

# Freedom of Expression Institute (FXI)

## *Annual Report*

June 2000 - June 2001

### Censorship

Over the past year, the FXI has experienced an overwhelming call on its time to respond to instances of censorship: in fact, cases are being brought to the office much more frequently than even a year ago. While this may be attributed to the heightened profile of the FXI, it appears to have more to do with the fact that instances of censorship are really growing. A cursory overview of these cases tells us that these cases are not confined to government censorship of individuals and institutions such as the media, but they are increasingly evident in the private sector and democratic organisations. A sample of the most memorable cases are dealt with below: however, they do not reflect the totality of cases the FXI dealt with, as there were many cases that were dealt with in the course of our daily work that involved consulting with people who were experiencing particular threats to freedom of expression.

One of the most striking media freedom issue to raise its head this year involves the murder trial of Hard Living Gang leader Rashaad Staggie: this trial has cause continuous debates in laws affecting media in South Africa, particularly Section 205 of the Criminal Procedure Act. 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.

Last year, 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. This year, on the 14 May, the Directorate of Public Prosecutions subpoenaed former chief photographer for the Cape Times Benny Gool to appear in court. However, Gool has 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. So far, 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 who took pictures during the murder of Staggie. The two journalists will be required to testify as witnesses in the trial. Also international news agencies Reuters and Associated Press were subpoenaed to testify. Both individual journalists and media organizations refused testify in court pointing out the implications free flow of information in giving testimony in court of law. The FXI stood by the media arguing that forcing media organizations and personnel to testify as witnesses in court will impact heavily upon the free flow of information. The FXI also met with like-minded organisations to jointly chart a way forward with respect to the subpoenas.

The FXI has also taken up the rights of the broadcast media to cover activities in instances when these rights have been denied. There have been numerous incidents in the past year turning on the broadcast media's coverage of different statutory institutions and commissions of enquiry. For example, on June 21, 2000, the Cape High Court ruled in favour of radio news syndication service, Live Africa Network News, against the King Commission's ban on live broadcasts of the hearings into cricket match-fixing. On June 8, the King Commission made a ruling preventing live radio and television coverage of the inquiry into cricket captain Hansie Cronje's match-fixing. This ruling was then overturned, and was also extended to allow the SABC and e.tv to broadcast the proceedings live. The FXI welcomed the decision, stating that the electronic media were the primary conduits for access to information for most South Africans.

The rights of the broadcast media was not laid to rest with this judgement, though. In January 2001, the FXI made representations to the Judicial Services Commission, in support of appeals to allow the broadcast media to record interviews with prospective judges. Then in June 2001, the FXI joined the SABC, e.tv and the South African National Editors' Forum as co-applicants in a review of a decision by the Public Protector not to allow broadcast media coverage of the hearings into alleged corruption in South Africa's first major arms procurement deal since 1994. The application failed on the grounds that the Public Protector had the right to make the ruling in terms of the Public Protector Act; a decision still has to be taken about whether to take this decision on appeal. Meanwhile, the hearings are continuing without the broadcast media having the rights to cover the hearings, which is extremely prejudicial to the users of these media. In its media statement on the matter, the FXI stated that:

▲...This review judgement is a further slap in the face of the country's poor, who rely overwhelmingly on the broadcast media to access information, especially radio. It is well known fact that the wisdom of the government having embarked on the arms deal in the face of the country's grinding poverty and underspending on basic services is already in question...By denying broadcasters the right to broadcast live (in the case of e.tv), or even to record and broadcast later, the Public Protector is limiting the ability of these media to report in terms of the demands of their media, which often require live or pre-recorded footage. ●

These incidents mark a disturbing new trend to prejudice against the broadcast media on the basis that the presence of cameras and microphones may have a chilling effect on proceedings of such institutions. If this trend is set to continue, then FXI will have to seek ways to reverse it.

The FXI released many other media statements during the course of the year, and made comments on a range of issues relating to freedom of expression. These included the ANC's reaction to the clash between 702's John Robbie and Health Minister Manto Tshabalala-Msimang, and the proposal of the ANC's KwaZulu-Natal provincial council to restrict the placement of state advertisements as a punitive measure against perceived hostile media organisations.

The FXI also intervened when attempts were made to pressurise Nu Metro not to screen a remastered version of ▲The Exorcist ●. The movie, first released in 1973, depicts the exorcism of a young girl possessed by the devil. Rhema Church threatened to boycott Nu Metro cinemas if

the screening of the film went ahead as planned. The FXI released a statement condemning these attempts and approached Nu Metro regarding rumours that it was going to withdraw the film: an intention which was denied by the cinema chain.

The FXI also expressed shock at information that military intelligence had approached Cape Argus political editor Adrian Hadland to establish a relationship with a view to acquiring oral and written analyses of current events. He said that the agent who approached him had offered to provide tip-offs for stories as well as to improve access to the official intelligence community. In addition, journalists would also be invited to functions and briefings to discuss issues of the day with intelligence community operatives and managers.

In the realm of democratic organisations, the FXI made public comment on the decision of the South African Communist Party to expel one of its members, Dr. Dale McKinley, for his journalistic activities. The SACP charged that McKinley's views expressed in his journalistic work were in conflict with the principles and policies of the SACP. The FXI noted that the disciplinary action, and subsequent expulsion of McKinley was not merely an internal matter, but was bound to have a chilling effect on a culture of critical debate in the country, and the practice of democracy both within the state and civil society. The FXI also noted that this action was not taking place in isolation, but that when viewed in relation to other recent events, a disturbing trend was evident in a number of leading democratic organisations - such as the ANC and trade unions - to take disciplinary action against their members for things they had said.

The FXI also condemned proposals by the ANC in the Western Cape to promulgate legislation to protect the President from insults and criticism. These proposals were made in the wake of comments by freelance journalist Max Du Preez, referring to President Thabo Mbeki as a 'womaniser'.

As mentioned above, instances of private sector censorship assumed increasing prominence in the caseload of the FXI. For example, the FXI provided assistance and publicity to the case of the President of the Oil, Chemical and General Allied Workers Union (OCGAWU), Siyolo Williams. Williams was dismissed from Uitenhage Volkswagen plant after strike action at the end of 1999. While Williams was not directly involved in the strike action, he ensured that the striking workers had some measure of media access, and he also spoke out on behalf of the workers. As a result, VW pursued separate disciplinary action against him, and dismissed him, citing his media comments as the reason.

Another matter the FXI took up was an attempt by Engen fuel company to interdict a community activist, Ashwin Desai, from participating in meetings involving Engen workers. When Engen filed its application, the FXI sent a letter expressing interest in the matter on the grounds that it had severe repercussions for the rights to free expression and freedom of association. The application was dropped, and the FXI may take up the matter once again if charges are pursued against Desai.

The FXI also made numerous comments on attacks on freedom of expression in the region, such as the bombing of Zimbabwe's *Daily News* Newspaper, and Swaziland's recent imposition of a state of emergency. The FXI also expressed its shock at the killing of Mozambican journalist Carlos Cardoso. Cardoso was renowned in the Southern African region, and beyond, for his courageous and independent journalism. The killing came in the wake of another attack on a

journalist, Radio Mozambique journalist Custodio Rafael: events that sent out extremely worrying signals about the state of press freedom in the country and the region.

## **Racism in the media**

The long awaited final report into racism in the media was released by the Human Rights Commission last year. While the report found evidence of the mainstream media indulging in blatant advocacy of racial hatred or incitement to racial violence, it did not let the media entirely off the hook and found that they could be characterised as racist institutions. The report was the culmination of eighteen months work, during which time it received many written and oral submissions. The enquiry was also wracked with controversy over the issuing of subpoenas to different media groups to force them to participate. The Commission noted the need to strengthen self-regulation, but also left the door open for statutory intervention should the self-regulation route not work. The Commission also made recommendations around the importance of training in newsrooms, as well as the need to foster media diversity: to this end, the Commission called for the speedy establishment of the Media Development and Diversity Agency.

## **Government Media Relations**

The relationship between government and media became tense in May this year when a group of 11 black professionals, accused the country's mainly white owned media of promoting a white right wing campaign against President Thabo Mbeki and other black leaders. Incidentally some of the black professional were among those who once accused the media of racism. The group paid for a full-page advert in the *Sunday Times* in which they argued that: "There is a very perceptible and increasingly strident campaign against black people in powerful positions, whether in government, business or in the labour movement....The campaign has in the last two years focused on President Thabo Mbeki. In response the media accuse the government of trying to force the media into *imbongis* (praise singers). In its intervention the FXI thought the attack on the media by black professional was not health for free press. The attack of the media in public by top politician has serious implications on free press, given what has happened in countries like Zimbabwe.

## **Community radio**

The FXI has taken a strategic decision to focus a great deal of energy on the broadcast media. This is because these media, especially radio, are the most popular and accessible media by far. If there are problems with respect to the broadcast media, then we are duty bound to sort them out first. As a result, the FXI devoted a great deal of time and resources to struggles around access to, and the effectiveness of, the broadcast media.

The FXI worked very closely with the National Community Radio Forum (NCRF) throughout the year, on matters of common interest. The most important area of joint work involved attempts to ensure that the broadcasting regulator, the Independent Communications Authority of South Africa, expedited the licencing of community radio. Applications for four year licences were invited by ICASA's predecessor, the Independent Broadcasting Authority, in 1997, and closed in 1998. Since then, the licencing process has been torturously slow, and hearings have still not taken place in KwaZulu/ Natal, Gauteng and the Western Cape. The slowness of the licencing has also been exacerbated by the establishment of ICASA from a merger between the IBA and the telecommunications regulator, the South African Telecommunications Regulatory

Authority. Since the merger, there have been no licence hearings for community radio, leading to rising anger and frustration in these provinces. In addition, there is a growing layer of completely new community radio stations, which have developed since 1997/1998, and frustration is growing among these stations as well, as there is no indication in sight of when they could expect hearings (much less when licences would be granted). Recently, in the Northern Province, a number of pirate radio stations have started broadcasting, with one of these stations stating that they are unwilling to wait for the next round of licencing, as the delays are unreasonable.

Last year, the FXI and NCRF collaborated on commissioning a legal opinion on the most appropriate ways of expediting the licencing process (covered in the previous annual report). The FXI and NCRF met with ICASA to discuss the proposals on 20 July. They gave an undertaking that they would respond to these proposals, and then fell silent. After continued correspondence from the NCRF/ FXI, which ICASA failed to respond to, the FXI/ NCRF had to resort to mass mobilisation tactics to get a response from ICASA. The FXI/ NCRF developed a petition to highlight the plight of stations, and organised marches of stations in Cape Town and Johannesburg. The petition was supported by stations, civil society organisations, individuals and other interested parties, and was presented to the Portfolio Committee on Communications Chairperson in Cape Town and the ICASA Acting CEO in Johannesburg. These activities were extensively covered in the media, and prompted a debate in the Portfolio Committee. This debate led to an undertaking by the Committee that hearings into the state of community radio would be held early in 2001.

After this action, the ICASA Council met with the NCRF NEC and the FXI Executive Committee to give a response to our proposals. In that meeting, ICASA made the following commitments:

- ② Stations that were granted licences but not issued would be prioritised.
- ② In speeding up the licencing process, ICASA has identified that there are 36 stations in the Western Cape, Kwa Zulu/ Natal and Gauteng (three remaining provinces still to be licenced) which are not competing for frequencies. It has decided that the applications of these stations will be decided on paper, and that they will not hold hearings for all these stations. The NCRF proposed that if there are stations in this category that are not granted licences, then they will be given an opportunity for a hearing as they would have a chance to argue their case in person. These hearings would be conducted in the language of the station ● s choice due to the out-of-court settlement between ICASA and Radio Pretoria. The NCRF has also proposed that ICASA should consider having responses to further questioning to stations to be done in audio, to afford stations the opportunity to make oral representations if they could not argue the case sufficiently well through written representations.
- ② Stations which are competing for frequencies would be licenced through a hearing. ICASA will conduct hearings in KwaZulu/ Natal, and then Western Cape, concluding with Gauteng. The dates for these hearings would be released once ICASA had finalised its workplan.
- ② As for the Radio Pretoria case, an out-of-court settlement had been reached where ICASA conceded to hold hearings in Afrikaans. At the time, ICASA was still seeking a legal opinion as to whether the stations which are competing with Radio Pretoria, and which were heard by the IBA Councillors, have to be re-heard or not.
- ② ICASA committed itself to having regular stakeholders ● meetings with industry to

enhance communication and information exchange. The first such meeting took place on the 14th November 2000.

The Portfolio Committee on Communications scheduled a dedicated hearing on the state of community radio for March 28, 2001. The FXI and NCRF raised funds for research on the impact of the slowness of the licencing on the community radio sector. Funds were granted by the Open Society Foundation, and two researchers were employed (Console Tleane and Patrick Dooms). The research was conducted under the auspices of the community media policy research unit (see below), and was presented by Pat Dooms at the Parliamentary hearing. It was decided at the hearing that a legislative amendment was necessary to expedite the licencing process, and that proposals were tabled around the nature of the amendment. The Department of Communications was tasked with drafting the amendment in time for the next session of Parliament.

In spite of these developments, there has still been no movement with respect to hearings in the three remaining provinces, and the FXI and NCRF are now seeking legal advice on the best method of taking the matter up.

### **Media Development and Diversity Agency**

The idea of a Media Development and Diversity Agency originated in the community media sector, and was endorsed at the 'Community Media 2000' conference held in 1995: at that stage, the body was referred to as an 'enabling support mechanism'. The following year, the government-appointed Communications Task Group of South Africa (COMTASK), endorsed the establishment of a Media Development Agency. As a result of this endorsement, the South African cabinet endorsed the idea as well, and the Government Communication and Information System (GCIS) - once it was set up - was tasked with establishing the Agency. The GCIS released a Draft Position Paper on the Agency for comment late in 2000 (which it re-named the Media Development and Diversity Agency). Organisations and individuals responded by February 28, 2001, and the Portfolio Committee on Communications held hearings on the Agency on the 28 March 2001.

It is clear from the bulk of submissions that many organisations are extremely critical of the planned Agency, but that these criticisms come mainly from the mainstream media industry's priorities and interests. Of the eighteen submissions received by the GCIS, very few were from non-governmental organisations or progressive organisations. This industry bias was also evident in hearings on the MDDA held by the Portfolio Committee on Communications. Also, given the fact that a number of these groups network the largest and most powerful newspapers, radio and television stations in the country, they are able to play a key role in shaping public opinion about the need for, and role of, the MDDA.

Briefly, the bulk of the mainstream media groups favour an MDDA with a greatly reduced mandate, which is funded entirely by government and international donors: in short, the groups do not want to be made to contribute financially to the Agency, which is what is proposed in the GCIS's position paper (in fact the GCIS proposes that a third of the Agency's funding comes from the government, a third from the commercial media and a third from international donors). They have argued that commercial media already makes significant contributions to the development of the media industry - especially broadcasters - and that they simply cannot afford

another levy. These positions will make it very difficult for the GCIS to establish the Agency as a viable funding body, as not only is the commercial media contribution in question, but the international donor contribution is as well. This is because many international donors have made their donations subject to local commercial media contributing to the development of South African media, as they are simply not willing to develop the sector in the absence of commitments from the country's own industry.

Under the auspices of the community media policy unit (discussed below), the FXI and NCRF collaborated on responding to the GCIS's Position Paper. In brief, the NCRF and FXI support an expanded mandate for the MDDA, and the highest guarantees of independence possible in terms of the law. Also, we support the imposition of a statutory levy on commercial media, on the basis that the Agency will not be able to fulfil its mandate without a stable, ongoing source of income. We have also argued that there are indications that the listed commercial media groups can more than afford the proposed levy (R20 million per annum), and that the GCIS should conduct a financial modelling exercise of revenue streams in the industry to settle this matter once and for all. While the FXI and NCRF have attempted to mobilise support and popularise these positions within the limits of available resources, there is a very real danger that the sheer weight of commercial media industry pressure will win the day, and the government will accept compromises that will not be in the interests of the community media sector.

Presently the GCIS is distilling responses to the Position Paper, and will come out with a final position paper and draft legislation simultaneously for cabinet approval. Cabinet is expected to approve both shortly, and the legislation will then be forwarded to the Portfolio Committee on Communications for public hearings (which are anticipated in September or October 2001). Therefore, it is important that the community radio sector and like-minded organisations intensify their lobbying activities around the MDDA. To this end, the FXI and NCRF have publicised their positions on the MDDA, and have also held a public debate on the matter. The National Association of Broadcasters, Print Media Association of South Africa, South African Union of Journalists, Open Window Network and Government Communication and Information System participated.

### **Community media policy research unit**

In 2000, the NCRF approached the FXI to set up and host a community media policy research unit. Initially, the unit was to be based at the Link Centre, University of the Witwatersrand, but the NCRF decided to approach the FXI instead to host the unit in view of collaboration in the past around research.

The NCRF then approached the Netherlands Institute for Southern Africa to fund initial work around the establishment of the unit, which was completed early in 2001. The report to NIZA made mention of the fact that research projects had to continue while the process of establishing the policy unit was taking place. It was agreed between the FXI and NCRF that given the lack of funds for the unit, the most immediate and pressing research projects would be undertaken by Jane Duncan from FXI. These projects involved responding to the Draft Position Paper on the MDDA, and the Discussion Paper on Local Content, released by the Independent Communications Authority of South Africa. Both papers were of immediate relevance to the community media sector, as they affected subsidy and local content levels for the sector. Therefore it was decided to respond to both, in the process using these platforms to announce

publicly the establishment of the unit. The deadline for submissions on both papers was 28 February 2001. The FXI and NCRF held a series of consultative workshops throughout January and February to develop positions on both papers.

A response to the MDDA Draft Position Paper was produced, which also included reports from all the consultative workshops. The response was then used to publicise the FXI and NCRF's positions around the MDDA. The FXI and NCRF also presented a summary of this response to a hearing of the Parliamentary Portfolio Committee on Communications on 27 March, on the MDDA. A response to the Local Content Discussion Paper was also produced. The FXI and NCRF used this response as a basis to make a presentation in ICASA's oral hearings on 10 May, and included a more elaborate response focussing especially on the South African Broadcasting Corporation.

This interface between research and consultation forms the basis for how the policy unit will operate in the future. The relationship is a dialectical one. Research on the sector has very little meaning if its main findings do not enjoy widescale support; yet on the other hand, the impact and credibility of lobbying activities will be severely reduced if they are not backed up by research.

The policy unit also raised funds from the Open Society Foundation to commission research. The unit then went on to undertake the research for the Portfolio Committee hearings, and Pat Dooms then produced research to assist the NCRF to develop a Charter for the organisation. The research was fed into an NCRF conference on revisiting the concept of community radio, held on 29 April - 1 May. The outcomes of the conference were harmonised with the research, and a final Charter was produced for presentation at the Annual General Meeting of the NCRF. The FXI and NCRF are now planning to produce a series of educational booklets on a number of matters, to be used in training workshops around advocacy: these booklets will be produced under the auspices of the policy unit.

The FXI also participated in the Annual General Meeting of the NCRF, and gave a keynote address to celebrate the launching of the Womens' Network.

### **SABC stocktaking conference**

In November 2000, the FXI held a two-day stocktaking conference on the SABC. The intention of the conference was to review the progress of the Corporation in transforming itself from a state to a public broadcaster since 1994. The conference was funded by the Friederich Ebert Stiftung and NIZA, and was attended by approximately two hundred people, and sixteen speakers: as such, it was the largest event ever organised by the FXI.

The conference was extremely difficult to organise, and fraught with tension. This tension spilled over into outright conflict with the SABC before the conference, as management took a decision not to participate. No reasons were advanced for their non-participation.

The conference ended with the adoption of a programme of action endorsed by the house. The most fundamental decision the conference took was that civil society organisations, and the public at large must become involved in the restructuring of the SABC as a matter of urgency. At the moment, the SABC is being restructured to bring it into line with the requirements of the Broadcasting Act of 1999, which involves the corporatisation of the Corporation and the

separation of its services into public service and public commercial service arms. Presently there are no points of engagement between the SABC and its public in relation to this restructuring, which the conference criticised as it was unable to play the watchdog role it needed to ensure that the public mandate was not compromised as restructuring proceeds.

It was also agreed that if profitable services were identified for privatisation during restructuring, communities would be mobilised to stop such privatisation from taking place. This was because the conference felt that these services would be needed to cross-subsidise the largely loss-making public services which are largely responsible for delivering on the Corporation's public service mandate.

The FXI was urged to facilitate a coming-together of organisations present at the conference, to ensure that a practical programme of action was finalised and implemented. The FXI was also tasked with developing a report from the conference, that could then be used as a basis for lobbying Parliament, the SABC Board, the Independent Communications Authority of SA and other organisations. Delegates endorsed several methods of action to ensure their voices would be heard, including legal engagements and mass action.

### **Friends of the Public Broadcaster**

Friends took up the closure of three of the SABC's offices, funded by government from an integration budget to ensure the smooth integration of the former homeland broadcasters with the SABC. These offices are based in Thohoyandou, Giyani and Umtata. Friends laid complaints with the Independent Communications Authority of South Africa and Pan South African Language Board about the matter, and an attempt to have a meeting with the Group Executive Committee of the SABC led to a walkout on the part of the Friends interim committee. Friends has not met since it was consulted on the holding of the SABC stocktaking conference, and the constituent organisations largely failed to respond to this request. Hence, the FXI took a decision to hold the conference on its own. The conference identified and endorsed the importance of Friends of the Public Broadcaster organisation, and identified it as one of the organisations that should take forward the decisions of the stocktaking conference. Friends has largely failed to make headway, and the organisation needs to meet to thrash out the reasons why, and to establish whether it has a future.

### **Other broadcasting matters**

The FXI also criticised the government for insisting that Cabinet have the final appointment powers in relation to the three key management positions at the SABC, namely the Chief Operating Officer, the Chief Executive Officer and the Chief Financing Officer. According to the government, corporate governance practices dictated that these appointments be ratified by Cabinet, as the shareholder of the SABC. The FXI criticised the government for violating the SABC's institutional independence, by applying a corporate governance protocol that was designed for a broad spread of parastatals. As a result, the protocol did not take into account the peculiar nature of a public broadcaster, which had to be protected from government intervention to ensure its editorial integrity. Notwithstanding the controversy, the government went ahead and ratified the appointments. This event highlighted once again problems with the Broadcasting Act: problems which still have to be addressed.

### **Education**

The year June 2000 - June 2001 has been a fulfilling one for the education unit. The Education Programmes Officer implements all the decisions made by the Education Sub-Committee, a committee that is answerable to the FXI Executive Committee. However what has tended to work in maximising the educational unit output is collaborating with other organisations and the support given by other FXI staff members.

Between 1997 - 1999 FXI educational work came to a halt. This was as a result of the Education Officer at that point, being forced to shift her focus into policy issues. In 1999 the education unit was revived. The persistent liberal image of FXI and the need to feel the gap between policy work and FXI's public output pushed this need even further. In identifying the kind of work the education unit should undertake, we looked at whom we would target and at what were the issues of contention at the time.

### ***Yizo-Yizo/ Kwaito workshops***

In 1999 when *Yizo - Yizo*, a drama series depicting life in Location Schools, was screened it created huge controversy. Some people wanted it banned as they said it influenced youth into imitating the programme, while others thought it should not be banned as it created space to debate issues affecting youth in these schools.

This project was born out of these controversies. The FXI saw *Yizo - Yizo* as a perfect vehicle for introducing issues relating to freedom of expression particularly artistic free expression, censorship, media diversity and access to information. The project was aimed at High School Learners in Grade 11 & 12. To make these workshops possible FXI worked with different Provincial Education MECs.

The first workshop was held in 1999, in Soweto Vista Campus; this was seen as a pilot project. In 2000 five provincial workshops were held; one in the Northern Cape, North West, Free State, Mpumalanga and the last one in Gauteng (Vereeniging). Through-out these workshops, the method of approach has changed as our knowledge of the target audience increased. It has been a huge learning curve for all the facilitators and actors involved as the quest to deliver the most educative and entertaining workshops increased. Their success has been incredible in every way. In every workshop we conducted we have received good feedback and the requests to conduct other similar workshops are overwhelming.

### ***Promotion of Access to Information workshops***

The Promotion of Access to Information was passed in January 2000 and it gives effect to the Access to Information clause in the South African Constitution. With the passing of this Act in 2000, the FXI began a process of educating Civil Society Organisations (CSO's) about this Act. The aim of these workshops was to inform CSO's about the Promotion of Access to Information Act, what it entailed, and what it aimed to achieve.

The emphasis of these workshops has been the need to duplicate similar workshops for community members. In 2000, four workshops were held; one in the Northern Cape, Mpumalanga, Eastern Cape and in the Northern Province. These workshops have been regarded as very useful and helpful by all the organisations that attended.

With the Promotion of Access to information coming into effect in March 2001, FXI organised a national workshop looking at different sectors and how they relate to this Act. We realised that

there was a need to move beyond informing people about the Act to finding strategies of implementing this Act. Even though the Human Rights Commission, an institution that has been given responsibility to implement this Act, is unlikely to police people in The Promotion of Access to Information Act implementation. The FXI encourages Civil Society Organisations to take a proactive role in implementing this Act, as they are the pioneers of transparency, accountability and information flow.




### ***The Promotion of Access to Information Workshop***

This workshop was held on June the 8th- 9th. The workshop was attended by all the people who deal with access to information and dissemination on daily basis, such a communications people, researchers, media and resource centres people etc. from national organisations. The aim of this workshop was to inform and to provide skills on how to use and apply the Promotion of Access to Information Act, to facilitate development of information manuals for organisations as required by the Act and to facilitate development of communication strategies to maximise information dissemination.

The workshop was extremely successful and it is evident from the evaluation forms that there is a gap that needs to be filled. As a way forward, it was suggested the FXI should take a monitoring role in the implementation of the Act. Further more it was suggested that the FXI and host other organisations should take up a campaign to pressurize government to allocate money to the South African Human Rights Commission so that they can implement this Act. The FXI is thankful to all the organisations that participated in this project and mostly to the Friederich Ebert Stiftung who funded this project.

### ***16 days of activism***

FXI and Tshwaranang Legal Advocacy Centre to End Violence Against women (Tshwaranang) hosted an Art Exhibition for the 16 Days of Activism on Violence Against Women in partnership with the Commission on Gender Equality. The aim of this art exhibition was to highlight gendered violence through different artistic expressions. The 16 Days of Activism is an international campaign highlighting violence against women. It highlights three main days:

-  25 November commemorated the Mirabal Sisters who were brutally murdered by TruZillo dictatorship in Dominican Republic.
-  1 December commemorates the anniversary of the Montreal Massacre when a man killed 14 women engineering students.
-  10 December International Day of Declaration of human Rights.

To enable this campaign to happen, different artists and organisations concerned with violence against women were invited. At the end a programme involving education through all forms of art and workshops emerged. The campaign received considerable media attention.

### ***African Human Rights Day, 2000***

For the African Human Rights Day, the FXI attended a workshop hosted by the South African Human Rights Commission and the South African NGOs Network.

### ***International Human Rights Day, 2000***

For the International Human Rights Day FXI attended a Duma Nokwe Human Rights Award ceremony hosted by NIPILAR.

### ***Human Rights Train the Trainer course, 2000***

The Education Programmes Officer attended a training the trainer course offered by the Canadian Human Rights Foundation in Montreal. The aim of the course was to educate trainers on how to train human rights trainers, using popular education techniques. The course looked at the definition of Human Rights, Human Rights Universality and Cultural Relativism, human Rights Conventions, Human Rights and Institution Building, Human Rights Training and the role of Human Rights Trainers. We would like to thank the Canadian High Commission, for making this trip possible.

### ***Other activities***

Outside of these projects the Education Programmes Officer is often invited to give presentations and respond to arising issues. Although this sounds like a simple enough task the process of preparing for such things takes a lot of time.

The second half of 2001 promises to be very exciting. We will see what happens as The Promotion of Access to Information Act is being utilised by different people. With the challenges facing the South African Human Rights Commission in implementing this Act, FXI would need to play a monitoring role and often advocate for an a speedy implementation of this Act. FXI will also undertake community radio work with NCRF, looking at training in regulatory issues, Defamation, Section 205 and Access to Information. There is a huge interest coming from government and the media that FXI do a Government-Media Relations training that it did in 1997.

### **FXI publications and media exposure**

In the course of the year, the FXI found that the level of demand for media comments on a range of issues increased dramatically, to the point where it has become extremely difficult to keep up with the number of requests. Views are canvassed on a daily basis, often in response to media statements that are put out. The FXI's exposure on radio has experienced particularly marked levels of growth. A number of opinion pieces, press statements and comments led to controversy, the most notable being those around the closure of a number of SABC rural offices, the FXI's defence of Max Du Preez and criticism of the ethical conduct of journalist Sam Sole.

With respect to its own information and publicity machinery, very little work was done on the FXI website during the course of the year, which means that a great deal of the organisation's work is not available electronically. Weekly reports continued to be produced, although they experienced a lull early in 2001, while a new Communications Officer was being appointed.

During the course of the year, the FXI continued to produce the quarterly publication *Update*. Three editions were produced since the last AGM, and were distributed to a range of local and international human rights organisations, FXI individual and organisational membership, government and statutory bodies and libraries. *Update* continued to serve as a record and a monitor of free expression issues. The publication covered issues relating to free expression and access to information locally and in the region, and consists of a series of commissioned and in-house articles, as well as a diary of instances of censorship. *Update* was funded from a grant by the Westminster Foundation for Democracy. It has been suspended in view of the fact that the grant was not renewed, and the FXI intends to review the effectiveness of *Update* and decide how whether to continue with the publication.

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 'good law' in the region, that is, judgements and new legislative developments that impact positively on freedom of expression in the region. Funding for the Briefing was renewed by IBIS/ Interfund, and production of the Briefing is continuing.

In addition, Jane Duncan, Head: Policy and Research of the FXI produced a book during the course of the year, entitled 'Broadcasting and the National Question: South African Broadcast Media in the Age of Neo-Liberalism'. The book has been copy edited and is being prepared for production.

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

The FXI continued to host the South Africa Chapter of the Southern African Human Rights NGO Network, and we continued to be an active member of the network. The regional office of SAHRINGON continued to provide disbursements for the running of the Chapter. SAHRINGON is a regional network established in 1997 in Johannesburg by NGOs 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. Furthermore, the chapter co-ordinator, Stlankie Chipeya, continued to participate in Chapter member activities.

Some of the highlights of the chapter included a meeting with the Deputy Minister of Defence on the so-called 'arms deal', a regional conference on police brutality that was held in Sandton in September 2000. The conference brought together senior members of the police across the region, and civil society to address jointly the thorny issue of police brutality. Lastly, SAHRINGON organised a workshop on the processes of the African Commission on Human and Peoples Rights on African Human Rights Day, October 2000. The workshop addressed some of the strengths and shortcomings of the Commission, and it called on the Commission to make the processes of NGOs getting observer status more flexible. A statement came from the workshop and thus was to be presented at the next session of the commission. The application is still under consider with the Commission. This will enable the FXI to liaise with the Commission on issues of freedom of expression in the continent. This workshop was hosted by the South African Human Rights Commission.

SAHRINGON also helped to co-ordinate provincial workshops on racism, organised by the Human Rights Commission in preparation for the National Conference on Racism in August 2000. These provincial workshops helped to gather information about incidents of racism in different provinces, to build up a picture of the prevalence of racism in the country.


The FXI's contract to host SAHRINGON ends in September, which means that a new hosting arrangement will have to be arrived at for the Chapter.

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

The FXI continues to be an active member of IFEX, although our involvement was less intensive

than last year given the fact that we participated less actively in the different IFEX committees. 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 expert, 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.





The IFEX site now includes a comprehensive links page to several hundred free expression-related sites. Links are grouped in categories, including Freedom of Expression, Human Rights, Media Organizations Supporting Freedom of Expression, Other Organizations Supporting Freedom of Expression, Censorship, Freedom of Information, and Privacy. FXI is also working to develop a links database, which will enable visitors to browse by category, country and region.

The IFEX Policy Documents, including the Governance articles (which include membership criteria, ✕ Editorial Guidelines, and Subscription Policy, are now available on the website in the  About IFEX ✕ section. A list of IFEX Council members is also available, and all of the above are posted in all three languages (English, French and Spanish).

On the members ● pages, IFEX member information was updated in the fall of 2000. Members without their own websites have also been encouraged to make use of this space on the Internet. The FXI web expert encouraged IFEX members to regularly update their information on the site. The FXI also solicited other ideas from members on how to improve the site.

The FXI and the IFEX Clearing House cooperated to design a special World Press Freedom Day web page for 3 May 2001. This feature was initiated in 1999 and has been continued in 2001 thanks to special funding from UNESCO. A special 3 May section will be retained under the new Reports Section.

There are a number of ideas for new additions to the site that FXI has begun working on this year in partnership with the IFEX Clearing House. At the IFEX Annual Conference in May 2000, suggestions to improve the site and add new features, which have not already been implemented, were approved as follows:

-  Adding an external page of distress funds available to media/writers in distress with full contact details.
-  Adding a section for reports published by members and listing them by country, region and topic, along with annual reports and special reports, i.e. for World Press Day.
-  Making the weekly IFEX Communique searchable, adding titles so that the contents of each issue are displayed.
-  Improving the search function, so that it is easier to find alerts on particular cases or countries.

Of these new features, the Reports Section could include an expanded range of topics covered (such as academic freedom, Internet freedom etc.) to make IFEX the definitive on-line resource for all types of freedom of expression.

## **Freedom of Expression Defence Fund**

The Freedom of Expression Defence Fund held regular meetings during the past year, taking forward the cases it continues to fund. The cases which the fund has been involved in since from last year are the South African Reserve Bank vs Nico Alant, Russell Mamabolo vs The State, and Moutse Radio and S.K. Parmanand vs University of Venda.

### ***South African Reserve Bank vs. Nico Alant***

Nico Alant was employed by the SA Reserve Bank between 1989 and 1993, during which time he gathered files that show how for 20 years the Bank approved of illegal offshore financial schemes devised in the apartheid era. In 1999, Alant was subpoenaed to testify in a civil trial between David Jenkins and the South African Forestry Company. His evidence was set to blow the lid off the Bank's activities, because his documents handed in court detailed 20 years of how the S.A. Reserve Bank condoned Mr. Jenkins's illegal scheme. The Reserve Bank made an urgent application based on the section 33 of the Reserve Bank Act of 1989, which prohibits all its former and currently employees from disclosing any information pertaining to the institution. In addition, as Jenkins was a client of the Bank, it was their duty to ensure that his dealings with bank were kept private. In the same week the Reserve Bank rushed to court and brought an application to silence its whistleblower, that he handed over to the Reserve Bank all documentation and information he has in his possession which originates from the Reserve Bank, which deals with either the Reserve Bank or its clients. The Reserve Bank also made an interlocutory application that the entire matter be heard in camera.

The FXI intervened in an in-camera hearing as friends of the court with the intention to oppose the Reserve Bank interlocutory application with the view that the new Promotion of Access to Information Act forces all public and private institutions to disclose information that is considered to be of public interest. The South African Reserve Bank managed to hide alleged evidence of maladministration that is in the hands of its former employee Nico Alant by reaching an out of court settlement with him. The FXI legal team believes that even though the imperfect solution was reached in this matter, the FXI made a point by intervening in the proceedings that public institution would simply refuse to be transparent and deny the public information.

### ***Russel Mamabolo vs. The State***

The Deputy Director of Liaison within the Department of Correctional Services, Russel Mamabolo, was fined R2000.00 and received a suspended sentence after he criticised a judge's ruling. He criticised Justice J.Els by stating that he had erred when he granted AWB leader Eugene Terre-Blanche bail pending the outcome of his appeal against an attempted murder charge. He appealed to the Constitutional court and he was supported by the FXI who intervened in the matter as friends of court. The FXI supported Mamabolo's appeal that the conviction was unconstitutional and restricted his freedom of expression. The court held that the right to freedom of expression was integral in maintaining the constitutional values of human dignity, freedom and equality and more pertinently the emphasis on accountability, responsiveness and openness in government. The ruling was then confirming that the right to freedom of expression was important in maintaining and upholding democracy in this country.

### ***Moutse Radio ( Tseke Nchabeleng)***

This matter was resolved amicably between the parties. Members will recall that the community radio journalist from Moutse Radio Station, Tseke Nchabeleng was assaulted for covering a story between two taxi associations. This was viewed by FXI as a serious threat to freedom of the

media and form of censorship in particular.

### ***S. K. Parmanand Vs. University of Venda***

The FXDF will soon have a decision in this matter. Members will recall that the Dr. S.K.Parmanand a lecturer in the University of Venda, was dismissed because he was perceived as a whistle-blower who exposed to the Public Protector and the Health Special Investigative Unit various instances of corruption and financial irregularities occurring in the University. The matter is currently with the Labour court.

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

Max Hamata, a journalism student at Peninsula Technikon 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 are currently proceeding pro bono with an application for leave to appeal.

## **Executive Committee and staff**

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

With respect to the staff, there were major changes. Laura Pollecutt, the Executive Director, resigned in March 2001. The FXI thanks her profusely for her contribution. She has been replaced by the former head of policy and research of the FXI, Jane Duncan. The FXI would also like to express regret at the resignation of the information and external campaigns officer, Nanagolo Leopeng. She has been replaced by Scotch Tagwireyi, who we would like to welcome to the organisation. The third resignation was that of Isabelle Walters, the office manager. We also thank her for her contribution. The post has yet to be filled, and will be advertised shortly. Thulani Akim was appointed the FXDF co-ordinator, and we welcome him too. Mamashoabathe Noko continues as the Education Programmes Officer, Pinky Magau as the Administrative Officer, and Gertrude Tsoku as the librarian. June Hunter also resigned as the office manager, and was replaced by Pretika Singh. We welcome her, and wish June well.










What should be noted is that the FXI is operating with two key staff positions vacant; this has impacted severely on the ability of the organisation to continue its work effectively. A lack of funds has prevented us from correcting the situation. This staff shortage, when coupled with an ever-increasing caseload, has made the pressure of work extremely difficult to cope with. As a result, it should be understood that the organisation is not functioning at its optimum level: a crisis which is being addressed at the moment.

## **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:

-  IBIS/ Interfund
-  Joseph Rowntree Charitable Trust
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-  Heinrich Boll Stiftung
-  International Freedom of Expression Exchange/ Canadian Journalists for Free Expression
-  Canadian High Commission
-  American Embassy
-  Liberty Life
-  European Union Foundation for Human Rights
-  Konrad Adenauer Foundation
-  Eskom
-  Westminster Foundation

