



Approved by Sherpa General Assembly on 25 June 2012

At the dawn of the 21st Century, it appeared that the authors of crimes against humanity were finally going to be brought to justice with the creation of the International Criminal Court. However, the economic context of globalization, and, in particular, the pervasiveness of “making a fast buck” as a key driver of business no matter the impacts on human development and the common good, saw the rise of new forms of impunity.

The non-profit organisation **SHERPA** was created in 2001 by William Bourdon, a lawyer and former Secretary General of the International Federation for Human Rights, in order to fight these new forms of impunity. SHERPA aims to prevent and seek redress for economic crimes, namely:

- Human rights violations (violations of economic, social or cultural rights), and environmental damage caused by economic actors;
- Illicit financial flows from developing countries.

SHERPA brings together jurists and lawyers who share values of social justice and solidarity. Its members are convinced that the law is a precious tool that can be used to promote social and human development, and have chosen to put their legal skills and experience to use to achieve the following objectives:

- Providing legal support to the victims of economic crimes in developing countries;
- Developing recommendations to promote better regulation of commercial activities and transnational financial flows;
- Raising awareness and building capacity among civil society actors about issues of economic criminality.

Our ultimate goal is to ensure that acting in the collective interest is part of the “bottom line” of business and the public policies that regulate business activity, to promote a fairer globalised society in which people’s right to benefit from their economic resources in developing countries is respected.

# TABLE OF CONTENT

A message from SHERPA's President.....	5
<b>I. OVERVIEW OF OUR ACTIVITIES IN 2011 .....</b>	<b>6</b>
<b>ASSET RECOVERY .....</b>	<b>7</b>
Equatorial Guinea - the focus of the Ill Gotten Gains investigation .....	7
The UNESCO-Obiang Prize.....	8
Ill-Gotten Gains and the Arab Spring .....	10
Related events .....	11
<b>MULTINATIONAL REGULATION .....</b>	<b>13</b>
European Campaign "Rights for People, Rules for business" .....	13
Launch of "Regulating transnational companies, 46 proposals" .....	15
Outreach events for "46 proposals" .....	16
<b>LEGAL CASES .....</b>	<b>17</b>
AREVA – Launch of the Health Observatory in Niger .....	18
The Mopani Case – Tax Evasion in Zambian Copper Mining .....	20
AMESYS – A surveillance system on a plate for the Gaddafi Regime .....	22
Disney in China – Fairwashing, when CSR is used for commercial purposes .....	23
The Bujagali dam in Uganda – The EIB fails to comply with its own operational policies .....	24
<b>BREVES .....</b>	<b>26</b>
Our written contributions .....	26
And a few extras .....	27
SHERPA Diary 2011 .....	28

II. ORGANISATIONAL LIFE.....	30
NEWS .....	31
SHERPA Board.....	31
SHERPA Staff.....	31
Communications .....	32
SHERPA'S FINANCES .....	33
Summary.....	33
Income .....	33
Costs.....	34
Profit and loss account.....	35
ACKNOWLEDGEMENTS.....	36
SHERPA's donors.....	36
The SHERPA Team .....	36

## \* A message from SHERPA's President



“**S**HERPA celebrates its tenth birthday this year...this beautiful adventure continues, through thick and thin.

My first words are, of course, dedicated to the SHERPA team of Maud PERDRIEL-VAISSIERE, Sandra COSSART and Rachel LEENHARDT, a wonderful trio who have continued to fly SHERPA's flag, courageously and efficiently throughout 2011. Many thanks also to all our interns and volunteers who provide discreet but invaluable support.

This year, our expertise on corporate social and environmental responsibility (CSR) has grown, in particular through the publication of “Regulating transnational companies: 46 proposals”. Some of our ideas have now been picked up by other political, economic and civil society actors. We are happy that these options for bringing about the long-awaited humanisation of globalisation are gaining wider currency.

2011 also saw spectacular developments in the “*Biens Mal Acquis*”, or ill-gotten gains, case currently being investigated in France. These include the money laundering cases filed after the fall of the dictatorships in the Arab world, but also the seizure ordered by the investigating judges in September at the luxury home of the son of President Obiang of Equatorial Guinea. This fight back against impunity is partly due to the preliminary investigative work SHERPA carried out which is a source of great pride to us. This case has also allowed us to develop our expertise in the recovery of stolen assets and, more generally, in fighting grand corruption, a field in which SHERPA is now internationally recognised. This will help us to develop our future activities with renewed determination and vigilance.

In addition, this year SHERPA tackled a new subject: tax evasion by multinationals. The massive outflow of capital from developing countries caused by tax evasion deprives them at least 125 billion Euros of tax income annually, an amount that will in consequence not be invested in health, education, infrastructure and other developmental priorities. We have also continued our organisational development by improving our governance and operational efficiency.

After a two-year transition period, we are entering a new decade, which requires a collective reflection on, and reworking of, our strategy and a redefinition of our ambitions. 2012 will see the consolidation of our international legal network, exemplified by the “Legal Tour”, a new project which will take SHERPA lawyers to several countries of sub-Saharan Africa during the autumn of 2012, to carry out training workshops and awareness rising on CSR with our local partners.

Lastly, I would like to take this opportunity to remind you that SHERPA's richness lies in its dual identity carrying out legal activism and generating new ideas to promote CSR and tackle illicit financial flows fields. It is a tiny organization with enviable efficiency. *Small is beautiful.*”

**William Bourdon**

## **I. OVERVIEW OF OUR ACTIVITIES IN 2011**

## \* Equatorial Guinea - the focus of the Ill Gotten Gains investigation

### Background

In 2007, SHERPA, and French organisation Survie, along with the Federation of the Congolese Diaspora filed a case with the Public Prosecutor in Paris against the ruling families of Congo-Brazzaville, Equatorial Guinea and Gabon, alleging that their considerable fortunes, whether in real estate assets or bank accounts, could not have been accrued solely from their public salaries and fees. The main charge in the case is “concealment of misappropriation of public funds”, which is a crime under French Law if there are assets on French soil which have been acquired illegally. A probe was carried out but despite it uncovering conclusive evidence, the case was classified without any further investigation.

In 2008, Transparency International (TI) France and a Gabonese citizen filed a civil claim as part of criminal proceedings with SHERPA's legal support, with the aim of overcoming the Public Prosecutor's reluctance to open an investigation. At the end of 2010, after 4 years of judicial battles since the first case was filed, the Supreme Court finally ruled that TI France's civil claim could go ahead, and a judicial investigation was launched.

### Update: new developments in 2011



Equatorial Guinea © Will Sands, Fracture Photo

Porsche worth 137,000 euros.

**In June 2011** an article in French newspaper *Le Monde* revealed that the 3 African ruling families continued to purchase cars and other luxury goods in France after the complaint was lodged.

For instance, Teodorin Nguema Obiang, son of the President of Equatorial Guinea and the country's Minister for agriculture and forestry, chartered a plane through France in 2009 with 26 luxury cars on board! Meanwhile, Tracfin – the French government's anti-money laundering unit – informed the Public Prosecutor that the very same Teodorin Obiang had spent at least 18 million euros at the auction of the Yves Saint Laurent and Pierre Bergé Collection. In 2009, Ali Bongo, the current President of Gabon and son of the former President, bought a Bentley worth 200,000 euros, while the nephew of Congolese President Denis Sassou-Nguesso, tasked by his uncle with collecting taxes on petrol tankers, acquired a

Logically, the investigating magistrates in charge of the case asked the Public Prosecutor, as required by French law, to allow them to extend their investigation to this new evidence. This should have been a mere formality, but the Public Prosecutor refused to follow through. SHERPA and TI France had to file yet another civil claim in relation to the new evidence, in order to ensure the investigation could run smoothly.

**In September 2011**, the two investigating magistrates ordered both a search of Teodorin Obiang's luxury mansion at 42 Avenue Foch, and the seizure of some fifteen sports cars belonging to Teodorin.



At the same time, Robert Bourgi, a former secret operative for the French government, revealed that during his career he had delivered suitcases full of banknotes to various French high-ranking officials on behalf of African leaders. TI France and SHERPA subsequently asked the Public Prosecutor to take testimony from Robert Bourgi. The three heads of State in the case were included in the six whom M. Bourgi accused of financing the electoral campaigns of former President Jacques Chirac and other French politicians. However, when he was interviewed by the magistrates in early October, he denied having any relevant information, in spite of his role as a privileged intermediary.

**On October 19<sup>th</sup>**, Equatorial Guinea announced that Teodorin Obiang was its permanent assistant delegate to UNESCO, an appointment that may confer diplomatic immunity on him and therefore impede the progress of the judicial proceedings against him in France.

## **\*The UNESCO-Obiang Prize**

The Obiang Nguema Mbasogo Prize for Research in Life Sciences was set up by UNESCO's Executive Board in October 2008, with a 3 million dollar donation from Equatorial Guinea's President, to reward scientific initiatives aimed at benefiting humanity. Widespread protest by civil society and eminent thinkers, scientists and artists ensued, including SHERPA, who denounced this attempt by the Obiang regime, held one of the most corrupt and repressive regimes in the world, to launder its reputation through UNESCO. In October 2010, UNESCO's Executive Board was obliged to suspend the prize indefinitely, given the lack of consensus on whether it should be established.

However, the Prize came back on the organisation's agenda in 2011. Civil society and a number of intellectuals and well-known figures from politics and the arts called for the definitive cancellation of the prize, to keep UNESCO from tarnishing its credibility by partnering with the Obiang regime. Concerns also arose from the source of the funds to be used for the Prize: it was initially stated that the UNESCO-Obiang prize was funded by the Obiang Nguema Mbasogo Foundation; however the most likely source is Equatorial Guinea's public funds.

In early October, 2011, the 58 members of UNESCO's Executive Board decided to reiterate its earlier decision to suspend the prize, due to the lack of consensus on the issue. The Prize will be addressed once again during the next Board meeting in the spring of 2012.





## \* III-Gotten Gains and the Arab Spring

In early 2011, in the wake of the revolutions in several Arab countries, SHERPA filed complaints against the Ben Ali, Mubarak and Gaddafi families with a view to identifying, confiscating and returning any assets on French soil they could have illegally acquired while in power.

**By filing these complaints**, SHERPA hoped to obtain the timely seizure of any assets and to avoid the funds being transferred to jurisdictions where there is greater secrecy and less cooperation with investigations, which would thwart subsequent recovery efforts by the new governments of Tunisia, Egypt and Libya.

Although this can be considered a second chapter in the “Ill-gotten gains” case, they are radically different from the first case which targeted serving Heads of State of Congo-Brazzaville, Gabon and Equatorial-Guinea.

Notably, as opposed to a case against leaders who are still in power, these complaints were quickly accepted by the Public Prosecutor in Paris, an assets freeze was implemented and judicial investigations were opened into Ben Ali and Mubarak’s assets in June 2011.

In addition, a preliminary police investigation into the Gaddafi family’s assets was still in progress at the end of 2011.



Tahrir Square - © CC Khalil Albahid (Flickr.com)

**However, one question remains:** if the Public Prosecutor did not oppose the opening of these cases, why didn’t he seize the initiative himself? The more time passes, the more likely it is that the assets will be moved out of the reach of investigators and the weaker the chances of recovery are.

**Now that** Tunisia, Egypt and Libya are engaged in the recovery proceedings, SHERPA no longer has a central role to play. However, we will continue to track closely developments in these. Once the funds are repatriated, the key question will be ensuring they are used in the public interest and to build new democracies. Tunisian, Libyan and Egyptian civil societies will play a central role in ensuring such oversight.

## Related events

### 20-21 June 2011 | International seminar on stolen asset recovery (Paris)



In the context of a research project studying the role of civil society in asset recovery, SHERPA organised an international seminar in Paris bringing together 33 international asset recovery experts from diverse backgrounds and countries (including France, Switzerland, Norway, United States, United Kingdom, Nigeria and Brazil).

The objective was to assess the opportunities for civil society actors to overcome the inertia of public authorities and to take legal action to recover ill-gotten assets when the authorities do not take the initiative.

The seminar took place after several months of research, consultations and interviews on the following questions:

- Are there currently legal means to allow non-state actors to initiate asset recovery proceedings?
- What lessons can be learnt from past or current experience?
- What are the most promising leads, and what other options could be attempted?
- What are the main challenges and constraints?

The findings of the seminar will be published in a report in 2012.

**24-28 October 2011 | Workshop on “*Best practises in asset recovery*” - 4th Conference of States Parties to the United Nations Convention against Corruption (Marrakech)**

SHERPA was the only French NGO to attend this key conference. We participated on our own behalf, but also as a member of the Coordination Committee of the UNCAC Coalition, comprising over 300 civil society organisations committed to fight corruption worldwide. SHERPA also led a group advocating on asset recovery and participated in the lobbying of national delegations of State parties to the Convention.

SHERPA and other organisations are advocating for the following:

- Lifting legal obstacles to asset recovery (immunity, non-conviction based confiscation)
- Recognising the citizens of countries where assets have been looted as victims
- Establishing a complaint mechanism within the UNODC Intergovernmental Working Group on Stolen Assets to allow civil society organisations to share their concerns about asset recovery;
- The admission of *Public Interest Litigation* in the domain of asset recovery, i.e. the triggering of judicial proceedings by other entities than States themselves.

In addition, a workshop on asset recovery was organised alongside the main conference. The panellists were all part of State delegations, which meant there was a substantive debate. The aim of the workshop was to discuss best practices in asset recovery, to present initiatives (legislative or other) recently taken by States and by the World Bank's StAR (Stolen Asset Recovery) Initiative.



## \* European Campaign “Rights for People, Rules for business”

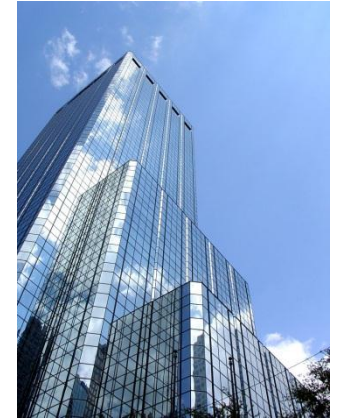
### “Rights for people” Petition

As a member of the Forum Citoyen pour la Responsabilité Sociale et Environnementale des Entreprises (FCRSE - Citizens Forum on Corporate Social Responsibility) in France, SHERPA participated in a Europe-wide campaign for the regulation of multinationals, led by the European Coalition for Corporate Justice (ECCJ; see [www.corporatejustice.org](http://www.corporatejustice.org)).

The ECCJ brings together more than 250 NGOs through national coordination offices, including Amnesty International, Oxfam and Greenpeace, and SHERPA is a member of both the Board of FCRSE and the steering group of the ECCJ.

The campaign aimed to raise awareness among European citizens on the part the European Union has to play in regulating transnational companies, both in Europe and worldwide, as well as to lobby for appropriate legislative changes within European institutions.

One campaigning action was the “*Rights for people*” *Petition*, where SHERPA collected 3,800 signatures. The measures proposed in the petition included non-financial reporting obligations for multinationals based in Europe and the opportunity for people affected by their activities to bring cases within European jurisdictions.



**DES DROITS  
POUR TOUS, DES  
RÈGLES POUR LES  
MULTINATIONALES**

In Mid-July, the 73,000 signatures in total collected in Europe were handed over to Antonio Tajani, Vice-President of the European Commission, Commissioner for Industry and Entrepreneurship, with the support of 140 MEPs. SHERPA continues its efforts to raise public awareness on the need for greater regulation of transnational companies as well as lobbying MEPs and other public officials.

### **30 November 2011 | Round Table on Access to Justice for Victims of Multinationals at the European Parliament (Brussels)**

The EU's legal system is currently being revised. This revision should address the fact that European companies carry out activities beyond the borders of Europe. It is an opportunity for EU institutions to ensure effective access to European justice for victims of violations caused by the activities of EU-based multinationals in developing countries.

SHERPA, along with French NGO CCFD-Terre Solidaire and the ECCJ organised a workshop in Brussels entitled “*Europe: What access to justice for victims of multinationals?*”, aimed at mobilising MEPs on this issue.

MEPs were given presentations on the “Resource Curse”: the fact that levels of human development remain low in many countries rich in natural resources (in particular minerals). The desire to control access to natural resources lies at the root of numerous conflicts for the control of areas where resources are located. In addition, massive investment by multinationals in resource extraction does not lead to development progress and poverty reduction in the countries concerned. On the contrary, plundering of resources and violations of human rights are widespread.

Victims of human rights violations are often not protected by their own governments and there is currently no legal remedy in the multinationals' countries of origin. As an illustration, the concrete cases of Shell's activities in the Niger Delta and Perenco's in the Democratic Republic of Congo were presented. The organisers also outlined the current legal gaps and shortcomings, along with recommendations for how MEPs could support action to address cases of violations that go unpunished.

A Declaration was issued at the end of the Round Table, with MEPs calling on the European Commission and member States to reinforce the legal frameworks applicable to corporate violations with respect to human rights and the environment.

## \*Launch of “Regulating transnational companies, 46 proposals”

SHERPA acknowledges the support of the Charles Léopold Mayer Foundation for this publication, which aims to make the legal issues relating to the regulation of transnational business comprehensible and accessible, and to develop imaginative solutions to the issues raised.

“Regulating transnational companies, 46 proposals” is freely available on [SHERPA’s](#) website.

### Foreword by Mireille DELMAS-MARTY

*Mireille Delmas-Marty is an Associate Professor in private law and criminology, a member of the Collège de France since 2002, where she holds the Chair in Comparative judicial studies and internationalisation of law and a member of the Academy of Moral and Political Sciences since 2007.*



**“At** a time when the future of our societies is cloaked in doubt, redefining the role of transnational companies within the international community has become a central issue. This Proposal Paper intends to provide readers with a new interpretation of the highly topical issue of regulating transnational companies, taking into account the increasingly complex balances of power between the economic and political worlds.

An assessment of legal systems’ capacity to manage these balances of power requires more than reading texts or consulting judicial decisions. We need to rethink the notions that underpin legal responsibility and to reform assessment and monitoring instruments. In other words, we need to show legal imagination to explore all the possibilities that they offer, or could offer. [...]

Drawing on years of experience gained from working with a range of businesses, and mindful of the theoretical and practical difficulties of such a project, Yann Queinnec and William Bourdon have worked in a concrete and methodical way to come up with suggestions for legal mechanisms suited to the goals they set out: renewing the concept of the business, ensuring protection for basic human rights and the environment in businesses’ countries of origin, strengthening legal frameworks in

countries where these businesses operate and, lastly, promoting new concepts such as the ‘sustainable contract’ to reflect the increasingly international nature of business and the challenges of sustainability.

This Proposal Paper, modest yet ambitious, realistic and idealistic, has been produced for use by anybody who is concerned by the search for answers to the flagrant problems revealed, aggravated and at times created by the globalized market. It offers innovative answers that should enrich the debate, as well as inciting citizens, businesses and states to get involved.”

The launch of the French version is now complete and a thousand copies have been distributed. In order to use the publication as effectively as possible, we targeted actors that were most likely to take forward SHERPA's proposals, to implement them and to disseminate them in their professional spheres. These key stakeholders range from institutions in charge of formulating public policy through companies required to act responsibly to academics, civil society and the media. SHERPA also took part in debates, conferences, seminars, training sessions etc. at which the publication was discussed (see below for details).

Overall, the publication was received positively, as an important contribution to the debate over the roles of economic, political and other actors in bringing about sustainable development; a question very much on the agenda in both national and international level policy processes, such as the G8/G20 discussions, the Durban climate change negotiations, Rio +20, the French presidential elections of 2012), and the forthcoming European elections in 2014.

This opens up interesting perspectives for SHERPA in terms of advocacy.

## Outreach events for “46 proposals”

SHERPA organised two seminars to debate the 46 proposals with legal experts, economists, academics and others with relevant expertise.

The aim was to explore and refine further the ideas through feedback from a group of experts to ensure that they address concerns over the regulation of corporate activities adequately, and are more likely to be adopted by decision makers. A selection was also made of those ideas whose implementation should be prioritized.

### **23 June 2011 | Cameroon Seminar**

Africa is a key destination for transnational investment, particularly in the natural resource sector, often at the expense of workers' fundamental rights and of the environment. Learning lessons from the current situation and playing an active role in the establishment of a cost-effective and socially responsible regulation system is thus crucial for the region's development.

The seminar brought together 10 participants who are confronted daily by the uncontrolled activities of multinationals of which 5 were African legal experts. Three main foci for future work emerged:

- The creation of a national centre for monitoring corporate non-financial performance;
- The promotion of Socially Responsible Investment (SRI);
- The development of specific initiatives in the mining and forestry sectors, the heart of Cameroon's economy and a major focus for stakeholders (state authorities, companies, investors and Cameroonian citizens and NGOs).



## 15 December 2011 | Paris Seminar

The seminar focussed on 3 issues:

- The creation of a legal personality for a group of companies given that, currently, different entities have an independent status in spite of being linked by their financial and commercial activities;
- Recognizing the legal responsibility of the group's parent company with respect to its subsidiaries' operations;
- Reinforcing transparency obligations of multinationals.

The solution proposed by the participants to overcome the disconnection between entities of a same group was to establish a 'duty to know' or 'to monitor' for the parent company within the sphere of its business activities.

The small number of actors currently able to call for the parent company's liability was also deemed an obstacle. In the absence of any legally binding mechanism to enforce the parent company's responsibility, there is opacity with regard to the legal and financial arrangements made by transnational groups as well as a lack of redress for the impacts of their activities.

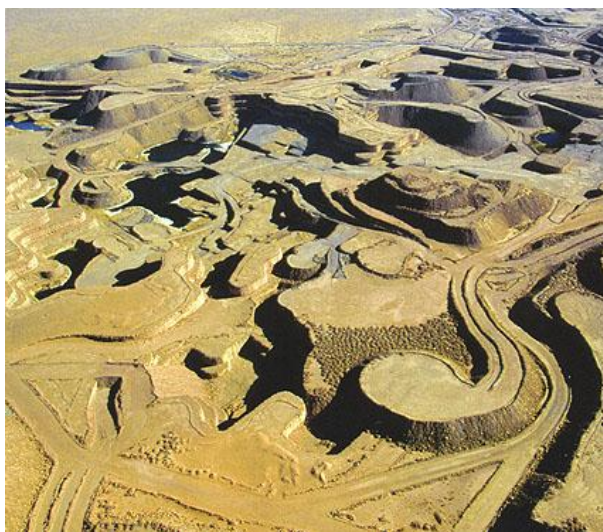


## \* AREVA – Launch of the Health Observatory in Niger

### Background

French nuclear giant AREVA has been present in Gabon and Niger for more than 40 years: both countries have important uranium deposits. The company carried out uranium mining at the Mounana site in Gabon from 1958 to 1999, through its Gabonese subsidiary COMUF, and at the Arlit site in Niger since 1968, via two other subsidiaries: SOMAÏR and COMINAK.

In 2005, SHERPA and civil society organisation the Commission for Independent Research and Information on Radioactivity (CRIIRAD) published a report on the harmful social and environmental impacts of uranium mining in Niger. Following this report, SHERPA was contacted by the organisation *Mounana*, which brings together ex workers of COMUF, and informed of a similar situation pertaining to AREVA's mines in Gabon. In 2007, SHERPA and the CRIIRAD, joined by Médecins du Monde, published a second report on the social and environmental impacts of uranium mining in Gabon.



Uranium mining site in Niger

The same assessments were made in Niger and Gabon: workers are over-exposed to radiation, neighbouring communities use radioactive materials for construction (including hospitals, maternity wards, schools) and water resources are monopolised for mining. Furthermore, a range of medical conditions have been developed by miners and their families.

### SHERPA's action

Based on their reports, SHERPA and the CRIIRAD announced their intention to file a case against AREVA alleging homicide and unintentional injury, reckless endangerment and inexcusable conduct. The aim was, on the one hand, to denounce the existence of radiation-linked risks that AREVA was well aware of, the lack of information regarding these risks given to its employees and their apparent attempt to ensure those communities affected remained ignorant of these risks. The other aim was to obtain reparation for the victims.

The case led AREVA to propose a negotiated solution in 2007. With the approval of its partner organisations (Médecins du Monde, Aghir In'Man and *Mounana* association), SHERPA joined the negotiations to represent the victims. In 2009, after two years of hard bargaining, AREVA and SHERPA reached an agreement with two objectives: to guarantee compensation for victims and to prevent radiation risks on mining sites. To achieve this, the agreement notably makes provision for the creation of local health observatories at each of AREVA's uranium mining sites.

## 2011 Developments

**On 6 December 2011**, the Health Observatory of the Agadez Region (OSRA) was officially established. SHERPA welcomes this development, after 6 years of campaigning, although we will continue to watch over its impact.

The OSRA aims to monitor the health of ex-AREVA workers and neighbouring communities exposed to radiation from AREVA's mines in Niger. OSRA must inform the Nigerien authorities, former AREVA employees and communities of the monitoring results in complete transparency. The first medical examinations



Open Air Uranium - ©Infos Gabon

are due to take place in early 2012. If cases of occupational diseases are detected, AREVA will cover the medical expenses in compliance with the agreement. SHERPA has been involved in drawing up the observatory's statutes and will oversee its proper functioning in the respect of the agreement's ambitions and objectives.

After the Mounana Health Observatory (OSM), launched on the 19 October 2012 in Gabon, the OSRA is the second monitoring centre established in accordance with the agreement. This public health initiative is unique in the mining sector and is the first time a civil society organisation has ever obtained such a commitment from a multinational mining company, with the concrete outputs of setting up health observatories. The negotiation and implementation of the agreement also involved

the whole range of concerned stakeholders: civil society and workers' representatives, public authorities and the company, AREVA.

## Outcome

By the end of 2011, the creation of the OSM had led to almost 400 of the 1,600 ex-employees of COMUF benefiting from a clinical examination, blood tests and lung x-rays. Amongst the 22 compensation claims filed by former expatriate workers of COMUF in Gabon represented by SHERPA, 2 were declared admissible and a further 4 are still under consideration by the ad hoc medical group set up by the agreement. Due to security conditions in the country, the OSRA was created later than anticipated and consultations are due to begin in January 2012 and to continue over the next two years.

SHERPA is satisfied with the obtained results so far, given the challenges of the local political context and the logistical problems inherent to the launch of medical consultation procedures: these range from sometimes non-supportive national authorities to poor security, difficulties in contacting and assembling workers, etc.

There is still a long way to go to ensure the agreement is implemented, and a lack of material, financial and human resources to ensure fully operational health monitoring centres. SHERPA is in permanent contact with stakeholders through its role as representative of local civil society and intends to oversee the correct implementation of the agreement, conveying the views of local communities to AREVA and, if necessary, denouncing any non-compliance.



## \* The Mopani Case – Tax Evasion in Zambian Copper Mining

### Background

Mopani Copper Mines is the largest mining company in Zambia and one of the country's main producers of iron and cobalt. It is a subsidiary of the multinational Glencore International PLC (Switzerland) and First Quantum Minerals Ltd (Canada), through subsidiaries which are mostly located in tax havens.

In 2009, the Zambian government, with the support of Norway, commissioned an audit of the Mopani mine, which was carried out by the firms Grant Thornton and Econ Pöyry. The results of the audit (obtained by SHERPA) reveal a number of anomalies including: an unexplained increase of \$380 million in production costs in 2007, surprisingly low official production volumes compared to other mines in the region and tampering with copper prices to favour Glencore in violation of the arm's length principle which have enabled Mopani to declare paltry revenues and significantly reduced its tax bill.

This is not an isolated case. In Zambia, only one out of 12 mining companies pays tax on profits: the others are officially in deficit even though commodity prices are soaring. In this situation, the loss of income is colossal for Zambia, one of the poorest countries in terms of gross national income and human development alike.

Tax evasion by multinational corporations annually deprives developing countries of 125 million euros in tax income, the equivalent of one and a half times the amount allocated by developed countries in official development assistance.



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### SHERPA's action: OECD Guidelines Complaint

In April 2011, SHERPA and 4 partner organisations, La Déclaration de Berne (Switzerland), Mining Watch Canada, l'Entraide Missionnaire (Canada), and the Centre for Trade Policy and Development (Zambia) lodged an extra-judicial complaint with the OECD's National Contact Points (NCPs) in Switzerland and Canadian against Glencore International and First Quantum Minerals. The plaintiffs believe that these companies have violated Chapters II (accounting principles) and XI (taxation) of the OECD Guidelines for multinational enterprises, which require that companies contribute to the economic progress of the country in which they operate and pay on time the taxes they owe.

The OECD Guidelines are a “soft law” tool, meaning that they have no binding force and cannot result in legally binding measures. Nevertheless, they are a lever for regulating multinationals’ activities, in particular by highlighting a reputational risk for the company. With this complaint, the four organisations are calling on the NCPs to assess the alleged violations of the Guidelines, and seeking to establish a constructive dialogue with the companies in question – a dialogue which will hopefully result in the payment of taxes due and to more sustainable business practices in Zambia.

Furthermore, this action should highlight to decision makers, and in particular policy makers, the consequences of tax evasion, and how it hinders development.

## **Outcome**

As of 31 December 2011, no concrete progress had been made in terms of the OECD complaint. However, along with a campaign denouncing the case led by Counter Balance, our action has generated some positive political and economic impacts. A group of 50 MEPs called for a moratorium on the European funding allocated to the mining industry.

On 1 June 2011, the European Investment Bank (EIB), which had loaned Glencore 48 million euros to finance the Mopani project, announced that it would decline all new financing requests from the Swiss company and its subsidiaries. Glencore, whose public flotation coincided with the filing of the OECD complaint, scrambled to show its new ethical face: on 7 September, the company made official its support for the Extractive Industries Transparency Initiative, a voluntary disclosure initiative.

However, one may wonder if this is merely a smokescreen aimed at reassuring investors and appeasing public authorities.

## \* AMESYS – A surveillance system on a plate for the Gaddafi Regime



© Jonathan MacIntosh

**In August 2011**, a Wall Street Journal (WSJ) investigation revealed that in 2007 the French company AMESYS, a subsidiary of Bull, provided the dictatorial regime of Muammar Gaddafi with telecommunications remote monitoring equipment. Journalists discovered a six floor building in Tripoli entirely dedicated to the interception of telecommunications. The WSJ investigation showed how the *Eagle* system that enables control of internet, social networking and phone communications, sold by AMESYS, was used against opponents of the Libyan dictator.

**On 13 September 2011**, SHERPA filed a complaint with the Public Prosecutor in Paris against AMESYS, accusing it of having illegally sold a remote monitoring device used to track rebel forces and opponents to the regime. SHERPA believes that, as with the sale of certain military equipment, this type of technology transfer

should only occur with the authorization of the French government.

SHERPA hopes to trigger an investigation that will shed light on this controversial deal and identify any responsible parties. More fundamentally, through this case SHERPA is aiming to denounce the search for profit above all else that drives some economic actors, to the detriment of the common good. AMESYS denies having enabled the Gaddafi government to track opponents, claiming that the equipment was diverted from its original purpose – to track pedophiles, drug dealers, and terrorists in Libya. The company also refers to the close diplomatic ties between France and Libya at the time of sale. However, it is difficult to imagine that the leaders of AMESYS believed that the openly authoritarian and violent regime of Colonel Gaddafi would use *Eagle* for honourable purposes.

A preliminary investigation into the case was quickly opened and in December 2011, the legal proceedings were transferred to Aix-en-Provence, where the AMESYS headquarters are located.



## \* Disney in China – Fairwashing, when CSR is used for commercial purposes

In recent years, many companies have ridden the wave of sustainable development and CSR and, since the late 1990s there are an increasing number of ethical statements aimed at addressing the growing concerns of consumers. However, the proliferation of codes of conduct, ethical charters, labels, standards - and of companies' CSR departments - has not been accompanied by a decrease of human rights violations. There is obviously a blatant contradiction between such statements and the reality of corporate behaviour.

Breaches of environmental communications are referred to as “*Greenwashing*”; in its *Fairwashing* campaign, SHERPA aims to highlight the social impacts of corporate activities, exemplified in this case by the social impacts of the manufacture of Disney products in China.

### Background



**On 8 November 2010**, SHERPA filed a complaint against the Walt Disney Company with the French Authority for the Professional Regulation of Advertising (ARPP), the body responsible for overseeing advertising standards in France. The complaint called for Disney's code of conduct for manufacturers to be recognized as misleading advertising. Disney guarantees “*ethical and responsible conduct in all of our operations in every corner of the world*”, “*respect for the rights of all individuals*”, and for suppliers to comply with the company's standards.

However, investigations carried out in China since 2005 by SACOM and China Labor Watch – circulated in France by the civil society organisation *Peuples Solidaires* – revealed a very different reality of excessive and forced overtime, paltry wages, poor safety conditions and lack of social security as the daily conditions for labourers making Disney toys in China.

### SHERPA's action

Sherpa's complaint to the ARPP is another example of a “soft law” tool. The Jury of Advertising Ethics, which investigates complaints, can demand the removal of disputed adverts. Our objective was to get the Jury to recognize that codes of conduct are also forms of advertising, so that companies who violate them can be punished for misleading advertising.

The ARPP rejected the complaint on 3 December 2010, on the basis that the “*Code of conduct for Manufacturers developed by Disney which clarifies requirements regarding its manufacturers (...) does not qualify as advertising and is therefore not under the jurisdiction of the Jury.*”

SHERPA flatly rejects this analysis. It is obvious that an increasing number of consumers are paying greater attention to the social conditions in which the goods they buy are produced and that businesses use ethical statements and claims specifically to influence their choices. On 6 January 2011, we filed an appeal calling for the ARPP to revise its position. This appeal was also dismissed.

## **Outcome**

The ARPP's decision shows us that there is a long road ahead. CSR is still largely a voluntary commitment: if companies violate their own voluntary commitments, no sanctions are applied.

However, SHERPA maintains that the ethical commitments of companies such as codes of conduct and other statements are not devoid of legal weight, so that a company that knowingly violates them ought to be held liable. We continue to explore alternative ways, both judicial and extra-judicial, to tackle the issue of companies' misleading advertising, and to ensure that their communications gradually come to confer a legal responsibility on them. On one hand, we want to stop companies using empty declarations to skew consumers' choices and, on the other, to ensure they comply with the commitments they make regarding human rights in the countries in which they operate.



## **The Bujagali dam in Uganda – The EIB fails to comply with its own operational policies**

### **Background**

The Bujagali Hydroelectric project involves the construction and operation of a dam and hydroelectric plant on the Nile, 10 km from the outlet of Lake Victoria, and downstream of existing Nalubaale and Kiira dams.

This project has been criticized for a number of years by Ugandan and international civil society because of its impact on the environment and on local communities. The construction of the dam would have a number of adverse effects such as decreasing the water level of Lake Victoria, water pollution, flooding of farmland, reduction of fish stock, threatening the area's ecosystem, population displacement and destruction of the natural heritage, culture and tourism of the Bujagali falls.

In addition, the project is based on inaccurate and insufficient analysis. The dam will not produce the expected amount of electricity and could lead to a rise of electricity prices. The production of electricity will benefit a minority – the elite – of the Ugandan population, since no network expansion is expected to increase existing access levels. In spite of this, the World Bank, the African Development Bank and the European Investment Bank (EIB) agreed to fund the project in 2007.



In fact, the Bujagali project is in flagrant violation of the EIB's objectives of supporting development and its obligations to evaluate the environmental and economic durability of the project, to equitably compensate affected communities and to implement alternative measures to compensate for the impact of the project.

### **SHERPA's action**

Alerted by the mobilization of local civil society, several international NGO's urged the EIB to suspend its funding, with no effect: the bank agreed to a loan of 95 million euros in May, 2007. In April, 2009, SHERPA and Counter Balance carried out an initial investigation in Uganda. Based on its findings, SHERPA, Counter Balance and the National Association of Professional Environmentalists (NAPE, a Ugandan civil society organisation) filed a complaint with the EIB on 2 December 2009.

The complaint called on the EIB to:

1. Recommend independent studies to measure the environmental and social impacts of the project and estimate the production of electricity;
2. Ensure that the promised compensatory measures (relocation, access to work, access to electricity, etc.) are effective;
3. Suspend its funding as long as the two previous demands are not met and until local judicial proceedings are completed.

### **Outcome**

In the two years following the filing of the complaint, there was no response from the EIB. As a result, on 15 November 2011, SHERPA and its partners referred the case to the European Ombudsman for maladministration, as the EIB has not issued any conclusions and continued to fund the project, in violation of deadlines set out by the EIB complaint mechanism.

## \* Our written contributions

- ❖ « Biens Mal Acquis, une affaire purement africaine ? », Article written by Maud Perdriel-Vaissière | Altermondes n°28, December 2011
- ❖ « Le Parquet français en situation de coma dépassé », Article written by Eric Alt | Agora Vox, 12.14.2011
- ❖ Non State actors in asset recovery, collective work under the direction of Pedro Gomès Pereira and Daniel Thelesklaf, “How to turn Article 51 into reality?” section written by Maud Perdriel-Vaissière | Basel Institute on Governance, 2011 \*
- ❖ « Indignés contre la corruption », Article written by Eric Alt, | Agora Vox, 1.8.2011
- ❖ « Pour des contre-pouvoirs », Op-ed by William Bourdon | Le Monde – Idées, 10.6.2011
- ❖ Secteur Minier coté et risques ESG – De l’influence des ONG sur l’activité et la réputation des entreprises minières, Interview with Sandra Cossart and William Bourdon of Sherpa | Novethic – Be-linked Study, 2011, pages 53 to 56
- ❖ « Comment être de plus en plus irresponsable en étant de plus en plus responsable ? », Article written by William Bourdon and Yann Queinnec, | Paul Jorion’s Blog, 8.27.2011
- ❖ Entretien avec William Bourdon et Yann Queinnec | Dalloz 2011, page 1608
- ❖ Garantir que le crime ne paie pas - Stratégie pour enrayer le développement des marchés criminels, collective work under the direction of Chantal Cutajar, « Titre III : La Restitution des avoirs illicites », by Maud Perdriel-Vaissière | Presses Universitaires de Strasbourg, 2011
- ❖ « La poursuite des faits de corruption à la lumière de l’affaire des Biens mal acquis », Article written by Maud Perdriel-Vaissière | Dalloz 2011, page 112
- ❖ « Les Défis de la société civile pour 2011 », op-ed by William Bourdon | Good Planet, 1.6.2011



## \* And a few extras...

### ❖ Wanna be rich? Careful... SHERPA watches out for corruption!



To mark International Anti-corruption Day, SHERPA created a comic video clip as a reminder that grand corruption is a major issue in development. The illicit enrichment of high-ranking officials and businessmen is a direct cause of poverty worldwide. Legal means to address this problem do exist, but political and judicial obstacles remain...

### ❖ Candid Camera – The Ill-Gotten Gains of Ben Ali

In January of 2011, shortly after the fall of Ben Ali and filing a complaint to seize his assets, SHERPA was tricked by *ACTION DISCRÈTE*, the “Candid Camera” show on French TV channel Canal +. See the SHERPA team, grappling with a mysterious box... A great moment! [Watch online](#).

### ❖ William Bourdon awarded a prize for the creation of SHERPA!

On 22 June 2011, at the first ever Legal Communications Awards, rewarding lawyers’ innovative communication actions, William Bourdon won the *Commitment Prize* for the founding of SHERPA.



## SHERPA Diary 2011

- ❖ 19 January 2011 | Conference « ONG et Droit : de nouvelles armes juridiques pour les sociétés civiles du Nord et du Sud », Université Paris 1 (France)
- ❖ 25 January 2011 | Conference « Firms et mondialisation: RSE ou régulation ? », Université de Grenoble 2 (France)
- ❖ 8 March 2011 | CINEMaCTION – Screening-debate: « Uranium, l'héritage empoisonné » (Cognac, France)
- ❖ 14 & 15 March 2011 | Festival International du Film de Droits de l'Homme – Screening-debate: « Toxic Playground » (Paris, France)
- ❖ 17 March 2011 | Screening-debate « À ciel ouvert » (Paris, France)
- ❖ 30 March 2011 | Conference « Les Outils juridiques et institutionnels de la protection sociale au plan international », Université de Lyon (France)
- ❖ 4 April 2011 | Conference « Droits Humains et développement: comment concrétiser l'approche par les droits humains ? » (Paris, France)
- ❖ 6 April 2011 | All-day debate « Le pouvoir des entreprises transnationales » (Paris, France)
- ❖ 7 April 2011 | Séminaire national RSE à l'initiative du député Bertrand Pancher, Assemblée Nationale (Paris, France)
- ❖ 13 April 2011 | C5 Annual Conference « Fraud, asset tracing and recovery » (Geneva, Switzerland) \*
- ❖ 27 & 28 April 2011 | All-India Anti-Corruption Summit, organised by Transparency International and 5th Pillar (New Delhi, India) \*
- ❖ 28 April 2011 | Les Jeudis de l'Écologie « Nord/Sud: la responsabilité sociale et environnementale des entreprises » (Paris, France)
- ❖ 14 May 2011 | Conference – La Déclaration de Berne: « Lutte contre les Biens Mal Acquis en France » (Switzerland)
- ❖ 21 May 2011 | Symposium « La Restitution des biens mal acquis à l'étranger » (Tunisia)
- ❖ 27 May 2011 | International symposium « L'entreprise dans la société du XXI<sup>e</sup> siècle » (Rennes, France)
- ❖ 17 June 2011 | Roundtable « Y a-t-il une diplomatie des Droits de l'Homme ? », Forum 100 Idées pour la France, Terra Nova (Strasbourg, France)
- ❖ 22 June 2011 | Symposium « Droit et Démocratie: La grande corruption est-elle un crime contre l'humanité ? »
- ❖ 23 & 24 June 2011 | The International Bar Association's 9<sup>th</sup> annual anti-corruption conference « The fight against foreign bribery » (Paris, France) \*
- ❖ 1<sup>er</sup> July 2011 | Symposium « Paradis fiscaux, judiciaires et réglementaires », l'Assemblée Nationale (Paris, France)
- ❖ 5 July 2011 | Roundtable at the OSCE : « On the road to Marrakesh: the role of civil society in fighting corruption » (Vienna, Austria) \*
- ❖ 8 September 2011 | Débat – Novethic/Be-linked: « Secteur Minier coté et risques ESG : de l'influence des ONG sur les entreprises minières » (Paris, France)

- ❖ 26-28 September 2011 | 6e Global Conference des Ateliers de la Terre (Evian, France)
- ❖ 6 & 7 October 2011 | Symposium « Exploitation des ressources naturelles et Droits de l'Homme » (Grenoble, France)
- ❖ 7 October 2011 | The Task Force for Financial Integrity's annual conference: « Corrupt dictators and the Arab Spring : implications for banks and anti-money laundering rules » (Paris, France) \*
- ❖ 14 October 2011 | Business of a Better World's symposium: « Human Rights and transnational enterprises: practical applications of the UN's guiding principles on human rights » (Paris, France) \*
- ❖ 14 & 15 October 2011 | Les Rencontres Capitales pour un autre monde: « Droit de l'Homme, droit d'ingérence: comment protéger les populations ? » (Marseille, France)
- ❖ 20 October 2011 | Journée d'échange – Comité 21: « Évaluation et Reporting des stratégies RSE des entreprises et acteurs publics » (Paris, France)
- ❖ 20 October 2011 | Symposium – École Nationale de la Magistrature: « Rôle de la Société Civile en matière de lutte contre la corruption » (Paris, France)
- ❖ 20 & 21 October 2011 | Conference – International Catalan Institute for Peace: « Rôle et responsabilités des entreprises en situation de conflit » (Barcelona, Spain)
- ❖ 7 November 2011 | Symposium: « La Dette écologique » (Paris, France)
- ❖ 12 November 2011 | Forum – La République des Idées: « Les Ateliers du présent : refaire société » (Grenoble, France)
- ❖ 12-20 November 2011 | France's week for international solidarity
- ❖ 25 – 27 November 2011 | Expert meeting on prohibition of torture (Berlin, Germany)
- ❖ 28 November 2011 | Symposium: « Investisseurs responsables face aux risques ESG » (Paris, France)
- ❖ 2 December 2011 | Conference at the European Council « Le Recouvrement d'avoirs illicites » (Belgrade, Serbia)
- ❖ 12 December 2011 | Debate for the launch of the book: « Le Scandale des Biens Mal Acquis » (Paris, France)
- ❖ 14 December 2011 | Eco-bistrot sur les Biens mal acquis (Paris, France)
- ❖ 16 December 2011 | L'Exposia, European event: « Droit de l'environnement et responsabilité sociale des entreprises »



## **II. ORGANISATIONAL LIFE**

## SHERPA Board

This year, we have had the pleasure of welcoming four new members of the Board whose arrival fully participates in the reinforcement of the organisation:

**Eric ALT** is a magistrate of the Court of Cassation (French Supreme Court of Appeal). He has served as vice-president of the Syndicat de la Magistrature (Union of Magistrates) and the MEDEL Association (European Magistrates for Democracy and Freedoms). Among other books, he co-signed the “Que-sais-je?” edition on fighting corruption (PUF, 1997).

**Chantal CUTAJAR** is a professor of private law and criminal sciences and senior lecturer at the Management School of Robert Schuman University (Strasbourg III). Specializing in the fight against organised crime, she is the driving force of the GRASCO (Group for in-depth Research in Organised Crime)

**Jean MERCKAERT** is the chief editor of the journal *Projet* since May 2010. He previously worked for French NGO *CCFD-Terre Solidaire* where he was responsible for development funding issues and also coordinated the tax and judicial havens platform. He is the author of many reports for the CCFD on ill-gotten gains, tax havens and the debt of countries in the southern hemisphere.

**Sarah WYKES** is an investigator and campaigner. With 10 years of experience in the field of corporate accountability, she is especially interested in the human, social and environmental impacts of natural resource extraction, particularly in Sub-Saharan Africa. She has worked with numerous organisations including the Heinrich Boell Foundation, Friends of the Earth Europe, Global Witness, International Alert, Amnesty International UK, Oxfam and the Business and Human Rights Resource Centre. She is currently Senior Policy Adviser for climate change and environment at CAFOD in the UK.

## SHERPA Staff

After almost two years with SHERPA, Claire LUCCHINI has left the organisation to realize her dream of travelling the world. She is replaced by Rachel LEENHARDT.

Thanks to financing from *Solidarités Nouvelles Face au Chômage*, SHERPA was able to employ Céline ÊTRE, an expert in codes of conduct, from January to June. Her expertise mostly benefited the *Fairwashing* campaign.

In 2011, the organisation also benefited from the support of more than 30 volunteer lawyers and legal interns, whose contribution has been invaluable.

SHERPA also strengthened its links with the academic world, with the creation of two legal clinics in partnership with Law Schools in Paris. The students involved in this training programme have worked on various research projects related to the Globalisation and Human Rights division.

## **Communications**

### **Sherpa in the media**

This year SHERPA had its highest ever level of media coverage SHERPA issued 22 press releases in 2011: 11 related to the Ill-Gotten Gains case and 5 to other corruption-related cases; 4 about aspects of CSR legislation and 2 on legal proceedings involving companies. For a taste of our media coverage, we have listed 217 articles mentioning SHERPA, from both print and online press (keep in mind that the list was compiled with our limited resources and is far from exhaustive!). 80% concern the Illicit Financial Flows programme, whereas 20% are related to the CSR programme – this is partly due to the spectacular developments in the Ill-Gotten Gains case and the complaint filed against Mopani in Zambia for tax evasion.

### **Sherpa online**

SHERPA increased its online presence in 2011. The new website offers a more complete and transparent picture of SHERPA's work and easier access to information, including a more dynamic navigation experience.

SHERPA has also made significant progress with social networking. For instance, SHERPA welcomed its thousandth Facebook fan over Christmas! Our page is more interactive, with more information sharing and more room for user comments. We're also building our visibility on Twitter: at the end of 2011, SHERPA had 280 followers.



## \* Summary

2011 was characterized by important restructuring aimed at improving the performance of the organisation – particularly its financial management – and increasing the confidence of our individual and institutional donors and partner organisations.

We commissioned the chartered accountants ENTRY EXPERTISE to carry out a structural audit of SHERPA. On the basis of the recommendations and with their support, SHERPA has made significant changes to the organisation's financial and accounting management, as well as its operations.

Following the audit, SHERPA entered an agreement with ENTRY EXPERTISE to support the financial and administrative management of the organisation on an on-going basis. In addition to the preparation of the annual accounts, ENTRY EXPERTISE will be responsible for salary statements, social security declarations and wage-based contributions, as well as supporting a range of other financial and social matters.

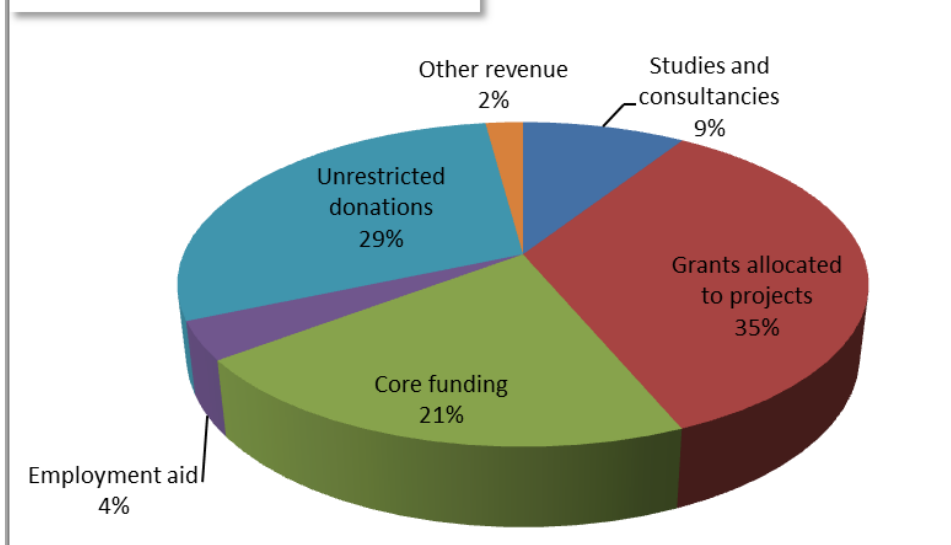
Finally, SHERPA has voluntarily opted to have its accounts certified by the auditing firm MAZARS beginning in 2011. The 2011 account audit will be completed on a contractual basis, the selection of an auditing firm for a period of six years being subject to a decision from the General Assembly.

## \* Income

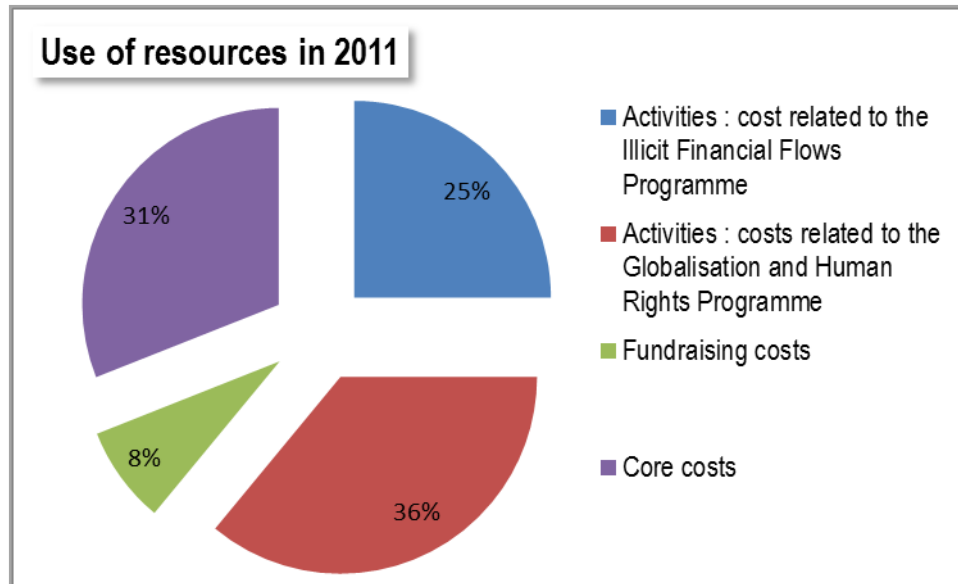
Revenues for the year 2011 amount to € 268,863, which represents a 30% increase compared to the financial year 2010.

<b>Studies and consultancies</b>	€ 24 550
<b>Grants allocated to projects</b>	€ 92 871
<b>Core funding</b>	€ 56 584
<b>Employment subsidies</b>	€ 10 256
<b>Unrestricted donations</b>	€ 78 961
<b>Other revenue</b>	€ 5 641
<b>Total income</b>	<b>€ 268 863</b>

**Distribution of resources in 2011**



## \* Costs



### Analysis – key elements:

In 2011, the majority of resources were allocated to fulfilling our activities. Besides staff expenditures, costs directly attributable to these mainly include:

- Legal fees, translation expenses and other service providers' fees;
- Event organisation ;
- Activity and travel costs ;
- Communication costs.

Core costs, which are mainly fixed charges, include:

- Organizational costs (rental charges and taxes, insurance, accounting and auditing fees, plus diverse costs) ;
- Personnel costs related to management and administration of the organisation (which are not directly attributable to organisational activities or to fundraising costs);
- Other operating costs related to the daily functioning of the organisation (grants paid by SHERPA; coalitions and network membership fees).

## Profit and loss account

The association was able to cover its activities and operating charges from funds raised.

<b>Expenditure</b>	<b>TOTAL</b>	<b>Income</b>	<b>TOTAL</b>
<b>Operating Costs</b>	<b>€ 260 864</b>	<b>Operating Income</b>	<b>€ 268 863</b>
• Fees and benefits for legal services, translators	€ 11 127	• Consultancies - Studies and support provided by SHERPA	€ 24 550
• Expenses- event organisation	€ 34 109	• Funds allocated to projects (SOMO, MISEROR, FPH, FRZANCE LIBERTES...)	€ 92 871
• Mission and travel expenses	€ 17 783	• Unallocated funds (SIGRID RAUSING TRUST...)	€ 56 584
• Staff expenses (Salaries, social security contributions and taxes)	€ 161 210	• Employment subsidies	€ 10 256
• Communication costs	€ 10 570	• Unrestricted donations	€ 74 435
• Rents and ancillary costs	€ 7 080	• Online unrestricted donations	€ 4 526
• Payment, Accounting, Auditing services	€ 7 813	• Other income (reimbursement of fees by partners....Various)	€ 5 641
• Other organisational costs	€ 7 817		
• Depreciation & Provisions	€ 1 013		
• Other expenses (subsidies paid, platforms subscription fees, others)	€ 2 342		
<b>Financial expenses</b>	<b>€ -</b>	<b>Financial revenue</b>	<b>€ 27</b>
<b>Exceptional costs</b>	<b>€ 4 749</b>	<b>Exceptional income</b>	<b>€ 4 570</b>
<b>Projected use of allocated funds</b>	<b>€ -</b>	<b>Report on unused funds from previous years</b>	<b>€ -</b>
<b>Total Expenses</b>	<b>€ 265 613</b>	<b>Total Income</b>	<b>€ 273 460</b>
<b>Surplus as of 12/31/2011</b>	<b>€ 7 847</b>		

## \* SHERPA's donors

SHERPA would like to warmly thank its donors, both individuals and foundations, who have helped us carry out all our activities in 2011!



SIGRID RAUSING TRUST



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Make a secure online donation on our website.

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