



The Anti-Censorship Programme

Third progress report to the Open Society Foundation for South Africa

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1. Executive summary

The last nine months of the Anti-Censorship Programme's operations have seen a continuing rise in the demand for our intervention and assistance on a wide range of matters relating to freedom of expression. Not surprisingly and given the rising levels of conflict between state and non-state actors on the one hand, and individuals on the other, such intervention now spans a whole range of areas including legal support, publicity and expert submissions.

Both direct and indirect means of trouble-shooting cases of censorship, as well as alerting the public about the dangers posed by censorship, continue to be used by the Anti-censorship Programme (ACP). In this regard, one of the most significant activities of 2003 and in which the programme participated extensively was the Hefer Commission of Inquiry into spying allegations against the National Director of Public Prosecutions Mr. Bulelani Ngcuka.

Right from start of the commission, we defended the right of journalists not to be subpoenaed to give evidence at the inquiry save as a matter of last resort and only after all other avenues had been tried and exhausted. Our active intervention at the commission saw us playing a leading role in the debate about protection of sources of information as a result of which we have been regularly invited to give comment in a wide range of forums in regards to journalists and their sources of information.

We also initiated and continue to play an active role in coordinating other media institutions such as the South African National Editor's Forum (Sanef), the Media Workers Association of Southern Africa (Mwasa) and the Media Institute of Southern Africa (Misa-SA) around the Ranjeni Munusamy case. This case arose after Judge Hefer- who headed the Hefer Commission subpoenaed her to testify on the basis that she was the author of the story that eventually led to the establishment of the commission. When the judge refused to grant her (and our) request that she be called only as a matter of last resort, she went to the High Court seeking a review of the judges' decision. We together with the other three media freedom bodies joined this application as *amicus curiae* (friends of the court). This application was dismissed by the court and the matter is now heading to the Constitutional Court. Our role at the Commission and in the subsequent High Court appeal by Ms Munusamy against Judge Hefer's ruling are captured at some length in this report.

Legislative reform is one of our key areas of concern though as explained in the report, we are yet to launch a campaign to address the censorious laws still obtaining in the country's statute books. However, the programme aims to embark on two major legal challenges (one of which is currently underway) on laws that violate the right to freedom of expression. The Munusamy case discussed above will proceed in collaboration with our partners, while we have already applied for funding to lodge a constitutional court application against the Regulation of Gatherings Act. Cases of this kind usually take a long time to complete but regular reports and updates will be made available.

In the recent past, we have been asked to give expert opinions on certain laws and legal provisions of concern. We received a request from the Public and Allied Workers Union of South Africa (PAWUSA) to comment on whether the Public Service Regulations of 2001 as read together with the Public Service Act (104 of 1995) and the Protected Disclosures (Whistle blowers) Act (26 of 2000) are in conformity with the Constitution. We found that certain aspects of the Regulations as well the Whistle Blowers Act are constitutionally suspect and consequently invited the union to engage with us in discussions around the possibility of launching an amendment campaign. Our opinion to PAWUSA is annexed to this report.

Similarly, the Programme was asked to give its view on new regulations proposed by the Department of Health to regulate and restrict advertising in regards to infant foods. As we stated in our media commentary, the government's move to advocate for greater breast-feeding and

restrict overt advertising for these foods is laudable but such action must not impinge unduly on the right of individuals and institutions to express themselves. The proposed regulations are still under discussion.

A notable success in this period has been the shelving of the controversial Anti-Terrorism Bill (or as its long name states "The Protection of Constitutional Democracy against Terrorist and Related Activities Bill"), by the government in late February. That being the case, the Bill was not tabled in the National Assembly during its last session before the House broke for the April recess and 2004 elections. This is a small, though not an insignificant achievement and in spite of the fact that government seems to have retreated only after its alliance partner the Congress of South African Trade Unions (Cosatu) threatened industrial action, our role towards the victory, albeit temporary, is a matter of public knowledge. A recent article in the Citizen cited the FXI as one of the most active, vociferous and consistent critiques of the Anti-Terrorism Bill.

In late November, the head of the ACP together with Mr. Raymond Louw (formerly editor of the Rand Daily Mail and currently a member of the FXI board) and Ms. Jeanette Minnie (a media freedom consultant) held a meeting with President Festus Mogae of Botswana in Gaborone. Mr. Louw had requested the meeting in a bid to brief the President about an on-going campaign to remove 'insult laws' from criminal and civil laws of many states in Africa. A hangover from the colonial regimes, these laws are routinely used by governments and top state bureaucrats to avoid criticism. The World Press Freedom Committee funds the campaign and Botswana was selected as a starting point due to its impressive record of good governance and human rights.

Evaluation of the Freedom of Expression Defense Fund (FXDF) and proposals for the establishment of a Legal Unit within the FXI have been completed after a series of discussions between the head of the ACP, the Executive Director and the expert commissioned to undertake the evaluation Advocate Salim Ebrahim. We envisage that the Unit and Fund will be operational before the end of April with a full-time junior advocate heading the unit, while moves are currently underway to raise finances for the Defense Fund. Advocate Ebrahim's report is annexed herewith.

We note with some concern however that some of the cases in which we have intervened are lapsing for want of action from the side of the victims forcing us to close down such files. Whereas the closure of a file signals the end of our involvement in the matter, it is by no means an indicator that the censorious action has been redressed. We have become aware over time that perhaps the reason for inaction on the part of the victims owes to the programme's inability to provide expedient legal assistance. Nevertheless, with the establishment of the Legal Unit and Defense Fund, this setback may soon be a thing of the past.

We trust that this report will highlight the central role the programme continues to play in defending, deepening and advancing the right to freedom of expression in South Africa and the need to maintain our active monitoring of the free expression environment.

Finally, we would like to extend our gratitude to the Open Society Foundation for its generous assistance and support for FXI's work as well as other democratic initiatives in South Africa

2. Overview of ongoing and new cases handled since October 2003

2.1. The Khayelitsha Anti-Eviction Campaign

A decision was taken to hold this case in abeyance until the establishment of the Legal Unit and Defense Fund in April. It will be transferred to the Unit once this becomes fully functional. The case is still pending before the Magistrates' court in Khayelitsha.

2.2. The case of Guy Slingsby

Discussions were held with Mr. Slingsby and his legal Counsel Willem De Klerk in late October and it was decided that we list the matter as 'low priority' in our files. We do not envisage any other form of intervention but we will formally close the file once the court process comes to an end.

2.3. The case of Sonya Roets

The Legal Unit will also deal with this case once its head is appointed. No date has been set yet for its next hearing in the Cape High Court.

2.4. The case of Tascoe De Reuck

On October 15 2003, the Constitutional Court handed down its judgment in the application made by Tascoe De Reuck, that sections of the Films and Publications Act (65 of 1996) dealing with child pornography be declared unconstitutional. The court dismissed De-Reuck's application with costs but made an elaborate ruling on the interpretation of child pornography in relation to the right of freedom of expression.

The court stated that any image which, judged as a whole predominantly stimulates aesthetic rather than erotic feeling in the mind of a reasonable viewer, would not be caught within of definition of child pornography. In other words an objective test will have to be applied in every case where it is alleged that a visual image or images constitute child pornography

We concurred with the court's finding and no longer consider this case as active.

2.5. The case of Justin Nurse

Unfortunately, this case continues to drag on because of the irregular nature of communication by the victim Mr. Justin Nurse. During the last telephonic conversation with him in October, he undertook to identify an appropriate advocate or suitably qualified attorney to give an expert legal opinion on commercial expression vis-à-vis- the horizontal application of s16 (freedom of expression clause) of the constitution. He is yet to do so.

On December 12 2003, the Supreme Court of Appeal in Bloemfontein dismissed an application brought by South African Breweries (SAB) seeking to have Mr. Nurse present adequate guarantees for legal costs in the event that he lost the case. SAB's action was mischievously aimed at stalling the matter since they know the defendant is not in a position to give such guarantees.

This file will be kept open and the programme will track all developments around the case, which is still pending before the Supreme Court of Appeal.

2.6. The case of Ranjeni Munusamy

President Thabo Mbeki appointed the now famous Hefer commission in September 2003 to investigate allegations that the National Director of Public Prosecutions Bulelani Ngcuka was an apartheid spy. This commission was headed by retired Judge Joos Hefer and sat for a period of two months hearing submissions and gathering evidence in Bloemfontein.

Among those subpoenaed to appear before the commission to testify was a former senior political correspondent of the *Sunday Times* newspaper Ranjeni Manusamy. Her summoning related to the fact that she was the source of a story published in the *City Press* alleging Mr. Ngcuka was investigated by the ANC intelligence in the late 1908s as a possible spy for the apartheid government. Munusamy was subsequently dismissed from the *Sunday Times*, which refused to publish the story, for passing it to its rival paper *City Press*.

Other media persons who were either subpoenaed or requested to voluntarily appear before the commission and give evidence were senior journalist Elias Maluleke and his editor Vusi Mona (he resigned soon thereafter) of *City Press*, Mathata Tsedu (then with the *Sunday Times*, he was later dismissed for different reasons), Joe Tlloe, editor in Chief at *Etv* and Mondli Makhanya (then editor in chief for the *Mail and Guardian* but presently holding the same portfolio at the *Sunday Times*). Besides Mona, the other journalists indicated their unwillingness to comply with the subpoenas and refused to appear before the commission.

On Thursday 16 October 2003, the FXI, the South African National Editors Forum (Sanef) and the Media Institute of Southern Africa (Misa-SA) made a joint submission to the commission calling for the subpoenas to be withdrawn. The three organisations argued that the subpoenas would gravely compromise media freedom in the country because among other things, journalists may be forced to reveal their confidential sources of information and the public trust which forms the basis of investigative journalism would be severely compromised.

Furthermore, the three organisations pointed out that the public would consequently view journalists not just as informers, but also as an extension of the investigating arm of the authorities. In future, this could make the public fear or refrain from supplying journalists with information.

In spite of this submission together with that of Munusamy where we asked that she be called only as a witness of last resort, Judge Hefer ruled that she would have to testify. She appealed to the High Court in Bloemfontein for a review of the judge's decision and the matter was heard on November 4. The FXI, Sanef, Misa-SA and Mwasa were enjoined in the case as *amici curiae* (friends of the court) and represented by Advocate Gilbert Marcus SC. FXI, Misa and Sanef also attended the court hearing. In a judgment delivered on 11 November, the court dismissed Munusamy's application with costs.

Munusamy subsequently made an application for leave to appeal to the Constitutional Court (CC) but this application, which was due to be heard in December was removed from the court's roll after the commission came to a close. Hefer also stated that he no longer considered Munusamy's evidence essential to the commission's final decision. Once the matter is re-enrolled the four organisations aim to once again apply to become *amici curiae*.

So far, the FXI has spent close to R50 000 in legal fees and other disbursements. Misa-SA has contributed a similar amount, Sanef put in some R10 000 while Mwasa contributed R7000. In

February 2004, the Washington based World Press Freedom Committee made a donation of \$4500 towards the case.

What the four organisations are striving to establish is the principle that journalists should not be summoned or subpoenaed to give evidence before judicial or quasi-judicial forums, save as a matter of last resort. Secondly, that journalists should not be made to reveal their confidential sources of information unless the public advantage to be gained by doing so outweighs the public prejudice thereby caused by violating the right to media freedom.

As a collective, the group has issued joint statements and action alerts, and participated in media interviews and seminars to articulate the principles behind the intervention. In a meeting at FXI's offices in February, it was agreed that the case would be pursued on a priority basis.

Recently however, we have learnt that Johnic Communications- owners of the *Sunday Times*- has been advised by their legal team that they no longer need to support the case financially. The legal team argues that there is no more legal obligation on the part of the paper since their commitment went as far as ensuring that Munusamy would not be compelled to testify by the commission.

In response to this development, some members of the group have agreed to ask for a meeting with the paper's managing editor Mike Robertson to emphasise the necessity of the *Sunday Times* continuing support for the case on a principle basis. If this meeting fails to resolve the issue, then the alternative would be to raise monies to fund the case directly. Other members such as Sanef have however indicated that they will not participate in such a meeting.

Furthermore, some of the partner members like the FXI and Mwasa feel that we ought to explore another option of instituting a fresh class action under section 38 of the Constitution. This section allows anyone who has an interest in any matter to approach a competent court (including the Constitutional Court) for relief if a fundamental right is violated or under threat of violation.

A major reason behind this proposal is that it has been difficult to separate the principle of protection of sources from the actions of Munusamy as it is now stated in many quarters that she compromised major caveats of journalistic ethics. Firstly, she was insubordinate by refusing to comply with her editor's instructions not to publish the article, and secondly, there appears to be a disturbingly close relationship between her and her sources. Many a time, she has appeared to be the personal voice of the sources rather than an arbiter of information. It is instructive to note that both her alleged main sources of information- Mac Maharaj and Moe Shaik were widely discredited at the Commission.

No definite stance has been taken in regard to pursuing the s38 option as we are still weighing up a number of issues such as the cost factor and the possibility of not making a successful application in light of Munusamy's still unfinished court case. A substantive update will however be made in the next progress report. Meanwhile we have applied to the Network Media Programme of the Open Society Foundation for funding to enable us institute the s38 application and are awaiting their response.

2.7. The Dulcie September book

In November last year, the ACP was approached with a request from Maggie Davey- an independent publisher- to give opinion on a book written by Evelyn Groenink an independent journalist in regards to the 1988 assassination of Dulcie September. September was the then ANC representative in Paris. The publisher's interest was whether or not the book would

potentially result in defamatory suits and if so whether the FXI would be willing to provide legal support

Originally published in Dutch, the book's primary focus is on the assassination of Dulcie September. However, it also investigates and makes certain connections around the murders of Anton Lubowski, then prominent SWAPO lawyer, in 1989, and Chris Hani, former commander of Umkhonto We Sizwe and General Secretary of the South African Communist Party in 1993.

In all these assassinations, the author shows (or attempts to show) that the victims were killed because they stood in the way of the French and French interests. In the case of September, the author alleges that she stumbled upon evidence of French collaboration with the apartheid government over the then South African nuclear armament programme. For Lubowski, the author argues that he refused to accede to the plans of international Mafia groups who sought Casino rights, oil exploration ventures and transport opportunities for ELF the French oil giant as well as other Franco-Italian international dealers, with the newly constituted government of Namibia.

Hani's case involves a wider conspiracy beyond the accepted right-wing plot in that his incorrigible nature posed a threat to French interests around arms deals with the then ANC government in waiting. A number of companies such as Thompson-CSF (now Thales, and currently embroiled in the SA multi-billion dollar arms scandal) are mentioned as having stood to lose if Hani -as was likely to be given his influence and popularity- became the defense minister and possibly even Mandela's successor.

There are many individuals mentioned in the book who may want to sue on allegations of defamation. The main ones are firstly Alain Guenon, a renowned French arms dealer and international financial kingpin. He is linked to all the three deaths. Secondly, Tokyo Sexwale, a former Premier of Gauteng Province, deputy to Chris Hani. He is now one of the richest people in South Africa. He is portrayed as possibly 'corrupt' or not averse to cutting deals with the French. In actual fact, the author raises controversial points on the possibility of his having accepted to do what Hani wasn't prepared to do i.e. smooth the way for French arms merchants with the incoming ANC government.

Thirdly, the family of Joe Modise. Modise was the first black defense minister of the new SA and Hani's boss as the head of Umkhonto We Sizwe during the liberation struggle. At the time of his death in 2002, there was already a sizeable cloud hanging over his head in relation to his 'below the board' contracts for certain favoured companies involved in the SA arms deal. In the book, he is presented as a corrupt character and though as a dead person he cannot sue, his family or estate may claim defamation by association.

Other persons mentioned in the book include Mathews Phosa, an advocate and former Premier of Mpumalanga Province during the Mandela administration. He was appointed by the ANC in 1993 to head a committee that investigated the Hani murder but the committee's findings were not conclusive. Nevertheless, Evelyn has tied him to a questionable housing project initiated in his province and alleges that he may have taken kickbacks in the process. Though Phosa does not have a reputation for cleanliness, he has already hinted to Maggie Davey- the intending publisher, that unless the passages referring to him are deleted or edited he stands to be "very rich".

ACP's general view is that this book is a very interesting historical narrative of South Africa's troubled past. According to SA's common law of defamation, the probable defenses that both Evelyn and Maggie can raise are one, truth and in the public interest and two, reasonableness, i.e. that they have taken all reasonable steps to establish the veracity and authenticity of their information. Furthermore on the second defense, the courts have pointed out that political

expression will normally invite a higher degree of protection as compared to other forms of expression and this book is in my opinion, such a case.

The problem nevertheless is that it is difficult to sufficiently establish the truthfulness of the allegations unless for instance documents can be produced which is certainly impossible. The first defence would not therefore be good enough. On reasonableness, both the author and publisher would have to show that they took all necessary steps such as proper research, verification and a sober analysis of the information in their hands. Before a progressive bench, they could possibly get away with it.

For the FXI, this book is a good case for testing the right to freedom of expression and the flexibility of the courts when interpreting s16 of the constitution on matters of defamation. Our problem however is that we do not have the funds to engage the services of an advocate to represent the two in court. Maggie runs a small independent publishing house called Jacana Media and hence the reason for her initial fears of getting the book in the market in case she gets slapped with a barrage of law suits.

In February 2004, Witold Waluz, brother of Janus Waluz (the latter was convicted for the murder of Chris Hani and jailed for life), sued Maggie Davey and her publishing company for defamation. Witold asked the court to place an interdict on the publication of the book and that he also be given access to the manuscript for his comments prior to publication. The court declined to grant his prayers and the case will proceed to a full hearing at a later date.

A Namibian individual named Andreas Guibbeb has also threatened legal action over claims in the book that he and his late brother Hans Guibbeb were allegedly apartheid agents during the 1980s.

In December, the ACP sent a request to the Amsterdam based Netherlands Institute for Southern Africa (Niza) asking whether they are in a position to co-publish the book. If not, we inquired whether they would be able to provide the FXI with funds to defend the publisher and the book's author in court. Though this matter was raised again during a trip to Amsterdam in January, no response has ever been received from Niza.

After commencement of the lawsuit, the programme sent appeals for financial assistance to the World Press Freedom Committee, the Committee for the Protection of Journalists, Niza (a reminder), International PEN and the Commonwealth Press Union. None of them have offered any help though the last group has provision for expert legal advice rather than direct financial assistance.

We are hopeful that funds will be secured either locally or internationally but the case will be handled more effectively once the Defense Fund is established.

2.8. The matter of the General Workers Union of South Africa (GIWUSA)

The ACP was requested to intervene in this matter where the works director at Nampak Paper Ltd. issued a circular to the newly constituted General Workers Union of South Africa (Giwusa) directing that they will not be allowed to wear union attire at the workplace. Giwusa was set up by workers who broke away from the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (Ceppwawu) during its internal crisis in 2003.

A letter of complaint was sent by the ACP to Mr. Payne the Nampak director pointing out that this directive was a violation of the worker's right to freedom of expression and association. On November 19, Mr. Payne sent a response saying the matter would be addressed internally with the Union's shop stewards. No further complaints have been received after that and it is our

belief that the problem has since been resolved. This file will however remain open pending developments in the future.

2.9. The matter of the Public and Allied Workers Union of South Africa (PAWUSA)

Pawusa asked the ACP to provide it with an opinion on whether a circular issued by the Department of Public Service to all civil servants regarding communication with the media complies with the constitutional right to freedom of expression. The circular also makes directives about reporting of suspected irregularities and handling of official information by public service employees.

The programme was requested to examine and give this opinion with reference to the Public Service Regulations of 2001 and the Protected Disclosures Act. The case of Emmanuel Agbesi, who was disciplined by the Department of Health for allowing himself to be interviewed by SABC about HIV/AIDS and asbestosis in the Northern Cape, formed the background to this analysis.

In the event, we explored the 2001 Regulations in depth especially their interface with the freedom of expression clause and the Promotion of Access to Information Act (PAIA). We also examined the provisions of the Protected Disclosures Act and the Public Service Act. As stated in the opinion (annexed to this report), we came to the conclusion that some aspects of the Regulations and the Protected Disclosures (Whistle Blowers) Act are constitutionally suspect.

We concluded by saying that we are open to holding further discussions with PAWUSA on the possibility of lobbying the Department of Public Service and Administration on the contentious areas identified by ourselves. We also indicated that we are prepared to put in place a joint lobbying plan with PAWUSA which would target several departments including that of Justice and Constitutional Affairs on the problems inherent in the Whistle Blowers Act.

2.10. Complaint against SABC

An individual complained to the Broadcasting Complaints Commission (BCCSA) about a programme flighted on SABC 3's "3-Talk" in June 2003. In the complaint, he alleged that her partner's ex-husband was featured in the programme in violation of a domestic violence order issued against him. He also alleged that the broadcast violated the Divorce Act and the Child Care Act because minor children are involved in the divorce matter.

The two also lodged complaints with the Gender Commission, the Human Rights Commission and the Public Protector. In the event, the SABC through its lawyers ordered them to refrain from 'defaming' them in the complaints made to the chapter 9 institutions and threatened to institute legal action.

Follow-ups were made in this regard and the head of the ACP contacted both Jimmy Mathews (head of SABC TV news) and Kitten Mathews (chief legal adviser) of the SABC. On 14 November the head of the ACP attended a hearing of the matter by the BCCSA regarding whether or not the commission should adjudicate the complaint. SABC alleges that the complaint, which runs to more than 200 pages is unwieldy and does not disclose an offense.

So far, no further threats of legal action have been made against the complainant and his partner but we are keeping our file open on this matter.

2.11. Department of health regulations on advertising for infant formula foods

These regulations were drafted in 2003 with the aim of encouraging greater breast-feeding among women rather than the growing practice of using formula foods for infants and young children. Though the regulations cover a wide range of health and nutrition related matters, they restrict overt and colourful advertisements for infant foods and also require both manufacturers and advertising companies to depict messages in such products stating that breast-feeding offers better nutritional value to infants.

As is to be expected, the regulations have caused an uproar from the formula food industry and media companies that publish baby magazines and other publications. The ACP has also been drawn into the fray particularly on the requirements that every article written on infant food must contain sentences detailing the benefits of breast-feeding. This means for instance that even academic papers must highlight such benefits. We restricted ourselves to this concern alone and gave media comments that it has the effect of overreaching the limitations sanctioned by the constitution.

The regulations are still under discussion and have not been adopted or implemented.

2.12. The state doctor's march

Since the beginning of the year, the ACP has followed up on the controversies surrounding the state doctors' march during the opening of Parliament in Cape Town on the 6th of February. There were allegations of state intimidation against the doctors prior to and after the event.

Much of this controversy was discussed in the local media and for instance the Cape Argus of February 17 reported that an instruction had been issued to all heads of state health departments, to submit names of doctors who participated in the march.

After the march, the programme head contacted Dr. Kgosi Letlape, the chairperson of the South African Medical Workers Association who said the intimidation and harassment allegations were true and that he would ask the relevant members to get in touch with FXI for further action. So far, no such communication has been received though the matter remains active in our files.

2.13. The APF Matter

The Anti-Privatisation Forum, an organisation consisting of lobby groups fighting against evictions and water and electricity cut-offs in black urban townships requested the assistance of the ACP, after its application for a demonstration on March 3 to the Johannesburg City Council was denied. The organisation sought to march to the headquarters of the city council to protest against eviction notices, billing problems and disconnection of basic services.

In denying permission, the council cited three spurious grounds including the fact that business activities in Braamfontein-where the council's headquarters are situated- would be "severely affected especially during lunch time and afternoon peak". It should be noted that according to the Regulation of Gatherings Act, permission may be denied only if there is a reasonable possibility of severe disruption of pedestrian or vehicular traffic, and after police and traffic officials prove that they do not have enough resources to ameliorate the situation.

Since the Forum was already outside the stipulated 48 hours period for appeal, we advised it to apply again with a view to appealing the council's decision at the magistrates' court if permission was refused. However the organisation still went ahead and held the march without the requisite permission.

The Forum then applied for a demonstration outside the official opening of the South African Constitutional Court. Permission was again denied for several reasons, including disruption of traffic. The APF then attempted to march illegally but were stopped by the police, resulting in the arrest of 57 people on March 21.

Be that as it may and as explained elsewhere in this report, we plan to launch a court application to challenge the constitutionality of the Regulation of Gatherings Act (No 205 of 1933) as part of our legislative amendment campaign. The APF matter has also been included in the funding proposal to OSF's Network Media Programme.

2.1.4. The LPM Matter

The Landless People's Movement, a national social movement consisting of landless people struggling for land and agrarian reform in South Africa, formally emerged in August 2001 during the World Conference Against Racism in Durban.

In December, media reports alleged that its national organiser Mangaliso Khubheka had stated that "if a farmer kills a farm worker, we will kill the farmer", and that members of the LPM should make themselves available to be trained as military cadres. On the 11 February 2004, the South African Human Rights Commission (SAHRC) wrote to Khubheka stating that it was of the view that his statements constituted hate speech. Khubheka did not meet the deadline to respond for a number of reasons, and on 3 March 2004, the SAHRC informed Khukheka in writing of their finding. The Commission recommended that Khubheka should give a written apology within 14 days.

The ACP is in the process of following this matter up, as the finding was brought to its attention very late. It is exploring avenues of having the case re-opened by the SAHRC on procedural grounds. If this occurs then the ACP intends contesting the ruling. This case, together with a number of other contentious judgments by the SAHRC such as its finding that the "Kill the Boer, Kill the Farmer" slogan and Mbongeni Ngema's song "Amandiya" constituted hate speech are also included in the funding proposal to the Network Media Programme. We intend to bring a constitutional court challenge on the commission's findings with a view to having the court enunciate a clear interpretation of the hate speech clause in the Constitution.

2.1.5. University of Pretoria and the Anti-Terrorism Conference

Early march, the University of Pretoria's Centre for International and Political Studies announced a planned conference to be hosted jointly between it and the embassy of the united states of america in south africa on the 23rd of march. However, the 'invitation', or more appropriately the notice released by the university stated that the conference would be "closed to members of the public and the media and space is limited to 200 persons".

We were then alerted about the conference by the Media Review Network, a media monitoring organisation with whom we have collaborated extensively in the campaign against the Anti-Terrorism Bill. They asked that we lodge a formal protest with the university at the secrecy surrounding the conference as well as the refusal to allow public and media participation. Of particular concern to was the fact that a matter as grave as anti-terrorism was being planned in secrecy and held behind closed doors in a public institution of higher learning, while the public and the media, two important constituencies, were barred from attendance. When a public outcry ensued because of America's involvement in the conference given its so called "war on terror" and the violation wrought by anti-terror legislation world-wide on fundamental rights and freedoms, the University's Vice-Chancellor and Principal Professor Calie Pistorius cited the "Chatham House Rule" as the basis for keeping them.

FXI's Executive Director Jane Duncan then sent a letter of protest to Professor Pistorius questioning the rationale behind barring the public from participating in such a crucial debate and questioning the very essence of the Chatham House Rule. As she pointed out in the letter (annexed to this report), the Chatham Rule is an antiquated instrument for protecting elite and governmental privilege and is far from being: -

" A politically neutral instrument for the facilitation of free debate...It is invoked on a regular basis by right-wing think tanks, security and intelligence officials, governments and others, to facilitate 'free debate' amongst few hand-picked 'decision-makers'. The Chatham House rule originated in the Royal Institute of International Affairs to provide members of Britain's political and economic élite with information that they feel would be of particular use to them."

We received no response from the vice-chancellor's office and though the conference went ahead without public participation, both students and members of the public held protests outside the venue for its entire duration.

3. The Anti-Terrorism Bill

In a surprising turn of events, the ANC government decided in late February not to process the Anti-Terrorism Bill in Parliamentary with a view to having it signed into law by the proposed deadline of 31 March 2004. This surprise came from the fact that government had all along demonstrated great levels of intransigence on the Bill and completely refused to listen to the pleas made by a wide group of organisations and individuals that this law stood to violate fundamental rights and freedoms.

When however the ruling party's alliance partner, the Congress of South African Trade Unions (Cosatu), threatened to mobilise its almost two million strong members into mass action if government did not address the Bill's criminalisation of the workers' right to strike, the government backed down.

Though the Bill has been shelved for now, it is possible that it will be revived and passed with perhaps a few cosmetic changes soon after the elections, which means that we must continue to agitate its complete retraction. It was not lost on us that its temporary shelving may have been a political move meant to appease the public especially at this time when the country goes into elections. As we noted in a press statement released on February 27, a day after the shelving became public,

"... Political, rather than constitutional reasons appear to be the real motivation behind the government's momentary backtracking. This much is borne by the fact that the ruling party's alliance partner COSATU has among other things threatened to call for a national strike and lodge a constitutional court challenge if their concerns about the Bill are not redressed. These actions would have had the effect of tarnishing the ruling party's image especially at this crucial time in the run-up to the country's third general elections."

Discussions have continued with other partners who were involved in our 2003 campaign against the Bill such as the Media Review Network and the Social Movements on how to best re-start the campaign. We also want to avoid the possibility of Cosatu taking its dispute around the Bill to the National Labour and Development Council (Nedlac) and thereby succeed in confining it to that narrow forum. Our call is that the Bill is so fundamentally flawed as to make it completely incurable save by totally withdrawing it from the legislative process.

4. The Films and Publications Amendment Bill

This Bill seeks to amend the Films and Publications Act (65 of 1995, "the FPA") in areas such as child pornography and the classification of publications and also introduce new provisions relating to the regulation of broadcasts and internet service providers. Some of the proposed changes clearly violate the right to freedom of expression and when we examined it in November, we decided to make an intervention with the Parliamentary Portfolio Committee on Home Affairs Portfolio, which deals with all matters under the FPA.

However, we were unable to send a written submission as required by the Committee and instead, we supported the submission made by the National Association of Broadcasters ("NAB", see-annexed letter). Discussions are still going on at the committee level and if the offending proposals are not removed, then we will explore mechanisms of supporting further actions by the NAB which might probably include an application to the constitutional court.

5. The Insult laws campaign

In the afternoon of Thursday November 20 2003, Raymond Louw, Jeanette Minnie and the head of the ACP met with President Festus Mogae of Botswana at his offices in Gaborone. This followed a request made by Mr. Louw on behalf of the group to meet and discuss with the President about the international campaign on insult laws.

Article 91-93 of the Botswana Penal code contain what can be described as 'insult laws' and the team hoped given Botswana's clean record of governance, general respect for human rights and adherence to media freedom, it would be able to impress upon the President to lead by example and remove these clauses. The group also hoped to appeal to him to take the issue of insult laws directly to regional and continental structures such as the Southern African Development Community (SADC), the African Union (AU) and its platform of action the New Partnership for Africa's Development (Nepad).

After a discussion lasting approximately one and a half-hours, the group took the President's offer to maintain continuous dialogue with his government officials about the campaign. Another meeting was held between Mr. Louw and South Africa's Deputy Foreign Affairs Minister Aziz Pahad in January 2004, while a meeting has also been sought with the Mozambican President Joachim Chissano in his capacity as the President of the AU. In addition, a series of workshops have been planned for Western and Eastern Africa or alternatively, Eastern and Southern Africa.

The objective of these workshops is to filter the aims of the campaign down to the grass roots level and to secure the necessary buy-in from the various stakeholders including media institutions, non-governmental organisations and political parties.

6. Campaign for legislative amendment

This campaign was meant to have started at the beginning of last year but due to capacity constraints, the programme has not been able to implement it. We have however put in place certain modalities to ensure that it gets underway in earnest during the second quarter of the year.

It will involve a two pronged strategy; a direct engagement with state institutions such as the department of justice and parliament, and a litigation process. The second part of this strategy is already in place with the Ranjeni Munusamy case (see above); whose finding at the constitutional court level will have implications for section 205 of the Criminal Procedure Act (51 of 1977). This section, which empowers courts to subpoena witnesses to give evidence without

allowing some form of qualified privilege to journalists, has already been the subject of an expert legal review by the FXI.

Another piece of legislation that we aim to challenge is the Regulation of Gatherings Act (205 of 1993). Passed by the old apartheid parliament on the eve of transition in 1994, the Act has become an Achilles' heel for many organisations and individuals (see APF case above) wishing to demonstrate or hold assemblies. A disturbing routine has emerged from local authorities and police departments who regularly use the Act's restrictive provisions to "deny permission" for marches.

We are in the process of commissioning an expert legal opinion on both the constitutionality of the Act as well as the possibility of launching a successful court challenge. Thereafter and based on the opinion, we will decide on the next way forward.

7. Education and training workshops

As discussed in the second progress report, the first leg of these workshops took place in August last year in the Northern Cape, the North West and Limpopo provinces. The second leg is planned for some of the remaining six provinces of the country during the rest of the year. Due to financial constraints, it may not be possible to cover the entire country and it may become necessary to identify a select number of provinces that will fit within the budget.

The alternative will be to raise additional funding to cover the shortfall and such extra funds may also be important as we have toyed with the idea of hiring an independent trainer to run the workshops. Decisions regarding the dates when the workshops will take place will only be finalised once FXI's evaluation and strategic planning reports are submitted.

8. SADC Media Awards

We had been instrumental in setting up the Southern African Development Community's (SADC) Media Awards and its implementing arm the National Adjudication Committee (NAC) between 2002 and 2003. However on the eve of the launch of the awards on November 20 last year, we formally decided to withdraw from the NAC and the awards themselves for a number of reasons.

Firstly, we took exception to the competition requirement that all entries emanate from "registered media houses". Secondly, we expressed grave misgivings about Article 22 of the SADC Protocol on Culture Information and Sport, which calls for the creation of an accreditation system for media practitioners in the SADC region. Finally, we thought it inappropriate and contradictory that while the Awards are meant to encourage media freedom and diversity in the region, the Zanu-PF government in Zimbabwe continues to hound media workers and has effectively curtailed freedom of expression in Zimbabwe. We thought it would be hypocritical of us to be part of the Awards while the situation in Zimbabwe demands precisely that SADC Member States, organisations and individuals stand up against President Mugabe's blatant violation of the right to freedom of expression.

These three issues had been raised on a regular basis but representatives from the Government Communications and Information Services-, which is the action point for the SADC protocol- repeatedly stonewalled on our concerns. Our decision was communicated to the chairperson of the NAC and we have thereafter not maintained any contact with the committee or its Task Team. The South African chapter of the Media Institute for Southern Africa (Misa-SA) also took a similar step and resigned from the Awards.

Prior to the resignation, the head of the ACP had written a commentary on the Report issued by the Regional Adjudication Committee of the Awards during its eighth session in Dar es Salaam between 21-22 August 2003. Both the commentary and letter of resignation are annexed to this report.

9. FXI roundtables in Amsterdam, London and Johannesburg

FXI hosted a series of roundtables with donors in Amsterdam (January 28), London (January 30) and Johannesburg (February 19). During these roundtables-whose overriding aim was to bring together different funders on a common platform to discuss the work of the institute- the head of the ACP spoke about South Africa's state of freedom of expression and how the programme was responding to matters of censorship. A documentary commissioned by the FXI and produced by independent film maker Ben-Cashdan titled "South Africa and new state of emergency", was also screened and used as a reference point for discussion.

Lessons gleaned from these discussions have been useful in alerting us to the need to publicise the state of freedom of expression in South Africa in a bid to change the widely held perception that there is no cause for concern about freedom of expression in the country. One of the ways through which we can take forward this objectives is to organise speaking tours in other parts of the world such as Canada and the United States of America and ideas are already in place to have them in the later part of this year.

10. Seminars

10.1. Seminar on media ethics

This seminar was hosted by the Institute for the Advancement of Journalism (IAJ) on November 11, and it saw a diverse range of media institutions and practitioners come together to debate the state of media freedom as well as journalistic ethics in South Africa. Participants examined whether the current spate of malpractices within the media fraternity in the country represents a threat to media freedom.

The ACP head made a presentation on the theme of addressing the interests of justice and commitment to media freedom. In the presentation, he interrogated the subpoenas issued by the Hefer Commission to journalists with the overriding inquiry of at which point should a journalist be compelled to testify. Also on the panel were Prof. Tawana Kupe (Wits University), Prof. Shadrack Gutto (Unisa) and Alistair Sparks (veteran journalist).

10.2. Seminar on media freedom, freedom of expression and racial stereotyping

This seminar was organised by Phase 2, a forum constituted after the World Conference against Racism in Durban in August 2001 to take forward and implement the resolutions of the Conference. The head of the ACP participated as a panelist and spoke on the theme of limitations on the right to freedom of expression and how such limitations are to be determined if we are to strike the required balance between the right of individuals to express themselves and the right of other people to their dignity and other fundamental rights.

Co-panelists included Tsiliso Thipanyane, the head of research at the South African Human Rights Commission, and Jeanette Minnie (who stood in for Gail Smith of *This Day*), a media freedom consultant. It was held on the 26th of February.

11. The World Social Forum

Attended by approximately 100 000 people from all corners of the globe, the 2004 World Social Forum took place in the Indian capital of Mumbai between the 16th and 21st of January. It was a monumental occasion when the world's poor, the socially excluded and economically marginalised came together to share their problems around globalisation, human rights violations and the difficulties of daily existence.

The head of the ACP participated in the multitude of conferences, seminars, panel discussions and roundtables hosted at the event. He spoke at a number of forums including those discussing the war on terror, media stereotypes, and internet based hate crimes. He also conducted a live interview with *the Voice*, a Johannesburg based community radio station.

12. Media activities

12.1. Radio and TV

Date	Time	Interviewer	Media network	Programme	Summary of issues
08/10/03	17:45-18:00	Sithembiso Ntshangashe	P4 Radio	News	Radio interview about the subpoenaing of Ranjeni Manusamy to testify before the Hefer Commission. The commission was appointed by President Mbeki to investigate allegations that NDPP Director Bulelani Ngcuka was an apartheid spy.
08/10/03	17:12-17:15	Thobela FM Martha	SABC public services Radio	News	Radio interview about the subpoenaing of Ranjeni Manusamy to the Hefer Commission.
10/10/03	13:15-13:20	Dumisani-political correspondent	SABC public services Radio	News	The subpoenaing of Ranjeni Manusamy to testify before the Hefer Commission. The commission's terms of reference had been expanded to include an investigation into whether Justice Minister Penuel Maduna was abusing his office.

10/10/03	14:10-14:15	Ike Phasa-	SABC	PM Live	The subpoenaing of Ranjeni Manusamy and other journalists to testify before the Hefer Commission.
14/10/03	16:35-16:40	Wardham	KFM	News	Radio interview about the subpoenaing of Ranjeny Manusamy and other journalists to testify before the Hefer Commission.
15/10/03	17:15-17:20	Taslina Viljoen	SABC	News	Subpoenaing of Ranjeny Manusamy and other journalists to testify before the Hefer Commission
15/10/03	19:00-19:10	San Reddy	ETV	Prime time news	Ruling by the Constitutional Court in the Tascoe De Reuck case that everyone has to obtain permission from the Films and Publications Board in advance before possessing child pornography.
16/10/03	10:30-10:40		Umhlobo Wenene	News	Interview about the subpoenaing of Ranjeni Manusamy and other journalists to testify before the Hefer Commission.
16/10/03	14:45-15:00		Channel Islam	Current affairs	Interview about the subpoenaing of Ranjeni Manusamy and other journalists to testify before the Hefer Commission.
16/10/03	15:10-15:20		Radio 702	Current affairs	Interview about the subpoenaing of Ranjeni Manusamy and other journalists to testify before the Hefer Commission.
25/10/03	12:15-14:00		The Voice (community radio)	Current affairs	Interview on a wide range of issues including the Anti-Terrorism Bill, freedom of expression in the new world order and the 2004 general elections in South

					Africa.
5/11/03	15:07-15:14	Thelma	SABC-Durban	Current affairs	Ranjeni Manusamy's case and the subpoenaing of journalists to testify before the Hefer Commission.
5/11/03	17:10-17:20		The Voice	Current affairs	Ranjeni Manusamy's case and the subpoenaing of journalists to testify before the Hefer Commission.
11/11/03	12:40-12:45	Organised by Glynnis	Radio 702	Current affairs	Dismissal of Ranjeni's application with costs by the High Court in Bloemfontein.
12/11/03	09:30-10:00	Vuyo Mbuli show	SAFM Live	Current affairs	Media ethics and the Ranjeni case. Why should we defend media when they breach their ethics?
12/11/03	12:25-12:30	Warda	KFM	Current affairs	Dismissal of Ranjeni's application with costs by the High Court in Bloemfontein. What next for the FXI and other media freedom lobby groups.
12/11/03	17:17-17:27		The Voice	Current affairs	Dismissal of Ranjeni's application with costs by the High Court in Bloemfontein. What are the issues?
21/11/03	16:15-16:20		East Coast Radio	News	Passing of the Anti-Terrorism Bill by parliament on 20/11/03
26/11/03	07:05-07:10		Radio 702	Current affairs	Media images of nude players of the national rugby squad "the Springboks" during their controversial training at Camp Staldraad, before the Rugby World Cup. Do these images violate their right to privacy and dignity?

28/11/03	12:08-12:13		Umhlobo Wenene	Current affairs	Vusi Mona's testimony before the Hefer Commission. Breach of media ethics and duty on a journalist not to reveal or disclose the contents of a discussion given on the basis of confidentiality or off the record agreement
09/01/04	11:00-12:00	Vuyo Mbuli show	SAFM	Current affairs	Freedom of expression in general. Case of Roy Clarke who is being sought for deportation from Zambia for writing a satirical article calling the president a fool "Mawelewele" and politicians "baboons". Mbeki's controversial visit to Haiti and the comment by one caller on the show calling the President "an idiot" for undertaking the trip.
09/01/04	16:00-16:10		Motsweding FM	Current affairs	SABC's decision to broadcast live President Mbeki's launch of the ANC manifesto in Pietermaritzburg on Sunday 11 Jan 2004. Is it right and has the public broadcaster breached the rules and code of conduct for broadcasters on matters of electioneering
12/01/04	12:00-12:10		Radio 702	Current affairs	Freedom of expression in general. Concerns about the case of journalist Roy Clarke who is being sought for deportation from Zambia for writing a satirical article calling the president a fool

					"Mawelewele" and politicians "baboons". Zimbabwean case of Ide Wetherell and his two colleagues from the privately owned " <i>The Zimbabwe Independent</i> " who were arrested and charged for criminal defamation and publishing falsehoods for writing a story stating that Pres. Mugabe had commandeered a plane from the national airline-Air Zimbabwe- for his own use in the far East. This had allegedly left hundreds of passengers stranded in Harare.
12/01/04	17:10-17:15		Radio 702	Current affairs	SABC's decision to broadcast live President Mbeki's speech at the launch of ANC's election manifesto in Pietermaritzburg on Sunday 11 Jan 2004. Need for balance and for other political parties to be given similar avenues
12/01/04	21:10-22:15		Radio 702	Current affairs	Freedom of expression and hate speech. Dismissal of BBC talk-show host Robert Kilroy-Silk for writing an opinion piece titled "We owe Arabs nothing". He also allegedly referred to Arabs as "suicide bombers, limb amputators and women repressors". Is this hate speech? Is it an enforcement of political correctness?

13/01/04	13:50-13:55		KFM	Current affairs	The Zimbabwean case of Ide Wetherell and his two colleagues on the Robert Mugabe airline story
08/02/04	15:00-15:10	Seema Naran		Current affairs	Ruling by the Zimbabwe appeal court declaring that the controversial Access to Information and Protection of Privacy Act is constitutional
13/02/04	17:50-18:00	Nyen Winnaung	Radio Free Asia	Current affairs	FXI's statement asking that the Burmese military regime commute the death sentence imposed against Burmese journalist Zaw Thet Htwe.
16/02/04	20:00-20:30	Daniel Makovera	SABC Africa (Live show)	Current affairs	Discussions on South Africa's anti-terror legislation. Panel with among others a professor of international law from Wits University and Mluleki George, Chairperson of the Portfolio Committee on Safety and Security
16/02/04	22:20-23:00	Kino	Radio 702 (Cape Talk)	Current affairs	Song by musician Sello "Chicco" Twala comparing the ANC to God. Is it blasphemy? Others on the live interview included Patricia De Lille (Independent Democrats), Douglas Gibson (Democratic Alliance) and Mcebisi Skwacha (African National Congress)
24/02/04	13:45-14:15	Cameroon Baughen	Canadian Radio	Current affairs	On SA's Anti-terrorism legislation. Rights threatened and international comparisons
24/02/04	17:00	Phakamile	Kaya FM	News	Passage of Anti-terrorism legislation

					by the NCOP
24/02/04	21:05-21:25		Voice of Islam international	Discussion programme	Passage of Anti-terrorism legislation by the NCOP earlier in the day
25/02/04	13:10-13:16	Kavith	East Coast Radio	News	The Anti-Terrorism Bill and its implications for fundamental rights and freedoms
10/03/04	17:20-17:28	Francois	Voice of America	New	Threats by government of Robert Mugabe to take legal action against foreign media for its 'subversive' activities.
19/03/04	16:45-17:00	Lawrence Dube	Kaya FM	Current affairs	Conference organised by the University of Pretoria on terrorism to which the public and the media has been barred. Ambassadors (including the US one), high commissioners and defence attaches among other securocrats have been invited
29/03/04	10:45-11:00	Vuyo Mbuli show	SAFM	Current affairs	FXI's withdrawal from the SADC Media Awards.

12.2. Print media

- i. The Sowetan, Wednesday 8 October 2003, p1 "Hefer heads for clash" (regarding the subpoena issued to Ranjeni Munusamy to appear before the commission and testify about her story alleging that Bulelani Ngcuka had been investigated by the ANC in the late 1980s as a possible apartheid spy).
- ii. The Sowetan, October 9 2003, p2 "Media back Munusamy" (Ranjani Munusamy and the Hefer commission).
- iii. The Mail and Guardian online, October 9 2003, "Subpoena violates media freedom" (Ranjani Munusamy and the Hefer commission).
- iv. Business Day, October 9 2003, p3 "Media organisations oppose writers subpoena" (Ranjani Munusamy and the Hefer commission).

- v. The Citizen, October 10 2003, p3 "Hefer may call more journos" (Ranjani Munusamy and the Hefer commission).
- vi. The Mail and Guardian, October 17 to 23 2003, p4 "Onto the next court" (Regarding the pending appeal by Ranjeni against Hefer's ruling).
- vii. Business Day, October 24 2003, p14 "Poor argument" (Letter to the editor by head of ACP about Ranjeni Munusamy and the Hefer commission).
- viii. The Mail and Guardian online, October 29 2003, "Spymasters' flawed argument" (Ranjani Munusamy and the Hefer commission).
- ix. The Citizen, October 29 2003, p6 "Govt agencies using apartheid laws" (Ranjani Munusamy and the Hefer commission).
- x. The Star, October 30 2003, p1 "Hefer to squeeze secret agencies" (Ranjani Munusamy and the Hefer commission).
- xi. The Sunday Times, November 2 2003, p2 "Subpoenas on reporters slammed" (in relation to the subpoena issued to Sunday Times reporters Bonny Shoonaker and Gill Moodie by the Cape High Court to give evidence and hand over notes and materials to an advocate involved in a private civil suit between prominent author Wilbur Smith and his step son Dieter Schmidt).
- xii. The Mail and Guardian online, November 05 2003, "What is freedom of expression" (Ranjani Munusamy and the Hefer commission).
- xiii. The Sowetan, November 12 2003, p2 "Court rules reporter must testify" (Ranjani Munusamy and the Hefer commission).
- xiv. The Citizen, November 12 2003, p2 "Ruling sets a frightening precedent" (Ranjani Munusamy and the Hefer commission).
- xv. The Star, November 12 2003, p3 "Munusamy ruling raises fears" (Ranjani Munusamy and the Hefer commission).
- xvi. The Sowetan, November 12 2003, p2 "Court rules reporter must testify" (Ranjani Munusamy and the Hefer commission).
- xvii. The Sowetan, November 12 2003, p2 "Court rules reporter must testify" (Ranjani Munusamy and the Hefer commission).
- xviii. This Day, November 14 2003, "Media Ethics: A town meeting" (Seminar organised by the Institute for the Advancement of Journalism on media ethics in South Africa).
- xix. The Mail and Guardian online, November 24 2003, "Hefer: Fight it tooth and nail" (Ranjani Munusamy and the Hefer commission).
- xx. The Sowetan, November 24 2003, p1-2 "Hefer surprise turn" (Ranjani Munusamy and the Hefer commission).
- xxi. The Star, December 4 2003, p20 "Munusamy's testimony objection not total" (Ranjani Munusamy and the Hefer commission).

- xxii. Biz Community online, November 20 2003, "Increasing inroads into media freedom cause for serious concern" (Reflecting a press statement issued by the head of the ACP about the disconcerting climate of freedom of expression).
- xxiii. Mail and Guardian online, January 9 2004, "SABC not to show Mbeki speeches, say parties" (SABC's decision to broadcast live Mbeki's launch of the ANC election manifesto).
- xxiv. The Star, January 12 2004, p3 "SABC slated for 'unfair' broadcast" (SABC's live broadcast of the ANC election manifesto launch).
- xxv. Business Day, January 12 2004, p3 "Parties take on SABC over poll coverage" (SABC's live broadcast of the ANC manifesto launch).
- xxvi. IOL (online), January 9 2004, "SABC must cover other parties too", (SABC's decision to broadcast live Mbeki's launch of the ANC election manifesto).
- xxvii. The Star, February 9 2004, p3 "Breast is best... and that's the law, mom" (Proposed government regulations on advertising for infant foods).
- xxviii. This Day, February 12 2004, p4 "Controversial 'anti-terror' law draws hot debate" (Proposed Anti-Terrorism Bill).
- xxix. Citizen, March 8 2004, p6 "Cosatu hails terror Bill dumping" (Proposed Anti-Terrorism Bill).
- xxx. The Star, Business Report, March 26 2004, p2 "How far does free speech go at work?" (Comment by FXI's Executive Director, Jane Duncan on the case of Norman Marks, a storeman in a hydraulics company who was disciplined for wearing a union T-shirt advocating support for the ANC).

13. Invitations

13.1. IFEX Strategy conference

The FXI has been invited to participate in the International Freedom of Expression Exchange (IFEX) strategy conference that will be held in Baku, Azerbaijan, from 14-18 June 2004. At this conference the head of the ACP will represent the institute. We are presently scouting for funds to enable our participation as this is one of the major forums where free expression lobby groups and individuals from around the world come together to share ideas, discuss strategies and initiate campaigns.

13.2. Conference on defamation and related law

This conference will be held in Johannesburg between 3-5 May 2004, and it seeks to examine at length the common law of defamation in South Africa, against the background of the constitutional right to freedom of expression. Under the rubric of "Defamation and Freedom of Expression in the Media", the head of the ACP will speak on the following thematic areas:

- What limits should be placed on freedom of expression;
- Regional and International developments on defamation and media freedom;
- New laws in South Africa and their impact on freedom of expression; and,
- Policy developments to ensure the freedom and independence of media in South Africa.

14. Activities Scheduled for the next reporting period

ACP Workplan* Jan-Dec 2004

Activity	Resources and strategy	Time-plan	Comments
Publicity** around instances of censorship – interviews, press releases, newspaper articles, publication of book, action alerts, IFEX	Administrative unit support *** FXI Website Mainstream print and electronic media Community media network IFEX network	Throughout 2004	<ul style="list-style-type: none"> • Need to get a higher output of op-ed pieces and commentaries in the print media • A decision is still pending about FXI's affiliation to the IFEX network
Lobbying* to redress instances of censorship	<ul style="list-style-type: none"> • Networks with media unions/ associations at national, regional and international level • Networks with broad civil society organisations including social movements 	Throughout 2004	<ul style="list-style-type: none"> • Currently the ACP enjoys high public visibility and it is essential to build on this opportunity in order to set up the relevant networks
Lobbying for amendment of censorship legislation and prevention of new censorship laws	<ul style="list-style-type: none"> • Networks with media organisations • Networks with organised civil society (e.g public service employees unions-Nehawu for example), NGOs and social movements • Designing an action plan targeting key state agencies and departments like Justice, Public Service and Admin, Safety and Security and Office of the President 	<ul style="list-style-type: none"> • Implementation programme to be ready by the end of Feb '04 • First phase of implementation to take 5 months (till end of July) after which an evaluation of its efficacy and success will be done • Second phase to run till December '04 	<ul style="list-style-type: none"> • This will involve legislative advocacy but should not be an obstacle given that we already have a major analysis of some of the major laws that affect free expression in South Africa
Building legal support	<ul style="list-style-type: none"> • Legal unit is 	<ul style="list-style-type: none"> • Legal unit 	<ul style="list-style-type: none"> • It is envisaged that

for victims of censorship	<p>currently under consideration and will be made operational soon.</p> <ul style="list-style-type: none"> • There's discussion around applying for FXI to be accredited as a legal clinic • A defense fund will also be established 	and defense fund to be operational not later than April '04	work around this activity will be completed by the end of February.
Monitor work of specific institutions relating to freedom of expression and lobbying where necessary	<ul style="list-style-type: none"> • Print and electronic media • Internet • Government's website on policy papers, draft bills, final bills and new statutes • Liaise with monitoring forums like the Parliamentary Monitoring Group 	<ul style="list-style-type: none"> • Obtain the MTEF and programmes of relevant departments such as Justice and Constitutional Affairs, Safety and Security and Arts and Culture- by end of March '04 	<ul style="list-style-type: none"> • This activity is crucial as more often than not, we only become aware of censorious actions too late for any meaningful intervention. It is an area however that requires there to be more capacity within the programme
Producing longer-term analyses of censorship trends	<ul style="list-style-type: none"> • Publish an update on the state of censorship and freedom of expression in SA • Plans are also afoot to produce a major publication (book) in the field of freedom of expression. One example in this instance would be an examination of how the recently passed anti-terrorism law will impact on the right to freedom of expression 	<ul style="list-style-type: none"> • Publication to coincide with 10 years of FXI/10 years of democracy activities • Book to span over a period of 18 months until the end of the current phase of funding for the programme in July 2005 	<ul style="list-style-type: none"> • The update will be a light publication compiled out of materials gathered in the ACP's 18 months of operation • The book will require extensive background research and may even incorporate strategies such as the holding of an expert seminar/ conference to garner inputs
Education on freedom of expression and censorship	<ul style="list-style-type: none"> • Conferences • Education and training workshops at provincial level 	<ul style="list-style-type: none"> • Second phase of the workshops with community 	<ul style="list-style-type: none"> • Given the time-consuming nature of education and training workshops, we have been toying

	<ul style="list-style-type: none"> • Seminars • Different speakers' fora (largely external) 	<p>radio stations to continue in '04</p> <ul style="list-style-type: none"> • Conference to be planned around 10 years of FXI celebrations • A workshop on the Regulation of Gatherings Act to be held by April '04 • At least 2 seminars to be organised in the course of the year • Programme head to continue participation in external fora on invitation 	<p>with the idea of hiring trainers on a contractual basis</p> <ul style="list-style-type: none"> • Conferences, internal workshos and seminars will be organised by the programme
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* The Executive Committee of FXI approved this workplan during the organisation's strategic planning exercise between 6 and 7 Feb 2004.

** We have over time been called to comment on or deal directly with matters of censorship at the regional level especially in Zimbabwe but also in other countries such as Zambia and Swaziland. With FXI's gradual involvement with regional work the ACP will too have to extend its reach beyond the borders of South Africa.

*** Admin support is a crosscutting function in all activity areas

15. Conclusion

We are now half way through the three-year workplan that formed the basis for the establishment of the Anti-censorship Programme (ACP). In the eighteen months of our existence, we have acquired a great deal of experience in matters of freedom of expression, had a few notable successes and also, as is to be expected, committed our own fair share of mistakes.

During this time, we have carved a niche for ourselves as perhaps one of the few organisations inside South Africa interpreting the right to freedom of expression in a radical and progressive sense, rather than merely confining our understanding of this important right within the traditional libertarian philosophy.

This novel approach to free expression has meant that we have increasingly found ourselves responding to censorship problems from a vast array of sources as more and more people come into conflict with the state around how they should engage in popular forms of expression.

Internally, the FXI has also undergone an evaluation and strategic planning exercise that has been useful in prizing open its strengths and weaknesses, and in identifying what the organisation should do in order to maximise the impact of its work. For the ACP, both its programmatic evaluation and strategic plan as well as the evaluation of the FXDF and the Legal Unit, has shown that with additional human and material capacity, it will be in a position to truly manage its diverse range of activities on censorship and related matters. This will also determine the future shape of the programme.

With the onset of the Legal Unit and Defense Fund, we hope to reduce the amount of time normally taken to resolve problems of censorship and in that way instill faith in our constituency, that we are capable of mediating their free expression problems expeditiously. This additional structural capacity will also enable us to undertake outstanding matters such as the long planned legislative reform campaign and the education and training workshops.

The barrage of challenges notwithstanding, we have still managed to notch up a few successes such as the temporary shelving of the Anti-Terrorism Bill, and the regular invitations to speak about and elaborate on matters of freedom of expression in the media, seminars, conferences and public gatherings. This means that our work finds use and value among the South African public and we hope to carry on and expand our interventionist activities even further, as we move progressively into the second half of the ACP's operations.

16. Statement of expenditure

17. Annexures