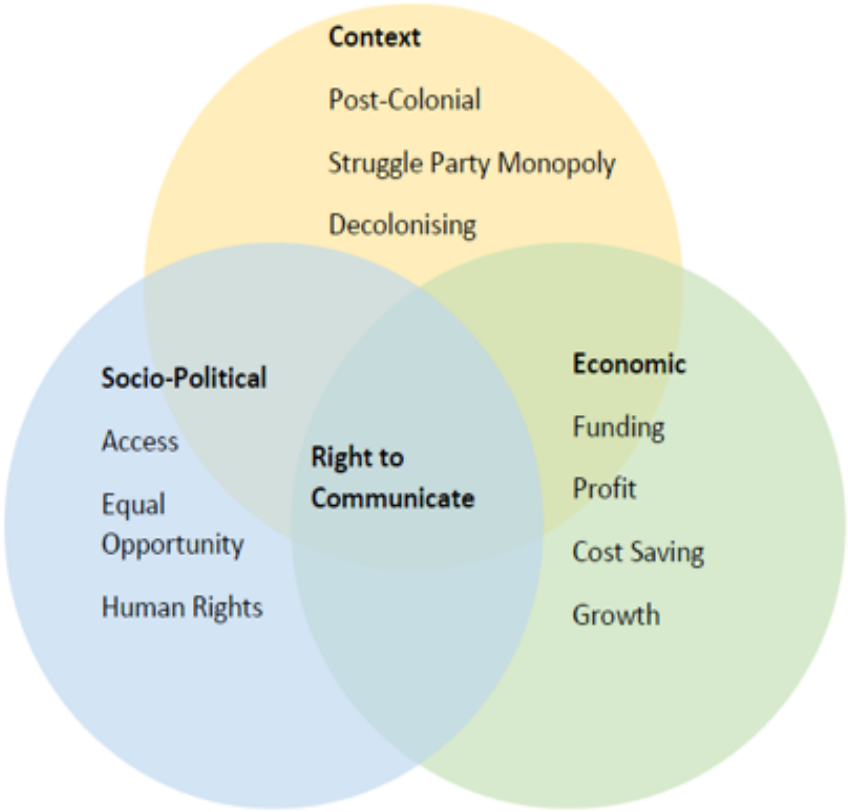

Figure 3: An Afrokology Approach to the Right to Communicate

In essence, Figure 3 illustrates that if communication policy instruments are to be effective in an African context, a forward-looking, risk aware and inclusive approach to communication policy and media ecology is needed. Policies should be able to address multiple challenges at one time, that can lead to improved services and sustainable resources. The right to know is to be looked at in an integrative way that would enable citizens and media institutions in fledgling democracies to better withstand disruptions effectively and empower them to build new relationships and rebound faster from crises. Moreover, instruments that are forward-looking can ensure that citizens and institutions do not just end up in the same conditions that lead to crises in the first place.

We have argued here that while the legal environment in both South Africa and Zimbabwe remains protective of the rights to communicate, it is no longer feasible to keep making piece-meal policies that can halt executive overreach. In both countries, we have demonstrated how misrecognition of local exigencies can lead to weak implementation and lack of enjoyment of the right to communicate. Clearly, in both South Africa and Zimbabwe, regulatory and legal frameworks for broadcasting in the public interest are theoretically constructed and enshrined in frameworks that allow citizens to intervene should the public interest be undermined. There is therefore reason to believe that the opening of the public space and the proliferation of numerous non-governmental and civil society organizations from the 1990s onwards, signals that democracy has a good chance to endure in Africa (Gazibo 2019: 6). Of course, this would require Africans to relexicalise the link between democracy and the right to communicate in their own terms.

References

ACHPR (2019). African Commission on Human and Peoples' Rights. 2019. https://www.achpr.org/legalinstruments/detail?id=69. Accessed 18 October 2019

Article19. 2002. Right to Communicate. *Article19.org*. [O]: https://www.article19.org/resources/right-to-communicate/ Accessed 15 May 2019

Barr, Trevor. 2000. *newmedia.com.au: The Changing Face of Australia's Media and Communications*. Sydney: Allen & Unwin.

Businesstech. 2019. Most South Africans have stopped paying their TV Licences. *Businesstech.co.za* [O]: https://businesstech.co.za/news/media/343766/most-south-africans-have-stopped-paying-their-tv-licences/

Chiumbu, Sarah (2013). Knowledge and Ideas in a Context of Power: Rethinking media policy and reform in southern Africa. *Africanus*, 43 (2):64-77.
e.tv (2009). Submission by e.tv (pty) limited on the public service broadcasting discussion document to the Department of Communications, 31 August.
Gazibo, Mamoudou 2019. Democracy and the Question of Its Feasibility in Africa. *Oxford Research Encyclopedia*, 10.1093/acrefore/9780190228637.013.702
Ferreira, Tinus 2019, More South Africans than ever don't feel like paying their TV licence as SABC wants to increase fees. *Channel24.co.za* [O]: https://www.channel24.co.za/TV/News/more-south-africans-than-ever-dont-feel-like-paying-their-tv-licence-as-sabc-wants-to-increase-fees-20190926-2 via @Channel24
Limpitlaw, Justine. 2016. *Media Law Handbook for East Africa*. Volume 2. Konrad-Adenauer-Stiftung Regional Media Programme: Johannesburg
Louw, P. Eric & Milton, Viola C. (2012). *New Voices over the Air: The Transformation of the South African Broadcasting Corporation in a Changing South Africa*. New York: Hampton Press
Mano, Winston. 2009. Three Decades of Public Television and Political Power in Zimbabwe: 1980-2009 in Kristin Skare Orgeret and Helge Ronning *The Power of Communication: Changes and Challenges in African Media*. Oslo: UNIPU, pp. 135-176
Mano, Winston. 2016. The State and Public Broadcasting: Continuity and Change in Zimbabwe, in Flew, Terry, P.etros Iosifidis, Jeannette Steemers (eds.), *Global Media and National Policies: The Return of the State*, London:Palgrave Mcmillian, pp. 190-205.
Mano, Winston. and milton, viola c. (2021a) Afrokology of Media And Communication Studies: Theorising from the margins, in W. Mano and v. c. milton (eds.) *Routledge Handbook of African Media and Communication Studies. London: Routledge*
Mano, Winston. and milton, viola c. (2021b). Decoloniality and the push for African media and communication studies. An introduction. In: W. Mano and v. c. milton (eds.) *Routledge Handbook of African Media and Communication Studies*. London: Routledge
Mano, Winston. and milton, viola c. (2020) “Civil society coalitions as pathways to PSB reform in Southern Africa”. *Interactions*, 11 (2): 135– 158
milton, viola c. (2018) South Africa: Funding the South African Broadcasting Corporation, in Christian Herzog , Heiko Hilker , Leonard Novy and Orkan Torun (eds.) *Transparency and Funding of Public Service Media – Die deutsche Debatte Im Internationalen Kontext*. Wiesbaden: Springer VS. pp.181 – 202.

milton, viola c. and Fourie, Pieter J. (2015). South Africa: a free media still in the making. In: Thussu, Daya K.and Nordenstreng, Kaarle (eds.). *Mapping BRICS Media*. New York: Routledge. pp.181-203

milton, viola c. and Mano, Winston (2021). Afrokology as a transdisciplinary approach to media and communication studies. In: W. Mano , and v. c. milton (eds.) *Routledge Handbook of African Media and Communication Studies*. London : Routledge.

Minnaar Izak. Interview by viola c. milton and Winston Mano, Johannesburg, 12 February 2020.

Moyo, K. 2013, *Zimbabwe adopts a new Constitution*. [O]: https://blogs.sun.ac.za/seraj/2013/05/28/zimbabwe-adopts-a-new-constitution/ Accessed 12 December 2019

Nyamnjoh, Francis B. 2018. Introduction: Cannibalism as food for thought. In Nyamnjoh, B., ed. *Eating and Being Eaten: Cannibalism as Food for Thought*. Bamenda: Langaa.

Phiri, Sam & Fourie, Pieter J. 2011. Media development aid and the Westernisation of Africa: The case of the Open Society Initiative for Southern Africa (OSISA). *Communicatio*, 37(1): 80–99

Price, Monroe E. & Raboy, Marc. (eds) (2001). P*ublic service broadcasting in transition: A documentary reader*. Commissioned by The European Institute for the Media. Compiled by Programme in Comparative Media Law & Policy, Oxford University Centre for Socio-Legal Studies (PCMLP).

Querejazum, Alfonso. 2016. Encountering the pluriverse: Looking for alternatives in other worlds. *Revista Brasileira de Política Internacional*, 59 (2), www.scielo.br/pdf/rbpi/v59n2/1983-3121-rbpi-59-02-e007.pdf Accessed 18 October 2019

Samukange Tinotenda. 2013. *ZBC licence boycott is justified, available.* https://www.newsday.co.zw/2013/12/zbc-licence-boycott-justified/ Accessed 12 December 2019

Teer-Tomaselli, Ruth (2008). 'National' public service broadcasting: Contradictions and dilemmas. In: Adrian Hadland, Eric Louw, Simphiwe Sesanti & Herman. Wasserman (eds), *Power, politics and identity in South African media* (pp. 73–103). Pretoria: HSRC Press.

UNESCO (2001). AFRICAN CHARTER ON BROADCASTING. 2001. https://en.unesco.org/sites/default/files/african_charter.pdf. Accessed 15 January 2019.

Windrich, Elaine. 2010. Broadcasting in Zimbabwe. In: Moyo Dumi, Chuma, Wallace (eds.)., *Media policy in a changing Southern Africa: Critical reflections on media reforms in the global age*. Pretoria: Unisa Press, pp 73–89