

**MEDIA
DEFENCE**

TEN YEARS OF MEDIA LEGAL DEFENCE INITIATIVE

2008-2018

In 2019, we are rebranding.

This annual report has been produced in our new style with our new logo.

Our thanks to Atelier Doodle for their pro bono work in developing this new identity with us.

www.atelierdoodle.com

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A MESSAGE FROM OUR CEO



LUCY FREEMAN, CEO

In 2018 Media Legal Defence Initiative (MLDI) turned ten years old. This year our annual report will reflect on our growth, achievements and impact over the last ten years, as well as taking an in-depth look at 2018.

We launched in 2008 with three staff, a handful of cases, and a mission to provide emergency legal assistance to journalists. Ten years later, legal defence for independent media remains at the core of our work. We have grown to a team of 11 staff and in 2018, we supported 265 cases around the world.

Sadly, the need for our work has become more acute. The past decade has seen a contraction of the space for independent media – a trend which accelerated in 2018. In every corner of the world the established (if not always adhered to) norms of a free press were eroded further. States which have been historically unsympathetic to a free press became openly hostile. Repressive criminal and civil laws, threats and actual violence were used against journalists in increasing numbers. Meanwhile perpetrators of violence against journalists were rarely brought to justice and, in many countries, threats and attacks were not investigated at all. In addition, the evolving digital landscape which has seen more media move online has also presented new legal threats and attempts to regulate independent press.

Over the last decade, we have fought hundreds of legal attempts to silence independent media. We provided legal defence to journalists prosecuted for a wide range of offences, including defamation, blasphemy, public order, terrorism-related offences and, more recently,

offences created under new cyber-crime legislation. Throughout time we have maintained a strong case success rate of around 70%.

Our strategic litigation has grown from a small number of interventions at the European Court of Human Rights to a portfolio of cases before many international human rights courts and tribunals. We have won important successes at national, constitutional and supreme courts around the world, as well as at the Economic Community of West African States Court, the African Court of Human and Peoples' Rights, the East African Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights. By winning landmark judgments, we created legal precedents that can benefit journalists across entire regions.

We have built local legal capacity by funding a growing number of partner organisations to build their own Media Defence Centres in countries around the world, and by running specialist media and freedom of expression litigation surgeries in Southern Europe, South-East and South Asia, and East, West and Southern Africa. These partners have gone on to shape the freedom of expression landscape in their countries and regions.

The achievements of the past ten years would not have been possible without the inspirational journalists, lawyers and activists we have partnered with, the generous support of our donors and pro bono legal partners, and the continued dedication of our UK and US trustees, patrons, and staff, who have all worked tirelessly to ensure that journalists can carry out their work uncensored and unhindered. Their continued support will enable us to continue to take practical action to defend press freedom globally in the years to come.

ABOUT MEDIA LEGAL DEFENCE INITIATIVE

WHAT WE DO

We ensure legal defence of journalists, citizen journalists and media outlets in legal cases related to their journalism, ensuring that they can continue to report on issues of public interest.

HOW WE DO IT

Emergency Legal Defence:

We provide legal help to journalists and independent media across the world.

Strategic Litigation:

We take on strategic cases to change unjust laws used against journalists.

Capacity-Building:

We build local legal capacity to defend journalists.



**10 YEARS OF
MEDIA LEGAL
DEFENCE
INITIATIVE**

10 YEARS OF MLDI: AN OVERVIEW

Number of cases approved by country, 2008-2018

601 cases supported in **91** different countries



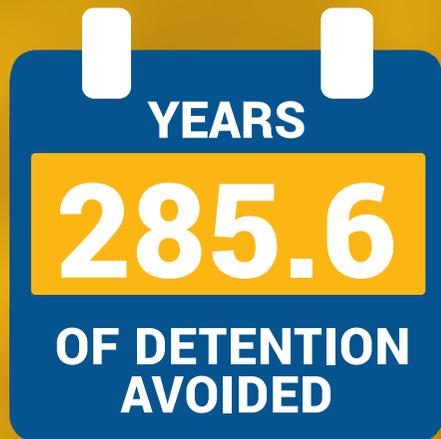


94

**MEDIA DEFENCE
CENTRE GRANTS
AWARDED**

£444,372,049

**AMOUNT OF CIVIL
DAMAGES AVOIDED**



YEARS

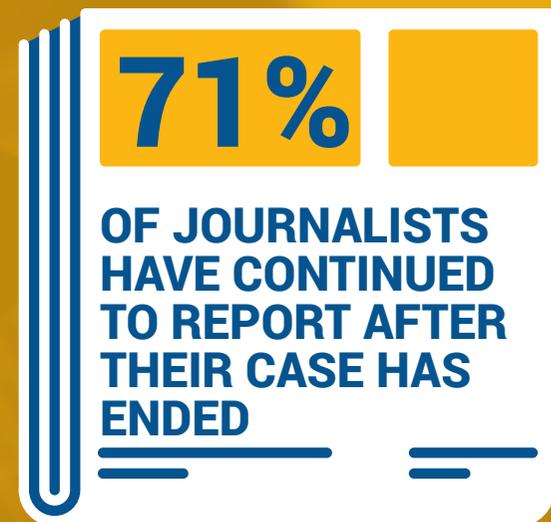
285.6

**OF DETENTION
AVOIDED**



70%

SUCCESS RATE



71%

**OF JOURNALISTS
HAVE CONTINUED
TO REPORT AFTER
THEIR CASE HAS
ENDED**

2008-2018: 10 YEARS OF MEDIA LEGAL DEFENCE INITIATIVE

EMERGENCY LEGAL DEFENCE

We provide direct legal assistance to journalists and independent media through an emergency defence fund. We provide funding to hire a local lawyer and work alongside the local lawyer to secure a good outcome for the journalist concerned. Since 2008, we have supported 601 cases in 91 countries, with an average case success rate of 70% between 2008 and 2018 and totalling over £900,000 in financial support for individual cases.

Of all the cases we provided direct support to from 2008-2018, the largest number were in Russia (73), closely followed by Azerbaijan (68). Due to the lengthy process of progressing cases to European Court of Human Rights in Russia and Azerbaijan, around half of these cases are still ongoing.



STRATEGIC LITIGATION

We actively pursue strategic cases that can have a wider impact on the development of law and practice in the country or region concerned and which may result in enhanced respect for international norms on the right to freedom of expression. Through this strategic litigation, we challenge the laws that are used to silence the media and bring laws and practices into line with international standards.

From 2008-2018, we worked on 172 strategic litigation cases across 49 countries, with a 68% success rate.

Strategic cases by region



* Success is defined as fully or partially meeting MLDI's case objectives, which are decided by the Legal Officer when beginning the case.

LEGAL CAPACITY BUILDING | MEDIA DEFENCE CENTRES

We provide grants and technical support for organisations to create and run national Media Defence Centres, offering free legal assistance directly to media in their own countries. As well as funding we offer other kinds of support such as legal mentoring, expertise in filing or litigating at regional courts.

From 2008-2018 we awarded 94 Media Defence Centre grants, to organisations in 28 different countries.



LEGAL CAPACITY BUILDING | LEGAL TRAINING

Since 2015, we have been running a legal training programme, providing specialised legal training for practicing lawyers on media law, international standards on freedom of expression, and engaging with international and regional mechanisms. We also facilitate further learning, networking and collaboration between the lawyers after completion of the training and our legal team offer specialised individual help as needed, such as coaching or support with filing.

Since 2015 we have trained 86 lawyers and activists.



POLAND: A BACKSLIDE IN MEDIA FREEDOM

Article by Dominika Bychawska-Siniarska, member of HFHR Board. MLDI has been working with HFHR since 2015 to provide legal defence to independent media in Poland.

The Helsinki Foundation for Human Rights (HFHR) has been operating for 27 years and is the biggest human rights NGO working in Poland and the post-Soviet region. Our work focuses on education, advocacy and monitoring, and human rights litigation. We have been running a project devoted to freedom of the press since 2008 in response to Poland's dispersed and divided media environment.

Within the media freedom project we conducted litigation activities and campaigns advocating for freedom of expression – including one campaign on the need to decriminalise defamation. Some of Poland's largest media outlets and journalistic associations joined us. The HFHR media freedom project continuously supports journalists and bloggers via litigation and we continue to respond to emerging challenges and the changing media environment.

Since the 2008 creation of the media programme we have witnessed a gradual improvement of the situation for media in Poland, as recorded by international organisations such as Reporters without Borders. In 2015 Poland was ranked 15th in the World Press Freedom Index – the highest position it has held. However, since then we have faced a backslide, reflected in Poland's fall in the World Press Freedom Index to the 58th position, one of the worst among EU states.

Such a low ranking is particularly due to legal changes introduced by the right-wing Law and Justice party (Prawo i Sprawiedliwość, or PiS) which led to a political takeover of public media. More than 200 key journalists and editors were dismissed just within a couple of months, without justification or compensation. This left public media without an institutional memory and paved the way for further political influence of media programming. Currently selection of public media's management and supervisory boards is in the hands of the National Media Council, a body composed of active politicians. The political influence on the public media reveals itself in ways such as organised smear campaigns against opposition politicians and liberal NGOs.

Meanwhile another hurdle for critical journalists is access to public institutions such as the parliament or the Constitutional Court. The Speaker of the Sejm (the lower chamber of Poland's parliament) issued a 2016 order so that only certain journalists received a permanent entrance card, valid for up to one year. All other journalists (mostly those critical of the current government) need to request an entrance permit every time they need to follow parliamentary proceedings. It is common practice to deny permits to critical journalists, even when they identify themselves with press cards. Such practices violate Poland's constitutional provisions, guaranteeing free access to information.

Independent journalists regularly report a lack of access to government officials and that they have been denied interviews. Sometimes government politicians even boast about not speaking with critical news outlets, making it harder for newspapers viewed as opposition-aligned to access information.

Another dangerous tendency we have observed at HFHR is 'state machinery' being used to protect the reputations of particular officials. The most prominent example is the case of Wojciech Czuchnowski, editor of *Gazeta Wyborcza*, who is under investigation for insult of a constitutional body after publishing a series of articles examining links between top judges of the Constitutional Tribunal and intelligence agencies. In some isolated cases, journalists are targeted with severe charges such as espionage to deter them from reporting on specific topics. In an increasing number of cases, state institutions' resources (such as their legal departments) are being used to sue for the personal protection of particular officials.

Besides the new legal challenges, there are some long-lasting and unresolved issues around the criminalisation of defamation and the 'chilling effect' of using legal proceedings against journalists, particularly at a local level. Usually legal proceedings, particularly around defamation, are used more frequently by officials during elections.



Lohé Issa Konaté

LOHÉ ISSA KONATÉ: PAVING THE WAY FOR PRESS FREEDOM IN BURKINA FASO AND BEYOND

Case duration: 2013 – 2016

In 2012, Burkinabe newspaper L'Ouragan reported allegations of corruption and abuse of power at the office of a local prosecutor. A criminal complaint was filed against the paper's editor, Lohé Issa Konaté, who was sentenced to 12 months imprisonment and ordered to pay damages totalling US\$12,000. The paper was ordered to close for six months. The court's decision was upheld on appeal.

Following his conviction, Konaté engaged MLDI to petition the African Court on Human and Peoples' Rights.

Mr Konaté was represented by MLDI, along with John Jones QC and Steven Finizio of WilmerHale, both of whom appeared pro bono.

In 2014, the African Court found violations of Mr Konaté's rights and held that no journalist should be imprisoned for defamation or similar violations of the law. The Court ordered Burkina Faso to change its criminal defamation laws. The ruling set an authoritative precedent for all African countries where imprisonment for libel is still used as a tool to silence members of the press, bloggers, political activists and human rights defenders. The threat of prison for journalists who expose corruption or criticise the government is one of the major impediments to effective journalism. By clearing this barrier, the Court paved the way for a stronger media across the continent.

In 2016, Konaté was awarded \$70,000 in compensation for the harm he suffered.

Mr Konaté expressed his delight with the decision, saying:

"The African Court has recognised the injustice I have suffered. Not only am I happy from a personal point of view, but also because this decision will have positive implications for all my fellow journalists who face great risks, including, as I did, imprisonment, for reporting on issues that matter. This is a victory for the entire profession."

The judgment was also welcomed by journalism organisations around the world. Jim Boumelha, the President of the International Federation of Journalists said:

"We welcome this magnificent victory for press freedom. The African Court has delivered an extraordinary first ruling on press freedom which will have a knock-on effect on the legislation in all African countries forcing them to change their law on defamation. African governments should now amend their laws, drop pending criminal defamation charges, and free those jailed under such laws."

The judgment has since been used as a stepping stone towards defamation law reform across the continent, and is referenced in criminal defamation cases across the world.

For our work on this case, in March 2015, we were awarded the inaugural Global Freedom of Expression Prize by New York's Columbia University.

“THE BIG GUYS DON’T CARE ABOUT WINNING – THEY WANT TO DAMAGE THE LIVES OF JOURNALISTS.”

Award-winning journalist Inga Springe is the founder of Re:Baltica - The Baltic Centre for Investigative Journalism, based in Riga, Latvia. We worked with Inga in 2012 when Re:Baltica was sued for defamation. Here she describes what drives her and how she hopes to bring socially-responsible journalism back to Latvia.

Case duration: 2012 - 2015

Inga Springe recognised injustice early. As a teenager growing up in Latvia, she watched her parents struggling to afford everyday items like clothes and a car while others got rich through corruption and theft. Such inequality inspired her career choice. “I was determined to be a journalist from when I was 15,” she remembers. “Journalism is in my character. I like uncovering justice and getting to the truth. When someone is arrogant or dishonest, I want to show it.”

Inga set up her own organisation - dedicated to keeping good-quality journalism alive in Latvia: The Baltic Center for Investigative Journalism - *Re:Baltica*, which launched in 2011. It produces stories about corruption, crime, health and human rights and pushes them out through a variety of news platforms.

In 2012 *Re:Baltica*, barely a year old, was sued for defamation after republishing a story about a Russian laundering network. The claimants demanded around \$16,000 in compensation – a challenging sum for a fledgling organisation like *Re:Baltica*.

“When I heard about the case I was overwhelmed,” says Inga. “I was already so busy setting up *Re:Baltica*. With this kind of case, often the big guys suing don’t care if they win in the end. They just want to damage the lives of journalists. They know we have to find money for lawyers and find time for going to court. It’s very hard.”

Inga contacted us and we funded a lawyer for the case: Irina Kostina from Lawin, the largest law firm in the Baltics. We supported Irina with international case law that would help her defend *Re:Baltica*. “When Irina started helping us I wasn’t worried anymore,” Inga remembers. “I’d have been very surprised if we had lost, as the claim wasn’t serious.” She was right: *Re:Baltica* won the case.



Inga Springe

The same year Inga won a Best Investigative Journalism award from the Latvian Journalism Association in 2012 for a *Re:Baltica* investigation that raised awareness of social inequality in Latvia. Inga is determined to make Latvian journalism credible again and works to ensure that the media is for the public good, not a business opportunity. “There is demand for good content.”

CLAUDIA DUQUE: THE ONLY ANSWER FOR ME IS THE COLOMBIAN PEOPLE – MY WORK AS A JOURNALIST, ESPECIALLY AS A HUMAN RIGHTS JOURNALIST, IS TO GIVE THEM A VOICE.”

Case duration: 2016 - present

Claudia Julieta Duque Orrego is a leading investigative journalist in Colombia and a recipient of the Courage in Journalism award. She works for Equipo Nizkor and Radio Nizkor, and is a member of Fundación para la Libertad de Prensa (FLIP) and the National Union of Journalists (NUJ) in the UK. Her reporting has often focused on crime, corruption and human rights abuses.

In August 1999 the Colombian journalist, satirist and peace activist Jaime Garzón was shot five times by gunmen in Bogotá in broad daylight. Jaime Garzón was a household name, and his murder created a huge impact. “He was the Charlie Chaplin of Colombia.” Duque explains. “When he was murdered it was a big shock – not just for the media but for everyone.”

The murder was a turning point, creating an impetus to finally end the impunity for violence against the media. In Colombia at the time, Duque says, 12 journalists were killed every year on average. “There was not any justice at all in the situation. It was a landmark case we needed to work,” explains Duque. “My solution was that journalism must be part of the process.”

Two years later, in 2001, with no killers brought to justice, Duque began actively investigating Garzón’s murder – “inside the process but also outside the process” – looking at all possible angles, including corruption and conspiracy. Duque convinced Garzón’s brother to give power of attorney to a good, trusted lawyer, who could properly represent the family in the legal process and give Duque access to all the documents and information needed to investigate the case.

However, shortly after she began investigating the murder, Claudia Duque herself became the target of intimidation, harassment and threats. Duque was followed in public places and had threatening phone calls. She always wrote down the number plates of the cars which followed her and investigated them. She was able to trace one of the cars back to the Departamento Administrativo de Seguridad (DAS - Colombian secret police).

In July 2001 Duque was kidnapped in a taxi for a number of hours, robbed, and told to “let the dead rest”. Shortly after, she went into exile for her own safety. She returned in 2002 and continued her investigation. However, the threats continued, and it appeared that the people harassing and threatening Duque were intercepting both phone calls and emails.

As her investigations into Garzón’s unsolved murder progressed, the harassment intensified. “In the middle of this process I became aware that the DAS was behind a cover-up to prevent the identification of the real perpetrators of the crime. As I realised it, the situation worsened,” she explains.

When she did not stop working on the case, the harassment increased to death threats and threats against her young daughter, María Alejandra Gómez. Duque decided to flee the country again with her daughter.

When she returned to Colombia in 2006 the government provided Duque with security and safety measures because of the extreme risks she was facing. The safety measures included an armoured vehicle and a driver who also worked as unarmed bodyguard.

In 2007 Duque filed a complaint against the DAS and the Ministry of the Interior at an Administrative Tribunal, because the government removed her own security measures. She argued this decision was violating her rights to family, life and her right to physical and psychological integrity. In the middle of this process, the DAS presented, as proof against Claudia, several intelligence reports gathered by her security personnel.

In the meantime, Claudia and her daughter were forced to leave Colombia again. Between 2001 and 2008 the two women left the country numerous times. However, when it was safe to do so, Duque kept returning to Colombia to continue her work. In October 2008, when she was in exile, the Constitutional Court ordered DAS to allow Duque access to any files they had about her. This decision gave her the necessary strength to return to her country once again.



Claudia Duque with a UN Officer

It's extremely rare, almost unheard of, for victims of state harassment to be able to see documents which definitively prove both what occurred and who was behind it. As a trained investigative journalist with now unprecedented access, Duque was able to conclusively demonstrate that the DAS was behind her persecution.

Duque was able to show that the DAS had ordered years of surveillance, illegal interceptions, harassment and intimidation against her. She could even prove that this was directly related to her investigative work around Jaime Garzón's murder. She found a manual written specifically on how to harass her, allegedly written by DAS Sub-Director José Miguel Narváez, who has recently been convicted for ordering Garzón's murder.

Duque's case also uncovered evidence that the DAS had a wider campaign of mass surveillance and harassment of other journalists, NGOs, human rights defenders and even judges. The wire-tapping revelations became a national scandal (*escándalo de las chuzadas*) and led directly to the DAS being dissolved and replaced with the National Intelligence Agency (*Dirección Nacional de Inteligencia*, or DNI).

In November 2009 Duque and her daughter were granted security measures by the Inter-American Commission for Human Rights.

At that time, the investigation into the threats and attacks suffered by Duque had been going on for five years with no results – amounting to impunity for the perpetrators. Duque presented the evidence to the prosecutor that investigated her case and argued that the deliberate and illegal campaign of surveillance, intimidation and harassment – often threatening her young daughter – amounted to psychological torture.

In March 2013 Colombia's Prosecutor's Office ordered the arrest of seven high-ranking former DAS agents for the crime of aggravated psychological torture in incidents from 2001 onwards.

Any form of torture – physical or mental – is illegal under international law, but as psychological torture is much more difficult to prove, this became the first ever case taken to trial in Colombia and one of very few in the world. It was the result of years of hard work by Duque and her colleagues, as well as a number of international human rights and national press freedom organisations.

Three former members of DAS have pled guilty and been sentenced, including former Chief of Intelligence of DAS Carlos Arzayús, and the deputy directors of Technical Intelligence, Armando Rubiano, and Intelligence Operations, Hugo Daney Ortiz. All of them served between four and six years in prison, despite being sentenced to much longer prison terms.

In 2015, four other high-ranking DAS officials were tried in the specialised Penal Courts in Bogotá for aggravated psychological torture. One of the cases ended in November 2017, but one year later the court's final decision is still pending. Ronal Rivera, the only defendant detained in one of the cases, was released last July. The other trial, against former DAS deputy director José Miguel Narváez, and the Intelligence directors Giancarlo Auqué (currently a fugitive) and Enrique Ariza has been stalled for a year. MLDI is supporting Duque in the case, with direct support in the form of legal fees for two trials.

Ariza had fled to the United States, but in April 2017 Duque managed to get him deported back to Colombia to face justice, after presenting her complaint before the Human Rights Violators and War Crimes Center (HRVWCC) of US Homeland Security.

In October 2017 Colombia's Attorney General stated that the psychological torture was a crime against humanity and, as such, was not subject to any statute of limitations. However the case is not concluded yet. At the beginning of 2018, four other former DAS agents, including the deputy director Emiro Rojas, were sent to trial, but after several months, the judge has not even scheduled the first hearing.

Duque and her daughter still remain under threat. What motivates a person to keep going despite these huge threats? "I always ask myself the same question," says Duque. "The only answer for me is the Colombian people – my work as a journalist, especially as a human rights journalist, is to give them a voice."

"My main concern right now is about impunity," says Duque. "In August 14 journalists were threatened in Colombia, and in the entire year there have been more than 90 death threats against colleagues". Threats against Duque are not yet a thing of the past, either. "They want me to stop looking. They want me to quit," she says.

Claudia Duque hasn't quit yet. Meanwhile, her daughter María Alejandra Gómez, who was a child when the threats and attacks began, is now fighting for justice herself – and is a fully qualified lawyer. In October 2018, Gómez filed a complaint – the result of over a year's work – before the Inter-American Commission on Human Rights (IACHR) for the persecution she and her mother endured from 2001-2008, as well as for the successive threats and attacks that both women have suffered over the years. MLDI is supporting Gomez with this case at the IACHR.

Duque said "it's very nice for me to see that girl turned professional, backing her mother in this whole fight. It is also a very nice message that I protected her to the fullest and now that she is out of the country developing as a woman and a professional, she decides to face and take charge of her own fight for justice."

KHADIJA ISMAYILOVA: “HER RELEASE IS A VICTORY FOR ALL JOURNALISTS WHO DARE TO SPEAK TRUTH TO POWER.”

Duration of cases: 2013 – 2019

Khadija Ismayilova is an award-winning investigative journalist in Azerbaijan, one of few remaining independent journalists in the country. Her work has brought numerous examples of government corruption to light.

In 2012 Ismayilova published an article which uncovered that the daughters and wife of the President held senior management positions in Panamanian companies that had just been awarded a mining extraction licence worth USD 2.5 billion. (The corruption was later confirmed in the Panama Papers.) While researching the article, Ismayilova received a letter blackmailing her to end her investigations or else she “would be shamed”.

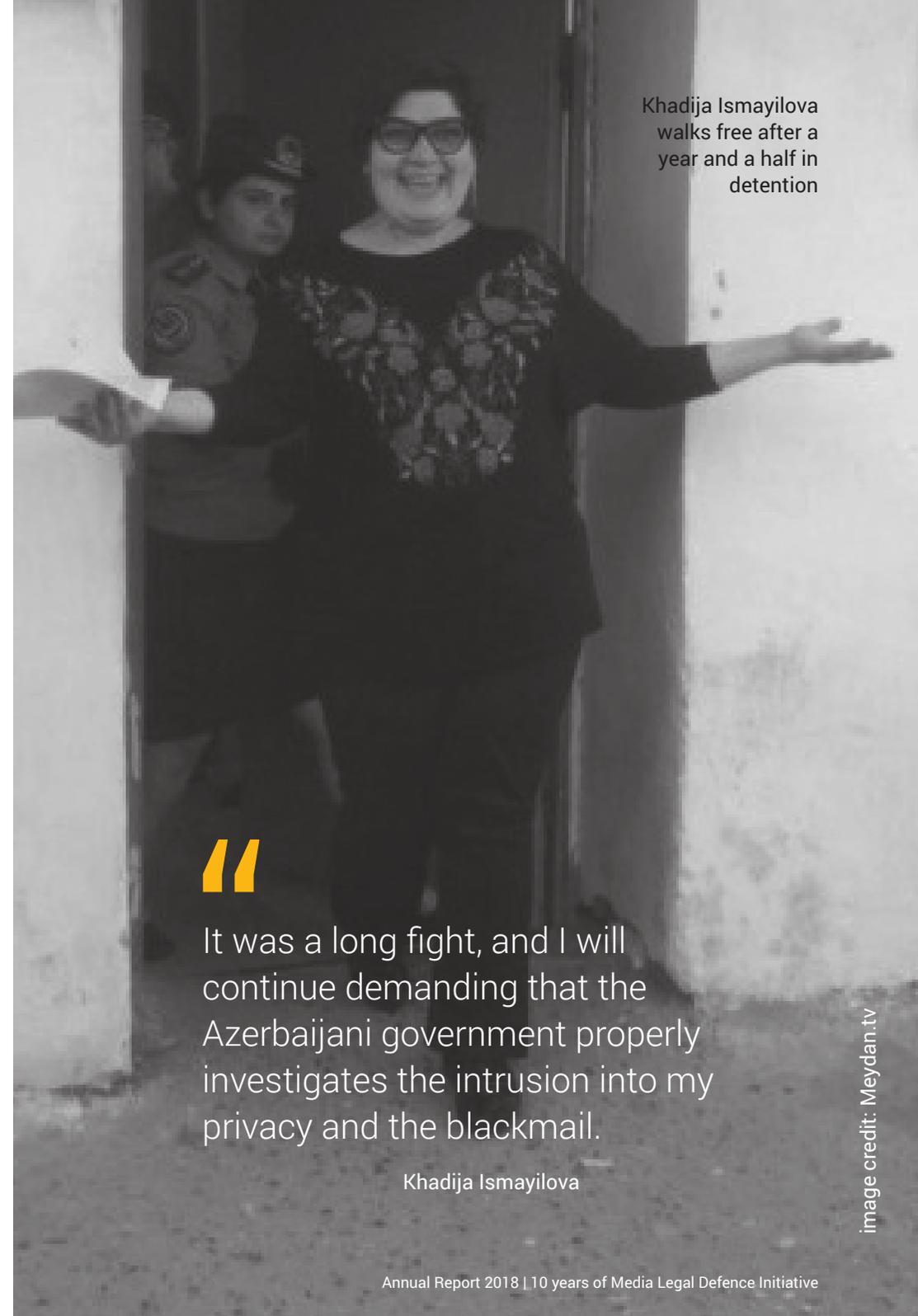
In response to her work, Ismayilova was the target of a systematic smear campaign comprising threats, intimidations and gross violations of her privacy designed to prevent her from pursuing her journalistic work.

In September 2013 and July 2014 MLDI, along with attorneys at De Brauw Blackstone Westbroek, filed two complaints with the European Court of Human Rights on Ismayilova’s behalf.

She was arrested in 2014 on a trumped-up charge of inciting a former colleague to commit suicide. Her preventive detention was routinely extended ever since and in 2015, she was additionally charged with large-scale embezzlement, illegal trading, tax evasion and abuse of authority and a Baku court sentenced her to 7.5 years in prison.

MLDI funded her case in the Azerbaijani national courts and in 2016, Azerbaijan’s Supreme Court ordered to release Khadija Ismayilova from custody after reducing her prison sentence to a suspended term of 3.5 years. In 2016, the Court ordered Khadija Ismayilova’s suspended term to be shortened to 2 years and 3 months.

Khadija Ismayilova walks free after a year and a half in detention



“

It was a long fight, and I will continue demanding that the Azerbaijani government properly investigates the intrusion into my privacy and the blackmail.

Khadija Ismayilova

image credit: Meydan.tv

In September 2013 Ms Ismayilova petitioned the European Court of Human Rights. MLDI represented her before the Court, putting together a team of lawyers including Amal Clooney.

In May 2016, after almost a year and a half in prison, the Supreme Court of Azerbaijan issued a verdict which resulted in Ismayilova's release. She was acquitted on two of the four charges while her sentence for the two remaining charges was reduced to conditional release and five years' probation. A further European Court of Human Rights case was filed by MLDI regarding her conviction.

Speaking at the time MLDI's co-counsel Amal Clooney, said: "we can all celebrate the fact that an innocent young woman has been freed. Khadija is a talented journalist who was instrumental in exposing corruption in her country. Her release is a victory for all journalists who dare to speak truth to power."

In 2019, the European Court of Human Rights found that Azerbaijan violated Ismayilova's right to privacy and right to freedom of expression by failing to adequately investigate the intrusions into her private life.

Speaking in January 2019, Ismayilova said:

"This decision proves that the Azerbaijani government is responsible for the heinous crime I was subject to."

"It was a long legal fight, and I will continue demanding that the Azerbaijani government properly investigates the intrusion to my privacy and blackmail. I strongly believe that the Azerbaijani government officials were behind the secret filming and blackmailing, and my legal struggle will continue till the day when all perpetrators will be brought to justice."

The cases relating to her detention continue. Khadija Ismayilova has been represented by MLDI as well as Azerbaijani lawyer Yalchin Imanov, Amal Clooney, Doughty Street Chambers, and firms De Brauw Blackstone Westbroek and WilmerHale.



NGUYỄN VĂN ĐÀI: ARBITRARY DETENTION OF JOURNALISTS IN VIET NAM

Duration of cases: 2016 - 2018



Nguyễn Văn Đài (centre) with his wife Vũ Minh Khánh (left) and Lê Thu Hà (right) secretary for the Brotherhood for Democracy

Nguyễn Văn Đài is an award-winning Vietnamese blogger and human rights lawyer. In December 2015, Mr Văn Đài was detained on charges of ‘conducting propaganda’ against the state, and for two years he was held incommunicado, without access to a lawyer. For the majority of his incarceration he was not allowed to see his family. In 2018, following a rare visit, his wife reported that his cell was open to the elements with only a concrete surface to sleep on and that in two years he had rarely been allowed to leave the cell.

In 2016, working with Edinburgh University, we filed a petition with the UN Working Group on Arbitrary Detention (UNWGAD) urging the group to hand down an opinion in his case.

In an Opinion delivered in October 2016, UNWGAD stated: “the repetitive and systematic harassment, assault and detention of Mr Đài by the Vietnamese authorities for more than 10 years ... indicate that Mr Đài’s present detention is part of a pattern of persecution for his activities as a human rights defender.” UNWGAD also noted that “widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.”

Despite being held since 2015, Mr Văn Đài was only tried in April 2018. The trial was held in secret and without a lawyer, and Mr Văn Đài was sentenced to 15 years imprisonment for ‘plotting to overthrow the government’.

In June 2018, however, Mr Văn Đài was released from prison and exiled to Germany. While exile is preferable to prison, it still separates activists from their families and friends, and limits their ability to continue their work. His release into exile is the latest in a series of attacks on the rights of Vietnamese journalists to report in the public interest, and the rights of the public to be informed.

MLDI’s Legal Director Pdraig Hughes said: “The community of independent bloggers and citizen journalists in Viet Nam has been decimated in recent years as a result of the government’s heavy handed response to unwelcome comment and criticism. We are glad Văn Đài has been released from prison, however the continued detention of other journalists for exercising their legal rights remains a stain on Viet Nam’s reputation. We will continue to challenge these detentions and call on the international community to do more to pressure Viet Nam to release those journalists.”



2018 IN FOCUS

EMERGENCY LEGAL DEFENCE IN 2018

Providing emergency legal defence to journalists in need is the core of what we do. We make added value grants to fund legal defence – paying legal costs and providing the lawyers representing the journalists with additional technical legal support, including research memos, case strategies and draft briefs.

In 2018 we supported 265 cases across 54 countries, including 98 new and 167 continuing cases, the highest number in our ten year history and a 26% increase in our total case load compared to 2017. We provided added value legal support in over 30% of them.

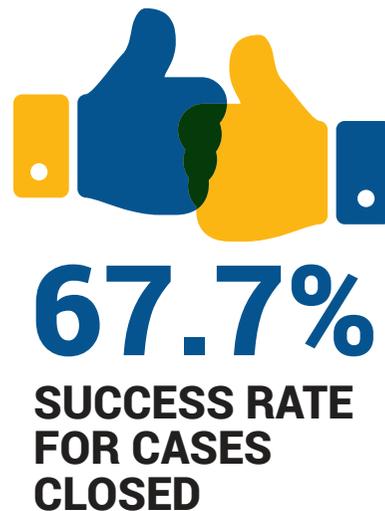
Of the 67 cases closed in 2018: 42 were either fully or partially successful, giving our legal defence programme a success rate of 67.7%.*

The highest number of new cases we supported directly in 2018 were from Azerbaijan (29), followed by Russia (12), (the highest number of cases we supported indirectly through partners were from Turkey (114).

The five most common stories or investigations that landed journalist in legal trouble were government corruption; human rights abuses; politics; business corruption; education, health or public services. Other topics included environmental issues, crime, justice and national security.

Of the journalists we supported, five indicated that their identity, including their gender, sexual orientation, ethnicity or religion, was factor in the case they were facing.

* Success, for cases supported directly, is defined as fully or partially meeting MLDI's case objectives.



ZUNAR: CARTOONS, SATIRE AND SEDITION IN MALAYSIA

"Your continuous support is hugely appreciated. It is a torch for me to carry on the trial in a mission to expose the repressive regime, as well as to free Malaysia from the archaic Sedition Act. Freedom of expression and freedom of speech are fundamental rights and must be upheld"

Zulkiflee Anwar Ulhaque, better known as Zunar, is an international award winner and one of Malaysia's most acclaimed cartoonists. Many of Zunar's cartoons draw attention to corruption and abuse of power, as well as mocking some politicians' lavish lifestyles. He is a regular contributor to the news website Malaysiakini and has published several compilation books of his political cartoons.

For over a decade Zunar has also been subjected to various forms of censorship including unlawful arrests, police raids of his offices, and a two-year travel ban for being 'detrimental to parliamentary democracy'. At least five of Zunar's books have been banned or seized by the authorities.

In 2015 Zunar faced criminal charges for sedition in response to a series of social media posts on Twitter. His comments were about the Federal Court's judgment against an opposition politician who had been jailed on a trumped up sodomy charge. The potential sentence for his tweets, if convicted, was up to 43 years in prison.

MLDI provided both financial and technical support in two of his book ban challenges and supported Zunar with his legal fees in the sedition case.

In July 2018, Zunar was acquitted of all sedition charges. Upon hearing the news he said "Finally, no more sedition for me, the burden is lifted ... But the fight is not over yet. The government has to abolish this law to show the commitment to freedom of expression."

Zunar was represented by Mr N Surendran and Ms Latheefa Koya of NGO Lawyers for Liberty, with support from MLDI.

A portrait of Zunar, Zulkiflee Anwar Ulhaque, a middle-aged man with short grey hair, wearing a dark blue polo shirt. He is looking slightly to the right of the camera with a neutral expression. The background is a solid, warm yellow color.

Zunar, Zulkiflee Anwar Ulhaque

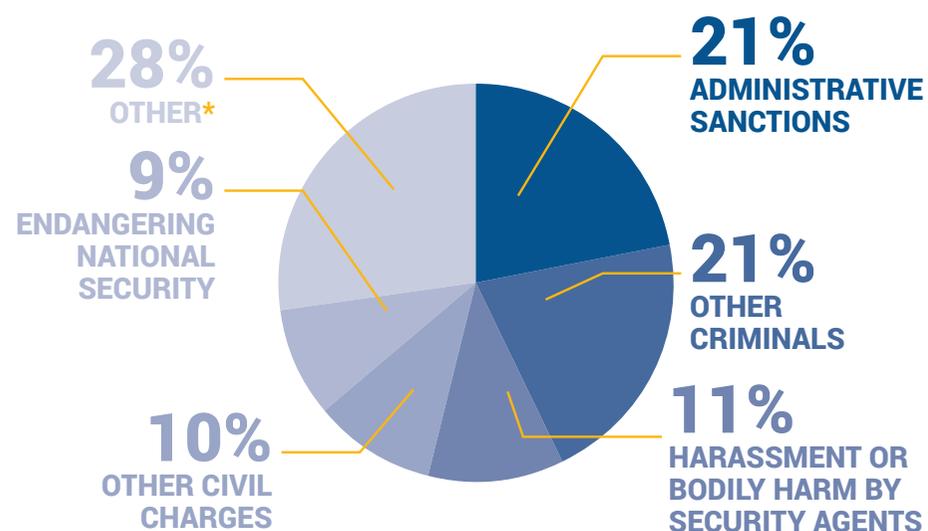
OUR STRATEGIC LITIGATION WORK IN 2018

ABOUT THE PROGRAMME

Our high-impact strategic litigation programme works to win landmark judgments and clarify or change laws, bringing them in-line with international standards on freedom of expression.

In 2018, the global downturn in media freedom resulted in a growing number of strategic cases around criminal defamation, repressive tactics and news-gathering restrictions –for example journalists in Europe being turned away from reporting on demonstrations. Judicial harassment cases were on the rise, especially in Tanzania, Uganda and Russia. Meanwhile in Turkey, the highest number of cases were related to arbitrary detention of journalists.

Case Type in 2018



* Access to information 7% (9), Criminal defamation/libel 6% (8), Civil defamation/libel 6% (7), Closure of media outlet 4% (5), Insult (Government or official) 2% (2), Counter-Terrorism (1), Protection of sources (1), Sedition (1), Torture (1)

Threats to digital rights and free speech online continued developing, with a worrying growth in instances of web blocking and internet shutdowns. Our work often addressed the swathe of new, overbroad ‘cybercrime’ laws which restrict free speech online. Some of our strategic work also helped shape the ongoing development of the right to be forgotten.

In 2018 we worked on a total of 124 strategic litigation cases, including 46 new and 78 ongoing from previous years. Of the strategic cases closed in 2018, there was a 67% success rate**.

In 78% of our strategic cases we directly represented the journalist, and in 22% of our strategic cases we submitted third party interventions, offering crucial expertise to the court on freedom of expression issues.

The Gambia: criminal defamation declared unconstitutional

In May, the Gambian Supreme Court declared the country’s criminal defamation law and law on false news on the internet were both unconstitutional. One of these decisions was in response to a challenge brought by the Gambian Press Union in 2014, with support from MLDI, arguing that Gambian laws on sedition and false news laws were unconstitutional. Notwithstanding this positive result, the decision represented a missed opportunity to also declare unconstitutional the laws on sedition and false publication and broadcasting.

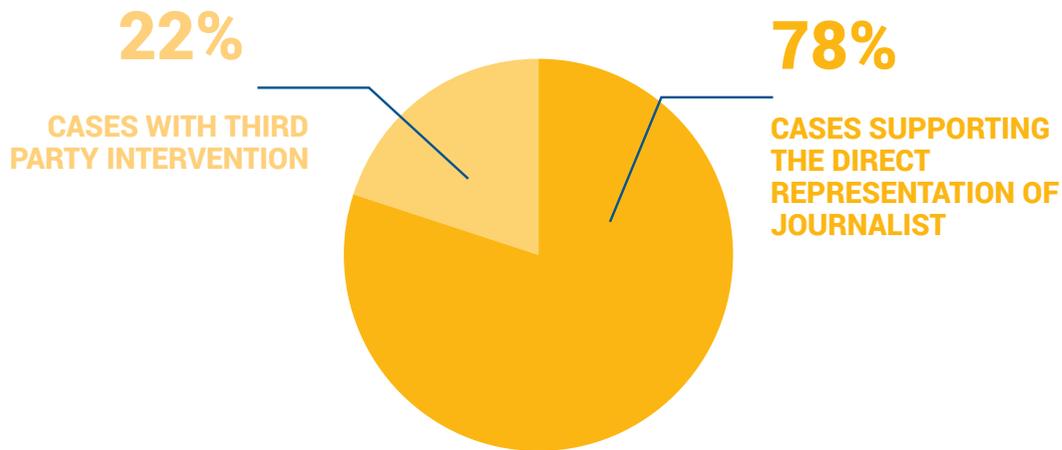
Tanzania’s newspaper ban overturned

In June, the East African Court of Justice ruled that Tanzania’s ministerial ban on a newspaper must be overturned. The 2016 order banned the Mseto newspaper from publishing for three years. No reasons had been given for the order, but it followed shortly after Mseto had reported on corruption during the presidential election. The case was taken by Tanzanian lawyer Fulgence Massawe from Legal and Human Rights Centre, with MLDI’s support. The Court agreed that the ban interfered with press freedom and was in violation of the right to freedom of expression under international law.

Clarification that hyperlinking is not dissemination

In December the European Court of Human Rights gave important clarification on the objective liability standard online. Magyar Jeti ZRT v Hungary contested whether hyperlinking to false or defamatory content made journalists or publishers liable for ‘disseminating’ the content. In its unanimous judgment the Court clarified that the news portal 444.hu was not liable for defamatory content on YouTube which it linked to in an article. The case was brought by the Hungarian Civil Liberties Union with MLDI and the US law firm Wilmer Hale. The clarification is important for freedom of expression and access to information online.

** Success is defined as fully or partially meeting MLDI’s case objectives, which are decided by the Legal Officer when beginning the case



Strategic litigation at regional courts

European Court of Human Rights	62
ECOWAS Court (Economic Community of West African States)	6
East African Court of Justice	2
African Commission on Human & Peoples' Rights	2
Inter-American Court of Human Rights	1
Inter-American Commission on Human Rights	1

Strategic cases supported in 2018



FAJ AND OTHERS V THE GAMBIA: A LANDMARK JUDGMENT THAT WILL BENEFIT JOURNALISTS ACROSS THE CONTINENT

In February 2018, the Court of Justice of the Economic Community of West African States (ECOWAS) delivered a landmark judgment finding that the Gambia had violated the rights of four Gambian journalists through both laws criminalising speech and the actions of the Gambian authorities. The judgment also recognised that the criminal laws on libel, sedition and false news disproportionately interfere with the rights of journalists and directed that the country “immediately repeal or amend” these laws in line with its obligations under international law. The Court also found that there had been a violation of the prohibition on torture.

MLDI worked with a team of international and Nigerian lawyers to file the case in December 2015 on behalf of four exiled Gambian journalists who had been arrested and detained by the Gambian authorities. Two of the journalists had been tortured while in custody - including beatings, electric shocks and detention in poor conditions. All four journalists later fled the country fearing further persecution.

This was a significant judgment, not only for the Gambia but also for the whole West African region. The ECOWAS Court expressed, in the strongest terms, the crucial role that the media play in society and unequivocally condemned the enforcement of criminal laws against journalists for carrying out their jobs.

The case was also brought in the name of the Federation of African Journalists, which acted as a representative of all Gambian journalists whose rights had been violated by criminal laws on libel, sedition and false news.

“This judgment provides an impressive overview of international norms on freedom of expression and the media,” said Gabriel Baglo, General Secretary of Federation of African Journalists, “as reform is already underway in the Gambia, we hope that the decision of the ECOWAS Court will be fully taken into consideration by those responsible for reform of the media law.”

Noah Ajare, the lawyer representing the Applicants, said “this is a landmark judgment that will benefit journalists and freelancers across the continent, who have seen journalists systematically tortured and dehumanised over the years in the Gambia. I commend the boldness of the justices of the ECOWAS Court in delivering this extraordinary and epoch-making judgment.”

The Applicants were also represented by London-based barristers Can Yeginsu and Anthony Jones. The Nigerian lawyer acting for the applicants was Noah Ajare. Amicus briefs were also filed on behalf of REDRESS, the UN Special Rapporteur on Freedom of Expression, and a coalition of eight free speech organisations.



Lawyers representing the applicants and interveners

BUILDING LOCAL LEGAL CAPACITY

We provide added value grants to national partner organisations to provide legal defence to journalists in their countries; and we ensure that well-trained lawyers are available to defend journalists by training and networking local lawyers.

MEDIA DEFENCE CENTRES

In 2018, we awarded over £250,000 to 15 partner organisations in 14 countries to defend media freedom in their countries.

OUR PARTNER ORGANISATIONS IN 2018

The Centre for Victims of Human Rights Violations | **The Gambia**
 C-Libre | **Honduras**
 Committee for Legal Aid for the Poor (CLAP) | **India**
 Foundation for Press Freedom (FLIP) | **Colombia**
 Helsinki Foundation for Human Rights | **Poland**
 The Human Rights Network for Journalists (HRNJ-Uganda) | **Uganda**
 Human Rights Platform (HRP) | **Ukraine**

The number of new cases litigated by our partners in 2018 was 197, with an 83% case success rate. In addition, over 78% of journalists supported by our partners have continued to publish.

Hungarian Civil Liberties Union (HCLU) | **Hungary**
 The Media Development Centre (MDC) | **Macedonia**
 The Media Policy Institute (MPI) | **Kyrgyzstan**
 Ossigeno per l'informazione | **Italy**
 Platform24 | **Turkey**
 TOHAV | **Turkey**
Middle East/North Africa¹
South Asia²

LITIGATION SURGERIES

In 2018, we ran two surgeries on litigating freedom of expression online. The surgeries, held in Nairobi, Kenya, for lawyers in East Africa and Lagos, Nigeria, for lawyers in West Africa, were part of a digital rights project funded by the US State Department for Democracy, Human Rights and Labor (DRL). In total 24 lawyers attended these practical workshops, learning about digital rights issues, significant case law and the regional mechanisms necessary to litigate digital rights cases.

Lawyers who attended were offered further opportunities for networking and collaboration. In November 2018 we supported seven lawyers from our network to attend the Internet Governance Forum (IGF) at UNESCO headquarters in Paris, France.

We also published three practical legal training manuals for lawyers litigating digital rights cases. These were *The Digital Rights Litigation Guide*, *The Training Manual on Digital Rights and Freedom of Expression Online*, and *The Training Manual on Litigation of Freedom of Expression in West Africa*. All of these were given to lawyers attending our workshops and they are available to download from our website.

^{1, 2} Name and country withheld for safety reasons

OUR PARTNER ORGANISATIONS IN 2018



The Centre for Victims of Human Rights Violations | The Gambia



C-Libre | Honduras



Committee for Legal Aid for the Poor (CLAP) | India



Helsinki Foundation for Human Rights | Poland



Foundation for Press Freedom (FLIP) | Colombia



Human Rights Platform (HRP) | Ukraine



The Human Rights Network for Journalists (HRNJ-Uganda) | Uganda



The Media Development Centre (MDC) | Macedonia



Hungarian Civil Liberties Union (HCLU) | Hungary



Ossigeno per l'informazione | Italy



The Media Policy Institute (MPI) | Kyrgyzstan



Platform24 | Turkey



TOHAV | Turkey

And two defence centres in the Middle East and North Africa and South Asia regions.

SPOTLIGHT ON MACEDONIA: THE MEDIA DEVELOPMENT CENTRE



We have been working with The Media Development Centre (MDC) since 2012 to provide legal defence to journalists, bloggers and independent media in Macedonia. Here MDC describe Macedonia's media landscape, and the impact of our national Media Defence Centre grants.

“Macedonia’s media sector is in a period of change. In 2012 the country decriminalised defamation, transferring these cases from the criminal to the civil courts. After the ousting of Macedonia’s authoritarian government in 2016, the press freedom situation in the country is perceived as much improved. However, civil defamation charges remain a threat to the very survival of impoverished media and journalists - mainly because of the deep financial crisis of the media sector.

Shrinking advertising budgets and the migration to online content have made the financial landscape extremely tough. Several outlets have already folded, including the leading publishing company – taking three daily papers with it. Few media can afford proper quality defence when facing any kind of judicial pressure, so without MLDI’s support journalists would find themselves in a much more precarious situation.

Though MDC was always interested in defamation from a freedom of expression and media freedom viewpoint, the partnership grant project has increased MDC’s knowledge, skill and competence around defamation issues, and pushed MDC to work on the topics in a more focused and hands-on way.

MDC is now widely recognised in the Macedonian media community as providing a tangible legal representation service. These changes are exclusively the result of MLDI’s support and funding. Other funders are uninterested in media projects, and media legal defence is never a priority area.”

SPOTLIGHT ON NIGERIA: OLUMIDE BABALOLA LITIGATING DIGITAL RIGHTS

Olumide Babalola is a Nigerian lawyer with ten years' post call experience. He works in private practice and takes cases across a range of issues including digital rights, consumer rights and freedom of expression litigation. In September 2018, Mr Babalola attended MLDI's West Africa digital rights and freedom of expression litigation surgery, held in Lagos.

In the months immediately after the digital rights litigation training, Mr Babalola filed his first case at the regional ECOWAS court – challenging part of Nigeria's controversial Cybercrimes Act 2015. Regional mechanisms can spur action in cases where domestic progress is slow. "Why are we still trying to fight the law locally? You can take it up a notch and take it to the regional court. We can even use the judgment to mount pressure for policy change and legislation review."

"The government has constantly used section 24 of the Cybercrime (Prohibition, Prevention etc) Act 2015 to clamp down on not just journalists but users of social media. It's been very, very rampant."

As well as increasing knowledge and awareness of how to use these international mechanisms, MLDI's legal capacity building aims to create and strengthen networks among human rights lawyers. Mr Babalola says: "It created an avenue for collaboration, and for partnership as well." One of those partnerships is already in the works, with another lawyer from the surgery: Solomon Okedara. "I'm so excited about it," he says. "I have known Solomon for a long time, but professionally we never came together on digital rights. The surgery brought us together and we have formed a partnership for a local network of digital rights lawyers, called the Digital Rights Lawyers Initiative." They aim to build a database of all the digital rights lawyers in Nigeria, to aid further collaboration. "It's going to be a formidable body – the go-to body – for anything that has to do with digital rights litigation."

The two lawyers got the registration for the new organisation approved just two months after attending the training, and their vision is bold: "It's going to be online platform where lawyers can share ideas. Then periodically we are going to arrange trainings for them on how to litigate digital rights in Nigeria, how to draft processes, to share materials – both locally and internationally – materials on digital rights in various forms ... We can all share ideas and experience within ourselves so if there is any case on digital rights we can all come together."

With the right support and collaboration, the potential impact is huge. Mr Babalola and Mr Okedara's new initiative aims to promote digital rights throughout Nigeria. There are a number of lawyers working on individual digital rights cases, but after the litigation training Mr Babalola is keen to share his expanded horizons with the wider legal community. "It's for us to further create awareness and forge partnership and collaboration between them."

“

The surgery brought us together and we have formed a partnership for a local network of digital rights lawyers.

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Olumide Babalola, Lawyer



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science et la culture

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