

**ACTIVITY REPORT**

**2015**



**\*Sherpa**

Protecting and defending  
the victims of economic crime

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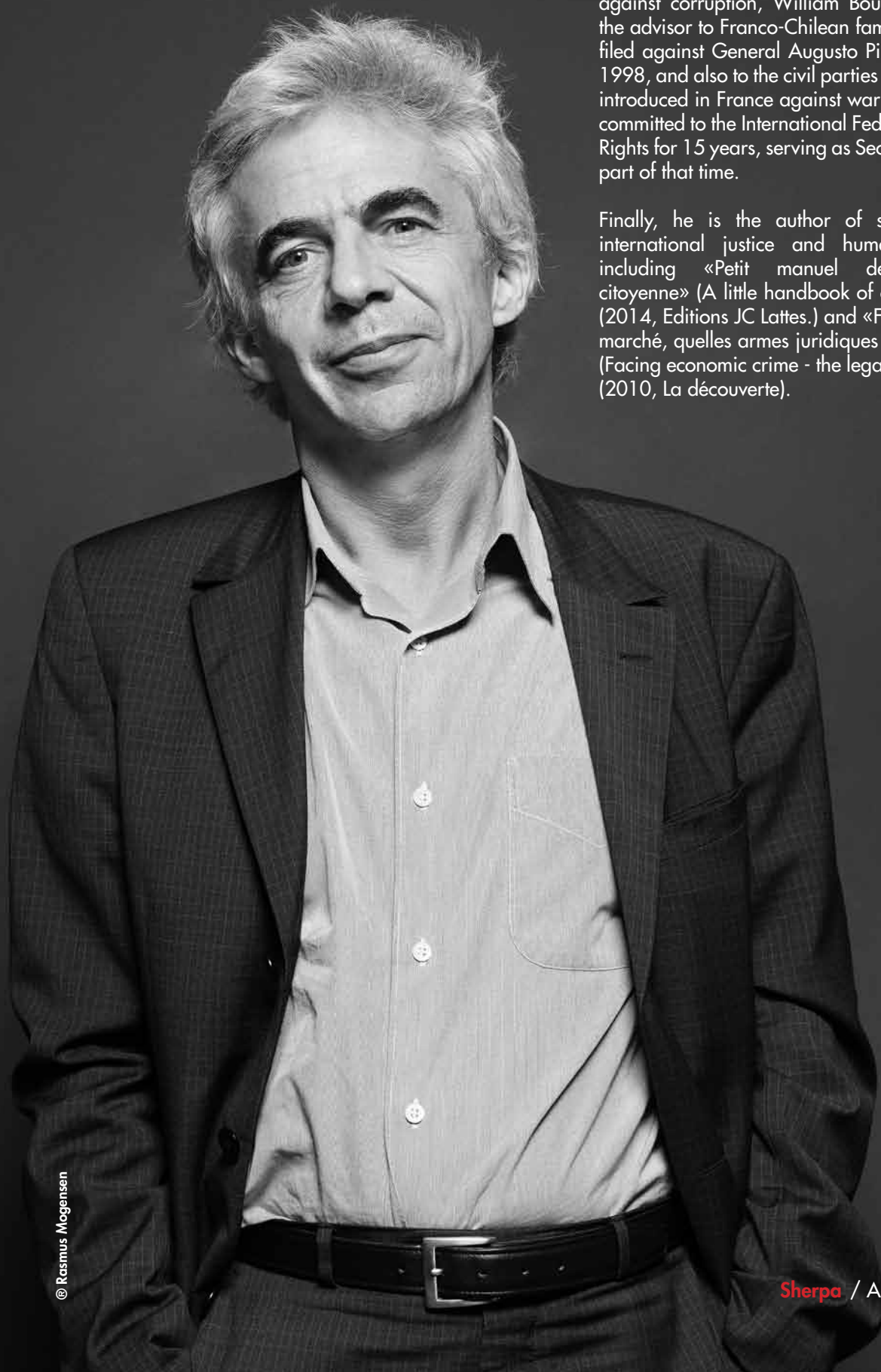


## HISTORY

**S**herpa was founded in 2001 by William Bourdon, lawyer at the Paris Bar and President of the association.

Long committed to human rights and the fight against corruption, William Bourdon was notably the advisor to Franco-Chilean families in the lawsuit filed against General Augusto Pinochet in October 1998, and also to the civil parties in the proceedings introduced in France against war criminals. He was committed to the International Federation for Human Rights for 15 years, serving as Secretary General for part of that time.

Finally, he is the author of several books on international justice and human rights issues, including «Petit manuel de désobéissance citoyenne» (A little handbook of civil disobedience) (2014, Editions JC Lattes.) and «Face aux crimes du marché, quelles armes juridiques pour les citoyens» (Facing economic crime - the legal arms for citizens) (2010, La découverte).





## EDITORIAL

In 2015, the news once again demonstrated the visionary foresight of the founder of Sherpa, and the salutary action of our association: not a month passed without new scandals, whether financial or related to the activity of multinationals, feeding the columns of newspapers.

Legislative activity dominated the agenda of our anti-corruption pole: the «business secrets» act, the protection of whistleblowers, the transposition of the European directive on transparency, public country-by-country reporting, etc. In parallel, the Ill-Gotten Gains case progressed significantly, and the emblematic litigations that Sherpa has been working on have enabled us to identify key factors for changes of practice in the area of corruption. Finally, Sherpa obtained approval from the High Authority for Transparency in Public Life (HATVP), as well as approval of standing, which makes it easier for us to intervene in case of the suspicion of corruption.

Similarly, our Human Rights pole made several new breakthroughs in 2015, including the recognition of the jurisdiction of French justice for a company under Gabonese law, on the grounds of the denial of justice in the COMILOG case, which gives access to justice and to the recovery of their benefits to hundreds of Congolese workers who were unduly laid off.

At the same time, the registration of our complaint against VINCI for «forced labor and reduction into servitude», followed by the opening of a preliminary inquiry, benefited from unprecedented media coverage which, in conjunction with the Rana Plaza case, decisively influenced the vote for the pioneering bill that Sherpa has backed since 2010 through its research and proposals for the «Liability of parent companies and subcontracting companies». Sherpa's work of awareness raising and legal training among elected representatives and civil society organizations has finally started to pay off, thanks to the collective advocacy that led to the adoption of this law by the parliament in March

2015. Thanks to our many partners in France and abroad, our influence has begun to have impact at the European level and on the draft Treaty of the UN. However, we must remain vigilant and continue our legal research and lobbying in 2016 in order for this law to be definitively adopted in France in an effective form.

We overcame a few extremely time-consuming challenges for the organization: 3 months of relocation and the rotation of our Administrative and Financial Officers slowed down certain activities considerably. Despite these constraints, we can congratulate ourselves on the professionalization of our Communications Department: the implementation of numerous communication tools has allowed us to reach and inform a much wider, non-francophone audience. Indeed, the general public, who until recently showed very little commitment towards our actions, multiplied their support for Sherpa in 2015.

We offer our sincere gratitude to all the volunteers who have made these fine achievements possible, and to all those who supported our action throughout 2015!

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**Laetitia Liebert**  
Director of Sherpa

# VISION & MISSION

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## MISSION

Sherpa has taken up the mission to combat new forms of impunity related to the globalization of economic and financial exchange.

**We protect and defend the victims of economic crime with the support of the law, a precious tool for our action in favor of development.**

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## PROGRAM

To carry out its mission, Sherpa acts in two complementary areas: the Globalization and Human Rights (GHR) program, and the Illicit Financial Flows (IFF) program.

### THE GHR PROGRAM

Both local populations and the environment are all too often the victims of the activities of multinational companies, particularly in the countries of the South. Industrial disasters are on the increase. The absence of a regulatory framework adapted to globalization does not allow us to establish the responsibilities nor obtain compensation for the damage.

Sherpa is working for the establishment of a binding legal framework to make the economic players, transnational companies in particular, that violate human rights and cause environmental damage accountable for their actions.

### THE IFF PROGRAM

Sherpa launched this program in 2007 with the so-called «Ill-Gotten Gains» affair. Developing countries lose at least one thousand billion dollars each year due to illicit financial flows. These flows are a major challenge to development because they reduce the resources available for essential public services such as health and education and aggravate the debt burden of developing countries. This means that even today most of the governments of these countries fail to meet the basic needs of their population.

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**Sherpa qualifies illicit financial flows, the violations of human rights, and the environmental damage perpetrated by multinationals, as «economic crime».**

**For these two programs, Sherpa has implemented specific legal training for political and civil society stakeholders, as well as advocacy and litigation actions.**

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## MEANS OF ACTION

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### LEGAL ADVOCACY

Sherpa develops lines of legal advocacy and implements campaigns, both alone or in partnership with the working groups in which it participates, directed towards economic, political and institutional stakeholders, as well as the media and the general public, in order to advance legal rights at the local and international levels.



### RESEARCH/LEGAL STUDIES

These different actions support the legal advocacy and judicial actions conducted by Sherpa. They can take the form of investigative reports, presentations of situations, or legal studies.



### LITIGATION

Sherpa implements legal actions, which can be either judicial, by filing complaints with civil, criminal or administrative courts, intended to right specific situations of injustice, or extrajudicial, via the mechanism of the National Contact Points of the OECD, mediation, or arbitration.



### AWARENESS RAISING AND LEGAL TRAINING

Convinced that the sharing of knowledge and the transfer of skills participate favorably towards development, Sherpa develops activities to raise awareness and build capacities in France and abroad. The objective is to strengthen the autonomy of local stakeholders and their capacity to implement legal action, but also to stimulate exchange and collaboration between civil society organizations and experts.

## THE TEAM

**The association brings together committed jurists, lawyers and specialists with diverse profiles and benefiting from international experience.**

**Sherpa works in close collaboration with many civil society organizations throughout the world.**

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Sherpa also operates thanks to the commitment of its 8 administrators, the support of 5 trainees and the generous support of 17 volunteers in 2015.

## THE PERMANENT TEAM



**The Sherpa team is directed by LAETITIA LIEBERT.**

A humanist and citizen of the world, holder of a PhD in science, she began her international business career in export before leading teams and rural development and health programs in the field for NGOs (AVSF, MSF) in Palestine, Israel, Angola and then at headquarters in France, the USA and Japan. She then directed the international bureau of Greenpeace Mediterranean and conducted strategic campaigns in the field of energy and agriculture in Lebanon, Egypt, Jordan, Israel and Turkey, countries whose populations are severely affected by local-level trade and investment policies. Sensitive to the serious human consequences generated by unregulated globalization, she decided to join Sherpa in August 2014.

Laetitia Liebert is fluent in Arabic, Hebrew, Portuguese, Spanish and English.



**The Globalization and Human Rights program is headed by Sandra COSSART.**

An international lawyer, she began her career in international organizations such as the European Parliament and the Council of Europe, before working for several years in Moscow for the European Union as a manager of a Tacis cooperation project in Russia. On her return to France, she joined a law firm where she provided counsel and litigation services, notably in business law, and was also involved in pro bono work for NGOs for asylum seekers and refugees. She moved to London in 2002 and worked as a consultant for Russian businesses before joining the Business and Human Rights Resource Centre. After eight years in England, Sandra Cossart joined Sherpa in 2010. She is a graduate from Sorbonne University, Sciences Po Paris, the College of Europe and the London School of Economics.

Sandra Cossart is fluent in English and Russian.



**MARIE-LAURE GUISLAIN** is responsible for litigation and the coordination of the legal caravan at Sherpa.

A trained lawyer and holder of an LLM in International Cooperation and Human Rights, in 2010 she worked in Buenos Aires for CELS, a human rights NGO, and was involved in the management of development projects and the creation of an awareness-raising documentary on the rights of migrants. In 2011, she continued her project management work in Colombia with communities displaced by the armed conflict, for the protection of their rights and natural resources, before joining Sherpa in 2012.

Marie-Laure Guislain is fluent in English and Spanish.



A trained jurist, **Sophie Lemaître** is responsible for the Illicit Financial Flows program.

She began her career with CIRAD, a center for international research in agronomy and development and the UN Food and Agriculture Organization (FAO) on forestry issues, including governance and the reinforcement of the application of forestry regulations. She joined Sherpa in April 2014 in the context of her doctoral studies with the Institut de l'Ouest Droit et Europe research laboratory, attached to the University of Rennes and the CNRS.

Sophie Lemaître speaks fluent English.





**MANON SERRAND** is the administrative and financial officer at Sherpa.

Originally trained in international trade, she decided to follow a more alternative path and obtained a «Manager of International Projects» master's degree at Ecole de Commerce et Développement, where she specialized in humanitarian action. In 2012, she worked in India for an education and development association, where she handled administrative and financial management. She perfected her experience in fund raising with the ACF and joined Sherpa in late 2015 to ensure the administrative and financial support of the association and to contribute to the financial security of Sherpa.

Manon Serrand is fluent in English and Spanish.



**LISA RIEUX** is the communications officer at Sherpa.

During her training at EM Strasbourg Business School, Lisa completed her studies in Australia where she specialized in marketing and communication, more particularly in the development and voluntary sector. Passionate for the defense of human rights and with a long-standing commitment to the voluntary sector, she joined the Communication and Publicity service of Amnesty International France in 2014. In order to develop her experience in communication strategy, Lisa redirected her career toward communications agencies and joined Babel Stratégie et Communication.

Lisa Rieux is fluent in English and German.

Fundamental human and environmental rights are constantly neglected in favor of the systematic reduction of costs and an ever higher rate of production.



# GLOBALIZATION AND HUMAN RIGHTS

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Globalization has disrupted the ways of life of populations around the globe. New trading opportunities, notably due to the revolution in transport, have enabled businesses to extend their production activities towards developing countries.

Unfortunately, fundamental human and environmental rights are constantly neglected in favor of the systematic reduction of costs and an ever higher rate of production.

Both the populations and the environment are all too often the victims of the activities of multinational companies, particularly in the countries of the South. Industrial disasters, such as the collapse of the Rana Plaza in Bangladesh which caused the death of over 1138 workers, have multiplied at an alarming rate, causing sometimes irreversible social and environmental damage. However, the absence of a regulatory framework adapted to globalization does not allow us to establish the responsibilities nor to obtain compensation for the damage.

Through its Globalization and Human Rights program, Sherpa is working for the establishment of a binding legal framework to make the economic players, and transnational companies in particular, that violate human rights and cause environmental damage accountable for their actions.

To this end, Sherpa implements different actions in order to adapt, improve and strengthen the national and international legal frameworks, initiate legal research, raise awareness, train the different stakeholders, and combat impunity through judicial and extrajudicial actions and litigation, which also highlights the flaws and shortcomings of positive law.



# LIABILITY OF PARENT AND SUBCONTRACTING COMPANIES TOWARDS THEIR SUBSIDIARIES AND SUBCONTRACTORS, ACCESS TO JUSTICE FOR VICTIMS

In 2015, Sherpa continued to work for the liability of parent and subcontracting companies towards their subsidiaries and subcontractors in order to provide access to justice for the victims.

## OBJECTIVES

Sherpa, a pioneer regarding the liability of parent companies for the activities of their subsidiaries and subcontractors since 2001, shares and disseminates its expertise in order to create a greater political momentum and response to its recommendations. We have thus raised the awareness of many civil society stakeholders and policymakers to the need for a law on the duty of care of multinationals with a view to obtaining its inclusion on the agenda of the two chambers of parliament and a final vote. In addition, Sherpa also uses so-called soft law tools, such as the OECD Guidelines and the French National Contact Point, and works for their reform, in order to provide access to justice for the increasing number of victims of the activities of multinationals.

## ACHIEVEMENTS AT THE NATIONAL LEVEL

Throughout 2015, Sherpa continued to work for the adoption of a bill for the liability of parent and subcontracting companies. Sherpa's work evolved during the course of the year. Previously, the association had worked more specifically on the substance of texts of law, providing expertise but without asserting its knowledge with decision makers. Today, Sherpa defends its own lines of advocacy

with decision makers that are parliamentarians and the French government.

We have continued our investment within the FCRSE (Citizen's Forum for Corporate Social Responsibility). Thanks to our expertise on the liability of parent and subcontracting companies and the access to justice for victims, the association carries great weight within this network, which defends the same lines of advocacy as those of Sherpa.

In late January 2015, thanks to a long process of awareness raising, a group of environmentalist members of parliament filed a bill for the duty of care with the National Assembly. This text was to a large extent written by Sherpa, an expert on the corporate social liability of parent and subcontracting companies. On January 29, 2015, the parliamentarians voted a referral back to committee of the text. Sherpa therefore intensified its activity in order to rewrite the text of the bill for it to be presented by members of the Socialist group so that it would bear as much weight as possible. After an important process of awareness raising, the Socialist group, led by MP Dominique Potier, decided to support the Forum in its approach. The drafting of the new proposal required lengthy and in-depth legal work, each word carrying a different meaning and legal implications. Sherpa's network of jurists (university professors, etc.) then provided an important contribution to legitimize and complete



the text of this bill. It was filed with the National Assembly on February 12. The bill was examined in plenary and adopted on March 30.

Following this historic vote, Sherpa worked to ensure that the bill would be presented to the Senate as quickly as possible. However, the Senate is not composed of the parliamentary majority and was therefore not in favor of this text. Numerous meetings with senators (collectively with the FCRSE or individually as Sherpa) were therefore organized in order to attract the attention of these policymakers to the issues of the text and to encourage them to carry it before the Senate. The collaboration with our partners of the FCRSE is a process which can be time-consuming but which was essential in order to bring together the greatest number of policymakers around this bill. Letters to senators and members of parliament were drafted in partnership with the members of certain partner organizations, which also favored the mobilization of these parliamentarians. The members of parliament who introduced the bill also played a key role in ensuring a quick vote in the Senate. During an awareness-raising meeting at the Senate, organized in partnership with Sherpa on July 8, the bill was presented to the senators and parliamentary assistants and helped to convince them of its importance. As speakers, Laurent Berger (Secretary General of the CFDT trade union) and Antoine Lyon-Caen (Professor of Law at the University of Paris Ouest-Nanterre, La Défense) managed to convince them of the need for such a law and we were thus able to obtain a date for the vote in the Senate for November 18, 2015. Through this event, Sherpa initiated a new dynamic of collaboration with university professors, a new exchange between the academic world and political decision makers. Sherpa aimed to generate the desire among the academics to carry out research on the duty of care and to write articles which will help to strengthen the doctrine on the subject. These expert professors also provided incisive legal reflection on the drafting of the bill.

In parallel to this important effort of awareness raising of policymakers, Sherpa aimed to popularize its legal arguments through essays comparing the first and second text of the bill for the liability of parent and companies in mainstream media such as Lamy, Le Monde, etc. On November 18, 2015, the bill was examined and rejected in the Senate. Sherpa will remain vigilant to ensure that parliamentary shuttles do not block the text and to obtain a final vote in the course of 2016.

Sherpa a réaffirmé également son engagement au sein de la Plateforme RSE tout au long de l'année 2015.

We were particularly active within Group 3 of the CSR platform, devoted to subcontracting chains.

In May, an advisory note was also issued on the nature of subcontracting chains, what should be done, and the government recommendations, the result of a year and a half of tense negotiations between the different poles of the platform, notably between employers' and civil society organizations. In parallel, another advisory note was produced on the duty of care. These documents are advocacy tools that can be used to influence decision makers. As a result of these two efforts, Group 3 had fulfilled its mandate and was therefore terminated. As of July 2015, the Platform set up two new working groups: the National Action Plan on Human Rights - NAPHR and the NAPCSR (National Action Plan on CSR). Sherpa is particularly involved in the NAPHR working group. All countries must publish an NAPHR and transpose the UN Guiding Principles into their national law. Because this is a crucial advocacy document for the years to come, Sherpa was strongly committed to the drafting of this plan by becoming co-rapporteur, with the aim of obtaining the consensus of the economic pole whenever possible, but also to reveal any dissensus to enable public authorities to decide between divergent interests. Indeed, through this NAPHR, France is preparing to commit itself to taking measures in favor of human rights and to enforce them on businesses, notably through the establishment of a duty of care for multinationals.



## **CITIZENS' FORUM FOR CSR**

### **OBJECTIVES:**

The FCRSE is a forum for expertise, public expression and advocacy on issues relating to corporate social, environmental and societal responsibility.

It has two objectives:

1. Promote the converging voice of its members towards public, European and international authorities to enable the emergence of national, European and international frameworks to provide a focus for the development of CSR, which are likely to promote both internal and external collective bargaining with companies;

2. Develop a center of common resources to encourage the construction of tools and places of independent assessment that are able to ensure democratic sustainability and the social and environmental efficiency of the corporate social responsibility process. This inter-association work is materialized by thematic meetings, the input of experts, the organization of events, and the development of documents and official letters addressed to political powers, businesses, and public organizations.

### **MEMBERS:**

It is composed of different civil society organizations: Sherpa, Alternatives économiques, Amis de la Terre France, Amnesty International France, CCFD-Terre Solidaire (Comité Catholique contre la Faim et pour le Développement), Centre de Recherche et d'Information pour le Développement (CRID), Centre Français d'Information sur les Entreprises (CFIE), Collectif Éthique sur l'étiquette, Confédération Française Démocratique du Travail (CFDT), Confédération Générale du Travail (CGT), France Nature Environnement (FNE), Greenpeace France, Ligue des Droits de l'Homme (LDH), Peuples Solidaires/Action Aid France, Terre des Hommes France, and WWF France.

In the same logic as the NPAHR, the European Commission has asked the member states to implement a plan of priority actions aimed at promoting CSR. These two plans of action must be coherent in order to avoid omissions or inconsistencies between them, which implies a collaboration by Sherpa with the co-rapporteurs of the PNRSE working group, notably on the environmental and reporting issues that this document must contain.



## **NATIONAL PLATFORM FOR COMPREHENSIVE ACTION FOR CORPORATE SOCIAL RESPONSIBILITY**

### **OBJECTIVES:**

According to the EU recommendations, its main mission is to equip each France with a National Action Plan or a list of priority actions aimed at promoting CSR in the context of the implementation of the Europe 2020 strategy.

### **MEMBERS:**

This multi-stakeholder platform brings together, under the auspices of the Prime Minister, trade unions, employers' organizations (MEDEF and AFEP in particular), researchers, NGOs, and those public authorities that have a stake in CSR. The composition of the Platform, initially fixed at around forty members, is scalable, the heart of the activity being the participation in the working groups, whose themes do not concern all members to the same degree. The Bureau, composed of 13 members, including the FCRSE, ensures both steering and the progressive adaptation of the Platform towards the achievement of its missions.

## ACHIEVEMENTS AT THE EUROPEAN LEVEL

At the European level in 2015, Sherpa mainly worked within the European Coalition for Corporate Justice (ECCJ). As member of the Steering Committee<sup>1</sup>, Sherpa was able to strongly influence this coalition to initiate and fix its strategic lines. The priority of the ECCJ in 2015 emphasis more the establishment of a binding European legal mechanism for corporate social responsibility rather than - as previously-non financial reporting. At the same time, the European platform continues to encourage the incorporation of the UN Guiding Principles.

In the course of 2015, the French and Swiss legislative initiatives on the duty of care were relayed to the European level by the network in order to instigate European-level regulations. A long effort of analysis was carried out on the existing reforms on due diligence/duty of care, on the reforms in the course of implementation, and on their effectiveness.



### ECCJ: EUROPEAN COALITION FOR CORPORATE JUSTICE

#### OBJECTIVES:

Increase European cooperation between NGOs working for corporate social responsibility and influence the policies within the European Union and its member states. Raise the awareness of public opinion about corporate social responsibility and EU policies and promote a coherent expression of the voice of civil society. Strengthen the skills and knowledge of these topics among NGOs in Europe.

#### MEMBERS:

The European Coalition for Corporate Social and Environmental Responsibility (ECCJ) brings together national coordinating bodies consisting of NGOs, trade unions, consumer organizations, and research institutes, working for corporate social and environmental responsibility throughout Europe. The ECCJ represents over 250 organizations in 15 European countries. Sherpa is a member of the Steering Committee.

The concept of Human Rights Due Diligence (HRDD) is the most spread at both the European and international levels as it is mentioned in the UN Guiding Principles. But it is more of a managerial concept of prevention that establishes measures that multinationals should implement in order to prevent damage; measures which could thus enable businesses to release themselves from any liability once these measures are taken. This is based on a risk management concept set up for a company rather than for its stakeholders. This vision is obviously not ours and prevents from defending public interest; it is rather fundamental to advocate the establishment of a general duty of care for multinationals. This latter is not simply a list of measures to implement in function of the goodwill of the businesses, but a real legal obligation of behavior involving the vigilance of the parent and subcontracting companies over the activities of their subsidiaries and subcontractors abroad.

Thanks to an important effort to raise awareness over Sherpa's main activity and legal expertise, the association has been invited to many European seminars by various stakeholders. We have thus been able to disseminate our expertise on the duty of care during participation in conferences and congresses across Europe, including Oslo, Berne, Geneva, London, Brussels, etc.

Furthermore, even though this type of intervention requires substantial preparation, our participation has allowed Sherpa to enhance its reputation and to be recognized as an essential European stakeholder for the promotion of the respect for human rights by multinationals. This long campaign of awareness raising and training allows us to inspire, motivate, convince, and even to provide tools to ever more numerous and better-trained stakeholders on the European scale; stakeholders who in turn generate national initiatives or support a European initiative in this direction.

## ACHIEVEMENTS AT THE INTERNATIONAL LEVEL

At the international level, Sherpa continued its involvement within the OECD Watch network in 2015 and participated in the establishment of its main strategic directions. The association also participated in various OECD working groups, notably in the group on the practices of responsible business. We also focused on the role of National Contact Points (NCPs) in the event of failure to comply with the OECD Guidelines). A member of the OECD Watch steering committee, Sherpa participated in the drafting of the report «15 years on: remedy remains rare» which is critical of the implementation of the OECD Guidelines by NCPs and proposes rules to strengthen their operation. The Steering Committee defended the recommendations it introduced in the report during the General Assembly of OECD Watch. The desire to promote access to justice for the victims of economic crime was confirmed and the question of the effectiveness of national contact points was raised.

In June, the UN launched a new working group in order to initiate reflection on the establishment of a binding international treaty on the questions of business and human rights. The drafting of this treaty was entrusted to a United Nations working group (UNWG) with which the Treaty Alliance, a civil society group, attempts to intervene in order to influence this treaty. The Treaty Alliance solicited Sherpa as an expert on the question of business as a subject of international law. Sherpa thus enables civil society organizations to better grasp legal issues. Sherpa aspires to enlighten and influence the UNWG in this direction. As a result of a strong effort of advocacy on the part of the associations, France became an observer of the UNWG.

Sherpa thus continues to broaden its competencies and influence among ever higher decision-making spheres at the international level. Sherpa has also increased its renown and disseminated its expertise at the international level. Also, its experience and know-how are much sought after and may be a source of inspiration during international events: Sherpa was invited to speak at the «Build Learning on Effective Judicial and Non-Judicial Remedies» conference in Washington in September, and then attended the UN Forum on Business and Human Rights organized in Geneva by the UN in November in order to present Sherpa's litigation cases and our advocacy on the duty of care bill.



### OECD WATCH

#### OBJECTIVES:

OECD Watch is an international network of NGOs working to promote the social responsibility of businesses. The objective of OECD Watch is to inform the NGO community on the policies and activities of the OECD Investment Committee and to assess the effectiveness of the OECD Guidelines on the practices of multinational enterprises.

#### MEMBERS:

OECD Watch is a global network, which counts over 80 members from 45 different countries. Its members are composed of a broad range of civil society organizations, sharing their commitment to ensure that commercial activities contribute to sustainable development and the reduction of poverty, but also to ensure that businesses are held accountable for their actions around the world. The network has a coordination committee with a diverse regional representation. The current members of the coordination committee are: Sherpa (France), SOMO (the Netherlands, secretariat), CEDHA (Argentina), CIVIDEP (India), ForUM (Norway), Green Advocates (Liberia), Oxfam Australia (Australia), and Plades (Peru).

## OBSTACLES

Within the national CSR platform, Sherpa's work often collides with the willingness of the public authorities to obtain a forced consensus, especially between civil society organizations and businesses. Yet the disagreements that oppose civil society and businesses are fundamental and ever-present during negotiations and decisions within the CSR platform, and within the NAPHR working group in particular. Indeed, our desire is that economic actors should be held accountable for their impacts and that their activities should be framed by binding regulations providing the access to justice for victims. On the other hand, the economic pole only wants to accept self-regulation and refuses any binding standards imposed by public authorities. Sherpa and its partners therefore question the interest of continuing to work within this type of multipartite body in which disagreements are so important that the work, already very time-consuming, does not even permit agreements to be reached. In addition, the state shirks its legislating role on this type of multi-stakeholders body in which it is represented. Moreover, the French government demonstrates a lack of political will and does not wish to provide support to draft legislation such as the duty of care bill.







# TRANSPARENCY THROUGH REPORTING

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The access to information by the stakeholders of a company, such as consumers, communities affected by its economic activity, trade unions, NGOs, or investors, has seen real progress in France in recent years, but remains limited.

In addition, the increasing complexity of the chains of production sometimes allows businesses to maintain a certain degree of opacity.



## OBJECTIVES

It is Sherpa's wish to see the establishment of an obligation of transparency concerning the communication of information relating to the impact of businesses on the environment, society, and human rights. To be useful, this obligation must include accurate, reliable, relevant, and comparable indicators between enterprises within the same sector and according to an identical calendar.

Despite the pioneering position of France within the EU, an effective obligation to communicate this information for each of the foreign subsidiaries within a group, and the obligation to transcribe these obligations at the European level, remains to be set up.

Such an obligation would require businesses to report the risk of social and environmental damage and human rights violations created by their activities. It would thus enable both to prevent these risks and to obtain evidence in case of a litigation, and also to establish reliable labeling of consumer products indicating the social and environmental performance of the company to consumers.

This access to information would also allow investors to promote good practices by favoring the financing of businesses that are respectful of human rights and the environment.

## ACHIEVEMENTS

Within the CSR platform, Sherpa has supported this line of advocacy with its partners within working group No. 2. We therefore have collectively agreed to deepen the criteria of article 225 of the Grenelle II Act (relating to the obligations of businesses for transparency in social and environmental matters). These recommendations contain the obligation for companies to produce non-financial information, the audit of this information by an independent third-party organization in the current conditions, the need to fully accommodate concepts such as due diligence, the respect of human rights, the fight against corruption, and the abandonment of the distinction between listed and non-listed companies, etc. Thanks to this analysis, the Platform has contributed to the development of a guide for the French government, and recommended by the EU directive, for the implementation of the directive.

## OBSTACLES

French employers' organizations and companies often complain of being alone in Europe to be bound by such stringent reporting obligations, which they consider to be very costly and useless. They therefore do not want very specific indicators.





# THE EXEMPLARITY OF THE STATE THROUGH ITS INTERNATIONAL OBLIGATIONS AND INVESTMENTS

The state has the primary responsibility to ensure the protection of human rights, both through its role as regulator and legislator, but also as a direct economic actor or investor. The state must therefore be exemplary if it wants to be able to generate a change of practice among private actors.



## OBJECTIVES

Sherpa has never ceased to assert and disseminate the United Nations Guiding Principles (UNGP), its first pillar in particular, which recalls the major responsibility of the state as the central key player of the system for the protection of human rights. This implies that states must take all the necessary steps to prevent violations of human rights by third parties, notably by economic actors such as businesses.

Moreover, the state is a major economic actor, notably through public companies and its participation in private enterprises. Sherpa therefore considers that the state is liable even in the case of minor participation in a company.

Finally, the state must encourage investments that are respectful of human rights. We believe that the state must condition its investments and guarantees on the satisfaction of social, societal, and environmental requirements. It must impose a socially responsible framework for investment and must not be the guarantor of projects which pollute the environment and violate the human rights of populations. To do so, the state must fulfill its own duty of care in the conduct of its activities, including through its development agencies or export credit programs.

## ACHIEVEMENTS

### THE STATE AS REGULATOR-PROTECTOR

The state performs its work as regulator of economic activities at different levels: at the national level the work undertaken by Sherpa in the NAPHR is an initiative to enhance the exemplary nature of the state. The elements introduced in this plan constitute an important commitment on the part of the state, which it should be obliged to respect. Civil society organizations will thus be able to call it to order whenever it tries to derogate from its responsibilities. The state is therefore preparing to commit very significantly in favor of human rights.

In addition, the vote on the duty of care bill on March 30 at the National Assembly was also a first step towards the liability of multinational corporations and the respect of the first pillar of the UN Guiding Principles.

At the European level, the French state is fully acting in its role as regulator when, notably under the pressure of civil society organizations, it requests from the European Council and the Commission that the European directive on non-financial reporting should incorporate the French legislative provisions that are more protective of human rights.

At the international level, thanks to the impetus of civil society, the French state is an observer in the working

group on the UN binding treaty. The recognition of businesses as a subject of international law represents an important step forward for the liability of multinationals. Civil society organizations push the state to be particularly vigilant over the smooth process and effectiveness of this working group.

## OBSTACLES

There is a lack of willingness, reluctance even, of the states in the quest for exemplarity, due to the importance of the economic issues at hand. Indeed, the European states, and France in particular, more often favor economic diplomacy over the respect of human rights. One should note the difficulty for the state to guarantee the respect of human rights by multinationals outside its national territory, as these latter often hide behind the notion that the sovereignty of the state is not a subject of international law. It is the responsibility of states to modify the existing law, but the underlying economic issues do not allow them to be fully active, nor even favorable, towards this shift of paradigm.





# LEGAL STUDIES AND RESEARCH

Since its creation, Sherpa has positioned itself as a legal research laboratory and has studied the adequate legal means to establish the liability of the economic actors, mainly around the themes of prevention and remedy. To continue to be an innovative force, we constantly confront and discuss our work with many academics and other practitioners of law.

**In order to enrich our research, in the past few years we have developed partnerships with universities, thus participating in several legal clinics.**

This collaboration enables us to entrust legal studies and research to students in order to deepen particular topics through exchanges with lecturer-researchers, providing students with the opportunity to experience the practical application of their knowledge.

The follow-up of several legal clinics, the collaboration with the teaching teams and the guidance of students require a great deal of investment from Sherpa, which has also helped to forge privileged links with a network of experts and academics and has given rise to some quality studies. This joint effort has also helped to raise the awareness of young jurists and lawyers around the themes of the legal liability of businesses.

In collaboration with Nanterre University and Clinique Euclid, Sherpa completed two studies centered on the duty of care bill in 2015:

- the first, «Economic dependence and civil liability, the concepts of control and negligence» focused on the principle of the autonomy of the legal personality, which constitutes the main difficulty for the establishment of the duty of care for parent and subcontracting companies,
- and the second, «The concept of control in the area of company law: making subcontracting companies liable», which analyzed the concept of the control of parent companies, which constitutes an instrument of power at the service of the latter. The existence of a power of control would therefore trigger the liability of the holder of that power.

Indeed, the liability of a parent company for acts committed by one of its subsidiaries assumes that the one has been forced to obey the injunctions of the other. But the existence of a constraint is difficult to characterize, as the corporate veil is held as a fundamental principle of French company law.

Thanks to this research work, Sherpa continues to be a true legal research laboratory that studies pioneering legal topics. These analyses feed the advocacy and litigation work of the association in order to circumvent the legal obstacles to the liability of parent companies. Indeed, support for the activities of Sherpa requires continuous or ad hoc research into innovative and highly specific points, such as the notion of control of subcontracting companies, feasibility studies of litigation, etc.







# MODERN SLAVERY

**COUNTRY: QATAR**

**COMPANY TARGETED: VINCI**

## AN OVERVIEW OF THE FACTS AND PROCEEDINGS

In recent years, Qatar has undertaken a vast program of modernization of its infrastructures and it is expected that the pace will accelerate and expenditure will multiply as we approach the soccer World Cup. It is in this context that the Vinci company has been attributed major projects amounting to billions of euros, including the construction of the Metro. Vinci, and more specifically Vinci Construction Grands Projects (VCGP) employs 6000 migrants on its construction sites through its Qatar subsidiary (Qatari Diar Vinci Construction (QDVC)) and numerous subcontractors.

VINCI Construction Grands projects, one of the world leaders in civil engineering, is established throughout the world. In 2014, the company's turnover reached 1,107 billions of euros and it employed nearly 7000 employees.

During our investigation in Qatar in November 2014, our interviews with workers on Vinci construction sites denounced working and housing conditions that are incompatible with human dignity: a 66-hour working week, particularly cramped and poorly-equipped accommodation with several persons per room, confiscation of passports and threats of dismissal or return to their country of origin in the event of a protest, all in violation of Qatari law. Furthermore, a lack of sufficient equipment to protect against the risks of construction sites and the heat are alleged to cause an abnormally high number of deaths among workers on the sites.

## LEGAL BASIS / OBSTACLES CIRCUMVENTED

As a result of months of investigation and our mission to Qatar in November 2014, Sherpa decided to file a complaint against Vinci for forced labor and bounded labor, failure to provide medical response and unintentional injuries, as well as for concealment of profits arising from violations, before the Public Prosecutor of Nanterre, the headquarters of Vinci Construction.

This is the first time that a multinational has been sued on the **basis of criminal offenses of «forced**

**labor» and «bounded labor»**. This complaint is thus a **historic legal step forward towards the establishment of the parent company-subsidary link** that is extremely difficult to prove for the victims.



## WHAT SHERPA'S WORK HAS ENABLED

Sherpa actively campaigns for the reinforcement of French legislation on the liability of parent companies for their subsidiaries and subcontractors abroad. Sherpa's action aims to shed light on all the conditions of social responsibility, and to show that a law on the duty of care remains more necessary than ever.

This case has also incidentally relaunched the debate on the techniques of **SLAPP (Strategic Litigation Against Public Prosecution) lawsuits used by multinationals**. In fact, subsequent to the filing of Sherpa's complaint, Vinci immediately initiated **proceedings for defamation** and for the infringement of the presumption of innocence by claiming damages for several hundreds of thousands of euros against several employees (physical persons) of the association.

The complaint filed by Sherpa against Vinci benefited from **unprecedented visibility in both French and international media** and thus helped to generate a **high level of public awareness over the exploitation**

of migrants in the Gulf countries, and especially on the possibility of action against such practices. Thus, during the vote on the duty of care bill on March 31, 2015, this case was mentioned in the debate and was **a decisive factor for the adoption** of the principle of the liability of parent companies by the National Assembly, which could prevent many future violations of human rights by multinationals.

The positive impact of the complaint was immediate for certain victims. Thanks to the debate that this complaint stimulated in the media, Vinci was led to **improve the working conditions** for a part of the workers on the site: according to witnesses the **daily working hours** have decreased from 11 hours to 10 hours per day, some workers directly employed by QDVC have acquired **shaded shelter** for their breaks, have been given better **housing**, and have been able to recover their **passports**. In addition, Vinci has agreed to enter into **negotiations** with the **Building and Wood Workers' International**, even though negotiations had been blocked for months. Finally, and above all, a rare consequence and one that bears hope for the future, **the International Labor Organization (ILO)** has, following our complaint and the reports of other organizations such as Amnesty International and Human Rights Watch, launched **a mission of inquiry to Qatar** on the working conditions of migrants.

## CHRONOLOGY OF THE PROCEEDINGS

**November 2014:** Sherpa traveled to Doha to investigate, within a delegation of the Building and Wood Workers' International.

**March 24, 2015:** A complaint was filed with the Public Prosecutor of Nanterre.

**April 7, 2015:** Opening of a preliminary inquiry.

**APRIL 13, 2015: Suit for defamation filed by Vinci.**

**April 23, 2015:** An application for a preliminary injunction against William Bourdon and Laëtitia Liebert for infringement of the presumption of innocence as a result of the publication of an interview in the Liberation newspaper.

**May 13, 2015:** Proceedings by Vinci on the infringement of the presumption of innocence

**July 22, 2015:** After the rejection of jurisdiction by the judge, Vinci filed for an examination on the merits.







# DEATH OF WORKERS, COLLAPSE OF TEXTILE FACTORIES AT RANA PLAZA

**COUNTRY: BANGLADESH**  
**COMPANY**  
**TARGETED: AUCHAN**

## AN OVERVIEW OF THE FACTS

Within the past few decades, the textile industry has reorganized at the international level, relocating its production bases to countries like Bangladesh in the search for the lowest costs. Today, a large part of the textile products sold in western stores is manufactured in this country.

The AUCHAN Group is present in 16 countries, employs 330,700 people and declared a turnover for its stores of 63 billion euros for December 31, 2014.

On April 24, 2013, the collapse of the Rana Plaza, a building occupied by many textile workshops working for European and American brands, caused over 1138 deaths in Bangladesh. Labels bearing the InExtenso brand name, belonging to the AUCHAN Group, were found in the rubble.

Yet, AUCHAN publishes its ethical commitments on its Internet site and displays them in its stores, in which it claims to enforce the respect of workers' rights on all its suppliers, as well as the OECD and UN Guiding Principles for multinationals, implying due diligence along the entire chain of production.

## LEGAL BASIS / OBSTACLES CIRCUMVENTED

In January 2015, the complaint for «misleading commercial practices» initiated by Sherpa and its partners against Auchan for the Rana Plaza drama was dismissed. After a mission in December 2014 to gather evidence in the official Auchan factories in Dhaka, Bangladesh, Sherpa took the decision to file a complaint with civil party petition against Auchan.

The grounds of «misleading commercial practices» is innovative because it allows us to circumvent existing legal obstacles in terms of the liability of multinationals and thus to require them to respect human rights along their chain of production, at least when they claim to do so in their ethical commitments.

This procedure with civil party petition gives access to an examining magistrate; the association can thus participate in the investigation and provide evidence throughout the inquiry. This enabled Sherpa to provide the judge with many of the elements of its investigation in Bangladesh, and thus prove that violations of workers' rights persist among the brand's official subcontractors.

In the preliminary investigation report conducted by the office of the prosecutor, Auchan justified itself by the fact that it could not know that one of its subcontractors was manufacturing its order at the Rana Plaza. Sherpa then sent an analysis of the report of the investigation in June through a civil party petition, showing that Auchan should have known. Moreover, in October, Sherpa sent a note to the judge summarizing all the elements brought from the factories in Bangladesh, demonstrating that even if Auchan claimed to be unaware for the Rana Plaza, in any case it could not ignore the serious violations that persist in its current official plants.

## WHAT SHERPA'S WORK HAS ENABLED

The grounds of «misleading commercial practices» should give more binding value not only to the ethical standards of groups, but also more generally to the standards of soft law (OECD Guidelines, UN Guiding Principles, etc.), when companies claim to respect these texts. However, the use of these grounds in the context of the relationship between subcontracting companies and subcontractors, and not the parent-subsidiary relationship, shows that it is necessary to hold businesses liable for the serious damage which may be caused by their suppliers or subcontractors abroad.

The complaint with civil party petition filed by Sherpa against AUCHAN registered on June 10, 2015 and a documentary on Arte entitled «Fashion kills», broadcast on October 20, 2015, which follows Sherpa during its investigation in Bangladesh, have helped to raise the awareness of the public on the dangerous working conditions of workers in Bangladesh and in the textile industry in general. This complaint was also decisive during the vote on the duty of care bill, because it helped to relaunch the debate on the liability of parent companies over their subsidiaries and subcontractors abroad. Moreover, the evidence collected by Sherpa fed the investigation and complemented the work of the Public Prosecutor, who does not always have the political will nor the financial means to conduct thorough investigations abroad in cases involving large multinationals. Thus, the expertise of Sherpa in the domain helped to improve the victims' access to justice, who most of the time have neither the expertise nor the means to provide the evidence.

## CHRONOLOGY OF THE PROCEEDINGS

**2 April 24, 2014:** A complaint was filed by Sherpa, Peuples Solidaires and Collectif Ethique sur l'Etiquette with the Public Prosecutor in Lille.

**May 26, 2014:** Opening of a preliminary inquiry.

**December 2014:** Complementary investigation of Sherpa in Bangladesh.

**January 7, 2015:** The complaint was dismissed without further action.

**June 10, 2015:** A complaint with civil party petition was filed by Sherpa, Peuples Solidaires and Collectif Ethique sur l'Etiquette

**October 20, 2015:** Submission of a note of analysis on the investigation report; the documentary «Fashion kills» was broadcast on Arte.





# CHILD LABOR, MISLEADING ADVERTISING AND THE EXPLOITATION OF CHILDREN

**COUNTRY:** CHINE  
**COMPANY**  
**TARGETED:** SAMSUNG

## AN OVERVIEW OF THE FACTS

The unprecedented expansion of telecommunications, the Internet and social networks is accompanied by a real boom in equipment and electronic gadgets. However, the conditions of production of this equipment, from one end to the other of the «value chains» and the fate of the workers on electronic production lines concentrated in the Asian countries, particularly in China, do not necessarily respect fundamental rights.

The SAMSUNG group is part of one of the major conglomerates in South Korea, the world leader in mobile phones and television screens, generating a total income that is equivalent to 20% of the South Korean gross domestic product.

SAMSUNG France boasts of having adopted ethical commitments that are widely disseminated on the Internet, where it claims to be able to contribute to a «better world» by being a «socially responsible» company. The ethical standards of the company are affirmed without ambiguity and are incorporated

by two Codes of Conduct, which are themselves strengthened by the Reports on Sustainable Development.

China Labor Watch, a Chinese NGO which controls the working conditions of employees in China, has undertaken to carry out field investigations in the factories where the company's products are manufactured. The investigations attest to the existence of particularly unacceptable working conditions within the subsidiaries of Samsung, in contradiction with the ethical values proclaimed by the company.

## THESE INVESTIGATION REPORTS DENOUNCE:

- ★ Child labor: according to the particularly well-documented findings carried out by China Labor Watch, several children under the age of 16 have been employed at the SAMSUNG plants.
- ★ Frequently unpaid overtime hours: up to 150 additional hours per month, seven days a week, with working days of 14 to 15 hours.
- ★ The absence of adapted security measures for employees forced to perform dangerous tasks without adequate protection.
- ★ The use of carcinogenic substances, such as benzene.
- ★ Moral pressure and physical violence exerted by the employers on a regular basis





## LEGAL BASIS / OBSTACLES CIRCUMVENTED

After a dismissal without further action of the complaint filed by Sherpa in February 2015, the association, in partnership with the Indecosa-CGT, summoned Samsung France and Samsung Electronics World to appear before the Court of Bobigny for deceptive marketing practices on December 17, 2015. After a first complaint on these grounds, which, as for Auchan, enabled us to circumvent the existing legal obstacles in terms of the liability of multinationals, Sherpa used the private prosecution procedure for the first time, giving direct access to the court, judging that it held sufficient evidence to dispense with an investigation. Sherpa attached new reports by China Labor Watch that corroborate the facts already denounced in its initial reports.

The implication of the Korean parent company, another addition to the initial complaint, prevents the French subsidiary from denying all liability with respect to its head office (the main argument of Samsung France after analysis of the investigation report).

## WHAT SHERPA'S WORK HAS ENABLED

For the first time in France, a multinational has been brought before a court on the grounds of misleading commercial practices to denounce the violation of human rights of which it is responsible

abroad. In this case it consists of imposing sanctions on the large gap between the ethical standards that multinationals boast of and their own commitments. This case enabled the use of «soft law» tools in «hard law» procedures and demonstrates that soft law alone is insufficient to prevent serious violations of human rights by multinationals. Finally, as these grounds do not provide compensation for the victims, it demonstrates the need to adopt the law on the duty of care of multinationals all along their chain of production, which would imply a remedy for the damages suffered by the victims.

## CHRONOLOGY OF THE PROCEEDINGS

**February 26, 2013:** Complaint filed with the Public Prosecutor of Bobigny by Sherpa, Peuples Solidaires and Indecosa-CGT against SAMSUNG France and unknown persons.

**July 8, 2013:** The Public Prosecutor decided to open a preliminary investigation.

**December 3, 2014:** The Public Prosecutor decided to dismiss the complaint after an investigation limited to the French territory: hearing of the legal director of SAMSUNG France, some research on the SAMSUNG France Internet site, interview with the director of the «Department for the Protection of Populations» of SAMSUNG. Of course, Sherpa considered the investigation to be insufficient.

**December 17, 2015:** Sherpa and Indecosa-CGT summoned Samsung World and Samsung France to appear before the court of Bobigny.





# FINANCING CONFLICT WITH BLOOD TIMBER

**COUNTRY:** *LIBERIA*  
**COMPANY TARGETED:** *DLH*

## AN OVERVIEW OF THE FACTS AND PROCEEDINGS

Between 2001 and 2003, DLH bought, imported into France, and distributed in Europe timber from Liberian logging companies that directly served the interests of the regime of President/Warlord Charles Taylor. During this period of civil war, DLH sourced its materials from companies specifically identified by several UN reports as being responsible for violations of human rights, breaches of the arms sanctions imposed by the United Nations, destruction of the environment, and acts of corruption.



## LEGAL BASIS / OBSTACLES CIRCUMVENTED

The complaint filed on the grounds of concealment enabled the engagement of the criminal liability of a French company for acts committed in the context of its activities abroad. It is therefore important to develop it and create a jurisprudence.

The procedure of a complaint with civil party petition is specific to France. It gives the civil party direct access to a judge and enables them to play an active role in the investigation by feeding the inquiry. Not enough associations or plaintiffs know how to use it. It is an essential tool to avoid abandoning lawsuits as crucial as the involvement of multinationals in war crimes and to push forward the jurisprudence in the matter.

## WHAT SHERPA'S WORK HAS ENABLED

Because of their high level of technicality and particularity, the various procedures can often only be performed by lawyers or jurists. Yet these procedural aspects are key factors to assert the rights of populations who are victims of economic crime. Similarly, the procedural aspect should not be neglected in the advocacy for better access to justice, and can only be carried out by professionals of law.

Furthermore, since the complaint the **illegal traffic of timber** has been regulated by the EU wood regulations, but these grounds are not yet operational in France. The use of concealment to combat this blight, which is the cause of massive deforestation in the world, provides an opportunity to improve the means available to environmental associations.

We also wish to combat the involvement of French economic actors in armed **conflict**, of which this case is unfortunately a perfect illustration.



## CHRONOLOGY OF THE PROCEEDINGS

**November 18, 2009:** Sherpa, Global Witness, Greenpeace France, Amis de la Terre and Alfred Bronwell filed a complaint with the Public Prosecutor of Nantes (France) against the companies DLH France and DLH Nordisk A/S.

**During 2010:** Opening of a preliminary inquiry.

**February 16, 2012:** The case was transferred to the office of the Public Prosecutor of Montpellier.

**February 15, 2013:** The case was dismissed without further action on the grounds of an «insufficiently characterized offense».

**March 17, 2014:** A complaint with civil party petition was filed by the 4 plaintiff associations.

**April 2, 2014:** Receipt of the order by the investigating judge fixing the bond for costs at 4000 euros. Appeal made by a lawyer in Montpellier against this order.

**October 16, 2014:** Sherpa's appeal against the high amount set for the bond was declared inadmissible and rejected and no new deadline was set for payment.

**End of October:** Sherpa sent a request for rectification of a factual error to request the deadline to be set.

**February 26, 2015:** The Montpellier Court of Appeal set the deadline for payment of the bond for March 20, 2015.

**March 19, 2015:** The bond was sent by all the associations party to the complaint.

**During 2015:** Receipt and analysis of elements serving the investigation.





# JUSTICE DENIAL

**COUNTRY: : DEMOCRATIC  
REPUBLIC OF THE CONGO  
COMPANY TARGETED:  
COMILOG**

## AN OVERVIEW OF THE FACTS AND PROCEEDINGS

The COMILOG company was incorporated in 1953 in order to exploit a deposit of manganese located near the town of Moanda in Gabon. Due to the distance between the mine and the Gabonese coast, a cable car linking the town of Moanda with the city of Mbinda located in the Congo was built, as well as a railway to transport the ore through the port of Pointe Noire.

In 1991, in Mvougouti, near Pointe Noire, a train pulled by a COMILOG locomotive was involved in an accident killing one hundred persons and wounding nearly three hundred. As a result of this dramatic accident, the management of COMILOG decided, on injunction of the Gabonese authorities, to suspend the transport of manganese along the Congolese railway and dismissed all of the workers in the Congo without notice.

The Company did not pay the slightest compensation to the dismissed workers and even refused to give them an end-of-work certificate, which is an essential document to receive a retirement pension and to justify the many years of work performed.



## LEGAL BASIS / OBSTACLES CIRCUMVENTED

The proceedings of the COMILOG case require that the jurisdiction of the French courts be recognized with respect to COMILOG, COMILOG France and COMILOG INTERNATIONAL, on the grounds of article 15 of the civil code and the denial of justice. The latter is based on an abusive breach of labor contracts presented before the French Conseil des prud'hommes (labor court). At the legal level, it is a considerable judicial breakthrough, because after eight years of proceedings, the Court of Appeal finally recognized its competence to judge the case, on the grounds of the denial of justice. It condemns in France a company under Gabonese law for its acts abroad, concerning the employment contracts of Congolese employees. The Court considered that the link between the dispute and France was sufficient due to the French nationality of its current parent company: Eramet.

Nevertheless, the denial of justice is a rare case and particularly delicate to use to obtain access to justice in France for victims. This proves that a general law on the duty of care of parent and subcontracting companies, giving access to justice in France to these victims, is all the more necessary.

## WHAT SHERPA'S WORK HAS ENABLED

After a 23-year legal battle, the former workers of COMILOG who had filed a complaint with the Labor Tribunal of Pointe Noire in the Congo in 1992, obtained, on September 10, 2015 before the French courts, the conviction of the Gabonese company to pay compensation following the breach of their employment contracts. These judgments, which will settle the fate of the 857 workers individually even though they suffered the same prejudice, also demonstrates the need in France to extend the concept of «class action» to cases other than consumer actions and encourages Sherpa to continue advocacy on this subject.

## CHRONOLOGY OF THE PROCEEDINGS

**November 9, 2007:** 857 former employees of the COMILOG company filed a complaint against COMILOG, COMILOG FRANCE, COMILOG INTERNATIONAL and COMILOG HOLDING with the Labor court of Paris for the abusive breach of labor contracts.

**October 8, 2008:** 1st hearing before the Conciliation Board of the Labor court of Paris. However, because of the absence of one of the lawyers of the company, the hearing was postponed to June 22, 2009.

**June 22, 2009:** 2nd hearing before the Conciliation Board of the Labor court of Paris.

**November 28, 2009:** The Conciliation Board rejected all of the demands on the grounds that it was not within their competence to decide on the difficult question of the nationality of the COMILOG company.

**October 13, 2010:** 1st hearing before the Judgement Board of the Labor court of Paris.

**January 26, 2011:** Judgment by the Labor court rejecting the request of the Congolese Workers on the grounds of the incompetence of the French *lex fori* on the dispute.

**February 2011:** The Judgment Board having declared itself incompetent without ruling on the merits, the former COMILOG workers challenged the decision, hoping that the Court of Appeal would recognize its competence and rule on the merits.

**April 11, 2013:** Appeal hearing before the Court of Appeal of Paris. Léopold Moukouyou, president of the Collective of Former COMILOG Workers was unable to be present due to a late refusal of his visa.

**June 20, 2013:** Judgment of the Court of Appeal of Paris, which received the challenge and declared the French courts to be competent to decide on the claims against COMILOG FRANCE and COMILOG INTERNATIONAL.

**January 28, 2015:** Judgment of rejection by the Court of Cassation on the irregularity of the procedure, the *litispence* and the jurisdiction.

**September 10, 2015:** Judgment of the Court of Appeal of Paris: the Court of Appeal recognized the jurisdiction of the French courts on the grounds of the denial of justice.

**During 2015:** appeal of both parties. In wait for the judgment of the Court of Cassation.







# LAND SEIZURE, ENVIRONMENTAL DAMAGE AND THE LOCAL IMPACT ON HEALTH

**COUNTRY: CAMEROON**  
**COMPANY TARGETED:**  
**SOCAPALM**

## AN OVERVIEW OF THE FACTS AND PROCEEDINGS

SOCAPALM (Société Camerounaise de Palmeraies) is the most important producer of palm oil in Cameroon. Formerly a state company, SOCAPALM was privatized in 2000 in the context of structural adjustment measures spurred by the World Bank and the IMF. PALMCAM (Palmeraies du Cameroun) became the majority shareholder with nearly 70% of the shares while the state of Cameroon retained 27%\*.

SOCAPALM met with a great deal of tension from local populations. With the arrival of the plantation, hectares of forest and arable land were withdrawn from the local populations. Many fishing areas became inaccessible to them. The activities of the company affected the quality of their environment and posed a serious risk to their health. In addition, the local populations have not benefited from the employment and business opportunities offered by the plantation, in spite of the company's promises. As regards the employees, they have endured deplorable conditions of work and housing.

In addition, the Bolloré Group is the holder of nearly 39% of the capital of Socfin. This latter exercises its control over SOCAPALM. It has therefore been recognized that the Bolloré Group itself exercises control over SOCAPALM, which is thus one of its subsidiaries.

## LEGAL BASIS / OBSTACLES CIRCUMVENTED

The complaint or «specific circumstance» that Sherpa filed with the National Contact Point (NCP) of the OECD circumvented the inappropriateness/inadequacy of hard law to the evolution of business. Indeed, civil and criminal liability law does not currently permit us to question the liability of parent companies for acts caused by their subsidiaries in financial schemes such as that of SOCAPALM, whereas the OECD Guidelines take account of these relations of control and influence between parent companies and subsidiaries (or subcontractors).

Sherpa therefore had no recourse other than the NCP to call upon Bolloré to act on SOCAPALM. In addition, the NCP's institutional framework for negotiation encouraged Bolloré to accept a mediation process. Thanks to this framework, Sherpa managed to go well beyond what could have been obtained within the classic framework of direct negotiations with the group.

Finally, the use of this little exploited procedure in 2010 also implied that it could be improved. Sherpa thus used this procedure to present suggestions of reforms to the NCP in order to strengthen its effectiveness (see above).

## WHAT SHERPA'S WORK HAS ENABLED

Through this procedure, Sherpa has managed to obtain an unprecedented plan of action englobing a commitment by the group to specific actions on all the points raised in the original complaint: dialogue with the neighboring populations, land issues, environment, public service missions to be ensured by SOCAPALM, local development to ensure, conditions of workers and subcontractors, transparency, and finally compensation to local

\* The remaining 3% are held by PALMCAM (via SOCIPALM - staff investment fund) for the benefit of the SOCAPALM staff.



populations for the damage suffered as a result of the activity of SOCAPALM.

Although mediation procedures before the NCP are infrequent between businesses and associations, it is the very first time that this process has been finalized and has allowed the commitment of the parties to implement a plan of action to remedy the shortcomings of the OECD Guidelines. It is also the first time that an operationalization monitoring mechanism has been implemented to ensure that the plan of action is actually applied, consisting of one body in France and one in Cameroon. Several years of work by Sherpa on the SOCAPALM case has created a precedent that could encourage parties to use the NCP to obtain specific remediation actions.

However, the group announced to Sherpa that it could no longer continue to implement it as Socfin, one of the subsidiaries, was blocking the process. All of Sherpa's efforts in 2015 therefore consisted in requesting Bolloré by various means to respect its commitments. Sherpa also worked with the French NCP via several written documents to ensure that its March 2015 statement carried a clear demand, written in strong and dissuasive terms, for the Bolloré Group to exercise its influence over Socfin to unblock the situation.

Sherpa has also continued to relay the claims of local residents and workers, and to monitor the situation on site with the different organizations involved, notably including the monitoring agency chosen in Cameroon (SNJP) and the Synaparcam (local residents' association).



## CHRONOLOGY OF THE PROCEEDINGS

**December 3, 2010:** Complaint filed with the French, Belgian and Luxembourg National Contact Points by Sherpa, FOCARFE, Centre pour l'Environnement et le Développement, and MISEREOR against Bolloré (France), FINANCIERE DU CHAMP DE MARS (Belgium), SOCFINAL (Luxembourg), and INTERCULTURES (Luxembourg) - all 4 jointly exercising their control over SOCAPALM, Bolloré being the parent company

**July 30, 2012:** NCP hearing of the parties.

**February 7, 2013:** First mediation meeting between Bolloré and the different parties.

**Late May 2013:** Bolloré agreed to withdraw its defamation complaint against Sherpa.

**September 3, 2013:** After six months of mediation, submission of the plan of action developed by the parties to the NCP.

**November-June 2014:** Sherpa and its partners developed a system to monitor the plan of action to be implemented by a European body (GRET) and a local partner (SNJP).

**September 12, 2014:** Validation of the first stages of work and a first mission of the GRET and the SNJP in Cameroon.

**December 15, 2014:** Notification by Bolloré to Sherpa of the withdrawal of Socfin, who no longer wished to participate in the action plan. Bolloré stated that it cannot enforce the plan.

**January 9, 2015:** Letter from Sherpa and its partners to V. Bolloré asking him to unblock the situation and to officially commit to the proper conduct of the plan of action.

**February 5, 2015:** Receipt of the response from Bolloré explaining that they had already tried to exercise their influence over Socfin and could do no more.

**February 17, 2015:** Letter from Sherpa and its partners to Bolloré, reminding them of their power of influence and their obligation to do everything necessary to see that the plan of action is applied.

**February 25, 2015:** Bolloré acknowledged receipt of the letter and said that it had been transmitted to Socfin for comment.

**March 2, 2015:** Publication of a statement from the French NCP requesting Bolloré to respect their commitments and to exercise their influence over Socfin to enforce the plan of action.

**April 23, 2015:** Letter from the Alliance internationale to Bolloré requiring them to take all the necessary measures.

**April 30, 2015:** A second letter from Sherpa and its partners to Bolloré, taking note of their silence and stating «We will be obliged to draw all the conclusions in the near future.»

**September 25, 2015:** Request by the NCP to the Bolloré group and Sherpa to make an assessment report of the procedure and a request for a hearing.

Developing countries lose at least one thousand billion dollars (750 billion euros) each year due to illicit financial flows\*, i.e. due to money earned, transferred or used illegally or in an illicit manner.



# ILLICIT FINANCIAL FLOWS

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In our time of digital communication and globalization, the circulation of money is accelerating and becoming globalized. The number of financial transactions and their geographical scope are increasing, as well as the amounts exchanged, which are becoming ever more important. Although there are a certain number of rules that govern financial flows, they seem to be more and more unadapted to track and control these rapid and immaterial exchanges.

Developing countries lose at least one thousand billion dollars (750 billion euros) each year due to illicit financial flows\*, i.e. due to money earned, transferred, or used illegally or in an illicit manner. These illicit financial flows are a major obstacle to development. Indeed, they dramatically reduce the resources available for essential public services such as education or health and aggravate the debt burden of developing countries.

Thus, in order to combat this problem, Sherpa launched its Illicit Financial Flows program in 2007. It started with the so-called «Ill-gotten Gains» case with the objective of recovering and repatriating to the victim populations stolen assets derived from corruption or the embezzlement of public funds.

The Illicit Financial Flows program is organized around three poles:

- ★ Illicit financial flows and natural resources.
- ★ Changing practices in relation to economic and financial crime.
- ★ The recovery and repatriation of assets to victim populations

Sherpa has illustrated itself for each of these three poles through actions of advocacy, litigation, research, training, and publication. Sherpa favors networking within platforms that allows it to be more effective with respect to other stakeholders (businesses and public institutions). This work also helps Sherpa to increase its visibility and share its legal expertise with other organizations.



Source: ONE, the heist of the century - a one thousand-billion-dollar scandal, 2014.



# FIGHTING ILLICIT FINANCIAL FLOWS IN THE NATURAL RESOURCES SECTOR

## OBJECTIVES

Promote transparency and liability for natural resources and reduce illicit financial flows in this sector.

## SHERPA'S ACHIEVEMENTS

### TRANSPARENCY OF EXTRACTIVE AND LOGGING COMPANIES

In 2013, the European Union (EU) adopted the transparency and accounting directives which introduced an obligation for oil, gas, mining, and logging companies, whether listed or not on the stock exchange in the EU, to publish the payments made to governments in which these companies carry out their exploration and/or operating activities. This publication should be made per country and per project. France transposed these directives into French law in September 2014.

During 2015, Sherpa, with its partners in the Publish What You Pay (PWYP) coalition, followed up the transposition of the European directives into French law by monitoring the publication of the decrees necessary for the proper application of the law. To do this, various meetings were held with the Ministry of Finance in order to express our recommendations: the adoption of a model for a single and common report for all companies, as well as the publication in an open data format to allow access for all to the information and facilitate the use of the data. The first reports are expected at the end of the first half of 2016.

Sherpa also participated in various meetings about the Extractive Industries Transparency Initiative (EITI).<sup>1</sup>

Publiez Ce   
Que Vous Payez

### PUBLISH WHAT YOU PAY (PWYP)<sup>2</sup>

#### OBJECTIVES:

PWYP is a global network composed of different civil society organizations. Its objective is to make the extractive sector more transparent and accountable to ensure that the income from oil, gas, and mining industries contributes to the improvement of the living conditions of the populations of countries rich in natural resources and that the extraction is conducted in a responsible manner for the benefit of the country and its citizens.

#### MEMBERS:

The global network is comprised of over 800 member organizations around the world. The members of the network in more than 35 countries have joined forces to create national coalitions. Thus, there is a national coalition in France, in which Sherpa is a member, coordinated by Oxfam France. The members of the French coalition are: CCFD Terre Solidaire, la CIMADE, Defi Michée, la FIDH, Info Birmanie, Justice et Paix, Les amis de la Terre, ONE France, Oxfam France, Partenaria 2000, Secours Catholique, Sherpa, Survie, and Transparency International France.

In 2015, Sherpa and its partners from PWYP met with the different ministries to raise awareness on the importance of being involved in the process. Indeed, this candidature would send a strong signal in the fight against opacity and Illicit Financial Flows in a crucial sector that many countries depend on for their development. A position paper has been published by PWYP on this topic.<sup>3</sup>

<sup>1</sup> <https://eiti.org/fr/la>  
<sup>2</sup> [www.publishwhatyoupay.org/fr/membres/france2/](http://www.publishwhatyoupay.org/fr/membres/france2/)  
<sup>3</sup> <http://www.cas-sherpa.org/node/mise-en-place-de-linitiative-pour-la-transparence-dans-les-industries-extractives>



## EXTRACTIVE INDUSTRIES AND CORRUPTION

Sherpa attended the OECD Policy Dialogue on natural resources in June and December 2015.<sup>4</sup> In parallel to these sessions of exchange and meetings, Sherpa, within the OECD working group on the risks of corruption in the extractive sector, helped to establish a typology of the risks of corruption in this sector. The report identifies the different stakeholders in these corruption schemas and highlights the means used to perpetuate corruption as well as the incentives to fight against corruption in extractive industries.<sup>5</sup> The typology was finalized in December 2015. This work represents an opportunity to clean up the sector. Nevertheless, it is not a miracle solution and Sherpa will continue to carefully monitor its progress and the actions that will be carried out in this sector to combat corruption.

### MINERALS FROM CONFLICT AND HIGH-RISK ZONES

Sherpa, with its partners in the «Minerals from Conflict and High-Risk Zones» France group, held many advocacy meetings with the Ministry for Foreign Affairs, the office of the Prime Minister, as well as the Ministry for Finance in order to present our demands, in particular the adoption of an ambitious, credible, and binding European regulation obliging importers of minerals to implement a system of due diligence in order to source minerals in a responsible and transparent manner and to avoid feeding conflicts that are devastating for local populations.

In May 2015, Sherpa and many partners drafted and published an open letter to the members of the European Parliament on the EU regulation concerning minerals from conflict zones.<sup>6</sup> In this letter, the organizations requested the European Parliament to mobilize and commit itself by voting for a binding law on minerals from conflict zones.

A few days later, the European Parliament voted in favor of a binding regulation to regulate extraction and the trade of «blood minerals». The European Union must now reach an agreement among its various constituent bodies - the trilogue composed of the European Parliament, the European Commission and the European Council - in order to reach a final agreement on this regulation. New actions are planned for 2016.

Subsequently, the CSA polling institute was mandated by Sherpa and its partners to determine the opinion of the population on a binding regulation toward companies that use blood minerals.<sup>7</sup> The results of the survey stressed the importance to the general public of our advocacy action for a binding regulation: indeed, 83% of the French population

say they would like to see France take a favorable stance toward a binding regulation. 66% also to say that having information about the consequences and conditions of extraction of the minerals might influence their choice when purchasing an electronic device.

### MINERALS FROM CONFLICT AND HIGH-RISK ZONES FRANCE GROUP

#### OBJECTIVES:

Civil society is organized at the European level in order to make proposals for an ambitious and binding regulation on the minerals from conflict and high-risk zones.

#### MEMBERS:

A coalition has been established around this issue in France. It is composed of the CCFD, Amnesty International, AITEC, Info Birmanie, Le Secours Catholique, and Sherpa. At the European level, the group is composed of a coalition of 58 civil society organizations. The France group works in close collaboration with the European coalition.

## OBSTACLES TO OVERCOME

Our proposals to provide an open and unique format for the transposition of the transparency and accounting directives were not retained by the institutional bodies. The analysis of the reports that will be published by the companies in 2016 will require an important effort of harmonization. Nevertheless, this will allow us to subsequently demonstrate the need for a common reporting format. This work will be carried out in 2016.

The binding regulation on the minerals from conflict zones will be negotiated during the trilogue meeting of the European Union in 2016. Although the European Parliament is in favor of truly binding regulations for businesses that import these minerals to the EU in the form of raw materials or as components of products, the other two bodies, the Commission and the Council, seem to be favorable to a voluntary, a much less effective mechanism. 2016 will therefore be decisive in this regard since the text that emerges from the negotiations will be adopted as a regulation applicable to all the countries of the European Union.

# CHANGING PRACTICES IN RELATION TO ECONOMIC AND FINANCIAL CRIME

## OBJECTIVES

Combat economic and financial crime via legal proposals that lead towards changes in practices.

## SHERPA'S ACHIEVEMENTS

### APPROVALS OBTAINED TO MONITOR THE EXEMPLARITY OF PUBLIC AND ECONOMIC ACTORS

In 2015, Sherpa obtained the approval from the High Authority for Transparency in Public Life<sup>8</sup>. Anti-corruption associations like Sherpa help to advance probity in public life. In this context, the laws of 11 October 2013 relating to the transparency of public life enable them to have recourse to the High Authority for Transparency in Public Life when they have knowledge of a situation or facts likely to constitute a breach of the different obligations provided for by the law. It may be a case of an infringement of probity, a conflict of interest, the non-respect of the obligations of declarations, or of «revolving door» policies on the part of public officials.

In February 2015, the association was also granted standing for a period of three years. This approval allows Sherpa to file a complaint against a company or persons unknown for offences such as corruption without having to demonstrate its standing. Normally, in order to initiate judicial action, the plaintiff must prove its legal stake in the dispute. However, this is difficult to demonstrate in the context of economic crime. Thanks to the article of the Code of Criminal Procedure resulting from the act of December 2013 on economic and financial crime, any approved association that has been incorporated for at least five years on the date of the civil party petition and whose statutes propose to combat corruption may exercise the rights recognized to the civil party in respect of a breach of the duty of probity, acts of corruption, influence peddling, concealment, or money laundering.

## STUDY OF THE FACTORS LEADING TO A CHANGE IN PRACTICES

Sherpa has begun a study of the different factors which could lead to changes in practices of multinational companies in their trade relations in order to combat transnational corruption and the bribery of foreign public officials. In this context, Sherpa publishes different notes of information highlighting the affairs and corruption schemes that affect businesses operating abroad.

A first note concerning Alstom was published in June 2015.<sup>9</sup> The company was sentenced in December 2014 by the U.S. Department of Justice to pay a record fine of 772 million dollars for acts of corruption that took place over more than a decade in all corners of the globe. It is also the subject of investigations in several other countries. Nevertheless, Alstom had an internal anti-corruption control program. The group has also significantly publicized its changes in corporate culture and practices. The gap between rhetoric and reality raises questions about both the effectiveness of such programs and the responsibility of the leaders. Other notes will be published in 2016 in order to draw lessons, make recommendations to combat corruption, and promote a culture of integrity within the companies.

This initial effort has helped build relationships with investors who are mindful of the ethical practices of the companies in which they invest. Sherpa considers that this is an important partnership and wishes to continue the dialogue with investors wishing to contribute to changing practices.

## BILL TO REFORM THE FRENCH SYSTEM TO FIGHT AGAINST CORRUPTION

At the end of 2015, Sherpa was heard by the Ministry of Justice in the context of the bill relating to transparency, the fight against corruption, and the modernization of economic life, the so-called Sapin II Bill. A first series of recommendations were presented to the Ministry. This bill will be at the center of Sherpa's activities for 2016.

## PUBLIC COUNTRY-BY-COUNTRY REPORTING

Sherpa has worked closely with the Platform Paradis Fiscaux et Judiciaires to establish public country-by-country reporting. Public country-by-country reporting is a vital measure in the fight against tax evasion by multinationals, which would oblige French companies to release information on their activities and the taxes they pay in each of the countries where they operate. This measure has been defended for almost 10 years by the Platform. It should allow citizens, journalists, trade unions, and civil society as a whole to know if the taxes paid by companies in a country correspond to their actual economic activity. Public country-by-country reporting is currently under discussion at the European level, following the vote by members of the European Parliament in favor of an amendment to the directive on the rights of shareholders in July 2015.

At the national level, on December 4 the French Chamber of Deputies took a decisive step: they adopted public country-by-country reporting in the framework of the Finance Amendment Bill for 2015, which, however, was rejected by the Senate. During a second passage before the National Assembly on December 16, the members of parliament once again voted in favor of public country-by-country reporting. Nevertheless, the Government mobilized members of parliament in the middle of the night for a new vote, which ultimately rejected public country-by-country reporting. This comes as a blow that will dangerously slow down the fight against tax evasion. Sherpa and its partners on the Platform Paradis Fiscaux et Judiciaires will continue to promote this measure in 2016 within the framework of the Sapin II Bill.

En juillet 2013, à la demande des ministres des finances du G20, l'OCDE a lancé un plan d'action, nommé Base Erosion and Profit Shifting (BEPS), en 15 points pour lutter contre les pratiques d'évasion fiscale des multinationales. La plateforme paradis fiscaux et judiciaires a analysé ce plan d'action ce qui a permis de mettre en avant ses forces et faiblesses. Le travail de l'OCDE a permis d'ouvrir un chantier et de faire reconnaître à tous qu'il y avait un véritable problème dans la manière dont les entreprises multinationales exploitaient les failles du système international pour payer le moins d'impôts

possible. Cependant, les résultats ne sont pas à la hauteur des attentes : les propositions initialement ambitieuses ont été rapidement vidées de leur contenu à cause de résistances très fortes de certains Etats et d'un lobby très actif du secteur privé. En conséquence, les solutions proposées aujourd'hui ne permettront pas de répondre à l'objectif initial d'imposer les entreprises là où elles ont une activité réelle et seront insuffisantes pour mettre un terme aux échappatoires fiscales qui permettent actuellement aux multinationales de ne payer que très peu d'impôt. De plus, contrairement à ce que l'OCDE annonce, il n'y a aucune avancée en matière de transparence : seules les administrations fiscales auront accès à plus d'informations.

## 4th ANTI-MONEY-LAUNDERING DIRECTIVE

In May 2015, the European Parliament adopted a new directive to combat money laundering. Sherpa has prepared a memo on this subject with the objective of exposing the main elements and results of this revision, analyzing their potential impact, and highlighting the points which may require the action of the Platform Paradis Fiscaux et Judiciaires during the transposition of the directive into French law.





## OBSTACLES TO OVERCOME

The change of practices in the domain of economic and financial crime is hampered by a lack of political will on the part of the French government. The maneuver during the vote on public country-by-country reporting in order to reject a bill that had initially been adopted demonstrates its reluctance to establish a binding framework for the fight against tax evasion. The government must now propose an ambitious and binding bill in the fight against corruption and promote transparency in economic life. The French Parliament must then adopt this bill to be able to endorse a change in practices within companies as quickly as possible.



### PARADIS FISCAUX ET JUDICIAIRES (PFJ) 10

#### OBJECTIVE:

The members of the Platform carry out a collective effort of expertise and advocacy on the measures to be taken to reduce financial opacity, to fight effectively against tax evasion, to promote greater regulation of the mobility of capital, lift bank secrecy, and sustainably finance development.

#### MEMBERS:

The Platform brings together 19 French civil society organizations committed to the fight against tax havens, including trade unions, development NGOs, associations for the fight against corruption, and faith-based and environmental organizations: Les Amis de la Terre, Anticor, Attac France, CADTM, CCFD-Terre Solidaire, CFDT, CGT, CRID, Justice & Paix, OCTFI, Oxfam France, Secours Catholique- Caritas France, Sherpa, Syndicat de la magistrature, Solidaires Finances Publiques, Survie, and Transparency International France.





# THE RECOVERY AND REPATRIATION OF ASSETS TO VICTIM POPULATIONS

## OBJECTIVES

Initiate reflection at the national, European and international levels on the means by which assets which have been stolen and subsequently confiscated should be returned to the victim populations in their countries of origin.

## SHERPA'S ACHIEVEMENTS

In 2015, Sherpa initiated reflection on the means by which the assets should be returned to victim populations. To this end, a partnership was established with the Nanterre law clinic (EUCLID). Law students conducted preliminary research on the cases of restitution throughout the world and the strengths and weaknesses of these mechanisms in order to identify a framework to enable the repatriation of assets.

Restitution to the victims is not possible at the present time, as French law does not allow it for the moment. The confiscated assets will therefore remain in France. This is the reason why Sherpa also works with Transparency International France on the development of proposals introducing into French law the principle of restitution to victim populations.



### UNCAC Coalition <sup>11</sup>

#### OBJECTIVE:

Promotion of the ratification and implementation (transposition) of the United Nations Convention against Corruption. The coalition was created in 2006 with the objective of mobilizing civil society on these actions at the national, regional and international levels.

#### MEMBERS:

Global network composed of 350 civil society organizations in 100 countries.



# BRIBERY OF FOREIGN PUBLIC OFFICIALS

**GEOGRAPHIC AREA:**  
*SOUTH AFRICA, NAMIBIA, THE  
CENTRAL AFRICAN REPUBLIC*  
**COMPANY TARGETED: AREVA**

## AN OVERVIEW OF THE FACTS

In 2007, AREVA bought UraMin, a company holding operating licenses in South Africa, Namibia, and the Central African Republic, for an amount of 1.8 billion euros, in spite of the fact that it had been estimated between 600 and 800 million euros at the most. This purchase has proven disastrous for AREVA, in particular because the mines have never been exploited. Today, this group, the jewel of the French nuclear industry, is practically bankrupt, with a deficit of 5 billion euros, and has been compelled to lay off thousands of people.

## LEGAL BASIS FOR THE PROCEEDINGS

Fraud, bribery of foreign public officials, complicity.

## LEGAL BASIS / OBSTACLES CIRCUMVENTED

A civil party petition not only allows the association to have access to the case but moreover enables it to provide additional elements to the investigation. Sherpa thus strives to understand how suspicious transactions have managed to escape the attention of the group's audit and compliance management, but also of all other intermediaries, such as the legal and fiscal advisers, or even the statutory auditors, whose should have been able to detect and alert the judicial authorities.

## WHAT SHERPA'S WORK HAS ENABLED

The AREVA affair raised the awareness of the general public and policy makers to the challenges of the fight against corruption, and demonstrated that a change of practices in international transactions and the fight against international corruption is necessary. Indeed, the bankruptcy of AREVA, a public company, has led to disastrous consequences for the employees and taxpayers, but also for investors, shareholders, and inevitably for the image of the French nation. This case therefore reveals the major challenges of the fight against corruption to the general public. In addition, the different state services involved in the approval and monitoring of AREVA's projects seem to have been neutralized. Consequently, it is crucial to shed light on the role and responsibilities of the different actors in this case.



## CHRONOLOGY OF THE PROCEEDINGS

**2007 :** Purchase of UraMin by AREVA.

**2012 :** A parliamentary inquiry on the management of the purchase of UraMin was opened and established «dysfunctions in the governance and decision-making process within the company».

**February 2014:** The Court of Auditors notified the national financial prosecutor of the suspicion of the commission of criminal offenses. This latter opened a preliminary investigation into acts of «inaccurate or unfaithful presentation or publication of accounts», «dissemination of false or misleading information», «forgery and the use of false documents».

**May 2015:** Two judicial inquiries were opened, including one for acts of bribery of foreign public officials.

**June 2015:** Sherpa filed as a civil party in the corruption case.

## OTHER CASES OF BRIBERY OF FOREIGN PUBLIC OFFICIALS:

**Kinross - Mauritania / Ghana:** a report was filed with the Royal Canadian Mounted Police in Canada in partnership with Mining Watch Canada, in December 2015.

**Vinci - Russia:** ongoing investigation.



# MISAPPROPRIATION OF PUBLIC FUNDS, CORRUPTION AND MONEY LAUNDERING

**GEOGRAPHIC AREA:**  
*EQUATORIAL GUINEA, FRANCE*  
**POLITICAL ELITE TARGETED:**  
*TEODORIN OBIANG AND RELATIVES OF THE PRESIDENT OF EQUATORIAL GUINEA*

President of Equatorial Guinea since 1979, Teodoro Obiang Nguema Mbasogo governs under an authoritarian regime, enabling his relatives to collect money from oil revenues as well as many natural resources.

## **AN OVERVIEW OF THE FACTS**

For very many years, different observers have collected a certain amount of information on the fact that the leaders of certain states or some of the members of their family had, while they were in power, acquired or caused the acquisition of property on the French territory. As a result of different inquiries that they have carried out or by compiling information gathered by different observers, some associations, including Sherpa, have established the strong probability of the detention on French territory, in particular in Paris, of real estate, sometimes of a very great value, by foreign leaders still in power and by certain members of their family. It is under these conditions that Sherpa, with Transparency International France, filed a complaint, notably against, the son of the President of Equatorial Guinea, Teodorin Obiang.

## **LEGAL BASIS FOR THE PROCEEDINGS**

Concealment of embezzlement of public funds, aggravated money laundering committed by an organized group

## **LEGAL BASIS / OBSTACLES CIRCUMVENTED**

The Ill-gotten Gains case aims to fight against the impunity of the heads of states, corruption and the embezzlement of public funds. Countries such as Equatorial Guinea or Gabon are regular victims of this type of abuse. The association has faced difficulties related to the legal immunity of heads of state in power.

This case of presumed embezzlement, corruption, and money laundering in Equatorial Guinea raises the question of the standing of French associations for the fight against corruption. The admissibility of the complaint with civil party petition by Sherpa has thus been raised.

## **WHAT SHERPA'S WORK HAS ENABLED**

Sherpa has initiated proceedings that are unprecedented in the world by targeting foreign dignitaries in power; the objective being to enable the recovery and repatriation of stolen assets to victim populations. Sherpa has also contributed to the launch of an international civil society movement on the recovery of assets and is considering the possible actions to enable restitution to victims.

## **THE CONSEQUENCES OF THE PROCEEDINGS**

In September 2015, the inquiry involving Teodorin Obiang, son of the President of Equatorial Guinea, was closed. On December 15, the Court of Cassation rejected his application for legal immunity in connection with his position as vice-president of Equatorial Guinea. The closure of this inquiry and the rejection of immunity may open the door to an unprecedented trial. Never has a political personality still in power been pursued judicially.

This trial will probably be held in 2017.



## CHRONOLOGY OF THE PROCEEDINGS

**May 2007 and July 2008:** Sherpa and its partners filed a complaint with the office of the Prosecutor of Paris.

**December 2008:** Complaint with civil party petition filed by Transparency International France with the support of Sherpa.

**October 2009:** Judgment of the Court of Appeal declaring the complaint with civil party petition to be inadmissible.

**November 2010:** The Court of Cassation stated that Transparency International France has standing in the case.

**During 2011:** A search at the residences in Avenue Foch and Avenue Marceau enabled the seizure of luxury vehicles for a value of over EUR 40 million.

**March 2014:** Teodorin Obiang was charged with money laundering.

**September 2015:** Closure of the inquiry.

**December 15, 2015:** Judgment of the Court of Cassation rejecting the immunity of Obiang

## OTHER CASES OF ILL-GOTTEN GAINS

**Bongo/Gabon:** The investigation is in progress.

**Sassou Nguesso/Congo:** Seizure of property (vehicles) of the Sassou Nguesso clan in February.  
**Karimova/Uzbekistan:** The investigation is in progress.

**Rifaat al Assad/Syria:** The investigation is in progress.



The accessibility of the problems of law and of the responsibility of economic actors and decision makers remains a major concern.



# COMMUNICATION

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Communication is an essential working tool to place Sherpa's combats at the heart of public debate and raise awareness not only among legal experts and politicians, but also with the general public, who are more and more concerned about the dramatic consequences of poorly regulated globalization.

In 2015, Sherpa endeavored to expand its communication toward the general public. Thanks to more accessible messages and presentations of our activities, and by highlighting the human impacts of the economic activities denounced, the association has begun to reach the general public. We have also added graphics and videos to our tool kit. The improvement of the newsletter format now allows us to periodically inform our friends and supporters of the progress of our actions.

In addition, in order to reach a more international audience, we have undertaken a huge effort of translation: the entire website, the annual activity report, Sherpa's presentation leaflet and even each press release are now translated into English so that the activities of Sherpa can finally be disseminated and understood beyond the borders of France and French-speaking Africa.

For the first time, the association has set up large-scale communication campaigns: at the time of filing the complaint against Vinci, planned to precede the vote on the bill for the liability of parent and subcontracting companies at the French National Assembly, a true press kit was prepared for the first time and media exclusives were chosen in such a way as to obtain the greatest dissemination. In the

same logic, the broadcast of a documentary on the textile industries in Bangladesh, which follows Sherpa during a field investigation, enabled the Association, thanks to an exclusive press report, to provide an excellent echo to the announcement of the new evidence brought against Auchan in the Rana Plaza case. These campaigns have provided strong support for our advocacy activity with elected politicians and these two cases, cited by the representatives during the debates at the National Assembly, were decisive for the positive vote on the bill in March 2015. In addition, this media coverage enabled us to reach a major group of stakeholders in the company, the investors, who contacted us in large numbers.

These huge undertakings require specialized techniques such as graphic design, filming and editing, web development, informatics, translation, and even photography, which would never have been within Sherpa's reach without the mobilization, support, and wonderful creativity of the many volunteers who generously provide their skills to the association. We take this opportunity to thank them all!



# EVENTS:

The Sherpa team and the members of the Board of Directors regularly intervene during events in connection with the themes of the association. These events allow the association to support its actions of advocacy and litigation, to present and share its expertise, and to increase its renown among specialized audiences, civil society, and even the general public.

**The members of Sherpa participated in a total of 22 events during 2015.**

## ILLICIT FINANCIAL FLOWS

### NATURAL RESOURCES

#### «Kleptocracy, Natural Resources, Communities, & Capacity Building»

Conference organized by the American Bar Association. Speech by Sophie Lemaître.

**April 8, 2015**

#### «Improving forest governance: A cure to reduce corruption?»

Annual conference of the IUCN Academy of Environmental Law in Jakarta. Speech by Sophie Lemaître.

**From September 7 to 12, 2015**

### ILL-GOTTEN GAINS

#### «The inside story on the Ill-Gotten Gains affair»

Conference organized in Neuchâtel (Switzerland) by the ILCE (Institute for the Fight Against Economic Crime). Speech by Laetitia Liebert

**September 9 and 10, 2015**

### RECOVERY AND RESTITUTION OF ASSETS

#### « We Want Our Money Back! Stolen Asset recovery »

United Nations' 3rd Conference on Financing for Development, organisée à Addis-Abeba. Intervention de Laetitia Liebert

**Le 15 juillet 2015**

### TAX HAVENS, TAX EVASION

#### «Tax havens, tax evasion: a question of justice»

Symposium organized in Paris by the tax and legal havens platform. Speech by Jean Merckaert and Eric Alt, members of the Sherpa Board of Directors.

**June 26, 2015**

## GLOBALIZATION AND HUMAN RIGHTS

### DUTY OF CARE

#### «HEC Conference»

Conference organized by Ecole des Hautes Etudes de Commerce. Speech by Sandra Cossart.

**March 9, 2015**

#### «The instruments of action of the Sherpa NGO on the duty of care of multinationals for the prevention of environmental disasters»

Conference organized in Paris by the CERAP. Speech by Sandra Cossart.

**March 26, 2015**

#### «EHESS Conference»

Conference organized by Ecole des Hautes Etudes en Sciences Sociales. Speech by Sandra Cossart.

**March 26, 2015**

#### Multiparty round table «Draft legislation»

Conference organized by Science Po Paris. Speech by Sandra Cossart.

**March 31, 2015**

#### «The duty of care of parent companies»

Conference organized in Paris by the EFB. Speech by Sandra Cossart and Marie-Laure Guislain.

**September 30, 2015**



## HUMAN RIGHTS IN SPORT

### «No sports and cultural construction without employee rights»

Round table organized in Paris by the CGT at the Fête de l'Humanité. Speech by Marie-Laure Guislain.  
**September 11, 2015**

### «Paris and the Olympic Games, sports, and human rights»

Conference organized by the CGT. Speech by Marie-Laure Guislain.  
**November 04, 2015**

## HUMAN RIGHTS AND BUSINESS:

### « Brainstorming session on business and human rights, access to justice for victims and human rights defenders and extraterritorial obligations »

Conférence organisée par CICC Genève, Friedrich Ebert Stiftung. Intervention de Marie-Laure Guislain.  
**February 26, 2015**

### «Obstacles to the commitments of the responsibility of multinationals and litigation actions by Sherpa to circumvent these obstacles»

Conference organized by Science Po Paris. Speech by Marie-Laure Guislain.  
**April 14, 2015**

### «3rd annual information meeting of the NCP: the SOCAPALM case»

Conference organized by the National Contact Point. Speech by Sandra Cossart.  
**April 14, 2015**

### « Build learning on effective judicial and non-judicial remedies »

Conference organized in Washington by ICAR and SOMA. Speech by Sandra Cossart.  
**From September 8 to 11, 2015**

### «How to create decent jobs? »

Conference organized in Oslo by the Norwegian Council for Africa, Forum for Environment and Development, Fafo, Focus, Agenda, LO, Fagforbundet, Industri Energi, and Norad. Speech by Sandra Cossart.  
**October 23, 2015**

### «UN Global Forum»

Conference organized in Paris by the UNO. Speech by Sandra Cossart «Access to remedies for victims».  
**From November 16 to 18, 2015**

### «World business, global responsibility»

Conference organized in Berne by Initiative Multinationales Responsables. Speech by Marie-Laure Guislain.  
**December 2, 2015**

## «B&HR and HRDD»

Conference organized in London by Amnesty International and ICAR. Speech by Sandra Cossart.  
**From December 7 to 9, 2015**

## HUMAN RIGHTS AND THE ENVIRONMENT:

### «¡Conga no va! - Human and environmental rights in Peru: What prospects? What forms of solidarity?»

Symposium organized in Paris by Laurence Cohen, Senator of the Val-de-Marne, in collaboration with the Comité de Solidarité avec Cajamarca, France Amérique Latine, Colectivo de Peruanos in Francia, and Association des Peuples des Montagnes du Monde. Speech by Marie-Laure Guislain.  
**May 22, 2015**

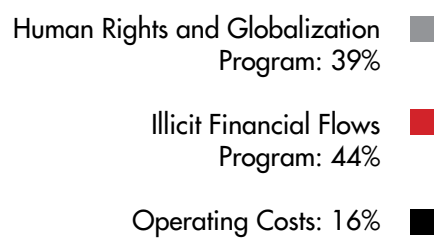
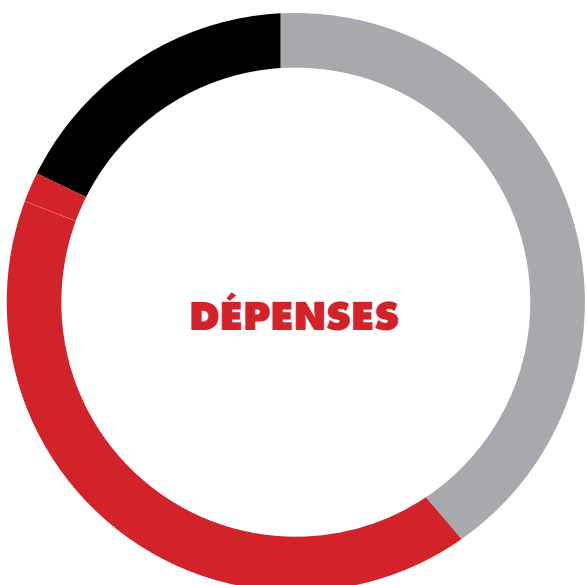
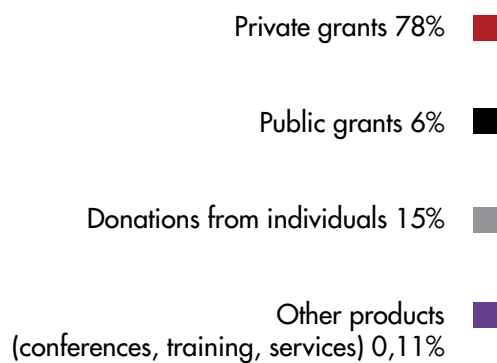
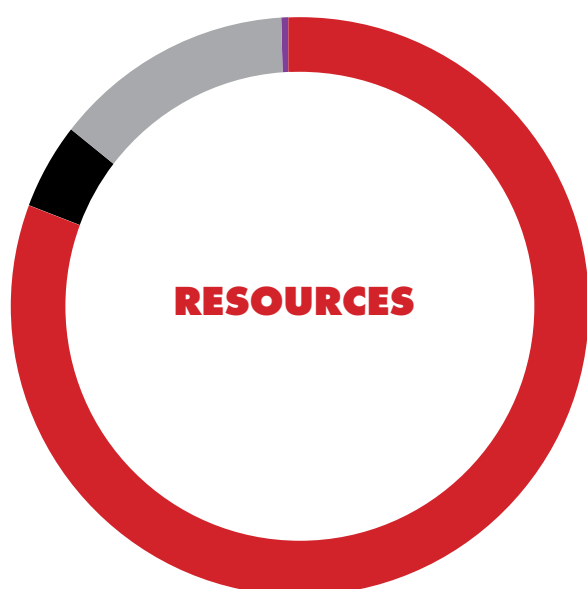
### «Effects of climate change on migration and forced labor»

Round table organized by Energies 2020 in the context of COP21. Speech by Sandra Cossart.  
**December 10, 2015**

# FUNDING

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**2015 budget € 483,191**



# PARTNERS

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Fondation Charles Léopold Mayer  
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