

ACTIVITY REPORT

2016




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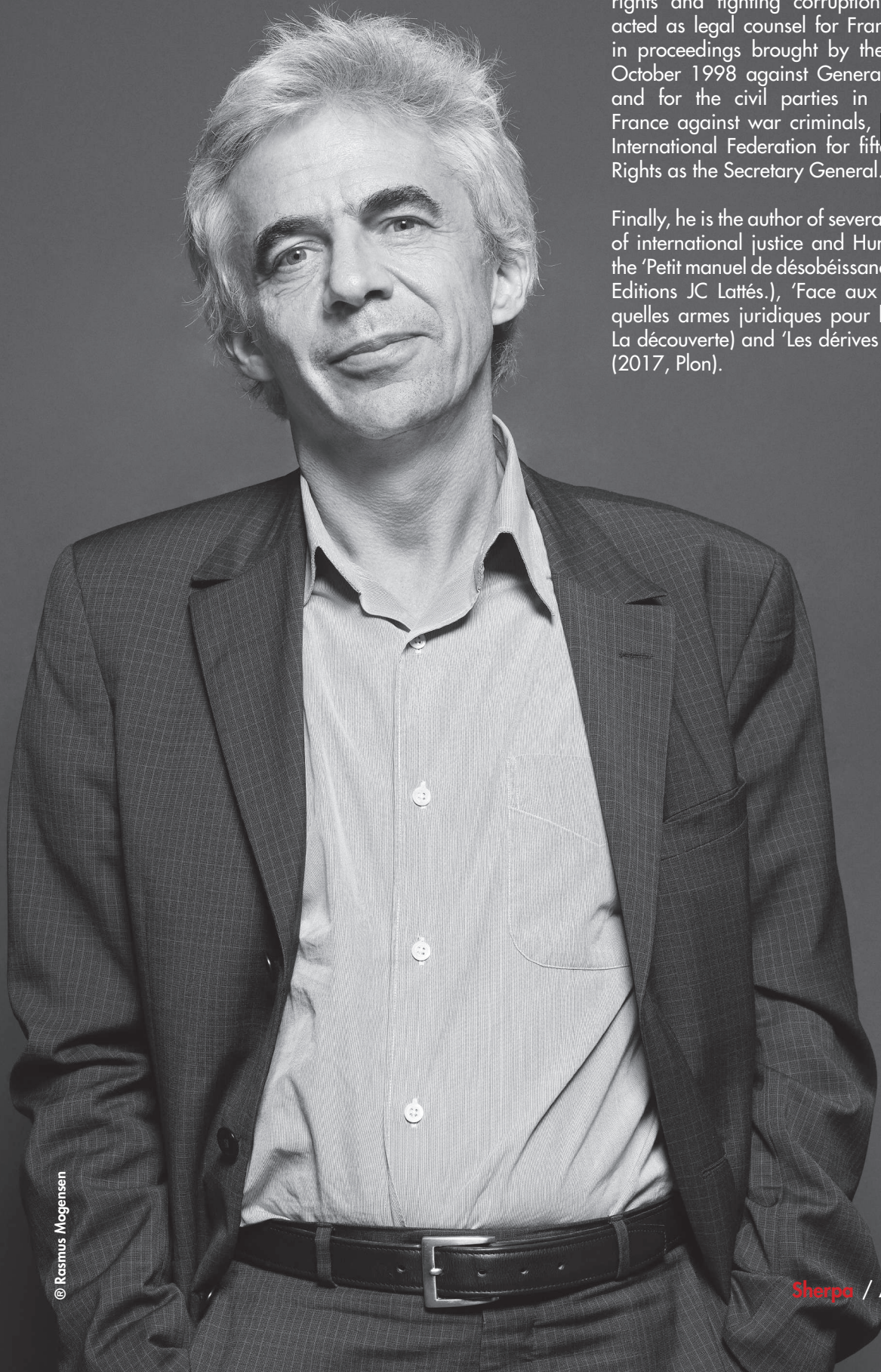


HISTORY

Sherpa was founded in 2001 by William Bourdon, a lawyer practising at the Paris Bar, President of the Association.

Committed for many years to promoting human rights and fighting corruption, William Bourdon acted as legal counsel for Franco-Chilean families in proceedings brought by the complaint filed in October 1998 against General Augusto Pinochet, and for the civil parties in actions brought in France against war criminals,  worked with the International Federation for fifteen years, Human Rights as the Secretary General.

Finally, he is the author of several works on questions of international justice and Human Rights, notably the 'Petit manuel de désobéissance citoyenne' (2014, Editions JC Lattés.), 'Face aux crimes du marché, quelles armes juridiques pour les citoyens' (2010, La découverte) and 'Les dérives de l'état d'urgence' (2017, Plon).





EDITORIAL

For fifteen years, Sherpa has been speaking out on the negative impact of unregulated globalisation, notably through its judicial actions: land grabbing, environmental harm, working conditions constituting modern slavery, misappropriation of public funds, tax evasion perpetrated including by some of the most powerful companies on the planet, etc.

Although the public - now better informed - is today expressing concerned opinions on the violations of Human Rights and serious environmental damage committed by some multinationals and their ability to avoid paying their fair share of taxes, so increasing the tax burden on citizens during these times of austerity and the deterioration in public services, the loss of citizens' confidence in public institutions and their capacity to protect the public interest has been exacerbated. One of Sherpa's mandates is to adapt the legislation on global trade for the public benefit.

After many years of work, in 2016 Sherpa witnessed significant legislative progress.

The European obligation to publish a National Plan for Human Rights followed the adoption of various proposals made by Sherpa - co-rapporteur of the opinion pronounced by the CSR Platform when preparing the National Plan Companies and Human Rights in France, so we could consider strategic priorities such as the corporate liability of parent companies and contractors for their subsidiaries and sub-contractors, Transparency via Reporting and the setting of the State's exemplarity.

In addition, our judicial action against LafargeHolcim

for financing terrorism in Syria once again revealed the possibility for multinationals to operate in conflict zones, supplying armed conflicts and participating in serious violations of Human Rights.

It was in this context that the duty of vigilance of parent companies with regard to Human Rights, conceived by Sherpa in 2010, and since appropriated by French MPs in 2013 thanks to the collective action of the Forum Citoyen pour la RSE, was finally adopted by the French Parliament, despite pressure from business leaders' organisations AFEP and MEDEF who invoked competitive harm. This law is an historic first step towards more regulated globalisation, respectful of Human Rights, that we must improve further to facilitate access to justice for victims. In 2017 we will work to strengthen this law and our ambition is to inspire and mobilise Europe and the UN for widespread enforcement of similar regulations.

Other projects are in progress: free trade agreements (TAFTA, CETA) so that foreign investors can file complaints against States, when public policy decisions in the common good affecting private interests remain at the planning stage.

Strategic Litigations Against Public Participation are multiplying: Bolloré attacks journalists in court, Veolia is prosecuting the Fondation France Libertés and Sherpa is the subject of many consecutive judicial proceedings for defamation and infringing the presumption of innocence by Vinci, which is claiming hundreds of thousands of Euros from its representatives. The moral and financial pressure of these proceedings reduces freedom of expression in France, and demonstrates the need for legislation reinforcing protection for Human Rights defenders.

Regarding the fight against financial secrecy, there is a great deal of work to be done: the start of the trial of Jérôme Cahuzac, the former budget minister for laundering the proceeds of tax fraud, the anniversary of the SwissLeaks scandal which highlighted tax evasion practices facilitated by HSBC Bank in Switzerland, recalling the urgent need for greater transparency in public life and the fight against tax havens and major economic and financial crime.

Our recommendations and the many exchanges we were able to organise with political decision-makers resulted in the adoption of some of our amendments on the French law known as Sapin II on transparency, fighting bribery and modernising economic life, notably the creation of the French Agence de prévention et de détection de la corruption' and anti-corruption measures.

We are also happy with the progress made on certain legal actions against the misuse of public funds. One such case was Rifaat al-Assad, the uncle and opponent to the Syrian President, who was indicted in Paris. Another case was Teodoro Obiang, who was brought before a court to be tried for the first time ever on accusations of money laundering, misuse of public funds, misuse of corporate funds, breach of trust and corruption, as committed by a high-ranking official; this suit was initiated by Sherpa and then pursued by Transparency International.

These major successes for the vision of a more human approach to globalisation were made possible thanks to our staff and specialised volunteers, as well as our generous donors and members, all of whom we wish to thank for their contributions.

Many thanks for your endless support,

Laëtitia Liebert
Director of Sherpa

VISION & MISSION

MISSION

Sherpa has set itself the mission of combating new forms of impunity, associated with the globalisation of economic and financial exchanges.

We protect and defend the victims of economic crimes with the support of the law, an invaluable resource for promoting development.

PROGRAMME

To achieve its mission, Sherpa acts in two complementary fields: the Globalisation and Human Rights (GHR) Programme and the Illicit Financial Flows Programme (IFF).

THE GHR PROGRAMME

People and the environment are all too frequently victims of the activities of multinationals and in particular, in emerging countries. Industrial disasters are becoming more frequent. The absence of a regulatory framework adapted to globalisation prevents establishing liability or obtaining compensation for damages.

Sherpa is working to establish a strict legal framework that will make economic actors responsible - notably multinational companies which violate human rights and cause environmental damage.

THE IFF PROGRAMME

Sherpa initiated this programme in 2007 with the so-called 'Ill-Gotten Gains Case'. Emerging countries lose at least a thousand billion dollars every year through illicit financial flows. These flows are a major challenge to development since they reduce the resources available for essential public services such as education or health, and aggravate the burden of debt in emerging countries. To such an extent that today, most of the governments in these countries cannot meet the basic needs of their citizens.

Sherpa classifies illicit financial flows, infringements against Human Rights and environmental damage perpetrated by multinationals as 'economic crimes'.

For these two programmes, Sherpa deploys targeted legal training programmes for political stakeholders and civil society as well as offering advocacy and litigation services.

ACTION RESOURCES



ADVOCACY

In order to move local and international law forward, Sherpa is developing legal advocacy priorities and deploying campaigns, alone or in partnership with working groups of which it is a member, with economic, political and institutional stakeholders, the media and the public to move local and international law forward.



LEGAL STUDIES/RESEARCH

These various initiatives support the advocacy and judicial actions conducted by Sherpa. They may be in the form of investigative reports, exposures of a situation or legal studies.



LITIGATION

Sherpa conducts legal actions which may be judicial, with the filing of complaints before the civil, criminal or administrative courts, to remedy a given situation of injustice or extra-judicial using the OECD network of National Contact Points, mediation or arbitration.



RAISING AWARENESS AND LEGAL TRAINING

Convinced that the sharing of knowledge and transfer of skills promotes development, Sherpa conducts awareness-raising and build capacities in France and abroad, to increase the autonomy of local stakeholders and their ability to pursue legal actions and also, to stimulate exchanges and co-operation between civil society organisations and experts.

The association brings together jurists, lawyers and specialists who are all committed, with different profiles and the benefit of international experience.

Sherpa works closely with many civil society organisations worldwide.

Sherpa also operates thanks to the commitment of its board members, the support of five interns and the generous help of seventeen volunteers in 2016.

THE PERMANENT TEAM



The Sherpa team is led by LAËTITIA LIEBERT.

A humanist and world citizen holding a science doctorate, she began her international business career in export before managing rural development and health programme teams at the NGO – AVSF, MSF – on the ground in Palestine, Israel, Angola, then at the headquarters in France followed by spells in the USA and Japan. She then took over management of the international bureau of Greenpeace Mediterranean and conducted strategic campaigns on energy and agriculture in Lebanon, Egypt, Jordan, Israel and Turkey, countries where local people are severely affected by local investment and commercial policies. Aware of the serious human consequences of unregulated globalisation, she decided to join Sherpa in August 2014.

Laëtitia Liebert speaks Arabic, Hebrew, Portuguese, Spanish and English fluently.



The Globalisation and Human Rights programme is led by SANDRA COSSART.

A trained lawyer and graduate of Sciences Po, she began her career in international organisations, the European Parliament and Council, before working for several years in Moscow, managing a European Union co-operation project in Russia. On her return to France, she joined a law firm providing advice and litigation, notably in business law, and in parallel committed to associations offering aid to refugees. In 2002, she relocated to London and worked as a consultant for Russian companies before joining the Business and Human Rights Resource Centre. After eight years in England, Sandra Cossart joined Sherpa in 2010.

Sandra Cossart speaks English and Russian fluently.



MARIE-LAURE GUISLAIN is head of litigation and legal caravans.

A trained lawyer and holder of an LLM in International Co-operation and Human Rights, she worked in Buenos Aires in 2010 for the Human Rights NGO CELS, and was involved in managing development projects, the production of a documentary and awareness-raising on the law on migrants. In 2011 she coordinated projects in Columbia, with communities displaced by the armed conflict, to protect their rights and natural resources, before joining Sherpa in 2012.

Marie-Laure Guislain speaks English and Spanish fluently.



A trained lawyer, **SOPHIE LEMAÎTRE** manages the Illicit Financial Flows programme.

She commenced her career at CIRAD, an international research centre in agronomics and development and the United Nations Food and Agricultural Organisation (FAO) specialising in forestry issues, notably governance and stricter enforcement of forestry regulations. She joined Sherpa in April 2014 when studying for a doctorate in law at the research laboratory Institut de l'Ouest Droit et Europe, part of Rennes University and of CNRS.

Sophie Lemaître speaks English fluently.



MANON SERRAND is the administration and finance officer at Sherpa.

Originally trained in international trade, she decided to follow an alternative path and obtained a Masters 'Manager of International Projects' from the Ecole de Commerce and Development 3A where she specialised in humanitarian actions. In 2012, she worked in India for an education and development association where she was responsible notably for administration and financial management. She complemented her experience by fundraising at ACF and joined Sherpa at the end of 2015 to provide administrative and financial support to the association and contribute to securing Sherpa's financial future.

Manon Serrand speaks English and Spanish fluently.



LISA RIEUX is the communications officer at Sherpa.

During her studies at the Ecole de Management Strasbourg, Lisa completed her studies in Australia, specialising in marketing and communications, and more specifically in the associations and development sector. Passionate about the defence of Human Rights, and committed to various associations for many years, in 2014 she joined the Communication and Publicity Department of Amnesty International France. To further expand her experience in communication strategies, Lisa then worked for communication agencies and joined Babel, Strategie et Communication. She joined Sherpa in October 2015 and placed her skills in the service of a human rights defence association.

Lisa Rieux speaks English and German fluently.



Fundamental human and environmental rights are constantly overlooked for the sake of systematic cost reductions and ever-faster production rates.



GLOBALISATION AND HUMAN RIGHTS

Globalisation has overturned the lifestyles of many populations. New commercial opportunities, notably offered by the transport revolution, have allowed businesses to extend their production activities to emerging countries.

Unfortunately, fundamental human and environmental rights are constantly overlooked in favour of a systematic cost reductions and ever-faster production rates.

Populations and the environment are all too frequently victims of the activities of multinationals, particularly in emerging countries. Industrial disasters, such as the collapse of Rana Plaza in Bangladesh, causing the death of more than 1138 workers, are multiplying at an alarming rate, causing social and environmental damage which may be irreversible. The absence of a regulatory framework adapted to globalisation prevents establishing liability or obtaining compensation for damages.

Through its globalisation and Human Rights programme Sherpa is working to establish a binding legal framework that will hold economic stakeholders liable - notably multinational companies which violate human rights and cause environmental harm.

To this end, Sherpa is carrying out various actions to adapt, improve and reinforce national and international legal frameworks, and initiating unprecedented and innovative legal research projects.

In 2016 Sherpa was strongly committed to the problem of the liability of parent and contracting companies for the activities of their subsidiaries

and subcontractors abroad and access to justice for victims.

This focus for reflection was marked in 2016 partly by work on the French Bill on the duty of vigilance and a national action plan for implementation of the United Nations Guidelines on Business and Human Rights.

The work consisted in demonstrating the need for improved transparency in order to establish the liability of companies and provide access to justice. The progress achieved by these two objectives facilitated the setting of a good example by the French State and its regulatory function.

The association raises awareness and also trains various stakeholders in civil society and political decision-makers on restoring the balance in power relations.

Finally, Sherpa is fighting impunity through judicial and extra-judicial actions, which not only defend the affected communities but also highlight the fault lines and inadequacies of substantive law.



CORPORATE LIABILITY OF PARENT COMPANIES FOR THEIR SUBSIDIARIES AND SUBCONTRACTORS / ACCESS TO JUSTICE FOR VICTIMS

In 2016, Sherpa continued to work on the liability of parent and contracting companies for their subsidiaries and subcontractors so victims could provide access to justice.

OBJECTIVES

Sherpa, a pioneer in the field of the liability of parent companies for the activities of their subsidiaries and subcontractors since 2001, has raised the awareness of many stakeholders in civil society and political decision-makers on the need for a law on the duty of care of multinational corporations. Sherpa also promotes transparency of companies and reinforces the good example set by the State.

Moreover, to allow access to justice for the victims, notably in emerging countries, of the activities of multinationals, Sherpa uses so-called 'soft law', for example the OECD guideline principles and the French National Contact Point, and is working on their reform.

The association is working to enable France to establish an ambitious National Action Plan for implementing the United Nations Guidelines on Business and Human Rights (PNADH in the French acronym) as commended to EU member states by the European Commission.



SHERPA'S ACHIEVEMENTS AT THE NATIONAL LEVEL

This year again, Sherpa was strongly committed to the Forum Citoyen pour la RSE (FCRSE) [Citizen's Forum for Corporate Social Responsibility] and enabled it to continue its strategy on enforcing the liability of multinational companies for the activities of their subsidiaries and subcontractors abroad and providing access to justice for victims.

Throughout 2016, Sherpa worked actively on the national CSR Platform for the adoption and publication on July 5th 2016 of the opinion of the national CSR platform on PNADH¹. Sandra Cossart, head of Sherpa's Globalisation and Human Rights programme, was the co-rapporteur for civil society. Once again Sherpa's legal expertise enabled FCRSE to establish its legitimacy and work at national level on establishing an ambitious PNADH.

- ★ In 2016, the association continued its advocacy work for adoption of the Bill on the duty of vigilance. Sherpa continued its awareness-raising campaigns and training for civil society associations on legal aspects and for political decision-makers on expediting the procedure for adopting the Bill. To this end, Sherpa increased its visibility and status as an expert by participating in many symposiums, for example at the French National Assembly on international trade and investment treaties.
- ★ The association has sought many meetings with varied stakeholders and decision-making bodies such as business leader associations, to gain a better understanding of their opposition and to exchange positions. Sherpa has also obtained meetings with ministerial cabinets to ensure governmental support for the Bill.
- ★ Sherpa also followed up the parliamentary exchanges on the Bill and proposed amendments. The association prepared amendments to the Bill during its three stages before the French National Assembly and Senate resulting in an ambitious final draft.
- ★ To multiply the chances of adoption of the concept of the duty of care, Sherpa sought out other legislative vectors and prepared draft amendments incorporating the duty of care of parent companies in the Sapin II bill during the legislative pathway of the latter.
- ★ In 2016, Sherpa began to prepare what would be the ideal enacting decree for civil society of the Bill, should it be definitively adopted. To this

end, Sherpa organised several working groups with academics to initiate reflection on the decree.

Thanks to this significant work, the final provisions of the Bill were finalised and adopted on November 29th 2016 by the French National Assembly.



NATIONAL PLATFORM FOR COMPREHENSIVE ACTION FOR CORPORATE SOCIAL RESPONSIBILITY²

OBJECTIVES:

Its main mission is to equip each member State with a plan or a list of priority actions to promote CSR in the context of implementing the Europe 2020 strategy.

MEMBERS:

This multi-stakeholder arena brings together under the aegis of the Prime Minister, trade unions, business leaders' organisations (notably MEDEF and AFEF), researchers, NGOs and public authorities with an interest in CSR. The composition of the Platform, initially fixed at some forty members evolves: the core activity is participation in working groups, of which the themes do not concern all members to the same extent.

The Bureau, composed of 13 members including FCRSE, acts as a steering body with gradual adaptation of the platform to achieve its missions.

¹<http://www.ladocumentationfrancaise.fr/rapports-publics/174000024/index.shtml>
²<http://www.strategie.gouv.fr/clients/plateforme-rse>

CITIZENS' FORUM FOR CSR³

OBJECTIVES:

The FCRSE is a centre of expertise, public expression and advocacy on questions concerning social, environmental and corporate liability of multinationals. It has two objectives:

1. To promote converging of its members in their approaches to European and international public authorities and so encourage the development of a national European and international framework for CSR, which promotes collective bargaining, both in and outside companies;
2. To develop a common resources centre to promote the provision of instruments and independent evaluation forums capable of guaranteeing democratic sustainability, social and environmental efficacy of the process for make companies liable for their actions. Inter-association work is manifested by themed meetings, invitations to experts, organisation of events and preparing official letters or documents sent to the public authorities, businesses, or public bodies.

MEMBRES:

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

In parallel, to continue acting as an innovative force for law, Sherpa has retained its specialism as a law laboratory. Following extensive research, the association contributed to public consultations on draft reforms of the French civil regime and proposes innovative recommendations to impose the liability of economic stakeholders and facilitate access to justice.

SHERPA'S ACHIEVEMENTS AT THE INTERNATIONAL LEVEL

As an extension of its work in France, Sherpa is promoting the concept of a binding corporate human rights duty of care imposing a general behavioural obligation rather than mere due diligence at European and international level.

- ★ The awareness-raising campaign is first of all characterised by the association's participation in various conferences and symposia, for example those organised by ICAR Business and Human Rights Meeting and the days at the Academy of the Kingdom of Morocco.
- ★ In order to raise the awareness of stakeholders in European civil society, Sherpa has also organised a workshop on the duty of care with its partner ECCJ in Brussels, emphasising the importance of not working only to establish HRDD - human rights due diligence, but more broadly a duty of care.
- ★ To promote discussions in other European Union countries, the association participated at the Carton vert organised by the French MP Danielle Auroi which brought together many European partners and raised awareness of the Bill on the duty of vigilance and the need to adopt a common declaration requesting the European Commission to address this issue. The initiative is also intended to promote similar undertakings in other EU countries.

Moreover, the association has worked actively on improving the OECD Guiding Principles. To this end, it prepared a joint declaration with OECD Watch on 40 of the guideline Principles.

Sherpa also cooperated in preparing the due diligence report of the OECD by contributing its expertise on the duty of care. The association has also worked to improve the mechanism of the National Contact Points (NCP). Sherpa is the only French association, member of OECD Watch, which has used the French NCP and can make real recommendations thanks to the experience it acquired through its complaints.

Sherpa has contributed to reflection at European and international level on the environmental liability of companies and the legal instruments allowing victims to obtain compensation for ecological harm perpetrated by multinational companies.

As a law laboratory, Sherpa has sought many meetings with partners in emerging countries: academics, lawyers and experts to evaluate the possibility of judicial action on climate justice. The association has also conducted feasibility studies on this topic.

Sherpa has participated in events for example the conference organised in Nimes entitled "Environnement, nouvelles menaces, nouveaux défis" or "The power of Law. Making companies accountable" organised in Brussels.



ECCJ: EUROPEAN COALITION FOR CORPORATE JUSTICE⁴

OBJECTIVES:

Increasing European cooperation between NGOs working to ensure the corporate liability of companies and influencing policies in the European Union and individual Member States. Making the public aware of the issues of the corporate liability of companies and policies of the EU and promoting a consistent view of civil society. Reinforcing the knowledge and skills of NGOs in Europe on these topics.

MEMBERS:

European Coalition for Corporate Justice and Corporate Social Responsibility (ECCJ) which brings together coordinated national bodies composed of NGOs, trade unions, consumer associations and research institutes working on the corporate and environmental liability of companies throughout Europe. ECCJ represents more than 250 organisations from 15 European countries. Sherpa is a member of the Steering Committee.

OECD Watch

OECD WATCH⁵

OBJECTIVES:

OECD Watch is an international network of NGOs which works to promote the corporate liability of enterprises. The objective of OECD Watch is to inform the community of NGOs on the policies and activities of the OECD Investment Committee and to assess the efficacy of the OECD Guidelines on the practices of multinational corporations.

MEMBERS:

OECD Watch is a worldwide network, with more than 80 members from 45 different countries. Its members are composed of a range of civil society organisations which together share a commitment to ensure that commercial activities contribute to sustainable development and the reduction of poverty, but also that companies are held liable for their actions throughout the world. The network has a coordinating committee with a diverse regional representation. The current members of the coordination committee are: Sherpa (France), SOMO (Netherlands, secretariat), CEDHA (Argentina), CIVIDEP (India), ForUM (Norway), Green Advocates (Liberia), Oxfam Australia (Australia), Plades (Peru).

OBSTACLES:

Despite the many successes described above and achieved by Sherpa during 2016, serious obstacles arose.

Nationally, the association invested a great deal in the functioning and representation of FCRSE but a proportion of this investment was eaten up by reorganisation and governance problems at FCRSE.

Sherpa also came up against organisation and governance problems at the National CSR Platform, notably the determination of the public authorities to obtain a forced consensus between civil organisation and companies.

When preparing the opinion of the National CSR Platform on the PNADH, the association's work suffered from a lack of cooperation with certain members of economic organisations, for example AFEP or MEDEF. This grouping – although extremely

heterogeneous – was unfortunately represented exclusively by these two major organisations who are considered as conservative.

Moreover, Sherpa had to confront the blocking by the government of adoption of the Bill on the duty of vigilance. In fact, the period of waiting between registration of the law on the parliamentary timetable was long, notably between the 2nd reading in the National Assembly on 23 March 2016 and the 2nd reading in the Senate of the Bill on 13 October 2016. For this reason, Sherpa and its partners had to work throughout this period, calling on and meeting political decision-makers who could expedite the parliamentary timetable.

At European level, Sherpa also came up against the lack of political will in the European Union to establish a binding legal framework that would make parent companies liable and facilitate access to justice for victims.





LEGAL STUDIES AND RESEARCH

Since its founding, Sherpa has become a legal research laboratory and has conducted research into the appropriate legal resources to make economic stakeholders liable for their actions, structured essentially around the themes of prevention and compensation. So it can continue to act as a true innovative legal force, Sherpa permanently presents its works to many universities and other law practitioners. To enrich its research, Sherpa has, for several years, developed themed working groups and partnerships with universities and participated notably in several law clinics.

This form of cooperation allows assigning legal studies and research to students to examine specific topics in more detail through exchanging with research staff and offering them the opportunity to make practical use of their knowledge.

Follow-up of the working groups and law clinics, cooperation with teaching teams and supervision of students requires a major investment from Sherpa, but also forms special bonds creating a network of experts and academics producing studies of extremely high quality. This joint work has also raised the awareness of young jurists and lawyers to the theme of corporate social responsibility.

In cooperation with lawyers, academics and civil society partners, Sherpa published several legal articles on the liability of multinationals in 2016:

- ★ "Les codes de conduite volontaire comme échappatoire aux normes contraignantes? Pas si sûr, ...", written by Sandra Cossart, head of the Globalisation and Human Rights Programme and William Bourdon, President of the association, analysing the scope of voluntary undertakings of companies,
- ★ "La sphère d'influence des sociétés et les Principes directeurs des Nations Unies"⁶, written by Sandra Cossart, head of the Globalisation and Human Rights Programme and Raphaël Lapin, an MA student on the spheres of influence of groups of associations at the university of Cergy-Pontoise, questioning legal recognition of such influence that would allow constructing in France, the three pillars on which the Guideline Principles of the United Nations are founded,

- ★ "Corporate accountability: is the EU ready to listen?"⁷, written by Sandra Cossart, head of the Globalisation and Human Rights Programme, Jérôme Chaplier, ECCJ coordinator and Urs Rybi, responsible for the theme of Raw Materials at Public Eye, challenging the European Union on the need to establish a strict legal framework for multinationals in relation to human and environmental rights,

- ★ "Consultation publique sur le projet de réforme de responsabilité civile", written by Sherpa, proposing innovative recommendations to the general system of accountability to allow obtaining compensation for harm caused by damage to health, the environment and which constitute an infringement of fundamental rights.

All these studies adopt the standpoint of a need to establish a strict framework of the liability of multinationals. In fact, they offer to reform and promote changes in the law currently in force which, for the moment, does not allow enforcing the liability of a parent company for acts committed by one of its subsidiaries, notably abroad.

Thanks to this research work, Sherpa continues to act as a true legal research laboratory, studying cutting-edge legal issues. These analyses are instrumental to the advocacy and litigation work of the association - in circumventing the legal obstacles to the liability of parent companies.

Support for Sherpa's activity requires ongoing and also, ad-hoc research on innovative and highly specific points of law, for example the concept of control of contracting companies, feasibility studies on litigation, etc.



FINANCING TERRORISM, COMPLICITY IN WAR CRIMES AND IN CRIMES AGAINST HUMANITY

COUNTRY: SYRIA
TARGETED COMPANY:
LAFARGEHOLCIM

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

LafargeHolcim is the 98.7% owner of a plant located in Manbij in Northern Syria. After the departure of major multinationals such as Total, Bel or Schneider Electric and the evacuation of expatriate employees from the plant in 2012, LafargeHolcim decided to maintain its activity in this zone, to the detriment of the security of its Syrian staff.

Following a long investigation, Sherpa produced two hundred documents appended to the complaint. The information revealed that the company may have guaranteed the movement of its staff and goods by **financing laissez-passers from the so-called Islamic State (IS)** and procuring inputs (oil and pozzolan) from the terrorist organisation.

Through these arrangements, the staff at the plant would have been placed in danger: the company forced them to travel to the plant despite occasional attacks during their journeys, to collect their wages at locations where they were exposed to attacks, and to live in the town of Manbij open to IS attacks.

Some were kidnapped and some had to flee from the plant using their own resources, on the day the plant was attacked by Daesh, September 19th 2014. The company had not provided for any evacuation plan for these members of staff, whereas everyone else in the region had already fled to Turkey.


LEGAL BASIS/OBSTACLES CIRCUMVENTED

Sherpa was able to collect witness statements from 11 former Syrian employees of the plant. The employees with Sherpa and ECCHR, originated the complaint filed on November 15th 2016 **for financing terrorism, complicity in war crimes and in crimes against humanity, endangering the life of others and forced labour**. It was the first time a complaint had been filed on this basis against a multinational.

Sherpa considers that payment of taxes to IS, the purchasing of raw materials and even the provision of cement constitute the offences of financing terrorism, complicity in war crimes and in crimes against humanity.

Sherpa wants the staff victim of these crimes to seek compensation.

This case illustrates the need to reinforce the fight against the impunity of multinationals involved in armed conflicts.

Through these offences of deliberately placing persons in danger and forced labour, multinationals must be held liable for questions of the safety and fundamental rights of workers, as well as the parent company must be held liable for its subsidiaries as employers of staff  the victim of these offences.



WHAT SHERPA'S WORK HAS ENABLED

Sherpa allowed the victims who suffered from the acts of LafargeHolcim to obtain justice.

Thanks to media coverage of the filing of this complaint, the LafargeHolcim case was cited on several occasions during discussions at the French National Assembly when voting on the "the Bill on the duty of vigilance" and contributed to adoption of this law, which makes multinationals liable for violations of Human Rights committed by their subsidiaries and subcontractors.

Western States such as the French government are committed to an unrelenting fight against terrorism. Yet, economic stakeholders such as multinationals who could play a major role are not sufficiently controlled and may go unpunished. This must be recalled at this key moment in the political calendar.

CHRONOLOGY OF THE PROCEEDINGS

15 November 2016: The filing of a complaint and a claim for indemnification by Sherpa, ECCHR and eleven former employees of the Lafarge Cement plant in Syria before the senior examining magistrate in Paris.





STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPA- TION FOLLOWING THE FILING OF OUR COMPLAINT NOTABLY ON FORCED LABOUR AND REDUCING MODERN SLAVERY

COUNTRY: QATAR

TARGETED COMPANY: VINCI

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

Qatar undertook a vast programme for modernising its infrastructure in recent years and the number of worksites increased along with expenditure given the impending hosting of the football world cup. In this context, the company Vinci won major contracts worth billions of Euros, for example for constructing two metro lines. Vinci, and more specifically Vinci Construction Grands Projets (VCGP), employs 6,000 migrant workers on its worksites through its Qatar subsidiary (Qatari Diar Vinci Construction (QDVC)) and also, many subcontractors.

VINCI Construction Grands Projets, is one of the world's leading companies for construction and public works represented in global locations. In 2014 the company achieved turnover of €1,107 billion and employs almost 7,000 members of staff.

During the Sherpa investigation in Qatar in November 2014, workers on Vinci sites criticised in interviews the working and accommodation conditions incompatible with human dignity: working 66 hours per week, accommodation crowding several people in very small ill-equipped rooms, confiscation of passports and threats of dismissal or repatriation in the case of complaints - all in violation of Qatari law. Moreover, a lack of adequate equipment to protect them against risks on the worksite and heat, caused an abnormally high number of workers' deaths at the worksites.

LEGAL BASIS/OBSTACLES CIRCUMVENTED

Sherpa filed a complaint against Vinci on March 24th 2015, for forced labour and modern slavery, failure to provide first aid and for accidental injuries and handling profits obtained from these offences, grounds for legal proceedings never before used against a multinational.

Following the filing of this complaint, Sherpa was severely criticised for the first time following the filing of a complaint, by Vinci which brought 6 sets of proceedings against the association and some of its members for defamation, infringement of the presumption of innocence and false allegations.

These procedures, unusual notably given the amount claimed from Sherpa, seemed to aim at dissuading the association from reporting on the abuses which may have been committed by the company. Strategic Litigation Against Public Participation, of which Sherpa was the subject, reveals the extent and multiplication of this type of practice and the need to protect those defending Human Rights with the assistance of the media.

In 2016, Sherpa mobilised significant resources on this case to prepare its defence in the framework of the defamation proceedings: analysis of the case file, contacting witnesses, collecting evidence, etc. The Paris Regional Court ordered the staying of a decision pending a decision on the facts the subject of the complaint filed by the association.



WHAT SHERPA'S WORK HAS ENABLED

The complaint against Vinci demonstrates the importance of reinforcing French legislation on the liability of parent companies for their subsidiaries and subcontractors abroad. The final adoption in 2017 of the Bill on the duty of vigilance is essential in this respect.

The unprecedented media coverage of this judicial action in France and internationally mobilised public attention on exploitation of migrant workers in Gulf countries and, without doubt, reinforced the argument of those members of parliament in favour of the Bill on the duty of vigilance, as shown by the reference to the complaint during the discussions in the French National Assembly.

Finally the positive impact of the complaint for the workers involved was immediate:

- improved working and accommodation conditions for some of the workers on site,
- return of passports,
- negotiations between Vinci and the International Federation of Building and Wood Workers (IFBWW) and notably on authorisation of the organisation for employees and an improvement in their working conditions.

CHRONOLOGY OF THE PROCEEDINGS

November 2014: Sherpa travelled to Doha to investigate, with a delegation from the International Federation of Building and Wood Workers (IFBWW).

24 March 2015: A complaint was filed before the Nanterre Public Prosecutor.

07 April 2015: Opening of preliminary investigations.

13 April 2015: Vinci went on the attack by bringing a charge of defamation

23 April 2015: Summoning of William Bourdon and Laëticia Liebert by injunction for infringing the presumption of innocence following publication of an interview in the newspaper Libération.

13 May 2015: Injunction served by Vinci for infringement of the presumption of innocence

22 July 2015: After rejecting the jurisdiction of the interlocutory judge, Vinci serves a summons on the merits.

17 February 2016: Hearing in the framework of the procedure for infringement of the presumption of innocence

13 April 2016: Ruling handed down at the hearing on infringement of presumption of innocence; VINCI's complaint is rejected and it lodged an appeal.

13 April 2016: Vinci summonsed Sherpa on the merits for infringement of presumption of innocence.

26 June 2016: In the framework of the criminal proceedings for defamation, the court pronounced postponement of the judgement until September 27th on the question of adjournment.

27 September 2016: The court ordered adjournment of a decision in the defamation proceedings.



HANDLING OF BLOOD TIMBER

COUNTRY: *LIBERIA*

TARGETED COMPANY: *DLH*

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

Between 2001 and 2003, DLH purchased and imported into France and distributed in Europe, timber from Liberian forestry companies directly serving the interests of the regime of the President conducting a war, Charles Taylor. During this period of civil war, DLH procured supplies from companies notably identified in several United Nations reports as responsible for violation of Human Rights, breaches of the arms embargo imposed by the United Nations, destruction of the environment and corruption.

LEGAL BASIS/OBSTACLES CIRCUMVENTED

After the filing without results of a first complaint, Sherpa filed a complaint and a claim for indemnification to gain access to the courts and allow and opening of judicial enquiries. The association **could then play an active role in judicial enquiries and it submitted new evidence to the judge during the year** and filed a claim for discovery.

The complaint was founded on handling stolen goods incurring the criminal liability of a French company for acts committed during its activities abroad. It is important to evolve and create case law.



WHAT SHERPA'S WORK HAS ENABLED

Through this complaint Sherpa obtained justice for the victims of the actions of DLH in Liberia during the civil war.

Moreover, the traffic in illegal timber has, since the complaint, been regulated by the EU timber law, which is not yet operational in France. Using handling stolen goods to counter this scourge, the cause of wide-scale deforestation worldwide is an opportunity to regulate the involvement of economic stakeholders in armed conflicts and improve the resources available to environmental associations.

CHRONOLOGY OF THE PROCEEDINGS

18 November 2009: Sherpa, Global Witness, Greenpeace France, Friends of the Earth and Alfred Bronwell filed a complaint before the Nantes Public Prosecutor (France) against the companies DLH France and DLH Nordisk A/S.

During 2010: A preliminary investigation was opened.

16 February 2012: The case was transferred to the Montpellier Prosecutor's Office.

15 February 2013: Case closed without action by the prosecutor's office on the grounds that the "offence was insufficiently founded"

17 March 2014: Complaint filed with a civil action by the 4 complainant associations.

02 April 2014: Receipt of a ruling handed down by the examining magistrate to pay a deposit of €4,000 to the court. Appeal by a lawyer in Montpellier against this ruling.

16 October 2014: Sherpa's appeal against the high deposit it was ordered to pay into the court was rejected, declared inadmissible and no deadline for payment of the deposit into court was set.

End of October: Sherpa sent an application for correction of a material error requesting that the deadline should be set.

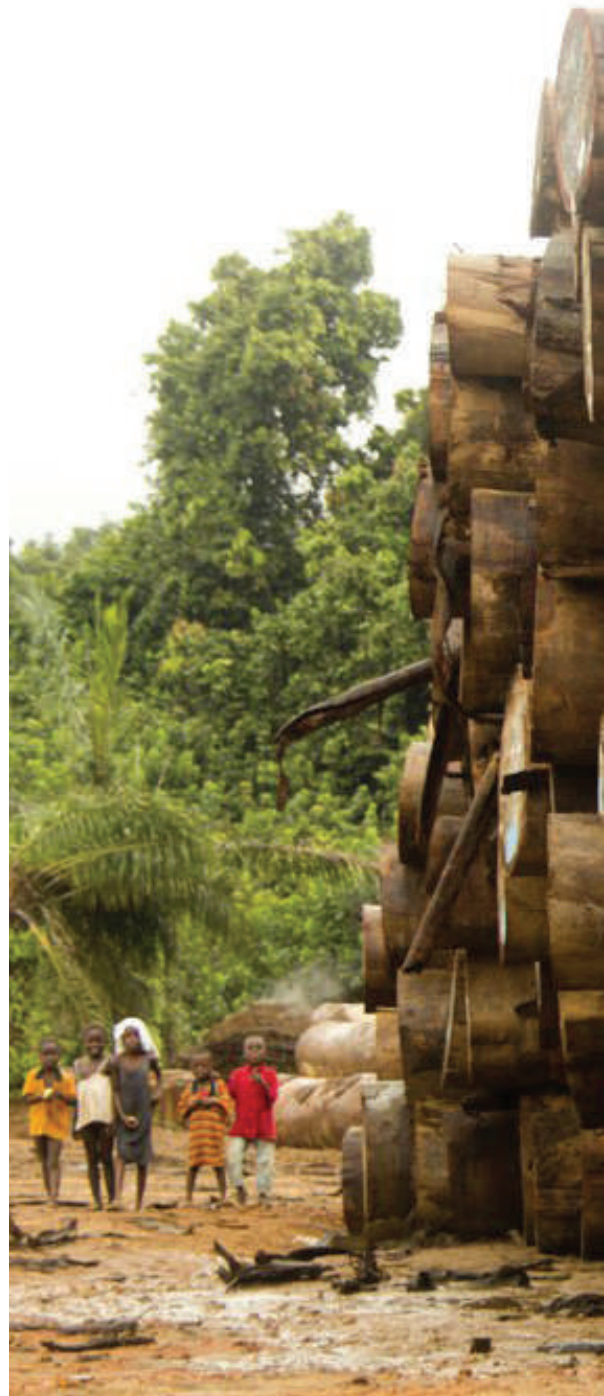
26 February 2015: Setting by the Montpellier Court of Appeal (Examining Chamber) of the deadline for payment of the court deposit of 20 March 2015

19 March 2015: Payment of the deposit for all the associations party to the complaint

During 2015: Receipt and analysis of information used in the investigations

18 January 2016: Decision of FSC to again associate DLH Sweden and Denmark with the label DLH France is not included given founded inadequacies in its diligence system.

19 October 2016: Notes sent to the examining magistrate





LAND GRABBING, ENVIRONMENTAL HARM AND IMPACT ON THE HEALTH OF POPULATIONS

COUNTRY: CAMEROUN
TARGETED COMPANY:
SOCAPALM

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

In 2010, the associations FOCARFE, Centre pour l'Environnement et le Développement and MISEREOR filed a specific complaint before the National Contact Points (NCP) in France, Belgium and Luxembourg for land grabbing, environmental harm and impact on the health of local people against the Bolloré companies, Financière du champ de mars, Socfinal and Intercultures.

After a year of refusing, the Bolloré Group agreed to enter into mediation with Sherpa in the name of local associations and communities.

After many years of mediation and negotiations, Sherpa obtained preparation of an innovative action plan validated by the French NCP. Bolloré undertook to deploy it with the follow-up mechanisms established by GRET and SNJP to remedy the violations of the OECD guideline principles highlighted by the NCP in its final report.

It was only at the end of 2014 when the mission of GRET was about to commence in Cameroon that the Bolloré Group declared it could no longer deploy the plan since it was being blocked by its Belgian subsidiary, Socfin.

The NCP admitted in two communiqués that the action plan prepared in co-operation with the Bolloré Group had not been applied but should rapidly be deployed.

Given the blockage created by Socfin, the French NCP agreed to transfer the case to the Belgian NCP for implementation of the action plan.

Sherpa demanded that Socfin should undertake not to renege on deployment of the action plan of the French NCP and refrain from any attempt to renegotiate the measures and mechanisms in the action plan adopted by the French NCP on which local communities relied for compensation.

LEGAL BASIS/OBSTACLES CIRCUMVENTED

Given the difficulties in establishing the liability of the parent company for acts of its subsidiaries in financial set-ups such as SOCAPALM's one, Sherpa filed a complaint before the OECD NCP. The association circumvented the non-adaptation of 'hard law' to the changes in business.

The institutional framework for negotiation offered by the NCP encouraged Bolloré to enter into mediation. Sherpa was able to obtain adoption of an innovative action plan which remedied violations of the OECD guideline principles.

Finally, using this under-exploited procedure in 2010 implied power to improve it. In the framework of this dispute before the NCP, **Sherpa made suggestions on reforms to reinforce its efficacy and obtain real improvements for the affected communities.**

WHAT SHERPA'S WORK HAS ENABLED

Through these proceedings, Sherpa achieved an innovative action plan with a commitment to specific actions by the Group on all points raised in the initial complaint: dialogue with local people, land issues, the environment, the public service mission to be fulfilled by SOCAPALM, local development to be guaranteed, conditions for workers and sub-contractors, transparency, and finally indemnities for local people for the harm suffered as a result of SOCAPALM's activity.

This was the first time the process was finalised enabling a commitment by the parties to implement an action plan to remedy breaches of the OECD guideline principles. It is also the first time that an operational follow-up mechanism was deployed for an action plan, composed of one organisation in France and one in Cameroon.

Sherpa's several years of work on the SOCAPALM case created a precedent and could encourage parties to use the NCP **to obtain concrete mediation actions**.

Sherpa continued relaying the claims of local people and workers and following-up the local situation with various committed organisations, notably the follow-up organisation selected in Cameroon (the SNJP) and Synaparcam (a local association).

This allowed the neighbouring communities or those working for SOCAPALM to negotiate and obtain the implementation of certain measures, with the assistance of the Cameroon follow-up organisation the SNPJ, and to reinforce their capacity to ensure respect of their rights in the framework of institutional dialogue.

CHRONOLOGY OF THE PROCEEDINGS

3 December 2010: Complaint by Sherpa, FOCARFE, Centre pour l'Environnement et le Développement and MISEREOR before the French, Belgian and Luxembourg National Contact Points against the companies Bolloré (France), FINANCIERE DU CHAMP DE MARS (Belgium), SOCFINAL (Luxembourg) and INTERCULTURES (Luxembourg) – all four together exercising control over SOCAPALM, Bolloré being the parent company.

30 July 2012: Hearing of the parties by the NCP

7 February 2013: First mediation meeting between Bolloré and the various parties

End of May 2013: Bolloré agrees to withdraw its defamation complaint against Sherpa.

3 September 2013: After six months of mediation, presentation to the NCP of the action plan prepared by the parties

November-June 2014: Sherpa and its partners prepared a monitoring system for the action plan, implemented by the European organisation (GRET) and a local partner (SNJP).

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

15 December 2014: Notification by Bolloré to Sherpa of the withdrawal of Socfin, which no longer wished to participate in the action plan. Bolloré maintained it could no longer ensure application of the plan.

9 January 2015: A letter is sent by Sherpa and its partners to V. Bolloré asking him to resolve the situation and officially commit to satisfactory conduct of the action plan.

5 February 2015: Receipt of a reply from Bolloré explaining that the company had already tried everything to exercise its influence on Socfin and could do nothing more.

17 February 2015: A letter is sent by Sherpa and its partners to Bolloré, recalling its power of influence and obligations to take every action to ensure application of the action plan.

25 February 2015: Bolloré acknowledges receipt of the letter and forwards it to Socfin for observations.

2 March 2015: Publication of a communication of the French NCP requesting Bolloré to comply with its undertakings and exercise influence on Socfin so it would apply the action plan

2 mars 2015: Publication d'un communiqué du PCN français demandant à Bolloré de respecter ses engagements et d'exercer son influence sur Socfin pour faire appliquer le plan d'action

23 April 2015: Letter from Alliance internationale to Bolloré requesting it to adopt all necessary measures.

30 April 2015: Sending of a second letter from Sherpa and its partners to Bolloré, noting its silence and stating, "We must shortly draw all consequences".

25 September 2015: Request from the NCP for an inventory of proceedings from the Bolloré Group and Sherpa, and a request for a hearing.

February-June 2016: Presentation of the case to the French NCP concerning transfer of the case to the Belgian NCP, withdrawal of Bolloré from the proceedings

23 November 2016: Sherpa sends a letter to the Belgian NCP explaining its position in this case.



Emerging countries lose at least a thousand billion dollars (750 billion Euro) each year through illicit financial flow, that is money earned which is transferred or used illegally or illicitly.



ILLICIT FINANCIAL FLOWS

In these times of digital communication and globalisation, circulation of money is accelerating and becoming global. The number of financial transactions and their geographical scope is increasing as well as the amounts exchanged which become increasingly large. Although there are a number of rules on financial flows, these appear increasingly unsuitable to trace and control rapid paperless exchanges.

Emerging countries lose at least one thousand billion dollars (750 billion Euro) each year from these illicit financial flows*, that is money earned, transferred or used illegally or illicitly. These illicit financial flows constitute a major hindrance for development. They drastically reduce the resources available for essential public services such as education or health and aggravate the burden of debt of emerging countries.

To combat this scourge, in 2007 Sherpa launched the Illicit Financial Flows Programme. It began with the so-called 'Ill-Gotten Gains Case' with the objective of recovering and returning to the victim populations, assets stolen through corruption or misappropriation of public funds.

The Illicit Financial Flows Programme is based around three strategic priorities:

- ★ Illicit financial flows and natural resources
- ★ Changing practices on economic and financial crime
- ★ Asset recovery and restitution to populations

For each of these three strategic priorities, Sherpa uses advocacy, litigation, research, training and publications. Sherpa prefers working with a network on platforms enabling it to become more effective vis-a-vis the other stakeholders (companies and public institution). This work also increases its profile and allows sharing its legal expertise with other organisations.



*Source: ONE, Le casse du siècle – un scandale à mille milliards de dollars, 2014.



COMBATING ILLICIT FINANCIAL FLOWS IN THE NATURAL RESOURCES SECTOR

OBJECTIVES

Promoting transparency and liability of companies in natural resources and reducing illicit financial flows in the sector.

SHERPA'S ACHIEVEMENTS

Following the transposing into French law of the European Directives on accounting and transparency, in 2014 French oil, gas and mining companies published, for the first time in 2016, the payments they made in 2015, in favour of governments with whom they conducted exploration and/or exploitation activities. In cooperation with the associations ONE and Oxfam France, members of PCQVP France, in partnership with The Basic, Sherpa **analysed these declarations with a view to publishing a report on the subject in 2017.**

During the Partnership for open government held in Paris in December 2016, **the association presented a paper entitled: Open Data, the example of the extractive industries⁸.**

Sherpa also went to the annual general meetings of Publish What You Pay (PWYP) and the Extractive Industries Transparency Initiative (EITI) held in Peru in February 2016 **to promote reinforcement of the law on the fight against illicit financial flows in the natural resources sector.**

Publiez Ce 
Que Vous Payez

PUBLISH WHAT YOU PAY (PWYP)⁹

OBJECTIVES:

Publish What You Pay is a global network of civil society organisations. Its objective is to make the extractive sector more transparent and liable, so that the revenue from oil, gas and mining industries contribute to improving the living conditions of the populations of countries rich in natural resources and the responsible carrying out of extractive activities for the benefit of the country and its citizens.

MEMBERS:

The world network is composed of more than 800 member organisations worldwide. In more than 35 countries, members of the network have combined forces to create national coalitions. There is a national coalition in France, of which Sherpa is a member, coordinated by Oxfam France. The members of the French coalition are: CCFD-Terre Solidaire, CIMADE, Defi Michée, FIDH, Info Birmanie, Justice et Paix, Friends of the Earth, ONE France, Oxfam France, Partenia 2000, Caritas France, Sherpa, Survie, Transparency International France.

CHANGING PRACTICES IN DEALING WITH FINANCIAL AND ECONOMIC CRIME

OBJECTIVES

Combating economic and financial crime via legal proposals to enable a change in practices



SHERPA'S ACHIEVEMENTS

Throughout 2016, Sherpa was particularly committed to preparing the Bill known as the Sapin II law on transparency, the fight against corruption and modernisation of economic life. A position paper was prepared and published in partnership with the judicial and tax haven Platform¹⁰.

The association was heard by the French National Assembly and the Senate and so presented its recommendations on effective combating of corruption and promoting a change in practices. Following these hearings, extensive work carried out in close liaison with the legislator was undertaken. Sherpa submitted amendments seeking to reinforce the provisions on the creation of an Anti-corruption Agency, protection of whistle-blowers and the establishment of an obligation to establish compliance programmes to French MPs and Senators.

These amendments were defended by the legislator during discussions of the Sapin II Bill. Some were adopted, notably those on the Anti-Corruption Agency and protection of whistle-blowers.

Protection of whistle-blowers established by the law Sapin II is a real victory since it establishes effective protection for them. Whistle-blowers such as Antoine Deltour will now be protected by this law. The Sapin II Bill was finally adopted on Tuesday November 8th 2016.

In terms of combating tax evasion, Sherpa was heard by the Conseil économique, social et environnemental (CESE). The association was able to make proposals and recommendations on the publication of an opinion of the CESE on tax evasion in December 2016¹¹.

Platerforme s fiscaux et judiciaires (PFJ)¹²

OBJECTIVE:

Members of the platform are working together on expertise and advocacy on the measures to be adopted to reduce financial secrecy, effective to combating of tax evasion, strict regulation of capital movements, lifting banking secrecy and providing sustainable finance for development.

MEMBERS:

The platform brings together 19 French civil society bodies, committed to the fight against tax havens, such as trade unions, development NGOs, associations fighting corruption, faith groups and environmental organisations. Friends of the Earth, Anticor, Attac France, CADTM, CCFD-Terre Solidaire, CFDT, CGT, CRID, Justice & Paix, OCTFI, Oxfam France, Caritas France, Sherpa, Syndicat de la magistrature, Solidaires Finances Publiques, Survie, Transparency International France.

¹⁰ <http://www.stopparadisfiscal.fr/ouen-es/en/la-france/article/projet-de-loi-sapin-2-las-recommandations-de-la-societe-civile>
¹¹ http://www.icees.fr/sites/default/files/pdf/Avv/2016_14_entement_fiscal.pdf
¹² <http://www.stopparadisfiscal.fr/>

OBSTACLES:

2016 was a year of dissent between associations fighting corruption. Whereas the Sapin II Bill took up most of the news, associations acknowledged in the field differed on the establishment of so-called “negotiated” transactional justice. Whereas Transparency International France firmly supported this measure, Sherpa and many other partners were resolutely contrary.

Criminal transaction introduces the possibility for companies to negotiate with justice in cases of corruption. For Sherpa, the efficacy of this procedural choice in terms of reducing corruption remains to be proven, and offer citizens the image of a two-speed justice system. Companies would be buying criminal immunity. Sherpa produced a paper on this topic, illustrating the limits of the measure, which is regularly used in the United States.

In addition, although country by country reporting was adopted in the context of the Sapin II Bill it remains inadequate giving fierce lobbying by the private sector. To block this measure that would allow effectively combating illicit financial flows, the detractors of country by country reporting seized the French Constitutional Council. The latter declared the measure contrary to the freedom of entrepreneurship and contrary to the French Constitution. This decision appears more political than legal and demonstrates the conservatism which persists in tax matters.



ASSET RECOVERY AND RESTITUTION TO POPULATIONS

OBJECTIVES

Initiating reflection at national, European and international level on the method by which misappropriated then confiscated assets should be returned to the population in the original States.

SHERPA'S ACHIEVEMENTS

In 2016, Sherpa continued its reflection on asset recovery and restitution to populations. To this end, Maud Perdriel-Vaissière prepared a study named the *"Ill-Gotten Gains" case: Quels enseignements après 10 ans de combat judiciaire?*¹³ tracing this case with reflections on the return of assets to the people of Gabon, Equatorial Guinea and the Congo.



UNCAC Coalition¹⁴

OBJECTIVE:

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

MEMBERS:

A world network composed of 350 civil organisations in 100 countries.

¹³ <https://www.asso-sherpa.org/affaire-bien-mal-acquis-enseignements-apres-10-ans-de-combat-judiciaire-2>
¹⁴ http://unaccalition.org/en_US/



LEGAL STUDIES AND RESEARCH



Since its creation, Sherpa has sought to act as a legal research laboratory studying the appropriate legal means of making economic stakeholders accountable.

To this end, four legal studies were published in 2016 on Illicit Financial Flows:

- * the first, "Corruption Internationale – Changer les pratiques: l'affaire Areva-UraMin"¹⁵, analyses and highlights the links between the various facts, times and places in the Areva-UraMin affair, on the basis of documents available to the public and sets out a series of recommendations for the attention of stakeholders in France to promote a real change in practice in the fight against corruption,
- * the second, "La justice négociée en France: une réponse adéquate pour lutter contre la corruption transnationale?"¹⁶ in collaboration with Anticor, questions the pertinence of establishing a measure such as transactional

justice – of Anglo-Saxon origin – to combat international corruption in France,

- * the third, "Projet de Loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique : note de position"¹⁷, establishes recommendations on the composition and missions of the French Anti-Corruption Agency provided in the Sapin II Bill,
- * the fourth, "L'open data: l'exemple des industries extractives"¹⁸, in collaboration with ONE and Oxfam France, explores progress in terms of transparency under the new publication obligations of extractive industry companies, but also the limits of these new measures, in particular access to open data.

¹⁵<https://www.asso-sherpa.org/corruption-internationale-changer-les-pratiques-laffaire-areva-uramin>
¹⁶<https://www.asso-sherpa.org/wp-content/uploads/2016/02/Note-de-position-justice-negociee-contre-la-corruption-transnationale.pdf>
¹⁷https://www.asso-sherpa.org/wp-content/uploads/2016/02/Note-de-position-Agence-fran%C3%A7aise-anticorruption_31_mai_2016.pdf
¹⁸<https://www.asso-sherpa.org/open-data-the-extractive-industries-case-study>

BRIBERY OF FOREIGN PUBLIC OFFICIALS

GEOGRAPHICAL ZONE:
*SOUTH AFRICA, NAMIBIA, THE
CENTRAL AFRICAN REPUBLIC*
TARGETED COMPANY: AREVA

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

In 2007, Areva acquired UraMin, a company holding mining licences in South Africa, Namibia and the Central African Republic for €1.8 billion, whereas the latter were evaluated as a maximum of between €600 and €800 million. This acquisition proved disastrous for Areva, notably since the mines were never exploited.

Today, this Group, the flagship of the French nuclear industry, is insolvent with a deficit of €5 billion and has been obliged to dismiss thousands of staff.

Sherpa filed a claim for indemnification in the framework of a judicial enquiry opened for alleged corruption of a foreign public official.

LEGAL BASIS OF THE PROCEEDINGS

Bribery of a foreign public official, complicity, money-laundering, handling of stolen property.

LEGAL BASIS/OBSTACLES CIRCUMVENTED

The filing of a claim for indemnification allowed the association not only to gain access to the case file, but above all to add supplementary information to the investigation which is what Sherpa succeeded in doing in 2016.

WHAT SHERPA'S WORK HAS ENABLED

The Areva case increased the awareness of the public and of political decision-makers to the stakes in the fight against corruption and demonstrated that a change in practices for international transactions and in combating international corruption is necessary. In fact, the insolvency of Areva, a public sector company had disastrous consequences for employees, tax payers, investors, shareholders and inevitably for the image of the French State.

This case demonstrates the vital nature of the challenge of the fight against corruption. Moreover, the various State departments involved in approving and follow-up of Areva projects appear to have been neutralised. It is crucial to shed light on the role and responsibilities of the various players in this case.



CHRONOLOGY OF THE PROCEEDINGS

2007: Purchase of UraMin by Areva

2012: A parliamentary inquiry on management of the acquisition of UraMin was opened and concluded on "malfunctions in governance and decision-making processes in the company".

February 2014: The Court of Auditors notified the national finances Public Prosecutor's office of suspected commission of crimes. The latter opened a preliminary inquiry on "submission or publication of inaccurate or untrue accounts", "dissemination of false or misleading information", "forgery and falsification of records".

May 2015: Two judicial enquiries were opened, one on bribery of a foreign public official.

June 2015: Sherpa filed a claim for indemnification for the bribery aspect.

2016: Application for discovery of documents submitted to the examining magistrate to progress the investigation

OTHER PROCEEDINGS

Kinross – Mauritania / Ghana: Investigations in progress

Vinci – Russia: In May 2016, Sherpa filed a complaint and a claim for indemnification before the Nanterre senior examining magistrate with CEE Bankwatch Network, supported by members of civil society, including Evgenia Tchirikova and Mikhail Matveev, and with the support of Princip, an association defending the Khimki forest, for bribery of a foreign public official, against Vinci in Russia.

An examining magistrate must now be appointed to hear the case. This complaint and this claim for indemnification followed a complaint filed in 2013 before the Public Prosecutor that was closed without action. Appointment of an examining magistrate will restart the investigations and shed light on the actions of Vinci in Russia.



MISAPPROPRIATION OF PUBLIC FUNDS, CORRUPTION AND MONEY LAUNDERING

GEOGRAPHICAL ZONE:
EQUATORIAL GUINEA, FRANCE

ELITE POLITICIAN

TARGETED:

TEODORIN OBIANG

*AND RELATIVES OF THE PRESIDENT
OF EQUATORIAL GUINEA*

AN OVERVIEW OF THE FACTS AND THE PROCEEDINGS

President of Equatorial-Guinea since 1979, Teodoro Obiang Nguema Mbasogo governs under an authoritarian regime, allowing his close associates and family members to receive money from oil revenue and from many natural resources.

For many years, various observers have collected information as evidence that the State leaders or certain members of their families had, when in office, acquired or arranged the acquisition of real estate in France.

Some associations, including Sherpa, following various investigations carried out, or by compiling information collected by different observers, have established the **high probability of the holding in France, notably in Paris, of real estate sometimes of very high value**, by foreign leaders still in office and by certain members of their family.

It was under these conditions that Sherpa, with Transparency International France filed a complaint, in particular against Teodorin Obiang, the son of the President of Equatorial-Guinea.

LEGAL BASIS OF THE PROCEEDINGS

Handling misappropriated public funds, aggravated money laundering committed as an organised gang.

LEGAL BASIS/OBSTACLES CIRCUMVENTED

The “Ill-Gotten Gains” affair was intended to combat the impunity of Heads of State, corruption and misappropriation of public funds. Countries such as Equatorial Guinea or Gabon are regularly victims of this form of abuse. The association was confronted by difficulties linked to the immunity from jurisdiction of Heads of State in office.

The case of misappropriation of funds, corruption and presumed money laundering in Equatorial Guinea posed the question of the locus standi of French associations combating corruption. The admissibility of the complaint and the claim for indemnification by Sherpa was questioned.

WHAT SHERPA'S WORK HAS ENABLED

Sherpa launched innovative proceedings throughout the world by targeting foreign dignitaries in office; the objective being to recover and return stolen assets to citizens. Sherpa contributed to the launch of an international movement of civil society for recovering assets and is reflecting on possible actions to allow their return to the victim populations.

THE CONSEQUENCES OF THE PROCEEDINGS

The date of the trial of Teodorin Obiang was initially set for January 2nd 2017, then postponed to June 19th 2017.



CHRONOLOGY OF THE PROCEEDINGS

May 2007 and July 2008: Sherpa and its partners filed a complaint at the Paris Prosecutor's office.

December 2008: Complaint and claim for indemnification filed by Transparency International France with the support of Sherpa

October 2009: Ruling of the Court of Appeal declaring the complaint and the claim for indemnification inadmissible

November 2010: The Court of Cassation declared that Transparency International France had locus standi.

During 2011: A police search of homes in avenue Foch and avenue Marceau with seizure of luxury vehicles of a value exceeding €40 million.

March 2014: Teodorin Obiang was questioned on money-laundering.

September 2015: Closing of the investigation

15 December 2015: Ruling of the Court of Cassation rejecting immunity of Obiang

23 May 2016: The Public Prosecutor indicted Teodorin Nguema Obiang Mangué to appear before the Paris Criminal Court.

05 September 2016: Committal for trial before the Paris Criminal Court of Teodoro Nguema Obiang Mangué of January 2nd to 12th 2017

OTHER CASES OF ILL-GOTTEN GAINS

Bongo / Gabon: Investigations in progress

Sassou Nguesso / Congo: Investigations in progress

Karimova / Uzbekistan: Investigations in progress

Rifaat al-Assad / Syria: 28 June 2016: Questioning in Paris of Rifaat al-Assad, former Vice-President of Syria and uncle of Bashar al-Assad

INTERVENTIONS

The Sherpa team and members of the Board intervene regularly in events linked to the themes dealt by the association. These events allow the association to maintain its advocacy and litigation actions, share its expertise, to increase its renown with the specialist public, civil society and the public at large. 

In total, members of Sherpa participated at 22 events in 2016.

GLOBALISATION AND HUMAN RIGHTS

DUTY OF CARE

« La RSE saisie par le droit, perspectives interne et internationale »

Conference organised by the University of Strasbourg in Strasbourg. Presentation by Marie-Laure Guislain.
April 7th 2016

« Réguler les multinationales »

Conference organised by the espace Dickens in Lausanne, Switzerland. Presentation by Marie-Laure Guislain.
April 28th 2016

« Régulation des filières »

Seminar organised by BASIC, the RONGEAD and Banana Link in Paris. Presentation by Sandra Cossart.
August 29th, 30th and 31st 2016

« ICAR Business and Human Rights Meeting »

Conference organised by ICAR in Washington. Presentation by Sandra Cossart.
September 7th and 8th 2016

« Meeting on new mechanisms for human rights remedies »

Conference organised by Wolfson College in Oxford. Presentation by Sandra Cossart.
September 15th 2016

« A l'heure des multinationales, le retard du droit »

Seminar organised by FCRSE and Revue Projet in Paris. Presentation by Sandra Cossart.
October 14th 2016

« La conduite responsable des entreprises : une consécration du droit souple ? »

Symposium organised by the NCP and the University

Paris-Dauphine in Paris. Presentation by Sandra Cossart.

November 15th 2016.

« Devoir de vigilance pour chaîne de production responsable – quelles solutions des acteurs ? »

Mutli-site linked day organised by RSE et PED. Presentation by Sandra Cossart.
November 18th 2016

« Indépendance juridique de la personne morale versus dépendance économique »

Conference organised by the University of Nanterre. Presentation by Sandra Cossart.
December 8th 2016

COMPANIES AND ENVIRONMENT

« Responsabilité des multinationales et justice climatique »

Conference organised by the association Le Gang in Consulat, in Paris. Presentation by Laëtitia Liebert.
September 23th 2016

« Environnement, nouvelles menaces, nouveaux défis »

Conference organised by the Forum de Nîmes in Nîmes. Presentation by Sandra Cossart.
October 11th, 12th and 13th 2016

« Mégaprojets en Amazonie : impact sociaux et environnementaux »

Conference organised by Brésil en Mouvements in Paris. Presentation by Marie-Laure Guislain.
October 13th 2016

« Face au changement climatique, un nouveau temps du politique »

Seminar organised by the Academy of the Kingdom of Morocco in Marrakesh. Presentation by Sandra Cossart.
October 18th, 19th and 20th 2016

« The Power of Law. Making companies accountable »

Conference organised by the European Environmental Bureau in partnership with the Club de Rome and Crowd Versus in Brussels. Presentation by Marie-Laure Guislain.

November 17th 2016

THE SUPPLY CHAIN

« Supply Chain Accountability Legal Network Meeting »

Conference organised by ITUS-CSI in Berlin. Presentation by Marie-Laure Guislain.

April 26th and 27th 2016

COMPANIES AND SPORT

« Qatar 2022: une coupe du monde raisonnable ? »

Conference organised by the University of Caen and Amnesty International France. Presentation by Lisa Rieux.

December 5th 2016

ILLICIT FINANCIAL FLOWS

NATURAL RESOURCES

« Rendez-vous d'Europe - Le trafic des ressources naturelles »

Conference organised by the University of Rennes in Rennes. Moderated by Sophie Lemaître.

March 21st 2016

« Capitalisme international et l'extractivisme »

Seminar organised by Ingénieurs sans frontières in Paris. Presentation by Sophie Lemaître.

April 6th 2016

RECOVERY OF ASSETS

« 3rd Annual International Asset Recovery Conference »

Conference organised by Anticorruption Center, International State Crime Initiative and Transparency International Ukraine at KIEV in Ukraine. Presentation by Laëtitia Liebert.

December 16th 2016

CORRUPTION AND TAX HAVENS

« Corruption and the role of tax havens »

Conference organised by Tax Justice Network in London. Presentation by Sophie Lemaître.

April 28th and 29th 2016

« Journées strasbourgeoises : Gouvernance d'entreprise et corruption transnationale – quels moyens de lutte ? »

Conference organised by l'Institut canadien d'études juridiques supérieures in Strasbourg. Presentation by Sophie Lemaître.

June 30th and 1st July 2016

« Les mécanismes d'évitement fiscal »

CESE hearing in Paris. Presentation by Sophie Lemaître.

July 6th 2016

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