**Program on Independent Journalism Portfolio Review: Addressing Legal Challenges to Freedom of Expression**

**Summary**

In the first PIJ Portfolio Review on “Addressing Legal Challenges to Freedom of Expression” on May 7, 2013 Stewart Chisholm provided some of the key findings resulting from analysis of grants within the PIJ’s broader freedom of expression portfolio over the past two years, which contained a legal component. This body of work included: standard-setting work with Inter-Governmental Organizations, including the Special Rapporteurs on Freedom of Expression; support for litigation and legal training efforts, primarily through the establishment of the PIJ spin-off, the Media Legal Defence Initiative; as well as grants for media law reform efforts, including the development of legal frameworks to protect journalists.

In his opening remarks, Stewart noted three main findings:

* The difficulty of conducting a retrospective analysis against the then Media Program’s overall strategy, which was intentionally quite general and broad so as to allow for more flexibility to respond to specific needs as they arose, particularly within the freedom of expression portfolio. The fact also that many of the grants were still ongoing during the time of the review, meant also that it was not possible in many cases to ascertain what specific accomplishments had actually been achieved from the grants themselves.
* The second finding was quite revealing to the staff working on the freedom of expression portfolio, as the analysis showed that the majority of the grants that had been issued during this period were often concepts that were initiated by the Program directly as project-support grants to address one-off objectives, rather than with broader considerations of building the field per se. In some cases, larger grants were made to secondary institutions to support the work of the Special Rapporteurs on Freedom of Expression, while in other cases smaller grants were made to support conferences and events, which sought to highlight specific media law reform efforts and address targeted research needs. This meant, however, that the freedom of expression portfolio’s staff was often over-stretched in attempting to oversee and manage the many grants and initiatives.
* It was much easier to document achievements and success resulting from those investments which sought to both develop and support strong “leaders in the field,” such as the Media Legal Defence Initiative (MLDI), which the Program incubated in-house for a number of years so as to assure a strong governance and financial backing before spinning it off.

Stewart asked Iva Dobicina of from the Human Rights Initiative to serve as the initial discussant and review the background paper ahead of time. Her response to Stewart’s presentation posed a number of questions. Iva stated that she struggled, for example, in seeing how all the grants fit together as a cohesive and strategic body of work. In some cases, such as support to the Special Rapporteurs, it was not clear to her why these grants were outsourced to other institutions, while in others the Program played a much more active role, such as establishing MLDI. These observations made it difficult for her to see the Program’s specific niche. For instance, what were the reasons for the Program to set up the organization – was it because staff felt there was a need that no one else was able to address, or were there other reasons behind this?

In response, Stewart highlighted that the disparate nature of many of the grants was due to the reactive nature of the program. One of the goals in working with the Special Rapporteurs was to find organizations to oversee the grants so as to have some sort of “firewall” between OSF and these structures, so as not to be seen infringing upon the independence of the Rapporteurs, although it was noted that in some cases, such as with the UN Special Rapporteur, there were significant challenges with the implementing organizations.

Chris said the he found peer-to-peer review between Stewart and Iva a useful way to set the stage and noted that he shared many of the same questions that Iva raised. Regarding MLDI, Stewart noted that this was a good example of the Program’s “niche” since it was often quite difficult for other donors (specifically governmental ones) to fund specific legal cases, but much easier after MLDI was created, which meant that it could select these cases on their merits. At the same time, Stewart noted the difficulties that MLDI faced in building some of the regional networks it supported, where it was clear that attempting to over-formalize these structures initially could actually cause them to implode, such as in Asia. Sandra Dunsmore supported this concern that, in such cases, it could be best to maintain support for existing efforts, even if they operated at a more informal and ad hoc nature. Chris also highlighted his support for MLDI, noting that it should not always be judged as problematic to invest significant resources into one institution if that organization continues to fill a specific niche needed by a field. He recommended that the PIJ may even wish to consider investing more resources into MLDI in the future, if it is clear that the current support is not sufficient.

Chris also questioned the Program’s support to the Special Rapporteurs, which Stewart explained was never meant to be exhaustive, but was rather opportunistic, given that all four posts happened to held at same time by four quite prominent individuals who were willing to raise the bar on certain issues. Stewart added that judging the impact of these offices is often a difficult task, as many of the standards which they Rapporteurs establish can take significant time to be implemented in practice. However, Chris expressed his support for continuing these processes, if and when it would appear that we see also some value in the individuals who hold these offices and have trust in their ability to influence change in the future, especially as these offices will all be changing hands over the next year. Chris wondered whether OSF could play a more pro-active role in endorsing certain candidates for the Rapporteurships, it was noted that this could also be problematic given the political nature of these offices. Stewart suggested that it could be useful to consider means to support the Rapporteurs once they have left office, if there are specific projects, which they are engaged in what might be worthy of continuing. He provided the example of the previous Rapporteur for Latin America, who went on to establish a regional university-based program on freedom of expression at one of Argentina’s lead universities.

Chris then asked a question as to whether the staff felt pressured to establish programs at universities where OSF board members were overseeing these efforts (i.e., Hong Kong University and Central European University). Stewart noted that they did not as the programs at CEU were independent, while Hong Kong University had been a long-term partner in incubating media law efforts. Overall the staff agreed bout the value of supporting programs on freedom of expression and building capacity of researchers and lawyers in academia.

Chris posed a question to the entire staff present, as to how it viewed the fact that there has been a significant decline in freedom of expression in the past few years. Given the fact that OSF is such a lead funder in the area, does this decline mean that we’re losing the battle, have not been addressing the correct threats, or have otherwise not succeeded in some fashion? Stewart noted that it remains an uphill battle, because old challenges and threats remain, while the passage of new restrictive laws, such as those regulating the Internet, bring with them additional concerns. However, Stewart added that these negative trends were matched by positive inroads brought about by technological change, in some cases allowing more individuals to voice their thoughts and opinions (i.e., support for online media, etc.) Edward Pittman also added that the Program has made significant inroads in helping to improve legal frameworks for protecting journalists, which has been one of the concepts it has been proactively developing.

Chris concluded the meeting by answering three of the questions that Stewart posed at the end of the background document (i.e. how should the portfolio balance the reactive versus strategic needs, how operational can it be in establishing new programs and networks, and how effective can it in measuring its work in convening and networking other organizations). Chris noted that OSF is only beginning to see the new world we are operating with a structure whereby the budgets and strategies are inter-linked to fixed goals. However, he stressed that our ability to be flexible will continue to exist through the use of the reserve funds, although the low spending to date of these funds ($12m out of the $100m at the time of this review) means there will be a process of adjustment still in moving towards this approach. He also added that the development of concepts served as the main means to support new initiatives, but only where they field was not significantly developed. Finally, he agreed that the role of donors in convening efforts should be viewed somewhat sceptically as noted in the background document, as the intent of grantees to take part in such efforts was not always clear (i.e., whether they were doing so to pursue valid interests or because they hoped to receive funding).

Stewart concluded by noting that the portfolio review process itself had been quite revealing and that the main “lesson learned” going ahead, which the freedom of expression portfolio would try to make adjustments for (in 2015), would be attempting to move away from the large number of project-based grants and really trying to focus on building “strong leaders” in each of the sub-fields and sectors, such as media law reform and safety, on the example of MLDI in regards to litigation. This could be achieved either by strengthening existing partners and/or attempting to forge new alliances in some cases. He noted that it would be useful to streamline more projects to show how they might contribute more directly to improving the enabling environment for journalists, which will be discussed once the new director is in place. These efforts might also help to alleviate over time the burden on the staff, who would not need to remain so directly engaged in all project activities. In reflection as well, regarding the “state of the field,” i.e., freedom of expression, it will be important perhaps not only for the freedom of expression portfolio but the PIJ overall, that it attempts to better monitor and track the work and assistance of other donors, so as to ensure that the PIJ is truly fulfilling the mission that is best suited for the Program. This will also be one of the tasks to be conducted in the autumn so as to coincide with the arrival of the PIJ’s new director.