FREEDOM OF EXPRESSION INSTITUTE

Annual
Report
2009

2009

INTRODUCTION

The scheme of this report is as follows:

1. We briefly outline the strategic objectives of the FXI as per the strategic plan;

2. We indicate objectives in respect of which FXI has been successful in securing funding;

3. We briefly summarise the funding contracts that were secured for during 2008 and 2009.

4. We report on each strategic objective listed below for which we have secured funding;

5. We report on the strategic objectives in respect of which we have not secured funding and future steps to revive these programmes.

6. FXI's organizational challenges are outlined.

FXI'S STRATEGIC OBJECTIVES

In or about January 2008 a strategic plan was put in place by the Freedom of Expression Institutes (FXI's) Executive Committee (EC). The Strategic Plan adopted 15 strategic objectives namely:

a) Build a nationwide freedom of expression network to counter grass roots censorship and build capacity for social movements to handle freedom of expression problems themselves (Freedom of Expression Network);

b) Ensure a change in law to enable journalists to protect their sources of information (Protection of Sources);

c) Monitor and intervene in cases of censorship (Censorship Interventions);

d)   Campaign to upgrade the independence and accountability of the SABC (Public Broadcasting);

e)   Promote access to information for economic justice in South Africa and the SADC region (Access to Information);

f)   Ensuring affordable access to communications (Communications);

g)   Campaigning around the effects of media consolidation on freedom of expression (Media Consolidation);

h)   Reduction in the instances of pre-publication censorship (Pre-publication Censorship);

i)   Campaign for academic freedom (Academic Freedom);

j)   Ensure that defamation does not limit freedom of expression unduly (Defamation);

k)   Narrow the definition of hate speech (Hate Speech);

l)   Promote freedom of expression in the workplace (Freedom in the workplace) ;

m)   Ensure an open and transparent court system (Open and transparent Judiciary).

n)   Campaign around community radio and freedom of expression (Community Radio);

o)   Develop a strategic approach to intervening in freedom of expression issues on the African Continent, and build international links with likeminded organizations (Interventions on the African continent);

FUNDING OF THE STRATEGIC OBJECTIVES

It is important to note that FXI has not secured funding for certain of the strategic objectives and that reporting on same will thus be relatively limited. Included below is a table indicating the FXI's funding status.

OBJECTIVE A:

BUILDING A NATIONWIDE FREEDOM OF EXPRESSION NETWORK

The aim of this programme is to build a nationwide freedom of expression network, to counter grassroots censorship and build capacity for social movements to handle freedom of expression problems themselves.

The strategic objectives of the programme are to:

1.1.   To capacitate a range of movements and organisations of the poor to eliminate censorship and repression directed against them;

1.2.   To encourage the develop 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 to represent grievances;

1.3.   To ensure that censorship and repression can be countered on a national basis, especially in areas and provinces the FXI or even the movements does not have the capacity to assist;

1.4. To network a range of community organisations that have developed in response to poor service delivery, and that are on the coalface and 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;

1.5. To stop growing censorship and repression in South Africa, which could have a destabilizing effect on the whole Southern African region.

2. *Major strategies:*

2.1. Strategic planning with social movements and community organizations on formation of a national freedom of expression network;

2.2. Capacitation of social movements on freedom of expression issues;

2.3. Consultation with organizations in other parts of the country;

2.4. Formation of a national freedom of expression network;

2.5. Launching of campaigns by network.

3. *Major Activities:*

3.1. Two national steering committee meetings. j

3.2. Initial provincial meetings in Eastern Cape and North West Province.

3.3. Legal capacitation workshops in Eastern Cape and North West Province

3.4. Two provincial steering committee meetings in KZN, Gauteng, Western Cape, Free State, Mpumalanga, Eastern Cape and North West Province.

3.5. Media capacitation workshops in at least four provinces;

3.6. National Freedom of Expression Day of Action in August;

3.7. Ongoing organisational support to the National and Provincial steering committees;

3.8. Ongoing legal support to the Freedom of Expression Network and its affiliates across the country**.**

3.9. Ongoing liaison with police to assist with capacitation on the RGA;

3.10. At least two RGA workshops with police in different parts of the country.

OBJECTIVE TWO:

MONITOR AND INTERVENE IN CASES OF CENSORSHIP

4. Programme goal:

4.1.   Stop abuses of the Regulation of Gatherings Act;

4.2.   Longer term trends in censorship are picked up on and planned for;

4.3.   Reduce and ultimately eliminate instances of censorship;

4.4.   Ensure that judicial and quasi-judicial proceedings are open to the media.

5. Strategic Objectives:

5.1. To respond to instances of censorship in both the public and private sectors;

5.2. To lobby against censorship and its causes;

5.3. To monitor the work of specific institutions relating to free expression and lobbying where necessary;

5.4. To initiate projects and campaigns to identify and redress censorious legislation still existing on the statute books;

5.5. To produce longer-term analyses of censorship trends;

5.6. To build support networks for victims of censorship;

5.7. Narrow the definition of hate speech to include physical harm only

5.8. To stop defamation being used to censor speech.

5.9. Major strategies.

5.10. Publicity on selected cases to discourage censorship in future ('naming and shaming');

5.11. Advocacy to remove causes of censorship;

5.12. Referrals to Law Clinic for litigation, either through the FXI undertaking litigation in its own name, FXI Law Clinic Head representing clients, or through amicus curiae interventions;

5.13. Partnership with Sanef and Misa-SA;

5.14. Litigation in relation to any other cases around protection of journalistic sources and defamation;

5.15. Intervention in disciplinary cases, appeals, and CCMA;

5.16. Legislative interventions in Parliament.

6.   Major Activities

6.1.   Respond to individual cases of censorship through writing letters, intervening with authorities, releasing press statements, litigation, etc;

6.2.   Prioritise violations of the right to protest;

6.3.   Prioritise precedents to defend the right of broadcast media to produce live coverage of judicial and quasi-judicial proceedings;

6.4.   Desk and field research;

6.5.   Research on international 'best practice' around protection of sources in developing countries (as requested by Department of Justice);

6.6.   Amicus curiae interventions in various protection of journalistic sources cases;

6.7.   Stop amendments to Film and Publications Act to allow for pre-publication censorship;

6.8.   Intervene in cases of prepublication censorship by representing clients or giving publicity;

6.9.   Publication of shorter articles and longer term analyses;

6.10.   Lecturing and supervision of research at academic level;

6.11.   Litigation and publicity to ensure open courts;

6.12.   Litigation to ensure the right of electronic media to cover judicial and quasi-judicial proceedings;

6.13.   Interventions in disciplinary hearings, CCMA and labour court on freedom of expression labour cases;

6.14.   Amend and/ or repeal censorship legislation, prioritizing the following laws:

6.14.1.   Defence Act

6.14.2.   Environmental Conservation Act

6.14.3.   Regulation of Interception of Communications Act

6.14.4.   Internal Security Act

6.14.5.   Intimidation Act

6.14.6.   National Supplies Procurement Act

Promote Access to Information

7. Situational analysis and challenges

The FXI's Access to Information Programme (ATIP) is located firmly within its 'proactive' thrust. The aim of the ATIP is for communities and their leaders, networks, and organisations to be empowered to use the right/freedom of access to information (FOI) to fulfil socio-economic-political rights, and basic needs in SADC countries and households. The landscape of FOI enabling legislation, policies and actions in SADC is woefully sorrowful. This is because only South Africa has a Promotion of Access to Information Act 2, of 2000. All the other 13 SADC countries are in various slow processes of attempting to enact stand alone access to information (ATI) legislation, as well as parallel processes to reform laws of the country that militate against FOI and freedom of expression. The dearth of FOI friendly societies in SADC creates countries in which accountability, transparency in decision making, good governance, and realisation sustainable livelihoods are severely impaired.

The trend towards commercialisation of basic need services such as transport, water, electricity, communications, education and health presents a situation where, in the absence of FOI legislation, people cannot challenge unjust and unfair business practices that have negative impacts on people's right to have decent lives. The objective of the Access to Information Programme to popularise FOI in SADC is to make the right to access to information a tool for community empowerment, beyond the elite. To make disadvantaged and resource poor communities appropriate FOI in the media and socio-economic spheres as a tool for social justice struggles. In order to promote a SADC environment that is conducive for individuals and organisations to seek information to advance socio-economic rights and needs the FXI Access to Information Programme is undertaking a communication for social change campaign encapsulating the following aspects:

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

The main phases of the communication campaign in South Africa, Namibia, Angola, Zambia, Zimbabwe, Lesotho, Swaziland, Mozambique and Botswana are:

1. Research on the situation analysis, and gap analysis with regards to ATI regimes and needs, opportunities and challenges in SADC;
2. Campaign communication strategy design with partners from the SADC countries;
3. Campaign in-country message design workshops;
4. Campaign in-country multi-media communication materials development;
5. Coordination, implementation and management of the campaign;
6. Monitoring and; process, output and impact evaluation.

The other programme activities will involve:

- Legal action to test the FOI/ATI legislation or issues of its constitutionality;
- Use of multi-media channels to popularise the work that's going on;
- Monitoring the number of information requests in the various countries around issues of debt, transparency in economic decision making, budget making and monitoring, international financial institutions; and trade.
- Mobilising social movements in SADC to use ATI legislation for advancing freedom of expression and actions for basic needs through their economic justice networks (EJNs).

The recent elections in Zimbabwe demonstrated FXI's vantage position in being a regional watchdog for facilitating and protecting freedom of expression and access to information rights. Many radio, television and newspaper media organisations turned to the FXI for information on how inadequate to access to information in Zimbabwe was going to impact on the processes and outcomes of the elections, the people's capacity to make intelligent informed choices, and the people's capacity to determine the social, economic, political order that they prefer. The FXI Access to Information Programme will gradually assume greater importance through linking issues of SADC countries electoral reforms and, socio-economic development that is just.

The FXI Access to Information Programme will face many challenges on the ground related to:

1. Identifying strategic and appropriate coordinating partners in the campaign countries;
2. Assisting coordinating partners to develop programme work-plans, budgets, coordinating mechanisms;
3. Government or private sector resistance as some organisations have been operating under a veil of secrecy for a long time and do not want to lift the vein;
4. Using South African experiences in advocacy, lobbying for ATI and making information requests for sharing experiences with other SADC countries;
5. Coordinating an international campaign.

These challenges are surmountable with the necessary administrative and programme capacities related to human resources, financial and technical sustainability.

6.1   Programme goal

The programme seeks to ensure that access to information is achieved throughout the region through the enactment of access to information legislation and pending legislative enactments through the provision of access to information to civil society organisations for

the advancement of socio- economic justice and to ensure open and transparent decision making on service delivery expenditure.

6.2 Strategic Objectives

The strategic objectives of the programme are the following:

- Intensify the campaign for the enactment of the access to information legislation in the region;
- Enhance public awareness/understanding on the right of information;
- Mobilise and empower citizens to demand access to public information;
- Need to engage SADC government on the benefits of access to information legislation;
- Development of good information management infrastructure within partner organisations on filing and tracking information requests ;
- Sharing and publicizing good information management practices in the present restrictive environment in the region.

6.3 Major Activities

The major activities for the programme are as follows:

- Advocacy and campaign material on the need for the passage access to information legislation by 2009 in the region;
- Holding of a workshop between regional partner organisations and other stakeholders and the media and journalists sector to explore options for the alignment of campaigns for the enactment of access to information in the region: a publication emanating from the presentations and contributions will be prepared, published and made available on a region wide basis;
- Two presentations in SADC (for example during heads of state meetings and other consultative fora) on the need for the enactment of access to information legislation;
- Hosting of one workshop per- country between partners organisations and representatives from government- in the ministry of information, and officers in departments critical for the advancement of socio- economic rights to explore practical methods of making information available in the current environment of no access to information legislation;
- Ongoing in- country filing of applications and requests for information on selected areas of socio- economic justice;
- FXI to prepare and develop a thorough and detailed guide on filing and tracking information request in the SADC context, and on effective recording of requested information from within our partner organisations;
- FXI to go through all Bills awaiting passage in SADC and provide a trenchant analysis of gaps in terms of the advancement of socio- economic justice. A publishable report presented in simple format to be circulated to partner organisations as basis for advocacy around passage of access to information legislation that is pro- poor.

6.4 Quantitative Indicators

Quantitative indicators for the programme activities and objectives are as follows:

- Number of countries to have enacted access to information legislation;
- Number of access to information requests that have been successful;

- Extent of the acceptance and use of access to information as a tool for achieving socio- economic justice within civil society organisations in the region;
- Capacity of SADC access to information network to initiate, track and file access to information requests independent of FXI.

6.5   Qualitative Indicators

Qualitative indicators for the programme activities and objectives are as follows:

- Achievement of broader civil society awareness of the need for the passage of access to information legislation in the region;
- Entrench the debate of the need for the passage of access to information legislation with the regional governmental structures such as SADC;
- Partner organisation independently and effectively undertake the filing and tracking of information requests

6.6   Means of verification

- External programme evaluation of the extent to which qualitative and quantitative objectives of the programme have been met;
- A critical review of progress on access to information in the region with a specific emphasis on legislative and policy developments and civil society's awareness and use of access to information indicators.

6.7   Outputs

- Report on countries that have enacted access to information legislation since the commencement of the programme;
- Report on access to information requests that have been met and the systematic use of tracking and filing of requests;
  Well co-ordinated regional network on access to information for socio- economic

    justice in the region.

Campaign for Public Broadcasting

7.0 Situational analysis and challenges

South Africa's public broadcaster, the SABC, is the most popular and accessible broadcaster in the country, and has often been seen as a model of independent broadcasting in the Southern African region. It also dominates African public broadcasting, and is also becoming an international force to be reckoned with as its News and Current Affairs division opens offices throughout the world.

Yet those who consider the SABC to be the continent's 'model' of public broadcasting, must be looking with bewilderment at the recent controversies around broadcaster's independence. Also, the extent of the SABC's accountability to the very communities it claims to serve is also in question, with the overly commercial bias in SABC programming lead to a bias towards middle and upper class audiences, and away from workers and the unemployed. Women, rural people and the elderly are underrepresented. This could be

attributed largely to the fact that the SABC derives over 80 percent of its income from commercial sources, and scant income from direct public funding. The skewed nature of the SABC's funding base means that its programmes are driven by commercial, rather than public service, interests.

Commercial capture is not the only problem regarding the SABC's independence; state capture is also emerging as a problem as well. Evidence of undue political interference has emerged in the appointment procedure of the latest SABC Board, controversial programmes have been unceremoniously removed, and the Managing Director of News and Current Affairs, Snuki Zikalala, has been accused (and found guilty) of blacklisting political commentators who are critical of the government; yet the Board continues continues to express 'full confidence' in him.

Nominally, the SABC is independent, but its independence has been eroded in subtler ways, which has meant that they fall under the independence radar. There is little evidence of direct external interference in the SABC's editorial content: rather the most pressing problem seems to point to editorial timidity at best, and a growing climate of internal self-censorship at worst. This culture of deference, combined with a fear of risk-taking, has been confirmed by a qualitative report on SABC current affairs, commissioned by the News and Current Affairs department from the research organisation Plus 94. This report contains a finding that that SABC current affairs programmes were not considered to be credible in the eyes of SABC listeners and viewers, with the exception of Special Assignment.

In a climate of uncertainty, where managers and even Board members dabble in decision-making that should be left to journalists, there is a growing tendency to self-censor to please the powers-that-be internally and externally, particularly when it comes to controversial decisions that may offend the government or the ruling party.

Apart from the overt manipulation of the process to favour the Thabo Mbeki camp in the ANC, more subtle biases have crept into the Board's composition, which represents an elite pact between political elites supportive of the Mbeki Presidency and business. These overt and subtle biased have eroded the SABC's institutional independence. The SABC's administrative independence has also been eroded over time. In 2003, when the SABC was incorporated as a public company, the Minister concluded the SABC's articles of association with the broadcaster, which effectively give the Minister control over key decisions of the Board. In terms of the articles, the three top managers of the SABC are appointed by the Minister, not the Board, including the CEO, who is also the SABC's editor in chief. This means that the Minister exercises indirect control over the SABC's most controversial editorial decisions. Also, the Minister has a power of veto over the SABC's strategic objectives, business plan, budget and training programme. The Minister enjoys all these powers in spite of the fact that the Broadcasting Act states that 'the Board controls the affairs of the Corporation'.

The SABC has become vilified in other sections of the media, and in civil society and the labour movement, as being a mouthpiece for the Mbeki faction in the ANC. These controversies, which peaked in the last two years, underscore the fact that much more needs to be done to secure the independence and accountability of what remains the most influential media institution in the country, and possibly on the continent.

8.1   Programme goal

- The establishment of an accountable, responsive public broadcaster, independent of governmental or commercial influences.

8.2   Strategic Objectives

- Upgrade the independence of the SABC Board;
- Ensure mechanisms of public access to SABC Board, and SABC services;
- Reverse climate of self-censorship in SABC news, current affairs and programming;
- Support the ANC's resolution for a 60 percent public funding base for the SABC by 2010.

8.3   Major strategies

- Lobbying as FXI to ensure that independence and accountability of SABC is upgraded;
- Establishment of user groups through social movements to lobby around independent and accountable public broadcasting;
- Capacity building of user groups;
- Publicity and research.

8.4   Major Activities

- Amendment of the SABC's Articles of Association through lobbying and, if unsuccessful, litigation;
- Lobbying the Ministry of Finance for public funding;
- Organise meetings with communities to take forward the work of the media rights campaign;
- Consolidate campaign in Gauteng, Free State and Limpopo, and extend campaign to KZN, Mpumalanga and North-West;
- Extend campaign to remaining provinces in 2008;
- Pursue blacklisting case at Icasa;
- Research on 'best practice' to be applied to the SABC Board;
- Ensure a new and better Board;
- Contribute to drafting of SABC Bill in 2008.

8.5   Quantitative Indicators

- Media rights campaign covers the following provinces by 2006: Gauteng, Free State and Limpopo;
- Media rights campaign reaches the following provinces by 2007: KZN, Mpumalanga and North-West;
- Campaign reaches remaining provinces by 2008;
- Amendment of AOA to upgrade independence of SABC;
- FXI wins blacklisting complaint at Icasa;
- Number of FXI candidates elected to SABC Board;
- Research informs drafting of SABC Bill;
- Independence and accountability problems are addressed in SABC Act.

8.6   Qualitative Indicators

- SABC becomes more responsive to the needs of poor communities;
- SABC becomes more independent of commercial sources and government
- SABC programming becomes more adventurous;
- SABC Board becomes more accessible;
- Future Boards are more representative of the South African population;

- Editorial controversies cease.

8.7 Means of verification

- Contents of SABC Act;
- SABC annual reports and minutes of Portfolio Committee on Communications;
- FXI wins case against SABC on blacklisting;
- Media articles on SABC controversies lessen over time.

8.8 Outputs

- Appeal on complaint to Icasa – 2008;
- SABC Act improves on problems in Broadcasting Act – 2008;
- User groups in all provinces by 2010;
- Media rights campaign – 2008-2010;
- Research on SABC Board – 2008.

8.8 Anticipated Impact

- SABC Board becomes more responsive;
- Self-censorship ceases;
- SABC public funding is increased;
  Independence is upgraded

Campaign for Media and Academic Freedom

10.0 Situational analysis and challenges

This campaign will focus on threats to media and academic freedom posed by commercial pressures, as commercialisation can also limit the ability of journalists and academics to express themselves freely. The campaign will also focus on maximising media diversity, as diversity could be understood as an instance of media freedom. Mainstream media in South Africa, especially the print media, have tended towards consolidation, with most major mainstream newspapers being owned by three groups (Media 24, Avusa and Independent Newspapers). A significant number of media assets are also foreign owned. Commercialisation of the media is leading to a concentration on elite politics, with popular politics often not being covered adequately, and constitutes a threat to the integrity of the media. Concentration has fostered media that are characterised by the homogenisation of views, commodification of news and views, the dumbing down of analysis and the tailoring of

facts to suit its own worldview. In some cases, the wall of separation between management and editorial functions has been eroded.

Audiences falling within LSM 3 and below remained largely underserviced by the media, with the public service stations of the SABC being the main sources of news and information. At the same time, independent, critical and investigative reporting has come under pressure in an increasingly consolidated media market.

These problems around media access means that communications should become part of a basket of basic services the state should provide funding for. However, the establishment of a publicly funded media system brings with it two additional problems, namely underfunding by the state and the erosion of independence. With respect to underfunding, the amount raised for the statutory media subsidy scheme, the Media Development and Diversity Agency (MDDA) was a shadow of its original budget. While Electronic Communications Act (ECA) has changed the amount available to the MDDA for state subsidy, the role of the MDDA needs to be strengthened.

With respect to independence, the FXI has also identified worrying developments through its research within the community radio sector where a number of stations have reported subtle intimidation, blackmail and attempts to control them by some members of the ruling party. Often, these attempts come in the form of members of the ruling party making statements to the effect that the ruling party members were responsible for the formation of these stations and that these stations are no longer benefiting the Party as they should. This undoubtedly raises concerns about other measures that the ruling Party may wield to muzzle community radio stations through direct manipulation of conditions under which these stations receive support from different government departments in the form of advertising and programme sponsorship.

The potential for control has been further heightened through Community Electronic Multimedia initiatives involving government, which in the words of one commentator have 'taken community media one step closer to government'. While this closer relationship may have a positive spin-off for community media in terms of greater access to resources, '…The downside is the obvious risk of political interference. In some cases, the political nature of government interventions has proved to be seriously debilitating with some community media organisations becoming little more than government communication instruments, taking all their content from government and relying on government for editorial direction and financial security. This naturally undermines the independence and credibility of media organisations'.[i]

Recently, the FXI has been called upon on numerous occasions by people who have seen themselves as victims of the violation of academic freedom or of free expression rights at universities. Over the past few years, the University of KwaZulu-Natal has been a flashpoint for controversies around academic freedom, with disciplinary action having been taken against two academics for a number of alleged misconducts, including speaking to the media. A case at Fort Hare University involved a law professor being disciplined for criticizing the university administration in his lectures, at conferences, in private conversations and in the media. A member of the support staff of the Tshwane University of Technology is being charged with the apartheid era offence of immorality, for distributing sexually explicit photographs to some friends. A disciplinary case was also heard at Wits University, where students were charged for bringing the institution into disrepute by criticizing the lack of freedom of expression on campus.

These are not the only problems. In universities across the country, rules and regulations are being developed that have a direct and potentially negative impact on academic freedom and freedom of expression. Further, registered student organisations at some universities

have complained that they are forced to jump through numerous hoops in order to realise their free expression rights at their campuses. They indicate a growing disciplinary culture in universities and a systemic shift in the academic freedom climate, where growing controls are being placed on the free speech of academics and students.

There are several macro-trends behind a disciplinary shift in the climate on campuses. First, a rise in labour cases relating to freedom of expression of university staff which she says mirrors the upward trend in freedom of expression-related labour cases generally. Second, globalisation pressures and declining budgets have pushed universities towards corporatisation and the need to attract private funding which has compromised important areas of research. Also, when a university is corporatised it becomes a 'brand' and power is 'sucked' to the top and often centralised in the vice-chancellor. Criticism of management amounts to criticism of the university and is punished through disciplinary measures that place reputation above free expression. The senate becomes marginalised and the disciplinary process is taken out of the hands of academics.

Third, state steering of higher education has brought pressure to bear on academic freedom. Finally, post-9-11 neo-conservatism is impacting on academic free speech. Draconian electronic communications policies ban "huge swathes of internet content" using a post-9-11 law, the Regulation of Interception of Communications Act as justification.

10.1 Programme goal

- To stop the erosion of media and academic freedom in South Africa;
- To develop positive precedents for media and academic freedom in South Africa;
- To ensure diversification of South African media.

10.2 Strategic Objectives

- Ensure a strict separation between three tiers of media;
- Campaign for the penetration of poor communities by media and the reflection of their concerns and needs by these media, including the formation of new, alternative media and campaign for the support of this media;
- Strengthen the performance of the MDDA;
- Achieve ownership rules that enable media diversity, while not threatening the viability of media organisations;
- Academic institutions that fulfil their mission to produce academic leadership and socially engaged research;
- The creation of academic environments where academics and students are able to engage in teaching and research freely.

10.3 Major strategies

- Research study on the effects of media consolidation;
- Advocacy around ownership rules;
- Advocacy to strengthen the funding base and independence of the MDDA
- Research and advocacy on the state of academic freedom;
- Encouraging the establishment of an academic association, as an industry self-regulatory body for academic freedom issues;
- Advocacy to ensure that community radio stations meet their mandates, and assisting communities to organize to achieve this objective.

10.4 Major Activities

- Extensive research study on the impact of media consolidation on media diversity and media access, leading to development of advocacy strategy;
- Advocacy with government, political parties, statutory bodies and Competition Commission to foster media diversity;
- Teaching and supervision of research on political economy of media
- Audit of subsidiary legislation impacting on freedom of expression on campus;
- Meetings with academics, Department of Education, Council for Higher Education, to discuss outcomes of research;
- Working with academics to form academic association;
- Advocacy with student organizations to overturn freedom of expression restrictions on campus.
- Handbook on censorship and community media in process
- Intervention in individual cases where CR are straying from their mandates.

10.5 Quantitative Indicators

- Rules, disciplinary codes and policies that restrict freedom of expression unduly on campus are repealed or amended;
- Formation of an academic association and self-regulatory body;
- Media diversity increases.
- Disputed community radio stations satisfy licence conditions (clean bill of health from Icasa.

10.6 Qualitative Indicators

- Academics are successful in organizing to protect academic freedom;
- MDDA is effective and impacts positively on the media diversity picture in South Africa.
- Communities are satisfied with level of service of community radio.

10.7 Means of verification

- For media diversification, 'Who owns Who in South Africa', GCIS and MDDA statistics;
- Number of postgraduate theses on media freedom;
- Department of Education and Council on Higher Education reports;
- Increased funding for MDDA (annual reports);
- Reduction on speech-related disciplinaries of academics;
- Amended disciplinary rules or codes of conduct;
- For community radio, Icasa Monitoring Unit reports;
- Existence of an academic association.

10.8 Outputs

- Research report on media consolidation;
- Media statements and articles;
- Master's and Doctoral thesis on aspects of media freedom;

- Draft or model legislation;
- Postgraduate courses on freedom of expression;
- Audit of university subsidiary legislation.

10.9 Anticipated Impact

- Media diversity increases;
  Journalism and academia are less affected by commercial pressures

ORGANISATIONAL CHALLENGES FACING THE FXI

During the

The FXI is finding that resources available for national freedom of expression work are diminishing, while its workload is increasing owing to a rise in censorship in the country. This means that the FXI has to be inventive about how it continues its work. Income generating activities that fall within in the FXI's mandate need to be pursued, and a 'Friends of the FXI' should be formed to assist with fundraising. Sympathetic individuals can also be tapped into as a source of funding.

Another strategy is to develop a partnership with a larger institution. To this end, in August 2007, the Freedom of Expression Institute signed an affiliation agreement with the Faculty of Humanities, University of the Witwatersrand. The principle objective of this affiliation agreement is to build a working relationship between the two institutions that may in time result in the full incorporation of the FXI as a centre of Wits, if the terms and conditions of full incorporation prove acceptable to both parties. The activities under this affiliation agreement include the following, and identify the responsible parties in relation to each activity:

- Contribution, through teaching, to selected courses of the Journalism and Media Studies Departments (FXI);
- Pursuing and concluding discussions with other Departments in Wits regarding teaching and research collaborations (FXI and Wits);
- Running seminars for career-entry Honours students in the Journalism Department on freedom of expression and related issues (FXI);
- Running a research group to offer Journalism Department students supervision in this area (FXI);
- Working together on public events where appropriate: e.g.. Media Freedom Day, or general seminars on media freedom issues (FXI and Wits);
- Any other reasonable teaching or research which arises out of these collaborations (FXI);
- Planning for the establishment of a dedicated freedom of expression course from 2008 onwards (FXI and Wits);
- Seek funding opportunities for joint activities which provide mutual benefit to each institution's teaching, research and outreach programs;

- Subject to funding being raised, implementation of a joint project on documenting the history of South Africa's public broadcasting transformation, and integration of the FXI's historical archives into Wits (FXI and Wits);
- Publishing journal articles on issues relating to freedom of expression (FXI);
- Planning for full incorporation of the FXI into Wits, pending a review of the affiliation agreement and the providing the terms of incorporation are agreeable to both parties (FXI and Wits).

11.1 FXI as a Continental Organization – Challenges

The FXI has participated in more Pan-African activities relating to freedom of expression, given the realities of continental integration. In spite of the fact that the FXI is mainly national in focus, it would appear from these developments that the FXI is being pulled inexorably into continental work, and that this is an inevitable evolution. What the FXI has failed to do, up to this point, is to develop a well-structured plan of action to move it away from an ad-hoc approach. The funding of this proposal will go a long way towards such a plan, by assisting the Institute to develop a pilot project for its continental work, while strengthening its regional work. One of the reasons why the FXI has evolved in this direction is its strategic orientation towards freedom of expression. There has been an international trend in freedom of expression work to reduce such work to media freedom. In the process, broader repression of more popular forms of expression – which is often even more vicious than media repression - go unchallenged. There are significant gaps in freedom of expression work on the continent, that existing media freedom organisations are simply not designed to address.

11.2 Governance challenges

- The FXI converted recently from a membership-based organisation to an NGO. This means that the Executive Committee is appointed, not elected; The appointment process needs to ensure a proper representation of skills and experience on the Committee, as well as an appropriate race and gender balance;
- The FXI needs a revised planning, reporting and monitoring system to enable strategy discussions at Executive Committee level, and to enable to measurement of impact;
- The Executive Committee needs to be more proactive in policy development: a role that it has played patchily and inconsistently. Thus far, policies to guide the FXI's work have been developed in relation to pornography, hate speech, media development and diversity, freedom of expression as a facilitative right, cameras in the courtroom and sub-judice;
- The FXI is committed to changing its governance structure to ensure that it is governed by a Board with continental representation. In addition, extensive consultation will need to take place with existing NGOs and social movements on the continent about the concept of the network and the role of FXI, given the extreme sensitivities that exist about the politics of South African NGO's extending their work beyond South Africa and into the African continent.

11.3 Programming challenges

In order to meet the challenges of this changing external global and local environment, the FXI requires the following:

- A need to balance between the 'reactive/case load' work and the proactive work with communities and organisations who turn to the FXI repeatedly for assistance, with an emphasis on working in a more proactive mode by empowering communities facing particular freedom of expression problems. There is high output in FXI without sufficient space for reflection. It is necessary for space to be created to prepare for a more pro-active way of working, based on the principles of empowerment;
- The FXI needs to find ways to work in a more sustainable way, as the benefits offered by the FXI would be spread. Adequate financial, organisational and professional capacity would be required to effect this shift as working in a complex external environment in an empowerment mode demands more strategic competence and space needs to be created for this to happen. The shift from a reactive to a proactive mode should be an integrated approach, involving all Programmes, so that an empowerment concept is evident in each Programme;
- That this balance be reflected in a strategic plan accompanied by activation of the required capacity, adequate reflective and strategic support to enable effective and sustainable pro-active work especially with community organisations, trade unions and social movements who are experiencing particular freedom of expression problems;
- The FXI needs to prioritise cases it takes up, targeting those cases, which may have a multiplier effect in the future if good precedents are set;
- The FXI needs to use to media more effectively to highlight freedom of expression violations;
- The FXI needs to establish a Legal Unit to pursue precedent setting cases into the courts, and also conduct legal training to ensure that skills to handle freedom of expression violations are taken to community level, and do not simply rest with the FXI (in line with moving away from a reactive mode of working).

11.4   Human Resources management challenges

- Ways need to be found of building HR capacity in a context of declining donor funding, and shifts from multi-year to single year contracts, and the instability that the shift brings on an HR level. Most staff cannot be retained in a climate of such uncertainty, and HR capacity cannot be built effectively;
- More of the FXI's work will need to be done on a contract basis, which requires stronger management skills;
- Financial uncertainty makes it more and more difficult to attract skilled staff;
- The FXI needs to establish an effective internship programme. The interns the FXI has taken on have benefited the organisation enormously;
- One way of building HR capacity is through the partnership with Wits, but the FXI needs to create space in its own programme for activities like supervision and teaching.

11.5   Operational capacity challenges

- There is a need for growing strategic management and strategic competence in order to ensure the relevance, effectiveness and efficiency of FXI in the light of the above-mentioned problems;
- A strengthened administration to address strategic administrative challenges. This will assist in freeing the Executive Director (ED), to enable her to scan the external environment for potential allies, and sharpening the FXI's strategy in relation to those allies;

- A strengthened financial department to do financial analysis and forecasting, to ensure that finances are adequate for the implementation of the strategic plan;
- Balancing national, regional and continental work.

11.5 Funding

- The FXI has gone some way to diversifying its funding base, but more work needs to be done in this regard;
- Donor funding is in long term decline and the FXI needs to plan to compensate for this decline;
- The FXI needs to investigate and implement income generating activities, such as consultancies, teaching and supervision, funded lectureships and research;
- The FXI needs to build a capital base;
- FXI's incorporation into Wits may assist with long term sustainability, as it will be part of a more stable institution with funding partnerships of its own. However, there are significant obstacles to full incorporation.

11.6 Networking challenges

- The FXI needs to position itself in a manner where it adds value to existing network, without duplicating what already exists;
- In attempting to expand its work into Africa, the FXI risks taking on too much, and promising what it cannot deliver;
- Competition with existing organizations, leading to conflict, necessitates greater relationship management.

11.7 Organization & management objectives for period 2008 – 2012

- Review FXI Constitution and management structures to enhance governance and management effectiveness;
- Tap into local resources;
- Establish 'Friends of the FXI', and set up individual subscriptions to support FXI's work;
- Ensure a shift from a reactive to a proactive way of working, and build benefit sustainability into all the FXI's activities by building capacity for social movements to take on freedom of expression cases themselves;
- Develop and implement a multiyear fundraising plan, to diversify the FXI's donor base, and to optimize this income stream;
- Convert the FXI from a nationally-focussed to continentally-focussed organization;
- Finalise discussions with Wits about the possibility of incorporation, and implement agreements. Through the relationship with Wits, develop an academic free expression programme that will build human resource capacity in the field;
- Develop an archive of FXI documents that researchers can have access to;
   Develop a business model and business plan that plans for multiple income streams

[i] Quoted in Benjamin, P. 'Community Media, Communications, Tariffs and Convergence', report submitted as part of the research contract on community media, co-ordinated by FXI and NCRF, funded by the Netherlands Institute for Southern Africa (Niza), March 2004. 33.

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