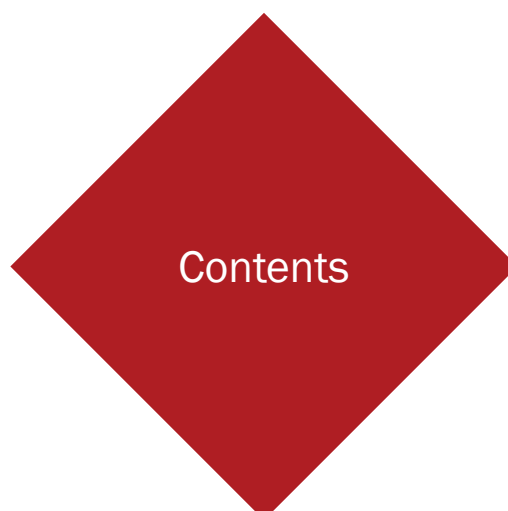




ANNUAL REPORT 2014



* **Sherpa**
Protecting and defending the victims
of economic crimes



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/ History

Sherpa was founded in 2001 by French lawyer **William Bourdon**, its current President and a member of the Paris bar. For many years, William Bourdon has been committed to the defence of human rights and the fight against corruption. He served as legal counsel to the French-Chilean families during their October 1998 lawsuit against General Augusto Pinochet, and to the plaintiffs in a number of actions brought in France against war criminals. He is also the former secretary-general of the International Federation for Human Rights, where he worked for 15 years. He is the author of several books concerning international justice and human rights, including: « *Petit manuel de désobéissance citoyenne* » (2014, Editions JC Lattès) and « *Face aux crimes du marché, quelles armes juridiques pour les citoyens* » (2010, La découverte).



/ Editorial

Issues of corruption and human rights violations by economic actors are more than ever making the headlines. In 2014, Sherpa won a number of battles, e.g. a preliminary enquiry was opened after we brought AUCHAN to court in April for false commercial practices. This case has received strong media coverage, which, as we shall see in 2015, will be of crucial importance to ensure major legislative progresses.

Indeed, Sherpa's advocacy and training work with elected officials and civil society partners has resulted in a legislative proposal on the accountability of parent companies being brought before the French National Assembly in January 2015. After almost a ten-year long battle, this is Sherpa's first success. Our advocacy activities have also gained pace at the European level, as we have secured a seat on the steering group of the European platform ECCJ (European Coalition for Corporate Justice).

Sherpa recruited a legal expert preparing a doctoral thesis at the CNRS (French National Centre for Scientific Research) on the topic of illicit financial flows (IFF) in the extractive industries. She helped creating an IFF department, based on a comprehensive assessment of the existing situation, which will spearhead a programme specialising in her research area.

Hiring a part-time assistant for administrative tasks and fundraising helped increase diligence and professionalism in the organisation's management, and allowed Sherpa to internally manage a number of tasks that used to be delegated to costly external providers.

Furthermore, 2014 also saw a leadership change in August.

Lastly, our legal caravan in Burkina Faso allowed us to establish strong partnerships with local experts and to take part in a conference on the topic of corruption in December after the overthrow of the President.

Sherpa thus confirmed throughout the year its position as a lead organisation on the topics of social accountability of business and illicit financial flows, not only because of its legal actions, but also because of the ability of Sherpa's teams to function as a think tank, and hence to appear as a credible interlocutor with elected officials, public administrations, journalists and civil society organisations.

In addition, Sherpa has initiated a process of internationalisation and diversification of its means of communication, which could never have taken place without the dedicated work of its volunteers.

Due to a decrease in public and private funds allocated by foundations with public interest aims, we nevertheless need to focus on more rigorous management, and to devote a large amount of effort to diversifying our sources of income, by increasing our individual donor base. This will require substantive work in addition to ongoing communication activities, in order to meet the demands of a wider, more diverse and better-engaged audience.

These two development axis must be our main areas of work in 2015, if we are to ensure Sherpa's continued existence, and allow our teams to answer the ever-increasing number of demands generated by the growing sense of injustice in many parts of the world.

Many thanks to all of you for your loyalty and support.

Laetitia Liebert
Executive Director

/ Mandate

Sherpa is committed to fighting the new forms of impunity linked to the globalisation of economic and financial trade.

We protect and defend the victims of economic crimes using the law, which we believe to be a precious tool to act for sustainable development.

/ Programme

In order to carry out its mandate, Sherpa's work focuses on two complementary areas: Globalisation and Human Rights (GHR), and Illicit Financial Flows (IFF).

GHR Programme

People and the environment are all too often the victims of multinational corporations' activities, especially in the Global South. **Industrial disasters are multiplying.** The absence of a regulatory framework suited to globalisation means that we are often unable to establish the liability of the parent or subcontracting companies and to obtain compensation for victims. Sherpa advocates for the implementation of a binding legal framework ensuring the accountability of economic actors, and particularly that of transnational corporations, which violate human rights and cause environmental damages.

IFF Programme

Sherpa launched this programme in 2007, with the "Ill-gotten gains" case. **Developing countries lose more than thousand billion dollars** each year due to illicit financial flows. This constitutes a major development issue, since illicit financial flows reduce the amount of funds available for essential public services such as education or health, and worsen the debt burden of developing countries, so much so that even today, most of these countries' governments cannot satisfy their population's basic needs.

Sherpa gathers illicit financial flows, human rights violations and environmental damages perpetrated by economic actors under the name of "economic crimes".

In both of these programmes, Sherpa offers targeted legal training to political and civil society actors, carries out advocacy campaigns, and takes judicial action.

/ The team

The organisation brings together legal experts, lawyers and politically engaged specialists with diverse profiles and international experience. Sherpa works in close collaboration with numerous civil society organisations throughout the world.

Sherpa also runs thanks to the commitment of its 8 board members, the support of 4 interns and the generous help of 29 volunteers in 2014.

/ The permanent team



Sherpa's team is headed by Laetitia Liebert.

A humanist and a citizen of the world, she graduated with a PhD in veterinary sciences in France and Spain, and then started her international career in pharmaceutical exports business. She then led large teams as well as rural development or health programmes in NGOs such as AVSF or MSF in Palestinian Occupied Territories, Israel, and Angola, before working in the headquarters in USA, France, and Japan. After various positions in the French government, she headed Greenpeace Mediterranean's international office, and led strategic campaigns around energy and agriculture issues in Lebanon, Egypt, Jordan, Israel and Turkey, countries whose populations are badly affected by local commercial and investment policies. Sensitive to the severe human consequences of unregulated globalisation, she decided to join Sherpa in August 2014. She's fluent in French, Arabic, Hebrew, English Portuguese and Spanish.



The Globalisation and Human Rights Programme is headed by Sandra Cossart.

Sandra Cossart has obtained her law degree from Sorbonne University in Paris. She is a graduate of Sciences Po Paris, College of Europe in Belgium and London School of Economics in the UK. She started her career as a lawyer in international organisations, such as the European Parliament and the Council of Europe. She then worked in Russia for several years for the European Union being in charge of a cooperation project. Upon her return to France, she joined a law firm advising companies litigating on corporate law and was also involved in pro bono work for refugees. In 2002, she moved to London, where she was a consultant for Russian companies on corporate social responsibility, and subsequently joined the Business and Human Rights Resource Centre. After spending 8 years in England, Sandra Cossart joined Sherpa in 2010. Sandra is fluent in French, English and Russian.

/ Tools of action

Legal advocacy work

In order to promote improved legal frameworks at the local and international levels, Sherpa develops advocacy goals and carries out campaigns, alone or in partnership with the working groups in which it takes part. Sherpa runs campaigns addressed to economic, political, institutional actors, the media and the wider public, in order to promote better local and international legislation.

Litigation

Sherpa carries out legal actions. These may be judicial, bringing suits before civil, criminal or administrative courts in order to seek redress for a specific injustice. They may also be extrajudicial, through the OECD's national contact points, mediation or arbitration.

Research / Legal expertise

These documents in turn support Sherpa's advocacy work and legal action. This work may take the shape of investigation reports, briefings or legal studies.

Awareness raising and legal training

Sherpa believes that knowledge sharing and skills transfer play a positive role in development. It therefore undertakes outreach and capacity building activities in France and abroad such as the reinforcement of the local actors' autonomy and their abilities to implement legal action, and the fostering of exchange and collaboration between civil society organisations and legal experts.



Marie-Laure Guislain is in charge of litigation, and of the coordination of Sherpa's Legal Caravan.

Marie-Laure Guislain has obtained her law degree in Paris II Assas, has studied in Westminster University in London and holds an LLM in International Cooperation and Human Rights.

She worked in Buenos Aires for the human rights NGO CELS, got involved in development projects' management, and took part in the production of an outreach documentary on migrants' rights. She then pursued project management in Colombia in 2011, working with populations 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 French, English and Spanish.



The Illicit Financial Flows Programme is headed by Sophie Lemaître.

Trained as a legal advisor, she started her career at the CIRAD (French Agricultural Research Centre for International Development), and then at the FAO (Food and Agriculture Organisation of the United Nations), where she worked at the forestry department on issues such as governance and forest law enforcement. She joined Sherpa in April 2014, as part of her work on a PhD at the Institut de l'Ouest Droit et Europe, a research centre attached to both the University of Rennes and the CNRS.

Sophie is fluent in French and English.



The fundamental rights of workers are constantly neglected in favour of the systematic undercutting of costs, and an ever increasing rate of production.



GLOBALISATION AND HUMAN RIGHTS

All around the globe, globalisation has led to a dramatic change in people's lifestyles. The new trade opportunities made possible in particular by the transport revolution have allowed corporations to expand their production activities to developing countries.

Sadly, decreasing costs and ever-increasing production rates constantly take priority over the fundamental rights of workers.

People and the environment are all too often the victims of multinational corporations' activities, especially in the Global South. Industrial disasters, such as the collapse of the Rana Plaza building in Bangladesh, which caused the deaths of over 1 138 workers, have multiplied at a worrying rate, leading to irreversible social and environmental damages.

Unfortunately, the absence of an appropriate regulatory framework, suited to globalisation, prevents the victims from establishing who is responsible, and from obtaining compensation.

Through its Globalisation and Human Rights Programme, Sherpa advocates for the implementation of binding national and international legal frameworks, in order to ensure the accountability of economic actors, and in particular that of transnational corporations which violate human rights and/or cause environmental damages.

To this end, Sherpa **carries out** several types of actions to adapt, improve and reinforce local and international legal frameworks. **It initiates legal researches**, raises awareness and **trains the different actors**. Finally, it **fight**s impunity by judicial and non-judicial resolutions, litigations which allow putting in evidence the flaws and deficiencies in current law.

RESPONSIBILITY OF PARENT COMPANIES FOR THEIR SUBSIDIARIES AND SUBCONTRACTORS / VICTIMS' ACCESS TO JUSTICE

Sherpa's work has historically revolved around four core axes: the responsibility of parent companies and contracting agents for the activities of their subsidiaries or subcontractors, victims' access to justice, transparency and the exemplarity of the State. In 2014, our legal work focused mainly on the responsibility of parent companies, bringing together the two first issues.

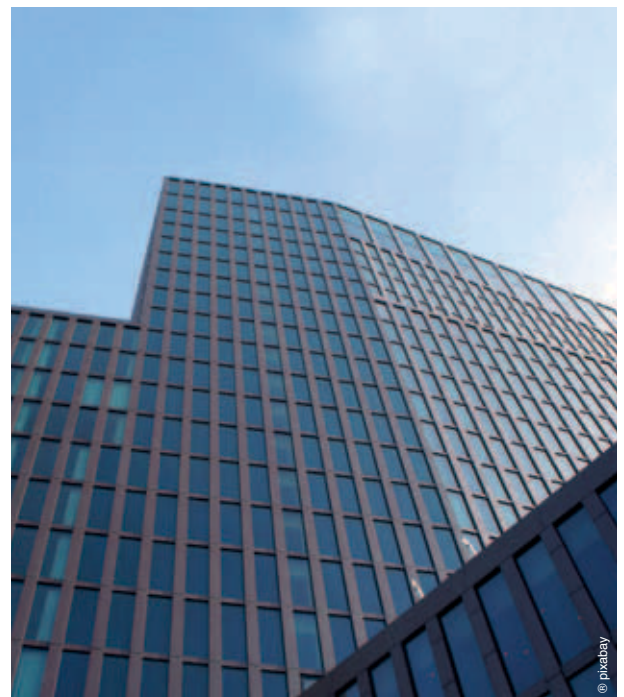
Currently, it is legally almost impossible to assign liability to parent companies for violations of environmental or human rights perpetrated by their subsidiaries or subcontractors. Likewise, victims of human rights violations cannot obtain redress from parent companies in France for damages caused by their subsidiaries, subcontractors or suppliers abroad.

Multinational corporations give orders to their subsidiaries and subcontractors, and profit from them. But this economic reality is not translated into legal responsibility.

Indeed, corporate law concepts such as legal personality and limited liability do not provide an accountability framework which would identify the responsibility of the parent company for its subsidiary and subcontractors' actions, and therefore, do not provide for redress or compensation for victims.

This is why Sherpa has focused on the absence of a legal framework aligned with economic realities, and advocated for laws that bind multinational corporations to respect international human rights principles.

At the same time, Sherpa is working to strengthen the existing instruments of "soft law", or voluntary standards - like the OECD's guidelines for multinationals and their implementation by the National Contact Point.



/ Goals

Sherpa, a pioneer in its focus on the responsibility of parent companies for the activities of their subsidiaries and subcontractors since 2001, strives to share and disseminate its expertise, particularly among other civil society actors, in order to broaden the political scope of its recommendations. We have raised the awareness of many civil society actors and political decision-makers, in particular, representatives and members of government, as regards the need for legislation on multinational corporations' duty of care, in order to get it on the agenda of the National Assembly and its final vote.

In addition, Sherpa uses the OECD's National Contact Point in France and is working on its reform, in order to provide access to justice to an increasing number of victims of multinational corporations' activities.



/ National achievements

Duty of care enshrined in law

Following the submission by 4 parliamentary groups in November 2013 to the National Assembly of a proposal for legislating the liability of parent companies and main contractors, Sherpa continued its awareness raising, legal training and advocacy work in 2014.

Notably, we continued to partake in the **FCRSE** (citizen forum for corporate social responsibility). Sherpa had already contributed significantly to the definition of FCRSE's strategic advocacy focus, in particular to make the responsibility of parent companies for their subsidiaries and subcontractors a key advocacy focus.

As a member of the board of directors meeting, Sherpa continued to provide and disseminate its legal expertise to other members of the forum in order to leverage the political weight of certain organisations and to increase the wider public's awareness of this issue.

Our participation in this network, as well as in the **CSR national platform**, allowed us to educate and train increasing numbers of political personalities (representatives), cabinet members, members of government and companies (as the MEDEF and AFEF took part in the platform).

Sherpa also contributed to the development of proposals within working group no. 3 on the liability of companies for their value chain. We hoped that the proposed law on duty of care could be included in the roadmap in order to raise the different actors involved in the platform's awareness on these issues. Despite lobbying from employer and business organisations opposed to this draft proposal, we succeeded.

We also participated in the development of a reference document on corporate social responsibility reflecting the CSR platform's position. Through the work of Sherpa and its partners, this document, adopted in the plenary on October 9, makes reference to the responsibility of the State for the protection of human rights (pillar 1 of the United Nations guiding principles) and the need for strong binding legislation. We emphasised that the principle of duty of care for multinational corporations is a fundamental legal obligation for the said companies' entire sphere of influence as it would provide for actual prevention of damages.

Sherpa also convened a community of eminent legal and academic experts on these subjects. They met regularly to contribute to the research work on the "proposed Bill on the duty of care", and to provide legal expertise and other types of knowledge.

All of this work was essential for initiating and developing the proposed law on the duty of care for multinational corporations, and resulted in its inclusion in National Assembly debates in 2015.

Litigation initiated by Sherpa, as in the AUCHAN case, supported this legal advocacy work, by further raising public and political awareness about the importance of multinational corporations' duty of care.

Strengthen voluntary norms or "soft law"- NCP

Sherpa continues to work on revising the OECD's guiding principles and those of their implementation bodies, the National Contact Points. We campaigned for the improvement of NCPs within the OECD Watch network, as well as the French NCP. Based on our experience in investigating complaints, we were able to identify issues requiring resolution. ➤

RESPONSIBILITY OF PARENT COMPANIES FOR THEIR SUBSIDIARIES AND SUBCONTRACTORS / VICTIMS' ACCESS TO JUSTICE

Indeed, we believe it is important to enhance the legitimacy of the NCPs both by guaranteeing their independence from their parent ministry, the Ministry of Economy in France, and by broadening the representation of its members, in particular, by integrating NGOs into the governance process.

As for the internal NCP operations, we emphasised the necessity of impartiality between parties and of improved accessibility for victims from the nations of the Global South. In addition, we stressed the importance of the NCP's role in assessing violations even before fulfilling a mediation role. Some recommendations were adopted by the NCP. This move indicates a change in practices, though this change has not yet been confirmed by an official change in NCP internal operations.



NATIONAL PLATFORM OF GLOBAL ACTION FOR CORPORATE SOCIAL RESPONSIBILITY (NATIONAL CSR PLATFORM)

Goals: Its main mission is to provide each state with a national action plan (NAP) or list of priority actions aiming to promote CSR within the context of implementing the Europe 2020 strategy.

Members: This is a multi-player area which brings together, under the aegis of the Prime Minister, trade unions, employers' organisations (especially MEDEF and AFEF), researchers, NGOs and public authorities with an interest in CSR. The composition of the platform, initially set at around forty members, is scalable. The heart of the activity is members' participation in working groups, whose themes do not interest all members at the same way. The Bureau of the Board, comprising 13 members including the FCRSE, manages the Platform and steers it in a progressive manner to ensure the execution of the Platform's mission.



CITIZEN'S FORUM FOR CORPORATE SOCIAL RESPONSIBILITY (FCRSE)

Goals: FCRSE is a forum aiming to develop expertise, public expression and advocacy on issues related to the social, environmental and societal responsibility of corporations. It has two main goals:

1. Encouraging its members to speak with one voice before public authorities, in order to advocate for national, European and international frameworks for CSR that will foster collective bargaining within and outside corporations.
2. Developing a common resources centre, which will provide the setting and the tools necessary for independent assessment, ensure the democratic accountability and social and environmental efficacy of the corporate responsibility framework.

This common work takes the forms of thematic meetings, expert hearings, other events, and the drafting of documents or official letters to be addressed to public authorities, corporations or public organisations.

Members: The FCRSE consists of a number of NGOs as well as trade Unions: *Sherpa, Alternatives économiques, Amis de la Terre France, Amnesty International France, CCFD-Terre Solidaire (Comité Catholique contre la Faim et pour le Développement), le Centre de Recherche et d'Information pour le Développement (CRID), le Centre Français d'Information sur les Entreprises (CFIE), le Collectif Éthique sur l'étiquette, Confédération Française et Démocratique du Travail (CFDT), la Confédération Générale du Travail (CGT), France Nature Environnement (FNE), Greenpeace France, la Ligue des Droits de l'Homme (LDH), Peuples Solidaires/Action Aid France, Terre des Hommes France, et WWF France.*



The National Contact Point

What is it?

The French NCP is a mediation and conciliation body, which seeks to provide solutions through consensual and non-litigious means.

Who sits on it?

The French NCP is a tripartite independent body, which is coordinated and chaired by the General Directory of the Treasury of the Ministry of Economy and Finance. The State (Ministries of Economy and Finance, Work and Employment, Foreign Affairs, Environment, Sustainable Development and Energy), six trade unions (CFDT, CGT, FO, CFE-CGC, CFTC, UNSA) and an employers' union, the MEDEF sit on it.

What are its goals?

The NCP promotes and monitors the implementation of the OECD Guidelines. It provides all necessary information and replies to information requests.

How does it work?

It examines the cases that come before it. It offers its services to all the parties (dialogue, information exchange), as well as mediation if necessary. The French NCP's decisions are made by consensus, and its work is confidential.

/ European-level achievements

Our European activities primarily take place within **the ECCJ** (European Coalition for Corporate Justice). Sherpa is a member of the ECCJ's Steering Committee. In 2014-2016, due, in part, to Sherpa's work on the subject, the ECCJ's activities focused on EU-level advocacy on corporate liability and access to justice. This topic being one of Sherpa's focus areas, we were able to explore the options for legislative reform at a European level, especially during the ECCJ's general assembly in May, and share the expertise and experience acquired in France. ➤



ECCJ: EUROPEAN COALITION FOR CORPORATE JUSTICE

Goals: Increasing European cooperation between NGOs working on the subject of corporate accountability, and to weigh on European Union and member state policies.

Raising awareness of corporate social responsibility and EU policies and promoting a more cohesive approach for civil society organisations working at a European level.

Reinforcing European NGOs' skills and knowledge on these issues.

Members: The European Coalition for Corporate Social Justice brings together national platforms of NGOs, trade unions, consumer organisations and academics to promote social and environmental corporate accountability throughout Europe. The ECCJ represents over 250 organisations in 15 European countries. Sherpa is a member of its Steering Group.

RESPONSIBILITY OF PARENT COMPANIES FOR THEIR SUBSIDIARIES AND SUBCONTRACTORS / VICTIMS' ACCESS TO JUSTICE

Sherpa held a conference on “Law and Access to Justice” on the 30th of June, at the Paris Bar. This was part of a project organised in collaboration with the law firm F Bold, and European NGOs ECCJ, Core and ECCHR, and which led to similar conferences being held in Germany, the United Kingdom and Belgium. The aim of the conference was to explore the legal issues around duty of care, and to explore the range of possibilities offered by French law.

/ International-level achievements

Being pioneers on legal issues around the impunity of multinational corporations, and having acquired practical expertise on the duty of care and instigated legislative reform in France, our competence is internationally recognised. We have therefore been asked to share our experience worldwide but could respond only to some of the requests. We took part in the ‘International Meeting on Transnational Civil Litigation Involving Corporate Defendants’ which took place in Canada, in November 2014.

However, historically our activities at the international level used to focus primarily on the OECD Watch network.

Sherpa takes part in the NCPs’ annual meetings, and to the drafting of OECD Watch’s yearly report examining the NCPs’ functioning and putting forward improvement recommendations.

We take part in the work and reflection process carried out on OECD Guidelines, and we have criticised the growing number of ‘proactive’ agendas, of which there are now five, dealing with specific areas within the ‘Working Party on Responsible Business Conduct’.*

The OECD calls for contributions on all of these agendas, and thus demands ever greater expertise and time investment from civil society organisations and trade unions. This, in turn, decreases the time that both the Organisation and the NGOs are able to dedicate to the main issue: functional equivalence and organisational problems within the NCPs.

We nevertheless took part in the negotiations taking place in some of these working groups, and in particular in those dealing with the textile industry, minerals originating in conflict-affected areas, and the first discussions concerning stakeholder engage-



OECD WATCH

Goals: OECD Watch is a global NGO network working towards corporate social responsibility. OECD Watch aims to provide information to the NGO community concerning OECD Investment Committee policies and activities, and to evaluate the efficiency of OECD Guidelines on business practices of multinational corporations.

Members: OECD Watch is a global network, with more than 80 members in 45 countries. Its membership consists of a diverse range of civil society organisations, bound together by their commitment to ensuring that business activity contributes to sustainable development and poverty eradication, and also that corporations are held accountable for their actions around the globe.

The network has a Coordination Committee with a diverse regional representation. It is currently made up by: *Sherpa (France)*, *SOMO (Netherlands - secretariat)*, *CEDHA (Argentina)*, *CIVIDEP (India)*, *ForUM (Norway)*, *Green Advocates (Liberia)*, *Oxfam Australia (Australia)*, *Plades (Peru)*.

* Agricultural value chain, due diligence in the financial sector, textile value chain, stakeholder engagement in the extractive sector, and supply chains of minerals from conflict-affected areas).



ment in the extractive sector ('OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector'). We constantly insist on consultation and participation of all stakeholders before the projects are initiated, and on making a methodology, a guidance document and an efficient and reliable complaint mechanism available to both companies and affected communities.

Thanks to its experience with the French NCP, Sherpa has become a source of proposals in the OECD National Contact Points' yearly meetings, drafting recommendations for the improvement of OECD Guidelines and NCP functioning. Civil society organisations' criticism of the NCP mechanism's inadequacies, in particular concerning production chains, has raised awareness and engagement within the French NCP, which has drafted a comprehensive report on production chains at the Rana Plaza building. This could lead to strategic changes in corporate value chain governance.

/ Obstacles to overcome

We are faced with the government's lack of political will to introduce binding legislation forcing companies to comply with fundamental rights in their activities abroad – a similar lack of will can be found in European Union institutions. This reluctance may be due to multinational corporations' extremely powerful lobbying, which argues that such legislation would lead to competitive loss.

This implies that human rights violations by subsidiary companies and subcontractors are currently a substantial competitive factor for these companies.

Although our activities within the National CSR platform have played a major part in pushing for such

legislation, they have also shown their limitations: we have indeed found that it is very difficult to continue acting as an opposition force while taking part in multi-stakeholder platforms aimed at creating consensus. However, since the State is abandoning its regulatory role and entrusting it to such bodies, we thought necessary to contribute to the discussions. Although, much as other civil society organisations, we found it difficult to escape from the trend pushing us towards baseline and minimal consensus. We indeed believe it to be governments' prerogative to decide between conflicting interests.

Another major hurdle in the path towards a legislative proposal is the absence of any European, or indeed international, rules. French companies are using this situation as an argument against any national intervention.

In collaboration with OECD Watch, we insisted on the implementation of "peers review" processes, which could spur into action those countries that are the least inclined to do so.

Lastly, it should be stressed that the existence of the NCP's complaint mechanism has often been used in France as a pretext to argue that no binding legislation is necessary.

TRANSPARENCY VIA REPORTING

/ Goals

In France, during the last few years, real progress has been made to guarantee a company's stakeholders (consumers, states, investors, residents affected by its economic activity, trade unions, NGOs) access to information. However, this progress remains limited. Moreover, the increasing complexity of production chains sometimes enables companies to maintain a certain lack of transparency.

Sherpa advocates an **obligation of transparency** regarding the disclosure of information concerning companies' environmental, social and human rights' impacts. To be useful, this transparency obligation must include indicators which are precise, trustworthy, and relevant and which can be compared among companies in the same sector and at the same time.

Despite France's pioneering position in Europe, an effective obligation to disclose this information for each one of the **foreign subsidiaries** of a group still needs to be implemented. In addition, these mandatory requirements must be adopted at the **European level**.

This type of obligation would make it binding for enterprises to disclose risks of social and environmental damages, as well as human rights violations committed by their activities. This would enable both the prevention of these risks and the gathering of evidence in case of disputes, as well as creating trustworthy labelling of consumer goods, making the company's social and environmental performance available to consumers.

In addition, providing such information to investors would enable them to reward good practice and to preferably finance companies that respect human and environmental rights.



/ Sherpa's achievements

At the European level, France has always been a pioneer in matters of reporting. Since 2001, the French Law on New Economic Regulations (*Loi NRE*) has already provided for reporting for the CAC40 companies. This legislation was complemented by a law called "Grenelle II", in 2010, and its implementation decree in April 2012.

Sherpa has been striving to see the French advances in exercising extra-financial reporting translated to the European level.

In 2014, we have continued to work within the FCRSE and ECCJ to support the creation of a European Directive on this issue. We have raised awareness



and trained members of this network on reporting “the French way” by proving that some of our objectives were not utopian as they were currently being translated into French law. We have therefore collectively encouraged the adoption of a Directive and brought recommendations before the European Commission, while ensuring that the draft Directive, in the drafting process for several years, will not be reduced to the minimum which certain states and the Commission have been advocating for.

The adoption of the Directive (2014/95/Eu) of the European Parliament and the Council on the 22nd of October 2014 regarding the disclosure of non-financial and diversity information by certain large companies and groups has been a positive step and a considerable victory in terms of our awareness raising activities and legal training of political, economic and civil society stakeholders.

This new directive, adopted as of the 15th of April 2014 by MEPs during a plenary session, targets public-interest entities of more than 500 employees. The text requires not only listed companies but also banks and insurance companies with more than 500 employees (and with a turnover of more than 40 million Euros) to disclose, in an annual publication, information as regards their environmental and social impact, respect for human rights and anticorruption practices. This legal requirement to publish is a victory in the sense that the European Commission mostly favours voluntary, non-binding measures.

The limitations of this directive lie within the “comply or explain” approach which Anglo-Saxon countries are particularly fond of. In these countries, companies need to either comply with the obligation or explain why they do not wish to do so. However, no sanctions are foreseen in the case of non-compliance, which, according to us, is not very encour-

aging. Moreover, the Directive is less ambitious than the French implementation decree of 2012 on certain issues, particularly regarding the target companies – the Directive applies to listed companies only – and the selection and content of the indicators. Additionally, the directive does not foresee independent third party verification.

Once the directive is published, Member States have two years to transpose the new European provisions into their national legislations. Thus, the directive (across Member States) will be applicable in 2017. Sherpa has worked within the FCRSE on the recommendations of the national CSR platform’s working group and will continue to pursue its efforts to fill the gaps in the disclosure of corporate information relating to human rights in the 2012 decree. Particularly, Sherpa will continue to work so that its propositions for revisions can take into account the positive points of the afore mentioned Directive, in particular those pertaining to due diligence and reporting by subsidiary companies.

/ Obstacles to overcome

Employers’ organisations and French companies often complain about being the only ones in Europe compelled to comply with such a reporting system, claiming that it is costly and useless. Thus, they are not in favour of indicators which are too rigorous.

While our partners at the European Commission have often drawn on the arguments of the companies to reject the idea of mandatory reporting, we consider that the mobilisation of European civil society organisations as well as investors has been successful.

STATE'S EXEMPLARY IN ITS INTERNATIONAL OBLIGATIONS AND INVESTMENTS

The State bears the all-important responsibility of ensuring the protection of human rights, not only in its capacity as regulator and legislator, but also as a direct economic player or investor. The State must conduct itself in an exemplary way if it is to generate any change in private stakeholders' practices.

/ Goals

Sherpa has ceaselessly reiterated the United Nations Guiding Principles (UNGPs), especially their first pillar, which spells out the key responsibility of the State as a central player in the system of protection of human rights. It implies that the State must do all that is necessary to prevent human rights violations by third parties, especially by economic players such as companies.

In addition, the State is a major economic player by way of public companies or through participation in private enterprises. Sherpa considers that the State's responsibility still holds even where its participation in a business is a minor one.

Lastly, the State has a duty to encourage that investments respect human rights. We believe that the State must attune its investments and its guarantees to social, societal and environmental requirements. It must set down a socially responsible framework for investment and should not be guarantor for projects that pollute the environment or violate the rights of populations. The best way for the State to achieve this is to respect its duty of care when carrying out its own activities.



/ Sherpa's achievements

The State as regulator and protector

The State works as regulator of economic activities on three levels:

On a national scale, by legislating on the duty of care of transnational companies, France respects the first pillar of the UN Guidelines (responsibility of the State). It is guarantor for the protection of human rights, and attempts to enact into French law the third pillar, which is access to justice (see Sherpa's primary strategic direction: the responsibility of the parent company, page 10).



On the European level, and, particularly when encouraged by civil society organisations, the French State performs its role as regulator when it asks the European Council and the Commission to include in the “European guidelines on extrafinancial reporting” French statutory provisions that have a greater focus on protecting human rights.

On the international level, we prompt member states and France in particular to rise to the challenge when we participate, within the Council of Europe, in negotiations for a non-binding treaty for Business and Human Rights. In fact, in early 2013, the Council of Europe Committee of Ministers gave the human rights steering group the task of developing a non-binding instrument by the end of 2015, which might include a good-practice guide to rectify the deficiencies in the UNGPs’ implementation within Europe. In 2014, Sherpa was part of the drafting group for Business and Human Rights on behalf of the ECCJ.

The State as economic player

When the State is a fully-fledged economic player, its conduct must be exemplary, even when it is (only) a minority shareholder in a company.

For example, we questioned the Eramet Company where the French State and the French public investment bank hold interests, and questioned on the subject of human rights violations occurring during the exploration phase for a nickel mine. It is alleged that the company forcibly evicted people during the current phase of exploration, and that the indigenous communities could not exercise their right to consent ahead of time in a free and informed manner.

The State as investor

The conduct of the State must also be exemplary in its investments, whether via a corporate bank or a development agency.

Responding to a particular litigation, Sherpa drafted recommendations addressed to the European Investment Bank (EIB) urging it to modify its practices. We ask these institutional public players to take into account the EU’s goals, EU’s foreign policy and to systematically respect the social and environmental criteria when providing funding. We request the definition of a clear development objective as part of the EIB’s mandate, and demand compliance with the Cotonou Agreements regarding its investments, in particular the consideration of the affected populations’ opinion, and, if necessary, the inclusion of compensatory measures for these populations. Lastly, we ask for an evaluation of the impact of these projects on climate change.

/ Obstacles to overcome

Member States, due to their strong economic interests, show a lack of will and even reticence in implementing exemplary conduct. In fact, European states, particularly France, usually favour economic diplomacy over respect for human rights.

It should be noted that it is difficult for the State to guarantee respect for human rights by multinational corporations outside of the national territory, as these are not subject to international law. It is the States’ responsibility to modify existing law, but the underlying economic interests prevent them from fully engaging in or even supporting this paradigm change.

LEGAL STUDIES AND RESEARCH

Since our creation Sherpa has envisioned becoming a think-tank to examine the law and research ways of making economic actors accountable, largely around the notions of prevention and remediation. In order to maintain our position as an innovative legal force, we continuously examine and discuss our own work together with many academics and other legal practitioners.

In the last few years we have developed partnerships with universities to enhance our research and have taken part in several legal clinics (Sciences Po and Nanterre).

This collaboration allows us to entrust specific legal research projects to students with a view to gaining a deeper understanding of particular subjects, while exchanging with teachers and researchers and giving students the opportunity to find a practical application for their academic knowledge.

While the ongoing work at several legal clinics, collaboration with the teaching teams and follow-up of students requires substantial input from the small Sherpa team, it has given us the opportunity to form privileged links with a network of experts and academics, and has resulted in high-quality studies. This joint project has also allowed young legal students and potential lawyers to become acquainted with the main ideas behind corporate liability.

In 2014, we continued our collaboration with Euclid University of Paris West Nanterre La Défense and developed a new partnership with the University of Paris VIII Vincennes - Saint Denis.



The two studies we undertook with Euclid in 2014, also in partnership with Amnesty, focused on the proposed law on the duty of care of parent companies and subcontracting businesses regarding damages caused by their subsidiaries and subcontractors, and fitted in with Sherpa's first strategic direction, that is parent company responsibilities.

- The first study focused on the **implementation of the proposed law in terms of its prevention and compensation aspects.**
- The second study did a **comparative legal analysis of the responsibility of parent company and contractor, in particular in the American and British legal systems.**

As for our collaboration with Paris VIII, it focused on a **study of a French company's violations of human rights in the context of a mining venture abroad, ultimately examining the feasibility of legal action.**



Entrusting students with legal research in order to deepen specific subjects by exchanging with experts and giving them the opportunity to seek a practical application of their academic knowledge.

These studies gave greater weight and support to our strategic directions dealing with access to justice and exemplary conduct by the State.

Sherpa also delivered a workshop on the theme of “Relations with Partners (NGO, Bar and institutions)” during a training on setting up legal clinics for teachers, researchers, doctoral students, lawyers and associations, between the 26th and the 28th of March in Caen.

We also seek to raise awareness among law practitioners in the area of company responsibility, by way of conferences, studies or participation in formal debates or informal exchanges, so that the advice they deliver to businesses includes human rights.

The influence they can have on improving practices should not be overlooked. This is why Sherpa organised a symposium on the theme “Access to justice:

putting the law to the test” at the Maison du Barreau in Paris on the 30th of June 2014.

Lastly, Sherpa coordinates a network of researchers around its themes and principles, thanks to its own technical expertise in substantive law and litigation practice, and to its ability to generate and implement legal advocacy by mobilising and raising the awareness of political decision-makers. This is how we created a working group of eminent jurists and academics focusing on the notion of duty of care, whose members were very frequently called upon for Parliamentary hearings while Parliament was working on the proposed law (cf. p.10).

Child labour

Misleading advertising and child exploitation

Country: China

Targeted company: SAMSUNG



Overview

SAMSUNG, the world's largest mobile phone and TV manufacturer, belongs to one of the main conglomerates in South Korea whose revenue represents 20% of South Korea's GDP.

SAMSUNG prides itself on its **commitments to ethical conducts**. SAMSUNG advertises, mainly on the internet, that it promotes a "better world" while being a good "socially responsible" corporation.

SAMSUNG's ethical standards are very clear; they are catalogued in two general codes of conduct and restated in several reports on sustainable development. However, international observers regularly denounce the inhuman working conditions in SAMSUNG factories in China where the products exported to the French market are manufactured.

Between August and December 2012, China Labour Watch, a Chinese NGO working since the early 2000s on monitoring the working conditions of workers, investigated eleven factories manufacturing SAMSUNG products. Unlike the ethical standards promoted by the company, the investigation

reports denounce **appalling working conditions** in SAMSUNG's subsidiary companies.

The reports expose the following issues:

- Child Labour: according to China Labour Watch's well-documented reports, several children, under the age of 16, have been employed in SAMSUNG's factories.
- Frequent non-paid overtime: up to 150 overtime hours per month, 7 working days with 14 to 15 daily working hours.
- Lack of security measures: workers are forced to execute dangerous tasks without any adequate protection.
- Forced labour, coercion and regular physical violence from employers.

Backed by this evidence, Sherpa alongside Peuples Solidaires and Indecosa-CGT launched a complaint in Bobigny against SAMSUNG France on the ground of misleading commercial practices. The company is accused of violating its ethical commitments as exemplified by the working conditions in its subcontractors' factories in China and of intentionally misleading French consumers, who are more and more sensitive to the respect of human rights.

New reports from China Labour Watch, published after the complaint, disclose additional facts that corroborate the violations mentioned previously.

The French public prosecutor thought our complaint was serious and thorough enough to open a preliminary investigation. Unfortunately, after hearing few members of SAMSUNG France, the case was dropped by the prosecutor.



Usefulness of the legal basis / Hurdles overcome

This procedure is interesting for two reasons: on one hand, it allows us to bypass the lack of evidence linking directly SAMSUNG to the **violations perpetrated by its subsidiary companies**. On the other hand, it gives **greater binding legal value to the codes of conducts and the commitments** taken by companies.

We chose this new legal basis to deal with the absence of general legal basis about companies' liability. However, misleading commercial practices cannot allow victims to receive any compensation. Thus, this case confirms the **need to legislate on the responsibility of multinational companies** as regards their entire production line's activities.

Although recognising misleading commercial practices cannot force multinational companies to respect workers' rights worldwide, officially recognising these violations could compel companies to comply with their ethical commitments, and respect human rights when they declare they do in their ethical codes.

Sherpa's achievements

The complaint against SAMSUNG allowed us to raise public awareness regarding this company's practices, but also to draw attention on the presence of child labour in its factories.

This case received wide media coverage and had an impact on the company's public image, reminding the mobile phone and technology industry of its **social responsibility in countries where their products are manufactured**.

For the first time in France, a multinational company was sued on the ground of misleading commercial

practices regarding human rights violations carried out abroad.

This lawsuit aims to sanction corporations for the discrepancy between the economic profit they gain from advertising their ethical standards and the blatant violation of fundamental workers' rights being carried out in other countries.

SEQUENCE OF EVENTS

26 February 2013: Lawsuit filed by Sherpa, Peuples Solidaires and Indecosa-CGT at the Bobigny public prosecutor's office against SAMSUNG France.

8 July 2013: The French public prosecutor decided to open a preliminary investigation.

3 December 2014: The public prosecutor closed the case without further action after only investigating in France: interview of the Head of SAMSUNG France's legal department, some researching on SAMSUNG France's website and a hearing with the head of SAMSUNG's 'Departement de Protection des Populations'. Sherpa believes that not enough was done during this investigation.

Worker fatalities

Collapse of the Rana Plaza textile factories

Country: Bangladesh

Targeted company: AUCHAN



Rescue operations in progress in the aftermath of the Rana Plaza collapse on the outskirts of Dhaka in Bangladesh.

Overview

The AUCHAN Group is present in 16 countries, works with 330,700 collaborators, and earned around 63 billion euros after taxes as of December 31st, 2014.

On the 24th of April 2013, the collapse of Rana Plaza, a building occupied by numerous textile workshops working for European and American brands, killed more than 1,100 people in Bangladesh. InExtenso labels, AUCHAN's brand, were found among the rubble.

Meanwhile, AUCHAN broadcasted its ethical commitments on its website and in its stores, where it claimed to **uphold workers' rights throughout its supply chain**. Sherpa therefore filed a complaint for **"misleading commercial practices"** to denounce the large gap between the group's ethical communication and the reality in its factories in Bangladesh.

Usefulness of the legal basis / Hurdles overcome

The legal basis of "misleading commercial practices" showcases the same advantages as in the SAMSUNG case (as mentioned above). However, the use of this charge in the context of the relationship between the contracting company and its subcontractors, and no longer a parent-subsidary relationship, demonstrates that it is necessary to make companies liable for the serious damages that are **caused by their providers or subcontractors abroad, not only their subsidiaries**.

This procedure should therefore give a **more binding value, not only to the ethical norms of these companies, but also more generally to the norms of soft law** (OECD guiding principles, UN guiding principles, Global Compact, etc.), which these companies claim to respect in their ethical norms.



Mother of one of the missing following the Rana Plaza collapse.



A rescue worker in front of the ruins of the Dhaka factory.

Sherpa's achievements

Sherpa's complaint against AUCHAN was filed on April 24, 2014, the day of the anniversary of the Rana Plaza collapse. It aimed to **raise public awareness of workers' dangerous working conditions** in Bangladesh, and to relaunch debate on the liability of parent companies over their foreign subsidiaries and contractors.

In addition, Sherpa went in Dhaka in December 2014 to conduct an additional field investigation.

The effort to collect evidence is very specific and delicate because witnesses are difficult to find and are afraid of reprisals; they rarely agree to testify and sign mandates for action. Sherpa's expertise in this area allows an **improvement of access to justice** for victims, who, most of the time, have neither the knowledge nor the means to provide evidence. This lack of resources increases the unbalanced power relationship between multinational corporations and victims, and thereby the impunity of the former.

Thus, the evidence collected by Sherpa is driving the investigation and complements the work of the prosecutor, who does not always have the political will or the financial means to conduct thorough investigations abroad in cases involving large multinationals.

The work of Sherpa and other civil society organisations helps the diffusion of methods to collect evidence, and **encourages more thorough investigations**, in the hope to mitigate the unbalanced power relationship between victims and multinational companies.

SEQUENCE OF EVENTS

April 24, 2014: A complaint is filed before the prosecutor of Lille.

May 26, 2014: Opening of a preliminary investigation.

December 2014: Additional investigation by Sherpa in Bangladesh.

Concealment of war-zone timber

Country: Liberia

Targeted company: DLH



Truck loaded with wood, Buchanan, Liberia.

Overview and proceedings

Between 2001 and 2003, DLH has bought, imported in France and distributed in Europe timber coming from Liberian logging companies working directly for the Charles Taylor Regime. During this time of civil war, DLH was buying timber from companies which several UN reports identified as responsible for human rights' violations, environmental degradations, and corruption. They were also accused of not respecting UN's ban on weapons.

On the 18th of November 2009, Sherpa along with Global Witness, Greenpeace France, Les Amis de la Terre and Green advocates launched a complaint with the Nantes public prosecutor's office (France) against both DLH France and DLH nordisk A/S, subsidiaries of the Dalhoff Larsen and Horneman (DLH) group. They were accused of trading with Liberia during the civil war, concealment of destruction of stolen goods, and concealment of bribery.

In addition to the UN's reports and resolutions, the lawsuit relied on several investigations by Global Witness which brought new incriminating evidences to the light.

A preliminary investigation was opened, unfortunately the public prosecutor's office then decided to close the case without further action.

Deciding that their work needed to be recognised, the four organisations launched a complaint with a civil action within criminal proceedings, referring directly to an investigating judge, not the prosecutor.

The case was referred to an investigating judge in Montpellier who decided to demand a 4000 euros deposit, therefore restricting access to justice for organisations without enough resources to pay this sum.

Our organisations thus appealed the judge's decision. The Court of Appeal's ruling not only refused to reduce the deposit but also forgot to set a deadline for the payment. Sherpa then sent a request highlighting the "material error" committed and asking the judge to set a deadline.

The organisations managed, not without some difficulties, to raise the 16000 euros requested to lodge the complaint and to work toward fighting against illegal timber trade in France

Usefulness of the legal basis / Hurdles overcome

Concealment is an underused legal basis in French law, under which a French company may **be held criminally liable for actions committed abroad**. It is therefore essential to push law forward and develop the case-law.

Moreover, since the complaint was filed, the EU Timber Regulation has been adopted and should help combat **illicit timber trade**, though the Regulation is not yet enforceable in France. Pursuing the charge



of concealment therefore appears to provide a good opportunity to give environmental organisations more tools in their fight against this scourge, which causes mass deforestation throughout the world.

Another of Sherpa's goals is to fight against the involvement of French economic stakeholders in **armed conflicts**, for which this case provides a good example.

The ability we used for NGOs to **file complaints and claims for criminal indemnification as civil parties**, is specific to France, and makes it possible to circumvent public prosecutors' sometimes arbitrary policies. This option must therefore be used in order to ensure effective access to legal protection for populations suffering from the actions of multinational corporations.

Sherpa's achievements

Sherpa shared its legal expertise with its partners to help them file a lawsuit in France against the DLH group. After the case was closed, Sherpa decided to join forces with fellow organisations to **lodge a complaint for criminal indemnification** and therefore bypass the decision of the public prosecutor.

Due to their high degree of technicality and specificities, procedural documents must often be drafted by lawyers. Lending assistance with procedural technicalities is key to the defence of the rights of the victims of economic crimes, since they precisely lack the necessary means and technical expertise. This work is also important in order to ensure **better access to justice**, and can only be carried out by members of the legal profession.

SEQUENCE OF EVENTS

18 November 2009: Sherpa along with Global Witness, Greenpeace France, Les Amis de la Terre and Alfred Bronwell lodged a complaint with the Nantes (France) public prosecutor's office against DLH France and DLH nordisk A/S.

In 2010: A preliminary investigation is open.

16 February 2012: The case is referred to the Montpellier public prosecutor's office.

15 February 2013: The proceedings are withdrawn for "insufficient grounds".

17 March 2014: The four organisations lodged a complaint for criminal indemnification to refer directly to the investigating judge.

2 April 2014: The judge sets a deposit of 4000 euros to be paid by each organisation.

16 October 2014: The appeal is declared not admissible. The judge does not set a new deadline for the payment of the deposit.

End of October: Sherpa sends a request for "material error" asking the judge to clarify the deadline.

26 February 2015: The appeal court in Montpellier sets the deadline for paying the deposit to the 20th of March 2015.

19 mars 2015: The four organisations sent out their deposit.

Land grabbing, environmental destructions and consequences on the health of the local populations

Country: Cameroon

Targeted company: SOCAPALM



Kienke's SOCAPALM plantation.

Overview and proceedings

SOCAPALM (Société Camerounaise de Palmeraies) is Cameroon's major palm oil production company. After the privatisation of this State company was undertaken in 2000 under the impetus of the World Bank and the International Monetary Fund, PALCAM (Palmeraies du Cameroun) became the main stakeholder, owning 70% of the shares, while Cameroon kept 27%¹.

After investigating the plantations in May 2010, Sherpa noticed several transgressions of the OECD Guidelines for Multinational Enterprises. As a result many conflicts are simmering between SOCAPALM and local populations, as hectares of forest have been taken away from local communities to create the plantation. Many fishing zones are no longer accessible.

SOCAPALM's activities lessen the quality of the environment of the local populations while increasing significantly the health hazards they face.

The nearby communities live under the threat of the company's agents who tour the plantations and its surrounding daily. The local populations do not even benefit from having the plantation; there has been no job creation and no rise in business for them. As for the employees, they are forced to work and live in deplorable conditions.

On the 3rd of December 2010, Sherpa, MISEREOR (Germany), the Centre for the Environment and Development (CED, Cameroun) and FOCARFE (Cameroon) filed a complaint before the French, Belgian and Luxembourg National Contact Points, against BOLLORÉ (France), FINANCIERE DU CHAMP DE MARS (Belgium), SOCFINAL (Luxembourg) and INTERCULTURES (Luxembourg) these four companies together oversee SOCAPALM's activities² for violation of the OECD Guidelines for Multinational Enterprises.

The French NCP agreed to study the specific complaint and to be the referent contact point, acknowledging the business relation tying the BOLLORÉ group to the Cameroon's subsidiaries targeted by this lawsuit.

It was only after two year, when BOLLORÉ finally decided to cooperate, that Sherpa, CED and BOLLORÉ were auditioned by the NCP.

In early 2013, lamenting the fact that the NCP had not yet delivered its final report, the plaintiffs agreed to enter into mediation under the supervision of the NCP so that real actions could be taken to stop the transgression of the OECD Guidelines for Multinational Enterprises.

1: The remaining 3% are owned by PALMCAM (through SICPLAM – a Sicav, employees' mutual fund).

2: Indeed, the SOCFIN Group owns 64% of SOCFINAF (target by the complaint before the NCPs), which owns 100% of PALMCAM, which in turn owns 65% of SOCAPALM. The BOLLORÉ Group owns 38.75% of SOCFIN's capital: about 17% directly, 12% through the Compagnie du Cambodge, and around 3 or 4% by BOLLORÉ Participations, S. A., Plantation Terres Rouges and Compagnie des Glénans. Vincent BOLLORÉ is a member of the boards of directors of Compagnie du Cambodge, Plantations Terres Rouges and Compagnie des Glénans. He is also expressly named as the person who controls BOLLORÉ, Compagnie du Cambodge and Compagnie des Glénans in SOCFIN's 'Statement of Participation'.



The final report was finally published by the NCP on the 3rd of June 2013, concluding that the company violated several principles set by the OECD Guidelines for Multinational Enterprises.

During the 6 month-long mediation, Sherpa represented the local population and on the 3rd of September 2013, the different parties presented to the NCP an agreed-upon and finalised action plan.

At the end of 2013, the parties met to set into motion the action plan and select the different organisations to monitor it.

After a long selecting process, the GRET was chosen as the French representative, while the SNJP (National Service for Justice and Peace) was chosen as the Cameroonian representative.

Usefulness of the legal basis / Hurdles overcome

Sherpa's lawsuit before the NCP was filed to bypass the inadequacy of hard law to regulate the evolution of companies' reach and power.

Currently, according to civil and criminal liability law, head companies cannot be held accountable for the actions of their subcontractors or subsidiaries in financial schemes similar to the SOCAPALM set-up. Yet, the OECD Principles take those relations of control and influence between head companies and their subcontractors or subsidiaries into account.

The **NCP was the only entity able to remind BOLLORÉ of its obligations regarding its subsidiary** in Cameroon. Moreover, the NCP's institutional nature led the BOLLORÉ group to agree to enter into a mediation process. Thus, Sherpa was able

to go beyond what could have been done through direct normal negotiations with the group.

Lastly, using this often-neglected procedure meant Sherpa could contribute to its improvement. Sherpa suggested a number of changes to create a **more efficient NCP**, which would increase the accountability of economic agents (*cf. supra*).

Sherpa's achievements

Through this action plan, Sherpa was able to obtain a number of specific commitments on the part of the corporation, on every issue raised in the initial complaint: dialogue with neighbouring populations, land issues, the environment, working conditions for employees and subcontractors, transparency, and compensation of neighbouring people for the damages caused by SOCAPALM's activities.

The action plan ensures respect for the rights of neighbouring populations and workers, as well as a significant improvement of their living conditions. This is the first time such an ambitious plan has ever been negotiated, together with an implementation mechanism which must be carried out in collaboration with a European body (funded by BOLLORÉ) and a local NGO (independently funded).

Sherpa's work therefore made it possible to go beyond the specific instance procedure, as the GRET, the SNJP, BOLLORÉ, Sherpa and SOCAPALM started working on an implementation methodology, and set priorities for 2015.

The discussion platforms between neighbouring populations and SOCAPALM are a priority, as they will allow the locals to weigh upon the implementation process, according to their needs. ➤

Similarly, a diagnostic mission should be set up in order to evaluate the specific steps which must be taken in order to help neighbouring populations and workers.

Unfortunately, although the first diagnostic mission had been planned by the GRET and the SNJP, SOCFIN announced it had decided to withdraw from the action plan in October 2014.

Sherpa attempted to resolve the issue by sending several letters to BOLLORÉ, reminding them of the commitment made before the NCP, according to which they were bound to do everything in their power in order to ensure compliance with the action plan, and asking them to exercise their influence upon their subsidiary company and ask them to comply with that commitment.

To this day, BOLLORÉ's only response is the acknowledgement for receipt of one of these letters, and its reply that it intended to forward it to SOCFIN for observations. An NCP statement asking the corporation to comply with its commitments did not succeed in resolving the issue.

Although mediation before the NCP is rarely used for disputes between companies and NGOs, this was the very first time such proceedings led to a **commitment, from both parties, to implement an action plan in order to remedy the violations of the OECD Guidelines**. Few civil society organisations are able to influence changes in the proceedings before the NCP, because most of them lack the means or the expertise to carry out field surveys, draft complaints, and take part in mediation meetings and the implementation of an action plan. Sherpa's several years' work on the SOCAPALM case creates a precedent, and could encourage parties to use the NCP in order to **obtain effective remedies**.

Moreover, despite the blocking of the action plan and of the monitoring mechanism the parties had agreed upon, this case allowed Sherpa to make BOLLORÉ and SOCFIN aware of the need to take into account the issue of CSR in their business activities, and thus had **a positive impact on ongoing negotiations with other NGOs**. Similarly, the SNJP, which was chosen to monitor the action plan, received independent financing to draft a report on the needs of SOCAPALM employees and neighbouring populations, and has begun to reinforce their position in order to establish a better power balance in relation to SOCAPALM.

SEQUENCE OF EVENTS

3 December 2010: Complaints are filed against companies BOLLORÉ (France), FINANCIERE DU CHAMP DE MARS (Belgium), SOCFINAL (Luxembourg) and INTERCULTURES (Luxembourg) before the French, Belgian and Luxembourg National Contact Points – all 4 exercise common control over SOCAPALM, BOLLORÉ being its parent company.

30 July 2012: Hearings of Sherpa, the CED and BOLLORÉ by the NCP.

7 February 2013: First mediation meeting between BOLLORÉ and the other parties.

End of May 2013: BOLLORÉ agreed to withdraw its defamation complaint against Sherpa.

3 September 2013: After a 6 month-long mediation, the action plan prepared by the opposing parties on the basis of several negotiation meetings is presented before the NCP.

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

12 September 2014: The first work steps and a first GRET and SNJP mission in Cameroon are approved.

15 December 2014: Sherpa is notified of SOCFIN's withdrawal, as the company no longer wishes to take part in the action plan. BOLLORÉ stated that it is unable to implement the plan.



Environmental and social damage

Construction and operation of a dam and a power plant

Country: Uganda

Targeted company: EUROPEAN INVESTMENT BANK (EIB)



Overview and proceedings

The EIB is the world's largest multilateral financial institution in terms of loan volume. It provides its funding and know-how towards investment projects which contribute to the targets set by EU policies. 90% of its activities take place in Europe, but it also supports the EU's external cooperation and development policies.

The Bujagali Hydroelectric project planned the construction and operation of a dam and a 250 MW hydroelectric plant on the Nile, 10 km away from Lake Victoria, downstream from the existing dams of Nalubaale and Kiira. Both Ugandan and international civil society organisations criticised for many years this project's impact on the environment and on local populations. This dam's construction could provoke many harmful effects: **decreased water levels on Lake Victoria, water pollution, submersion of fertile agricultural lands, reduced fish stocks and threats to the area's ecosystem, eviction of local people, destruction of the natural, cultural and touristic heritage around the Bujagali falls**, etc.

Moreover, the project is based on insufficient and erroneous studies from a technical, economic, and environmental point of view. The dam would likely not produce the expected amounts of electricity, and could lead to rising electricity prices. In any

case, the project will benefit the wealthiest minority of Ugandan citizens.

Several international NGOs, having been warned by the mobilisation of local civil society attempted to convince the EIB to withhold funding. However, the World Bank, the African Development Bank and the EIB upheld their decisions to fund this project in 2007. The EIB thus granted this hugely contested project a 95 million Euro loan in May 2007.

In April 2009, Sherpa and European NGO Coalition Counter Balance carried out a first field visit to investigate the project's impact. After this visit, Sherpa, Counter Balance and the NAPE (National Association of Professional Environmentalists) submitted a mismanagement complaint before the EIB Complaints Office on the 2nd of December 2009.

In their complaint, Sherpa and its partners asked the EIB to request independent studies to measure the **project's energy, social and environmental impact**; to ensure that the promised **compensatory measures** were effectively implemented; and lastly to **withhold payments** for as long as these demands have not been heard, and the judicial proceedings have not ended.

As the Complaints Office **delayed its reply** for two years, when the dam's construction was practically completed, in blatant violation of the time limits established by the EIB complaints mechanism (140 days), Sherpa, Counter Balance and the NAPE brought the matter before the European Ombudsman on the 15th of November 2011, lodging a complaint for mismanagement by the Bank.

When the Complaints Office finally published its report on 20 August 2012, it held that in spite of certain deficiencies in the evaluation of the project's negative impact on local populations, the EIB had overall complied with its economic, social and environmental ➤

policies. The European Ombudsman sent his reply two years after the complaint was submitted, on the 25th of September 2013, and argued that although the Bank had violated procedural time limits due to human resources issues and internal conflicts, there had been no mismanagement of the NGOs' complaint. The Ombudsman also upheld that the EIB had not committed any infringement in stating that the damages caused by the project could be repaired later, although the damages affecting people and the environment are irremediable.

On the 12th of August 2014, Sherpa, also representing the other complainant NGOs, sent a reply to the Complaints Office's report, requesting the Complaint Office to report on the progress achieved in monitoring the measures the EIB should have taken to respect social and environmental standards.

After analysing each aspect of the Complaints Office's report, Sherpa sent to the Complaints Office a set of recommendations for the improvement of the EIB's accountability process as regards foreign investments, and of its internal complaints mechanism, including the Ombudsman.

Usefulness of the legal basis

Using the complaints mechanism, in itself, indicates to the Bank that **citizens remain vigilant** on the subject of its social and environmental accountability. It is necessary to use this mechanism, although it is extremely costly and time-consuming for victims or their representatives. Field studies, gathering evidence and testimonies, writing reports (60 pages long on average...) on EIB policies, require means and expertise that many organisations do not have.

Furthermore, through these proceedings, Sherpa was able to make **recommendations to improve the way the EIB complaints mechanism** functions. Investors of such importance, which represent the European Union must respect social and environmental criteria in their selection of projects. This can only be achieved through transparency and an efficient complaints mechanism.

Sherpa's achievements

Sherpa is one of the few organisations that understands the way the EIB functions, and therefore takes an active part in the debate regarding the institution's reform, with an aim to ensure that the institution funds projects which comply with the rights of affected populations.

This case also allowed Sherpa to send a report to the NGO working group on the ways to **improve transparency** in the EIB.

Through this work, Sherpa took part in the general improvement of the **transparency of public investors' criteria for choosing projects**, particularly with regard to environmental and social concerns, to the systematic and compulsory compliance with these criteria, and to the improvement of extra-judicial complaint mechanisms which provide the means to check that public institutions comply with these rules.

SEQUENCE OF EVENTS

April 2009: Field survey in Uganda, by Counter Balance, Sherpa and CLAI.

2 December 2009: Sherpa and its partners submit a complaint before the EIB's Complaints Office.

15 November 2011: Sherpa, Counter Balance and the NAPE bring a complaint before the European Ombudsman arguing mismanagement of their complaint by the EIB's Complaints Office.

10 August 2012: Complaints Office decision (or final report), arguing (2,5 years after the complaint was filed) that the EIB complied with its economic, social and environmental policies when selecting this project.

25 September 2013: Ombudsman decision (also over 2 years after the complaint) does not find any mismanagement either.

12 August 2014: Sherpa's reply to the Complaints Office's final report is sent, containing recommendations and suggestions for the improvement of both the EIB's handling of complaints, and the taking into account social and environmental criteria in the EIB's investments.



Violations of protected areas and environmental damage

Country: Argentina

Targeted company: TOTAL



Overview

Present in Argentina since 1978 through its subsidiary Total Austral S.A., Total was the main producer of gas (shale gas) between 2009 and 2012, representing nearly 30% of the Argentinian national volume. 9 unconventional wells were drilled in the Neuquén region and the company plans to continue its development exponentially by obtaining legislative changes, prolongation of its concessions and new exploration permits, some of which are for locations in protected areas. According to independent experts who have evaluated the project, the impact studies contain a large number of inaccuracies. In fact, these experts would have been under considerable pressure, pushing them to abandon any criticism. Moreover, local populations were not consulted.

In addition, some accidents have been reported, particularly the loss of a radioactive pellet in a well and the following delay in warning public authorities. Finally, Total seems to have developed techniques for extensive operation without taking in account the boundaries of protected areas, by for example drilling horizontally or next to these areas.

Sherpa supported Friends of the Earth on this case and financed part of their documentary denouncing Total's extraction of shale gas in a protected area in Argentina.

During the screening of the documentary in May 2014, we met the Argentinian partners and thought

more in-depth about the different actions possible to safeguard the protected area.

In September 2014, Sherpa and Friends of the Earth met the director of Total Austral, as well as Total's CSR, Human Rights and Communication managers. They demanded them to explain the different violations found in Argentina and present their commitment as regards to remediation: the wells in the protected area, the absence of a study conducted by independent experts, pressure on the assigned experts, the lack of job creation, gas flaring, the lack of both transparency and consultation with the populations.

On the 7th of October 2014, Total made a commitment to our organisations to carry out an impact assessment of a well, to consult with the local populations in case of the building of new wells, and to conduct a study on the perception by the communities of Total's presence. These commitments are a first step.

Sherpa's achievements

This type of action - support for victim populations in advocacy meetings and evidence gathering to strengthen case and seek solutions - is primordial to prepare later actions. It lies within the framework of Sherpa aim to **strengthen the capacity of populations and the civil society** to help them exercise their rights: methods of evidence gathering, advocacy meetings, negotiation round, legal actions. Moreover, this advocacy effort allowed us to obtain CSR commitments from Total, thus **improving the situation of the population and of the local environment**. Sherpa provides legal expertise which helps negotiation focus on violations of local or international law, and thus sets them on a more solid and objective ground.

Finally, bringing these issues to Total's attention helps raise the company's awareness of the requirements of civil society with regard to respect of human rights, which may improve their practices.

THE LEGAL CARAVAN



When international companies violate human and environmental rights, it is very complicated for local populations to take them to court and seek compensation since, for them, initiating legal proceedings seems impossible.

Sherpa created the Legal Caravans in order to prevent those denials of justice.



The workshops are participative and interactive so that attendees learn from each other's experience.

/ Goals

The Legal Caravans has three main objectives:

- Passing on Sherpa's legal expertise and experience to the participants for them to master needed legal tools regarding CSR.
- Working with multidisciplinary teams in order to share skills and competences but also to find ways to inform the different sectors of society about CSR.
- Getting local actors (labour unions, journalists, lawyers, local organisations) acquainted with new means to defend their rights against the companies who violate them, create awareness and advocacy campaigns, and create links between stakeholders and foster sharing of good practices.



Marie-Laure Guislain, in charge of litigation and of the coordination of Sherpa's Legal Caravan, theoretical workshop in Burkina Faso.

/ Legal caravan 2014

Duration

The Legal caravans are usually two weeks long. The main objective is to allow participants to have enough time to work together and to acquire the legal tools required to defend the victims of economic crimes.

Place: Burkina Faso

The Legal Caravan in Burkina Faso took place in Ouagadougou from March 31st to April 11th 2014. Current Burkinabe and international laws doesn't allow economic actors from being held accountable when their activities violate local populations' rights. They are some laws regarding corporate social and environmental liability in Burkina Faso but they are inadequate and usually not implemented.

Proceeding

During this caravan, theoretical and practical workshops on the liability of international corporations were hosted by Sherpa and few Burkinabe speakers.

About 40 people from civil society organisations, labour unions, journalists, local government and law firms were able to work together on the best ways to advocate and protect the rights of the population affected by international companies' activities.

The activities of the extraction sector are a serious concern in Burkina Faso, mainly due to its many gold open-pit mines. Therefore a high number of people were interested by CSR and we had to choose those who could participate in the workshops. ➤

This legal caravan,
like the others, happened
thanks to the **Fondation de
France, Misereor** and the
Paris Bar support.



Amara Mining case study's workshop.

Two different stages for the theoretical work:

For the first stage, on the first day, there were several oral presentations on the following topics: CSR and regulations around the world, CSR and legal grounds in Burkina Faso and finally sharing experiences through reports on the main issues regarding CSR in Burkina Faso.

During the second stage, participants worked in smaller groups on made-up case studies about CSR. The goal was to get them acquainted with real legal tools so that they would be able to use them in the future. It also allowed them to identify the current shortcomings and legal loopholes in Burkina Faso, so that they could work on lobbying to ask their leaders to improve the legal system.

Case study: the Amara Mining case

After three days of theoretical seminars, the participants spent ten days working (with the help of the actors already involved) on the Amara Mining case and they learned how to use legal tools on this particular case. During a field trip to collect evidences,

the participants realised the extent of the violations and the necessity to efficiently defend affected populations.

We chose Amara Mining, a gold mine located 180km north of Ouagadougou, for the study case because it is representative of the specific issues caused by the mining sector in Burkina Faso. The mine was given the authorization to operate on fields used by local gold diggers and farmers, but the company was never required to compensate local workers or to encourage local development. Moreover the mine is not being held accountable for damaging the environment and for how it impacts the nearby population.

/ Assessment of the workshops

While being interested by CSR the civil society is still missing the resources and the organisation needed to act efficiently. The theoretical seminars, where legal tools were made available to the participants, were especially helpful.

The findings of the practical workshop corroborate Sherpa's conviction that in order to defend, its rights civil society needs to acquire better legal knowledge, methods to collect evidences, and guidelines for a better organisation and to develop cooperation between its different actors.

Since many representatives of the government participated in the closing ceremony of the workshops, we were able to present them with the areas of advocacy we worked on regarding corporate responsibility in Burkina. This was done during a press conference hosted by several journalists, which allowed a larger sensitisation in the country through their media.




We were also able to establish real partnerships with local organisations. Therefore when the president was overthrown, those organisations invited us immediately to participate in a conference on corruption.

Bringing together participants from different sectors and from all over the country allowed Sherpa to draw actors from civil society who didn't collaborate closer before, which will allow them to work in a more united way in the future.

Lawyers and legal experts committed to support local organisations in the proceedings. Some lawyers participated in the practical workshop and some even came to the field visit. The legal caravan helped to initiate and encourage lawyer's pro bono work, but also promoted a better cooperation between lawyers and civil society organisations.



Amara Mining case study's workshop.



Developing countries lose an estimated thousand billion dollars (750 billion Euros) each year to illicit financial flows, which may be defined as any amount of money earned, transferred or used in an illegal or otherwise unlawful manner.



ILLICIT FINANCIAL FLOWS

In the age of digital communication and globalisation, money circulation is accelerating and spreading worldwide. The number of financial transactions and their geographical scope as well as the amounts transferred are constantly increasing. Although the existing regulations do attempt to manage financial flows, they seem increasingly ineffective in tracking and controlling these fast and immaterial transactions.

Developing countries lose an estimated thousand billion Dollars (750 billion Euros) each year due to illicit financial flows*, which may be defined as any amount of money earned, transferred or used in an illegal or otherwise unlawful manner. These illicit financial flows therefore constitute a major obstacle to development. They dramatically reduce the amount of resources available for essential public services such as education or health, and worsen the debt burden on developing countries.

Sherpa launched its Illicit Financial Flows Programme in 2007 in order to combat this scourge. This started with the “Biens mal acquis” case, in which we fought to recover the amounts embezzled through corruption or misappropriation of public funds, and return them to the victims.

The arrival of a new staff member who took over the Programme in April 2014 allowed us to redefine our strategic goals. The Illicit Financial Flows Programme is now structured around **three topics**:

- **Illicit financial flows and natural resources.**
- **Changing practices in dealing with financial and economic crime.**
- **Asset recovery and restitution to populations.**

Sherpa acts on each of these topics through advocacy work, litigation, research, training and publications.

Sherpa promotes networking within platforms which allows it to be a stronger opponent to the other stakeholders (companies, public institutions). This work has also increased its visibility and its credibility, and allowed it to share its legal expertise with other organisations.

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

FIGHTING ILLICIT FINANCIAL FLOWS IN THE NATURAL RESOURCES SECTOR

/ Goals

Promoting transparency, access to information, disclosure of beneficial owners, and fighting tax havens and corruption.

/ Sherpa's achievements

Transparency of extractive and logging industries

The European Union (EU) adopted the Transparency and Accountability Directives in 2013. These acts introduce a requirement for oil, gas, mining and logging companies which are incorporated and/or listed in the EU, to publish the payments they make to the governments of countries where they carry out exploration or extraction work. The Directives introduce country by country reporting, to be made on a project basis. The Directives must be transposed into Member State law by July 2015, and France has committed to implementing them quickly.

During 2014, Sherpa and its partners in the **Publish What You Pay (PWYP)** and **Paradis Fiscaux et Judiciaires (PFJ)** platforms implemented several actions aiming at an ambitious implementation of these Directives. Among other initiatives, we drafted and sent several amendments to the members of the French National Assembly, published information reports and press releases, as well as notices in print media, and met the ministers responsible for the implementation.

This work led to the adoption by the French National Assembly, in September 2014, of a new piece of legislation which makes it mandatory for oil, gas,



mining, and forestry corporations to publish the payments made to foreign governments, country by country and project by project¹.

Lastly, Sherpa answered the European Commission's consultation on the equivalence of third country regimes regarding country by country reporting by extractive and forestry industries².

Extractive industries and corruption

Sherpa took part in the OECD's Policy Dialogue on natural resources in November 2014. Since this meeting, Sherpa has been a member of the OECD working group on corruption risks in extractive industries, which aims to provide a typology study on corruption risks in this sector, as well as corresponding mitigation measures³. This dialogue will continue through 2015.

Sherpa also took part in the 9th African Development Forum, within a panel on illicit financial flows in the extractive industries.⁴

1: www.legifrance.gouv.fr/affichTexte.do?sessionId=AEFE3A4163FE61B43EF7354E6634A3B6.tpdjo10v_2?cidTexte=JORFTEXT000029999826&categorieLien=id
2: <https://ec.europa.eu/eusurvey/publication/extractive-forestry>
3: www.oecd.org/dev/natural-resources.htm
4: www.uneca.org/adfix



Minerals originating from conflict-affected and high-risk areas

In partnership with other members of the French group on “Minerals originating from conflict-affected and high-risk areas”, Sherpa held numerous meetings with the French Ministry of Foreign Affairs, the cabinet of the Prime Minister and that of the Finance Minister, in order to present our proposals, in particular the adoption of an ambitious, credible and binding European regulation that would require mineral importers to implement a due diligence system, in order to ensure responsible and transparent procurement, and to avoid feeding conflicts that have a devastating impact on local populations. This advocacy work will continue throughout 2015, our end goal being the final adoption of a binding European act.

/ Obstacles to overcome

Although the involvement of many members of the French Parliament helped improve the legislative proposal introducing a requirement for oil, gas, mining and logging companies to publish the payments made to governments, and for making their reports accessible to the public without charge, the French proposal is only a minimal transposition of the EU Directives. In particular, this law does not specify the format in which the data should be published. Sherpa and its partners taking part in the platforms now focus on ensuring that the format is legible, accessible, consistent and usable. Moreover, the sanctions applicable for infringement will not act as a deterrent to large corporations. Indeed, they will only have to pay a fine of 3 750 Euros, the equivalent of the fine for pulling the alarm unnecessarily in the Paris metro. Lastly, the French Parliament did not seize this opportunity to establish a complete reporting system covering all countries, including those where no exploration or exploitation takes place, although this was one of President Hollande’s campaign promises.

Publiez Ce 
Que Vous Payez

PUBLISH WHAT YOU PAY (PWYP)⁵

Goals: PWYP is a global coalition of civil society organisations. Its aim is to campaign for an open and accountable extractive sector, so that oil, gas and mining revenues improve living standards in resource-rich countries, and that extraction is carried out in a responsible manner that benefits the country and its citizens.

Members: The coalition is made up of more than 800 member organisations across the world. In over 35 countries, network members have joined forces to create national coalitions, including France, where the coalition, of which Sherpa is a member, is coordinated by Oxfam France.

The other members of the French coalition are: *CCFD Terre Solidaire, the CIMADE, Defi Michée, the FIDH, Info Birmanie, Justice et Paix, Les amis de la Terre, ONE France, Oxfam France, Partenia 2000, Secours Catholique, Sherpa, Survie, Transparency International France.*

MINERALS ORIGINATING FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS: GROUPE FRANCE

Goals: Civil society has organised at a European level, in order to present proposals for an ambitious, binding regulation on minerals originating from conflict-affected and high-risk zones.

Members: In France, a coalition has formed around this topic. Its members are: *CCFD Terre Solidaire, Amnesty International, Info Birmanie, Le Secours Catholique and Sherpa. The French group works in close collaboration with the European coalition of 58 civil society organisations.*

5: www.publishwhatyoupay.org/fr/members/france-2/

CHANGING PRACTICES IN DEALING WITH FINANCIAL AND ECONOMIC CRIME

/ Goals

To fight against economic and financial crime through legal proposals that may lead to changes in practices.

/ Sherpa's achievements

During 2014, Sherpa and the Plateforme Paradis Fiscaux et Judiciaires:

- › obtained meetings at the Finance Ministry in order to present its main advocacy goals: country-by-country reporting, disclosure of beneficial owners, the end of shadow companies and a revision of international tax rules applying to multinational corporations,
- › took part in the evaluation of the reports published by French banks on the following data: activities, names and activities of subsidiary companies, revenue, number of employees. The results of this study of the banks' data were published in a report, with a list of recommendations.⁶

Sherpa also started a legal study on international corruption.



PLATEFORME PARADIS FISCAUX ET JUDICIAIRES⁷

Goals: The platform's members are collectively carrying out expertise and advocacy work on the steps to be taken in order to reduce financial secrecy, to fight against tax dodging, to promote stronger regulation of capital mobility, to lift bank secrecy and to finance development in a sustainable way.

Members: The platform comprises 19 French civil society organisations engaged in the fight against tax havens, such as trade unions, development NGOs, anti-corruption organisations, religious associations and environmental organisations: *Friends of the Earth, ANTICOR, ATTAC France, CADTM, CCFD-Terre Solidaire, CFDT, CRID, CGT, Justice & Paix, OCTFI, Oxfam France, Secours Catholique-Caritas France, Sherpa, Syndicat de la magistrature, Solidaires Finances Publiques, Survie, Transparency International France.*

6: www.stopparadisfiscaux.fr/que-font-les-etats/la-france/article/que-font-les-plus-grandes-banques
7: www.stopparadisfiscaux.fr/

ASSET RECOVERY AND RESTITUTION TO POPULATIONS



/ Goals

To initiate a national, European and international discussion on the way in which stolen assets should be returned to the citizens of the countries of origin.

/ Sherpa's achievements

In March, Sherpa joined the “Ill-gotten gains” suit against the daughter of the Republic of Uzbekistan’s President as a civil party. This decision was made as part of Sherpa’s fight against ill-gotten assets held in France.

In June, Sherpa took part in the NGO briefing held as a side event to the “Implementation Review Group” in Vienna⁸. Sherpa’s presentation mainly focused on our experience in recovering stolen assets, and the way in which our innovative litigation led French law to evolve, notably through the recognition that anti-corruption organisations have an interest in bringing proceedings.

In October 2014, Sherpa published a report written in collaboration with Transparency International France in order to share the lessons learned from the “Ill-gotten gains” case and the expertise gained from it⁹. This report contains a number of proposals and recommendations for the fight against stolen assets, notably the reinforcement of prevention of money laundering, European and international frameworks for the identification of stolen assets, and lastly, the establishment of a principle of restitution to the populations.



After carrying out several actions to ensure the recovery of stolen assets held in France, **Sherpa will now focus on their restitution**. A legal study has been launched on the topic of restitution and its practical aspects. A number of actions dealing with this topic will be set up in 2015.

/ Obstacles to overcome

In order to achieve these goals, France must increase the human, technical and financial means allocated to the fight against illicit financial flows. However, although France prides itself on initiating the “principle of restitution of the products of the offences of misappropriation and laundering of public funds¹⁰”, no specific measures have as yet been taken.



UNCAC COALITION¹¹

Goals: To promote the ratification and implementation (transposition) of the United Nations Convention against Corruption. The coalition was established in 2006 and aims to mobilize civil society action at the national, regional and international levels.

Members: A worldwide network of 350 civil society organisations from 100 countries.

8: www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/2-6June2014/V1403353e.pdf

9: www.asso-sherpa.org/biens-mal-acquis-rapport-revele-les-faibles-du-systeme-lutte-contre-blanchiment-restitution-avoirs#.VZpq9Pntmko

10: National Assembly Law Committee Report N° 243, on Bill N° 171 concerning the fight against corruption, Michel HUNAULT, submitted on 3 October 2007, p. 16. **See also:** National Assembly Foreign Affairs Committee Report authorising the ratification of the United Nations Convention against Corruption, Geneviève Colot, 29 June 2005

11: http://uncaccoalition.org/en_US/

JUDICIAL RESOLUTIONS

Implementing litigation in the field of illicit financial flows is much more complex, since the facts are often hidden. It is therefore difficult to discover and reveal offences. This is why Sherpa functions as a network and collaborates with whistle-blowers in its work in order to improve legislations to combat these illicit financial exchanges.

Tax fraud and money laundering

Geographical area: Monaco/Africa

Targeted company: BNP Paribas



BNP Headquarters, St Denis, La Réunion.

BNP Paribas is established in over 75 countries. It has one of the largest international banking networks at its disposal. Its net banking income for 2014 reached 39,2 billion Euros¹².

Overview

In 2008, large scale trafficking was uncovered between certain African countries (Madagascar, Senegal, Gabon, and Burkina Faso) and the Principality of Monaco, through tens of thousands of blank cheques issued by French nationals. This constitutes exchange control fraud. These cheques were allegedly cashed in accounts at the BNP Paribas Wealth Management Monaco. It is suspected that BNP Paribas did not check the economic justification for the cheques upon collection.

Legal basis for the proceedings

Aggravated money laundering committed by an organized group, concealment.

Usefulness of the legal basis / Hurdles overcome

After a thorough investigation, and despite the complexity of litigation before Monegasque courts, Sherpa's work has led to the **initiation of a judicial inquiry**.

Sherpa's achievements

Faced with the inertia of Monegasque courts, Sherpa wrote to the public prosecutor in Monaco several times, and then decided to file a complaint before the Paris public prosecutor. This succeeded in mobilising Monegasque authorities, which then **referred the case to an investigating judge**.

The next steps of the proceedings

Sherpa's request to be admitted as a civil party in the case was rejected. However, the investigation is ongoing. Sherpa is also continuing its advocacy work against tax fraud and evasion in collaboration with the Plateforme Paradis Fiscaux et Judiciaires.

SEQUENCE OF EVENTS

April 2013: Letter addressed to the Monaco prosecutor general, bringing to his attention a money-laundering operation and exchange control fraud in Africa, attributable to BNP Paribas Wealth Management Monaco. Request for the initiation of a judicial inquiry.

June 2013: Letter to the Monaco prosecutor complaining of the lack of action.

November 2013: Sherpa files a complaint before the French public prosecutor.

February 2014: Letter from the Monaco prosecutor general, informing Sherpa that he has requested the opening of a judicial inquiry on charges of money laundering, collusion, concealment of money laundering and the absence of suspicious transaction reports, following the investigation by the Monaco police concerning the facts brought to its attention by Sherpa.

March 2014: Sherpa requests its admission as a civil party before the investigating judge in Monaco.

June 2014: The request is rejected.

Since June 2014: The investigation is ongoing, Sherpa is not a party to the case.

¹²: www.bnpparibas.com/nous-connaître



Money laundering, bribery and undue influence

Geographical area: Uzbekistan, France, Switzerland, Sweden

Targeted political elite: Gulnara Karimova, eldest daughter of the President of the Republic of Uzbekistan



Uzbekistan is a country of 27 million people, whose capital city is Tashkent. Its head of state since 1999 is Islam Karimova. The country is ranked 170th (out of 176) on the Transparency International Corruption Index.

Legal basis for the proceedings

Money laundering committed by an organised group, corruption of foreign public officials and of private persons.

Usefulness of the legal basis / Hurdles overcome

Combatting the impunity of heads of state and their family members, corruption and embezzlement of public funds.

Overview

In 2007, Swedish telecommunications company TeliaSonera allegedly entered the Uzbek market through the company Takilant, paying 350 million USD in order to obtain a 3D network licence. Gulnara Karimova is suspected of having close ties with Takilant. According to Uzbek law, the government alone is able to grant telecommunication licences. A corruption investigation began in Sweden and Switzerland. A request for mutual judicial assistance was submitted to France, where Gulnara Karimova allegedly holds assets purchased with the proceeds of bribery.

In 2009 and 2010, Gulnara Karimova created two non-trading property investment companies (SCI) in Paris, which are specialised in the lease of land and other real estate:

- The SCI “**Invest service group**”, created on 10 September 2009, which has purchased a flat in the 16th arrondissement of Paris.
- The SCI “**Invest Studio**”, created on 4 May 2010, which has purchased an estate in Gassin, and the castle of Groussay.¹³

This real estate was purchased for a total cost of Around 50 million Euros.

Sherpa's achievements

Sherpa's request to be admitted as a civil party in this case was accepted. Sherpa now has access to all documents relevant to the procedure, and thus can bring new pieces of evidence to the attention of the judge, **assisting him in his investigation**. Sherpa also took part in a workshop held in Bern in November 2014 with several partner organisations working on Uzbekistan.

The next steps of the proceedings

The investigations initiated in several countries are ongoing, Sherpa is keeping a close eye on the case.

SEQUENCE OF EVENTS

September 2012: An investigation is opened in Sweden, concerning alleged corruption in acquisitions made by Swedish company TeliaSonera on the Uzbek telecommunication market.

February 2013: A judicial inquiry is initiated by the Financial justice department in Paris, based on charges of “money laundering in an organised group” and “corruption of foreign public officials”.

March 2014: Sherpa requests being admitted as a civil party before the French investigating judge.

June 2014: Sherpa is admitted as a civil party.

September 2014: Seizure of the Paris flat, the villa on the Côte d'Azur and the castle of Groussay.

13: www.uznews.net/en/society/24759-sleaze-wars-in-uzbekistan-snb-strikes-back

Embezzlement of public funds, bribery and money laundering

Geographical area: Equatorial Guinea, France

Targeted political elite: Teodorin Obiang, and other relatives of the President of Equatorial Guinea



The President of Equatorial Guinea since 1979, **Teodoro Obiang Nguema Mbasogo**, runs an authoritarian regime, which allows his relatives to gain money from oil revenues, and the proceeds of the exploitation of a number of natural resources. His estimated personal gain is between 500 and 700 million USD, while Equatorial Guinea remains at the 136th rank (out of 189 countries) on the human development index.

Overview

Several observers have been gathering information for many years, proving that heads of state or some of their relatives had purchased real estate in France, directly or through intermediaries. This is the background for the complaint filed by Sherpa and Transparency International France against Teodorin Obiang, son of the President of Equatorial Guinea.

Legal basis for the proceedings

Concealment of embezzled public funds, aggravated money laundering committed by an organised group.

SEQUENCE OF EVENTS

May 2007 and July 2008: Sherpa and its partners file a complaint before the Paris public prosecutor.

December 2008: Transparency International France files a complaint, requested to be admitted as a civil party, with Sherpa's support.

October 2009: A French Court of Appeal rules the complaint inadmissible.

November 2010: The French supreme court (Cour de cassation) declares Transparency France admissible as a claimant.

During 2011: A police search at the suspect's home on Avenue Foch and Avenue Marceau, in Paris, leads to the seizure of luxury vehicles valued at over 40 million Euros.

March 2014: Teodorin Obiang is charged with money laundering.



Usefulness of the legal basis / Hurdles Overcome

To fight against the impunity of heads of state, corruption and the embezzlement of public funds. Difficulties linked to the judicial immunity of serving heads of state; and problem of the admissibility of anti-corruption organisations as claimants, and as civil parties.

Sherpa's achievements

Sherpa initiated internationally unique proceedings, by **going after a serving foreign head of state**. The aim was to ensure the recovery and restitution of stolen assets to the people of Equatorial Guinea. Sherpa also **contributed to the birth of an international civil society movement demanding the recovery of these assets**. Lastly, these proceedings led to a revision of the French criminal code, and notably to the December 2013 Law which recognizes the **admissibility of anti-corruption associations** in such cases.

The next steps of the proceedings

Charges were pressed against Teodorin Obiang in March 2014. The investigation is ongoing.

Other Ill-gotten gains cases

Gabon: The case is ongoing.


Congo: Real estate belonging to the **Sassou Nguesso** clan were seized in October 2014.

Syria: Sherpa lodged a complaint and a claim to be admitted as civil party against **Riffat Al Assad** on 4 February 2014.



Rendering issues
of law as well as
accountability of
decision-makers
and economic
stakeholders
more accessible
remains a major
preoccupation.

AT THE HEART OF PUBLIC DEBATE



Communication is an essential line of work to place Sherpa's struggles at the heart of public debate, and mobilise not only experts and lawyers, but also the general public, which is increasingly worried of the terrible consequences of a poorly regulated globalisation.

Sherpa's team of experts is very active in professional and political circles, and is working efficiently on raising awareness among civil society partners and political decision-makers, training them and engaging them in improving legal frameworks. Expanding the current reach of Sherpa's work in the media and on the internet will enable us to make the public opinion more mobilised on our advocacy goals and thus to improve the law, both at a European and at an international level.

Our website's improvement, which we initiated in 2013, continued with its translation into English from September 2014, thanks to innovative partnerships. This decision reflects our

ambition to engage, and communicate with, our English-speaking audience. New forms of online mobilisation are currently being tested, and new communication tools (leaflets, etc.) have been made available. Lastly, we are planning several large scale media campaigns in 2015, in order to improve our media presence and establish our reputation.

One of our organisation's primary concerns thus remains to make legal issues, and those related to the accountability of economic stakeholders and decision makers, more accessible. Our goal is to ensure that an ever wider public understands these topics and engages with us.

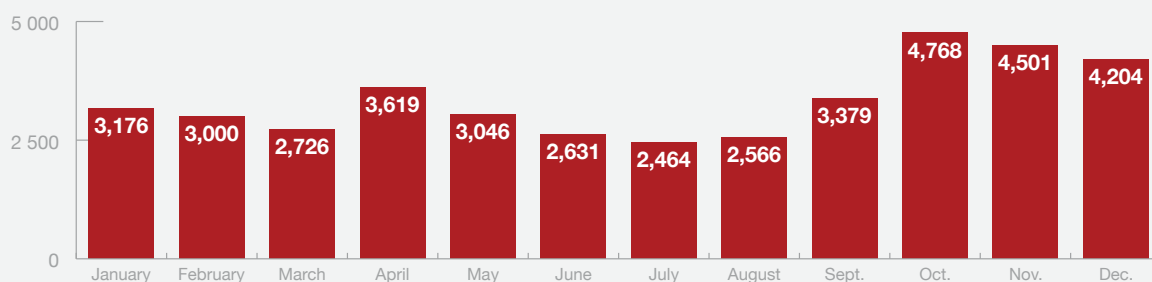
/ Website

Traffic: On the whole, the website is doing well. The number of visitors is steadily increasing, with a small peak in April 2014, due to our communication on the AUCHAN case, another in October 2014, after we launched our crowdfunding campaign, and a substantial increase from August 2014 on.

The website must be improved thanks to visuals, images, videos and graphics, so that it becomes more lively and accessible.

Moreover, planning communication campaigns is essential in order to ensure a steady stream of visits and to improve visitor loyalty.

Website traffic in 2014



/ Social networks

Facebook

The number of fans has been increasing steadily since early 2014. Our Facebook page had 3406 fans in January, and reached 3981 fans in December.

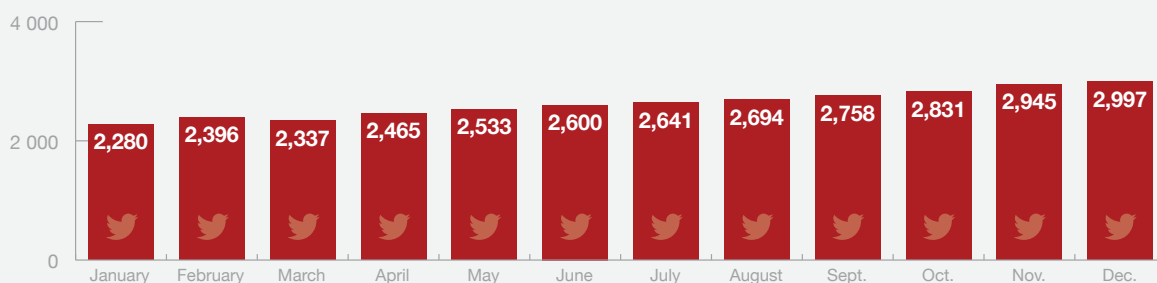
Total Number of 'Likes' in 2014



Twitter

The number of followers has been increasing steadily since early 2014, from 2280 followers in January to 2997 in December.

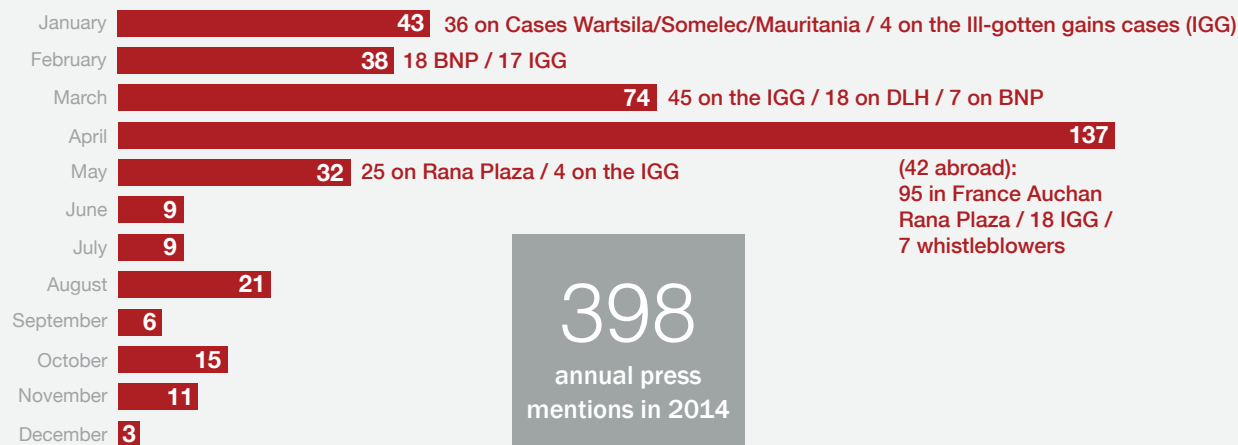
Number of followers in 2014



/ Press relations

Sherpa was able to increase its visibility thanks to media attention to the Rana Plaza and Ill-gotten gains cases, which lead to 74 press mentions in March, and 137 in April. Media campaigns should be planned regularly in order to increase Sherpa's visibility and place our struggles at the heart of public debate.

Campaigns Media Coverage



/ Events

Sherpa's team and the members of the Board regularly participate in events linked to themes which lie within the organisation's fields of interest. These events allow the organisation to gain support for its advocacy and litigation activities, to share and to make its expertise more widely known as well as to increase its profile among specialised audiences, civil society and the public at large.

In 2014, Sherpa's members participated in 42 events.

Law

"Liaising with Partners (NGOs, Bar Associations and Institutions)"

Training for legal clinics. Speaker: Sherpa Director Sophia Lakhdar.
→ Caen, 26 to 28 March 2014.

"Career Event"

International careers.
Speaker: Marie-Laure Guislain.
→ Free Law Faculty, Lille, 13 February 2014.

"Lawyers' New Careers"

Lecture series organised by the Free University of Brussels (ULB).
Speaker: William Bourdon.
→ Brussels, 25 February 2014.

"Activist Lawyers"

Lecture series organised by the Perelman Centre in cooperation with the Brussels Bar, conducted by William Bourdon (*Cabinet Bourdon Forestier*) and Quartier des Libertés.
→ Brussels, 25 February 2014.

Criminal law

"Commerce, Crime and Human Rights: Closing the Prosecution Gaps"

Sherpa was invited to London for a conference organised by The International Corporate Accountability Roundtable, Amnesty International and The Norwegian Peacebuilding Resource Centre.
→ 10 June 2014.

Good governance

"Governance for Better Development"

Conference debate for the 9th Solidarity Days with Sophia Lakhdar and development anthropologist, Eric Hanonou.
→ Coutances. Friday, 28 March 2014.

"Ecological Debt: From Exploitation of Natural Resources to Ecosystemic Services: Which Ecological Solidarity?"

Environmental Crime round table speaker: Sophia Lakhdar.
→ University of La Rochelle, 5-6 June 2014.

"Indigenous Peoples' Right to Consultation on Large Dam Projects in Brazil"

25th session of the United Nations Human Rights Council.
Speaker: Sophia Lakhdar.
→ Palace of Nations, Geneva, 10 March 2014.

Whistleblowers

"Rebels, 17th Meeting with History"

William Bourdon joined the round table Whistleblowers: Snitches or Saviours of Democracy? (*Les lanceurs d'alertes, mouchards ou sauveur de la démocratie ?*).
→ Blois, 9-12 October 2014.

Human rights and business

"Discussion Group at the Council of Europe"

Sandra Cossart participated in the Drafting Group on Human Rights and Business, representing the European Coalition for Corporate Justice.
→ Strasbourg, 24-26 September 2014.

"The EU's Business? Ensuring Remedy for Corporate Human Rights Abuses"

Speaker: Sandra Cossart.
→ European Parliament, Brussels, 12 November 2014.

Seminar "Businesses, Human Rights and the Environment: Implementation of International Standards in France"

Speaker: Sandra Cossart.
→ Sénat, le 30 janvier 2014.

"Seminar on Human Rights and Environmental Responsibilities of Multinationals"

Speaker: Sophia Lakhdar, Director of Sherpa.
→ Sciences Po. Paris, 14 February 2014.

"Corporate Social Responsibility – Challenges and Trends in Switzerland and in Europe"

Lunch debate organised by Swiss Ambassador Jean-Jacques de Dardel, in Paris.
Speaker: Sandra Cossart.
→ 14 February 2014.

“Meeting of the CSR Directors’ Circle and Directors of Financial Affairs of CAC 40 Groups”

Speaker: Sandra Cossart.
→ Paris, 20 March 2014.

“The Possible Treatment and Uses of Information from and about Companies”

Conference in the context of Citizens International Solidarity Encounters (RESIC).
Speaker: Sophia Lakhdar.
→ 22 March 2014.

“Panel: Best Practice Corners 2”

The Planet Workshops.
Speaker: Sandra Cossart on the SOCAPALM case.
→ 4 June 2014.

“Gaps in Criminal Proceedings Concerning Multinational Companies in Various European Countries”

Conference organised by ICAR and Amnesty International.
Speaker: Sandra Cossart.
→ 10 June 2014.

“Meeting of the NCPs of the OECD”

Speaker: Sandra Cossart on the SOCAPALM case.
→ 25 June 2014.

“CSR: An Instrument for our Strategy”

Trade Unions Annual Meeting. Roundtable.
Participant: Marie-Laure Guislain.
→ 26 September 2014.

“Soft Law Versus Hard Law: What is the legal value of CSR and what are its tangible contributions?”

Morning conferences organised by the AEF Press Group.
Speaker: William Bourdon.
→ 14 October 2014.

Multinationals duty of care

“One Year after the Rana Plaza Tragedy: How to End Modern-Day Slavery”

Participants: William Bourdon and Members of the French National Assembly: Danièle Auroi, Philippe Noguès and Dominique Potier, author of the proposed legislation on the duty of care of parent and subcontracting companies. Evening event of the *Cercle (Pour la Responsabilité Sociétale des Multinationales)* organised by Sherpa, Amnesty International and CCFD-Terre Solidaire.
→ French National Assembly, 16 April 2014.

“Live-in’ Demonstration for Rana Plaza Victims”

Happening in Bercy (French Ministry for the Economy and Finance) to call upon political leaders. Supported by Sherpa.
→ 24 April 2014.

“Access to Justice: Law Put to the Test”

Symposium organised by Sherpa. Speakers: William Bourdon and Sandra Cossart.
→ La Maison du Barreau, Paris, 30 June 2014.

“Access to Justice Conference for Halifax Initiative”

Speaker: Sandra Cossart, Canada.
→ 4-6 November 2014.

“The European Union’s Business ? Ensuring remedy for corporate human rights abuses”

Conference on access to justice, organised by ECCJ and Frank Bold.
Speaker: Sandra Cossart.
→ 12-13 November 2014.

“Transnational Corporate Human Rights Abuses: Delivering Access to Justice”

The French legislative proposal on the duty of care of parent companies, their subsidiaries and subcontractors.
Speaker: Sandra Cossart.
→ London, 17 July 2014.

EESC Symposium

Organised by the National CSR Platform. Co-moderation of the group on subcontractors.
Speaker: Sandra Cossart.
→ 17 November 2014.

“TRAINaCTION 2014”

Organised by Terre des Hommes. Debate: Which University for which Actor?
Speaker: Sandra Cossart.
→ University of Paris VIII, 18 November 2014.

Corruption and natural resources

“OECD Policy Dialogue on Mining”

Speaker: Sophie Lemaître.
→ November 2014.

“EU anti-corruption: Corruption in the Forestry Sector”

Online Training: Sophie Lemaître.
→ May 2014.

“Ninth African Development Forum”

Panel on illicit financial flows in the mining sector.
Speaker: Sophie Lemaître.
→ 12-16 October 2014.

“Indigenous People and Regional Integration”

Symposium.
Speaker: Sophie Lemaître.
→ University of Rennes,
27 November 2014.

“Corruption, Detection, Prevention, Repression”

Conference organised by the French National School for the Judiciary and the Central Service for the Prevention of Corruption.
Speaker: William Bourdon.
→ 27 November 2014.

Tax havens

“Are Tax Havens Legal?”

Conference organised by CCFD-Terre Solidaire and Le Collectif Roosevelt.
Speaker: Jean Merckaert, Senior Editor of “Projet” and member of Sherpa’s Board.
→ Naldini Theatre, Levallois Perret,
Tuesday, 29 April 2014.

“Conference debate: Do Offshore Locations Still Have a Future?”

Organised by the Institute for Legal Studies Paris I (IEJ) at the Pantheon.
Speaker: William Bourdon.
→ 18 February 2014.

“The Impact of Tax Evasion and its Consequences on Public Finances”

Speaker: Jean Merckaert, Member of Sherpa’s BoD.
→ Saint-Pourçain-sur-Sioule,
18 September.

Tax transparency and money laundering

“Banks: Stronghold or Sieve for Dirty Money?”

Conference organised by the Tax and Legal Havens Platform (*Plateforme Paradis Fiscaux et Judiciaires*).
Speakers: Jean Merckaert, Senior Editor of *Revue-Projet* and Member of Sherpa’s BoD and William Bourdon.
→ Palais Bourbon, 20 June 2014.

Asset recovery

“Symposium: Can Money from Dictators be Recovered? Means and Limits of Applicable Law”

Geopolitical Observatory of Criminalities - Sherpa.
→ Maison de L’Amérique Latine,
31 January 2014.

“UNCAC Coalition’s Implementation Review Group for NGOs”

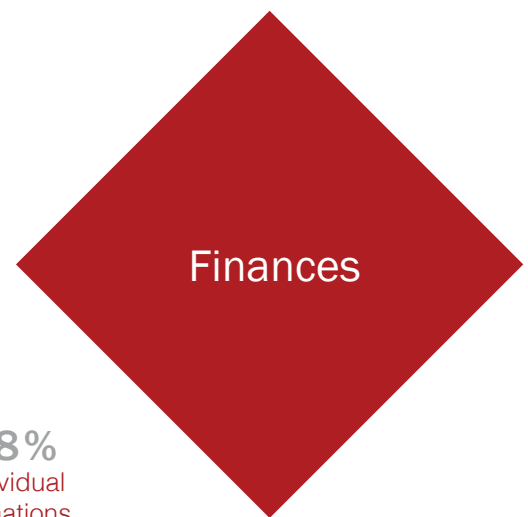
Sherpa’s experience on the recovery of stolen assets and how Sherpa’s groundbreaking complaints have led to landmark legislative changes in France.
Speaker: Sophie Lemaître.
→ Vienna, 5 June 2014.

“Raiding the Coffers, Violating Rights”

Conference on corruption and its impact on human rights in the post-Soviet world, organised by The Centre for Civil and Political Rights.
Speaker: Sophie Lemaître.
→ Bern, Switzerland, 26-27 November.

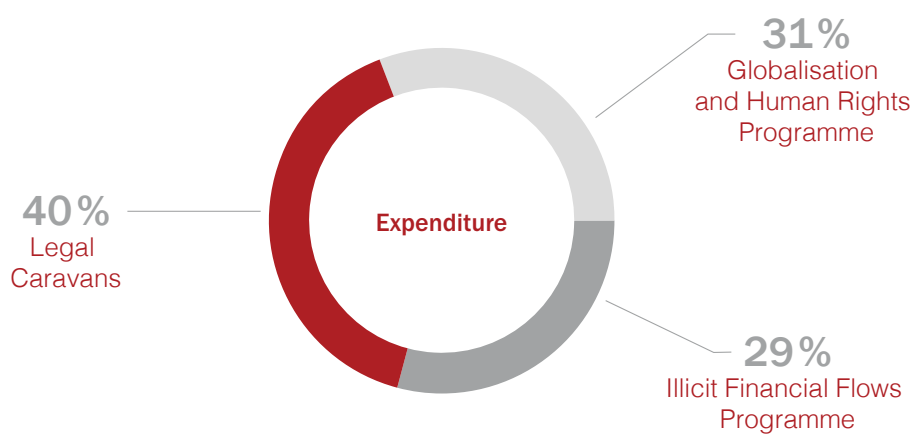
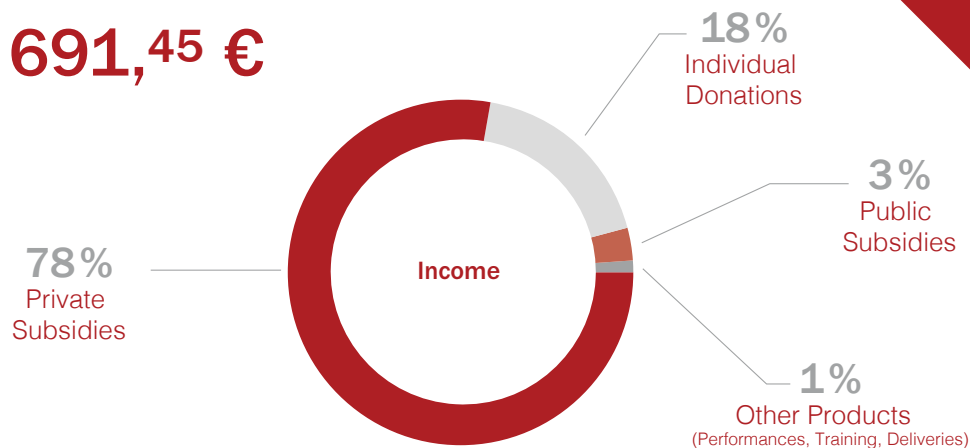
“Ninth Edition of the National Refusal of Corruption Days”

Organised by the National Network against Corruption (*Réseau National de Lutte Anti-Corruption*).
The Recovery of Illegal Assets at the Heart of Debates.
Speaker: William Bourdon.
→ Ouagadougou, Burkina Faso,
9 December 2014.



Budget 2014

457 691,45 €



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