MLDI

Media Legal
Defence Initiative

ANNUAL REPORT 2017

I can't imagine how desperate my situation would have seemed without MLDI. Having impartial support through unfamiliar criminal proceedings was invaluable.

An MLDI supported Journalist, United Arab Emirates

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DEFENDING THE MEDIA IN 2017

Lucy Freeman, CEO

2017 saw independent media come under sustained attack around the world. Many journalists were detained or suffered from physical violence, sometimes resulting in death. Attacks on press freedom took other forms too. Instances of internet shutdowns and blocking of social media increased and defamation laws were used to sue and intimidate journalists.

In Eastern Europe, Russia and the Balkans the space for independent media and civil society contracted rapidly. Turkey escalated its crackdown, ending the year with over 100 journalists in detention. Vietnam continued to imprison journalists and bloggers for their writing. In Peru and Venezuela, journalists fought trumped-up charges brought in an attempt to intimidate them.

These journalists were working to expose corruption, political impropriety and environmental degradation. They were trying to access parliament or report on elections. Some were targeted because they were writing about sexual and reproductive rights, sexual orientation or religion. Others because they were covering indigenous rights violations. They were holding authorities to account and facilitating the open flow of ideas.

Throughout the year, we worked to ensure that these journalists were not silenced and that they could continue to publish in the public interest. We increased our emergency support – providing direct financial and technical support to 85 new cases, an increase of 41.6% on the previous year, with a 72.3% success rate. With 131 ongoing cases carried over from previous years, this meant we worked on a total of 216 cases, reaching 52 countries.

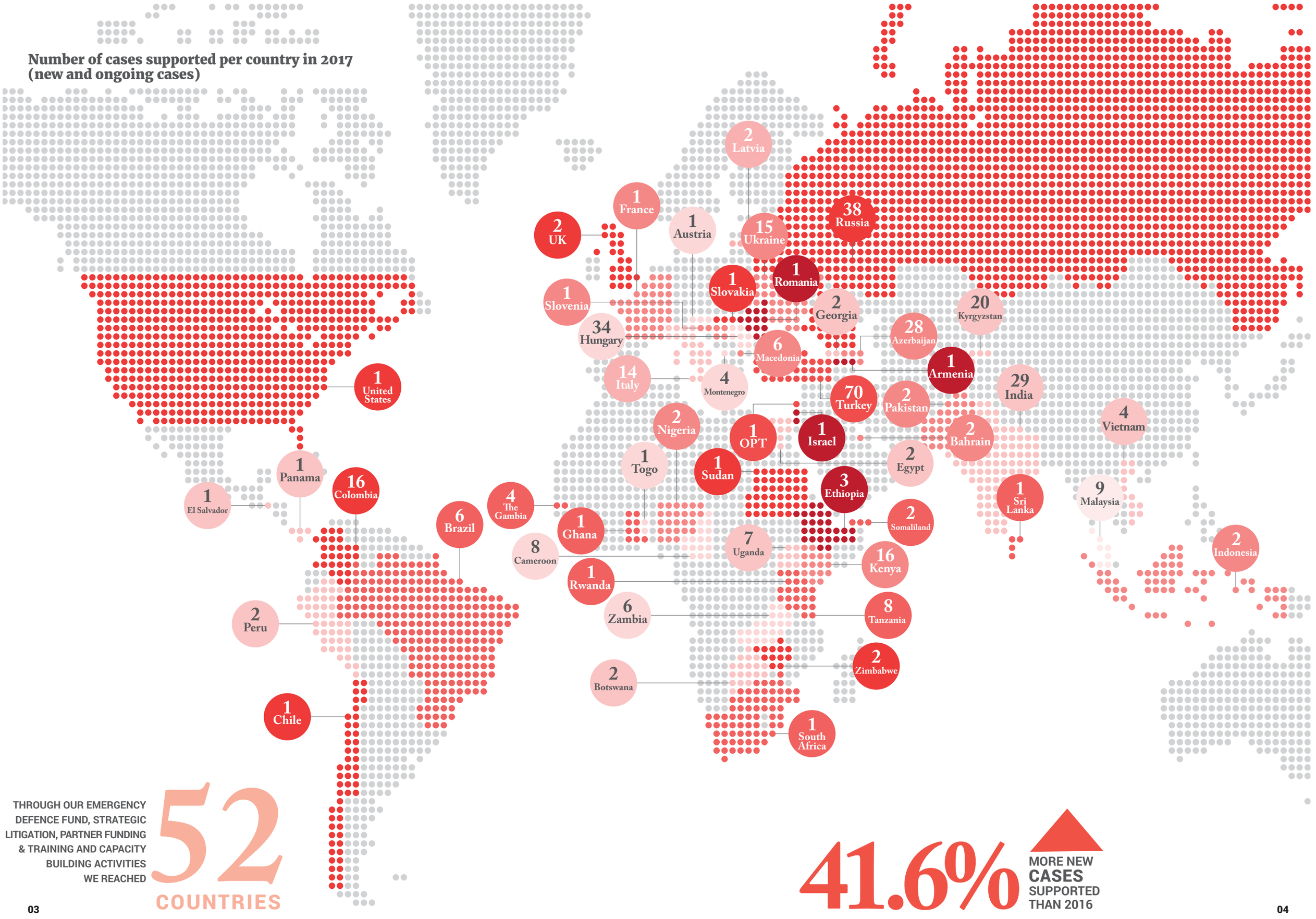
We pursued 40 new strategic cases at constitutional, regional and international courts around the world, in addition to the 46 ongoing strategic cases we continued to work on. In these cases, we aimed to challenge media laws using international human rights law, attempting to advance the legal and regulatory framework.

We helped to bring proceedings against internet shutdowns in Cameroon and Uganda, and we've challenged overly broad cybercrime legislation in Pakistan, Tanzania, and Nigeria. We fought against impunity, challenging the lack of an effective investigation into attacks against journalists in Azerbaijan, Uganda and Russia, among other places, and won damages for a journalist who was physically attacked in Montenegro.
We worked for the freedom of imprisoned journalists in Azerbaijan and against the systematic use of violence and torture against journalists there. And we challenged an alarming trend of restricting the media from accessing and reporting from parliament – an inherent violation of the fundamental democratic principle of freedom of expression in relation to political speech - pursuing cases against Hungary and Macedonia.

We are proud to have provided financial and technical support to 11 National Media Defence Centres in nine countries: Colombia, Hungary, India, Italy, Kenya, Kyrgyzstan, Macedonia, Turkey and Ukraine. Together, our partners supported another 175 cases under our grants.

We are grateful to our partners, donors and supporters, and the dedicated pro-bono lawyers with whom we work. Their vital support has enabled us to defend more journalists, support more partners and undertake more strategic litigation than ever before.

Number of cases supported per country in 2017 (new and ongoing cases)



THROUGH OUR EMERGENCY DEFENCE FUND, STRATEGIC LITIGATION, PARTNER FUNDING & TRAINING AND CAPACITY BUILDING ACTIVITIES WE REACHED

52

COUNTRIES

41.6%

MORE NEW **CASES** SUPPORTED THAN 2016

Types of cases supported:

44 Other criminal

41 Civil defamation/libel

37 Administrative measures/sanctions

29 Criminal defamation/libel

17 Harassment or bodily harm by security agents

14 Other civil

12 Endangering national security

9 Access to information

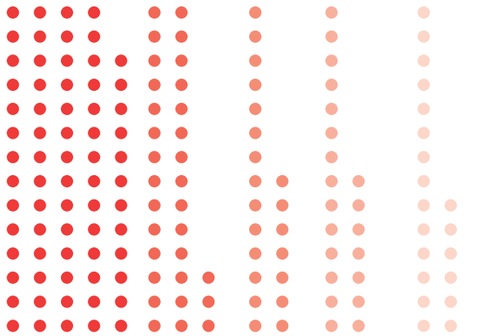
4 Sedition

4 Insult (Government or official)

3 Closure of media outlet

2 Protection of sources

The countries with the highest number of new cases:



68 Turkey | 31 Hungary | 21 Russia | 21 India | 20 Azerbaijan

WE FUNDED

11

ORGANISATIONS

Colombia | Hungary
India | Italy | Kenya
Kyrgyzstan | Macedonia
Turkey | Ukraine

Journalist Impact

85% satisfied with their legal representation

95% would recommend MLDI's support to others

66% satisfied with the outcome of their case

72% have been able to continue reporting

12 AVOIDED COSTLY FINES/DAMAGES

8 RELEASED OR PREVENTED FROM IMPRISONMENT OR DETENTION

5 MEDIA OUTLETS PREVENTED FROM CLOSING

Legal Impact

40 NEW STRATEGIC LITIGATION CASES

1 Case of judicial review

1 Case at the East African Court of Justice

2 Cases at ECOWAS Court

3 Cases within the UN human rights system

7 Cases at national constitutional, supreme or cassation courts

12 Third party Interventions at the European Court of Human Rights

14 Cases at the European Court of Human Rights

53 CASES CLOSED

87.5% SUCCESS RATE*

72.3% SUCCESS RATE*

FOR CASES WHICH RECEIVED TECHNICAL LEGAL SUPPORT FROM MLDI

* SUCCESS IS DEFINED AS FULLY OR PARTIALLY MEETING MLDI'S CASE OBJECTIVES – FOR CASES SUPPORTED DIRECTLY BY MLDI

EMERGENCY DEFENCE

ABOUT THE PROGRAMME

Our Emergency Defence Programme provides funding and support to journalists, bloggers and independent media in need of legal defence.

> In many countries, journalists face legal cases brought against them as a way to harass and silence them. Through our Emergency Defence Programme, we want to ensure that journalists have access to quality legal representation.

We give financial and technical legal support to the journalists' lawyers – by providing them with research memos, helping them devise case strategies and assisting in the drafting of briefs and other court documents.

OUR ACTIVITIES IN 2017:

Litigation against attacks, torture and threats

Of all the cases we worked on during 2017, the Central Asia and Russia region had the highest proportion of cases concerning harassment of violence against journalists. This was largely due to a sharp rise in the number of cases from Azerbaijan concerning detention, physical attacks and torture of journalists. The number of new cases we took on in the region increased by 126% from 2016, with 43 new cases from Azerbaijan, Russia and Georgia.

In the Americas, 20% of the cases we supported involved violent attacks, harassment or murder of journalists.

100+

JOURNALISTS IN DETENTION AT THE END OF 2017 IN TURKEY

Defence against arbitrary detention and ill treatment

Arbitrary detention of journalists and bloggers is a recurring issue in Vietnam where we are currently supporting four cases involving bloggers and journalists who have been detained due to their reporting. We are petitioning the UN Working Group on Arbitrary Detention to declare that the Vietnam government has violated international law for their treatment of these journalists and call for their release. Read more on page 29.

In Europe we saw an increase in detention of journalists. This was true, in particular, in Turkey where over 100 journalists were in detention at the end of 2017.

We also continued to support cases in the Middle East and North Africa region concerning the arbitrary detention, torture and ill treatment of journalists.

Challenging civil and criminal defamation charges

In many countries, defamation charges – both civil and criminal – are being used to stifle press freedom and intimidate journalists.

The story of Brazilian journalists Francisco Costa and Josi Gonçalves, who are facing 11 cases of defamation against them, illustrates how defamation is being used to threaten and silence critical media. Read more on page 10.

We directly supported civil and criminal defamation cases in ten countries across Europe and Central Asia. In the Americas we supported 12 cases of defamation. Almost 50% of the 33 cases we supported in India concerned civil or criminal defamation charges*. While in Sub-Saharan Africa, defamation cases made up 40% of the 60 cases we supported, a third of which were criminal defamation cases.

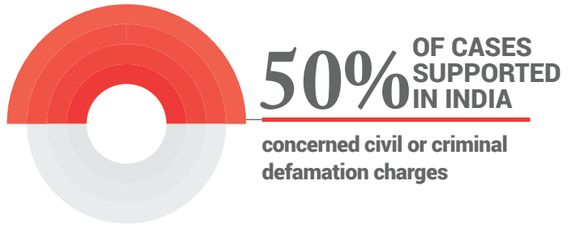
Challenging reporting restrictions

Many of our cases concerned physical or administrative barriers or restrictions aimed at deterring critical reporting. This could mean anything from restricting the movement of journalists to confiscation of equipment and broadcasting licences.

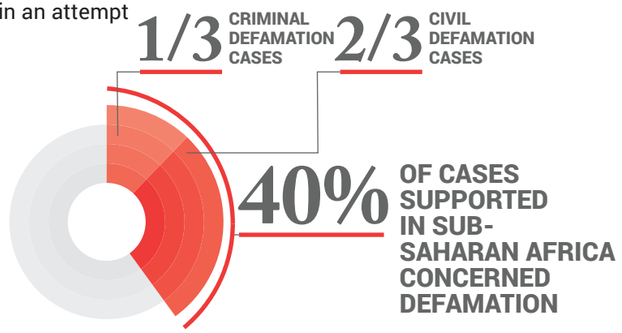
We supported 13 cases in Russia concerning content warnings which threatened media outlet closure. In Hungary and Macedonia we supported cases concerning the removal or banning of journalists from parliament, restricting their access to information of public interest.

In Egypt we continued to provide legal support to Esraa Abdel Fattah, an Egyptian journalist who was subject to travel bans (in addition to harassment, surveillance and freezing of assets) in an attempt to silence her and restrict her right to freedom of expression. And, in the Occupied Palestinian Territories, we are supporting Wattan TV, which has been unable to broadcast since 2012, in their petition to the Supreme Court of Israel to allow them to use their allocated television frequency without interference.

In 2017, we worked on three cases which threatened the closure of outlets in Somaliland and Tanzania. These included Mseto Newspaper, which was banned from publication for three years under Tanzania's Newspaper Act, following reporting that exposed corruption. A provision in the Act gives discretionary power to the Minister of Information to ban newspapers and take them out of circulation. We are supporting this case at the East African Court of Justice.



50% OF CASES SUPPORTED IN INDIA concerned civil or criminal defamation charges



40% OF CASES SUPPORTED IN SUB-SAHARAN AFRICA CONCERNED DEFAMATION

* BOTH DIRECTLY SUPPORTED BY MLDI OR VIA ITS PARTNER GRANTS

IMPACT

ITALY

In Italy, blogger Daniele Brunetti was charged with criminal defamation following a blog series in relation to Mayoral corruption and inefficiency in public works. With our support, and legal defence from our partner Ossigeno per l'informazione, Brunetti was acquitted of the charges.

KENYA

Following a judgment earlier in 2017 that found criminal defamation to be unconstitutional in Kenya, criminal defamation charges against independent media outlet Kenya Star were quashed by the court in a case we supported.

MALAYSIA

In Malaysia, independent media outlet Malaysiakini was sued by the National Feedlot Corporation (NFC), for defamation following several articles related to the use of public funds for private purposes. The Court of First Instance found Malaysiakini not guilty of defamation. An appeal is planned and we will continue our support for the media outlet.

Where we worked

Strategic Litigation

Armenia
Austria
Azerbaijan
Cameroon
Chile
Egypt
Ethiopia
France
Gambia (The)
Georgia
Ghana
Hungary
India
Israel
Kenya
Macedonia
Pakistan
Romania
Russia
Rwanda
Slovakia
Sudan
Tanzania
Togo
Turkey
Uganda
UK
Vietnam

Lawyers supported with training and capacity building activities

Cameroon
Colombia
Gambia (The)
Hungary
India
Kenya
Macedonia
Malaysia
Nigeria
Poland
Singapore
Ukraine

National Media Defence Partners

Colombia
Hungary
India
Italy
Kenya
Kyrgyzstan
Macedonia
Turkey
Ukraine

Local officials launch 11 cases against Brazilian journalists following reports on local embezzlement and fraud

Case study

Francisco da Silva Costa and Josineide Gonçalves da Silva run FALA RN, a news website based in São Gonçalo do Amarante in north-eastern Brazil.

Their outlet has covered cases of embezzlement of local public funds, nepotism, and electoral fraud involving local politicians. As a result of their critical reporting, São Gonçalo do Amarante officials have filed 11 cases of criminal and civil defamation against the couple in an attempt to harass, intimidate and ultimately silence them.

One of the many cases is a criminal defamation case launched by the town Mayor in relation to a post on the journalist's Facebook page. The post questioned the reasons why the city of São Gonçalo do Amarante had not improved any of its infrastructure despite receiving millions for improvements. The post also linked to a more detailed article on the FALA RN website. The Mayor, who felt personally insulted, filed a 'request for explanation' under Article 144 of the Penal Code. In cases where defamation is inferred from ambiguous statements, this allows the injured party to require the author to explain their publication in front of a judge.

The judge may decide to continue with a prosecution or may rule that the publication was truthful and dismiss the case – if FALA RN is found guilty, they could face up to two years imprisonment.

As if the threat of criminal charges and imprisonment was not enough, the couple is also facing a number of civil defamation claims by the same Mayor following a series of articles published by FALA RN which claimed that federal prosecutors were investigating whether the Mayor had received bribes in order to interfere with the allocation of public housing. The Mayor alleges that the publications were offensive and "insinuate situations distorted from the reality". The couple could face damages and fines if found guilty of defamation.

This form of harassment and attempt to intimidate journalists is a clear violation of the right to freedom of expression. We are facilitating the legal defence of the couple in six of their cases, ensuring the financial burden of the numerous suits and charges against them does not prevent them from defending themselves in court or allow them to be silenced.

NATIONAL MEDIA DEFENCE CENTRE PARTNERS

ABOUT THE PROGRAMME

Every year, we provide grants and technical support to organisations to set up national media defence centres offering legal assistance to media in their own countries. These organisations are able to help media outlets, journalists and bloggers who would ordinarily lack the means to hire lawyers.

Being able to access free legal assistance from these partners means journalists have the benefit of assistance from local lawyers who are experienced in litigating at their national courts and have a detailed knowledge of their countries' freedom of expression landscape.

By supporting partner organisations, we aim to build a strong and sustainable network of legal defence centres for independent media that reaches across the globe.

OUR ACTIVITIES IN 2017:

In 2017, we continued to grow our network of partner organisations.

We entered into new partnerships with the Foundation for Press Freedom (FLIP) in Colombia, a country with one of the highest impunity rates in the world, as well as Ukraine's Human Rights Platform and a new partner in Turkey*.
We continued to strengthen our existing relationships by providing grants and support to our existing partner organisations such as the Committee for Legal Aid for the Poor (India), the Hungarian Civil Liberties Union (Hungary), Media Development Centre (Macedonia), Media Policy Institute (Kyrgyzstan), Ossigeno per l'Informazione (Italy) and Platform 24 (Turkey). Our partner, Kenya Union of Journalists, also continued to provide legal defence to cases of journalists and bloggers in the country during 2017 under their 2016 grant.

IMPACT

Our partners include:

119 ORGANISATIONS IN **9** COUNTRIES
Colombia | Hungary | India | Italy | Kenya
Kyrgyzstan | Macedonia | Turkey | Ukraine

175 NEW CASES LITIGATED BY OUR PARTNERS IN 2017

OUR LONG-TERM IMPACT

During the year, MLDI carried out a number of evaluation activities to find out, among other things, the impact we have on the partners that we support, and the impact they in turn have in their home countries.

We collected data through different evaluation projects, including analysis of all partner reports received between 2012 and early 2017 as well as site visit evaluations of our partners in Ukraine, Uganda and Kenya.

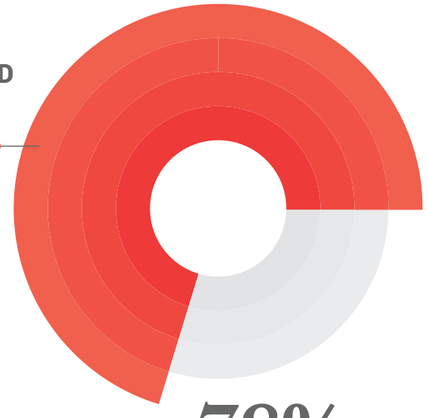
Historically, 73% of our partners were successful in achieving their case targets – our partners in Central Asia and Europe had the highest rates of success in meeting case targets.

Many partners expressed the view that journalists felt more confident working on controversial stories because our partners were ready to step in and support them if their work became the subject of litigation.

Funding cases via our partners provides very good value for money, helping to ensure our funds reach more journalists, especially in countries where the demand is high. The value (cost per case) has also improved over the last five years.

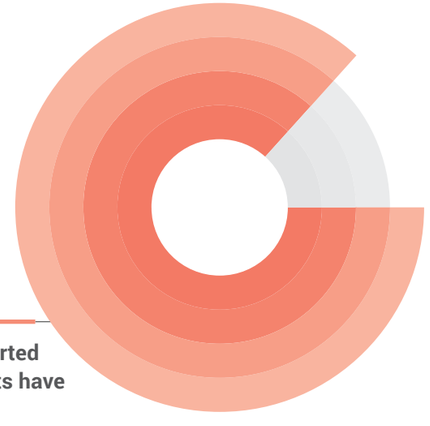
69% COMBINED SUCCESS RATE**

of cases supported under the grants



78%

of the journalists supported so far under these grants have continued to publish.



* Name of the organisation has been withheld
** If we exclude Turkey from the data, the combined success rate increases to 95%. In Turkey, where we have been involved in a higher proportion of cases than in previous years, many journalists have been detained and access to justice is limited. Several of the cases lost are being appealed.

PARTNER IN PROFILE

The Foundation For Press Freedom (FLIP) is one of our national media defence partners providing legal defence to journalists and the media in Colombia. Here, FLIP discuss the context in Colombia and their experience of working with MLDI.

Defending freedom of expression in Colombia

(Author: MLDI's Partner Organisation, Foundation For Press Freedom)

Context in Colombia

In Colombia, there is an increasing hostile environment for journalists and the media coming from state officials.

The government has failed to accomplish promises to create a public policy for freedom of expression and to provide compensations to journalists who are victims of atrocities in the armed conflict. At the same time, severe pressure has been put on media outlets critical of the government and have been denied access to public information regarding the peace process with FARC (The Revolutionary Armed Forces of Colombia).

As for the judiciary, the Constitutional Court has published decisions regulating freedom of expression online that are contrary to international standards.

However, several achievements in the pursuit of justice in cases of violence against journalists have been obtained. Since the media defence project started, there has been at least five important decisions that clarify the truth about crimes against journalists and take steps towards justice and compensations. Nevertheless, the Office of the Attorney General is yet to create a consistent plan to counter the phenomenon of violence against media workers in the country.

Organisational Growth and the role of MLDI

FLIP is experiencing a process of transformation. Since January 2017 the staff of the organisation has increased significantly. Such growth has also been accompanied by a significant increase in FLIP's capacity to interact with the most relevant public figures of the country in media and freedom of expression matters e.g. the Attorney General, the Vice President, the Ministry of Justice and Law, the Ministry of Information Technologies and Communications, the Director General of the Police etc. As the organisation grows in size and influence, it creates a better environment for FLIP's cases to be heard in court and to impact on public opinion.

MLDI has played a decisive role in this growth, particularly because it has allowed the strengthening of the legal team in a context where there is a lack of interest from many donors to support litigation. In that sense, MLDI´s support is invaluable.

In addition, MLDI has contributed to consolidating a group of legal professionals whose expertise in different areas of freedom of expression has grown significantly in the project period. Now FLIP has many more tools to litigate cases related to the internet, right to be forgotten, access to public information, criminal justice (mostly in cases of murders and death threats) and defamation.

Luis Antonio Peralta

Case study

Luis Antonio Peralta was murdered on 14 February 2015 at local radio station Linda Estéreo, because of his work exposing corruption in public administration and politics. In the same incident, his wife was injured and months later also died.

Luis Antonio Peralta was considered a fearless investigative journalist who exposed corruption. His journalism caused the animosity of corrupt politicians who allegedly planned his murder through a hired gunman. Since his murder, corruption and mismanagement have not been exposed with the same rigor and commitment.

The criminal investigation of these murders is conducted by a specialised prosecutor against human rights violations who was able to prove beyond a reasonable doubt that the authorship of these criminal acts was defendant Yean Arlex Buenaventura Barreto. The first instance judge highlighted the seriousness of the crime and acknowledged that the murder of Luis Antonio Peralta was motivated by his work as a journalist. On 1 February 2018, the judge read the judgement, sentencing Barreto to deprivation of liberty for 700 months. This imprisonment is the highest penalty of deprivation of liberty in cases of crimes against press freedom in Colombia.

FLIP has been representing the victims in this case since the beginning of the criminal prosecution. Throughout the trial, FLIP has collaborated with the Office of the Prosecutor to demonstrate the impact that this criminal offence has on human rights and freedom of expression. The foundation has provided technical and legal advice to the victims in the judicial proceedings and public hearings since 2015.

The litigation of this case has had an important impact in safe practice of journalism in the Caquetá region, where freedom of expression has been affected several times due to violence against journalists by state actors. Moreover, the judgement has had a reparatory effect for Peralta's relatives and for Caqueta's citizens.

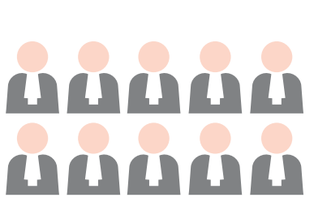
On 10 February 2018, the defendant filed an appeal opposing the court ruling. FLIP submitted a legal brief opposing the appeal arguments.

TRAINING, CAPACITY-BUILDING & NETWORKING

ABOUT THE PROGRAMME

Part of our mission is to build a strong legal defence network for independent media across the globe. To help achieve this, we provide support for legal professionals to ensure they have the capacity and skills they need to defend journalists, bloggers and media outlets.

We deliver specialist media law training and workshops for legal professionals. We also support the general development of media law expertise, for example by partnering with universities and supporting lawyers to connect to global networks of media and freedom of expression litigators.



10 LAWYERS TRAINED IN THE GAMBIA

15 LEGAL PROFESSIONALS SUPPORTED TO PARTICIPATE IN DIGITAL RIGHTS CONFERENCES IN GENEVA & BRUSSELS

21 LAWYERS TRAINED IN KENYA
via partner grant to BAKE
BLOGGERS ASSOCIATION OF KENYA

18 ADVOCACY PROFESSIONALS TRAINED IN THE GAMBIA

OUR ACTIVITIES IN 2017:

Digital Rights Advocates Project

As increasing numbers of people across the world gain access to the internet and new technology, there is a greater opportunity than ever for people to express themselves. However, many governments feel the need to control how people use these online spaces, which also means a greater potential threat to people's digital rights and to freedom of expression online.

By introducing legislation incompatible with international human rights standards and imposing liability on intermediaries, some governments are preventing bloggers and online media outlets from enjoying their right to freedom of expression.

In response to this increased threat, in 2017 we began a two-year project in the Sub-Saharan Africa region to train lawyers issues relating to freedom of expression online, and give more legal professionals the capacity to defend bloggers and online media.

Freedom of expression training in Kenya

We supported the Bloggers Association of Kenya (BAKE) to provide training courses on 'internet freedoms' in Nairobi and Mombasa.

IMPACT

In total, 21 junior lawyers attended BAKE's internet freedom training in Kenya. This has enabled them to develop the skills to provide legal defence and advice to bloggers across the country.

Litigation surgery and advocacy training in the Gambia

Following the departure of ousted former President of the Gambia, Yahya Jammeh, we seized the opportunity to expand press freedom in the country. We held a litigation surgery aimed at lawyers and an advocacy surgery aimed at journalists, activists and campaigners to navigate and challenge existing laws that threaten freedom of expression in the Gambia.

IMPACT

Our freedom of expression litigation surgery trained ten lawyers on national and international freedom of expression standards, as well as litigating at regional courts and mechanisms. The workshop equipped them with the litigation expertise necessary to provide legal defence to journalists and media in the country.

Our advocacy surgery aimed to equip its 18 attendees with the knowledge and tools they need to carry out effective advocacy and campaigning.

The advocacy surgery, which was attended by a mixture of journalists, activists and campaigners, succeeded in improving their:

1. KNOWLEDGE AND UNDERSTANDING OF THE DIFFERENT ACTORS INVOLVED IN ECOWAS JUDGMENTS AND THEIR IMPLEMENTATION;
2. AWARENESS OF DIFFERENT ADVOCACY TECHNIQUES AND TOOLS;
3. ABILITY TO EFFECTIVELY CREATE AN ADVOCACY STRATEGY.

Networking

We supported 15 legal professionals to attend RightsCon and the Internet Governance Forum. These events provided them with a way to increase their professional networks, build their skills and knowledge on digital rights issues, and create opportunities to collaborate with other lawyers.
We also convened the second meeting of our European Coalition, a network of media defence partners from Hungary, Italy, Macedonia, Poland, Russia, Turkey and Ukraine. The group were able to share ideas, discuss current threats to press freedom in the region, and plan litigation strategies to challenge these.

Junkung Jobarteh: Trained lawyer in the Gambia

Case study

Junkung Jobarteh was one of the participants who attended MLDI's litigation surgery held in the Gambia.

Junkung is the head of the legal department at the Public Utilities and Regulatory Authority, which is responsible for legal, licensing and enforcement of the 2009 Information and Communications Act.

He says his work on the Gambia's Information and Communications Act gave him "an understanding of the importance of promoting plurality of the media and the benefits of a free press" and it was his work in this area that motivated him to take part in the litigation surgery.

His work also brought him into contact with the Gambian Press Union (GPU), for which he provided training on the provisions of the Information and Communications Act and how they affect the press.

He says the relationship with the GPU and their work together "spurred [him] on to advocate for the amendment of the draconian provisions to enable a better and free press".

Junkung found the training extremely useful, and he has had no shortage of opportunities to apply ideas and learnings from the surgery to his work.

Soon after the training he was appointed to be part of the Media Review Committee, a government proposed initiative implemented by the GPU to review and reform legislation that is anti-press or restrictive of freedom of expression.

He feels he was chosen to be part of the committee due to his attendance of the litigation surgery and his newly enhanced knowledge on freedom of expression and the protection of journalists. "The information and resources from the training will be extremely useful for my work with the committee," he added.

In addition, Junkung has collaborated with another of the surgery participants, by peer reviewing a research and policy paper focusing on the need to reform media laws in the country. Junkung also teaches seminars on media law at the Management Development Institute; he has incorporated aspects of the training into his seminars and is sharing the training manual provided by MLDI to students to complement the resources available to them.

"The biggest challenges to press freedom in the Gambia are the draconian laws on sedition and false news," says Junkung. "Our only chance for achieving press freedom is to remove these laws".

Although he is not currently litigating cases, Junkung says the training provided "all of the legal instruments needed for a litigator to challenge laws that restrict freedom of expression". He added: "I will have the knowledge and resources needed in order for me to challenge these types of laws if I move into private practice".

Junkung Jobarteh

STRATEGIC LITIGATION

ABOUT THE PROGRAMME

Part of our mission is to break new ground and lead the way in challenging restrictions on press freedom through the courts. As part of our strategic litigation programme, we focus on litigating cases to change media laws and regulations – bringing them into line with international standards.

In many countries, criminal and civil laws are used to stifle freedom of expression. Through litigation we can put pressure on these countries to reform their laws. By winning landmark judgments – especially at international and regional courts – we can create precedents that will benefit other journalists facing similar legal challenges throughout an entire region.

As well as submitting cases to domestic courts and international tribunals, we intervene in cases already under way, and support and enable our partners to do the same.

OUR ACTIVITIES IN 2017:

Fighting election coverage restrictions & parliamentary change

In many parts of the world, independent journalism is particularly at risk at election time and following a change in power. In Georgia, we supported the case of Giorgi Meladze, a former elected member of the Georgian public service broadcaster's board of trustees. Following Georgia's 2012 election, the new parliament sought to dismiss the board of trustees, including Meladze. This case, at the Constitutional Court of Georgia, seeks to challenge the decision of the new government to replace the leadership of a broadcasting company following the change in power – limiting the independence of the broadcaster by removing individuals who may be critical of the new government.

In Russia, the regional Electoral Committee instituted administrative proceedings against Russian newspaper Orlovskaya Iskra Gazeta in 2007, which had published reports that were strongly critical of a governor who stood as a candidate for parliament. The newspaper was ordered to pay a punitive fine, as the Russian domestic courts held that their reporting constituted "election campaigning". We joined forces with the Russian organisation Mass Media Defence Centre to intervene in the case at the European Court of Human Rights, highlighting that Russia's law and practice was clearly out of step with European standards.

IMPACT

In 2017 the European Court reached a positive judgment which found that Russia's regulatory framework excessively and without compelling justification reduced the scope for press expression and restricted Orlovskaya Iskra Gazeta's freedom to impart information and ideas. The Court further noted that free elections and freedom of expression – particularly freedom of political debate – together form the bedrock of any democratic system.

Balancing press freedom and the right to privacy

The relationship between privacy and press freedom is being contested in a case involving Ghana at the Economic Community of West African States (ECOWAS) Court. The case concerns three judges who claim their right to privacy was violated following a journalist's report exposing their corruption. This is the first time the ECOWAS Court (or any other regional African court) will consider how the right to privacy interacts with the right to freedom of expression, and could set an important precedent for future cases. We intervened in the case to assist the Court in striking the right balance between any right to privacy and other rights which are relevant to journalistic freedom. These include rights protected under the ECOWAS Treaty such as rights to freedom of expression, freedom of the press and access to information.

Challenging physical and administrative restrictions on independent media

Across the world we saw freedom of expression restricted where independent media were refused access to physical spaces, equipment and licences. One of our strategic cases concerns Chilean radio station, Aukan Radio, which was denied access to a broadcasting licence for six years. The station's equipment was seized and the head of the radio station was detained and charged with criminal proceedings. The case seeks to challenge the use of criminal charges for such an offence and to demonstrate that the Chilean broadcasting laws and procedures violate international human rights standards.
Read more on page 36.

Litigating against physical attacks, torture and threats

In partnership with Montenegrin organisation, Human Rights Action, we supported the case of Tufik Softić at the Constitutional Court of Montenegro. Softić, a reporter and author of an article detailing criminal activities, was targeted in two violent attacks, which the authorities failed to investigate properly.

IMPACT

The majority of judges ruled that Tufik Softić's right to life had been violated due to the failure of the state to investigate threats of violence against him, and the ineffective investigation into his attempted murder. Softić was awarded compensation – the first time the Constitutional Court of Montenegro has awarded compensation for the moral harm caused by a violation of human rights. Read more on page 26.

PROTECTING DIGITAL RIGHTS

Online anonymity

We have intervened in important digital rights cases at the European Court of Human Rights, such as the case of Standard Verlagsgesellschaft MbH v. Austria. Here, we filed an intervention examining the circumstances under which an internet service provider can be compelled to disclose the identities of users who post anonymously.

We highlighted the important role the internet plays in facilitating and enhancing the public's right to freedom of expression. The willingness of internet users to engage in debates, particularly on politically controversial or taboo subjects, is encouraged by the option to do so anonymously.

Our intervention emphasises that the disclosure of anonymous users' identities might result in those users being silenced online. With states and powerful institutions increasingly looking to identify anonymous users, this case is particularly significant for the European Court.

Internet shutdowns

We are supporting challenges to a number of cases challenging internet shutdowns instigated by governments in Uganda and Cameroon. Read more on page 33.

Cybercrimes legislation

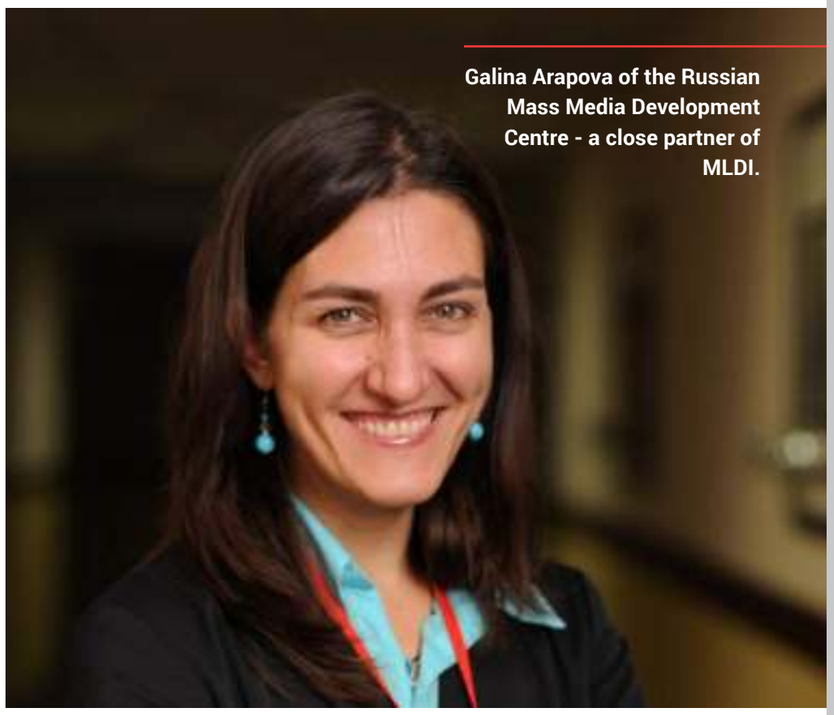
We are working with the Pakistan Press Foundation to challenge the Prevention of Electronic Crimes Act (PECA) at the High Court in Pakistan. The PECA criminalises aspects of free expression and curtails civil liberties, contrary to international legal standards on freedom of expression.

In Nigeria, the 2015 Cybercrimes Act is being used to target bloggers. Together with Paradigm Initiative Nigeria, we are challenging the constitutionality of sections of the Act that disproportionately restrict freedom of expression online.

IMPACT

In Tanzania, Yeriko Nyerere was the first blogger to be charged under the country's Cybercrimes Act. We funded the legal defence of Nyerere who faced five different charges under the Act.

In 2017, the Tanzanian government dropped all charges against Nyerere allowing him to continue his blogging and reporting.



Galina Arapova of the Russian Mass Media Development Centre - a close partner of MLDI.

European Court finds removal of journalists from parliament violates press freedom

Case study

In February 2017, the European Court of Human Rights ruled that the forcible removal of journalists from the Parliament of Macedonia was a violation of human rights.

The case, which was supported by MLDI and its partner the Media Development Center (MDC), has prompted a significant decision from the European Court – recognising that it is unacceptable for authorities to remove journalists from areas where public interest events are unfolding, unless there is some real threat to their or the public's safety.

The judgment dates back to events that unfolded in December 2012, when Macedonia's state budget was being approved amid protests from opposition MPs and the public. On 24 December 2012, during a debate on the budget, tensions among MPs came to a head with a number of opposition MPs causing disruption on the chamber floor. In response, the Speaker of the Parliament ordered that security officers "restore order", which resulted in the forcible removal of MPs and members of the media who were passively observing proceedings from a gallery.

Following an unsuccessful complaint to the Constitutional Court of Macedonia, six journalists brought their case to the European Court with MLDI's and MDC's support. The journalists argued that their removal from the parliamentary gallery violated their right to freedom of expression, and the public's right to receive information, under the European Convention. The Court agreed with the journalists, finding that the removal amounted to a violation. In its judgment, the Court held that the journalists' removal "instantaneously prevented them from obtaining first-hand and direct knowledge based on their personal experience of the events unfolding in the chamber".

MDC's lawyer, Filip Medarski, who represented the journalists, noted: "The judgment is even more important as it is the first decision in which the Court has found a violation of Article 10 of the European Convention of Human Rights by Macedonia. The decision is a milestone in the never-ending battle to improve the conditions of work for journalists and press freedom in Macedonia."

Countries with more than 5 new or ongoing cases supported in 2017

GLOBAL ISSUES

VIOLENCE &TORTURE

Many journalists around the world face physical attacks, threats, and harassment.

THE ISSUE

Violence and torture are tactics employed by those who want to silence journalists and deter others from critical reporting. In addition, whilst in detention or custody, journalists are sometimes tortured. These acts violate journalists' right to life, right to freedom from torture and their right to freedom of expression. Often, there is a high level of impunity for these actions and no one is held accountable.

During 2017 we worked on cases concerning violence or torture in Azerbaijan, Bahrain, Colombia, the Gambia, Kenya, Montenegro, Peru, Russia, Uganda and more. We sought protection for the journalists, challenged the failure to adequately investigate threats, and fought to hold accountable those responsible for these grave violations.

* SOME CASES INVOLVED MORE THAN ONE ISSUE

in 2017 WE SUPPORTED*:

- **12** Cases of **physical torture**
- **9** Cases of **physical attacks**
- **8** Cases of **physical threats**
- **2** Cases of **murder**
- **2** Cases of **psychological torture**
- **1** Case of **disappearance**

Constitutional Court of Montenegro finds failure to investigate violent attack to be a violation of journalist's right to life

Case study

In 2017, MLDI and Human Rights Action (HRA) welcomed the decision of the Constitutional Court of Montenegro, which unanimously found that journalist Tufik Softić's right to life had been violated due to the ineffective investigation into his attempted murder. It's the first time in its history that the Constitutional Court of Montenegro has awarded compensation for the moral harm caused by a violation of human rights.

Tufik Softić had been working as a radio reporter for Radio Berane and as a correspondent for the daily newspaper Republika when he was seriously injured in a violent attack that took place outside his family home in November 2007.

The attack was allegedly related to the publication of an article detailing the criminal activities of a drug trafficking group in northern Montenegro. Nearly six years later, in August 2013, Softić was again violently targeted by a bomb attack but managed to escape serious injury. Despite the serious threat posed to Softić's life, the authorities failed to conduct an effective investigation into either attack.

The decision of the Constitutional Court, which emphasised the importance of conducting timely and diligent investigations into attacks on journalists, is very important for the protection of human rights in Montenegro. It serves as an important step in the fight against the impunity shown towards attacks on journalists.

The bitter truth remains, however, that both attacks remain uninvestigated and no person has ever been prosecuted. A majority of the judges decided to award just satisfaction to Mr. Softić in the amount of 7,000 Euros to compensate for this failure.

The Constitutional complaint in the case of Tufik Softić was filed by lawyer Dalibor Tomović, with the support of HRA and MLDI.

DETENTION & CRIMINALISATION OF SPEECH

Free speech is under threat across the world. From criminal defamation to charges related to terrorism and national security, criminal laws are repeatedly used to stifle critical reporting and silence journalists and bloggers.

THE ISSUE

Criminal libel laws, which make it a criminal offence to undermine someone's reputation, date back to the Middle Ages. But many countries still use them, which means journalists could face prison for doing no more than criticising someone in power.

In 2017, we worked on 29 cases of journalists charged with criminal defamation in 11 countries.

We received an increase in the number of requests for support from journalists charged with endangering national security, particularly from Azerbaijan.

In Vietnam we saw ill-defined or overly broad criminal offences such as "conducting propaganda", "incitement" or "disturbing public order" being used to quash any kind of dissent and arbitrarily detain individuals who dared to speak out against the Vietnamese government. These criminal charges can have very serious consequences for the journalists concerned.

> In over a quarter of all of the new cases we took on in 2017, the journalist involved was either already in detention or faced a penalty of imprisonment if found guilty.

In these cases, the emergency legal defence we provide may be the difference between freedom or imprisonment for the journalist.

in 2017 WE SUPPORTED*:

- **29** Criminal Defamation cases
- **28** Cases concerning journalists in or at risk of detention
- **17** Cases concerning endangering national security charges
- **12** Cases concerning spurious criminal charges**
- **4** Criminal insult cases
- **3** Sedition cases
- **2** Incitement to violence or hatred cases

* SOME CASES INVOLVED MORE THAN ONE ISSUE
** MLDI DEFINES SPURIOUS OR TRUMPED UP CRIMINAL CHARGES, AS CHARGES AND ACTIONS WHICH HAVE BEEN FABRICATED, FALSIFIED OR EXAGGERATED

Interventions for detained Turkish journalists at the European Court of Human Rights

Case study

In 2017, Turkey was the largest jailer of journalists in the world, with over 100 journalists in detention at the end of the year.
At the end of 2017, Turkey had been under an extended State of Emergency for 16 months, which has enabled unprecedented repression of the free press and critical voices. In response, MLDI, together with other freedom of expression organisations, submitted third-party interventions in ten cases against the Turkish government concerning jailed journalists, which have priority status to go before the European Court of Human Rights (ECtHR). The interventions provide detailed legal analysis of the human rights principles at stake in the cases of the detained journalists.

The cases before the European Court concern the detention of board members from the Cumhuriyet newspaper, along with the cases of journalists Murat Aksoy, Şahin Alpay, Ahmet and Mehmet Altan, Ali Bulac, Ayse Nazlı Ilıcak, Ahmet Şık, Deniz Yücel, and Atilla Taş.

The briefs urge the Court to hold that the detention of a journalist is "subject to the strictest scrutiny", and that such measures in response to a journalist's work can only be justified in "extreme and exceptional cases". They underline that "the deliberate and arbitrary use of the criminal law to target journalists and other media for exercising their right of freedom of expression and opinion that may be critical of government for the ulterior purpose of punishing and preventing dissemination of critical opinions amounts to a violation" of the European Convention on Human Rights, to which Turkey is a state party.

"The volume of cases concerning detained Turkish journalists that are coming before the European Court are indicative of the dire state of press freedom in the country," said Padraig Hughes, MLDI's Legal Director. "These cases offer the European Court an important opportunity to take a stand against the widespread deprivation of liberty of those who have been willing to criticise the Turkish government, and to recognise that the real purpose behind these detentions is to deter journalists from speaking out in the future."

Third party interventions like this are an effective tool to help promote and protect human rights at the European Court of Human Rights. They offer an opportunity for civil society to assist the courts by providing an independent analysis of the human rights principles and standards at issue in a case, as well as any relevant international and comparative human rights law.

The UN Special Rapporteur, David Kaye, and Council of Europe Human Rights Commissioner, Nils Muižnieks, have also intervened in these critical cases.

This type of strategic litigation is just one of the ways in which MLDI is attempting to protect and promote freedom of expression standards in Turkey. MLDI also provides legal defence to individual journalists and is working with a number of partners in the country to build capacity and ensure the many journalists at threat have access to quality legal defence.

United Nations Working Group on Arbitrary Detention calls for the release of human rights defender Can Thi Theu

Case study

In 2007, the family farm of Can Thi Theu (a human rights defender and online activist) was confiscated by the state. Since then, Can Thi Theu has actively campaigned for land rights in Vietnam and for the release of imprisoned human rights activists.

Can Thi Theu has been repeatedly targeted by the authorities because of her activism, including arrests, confiscation of her equipment and heavy fines for "disrupting public order".

On 8 April 2016, Can Thi Theu participated in a peaceful demonstration in front of the Vietnamese Ministry of Natural Resources and Environment, demanding the release of a human rights lawyer who had been accused of conducting propaganda against the state. Can Thi Theu was holding a banner calling on the Government of Vietnam to repeal article 88 of the Penal Code, as well as another banner requesting the immediate release of the human rights lawyer. She was arrested, taken to a police station and subjected to death threats by police officials, before being released.

On 5 August 2016, she was formally charged with causing public disorder under article 245 (1) of the Penal Code for her participation in the demonstration in April. While many other individuals participated in the demonstration, Can Thi Theu is the only demonstrator known to have been arrested and prosecuted for being involved in the gathering.

On 20 September 2016, more than three months after she was initially detained, Can Thi Theu was tried by the District People's Court. The trial was conducted under maximum security and access to the court for Can Thi Theu's relatives was limited. Can Thi Theu was found guilty of causing public disorder and sentenced to 20 months' imprisonment.

In 2017, MLDI and students from the University of Edinburgh's Freedom of Expression Law Clinic filed petitions to the UN Working Group on Arbitrary Detention (UNWGAD), urging the Working Group to intervene for Can Thi Theu's release.

Later that year, we were notified that the petition had been successful and the UNWGAD had found Can Thi Theu's detention arbitrary and a violation of her rights to freedom of expression and freedom of assembly.

The Working Group has considered the application of national security and public order provisions of the Penal Code in Vietnam on numerous occasions. In all of these cases, the Working Group found that vague and overly broad provisions of the Penal Code were used to impose penalties on individuals who had merely exercised their rights to freedom of expression and peaceful assembly.

The Working Group requested the government of Vietnam take the steps necessary to remedy the situation of Can Thi Theu without delay. They urged the government to withdraw all charges against Can Thi Theu in relation to her peaceful human rights activism. In addition, the Working Group requested the government bring its laws into conformity with the commitments made by Vietnam under international human rights law.

DIGITAL RIGHTS AND INTERNET SHUTDOWNS

THE ISSUE

The use of the internet as a forum for freedom of expression continues to grow and expand. However, increasing regulation and attempts to control online space are presenting restrictions and threats to freedom of expression. We have an ever-increasing case load that involves protecting online media and reacting to violations of online freedom of expression. This includes challenging overly broad cybercrimes legalisation, intermediary liability and hyperlinking, anonymity, web blocking and internet shutdowns.

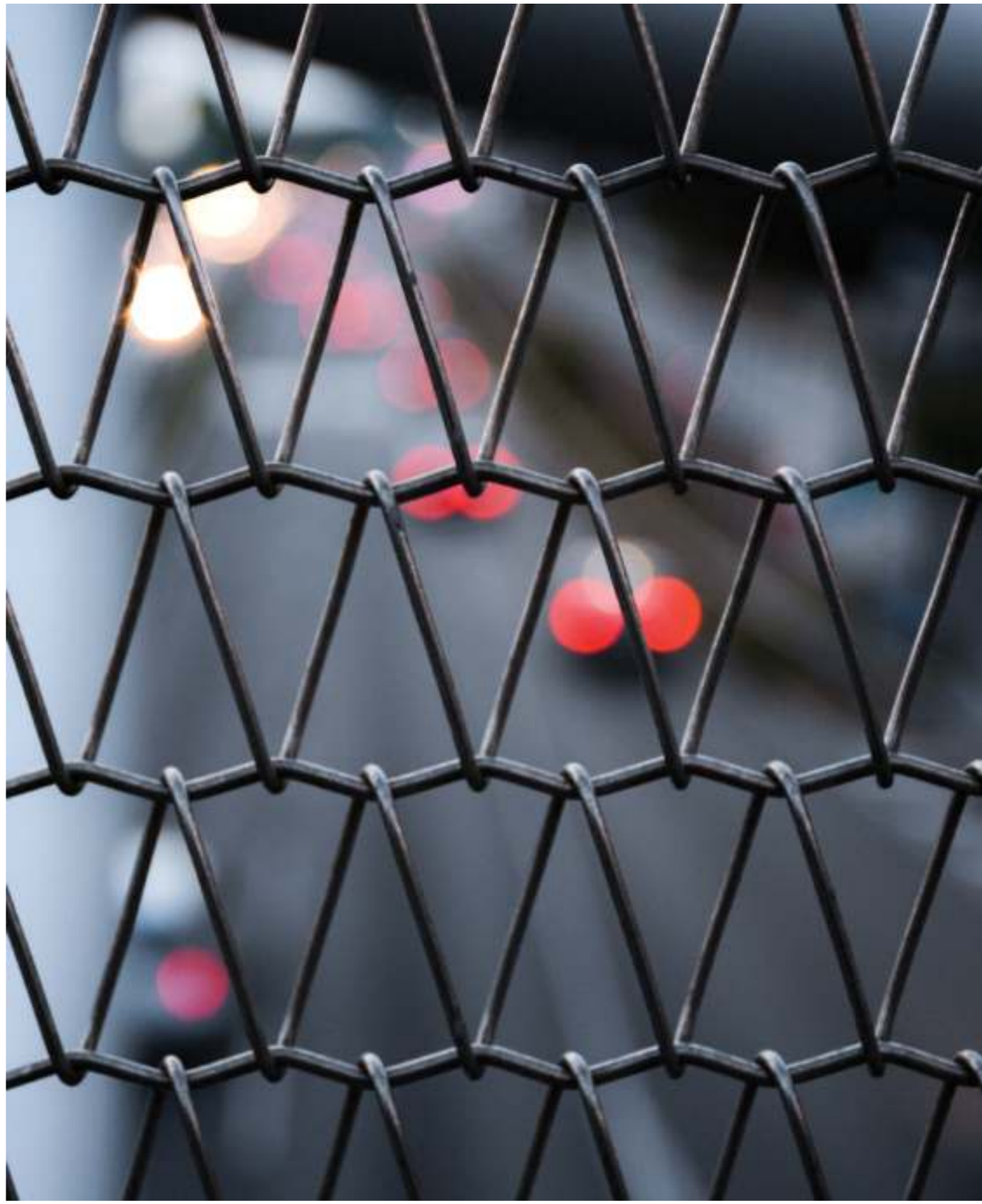
INTERNET SHUTDOWNS

Internet shutdowns are a violation of the right to freedom of expression – put simply, they are a way of silencing speech. They block journalists from reporting what's happening and the public from accessing information. Network shutdowns have become an increasingly common state tactic to silence opposition voices. The same is true for website blocking – where people are denied access to specific sites, typically social media channels. Throughout 2017 we supported a number of cases in which the state interfered with access to the internet.

in 2017 WE SUPPORTED 4 CASES CHALLENGING INTERNET SHUTDOWNS:

2 CAMEROON

2 UGANDA



An appalling violation of the right to freedom of expression

Case study

Imagine if you woke one day to find that your government had switched off the internet. On 17 January 2017, this was the reality for five million people in Cameroon. The blackout was widely seen as a direct response to growing anti-government protests in certain regions. The authorities kept them disconnected for three continuous months.

In majority French-speaking Cameroon, the internet was only turned off in the two English-speaking (North-West and South-West) regions of the country – where English-trained lawyers and teachers were striking over the state's refusal to let them work in their own courts and classrooms. Overnight, 20 percent of the country's population was silenced.

One man directly affected by the internet blackout was Cameroonian public interest lawyer Emmanuel Nkea, who came together with MLDI to challenge the shutdown through the courts.

Following discussions by Emmanuel and the MLDI legal team on the most appropriate strategy, it was decided to challenge the shutdown on two fronts: by way of judicial review and through a constitutional challenge. Emmanuel explains: "We feared that the Constitutional Court could say this is a matter for the High Court only, and the High Court could say this is a matter for the Constitutional Court. So, we decided to file both actions as a strategy to [cover ourselves] from both sides".

In both actions, Emmanuel is acting as counsel to a different consortium of Cameroonian NGOs, who were all affected by the internet shutdown. The defendants include the State of Cameroon, Cameroon Telecommunications (CAM-TEL) and other telecommunications companies in the country.

While there are many procedural nuances to consider, both actions focus on the same legal principle: Under International Law, the right to freedom of expression is guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Under the ICCPR, this includes "the right to seek, receive and impart information and ideas through any media regardless of frontiers" in its definition. Freedom of expression is also guaranteed by Article 9 of the African Charter on Human and Peoples' Rights, to which Cameroon is a party.

As well as funding the case, MLDI worked with Emmanuel in formulating the arguments and drafting the pleadings. In particular, MLDI was able to support Emmanuel by sourcing relevant international legal precedents and statements from authoritative bodies such as the UN to assist his work.

Building this body of international law is especially important, because Cameroon does not have a bill of rights – and the treaties signed by Cameroon have primacy over national law. In effect, these actions may help determine if the freedom of information and freedom of expression, enshrined in international law, should also be considered a constitutional right for every Cameroonian.

"The fundamental principles of freedom of expression should provide sufficient protection against a blanket internet shutdown," says MLDIs Legal Director. "International legal standards on freedom of expression are clear… shutdowns are unlawful and shouldn't happen".

Chief Foanyi Nkemayang Paul is President of the Commonwealth Journalists' Association for Cameroon and Africa and CEO of The Star newspaper in Limbe, a seaside city in one of the regions affected by the internet blackout.

"The shutdown made us feel like second-class citizens in our own country," he says. "And for our publication, it was terrible".

For three months, his editorial team had to travel 85km almost daily to the city of Douala, inside the French-speaking part of Cameroon, to connect to the internet. The travel expenses alone topped 360,000 Central African Francs (£500). The editorial team were unable to use their own equipment, had to rely on finding available computers at busy internet cafes, and undertook numerous risks.

This is just one of several cases MLDI is supporting in challenging internet shutdowns and website blocking around the world.

PHYSICAL & ADMINISTRATIVE RESTRICTIONS TO INDEPENDENT MEDIA

THE ISSUE

Throughout the year, we saw governments use various measures to restrict independent media. Access to information laws and policies were ignored, publications were banned and foreign agent laws were used to 'blacklist' media outlets and civil society organisations.

Many of the cases we supported involved restrictions on journalists' physical access to places where they might obtain public interest information, such as parliament buildings or refugee camps. Other cases concerned the removal of, or restriction on the use of radio or TV broadcasting equipment as a result of licensing or registration issues.

We challenged administrative barriers used to deter free and critical reporting, such as 'content warnings', which could lead to the closure of a media outlet, or the application of policies which restrict access to the licences required to legally operate as a journalist.

in 2017 WE SUPPORTED*:

- **13** **Content warning cases** (which threaten closure)
- **8** Cases concerning **licensing issues**
- **6** **Access to information** cases
- **5** Cases concerning **foreign agent laws**
- **4** **Publication bans**
- **4** Cases involving **physical access restrictions**
- **3** Cases concerning **removal of broadcasting equipment**
- **3** **Media outlet closure** cases
- **2** **Travel bans**
- **1** **Dismissal** case

* SOME CASES INVOLVED MULTIPLE RESTRICTIONS

Challenging the Broadcasting Bill at Chile's Constitutional Court

Case study

We are currently supporting local Chilean radio station, Aukan, in its fight against Chile's Broadcasting Bill.

Article 36 (b) of the General Law of Broadcasting, the inclusion of which in 1991 was heavily criticised by the Inter-American Commission of Human Rights, unfairly criminalises broadcasting without a licence and incorporates penalty fees, seizures of equipment and imprisonment as punishment.

For the last six years, the Aukan Centre for Communication and Cultural Activities has not been able to obtain a practising licence under the law because new licences for community radio stations are not being authorised in the city of San Fernando where Aukan is located.

Francisco Orellana, the legal representative for Aukan, was detained on 15 December 2015 by police. The authorities seized Aukan's FM equipment, a computer and a monitor. Mr Orellana was released the same day. However, he was later charged by the Public Prosecutor under Article 36 (b) for acting as a community radio station without proper legal authorisation – a charge which carries a term of imprisonment or a large fine.

With MLDI's support, Mr Orellana (represented by lawyer Javier Garcia of the NGO Defensoria Popular) and Aukan have filed an appeal to the Constitutional Court of Chile in order to prevent the application of Article 36(b) of the General Law of Broadcasting (Bill Number 20.433) against Francisco Orellana.

Through this appeal they intend to challenge the incompatibility of the Chilean legislation and international and regional human rights law. A favourable ruling by the Court would contribute to the modification of the current legislation in Chile and bring it into line with international and regional human rights standards.

Thank you!

We are extremely grateful to the following donors who made our work in 2017 possible:

The Adessium Foundation

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The MacArthur Foundation

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And individual and anonymous donors

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Bloggers Association of Kenya, *Kenya*

Committee for Legal Aid for the Poor, *India*

Foundation for Press Freedom, *Colombia*

Human Rights Platform, *Ukraine*

Kenya Union of Journalists, *Kenya*

Media Development Centre, *Macedonia*

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And three defence centres in Turkey

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