



Sherpa is an association created in 2001 by William Bourdon, a lawyer and former Secretary General of the International Federation of Human Rights (Fédération Internationale des Droits de l'Homme, FIDH).

The association brings together international jurists with a view to calling on their know how to find remedies for the practices of multinational companies which, in the framework of their foreign investment, are responsible for human rights violations and for failing to respect the environment.

Its objective is to make the notion of corporate social responsibility concrete.

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LEGAL PROCEEDINGS

1. TOTAL

Following a complaint filed in August 2002 made by two Burmese citizens, victims of forced labour on a gas pipeline run by TOTAL, a judicial enquiry was opened against person or persons unknown in October 2002 on charges of "abduction and restraint" before the Tribunal de Grande Instance in Nanterre.

On 29 November 2005, an agreement was signed between TOTAL and the plaintiffs. TOTAL agreed to pay each of the plaintiffs 10,000 euros as compensation and to pay compensation to any person in a similar situation to that experienced by the plaintiffs.

In addition, a solidarity fund of 5.2 million euros was set up to implement humanitarian and development projects among the numerous Burmese refugees in Thailand.

UPDATING AND UPCOMING STEPS

Following the agreement signed between TOTAL and the plaintiffs, the case was dismissed by the investigating magistrate in April 2006, closing the proceedings. The compensation was paid to the plaintiffs and the first projects to be funded by the solidarity fund for the many Burmese refugees in Thailand are currently being implemented. Julie Vallat, a lawyer and former Sherpa trainee, is responsible for ensuring the agreement is implemented.

2. ROUGIER

In the framework of the proceedings instituted by 7 Cameroon farmers and the Friends of the Earth against the management of the SFID, a Cameroonian company, on one hand and against its parent company the company ROUGIER SA, the chamber of instruction of the Court of Appeal in Paris handed down a decision on 13 February 2004 confirming the order of inadmissibility of the complaint, under which the plaintiffs requested damages, filed with the senior examining magistrate in Paris. The complaint was lodged in March 2002 on charges of the destruction of property belonging to others, forgery and the use of forgeries, fraud, receiving stolen goods and bribery of an official.

The question that was submitted to the examination division concerned the possibility of pursuing a French accomplice (the parent company) for its acts, regardless of the fact that it was not possible to institute proceedings against the principal Cameroonian author (its subsidiary) before the local courts.

The plaintiffs consequently decided to lodge an appeal before the Supreme Court. Said court dismissed the appeal. William Bourdon appealed to the European Court of Human Rights. The Court did not feel it was

useful to examine the appeal lodged by the Cameroonian plaintiffs, considering, after the filtering process, that it was inadmissible from the outset. This decision is wide open to criticism but is not a surprising one in view of the Court's present policy.

3. TOXIC WASTE IN IVORY COAST

We were contacted by a representative of the neighbourhood of the Akouedo dump in Ivory Coast where some of the toxic waste from the ship *Probo Koala* had been tipped. We advised them how to set up their organisation. A pool of lawyers grouping together Sherpa and English and Dutch lawyers was constituted to defend the interests of the victims in the European courts.

In the company of some English lawyers, Samira Daoud went to Abidjan in November as part of an exploratory mission and met victims' groups and others involved in the case. In partnership with Médecins du Monde, various meetings took place in Geneva with the people with responsibility for the file within the WHO, OCHA and the Basle Convention Secretariat.

On its return from Abidjan and on behalf of the victims, the pool of lawyers demanded that the various institutions concerned publish the results of the analysis of the waste that had been dumped. The exact nature of the product is still not known.

William Bourdon, commissioned by the victims to institute criminal proceedings in France against the French management of Trafigura, the company responsible for the cargo, has been to Abidjan in January 2007 accompanied by members of the English Law Firm and a representative of *Médecins du Monde*.

UPDATING AND UPCOMING STEPS

A complaint has been filed in the name of victims on 19 April 2007 in the hand of the "Doyen des juges d'instruction before the Tribunal de Grande Instance de Paris, on charges of unwilling homicide and active corruption of state agents against TRAFIGURA french executives and X.

4. CORRUPTION/WRONGLY ACQUIRED GOODS

A platform, including in particular the associations Survie and CCFD, was constituted to work on the issue of the illegal assets and wrongly acquired goods held by certain heads of state and former leaders. After identifying these goods and assets in Europe and the United States and having made an inventory of the actions already underway with regard to the restitution of certain wrongly acquired goods, Sherpa has determined the types of action that could be instituted by associations fighting corruption or by taxpayers' organisations in some African or Asian countries with a view to seizing assets.

UPDATING AND UPCOMING STEPS

Sherpa, besides association *Survie* and the *Fédération des congolais de la diaspora* has launch a criminal complaint on 27 March 2007 before the public prosecutor of the *Tribunal de Grande Instance de Paris* with charges of receiving of stolen public goods. We are expecting the position of the Prosecutor. Some encouraging signs make us confident that an enquiry is likely to be opened.

FILES UNDERWAY

1. URANIUM MINING IN ARLIT (NIGER)

After an initial exploratory mission in collaboration with CRIIRAD in December 2003 in Arlit (Niger) near the two uranium mines exploited by COGEMA subsidiaries, Sherpa and CRIIRAD published an advance report setting forth serious grounds, given the type of mining, for asking questions about the environmental impact of the activity and the origins of the health problems being encountered by the local population.

A second mission went to the site in November 2004 to gather further information, followed by a third in February 2005. The numerous statements collected during these missions and the results of CRIIRAD's analyses of samples taken in situ were published in a report in April 2005.

In particular the results of these studies revealed that the water taken and consumed by the population presented a level of uranium and its derivatives that exceeded the international standards for drinking water.

In any event it appeared incontestable that the protective measures were not sufficient to meet the major risks being run by workers. The companies involved were aware of it and endeavoured to ensure that under no circumstances could a link of any kind be made between the failures in protection and the appearance of particular pathologies. The stakes were high: if the link were established, as would seem probable, the question of the responsibility of the mining companies, and of course of COGEMA which controls them, would arise. As a French company COGEMA could therefore have to appear before a French court with regard to these alleged failings.

It should therefore be pointed out that one of the consequences of the investigations led jointly with CRIIRAD, and at the request of the association AGHIR IN³ MAN, was to require the mining companies to make special efforts to improve both working conditions and protection. The demand to withdraw contaminated metal from the town was belatedly but eventually agreed. This reinforces the idea that there is a need for independent studies to be conducted with regard to the situation in the mining region of the north of Niger.

The publication of this report and the broadcast on Canal + of a documentary about the investigation undertaken by Sherpa in Arlit, led COGEMA to set up an epidemiological study on the site. The results of the study, which should have been published in December 2005, are still not available. Sherpa has already put forward serious reservations about the study protocol. The results, when available, will be analysed by the association *Epicentre* (epidemiological branch of *Médecins sans Frontières*) which has agreed to review and report on COGEMA's study.

2. URANIUM MINING IN MOUNANA (GABON)

Following the publication of our report on the exploitation of the uranium mines in Niger and the documentary broadcast on Canal +, Sherpa was contacted by former workers at the uranium mine in Mounana in Gabon (run by a subsidiary of AREVA). An association, *Mounana*, was created in autumn 2005 and brings together former French workers at the mine. Its purpose is to establish the truth about the conditions under which the uranium mine in Mounana was run. In parallel, a group of former Gabonese employees was set up in Libreville. It approached us with a view to obtaining the launch of a health study and most importantly the setting up of a health watchdog and a special fund to compensate the population for any damage caused by the uranium mining.

An investigative mission to look at the working conditions and health impact of the uranium mine in Mounana run by the Areva subsidiary went to Gabon between 2 and 8 June 2006. It included Jean-Pierre Getti, Michel Bruguière, Director General of *Médecins du Monde* and Patrick Bouet, a specialist in occupational medicine. The investigation is continuing in France amongst former French employees at the mine. CRIIRAD will also analyse samples taken from the area in order to measure radioactivity in areas that are considered critical. The chair of the Greens group in the European Parliament has agreed to provide financial assistance.

UPDATING AND UPCOMING STEPS

A press conference presenting conclusions of the mission's report has been organised on 4 April 2007. Areva has anticipated the launching of the report announcing on 16 March 2007 the creation of "Health Observatories" on their mining sites. This press conference has also generated the release of Areva's epidemiological study on the Arlit site in Niger on 5 April 2007, i.e. the day after the release of report on Mounana site in Gabon. A letter has been sent to Areva on 27 May 2007 requesting them to provide information about the modalities of involvement of NGOs in the creation of the "Health Observatories" and a discussion on the creation of a special fund of compensation is under process.

3. GOLD MINING IN SADIOLA (MALI)

Sherpa was commissioned by a number of former workers at the gold mine in Sadiola (Mali), who are now disabled and by the families of former workers that have since died to produce a detailed report to be delivered to their former employer, in this case SEMOS, describing precisely their situation and formulating their demands.

Following the pressure exercised by the local authorities in Sadiola and by environmental organisations, journalists and Sherpa, a process of transmitting the medical files of the people concerned to a toxicologist, a specialist in occupational medicine and appointed by Sherpa to draw up an independent report, is underway. The analysis of the medical files that will be communicated to our expert should allow us to establish whether there is any link between the conditions under which the gold mine in Sadiola is run and the health problems encountered.

Moreover, a meeting between Sherpa and Terry Mulpeter, the new manager of the company responsible for the gold mine in Sadiola, has taken place. The idea being to try to open up an out of court settlement process.

The discussions are continuing with the legal department of AngloGold Ashanti, the parent company of the company running the gold mine in Sadiola, with regard to the health problems encountered by several former workers of the mine. A detailed note was sent to AngloGold's legal department, which maintains it has requested an investigation on the spot in order to respond to our demands. In addition, an epidemiological study has been set up that more generally studies the impact of the running of the mine on the health of neighbouring populations.

UPDATING AND UPCOMING STEPS

Official mandates from victims have been issued after a long process of collection and should be received in May 2007. Once these mandates in our possession, Sherpa will come back to the legal department of AngloGold Ashanti to find a settlement.

4. RIGHT TO WATER

The Sherpa Association is responsible for the legal aspects of the Alliance Internationale pour une Gestion Sociale de l'Eau, an international network of various players from the water sector that have united to promote the social management of water in France and throughout the world. Within this framework, Sherpa proposes to establish procedures for auditing any sanitation and water distribution service concession contracts whose validity is contested.

Sherpa has been involved, since the first international meetings were held on the right to access to water organised by the foundation France Libertés in Marseille on 23 and 25 November 2006, in the activity

of the non profit making association being set up to provide aid and assistance to French and foreign authorities that wish to move to public management of water and / or renegotiate the terms of their contracts with private operators (association 'Elus Associations Usagers (EAU) pour une gestion publique de l'eau potable').

UPDATING AND UPCOMING STEPS

Sherpa has also been invited by Suez to take part to internal conference in front of 40 executives to raise issues relating to the 'right to water'. This conference will take place on the 14 and 15 of June 2007.

ARGENTINA – ICSID / SUEZ

Sherpa has in addition worked alongside Argentinean lawyers that are defending the interests of Argentina before the ICSID in relation to disputes with Suez. Yann Queinnec carried out a study on the practices of water multinational companies in the context of public private partnerships. Some parts of the study were reiterated in the Argentinian lawyers' argument and collaboration on other cases can be expected in the future.

UPDATING AND UPCOMING STEPS

A project of conference on international arbitration role in matter of CSR is under way with our partners in Argentina. Such Conference would associate lawyers, arbitrators and academics to raise the current stage of legal doctrine in matter of CSR.

5. BOLIVIA – REPSOL

Sherpa was commissioned by the assembly of the Guarani people of Itika Guasu (APG) to assist it in its settlement process with the Spanish oil company REPSOL. The purpose of the settlement is to compensate populations that have been the victims of social, environmental and cultural impacts related to REPSOL's exploration and production activities since 1997.

UPDATING AND UPCOMING STEPS

To the request of APG and their Bolivian lawyers, Sherpa will provide by the end of May 2007 a model of settlement agreement to be used not only in the current process of negotiation with REPSOL but also within the frame of other pending disputes. Sherpa is working also on the way to promote this legal tool within southern communities victims of MNC's bad practices. Namely through training sessions dedicated to the said communities and their lawyers.

6. CORRUPTION

Sherpa is presently working on several cases. However given the high stakes, we are unable to reveal any information about the countries and companies involved for obvious reasons of confidentiality. (cf section "Legal Proceedings" and Sherpa's complaint in matter of wrongly acquired goods)

7. PANNING FOR GOLD IN GUIANA AND MERCURY POLLUTION

A partnership was initiated with the Commission de la Protection des Eaux, an environmental and water protection association which has been behind several proceedings in Guiana relating to the issue of mercury pollution, particularly of streams.

Sherpa was in fact approached to draw up a legal report on the possibilities of legal proceedings as a result of major mercury pollution caused by panning for gold in Guiana, to a great extent carried out clandestinely and illegally. Various plans of action are being examined.

A group called "*Quel orpaillage pour la Guyane?*" bringing together a number of associations, in particular those involved in the protection of the environment, has also asked us to approach the investigating commissioner responsible for examining the application to run a goldmine that has been submitted by the Canadian company CAMBIOR.

In a note we sent to the investigating commissioner, we cited a series of irregularities and inconsistencies contained in the application and emphasised the significant risks the project represents as regards its impact on the environment and consequently on public health. We thus invited the investigating commissioner to refuse the application submitted by the Canadian company.

This action, combined with the mobilisation of other associations, in particular those defending the environment, led the government to postpone the project. With regard to the possibility of further action relating to illegal panning for gold in Guiana we have also drawn up a report on the feasibility of criminal or administrative legal actions.

UPDATING AND UPCOMING STEPS

To the request of the NGO Mayouri Nature, Sherpa is in charge of a general study on the legal frame of gold mining sector and the way it is implemented. This study will be performed under the umbrella of the network OECD Watch. Aloys Ligault will be in Guiana for a two months mission from 30 May 2007 in order to meet operators, authorities and other stakeholders. This field visit will give rise to a study assessing the implementation of the legal frame and identifying potential actions of improvement.

8. SWISS COMPANY IN CAMEROON

Sherpa's partnership was commissioned by a Cameroonian consumer association with regard to a Swiss company that is marketing food products suspected of presenting a danger to the population, and in particular children, in the Cameroon. Yann Queinnec went to the Cameroon in October to obtain the additional information necessary for making a diagnosis of the file. He had the opportunity to meet doctors, pharmacists and Cameroonian lawyers as well as representatives of families of victims that had commissioned Sherpa to defend their interests.

UPDATING AND UPCOMING STEPS

Additional information on the health consequences of the consumption of these products is being finalised. Contact has been made with a Swiss lawyer to examine the feasibility of legal action and to initiate a settlement process.

9. OECD GUIDELINES FOR MULTINATIONAL COMPANIES

BOTNIA

Sherpa is assisting the Argentinean NGO, CEDHA (centre for human rights and the environment) with its legal action against the Finish company BOTNIA, whose planned construction of a cellulose production plant on the Uruguayan banks of the river Uruguay was not subject to the appropriate consultation with the Argentinean population. Furthermore, the reliability of the environmental impact studies was contested by the World Bank itself. Yann Queinnec was alongside Jorge Daniel Taillant (executive director of CEDHA) and Oscar Ignacio Bargas from the Argentinean community of Gualaychu during the meeting on 30 August 2006 at the Finish National Contact Point (NCP) which brought about the introduction of a process of dialogue between the two parties. They were then received by Mrs Paula Lehtomäki, Finland's Minister for Foreign Trade, who for the first time stated that she would make herself available to the two parties with a view to finding a positive outcome to the dispute.

Following the Finish NCP meeting, Sherpa sent a letter to both the President of the World Bank and to the President of Calyon (the Crédit Agricole investment bank involved in the financial arrangements for the project) to ask them about their position. Calyon replied that it was awaiting the position of the World Bank before committing itself. The President of the World Bank has to date still not replied and the World Bank finally gave its approval for the project financing at the end of November 2006, despite all the reservations that had been raised.

The affair is currently continuing on several legal and diplomatic fronts, notably with regard to the World Bank. A complaint initially made against the directors of BOTNIA and ENCE in January 2005 on the grounds of attempted contamination of the environment as

provided for in article 200 of the Argentinean criminal code was extended on 5 December 2006 to include the 23 directors of the World Bank that took the decision to approve the funding for the project.

ALSTOM

At the request of Friends of the Earth and a Sudanese association, Sherpa has prepared a complaint that will be filed before the French National Contact Point highlighting breaches of the OECD guidelines for multinational companies, relating to a dam project in Sudan, the principal operator of which is the French group Alstom.

We have also been approached to act with regard to another highly controversial dam project in Turkey that again implicates Alstom as well as several French banks.

ACTIONS IN THE PLANNING STAGES

1. EXPLOITATION OF FORESTS AND ARMS TRAFFICKING IN LIBERIA

In partnership with the English NGO Global Witness, which is investigating the exploitation of natural resources in conflict zones, and in conjunction with a Danish lawyer, legal proceedings against a Danish forest company are currently being instituted. The company is suspected of putting money into arms trafficking in Liberia, and consequently into the civil war, through its trade in wood from Liberia. Numerous facts and statements have been gathered and presented to the Danish lawyer. A further Global Witness mission went to Liberia to look for additional information. The joint work with the Danish lawyer on the legal grounds for the planned action has made significant progress. A working meeting will be taking place before summer 2007.

2. SOYA IN SOUTH AMERICA

The CCFD and some of its Latin American partners approached us to examine the possibility of legal action relating to human rights violations committed in the soya sector. Currently, a handful of multinational companies, in particular French, hold nearly all the interests in the industry in terms of production, processing and distribution. Numerous human rights violations have been reported such as poisonings subsequent to spreading manure, the expulsion of peasant farmers from their land, forced labour as well as various damage caused to the environment. We have established a number of areas for actions in France, notably that of receiving and concealing goods. Our work is continuing in partnership with the CCFD in order to establish both the methods and type of actions that should be instigated. A mission will be going to South America by the end of 2007.

3. DEBT

A partnership has been established with CADTM – Belgium (third world debt cancellation centre) and their partner the Democratic Republic of the Congo with a view to examining the feasibility of instituting legal proceedings against the World Bank and / or against a pool of banks that are creditors of the Democratic Republic of the Congo. The purpose thereof is to ask for the debt to be cancelled and to obtain compensatory damages from the World Bank. An initial legal study was made by a student and followed by a technical note written by Yann Queinnec setting forth potential civil or criminal action against the World Bank and presented during a conference organised by the CADTM in Brussels on 20 October 2006. The dossier is currently being constituted, as is the association set up under Congolese law that will centralise the complaints.

An international seminar on the concept of this odious debt bringing together eminent lawyers will be organised during 2007 in partnership with the CCFD.

4. GLOBAL WARMING / AUTOMOBILE INDUSTRY

Work is underway to examine the feasibility of instituting legal proceedings in France against the biggest contributors to global warming. The automobile sector has been identified as a worthwhile target, not only for its major contribution to global warming but also insofar as the European Commission, noting the failure of voluntary principles established with the automobile industry in 1996, is currently looking at measures that would more effectively encourage the sector to reduce its impact.

Within a coalition of organisations including notably the Climate Justice Programme (UK), Germanwatch, European Federation for Transport and Environment (Belgium), and Stichting Natuur en Milieu (Holland), co-ordinated action is being prepared using both soft law (OECD) and hard law instruments (legal action planned in France and Germany).

The background of the heat wave in France in summer 2003 has been an important factor in determining the causality between global warming and the effects on human health. Numerous scientific reports support this link. As part of the preparatory work a meeting was organised on Sherpa's premises on 1 December 2006 with 3 eminent scientists, all specialists in global warming, who came to give us a picture of the situation and their conclusions to date.

If the work in hand is conclusive, the envisaged actions should take by the end of 2007.

EXPERTISE

1. WESTERN SAHARA

Sherpa was approached by the Western Sahara Resource Watch to verify the compatibility of a draft advisory regulation concerning a fishing agreement and its appendices established between the European

Community and the Kingdom of Morocco on 28 July 2005 with the principles of international law and in practice with all the rules relating to Western Sahara, notably in view of the consultative ruling of the International Court of Justice on 16 October 1975. The fishing agreement included the territorial waters of the Western Sahara in the fishing areas concerned.

We have therefore also examined the legal opinion drawn up by the legal services of the European Parliament and dated 20 February 2006 as well as the various documents provided in the file.

We have written a legal note that we have sent to our partners, which concluded that the agreement seemed to us to be open to criticism insofar as it took no account of the opinion of the International Court of Justice relating to the status of the Western Sahara as a territory in which the population has the right to self determination and it sets no rules with regard to the way in which the population of this territory would receive a fair share from the development of the adjacent waters.

On this second point, we consider that the European Community is in breach of international law insofar as the agreement in no way respects the recognised special legal status of the Western Sahara, in spite of this status having been subject to a ruling from the International Court of Justice, and furthermore that none of the clauses in the agreement expressly reserve any particular status or rights for the population of the Western Sahara.

This report was greatly appreciated by our partners and was widely circulated. It was in particular presented to the Community's legal services before the representatives of the member states ruled on the agreement. The representatives of the member states finally approved the agreement despite the number of reservations.

Following a meeting in June 2006 that brought together the different organisations working on this issue, Sherpa produced a note giving further details as regards the competence of the international courts should the fishing agreement concluded between the European Community and the Kingdom of Morocco be the object of legal proceedings. It is in fact planned to dispute the agreement.

2. FAFO

Sherpa was furthermore charged with the French section of a comparative study run by FAFO on the legal instruments relating to the responsibility of the private sector in serious breaches of international law and to illegal economic activity. The study produced under the management of Samira Daoud, is available in French and English. The FAFO report was officially presented to Mr John Ruggie (special rapporteur to the UN Secretary General on the issue of social responsibility of business enterprises). Contact was maintained with Pr Ruggie in order to explore areas in which to use the notion of "sphere of influence" in the framework of his mandate.

UPDATING AND UPCOMING STEPS

Sherpa is due to provide a complementary analysis of complicity issues by mid May 2007.

3. INTERNATIONAL COMMISSION OF JURISTS

Sherpa has furthermore been associated with the work of the International Commission of Jurists based in Geneva and in October 2006 participated in a conference on the responsibility of business enterprises that invest in conflict zones. During the conference, which included representatives of ABB, Coca-Cola and British Petroleum and several professors that are members of the panel of experts (notably Professors Peter Muchlinski, Howard Mann and Andrew Clapham), the idea of greater involvement of business enterprises on issues of human rights violations united the participants.

UPDATING AND UPCOMING STEPS

Sherpa was charged with drawing up a draft new generation public private partnership proper to these conflict areas. The fundamental principles reside in the private operators' need for legal security, in the fact that in return for the freedom to invest in conflict areas they have to fully engage in prevention and play a warning role in the event of violations and that subject to respecting the terms of the engagement, they can avoid their responsibility being called into question. On the other hand, and it is in this respect that this type of PPP could offer a useful instrument for making enterprises more responsible, any violation of undertakings should be interpreted by prosecutors to whom complaints were referred to as something that would encourage them to open an investigation.

4. OECD WATCH

UPDATING AND UPCOMING STEPS

Sherpa is finalising a study on the legal status of the OECD Guidelines for multinational enterprises which intend to demonstrate a mutation from soft to hard law through the International Customary Law. The study will be sent to majors academics in order to obtain their legal opinion and hopefully enlarge this doctrine on the evolution of CSR legal status.

CONFERENCES

In partnership with the associations 4D, Enda-Europe and the Sustainable Development Chair at Sciences Po in Paris, in October we organised a seminar on the theme: *“Social responsibility of enterprises and sustainable development in the countries of the south. Role, initiatives and impact of multinational companies”*. Representing Sherpa, Philippe Texier led a round table discussion on the issue of human rights in the extracting industries sector. The seminar represented the first step in a long term partnership with the organising NGOs and with Sciences Po.

Sherpa, represented by Samira Daoud and Yann Queinnec, also took an active part in the international conference organised in Paris by the British Institute of International and Comparative Law and the Global Legal Alliance on the theme: *“the legal implications of economic activity in Europe and the rest of the world: risks and the law”*.

In June 2006, William Bourdon went to Durban (South Africa) and took part in the international legal strategy meeting in relation to the responsibility of business enterprises, which was organised by Friends of the Earth International in Durban (South Africa).

Lastly, Sherpa was invited to take part in the first of the international meetings on the right to have access to drinking water that was organised by France Libertés in Marseille on 23 and 25 November 2006. Yann Queinnec presented some of the general legal principles and legal notions in international customary law that may eventually influence the work of the international arbitrators that deal with disputes between investors and states.

