FREEDOM OF EXPRESSION INSTITUTE
Annual report - 2004/2005

Introduction

The year in review could best be described as the year of the protest and the tabloid. These two defining features of the period have their roots in an increasingly polarized socio-economic situation in the country, which has been termed the 'two economies' by the government.

This concept was foregrounded by the South African cabinet lekgotla in July 2003, which observed that the country is characterized by two parallel economies: the first and the second. Writing after the lekgotla, President Thabo Mbeki distinguished between the two by defining the First Economy as being '…modern, produces the bulk of the country's wealth, and is integrated within the global economy. The Second Economy (or the Marginalised Economy) is characterized by underdevelopment, contributes little to the Gross Domestic Product (GDP), contains a big percentage of our population, incorporates the poorest of our rural and urban poor, is structurally disconnected from both the First and the global economy, and is incapable of self-generated growth and development'.[1] In the state of the nation address, delivered on the 6 February 2004, President Mbeki again invoked this concept. He argued that in view of the successes the State had achieved in stabilising the First Economy, the main attention now had to be on the Second Economy as the stabilisation of the first have generated the public finances necessary to address the challenges of the second.[2]

One year later, President Mbeki quoted Iraj Abedian as saying: "The socio-political changes during the past decade have made South Africa a global model of political process management and of peaceful, constructive conflict resolution. As significantly, Government's economic policy management has demonstrated a rare and sustainable strategy that is set to pass the test of time…Few countries have experienced such profound change in such a short time, still fewer have managed the consequences as well…'[3] This message of optimism has been repeated in the media, who have welcomed the fact that those in the First Economy have benefiting hugely from these measures. For instance, the *Sunday Times* newspaper has gone even as far as declaring 'let the good times roll', on the basis that the middle class have never had it so good.[4]

However, this mood of optimism is not necessarily shared in the Second Economy, who are expected to exercise infinite patience in waiting for the fruits of the First Economy to trickle down. At the same time that the good-time celebrations were being held, the Bureau for Market Research has noted a 'dramatic growth in the levels of unemployment during the period 1991 to 2002'. This constitutes a 105 percent growth in unemployment in respect of 'Africans' during the eleven-year period.[5] A statistical increase in the number of available

jobs since then has been overshadowed by pending jobs losses in two of South Africa's primary economic sectors, namely textiles and mining, leading to the Congress of South African Trade Unions (Cosatu) calling for a national emergency to be declared against job losses. So experiences of what is meant to be a South African have differed vastly depending on where individuals are located in the two economies. These differences have also led to a battle of ideas - underpinned by a battle over the use of statistics - between the government and various institutions and individuals critical of the country's economic growth path.

Many poor people located in the Second Economy are engaging in struggles for survival. Local government is on the coalface of these struggles, as services are delivered on a cost-recovery basis (with a free basic service grant for water and electricity) in a situation where extreme income deprivation is the order of the day owing to the high unemployment rate. This problem is leading to local governments failing to cope with the extent of the demand on their services: an example of extent of the problem has been given by the Municipal Manager of Moqhaka in the troubled Free State province, who stated in January that '…When Council approves the budget for the ensuing year, close to 80% of this budget is not based on available funds but on expected income from the community'.[6]

With respect to the year of the protest, the year was marked by a spiral of violence between the state and communities protesting against poor service delivery, with the main focus being on the crisis of local government service delivery. This has been the case especially in small towns left entirely out of the globalisation loop, where communities are expressing anger in increasingly vocal terms. Needless to say, many of these developments are underreported in those sections of the media that are more concerned with letting the good times roll.

One of the most striking things about the period under review is the significant rise in the number of cases brought to the Freedom of Expression Institute's (FXI) attention involving the use of violence by the State against peaceful and unarmed demonstrators. These cases are dealt with in more detail in the Anti-Censorship Programme report, and involve the banning of demonstrations escalating into the injury and even killing of demonstrators.[7]

Primarily these cases involve groups and social movements protesting against poor service delivery, unaffordable services, and the underlying causes of these problems. In numerous incidents, the state has contravened the Regulation of Gatherings Act (RGA), either in the reasons given for denying 'permission' to organizations attempting to embark on gatherings, or in acting forcefully to break up spontaneous demonstrations. These developments are of extreme importance to the FXI because as we have pointed out in the past, the real terrain of struggle in relation to the exercise of the right to freedom of expression in South Africa, in relation to the agitation for social and economic rights. It

should also be noted that some gains have also been made with respect to a number of these cases, with the police being brought to book through the Independent Complaints Directorate (ICD).

The period under review has also been marked by a growing tabloidisation of the media, with new newspapers being launched and existing papers being repositioned to make inroads into the purses and wallets of working class South Africans who inhabit the space in between the First and Second Economies. For instance, the Sowetan newspaper was bought by Johnnic Communications, and was immediately repositioned in the newspaper market as a tabloid to reverse the loss of sales. More recently the Independent Group has launched the *Daily Voice*, aiming at the LSM 3 to 5 market in Cape Town. In the process, it has been set up direct competition to the *Daily Sun*, the most successful tabloid to date. Its Afrikaans sister paper, *Die Son*, is also doing extremely well. These newspapers have been credited with introducing a whole new layer of readers to the newspaper market, located mainly within LSM 4-6; this makes - according to Anton Harber - South Africa one of the few countries in the world where newspaper readership (and hence circulation) are increasing. However, LSM 3 and below remained largely underserviced, with the public service stations of the SABC being the main sources of news and information.

At the time of the tabloidisation of the *Sowetan*, the FXI argued that:

> ' The new-look *Sowetan* is a far cry from the product that subsequent editors from the era of [Percy] Qoboza shaped. That team [that Qcoboza set up] achieved what Can Themba accomplished at *Drum* magazine; refusing to turn black media outlets into purveyors of scandal, unanalysed sport, and gossip - all in the name of “what people want to read.” We live in an era when, perhaps more than ever before, a more developed and sharper black analytical perspective that looks critically into the transition is needed…An independent, critical, yet accessible but not “dumbed down” daily is what we need within the black working community. A daily that will assist the black working class community to understand its daily lives without assuming that the only way that such a class is able to do so is only when content is presented in a “dumbed down” manner. Unfortunately, that is what the *Sowetan* has been turned into'.[8]

At the same time, independent, critical and investigative reporting has come under pressure in an increasingly consolidated media market. The tragic closure of *This Day*, has underscored how difficult it is for a newspaper with a critical edge to survive in the race for the bottom line.

The year under review has also been marked by a growing problem around the independence of the SABC. Despite repeated denials on the part of SABC management, there were clear indications of an erosion of its independence, coupled with a growing public debate about this problem, leading to greater

antagonism between the SABC and sections of the media) as the SABC was accused increasingly of being a government tabloid.

According to a Media Monitoring Project (MMP) comparison of the level and type of government coverage on SABC 3 and private commercial channel e.tv, the proportion of government-related stories was far higher on SABC 3 than it was on e.tv. However, what was of more concern to the Project was that SABC 3 government-related stories tended to focus on positive aspects of government action, whereas the bulk of e-tv's government stories were neutral in character (that is, they adopted neither a positive nor negative view of the government's performance).[9] However, the extent of the erosion of the SABC's independence is ill-understood, especially the erosion of its institutional independence since its incorporation as a public company. According to the Articles, the shareholder (that is, the government) appoints the Group Chief Executive Officer, and the Minister approves her contract of employment; in addition the Minister must approve the appointment of the Group Chief Financial Officer and the Group Operating Officer. Particular resolutions of the Board cannot be passed without a representative of the Minister having voted in favour of the resolution. These resolutions include the SABC's business plan, training programme, annual budget or strategic objectives, or the establishment by the SABC of any subsidiary, joint venture or partnership.

At the same time, there have been advances on the licencing front in that Icasa has proposed licence conditions that will take the SABC closer to being a proper public broadcaster. The proposal for SABC1 and SABC2 to broadcast 80% of its programming in African languages and the setting of targets for genres on radio are progressive steps indeed. In spite of these positive developments, at the time of compiling this report there had been very little movement with regard to the proposed regional television stations. The stations, the Southern (broadcasting in IsiZulu, IsiXhosa, IsiNdebele, SiSwati, and Afrikaans) and Northern (Setswana, Sepedi, Tshixhonga, Tshivenda, Afrikaans, and Sesotho) streams, initially the brainchild of the national Department of Communications, would broadcast only in African languages. Initially, it was claimed that the project would receive about R300 million start-up capital from the DoC to establish the two stations. However, as time went on there was talk of only R100 million. This resulted in a shift towards the dreaded Public-Private Partnership. The FXI's opinion is that if this could be the case the services will, just like the current SABC, be subjected to the vagaries of the market, that is, the market making investments in these services only if they are able to attract higher Living Standards Measurement (LSM) or high disposable income earners instead of simply providing services to ordinary people. This shift also raises doubts about the commitment to allocate public funds to these services.

Another trend of the year under review involves the rise of corporate censorship, as the beneficiaries of the first economy become increasingly intolerant of criticism of corporate profiteering. In the year under review, the FXI dealt with two

instances of internet based censorship where corporations took legal action against satirical websites for "trade mark" infringement.

It has been said that FXI is losing focus through its mainstreaming of freedom of expression and access to information in delivery questions around socio-economic rights. Others have said that by adopting this approach, we are gaining focus. Only time will tell whether the FXI is becoming less or more relevant in the increasingly conflicted country.

Organisational overview

Since 2001, the FXI has divided its work amongst four Programmes, which are as follows:

- Anti-Censorship Programme
- Media and ICT's Programme
- Community Media Policy Research Unit
- Access to Information Programme

Two crosscutting units have serviced these Programmes: The Finance and Administration Unit and the Legal Unit.

The Anti-Censorship Programme entered its second year of existence, and grew from strength to strength. The Community Media Policy Research Unit also continued its work. The Media and ICT's Programme was established, as was the Access to Information Programme and the Legal Unit. This meant that all the Programmes and Units identified by the strategic planning meeting of 2001 were finally up and running.

In 2004, the FXI commissioned evaluation reports from Alvin Anthony on the Anti-Censorship Programme and the Community Media Policy Research Unit. Some of the findings will be dealt with in the Programme reports. Once the evaluations were complete, Anthony was commissioned to develop a sustainability plan for the organization. The plan focused especially on the challenges faced by the Finance and Administration Department given the growth in the FXI.

According to the sustainability plan, the evaluation reports isolated the critical challenges that need to be addressed with regard to sustainable proactive work and organisational development. It proposed the following:

- A planning system to enable measured work, reflection and strategy refinement, involving training for the staff and Executive Committee in the development of a strategic plan, leading to the development of programme plans.
- A shift away in the activities of the FXI from service delivery mode (responding to many individual crises) and towards capacitation and

empowerment of groups that frequently resort to the FXI for help: training and capacitation of target groups including the social movements and other organizations in freedom of expression strategies and legal knowledge so that they can act themselves then freedom of expression cases arise and the measurement of impact. Moving the FXI away from responding to the many individual crises by capacitating other target groups will also contribute to the FXI's sustainability in terms of focusing on policy development and reducing the current unmanageable workload arising from reactive service delivery.

- The restructuring of finance and administration to make the unit more effective, efficient and assist the Executive Director to manage more strategically. The second proposal - namely the splitting of finance and administration - has been adopted by the Executive Committee and is to be implemented as resources become available.
- A number of recommendations regarding broadening the donor base and the increased financial sustainability of FXI, which includes building the profile and marketing FXI, consolidating relationships with present funding partners, seeking new partners, building a reserve fund, and negotiating terms conducive to sustainability with funding partners.

The implementation of this plan should enable the FXI to secure, develop and manage sufficient human, technical and financial resources to enable it to meet its mission/purpose/strategic objectives in a relevant, effective and efficient manner. At the end of this process, the FXI should be able do so without dependence on a single or narrow base of technical resources, human resources and funding sources.

Finance and Administration Unit

The past year has seen the Finance and Administration Unit continue to support and measure its growth and activities against the growth and increased activities of the FXI Programmes. The substantive growth within the Programmes and the financial income presents a challenge for more complex financial accounting, budgets and reporting formats. To meet this challenge financial systems continue to be assessed and monitored, which ensures accurate financial reporting.

Due to the increase in the number of Programmes and the number of Programme activities, the administration staff has become more active and substantive support for logistics and workshop preparation is being given. The growth and shift has influenced the way in which the FXI operates. The Sustainability Plan that has been undertaken for the FXI has assisted in identifying the operational changes and capacity building that need to take place. The level of commitment and obligation continues to ensure that the work is supported and the good accounting practices remain as an integral part and norm for the FXI.

Legal Unit

Since 2001, the Freedom of Expression Defence Fund has been defunct. Work began in earnest in 2003 to re-build the FXDF, but not necessarily on the basis that it was established previously. As a result of the untimely dissolution of the FXDF, a major institutional and legal vacuum for the promotion and protection of the fundamental rights and freedoms referred to, was left. Such a vacuum has to date not been filled by any other organisation or institution. The fact that the demand for legal services from the FXI has increased has necessitated the re-building the Institute's capacity to deal with litigation matters.

At the Institute' s strategic planning meeting at the beginning of 2004, it was agreed that the FXI should not take the course followed by the FXDF and remain a 'funding agency', but should rather build in-house legal capacity. This approach would enable the FXI to engage in proactive litigation in the name of the Legal Unit.

The Legal Unit would carry out the following functions: -

- Provide FXI and its various Programmes with general legal advice-broadly render legal services
- Provide expert legal advice and opinion on freedom of expression (free speech, media freedom, access to information) matters
- On referral by the various programme heads, give legal advice to clients of the FXI
- If need be, undertake litigation on behalf of the FXI, or clients of the FXI
- Supervise candidate attorneys

The FXI contracted an attorney to run the legal unit and to handle the cases referred to the Unit by the Programmes. The Unit has been in existence since July 2004, and has taken on a range of cases referred to it by the Programmes. The Unit has also applied for Law Clinic status, which was granted by the Law Society of the Northern Provinces in April 2005.

Programme reports

Anti-Censorship Programme

The work of the Anti-Censorship Programme (ACP) cannot be fully understood without reference to the historical battles fought for freedoms of expression, association and assembly. In a country like ours coming out of many years of political oppression, the democratisation process cannot be taken lightly. An organizations like the FXI and all its programs should continue to exist to ensure that the political articulation of alternatives is encouraged and thrives.

An independent evaluation of the Programme, focusing both on its content and strategies, recommended certain changes. It was particularly critical of the ACP's

'firefighter' approach towards handling censorship cases, and recommended a pro-active approach, which includes working with a broad spectrum of civil society organizations and capacitating them to handle their own freedom of expression problems.

The sum total of the evaluation findings is that FXI should develop a new, more inclusive and multi-sectoral approach and work method that will promote broad based participation, especially the poor and marginalized sections of our society. Such an approach will have the following benefits for the FXI and Civil Society Organisations:

- The FXI will be able to create space for civil society organisations to influence its programs and activities thereby extending its scope and reach.
- Provide a vital link between civil society organisations engage with issues of democracy and human rights, which will enhance its lobbying and advocacy capacity.
- Create space for individuals and organisations to report freedom of expression violations - this will help co-ordinate matters of strategic litigation and campaigns.

The importance of such an inclusive approach is that the FXI will benefit from the direct support of civil society and be better able to take advantage of the few political openings to lobby and advocate for change and achieve palpable gains.

Direct and indirect responses to censorship remain a key aspect of the work of the programme. This has taken and will continue to take a variety of forms including direct liaison with victims of censorship, giving advice to such victims, direct targeting of the sources of censorship, and publicising instances of censorship through local, regional and international media. The programme will continue to use the International Freedom of Expression Exchange (IFEX) network to publicise instances of censorship and also call for solidarity from fraternal organisations across the globe.

In addition, the Programme will, where necessary, strive to use prompt legal interventions to defend individuals whose right to freedom of expression has been constrained be it at the instance of the state or private sources.

Areas of concern where censorship has been identified as posing a critical challenge to free expression include state repression against social movements and other community based organisations, the stifling of dissent within the trade union movement and censorious activities against community media. The Programme is particularly concerned about the questionable use of the Regulation of Gatherings Act (No 205 of 1993) by local authorities to restrict the right of those wishing to assemble, demonstrate, picket or petition organs of state including the local authorities themselves.

There are a wide range of activities that the Programme has embarked upon in line with its foundational objectives since its establishment in July 2002. This it has done through the direct trouble-shooting of censorship cases, campaigning for legislative reform, the holding of freedom of expression education and awareness workshops, and engaging in publicity actions around the work of the Programme through conferences, seminars, workshops and radio and television interviews.

But it has been especially by way of active engagement of free expression issues through the media and public fora that the Programme can be said to have raised the profile of the censorship discourse in South Africa to a significant degree. Below, we look at how these different activities have been undertaken and reflect on the manner in which they have helped to transform the country's free expression landscape.

Selected key censorship cases handled by the Programme in 2004/ 2005

The case of Max Ntonyana and others

Max Ntonyana heads the Khayelitsha Anti-Eviction Campaign (AEC) in Cape Town which has been engaged in a long struggle with the State on the issue of eviction of homeowners unable to pay their housing bonds. He was arrested in mid 2002 and held in prison for a long time facing several charges relating to protest activities against the evictions.

Together with a number of his comrades, he was granted bail in November of that year but the court imposed extremely harsh conditions against them. These included their being ordered not to: -

- Involve themselves in any public gathering or demonstration enticing or inciting evictions to take place; or,

- Communicate with any person who has been evicted.

In December 2002, the AEC sought assistance from the programme so as to defend the right of freedom of expression and association of its members and the ACP contributed the amount of R20 000 to enable them challenge the bail conditions. Furthermore, the ACP continued to assist them in a variety of ways including seeking alternative legal representation and publicising their case through the mainstream and community media.

The state finally dropped all charges against the accused on 20 October 2004.

Justin Nurse and SAB Miller

The ACP has been involved in this case since July 2002. It relates to the question of whether commercial interest can, in certain circumstances, outweigh the right to freedom of expression.

In early 2002, South African brewing giant SAB Miller sued Justin Nurse for trade-mark infringement alleging that the use of the words "Black Labour, White Guilt" on his company produced T-shirts was an infringement of SAB Miller's "Black Label, Carling Beer" logo. On 16 April 2003, the Cape High Court ruled against Nurse and held that besides the words on the T-shirts infringing the complainant's trademark, they also bordered on racism and hate speech. Nurse appealed against this decision to the Supreme Court of Appeal (SCA). At the appeal hearing, FXI joined the case as *amicus curiae* (friend of the court) and was represented by Advocate Gilbert Marcus SC.

After the hearing, the SCA on 16 September 2004 dismissed Nurses' contention, arguing in the process that he was:

> "Using the reputation of Sabmark's well-known trade mark, which has been established at considerable expense over a lengthy period of time, in the course of trade in relation to goods to the detriment of the repute of the mark without any justification. Such use and detriment is unfair and constitutes an infringement of the said provision. The appellant's reliance on the freedom of expression is misplaced. It did not exercise its freedom, it abused it."[10]

Nurse then appealed to the Constitutional Court and the FXI joined the case as *amicus curiae* in support of Nurse. The Court upheld the right of Nurse and dismissed the findings of the High Court and SCA.

Election Day torture allegations by LPM members

In the run-up to South Africa's third democratic elections, the Landless People's Movement (LPM) initiated what it called the "No Land, No Votes" campaign seeking to peg voting to the restitution of land to the majority landless black citizens. On Election Day 14 April 2004, LPM mobilised its members to hold a protest in one of the urban townships and gave the required notice to the state as required by the Regulation of Gatherings Act.

But as the LPM members gathered for the protest, police violently arrested and detained them in one of the local police stations where they were held overnight before being released on bail the following day. The ACP hired legal counsel who assisted with the release of the members who were later charged with holding a political activity on election day contrary to section 108(a) of the Electoral Act which states that *"on voting day no person may-…hold or take part in any political meeting, march, demonstration or other political event."*

What is of particular concern however is the fact that four of the members; Ann Eveleth, Maureen Mnisi, Samantha Heargraves and Moses Mayekiso, made disturbing claims about their ordeal in police custody during the night of 14/15 April. They stated that members of the Crime Intelligence Services (CIS) physically tortured them (Eveleth and Heargraves) or otherwise used violence, harassment and intimidation against them (Mnisi and Mayekiso).

FXI convened a joint press conference with the LPM on 28 April where the four members narrated their trauma in the hands of CIS operatives. Local media highlighted these claims widely after the conference and in May, a number of human rights organisations sent a protest letter to the National Minister of Safety and Security asking that the matter be investigated and appropriate action be taken against those found culpable. Various individuals also sent protest letters to the Safety and Security Minister as well as President Thabo Mbeki.

The four members laid charges of torture with the police complaints body, the Independent Complaints Directorate (ICD) and investigations, albeit at a very slow pace were launched. In January 2005, the ICD recommended that one of the officers named as being among those responsible for the torture be charged with assault with intent to cause grievous bodily harm. FXI welcomed this development but expressed its disappointment at the lengthy period of time it had taken to complete the investigations, and that after a whole nine months, only one out of the almost five police officers mentioned had been recommended for prosecution.

Meanwhile, the state is pursuing its case against the LPM members and the ACP has been providing them with media support, publicity and international solidarity to ensure that their plight receives as much attention as possible.

Mangaliso Kubheka and the hate speech allegation

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

In December 2003, media reports alleged that its national organiser Mangaliso Khubheka had stated that "if a farmer kills a farm worker, we will kill the farmer", and that members of the LPM should make themselves available to be trained as military cadres. On the 11 February 2004, the South African Human Rights Commission (SAHRC) wrote to Khubheka stating that it was of the view that his statements constituted hate speech. Khubheka did not meet the deadline to respond for a number of reasons, and on 3 March 2004, the SAHRC informed Khukheka in writing of their finding. The Commission recommended that Khubheka should give a written apology within 14 days.

After assisting Mangaliso Kubheka of the Landless People's Movement (LPM) to file his reply to the Human Rights Commission in April, the commission in July 2004 set aside its earlier finding of "guilty" against him for allegedly making hate speech remarks and the matter has now been re-opened. In September, the ACP assisted Kubheka to draft a letter to the commission as requested in answer to the allegations.

As a result of this intervention, this case was re-opened afresh. In a letter dated 20 December 2004, the commission informed Kubheka that it could not bring the case to a finality because it had:

> "Explored all the possible avenues, using its available resources and come to the conclusion that it is not well positioned to make a specific finding on this matter. This is primarily so because of a major dispute of facts"

The ACP is still considering the implications of this disturbingly ambiguous position adopted by the HRC since the commission neither finds Kubheka guilty nor innocent of the hate speech allegation thereby leaving him in a limbo. We are in discussion with Kubheka and will soon make a decision on whether to seek better clarity and definite standpoint from the HRC.

Matter of *'Die Hoorn'*

There has been slow progress in regards to this matter and in a telephonic conversation with the proprietor of the newspaper in the second week of March, he indicated that the Oudtshoorn Municipality had decided to have a joint meeting with him in order to discuss the problem. The Municipality has also resumed placing small advertisements with the paper which is a welcome development given its initial stance not to have any dealing whatsoever with the publication. We will await further developments in the matter.

Shooting of demonstrators in Harrismith

On 30 August, Police opened fire on a group of fleeing peaceful demonstrators in Harrismith, a semi-urban town in the Free State Province, and as a result a 17-year-old high school student Tebogo Mkhonza was killed. The demonstrators were protesting against the lack of delivery of basic services as well as unsatisfactory responses to their grievances by the local authority. The shooting received widespread media publicity and resulted in government sending a top-level delegation to the area composed of State and Provincial ministers to engage with the local community. ACP convened a planning meeting in FXI's offices on 14 September that was attended by representatives from the Centre for the Study of Violence and Reconciliation, the Institute for Security Studies, the Human Rights Institute of South Africa and the Landless People's Movement (LPM). ACP also acquired a copy of the videocassette shot at the scene by an

amateur photographer, which clearly shows police opening fire on the dispersing protesters.

The aim of the meeting held at FXI was to explore ways of formulating a collective response on how to engage relevant state institutions such as the Presidency, the Ministry of Safety and Security and the ICD among others, as well as the role that oversight bodies like the Human Rights Commission should play in regards to the rising use of violence by state law enforcement agencies. It was agreed that ACP would draft a working document detailing the incidences of police and other state agencies' use of force and violence against demonstrators, which will then be used as a template to lobby the identified state functionaries or institutions. This work is now in progress.

Amnesty International's London office has taken an active interest in this case after the ACP brought the matter to its attention. The lobby group is currently preparing an action plan on the case. Meanwhile, on 20 December 2004, the ICD announced that it had finalised its investigations into the shooting and recommended that three police officers be charged with murder, alternatively culpable homicide, and several counts of attempted murder. In addition, the ICD urged the South African Police Services to take disciplinary action against the named police officers, and advised that bird shot and buckshot should never be used in crowd management and control.

FXI welcome this development and in a media release lauded the ICD for its recommendations. However, the institute indicated that it was disappointed at the then exceedingly slow pace of investigations into the LPM torture case and wondered whether the slow reaction had something to do with the LPM's "unfavourable political orientation" as a social movement.

The "Hellkom" case

In August 2004 South Africa's telecommunications giant Telkom threatened to sue the owner of a website dubbed "*Hellkom"* for damages amounting to R5 million for alleged trademark infringement. The site parodies Telkom's name and keypad logo and is essentially a forum for sharing grievances by those opposed to Telkom's high tariffs and poor level of services. ACP intervened immediately and issued a press statement supporting the site and its criticism of Telkom, which received wide publicity in the electronic and print media. As the programme argued in its statement:

> "Telkom's claim that the use of the words "Hellkom" and "Telscum" as well as the use of certain graphics and logos on the "Hellkom" website amounts to the infringement of a registered trade mark as prohibited by the Trade Marks Act is spurious. Trademark infringement only occurs where an individual or individuals use a registered mark to deceive or

> cause confusion and also for a pecuniary benefit. This is not the case with the site under dispute."

In spite of such intervention however, Telkom went ahead in November 2004 and sued the owner of the site not, surprisingly, on the basis of trademark infringement, but on allegations of copyright violation and defamation. The ACP has teamed up with Gregg Stirton, the owner of the site and is currently exploring modalities of giving wide publicity to this case besides mounting a legal strategy in support of him.

Matter of van Heudsen and Cape Town City Council

Peter van Heudsen is a Cape Town based social activist who has been threatened with legal action by the Cape Town City Council for painting the slogan "SA. READ INDYMEDIA.ORG" DON'T HATE THE MEDIA, BE THE MEDIA!" on the front wall of his house. Indymedia is a world-wide independent media website with chapters in many countries around the globe. The Council alleges that the painting is a violation of its by-laws on advertisements and signage, which prohibit the exhibition of "unauthorised signs". Van Heudsen has countered that the by-law exempts advertisements or signs done for non-profitable organisations and additionally sought help from the ACP. We are addressing this matter and have already given preliminary legal advice to Van Heudsen.

Matter of *'Die Hoorn'*

Die Hoorn is small-medium newspaper published and circulated in the town of Outdshoorn in the Western Cape. In August, ACP received information that the Greater Oudtshoorn Municipal Council had taken a decision to suspend all interactions with the newspaper including the placing of advertisements, legal notices and sending of press releases because the paper was "'one sided, non-objective and biased'." ACP then sent a letter to the Municipal Manager expressing its concerns and stating that this amounted to censorship against the newspaper on the basis of the latter's press activities. We are making follow-ups on this matter.

Banning of gatherings of the Thembelihle Crisis Committee

In November 2004, marches of the Thembelihle Crisis Committee - an affiliate of the Anti-Privatisation Forum - were banned. The police reportedly stated in the meeting called in terms of the Regulation of Gatherings Act that they were going to deny permission 'because of Thembelihle's history' and that 'because of that once uncontrollable behaviour of the Thembelihle community blockading streets'. Presumably the officer was referring to an incident on 16 June 2002 when the Red Ants attempted to remove forcefully hundreds of residents from Thembelihle by razing shacks to the ground, leading to the some of the residents defending

themselves. In spite of the fact that this was a once off incident and the Committee undertook to adhere to certain conditions, the march was still banned. The reasons given were absurd, and there was no credible information provided on affidavit that the gathering posed a threat.

Campaign for legislative reform

At the time when the programme commenced its operations in July 2002, the FXI had through the financial support of the Netherlands Institute for Southern Africa (Niza), already commissioned a practising attorney to give it an analysis of the most pressing laws that violate the right to freedom of expression in South Africa. This commission also required the expert to suggest mechanisms and make recommendations for either amending or repealing these laws. This project was completed in early 2003 and the ACP has begun a campaign aimed at redressing the identified laws.

The campaign involves a two pronged strategy; firstly, a direct engagement with state institutions such as the Department of Justice and Parliament, and secondly, a litigation process. The second prong is already taking place with regard to the proposed challenge on section 205 of the Criminal Procedure Act.

In similar vein, the ACP in 2004 commissioned an expert legal opinion on the constitutionality of the Regulation of Gatherings Act (205 of 1993) with the ultimate question of whether it is possible to bring a successful Constitutional Court challenge against it. The ACP and social movements then held a three day National Anti-Repression workshop in November during which the Programme presented the findings of the opinion and canvassed ideas on how to institute the envisaged challenge against the Act. This will be consolidated in the forthcoming period.

One of the key activities initiated by the Programme in the area of legislative reform was the education, publicity, lobbying and advocacy campaign against the proposed Anti-Terrorism Bill (ATB), which was first introduced in Parliament on 10 March 2003. The campaign incorporated a diversity of strategies including education workshops, seminars, media interviews, press articles, mass meetings and submissions to Parliament. It also brought together a wide cross-section of different organisations that worked through a common platform to oppose the Bill. These organisations included the Media Review Network, Africa Muslims Agency, Media Workers Association of South Africa, Southern Africa Journalists Association, the Media Institute of Southern Africa (Misa)-SA and the Human Rights Media Institute.

After much pressure and widespread public opposition, the South African Parliament decided to shelve the ATB in February 2004, but the Bill was later revived, given a little gloss and passed into law in November 2004. The ACP is

still geared to challenging this law given its negative implications on the right to freedom of expression, assembly and association.

There is wide acknowledgment that the ACP played a crucial role in sensitising the public around the dangers posed by the ATB on fundamental rights and freedoms in South Africa. Indeed, this success led to the campaign being used as a case study for effective lobbying and advocacy at the strategic planning meeting of the International Freedom of Expression Exchange (IFEX) in Baku, Azerbaijan in June 2004.

In addition to the ATB campaign, the programme has made submissions on laws such as the Film and Publications Act (65 of 1996) and the proposed Hate Speech Bill. The ACP also supported Marie Stopes during its hearings before the Advertising Standards Authority in April 2004, in which it had been accused by the African Christian Action Group of engaging in "misleading advertising" in relation to its abortion services. Marie Stopes won the case.

Education and awareness on the right to freedom of expression

Workshops on freedom of expression

Recognising that education is crucial if the public is to understand and therefore enjoy the right to freedom of expression, the ACP decided to hold education and training workshops with community radio stations across the country from August 2003. This strategic decision was taken on the basis that community broadcasting is the sector of South African media that is most closely connected to the people.

The first leg of these workshops took place in August in the Northern Cape, the North West and Limpopo provinces. The second phase began in September 2004 and workshops were held in the Western Cape and Kwa Zulu-Natal. It is envisaged that the workshops will be conducted in the remaining four provinces of the country in the course of 2005.

By making use of a training guide and audience interaction, the workshops discuss critical issues that confront community radio stations such as censorship, defamation, hate speech and limitations on court reporting. They also examine the constitutional limitations on the right to freedom of expression, media freedom in South Africa and South Africa's legal and policy framework for broadcasting. That the training finds useful value can be confirmed by the following quotation from a letter sent to the ACP by one of the participating stations, in which the community broadcaster observes that the workshop had been able to:

> "Educate the participants [about] freedom of expression and in the main, democracy issues as contained in the Constitution of the

> country. Your focus on rural communities deserves acknowledgement."

Similar sentiments have been expressed in evaluation forms completed by participants in the majority of the training sessions.

Publicity around the right to freedom of expression

A considerable amount of work has been done in this area and the programme has consequently become very well established in the public domain. As a result, the ACP is sought continuously to give comments on matters that touch on freedom of expression through the print and broadcasting media, and also to make presentations in public protests, seminars, workshops and conferences.

On average, the programme is featured about fifteen to twenty times in both print and broadcasting media every month on a wide variety of subjects including hate speech, contentious news and information, popular forms of expression such as graffiti, new legislation affecting free expression and media freedom. This way, the programme continues to play an undeniably important role in informing and engaging the public on precisely how the right to freedom of expression is to be given its proper weight.

In addition, the programme has been an active participant in seminars, workshops and conferences both locally and internationally. Through these public events, the programme has articulated its standpoints on a wide array of issues such as limitations to freedom of expression, media and democracy, and the implications of the "war against terror" on freedom of expression.

Media and ICT's Programme

The FXI's 2003/2004 Annual Report referred to some of the challenges that were faced by the Community Media Policy Research Unit. An evaluation of the Policy Unit was undertaken. The evaluator arrived at two major recommendations and those were subsequently endorsed by the staff and the Executive Committee.

The first recommendation was that the joint management arrangement between the FXI and the National Community Radio Forum was no longer functional. As reported in the previous annual report, the FXI found itself managing and sustaining the Policy Unit on its own. The evaluation recommended that the relationship between the FXI and the NCRF be terminated in so far as the joint ‘ownership’ of the Policy Unit was concerned. The decision was carried through and implemented by the Executive Committee in December 2004 and communicated to the NCRF, which also accepted the recommendation and decision.

The Executive Committee adopted the report, but took a further decision to merge the Policy Unit into the Media and ICT Programme, as both Programmes were undertaking work in a similar field. This meant that the new and expanded Media and ICT Programme would continue to have its three main functions/strategies plus a research component. In summary, the Programme has the following functions:

- Conducting progressive research into the media and ICTs industry in the country and increasingly in the region with a view to promoting media access, diversity and freedom of expression
- Lobbying to remove key constraints that inhibit popular access to media and ICTs
- Building the capacities of media producers to pursue these aims directly and defend gains won in their respective organisations
- Building the capacities of communities who barely have media and ICT access to produce media themselves, or to access existing media to reflect their concerns

The previous Head of the Policy Unit, Console Tleane, was recommended to lead the newly created Media and ICT Programme. The Executive Committee endorsed this recommendation. His appointment completed the staff complement of the Programme. In August 2005 Virginia Setshedi was employed as an Organiser for the Programme.

The merging of the Policy Unit into the Media and ICTs Programme has proven valuable for the organisation. One of the major benefits from this development is that there is now seamlessness between the research function and the lobbying and advocacy functions within the organisation. In fact, the existence of two positions within the Programme is proving valuable for the organisation. The Organiser has brought invaluable skills and capacity into the organisation. She has been able to place the organisation at the cutting edge of community organising. This has freed up the Head, who is able to focus on more strategic and conceptual issues for the Programme and assist the Director with the overall vision for the organisation. The result is a Programme that is both active on the ground through working with community organisations and activists while at the same time being able to engage at conceptual levels.

The following projects were undertaken during the year under review:

Study on the State, Size and Shape of Community Radio in South Africa

The study is aimed at compiling what is arguably the first comprehensive study of community radio in the country. It is funded by the Centre for Civil Society at the University of KwaZulu Natal and the Open Society Foundation of South Africa. The study consisted of a literature review and fieldwork in seven provinces. The two provinces that were not visited were KwaZulu Natal and the Northern Cape.

At the time of compiling this report the study was being finalised. One of the deliverables already produced through the study is a chapter titled *Giving the people access: the challenge of community radio stations* in a book edited by William Gumede. The book is titled **Media, democracy and transformation**. The book was due for release at the time of compiling this report.

The two other deliverables will be a research report for both funders and a book. Both were being completed at the time of compiling this report. Lastly, it is hoped that other deliverables such as journal articles and newspaper articles will be produced from the study.

The expansion of the South African media and ICT companies into the SADC region

The study is aimed at producing the first comprehensive body of knowledge that examines the expansion of South African capital into the Southern African Development Corporation (SADC) region, with a special focus on media and the information and communication technology industry. The study is funded by the Open Society Initiative for Southern Africa. It seeks to examine the extent to which the expansion of South African capital enables, or disables, diversity and freedom of expression and more specifically the extent to which this expansion is a manifestation of South Africa's sub-imperialism in the SADC region, and to some extent even on the whole of the African continent.

Once completed, a lobbying and advocacy strategy will be developed that will involve regional organisations. The focal point of such lobbying will be to expose and start challenging South Africa's sub-imperialism and its manifestation. At the time of compiling this report the study was being translated into a book.

The impact of the convergence of broadcasting and telecommunications regulation on community radio

It was reported in the last report that the World Association of Community Broadcasters (Amarc) commissioned the FXI to research and compile a study on the impact of the convergence of broadcasting and telecommunications regulation on community radio. The study was conducted by Jane Duncan and later published by Amarc under the titled *The Convergence of Telecommunications and Broadcasting Sectors and Its Impact on the Community Radio Sector in South Africa: Some Lessons for other African Countries* (2005).

Evaluation of training for the Workers World Media Productions

The Workers World Media Productions (WWMP) commissioned the organisation to conduct an evaluation of a week-long training programme for the hosts of the labour community radio project, a joint project between the WWMP, the

Congress of South Africa Trade Unions, the National Council of Trade Unions, the Federation of Unions of South Africa, and the National Community Radio Forum. The evaluation was successfully compiled and submitted to the WWMP.

Audit of African Public Broadcasting

The second meeting in preparation for the audit of African public broadcasting was held from the 25th till the 29th November 2005. The meeting was attended by delegates from South Africa, Zambia, the Democratic Republic of Congo, Senegal, Madagascar, Ghana, Namibia, Angola, and Botswana.

The aim was to have the meeting being representative of all the regions on the continent, that is, the South, North, East, West and Central regions. However, representatives from the East and North could not attend. Efforts are being made to ensure that these regions are represented in the next meeting.

The project is aimed at compiling a comprehensive study of public broadcasting on the continent. The ultimate aim is to produce a body of knowledge that will be usable by stakeholders on the continent to lobby and advocate for free (from both governments and private capital) and fully funded public broadcasters while at the same reducing the current levels of conceptual dependency whereby African policy makers always have to turn to Northern countries to formulate and shape the policies for public broadcasting.

The second meeting was highly successful. A *Memorandum of Understanding* was signed amongst participants. This means that there was a commitment from all participating organisations that attended the meeting to be part of the project. A project committee was also chosen. The committee will work closely with the FXI, which is the project coordinator.

Lastly, a funding proposal has been prepared. The Netherlands Institute for Southern Africa (Niza) has offered to assist with fundraising.

The project should be launched in earnest once funds have been secured.

Communications Rights campaign

As indicated earlier, the existence of two positions within the Programme has brought in a new and fresh dynamism within the organisation. Since the end of August 2004 the organisation began to practically engage in active community activism with a number of organisations.

The Programme initiated the Communications Rights campaign. The campaign is aimed at highlighting the gross violations of peoples' rights to communicate by telecommunications companies, particularly Telkom, which is failing to meet its mandate primarily because of the privatisation process.

The campaign takes many forms. In the first place, selected members of identified organisations are trained to gain a deeper understanding of the telecommunications sector. This takes the form of workshops where various topics are addressed. Secondly, there are mass meetings where the Programme outlines to members of the community what some of the problems within the telecommunications sector are. Thirdly, the Programme has embarked on a door-to-door campaign wherein members of the communities are canvassed to support a call for affordable telephone rates and to also articulate their own problems. Fourthly, the Programme embarks on mass mobilisation. A successful march was organised and held to the headquarters of Telkom on the 21st October 2004.

At the time of compiling this report a Peoples Court was in the pipelines. The aim of this Court would be to highlight telecommunications rights and the denial thereof, especially amongst and for the poorer sections of the society.

Similar processes are organised with regard to the media. A number of workshops have been held thus far that are aimed at highlighting the state of the media in the country. Responses to these workshops have been very positive. A media Task Team has been formed. The Team is drawn from members of the media committees of various social movements that the FXI works closely with.

At the time of compiling this report a public meeting aimed at examining the state of the South African Broadcasting Corporation was being organised. The meeting would be attended by interested parties within the broader communications sector and members of the broader public, drawn strategically from community organisations.

To achieve some of the above activities the Programme has developed working relations with a number of community organisations and social movements. Some of the organisations that the Programme collaborates with are the Landless Peoples Movement, the Anti Privatisation Forum, the Soweto Electricity Crisis Committee and many others.

Policy interventions

In addition to the above activities, the organisation continued to monitor the national policy environment. A number of policy developments unfolded during the period under review. It is impossible to interface with every development that arises. Therefore, the Programme singled out three developments that it considered critical to freedom of expression and the right to communicate. This does not however mean that others were of less importance. It may well be that lack of capacity (enough human resource) is also a determining factor in choosing certain policies while leaving others out. The following three were the ones that the Programme actively participated in:

SABC Licensing

The Independent Communications Authority of South Africa (Icasa) released a discussion document (for public comment) regarding the broadcast licenses for the South African Broadcasting Corporation (SABC). This was in March 2004.

A comprehensive submission was prepared and sent to Icasa on the 9th June 2004. This was followed by an oral submission on the 22nd September 2005. Icasa released the draft licensing conditions on the 14th February 2005. Without taking too much credit, it will not be an exaggeration to claim that the organisation managed to influence the thinking process that went into the formulation of the Draft Licenses for SABC services. Most of the points raised in the submission made by the organisation were reflected in the Draft Licenses. Icasa called for another round of submissions, and again the organisation made a submission.

At the time of compiling this report Icasa had not released the final Licenses for the SABC. The experiences during the submissions and presentation highlighted once again the importance of participating in the limited spaces provided by some of the existing statutory bodies that seem to have an 'open door' policy, like Icasa.

Telkom Price Cap

The second policy intervention that the organisation made was the Telkom Price Cap review. The review was still under discussion at the time of compiling this report. The review involved considerations made by the regulator about new pricing regime for the telecommunications operator. The organisation commissioned economist Patrick Bond to assist with the drafting of the submission, which was presented on the 14th December 2005.

Convergence Bill

In December 2003 the national Department of Communications released a draft Convergence Bill for public comment. As reported in last year's report, the organisation raised funds for a short research that would assist the process of firstly understanding convergence as a new phenomenon within the communications sector and, secondly, assist the organisation to ultimately prepare a submission for the Bill.

The 2003 Draft Bill was recalled by the DoC as it was said to have been badly drafted. Indeed many analysts agreed that what was released then was not a convergence bill in a real sense. Nonetheless, funds were raised and the University of the Witwatersrand's Link Centre was commissioned to compile a short, easy-to-understand document that would not only be used by the

organisation but also by community-cased initiatives such as community radio stations to familiarise themselves with convergence legislation and processes.

A seminar was held by the Programme on the 26th August 2005. It was attended by nine community radio stations and the national office bearers (one each) from the National Community Radio Forum and the World Association of Community Broadcasters (Amarc), plus the representatives from the funding organisation, the Open Society Foundation of South Africa.

Whereas the 2003 draft Bill was withdrawn the knowledge developed through the above initiative became valuable during the period under review. In February 2005 the Department of Communications released a better-drafted Convergence Bill. The organisation compiled a short submission that was sent to the parliamentary portfolio committee on communications on the 8th April 2005.

At the time of compiling this report the organisation was preparing for an oral submission, which would be made during the public hearing in parliament.

Media

The Head has increased the Programme's media profile. This is done mainly through feature/opinion articles written for various newspapers. The two newspapers that have been cooperative and receptive are the *Business Day* and the *Sowetan*.

The period under review has been that of major strides achieved by the Programme, and therefore the organisation as a whole. As indicated earlier, one of the major accomplishments was the fusion of conceptual work and activism. The organisation is gradually, but firmly, gaining ground within a number of communities.

The Access to Information Programme (ATIP)

The FXI successfully raised funds from the Open Society Initiative for Southern Africa to establish a one year pilot project on access to information. The pilot project is being undertaken to plan for a three year regional access to information programme, focusing on access to information for economic justice.

On 1 November 2004 the Access to Information Programme Head, Titus Moetsabi, commenced work with the FXI. The Programme Head was faced with the challenge of turning the theory of project documents into practical reality using the available resources for the one year pilot, which if everything went well, would roll into a multi-year three year sub-regional campaign on access to information (ATI) campaign in SADC. The SADC campaign would build on work around ATI that has been undertaken in South Africa such as lobbying and advocating for an Act, managing to get the Act enacted, and enforcing the

legislation while monitoring outcomes of requests for information nationally. In order to contextualise the programme work it is strategic to revisit the mission and objectives of the programme.

The mission of the ATIP is to develop an access to information programme that advances the cause of economic justice in the Southern African Development Community (SADC) region by focussing on access to information to support the work of the region's economic justice networks (EJNs), non-government organisations (NGOs), community based organisations (CBOs) and social movements (SMs) struggling for the realisation of socio-economic rights.

In order to realise this mission, the following objectives will be fulfilled by the Programme:

- To access information about the state of delivery of basic services such as water and waste management, electricity, health, and transport with a view to having these evolving basic human rights written into the Constitutions of SADC countries.
- To address information deficits being faced by organisations struggling for socio-economic justice, and in the process develop 'models' that can be drawn on when the project is developed into a long term, multi-year programme beyond 2005.
- To engage in access to information activities around debt and debt related issues in SADC, budget monitoring and participatory budget making in SADC, transparency in macro-economic decision making in SADC, International Financial Institutions (IFIs) and their effects on SADC, Trade in SADC with specific reference to South Africa's expansion.
- To develop a common set of access to information principles that join together the activities.
- To develop a 'model' access to information law that economic justice groups could use to lobby for.
- In countries where ATI legislation exists, to file information requests relating to the activity areas; in countries where ATI legislation doesn't exist but constitutional provisions exist – to mobilise EJNs to ensure legislation is passed; in countries where constitutional provisions do not exist to mobilise EJNs for democratic constituent assemblies.

Tremendous milestones in the administrative and programmatic spheres have been accomplished in the first 6 months of the programme. These follow below.

The ATIP Administrative Systems

The ATIP has an internal communications strategy through which it keeps the executive director, the board and the annual general meeting abreast with activities and impacts progress. This vertical line communication is structurally complemented by a lateral communication network that involves other Heads of

Programmes and administrative support staff. The ATIP sees the administration of the programme as the fuel upon which the programme car moves. A variety of communication tools and methods are being used to keep the regular pulse of the ATIP such as staff meetings that are embedded with weekly progress reports, intranet, bilateral consultations, management, executive committee, general meeting, annual report briefs and financial reports that reflect actual against budgeted expenditure.

The ATIP has various publics in South Africa and the SADC region. These include but are not limited to individuals and organisations wanting to file requests for access to information, civil society organisations involved in access to information activities like Open Society Initiative for Southern Africa, Southern African Centre for Economic Justice, the Southern African Trade Information and Negotiation Institute, Media Institute of Southern Africa and its branches, South African History Association, Open Democracy Advice Centre, Human Rights Institute of South Africa, Media organisations like the African Investigative Journalists, Jubilee Angola-South Africa-Zambia, Zambia Association for Research and Development, Lesotho Council of NGOs, Botswana Council of NGOs, Namibia National Society for Human Rights, Malawi Economic Justice Network, Swaziland Council of NGOs, Mozambique Economic Justice Coalition and the Zimbabwe Coalition on Debt and Development.

The ATIP has identified collaboration partners for facilitating the campaign in each of the participating countries on the ground. These campaign facilitating partners are from South Africa, Namibia, Malawi, Zambia, Swaziland, Botswana, Lesotho, Mozambique, Angola, Zimbabwe and constitute the regional campaign steering committee. The steering committee relations are moderated by a Memorandum of Understanding between FXI and country partners. Each country partner coordinates an interest group of civic society organisations working in the area of ATI and economic justice issues. Thus, a web of communication takes place between FXI, the regional campaign steering committee, the in-country campaign partner and members, as well as a think tank that consists of experts in the activity areas that advice FXI ATIP as and when necessary. A legal literacy campaign of this nature as of necessity also collaborates will all sections of the justice delivery system such as the courts, lawyers and the police; and international networks in the filed of ATI. All these intermediary organisations are supposed to assist the access to information campaign to be grounded in the villages, the peri-urban areas, and other like communities made to be resource poor through deliberate pro-rich policies and information. The Access to Information Campaign for Economic Justice is designed to be a social movement located at citizen level. The clear communications structures are aiding the evolving campaign to be effective, economic and efficient. A communication campaign should not be found wanting in communication!

The Access to Information Programme Milestones

The Situation Analysis

A consultant was engaged in December 2004 to research on ATI and SADC needs, opportunities, problems and success in this area. The research findings were the following:

- Expression and access to information is a right owned and practiced by all.
- Access to agreements between member states and the creditors is essential (IMF, ADB and the WB). In particular, information on the terms and conditions of loan agreements.
- Finance Ministers in most SADC countries have immense powers that enable them to unilaterally enter into agreements with IFI's. Campaigns should be developed around access to information in the hands of Finance Ministries.
- Basic information on revenue and expenditure as provided for mostly in Medium Term Expenditure Budgets of many SADC countries position organizations involved in debt and debt related issues to examine the extent of the borrowing of their countries; and
- Conduct workshops with government officials on issues and debates around the World Trade organization.
- Budget analysis and monitoring requires reliable information;
- The use of other legislation other than national legislation, for instance, at local government level providing for access to information on local government revenue and expenditure has proved useful for organizations looking into budget formulation and analysis. In South Africa the Municipal Finances Management Act is a case in point whilst in Malawi the Public and Management Procurement Act is quite instructive.
- There is also agreement that in addition to the problems of unemployment and poverty, youth in SADC face the critical problem of HIV/ AIDS. Access to information around socio- economic rights should have a specific focus on these groups;
- A general measure of the extent of inequality between women and men in areas of socio- economic and political participation and decision making in SADC illustrates that women are still relatively weak and vulnerable compared to men;
- Some SADC countries still have laws that discriminate against women and exclude them from decision making in society. Campaigns should therefore also be directed at repealing laws that discriminate against women whilst advocating for access to information legislation.

It is worth noting that the post evaluation of the programme's activities will also take place against the background of the strategic areas of intervention identified hereunder:

- A need to reach consensus with the partners about the importance of integrating access to information work in their respective areas of work linked to the attainment of socio-economic rights.
- There is need to explore the capacity of the Access to Information Programme's partners to integrate access to information work in their respective campaigns.
- A data base should be established that tracks trends and developments in access to information work in the respective SADC countries.
- There is a need for the development of strong advocacy material particularly around the link between access to information the realization of socio- economic rights.
- A model access to information legislative framework should be explored – and must provide basis for engaging in consultative processes where there is move towards the enactment of freedom of information legislation.
- As noted above, most SADC countries still have laws that discriminate against women and exclude them from decision making in society. There is therefore an added impetus to advocate for constitutional reform over and above access to information legislation.

The Memorandum of Understanding

A Memorandum of Understanding (MOU) for regional collaboration was developed and adopted by the FXI Executive Committee. It will be signed by collaborating partners on 26 April 2005.

The First Regional Meeting of the Steering Committee

This was held on 13 January 2005. The meeting debated the situation analysis qualitative baseline report on ATI in SADC, terms of collaboration to be captured by the MOU, and key issues to be pursued by the campaign in the participating countries around debt, international financial institutions, trade, budget making, transparency and South African hegemony in SADC. The Steering Committee members agreed to go back to their home countries and establish in-country networks which would in turn be responsible for designing each in-country campaign programme, work-plan, and budget. Participants were delighted to be involved in the programme early in the programme design, that is , two months after commencement.

Presentations

The ATIP made a presentation on Access to Information and access to learning materials – Integrating Intellectual Property Rights and The Development Agenda- on 24 January 2005. South Africa University Vice Chancellors Association (SAUVCA), Committee of Technikon Principals (CTP), Consumer Institute South Africa (Cisa), jointly hosted the conference. The main sessions

that contributed to the ATIP growth were those on Trade Policy and Access to Learning Materials, and Open Source Software and the Public Domain in Education which exposed how social movements in these areas are undertaking campaigns for alternative open society copyright laws as well as creating through the concepts of ‘ creative commons and commons sense’; materials for learning that are copied and distributed for free learning while acknowledging the originators and ensuring that such materials were not sold hence their availability for resource poor communities-this is the concept of Gnu Free Documentation Licence (GFDL). This paradigm had parallels that could be adapted for the ‘model access to information law’ campaign in SADC. A major theme of the conference was the recognition that the idea of open access publishing models to allow more access to learning materials is very attractive as it is founded on the ethos of shared, participative development.

Social and Economic Justice Court Cases

The ATIP and the Legal Unit of FXI submitted a Notice of Appeal on November 17, 2004 against the Department of Water Affairs in the case where FXI is contesting the issue of privatisation of water and the concomitant limit of the free threshold of 6000 litres of water per household per month.

The two units have also collaborated in the Ebrahim Harvey case in which Ebrahim Harvey is trying to access certain documents from Johannesburg Water in order for him to complete his Masters Degree on corporatisation of water and sanitation services. The case is a clear illustration of the paradox of struggling to get information since 2002 in a country with a ‘progressive’ freedom of information legislative framework. The case is now pending arguments in the High Court.

FXI has filed a landmark ATI request to the Department of Trade and Industry asking for documents to be used by South Africa at the WTO, 6th Ministerial Conference in December 2005 in Hong Kong. The rationale of this request is to assess how South Africa’s negotiation position will impact on people in South Africa’s socio-economic rights.

Training in ATI, Information, Advocacy and Education

The ATIP has developed a power-point presentation for use in advocacy and lobbying training as well as education on the right to information. This presentation was used to sensitise and mobilise civic society organisations in Zimbabwe, Namibia, South Africa, and Zambia, so far. A yawning knowledge gap exists on what ATI is and how to demand it and get it. The South African training has been at the invitation of the Human Rights Institute of South Africa (HURISA) and, aimed at municipal councillors in Limpopo Province

The Model Access to Information on Socio-economic Justice Law

A consultant has been contracted to research and give a legal opinion on issues that need to be tackled in the context of ATI and the programme activities [debt, trade, international financial institutions, budget making, transparency in decision making and, South African Hegemony in the SADC. The outcomes of this research should lead the same consultant to then recommend a model ATI law that empowers ordinary citizens to easily request access to records that relate to their socio-economic rights.

African Social Forum and World Social Forum

In addition to self-initiated projects and campaigns and policy interventions, the organisation is also an active participant in other activities that are deemed to be of relevance to it. One of these is the World Social Forum and its related activities.

In December 2004, from the 10th till the 14th, the FXI attended the African Social Forum meeting that was held in Lusaka, Zambia. The ASF meeting served as a platform to articulate some of the experiences gained through the work undertaken by the Programme. It also served to develop links and networks with other organisations that are involved in similar work. For instance, the meeting served as a good platform to popularise the research work conducted by the Programme such as the study on the expansion of the South African media and ICT companies into the SADC region, and also gave an opportunity for the Access to Information Programme to network.

From the 26th January till the 1st February 2005 the FXI also attended the fifth World Social Forum held in Porto Alegre, Brazil. Again the WSF meeting served as a networking platform for the organisation.

Conclusion

South Africa occupies an important position in world and African politics and is seen by many as a vibrant and participatory democracy - with a solid democratic culture. In such a position, South Africa plays an important role in shaping and influencing world processes and should lead by example. However, of late many questions are being asked about the extent of democratic space and the state's response to political activities engaged in by social movements and poor communities. Public opinion is still divided on whether South Africa is in fact reverting to a repressive state, but the lack of agreement on whether or not the state is repressive or rather intolerant of criticism and dissent should not prevent us from observing and analysing trends. In doing so we will remain alert to exclusionary political processes that deny people their basic political rights, as we cannot take for granted democracy’s conditions of freedoms of expression, association and assembly.

What the FXI has learned through its work in the past year is that the South African state and its class alliance have taken a hard-line stance towards any form of political action undertaken by pro-transformation struggles by social movements, pro-democracy organizations and individuals; in some instances, the state has condemned these actions as externally orchestrated, unnecessary and defeating the transformation agenda led by government. In closing down political spaces needed for democratic participation, the South African state has demonised and criminalized political activities, and most recently it has engaged the National Intelligence Agency (NIA) to investigate the 'instigators'. Recent uprisings and protests clearly demonstrate that the state is ready to react with repression and legal / court action, rather than negotiation.

There are many lessons that the FXI has learnt in the past year in the field of freedom of expression in South Africa. One of those is that a well-informed public, which understands the profundity of the right to freedom of expression in the daily discourse of society, stands as perhaps the best bulwark against censorship. In this sense, an expanding assembly of individuals able to articulate and defend their right to free expression offers one of the most effective mechanisms for checking the tide of onslaught against freedom of expression from either the state or private sources.

It is out of this realisation that the evaluation of the ACP has urged the Programme to embrace a strategic shift in regards to its work and move out of its largely "reactive, fire-fighting" mode to a "proactive, sustainable" role. This will entail capacitating and empowering those sections of the society most at risk from acts of censorship and especially the social movements, community organisations and trade unions. Building and maintaining a sustainable and efficient Programme also means prioritising the freedom of expression cases that the ACP handles, undertaking a comprehensive study of the impediments against free expression and establishing a well considered media strategy.

All these factors have been considered and used in informing the proposed restructuring of the Anti-Censorship Programme. It is for this reason for instance that the Programme proposes to get into the new area of research, which hitherto has not undertaken. Similarly, knowledge sharing, skills transfer and capacity building will underpin all the education and training work undertaken by the ACP in future. Lobbying and campaigns against censorious legislation or acts of censorship have major implications for the country's free expression environment, and will also entail the active participation of key strategic allies and fraternal organisations, rather than the ACP alone engaging state institutions or other offending sources of censorship.

While the achievements attained by the Media and ICT's Programme have put the organisation on a strong footing, there are also challenges. Workload remains one of the major challenges for the Programme. By its very nature the Programme, particularly the research and policy side, is work intensive. There is

a strong need for additional personnel within the Programme. The intention is to employ a researcher, who will conduct some of the studies and also assist with policy work.

The main programmatic puzzle for the Access to Information Programme is to design the regional campaign for stand-alone ATI legislation strategically, realistically and in an achievable way. Each of the programme activity areas can be a campaign issue and it is impossible to run a campaign covering all these issues in each country. Rather, a positive bias has been made to identify the campaign pressure point issue in each country and use that as the theme to open up the ATI social movement in each country. The ATIP is also conscious of the fact that the programme activities consists of the advocacy and lobbying regional campaign as well as the enforcement of the right to information litigation, training, and publicity activities in South Africa itself. Time will need to be balanced between the two different but intermingling campaigns. The two campaigns also raise human resource issues, and its becoming clear that another programme person is required in the multi-year scaling up of the programme.

The process of developing the multi-year fundraising proposal has begun in Zambia, Zimbabwe, Namibia and Lesotho. The time lines are very tight and regional partners will have to work faster for the deadlines to be met. More resources are even needed in the pilot phase for public interest litigation around access to information cases that are increasing in South Africa as people become informed.

Materials need to be developed for the campaign. This will require engaging a media house to work with ATIP in developing requisite audio-visual materials and campaign paraphernalia.

The challenges are surmountable with the requisite care and passion being given to the campaign. This passion and energy is there right now as can be demonstrated by the regional campaign national networks being formed and the general civic society interest in the campaign.

In summary the FXI will need to develop sufficient human resources and financial capacity to meet the rising threats to freedom of expression, that are flowing thick and fast. In the past few months, the country has witnessed a rise in protest action that is unprecedented in South Africa's democracy. Thousands of people are exercising their right to freedom of expression in the most direct manner possible, and aspects of the state are reacting with increasing hostility, intimating that the protests constitute a threat to national security. South Africa needs a proper public debate about how to respond to the growing frustration of the poor: a debate that the media should facilitate. This will require a greater investment in the media's investigative capacity - which will inevitably attract more litigation - and a reversal of the dumbing down characterized by the growth of tabloidisation.

These are great challenges indeed, and if we do not meet them then South African may yet reap the whirlwind of incomplete transformation.

Endnotes

[1] Thabo Mbeki, 'Meeting the challenge of the second economy', Letter from the President, *ANC Today*, Volume 3, No. 45, 14-20 November 2003.

[2] Thabo Mbeki, 'State of the Nation Address', 6/02/2004, http://www.anc.org.za/ancdocs/history/mbeki/2004/tm0206.html.

[3] Iraj Abedian quoted in Mbeki, T. 'Do the South Africans exist?'. Letters from the President. http://www.anc.org.za/ancdocs/anctoday/2005/at12.htm
[4] Reference

[5] Unemployment amongst 'whites' has increased by 150 percent, by 157 percent amongst 'coloureds' and by 95 percent amongst 'Asians'. According to the Bureau, 'unemployment among the African population group increased by about 23.3 percent in 1991 to 47.8 percent in 2002. See 'Changes in the levels of employment and perceptions on economic progress', Markinor, 20/11/2004/, http://www.biz-community.com/Article/196/19/5310.html.
Ibid

[6] Unnamed Municipal Manager quoted in Mbeki, T. 'Signs of Hope in Local Government'. Letters from the President. ANC Today Vol. 5. No. 4. 28 January 2005. Downloaded on 15/04/2005 at http://www.anc.org.za/ancdocs/anctoday/2005/at04.htm.

[7] Cite incidents…

[8] Tleane, C. …

[9] 'Whose Master's Voice? A Comparison of SABC 3 and e-tv News'. Media Monitoring Project. 2005. 2-4. Downloaded on 15/04/2005 at http://mediamonitoring.org.za/cms/files/SABC_etv_comp_summary_final.pdf.

[10] LAUGH IT OFF PROMOTIONS CC V SOUTH AFRICAN BREWERIES INTERNATIONAL (FINANCE) BV T/A SABMARK INTERNATIONAL, case no: 242/2003 at paragraph 41.