



FREEDOM OF EXPRESSION INSTITUTE (FXI)

Annual report - 2005/2006

Introduction

The year under review saw some worrying developments with respect to freedom of expression. Protest action escalated around poor service delivery; in the process, the right to demonstrate became a key issue. Protest action peaked during this period, with the Minister of Safety and Security, Charles Nqakula, reporting in Parliament that there were 5,000 protests all over South Africa in 2005. This statistic is comparable to the number of protests that took place in the early 1990's, when the Regulation of Gatherings Act was developed by the Goldstone Commission of Enquiry. Unfortunately, the injustices and inequalities of the past continue to plague South African society and issues of basic civil and socio-economic rights continue to haunt the poor.

In the year under review, a range of crisis committees and concerned citizens' groups sprang up in different parts of the country. These groups have rallied citizens into popular mass-based social protest action. The state response has, in some instances, been intolerant and suppressive of such action. While violent service delivery protests have become a feature of South Africa's political landscape, this violence can often be the culmination of pent up frustration on the part of communities who feel that their voices are not being heard. The FXI has handled a number of cases where local authorities have banned gatherings illegally, and has been successful in contesting at least two such cases. There are indications that other local authorities are also abusing their power to ban gatherings, leading to communities taking to the streets in any event. The result is a spiral of violence between state and communities. These incidents are especially marked in small towns and rural areas, and may therefore take place outside the glare of the largely urban-based mainstream media. The FXI has therefore been challenged to develop intervention strategies in areas outside Gauteng.

The FXI is also seriously concerned about the state of media freedom in South Africa. Living in a post-1994 South Africa, most people expect that media freedom should not be an issue that is questioned. However, a number of developments over

the past year give us cause for unease regarding the path that South African society is treading in terms of protecting its hard-won freedoms.

An extremely worrying endeavor to undermine media freedom and independence in South Africa is the attempt by the Department of Communications and Communications Minister Ivy Matsepe-Cassaburi to compromise and subvert the independence of the Independent Communications Authority of South Africa (Icasa), the regulator of electronic communications. The Department has tried, in various ways, to subject Icasa to the Minister, most recently through the Icasa Amendment Bill which sought to have Icasa commissioners appointed by the Minister rather than by parliament, which is currently the case. Fortunately, President Thabo Mbeki refused to sign the bill and it has been referred back to parliament. A compromise has since been arrived at. However, Icasa seems to lurch from crisis to crisis, with ongoing allegations being made of internal weaknesses in governance and management.

Another institution that continues to attract controversy is the South African Broadcasting Corporation (SABC). Disputes have arisen around the extent of the SABC's editorial independence, leading to the credibility of the SABC sinking to its lowest point since the advent of democracy.

We have also, in the past year, seen an increase in the incidences of judicial censorship. This was seen, for example, in the case of the cartoons of Prophet Muhammad where the High Court granted an interim interdict preventing a range of publications from reproducing the cartoons. Another way in which media has increasingly been silenced over the past year is through the use of defamation suits.

Another major issue that the FXI has been dealing with in the past six months is the question of journalists' right to protect their sources. The issue was brought into sharp relief by the case of the *Mail & Guardian* and the civil and criminal cases brought against it as a result of its reportage on the "Oilgate" scandal. The FXI also responded to the violation of the freedom and independence of the media, when journalists were banned from the court appearances of former Deputy President Jacob Zuma.

Other areas of concern that have emerged in the past year relate to academic freedom and the freedom of expression rights of employees who are critical of the conduct of their employers. These areas need to be monitored carefully in the coming year.

The situation in some parts of the rest of Africa is much worse. Eritrea is regarded as the world's worst jailer of journalists, with at least 13 journalists in prison currently. The situation is only marginally better for journalists in the DRC, Gambia and Zimbabwe. Even outside of Africa, there is not much to celebrate on World Press Freedom Day. The media certainly is not free, for example, in the United States, supposedly the centre of 'the free world' where news production is carefully managed by US government and powerful business interests and where the fear of having a voice of dissent is becoming suffocating for many people. The FXI's role in countering censorship on the continent and internationally has increased. The FXI is a founder member of the Network of African Freedom of Expression Organisations (Nafeo), and was voted onto the Council of the International Freedom of Expression Exchange (Ifex) at its general meeting in February.

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 third year of existence, with a reduced amount of funding. The Community Media Policy Research Unit was merged with the Media and ICT's Programme. The Access to Information Programme entered its second year of existence, and the Legal Unit was established following the FXI's accreditation by the Law Society of the Northern Provinces. 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.

In the previous annual report, it was noted that 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 to do so without dependence on a single or narrow base of technical resources, human resources and funding sources. During the course of 2005, the plan was implemented, resulting in stronger planning, monitoring and evaluation systems.

Finance and Administration

Splitting of Finance and Administration Units

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 sustainability plan placed particular emphasis on the efficiency and effectiveness of this Unit. According to the plan:

Strategic competence and management are essential elements, if FXI is to consolidate and grow into a stronger and a more sustainable organisation. Vital to all of the above is an effective administration and finance unit to assist and provide the support for management and sustainability requirements in the coming period. Therefore the integrated planning system, the strategic issues landing on the desk of the ED and most importantly the space that needs to be created for the ED to deal with the strategic issues and sustainability is paramount. It is the opinion of the consultant that if these challenges, recommendations and plans proposed in this report are not dealt with decisively, it will impact negatively on the effectiveness and efficiency of FXI.

One of the decisions flowing from the Sustainability plan is that the Finance and Administration Units would be separated, so that the Head: Finance would be freed up to engage in more financial planning and forecasting. This split was effected in 2005, and Pinky Magau was promoted to the position of Head: Administration.

Finance Unit

Gail Snyman continued in her role as Head: Finance. 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. The finance department continues to support the activities of the FXI and to undertake its function by establishing and maintaining the accounting systems and practices that support the systems and internal controls. The controls continue to provide assurances that the transactions of the organisation are carried out and put into practice in accordance with good financial practices. Nevertheless funding remains a huge challenge and the FXI continues to battle to fund its budget fully.

Administration Unit

2005 represented the first year of the Administration Unit as a stand-alone Unit. 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.

Programme reports

Anti-censorship Programme

Introduction

Following the recommendations of the review process that FXI had undertaken, the Anti-Censorship Programme (ACP) set itself on the path to develop a more pro-active approach and one that is able to assist communities and organisations more ably, rather than only the reactive, more individualistic and legalistic approach. Thus, the FXI is increasingly dealing with the denial of the right to protest, march and organise. In doing this, the FXI wants to also:

- build solidarity and support among various stakeholders,
- build capacity and awareness that will sustain political actions and yield results.
- help develop collective leadership and ownership of issues.

These principles are intrinsically interlinked and mutually reinforcing, and should not be confused or conflated. Each one is significant for the success of the other.

Direct and indirect responses to censorship remains a key aspect of the work of the programme. This has taken 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 ACP has also used the International Freedom of Expression Exchange (IFEX) network to publicise instances of censorship and to call for solidarity from fraternal organisations across the globe. In addition, the programme has, where necessary, used legal interventions to defend individuals whose right to freedom of expression has been constrained, be it at the instance of the state or through private persons or institutions, where censorship has been identified as posing a critical challenge to free expression, include state repression, 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.

Freedom of Expression Network

With regard to this, and in attempting to follow a pro-active approach, the FXI has embarked on a process to set up a national Freedom of Expression Network. Much work has been done in the past year in this regard. The objectives of the network are:

- To capacitate a range of movements and organisations of the poor to eliminate censorship, a denial of free expression and repression directed against them;
- To encourage the development of new movements and organisations, and the strengthening of existing ones, by ensuring that the democratic space

exists for them to grow where they are needed in order to represent grievances;

- To ensure that censorship and repression is countered on a national basis, especially in areas and provinces where the FXI and even the various social movements do not have the capacity to assist;
- To network a range of community organisations that have developed in response to poor service delivery and that are on the coalface of repression, to strengthen their ability to continue their work by bringing collective pressure of the network to bear on the perpetrators of censorship and repression; and
- To stop growing censorship and repression in South Africa, a phenomenon which could have a destabilizing effect on the Southern African region as whole.

The past year saw the beginnings of the Network taking shape. Two workshops were held in Harrismith, the first as a follow-up to the tragic events there at the end of 2004 when police fired on protestors and one, Teboho Mkhonza, was killed. The Harrismith workshops were targeted at activists from Intabazwe Township in Harrismith and from Viljoenskroon. The second workshop also included a representative of the shack dwellers movement, Abahlali Base Mjondolo, from Durban. The workshops served to introduce the idea of the Network to the Free State. They also served as legal empowerment workshops where training was given on the Regulation of Gatherings Act.

In April this year, a national workshop was held in Johannesburg, together with the Social Movements Indaba. The workshop had a twofold purpose: strategy planning for the Freedom of Expression Network, and legal empowerment. The latter component included training around a number of laws in South Africa, including the law of delict, the Regulation of Gatherings Act and the Promotion of Access to Information Act, among others. The workshop brought together activists from social movements, residents associations and crisis committees from across the country to deliberate on the issue of setting up such a network. The very successful workshop made the following recommendations.

Movements unambiguously agreed on the need for a national Freedom of Expression Network. The possibility of such a network extending the services that the FXI was currently offering movements into their own areas and structures was an attractive one, as was the possibility of movements acting in concert and in solidarity.

Durban's Abahlali base Mjondolo announced their plans for an "UnFreedom Day" event, scheduled to take place on Freedom Day, 27th April 2006. It was recommended that activists from outside of Durban should try to attend and participate in the event. The workshop endorsed the FXI's proposal to approach Ministers Sydney Mufamadi and Charles Nqakula to impress on them the need to bring local authorities into line regarding their implementation of the Regulation of Gatherings Act. The workshop decided to set up a "liaison committee" which will help develop the FX Network. The committee consists of one person per province that was represented at the workshop. The committee will be responsible for liaison between the different provinces / organisations, helping in the sharing of information and coordination of solidarity activities.

The next five years will see the Network becoming firmly established and a healthy relationship between the Network and the FXI, where the FXI will act as a service organisation to the Network, whose members are increasingly becoming the FXI's new constituency. Besides work on the Network, the ACP has also been involved in a number of individual cases. Below are some of these cases.

Thoko Mkhwanazi-Xaluva case

Thoko Mkhwanazi-Xaluva is a former director in the Office of the Rights of the Child (ORC), based in the presidency and reporting to Minister Essop Pahad. In June 2003, Mkhwanazi-Xaluva was dismissed by the Presidency for, she claims, having blown the whistle on sexual harassment by a consultant to the ORC who, she says, was a friend of Pahad. The matter was referred to the General Public Service Sectoral Bargaining Council, which reinstated her in November 2003. She was dismissed again for interviews she had given to the media regarding her initial dismissal. The FXI got involved because this was a case of censorship of an employee and because we believe that she should be protected as a whistleblower and not disadvantaged because of it. The ACP assisted Mkhwanazi-Xaluva with advice on how she might proceed with the matter. The matter went before the General Public Service Sectoral Bargaining Council on the 21st February 2006. The FXI attempted to assist Mkhwanazi-Xaluva in getting an advocate to argue her case. Unfortunately, after numerous attempts, we failed to do so.

The Mail and Guardian and protection of journalistic sources

The issue of whether or not the courts should have the authority to compel journalists to disclose their sources remains hotly contested on ideological and political grounds. Even within the media fraternity, the views are divided. This issue, in the past year, assumed serious proportions in the case between the *Mail & Guardian* and Imvume. Imvume had been demanding that the *Mail & Guardian* be compelled to divulge its sources for its articles about the "Oilgate" scandal and the accusations made therein about Imvume. The *Mail & Guardian* claimed that the state, through Imvume, had supported the ANC election campaign to the tune of about R11 million. Two cases were filed against the *M&G*: a civil case by Imvume and a criminal case. The FXI filed an *amicus* intervention in the civil case and is also assisting the *Mail & Guardian* with its legal costs. Imvume had initially refused us *amicus* status but subsequently reconsidered their position. They are yet to give us that undertaking in writing. The FXI, the South African National Editors' Forum (SANEF), the Media Institute of Southern Africa (MISA) and the Media Workers' Association of South Africa (MWASA) pooled resources for the civil case to challenge Imvume's assertion that the information was improperly obtained and that the *Mail & Guardian* must be forced to reveal its sources. Subsequently, the state issued a section 205 subpoena to the *Mail & Guardian's* internet host, M-Web, in the process of investigating a contempt of court charge against the newspaper.

The FXI issued several media releases and has given many radio interviews on this matter. The matter is still pending, with none of the cases having reached a conclusion. The FXI has secured some funding from the Network Media Programme of Open Society Institute to continue dealing with this matter. The FXI has also called on the Ministry of Justice to amend the Criminal Procedures Act to recognise the fact that journalists have a 'just excuse' not to reveal sources. The ACP and the South African National Editors' Forum (SANEF) met with the Ministry of Justice to discuss our call. Simon Delaney, by agreement between FXI and SANEF, had drawn up a proposed amendment to the current legislation and this was submitted to the Ministry. The Ministry asked for further research into international trends around source protection.

Election Day torture allegations by LPM members

In the run-up to the 2004 national elections, the Landless People's Movement (LPM) initiated its "No Land, No Vote" campaign. On Election Day, 14 April 2004, LPM held a protest in Thembalihle. When LPM members gathered for the protest, police violently arrested and detained them overnight. The ACP hired a legal counsellor, who assisted with the release of the members. They were later charged with holding a political activity on election day contrary to section 108(a) of the Electoral Act.

Four LPM members – Ann Eveleth, Maureen Mnisi, Samantha Hargreaves and Moses Mayekiso – claimed that members of the Crime Intelligence Services (CIS) physically tortured Eveleth and Hargreaves and used violence, harassment and intimidation against Mnisi and Mayekiso. The four laid charges with the Independent Complaints Directorate (ICD). In January 2005, the ICD recommended that CI Unit Head Superintendent Simangaliso Patrick Simelane, be charged with assault with intent to cause grievous bodily harm. His trial was in August 2005 but the case was dismissed for lack of evidence. The prosecutor has indicated his intention to appeal the judgement. At the same time, the four LPM members are pursuing a civil case against Simelane. The FXI continues providing legal assistance and advice to the activists.

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. This case began in October 2005. The court has already heard both the state's and defence's arguments. The defence's application for the dismissal of the charges (because of a lack of evidence) was rejected by the magistrate.

Harrismith protests

On 30 August 2005, 17-year-old student Teboho Mkhonza died shortly after police fired into a crowd of protesters in iNtabazwe Township near Harrismith. The unarmed demonstrators were protesting at the municipal council's failure to provide basic services to the impoverished community. According to a video recording of the events as well as witness and forensic evidence, the police opened fire with birdshot, prohibited for use in controlling crowds. The police gave no warning and fired as people fled. Thirteen demonstrators were arrested and charged with sedition – the first time since 1994 that such a charge has been used – and with public violence.

The FXI assisted the accused with legal and other advice and held a workshop in Harrismith for the accused. The FXI also gave a number of media interviews on the issue. In particular, the FXI highlighted the danger of using the very serious charge of sedition in the context of a public protest. The charge is reserved for people that are intent on overthrowing the state and to use it against protestors (many of whom belonged to the ruling party) sets a bad precedent by which the state could deal with dissent, the FXI argued.

In December 2004, the Independent Complaints Directorate (ICD) recommended prosecution of three officers for murder and attempted murder and disciplinary action against the officers for a breach of standing orders on the use of force and firearms. In January 2006, the 13 appeared before the court in Harrismith. However, before the case began, they were informed by the prosecutor that the charge of sedition had been dropped.

Vusi Sibeko vs. Spar

Vusi Sibeko was chief shop steward at Royal Ascot Super Spar in Milnerton. He was suspended on the 8 November 2005, pending a disciplinary hearing set for the 10th November 2005 and charged with gross misconduct over an article that he wrote for *Izwi la Basebenzi*, a periodical published by the Democratic Socialist Movement. Sibeko had, in the article, accused Super Spar Milnerton of bad labour practices and of not paying workers the minimum wage as determined by the Department of Labour. The majority of the workers joined a union after Sibeko's intervention to prevent a worker's arbitrary dismissal. Sibeko appeared before a CCMA conciliation hearing on the 23 January 2006; Spar, however, was not present. The ACP provided legal advice to Sibeko, wrote to Spar to present legal perspectives on the dismissal and gave a number of interviews on the matter. The matter went to arbitration and Simon Delaney, head of FXI's Legal Unit, appeared as an expert witness. Through the arbitration, and largely as a result of our intervention, Sibeko was reinstated.

Tuesday Night Live

A group of LGBTI activists in Johannesburg had approached the SABC with the proposal that they could produce a radio programme addressing issues of gay rights. They were referred to Radio 2000, which gave them a slot on Tuesday evenings. The programme was called "Tuesday Night" and began broadcasting in November 2004. Tuesday Night was asked to pay for the airtime, which they did. In August 2005, Radio 2000 decided to increase the charge for the show by 100% to move the show to a later time slot. This did not suit Tuesday Night and they subsequently went off-air. FXI was then approached to assist with getting the show back on air. FXI advised the group on how they could take forward the discussion with SABC. The ACP assisted them with 1) developing a better understanding of public broadcasting and the mandate of the SABC; and 2) advice on lobbying the SABC so that they could get another slot, preferably on SAfm. Given the levels of homophobia in South Africa, the ACP felt that the SABC should welcome such a programme and should offer it free-of-cost. The FXI also issued a media release on the matter. In November 2005, the group met with Dali Mpofu, Group Chief Executive of the SABC to address their concerns. He promised to get back to them with a proposal but has not. The ACP is following up on the matter and wants to make it part of a package of issues raised with the SABC.

Greater Middelburg Residents' Association

The Steve Tshwete Local Municipality had taken a decision in 2004 to bar the Middelburg Concerned Residents' Association (GMRA) from the use of any Council facilities. This, after an allegedly violent protest by members of the Association. The charges against the Association were subsequently withdrawn, but the ban remained in force. The Association later merged into the Greater Middelburg Residents Association. In the middle of 2005, the Municipality refused to grant permission to the GMRA to use any council facilities, based on its 2004 ban on the Middelburg Concerned Residents' Association. The GMRA had, by then, expressed its intention to field candidates in the March 2006 local government elections and the ban, therefore, hampered its ability to participate in the elections.

The FXI was approached in July 2005 by GMRA chairperson and former mayor of Middelburg, Benjamin Mokoena, for assistance. The ACP wrote to the mayor of the Steve Tshwete Municipality and also to the Provincial Electoral Officer asking that the ban be rescinded and the GMRA be allowed to freely campaign. Following our intervention, the ban was lifted by the Council.

A recent development in this matter is that members of the GMRA, especially members of Mokoena's family, have faced certain harassment from members of the local ANC, including the mayor. This includes demonstrating outside the houses of Mokoena's family members and hurling verbal abuse at them. The GMRA has laid charges against the alleged perpetrators. The ACP continues to watch the situation carefully and plans to have a workshop in Middelburg as part of the development of the FX Network.

Abahlali Base Mjondolo

In November 2005, the eThekweni Municipality banned a march that was due to take place by the Foreman Road shack dwellers, protesting against a lack of housing and service delivery. The banning was in violation of the Constitution as well being in violation of the Regulation of Gatherings Act. The FXI issued media statements on the matter, wrote to the Municipality expressing our position and made legal assistance available to the shack dwellers if they needed it. The march did take place and was suppressed by police, allegedly firing live ammunition at protestors.

In February this year, Abahlali Base Mjondolo planned to have another march in the city centre. The march was again banned by local authorities. FXI issued a number of media releases on the matter, wrote to the eThekweni city manager and applied pressure on the city manager's office as well on the police. We also continuously advised Abahlali on the legal route to follow. On the morning that the march was due to take place, Abahlali applied for and was granted an urgent interdict preventing the police from interfering with their march. Our arguments on and interpretation of the Regulation of Gatherings formed the basis for Abahlali's arguments in court.

UKZN and the ban on Ashwin Desai

In December 2005, Durban academic and activist, Ashwin Desai, was prevented from taking up a position at the University of Kwazulu Natal (UKZN) by the Vice-Chancellor, Prof Malegapuru Makgoba. The problem dates back to 1996 when, on the eve of the merger of the University of Durban-Westville – where Desai was an academic – and the University of Natal to become the UKZN, he led a bitter struggle unifying staff, students and workers at the university against retrenchments and fee increases. Desai apparently agreed to an out-of-court settlement at the time with the then vice-chancellor, excluding him from the University of Durban-Westville campus in return for charges relating to his activities being withdrawn against him.

The next vice-chancellor, Saths Cooper, overturned the settlement and reinstated Desai, as he apparently did not want to deny the university an academic of Desai's calibre. After the merger, Desai worked at the UKZN's Centre for Civil Society. On applying for the new position, Makgoba ruled Desai out of the running on the basis that the ban was still in place, but that the council could rescind the ban if Desai made written representations to it.

Public opinion and academics from around the world mobilised behind Desai and a bitter struggle has developed in the media around the case. While much public attention has been focused on the Desai matter, others from UKZN, such as Richard Pithouse and Fazel Khan have been under pressure as well. What one infers from a close reading of recent events, as well as several on-the-record statements, is that these scholars are under attack for challenging power both inside and outside the university. And unions have been told that a march they are planning to have on the Westville and Howard College Campuses will be limited to very small sections of the

campuses. The FXI has issued media statements and published articles on the question of the constrained academic freedom at the UKZN.

We also intervened when UKZN issued illegal instructions to staff during a staff strike. We wrote to the university and gave legal advice to the strikers.

Another UKZN issue that we are currently dealing with is the university's attempt to implement a policy to monitor all staff and students electronic communication, internet information accessed and even private documents on computers. We are preparing a lengthy response to the policy, pointing out how it is illegal and violates free expression and academic freedom.

Jacob Zuma case and freedom of expression

Media gagged

Former deputy president, Jacob Zuma, appeared in court on rape charges in the first week of December 2005. The police, however, barred journalists from the Johannesburg Magistrates Court's Court 9. The media were also not allowed access to the docket. The FXI joined SANEF and the Media Institute of Southern Africa in releasing statements arguing that the area commissioner had exceeded his powers. The FXI also accused the police of being in dereliction of their duty when they allowed Zuma's bodyguards to manhandle a photographer.

Zuma gagged

The SABC had intended making Jacob Zuma its Newsmaker of the Year for 2005. However, in the middle of December 2005, the public broadcaster suddenly decided not to interview the former deputy president. The decision outraged Zuma and his supporters. The SABC countered that it had decided to interview Zuma before he had been charged with rape and after the charges were brought, an interview with him would violate the *sub judice* rule. The FXI gave interviews criticising the SABC for violating "the universally accepted broadcasting principle" that once someone was slotted for an interview, it was never changed and accused the SABC for toeing the ANC line.

Zuma song

Early this year, a pro-Zuma song on Ukhozi FM has become very popular with listeners. The SABC then decided to ban the song from its airwaves. FXI issued media comment on the matter and argued that political motives determining what goes out on air seemed to be becoming a trend at the SABC.

Monitoring and Interception Act

The Monitoring and Interception Act has been in operation since September 2005. The law allows the monitoring and interception by the state of various forms of communication between people. The Department of Justice claims it was aimed at organised crime networks. The ACP raised objections to the Act, on the basis that it was a violation of Section 14 of the Constitution, which protects the privacy of the individual and, in terms of which, the privacy of peoples communications may not be violated.

NGOs and foreign funding

In October 2005, President Thabo Mbeki questioned independence of African NGOs when he was speaking at the conference of the African Peer Review Mechanism. He accused and attacked NGOs for being manipulated by foreign donors and for,

allegedly, fulfilling the agendas of such donors. A number of South African NGOs were angered by the attacks by the president, which seemed to tar all NGOs with the same brush. The comments threatened not only the independence but the very survival of NGOs in Africa. The FXI issued media releases on this issue and was interviewed by a number of media on this question.

Health-e News

Matthias Rath, the controversial German doctor who is also an Aids dissident, sued Health-e News Service, two of its employees and a freelancer for defamation because of a series of stories broadcast by Health-e about the Rath Foundation.

A fall-out from the Health-e case was the conflict of interest issue related to Christine Qunta, whose law firm represented Rath and who is also Deputy Chairperson of the SABC. The FXI argued in the media that it was a conflict of interest for someone to be on the board of an organisation that professes to support freedom of expression while she represents a client in a case where he is seeking to compromise free expression.

Others

There were several other instances in which the FXI either was called for comment by the media or issued media releases. These include the following:

- The high court ruling that the media could not disseminate information it had about the risk of pebble-bed nuclear reactors. The information was given to the media by Earthlife Africa, which had been given it accidentally by Eskom's attorney.
- A complaint against Radio 702 talk show host, Tim Modise, for allegedly supporting a guest's claim that garlic and lemon could improve the health of an HIV positive person.
- The Gay and Lesbian Alliances's complaint to the BCCSA regarding the term "moffie" used in an Mnet soapie.
- The Zimbabwe government's seizing of the passport of Trevor Ncube, publisher of the *Mail & Guardian* and other newspapers.

Media Activity

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 regularly called upon by the media to comment on matters that relate to freedom of expression and to make presentations in seminars, workshops and conferences.

The programme has received coverage, on average, about fifteen times a month in the print and electronic media on a 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.

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.

Southern African Social Forum

In September 2005, three members of the FXI staff attended the SASF and presented a session on developing a regional response to Anti-Terrorism legislation. The need for civil society organisations to develop such a response was raised some time ago by SASF participants, in view of the SADC-wide counter-terrorism measures being adopted by countries in the region. Given the FXI's experience in relation to the South African Act, the Institute was approached to host a discussion.

Research Media & ICT's Programme (RMIP)

Introduction

It has been over a year that the RMIP is up and running. As stated in the 2004-2005 annual report that this has been the merger of the Community Media Policy Research Unit and the Media & ICT's Programme, the RMIP now has four main functions, namely:

- Conducting progressive research into the Media and ICT's 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 ICT's
- Building the capacities of media producers to pursue these aims directly and defend gains won in their respective organizations
- 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

Last year the programme had two members of staff working in it, one as the organizer and the other as the Head of the programme. These two individuals played different roles in making sure that the programme achieves its functions. The organizer managed to raise awareness within different communities regarding their rights to media & ICT's. The programme managed to work closely with certain communities in Gauteng and other two provinces. While on the other hand the Head of the programme managed to concentrate on more strategic and conceptual issues of the programme. The programme therefore managed to play a dual role, which was to engage at conceptual level, and also managed to build and actively engaged working class communities in issues that were mostly regarded as middle class or elitist issues.

It is important to note that given these good results regarding the work of the programme, there were a number of challenges that the programme experienced. For instance, after hard and explicit work that the programme undertook last year, both staff members within the programme were not available beginning of this year to continue with the good work already started. The Head of the programme resigned and the organizer had to go for maternity leave for four months. The programme work was then forced to be put on halt as a result there were number of important events that were important for the programme that were not appropriately engaged in due to the staff unavailability. The programme was then to replace the Head of the programme, which was done in April where the former organizer was moved to take the Head of the programme position and thus the challenge was to replace the organizer position. The organizer position was then filled Mid May by an activist who has been part of the programme campaigns and his name is Torong Ramela. This situation has left a big gap open in terms of the work done by the programme in the communities as well as on the lobbying and advocacy side. However there are

number of activities that took place between April and June that attempts to deal with the gap existing within the programme.

Southern African Journalists' Association (SAJA) Project

The International Federation of Journalists (IFJ) approached the Freedom of Expression Institute (FXI) to host SAJA project for the period of eight months, to enable the organization (SAJA) to re-establish itself as an independent entity. This project forms part of the Media & ICT's programme. The project to revive SAJA is divided into 6 components, which 5 of them have been achieved and only the sixth component is still to be realized. The Executive Committee meeting and the AGM are still to take place in the next coming months.

Communication Rights Campaign

The campaign has experienced a gap beginning of this year until beginning of April where some of the activities within campaign were undertaken. Firstly two workshops with the campaign committee members took place in May. The objective of the workshops was to recap on the work done last year on the campaign as well as updating the committee members on the current developments within the ICT sector. Along the Communication Rights Campaign the programme is involved with the South African Civil Society ICT's Cluster that is engaged in issues around the role of the Universal Service Agency with regard to the ICT's role out in South Africa. The cluster is also working on the promotion of Open Source Software usage as compared to Microsoft. A joint article between Sangoco and the FXI was published in the Mail & Guardian. The article highlighted the problematic issues around the USA and its relationship with Microsoft given the fact that it is expected to be promoting Open Source Software as a way of facilitating access to ICT's even for the marginalized communities around the country.

ICASA held Public Hearings on High Mobile Pricing on the 18th & 19th May 2006 and we made a submission which was based on the issues raised by 500 community representatives that attended the FXI Public Forum on Communications held in September last year. A picket at the Vodacom corporate offices took place and subsequent to that a meeting between the campaign's committee members took place with the attempt to deal with the issues that were raised in the submission. More activities regarding other telecommunications networks have been planned including Telkom who promised to have a meeting with us with the aim of dealing with the concerns raised by different communities around their service and more over to address Telkom's failure to perform on its mandate. There is specific targets set out within the programme in relation to the Communication Rights Campaign.

Media Rights Campaign

As it is the case with regard to the Communication Rights Campaign, issues around Media rights are continuously communicated to communities during the existing community meetings especially in Soweto. In other instances the programme staff will receive invitation to address community meetings around issues related to programme work even beyond Soweto. The community organizations that is more involved in the campaigns is the Soweto Concerned Residents (SCR) and the Tembisa Media Community Forum. These two organizations are now able to use Media as a tool in taking up their struggles and also reflecting their concerns. The Media Rights Campaign also includes issues regarding the Community Radio Stations. There are a number of issues related to Community Radio Stations and ICASA as the regulator. These issues include licensing processes that are

questioned by those trying to establish these Community Radio Stations. A picket at the Regulator's offices was staged by members of the Kathorus Community Radio supported by the campaign committee members regarding the long wait since 1998 for the license by the station in question.

Meetings with the Chairperson of ICASA have been scheduled in order to deal with this particular issue and other related ones. Another aspect in relation to the Community Radio Stations as part of the campaign is the monitoring process that the campaign is taking up. This means that the community is encouraged to monitor the role played by the Community Radio Stations with their respective communities and making sure that they are accountable to the community they are serving and avoid becoming commercial radio stations but Community Radio Stations.

SABC

There is a lot going on with regard to the Public Broadcaster, the SABC, at this present moment. In April the main issue that the programme has planned to focus was the around Public Funding model that would be suitable for the Public Broadcaster to meet its mandate. This effort has been substituted by the recent and seemingly ongoing events taking place within the SABC. These events include the canning of the Thabo Mbeki's Unauthorised documentary that was scheduled to be screened on 17th May 2006. The issue has taken more of our time than we anticipated however it forms an important aspect of the programme's work regarding the Public Broadcaster.

Another aspect in relation to the Public Broadcaster is about trying to get the Independent Producers into a meeting together with the SABC in order to look at issues around Editorial policies of the SABC as well as its relationship with the Independent Producers. This exercise is an attempt to avoid situations like the one we are faced with regarding the Thabo Mbeki documentary.

On the positive note, the campaign has managed to put the issue of the Public Broadcaster on the agenda item in the community meetings in Soweto more especially. Members of the community that have gained knowledge regarding Media rights easily associate themselves with the debates that are in the Media regarding the Public Broadcaster.

Consortium of organizations: monitoring of statutory institutions

The FXI together with other three media organizations have formed a Consortium that is taking up research work on four Media and ICT's institutions namely: SABC, Media Development and Diversity Agency (MDDA), ICASA and the Universal Service Agency (USA). The FXI is assigned to do an evaluation on the MDDA but moreover the overall management of this Consortium is done by the FXI within this programme. The management of the Consortium includes the management of funds for the Consortium member that is also done within FXI by our Finance Department. The Consortium has experienced a slow start due to some uncertainties regarding its management and the fact that beginning this year the programme did not have staff. Even though that has been the case the Consortium members managed to begin with their respective research work, developed a methodology and submitted the first portion of the report as required by the funder.

Kate Skinner is conducting the research work for FXI with the support from the Head of the programme.

ICASA Amendment Bill

In February, the FXI wrote to President Mbeki requesting him not to sign the Bill, on the basis that numerous provisions in the Bill were unconstitutional. These provisions related to the appointment of Icasa Councillors, removal from office of Icasa Councillors, and the setting up of a performance management system for the Icasa Council. The FXI noted that Icasa is an organ of state that is not within the national sphere of government. Therefore it was a contradiction for it to be subject to national executive control, which the FXI believed would be the case if the Bill was signed in its current form. As a result of the combined representations of the FXI and a number of other organizations, including Icasa itself, the President refused to sign the Bill and turned it back to Parliament for review. Parliament then arrived at a compromise, that gives it greater powers in the appointment, dismissal and performance management process, but does not remove entirely the role of the Minister. In spite of the fact that more could have been done on the current version of the Bill, there are attempts still pursued to check if there is anything that could be done in relation to this issue.

Access to Information Programme

The mission of FXI's Access to Information Programme 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-governmental organisations (NGOs), community based organisations (CBOs) and social movements (SMs) struggling for the realisation of socio-economic rights.

The ATIP operates at a regional level and works with a network of social and economic justice organisations across the region. For most of these organisations, "access to information" per se is not high on their agendas.

Titus Moetsabi, the Head of the FXI's Access to Information Programme, left the organisation in November 2005 and a consultant who had previously done work for the Programme, Mzi Memeza, was contracted to undertake work on an interim basis until a new Programme Head was appointed. Na'eem Jeenah was appointed in that position from the 1 March 2006. Na'eem has been an executive committee member of the FXI for many years.

Summary of programme activities

Strategic planning on governance structure for ATIP

Work on this area has commenced. In November 2005, the FXI Executive Committee began an internal discussion about the most appropriate organisational form for the Access to Information Programme. This organisational form must reflect the fact that the Programme is 'owned' by its regional partners from the level of governance through to the level of implementation. At a Strategic Planning Meeting of the FXI Executive Committee, a number of options were explored to deal with the question of 'ownership'. Proposals included the radical suggestion of creating a separate organisation. This was the proposal that was ultimately accepted by the Executive Committee: that the programme would develop with all partners relating as equals and that, over time, the programme would be spun off as an autonomous regional organisation.

The consultation with programme partners has been unfolding and a governance structure has been agreed on. The new structure – which is expected to be launched

early next year – essentially means the creation of a new NGO, based in Johannesburg, whose mission would be the same as that of FXI's ATIP is currently. The new organisation would have its own board and staff and FXI will, like other partner organisations, simply be a member of the board.

Osisa is funding the ATIP programme for the period of one year. In this year, the ATIP needs to ensure that the new structure is launched.

MISA/ FXI MOU

The FXI and the Media Institute of Southern Africa signed an MOU on the 31 March 2006. Misa has a programme on access to information and has done much work around this in the region. The MOU commits both organisations to work together in pursuing the objectives of the ATIP in the region.

Desk research on the extent to which SADC countries meet the freedom of information macro-indicators

FXI undertook a region-wide study, covering all countries of SADC, to determine the extent to which SADC countries meet access to information indicators. The results demonstrated a pathetic situation where two countries – South Africa and Zimbabwe have access to information legislation. (With Namibia passing ATI legislation and many other countries discussing draft bills, this situation has changed somewhat.) Gaps were identified in the South Africa and Zimbabwe legislation that need to be rectified through law reforms. What is required and what the program is lobbying for is for stand alone constitutionally enabled access to information legislation that has a bias on facilitating access to information on socio-economic rights specifically and on any other rights generally.

Backstopping Visits

ATIP Head, Titus Moetsabi, undertook a number of country visits to observe the work of partner organisations in respect of ATI, to assess, together with the partners, their priority areas that could be relevant to the work of the ATIP and to assist them in drawing up workplans to inform a three-year regional funding proposal to Osisa.

Info requests - DTI

The Access to Information Programme and SEATINI had launched a request for information from South Africa's Department of Trade and Industry (DTI) on information about international agreements related to South Africa's negotiation position in Hong Kong at the WTO meeting. Despite repeated attempts to ensure the release of the information in time for civil society meetings to prepare for Hong Kong, the DTI delayed matters.

In October it was decided not to launch an urgent application against the DTI on the advice of counsel, who we went to see with T Makhamele of ODAC. Even for an application in the normal course 'on principle' suing the DTI, ODAC was not interested in funding the case/counsel. With the December Hong Kong Ministerial meeting long gone, a decision had to be made about whether the case might be worth pursuing – if it was felt that the documents requested will still be relevant for advocacy on South Africa's increasingly compromising role in trade negotiations affecting the region.

SEATINI and the FXI jointly agreed that pursuing the case would be of no benefit as the information that was being requested was particularly relevant for the Ministerial meeting.

Info requests – SABC

The FXI has put in an information request to the SABC to acquire information related to various financial issues within the public broadcaster. This included information about funding, expenditure, costs per different kinds of programming, expenditure on different SABC media, etc. The SABC supplied some information. Some parts of the request were ignored or we were told that information does not exist. The FXI appealed the decision and is still hoping to obtain the full set of information requested.

Info requests – Minister of Water Affairs and Forestry

We had begun a process in 2004 to obtain information from the Minister of Water Affairs and Forestry to explain how the department had arrived at its free water policy of allowing households 6 kilolitres of free water per month. Information has still not been supplied and we still await a satisfactory response.

Advocacy and campaigning

The programme catalysed a process in 10 countries in which civil society was involved in developing national project proposals for three years. The ATIP Programme Head attended half of these processes which were both educational and programmatic. At country level, the FXI and MISA advocacy processes have begun to develop a critical mass that is aware of the strategic role of accessing information to protect and promote human rights and media rights. Interviews on radio and television have been undertaken and opinion pieces submitted to newspapers. Conferences, public seminars and forums have been attended to place ATI on the national agenda.

The South African Human Rights Commission is in the process of setting up an Information Officers' Forum, bringing together deputy information officers from all three tiers of government, Chapter 9 and other constitutional institutions, business and NGOs. FXI is represented on the Coordinating Committee for the Forum.

'Model' ATI Law

Currently, only three SADC countries have access to information legislation: Namibia, South Africa and Zimbabwe. All others have draft bills at some stage of development. The ATIP and the Legal Unit drafted a 'model' Access to Information law that could be used in the SADC region as a lobbying tool: to lobby for new legislation in countries where such legislation does not exist and to attempt to influence amendments to existing legislation where ATI laws do exist. The draft was circulated to partner organisations in the region.

The draft has been through a series of consultation among partner organisations and a final version will be ready within the next two weeks. That will then be adopted by partner organisations and be made public.

Capacity Building

Together with the SMI, the FXI hosted a 3-day capacity building and empowerment workshop for social movements, residents associations, etc dealing with various aspects of the law that affect these movements. (The workshop is discussed in detail in the ACP report.) One of the 'legal' sessions was called 'The right to know' and it focussed on South Africa's Promotion of Access to Information Act (PAIA). Participants were taken through the meaning of the Act, its various provisions, why it was useful for social movements, how it could be used, how to fill in a PAIA request, etc. The objective of the session was to help social movements understand what is available to them in terms of being able to access information both from the government and the private sector in order to enhance the work of social justice organisations.

The ATIP also organised and ran two three-day ATI training workshops for community media workers affiliated to Misa South Africa and for municipal staff.

Regional Meeting / workshop

The ATIP hosted a five-day meeting cum workshop earlier this month for representatives of partner organisations from across the region. A number of crucial discussions took place that will shape the future of the ATIP and the new organisation to be formed.

These included:

- Detailed discussions on the Draft "Model ATI law". A number of amendments were proposed and these will be integrated into the final draft;
- Highlighting the most important social/economic justice issues in the region that partner organisations were dealing with and how access to information could be used to enhance campaigns around these issues;
- Highlighting the most critical campaigns in each country and discussing how access to information could enhance these campaigns;
- Detailed discussions on a new governance structure for the ATIP. FXI's proposal of forming a new organisation was adopted. The next few months will see groundwork being done towards that and the new NGO is expected to be launched in February 2007 and be headquartered in Johannesburg.

Legal unit

Introduction

The FXI Legal Unit promotes the objectives of freedom of expression and access to information by providing free legal advice, research, capacity building and litigation. Simon Delaney, a practising attorney, directs the FXI Legal Unit. During the course of 2005 and 2006, the Legal Unit engaged in the following activities: community education, legal capacity-building within social movement groups, including the administration of a revolving bail fund, direct legal representation and intervention as *amicus curiae* ('friend of the court').

The Legal Unit aims to support applicants whose cases will contribute to the elimination of censorship and a freer environment for expression. In so doing, the FXI pursues precedent-setting cases in relation to freedom of expression.

The Legal Unit has also established a network of lawyers, drawn from both commercial law firms and law clinics, prepared to assist on freedom of expression

cases on a *pro bono* basis. The Unit works closely with legal assistance funders on both a local and international level.

The legal arena is an important forum for the defence of the right to freedom of expression. One of the FXI's aims is to make the courts more accessible to ordinary citizens and organisations whose rights to freedom of expression and access to information have been trampled on. As long as funding is available, test cases on these issues at all judicial levels are vigorously pursued. By doing this, the potential for judicial precedent favourable to freedom of information and expression is created.

In 2005 the Law Society of the Northern Provinces registered the FXI as a law clinic, allowing it to provide free legal services, including litigation in all courts, on behalf of victims of censorship. Individuals and organisations in need of legal assistance around freedom of expression and access to information problems can turn to the FXI for help. On referral by the various programme heads, the law clinic will give legal advice and undertake litigation on behalf of the persons in need of assistance.

Freedom of Expression Cases handled by the Legal Unit in 2005/2006

The Right to Protest

There is increasing evidence that community activists critical of the current *status quo* are being denied their constitutional rights to freedom of expression and assembly. Police officers are often ignorant of the Gatherings Act or, more worryingly, abuse the Act to prevent people from protesting and marching in public.

The Acquittal of Moeketsi & Jacobs

In February 2005, the APF gave the JMPD two week's notice of its intention to hold a peaceful and unarmed march against pre-paid water meters in Orlando. One day before the march, a letter from the JMPD prohibiting the march was allegedly hand-delivered to Kanapy Moeketsi & Peter Jacobs, the march organisers. Moeketsi & Jacobs denied that they received any such letter. The march proceeded peacefully and unarmed and no arrests were made. A week after the march, Moeketsi & Jacobs were arrested and charged with 'illegal gathering' under the Regulation of Gatherings Act. Together with their defence lawyer, the FXI's Simon Delaney, they attended court 9 times, with the trial being postponed each time because the State wasn't ready. In March 2006, Moeketsi & Jacobs were found not guilty of the charge of illegal gathering.

The FXI believes that the court ruling is significant in that the Johannesburg Metropolitan Police Department (JMPD) will now no longer be able to ban marches with impunity and expect that people who march nevertheless will be convicted. The judgement is a victory for freedom of expression of poor communities in particular, for whom taking to the streets is the only form of expression available to them. In the FXI's opinion, this case was a futile and vexatious witch-hunt against the leaders of the APF, designed to intimidate activists and drain their time, resources and commitment to the struggle for basic services.

After hearing only the State's evidence of Inspector Make, Head of Special Events, JMPD and Captain Nemalale of the South African Police Services (SAPS), respectively, Magistrate Mia ordered the acquittal of the accused Moeketsi and Jacobs, without even taking the usual step of hearing the Defence's version. Magistrate Mia reiterated the preamble to the Regulation of Gatherings Act, 1993, which paraphrases the constitutional right to demonstrate and holds that "...every

person has the right to assemble with other persons and to express his views on any matter freely in public and to enjoy the protection of the State while doing so...". Magistrate Mia emphasised that the purpose of the Gatherings Act was not to *prevent* gatherings, but rather to *facilitate* gatherings. The Act requires the police to consult and negotiate extensively with the convenors of a march and impose conditions on a march where appropriate. None of this happened in this case.

FXI Research on the Regulation of Gatherings Act

Alarming research findings by the FXI indict the JMPD in effectively banning certain social justice movements such as the APF and LPM from demonstrating at all. A summary of the FXI's research report entitled 'Establishing A Historical Record Of Violations Of The Regulation Of Gatherings Act & The Right To Freedom Of Assembly Amongst Social Movements in Johannesburg' is available on the FXI website. The FXI is working on an expanded nationwide research project.

The research done in Johannesburg reveals that local authorities such as the JMPD appear to discriminate between social movements based on the content or viewpoint of the protest. Protests that challenge the status quo on land redistribution or privatisation of basic services are generally prohibited. Protests by members of the tripartite alliance, for example COSATU regarding unfair labour practices, are generally allowed to go ahead. Prohibitions or restrictions based on the political viewpoint of the protester are patent and unjustifiable violations of the right to assemble.

The right to protest is fundamental to a democratic society. While the State is mandated to maintain order and protect the public, restrictions on the right to protest creates a slippery slope of decreasing freedoms and increasing confrontation between citizen and State. Our democracy was hard won, and constant vigilance is required to keep our freedoms from sliding.

Assistance to various social justice movements and researchers

The FXI has assisted the *Abahlali Base Mjondolo* (Shack Dweller's Movement) of Forman Road, Durban in opposing police harassment, advising on the Gatherings Act and writing open letters condemning the police. Other social movements such Jubilee have also been grateful to the FXI for assisting Jubilee in overturning prohibitions of gatherings and countering police harassment.

The FXI gave substantive input to Stuart Woolmer's chapter on Freedom Assembly in the 2nd Edition of Chaskalson, M et al, *Constitutional Law In South Africa*, published 2006. Substantive input was also provided to Bond & Whitcher, *A Consideration of the Law as both an Objective and Subjective Force in Shaping recent Community Movement Struggles in South Africa*, published 2005.

Balancing the Rights of Expression and Privacy: NM and Others vs Charlene Smith and Others (FXI intervening as amicus curiae)

The FXI made written and verbal submissions to the Constitutional Court recently in a case which has important ramifications for both individual and media defendants.

On 9 May 2006 the South African Constitutional Court reserved judgment in the application of three HIV-positive women for leave to appeal against the Johannesburg High Court's finding in 2005 that the women's right to privacy, dignity

and psychological integrity were not infringed by the publication of their names and HIV status in politician Patricia de Lille's biography.

The court found that it would place an intolerable burden on journalists if they had to obtain informed consent from people before publishing their names and HIV status. The court also found that De Lille, journalist Charlene Smith, who wrote the book, and the publishers, Africa Books, did not act unlawfully when they published the women's names.

The FXI successfully applied to be admitted as *amicus curiae* in this case. The FXI argued that it is neither necessary nor desirable for the common law to be developed to include negligence as a ground for fault in these situations. Such an approach, the FXI submitted, would unnecessarily and unjustifiably interfere with the right to freedom of expression and would have a chilling effect on the right to expression in South Africa.

Balancing the Rights of Expression and Dignity: the defamation cases

Goitsedimo Ephraim Seleka / Paul Moola

In September 2005 summons was served on Paul Moola in his capacity as editor of the Mafikeng community newspaper *North West On Sunday* for damages of R200 000. The FXI's law clinic is acting as Moola's attorneys. The plaintiff is Goitsemodimo Ephraim Seleka, employed by the Central District Municipality. Seleka alleges that during May 2005 the newspaper published an article entitled "Disgraced Celebrity", which basically stated that Seleka was not qualified for his municipal job. Seleka claims that the article was wrongful and defamatory of Seleka because it implies that Seleka was corrupt and incompetent. Moola's defence is that the statements in the article are true and in the public interest, alternatively fair comment and reasonable. The case law and constitutional imperatives protecting freedom of expression – especially where civil servants are concerned – are in favour of Moola successfully defending the case.

This litigation, if successful, has the potential to positively impact on community newspapers around South Africa. The campaign of the rich and powerful, especially in small towns with 'kingpins ruling over a personal fiefdom' to silence outspoken community newspapers violates these rights and as long as this remains the case, so too will millions of South Africans be unable to access community media and enjoy the full spectrum of their fundamental human rights.

An observation that is being made, especially with regards to the practice of human rights in small towns in South Africa, such as Mafikeng, is that in most of these towns authorities seem to undermine the basic tenets of the Constitution and those aspects of the legislation that affirm human rights. This is arguably due to the physical distance between these towns and the major cities, in terms of which major cities are better monitored by the more vigilant civil society organisations. Defending the newspaper and its editor in this case will serve first as a deterrent against a seeming increase in the number of repressive measures adopted by authorities in small towns such as Mafikeng. Second, it will strengthen the community media sector, which is in fact the only available avenue for communities in these kinds of towns to express their views against the excesses of power.

Erick Chauke vs Editor of The Developer and others

In January 2005 summons was served on Cheche Selepe in his capacity as editor of the Sowetan community newspaper *The Developer* for damages of R100 000. The FXI's law clinic is acting as Selepe's attorneys. Chauke alleges that Selepe published

an article in *The Developer* containing a number of defamatory statements, including that “the Plaintiff (Chauke) is a crook, a thief, stole chickens on Christmas Day, is well known to be poor, is normally making bricks, the Plaintiff’s wife is selling meat, the Plaintiff’s wife has become rich overnight”. The various defences to defamation are available to Selepe, who has not yet been called upon to deliver his plea.

Highbury Monarch Communications (Pty) Ltd vs Kevin Bloom

In 2004 Custom publishing house Highbury Monarch issued summons against well known media commentator and editor of *The Media* magazine, Kevin Bloom, in the Cape High Court for damages of R1 million. Highbury Monarch claims that Bloom defamed it in an article that appeared in the *Mail & Guardian*, titled 'Celebrating mediocrity'. Although the FXI is not representing Bloom, it intends intervening as an *amicus curiae* when the case is set down for hearing.

Balancing the Rights of Expression and Intellectual Property: Laugh It Off Promotions cc vs South African Breweries International (FXI intervening as amicus curiae)

On 27 May 2005, in the 't-shirt parody' case of *Laugh it Off v SAB* (the facts of which have been dealt with in previous annual reports), the Constitutional Court gave judgment in favour of *Laugh it Off*.

Although Justice Moseneke gave an account of the FXI's *amicus curiae* submissions in his judgment, he found it unnecessary to make a finding on 'fair use' of a mark under section 34(1)(c) of the Trademarks Act and freedom of expression, firstly because SAB's claim of infringement of its marks had already been dismissed because no likelihood of economic prejudice had been established; and secondly, where no economic harm has been shown, the fairness of parody, satire or lampooning does not fall for consideration.

The concurring judgment of Justice Sachs, however, found particular favour with the *amicus* submissions of the FXI with respect to freedom of expression, noting that “I can see no reason in principle why a joke against the government can be tolerated, but one at the expense of what used to be called Big Business, cannot...a society that takes itself too seriously risks bottling up its tensions and treating every example of irreverence as a threat to its existence...humour is one of the great solvents of democracy...it is an elixir of constitutional health.”

Access to Information: FXI & Harvey vs Johannesburg Water & others

Since April 2003, the FXI has joined researcher Ebrahim Harvey's efforts to force Johannesburg Water (JW) to grant access to 16 documents, to enable him to complete a Master's Degree at the University of the Witwatersrand on the impact of Johannesburg's IGoli 2002 plan on the delivery of water (which led to the formation of JW as a corporate entity). The plan has been controversial as it fuelled the commercialisation of services such as water and electricity, leading to the disconnection of many poor residents when they could not afford the rising costs of these services.

The FXI and Harvey sued JW for the documents in terms of in terms of the Promotion of Access to Information Act. After bringing JW to the doors of court, JW agreed to grant access to 11 of the 16 documents. JW continues to refuse to release other documents relating to its activities. The case will be heard in court in August 2006 for judgment on the balance of the documents.

Harvey and the FXI have argued in their founding affidavit that if the court finds that any of the documents cannot be disclosed on any of the grounds referred to in the Act, then the Act's public interest override clause should be invoked. This clause requires the body concerned to disclose documents if two public interest requirements are met. The first requirement is that the disclosure of the document(s) would reveal evidence of either a substantial contravention of, or failure to comply with, the law or an imminent and serious public safety or environmental risk. The second requirement is that the public interest in the disclosure of the record clearly outweighs the harm resulting from the disclosure.

Harvey and the FXI have argued that this clause is unconstitutional. Rather the clause should ensure that only one of the requirements has to be met for documents to be disclosed in the public interest. The Act, by stating that both requirements must be met, does not strike an appropriate balance between disclosure and non-disclosure, as the grounds for mandatory refusal are broad and the override is too narrow. If this challenge is accepted by the High Court, it will have to be confirmed by the Constitutional Court; if not, then Harvey and the FXI will be in a position to appeal against the High Court judgment in the Constitutional Court.

Most of the documents requested explain the operational duties and evaluate the performance of JOWAM and JW. They will throw light on policies relating to disconnections, pricing, service priorities and plans to remove inequalities in service provision. Others will contain information regarding current inequalities in service consumption and the provision of infrastructure. Access to the documents will also allow an investigation of whether the transfer of responsibilities for water provision to contractors such as JOWAM may negatively impact on access to water, including through increases in prices for water, failures to remove inequities in service provision or through unjustified disconnections. Finally, access to the documents is necessary to investigate whether JW is fulfilling its constitutional obligation of providing access to water. In short, the transparency that will flow from disclosure of these documents is essential to ensure public accountability.

Harvey and the FXI have also noted that there is a particularly compelling public interest reason for disclosing documents relating to the activities of JOWAM, a joint venture of subsidiaries of the international water company Suez, in view of Suez' increasingly dubious track record internationally. Suez and at least some of its international subsidiaries have recently been accused of corruption, dishonesty and a lack of accountability, and these accusations are sufficiently cogent to warrant careful scrutiny of the way in which water and wastewater services are being managed in Johannesburg. The affidavit also points out that in Grenoble, France, the City Council terminated its relationship with Suez after a former mayor and government Minister, and certain senior executives of Suez received prison sentences for accepting and giving bribes. In France, Suez has also been the subject of a recent investigation into a scandal around 'an agreed system of misappropriation of public funds'.

Protection of the Confidentiality of Journalist's Sources of Information

There is no absolute privilege afforded to communications between informant and journalist such as may be said to apply between attorney and client. Almost no jurisdiction in the world provides such a privilege to journalists. In South Africa a journalist may thus be compelled to reveal her sources on pain of imprisonment although no such sentence has been handed down since the adoption of the Constitution. Nevertheless, there is, emerging from case law, and an interpretation of the Constitution and the term "just excuse" in section 189 of the Criminal Procedure Act, a suggestion that communications between source and reporter may enjoy a

partial or qualified privilege under South African law. Presently, an agreement exists that purports to restrain the state in making use of section 205 but these restraints are purely procedural.

The FXI's policy position is that firstly, to compel a journalist to reveal her confidential sources creates a situation in which the free flow of information and freedom of expression is inhibited not only to a from the journalist so compelled but within the profession generally; secondly, to compel a journalist to testify against participants in events that she was covering similarly inhibits the free flow of information and has the additional effect of placing the safety of journalists at risk; and thirdly, it is in the public interest that there is as free a flow of information as possible and that journalists are able to operate freely, especially in controversial, momentous areas like politics and crime where many informants speak only on condition of anonymity and where some journalists are tolerated only on condition that they are not potential witnesses.

The FXI together with the South African National Editors' Forum are lobbying the Ministry of Justice and Constitutional Development for an amendment to section 205 of the Criminal Procedure Act to protect journalists and their sources.

A landmark case on protection of journalistic sources has recently been brought to the Johannesburg High Court that presents the FXI with the opportunity of making important policy contributions:

Imvume Management (Pty) Ltd vs M & G Media Ltd (FXI intervening as amicus curiae)

A Johannesburg-based small independent newspaper called the Mail & Guardian has recently run a series of articles detailing how the ruling ANC party has been funded to the tune of R11 million in its election campaign by a private company called 'Imvume', using public funds that should have been used to buy oil.

The so-called 'Oilgate' saga has now resulted in litigation, with Imvume suing the Mail & Guardian for, amongst other things, an order forcing the paper to reveal the sources of its journalist's information. The case has been set down for hearing in court in October 2006.

The FXI, together with the South African National Editors Forum, the South African Chapter of the Media Institute of Southern Africa and the Media Workers Association of South Africa has made an application for intervention as *amici curiae* and, at the court hearing, will submit policy and legal arguments in support of the principle of protection of sources, specifically on the implications of journalists being forced to disclose their confidential sources.

The amicus applicants intend advancing the following submissions if they are admitted as amici curiae: Firstly, journalists' use of confidential sources is an essential component of the right to freedom of expression and freedom of the press, contained in section 16 of the Constitution. Secondly, forcing journalists to reveal their confidential sources would severely undermine the media and would diminish the media's ability to play their constitutionally protected role. In particular:

- It would deter other sources from confiding in journalists for fear of being exposed and thus have a 'chilling effect' on journalists' ability to develop other sources and gather news;
- It would result in a perceived loss of independence for the media because the public may perceive the media as an investigative tool of the litigants instead

- of a neutral entity. This undermines public confidence in the media and restricts journalists' newsgathering ability;
- It would place a burden on the time and resources available to media organisations by bogging down reporters and editors in dealing with court challenges, thus affecting the ability of the news organisation to carry out their prime function of gathering and disseminating news efficiently. This is particularly the case for small, independent media organisations who have minimal resources;
 - It would amount to an intrusion into the editorial process of the media because the prospect of a subpoena may inhibit the media from newsgathering or disseminating news. Rather than risk being subpoenaed to reveal source, a journalist or newspaper may decide not to publish information; and
 - It may, in certain circumstances, threaten the safety and well-being of journalists and their sources. In particular, sources who provide information on condition of confidentiality may face harassment, prejudice or retaliation or even threats to their lives if their identity is disclosed.

Legal Assistance to Social Justice Movements in 2005/2006

Also in 2005 a joint legal committee was created, comprising the Anti-Privatisation Forum (APF), the Landless People's Movement (LPM) and the FXI law clinic.

The past two years have seen the legal demands on the social movements grow to include both individual and group legal defences against the erosion of access rights (from evictions to disconnections); the support of legal and constitutional challenges; the defence of freedom of expression rights when activists are arrested while exercising these rights; the defence of activists targeted for arrest on trumped-up 'criminal' charges aimed at undermining movement activities, as well as the still unmet requirements to challenge the harassment meted out by state intelligence agencies against the movements, among others.

During the course of 2005 and 2006, the law clinic engaged in four major activities on behalf of the social movements: community education, legal capacity-building within social movement groups, including the administration of a revolving bail fund and direct legal representation.

Community Education

There is an urgent unmet need to provide basic legal information to grassroots community activists engaged in daily struggle. Several social movement groups have themselves recently held sessions on basic legal, but have found that the need and questions of communities far outstrip existing resources and expertise.

As such, the law clinic has coordinated workshops in various communities on basic legal rights. Issues identified by communities include: arrests, criminal charges, protests, freedom of expression, evictions, service cut offs, and other topics identified by the communities themselves. These workshops serve to build the capacity of social movements to defend their rights in situations where basic knowledge of the law is needed to do so, such as the Regulation of Gatherings Act.

In addition, in order to make printed material on basic rights available to social movements, the law clinic has conducted a national scan of existing public education materials. The law clinic will then re-print materials currently unavailable to

communities and developing new, accessible materials to fill the significant gaps that currently exist.

Activists have repeatedly expressed a desire for such education in their communities and directly related to their work. As a project of the social movement groups themselves, the law clinic is uniquely positioned to respond to both basic education needs and on-going issues as they arise.

Capacity-Building

Beyond basic knowledge provided to all activists, it has become clear that a cadre of well-trained legal workers is needed within the social movement groups. Following a model that has proved successful in several South African communities, the law clinic is coordinating with social movement groups to identify individuals with the interest and ability to act as legal workers within their individual communities.

These individuals are not lawyers, but well-trained lay-people capable of dealing with immediate legal needs as issues arise. They are able, for example, to arrange bail for activists, prepare legal permits for protests and marches, prepare motions for stays of eviction, take information from witnesses, etc. In addition, these individuals are developing the capacity to negotiate the confusing and specialized array of legal services that may be available from legal aid, outside NGOs, and other agencies.

Through a series of in-depth trainings and mentorships with the law clinic attorney, the skills of the social movement legal workers are being built up steadily. This will both decrease the costs associated with outside lawyers and increase the ability of social movements to control their own legal needs and strategy.

Legal Representation and Coordination

With a better education community and on-the-ground legal workers, the need for direct representation will be reduced but far from eliminated. There will continue to be a dire need for lawyers to respond rapidly to requests for legal intervention from the social movements on matters such as those discussed above.

Social movements need a way to develop expertise about the specific legal issues they are facing and to coordinate the use of this expertise. Activists are increasingly facing coordinated efforts on the part of government and corporate officials to use the criminal and civil justice systems to systematically subvert the work of social movements. Relying only on reaction to legal problems through disconnected public and NGO legal resources is no longer an effective strategy for supporting social movement work.

A revolving bail fund is housed in the FXI and overseen by the Social Movements Indaba. The purpose of the bail fund is to counteract the direct intentions of the repressive apparatus of the State (police, intelligence arms) to either remove activists from the movements while they await trial if they cannot afford to pay, or tie up vast portions of movement resources in bail payments for lengthy periods as activists await the slow-churning wheels of justice to reach the conclusion of trumped up cases against them.

Bail costs for activists arrested in a single incident can easily run into tens of thousands of Rands, and currently the movements are forced to sacrifice other aspects of their struggles while these monies are tied up in the courts. The Revolving

Bail Fund aims to provide a lump sum solution to this, on the basis that bail funds would be loaned out to movements, and returned at the conclusion of a case.

The fact that most charges against activists are routinely either dropped or dismissed during the proceedings, alongside the ongoing collective work of the movements and activists within them, means that the fund would be administered relatively easily, with prioritisation criteria to be agreed in the strategy committee, and funds to be paid out and collected by the same person in any particular case.

The FXI law clinic attorney devotes substantial time to the legal work of social movements. The duties of the attorney, with respect to the social movements, are firstly to assist members of the legal committee to assess requests for legal assistance by victims of State repression on matters of violations of socio-political rights; and secondly provide expert legal assistance to members of the social movements who fall victim to State repression. Such assistance may include, but is not necessarily limited to, legal advice or legal representation before courts of law or other tribunals.

The following cases dealt with to date on behalf of the FXI's social justice movement partners are summarized as follows:

Water Case

The South African Coalition Against Water Privatisation, of which the FXI and APF are leading members, is ready to launch a constitutional court challenge to the system of prepayment water meters and the inadequacy of the free basic water supply in South Africa.

The right to water for all South Africans, irrespective of race, gender or economic status, was enshrined in the new Constitution in 1995. The government initially had ambitious goals for delivery of water, but soon the goals were diminished. Currently, the government aims to deliver 25 litres of water per person per day – an amount of water providing only for the bare survival according to the World Health Organization.

However, poor South Africans still live without any access to improved water sources. And even where water distribution has been improved over the past decade, the poor are left to pay large amounts of their meagre - or nonexistent – incomes towards a basic resource such as water. And while the privileged, typically white, South Africans continue to enjoy first class services the poor often can only receive improved services if they agree to prepaid water meters in their communities. With the current level of poverty in communities such as Phiri and Orange Farm, townships on the outskirts of Johannesburg, people are unable to afford even the minimum amount of 25 litres of water per person per day. There is no negotiation or credit with a prepayment water meter. You must pay up front – or live without water. This has created an unprecedented level of conflict in the communities and many have stood up – arguing for the abolishment of the use of prepaid water meters on the grounds that the use violate not only the UN right to water, but the constitutionally-guaranteed right in South Africa.

The South African Coalition against Water Privatisation, which includes scores of local community groups and environmental groups, has been on the forefront defending the right to water. The group is currently seeking funds to challenge the constitutionality of the use of prepayment water meters through public education, lobbying and the legal system. The Coalition has worked with numerous groups over

the past years and has a strong standing in affected communities that would benefit from stronger rules to protect their right to water.

This litigation, if successful, has the potential to positively impact on the lives of millions of South Africans in the realization of their most basic constitutional and human rights. The continued implementation of prepayment water meters necessarily violates these rights and as long as this remains the case, so too will those millions of South Africans be unable to enjoy the full spectrum of their fundamental human rights.

The FXI's attorney, Simon Delaney, is the attorney of record for the case. The date for hearing of the case in court depends on variables that are partly not within our control, such as court rolls and the availability of counsel and judges. Nevertheless, we aim to serve and file the application by 1st July 2006.

Opposing Unlawful Evictions

The FXI's attorney has used the courts to prevent the evictions of two groups of destitute people:

In 2005 approximately 800 occupiers of shacks in Rooikop, Johannesburg, were served with eviction notices. Using the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, the occupiers opposed the eviction on the basis that there was nowhere else for the occupiers to go, most of whom were vulnerable women, children and the elderly. The FXI's attorney also raised several technical defects in the opposing papers. The landowner was forced to remove the application from the court roll and has not proceeded since. The landowner has indicated that it intends withdrawing the application.

In 2005 approximately 1000 destitute occupiers, mostly women and children, of shacks in Alexandra, Johannesburg, were served with eviction notices. Using the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, the occupiers opposed the eviction on the basis that there was nowhere else for the occupiers to go and that, besides, they were renting the land for nominal amounts and were therefore not 'illegal occupiers' as defined in the Act. The FXI's attorney also raised several technical defects in the opposing papers. After several weeks of intense argument in court, the landowner was forced to withdraw the application.

Defence of Arrested Activists

The FXI law clinic attorney has defended over 20 members of the social movements arrested on various charges, ranging from illegal gathering to assault.

International Freedom of Expression Exchange

The FXI chairs the editorial committee of IFEX. The FXI has had a long-standing discussion with the IFEX Clearing House about its interpretation of freedom of expression which, in the FXI's view, has been unconsciously biased towards media freedom. As a result, FXI Action Alerts that the Institute has attempted to have circulated on the network have been rejected on the basis that they deal with the violation of the right to assembly, rather than the right to freedom of expression. For poor communities, more popular forms of expression, such as gatherings, are often used because as they constitute the most accessible forms of expression. It is, therefore, especially important to protect these rights as they are often the only forms

of expression available to these communities. The FXI made these arguments to the Clearing House, leading to a decision to review the Editorial Guidelines of IFEX.

The Editorial Committee had a teleconference to discuss the matter, and agreed that a memo will accompany the Editorial Guidelines, to act as a guide for the Clearing House in deciding which Alerts to issue and which to reject. The memo makes it clear that where there are demonstrations that are prevented because of their expressive content, this should be considered a freedom of expression violation, and should therefore be circulated on the network. The FXI is pleased with this decision, as it has led to a situation where a broader interpretation of freedom of expression has been adopted, leading to FXI Alerts being circulated that cover violations of the right to demonstrate. This should mean that a more holistic picture can be built up of the freedom of expression situation in different countries. These changes are to be put to the IFEX AGM in Brussels in February 2006, which the FXI will be attending.

Network of African Freedom of Expression Organisations (NAFOE)

The FXI is a founding member of NAFOE and, in October 2005, we attended its launch. The conference included 42 participants from 33 organizations dedicated to freedom of expression and media freedom in Africa. The conference was hosted by the Media Foundation for West Africa (MFWA), in partnership with Media Rights Agenda (MRA), Media Institute of Southern Africa (MISA) and Journalists en Danger (JED). In addition to the formation of the network, it was agreed that the MFWA will host the network for the time being, and that funds will be sought from Unesco to employ a co-ordinator. A long-term strategic plan and short term targets will also be identified.

The conference agreed to establish a network that will seek to fundamentally change over the next decade the environment for freedom of expression in Africa. Already the network has intervened in the deteriorating free expression environment in Ethiopia following that country's highly contested elections. Interventions are also being discussed in relation to the media freedom situation in the Gambia and Eritrea. A follow up planning meeting took place at the IFEX conference in Brussels in February.

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.

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.