

MLDI

Media Legal
Defence Initiative

2019 Learning Report

A summary of MLDI's Monitoring, Evaluation and Learning activities



May 2020

Introduction

At MLDI, we take the monitoring and evaluation of our work very seriously. We undertake a number of internal and external evaluations each year, in order to understand both the effectiveness and relevance of our programmes and the impact of legal defence for journalists, in an increasingly contracting space for media freedom globally. We are committed to being a transparent organisation and wish to share the lessons and findings from our evaluations with our supporters, but due to the sensitive nature of many of our evaluation reports, we are not able to share the full reports externally. Instead, we have created this Learning Report to share key findings from 2019.

This report includes a summary of the following programme and project evaluations carried out in 2019:

1. Strategic Output and Outcome Indicators
2. 2015-2020 Strategy Evaluation
3. 2019 Journalist Impact Survey
4. Digital Rights' Advocates Project Phase 1 – Final evaluation
5. Macedonia – Media Development Centre (MDC) partner evaluation
6. Strategic Litigation Impact Measurement Framework – case study on Konaté v. Burkina Faso

1. Strategic Output and Outcome Indicators

What we monitored

MLDI tracks a number of key performance indicators (KPIs) at quarterly intervals in order to monitor our progress in our emergency defence, strategic litigation and capacity building:

- Facilitating high quality legal defence for journalists, bloggers and free media
- Journalists are able to defeat abusive legal challenges and continue to report on issues of public interest
- Ensuring high impact of MLDI litigation, partnerships and training
- Building partnerships with key organisations and individual lawyers where media freedom is under legal threat
- Providing support in all regions where media freedom is under legal threat
- Ensuring sufficient enablers (the internal resources that underpin MLDI's work)

How we collected data and information

Monitoring indicators predominantly track our performance on an output level. This output data is collated and stored in an online database of cases and projects for easy analysis. As a live database, this information is continually updated.

Longer term outcome and impact level indicators are collected through reports from the lawyers and partner organisations that we fund as well as through surveys, interviews and document analysis.

Our findings

2019 was a successful year in which we achieved most of our targets. Some of our KPIs are outlined below. The data from the end of 2019 marks the end of our 2015 – 2020 strategy, so served as an important baseline in the development of our strategy for 2020 – 2024.

Key Performance Indicator and target	2019 result	2018 result	Notes
Provide support to 100 new cases	116	98	This was a record number of cases supported in a single year for MLDI and an 18% increase on the previous year
Provide support to 40 new strategic cases	45	45	This included 16 in-kind cases
10 days for grant approval	18 days	13 days	Although over our desired approval speed due to several anomalies taking a longer time to approve, recent evaluations showed journalists and lawyers found us to be effective and responsive. See Journalist Impact Survey results below
Award 14 partner grants	13	13	One partner failed to meet due diligence requirements
Support 90% of cases in 'Difficult and Very Serious' or 'Problematic' countries as defined by RSF 2019 Press Freedom Index	92%	95.5% ¹	92% of our cases are in countries experiencing difficult press freedom situations, therefore we are meeting the need for support
70% of closed cases with successful outcomes	73%	68.5%	Whilst governments continue repressing independent media, MLDI's hybrid support of grant-making and emergency defence is achieving good outcomes
80% of journalists continuing to report following conclusion of their case	74%	71%	We set an ambitious target in 2019 for journalists whose cases closed in 2019. Although we didn't quite meet our target, 100% of journalists who responded to our impact survey reported that they continued to report

What we learnt and how we will implement learnings

We finished the end of our 2015-2020 strategy period with the highest ever number of new cases supported in a calendar year (116), and met or exceeded another three KPI targets. Countries with the highest number of new cases in 2019 were Azerbaijan (39), Russia (9), Turkey (7) and Uganda, Vietnam, Romania (5).

We continued to take on cases at a higher rate than closing cases, which has resource implications for the ongoing management and funding of our added-value case support. In addition, staff changes in our

¹ This figure is based on 2018 Press Freedom ratings which ranked countries as 'Not Free' or 'Partly Free' as opposed to 'Difficult and Very Serious' and 'Problematic' as in 2019.

grants team in combination with the growing case portfolio meant we were unable to reduce the speed of our grant approval process.

The increase in our speed of approval is mainly due to a small minority of cases which took a significant amount of time to approve (50+ days) due to for instance a lack of information available, which impacted the overall average. We will review and improve our grant making processes to ensure we can provide support as quickly and as efficiently as possible. We will continue to aim for an approval average of 10 days in 2020 whilst remaining committed to our thorough due diligence process.

In implementing our 2020-2024 strategy, we will simplify our KPIs whilst also ensuring that we capture data related to identity-based discrimination, our priority countries and the case types supported in our strategic litigation. In the long term, we will incorporate impact-level indicators for our strategic litigation (recording the proportion of cases setting a precedent, changing laws and improving ability of journalists to report – see item 6) and our capacity building as we grow our partners and legal community (such as measuring the strength of our partner-lawyer networks globally).

2. 2015-2020 Strategy Evaluation

What we evaluated

As 2019 marked the end of MLDI's 2015-2020 strategy period, we wished to build on the interim evaluation of our progress in reaching our strategic objectives, conducted in 2017. An external evaluator was commissioned to oversee the evaluation. For consistency, we worked with the same evaluator who conducted the interim evaluation. The progress was measured against our six strategic objectives:

1. Facilitate high quality legal defence for journalists, bloggers and free media
2. Journalists are able to defeat abusive legal challenges and continue to report on issues of public interest
3. Ensure high impact of our litigation work, partnerships and training
4. Build partnerships with key organisations and individual lawyers where media freedom is under legal threat
5. Ensure sufficient enablers – the internal resources that underpin MLDI's work

The evaluation took place between May and July 2019. It consisted of document and data review (supplied from MLDI's KPI reports and evaluation reports), and interviews with MLDI staff, partners and beneficiaries. The evaluator measured progress in meeting our strategic objectives whilst also understanding how our activities contributed to outcomes identified by interviewees, including negative outcomes and the extent to which we had met recommendations from the interim evaluation.

What we learnt and how we will implement learnings

The evaluation found that we were successful in delivering on our strategic objectives from the 2015-2020 strategy. It also noted the difficulty in measuring some of the objectives due to their vagueness.

Most positively, the evaluator found that we had maintained a significant caseload, diversified our cases to incorporate an increasing range of legal threats, maintained high success rates and a high satisfaction levels from beneficiaries. Notably, the evaluation highlighted that this was achieved despite relatively high level of organisational changes, including a new management team from 2016.

The key recommendations included:

- Addressing the balance and thematic focus of our litigation, shifting resources to partners to increase local level capacity for legal defence of the media whilst growing our strategic litigation programme.
- Strengthening communications and outreach.
- Developing a new M&E approach to measuring complex interventions – the evaluation recommended that MLDI continue to develop our M&E, including by developing an ‘annual legal review’ of cases and trends in freedom of expression using our data.

We have incorporated these recommendations in our 2020-2024 strategy. Over the next four years, five strategic priorities will drive our work:

1. Provide free emergency legal assistance to journalists in need.
2. Obtain landmark judgments that can improve the climate for press freedom, worldwide.
3. Increase our investment in local legal capacity building through grant-making, training and information sharing.
4. Grow our internal capacity to meet the global legal challenge to journalists’ ability to work on issues of public interest.
5. Strategically communicate our work and that of our partners.

3. 2019 Journalist Impact Survey

What we evaluated

Every year, we issue an Impact Survey to all journalists whose case has closed in the preceding year. The survey questions are designed to understand:

- How journalists rate the quality, efficiency and quantity of MLDI’s financial and legal support during their case.
- The impact of MLDI’s support on case outcomes and journalist’s ability to continue reporting.
- The wider impact of MLDI’s support on press freedom laws and environments in active countries, so that we can test our theory of change.

The 2019 survey was distributed to 73 journalists whose case closed in 2018 or 2019 and who were not in detention. The survey was distributed in English, Spanish and Russian. We received 22 responses (30% response rate).

What we learnt

The 2019 Journalist Impact Survey found high levels of satisfaction with MLDI’s legal and financial support:

- The average score for satisfaction with the quality of MLDI’s legal advice and support and the efficiency of support was the highest since the survey began in 2017 (at 4.7 and 4.5 out of 5 respectively).
- The score for communication with MLDI was consistent with 2018 at 4.6 out of 5.
- 100% of respondents would recommend MLDI’s support to other journalists facing legal action.
- 82% of respondents were satisfied or extremely satisfied with the lawyer who handled their case.

There were also some important findings in relation to the broader impact of legal defence for journalists in improving press freedom:

- 100% of respondents said they continued to report on issues of public interest, with the most commonly reported issues being political corruption and human rights abuses (political corruption continued to be the most frequently cited journalistic issue for which respondents faced legal action for covering, as in 2017 and 2018).
- 50% of journalists said they made no changes to their practice in this period or had become emboldened in their reporting, but some said they were more careful reporting and that they avoided reporting on certain issues and individuals.
- 68% of respondents believed their case would have a positive impact on press freedom in their respective country, down slightly from 2018 but up from 2017.
- Only 9.1% of respondents believed they were not at all likely to face more legal challenges in the future, reflecting the continuation of repressive laws and punitive measures against journalists in all regions in which we are active.

The 2019 Impact Survey results continue to highlight the quality, efficiency and reliability of MLDI's legal defence service, in addition to serving as a useful exercise to test assumptions in our theory of change. MLDI assumes that journalists have access to quality networks of lawyers (which we hope to advance through our trainings and partner grants). We also assume that journalists will continue to report on issues of public interests following successful case outcomes. Whilst this survey provides some evidence of our impact, further research should be undertaken to understand how gender, identity and regional differences affect journalist's ability to continue reporting.

How we will implement learnings

In future versions of the survey, MLDI will seek to deepen our understanding of the impact on specific groups and individuals. We will do this by following up on responses received from journalists who received added-value support from MLDI legal team, in the form of advising on case strategy, providing research or drafting, to understand the impact this support has on journalist's cases. MLDI will also consider reaching out specifically to women and minority journalists to ask them to complete the survey and share their thoughts, due to low response rates and to understand particular challenges they face to practice journalism or in facing legal proceedings. We will also continue to implement a bi-annual Lawyer Impact Survey and compare findings across regions and years, to understand broader trends.

4. Digital Rights' Advocates Project Phase 1 – Final Evaluation

What we evaluated

In 2019, the first phase of our Digital Rights Advocates Project came to end. During the two-year programme, we trained 72 lawyers at six litigation surgeries on freedom of expression law in all regions of Africa. We developed a network of lawyers and organisations providing legal defence to online media through our sub-awards and networking events.

We wished to evaluate the extent to which we had reached our five strategic objectives for this project:

1. Increased specialised legal expertise among lawyers in Sub-Saharan Africa to litigate freedom of expression online cases at a national, regional, and international level.
2. Lawyers in Sub-Saharan Africa are better connected to each other and with broader, global internet freedom advocacy efforts.
3. National and regional media defence centres in Sub-Saharan Africa are better able to provide local-level access to legal assistance for freedom of expression online to independent media.
4. Recognition and protection of digital rights in the case law of Africa's regional and human rights mechanisms.

5. Strengthened results with universities in the UK and targeted regions.

We also wished to monitor our progress in meeting recommendations from the interim evaluation. We commissioned an external evaluation of the project at the interim and final stage.

What we learnt

The key strengths of the project were the following:

- Highly regarded and rated litigation surgeries. The evaluation found high satisfaction rates among beneficiaries for both the surgeries and the training manuals.
- Evidence of success at impact-level. The evaluation found strengths in developing legal communities in the target countries skilled at litigating digital rights cases, facilitated partly by MLDI's interventions such as networking events and the creation of post-training social media groups, but initiatives were also emerging independently and organically from training participants.
- Evidence of successful digital rights litigation emerging as a result of the surgeries – with 18 of the 45 cases litigated by training participants supported by MLDI.

They key areas for improvement related to:

- Administrative and logistical aspects of the trainings – complaints about the level of per-diems were the biggest critique from participants.
- More support for lawyers needed who are not as active in the network or who do not bring cases.
- Need for further connection and integration between the different elements of the project, specifically in relation to the sub-awards.

How we will implement learnings

MLDI already began adjusting the level of per-diems where appropriate in advance of the final evaluation. We will ensure that logistics and administrative aspects of the projects are clearly communicated to participants before the surgeries. We will also ensure that feedback (given anecdotally or from post-surgery surveys) is considered on a routine basis by holding debriefing meetings following networking events and surgeries. We will make sure all participants are clearly informed of how we will or will not be able to integrate feedback into future program design.

5. North Macedonia – Media Development Centre (MDC) Partner Evaluation

What we evaluated

Media Development Centre (MDC) in North Macedonia has been a partner of MLDI since 2012. Their grants have focused on defending journalists against civil defamation claims following the decriminalisation of defamation in 2012, when around 20% of journalists in the country were facing civil defamation lawsuits.

The evaluation sought to understand:

- The impact of MLDI funding on MDC's organisational development and on their ability to provide legal defence services.
- The impact of MLDI's funded programmes on the broader press freedom environment in North Macedonia.

- What issues remain for journalists in the country and how best MLDI can address these.

What we learnt and how we will implement learnings

The evaluation found that beneficiaries of MDC's legal defence rated their work highly. It is clear they provide unique and well-regarded support for journalists in the country. Other successes of their work include:

- Strong track-record in successful outcomes, with a 95% success rate in the MLDI-supported cases.
- High praise for their freedom of expression lawyers from the Medarksi legal office.
- Strengthening case law on civil defamation and a decrease in lawsuits following 2017 can be attributed to MDC's work to a certain extent.

MLDI also had an impact on MDC's work throughout the grant period:

- MLDI as a longstanding donor – MDC noted the decrease in other funders being willing to fund media defence work.
- MLDI strengthening MDC's legal expertise – MDC noted strong communication between our lawyers and MDC staff and readiness to offer legal advice.
- MLDI advancing MDC international reach – clear recognition of the benefits of being exposed to networks as a result of MLDI funding.

Whilst they have provided a high-quality service, many stakeholders interviewed had consensus that the transition to a more progressive government in 2017 had a positive impact on press freedom, with improvement in global rankings and decrease in abusive lawsuits. MLDI will continue to monitor the situation in North Macedonia closely and act on recommendations including ensuring that non-legal support to partners, including M&E, financial and fundraising support, is more routinely integrated as part of our grant-making.

6. Strategic Litigation Impact Measurement Framework – Case Study on Konaté v. Burkina Faso

What we evaluated

MLDI has adopted a method called *process tracing* in order to systematically and rigorously evaluate the impact of our strategic litigation on a case-by-case basis. Conventionally, it is difficult to measure the impact of strategic litigation, particularly in the regions we operate. This is mainly due to the length of the litigation process (both during litigation and the time lag following the judgment and observable impacts), the array of other factors in the public sphere which can influence law and policy (such as change in government and advocacy campaigns). This leads to difficulty in ascertaining contribution and attribution (i.e. how litigation contributes to specific outcomes and the extent to which observable outcomes and impacts can be attributed to a single litigation process or judgment).

MLDI began piloting a *process tracing* method to understand the impacts of our strategic cases in regional human rights courts globally. *Process tracing* is a method used in understanding how change happens when influencing policy environments, and can be suitably applied to litigation. The method involves developing hypotheses about what changes one thinks have occurred, and then weighing up the evidence found to enable hypotheses to be confirmed conclusively, confirmed tentatively, or refuted. This will allow MLDI to report with a certain degree of confidence on the impact of strategic litigation, both collectively and on a case-by-case basis.

In 2019, we conducted an evaluation case study of a strategic win at the African Court of Human and Peoples' Rights in 2014, in the case of Konaté v. Burkina Faso. The Court ruled that custodial sentences for defamation violated the African Charter on Human and Peoples' Rights and other legal instruments that Burkina Faso had ratified.

What we learnt and how we will implement learnings

The evaluation of the Konaté case showed that there was a considerable amount of evidence for MLDI to claim impact in:

- Setting a precedent – extensive commentary from the legal community and many judgments referencing the case showed the impact of Konaté in setting a precedent for future positive case outcomes in decriminalising defamation.
- Changing law or policy in country – evidence was found in civil society reports and Universal Periodic Review of Human Rights in Burkina Faso that legislation was amended to decriminalise defamation following the judgment.
- Informing judiciary – case is referenced frequently in UNESCO judicial toolkit and other literature as evidence of informing judiciary in advance of future cases.
- Use of new laws, acts, or courts to seek justice – evidence found demonstrates that, as one of the first merits case at the African Court, the Konaté case clarified doubts about the Court's jurisdiction and pushed international soft law arguments onto the Court's radar.

MLDI will continue to use this method in evaluating impact of our strategic litigation in 2020, particularly looking at cases from the European Court of Human Rights. This will enable us to ultimately assess whether the cases we supported have an impact across different regions.