

# ***Freedom of Expression Institute (FXI)***

## ***Annual Report – 2001/ 2002***

### **1. Introduction**

The FXI was established in 1994 to protect and foster the rights to freedom of expression and access to information, and to oppose all forms of censorship. The Institute was formed from a merger of three organisations: The Campaign for Open Media, the Anti Censorship Action Group and the Media Defence Trust.

The FXI undertakes a wide range of activities in support of these objectives, including lobbying, education, monitoring, research, publicity and litigation and the funding of legal cases that advance these rights. In the process, it networks with, and collaborates with, a wide range of organisations locally and internationally.

The FXI is a voluntary, non-governmental organisation managed by an executive committee, which is elected once every two years at the organisation's annual general meeting. The current executive committee is in its second year of office. In addition to the executive committee, the FXI has a staff of four full-time members and a part-time librarian.

The FXI is a member of the Media Institute of Southern Africa (Misa) which is a regional organisation devoted to the promotion of freedom of expression and a free, fair and independent media. The FXI is also a member of the International Freedom of Expression Exchange (IFEX), which monitors freedom of the media and freedom of expression on a global scale. Through the IFEX Action Alert system, FXI publicises freedom of expression violations in South Africa and draws in other organisations to support its campaigns.

This annual report covers activities undertaken by the FXI from June 2001 to June 2002, and includes a summary of activities undertaken during this period.

### **2. Censorship – South Africa**

The period covered by this Annual Report was not an encouraging one for freedom of expression. In fact, it has become apparent to the FXI that a culture of censorship is beginning to entrench itself in the country, to the extent where the Institute has had to create a position for an Anti-Censorship Co-ordinator.

The most recent example of censorship the FXI has taken up involves the banning of Mbongeni Ngema's song 'AmaNdiya'. The FXI has noted in its public statements that the song is extraordinarily crude, perpetuates apartheid divisions and renders South Africa more inflammable. Instead of assisting to address the real problems that do exist between the African and Indian communities, almost all of which can be traced to

apartheid capitalist social engineering, Ngema has only succeeded in fuelling ethnic fires between these two groups - retribalising the black community.

However, the FXI also argued that banning the song does not in any way amount to a solution, and that a binary approach where offensive speech should be banned is completely inappropriate. The FXI also criticised the approach of the Broadcasting Complaints Commission of South Africa (BCCSA) and the South African Human Rights Commission (SAHRC) in dealing with the song by promoting its prohibition as retrogressive and politically naïve; the Institute noted that it sets a dangerous precedent on how to deal with controversial speech in future. The BCCSA judgement on the matter infers that parliament should examine the lacuna in existing legislation, to ensure more effective banning of 'hate speech' in future; an inference that the government may well pick up and address.

And what are the implications of opening the floodgates for the banning of 'hate speech'? International experience has shown how hate speech is defined by who is in power and who is not, and that 'hate speech' legislation is used to ban the politically powerless, who overwhelmingly are workers, women and black people. There is no reason to believe that South Africa will be different.

Freedom of expression has been under threat from other institutions of state as well, notably in parastatals. A recent example of such censorship, which FXI took up publicly, involved a gagging order binding iron and steel parastatal ISCOR and sixteen residents of Steel Vally, Vanderbijlpark to silence over environmental spillages in the area. The gagging order was granted by the Johannesburg High Court after ISCOR sought the order to prevent the residents from speaking about allegations against the Corporation that it was responsible for environmental leakages of chrome and cadmium into the area's groundwater, leading to residents suffering from numerous health problems.

According to the order, which was issued by the court after the plaintiff and defendant agreed to it, the parties to the proceedings are interdicted from communicating directly or indirectly with the media relating to the merits or related aspects of the legal proceedings, pending the finalisation of such proceedings. This order deprives journalists of information by gagging potential sources, and has even more far reaching consequences affecting the residents' right to freedom of expression and association more generally. The ability of the residents to speak in meetings, or even to speak in a manner where the contents of the conversation could be relayed to journalists, could be curtailed out of fear of falling foul of the gagging order.

Reportedly, the residents were coerced into the order by Iscor, on pain of not having the case proceed at all. This amounts to bully-boy tactics and blackmail on the part of ISCOR, who clearly have far deeper pockets than the residents, and who are therefore able to exploit this unequal power relationship cynically and ruthlessly. However, the existence of the gagging order was prejudicial not only to the applicants: it affects the whole community of Vanderbijlpark and similar communities who are struggling for

environmental justice, and sets a worrying precedent for how similar cases will be dealt with in future.

Another disturbing trend with respect to media freedom involves the increasing attempts to use journalists as witnesses. The most publicised case involved the murder trial of Hard Livings Gang leader, Rashaad Staggie. On August 18, 1996 editors of the *Cape Times*, the *Cape Argus*, *Die Burger*, the South African Press Association, Associated Press, Reuters News Agency and SABC were served with subpoenas to hand over to the court photographs, video footage and transcripts pertaining to meetings, gatherings and demonstrations of Pagad before the public killing of Staggie, as well as of events on the night of August 6 1996. The court also demanded that the media reveal the names of photographers responsible for the video and photographs and journalists who conducted the interviews.

In 2000, the elite Scorpion police unit raided the South African Broadcasting Corporation (SABC), the British Broadcasting Corporation (BBC), Reuters and Associated Press News Agencies and the offices of the National Association of Broadcasters (NAB) to obtain video tapes recording the murder of the Cape Town gangster Staggie. On the 14 May 2001, the Directorate of Public Prosecutions subpoenaed former chief photographer for the Cape Times Benny Gool to appear in court. However, Gool refused to testify on two counts, firstly on principle as a journalist arguing that his testifying will compromise his ability to operate as a photojournalist as he will be seen as an extension of the police. Secondly, testifying in court will put his life in danger. At that stage, at least seven state witnesses against anti-drug vigilantes have been murdered since May 1998, leading to other witnesses changing their minds about testifying.

The Directorate of Public Prosecution further subpoenaed the editor of a Cape Town newspaper *Die Burger* and the newspaper's photographer, Christo Lotter who took pictures during the murder of Staggie.

Gool consistently refused to testify, while Lotter eventually relented and agreed to cooperate. The FXI partnered with the South African Union of Journalists and the Media Workers' Association of South Africa in running a publicity campaign around Gool's case, culminating in a joint press conference in September 2001. In a major victory for freedom of expression, the state decided not to pursue Gool's evidence and eventually the case was dismissed.

This was not the only case of journalists being subpoenaed to assist in a criminal investigation. In September 2001, subpoenas were issued to journalists Sam Sole and Jaspreet Kindra in a trial involving a whistleblower, Ashen Singh. Singh was a member of the MacAdams Investigating Directorate, which he alleged arrested the wrong people in the so-called Ndabizitha massacre. Singh allegedly leaked information to the media to this effect, and the state then subpoenaed the journalists to verify that Singh acted as their source of information. Singh is being charged under one of the most notorious pieces of apartheid censorship legislation, the Protection of Information Act. The FXI condemned the issuing of these subpoenas, and supported the right of the journalist not to testify even

though one of them decided to co-operate with the Authorities. These events put into sharp focus the need to deal with the Criminal Procedure Act to ensure that journalists are not compelled to testify in criminal cases in future.

To this end, the FXI is re-launching its work on the repeal and/ or amendment of censorship through the Anti-Censorship Programme.

Other cases the FXI commented on included the following:

- The death threats against the Minister of Water Affairs and Forestry, Ronnie Kasrils, and his family. The death threats were made after making public statements in support of the Palestinian's right to self-determination, leading to him being vilified as being anti-semitic and a traitor to the Zionist cause.
- Two journalists from City Press newspaper were assaulted in KwaZulu/ Natal, and were threatened with further assault, after they published a story about the alleged criminal activities of businessman Michael Mwangi.
- Comments by former President Nelson Mandela on journalists being 'unpatriotic', on Safm's Tim Modise show.
- The censoring of a poster by the Johannesburg City Council, advertising the performance of a play called the 'Vagina Monologues'. According to the City Council, the poster was banned according to a by-law which states that 'no poster shall be displayed by any person which is indecent, or suggestive of indecency, prejudicial to public morals or reasonably objectionable': terms which are even more restrictive than those used to ban films and publications in terms of the Publications Act of 1974.
- The decision by Johnathan Ball Publishers not to publish Robert Kirby's book 'Songs of the Cockroach', on the basis that it may open itself up to defamation action if it did. The book was a satire set in the future, modelled on past and present figures in the Democratic Alliance and the National Party.

These are but a small sampling of cases dealt with by the FXI in the past year. In addition to these cases, the FXI also responded to various pieces of legislation including the Monitoring and Interception Bill and the Protection of Powers and Privileges Bill. Both Bills had severe implications for media freedom in South Africa.

An analysis of the cases of censorship (mentioned and unmentioned) handled by the FXI in the past year points to the following trends:



**Censorship is on the increase.**

Censorship is definitely on the increase, with more and more limitations on freedom of expression becoming increasingly apparent.



**Public and private sector censorship on the increase**

Not only is censorship taking place at the level of the state; there are increasing number of cases involving private sector censorship, especially company censorship of employees.



### **Recourse to apartheid legislation is becoming more commonplace**

Public and private sector bodies are making increasing use of the legislation and practices of the former government, where apartheid legislation that is still on the statute books is invoked to effect censorship against journalists and ordinary citizens.



### **New censorship provisions being introduced in legislation**

Apart from invoking apartheid legislation more and more often, there is also increasing evidence of the democratic government introducing censorious provisions in new legislation.

The reasons for this rise in censorship are highly complex and numerous. In a relatively new democracy, it is to be expected that there will be ongoing tensions as a country charts a new course. However, these 'normal' tensions between media and government, the state and civil society, do not account for the increasing prevalence of censorship.

Principally, tensions around the delivery of social services has become one of the primary faultlines in South Africa today; increasingly these tensions are bubbling over into outright conflict. In the process, the rights which protect the conduits for expression of these conflicts are coming under increasing pressure, namely the freedoms of expression and association. It should not be surprising, therefore, that many of the cases the FXI has handled in the past year have involved individuals who have given expression to these tensions, and in the process have attracted the wrath of public and private institutions. Labour relations are also becoming more fractious, which is placing even more pressure on the free flow of information. The rise in private sector power is also leading to more and more censorship cases being private sector-related.

The FXI has also handled cases involving conflicts within the alliance formed by the African National Congress (ANC), the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU), that have spilled over into disputes around the state of free expression in the alliance. These disputes have reflected growing tensions on macro-economic policy, and specific policies such as those around privatisation. In view of South Africa's worsening economic profile, especially for workers, it is to be expected that these tensions will continue and, in fact, intensify.

The FXI recognised that it needed to gear itself to rise to these challenges, which included changing its approach to how it handled censorship cases. The Institute recognised that merely publicising cases was insufficient, and that it had to build its activist capacity to troubleshoot cases of censorship. An Anti-Censorship Programme has been created, headed by a co-ordinator, and will be commencing work from the beginning of July. The co-ordinator will be responsible for troubleshooting instances of censorship, conducting education around the dangers of censorship, lobbying to remove obstacles to freedom of expression and counselling victims of censorship.

## **3. Censorship – international**

In a press conference called to commemorate World Press Freedom Day, the FXI noted that freedom of expression cannot be promoted successfully at the national level alone. Globalisation has meant that events in one country can have a profound impact on another. Also, the increasing globalisation of the media, especially the news media, has meant that when news in one part of the world is censored, it affects us all.

The global freedom of expression environment was altered fundamentally by the events of September 11 in the United States of America. The resulting 'war on terrorism' has also been fought on the level of information, where immense pressure has been put on journalists to serve propaganda ends. There has also been a rush on the part of many countries to pass 'anti-terrorism' legislation, some with severe implications for the freedoms of expression, association and privacy.

For example, the United States passed a law to make it easier for the authorities to investigate people suspected of terrorist activities. The Anti-Terrorism Act of 2001, give investigators the power to obtain telephone numbers dialled by a suspect, as well as e-mail and internet addresses. The Act also opens the way for investigators to use the 'Carnivore' software, which enables them to intercept information on the usage of the internet, even from innocent users who are not under investigation. Similar moves are reportedly taking place in Canada, Australia, France, and Jordan. An EU-wide definition of terrorism has also caused concern, with the International Federation of Journalists pointing out that the definition is so broad that it could even cover anti-globalisation demonstrators. On June 12 and 17, the EU took a decision to list the Revolutionary Armed Forces of Colombia (FARC) and the Popular Front for the Liberation of Palestine (PFLP) as 'terrorist organisations', after having included Kurdish, Turkish and Basque resistance organisations on the list. These decisions fly in the face of the rights to national self-determination and resistance against colonial occupation as basic democratic rights, including the right to armed resistance struggles against occupation, as recognised in numerous UN resolutions.

South Africa has also followed suit by fast-tracking anti-terrorism legislation, as well as the Monitoring and Interception Bill, as mentioned above, and buying surveillance software to be used on the internet. Very little public debate has taken place about the implications of these developments for the privacy and freedom of expression of South African citizens.

The heightened conflict in the Middle East has also seen freedom of expression in the firing line. The events following September 11 saw a virtual media blackout of the killing of Palestinian civilians. The free flow of information was further frustrated by the Palestinian Authority, by banning interviews with Palestinians on the September 11 attacks, and since October 9 last year, banning access to Gaza of foreigners (including foreign journalists). Both international and Palestinian journalists were censored.

The Israeli authorities then targeted the media, especially independent Palestinian journalists, who do not have the support of large international media organisations behind them. Israel has imposed a ban on reporters covering the military intervention in the West

Bank town of Ramallah, and declared it a closed military zone. The Foreign Press Association in Israel protested on the basis that they were unable to cover a major story.

Palestinian journalists have also been denied press card accreditation, and in addition the Israeli army destroyed the infrastructure of the Palestinian Broadcasting Corporation in Ramallah and Gaza City in February 2002.

The events that have unfolded since September 11 have changed the stakes for journalists, who are being seen increasingly as legitimate military targets. A lethal precedent was set in this respect by the North Atlantic Treaty Organisation (NATO) in 1999, when it bombed the public broadcasting system in Belgrade. 16 media staff were killed. Governments and multi-lateral institutions are now routinely ignoring the fact that international law guarantees the rights of media staff and journalists as non-combatants.

The impact of this direct censorship is that that the full horror of conflict flowing from the Palestinian peoples' struggle against the Israeli state's occupation of the Gaza Strip and the West Bank is not seen. In addition, such censorship creates an environment where lethal stereotypes can take root and breed, such as the stereotype that the conflict is a continuation of a primordial struggle between Judaism and Islam, that Israel is a Jewish country and that all Palestinians are Muslim. These stereotypes – which strengthen Zionism's claims to the disputed territories – are unconscionable in an information age where a proliferation of news sources are available.

The reproduction of stereotypes is evident in South Africa as well, as is the tendency to rely on mainstream international news feeds. The Media Monitoring Project has noted that South African media have relied almost exclusively on foreign news services. Broadcasters rely very heavily on news feeds such as CNN and Reuters, with there being very little evidence of concrete policies to diversify news sources, especially from independent media.

Also, there has been very little evidence of media solidarity or even civil society solidarity with media workers in the Israeli-Palestinian, relative to the amount of attention given to the situation in Zimbabwe. This disproportionate coverage led the Minister in the Presidency, Essop Pahad, to accuse the South African media recently of 'selective morality' by glossing over 'invasions of media freedom perpetrated by countries such as Israel, when there is a vociferous howl to heaven about steps against the media in other countries, not least in Africa'.<sup>1</sup> While Minister Pahad's comments were somewhat ironic given the controversy at the event where he spoke about the non-invitation of the South African media, he makes an important point that when we defend freedom of expression, we need to do so consistently.

The extremity of the situation in Zimbabwe should not be underplayed, though. The passing of anti-media freedom legislation such as the Access to Information and Protection of Privacy Act and the Public Order and Security Act has led to intensifying attacks on the media. In the process, virtual news blackouts are taking place on aspects of the conflict: blackouts that, like those in the Israel-Palestinian conflict, will prevent South

Africans from reaching informed decisions about the necessary actions to take in solidarity with the Zimbabwean people. The promulgation and subsequent enforcement of the Access to Information and Protection of Privacy Act and the Public Order and Security Act. The FXI tracked these pieces of legislation and was interviewed extensively on their promulgation and implementation, and also participated in a protest action organised by the Media Institute of Southern Africa and the National Community Radio Forum.

#### **4. Media and Information and Communications Technologies (ICT's)**

The FXI continued its work in this field, and started to lay the groundwork for more vigorous work in relation to access to telecommunications services and ICT's. A great deal of this work was undertaken through the Community Media Policy Research Unit: joint initiative of the FXI and the NCRF. On 24 May 2002, the FXI and NCRF signed a Memorandum of Understanding on the Policy Unit, which noted that both organisations had a common interest in seeing a viable Unit to service the research needs of the community media sector. Apart from a partnership around the Unit, it was agreed that the partnership will also address any other obstacles the community media sector experiences in ensuring the rights to free expression and access to information are realised. The undertaking by the two organisations to cooperate wherever possible does not limit the right of either organisation to pursue their own activities should they so decide.

The establishment of the Unit is taking place in a very difficult time for the media. The South African media have been especially challenged to address diversity questions in the past few months, in view of the financial squeeze on the industry. Rising unemployment is leading to declining demand for goods and services, which is having a knock-on effect on the advertising industry. Already a nine-percent decline in adspend is anticipated this year, which coupled with rising costs for inputs such as paper, printing presses and broadcasting equipment, is placing a great deal of pressure on the industry. Rising interest rates are also bound to take their toll, making it even more difficult for media groups to afford credit. All these factors may well see many smaller independent media groups becoming unsustainable, and collapsing unless they receive financial support. In the process, the diversity of local and international news sources is reduced, and the temptation to rely on large multinational news groups increases.

The economic environment is also having an increasing impact on the most marginalised communities in South Africa in terms of access to information. The latest figures released by the South African Advertising Research Foundation shows declining radio listenerships on the country's most accessible stations, owned by the South African Broadcasting Corporation. This is especially so in rural areas, amongst women and the elderly, and in areas and languages where there is, more often than not, very little competition: therefore it cannot be surmised that these listeners are migrating to other services.

The extent of user 'churn' - that is, the extent to which users are falling out of the communications network - is even more pronounced in telecommunications. Estimates

have been made that almost two thirds of recently installed Telkom lines were disconnected in 2000 as users could not afford to pay the spiralling costs of telephone calls: the majority of these lines are in underserved areas. The rate of disconnections is defeating attempts to achieve universal access, not to mention universal service. For this reason, the FXI approached the Independent Communications Authority of South Africa (Icasa) to express support for the regulator's legal case against Telkom's price hikes. The FXI also offered to make an *amicus curiae* submission to the court on the basis that the price hikes were undermining freedom of expression and access to information. Icasa settled with Telkom in a widely criticised move, before the matter could be taken further.

These are deeply worrying developments, reflecting a trend where the right to '...receive or impart information or ideas' is becoming more rather than less difficult to realise. It is in this context that the South African government is establishing a statutory Media Development and Diversity Agency to foster media diversity. The Agency will, amongst other things, support community and small commercial media, including news agencies located in marginalised areas of the country. The FXI has supported the establishment of the MDDA since the idea was mooted by the task team on Government Communications, COMTASK, on the basis that it would give real effect to the constitutional right to 'receive..or impart..information or ideas'.

The founding legislation for the MDDA was heavily criticised earlier this year by several organisations, including the FXI. The Bill gave too much power to the Minister in charge of the Government Communication and Information System (GCIS). This power was to be exercised through passing regulations to prescribe detailed criteria for selecting projects to be funded and the percentages of money to be given to each sector, as well as in other areas. The FXI argued that in order for independence to be realised, the Board should enjoy full autonomy to decide on all areas of its operation, and predicted that the independence debate would sidetrack public attention from the vitally important work this Agency needs to undertake to support community media and small commercial media.

The FXI, the NCRF and the South African NGO Coalition (SANGOCO) responded to the Bill jointly, under the auspices of the Policy Research Unit, and maintained a presence in the Portfolio Committee deliberations as well for lobbying purposes: the first time that a Bill has been tracked from inception to finalisation by the organisations. During deliberations, the Portfolio Committee amended the Bill to ensure that the MDDA Board was given the power to issue the regulations without reference to the Minister. These changes represented a major victory of freedom of expression, and the Portfolio Committee should be commended for adopting an unequivocal stand on the powers of the Board.

The FXI has been engaged in activities around public broadcasting since its inception, and is continuing with this work. We believe that monitoring and activism around the role of the public broadcaster is especially important in this period, given the fact that the SABC is in the process of being corporatised: a process which we believe threatens the viability of its public mandate, especially of its radio stations. However, indications are

that the macro-economic policy of the government has been impacting negatively on the public broadcaster and this policy is also driving restructuring at the Corporation at the expense of the public mandate.

As the most accessible and popular form of media, public radio requires particular focus. The FXI has embarked on a two-year project consisting of two stages: firstly, an assessment of the SABC from the perspective of employees, management, the regulator, the Department of Communications and the Portfolio Committee on Communications. Secondly, the public will assess the SABC through listener groups that will be established with community radio stations.

These activities involve a combination of a research project and an educational campaign on the role of these stations. While the focus of the activities will be on the public service radio stations of the SABC, work will also be undertaken on the relationship between community radio and public service radio in terms of their shared public service obligations.

The first stage of the research was conducted by the Policy Unit during 2001 and is currently being compiled into a report. This research revealed various organizational and capacity problems that are limiting the ability of the public service radio stations to meet the needs of their audiences. The second stage of the research is being conducted by the Policy Unit from June 2002, which involves the organising of mass meetings of listeners in all provinces, to popularise the existence of the Broadcasting Charter, contained in the Broadcasting Act of 1999, and to canvass audiences through carefully constructed audience research instruments. This work will also be used to inform the FXI and NCRF's responses to the re-licencing of the SABC by ICASA.

The FXI believes that work around enhancing the accountability of the SABC is timely, given the heightened public criticism about its performance. Even the Portfolio Committee on Communications has publicly criticised the SABC for failing its mandate, and it is clear that these sentiments are felt by many viewers and listeners as well. This rising anger presents both opportunities and dangers: opportunities in that it is fertile ground for the formation of a social movement, and dangers in that the government may use the space to lessen the independence of the SABC.

Another project the FXI has embarked on involves the creation of a database of documents relating to the transformation of broadcasting in South Africa. This database will be available in hard copy form, as well as on the internet. The FXI has approached NIZA for a PSO expert mission to fulfil this task.

The database will include a written account of this transformation, to give the documents a context. Most of these documents will be sourced from the archives the FXI has in its possession on the work of the Campaign for Open Media (COM) and the Campaign for Independent Broadcasting (CIB). The documents relate to the establishment of South Africa's first broadcasting regulator, the Independent Broadcasting Authority, as well as the transformation of the South African Broadcasting Corporation from a state

broadcaster to a public broadcaster (more specifically the process of appointing the first independent SABC Board). The intention of establishing this database is to make the information available internationally, so that it can inform transformation endeavours in other countries. The documents have been in the possession of the FXI since its inception in 1994. Since then, the number of requests for access to this information have increased; this is especially so with respect to organisations in other Southern African countries seeking 'models' for the transformation of their broadcasting sectors. It is important to make as much information available as possible so that these organisations can make their own assessment of the successes and failures of the South African 'model'.

The FXI is also becoming increasingly involved in debates around public broadcasting in Africa, as well as activities to ensure the transformation of state broadcasters to public broadcasters. One of the spin-offs of greater regional integration is that there is a drive on the part of the Southern African Development Community (SADC) to harmonise legislation within SADC countries. It has been brought to the FXI's attention on several occasions that the SABC corporatisation 'model', as per the Broadcasting Act, is being seen increasingly as a viable and attractive model for other countries, and that public broadcasting legislation may be harmonised on the basis of this model. This is mainly because corporatisation gears a public broadcaster for self-sufficiency, thereby freeing governments of the burden of continuing to support them. The SABC model has apparently been discussed in the communications cluster of the Southern African Development Community (SADC), and has led to the corporatisation of the Zimbabwean Broadcasting Corporation (ZBC).

In view of the pending formation of the African Union (AU), it is to be expected that there will be greater moves towards continental integration as well. South Africa is a signatory to the Constitutive Act of the African Union, as are thirty five other countries on the continent. The AU is supposed to be launched in July 2002 in South Africa.

The programme that is increasingly being recognised at official levels as the programme of action of the African Union is the New Partnership for Africa's Development (NEPAD). Given the developments around the AU and NEPAD, it is to be expected that similar endeavours around harmonisation of communications policies and legislation at SADC will be repeated at AU level: hence the need to engage with appropriate 'models' on these levels as well.

NEPAD especially has major implications for public broadcasting, in that its provisions around restoring and maintaining macro-economic stability and increasing private sector investment in infrastructure could undo any attempts to establish publicly-owned and controlled and publicly-funded public broadcasting. It also has major implication for the realisation of universal service and universal access in relation to ICT's. The application of similar macro-economic prescriptions in South Africa has resulted in a weakened public broadcasting increasingly unable to fulfil its mandate, as it has led to ongoing privatisation coupled with the phasing out of what little government funding the SABC enjoyed. It has also led to a telecommunications system that is increasingly unable to offer affordable services, hence the massive rate of churn.

According to the FXI's information, there has been no audit conducted on the state of public broadcasting in Africa. The Institute feels that there is a great need for such an audit, given that it will be impossible to develop a continent-wide platform in defence of public broadcasting without factual information about its state of health. The FXI is pursuing discussions with the Netherlands Institute for Southern Africa and a number of other possible partners to take this project forward.

It is evident that decisions about the future of public broadcasting are being taken at international levels as well, through employers' organisations such as the Southern African Broadcasters' Association (SABA) and the Commonwealth Broadcasters' Association (CBA), using consultancies such as McKinsey and Associates. To this end, the FXI is also internationalising its public broadcasting work, and has been engaging the International Federation of Journalists and UNI-MEI on areas of collaboration.

In relation to local content (or South African content as it is now known), the Policy Unit participated in the hearings held by ICASA in May 2001. The South African content Position Paper and regulations were published on the 15 February 2002. The FXI and NCRF's submission is quoted in several places on the Paper, in support of the non-inclusion of sport in local content obligations, a tighter definition of what constitutes 'independent productions' and other matters. It also noted that the issue raised about the SABC outsourcing too much of its production should be dealt with in the context of the re-licencing process. ICASA has since set up a local content forum involving the NCRF, FXI, the National Association of Broadcasters and the Association of Christian Broadcasters, and the first meeting of the forum will be taking place shortly.

In relation to community radio, the FXI and the NCRF continued engaging ICASA on the speeding up of the licencing of community radio stations. The process is still moving very slowly, in spite of the fact that some progress was made last year. ICASA is in the process of releasing decisions for licencing in the Western Cape and KwaZulu/ Natal, as well as for Radio Pretoria. The hearings for Gauteng have been delayed once again owing to the changeover of Councillors.

The FXI and NCRF have also been engaging in training around lobbying and advocacy for community radio stations. Workbooks on the MDDA and the Promotion of Access to Information Act have been compiled, and are to be used in a training workshop with community radio stations shortly.

## **5. World Conference Against Racism**

While ICT access crises are deepening (the so-called 'Digital Divide'), South Africa has taken to hosting major international events on the burning issue of the day in a bid to position itself internationally: events that have raised serious access questions of their own.

In August and September 2001, South Africa hosted the World Conference Against Racism (WCAR), a United Nations (UN) function meant to address the global rise in racism.

In a bid to enhance greater participation and a deeper knowledge of issues pertaining to the WCAR, the FXI hired a train which it called 'Freedom Express'. The train involved participants from various communities around Gauteng. All together, the participants occupied the last five coaches of the train, united in the intention to make an impact on the conference proceedings once in Durban. The expected outcome of the activity was for communities to freely express their collective opposition to racism and its socio-economic underpinnings, in informed and innovative ways, especially through the mediums of poetry, music and visual arts, to allow for interaction between community activists and to challenge the exclusivity and 'expert' nature of the UN framework in dealing with issues of social concern such as racism.

In order to achieve these objectives, the FXI had prepared a number of activities on the train, including workshops to facilitate debate about the WCAR conference agenda, as well as to introduce discussions around censorship, freedom of expression, racism and the media. In addition the FXI organised a film screening and preparatory workshop on the weekend before departure, where the United Nation's historical role in Africa. Community organisations were also given an opportunity to produce their own media for the WCAR, and the preparatory workshop hosted poets and musicians from different community organisations.

In terms of these objectives, the FXI met with mixed success, notably the inability to coordinate the workshops properly on the train owing to the cramped space of the coaches. However, a great deal of cultural activity took place on the train, which was continued in the Sangoco-organised march in Durban where the FXI section involved street theatre, drummers, banners and flags.

## **6. FXI publications and media exposure**

The FXI has continued to contribute to public debate through the media. The recognition of the FXI by the media has enabled the organization to express its thoughts on freedom of expression through the media on regular basis.

The communications officer of the FXI, the Executive Director, the Chairperson and some executive members have been asked to engage in debates either on radio, television and in the newspapers. Requests for comment have spanned debates on the Zimbabwean and Middle Eastern crises, the Aids debate in South Africa, debates on the political landscape of the country, debates on the state of South African media and African media as a whole.

Our main vehicle for transmitting our views and beliefs has been radio. Radios such Kaya FM of Johannesburg have conducted over 10 interviews with us over the past year mainly for their news bulletins. Radios such as Y-FM have also conduct interviews with us. Community radio stations, particularly those in Cape Town such as Radio 786 and Cape

Talk, have also conducted more than 10 interviews with us. We have also been invited to participate in talk shows such as Lawrence Dube's show on Kaya, Yvonne Chaka Chaka's show on 702, as well as on SA FM's Morning Live and PM Live and Radio 702.

Television stations, the SABC and E TV have also come to us on several occasions in search of our opinion. The organization has received almost eight hours of air on television. All South African national newspapers have contacted the FXI for comment. In addition, two press conferences were held, on Benny Gool's case and World Press Freedom Day. The FXI has also released over 30 press statements dealing with many issues on free expression. The media has also picked up some of our press statement and at times they have reproduced them.

Apart from media seeking comments we have also hosted students, both local and overseas students who wanted information from our archives or wanted our opinion about the state of media and politics in the country.

The weekly report has been an important vehicle through which we are able to express our opinion in a much more coherent way. The page-long opinion piece usually looks at current affair on issues of free expression and express FXI's view on them. The weekly report has touched on several issues from the Aids, debate, the ANC, Cosatu and SACP alliance. It has critically looked at NEPAD and the way journalists, cover stories, in the Middle East and other places.

The weekly report is circulated through an e-mail list that includes newsroom, other media organizations, FXI members and staff, universities and other institutions that may be interested in freedom of expression debates. The report is further spread through the networks of the International Freedom of Expression Exchange (IFEX) that circulate it to the rest of the world. FXI has produced close to 50 weekly reports since the previous year.

The publication of the FXI's quarterly publication was suspended last year owing to a lack of funds. It has since been decided to fundraise for a more in-depth six monthly publication that would use material generated by the FXI's programmes.

The FXI also continued to participate in the publication of the *Southern African Media Law Briefing*. The Briefing newsletter is a joint publication of the FXI, Article 19 and the Media Institute of Southern Africa. The newsletter is distributed to media lawyers, academic institutions and civil society organisations in the region, with the intention of publicising examples of 'A good law ● in the region, that is, judgements and new legislative developments that impact positively on freedom of expression in the region. The publication is being reviewed with a possibility of producing it in electronic format only.

On 12 September, the book 'A Broadcasting and the National Question: South African Broadcast Media in the Age of Neo-Liberalism by Jane Duncan was launched. The book

was launched by the Chairperson of ICASA, Mandla Langa. The book was a co-publication of the Netherlands Institute for Southern Africa (NIZA) and the FXI.

## **7. Media Lawyers' Conference**

The FXI, MISA and Article 19 held a Media Lawyers' Conference in Harare, Zimbabwe from 29 November to December 1, 2001. The conference brought together media lawyers from all countries in the SADC region to discuss access to information held by the state, multinational and transnational institutions. Thirteen delegates attended the conference from the following countries: Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.

Several resolutions came out of the conference, including the need for media lawyers to initiate a campaign of consciousness-raising on the right to information, conduct a regional audit of NGO's involved in human rights who could participate in the campaign, and appoint a regional co-ordinator for the campaign. The conference also decided to engage SADC on the Protocol on Culture, Information and Sport and the Media Lawyers' Network should initiate and support litigation in the area of access to information. Delegates also raised concern about the inactivity of the Network, and that it should be revitalised.

## **8. Southern African Human Rights NGO Network (SAHRINGON)**

In September 2001, the FXI ended its hosting arrangement of the South Africa Chapter of SAHRINGON, which is a regional network established in 1997 in Johannesburg by NGO's from 11 SADC countries. The network has country chapters with a Secretariat based in Zambia. The FXI as a member supplies the network with information regarding freedom of expression and related issues from South Africa. The Chapter co-ordinator, who was based at the FXI offices, ended her term of office in October. The future of the South African chapter still has to be decided.

## **9. International Freedom of Expression Exchange (IFEX)**

The FXI continues to be an active member of IFEX, issuing Action Alerts when the need arises. Apart from continuing to release Action Alerts on the IFEX network, the hosting arrangement of the IFEX website by the FXI continued. In 1999, the Freedom of Expression Institute (FXI) took over the hosting of the International Freedom of Expression Exchange (IFEX) Internet Services on behalf of the IFEX membership. The site was officially re-launched in November 1999. The communications officer of FXI was designated the web co-ordinator, with additional technical support available from a local expert and from IFEX Clearing House in Canada. The local expert was hired to replace the functions of the Norwegian partner who has managed the technical aspects of the site since it was set up in 1996.

Most of the work that has been done on the site has been HTML coding, involving updating of the members pages, links, and other pages, with some system work having

been done. This work has been done by a consultant hired especially for the purpose, Fatima Bhyat, and the current Communications Officer of the FXI, Scotch Tagwireyi.

The site is in the process of being designed to turn it into a cutting edge instrument for human rights advocacy, and numerous re-design ideas are being pursued at the moment.

## **10. Southern African Journalists' Association**

In 2001, the FXI was approached by the International Federation of Journalists to form a joint committee with the South African Union of Journalists (SAUJ) and the Media Workers' Association of South Africa (MWASA), to assist in the establishment of the Southern African Journalists' Association (SAJA). The mandate of the committee was to ensure the appointment of the co-ordinator, and to ensure that the launch of SAJA took place.

SAJA was launched on 12 December 2001 as a confederation of media unions, and currently has the following affiliates: MWASA; SAUJ; the Zimbabwean Union of Journalists, the Botswana Journalists' Association; the Zambian Union of Journalists; two associations from Mozambique; Swaziland National Association of Journalists; Swaziland Media Electronic, Publishing, and Allied Workers' Union; Tanzanian Union of Journalists and an affiliate from Madagascar.

SAJA is based in the offices of the FXI, and uses the Institute's finance and administrative capacity as a temporary arrangement until the Association's systems are in place. The FXI has provided support to SAJA out of recognition of the extremely important role that independent journalists' organisations need to play in the light of the integration of SADC.

## **11. Freedom of Expression Defence Fund**

The FXI experienced serious problems with the FXDF during the course of the year, in that money that had been allocated for FXDF activities had to be used for operational expenses for the FXI. This resulted in the FXDF not being able to continue funding cases, leading to the Fund becoming temporarily dysfunctional.

It was decided that an evaluation would be conducted of the FXDF, and the outcomes would be fed into the strategic planning process mentioned below. The evaluation was conducted by Advocate Salim Ebrahim, which led to a number of extremely valuable recommendations, based on what was identified as serious weaknesses in the management, administration, funding and effectiveness of the Fund.

One of the recommendations was a review of the cases supported by the FXDF needed to be done, in view of questions raised about the appropriateness of a number of the cases funded, coupled with gaps in the making of good freedom of expression law that still remained to be addressed. It was also recommended that a network of attorneys and advocates willing to work on a pro-bono basis should be developed: a hitherto unexplored idea by the FXDF. In addition, networking is taking place with other media

defence funds to ensure that cases receive support while the FXDF is being re-capacitated.

### ***Max Hamata vs. Peninsula Technikon***

One case that reached a tentative conclusion involved Max Hamata, a journalism student at Peninsula Technikon who was expelled for supposedly bringing the institution into disrepute because of an expose he did on prostitution on campus. The review application against the irregularities during the hearing which led Hamata to be expelled at the Technikon was dismissed. The Legal team proceeded with leave to appeal and won the case on appeal, not on free expression grounds, but on the right to legal representation. Peninsula Technikon then made representations to the Appeal Court to have costs awarded to Max Hamata disallowed, and these representations are continuing.

## **12. Restructuring of the FXI**

The FXI is no different from many NGO's who are seeking to understand their positions in the changing political environment in South Africa. The rise of independent social movements coupled with the increasing 'corporatisation' and 'professionalisation' of many NGO's means that the FXI has to take strategic decisions about where it positions itself: it could join the ranks of other 'blue chip' NGO's and become upwardly mobile or it could position itself to relate to mass movements and the working class interests they represent.

In addition, for quite some time the FXI has been experiencing a funding crisis. While this crisis had much to do with the fact that fundraising for institutional or 'core' funding has become more difficult, it also had to do with inadequate planning which trapped the organisation in a vicious cycle of short term funding. It became clear that a 'sink or swim' strategy had to be adopted: either the organisation turned itself around within a given period of time or it would have to close down. Therefore, the FXI spent a great deal of time on internal organisational matters to recalibrate itself to become a far more effective organisation. This work was undertaken in partnership with the Canadian Journalists for Free Expression, which in turn was supported by the Canadian International Development Agency (CIDA). This partnership proved to be strategic in re-shaping the work of the FXI.

As a start, the FXI commissioned an evaluation, conducted by the Sedibeng Centre for Organisational Effectiveness. The evaluation involved interviews with external stakeholders and former and current Executive Committee and staff members. The evaluation noted that censorship was on the increase in South Africa, and regionally, but that the FXI lacked the capacity and systems to deal with the growing problem. It also noted that the FXI needs to acknowledge the socio-economic context within which it operates, and that '...it should further recognise its strategic role as an instrument for lobbying and advocacy on behalf of those who do not yet have the political and economic means of enjoying the benefits of freedom of expression'.

This strategic orientation would mean that it would have to broaden its scope to focus beyond media freedom to promote freedom of expression in more popular guises, and

would further need to ‘rebrand’ itself to address the growing contradictions in the free expression environment. The evaluation further recommended that ‘..the FXI should consciously and systematically target historically marginalised communities and consolidate its strategic partnerships with existing agencies on the ground. Physical presence in some of the country’s metropolitan cities should form part of the vision of reaching out to previously marginalised communities’. This meant that the FXI would need to evaluate its existing partnerships with a view to consolidating and expanding its mandate.

The evaluation also noted that the internal structure of the FXI would need to change to break it out of the often haphazard approach of working. Up to 2000, the FXI had a number of departments staffed by one staff member per department. These departments were as follows: education and public awareness, communications and information, and policy and research. This structure has proved to be unsatisfactory for a number of reasons, one of them being that a department-based structure did not lend itself to clear, long-term programme-based planning.

Hence, in late 2001, the FXI embarked on an evaluation and strategic planning process to shift from an institution-based workplan to a programmes-based workplan. The strategic planning process also focussed on developing a three year plan for the FXI, to break the organisation out of the cycle of perpetual instability caused by fundraising on an annual basis.

Based on the outcomes of the strategic planning meeting, the FXI’s activities are now divided into five core programmes, which are listed below.

1. Anti-censorship Programme
2. Media and ICT Programme
3. Access to Information Programme
4. Community Media Policy Research Unit
5. Freedom of Expression Defence Fund

Fundraising is currently taking place on the basis of these five programmes.

The strategic planning meeting also considered the question of the FXI’s identity and more specifically its membership base. It has long been recognised that the standing arrangements around membership were unsatisfactory. In the meeting, the following problems were raised with the existing membership based approach:

- The FXI does not have the resources to manage a membership organisation with the required structures to involve them on an ongoing basis as is required by the constitution,
- Only about 40 out of approximately 400 members attend AGM’s and elect the executive, therefore raising the possibility of a minority of people dominating the organisation and controlling the executive,
- Executive members are not held accountable to their constituency because of the lack

of constant organisation and communication. Their performance on the executive is therefore not monitored. Attempts made to ensure greater participation of the membership have failed, as it has been extremely difficult to find a role for this individuals in the work on an ongoing basis.

The workshop resolved to find an alternative model for FXI, which takes the aforementioned factors into account. Two diametrically opposed 'models' were discussed: the NGO network model, where affiliates constitute the organisation and are therefore represented on the Executive Committee, and a 'pure' NGO model which does not have full members, but associate members.

At the Executive Committee meeting of the 4 June, it was agreed that the Executive Committee would support a variation of NGO network model, with one dissenting vote. In terms of this decision, the Executive Committee would recommend to the Annual General Meeting that the constitution be amended to make provision for organisations becoming full members. Affiliated organisations will then be able to pursue press freedom/ freedom of expression work through the FXI, rather than having to build their own structures to service their members' needs on this level, and will further be able to control the implementation of this work through the management of the FXI. Strict criteria for membership are being proposed as part of the package of amendments, including conflict of interest provisions and provisions for the expulsion of members whose words or deeds conflict with the objects of the FXI.

### **13. Executive Committee and staff**











In 2000, a constitutional amendment was effected to change the term of office of executive members from one year to two years. This AGM marks the second year of those two years. The Executive Committee is as follows: Salim Vally (Chairperson), Kate Skinner (Deputy Chairperson), Raymond Louw, Prishani Naidoo, Nkopane Maphiri, Zweli Hulane, Daniel Hutchinson, Nicholas Dieltiens and Ahmed Veriava. Penny Molefe resigned during the course of the year.

With respect to the staff, Mamashoabathe Noko resigned as the Education Programmes, as did the bookkeeper, Pretika Singh. Pinky Magau was promoted to the position of Administrator and Personal Assistant to the Director. Gertrude Tsoku continued as the librarian, and is currently on contract at the FXI's receptionist, as did Jane Duncan as the Executive Director and Scotch Tagwireyi as the Communications Officer. Late in 2001, the FXI was in a financial position finally to appoint a new office manager. However, a decision was taken to upgrade the position to a full-time Finance and Administration Manager. In January 2002, Gail Snyman was appointed in this position. Then in June 2002, the FXI appointed Console Tleane to the position of Policy Unit Co-ordinator and Simon Kimani N'dungu to the position of Anti-Censorship Co-ordinator.

### **14. Funding**

The contribution of several donors has to be acknowledged, for without their continued support, the FXI would be unable to continue its work.

We would like to make special mention of the Open Society Foundation, whose continued contribution to the organisation's core costs literally saved the day. We would also like to acknowledge the contribution of the following organisations:

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-  Canadian High Commission
-  American Embassy
-  Liberty Life
-  European Union Foundation for Human Rights
-  Konrad Adenauer Foundation
-  Eskom
-  Westminster Foundation

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<sup>i</sup> Address by Dr Essop Pahad, Minister in the Presidency and Minister responsible for the GCIS, at the Indian Ocean Rim conference on 'Parliament and the Media: Securing an Effective Relationship', Cape Town, 15 April 2002.