

1997

Freedom of Expression Institute

[ANNUAL REPORT 1997]

1. THE IMPORTANCE OF THE RIGHT TO FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

The FXI believes that the collapse of a closed apartheid society will not automatically lead to the emergence of a new open society in South Africa. The need for the FXI is rooted in the belief that South Africa is in the early stages of building a democracy and strong institutions are required to campaign for and uphold democratic values, and in this instance, the values of freedom of speech and expression and access to information. With this in mind the FXI was established in 1994 after its founding bodies had been active in the field for up to ten years. It is the only NGO in South Africa with the primary aim of defending and strengthening the rights to freedom of speech, expression and access to information.

2. MANAGEMENT AND ADMINISTRATION

2.1 THE EXECUTIVE COMMITTEE OF THE FXI

The 1996 Annual General Meeting at which the 1996/7 FXI Executive Committee was elected, was held on 23 May 1996. The following members were elected to the Executive Committee: Raymond Louw, Mandla Seleokane, Tyrone August, Ruth Bhengu, Harry Dugmore, Clive Emdon, JP Louw, Nomavenda Mathiane, Japan Mthembu, Andries Oliphant, Jim Peron and Enoch Sithole. As required by the constitution, the chair and deputy chair were elected by the executive members at their first meeting after the AGM. Raymond Louw was elected as chairperson and Mandla Seleokane as deputy chairperson. Mr J P Louw resigned from the committee last month due to time constraints.

The Executive Committee has met 11 times (once a month) to discuss practical and policy matters relating to the FXI. In addition to the already existing Freedom of Expression Defence Fund (formerly the Media Defence Fund) sub-committee, another four FXI sub-committees were established after last year's AGM. They are the Management sub-committee, the Publications and Training sub-committee, the Media sub-committee and the Foreign Affairs sub-committee. Various executive members were appointed to serve on these committees.

2.2 STRATEGIC PLANNING MEETING

As mandated at last year's AGM, the Executive Committee convened a strategic planning meeting at which various issues raised at the AGM were discussed. The meeting took place from August 2-4, 1996 and its recommendations were ratified by an FXI General Meeting held on 31 October 1996.

The staff of the FXI also undertook a staff strategic planning meeting on 16 September 1996, in order to assess how the Directorate of the FXI was functioning and to define and assess each staff member's role.

2.3 FXI STAFF

Nine posts exist in the FXI at present. Five are filled on a full-time basis and four on a part-time basis. The current posts and their incumbents at the time of writing are:

Full-time:

Executive Director - Jeanette Minnie (resigned with effect from the end of May 1997)

Information and External Campaigns Officer - Raashied Galant

Researcher/Lobbyist - Ike Hloka

Publications and Training Co-ordinator - Jane Duncan
Administrative Assistant - Mpho Masilo

Part-time:

Co-ordinator of the FXI's Defence Fund - Alex Kuhn
Office Manager - Tracy Klass
Accountant - Gerry McIntyre
Librarian - Winnie Nyabeni

The following staff changes took place over the year:

- * The Executive Director, Jeanette Minnie, resigned her position with the FXI at the end of last month (May) to take up the position of Executive Director of the Media Institute of Southern Africa (MISA) in Windhoek, Namibia, from August 1. This vacancy was advertised and short-listed applicants were scheduled to be interviewed by the end of last month (May).
- * Jane Duncan's post was expanded to include co-ordination of publications, educational campaigns and training courses.
- * Alex Kuhn, who previously served as both FXI Office Manager and co-ordinator of the FXI's Defence Fund, resigned her position as Office Manager at the end of April this year. She is continuing, however, on a part-time basis as the FXI's Defence Fund Co-ordinator. Tracy Klass was appointed on a half-day basis as the FXI's Office Manager from May 1.
- * Raashied Galant, who was appointed as an assistant to Jane Duncan in a development post in terms of the FXI's affirmative action programme in September 1995, was promoted to the position of Information and External Campaigns Officer. His duties include editing the FXI's monthly newsletter, the FXI Update, recording and disseminating freedom of expression violations in South Africa and maintaining the FXI's Internet World Wide Web site.
- * The FXI's Administrative Assistant, Mpho Masilo, is still continuing in her position.
- * An additional permanent post was created earlier this year with funding granted by the European Union Foundation for Human Rights for the position of a Researcher/Lobbyist in the FXI. The post was advertised and Ike Hloka was appointed from over 70 applicants to fill this position from the end of April this year.

2.4 STAFF TRAINING & DEVELOPMENT

Staff constantly require further training and development. In particular, advances in technology require further skills training and staff in development posts need to have their skills enhanced. The following courses have been attended:

Junior Administrative Officer (Development Post): Word perfect 3.1 course, Business English course; Office Management course.

Assistant Publications Co-ordinator (Development Post): Training in Publishing and in "http" (Internet) publishing.

Publications Co-ordinator: Training in Publishing and in "http" (Internet) publishing.

Office Manager & MDF Co-ordinator: Windows 3.0 course, Sangonet (e-mail) course

Executive Director: Sangonet (e-mail) course

3. PROJECT ACTIVITY

3.1 THE FILMS AND PUBLICATIONS BILL

During 1995 and 1996 the FXI made at least five written submissions and two oral submissions to various bodies in Government about this Bill. One of these submissions was distributed to all members of Parliament. We recorded serious reservations about a number of features of the Bill.

The FXI also held a conference in August 1995 to provide theoretical and analytical insights into the pornography and hate speech debate, particularly with a view to the debates surrounding issues pertinent to this legislation and subsequently published a book in 1996 entitled "Between Speech and Silence: Hate Speech, Pornography and the New South Africa".

Parliament passed this Bill on August 29 last year despite calls by the FXI at a press conference and in radio and television interviews not to do so. Far-reaching amendments were made to the Bill in secret session by the Parliamentary Portfolio Committee on Home Affairs just days before the law was adopted. After Parliament passed the Bill we called on the Senate not to ratify the bill. The Senate Committee on Home Affairs held another round of public hearings on the Bill at which the FXI testified, but to no avail, and the Senate approved the Bill on September 16 with only minor amendments.

The far-reaching amendments which took place during secret session included extending the definition of "publication" to include all "statues, carvings and models" as well as "live entertainments". This happened shortly after the deputy Speaker of Parliament, Ms Baleka Kgotsitsile, objected to a ceramic work of art portraying female genitalia. The amendments also introduced an additional definition of hate speech based on gender, and became the first law to impose restrictions on hate speech as defined in the Constitution.

In addition, it was decided that office-bearers of political parties could be nominated by the public for appointment to the committees of the Publications Board which will apply this law. This raises the spectre of political control over films, publications, plays and sculpture.

The FXI is deeply disillusioned at the manner in which the Film and Publications Act has been dealt with and its final formulation. The committee's secret deliberations and the Act itself are contrary to the democratic and transparent principles which the ANC-led government claims to uphold. It bodes ill for a culture of freedom of expression in the new South Africa. We intend to vigorously monitor the decisions of the committees of the Publications Board and its Appeal Board, and some of our executive members are in favour of a new campaign against this Act.

3.2 THE TRUTH AND RECONCILIATION COMMISSION

(See also section on the Freedom of Expression Defence Fund)

The FXI was approached by the Truth and Reconciliation Commission in the latter part of last year to conduct a preliminary investigation into the feasibility of the TRC holding a special hearing into the role of the media under apartheid.

The FXI was of the view that such hearings should be held so that the role of the State in controlling and regulating the media during the apartheid era in furtherance of its policies could officially be placed on record. The consequences of state censorship, control and regulation of the media in terms of gross human rights violations should be recorded to serve as a warning to present and future governments about the importance of preserving a free, diverse and independent media.

The TRC and the FXI met on 31 October after the FXI had canvassed in writing and telephonically key representatives of a broad and inclusive range of media organisations on their views about whether the TRC should hold such a hearing. Since no substantial objections to the TRC's proposal, or to a proposal that the FXI co-ordinate research into a number of clearly identified themes, were received, the TRC requested the FXI to conduct the relevant research.

During December, however, a number of media organisations objected to the role of the FXI as an "intermediary" for the TRC, arguing that it would be wrong for any media organisation in the country to play this role. These statements were followed by a number of personal attacks

on mainly the FXI chairperson, Raymond Louw, and one of its executive members, Clive Emdon, to the effect that they had formerly occupied key managerial roles in the white-controlled English-language press, and that an FXI investigation under their control was bound to be a "whitewash" of the history of this particular sector.

The FXI disputed both allegations and pointed out that its brief from the TRC was being misunderstood or willfully misrepresented. If the FXI recommended to the TRC that media hearings be held, these would be under the control of the TRC and media practitioners and institutions would be testifying directly to the TRC. Therefore the contention that the FXI was acting as an intermediary was entirely incorrect. Furthermore, from the outset, in recognition of a potential conflict of interest, the FXI decided to appoint independent researchers from outside its ranks to conduct the preliminary investigation. The first of these were appointed from December 1 last year, some days before the first allegations that an FXI investigation would not be impartial. It was also pointed out that Clive Emdon had never occupied a managerial position, editorially or otherwise, at any point in his career as a journalist.

These and many other clarifications were contained in a lengthy press statement issued by the FXI at a press conference early in January. The TRC nevertheless decided to call off the official investigation by the FXI. It announced that it would establish its own committee to conduct an investigation, but requested the FXI in a public statement to continue with its own investigation and to submit its findings to the TRC along with any other bodies or individuals who wished to do so. The FXI agreed, but only after a personal protest to the TRC for not having honoured an undertaking to meet with the FXI to hear its responses to the various allegations before making a final decision.

Two full-time researchers and one part-time researcher from outside the ranks of the FXI were appointed to conduct the investigation from the beginning of December. In mid-February a third full-time researcher, a foreign national, as well as four part-time foreign graduate assistants, were additionally appointed to the project. They were due to complete their research reports by the end of last month (May).

3.3 LEGISLATIVE REFORM

3.3.1 NATIONAL ARCHIVES ACT

The FXI made a submission to the Portfolio Committee on Arts, Culture and Language, Science and Technology on the new National Archives of South Africa Bill. The bill makes provision for the circumstances in which documents in the national archives may be destroyed. The National Archives Commission set up in terms of the bill would determine

when documents could be destroyed. The FXI recommended that members of civil society, and not only archivists and librarians be appointed to the Commission, because they would bring a different perspective to bear on what might constitute socially, politically or legally important documents which should not be destroyed. We were also concerned that the public's right to access to information might be hindered by the provision in the bill that records not older than 20 years need the National Archivist's permission to be viewed. Documents like the Independent Electoral Commission records which went straight to the National Archives after the 1994 elections might therefore not be accessible.

3.3 2 LEGAL DEPOSIT ACT

The FXI made a submission to the Task Group drafting a new Legal Deposit Act and attended two seminars on the new bill. The essential problem which we saw in the bill was the need to weigh the benefits of compulsory legal deposit against the right to free creative expression. As the definitions in the bill stand, even if only one copy of a document is in existence, this could be claimed, free of charge, by the legal deposit libraries. This would have a particularly serious effect on artists who work in the medium of printing, where only one copy of a book or portfolio exists. The FXI's criticism of the bill was made at a seminar held in May this year, and was accepted by the Task Group, which promised to look into the definitions in the bill.

3.3.3 AMENDMENT OF ALL LEGISLATION OFFENDING FREEDOM OF EXPRESSION

The FXI together with the Media Project based at the Centre for Applied Legal Studies (CALs) have for the past two years been engaged in research into legislation still in force which contravenes the constitutional provisions on freedom of expression and access to information. The focus of the research has changed, however, in that it is no longer aimed at a so-called Omnibus Act to repeal legislation en bloc. The focus has been shifted towards identifying those statutes which are most offensive from a freedom of expression and information point of view. These are concentrated on individually and consideration is taken in each case about what would be the best way to protect freedom of expression. A comprehensive document detailing offensive legislation has already been prepared by the Media Project. The actual lobbying and policy work is done in consultation with the FXI. The recently established South African National Editors Forum (SANEF) has indicated that it also views the repeal of such statutes as an urgent priority. The FXI therefore hopes to be able to collaborate with SANEF on this project.

Late last year the FXI sent a copy of the Media Project's research to the President's Director of Communications, Joel Netshitenzhe, requesting State assistance for a civil society task group to undertake the work of identifying and recommending amendments to the legislation still infringing media freedom. The FXI has recommended a voluntary task group set up by civil society, but which is able to call upon the legal expertise of State lawyers. The FXI notes in the letter, "The research project by FXI and CALs has been continuously hampered by our financial inability to afford the legal costs of lawyers who will have to spend a number of months on this work." We recently contacted Mr Netshitenzhe and are again making efforts to revitalise this project. The request to Mr Netshitenzhe follows previous requests to a range of Government officials including the deputy president, the ministers of justice and law and order and the Speaker of Parliament. We were pleased that the Comtask Report recommended the FXI's proposal of a civil society task group assisted by State lawyers and we are awaiting the State's response in relation to these recommendations.

3.3.4 SECTION 205 OF THE CRIMINAL PROCEDURE ACT - "REVEAL YOUR SOURCES" PROVISION

The issue of whether there should be a provision in law which can be used to compel journalists to reveal their sources, both confidential and otherwise, is a matter of great contention among the media. At a conference organised jointly by the FXI and the Human Sciences Research Council held from 8 to 10 November, called "Media for Democracy in South Africa", this issue was debated at length by the delegates, but no consensus was reached. However, it was agreed that the provision as it stands at the moment is unsatisfactory, and that either it should be abolished altogether, or it should be amended to place the onus on the state in the first instance to show a compelling need to use the provision against a journalist. The latter option would provide some protection to the journalist, and the former option complete protection. FXI chairperson, Raymond Louw, has also pointed out that there is provision in the Act for a "just excuse" for not divulging sources and that the instrumental role of journalists in facilitating a free flow of information should provide such an excuse. The FXI and the UK based International Centre against Censorship, Article 19, have agreed to engage in joint activity on the question of s205 this year, as soon as Article 19 opens its Africa office in Johannesburg.

The provision was used during last year to subpoena various journalists, particularly during the PAGAD demonstrations in Cape Town in August. The FXI issued a statement condemning the state's use of s205. During last year's Commonwealth Press Union annual meeting, attended by FXI Chairperson Raymond Louw, the President of the Constitutional Court argued that journalists should not have a status different from any other individual who must reveal sources when it is in the public interest to do so. Mr Louw wrote a rejoinder which was published in the Business Day and reprinted in the FXI Update and also met the President of the Court and the Chief Justice with the SA National Editors Forum at which journalists' disquiet over the President's speech were noted.

4. EDUCATION AND TRAINING ON FREEDOM OF EXPRESSION

4.1 PRINT MEDIA

In the first half of 1996, the publications section of the FXI developed a series of educational articles on freedom of expression. These were run in the Sowetan newspaper over a period of eight weeks, in advertising space paid for by the FXI at 25% less than the standard advertising rate for half a tabloid page. The edu-ads elicited a large response, with dozens of people telephoning or writing to the FXI to comment or to be counselled on freedom of expression matters affecting them directly. In addition, numerous commercial and community newspapers approached the FXI to also run the edu-ads after having seen them.

On the basis of the educational advertisements run by the FXI in the Sowetan, the FXI was invited by the Wesley Guild church group in Diepkloof, Soweto, to run an information workshop on freedom of expression. The ads also ran in West - a community newspaper in the North-West province - from July to October last year to complement a series of workshops we ran for a community media course. The ads were also featured, free of charge last year, by the Goldfields Tribune in the Free State.

Our experience with these edu-ads has led us to believe that we need to expand our educational activities in the coming year. It has shown us that there is a great deal of public interest in freedom of expression - particularly with regard to emotive issues like hate speech,

pornography and religion - and that we should tap into this interest to argue against censorship as a legitimate means of controlling material that many people may find offensive. One of the most difficult realities that the FXI has had to face in speaking on public fora and making public submissions is that huge numbers of people actually favour greater rather than fewer restrictions on freedom of expression.

We cannot pretend that these views do not exist, and the FXI has to consider strategies to influence public opinion in favour of greater freedom of expression, by targeting the mass media as vehicles for educational campaigns. We are therefore planning a range of activities to expand on the Sowetan edu-ads in print, and also to produce them for the electronic media.

Also, this educational campaign should be used to inform people about their constitutional rights to freedom of expression and access to information, how to exercise these rights and what to do if these rights are violated. In addition, these activities should focus on sensitising people to the role of the media in a democratic society, and to how to engage the media to ensure that it does provide different communities with a voice.

4.2 TRAINING

In the first half of 1996, the FXI ran two workshops on the Open Democracy Bill for the ML Sultan Technikon in Durban and as part of a course offered by the Institute for the Advancement of Journalism. The Deputy Chairperson of the FXI also ran a session on limitations to freedom of expression at the Communications Department of the University of South Africa, and a session together with the MDF co-ordinator on the Bill of Rights, freedom of expression and the Films and Publications Bill, for the Journalism Department of the Pretoria Technikon. These activities - coupled with ongoing requests for workshops in a range of freedom of expression themes - led us to identify training as an important growth area of activity for the FXI, answering real needs.

In July- August, the FXI ran a series of three all-day workshops for a community media training course run by a Rustenburg-based Non Governmental Organisation (NGO) called Talent. The NGO has over the years set up and run a newspaper called West and a community radio station called Radio Mafisa. The workshops dealt with freedom of expression, the Bill of Rights, the law of defamation, hate speech, media ethics and freedom of expression, provincial and local government and access to information, and media diversity and the economics of community media.

The publications co-ordinator of the FXI organised these workshops, and trainers were drawn from the FXI Executive and the FXI membership. The workshops proved to be highly successful, and participants who completed their course received in-house press cards from Radio Mafisa shortly afterwards: these were presented by the FXI Deputy Chairperson at a ceremony in November. We are engaged in ongoing discussions with Radio Mafisa concerning collaboration on a civic education programme, involving community media, residents of Rustenburg and the Rustenburg Town Council.

One of the rewarding aspects of our experiences in the Rustenburg area was the extent to which we were able to integrate training with a media campaign. Apart from running the edu-ads in West, we also participated in numerous radio programmes on the radio station, one of which was broadcast twice, and on both occasions, was voted programme of the week. This has resulted in us reaching more people, and in another development, the editions of West

featuring the edu-ads were prescribed by an English teacher, who participated in our workshops, for his Standard 9 and 10 pupils.

In April 1997, the FXI ran a two-day workshop for Soweto Community Radio on court reporting and media ethics in relation to freedom of expression. The course was run by the Executive Director and the co-ordinator of the MDF.

Other training activities are in the process of being scheduled. Some of the training that has been scheduled is listed below:

Funding has been provided to the FXI by the European Union Foundation for Human Rights to undertake a series of government/media seminars involving local and provincial governments.

These seminars are in the process of being organised, with dates having been set for three at provincial government level, and one at local government level (we are obliged to run five for provincial government, and a maximum of five for local government). The intention is to provide an interface between governments and the media who report directly on them to discuss the constitutional role and obligations of government in South Africa and the role of the media in a democracy.

The FXI is aware that tension exists between some media practitioners and governments at local and provincial levels, to the extent that meaningful communication and a free flow of information in the public interest is sometimes threatened. These seminars will attempt to provide a dialogue between these parties without undermining the independence of the media and by emphasising the obligations of both parties to facilitating the public's right of access to official information.

The FXI prepared a series of proposals involving seminars on aspects of freedom of expression to the Independent Newspaper Group. These proposals have been accepted, and dates are being scheduled for these activities. The seminars deal with the following themes: the Constitution and press freedom rights, media ethics and codes of conduct in relation to freedom of expression and government/media relations. These seminars are scheduled to be run in Johannesburg, Durban and Cape Town.

In November, we are scheduled to run a week long training programme on human rights and the media for the Institute for the Advancement of Journalism.

4. 2 RADIO PROGRAMMES

This year the FXI has ventured into the area of radio production to extend public education on the rights to freedom of expression and access to information. We are currently involved in negotiations with the SABC for the production of a series of radio feature programmes. The FXI will be actively involved in the scripting and production of these programmes and will also retain the copyright to these programmes. They will be produced in several indigenous languages and will be structured in such a way that radio stations can use them as a lead-in for phone-in shows or panel discussions. The programmes will be broadcast by the SABC and the FXI hopes to be able to make them available to community radio stations afterwards.

5. FXI CONFERENCE ON MEDIA FOR DEMOCRACY IN SOUTH AFRICA

A joint conference on the media and democracy was held from 8 to 10 November 1996 by the FXI and the Centre for Socio-Constitutional Dynamics at the HSRC. The purpose of the Conference was to stimulate research on how the media can contribute to democracy, to raise awareness amongst stakeholders of the issues involved and to provide a programme of action to assist with the democratisation of the media in Southern Africa. Topics covered included the role of the media in consolidating democracy; civil society and the media; an analysis of the media ownership in post-apartheid South Africa; control of the media, including transparency and accountability of the media, voluntary versus statutory regulation of the media; and the application of the bill of rights to the media. Speakers were drawn from South and Southern Africa and from Australia. Approximately 100 delegates attended, ranging from the media to academics to political party officials.

6. REPRESENTATIONS TO COMTASK

Following the Government Conference of Communicators held in Arniston from August 25 - 27, 1995 at which the FXI chairperson chaired a session, Deputy President Thabo Mbeki's office appointed a Task Group to investigate and make recommendations on Government communications, commonly known as COMTASK. The Chairperson of the FXI was appointed a member of COMTASK. On 19 August 1996 the FXI made an oral and written submission to COMTASK on the state of government communications, as well as on matters pertaining to freedom of expression and the government. The FXI, among other recommendations, stated that the government should repeal or amend all legislation which erodes freedom of the media, and in doing so, it would send a powerful and concrete message to the media of its commitment to press freedom and freedom of expression. The FXI also recommended that a diversity of media should be encouraged through state subsidies to small, independent and community based media. We also urged that the Open Democracy Bill be passed as soon as possible. COMTASK's report has since been presented to the Deputy President and the cabinet.

7. REQUESTS TO THE FXI FOR ASSISTANCE & INFORMATION

During the course of 1996, the FXI again responded to countless requests for assistance and information: these instances are too numerous to list comprehensively. But it should be noted that many of the requests for information over the last year have been in relation to the Open Democracy Bill.

The FXI is approached on an ongoing basis by students, local and foreign researchers, writers and journalists for information about freedom of expression, access to official information, freedom of the press and diversity of the media issues. The FXI chairperson, Mr Raymond Louw, is often consulted by various diplomatic representatives including foreign press attaches, ambassadors and a similar range of journalists, students and researchers. Requests for information and comment on freedom of expression issues have resulted in particularly the chairperson and executive director of the FXI being quoted in a range of overseas and local publications and electronic media.

8. CONFERENCES

The FXI is frequently invited to conferences and seminars. Reference is made here to some of the conferences attended during 1996/7.

Exploratory conference between Nigerian pro-democracy groups and South African civil society 29-31 March 1996. Attended by the FXI's Information and External Campaigns Officer, Raashied Galant. The FXI contributed R10 000 to the costs of this conference. IFEX AGM, Toronto, Canada, 10 - 15 May 1996. Attended by Assistant Publications Co-ordinator.

"Africa - Crisis and Challenge" conference organised by the Institute for the Advancement of Journalism, 6 - 8 May 1996. It explored problems facing African countries, including freedom of speech, the media and opinion. Attended by the Executive Director, Jeanette Minnie, and the Publication Co-ordinator, Jane Duncan.

Telecommunications and Broadcast Freedom Conference organised by the University of Pretoria on 30 - 31 May 1996. The conference looked at freedom of expression and regulation in the broadcast media. The Executive Director attended and chaired a session and the Publications Co-ordinator attended as well. The FXI contributed R5 000 to the costs of this conference.

A Constitutional Round Table Conference organised by the Swaziland Chapter of the Media Institute of Southern Africa (MISA) in Mbabane, Swaziland from 11 - 13 June 1996. It examined the constitution making process in Swaziland. The Executive Director attended and gave a speech on the constitution making process in South Africa.

"The Right to Know - Access to Information in African Countries" was organised by the International Federation of Journalists in Harare from 25 - 27 July 1996. Attended by the Executive Director who gave a speech on the Open Democracy Bill in SA.

"Future Search" planning commission: 15 - 17 August 1996 in Harare. The Radio Nederland Training Centre invited the FXI to participate in planning a conference in which delegates from five Southern African countries determine planning priorities for their countries over the next decade. The Executive Director attended, and was a joint co-ordinator for the conference which was held from 13 to 16 October 1996 and attended by the MDF Co-ordinator and Office Manager, Alex Kühn.

"Development in Higher Professional Education" conference held at the Technikon SA, 13-15 May 1996. Publications co-ordinator Jane Duncan gave a speech at the conference. An edited version of the speech was published in the January edition of the Rhodes Journalism Review.

Report-back colloquium of the Communications Task Group of South Africa (COMTASK). Publications co-ordinator Jane Duncan attended the conference.

Consultative Meeting between Nigerian pro-democracy activists and South African anti-apartheid activists from September 27-29, 1996. Attended by Information and External Campaigns officer, Raashied Galant.

MISA Annual General Meeting held in Malawi from 6 to 12 October 1996 and attended by the Executive Director, Jeanette Minnie. Until the end of April 1997 she was South Africa's representative on MISA's Regional Governing Council.

NGO Week Conference held from 2 to 6 December 1996 and focussing on a range of topics of concern to NGOs including fundraising, interacting with the government and proper administration and management of NGOs. Attended by the Office Manager.

Freedom of Information Conference held by IDASA on 21 and 22 November 1996. Delegates from the sub-region attended and discussed issues like the role of NGO's in fighting for access to information and the passing of Freedom of Information Acts. The Executive Director and MDF Co-ordinator attended and the Executive Director and Chairperson of the FXI chaired two sessions.

* "Journalists under Fire : Media Under Siege" - African Media Forum hosted by the United States-based Freedom Forum in Johannesburg on 11 November 1996. The Executive Director was the opening speaker at the seminar.

* The Chairperson, Raymond Louw, in his personal capacity also attended various media conferences in Venice and Turkey.

9. PRESS STATEMENTS AND MEDIA PUBLICITY

Representatives of the FXI participated in a wide range of television and radio interviews during the year. These include:

- * The executive director appeared on a "Two Ways" SABC TV programme on investigate reporting and the right to privacy;
- * The chairperson and executive director appeared on "Q and A" SABC TV programmes on the topics of censorship and the relationship between of freedom of the press and the right to privacy;
- * The chairperson appeared on a "Future Imperfect" programme on SABC TV on the theme of the media under apartheid;
- * The deputy chairperson and the executive director appeared on a "Two Ways" SABC TV programme on pornography and the Film and Publications Bill;
- * The deputy chairperson appeared on a "Q and A" SABC TV programme on the existence of racially exclusive groups and organisations in the new South Africa;
- * The chairperson and executive director have been interviewed on many occasions by SABC "Radio Sonder Grense", Radio SAFM, Radio 702 as well as by community radio stations on a variety of topics including World Press Freedom Day and the controversy around the financial affairs of the Independent Broadcasting Authority.
- * An article on the Film and Publications Bill entitled "Perpetuating Censorship?" by the Executive Director was published in the May edition of "LHR Rights", the journal of the National Directorate of Lawyers for Human Rights.
- * An edited version of an address delivered by the FXI's Publications Co-ordinator, Jane Duncan, on the danger of standardising journalism education under the National Qualifications Framework, was published in the December edition of the Rhodes Journalism Review.
- * Die Beeld newspaper published a feature article by the Executive Director on the legal dilemma facing journalists in terms of protecting confidential sources of information.
- * New Nation newspaper published an article by the Executive Director on the access to information issues at stake in the bail application of Dr Wouter Basson, allegedly the founder of the former SADF's Chemical and Biological Warfare Programme.
- * New National also published an article by the Chairperson on the funding of the SABC.
- * The United States-based Freedom Forum published a recorded public interview with the executive director in their publication "Journalists under Fire : Media under Siege" based on a seminar hosted by the Freedom Forum in Johannesburg on November 11, 1996.
- * The chairperson published an opinion piece in Business Day on the right of journalists to protect sources of information
- * The deputy chairperson published an opinion piece in Business Day in reply to criticism of the FXI's role in conducting a preliminary investigation into the media under apartheid at the request of the TRC.

Many press interviews have also taken place with FXI representatives. Most of these are in the form of responses to developments with implications for freedom of speech or access to information.

A variety of media statements were issued over the past year including on:

- * The danger to the independence of broadcasters in South Africa following calls

for the scrapping of the IBA in the wake of disclosures of financial impropriety.

- * Concern about censorship of medical practitioners in the Northern Cape expressing doubt about the competency of some Cuban doctors in their area after a number of incidents were reported to the Medical and Dental Council.
- * Press freedom abuses in Nigeria. Statement issued on June 12 1996, the third anniversary of the annulled presidential elections by the Nigerian military.
- * Press freedom abuses in Zambia following a meeting between the FXI and the SA acting director of Foreign Affairs for Southern and Eastern Africa.
- * The Zambian government having temporarily withdrawn legislation to establish a statutory media council in Zambia. .
- * The SA Human Rights Commission being urged by the National Party to establish guidelines for public statements by public officials, after so-called hate speech statements against Mr FW de Klerk by three ANC leaders.
- * The arrest of City Press reporter Mapule Sibanda after she handed narcotics to the police with a request that they conduct forensic tests on them. She purchased the drugs during the scope of a news investigation.
- * The response of the FXI in relation to criticism of its role in conducting a preliminary media investigation for the TRC.
- * The TRC denying the FXI the right of reply by calling off a meeting with the FXI after meeting with other organisations who were objecting to the FXI conducting a preliminary media investigation for the TRC.
- * A closed meeting of the Parliamentary Committee on Home Affairs at which far-reaching amendments are made to the Film and Publications Bill.
- * An FXI appeal to Parliament and the Senate not to pass the Film and Publications Bill.
- * The issuing of subpoena's to the media to hand over all information in connection with Pagad activities in Cape Town.

10. THE FREEDOM OF EXPRESSION DEFENCE FUND

The FXI's Defence Fund gives effect to the FXI's strategy of litigating where appropriate in defence of freedom of speech and expression. The fund was incorporated in the FXI in 1995 at the request of its previous administrators. The purpose of the fund is to strengthen the legal and constitutional basis for freedom of expression and access to information. It focuses on precedent setting court cases, including Constitutional Court cases and cases where the media, film and video producers, artists and others are confronted by attempts to censor them.

Until recently the fund was known as the Media Defence Fund. This name, however, did not reflect the fact that it funds any matter which relates to freedom of expression and access to information, and not only cases pertaining to the media. To remedy this, the MDF sub-committee suggested a name change, which was supported by the FXI Executive. The fund will be known from now on as the Freedom of Expression Defence Fund. The new name will also clearly identify it as a fund of the FXI.

The FXI's Defence Fund invites lawyers, organisations, newspapers and other affected individuals in need of legal financial assistance to contact the Fund. The applications are considered by a sub-committee of seven persons appointed by the FXI Executive, including several media lawyers. They meet once a month to deal with new applications for funding and to assess cases which have already received funding. Two of the sub-committee members are also FXI Executive Committee members. During the last year its members were Claire Wright (in the chair), Clive Emdon, Malcolm Fried, JP Louw, Moira Mokuena, Mafika

Sihlali and Raymond Louw. During the course of the year, JP Louw and Malcolm Fried tendered their resignations due to work-related pressures. The FXI's Defence Fund Co-ordinator, Ms Alex Kühn, administers the Fund. The Fund makes a quarterly written report to the FXI Executive Committee.

The fund pays lawyers at a human rights tariff, set by the sub-committee once a year, and which is substantially lower than normal professional fees. For example, senior counsel is funded at R450 per hour which is roughly half of the professional minimum. The fund also has a set of guidelines for the disbursement of funding.

10.1 CASES FUNDED BY THE FXI'S DEFENCE FUND DURING THE PAST YEAR ARENSTEIN v PREMIER OF MPUMALANGA

Justin Arenstein is the bureau chief for African Eye News Service in Mpumalanga, an independent news agency with a reputation for investigative journalism. Among the stories it has broken are the exposes on Eugene Nyati, Senator Patrick Mogale's child by an underage schoolgirl, and the alleged "gifting" of farms worth hundreds of thousands of rands to National Parks Board chair Enos Mabuza. The Mpumalanga government has attacked Arenstein on several occasions via press releases or in the provincial legislature as a racist reporter with a sinister agenda. In the latest instance, Premier Phosa announced in the legislature during December 1996 that "a certain" journalist had been attempting to bribe government officials for sensitive internal documentation. Although refusing to name the journalist, Phosa listed the alleged theft of a draft report from the Auditor General's office and subsequent articles based on this report as an example of the said journalist's activities. Arenstein is the only journalist to have written articles based on such a draft report. In an interview with SAPA on 17 December 1996, Phosa's spokesperson repeated the allegations made by Phosa and went on to say that the journalist had "racist tendencies" and concentrated on writing articles involving blacks who were guilty of corruption while ignoring whites who were guilty of similar offences. Arenstein has denied all the allegations against him.

The FXI's Defence Fund paid for Arenstein's preliminary legal advice and the drafting of a letter to Phosa demanding that the allegations be retracted and a public apology issued. To date, no response to the letter has been received from the Premier's office and Arenstein will issue summons for defamation against Premier Phosa in the Magistrate's Court.

BAILEY v SCHADEBERG

This matter concerns a copyright dispute involving some of the most historically important photographs in South Africa - those taken during the 1960's by the photographer Jurgen Schadeberg. Bailey, the proprietor of Drum Magazine, is claiming that the copyright of certain photos vests in him on the basis that when Schadeberg took them, he was in Bailey's employ. Based on a careful reading of the papers in this matter, the Defence Fund is of the opinion that Schadeberg was not in Bailey's employ, and that the copyright of the disputed photos therefore rests with him. Should a court find the same, this would affect in practice the position of several other photographers who also worked for Drum magazine during that period. The Fund has approved R40 000, half of the funding required for the matter to proceed, with Schadeberg providing the rest.

CONWAY v NEER

Neer, the MEC for Safety and Security in the Eastern Cape, testified before the TRC that a certain security policeman allegedly assaulted and tortured him. The policeman has since sued Neer for defamation. This is the first defamation case to arise from the TRC. The FXI has long warned, based on an opinion commissioned from a counsel, that witnesses before the TRC and the media who report the testimonies of these witnesses, are not adequately protected.

HALL v WELZ, CHAUCER PUBLICATIONS & OTHERS

An insidious form of covert censorship is the institution of legal proceedings against the media which have as their ultimate objective the closing down of a critical voice because of the legal costs incurred. It seems that this was one of the thwarted objectives of the plaintiff in the South African case Hall v Welz and others.

Martin Welz is the editor of noseWEEK, a small independent publication well known for its investigative journalism and biting style, published by Chaucer Publications. Dr Robert Hall, born and reared in America, but who has resident status in South Africa and describes himself as a "detrified South African convert" claims that he was defamed by an article printed in noseWEEK, in which it was alleged, among other things, that he is treated by the South African Reserve Bank as a non-resident and was therefore allowed to do repeated financial deals which, by law, are denied to permanent residents. In 1981 Dr Hall formally applied for, and was granted, permanent resident status in South Africa and his passport was so endorsed. Hall issued summons claiming R1,5 million in damages from noseWEEK. He also sued The Argus for its follow-up of the noseWEEK story.

The FXI's Defence Fund raised the bulk of the funds for noseWEEK's defence. Judgement was handed down by the Cape Provincial Division of the Supreme Court on 27 September 1996. Judge Conradie held that the defendants had proved that what they had said about the plaintiff was substantially true and in the public interest. The plaintiff's claims were therefore dismissed. It is unfortunate that the Court did not accept the constitutional arguments placed before it and held that the law had not changed with regard to defamation and the media. At the outset of the trial, noseWEEK and The Argus launched a major application to attempt to persuade the Court that the onus of proving truth in the public interest, after the decision of *Holomisa v Argus Newspapers Ltd*, no longer rested on them. The Court held, however, that the law had not changed.

Having lost the case, Hall applied to the Court for leave to appeal which was denied. A settlement with regard to costs was then reached with Hall.

FXI & OTHERS v MAGISTRATE OF THE REGIONAL COURT, PRETORIA

Dr Wouter Basson was a brigadier who headed the former SADF's Seventh Medical Battalion who allegedly founded the SADF's chemical and biological warfare programme. Basson was arrested in January 1997 when he was allegedly caught handing over 1000 tablets of Ecstasy.

The Magistrate in the bail hearing for Basson declared significant portions of the hearing in camera. The FXI, along with two newspapers, the Sunday Times and Business Day contested his ruling based on argument about the public's constitutional right of access to information. As a consequence the Magistrate ruled that persuasive evidence for a closed hearing had not been produced and that the bail hearing would proceed in open court. However, the

magistrate would not lift the embargo from the previous day's in camera record. All the applicants, including Die Beeld and The Star who at this point joined the case, applied to the High Court to review this refusal to lift the embargo. The application was successful. However, Basson joined by the SANDF and the statutory committee on the Non-Proliferation of Nuclear Armaments immediately again applied to the High Court for certain sections of the disputed record to be embargoed, and this was granted. At present the FXI is still pursuing this case in an attempt to lift the new embargo and to gain access to records confiscated from Basson during the initial raid after his arrest. The Fund is paying the FXI's costs in this matter.

FXI & MAIL&GUARDIAN (M&G) v SANDF

The FXI is bringing an application to the High Court in Cape Town to challenge an in-camera ruling of the court martial hearing of Staff Sergeant Herman Pfeiffer and Corporal Dawid Booyesen. They are charged with attempting to make photocopies of official documents, publicly questioning the competence of their commanding officer and leaking sensitive information. The case involves attempts by Military Intelligence (MI) to investigate allegations of local and international arms smuggling by the Unit, Group 31, to which they were attached.

In terms of the Defence Act of 1957, court martials are generally held in open court in the presence of the accused, but may be held in camera if this is in the "interest of good order or public morals or the administration of justice or for reasons of security."

The FXI and Mail & Guardian's request that the court martial be held in open court was denied by the court martial and the FXI is now requesting the High Court to review this decision.

McNALLY V MAIL&GUARDIAN

In this case, the Attorney General of Kwa-Zulu Natal, Tim McNally, sued the M & G for defamation, following their publication of a critical article on him. The M & G alleged that a critical analysis of his conduct as the senior public official in charge of prosecutions in Kwa-Zulu Natal shows that he has not done enough to arrest and charge the perpetrators of violence in the province.

In effect, the facts of the case are such that it is the ideal vehicle with which to introduce the Sullivan principle into South African law. The *New York Times v Sullivan* case in the United States held that the constitutional guarantee of freedom of speech precluded a public official from recovering damages for a defamatory falsehood relating to his/her official conduct unless s/he proved that the statement was made with "actual malice", that is, with knowledge that it was false or with reckless disregard as to whether it was false or not. This principle enables the press to inform the public about matters which are of concern to them, but which cannot be proved in a court of law, for reasons such as witnesses being intimidated or going missing. Should the court allow the introduction into our law of the Sullivan principle, the effect will be to allow more in-depth probing and comment on public officials by the press, without fear of being sued for defamation.

RADIO 786 CASE - COMPLAINT TO IBA

Dr Ebrahim Moosa co-ordinated a statement in November 1996, signed by about 60 religious leaders, which was supportive of PAGAD's anti-crime agenda but critical of its violent methods. The community radio station Radio 786, which is perceived in many quarters as the ideological mouthpiece of the Islamic Unity Convention, Qibla and PAGAD, then allegedly responded to the statement through its broadcasts in such a way as to place Dr Moosa in a bad light and to incite public opinion against him. As a result, he and his family had received abusive and threatening phone calls. His motives in approaching the IBA's complaints committee were to try and stop the station from maligning him and to obtain an apology for the harm to his reputation. He emphasised that he did not want the radio closed down, but sought to oblige the station to report truthfully and with due regard for ethical journalistic practices.

The Fund decided to pay Dr Moosa's legal costs incurred in making his complaint to the IBA. It did this so to ensure that the dispute could be effectively aired. The Fund in no way supports the closure of Radio 786, but rather the building of a culture of freedom of expression, and tolerance for a multiplicity of voices including political and religious dissent. The Fund believes its contribution in this instance is facilitating diversity of opinion.

RAMAINOANE v ATTORNEY OF LESOTHO

Mr Ramainoane is the editor of the independent Lesotho newspaper MoAfrica, which takes a critical stance against the Lesotho government. Recently, the government issued an order that no government or "parastatal" advertising should be placed in the paper because of its negative approach to the government. Mr Ramainoane seeks to have the order overturned on the basis of administrative law. The Lesotho government's approach to freedom of the media has long given cause for concern. The Fund is supporting Mr Ramainoane in the hope of obtaining a court ruling favourable to the freedom and independence of the media.

SKOTNES v SA LIBRARY: LEGAL DEPOSIT ACT

In this case, Pippa Skotnes, a practising artist and senior lecturer in the Fine Art Department at the University of Cape Town challenged in the Appeal Court a Cape Supreme Court decision ordering her to deposit with the South African Library a copy of a limited edition of books on San intellectual traditions. This book, called "Sound from the Thinking Strings", is made in the medium of "the artist's book". The Cape Provincial Division's decision in SA Library v Skotnes indicates that in circumstances where only one copy of a publication exists, that copy would have to be handed to the SA Library in terms of the Legal Deposit Act. The judgement goes on to say that a reproduction of the publication would not be sufficient to satisfy the requirements of the Act. Skotnes, however, lost the appeal.

This case has been controversial in the public domain and within the ranks of the FXI's executive. Sympathy exists for the purpose of the Act which is to ensure that all publications produced in South Africa are placed in a national archive so that they can be accessible to the public. In the FXI's view the Act needs to be improved to recognize the financial and technical production problems in relation to "the artist's book" and to make allowance for the deposit of quality copies in State libraries, particularly in cases where originals have been placed in public or academic art galleries where they can be examined and researched by members of the public.

SPENCER v JASON

The Cape Supreme Court issued a temporary interdict restraining photographer Fanie Jason from, among other things, photographing the Earl of Spencer without his consent, unless such photographing occurs while he is attending a "public function as a public figure". Two issues were at stake: The threat to the principle that a public figure can be photographed at any time in public; and the assertion that Lord Spencer, Princess Diana's brother, is not a public figure. Before this matter was argued the parties entered into settlement negotiations. Jason is entitled in terms of the agreement to take photographs of the Earl of Spencer in public places but agreed not to take photographs of Spencer within the privacy of his home.

STATE v HARBER & OTHERS (THE STAAL BURGER CASE)

The defence in this case sought to establish that under certain circumstances, it is justified to breach an individual's right to privacy where there is an overwhelming public interest to do so.

In this important case, the editor of the Weekly Mail (now the Mail & Guardian) was charged with and later found guilty of *crimen injuria* for having bugged CCB operative Staal Burger's office. The issue of who is responsible for third force violence in the country prior to the elections was, and continues to be, a frustrating one, with little or no hard evidence being available. The Weekly Mail (now the M&G) has over the past few years published a number of articles which related to the violence in the country and the allegations it made subsequently proved to be correct. The Magistrate's Court found Harber guilty. The matter has now gone on appeal to the High Court and judgement is awaited.

STATE v RADIO TUKS JOURNALISTS

The University of Pretoria experienced student dissent about its choice of a new Chancellor. The university obtained an interdict banning certain actions on campus. In contravention of the order, a press conference was organised by the students which three Radio Tuks journalists attended in their capacity as student journalists. The SAPS arrested all those present at the press conference including these three journalists. All were to have been charged with contempt of court. The Fund sponsored the journalists' defence because it believes that journalists have a right and a duty to receive and impart information both on "legal" and "illegal" activities. Charges were ultimately withdrawn against all the journalists arrested including those from Radio Tuks.

YOUNG & ANOTHER v MAIL & GUARDIAN

The case also seeks to establish the *New York Times v Sullivan* principle in our law (see *McNally versus Mail & Guardian* above).

The case results from a story published in the Mail & Guardian in 1995 concerning allegations of nepotism and corruption in the former Department of Education (DET) in which the Young's were named.

11. PUBLICATIONS

11. 1 UPDATE

The FXI Update remains the most consistent product of the FXI in which the views of the organisation are articulated and issues pertaining to freedom of expression are highlighted. These include coverage of pertinent issues in the Southern Africa region and in other

countries on the African continent. Eleven monthly issues are produced. Up to a year ago the Update was largely distributed on a complimentary basis by mail, but we have since moved to a paying subscriber base. FXI members, however, continue to receive the publication free of charge. The move to a subscriber base has not been altogether smooth and the amount of money received from subscriptions is still not able to sustain the publication. Many readers who did not respond to subscription notices were also lost. In the circumstances donor funding remains an important means of ensuring the survival of Update. The organisation envisages a vigorous marketing campaign this year to generate greater subscriptions.

11.2 FXIWEBSITE

The FXI continues to maintain its Internet site on the World Wide Web at <http://fxi.org.za/>. The site, launched in March last year, includes information on the work of the FXI as well as media statements, submissions to Parliament, task groups, commissions of inquiry and publications of the FXI, including the FXI Update and the book it published last year "Between Speech and Silence: Hate Speech, Pornography and the New South Africa". The latest publication we have placed on the site is the quarterly Southern African Media Law Briefing, which is produced jointly by the FXI, the Windhoek-based Media Institute of Southern Africa (MISA) and the London-based International Centre against Censorship, Article 19. Our site is also linked to a number of other sites around the world, including the home page of the newly launched site of the International Freedom of Expression Exchange (IFEX). It can also be accessed through the major search engines which exist on the Internet.

The site was overhauled in August last year and a search engine was added. On average the site receives four "hits" a day and during the Parliamentary hearings on the Film and Publications Act was the second most-visited site of the SangoNet service provider. The FXI website is frequently visited by local and international human rights organisations, journalists, lecturers and students.

11.3 BOOK ON THE THEME OF MEDIA AND DEMOCRACY IN SOUTH AFRICA

The FXI, in conjunction with the Human Sciences Research Council (HSRC), is preparing publication of its second book. The book stems from a conference hosted jointly by the two organisations on the theme of Media and Democracy in South Africa held from November 8-10 last year. The editorial deadline for the book was the end of last month (May) and it should be ready for release towards the end of August. It will contain contributions by a variety of conference speakers supplemented by additional research.

The book is being edited by the FXI's publications co-ordinator, Ms Jane Duncan, and the FXI's deputy chairperson and Acting Head of the Centre of Socio-Constitutional Dynamics at the HSRC, Mr Mandla Seleane. They have also written a comprehensive introduction to the theme of the book.

The book will be distributed by the HSRC and a pre-publicity campaign is being planned with its marketing department, especially with a view to universities and technikons who may wish to consider the book as prescribed curriculum material. The FXI's previous book, "Between Speech and Silence", is prescribed in the Communications Department of the University of the North-West and the media law course of the Department of Journalism and Media Studies at Rhodes University. It is also used as a reference in the media law course of the Department

of Journalism at the Technikon Northern Transvaal. "Between Speech and Silence" was positively reviewed by a number of South African journalists who recommended the book as serious and, in some cases, as essential reading for human rights students and researchers.

11. OTHER PUBLICATIONS

* The FXI issued a special report on Human Rights Day (March 21, 1997) which evaluated the status of the rights to freedom of expression and access to information in South Africa. The report was issued a second time on World Press Freedom Day (May 3, 1997). It is available on the FXI's World Web Site. The report was issued to the print and broadcast media on both days.

It was also issued to 75 individuals and organisations on the FXI's e-mail group list, as well as to all electronic subscribers of the Sangonet (South African NGO Network) service provider.

* The FXI's e-mail group list is used for the local and international dissemination of FXI press releases and more recently for the electronic dissemination of weekly monitoring reports on South African media and freedom of expression developments and incidents of censorship. Recipients of the weekly monitoring report include IFEX and MISANET.

The International Freedom of Expression Exchange (IFEX) is an umbrella body of some 20 organisations around the world who are concerned about freedom of expression issues. The FXI became a member of IFEX in April last year. Based in Toronto, Canada, IFEX distributes information to all member organisations via electronic mail (e-mail) on freedom of expression violations and attacks on media freedom around the globe. IFEX generates support internationally for freedom of expression campaigns as well as ensuring that where freedom of expression abuses do occur they are met with swift international condemnation and action. FXI Information Officer and External Campaigns Co-ordinator, Raashied Galant, attended the IFEX annual congress in Toronto last year and FXI deputy chairperson Mandla Seleokane represented the organisation at this year's annual congress in Lima, Peru last month.

MISANET is the electronic (e-mail) news and press alert information arm of the Media Institute of Southern Africa (MISA) and provides a similar regional service to that of IFEX. The FXI became a member of MISA in 1994.

12. FOREIGN AFFAIRS

The FXI became increasingly involved in campaigns beyond South Africa's borders last year, mainly as a result of our government's stepped up role and improved status in the international arena. Civil society organisations abroad thus had great expectations from South Africa to take a lead in human rights matters, particularly in relation to Africa. At the FXI's strategic meeting held in August last year, an African policy was adopted which prioritised the Southern African region. However, this did not preclude the organisation from engaging in other campaigns beyond the region, such as the Nigerian campaign. The international role of the organisation was also increased due to our association with the International Freedom of Expression Exchange (IFEX) and the Media Institute of Southern Africa (MISA). Our relationship with MISA has also been strengthened by the fact that the FXI's executive director was until the end of April the South African representative on the Regional Governing Council of MISA.

12.1 The Department of Foreign Affairs

Our involvement in campaigns beyond our country's borders has meant that the FXI has become increasingly sensitive to our government's foreign policies, particularly in respect of foreign governments who engage in freedom of expression violations. To this end the FXI is interested in the work and operations of the Department of Foreign Affairs (DFA) and the extent to which the DFA interacts with civil society and is responsive to the concerns raised by members of civil society.

The DFA released a discussion document last year on the policies that should shape South Africa's foreign relations as well as the department's relations with civil society in South Africa. The FXI was one of a number of organisations that was invited to a two day seminar held in Johannesburg to obtain civil society's involvement in the development of the document. Prior to this, the FXI collaborated with the Ceasefire Campaign and a number of other civil society organisations to formulate a document in response to the DFA's discussion document. It was felt that the latter failed to address adequately certain important aspects of foreign policy, including the relationship between the DFA and civil society. The FXI, in its contribution, highlighted the role civil society should play in foreign policy making and called among others for the DFA to respect and not restrict the foreign relations which civil society organisations were engaged in independently of government. This document was distributed at the Johannesburg seminar. One of the proposals that came out of the seminar was the establishment of a foreign policy advisory council. The aim of this council would be to allow for regular consultation between civil society and government on contentious issues and other foreign policy matters. The FXI will be monitoring this process since we support any initiative that will lead to greater civil society participation in government.

12.2 South African Nigerian Democratic Support Group (SANDSG)

The FXI remains a member of the steering committee of the SANDSG. Last year the support group organised a number of campaigns to highlight the situation in Nigeria while also issuing regular press statements and conducting regular radio interviews. Members of the support group also organised public seminars on issues relating to Nigeria. On June 12th last year, the anniversary of the annulled 1993 elections, a protest march was held outside the Nigerian High Commission premises in Johannesburg. The FXI also issued a press statement on this date in which it pointed out that the deteriorating human rights situation in Nigeria had led to a severe clampdown on the media, including the arrest and torture of journalists, and the fire-bombing of newspaper offices.

A protest was also held on November 10 to commemorate the first anniversary of the hanging of Ken Saro Wiwa and the eight other Ogoni rights activists and to demand the release of all political prisoners in Nigeria. The support group was able to secure a meeting last year with the Deputy Director-General for Africa in the Department of Foreign Affairs, Mr Tony Mongalo, at which we were able to put forward our views and the actions which we wished our government to take in relation to Nigeria. Our lobbying paid off in April this year when the United Nations adopted a resolution to appoint a special rapporteur to investigate and report on the human rights situation in Nigeria. The South African ambassador to the UN played an important role in arguing for the need for this rapporteur.

In September last year the support group along with the International Human Rights Law Group co-hosted a successful conference in Johannesburg for Nigerian pro-democracy activists. The conference brought together Nigerian activists and South Africans who had played important roles in the anti-apartheid struggle. The aim was for them to exchange ideas

and share experiences on a wide range of issues, including the pressing issue of how democratic groups in Nigeria can survive, and even organise, during periods of extreme repression. This was the second conference for Nigerian activists held in South Africa, with the first one, also co-hosted by the support group, held in March last year.

12.3 Zambia

The FXI has closely followed developments in Zambia ever since the government of President Frederick Chiluba exposed its contempt for media freedom by jailing the Editor-in-Chief of The Post newspaper, Fred M'membe, for contempt of parliament last year. Earlier this year the FXI held a meeting with the Acting Director General for Eastern Africa in the Department of Foreign Affairs, Mr W Zastra, specifically to raise our press freedom concerns about Zambia with him and to request that South Africa raise these concerns with Zambia on a diplomatic level. Mr Zastra undertook to raise these concerns in a meeting with the Zambian High Commissioner. The FXI continues to monitor the situation with the aid of the Media Institute of Southern Africa (MISA).

12.4 Swaziland

The people of Swaziland have been living without a Constitution and a Bill of Rights for over two decades following a Royal Decree in 1973 which nullified the country's Constitution adopted shortly after independence in 1968. The FXI, through our Executive Director Jeanette Minnie, participated in a "Constitutional Round Table" conference in Swaziland last year to discuss ways of setting Swaziland on the road to Constitutional and democratic reform. A number of the resolutions adopted at the end of this conference stressed the freedom of expression rights of Swazi citizens as well as the right of the media to operate freely and independently. Earlier this year the demands for political reform in Swaziland reached fever pitch when a large number of Swazi workers embarked on a month long strike in support of these and other demands. The strike was held amidst the absence of fundamental human rights and was characterised by numerous freedom of expression and association violations on the part of the Swazi government as well as a number of restrictions on the media in reporting the strike. A number of organisations in South Africa responded to this situation by forming the Swaziland Solidarity Committee with the aim of providing support for pro-democracy activists in the kingdom as well as to lobby the South African government to put greater pressure on the Swazi government to implement democratic reforms. The FXI is involved in this committee and will seek to step up its campaigning in respect of Swaziland.

12.5 Southern African Human Rights NGO Network

A regional network of Human Rights NGOs in Southern Africa, SAHRINGO, was established earlier this year. The FXI has been participating in the activities of the interim structure and intends to become a fully fledged member of the regional network. The FXI was a signatory to a joint statement issued by Human Rights NGOs in Southern Africa to the SADC Heads of State Summit Opening in Maseru earlier this year, in which we urged SADC member states to ratify international human rights treaties, and to ensure that the SADC Organ on Politics, Defence and Security embraces human rights, and to ensure that SADC plays a leading role in protecting and promoting human rights in Africa.