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# To talk or not to talk? From Telkom to Hellkom<sup>1</sup>: A critical reflection on the current telecommunication policy in South Africa from a social justice perspective

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**Abstract** With the development of new information and communication technologies, the right to communicate assumes new dimensions, since it is almost impossible to fully participate in the globalized world without access to modern information and communication technologies. South Africa held its first democratic elections in 1994 and has subsequently returned to the international arena. Its citizens should rightly expect to be able to participate in all that this return offers, not only politically, but also economically and socially. Telecommunications are vital to making such participation possible. In recognition of this fact, the newly elected government developed policies and enacted legislation to ensure that the telecommunications sector, and specifically the sole fixed line service provider Telkom, provides South African citizens affordable access to the telecommunications infrastructure whilst providing acceptable levels of service. However, rather than meeting its obligation to the government and the people of South Africa, Telkom has misused its monopoly. The social injustice that this situation creates is critically examined against the background of the right to communicate based on Rawls' principles of social justice and Sen's capability approach.

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<sup>1</sup> Hellkom is a word used by a consumer activist website (<http://www.hellkom.co.za>) hosted in South Africa to describe the current unjust policies of Telkom in South Africa. This article is based on a paper that was presented at the CEPE Conference in 2007.

## Introduction

With the development of new information and communication technologies, the right to communicate assumes new dimensions since it is almost impossible to fully participate in the globalized world without access to these technologies. South Africa held its first democratic elections in 1994 and has subsequently returned to the international arena. Its citizens should rightly expect to be able to participate in all that this return offers, not only politically, but also economically and socially. Telecommunications are vital to make participation possible. In recognition of this fact, the newly elected government developed policies and enacted legislation to ensure that the telecommunications sector, and specifically the sole fixed line service provider Telkom, provide South African citizens affordable access to the telecommunications infrastructure whilst providing acceptable levels of service. However, it seems that, rather than meeting its obligations to government and the people of South Africa, Telkom has inappropriately used its monopoly in the marketplace. Telkom, furthermore, increased its profit margin substantially in the last couple of years and has cut its workforce by more than half. Not only has it led to a failure to provide an effective communication infrastructure in South Africa, but due to this monopoly in the marketplace, South Africa has ended up being one of the most expensive countries in which to use telephonic communications. This paper, based on the assumption that we all have a right to communicate, will investigate, from a justice perspective, the situation with regard to Telkom as telecommunications provider as well as the effect that its policies has on the people of South Africa.

This paper is structured in the following manner: First, the right to communicate is discussed with reference to the role telecommunications plays in providing this right. Second, the South African situation is described with regard to the policy of its government to provide telecommunications infrastructure and the implementation thereof to date (both the history leading to the current situation and the current situation are covered.) Last, the social injustice that this situation creates is critically examined against the background of the right to communicate. The analysis is based on John Rawls' two principles of justice as well as Sen's capability approach.

## The right to communicate

Communication is an essential human process that makes both individual expression and societal structure possible. Habermas (1989) and Fisher (1982) view access to information as fundamental and a necessary precondition for personal development and socio-economic participation. Access to information and the ability to communicate is therefore central to human freedom and human development (Benkler, 2006). Information and communication technology (ICT) has made it possible to communicate beyond the distance that one's voice carries to reach the entire globe by means of modern inventions such as telephones and e-mail. In the global information economy, communication and access to information also implies access to different socio-economic and political activities (for

example, buying online and participating in online discussion forums). This is also the reason why Hamelink (2003) argues that we should move beyond information and knowledge societies towards communication societies. Human rights needed to be updated to reflect these developments.

The original basis for the right to communicate as a human right derives from the Universal Declaration of Human Rights (UDHR) (United Nations, 1993), which was first adopted in 1948. Central to communication is Article 19 of the declaration on the right to freedom of expression that states:

'Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers' (United Nations, 1997).

Article 19 of the UDHR is reinforced by Article 27 section 1, which states:

'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits' (United Nations, 1997).

Development in modern ICT, such as telephony and the Internet (including the World Wide Web), can be seen as scientific advancements and, as such, not as the exclusive domain of those who are able to negotiate the marketplace to acquire them. The International Covenant on Civil and Political Rights or ICCPR, which, as of December 2002, has been ratified by 149 States, also reinforces the right to communicate:

'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice' (United Nations, n.d.).

Both Article 19 of the UDHR and Article 19 of the ICCPR were carefully drafted to explicitly guarantee:

- an unfettered right to hold opinions;
- a right to express and disseminate information or ideas of whatever nature;
- a right to have access to the media; and
- a right to seek and receive information and ideas (WSIS, 2003, 3).

A clear case can therefore be made that access to information is a prerequisite for becoming a knowledge and information society. Acknowledging such a right not only allows access to the ideas of others, but also opens up the opportunity to participate in global information-based socio-economic and political activities. The denial of access to information is therefore no longer merely a denial of access to the ideas held by others, or oppression of the freedom of expression; it will also marginalize people's participation in various economic, political and socio-cultural activities. It touches the very heart of the modern information era (Lor & Britz, 2007).

The right of access to information has indeed become one of the fundamental individual as well as social rights. The fact that the global economy is based on the manipulation of information puts this right within the realm of a social right – in other words, the right to participate in economic activities. For Benkler (2006: 302) access to information has become access to opportunities. It is also an instrumental right, because it allows and empowers individuals to exercise all other rights. The South African Constitution rightfully defines the right of access to information within this framework (Constitution of the Republic of South African, Chapter 2, Section 24, 1996).

The argument that access to information is an instrumental and individual as well as social right not only implies the protection of this right, for example, in a constitution and by means of legislation, but also ensures the enabling of this right. One can indeed argue that society has a moral obligation and legal responsibility to create an accessible information infrastructure together with a legal regime that will allow citizens not only the protection of this right but also the means and ways for exercising it. Article 28 of the United Nations Declaration of Human Rights states: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized' (United Nations, 1997).

Furthermore, this right to communicate is both a negative and a positive right. As a negative right, a state's government should not restrict access, but, as a positive right, it goes further and places an obligation on a government to also provide the resources to allow citizens to exercise their right to communicate (WSIS, 2003:2). In recognition of this, for example, the Organization of American States (OAS) adopted the American Convention on Human Rights based on the Universal Declaration of Human Rights. Although the Convention did not make specific reference to a right to communicate, it did address the issue of communication, with specific reference to the role and responsibilities of governments and private organizations alike; Article 13 (iii) of the treaty states:

'The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or implements of equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions' (OAS, 1969).

Of particular interest here is government control over the means of dissemination of information and communication. This is also mentioned in the *World Summit on the Information Society (WSIS) Statement on the right to communicate*: 'Governments are part of the problem, for example, where they impose restrictive rules and regulations on the media or telecommunications' (WSIS, 2003:1). One of the key elements of the right to communicate is 'equitable access to the means of communication' (WSIS, 2003:2) to which telecommunications are intrinsic. Equitable access in telecommunications results in the commitment to universal service, requiring telecommunications service providers to ensure that access to their products (for example, telephone lines) is universally available to all

citizens. In his opening address at the Telecom 95 conference, then President of South Africa, Nelson Mandela said: "...in the 21st century, the capacity to communicate will almost certainly be a key human right" (Mandela, 1995).

Justice requires that those individuals and groups ensured of the right to communicate must also be reasonably enabled to effectively make use of it. This implies that the telecommunications infrastructure must be made available and accessible. Furthermore, merely putting the technologies in place is not sufficient; the social appropriation of technologies to serve society must also be enabled and supported.

## The current situation: Money talks, not people

Having argued that the right to communicate is a basic human right in the previous section, in this section of the paper, we focus on telecommunications in South Africa and how the current situation negatively affects that basic and important right.

Telkom has been the sole, fixed line telecommunication operator in South Africa since 1991. Of a population of more than 40 million, Telkom serves only around 2.4 million residential customers (Telkom, 2006:4). Corporate customers include "more than 200 of the country's largest financial, retail, manufacturing and mining companies with domestic and international operations and approximately 550,000 large, medium and small businesses" (Telkom, 2006:4). Even with such a relatively small customer base, Telkom has clearly used its monopoly to its advantage: since the year 2000, its operating profit margin increased from R1.54 billion to just over R9 billion in the fiscal year ending in 2007. In order to achieve such profit margins, telecommunication costs clearly must be high, indeed, telecommunications cost in South Africa is currently one of the highest in the world; numerous studies have found that Telkom's pricing is excessive (Efficient Research, 2004; Genesis Analytics, 2004; Yankee Group, 2003). The 2000–2004 situation reveals the following about telecommunication costs in South Africa:

- Most expensive country for local call rates;
- Most expensive country for national call rates;
- Most expensive country for international calls; and
- Local call costs rose by 10.5% in 2000, 16% in 2001, 24% in 2002, and 12.5% in 2003.

As a result of relatively high tariffs, the number of fixed lines has decreased considerably over the past years: from 2000 to 2004, 12.2% of fixed lines were disconnected (Love, 2005: 59). However, South Africa's reduction in fixed lines has been accompanied by continued profitability for Telkom. Research ICT Africa! (2004:6) found that in seven African countries they reviewed that adopted reform models that protected the public switched telephone network with formal periods of exclusivity, with the aim of financing the extension of the network and increasing access to unserved areas, the number of fixed line subscribers has declined. This trend of disconnection is exacerbated by the expansion of a competitive mobile

market. Furthermore, Telkom has been investing less in network roll-out since the end of the formal exclusivity period, and focusing increasingly on the lucrative business market.

Frustrated with high tariffs and poor quality of service, consumers started protesting. A number of websites were created by irate consumers including Hellkom ([www.hellkom.co.za](http://www.hellkom.co.za)), Teklom ([www.teklom.za.org](http://www.teklom.za.org)), and TelkomSucks ([www.telkomsucks.co.za](http://www.telkomsucks.co.za)), all of which attract significant traffic with very negative feedback on tariffs and service delivery. Hellkom created a number of parodies of Telkom's corporate logo. Individuals even placed advertisements in major newspapers to voice their frustration and attempt to get a response from Telkom. An article on a newspaper advertisement describes the frustration of a Telkom customer (Shapshak, 2006:9).

In recognition of the public outcry on high tariffs and excessive profits reaped from a captive audience, on August 1, 2006, Telkom implemented an overall price decrease of 2.1% on the regulated basket of services. In real terms, taking into account inflationary pressures, the price decrease actually amounts to 5.6%. International and long-distance call charges were decreased by 10% to 'further narrow the gap' between South Africa and other international operators (Telkom, 2006:10). Given previous increases, these decreases are insignificant and tariffs remain high relative to other international telecommunications operators. On January 19, 2007, the Telecoms Action Group ([www.tag.org.za/index.php](http://www.tag.org.za/index.php)) published an advertisement in the Mail & Guardian newspaper to this effect, which was paid for by contributions raised on their website from more than 200 contributors (TAG, 2007).

Telkom has also consistently retrenched their workers: approximately 50% of its workforce was lost from 2000 to 2005 in order to – as they put it – be more efficient. In 1999, Telkom had 61,237 employees, but, by September 2003, this was down to around only 33,800. The employee reduction came at a cost of approximately R1.4 billion (Hellkom, n.d) and has contributed to South Africa's already high unemployment rate.

Meanwhile, the government of South Africa remains the largest shareholder in Telkom with a shareholding of 38.9%<sup>2</sup> (Telkom, 2006:3; 2007) and thus reaps significant financial benefits from the monopoly. Furthermore, a government-owned company that invests funds on behalf of public sector entities, the Public Investment Corporation (PIC), holds a share of 8.6%<sup>3</sup>. This significant ownership in Telkom by the government does raise the question of its impartiality in fulfilling its role to ensure and enable the right to communicate of South African citizens.

In addition, this is in contrast to the same African National Congress (ANC) government's view of telecommunications in South Africa, and, more specifically, Telkom's role upon the party's election in 1994 in the country's first democratic election. In 1994, the ANC developed the Reconstruction and Development Plan (RDP) which aimed

to redress the imbalances instituted by previous apartheid policy. The RDP promised access to telecommunications for all and emphasized the importance of the creation of advanced information networks as key in the reconstruction of the country. In 1995, the Green Paper on Telecommunications Policy listed the government's objectives (Ministry of Posts, Telecommunications and Broadcasting, 1995):

- achievement of universal service;
- economic empowerment of historically disadvantaged citizens;
- provision of wide range of services to stimulate and support economic growth;
- effective use of telecommunications for social development; and
- competition and deregulation to support the right of all South Africans to have affordable access to a telecommunication infrastructure.

The subsequent White Paper on Telecommunications Policy (Republic of South Africa, 1996) stated the government's intention with regard to universal access in support of socio-economic development:

'The state's vision for telecommunications is one that balances the provision of basic universal service to disadvantaged rural and urban communities with the delivery of high-level services capable of meeting the need of a growing South African economy.'

It also recognized the importance of affordability over and above access: 'Affordable communications for all, citizens and business alike, throughout South Africa, is at the core of its vision and is the goal of its policy.'

A new regulatory regime was to be introduced with an independent regulator, responsible to the government through the Minister of Communications. A phased approach to liberalization was favored: a five year exclusivity period for Telkom was granted with introduction of competition thereafter. The Telecommunications Act of 1996 went through 14 drafts and presented a compromise between the Green and White Papers. The central issue was who would have ultimate authority over the telecommunications sector and many of the responsibilities of the independent regulator were taken over by the Minister (Table 1).

In 1997, the South African Telecommunications Regulatory Authority (SATRA) was established, as was the Universal Service Agency which was tasked with monitoring the universal service obligations of telecommunications network operators.

In 2000, the Independent Communications Authority of South Africa (ICASA) was formed as an amalgamation of SATRA and the Independent Broadcast Authority. ICASA is charged with the following:

- 'make regulations and policies that govern broadcasting and telecommunications;
- issue licenses to providers of telecommunication services and broadcasters;
- monitor the environment and enforce compliance with rules, regulations and policies;

<sup>2</sup> Consists of one Class A ordinary share which represents 100% of the class.

<sup>3</sup> The remainder is held by a black economic empowerment group The Elephant Consortium (7%), two Telkom subsidiaries (collectively holds 4.3%) and freefloat shares publicly traded (41.2%).

**Table 1** Differences between the White Paper and the Telecommunications Act of 1996 (Love, 2005, 34)

	White paper	Telecommunications act
Market structure	Exclusivity period of five years	Determined by the Minister in Telkom's licence
Management of phased introduction of competition	Regulator and Minister	Minister
Licensing of Telkom	Regulator	Minister
Network extension goals	Regulator	Minister
Tariffs setting	Regulator	Minister (for 3 years)

- hear and decide on disputes and complaints brought by industry or members of the public against licensees;
- plan, control and manage the frequency spectrum and
- protect consumers from unfair business practices, poor quality services and harmful or inferior products" (ICASA, n.d).

ICASA, which is state funded, is, however, beset by problems. Apart from the lack of responsibilities, it also does not have the authority nor the financial means to enforce regulation. It is also suffering a mass exodus of senior staff members who are fed up with interference in management operations and the regular flouting of the regulator's policies and procedures by the council of ICASA (McLeod, 2006; Mochiko, 2007; South African Broadcasting Corporation, 2006).

In 2003, the initial public offering of Telkom took place (3 years overdue) and only in 2006, 12 years after coming to power, the government allowed the second national operator (SNO), Neotel, to enter the South African market; interestingly, the Government of South Africa has 30% indirect ownership in Neotel (Neotel, 2006). Unfortunately the introduction of the SNO has not had the expected effect of reducing telecommunications costs – the main reason being that previous monopoly operator Telkom is deliberately "closing the door on its [Neotel's] potential contracts" (Stones, 2007). Although Telkom contests this, South Africa's Competition Commission said there is incontrovertible evidence that the country's low internet penetration, expensive data tariffs and high phone bills were a direct result of Telkom's continuing dominance in the marketplace (Stones, 2007) and according to local telecommunications analysts, Neotel is not yet in a position to compete aggressively with Telkom (Mgibisa, 2008).

In terms of accessibility, affordability and quality of service, South Africa's monopolistic fixed line market is underperforming relative to similar countries and the promise of universal access has certainly not materialized in spite of initial good intentions. Based on the above background description, we conclude that the situation regarding the right to communicate as well as the telecommunication policy and infrastructure development to date in South Africa has been and continues to be a matter of social justice.

## A case for social justice: From Hellkom to Telkom

In this part of the paper we analyze this situation from a social justice perspective based on the premise that the right to communicate is a basic human right. We base our analysis on three categories of justice, namely distributive, contributive, and commutative justice, which are derived from the two core principles of social justice defined by Rawls (1971:61). The two principles read as follows:

"Each person is to have an equal right to the most extensive basic liberty with a similar liberty for others" – we understand this 'basic liberty' to include the fundamental right to communicate.

"Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all". We interpret this to mean amongst other, that economic benefits gained from the telecommunication marketplace, cannot be at the expense of the basic right to communicate.

We focus on the following in dealing with these three categories of justice:

- Distributive justice: the fair allocation of burdens and benefits in society.
- Contributive justice: duty and responsibility to one another in society.
- Commutative justice: fair contractual agreements that define relationships, outline benefits and burdens, and specify obligations and responsibilities to one another.

Young (1990) correctly pointed out that justice is both a positive and negative virtue which not only prevents harm and conflict, but also creates a consciousness towards the recognition and protection of our human dignity and basic rights. Our point of departure is that social justice as a tool can be applied to when there is consensus among all role players and stakeholders in South Africa.

We argue, based on Rawls' first principle and as it is expressed in distributive, contributive, as well as commutative justice, that the South African government has the responsibility to ensure that the rights of individuals in a community are protected, their human dignity respected, and the least in society taken care of. Huber (1993) strongly advocates that the demand for justice is primarily towards those in power – in this case, the South African government. It also implies the fair distribution of essential information and other goods and services that are regarded as common goods, such as telecommunications infrastructure. We also illustrate, using Sen's (1993) capability approach, that the social and economic structures in South Africa need to be organized in such a manner that everyone has an equal opportunity not only to contribute towards the creation of wealth, but also to be able to participate in the various socio-economic and political activities that will enable their human well-being. This implies, among others, access to an affordable communication infrastructure. The South African government and other relevant institutions that shape the economic life will violate the principles of social justice, as it is expressed in these three categories of

justice, when they fail to create a system, including a communication infrastructure, where all have the equal opportunity to participate in socio-economic and political activities.

In addressing these inequalities in the South African information marketplace, we argue, based on Rawls' second principle, that, although inequalities can be justified in a society, they cannot be to the disadvantage of those less privileged and poor. Thus different services with different prices are acceptable. However, the less privileged in South Africa are not only price-sensitive but are also, in many cases, treated with less respect by Telkom. Here, we refer specifically to the fact that Telkom does not respond in an appropriate manner to the broad and fully justified public outcry against some of their policies.

The current telecommunications situation in South Africa is particularly untenable given the mandate and platform of the government as the first democratically elected government. Based on commutative justice, we are of the opinion that, given the promise of access to affordable telecommunications, the people living in South Africa can justifiably expect the government to deliver on its initial policy intentions, since these are in line with the principles of social justice. The main telecommunication role players in South Africa need to be open to listen to the valid complaints of South Africans and in particular the workers who lost their jobs. Such an openness does not only imply the creation of a platform where people can raise their concerns in a legitimate manner, but it also implies the creation of new structures and policies that should be based on mutually acceptable core values (Waltzer, 1983).

## Conclusion

In this article, we have argued that, without access to modern ICT, it has become impossible to participate meaningfully in the global world in which we are living today. We further argued that access to information and ICT must be recognized as a basic fundamental right that is legally protected.

Against this background, and based on John Rawls' principles of social justice, we have argued that the current monopoly of telecommunications in South Africa by Telkom is a matter of social justice, since it excludes and marginalizes the poor from effective communication and thereby socio-economic and political participation in South Africa.

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