



# Sherpa

Activity report 2013



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# The President's page



Against all odds Sherpa continues to illustrate that small is beautiful. And this more than ever exceptional. We will not hold out for long, as cases are more and more complex and sour. Sherpa's team can feel and measure it: Exasperation, perceived unfairness and resulting anger are growing around the world.

Our recognized value but also our constant concern to remain both human and professional, bring to us requests and worries that we cannot respond to, not only because of a lack of human resources, but also because they are not always under our mandate.

2014 will thus be the year to strengthen the teams working for Sherpa. We have to. It will also be the year for a better organization of tasks among them. Imagination has to work for the precursor mentality which is our DNA-profil but must also serve working together.

There is no need to remind of how our initiatives were successful in 2013, and how they demonstrate our vitality and our dynamism. I would like to thank all the Sherpa's teams for their efficient work.

The board will grow and be more diversified in order to take into account the complexity of the challenges and the diversity of work we must achieve.

We have known Sherpa from when its situation was precarious. Today, our situation has improved thank to everyone's efforts. However, we need to sustain and maintain Sherpa to ensure its longevity and its adaptability to the consequences of our success : more expectations and hope.

Thank you again for your loyalty,



William Bourdon  
Président



Sherpa was created in 2001 by the French lawyer William Bourdon, member of the Paris bar and former general-secretary of the International federation for human rights (FIDH), to fight against impunity related to the globalization of exchanges. The organisation, constituted of lawyers and legal advisers from different backgrounds, collaborates with the civil society from around the world.

## 1 MANDATE

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Convinced that rules of law constitute a precious tool to help development, Sherpa has chosen to put its expertise at the disposal of the Millennium Development Goals (MDGs) in order to protect and act for victims of economic crimes.

## 2 PROGRAMME

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### Illicit financial flows and development



Considering the multinationals' corruption and tax evasion, illicit financial flows are a major stake with regard to development. They reduce fee resources for central public services and increase the public debt of developing countries. It further explains why most of the governments of developing countries cannot provide for the basic needs of their population.

### Globalization and human rights



The European Commission has defined the Corporate Social Responsibility (CSR) as « the voluntary integration of social and environmental objectives into the commercial activities of enterprises and into their relationships with their partners. » (Green paper on Corporate Social Responsibility, 2001).

Nevertheless, cost reduction and increased production by economic actors in developing countries lead to a great deterioration of the fundamental rights of workers.

## 3 TOOLS OF ACTION

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### Judicial



With its important network of lawyers and legal experts, Sherpa uses legal tools in order to initiate extrajudicial measures (OECD National Contact Points' mechanism, mediation, arbitration...), but also judicial proceedings brought before civil, criminal or administrative courts.

### Advocacy



Sherpa's advocacy to economic actors and public authorities aims to promote a better regulation of their commercial activities and their international funds flows.

### Training and Raising awareness

Convinced that knowledge sharing sustains development, Sherpa develops awareness raising activities and trainings in France and abroad.



The Sherpa's legal team organises sensitization and capacity building workshops. The main objective is to train local actors to the CSR issues: by making justice more accessible, by encouraging local lawyers and legal experts to be involved in public discussion and by promoting their partnership with local organisations.



# Sherpa's programmes around the world





### Judicial

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# Globalization and Human Rights



At the dawn of the 21st century, while the authors of crimes against humanity are finally brought before the International Criminal Court (ICC), the economic context of globalization has generated new forms of impunity.

The transport revolution has created new ways of trading and gave multinational companies the possibility to extend their production in developing countries.

Fundamental social rights of workers are impacted by systematic cost reductions and the upholding of an increasing level of the production rate.

This increase of productivity overtakes final product quality. Consumers are therefore endangered by this commercial logic. The lead-contaminated Chinese toys' case is an example. Furthermore, industrial disasters as the Probo koala, an oil ship which has offloaded 600 tonnes of toxic wastes in Ivory Coast' bay of Abidjan in 2006, has rapidly increased over the last few years, giving rise to environmental and social damages sometimes irreversible.

Across the globe, populations' living conditions have been drastically modified by Globalization. While industrial exploitations grow, many communities are evicted and experience extinction of their traditional means of livelihood. The lack of legal framework adapted to globalization of exchanges impedes the possibility to establish their liability and obtain compensations.

Sherpa "Globalization and Human Rights" programme started with two cases: the activities of the Total company group in Burma and the operating conditions of loggers working for the Company group Rougier in Cameroon. Sherpa's advocacy and training activities are directly linked with the judicial proceedings.



## Comilog Congo Brazzaville

In 1991 in Congo Brazzaville a train from the Comilog company, exploiting mining resources in Gabon, has collided with another train. 100 people died. As a consequence, the company has stopped to convey raw materials by rail and laid off 955 workers without notice or compensation. Sherpa's team went to Cameroon to investigate and collect evidence.

In 2007, 867 individual files were gathered and the company was brought by Sherpa before the labour Court in Paris (Conseil de Prud'hommes). However, the French judge declined jurisdiction. Sherpa has appealed this decision.

Comilog that used to be a French company during the colonisation, is still considered so through an agreement between France, Gabon and Congo allowing the company to keep its nationality in case of independence.

On the ground of denial of justice and article 15 of the French civil code, which provides that any French defendant may be sued before French courts, Sherpa asked for French jurisdiction on these mass lay-offs.

On 20 June 2013, the Appeal court of Paris has confirmed

its competence for the claims against Comilog France and Comilog international, and found relevant the ground of denial of justice argued by Sherpa.

This decision is a first step of the ability for victims to seek redress from French companies for the violations committed by their subsidiaries located abroad.

### **French jurisdiction for this litigation**

French jurisdictions called back the parties to a new hearing held on 5 June 2014. They will be heard on the

submission of documents and merits of the case.

The work accomplished by Sherpa on this case and the ruling of the Appeal Court allows a progress on two levels :

- At a human level: It gives compensation to 867 workers and their families.

- At a legal level : It prevents economic actors from impunity, and gives better access to a fair justice to the victims of multinationals..

Moreover, Comilog case has highlighted the issue to hold parent companies liable for the human rights' violations and environmental degradation committed by their subsidiaries.

The judges' decision could be a new step towards the recognition of parent companies' liability for their subsidiaries' acts.



Train COMILOG - © Georges Dougueli





DLH Liberia

In Liberia, the Charles Taylor' Regime has been largely financed through the wood resources of the country and has partly contributed to buy weapons in the frame of the civil war between 1999 and 2003. Investigation by the NGO Global Witness showed that between 2001 and 2003, DLH group has bought, imported and distributed wood providing from Liberia logging companies in Europe and France. Those companies were working directly for the Charles Taylor' Regime. Some of these companies have been identified as responsible for human rights' violations, environmental degradations, and corruption.

On 18 November 2009, Sherpa along with Global Witness, Greenpeace France, Friend of the Earth and a Liberian citizen have lodged a complaint with the Nantes public prosecutor's office against both companies: DLH France for handling of influence peddling and of destruction of property, and DLH nordisk A/S, subsidiaries of DLH group for complicity. In 2010, a preliminary investigation was opened by the Nantes public prosecutor's office.

In February 2012, the file was referred to the Montpellier public prosecutor's office where the DHL headquarter is based.

**Withdrawal of proceedings... without explanations**

One year later, despite few follow-up calls from the public prosecutor's office, proceedings have been withdrawn for insufficient grounds.

To understand the reasons of this outcome, Sherpa has continuously asked for access to the

file. However, the public prosecutor's office has constantly denied it, without any justifications.

Towards this refusal, our organisations consider the possibility of lodging a complaint and a claim for criminal indemnification to refer directly to the investigating judge.



Truck loaded with wood, Buchanan, Liberia – © Mikael Schuer



Over the last few decades, Guyana has been victim of illegal practices related to gold washing. The use of environmental damaging methods, especially mercury constitutes an environmental (contaminated river and soil..), sanitary (cardiovascular problem ...) and social (violence of the illegal gold washer) plague. Because of the lack of police controls the affected areas is not safe despite many alerts from the civil society via petition, and the lodge of a complaint in 2001 before the district Court of Cayenne.

In 2008, a fact-finding mission was organised by the Sherpa staff to collect information and testimonies from local people directly impacted by gold washing damages. This mission revealed the impact of damages caused by this illegal practice, and is used as a background paper for legal action against the French State. The impact on people's health, especially Wayana and Emerillon people, is particularly sensitive and acknowledged. It has been the subject of many studies<sup>1</sup>. This overexposure to mercury can lead to neurobiological troubles and cardiovascular problems. Foetus and young children are particularly at risk.

### **A failure of the French administration**

This is why the different organisations, that have collected evidence, have brought the French state to the Court on 11 December 2013. This proceeding was addressed to the prefect of Cayenne, representing the Solidarity Guyana organisation (association Solidarité Guyane), and the organization of indigenous people (Organisation des Nations Autochtones). The main objective of this action is to highlight the French administration deficiency to take necessary measures to uphold legislation regarding gold washing in French Guyana. Because of its lack of action, French State has caused da-

mages to local population and to the environment. As a consequence, compensation is requested.

Following this appeal, a letter dated 30 December 2013 and sent to Sherpa and its partners by the Minister of Justice, Christiane Taubira ensured that French administration has enlarged its action to put an end to those violations.

This case constitutes a further step for Sherpa's advocacy, but also a recognition of State's liability regarding its duty to protect local communities.

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<sup>1</sup>-<http://etudescaribeennes.revues.org/753>



Orpailleur à Madagascar - © Lebelot



## Samsung China

The Samsung group is one of the most important company in South Korea. As part of its communication, Samsung France, subsidiary of the Korean company Samsung Electronics CO LTD, prides itself on adopting commitments to ethical conducts that have been largely spread out through its advertising. Samsung intends to promote a “better world” in being a good corporate citizen “socially responsible”. Its code of conduct was thought as a legally-binding document for all the different entities of the company as well as those contributing to the production, in particular its subcontractors.

The NGO China Labor Watch, working since the early 2000, dedicates its actions monitoring the working conditions of Chinese workers. Between August and December 2012, it has organised eleven investigation missions by infiltrating some of its members inside different manufactures of Samsung products. This investigation reports denounces facts such as children presence within hired staff, frequent non-paid overtime (up to 150 monthly overtime, 7 working days with 14 to 15 daily working hours), a lack of security measures adapted to workers that are forced to execute dangerous tasks without any adequate protection, and forced working practices, besides moral pressure and regularly physical

violence from employers.

### **A violation of the fundamental rights of workers**

With those evidence, Sherpa organisation along with Peuples Solidaires et Indeco-sa-CGT lodged a complaint on 26 February 2013 with the Bobigny public prosecutor's office against Société Samsung France on the ground of misleading commercial practices. Samsung France is accused of violation of its ethical commitment due to the working conditions in its subcontractors' factories in China. This has intentionally misled French consumers, who are increasingly sensitive to the respect of fundamental rights of workers as well as environmental preservation.

On 8 July 2013, the French public prosecutor has decided to open a preliminary investigation. Within this framework, few witnesses should be heard in 2014.

For the first time in France, an action is brought against a multinational company on the ground of misleading commercial practices to denounce its violation of human rights in its activities abroad. This experience is a meaningful progress to fight against multinationals impunity. Until then, Sherpa and its partners' action succeed to impulse a reform of the French liability system. This case will allow sanctioning the discrepancy between ethical norms, from which multinationals get a consequent economic advantage and their real conduct.



Assembly Plant in Shenzhen – c Foxconn



## Areva Niger/Gabon

Areva is a public limited company, which is 85%-owned by the French State. It has been operating for more than 40 years in Gabon and Niger, two countries that have important uranium resources. Areva exploited the Mounana site in Gabon from 1958 to 1999 through the company Comuf and the Arlit site in Niger since 1968 through the companies Somair and Cominak. Following the publication of two reports establishing the social and environmental impacts of the exploitation of uranium, Sherpa is representing the victims in negotiations with the companies.

In Niger as well as in Gabon, workers are overexposed to radiations arising from construction sites and from material used for construction of buildings such as hospitals, maternities and schools. Water resources are monopolized by extraction activities in spite of the surrounding population. Children and their families have newly developed an important number of diseases .

Negotiations with Areva in 2009 led to an agreement providing for the creation of Health observatories. Sherpa has monitored the strict application of the agreement for three years now, through regular contacts with the involved parties. Despite our

followed-up calls, the slowness in creating the agreed observatories and setting up the compensation process showed up the lack of willingness of Areva to fulfil its commitments. For this reason, Sherpa has decided after the consultation of its local partners to withdraw itself from this agreement on the 18 December 2012.

### **Areva recognized as actual employer**

Sherpa's role is directly related to the French social security Court' decision dated 12 May 2012 . The Tribunal found that Areva, as a parent company, was liable to compensate M. Serge Venel previously employed by Cominak, which had developed a disease in

his professional environment while he was working abroad for the company. The Tribunal has decided that in being part of the mentioned agreement, the Areva group was considered as having the intention to protect the health of workers employed by its subsidiaries. Its was thus acting as an employer regarding health and security issues.

Sherpa has been in contact with the civil society in Niger and Gabon and has support its members in 2013, following the negotiation process of the exploitation's contracts.

As of today, Sherpa is working on the possibility of other types of action to impede Areva to assume its responsibilities.



A village near of Arlit – © AFP/Issouf Sanogo



## BEI Uganda

The Bujagali Hydropower project concerns the construction and exploitation of a dam and a hydroelectric central across the Victoria Nile, 10km to the exit of the Victoria Lake. Criticized for many years, the project could have adverse effects on water pollution and on the local population. Indeed, this project is based on wrong analysis: it will not produce as much energy as expected and might increase electricity prices. Despite this information, the World Bank, the African Development Bank and the European Investment Bank (EIB) have accepted to finance it in 2007.

In May 2007, some international NGOs, alerted by a strong mobilisation of the local civil society, have tried to convince EIB to suspend its funding for a loan of 95 millions euro in the framework of this project. In April 2009, Sherpa and Counter Balance group organised a first mission. Based on the information gathered, and along with the National Association of Professional Environmentalists (NAPE, Ugandan organisation), a complaint was lodged with the EIB on 2 December 2009.

After the answer being continuously delayed for 2 years, and meanwhile the construction was almost finished, claimants referred the case to the European mediator on 15 November 2011 on the ground of maladministration by the European Bank. After having exceeded the delay of treatment of the claim (140 days), the European mediator has decided that it was unfounded. The complaint office produced its annual report on 20 August 2012, considering that the EIB had globally respected its economic, social and environmental commitments.



The European mediator answered on 25 September 2013, 2 years after being referred to. The violation of the delays of proceeding by the Bank was confirmed, on the basis of insufficient human resources and internal conflicts. It has however concluded to an absence of maladministration of the complaint.

He reckoned that the EIB has not been responsible for the damages caused by the project as they could be subsequently repaired, where some are in fact irreversible for the population and the environment. As of today, the stake for Sherpa and its partner is to denounce the irresponsibility of this investment, and the lack

of efficiency in processing an internal claim related to this case.





## Michelin India

Michelin operates in 69 production sites spread out across 18 countries, notably in India. There, the company is currently building its largest tyre manufacturing plant, on land provided by the State of Tamil Nadu. The area's inhabitants, mostly "untouchables", were not consulted. The area's development led to the destruction of 450 hectares of communal forest, which used to provide agricultural and grazing lands, thus depriving its inhabitants of their chief means of subsistence. Moreover, these lands are located on a hydrographical basin, which is the area's main water supply for agriculture.

On 10 July 2012, Sherpa, the CGT (French General Confederation of Labour), and the CCFD-Terre Solidaire (French Catholic Committee Against Hunger and for Development), together with two Indian partners - the Tamil Nadu Land Rights Federation and villagers organisation Thervoy Sangam - submitted a complaint to the French National Contact Point (NCP) alleging a breach of OECD guidelines for multinational enterprises by French company Michelin in the course of the construction of its new manufacturing plant in Tamil Nadu, India.

After the hearings in November 2012, our organisa-

tions sent numerous letters to the NCP reporting procedural irregularities. These letters also requested additional information in response to the memoranda submitted by Michelin. Although the plaintiffs agreed to take part in mediation in order to discuss all the issues raised by this specific case in April 2013, Michelin and the NCP have only shown interest in examining the impact assessment, and have thus refused comprehensive mediation.

### **Is Civil Society Being Heard?**

The repeated procedural irregularities, and the fact that the NCP's final report does not comply with its initial mission

statement, led the plaintiffs to withdraw their complaint in order to denounce these flaws, and call for a profound reform of this institution. On the 27 September 2013, the NCP nevertheless published its final communiqué, which recommends that Michelin pays attention to certain chapters of the Guidelines. It also recommends certain improvements on issues such as better information of local populations, or the evaluation of industrial risks, but however refuses to find that the company violated the Guidelines.

This case does appear to have had some positive impact, in that it led the NCP to take into account civil society demands, as expressed within the Forum Citoyen pour la RSE (Citizen Forum for CSR). The organisations campaigning for a reform were invited to a hearing concerning the inclusion of a civil society panel in the French NCP. Civil society organisations should be included in its decision-making process, as they are in some of its efficient European counterparts, such as the British NCP.





# Socapalm Cameroon

Socapalm (Société camerounaise de palmeraies) is the Cameroon's major oil palm production company. The privatisation of this State corporation, undertaken in 2000 under the impetus of the World Bank and the International Monetary Fund, was supposed to enable local development. However, a fact-finding mission led by Sherpa in May 2010 reveals that, on the contrary, privatisation contributed to environmental deterioration, and led to unsolved land disputes and deplorable working and living conditions for employees, without any consideration or compensation.

On 3 December 2010, Misereor (Germany), the Centre for the Environment and Development and FOCARFE (Cameroon), and Sherpa, filed a specific instance complaint before the French, Belgian and Luxembourg National Contact Points, against the four companies which exercise control over Socapalm: Bolloré (France), Financière du Champ de Mars (Belgium), SOCFINAL (Luxembourg) and Intercultures (Luxembourg).

The French NCP only held the complaint admissible on 5 July 2011, and Bolloré agreed to cooperate with the NCP one year later, in July 2012. The hearings therefore took place two years after the complaint had been filed.

In February 2013, lamenting the fact that the NCP had not yet delivered its final report, the plaintiffs agreed to enter into mediation under the NCP's assurances that the final report would be published without delay. The report, which was finally delivered on 3 July 2013, exaggerates the positive



Oil Palm Plantation

impact of the commitments undertaken by the Bolloré group, whilst finding violations of Guidelines Chapters II, III, IV and V, on which the complaint was based.

### **An Action Plan to Address the Violations**

After the Bolloré group agreed to withdraw its defamation complaint against Sherpa<sup>2</sup>, a six-month mediation process led to the presentation of an action plan in September 2013. In order to address the violations of OECD Guidelines, and to improve living conditions for residents and Socapalm employees, the plan's implementation must be monitored by a number of civil society actors.

Although it was the NCP's institutional nature which led the Bolloré group to agree to mediation, its pledge to implement the action plan was not due to the agency's good offices. The NCP must be reformed in order to become more efficient and increase its legitimacy if it is to fight the impunity of multinational corporations, while we await real coercive mechanisms.

1- After the complaint was filed, the group's first reaction had been a « strategic lawsuit against public participation », and it had filed a complaint for defamation against Sherpa and several journalists.



**In terms of advocacy, Sherpa managed to undertake various axes leading to actions targeting various French, European and International actors for many years.**

**In 2013, these strategic guidelines were the subject of research works and actions that focused on 4 areas:**

### **Parent/Subsidiary and Subcontractor Accountability**

Two structuring principles of current company law, the autonomy of legal persons and limited liability, prevent a holding or parent company from being held liable for the actions of its foreign subsidiaries. A group of companies may be an economic reality, but each business is legally isolated and most of its members are often established in developing countries. This makes it impossible, in law, to hold parent companies liable for the human rights violations and environmental degradations committed by their subsidiaries.

### **Transparency, notably through reporting**

Stakeholders (consumers, people affected by economic activities, trade unions, States, NGOs, etc.) still have insufficient access to information. This lack of transparency is also preventing the development of socially responsible investment (SRI) qualitative practices. A transparency obligation must be established, concerning information related to due diligence, particularly in conflict zones, and to environmental, social and

human rights impacts. This information should be based on precise, reliable and pertinent indicators, which allow for comparisons between companies active in the same sector, at the same time. In France, the Grenelle process allowed some progress in this area, despite strong opposition from employers' organisations. However, reporting methodology must be clarified, notably in regard to the obligation to provide this information for all the group's subsidiaries.

### **Access to Justice**

At this time, victims cannot seek redress from parent companies in France for human rights violations committed by their foreign subsidiaries, subcontractors or suppliers. Procedural hurdles must be removed in order to ensure access to justice and allow the victims of multinational corporations to seek compensation before French courts when the parent company's headquarters are located in this country.

### **State Liability and Exemplarity in Investments**

Sherpa's work does not only concern private market operators. Public operators may also commit violations, which qua-

lify as criminal offences. The French State was directly implicated in the course of its negotiations with Areva, due to its position as 85% shareholder. It can therefore be held liable in the case of mercury pollution in French Guyana.

These 4 main areas are complementary. They all individually and collectively aim to help build an appropriate binding legal framework for trade globalization and ensure the accountability of economic actors.



For many years, Sherpa has been working to disseminate these issues at the national, European and international levels, in the hope that they will be taken up by other organisations and thus gain wider publicity. We have succeeded in putting all of these issues on the political agenda of several platforms, such as the Forum citoyen pour la RSE (FCRSE) in France, and the European Coalition for Corporate Justice (ECCJ) at the European level.

For instance, the strategic priority concerning parent/subsidiary liability, which Sherpa has been developing for many years, has been a major advocacy area for the FCRSE since 2012, and a decisive milestone was reached in 2013. The aim is to overcome the separate legal personality of group entities, and to introduce a « knowledge » or « monitoring » duty for parent companies over those within their sphere of influence.

Sandra Cossart is in charge of our « Globalization and Human Rights » programme. In September 2013, after her return from parental leave, she re-engaged with the platforms Sherpa had collaborated with in previous years, and consolidated our organisation's contributions to their work. She also ensured the continuation of our law clinic programme, set up in 2011 in partnership with academic institutions. The FCRSE thus agreed to officially present Sherpa's candidacy to the France's national platform on

corporate social responsibility.

Sherpa's commitment in these platforms requires considerable effort in light of our human resources. However, they are an integral part of our strategy, as we believe this strong commitment will enable other civil society actors to relay our positions, and we have been successful in this regard. This commitment gives greater visibility to our organisation, and to the issues we fight for.

## I - The platforms

### The FCRSE (France)

Sherpa has once again taken on the role of FCRSE secreta-



ry. The Forum has itself been incorporated as an association. Its actions and its organisation have taken a more institutional dimension, its meetings have become more formal.

In 2013, Sherpa's contributions in this context were to:

- Define the Forum's policies around 4 strategic orientations identical to Sherpa's;
- Plan and implement advocacy activities (meetings with ministers or experts, citizen mobilisation campaign);

- Define a collective civil society strategy, and the Forum's positions within the national platform on CSR, developing strategies for all of the platform's working groups;

- Advocate for the restructuring of the French OECD National Contact Point.

FCRSE members work very closely together. Within the platform, they take part in meetings focused on a number of topics, write and exchange documents and official letters sent to political institutions, companies, and public bodies, and organise expert hearings and public events.

Sherpa's role in raising awareness about the issue of parent company responsibility for the actions of its subsidiaries and subcontractors among other civil society actors has allowed it to set up a partnership with two other FCRSE members, Amnesty International France and CCFD-Terre Solidaire. This partnership's aim was to draft a legislative proposal on the duty of vigilance, as recommended by the UN Guiding Principles.



We have focused on those actors which were already aware of our proposals, so that they may implement them and spread them across their spheres of influence. This may include institutions responsible for formulating public policy, companies called upon to implement responsible measures, academia, civil society and media.

2013 will be remembered as an important year for the realisation of a number of Sherpa's advocacy areas, and in particular the draft legislative proposal on the duty of vigilance on 6 November 2013 by three members of the French Parliament: Danielle Auroi (EELV group), Philippe Noguès and Dominique Poitier (PS group)<sup>3</sup>.

This legislative proposal ties together two of our advocacy areas: parent company liability for the actions of their subsidiaries or subcontractors, and access to justice for the victims of multinational corporations, particularly through the reversal of the burden of proof, from victims to companies. This proposal is a perfect illustration of how our strategic orientations often overlap in our advocacy and judicial activities.

### **Why a Duty of Vigilance?**

The European Commission Communication dated 25 October 2011, the OECD

Guidelines, and the UN Guiding Principles all use the term « diligence », sometimes associated with the term « reasonable », whereas ISO 26000 uses « duty of vigilance ». We chose to use the latter expression in the legislative proposal, although all terms refer to the same standard.

The duty of vigilance is primarily a best efforts obligation, which requires companies to identify, prevent and mitigate the actual and potential social, environmental and economic impact of their decisions and activities (this obligation arises from the 2011 UN Guiding Principles on Business and Human Rights).

### **How?**

In view of the State duty to protect human rights (first pillar of the UN Guiding Principles), we set out to engage political actors around this issue. In order to inform discussions, and position ourselves as a source of proposals, we developed legal arguments and investigated the possibility of implementing this rule in French law.

The engagement of political actors happened through the creation of a parliamentary discussion group on this issue: the Cercle pour la Responsabilité Sociétale des Multinationales (cercle RSM). The group has started working on four key measures, based on our

strategic orientations.

The group was officially created at a conference held on 13 December 2012 by the FCRSE and the Collectif Ethique sur l'Etiquette, at the French National Assembly. Its presidents are Assembly members Danielle Auroi, Philippe Noguès, and Dominique Poitier. Sherpa, CCFD-Terre Solidaire and Amnesty International France are responsible for its coordination, in collaboration with the FCRSE. Its first meeting, held in February 2013, on the topic : « How to make parent companies accountable for the actions of their subsidiaries and subcontractors? »

This initiative reflects the convergence between civil society and some members of Parliament in the struggle to reinforce the legal framework, and improve multinational corporations's respect for human rights and the environment.

A second meeting, held on 19 June 2013 at the French Economic, Social and Environmental Council, was on the theme « Deregulated globalization: protecting the rights of workers, at home and abroad. » Mr Alain Leopold Moukhouyou, the president of the collective of former Comilog workers, addressed the group in order to explain the denial of justice they are facing.



Alain Léopold Moukoudou and Sophia Lakhdar  
- © Média Solidaire/Clarisse Briot

The group's third meeting, held on 17 July 2013 at the National Assembly, was titled « Presentation of legislative proposals. For the accountability of multinational corporations. » Its aim was to present the proposals which grew out of the legal study carried out by the Paris Institute of Political Studies. In 2013, its law school collaborated with Sherpa, Amnesty International France and the CCFD-Terre Solidaire on the issue of parent/subsidiary/subcontractor liability. Sherpa notably helped supervise students, proofreading their dissertations, and providing guidance for their interviews with law professors, including Cristina Mauro, Laurent Neyret, Charley Hannoun and Horatia Muir Watt.

Lastly, the fourth meeting, held on 20 November 2013, also at the National Assembly, was themed around the impact of the Perenco corporation in the Democratic Republic of Congo, and attended

by Jean-Marie Muanda and the Congolese NGO ADEV.

Under our partnership with Amnesty International France and CCFD-Terre Solidaire, we also organised several advocacy meetings with government members, in particular with members of the cabinets of the President, of Prime minister Jean-Marc Ayrault, and of the Minister of Sustainable Development Pascal Canfin, as well as with leaders of the Europe Ecologie Les Verts party, with the Counsellor for Social Affairs of National Assembly President Claude Bartolone, and with Deputy Minister in charge of Social and Solidarity Economy Benoît Hamon.

Negotiations on the project of a legislative framework for the duty of vigilance were accompanied by intensive lobbying from employer representatives. This required strong mobilisation in order to ensure we received the support of all FCRSE civil society or-

ganisations, particularly trade unions.

Sherpa simultaneously started working on legal arguments which Members of Parliament could use to support the legislative proposal during hearings at the National Assembly, or in the media.

We also worked on other ways to introduce the duty of vigilance in French law. After being appearing before a Parliamentary Commission, we submitted amendment proposals enabling its inclusion within the Framework Act on International Solidarity (Loi d'orientation et de programmation sur la solidarité internationale, LOP).

Several institutions also sought counsel from Sherpa on a number of occasions, due to our expertise on the accountability of economic actors. Among others, we appeared before the National Advisory Commission on Human Rights, and the Government Mission for Corporate Social Responsibility responsible for drafting a report on a national plan for CSR.



## National platform for the CSR (France)



A number of FCRSE members, including Sherpa, initiated the project for a national platform on corporate social responsibility. After long discussions and negotiations, sixteen civil society organisations, including employer and worker representatives, wrote to the Prime Minister on 24 July 2012, requesting the establishment of a platform tied to his office, a « national platform for dialogue and cooperation [which] would tie together all civil society actors with an interest in CSR (employer representatives, trade unions, non-profit organisations and NGOs, multi-stakeholder structures...) and representatives of public authorities (central administration, Members of Parliament, regional and local authorities...). Its primary mission would be to prepare a reply to the European Commission's invitation for each Member State develop or update « their own plans or national lists of priority actions to promote CSR in support of the Europe 2020 strategy ».

Prime Minister Jean-Marc Ayrault agreed to this proposal during the first environmental conference, on 16 September



Jean-Marc Ayrault, First minister, at the launching of Plateforme RSE- © UNEA

2012. The national platform for global actions on corporate social responsibility<sup>4</sup> was established on 17 June 2013, after the Commissioner General for Strategy and Planning. Sherpa secured a seat in working group n° 3, which will work on international norms and subcontractor chains..

## European coalition for corporate justice (Europe)

Contrary to the two previous years, Sherpa has been unable to cover all of the European platform's projects, due to our temporarily insufficient

should secure a seat in the Steering group at the next General Assembly, to be held in Berlin in 2014.

In 2013, the ECCJ continued its work on the Directive on disclosure of non-financial and diversity information by large companies and groups. Together with the FCRSE, we obtained a letter of support for this directive from the national platform on CSR.



workforce. However, since September 2013, the head of our « Globalization and Human Rights » Programme has returned to work. Hence, we





We encountered similar problems in continuing our work with OECD Watch as we did with the ECCJ. Sherpa nevertheless contributes on a regular basis, by communicating the progress made in the cases brought before National Contact Points through a consolidated document (Socapalm in Cameroon, Michelin in India, and Mopani in Zambia). This document outlines the facts and the procedure, as well as any problems Sherpa faced in its experience with the NCP's good offices. This is then published within the Quarterly Case Update<sup>5</sup>, which outlines the developments of all cases filed by NGOs or trade unions as complainants.

Sherpa also played an active role in advocacy for reform of the French NCP, notably by the inclusion of civil society members in panels.

## II - Law Clinics

A Law clinic, or legal clinic, is a concept born in the United States in 1947, which allows

student training through an experience that combines practical experience with solidarity towards people lacking access to justice. They are now so widespread in the United States that practically every law school has created its own law clinic.

The first French law clinic (Clinique juridique des droits fondamentaux) was established in 2009, within the Université de Caen Basse-Normandie. In 2013, there are still less than ten law clinics in France, but a dynamic has emerged towards the establishment of new structures across the country, and within several law faculties and research centres that also wish to embark upon this path.

There are two types of law clinics: one provides legal assistance to private individuals, the other to non-profit organisations. Sherpa's partnerships with law clinics focus on the latter, enabling students to work on legal projects (feasibility studies, report, legal briefs...) over periods ranging from six months to a year.

In 2013, Sherpa continued its partnership, which started in 2011, with the Nanterre law school clinic, Euclid. Students worked on legal research

concerning Areva from February to July 2013.

In collaboration with Amnesty International and CC-FD-Terre Solidaire, Sherpa is also monitoring students from the Paris Institute of Political Studies' law clinic, whose re-



search on the legislative proposal on parent companies' duty of vigilance over their subsidiaries and subcontractors started in 2013, and should be completed in 2014.

Sherpa is in contact with several other law clinics, and is planning to start new partnerships with some of them in 2014..

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1-<http://www.assemblee-nationale.fr/14/pdf/propositions/pion1524.pdf>

2 «The platform initially had about forty members, but its membership changes over time, according to the varying interests of its members in participating in its main activity, themed working groups. The board comprises 13 members; it ensures the steering of the platform towards completing its objectives, and its gradual adaptation to their requirements. (<http://www.strategie.gouv.fr/blog/la-plateforme-rse/>)

3 [http://oecdwatch.org/publications-fr/Publication\\_4014-fr/](http://oecdwatch.org/publications-fr/Publication_4014-fr/)



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# Caravan



As of today close to a quarter of the global population lives below the poverty threshold. Those people can be found mainly in rural areas where there is only a limited access to education.

Therefore, victims are facing many obstacles to access to justice and to seek compensation from international companies for their human rights violations and environmental degradations. It appears to them to be almost impossible to bring those companies to Court.

That is why Sherpa has created the Legal Caravans. Training local stakeholders on Corporate Social Responsibility to restore the balance of power and improve capacity building has become one of Sherpa's major focus.

A Legal Caravan is a two weeks long workshop. Once the training is completed the local population should be better equipped defend their rights.



## Workshops

Participants are selected based on a questionnaire that allows us to assess their interest in CSR.

Workshop 1 consists in a first day where the topic “Businesses and Human Rights” is first approached. About 40 people, mainly from civil society and labor unions, are taught how to work on CSR in order to involve as many parties as possible. That day is also meant to inform and generate lawyers and journalists’ interest in these issues.

Only 20 people, among the 40 participants, are selected to

join in the workshop 2. During two days they will attend a capacity building seminar on CSR theoretical knowledge and tools. The goal of this workshop is for the participants to get acquainted with new means to defend their rights.

Finally, the workshop 3 is a practical training session where only a few people remaining from workshop 2 attend. Those participants are usually representative of directly affected populations or local organisations’ members working on relevant cases.



## Kinshasa Democratic Republic of the Congo 27 May - 7 June, 2013

### A workshop on the Perenco Rep case and the impact of mining activities

During the first parts of the workshop, the energy of the group lead to an advocacy proposal send to the Minister of Labour.

We chose to present the Perenco Rep case (involving a subsidiary firm of the French company Perenco) during the 3rd workshop because its activities have highly affected the mining industry in the Bas-Congo province.

Prior to organizing this caravan, Sherpa was informed of the abuses committed by this

company against the local population (violations of labour rights and real property rights), as well as the impact on the environment (pollution due to flaring and crude oil spill).



Street of Kinshasa – © Sherpa

After our stay in the Republic of Congo, CCFD Terre-Solitaire published a report in November 2013 regarding this company’s activities. This document confirmed the participants’ accounts on the situation.





## Dakar Senegal 16-27 September, 2013

### A fact-finding mission to learn about guidelines on evidence collection

During the first two workshops, the participants demonstrated a real interest in the issues and challenges related to CSR. They were also able to present their advocacy guidelines during a press conference.

The 3rd workshop focused on the ICS (Industries Chimiques du Sénégal) case. The ICS main activity is based on phosphate mining and processing. This case was given a complete overview given the extent of the abuses found to exist :

“land grabbing”, air pollution, soils and groundwater pollution. A fact-finding expedition showed the participants how to collect evidences regarding some of the violations committed by ICS.

During this training, participants unanimously decided to create a national platform on CSR. A first meeting to set up this project will be organised

at the beginning of 2014.



Phosphate traces on the floor – © Sherpa



## Cotonou Benin 25 November - 6 December, 2013

### A case study : “land grabbing” without compensation

During the first two workshops people were particularly interested in understanding the reasons why companies want to increase their activities worldwide and how they do it.

As in other caravans, the feedbacks given following the press conference showed how necessary those workshops are in Benin.

During the last workshop we studied the case of the Benin Cements Society (Société des Ciments du Benin) which is located in the center of Coto-

nou and on the lagoon's edge. Many issues regarding its activities such as land appropriation without compensation or air pollution have been mentioned during this workshop.



Homes near of SCB – © Sherpa

The workshops were a good opportunity to strengthen the relationship between NGOs and lawyers working pro bono. They also created a time chart summarizing all the actions to be taken.



### **Judicial settlements**

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# Illicit Financial Flows



In our highly globalized world, the circulation of money is getting faster and faster and spreading worldwide. The amount of financial transactions, the geographic scope of these exchanges and the amounts transferred keep growing.

Illicit Financial flows can be defined as the total amount of embezzled money that should benefit to populations but never reach them. These missing assets can be misappropriated at state level, by corrupted civil servants, or by private entities through tax evasion. Money circulation channels being the same, complex and opaque financial mechanisms are used thanks to the banking secrecy or tax havens.

Although some rules regulates financial flows, they seem to be increasingly ineffective to channel those intangible, rapid and often untraceable exchanges and the 2008 financial crisis has showed the drift of out of control stock-market speculations. According to Article 51 of the 2003 United Nations Convention against Corruption (the Mérida Convention), the return of illicit assets is a fundamental principal. However this convention was created by states and for states, strengthening their ability to recover those stolen assets. Therefore, what to do when the state leaders are the one pillaging resources of their country ?

As from 2007 and the “ill-gotten gains” case, we have created our “Illicit Financial Flows” programme consisting in legal actions and advocacy activities.



## Ill Gotten Gains Congo Brazzaville

Denis Sassou Nguesso became President of the Republic of the Congo after a coup in 1997, meanwhile the country was ravaged by a civil war that killed or displaced thousands of people. Contested elections, outrageous personal expenses, foreign accounts ... for years allegations of corruption have been raised against the president and his family. Today the country ranks 142nd out of 187 according to the Human Development Index and half of its population lives below the poverty line, even though the Republic of the Congo exports large quantity of wood and hydrocarbons.

In 2007 Sherpa lodged a complaint against five foreign state leaders; however the court dismissed the case a few month later. In 2008 Transparency International France and a Gabonese citizen, with the support from Sherpa, lodged a complaint against Denis Sassou Nguesso, Omar Bongo (President of Gabon), Teodor Obiang Nguema Mbasogo (President of Equatorial Guinea) and their relatives.

The case was presented to a French investigating judge and reports several offences including corruption, money laundering and misappropriation of public funds. Despite several attempts to close the case from the Court that consid-

ered that a complaint with a claim for criminal indemnification was not admissible, the French Supreme Court (Cour de Cassation) finally approved the actions against Denis Sassou Nguesso, Omar Bongo, Teodor Obiang Nguema Mbasogo and their relatives in November 2010.

### **Franck export: a company that allows money transfers to France.**

In April 2012, the investigating judge requested a debt-claim seizure under a criminal process against Mrs Daniele Mboussou Ognanosso (Denis Sassou Nguesso's nephew's wife) who then appealed the decision.

The petition for seizure was

approved by Paris public prosecutor's office the following month; unfortunately it was never carried out due to Mrs Daniele Mboussou Ognanosso's priority preliminary ruling on constitutionality (question prioritaire de constitutionnalité). Her request was passed down to the Court de Cassation in November 2012.

In 2013, a second police officer joined the ongoing investigation and eventually the new evidence brought in led to the search of the president's daughter's appartement in Neuilly.

The investigating judges also pointed out the role played by the company Franck Export. For the first time they were able to explain how Denis Sassou Nguesso and his relatives (with the help of this company) had been able to accumulate so many assets in France.

Invited by François Hollande for an official visit in France on 8 April 2013, Denis Sassou Nguesso complained that the French courts were trying to interfere in its country's internal matters.



© afp.com Bertrand Langlois



## Ill Gotten Gains Gabon

Omar Bongo Ondimba was the President of Gabon from 1967 until his death in 2009. There were suspicions of corruption during his entire presidency; moreover he and his wife, Edith Bongo, were involved in several cases of illicit financial flows between 1997 and 2009. Although the country has natural resources such as wood and petroleum, Gabon only ranked 106th out of 189 according to the 2013 Human Development Index. Following the death of Omar Bongo, his son, Ali Bongo, was elected President of Gabon in 2009. He is also suspected of bribery, including in the United States of America.

In 2007 Sherpa lodged a complaint against five foreign state leaders; however the court dismissed the case a few months later. In 2008 Transparency International France and a Gabonese citizen, with the support from Sherpa, lodged a complaint against Denis Sassou Nguesso, Omar Bongo (President of Gabon), Teodor Obiang Nguema Mbasogo (President of Equatorial Guinea) and their relatives.

The complaint alleges the following infringements: concealment of stolen assets, misappropriation of company assets, breach of trust, bribery of public officials and private citizens and money laundering by organized crime from misappropriation of public funds, company assets and breach of trust.

After several attempts to close the case from the Court that considered that a complaint with a claim for criminal indemnification was not admissible, the lawsuit filed by Transparency International

France was definitely rejected in October 2009. The decision was immediately appealed before the French Supreme Court.

The complaint was finally found admissible by the Supreme Court in November 2010.



### **The discovery of new assets in Nice**

In January 2012 the public prosecutor has finally modified its initial indictment, extending the investigating judge's mandate to money laundering and handling. Few months later Transparency International France's lawyer, Mr Bourdon, brought new information to

the judge, including evidence that Pascaline Bongo (Omar Bongo's daughter) had purchased a new apartment.

In 2013, a second police officer joined the ongoing investigation and eventually they were able to gather new materials concerning the 39 French properties owned by the Bongo Family (which are worth around 21 millions euro).

Moreover in February 2013 investigators discovered two new villas that were not included in the complaint lodged in 2008.



## Ill Gotten Gains Equatorial Guinea

Teodoro Obiang Nguema has been president of Equatorial Guinea since 1979 and set up an authoritarian regime that allows his family to gain money from oil production and natural resources extraction. Obiang and his inner circle have allegedly raised between 500 and 700 millions of dollars through corruption, while Equatorial Guinea only ranks 136th out of 189 according to the HDI. Several member of the Obiang Family, including the president's oldest son (Teodorin Obiang Nguema), are investing in real estate and expensive car outside of the country, especially in France.

In 2007 Sherpa lodged a complaint against five foreign heads of state; however the case was dropped few months later without any actions being taken. In 2008 Transparency International France and a Gabonese citizen, with the support from Sherpa, have lodged a complaint and a claim for criminal indemnification against Denis Sassou Nguesso, Omar Bongo (President of Gabon), Teodor Obiang Nguema Mbasogo (President of Equatorial Guinea) and their relatives.

This complaint concerns the following infringements: misappropriation of public funds, corruption and money laundering. After several attempts to close the case from the Court that considered that a complaint with a claim for criminal indemnification was not admissible, the French Supreme Court finally approved the actions against Denis Sassou Nguesso, Omar Bongo, Teodor Obiang Nguema Mbasogo and their relatives in November 2010.

In 2011 a search was organized in two different properties (avenue Foch and avenue Marceau) and resulted in the seizure of several luxury cars worth more than 40 millions euros.

### **The international arrest warrant is deemed to be valid**

In 2012 Teodorin Nguema Obiang is nominated Vice President of Equatorial Guinea, probably hoping to be granted judicial immunity since he was suspected of misappropriation of public funds, money laundering, misuses of company assets and breach of trust. In July 2012 an international arrest warrant was issued against him, after he failed to appear in court twice.

These judicial setbacks do not prevent him from regularly filing defamation complaints against NGOs and journalists. He is also very familiar with the "Strategic Lawsuit Against Public Participation" method used to intimidate the people trying to prosecute him. In June 2013 the Paris Court of Appeal decided that the petition for the withdrawal of the international arrest warrant was rejected.



© AFP Jérôme Leroy





## Ill Gotten Gains Syria

Hafez Al-Assad became President of Syria after a coup in 1970 and remained in power until his death in 2000. His son, Bashar Al-Assad, succeeded him and turned the country into an authoritarian regime based on systemic corruption and nepotism. Syria ranks 116th out of 189 according to the 2013 HDI and while most of the Syrian population is poor, the system has been allowing the presidents and their inner circles (including Hafez Al-Assad's brother, Rifaat Al-Assad) to grow richer. Hafez Al-Assad went into exile in France in 1984 after he tried to overthrow his brother's government and to date he is still not allowed to go back to Syria.

Former chief of the Republican Guard, which was involved in the 1982 slaughter in Hama, Rifaat Al-Assad has allegedly accumulated at least 160 millions euro that can not entirely be explained by the incomes from his political and professional activities. For instance he has many properties spread out through Paris and Bessancourt (Val d'Oise).

It is very likely that half, if not all, of these assets came from illegal activities (such as corruption, misappropriation of public funds, misuses of company assets, etc.) that took place in Syria before his exile in 1984.

### **Preliminary Investigation**

In July 2011, Sherpa and Transparency International France filed a lawsuit against Rifaat Al-Assad, and twenty other people, with the French public prosecutor specialized in investigating organised financial crimes. Unfortunately this first case was closed without further action a few months later.

After new evidence was brought to the attention of Sherpa and Transparency International France, a second complaint was lodged with the Paris public prosecutor's office on September 13th, 2013. Rifaat Al-Assad was charged with misappropriation of public funds, corruption and money laundering committed

by an organised group. The Paris public prosecutor's office opened an investigation two weeks later.

According to Article 51 of the 2003 United Nations Convention against Corruption (the Mérida Convention), the return of illicit assets is a fundamental principle. France signed it in 2005 and the French authorities are now required to implement anti-corruption measures and ensured their effectiveness.





BNP Monaco

Also known as the African laundry (« lessiveuse africaine ») case, the case deals with tourists who paid their invoices in hotels and shops with blank cheques (without the beneficiary's name). Then, these cheques are repurchased in cash by residents of concerned countries and deposited to some BNP Paribas Wealth Management Monaco accounts through a third party. This system allows transferring local currencies out of the country without local authorities' knowledge. It serves as a way to bypass exchange control and to launder funds from about 20 African countries

It seems that this system of tax evasion and money laundering, known by BNP Paribas since 2008, has been set up long before that date. This big trafficking organisation between, on the one hand some African countries such as Madagascar, Senegal, Gabon, Burkina Faso and, on the other hand, Monaco allowed to transfer tens of thousands blank cheques issued by French people. This tax fraud represents several million to hundreds of millions euro. It harms developing countries from which funds come from.

#### **A confidential report calls into question BNP Paribas's liability**

Alerted by a BNP Paribas's former employee, Sherpa got a mission report from BNP Paribas's general inspection dated October 25th, 2011. This report endorsed the whistle blower's information. This situation has prejudiced the central banks of African countries involved. It has also deprived States of tax revenues while they were already in a vulnerable economic situation. Therefore, Sherpa has

decided to warn the Monaco public prosecutor's office on April 10th, 2013.

Among the letters that were sent to him, the one dated June 21st 2013 requested, after informing him, to refer the case to an investigating judge. Sherpa has then asked the Monaco public prosecutor's office to take position on this issue and, thus demonstrate independence towards the banks.

#### **1000 billions euro in lost income**

Despite our many representations to the Monaco public prosecutor's office, there is no progress to point out the first French bank's liability. Therefore, on November 12th 2013, Sherpa has decided to refer the case to the Paris Court of first instance (Tri-

bunal de Grande Instance de Paris) financial department. The claim includes tax fraud by an organized group, handling profits of tax evasion and aggravated money-laundering.

Recent events have highlighted the impacts of tax havens upon public finances of wealthy countries. The European Union considers that there are around 1000 billions euro of lost income. Furthermore, developing countries are the first ones to be prejudiced by tax havens and illicit financial flows. Since 2007, Sherpa is involved in fighting illicit financial flows, and wishes to make all authors and accomplices of these financial flows acknowledge their responsibilities.



Monaco from the sky © Presse Monaco





# Fundraising of the Sarkozy's campaign **Libya**

Banned from international community for two decades, Colonel Mouammar Gadaffi, who came to power in Libya through a military coup in 1969, backed in favor with international community in 2000's. Natural resources of Libya, in particular oil and gas, explain a change of attitude of some countries towards him. In that regard, between 2005 and 2010, France has concluded many arms contracts with Libya. However, compliance with fundamental rights and freedom of expression are not more guaranteed during that time of qualified opening of Libyan population than they were before.

Despite a society and political opponents under strict supervision, the Libyan Regime encountered its first jolts and public protests in February 2011. Soon after, repression turned into armed uprising from the East of the country to ask for a greater social justice. In August 2011, Tripoli fell to the rebels and Mouammar Gadaffi is captured and killed in October 2011.

The international community's part in a diplomatic rapprochement with Libya allowed to promote Colonel Gadaffi before his death. Many relationships established by some countries with Libya generated polemics. The most important one relates to the involvement of the Libyan Regime in the financing of the Sarkozy's election campaign in 2007. The funding is estimated to be up to 50 millions euro.

A Mediapart' article has ruffled any feathers in 2012 by publishing a document dated 2006. This document relates to a meeting that endorsed financial support of Nicolas Sarkozy electoral campaign for 2005.



© AFP Ahmad Al-Rubaye

## **Corruption and influence peddling**

As many testimonies have confirmed transfer of funds to finance Sarkozy's electoral campaign, the Paris public prosecutor's office has decided to open a judicial investigation on April 19th 2013 for corruption, influence peddling and misuse of social assets.

On June 26th 2013, Sherpa filed a civil suit before the judges Serge Tournaire and René Grouman . This suit took place in the framework of Sherpa's Illicit Financial Flows programme.

Indeed, the goal of our association is to use all existing tools to fight illicit flows and international corruption, which still damage the most vulnerable populations.



In 2006, the Russian Government has decided to build the first motorway (the M11 motorway) from Moscow to St. Petersburg. The procedure for the award of the public contract to build this motorway (15-58 km) began in accordance with Russian legislation on public procurements. This operation was carried out through a public-private partnership with the Motorway Federal Agency, Rosavtodor. The distributor has received, in addition to the amount paid by the grantor, fees from tolls. This 43 km-long road crosses the Khimki forest, known for its high biodiversity in the north suburb of Moscow.

It appears that this motorway lacks of economic interest: First, the route chosen to build the motorway is exactly the same than the already existing motorway. Secondly, the operation cost 1,63 billions euro. The Khimki forest is the last island of biodiversity remaining in this area and was under protection until then. Located at the exit out of Moscow, this forest is the last major green place that allows the Muscovites to breath in a densely populated city.

lowed to reduce the cost of the operation and to preserve the Khimki forest.

### **Presumptions of corruption and influence peddling**

In return, Vinci Group has created an environmental coordinating committee in order to mitigate environmental impacts. However, there is no evidence of any action or even the existence of such a committee so far. Many environmental activists and journalists have suffered from intimidation and arbitrary arrests.

tions have convinced Sherpa, “Russie-Libertés”, CEE bankwatch network, Mobo princip and Russian civil society’s members (including Evgenia Tchirikova, an environmental activist) that Vinci Group “Concession Russia”, legal entities, and individuals may have committed financial criminal offences. Those include corruption of foreign public officials and influence peddling.

In June 2013, a complaint is lodged with the Nanterre public prosecutor’s office. The complaint denounced conditions under which the operation was entrusted to North West Concession Company society in 2009. This society is held 100% by the French society, Vinci “Concession Russia”. Then, the complaint has been referred to the Paris public prosecutor’s office. A few months later, on September 27th 2013 the Paris public prosecutor’s office opened a preliminary investigation.



Pelleteuse Caterpillar in Khimki's Forest

Despite this protection, the status of 144, 88 hectares part of the forestry field, has been modified by an order dated 5 November 2009 authorizing the built and that land. Independent studies suggested eleven alternatives routes for this motorway. All these routes al-

Journalist Mikhail Beketov’s death in April 2013, due to a violent police assault, after the publication of articles denouncing corruption on this operation, has shocked all actors from the civil society involved.

European NGOs’ investiga-



# Mopani Zambia

Mopani Copper Mines is the most important society in Zambia specialised in mine extraction of cobalt and copper. In 2009, the Zambian Government has conducted an audit of the mine. Results underlined some anomalies. First, there was an unexplained 380 millions of dollars increase of production costs in 2007. Secondly, there was a surprisingly decrease of official production volumes compared with other mining activities in the same area. This allowed Mopani society to display low revenues and thus to significantly reduce level of taxation.

In April 2011, Sherpa together with four partner associations, the Berne Declaration in Switzerland, Mining watch Canada, “Entraide missionnaire” in Canada and the Centre for trade policy and development in Zambia lodged a complaint against Glencore International PLC and First Quantum Mineral companies. Complainants argued that both companies infringed chapter II and XI of the OECD guidelines established for multinational firms. These guidelines require companies to contribute to national economic development and to pay their

taxes on a regular basis.

### **A complaint for fiscal evasion**

Swiss PCN, in charge of the case, received the complaint in its initial assessment on 5 October 2011. Meanwhile, the Zambian Government required Glencore international PLC to refund unpaid amounts. Since then, Glencore International PLC is still reluctant to take part in the proceeding before Swiss PCN and to communicate with NGOs.

On May 2012, pursuant to a letter from Swiss PCN, Glen-

core International PLC has accepted to join negotiations, after having launched a communication campaign about his involvement in the proceeding.

On 11 July 2012, a meeting has been finally held in Bern, between Glencore International PLC and NGOs with a mediator. A confidential agreement was adopted between the parties. On 28 November 2012, Swiss PCN published a final press release to support the ongoing discussion between the parties. During summer 2013, Christian Aid has sent a complaint to BEI for it to publish the report regarding Glencore’s tax evasion and falsification of results.



© MNM

**For several years now, our association has started thematic brainstorming that led to actions with institutional French, European and International actors. These strategic guidelines that led to actions and research, focus on two main areas.**

### **Recovery of illicit assets**

According to Article 51 of the 2003 United Nations Convention against Corruption (the Mérida Convention), the return of illicit assets is a fundamental principal. However this convention was created by states and for states, strengthening their ability to recover those stolen assets. Therefore, what to do when the state leaders are the one pillaging resources of their country ?

In 2013, we drafted many legislative proposals to improve the fight against corruption, both at the national and international levels with UNCAC Coalition. Besides, we have contributed to promote ratification, implementation and enforcement of the UN Convention against Corruption (UNCAC).

### **Fighting tax havens**

Each year, capital flights generated by tax evasion from developing countries are 10 times the amount of development assistance. In 2010, more than 60% out of 850 billions euro "flew" to tax havens and wealth countries due to illicit activities of multinational firms. Manipulations of transfer price, costs and volumes, deprive many states of precious

tax revenues.

These two main areas (recovery of illicit assets and fighting tax havens) are complementary. Together or separate, their aim is to establish a legally binding framework, appropriate to globalization of trade and to international legal assistance.

Sherpa underscores and promotes these thematic areas within national and international platforms to encourage endorsement by other organizations and, eventually to have more resonance. We managed to register these thematic in the political agendas of some platforms, such as the tax evasion and legal havens, one at a French level or the UNCAC Coalition at an international level.

2013 was a fruitful year in terms of advocacy on tax evasion and transparency in public life legislations. For several years now, Sherpa and many other associations fighting against corruption are willing to be allowed to file a complaint. Sherpa has been received twice by parliamentarians to advocate for reform. This possibility was then legally endorsed confirming the French Supreme Court case law, dated November 9th 2010 about legal interest of

associations fighting against corruption to file a complaint. Sherpa considers this as a major success. The new law has also increased penalties for tax evasion and has created the crime of fraud committed by an organized group. Moreover, it strengthens protection for whistleblowers (however, the protection is still weak). Last but not least, the law requires the executive to provide annual reports to the Parliament on prevention of tax evasion and quality of international judicial cooperation.

## I - Platforms

Tax and legal havens platform  
(France)



In the framework of a law on separation and regulation of banking activities adopted by the Parliament on 18 July 2013, Sherpa has contributed to the adoption of a reporting obligation for banks, country by country. It was a success since France has adopted a pioneer legislation on this matter, followed by the European Union.

Sherpa also appeared before deputies and senators on transparency and tax evasion, in particular before the Senatorial commission of inquiry, the information mission on optimization, the information mission on tax havens, and the Rapporteur on the tax evasion bill.

**Publish what you pay (International)**



In 2013, Sherpa's activities within that platform have been reduced after a transfer of structures between Secours Catholique and Oxfam France to organize it.

**UNCAC Coalition (International)**



In 2013, we have drafted many legislative proposals to improve the fight against corruption, at a French level as well as at an international one with the UNCAC Coalition. Besides, we have contributed to promote ratification, implementation and enforcement of the UN Convention against corruption.

## II - Law clinics

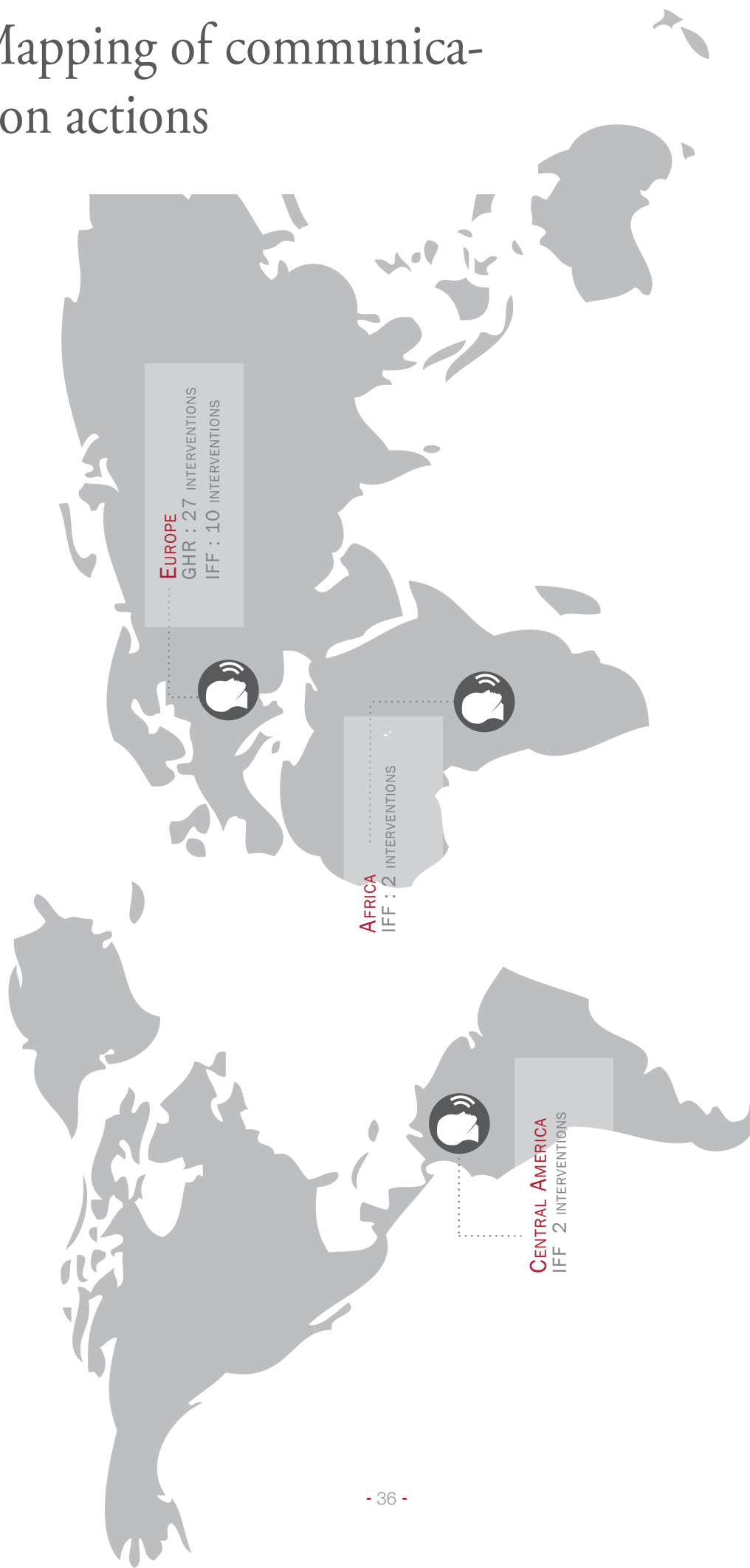
Sherpa maintains its relationships with academic institutions such as the French Uni-



versity of Nanterre through its programme Euclid, a law clinic born in 2011. In 2012, students involved in this programme worked on a research on corruption in Mauritania. In March 2013, Sherpa drew the attention of international donors on corruption in Mauritania and warned them on the issue of misuse of allocated funds.



# Mapping of communication actions





# Communication

As the main thrust of our work, communication ensures Sherpa's activities to be better known and promoted to the general public. Cooperating in both content and form is a priority for our employees and volunteers who work to develop our tools. Therefore, the launch of our website in November 2013 and the creation of a new graphical charter in order to have consistent formats were a 2013 priority. Results are very satisfactory: visits on our website, followers and fans on social networks show that a growing number of people follow Sherpa's activities. Our aim is to make our contents more accessible and didactic to a wide and young public. Deconstructing legal vocabulary making it more understandable while keeping Sherpa's identity can mobilize a broader public. This remains a major concern for the association so that issues on which Sherpa has been working are not reserved to legal experts and technicians. This work is continuously changing and involves more and more volunteers.

# Declarations.



20 February 2013, *Richesses minières, gouvernance et conflits*, lecture in the framework of the anti-colonialism week, Survie association, Paris, France

26 February 2013 *Géopolitique des ressources et conflits au Sahel*, seminar, Fondation Gabriel Péri, Pantin, France

28 February 2013, *Parties prenantes : gérer les risques pour ne pas gérer la crise*, Kea & Partners consultant, Paris, France

21 March 2013 *Responsabilité pénale des entreprises en zones de conflit*, conference, Conseil national des barreaux & American bar association, Paris, France

22 March 2013 *Les paradis fiscaux dans la crise économique*, lecture – discussion CCFD-Terre Solidaire, Trelrières, France

26 March 2013 *Are the global players failing to meet the seven major challenges of sustainability?* Presentation of the study Oekom corporate responsibility Review 2013, Oekom research, Paris, France

28 March 2013 *Du préjudice écologique au crime contre l'environnement : vers un droit de l'excellence environnementale*, conference, Green Group at the French National Assembly (Assemblée Natio-

nale), Paris, France

13 April 2013 *Littérature, peut-on tout dire ?* lecture, Nouvel observateur, Nantes, France

27 April 2013 *Pourquoi s'engager dans la défense et le respect des droits humains aujourd'hui ?* lecture in the framework of the Human Rights Festival in Bourgogne, Ligue de l'enseignement et Amnesty Nevers, Nevers, France

23 May 2013 *Quel développement et quel(s) projet(s) économique(s) pour un monde plus humain et plus juste ?* lecture in the framework of the 5th World Forum on Human rights hosted by the city of Nantes, SPIDH (Secrétariat international permanent droits de l'homme et gouvernements locaux), Nantes, France

23 May 2013 *Interministerial meeting organized by Nicole Bricq following drama at Rana Plaza*, Ministry of Foreign Trade, Paris, France

5 June 2013 *Comment rendre la responsabilité sociale des organisations plus opérationnelle ?* lecture in the framework of the 8th edition of the Global conference, Ateliers de la Terre, Paris, France

19 June 2013 *La mondialisation dérégulée, conséquences sociales ici et là-bas*, lecture, Cercle pour la Responsabilité Sociétaire des Multinationales, Paris, France.

19 June 2013 *Enseignement et engagement des juristes*, discussion, Clinique du droit EU-

CLID, Nanterre, France

21 June 2013 *Environnement et santé, la nécessité d'une relance culturelle et politique pour une protection effective*, lecture, Supranational environmental justice foundation, Venice, Italy

July 10, 2013 *Après le drame du Bangladesh, le concept de RSE au défi*, lunch-Parliamentary discussion, Cabinet Bourry Tallon & associés, Paris, France

17 July 2013 *Devoir de vigilance des entreprises multinationales*, Présentation de propositions législatives, Parliamentary breakfast, Cercle pour la Responsabilité Sociétaire des Multinationales, Paris, France

1 October 2013 *Création de richesse, justice sociale et équilibre des sociétés*, lecture in the framework of the Forum des nouveaux mondes, France business school, Clermont-Ferrand, France

7 October 2013 *Présentation du travail effectué sur la loi relative au devoir de diligence des sociétés mères et des entreprises donneuses d'ordre à un réseau d'ONGS partenaires du CCFD-Terre Solidaire*, lecture-discussion, CCFD-Terre solidaire, Paris, France

14 October 2013 *Big Boys Gone Bananas, film and debate*, Paris International Film Festival on Human Rights, Paris, France

10 November 2013 *Pourquoi les droits humains sont-ils liés aux enjeux écologiques ?* lecture in the framework of the Environment and Human



Rights Day, salon bio Marjolaine, Paris, France

18 November 2013 *Business and Human Rights : Public Policies for accountability*, lecture, Sciences Po, Paris, France

19 November 2013 *Présentation d'une étude sur la Responsabilité Société mère – filiale*, lecture, Sciences Po, Paris, France

20 November 2013 *Sensibilisation et mobilisation des sénateurs en vue de l'examen de la loi responsabilité mère – filiale*, seminar and press conference, Sénat, Paris, France

6 December 2013 « *Attentes du monde professionnel et associatif autour de l'activité clinique* », lecture cliniques juridiques et société, Centre de recherche sur les droits fondamentaux et les évolutions du droit de l'université de Caen, Caen, France

10 December 2013 *Le cas Total en Birmanie*, lecture in the framework of a Master's degree in business policies and social regulations, Paris Dauphine university, Paris, France

18 December 2013 *Présentation de Sherpa et de ses axes de travail*, lunch-discussion in the framework of his programme “des mercredis singulier”, Paris, France

30 May 2013 *Fraude fiscale*, discussion, young ecologists from Ile-de-France, Paris, France

30-31 May 2013 *“Implementation Review Group”*, seminar, UNDOC, Vienna, Austria.



*des acteurs de la société civile dans le recouvrement des avoirs illicites*”, lecture in the framework of a seminar about ill-gotten wealth organized by the Tunisian

tria.

13 June 2013 *Rapport moral sur l'Argent dans le Monde 2013*, lecture-discussion organized in conjunction with publication of the book, Paris, France

14 June 2013 *“Paradis fiscaux : quel rôle pour la France ?”* conference, Platform Tax and legal havens, Paris, France

2 September 2013 « *Public ethics: a condition to fight corruption* », lecture in the framework of international seminar « *Lessons learned from fighting corruption* », Red por la Rendicion de Cuentas, Mexico city, Mexico

3-4 September 2013 *“Arab Forum on Asset Recovery” in the framework of the Stolen asset recovery initiative*, London, United Kingdom

2 October 2013 *“Conflict, Financial Secrecy and the Road to Stability”*, a panel discussion organized in the framework of the annual lecture of Task force on financial integrity and economic development, Dar Es Salaam, Tanzania.

24 October 2013 *“Comment récupérer les biens mal acquis ...”*, workshop, Africa division of International Business Group in Sciences Po, Paris, France

16 November 2013 « *Le rôle*

# Sherpa and social media

[www.asso-sherpa.org](http://www.asso-sherpa.org)

On November 2013, Sherpa has launched its new website. The previous one was difficult to access and was not intuitive enough to surf easily. It did not allow neither to understand Sherpa's mandate nor to identify its concrete activities. This has led to develop a clearer webspace.

## New tools:

- **Report Form:** it allows anyone to report to Sherpa violations of human rights. After being filled out, the answers' synthesis is automatically sent to our legal advisers who will study the case. This form allows to gather complete information and to be more reactive. Before this kind of form exists, most of the reports were addressed to the association by e-mail. From April to December 2013, Sherpa has received 81 reports. Among them, 21 were in the scope of GHR programme, 24 were in the scope of IFF programme and 36 did not fall within our mandate.

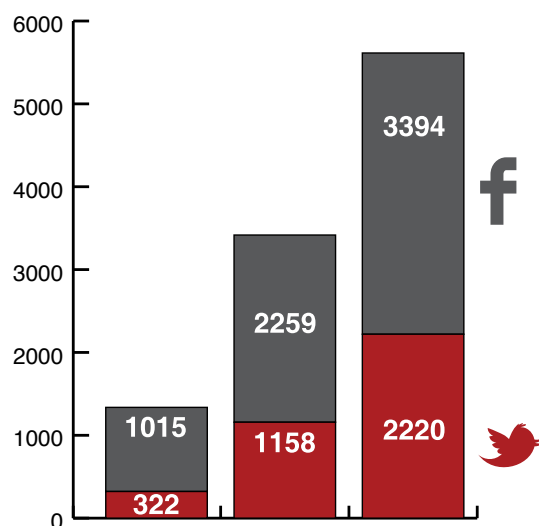
- **Volunteering Form:** it allows anyone wishing to support Sherpa's activities to offer assistance, on an ad hoc or a regular basis (onsite or remotely). This process allows gathering the request forms in order to improve the process and to meet everyone's needs.

In 2013, no less than 26 volunteers – apart from lawyers – contributed to Sherpa's activities in law, computing, accounting, administration, graphics...

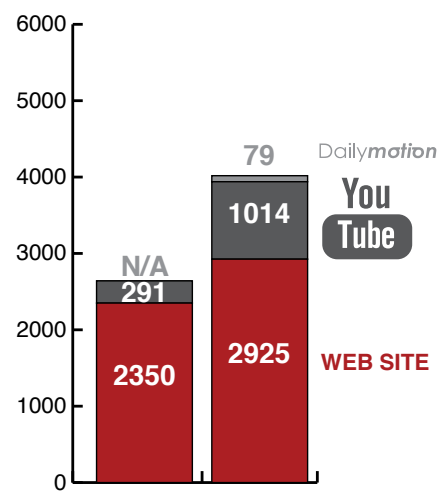
## Social networks

Between 2011 and 2013, number of followers on Twitter and Facebook has constantly increased. Visits on our website and on social networks such as YouTube have been fluctuant. However, on average over the last two years, the number of visits has raised. The launch of Daily Motion in April 2013 explains the lack of data and the small number of visits in 2012.

Evolution of the number of subscribers between end of 2011 and end of 2013.



Evolution of the average number of monthly visits in our website between 2012 and 2013.



# Contributions

1 February 2013

« **La république exemplaire, c'est maintenant** »,  
tribune de William Bourdon  
*L'Express*

15 May 2013

« **Trading haute fréquence et délits financiers** »,  
billet de William Bourdon  
*Blog de Paul Jorion*

23 April 2013

« **Procureur anticorruption : attention aux détails** »,  
tribune signée par Sherpa  
*Libération*

3 May 2013

« **'Mur des cons' : nous sommes fiers du Syndicat de la magistrature et de son histoire** »,  
tribune signée par William Bourdon  
*Rue 89*

7 May 2013

« **Pour une république exemplaire au regard du monde** »,  
tribune d'Eric Alt  
*Libération*

8 May 2013

« **Bangladesh : pour l'inscription d'une responsabilité juridique des multinationales dans le droit français** »,  
tribune signée par Sherpa  
*Slate.fr*

June 2013

« **Les entreprises face au risque de la corruption** »  
et « **Désarmer la finance offshore** »,  
articles  
*Rapport Moral sur l'Argent dans le Monde 2013*

4 June 2013

« **Au G8, la France doit s'engager contre les sociétés-écrans** »,  
lettre ouverte signée par William Bourdon  
*Blog Mediapart « Les invités de Mediapart »*

16 June 2013

« **Un petit projet de loi contre la grande délinquance économique et financière** »,  
billet d'Eric Alt,  
Blog d'Eric Alt  
*Mediapart*

15 July 2013

« **Fraude fiscale : faire sauter le 'verrou de Bercy'** »,  
tribune d'Eric Alt,  
William Bourdon, et Jean Merckaert entre autres  
*Libération*

25 July 2013

« **Protégeons mieux les lanceurs d'alerte** »,  
tribune de William Bourdon  
*Le Monde*

09 September 2013

« **Projet de loi sur la fraude et la corruption : derniers débats** »,  
billet d'Eric Alt,  
Blog d'Eric Alt  
*Mediapart*

19 September 2013

« **Affaire Snowden : pour une régulation mondiale Informatique et Libertés** »,  
tribune signée par William Bourdon  
*Libération*

September 2013

« **Monaco, la lessiveuse africaine** »,  
article de Jean Merckaert  
*Altermondes n° 35*

December 2013

« **De l'art et du devoir d'être vigilant** »,  
article de Yann Queinnec et Stéphane Brabant  
*Lamy Droit des Affaires n°88*

Decembre 2013

« **Paradis fiscaux : la souveraineté à l'épreuve de la mobilité des capitaux** »,  
article de Jean Merckaert et Mathilde Dupré  
*Revue 'En Question'*

# Press Reviews

In 2013, Sherpa has published 30 press releases and has registered 804 press mentions, all media combined, for only 330 in 2012. Among these 804 press mentions, 64% are related to FFI programme (Illicit Financial Flows), the rest is related to GHR programme (Globalization and Human Rights). Besides, 63 % of these press mentions have been published by French media. 98% of the total press mentions registered have been published through print or online media.

Press mentions



Press releases

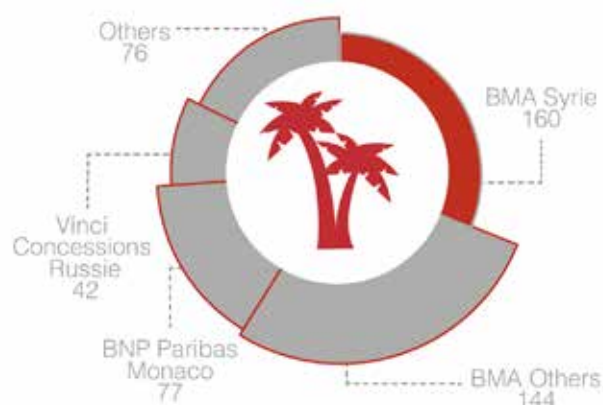


Press mentions in France and abroad

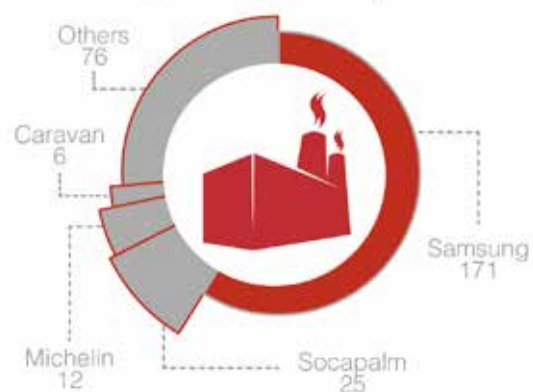


The Samsung case was the most covered by media in the scope of GHR programme (Globalization and Human Rights) with 171 press mentions registered. Regarding Illicit Financial Flows programme, the ill-gotten wealth case has been the most high-profile (Congo-Brazzaville, Gabon, Equatorial Guinea and Syria).

Press mentions per case – IFF programme



Press mentions per case – GHR programme





# Associative Life

Our team used to be composed of 4 employees until March 2013. Maud Perdriel-Vaissière, General Delegate, and Rachel Leenhardt, for External Relations, left in 2013. Sherpa thanks them for their commitment in the past years.

## Permanent staff



Sophia Lakhdar  
Director



Sandra Cossart,  
GHR programme



Marie-Laure Guislain  
GHR-CSR program, Litigation

## The Board of Directors.



William Bourdon  
Sherpa's founding-President



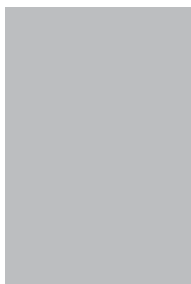
Jean-Pierre Getti  
Sherpa's vice-president



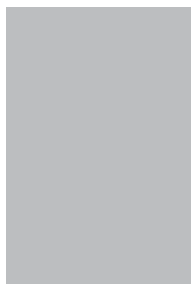
Jean Merckaert  
Sherpa's secretary



Sarah Wykes  
Sherpa's treasurer



Mireille Delmas-Marty



Chantal Cutajar



Eric Alt

## Interns and Volunteers.

Claire Bruggiamosca | Harald Condé Piquer | Clémence Gil | Pauline Kienlen | Thomas Ballot

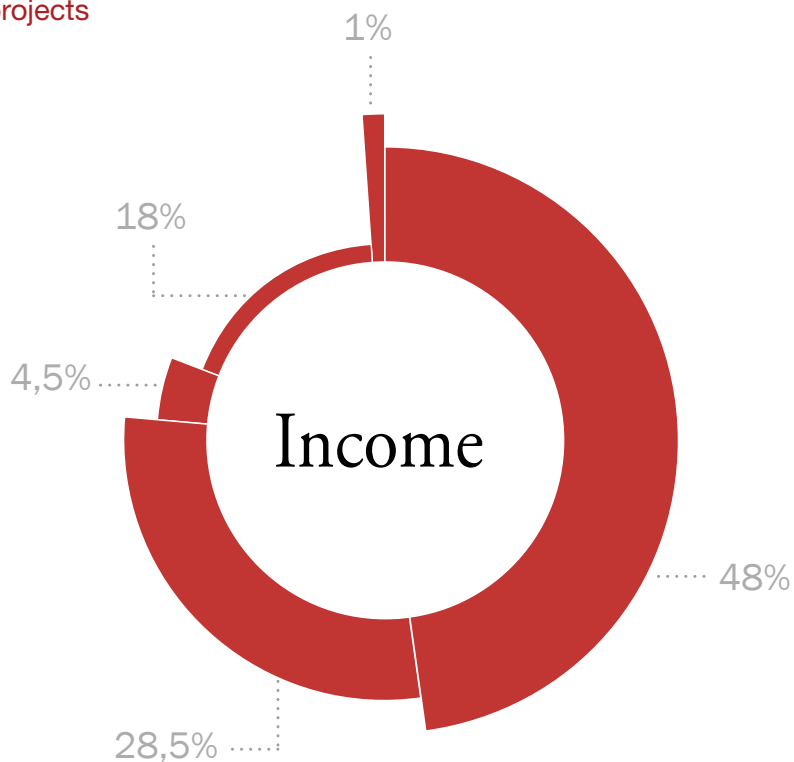
## Volunteers

Bastien Alidor | Jelena Aparac | Mahamadou B. Badini | Pierre-Yves Bossa | Apolline Cagnat  
Marie-Caroline Caillet | Erena Charuel | Marie Dosé | Guillaume Douxami | Pierre Farcot  
Léa Forestier | Paul Girard | Willy Julian | Stéphanie Kpenou | Johnny Lo | Fabienne Lornage  
Carine Mamou | Laura Monnier | Jérôme Moreira | Matthieu Morin | Eric Moutet | Léa Obadia  
Gaël Pierson | Yann Queinnec | Emma Saunders | Charlotte Silvera | Julia Thibord | Andrés Troya  
Jana Vychopnova | Gabrielle Vivier

# Income

**Income 2013 : 312 134€**

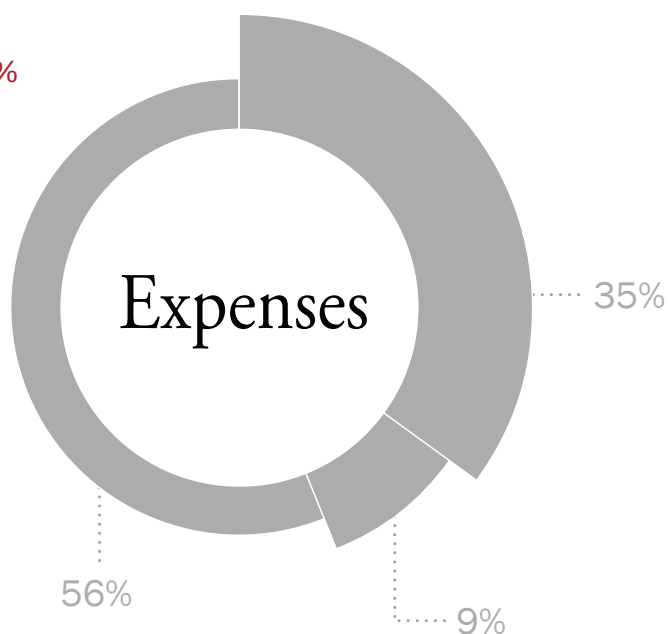
48% allocated to projects  
28.5% not allocated to projects  
4.5% Job assistance  
18% Free donations  
1% Other income



# Expenses

**Expenses 2013 : 301 906€**

Costs related to programmes: 35%  
Other costs: 9%  
Employee costs: 56%



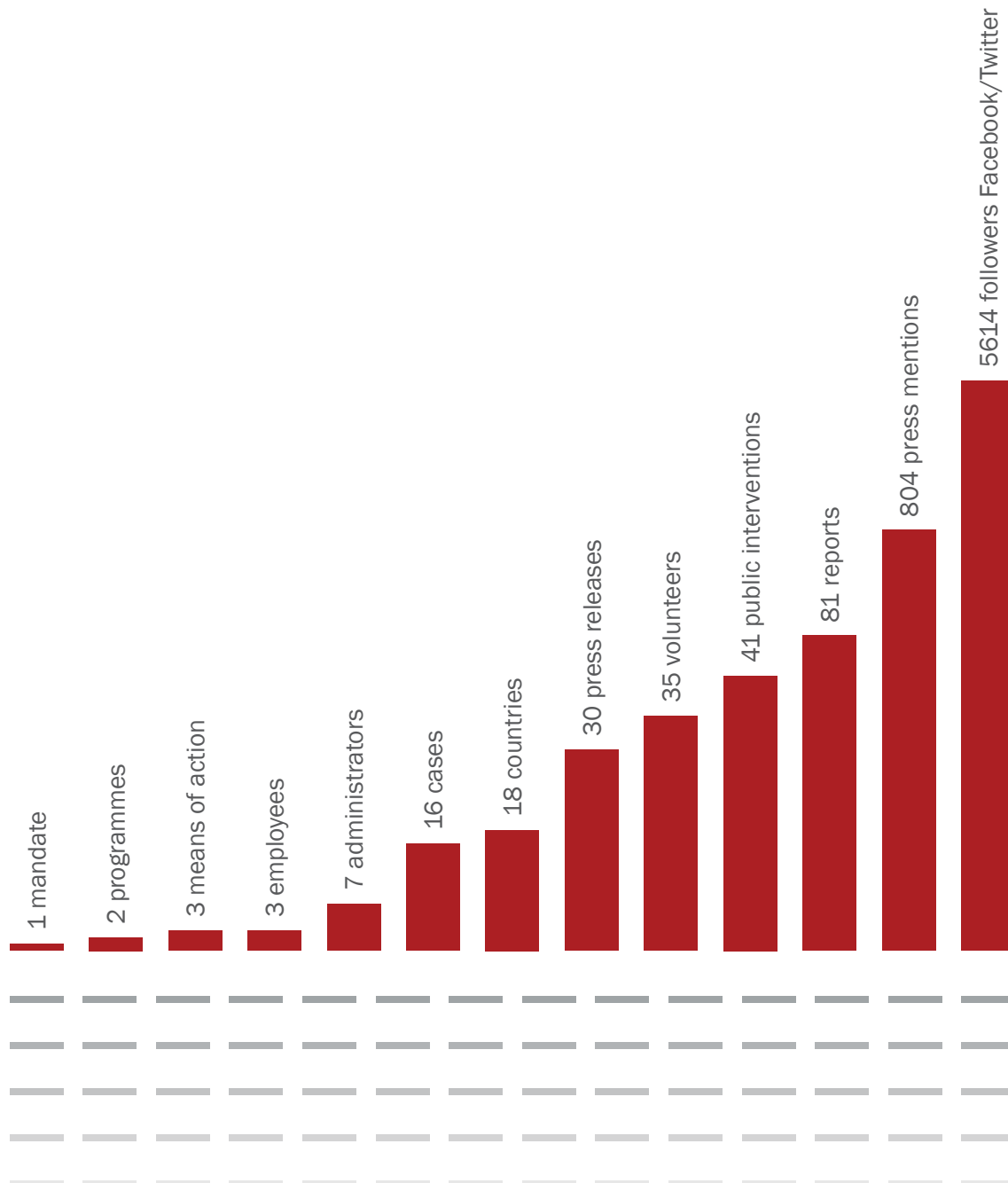


# Partners



SIGRID RAUSING TRUST





\*  
**Sherpa**

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or send your donations by cheque  
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+ 33 1 42 21 33 25