

# ACTIVITY REPORT — *2019*





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## ÉDITO

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**Franceline Lepany** — *President*



**Sandra Cossart** — *Executive Director*

For the second year as Sherpa's director and president, we have chosen to continue developing the Organisation by refining the strategy of each of the two poles: Globalisation and Human Rights on the one hand, and Illicit Financial Flows and Corruption on the other, and to better build bridges between the two. Thanks to the efforts made to gain the loyalty of international donors, we have been able to continue to strengthen our team, on a regular but constant basis, and thus to welcome experienced profiles that enable the implementation of this strategy.

The reduction of civic space and in particular the ability of associations to take legal action, as well as the criminalisation of social movements have unfortunately grown, and more generally, the grabbing of power by companies on issues such as environmental and climate emergencies are now at the heart of our reflection.

The law on the duty of vigilance of parent and ordering companies, an undeniable success of Sherpa's advocacy, has become a judicial reality. Indeed, as advocacy is always associated with Sherpa's litigation activities, we have decided to test the effectiveness and efficiency of this law on several occasions this year. Moreover, it is now a European and international reference. We have worked hard, particularly within the European Coalition for Corporate Justice (ECCJ), to call for an ambitious and cross-cutting legislation.

Sherpa has also been very involved in the law on the reform of the judiciary and particularly on the admissibility of associations to take legal action, the monopoly of the public prosecutor's office, and the regime of universal jurisdiction of the French judge for certain international crimes.

Soft law instruments, such as the NCP mechanism, have more than ever demonstrated their inability to enforce the defense of rights as well as their opacity of operation to discourage referrals.

Fighting new corporate strategies has mobilized Sherpa to protect whistleblowers, fight against trade secret and equip itself to face lobbying strategies; and we have achieved some judicial successes in denouncing Strategic Litigations Against Public Participation (SLAPP) brought by companies.

Whether it is to denounce the involvement of multinationals in armed conflicts or the violation of workers' rights, the road toward a fairer world continues. The historical indictment of Lafarge was maintained, even if the charge for complicity in crimes against humanity committed in Syria and Iraq, particularly by the Islamic State Organization, was canceled. In addition, Sherpa's admissibility in this case was rejected, as part of a broader movement to narrow the scope of civil action by associations. We have appealed to the Court of Cassation.

The opening of a judicial inquiry following Sherpa's complaint against Vinci, as well as the indictment of Samsung France for misleading commercial practices, are steps forward in our litigation strategy, even though our admissibility is challenged in each legal proceeding.

2019 was also a year of greater commitment by Sherpa against those responsible for climate change and the destruction of biodiversity. We can no longer ignore the decisive role played by large companies in the destruction of our ecosystem. In an unprecedented way, Sherpa has been involved alongside local authorities in two ambitious litigation cases against two oil companies.

Sherpa continues to be a key player in the fight against corruption, as it undermines the fundamental principles of the rule of law and the notion of general interest, as well as it misappropriates the wealth that should normally go to the people. However, in France, it is necessary to obtain an approval from the Ministry of Justice to be able to judicially denounce acts of corruption. It took more than a year and an appeal to the Administrative Court to finally obtain the renewal of our approval.

This problem, even temporary, has put Sherpa in difficulty in cases denouncing the role played by banks in the proliferation of offshore arrangements or in certain cases of ill-gotten assets.

Winston Churchill's maxim has never been so relevant to Sherpa's battles: «Success is not final, failure is not fatal, it is the courage to continue that counts».

We maintain this courage and this determination thanks to the quality of our exchanges with our partners, be they associations, unions, academics, journalists, lawyers... The numerous activities developed in this report are a demonstration of Sherpa's ever-increasing dynamism in fulfilling its missions to place respect of human rights and the environment at the heart of the city, however globalised it may be.

# Globalisation and human rights

Globalisation has changed peoples' lifestyles. New trade opportunities, particularly those offered by the transport revolution, have enabled companies to expand their production activities to developing countries. Unfortunately, fundamental human and environmental rights are constantly neglected in favour of systematic cost reduction and an ever-increasing pace of production.

Industrial disasters have multiplied at an alarming rate, causing sometimes irreversible social and environmental damages. However, the lack of regulations adapted to globalisation makes it difficult to establish responsibilities and obtain compensation for prejudice.

Through its globalisation and human rights program, Sherpa is trying to increase the obligations of economic players, at national, European and international levels. At the same time, Sherpa fights against the fundamental imbalance between victims and companies in terms of access to justice, often due to the transnational nature of litigations, but also to the existence of inadequate procedural rules.

Finally, the impunity of economic actors is often the consequence of strategies implemented by these same actors to limit the regulation of their sector and hinder public debate on their activities; Sherpa denounces these strategies and pleads for their regulation or even prohibition.

## CORPORATE LIABILITY OF PARENT AND INSTRUCTING COMPANIES FOR THEIR SUBSIDIARIES AND SUBCONTRACTORS

### Second year of implementation of the law on the duty of vigilance

2019 is the second year of implementation of the law on the duty of vigilance of parent and instruction companies, adopted by the National Assembly in February 2017. It is also the first year in which legal actions based on this law can be initiated.

This law, which is the undeniable success of Sherpa's advocacy, enshrines in the Commercial Code a legal obligation of prudent and diligent behaviour for companies that employ, directly or in their subsidiaries, at least 5,000 employees in France or 10,000 employees worldwide.

The duty of vigilance requires companies to establish, implement effectively and publish «reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons and the environment». The innovation of this law is that it covers the entire supply chain, since the measures must also apply to the activities of subsidiaries, subcontractors and suppliers with which a business relationship is established. These measures must be formalised in a vigilance plan, which provides material support for the duty of vigilance

### Publication of the Vigilance Plans Reference Guidance

After having worked for a text that is as ambitious as possible, Sherpa has led a project to ensure the follow-up and efficient implementation of this law with the publication in French of its Vigilance Plans Reference Guidance at the end of 2018.

The ambition of this Guidance is to set out our Organisation's understanding of the law and to provide the appropriate tools for stakeholders, including support in the dialogue around the implementation of new legal obligations. The Guidance enables the development of training and awareness-raising tools on the necessary legislative improvements. It also provides inputs for reflection on the development of new European or international vigilance mechanisms.

The year 2019 was marked by the publication of the English version of the Vigilance Plans Reference Guidance, and by its distribution and presentation at various events abroad. On the United Nations Forum on Business and Human Rights in Geneva and at the IBA Annual Litigation Forum in Berlin, we were able to present this tool, which is necessary to support civil society actors in their efforts to develop similar mechanisms in their countries or at international level.



### Publication of a study on the first year of implementation of the law on the duty of vigilance

Sherpa and the members of the Citizen Forum for Corporate Social Responsibility (CFCSR) have conducted a study to take stock of the first year of application of the duty of vigilance law. In 2018, major French companies were obliged to establish, publish and effectively implement their first vigilance plan.

Our study reveals that the first vigilance plans published are particularly succinct, and of lightness that contrasts with the importance of the issues at stake in the duty of vigilance law. Even more problematic, some companies have still not published a due diligence plan, despite the legal obligation to do so.



A forum for expertise, public expression and civil society plea on issues related to corporate social, environmental and societal responsibility.



### Launch of a website for vigilance plans: the Duty of Vigilance radar

In addition to the establishment and effective implementation of measures, the law on the duty of vigilance provides for an obligation of transparency and information. However, several criteria are required to determine whether a company is concerned by the law : corporate form, number of subsidiaries owned in France and abroad, and number of employees within the subsidiaries. Two years after the adoption of the law, no public database provides all this information, and no official list of the companies concerned has been communicated by the government. That is why Sherpa has carried out a project to ensure the implementation of the law, with the creation of the website «Duty of Vigilance radar». Alongside the Dataactivist cooperative, a data analysis specialist, and with the support of the Business & Human Rights Resource Centre, Sherpa and CCFD-Terre Solidaire sought to determine whether the public and financial reference databases made it possible to identify precisely the companies subject to the duty of vigilance law.

We were thus able to establish a first, non-exhaustive list of 237 companies that seem to be subject to the law, now available at [www.plan-vigilance.org](http://www.plan-vigilance.org). Over a quarter of those companies have not published a vigilance plan. This project has also allowed us to document the opacity of information relating to multinational companies, and the shortcomings of the databases on this subject, hindering the monitoring of the implementation of the duty of vigilance law.

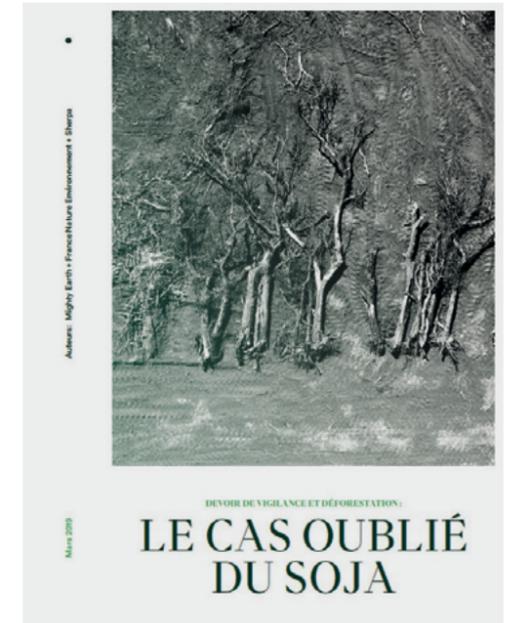
All of this work was presented by Sherpa at its hearing by the General Council for the Economy, instructed by the Ministry of the Economy to assess the implementation of the duty of vigilance law and in particular «to draw up the list of companies subject to the obligation to provide a duty of vigilance plan».

### Soya and deforestation: questioning of French companies in the agri-food and mass distribution sectors

In 2018, together with France Nature Environnement and Mighty Earth, we contacted 20 companies in the agri-food and mass retail markets to alert them on the environmental damages caused by soybean cultivation, particularly in Latin America. We asked these companies to indicate the measures implemented to identify this risk in their supply chain (soybean is used massively for cattle feed), and to prevent these damages.

Since then, some of them have replied to our questions, and others have published their first vigilance plan, as required by the law on the duty of vigilance. In a report published in March 2019, we analysed the measures implemented by these companies to prevent deforestation linked to soybean cultivation. The report shows that the companies subject to the duty of vigilance law are ahead, but that major gaps in risk identification and prevention remain.

We have therefore urgently called on the companies concerned to rectify their practices. On the other hand, we ask the public authorities to ensure that companies in this sector comply with their duty of vigilance by improving the monitoring of the law, lowering its application thresholds and effectively committing to the adoption of ambitious legislation at European level.



### Capacity building: duty of vigilance webinars

In order to reinforce the capacities of actors in the South, particularly communities - or their representatives - affected by multinationals, Sherpa has established a partnership with RSE et PED. We continued our participation in the series of webinars on vigilance begun in 2018, notably by running a webinar on the tensions between the duty of vigilance and trade secret.



Multi-stakeholder and independent platform for information and promotion of CSR in emerging and developing countries.

### Legal laboratory: university legal clinic and legal publications

Our reflection and legal expertise are also fueled by our exchanges with various actors, particularly academics. In order to better understand the future stakes and contentious issues of the duty of vigilance law, we have continued our collaboration with Sciences Po Paris in the

form of a University legal clinic. The students examined in particular some of the first vigilance plans of companies in the agri-food industry and the appropriateness of possible litigation actions.

In addition, Sherpa has widely shared its expertise in the field thanks to numerous legal publications in 2019 in the *Business & Human Rights Resource Centre Blog* and the *Revue des juristes of Sciences Po* as well as in *Les Cahiers de droit de l'entreprise*. Sherpa also develops expert reports, position papers and legal notes for the public or for its partners for awareness-raising purposes.



— Sandra Cossart —

## Reinforcing the obligations for economic actors at European and international levels

Sherpa's advocacy is part of an international civil society movement aiming at ending impunity for economic actors regarding human rights violations and environmental harms, and facilitating access to justice for victims. Sherpa is contributing to this movement, both at European and international levels.

### Bringing the law on the duty of vigilance to the European level

The progress represented by the French law on the duty of vigilance cannot materialise if it remains isolated, particularly in Europe. National coalitions are driving legislative developments in this area in several European countries, and proposals for comparable legislation are beginning to emerge, as in Switzerland for example.

In order to foster and strengthen the movement in which Sherpa has played a key role, the Association continued to carry out a series of activities in 2019. It shared its experience in mobilising around the law on the duty of vigilance, as well as its legal expertise on the content of this law. Moreover, to bear witness to its implementation,

Sherpa

it organized a meeting of legal experts, participated in workshops for sectoral NGOs, conferences, meetings with decision-makers, and by publishing legal articles.

Some of these activities have been carried out within the European Coalition for Corporate Justice (ECCJ), a Brussels-based organisation that coordinates the actions of national coalitions working on these issues. Sherpa has been a member of the ECCJ Steering Group since its creation and has contributed to the various works of the ECCJ legal work group, including those relating to the content of a future European directive or regulation on the duty of vigilance. We have also been called upon by the Italian, German, Finnish, Luxembourg, Dutch and Swiss networks of organisations to promote awareness in their national context on the importance of binding legislation in this area.

Finally, we contributed, through consultations and interviews, to the European Commission's study on due diligence in supply chains as well as to the study on access to justice carried out by the European Agency for Fundamental Rights (FRA).

These interventions aimed in particular at recalling the need for cross-cutting regulation combining the creation of new obligations applicable to companies with civil and/or criminal liability mechanisms, as opposed to sector-specific regulations prescribing only transparency (reporting) or compliance measures.

In October 2019, Sherpa was one of 80 civil society organisations (including human rights associations, environmental organisations and trade unions) that called on the European institutions to regulate the activities of multinationals by adopting a directive on the duty of vigilance.



European coalition whose mission is to increase European cooperation between NGOs working for corporate social responsibility and influence policies within the European Union.

## Supporting negotiations for a binding international treaty on business and human rights

In 2014, the UN Human Rights Council adopted a resolution sponsored by South Africa and Ecuador, creating a working group to draft a legally binding instrument on transnational corporations and human rights. After presenting the elements of the treaty in 2017, and a preliminary draft in 2018, the working group unveiled the first version of the draft treaty in July 2019.

Alongside the other members of the French coalition for a UN Treaty, Sherpa analysed this new version of the draft Treaty and mobilised French decision-makers in view of the negotiations that took place in Geneva in October 2019. In particular, Sherpa examined its provisions on private international law in an article published on the *Business & Human Rights Resource Centre's website*.

## Redefining the concept of corporation

Company's role and purpose in globalisation has been a subject that Sherpa has been working on for years. Our legal laboratory on this issue has fueled reflection on the strict definition of the company in French law, as determined by articles 1832 and 1833 of the Civil Code.

On 22 May 2019, the Act relating to the growth and transformation of companies, known as the «PACTE» Act, was adopted. While it set out ambitious objectives such as «rethinking the role of companies in society», the result falls far short, as it marks a move back towards a purely voluntary approach of corporate accountability. In March 2019, on the second reading of the PACTE Act in the National Assembly, Sherpa, along with several organisations, published an op-ed in the daily *La Croix*, denouncing the gap between the objectives of the text and the weakness of the bill.

Our advocacy for a new definition of a corporation was made by Sandra Cossart at a hearing by the Haut Comité Juridique of the Paris Financial Centre on the consequences of the modification of Article 1833 of the Civil Code by the PACTE Act as it reflects the intention to impose as few constraints as possible on companies.

Finally, Sherpa has contributed to several publications on this subject, including a roundtable published in the *Cahiers de droit de l'entreprise*.

## FACILITATING ACCESS TO JUSTICE



In 2019, Sherpa continued to denounce the obstacles faced by economic crimes victims in accessing justice, and proposed legislative changes to lift them.

### Proposed amendments for justice reform

In April 2018, the Government tabled a bill on the 2018-2022 programming period and justice reform. Among the measures envisaged are proposals on civil and criminal procedures, which represent major tools in the fight against impunity for multinationals. During debates on this draft law, Sherpa drew up proposals for amendments, based on our exchanges and research within our network of jurists, professors and NGOs.

Our proposals, which we continued to advocate for in 2019, concerned in particular the associations' legal standing to take legal action, the monopoly of the public prosecution and the universal jurisdiction of the French judge for certain international crimes. Unfortunately, only certain propositions concerning the latter point were retained by Parliament in the law enacted on 23 March 2019.

### Contribution to the evaluation of the National Plan of Action by the CNCDH

Sherpa contributed in 2019 to the evaluation led by the French National Consultative Commission on Human Rights of the National Action Plan for the Implementation of the UN Guidelines on Human Rights and Companies.

In particular, we recalled certain commitments contained in the National Action Plan to facilitate access to criminal justice for victims of crimes committed by companies abroad. More specifically, we call on the Public Prosecutor's Office's decision not to open an investigation following a complaint filed by a victim of a crime committed by a French person abroad be subject to a real appeal. In addition, we have pointed out the increasing obstacles to civil actions by associations in criminal matters and the restrictions on their admissibility before the courts.

### Reporting failures of the OECD National Contact Point (NCP)

Sherpa has dealt with the French NCP on numerous occasions since its creation, with always unsatisfactory results. This soft law mechanism, which we only use where hard law cannot be exercised, is often captured by private actors and proves ineffective in providing reparation for damages caused to victims. Indeed, it will never constitute real access to justice, understood as access to an independent and impartial judge with the power to make enforceable decisions.

In 2018, Sherpa, along with several NGOs, published an urgent appeal for the reform of the French NCP. In the letter addressed to the Minister of Economy and Finance, as well as to President of the French NCP, we denounced the lack of impartiality, transparency and resources of the NCP. Furthermore, we also called for urgent reform of its composition and mode of governance. Despite a reminder sent in January 2019, we have received no response to date. Sherpa as well as many associations have decided to no longer take part in discussions deemed useless initiated by the NCP with civil society.

In October 2019, Sherpa co-signed an Op-ed denouncing the shortcomings of the procedure, following the failure of ProDESC's referral to the French NCP. ProDESC is a Mexican association, defending the rights of the community of Unión Hidalgo against EDF's wind projects. It relied on the French NCP to resolve the local conflicts raised by the EDF project.

However, the opacity of the procedure, the pressure exerted by certain actors and the lack of a clear decision on the conflicts of interest linked to EDF's shareholding, among other shortcomings, led the Mexican association to withdraw its referral in July 2019.

### OECD Watch

A coalition whose mission is to inform the NGO community about the policies and activities of the OECD Investment Committee and to evaluate the effectiveness of the Guidelines.

# COMBATting BUSINESSES' NEW STRATEGIES

Whether it is by carrying out its actions for greater corporate accountability, or for better regulation of financial flows throughout the world, Sherpa targets economic actors with significant and multiple resources that are used to reduce access to justice and information, and the democratic space in general. Through its programs, Sherpa strives to defend the democratic space.

## Fighting SLAPP suits

Civil society actors, including Sherpa, are increasingly targeted by complaints from companies whose objective is to silence us. These complaints are based on ever more creative grounds: defamation, violation of the presumption of innocence, harassment, denigration.

These strategic lawsuits aim to put pressure on, financially weaken and isolate any journalist, whistleblower or organisation that would shed light on the activities and harmful practices of economic giants such as the Bolloré or Vinci groups. The aim is to dissuade them from investigating, so that «trade secret» remains well kept, in defiance of the general interest and freedom of expression.

The year 2019 will have been marked by major victories: Socfin and Socapalm, subsidiaries of the Bolloré group, have definitively withdrawn their appeal in the defamation proceedings brought against Sherpa, ReAct and Mediapart, among others, who were acquitted on 29 March 2018. Furthermore, in other cases, three court rulings have ordered the Bolloré group to pay damages in compensation for proceedings deemed abusive.

Sherpa had also proposed amendments on this subject prior to the 2018-2022 programming and justice reform law, limiting the right to bring defamation suits to natural persons only and recommending procedural adjustments aimed at dissuading the recourse to SLAPP suits. Unfortunately, these proposals were not adopted by the parliamentarians.



Sherpa is, with other NGOs and media, at the initiative of the On Ne Se Taira Pas! collective created in 2017. This interdisciplinary collective intends to initiate legislative reforms to put an end to SLAPP suits. It also helps to mobilise civil society collectively when one of its members is a victim.

## Protecting whistleblowers

Sherpa has actively participated in the creation of the Maison des lanceurs d'alerte (MLA), founded in October 2018, and is a member of its Board of Administrators.

Sherpa was MLA spokesperson in November 2019 during the Salon des Livres et de l'Alerte and when presenting the open letter to Emmanuel Macron on the status of whistleblowers, which calls for a rapid and exemplary transposition of the European directive on the protection of whistleblowers. The letter indicated that the directive takes up most of the advances of the French law, but also offers an opportunity to remedy the limits of the latter and to amend it. It includes a «non-regression clause», which, when transposed, guarantees the democratic objective of strengthening the protection of whistleblowers.

## Fighting trade secret

The transposition into French law of the European directive protecting trade secret in July 2018 posed a threat to our fundamental freedoms and provoked an outcry from the civil society. Sherpa, together with the Stop secret des affaires coalition, was very active in opposing the transposition text and proposed amendments to preserve fundamental freedoms.

While the defenders of the text had assured that it would not infringe press freedom and the right to information, four months after the transposition, the newspaper *Le Monde* saw its investigative capacity hampered. As part of the «Implant Files» investigation, which revealed that medical devices (defibrillators, insulin pumps, hip prostheses) have caused hundreds of deaths, the newspaper was refused access to the list of devices that had received a certificate of conformity. This refusal is based on trade secret.

The CADA (The Commission for Access to Administrative Documents), in an iniquitous opinion, favoured trade secret to the detriment of citizens' right to health, information and protection, and confirmed the legitimate fears of civil society at the time of the adoption of the text. However, the law itself provides that trade secret cannot be opposed to the media, whistleblowers and trade unions, which are essential actors in any democracy.

*Le Monde* contested this refusal before the Paris Administrative Court. On 27 June 2019, Sherpa among 36 associations and media decided to intervene in this litigation to ask the judiciary to protect press freedom, especially when it investigates a subject of general interest as important as health.

## Developing tools to face lobbying strategies

The capture of powers, particularly sovereign powers, by economic actors raises the question of the creation of the norm. Indeed, multinationals have a direct and indirect influence on the making of law, thanks to intensive lobbying and capacities of influence tenfold, relying in particular on information technology.

In 2019, we continued to be part of a working group whose objective is to draw the contours of the phenomenon of the private sector's insidious lobbying in public policies. This working group is focusing in particular on the creation of a position paper and recommendations

to improve the regulation of the growing influence of companies. As this is an international issue, we wish to be part of the networks working on these subjects at least on a European scale.

## Mobilising against trade and investment agreements

Sherpa is mobilised at the European level with numerous associations to denounce the iniquity of trade and investment agreements. Such agreements today confer to multinational companies exorbitant rights and give them access to a parallel system of justice protecting them. Sherpa has mobilised its network to relay throughout 2019 the petition «Stop Impunity! Rights for people, rules for multinationals», which has gathered more than 847,000 European signatories.

In addition to the abandonment of these agreements, we call on the European Union and its member states to support the ongoing negotiations at the United Nations for the adoption of a binding treaty on multinational companies and human rights, putting an end to their impunity. As part of this campaign, we co-signed an op-ed in *Le Monde* newspaper, «Investors' rights must not be better protected than those of citizens or the planet», stating the reasons for our opposition to the vote on the investment protection treaty with Singapore.

## Other Networks and Forums



(CSR Plateforme) A multi-stakeholder consultation body reporting to the Prime Minister, whose mission is to promote CSR.

## MULTINATIONAL COMPANIES' ROLE IN ARMED CONFLICTS

While the prosecution and conviction of natural persons for international crimes before international criminal courts is now accepted at both the international and national levels, the responsibility of companies, legal entities, and their executives for the commission of crimes is hardly ever recognised. Multinational companies working in conflict zones are likely, directly or through their subsidiaries, to fuel armed conflicts and to profit from violations of fundamental rights, in particular by dealing with those responsible for war crimes and crimes against humanity.

In 2019, the indictment of Lafarge and eight of its former executives was confirmed by the investigation Chamber of the Paris Court of Appeal. Sherpa is also involved in a collective of associations that is trying to put an end to French arms sales to Saudi Arabia and the United Arab Emirates in the Yemen conflict.

### Lafarge

*Historic indictment of the parent company*

**Country:** Syrie

**Target company:** Lafarge and Lafarge Cement Syria

**Legal basis:** complicity in crimes against humanity and war crimes, financing of a terrorist enterprise, deliberately endangering people's lives, work incompatible with human dignity

**Partner:** European Center for Constitutional and Human Rights (ECCHR)

#### \* Facts

Between 2012 and 2015, Lafarge, now Lafarge Holcim, owned at 98.7% a plant located between Raqqa and Manbij in northern Syria, managed by Lafarge Cement Syria (LCS). In 2012, when conflicts increased in the northern part of the country, Lafarge repatriated its expatriate employees but asked Syrian workers to stay and keep the plant running. Throughout 2013, conflicts intensified, and ISIS took over the northern Syrian territory. Risks for the lives of employees increased on the roads surrounding the Lafarge plant. Arrangements were then made between LCS and several armed groups, including Daesh, in order to maintain operations at the plant.

#### \* Sherpa's work

On 28 June 2018, the company was indicted on charges of complicity in crimes against humanity, violation of an embargo, financing a terrorist enterprise and endangering others. On 7 November 2019, the historical indictment of Lafarge, as a legal entity, was upheld on appeal by the Instruction Chamber of the Paris Court of Appeal. Eight former executives remain under indictment.

However, the Instruction Chamber cancelled the indictment for complicity in crimes against humanity committed in Syria and Iraq, in particular by the Islamic State Organisation. The charge of complicity in crimes against humanity is of fundamental importance in that it allows an understanding of the role of economic actors in armed conflicts. The Chamber also rejected the

"Ladies and Gentlemen, members of the National Assembly, France risks becoming an accomplice to war crimes in Yemen by continuing its arms sales to Saudi Arabia and the United Arab Emirates."

#YemenCantWait



admissibility of Sherpa and ECCHR as civil parties in this case, which is a part of a broader movement to narrow the scope of civil action of associations. An appeal to the Court of Cassation has been lodged, against both the decision declaring the associations inadmissible and the decision lifting the indictment against Lafarge on the grounds of complicity in crimes against humanity. The associations hope that the Court of Cassation will set a jurisprudential precedent regarding the admissibility of associations.

Lafarge's activities in Syria, in a context where extremely violent crimes were committed, some of them at the very foot of the plant, are a perfect illustration of how multinationals can fuel conflict. The fact that judiciary finally recognizes the extent and seriousness of these allegations is a step forward for the plaintiffs and the fight against impunity.

### Yemen and french arms sales

**Country:** Yemen

**Legal basis:** complicity in war crimes, complicity in crimes against humanity, torture

**Partners:** Action Sécurité éthique républicaines, Les Amis de la Terre, Salam for Yemen, Médecins du Monde, Action Contre la Faim

#### \* Facts

The coalition of Arab states led by Saudi Arabia has been conducting a military campaign in Yemen since 2015. Many NGO and UN reports demonstrate the commission of war crimes and multiple violations of international humanitarian law by the warring parties. Since the beginning of the conflict in 2014, France has granted licenses for the export of arms to Saudi Arabia and the United Arab Emirates. Despite the scale of the consequences for the civilian population, France has

maintained these licences, arguing that it has greater control over the flow of arms to the region. In addition, several reports point to the presence of French machines in conflict zones in support of multiple war crimes.

#### \* Sherpa's work

Sherpa and 5 other associations (Action Sécurité éthique républicaines, Les Amis de la Terre, Salam for Yemen, Médecins du Monde, Action Contre la Faim) filed an appeal with the Council of State on 19 November 2019 following the rejection by the Paris Administrative Court of Appeal of a request to suspend French arms exports to Coalition countries involved in the war in Yemen.

By ordinance of 26 September 2019, the Administrative Court of Appeal reversed the decision adopted by the Paris Administrative Court, which, after 18 months of adversarial debate, had deemed itself competent to hear the request submitted, although it rejected it. The court had refused to question the Prime Minister's decision refusing to suspend the licences to export arms to the coalition.

This decision, which was adopted in a non-adversarial manner, without a collegial and public hearing, constitutes a clear retreat from the rule of law, as the administrative court of appeal ruled that the issuing of licences authorizing the export of arms constituted an «act of Government», for which no judicial control is possible.

It is nevertheless urgent to put an end to the sale and maintenance of arms by France to the Coalition countries involved in the war in Yemen in order to ensure compliance with France's international commitments, in particular the Arms Trade Treaty (ATT) and the EU Council Common Position 2008/944/CFSP.



## VIOLETION OF WORKERS' RIGHTS THROUGHOUT THE SUPPLY CHAIN

The flagrant global disparities in workers protection, which allow multinationals to optimise their profit margins, foster serious forms of labour exploitation that mainly affect women and children.

The tragedy of Rana Plaza, which killed 1138 people in Bangladesh in 2013, remains one of the most infamous disaster illustrating these modern forms of exploitation. To defend workers and shed a light on the flaws and shortcomings of positive law, Sherpa tries to bring into play the responsibility of companies whose activities result in rights' violations on their production chain.

Modern forms of labour exploitation, such as work incompatible with human dignity, servitude and forced labour, are punishable under a number of offences in the Criminal Code. By demonstrating the link between the activities of subsidiaries and the French parent company, we want to ensure that the foundations of French criminal law are applied to offences committed abroad by multinational companies and we thus effectively combat their impunity.

In addition, to promote a responsible corporate image, companies publish ambitious ethical commitments to ensure that workers' rights are fully respected throughout the production chain. However, there are unacceptable gaps between these ethical commitments and the reality in the plants of some of these companies. The basis of misleading commercial practices must make it possible to penalise this discrepancy by giving ethical commitments a binding legal value, and helping to rebalance the power struggle between workers/consumers and multinationals.

### Vinci

*Opening of a judicial inquiry*

**Country:** Qatar

**Target company:** Vinci, Vinci Construction Grand Projet, Vinci Qatari Diar Construction (QDVC)

**Legal basis:** forced labour and bonded labour, human trafficking, work incompatible with human dignity, deliberately endangering people's lives, unintended injuries and unlawful concealment

**Partner:** Comité contre l'esclavage moderne (CCEM) (Committee against Modern Slavery)

### \* Facts

Qatar has undertaken a vast infrastructure modernisation programme in view of hosting the 2022 World Cup. In this context, Vinci has won major contracts worth billions of euros, and employs around 6,000 migrants on its construction sites through its Qatari subsidiary (Qatari Diar Vinci Construction ou QDVC) as well as many subcontractors.

During its investigation in 2014 and 2018, Sherpa collected information revealing inhuman and dangerous working conditions imposed by Vinci through QDVC, in violation of international and even local laws: 66 hours of work per week in violation of Qatari law, lack of equipment necessary to protect workers from heat, and collective accommodation that would be incompatible with human dignity.

### \* Sherpa's work

In 2018, Sherpa had carried out a new field investigation which led to the filing in November of a new complaint with the CCEM (Committee against modern slavery) and six former employees of QDVC against Vinci, Vinci Construction Grands Projets (VCGP), its Qatari subsidiary QDVC and their representatives on the same basis. This complaint concerned facts similar to those covered by the first complaint filed in 2015, which would have occurred between 2014 and 2016.

In the absence of a response from the Public Prosecutor's Office to whom the complaint has first to be filed, a complaint was filed in February 2019 with a claim for criminal indemnification. The senior investigating judge of the Tribunal de Grande Instance of Nanterre opened a judicial inquiry on 25 November 2019.

In March, Vinci tried to organise a «clean hands operation» on its construction sites in Qatar on the eve of Prime Minister Edward Philippe's visit. An attempt that fooled no one, during which Vinci showed to a dozen journalists from the French media a building site and a living place (the most recent, built in 2017) without allowing them to talk to the workers. Vinci also published a non-independent «social audit» which concluded that the workers were being well treated. This audit, which was carried out over a one-day visit, is devoid of any probative value.

### Opération mains propres de Vinci au Qatar

Mis en cause à propos des conditions de vie et de travail de ses ouvriers au Qatar, le géant du CAC 40 a ouvert, partiellement, ses portes sur place, alors qu'une nouvelle plainte a été déposée par l'ONG Sherpa.



Serious violations of workers' rights: Sherpa and ActionAid France obtained the indictment of Samsung France for misleading advertising. It is a first in France and a strong message sent to multinational companies worldwide\*

## Samsung

### Indictment of Samsung Electronics France

**Country:** China

**Target company:** Samsung France, Samsung Electronics Ltd (Corée)

**Legal basis:** misleading commercial practices

**Partners:** ActionAid France – Peuples solidaires

### \* Facts

Samsung prides itself on having adopted ethical commitments that are widely spread on the Internet where it claims to be contributing to «a better world». However, the NGO China Labor Watch, which infiltrated Samsung's factories, published well documented reports as early as 2012 denouncing numerous violations of workers' fundamental rights in their Chinese plants: child labour, inhumane working conditions, lack of safety measures.

### \* Sherpa's work

After Sherpa and ActionAid filed a complaint with a claim for criminal indemnification on 25 June 2018, an investigation was opened in August 2018, in which the senior investigating judge of the Tribunal de Grande Instance (TGI) of Paris was appointed.

After recognising the jurisdiction of the Tribunal de Grande Instance of Paris, he indicted on April 17, 2019, Samsung Electronics France, the French subsidiary of the electronics giant, for misleading commercial practices.

More than twenty years after the resounding case brought in the United States on the same grounds against Nike, in which the company had been convicted for failure to comply with the commitments made in its code of conduct, this is the first time in France that ethical commitments made by a company are likely to constitute commercial practices that are binding over it.

Despite the ethical commitments made by Samsung, the elements included in the complaint would characterise serious human rights violations. In addition, the use of toxic chemicals without protection in Korean factories, such as benzene and methanol, has caused incurable diseases to hundreds of employees. At least 465 workers are believed to be affected, 135 of whom have already died.

## Teleperformance

**Countries:** Colombia, Mexico, Philippines

**Target company:** Teleperformance

**Legal basis:** failure to exercise duty of vigilance regarding workers' rights

**Partner:** UNI Global Union

### \* Facts

Unknown to the large public, Teleperformance is the hidden face of the digital economy. Specialist in customer relationship outsourcing, the French multinational employs more than 300,000 employees in its call centers around the world, responsible for answering the requests of customers of the digital and distance selling giants.

Despite numerous warnings from the UNI Global Union, an international trade union federation, Teleperformance did not publish a vigilance plan in its annual report in 2018 and had merely published a two-page plan in April 2019, without even associating the unions.

### \* Sherpa's work

On 18 July 2019, alongside UNI Global Union, Sherpa issued a formal notice to Teleperformance to comply with its duty of vigilance.

Following the formal notice, the company published, in September 2019, a new vigilance plan, which unfortunately remains insufficient, particularly with regard to risks of serious violations of workers' rights denounced in its subsidiaries in Colombia, Mexico and the Philippines, which have still not been integrated into the company's vigilance plan.

## ENVIRONMENTAL DAMAGES



It is time to recognise that economic globalisation is at the root of climate change and destruction of biodiversity. We can no longer ignore the decisive role that large companies play in the destruction of our ecosystem, when 71% of global GHG emissions are estimated to come from the 100 most polluting companies, according to a recent report by the NGO Carbone Disclosure Project. Governing globalisation through law will require the accountability of those who pollute the planet and hinder access to the basic resources needed by all humanity.

International awareness is growing. Fatou Bensouda, the Prosecutor of the International Criminal Court (ICC), announced in September 2016 that her office would look into crimes involving «ecological devastation, illegal exploitation of natural resources or illegal expropriation of land».

At the national level, Sherpa is involved in two ambitious litigation cases against oil companies, Total, on global warming, and Perenco, on the issues of biodiversity protection and serious damage to the environment, thanks to the inclusion in the Civil Code in 2016 of the concept of «ecological prejudice».

### Perenco

**Country:** Democratic Republic of Congo  
**Target company:** Perenco SA  
**Legal basis:** instruction measures in “discovery” and ecological prejudice  
**Partner:** Amis de la Terre France

#### \* Faits

Perenco is a leading independent oil and gas group operating in Northern Europe, Africa, Latin America and South East Asia. No official figures are given on the group’s turnover, but it is estimated to be worth more than €5 billion in 2017, ranking the French family Perrodo, which owns the group, as the thirteenth richest in France.

Perenco is the only oil operator in the Democratic Republic of Congo (DRC), where its activities have reportedly caused serious environmental damages, provoking strong reactions from local populations and authorities. Numerous reports, some of which emanate from official authorities (Congolesse Senate and Ministry of the Environment), denounce water pollution, particularly through the discharge of crude from damaged pipelines, air pollution, particularly through the practice of gas flaring in unsafe conditions, and soil pollution in the region where Perenco operates.

The multinational is particularly opaque about its structure and management. Presented and presenting itself as a French company in the DRC, Perenco SA, the group’s French company, denies nevertheless any involvement.

#### \* Sherpa’s work

In transnational litigation, victims or associations trying to enforce the liability of the parent company are confronting the opacity and dilution of liability put in place by multinational companies. Before taking action on the basis of ecological damage, scheduled for 2020, Sherpa has therefore designed a probative pre-litigation strategy in order to obtain documents that would attest Perenco SA’s involvement in DRC operations and its control over Congolesse companies.

Sherpa used for the first time against a multinational company a civil procedure that makes it possible to obtain, on a non-adversarial request from the judge, a decision authorising a bailiff to seize documents «by

surprise» on a company's premises. In spite of the order obtained on 2 August 2019, the company refused to allow the bailiff to enter, thus opposing the enforcement of a decision yet legally enforceable. Forced to initiate a new summary proceeding, the associations are now trying to obtain a new similar measure thanks to an emergency procedure; they are appealing after dismissal.

## Total

**Target company:** Total

**Legal basis:** failure to exercise duty of vigilance regarding climate change

**Partners:** Notre Affaire à Tous, Eco Maires, ZEA and fourteen local authorities.

### \* Faits

As a major energy company, Total accounts alone for nearly 0.9% of global greenhouse gas emissions. Its commitment to limiting the effects of climate change must be commensurate with its historical emissions and its political and economic weight. It is obvious that this is far from being the case. Total is not committed to a downward emissions trajectory that would limit global warming to +1.5°C, as required by the Paris Agreement, and continues to invest several billion euros a year in fossil fuels, whereas it could prepare for the future by committing to renewable energy production projects.

### \* Sherpa's work

On 19 June 2019, along with fourteen local authorities and supported by the associations Notre Affaire à Tous, Eco Maires and ZEA, Sherpa issued a formal notice to the multinational Total to comply with the law on the duty of vigilance by taking the necessary measures to deal with climate change.

Although Total mentions climate change in its vigilance plan published in March 2019, unlike the previous one, the measures announced are clearly insufficient and fall short of the efforts needed to comply with the international objectives recognized by the Paris Agreement. This is the first formal notice sent under the duty of vigilance law.

## Socapalm

**Country:** Cameroun

**Target company:** Bolloré SA

**Legal basis:** forced execution of contractual obligations

**Partners:** ReAct, GRAIN, FIAN-Belgium, Pain pour le prochain, SYNAPARCAM, FODER, SNJP, L'amicale des Riverains d'Edéa and the trade union SATAM

### \* Faits

Socapalm, a subsidiary of the Belgian holding Socfin, a Bolloré Group company, is the largest palm oil producer in Cameroon. Its activities generate many tensions with communities because they would alter the quality of their environment, deprive them of arable land and fishing grounds, and pose a serious risk to their health. The working and housing conditions of the workers would be outrageous.

Sherpa filed a «specific instance» before the French OECD National Contact Point (NCP) in 2010. It aimed to identify and address the breaches of the OECD Guidelines for Multinationals by the concerned companies. Mediation was initiated under the French NCP auspices between Sherpa and the Bolloré Group, leading to the conclusion in 2013 of an «Action Plan» to improve the living conditions of the communities impacted by Socapalm's activities. While this Action Plan could have been a first in environmental and social terms, the Bolloré group has still not met its commitments negotiated with Sherpa and has offloaded its responsibilities to the company Socfin.

### \* Sherpa's work

On 4 September 2018, Sherpa participated in the meeting organised by the Belgian NCP with Socfin. Sherpa had requested a written statement by Socfin and Bolloré that they would commit themselves to implementing the Action Plan. Faced with the companies' refusal to affirm their will to apply the Plan's measures, in particular environmental ones, Sherpa maintained its position before the Belgian NCP: the unilateral voluntary measures proposed by Socfin cannot replace the application of the Action Plan.

In this context, Sherpa and its partners issued a summons on 27 May 2019 to the company Bolloré SA to compel it to implement the Action Plan in Cameroon, which is to be considered as a contract that has not yet been executed.

The French judge is requested to compel the Bolloré group to fulfil its commitments made in 2013 to Sherpa and the French NCP, towards the neighbouring communities and plantation workers.



# Illicit financial flows

Developing countries are losing at least €750 billion each year because of illicit financial flows, i.e. funds obtained, transferred or used illegally, resulting mainly from bribery, money laundering and tax evasion.

These illicit financial flows impede social and economic development, divert domestic and foreign investments from the sectors where they are most needed, thereby depriving the population of decent education and health systems.

In order to combat this scourge, Sherpa, through its Illicit Financial Flows program, is working on the fight against corruption, embezzlement, money laundering and the use of tax and judicial havens.



## CORRUPTION AND EMBEZZLEMENT OF PUBLIC FUNDS

Corruption is the perversion of a decision-making process aiming, for the corrupter, to obtain undue advantages through the complacency of unscrupulous political decision-makers.

It undermines the fundamental principles of good governance, the equal access of citizens to markets, jobs and public services, based on merit and capacity. It confuses the notion of general interest, feeds mistrust of governments and diverts wealth that should normally go to the people. The concealment of corrupt patterns, the time it takes to disclose scandals and the difficulty of proving them fuels the sense of impunity of political or economic decision-makers.

Thanks to the investigative works of civil society, NGOs, whistleblowers and investigative journalists, Sherpa has highlighted the most serious situations in which private interests take precedence over the general

interest. Sherpa therefore put forward innovative proposals to ensure that assets embezzled as a result of corruption are restituted for the benefit of the victim populations.

### *Admissibility of anti-corruption associations*

Obtaining the approval provided for in Article 2-23 of the Code of Criminal Procedure is necessary for any association wishing to exercise the rights recognised to civil parties in corruption matters.

Sherpa obtained it for the first time in February 2015 for a period of 3 years. As the approval expired in February 2018, a new request for approval was duly submitted in June 2018 in compliance with all the required steps set out in Decree n°2014-327 of 12 March 2014. It took more than a year and an appeal to the Administrative Court to finally obtain approval in October 2019.

The Ministry's long silence made it difficult for Sherpa to intervene in cases in which the Association was a civil plaintiff, such as the «Balkany» case, in which Sherpa wanted to denounce the role played by banks in the proliferation of offshore arrangements; or in the case of Uzbekistan's illegally acquired assets, which prevented the Association from appealing the decision of a non-transparent restitution of assets resulting from money laundering to the Republic of Uzbekistan, a party to the *comparution avec reconnaissance préalable de culpabilité* (Appearance with prior admission of guilt).

## "Ill-Gotten Gains"

«Ill-gotten gains» (IGG) is public assets and property misappropriated from a State's budget and placed abroad for personal use. It is an illicit enrichment, i.e. a substantial increase in the assets of a public official, or any other person, which cannot be justified in terms of income by that person and which is done at the expense of the populations affected by such spoliations. The World Bank estimates the annual cost of assets and property diverted from developing countries and placed abroad at between 20 and 40 billion dollars. Since 1991, the misappropriation of public assets has been considered a human rights violation following a decision by the UN Economic and Social Council.

Sherpa initiated the first complaints filed in 2007 in the so-called IGG cases, which concern suspicions of public funds' embezzlement by members of the ruling families of Gabon, Congo and Equatorial Guinea, which were dismissed before being relaunched by Transparency International France.

After a long judicial saga, one of these cases resulted in an unprecedented decision: the conviction of Teodorin Obiang, son of the President of Equatorial Guinea, by a verdict dated 27 October 2017, under appeal for various financial offences. In addition, developments are expected in the information opened against the clan of Congolese President Denis Sassou-Nguesso and that of Ali Bongo, Omar Bongo's heir.

Thanks to our action, this judicial odyssey is now spreading to Canada and the relatives of the Djiboutian President.

In 2019, Sherpa, together with Transparency International France, supported Senator Jean-Pierre Sueur's bill on the allocation of assets resulting from transnational corruption, recalling the importance of the adoption of such a law for France, which hosts some of these illegal assets. The proposed law was adopted by the Senate, followed by a report drafted by two MPs in November 2019, but no date has yet been set for its vote by the National Assembly. However, it is important that the bill be favourably considered in order to initiate a reflection on the concrete modalities for the restitution of ill-gotten assets to the victims of misappropriation through the implementation of projects benefiting the local population.

## IGG Syria

**Target person :** Rifaat El Assad

**Legal basis:** embezzlement of public funds, corruption and aggravated money laundering in organised gang

### \* Faits

Having fallen into disgrace with the regime of Hafez Al Assad, the former chief of the Syrian «Defence Brigades», Rifaat Al Assad, went into exile in France in 1984, then in 1998 after an attempt to return to Syria in 1992. Since his arrival on French territory, he has had considerable assets whose total value would, in all likelihood, far exceed the cumulative amount of wages and salaries generated by his known activities.

### \* Sherpa's work

Sherpa filed a complaint with a claim for criminal indemnification on 6 March 2014 which allowed the National Financial Prosecutor's Office to take up this case. At the end of an investigation that lasted nearly five years, it appeared that Rifaat Al Assad, during the entire period of his alleged exile from Syria, had illegally benefited from Syrian public funds hidden through a network of shell companies scattered throughout Europe and in tax havens. Thanks to Sherpa's work, Rifaat al-Assad trial was held from 9 to 18 December 2019.

The trial against Bashar Al Assad's uncle takes on a special dimension in the current Syrian context: it highlights the urgent need to set up a legal framework in France for the restitution of looted assets. Such a framework must be accompanied by guarantees of transparency, accountability and integrity. The case underlines the importance of a binding legal mechanism to ensure that returned assets do not fall back into the cycle of corruption. Finally, the trial highlights the crucial importance of civil action by associations in the fight against corruption. The decision will be rendered in June 2020.

Sherpa recalled during the trial but also in an Op-ed published in both Libération and Mediapart in December 2019 that this case is unique because it indicts for the first time a member of the Assad clan who has ruled Syria with an iron grip for more than forty years. It also places at the heart of the debates the repression of the offence of money laundering and the simple presumption of the illicit nature of property or income as established by the law of 6 December 2013.



## IGG Uzbekistan

**Target person :** Gulnara Karimova

**Legal basis:** money laundering in organized gang and corruption of foreign agent

### \* Faits

Gulnara Karimova, the eldest daughter of the president of the Republic of Uzbekistan, created in 2009 and 2010 civil real estate companies (SCI in French) in Paris through which she has acquired property in France for a total of about 50 million euros. These properties were allegedly purchased through acts of corruption.

### \* Sherpa's work

In February 2013, a judicial investigation was opened by the Paris financial pole against X for «money laundering in organised gang» and «corruption of foreign agent». In June 2014, Sherpa filed a claim for criminal indemnification. In September 2014, the assets were seized. After seven years of proceedings, the Uzbek chapter of the IGG case was closed in July 2019 with an appearance on prior recognition of guilt (CRPC) accepted by the parties.

The CRPC provides for the return of such illicitly acquired real estate - worth tens of millions of euros - to Uzbekistan. Noting that the country is democratising, the French judicial authorities have decided to return these assets to Uzbekistan, putting forward the change of regime after the death in 2016 of the dictator Islam Karimov.

Nevertheless, the country is still ranked 157th out of 180 by Transparency International's Corruption Perceptions Index, and the average Uzbek salary is less than 200 euros. Sherpa and Transparency International France have advocated that the return of these funds should be accompanied by guarantees of transparency, accountability and integrity to ensure that the returned funds do not fall back into the channels of corruption.

This is all the more so since the Association was forced to withdraw its constitution as a civil party, even though it had contributed to the progress of the investigation, having been refused at the time of the CRPC hearing the renewal of its «anti-corruption» accreditation, which it only obtained later. Sherpa therefore could not be present at the conclusion of the CRPC agreement to put forward her point of view.



### Other IGG cases are currently in process:

#### IGG Djibouti

Sherpa and the Collectif européen de la diaspora djiboutienne (CEDD) filed a complaint on 16 October 2018 against members of the entourage of Djibouti's President Ismaïl Omar Guelleh, who has been in office for nineteen years. The complaint concerns the acquisition of real estate by members of his family in France, in Paris in particular. The case is currently being investigated.

#### IGG Canada

On 1 March 2018, Sherpa asked the Royal Canadian Mounted Police (RCMP) to investigate the conditions under which African dignitaries from the Republic of Congo, Algeria, Burkina Faso, Gabon, Chad and Senegal, who had allegedly invested more than \$30 million in

Canada, acquired considerable real estate assets on Canadian territory. Some are also reportedly implicated in judicial proceedings in France.

After an investigation was launched, Sherpa and the IGG Canada Coalition filed a supplementary complaint on Thursday, 7 June 2018, against some twenty leaders from seven African countries for laundering the proceeds of criminal offences, misappropriation of public funds, abusing corporate assets, corruption and breach of trust, by asking the RCMP to extend the investigations to a relative of the former President of the Democratic Republic of Congo (DRC).

### Other cases of international corruption

#### Sarkozy — Lybia

**Target person:** Nicolas Sarkozy

**Legal basis:** influence peddling, forgery and use forgery, abuse of company assets, money laundering, complicity and concealment of these offences

#### \* Facts

In 2012, documents published by Mediapart assume the existence of a payment of 50 million euros to finance Nicolas Sarkozy's presidential campaign in 2007 from the Libyan regime of Muammar Gaddafi. The official amount for Nicolas Sarkozy's 2007 presidential campaign was €20 million. On 19 April 2013, the Paris Public Prosecutor's Office opens a judicial investigation against X... for «active and passive corruption», «influence peddling, forgery and use of forgeries», «abuse of corporate assets», «money laundering, complicity and concealment of these offences».

#### \* Sherpa's work

Sherpa filed a claim for criminal indemnification because of the exceptional nature of the alleged acts with regard to the accusation of a former President of the Republic concerning the suspicion of illicit financing of his presidential campaign by foreign means. At the beginning of 2018, the procedure gave place to indictments, in particular that of Nicolas Sarkozy for corrupting public officials abroad. In 2019, the case was still under investigation and Sherpa's admissibility was contested in September 2019, although the Association has been a civil party since 2013. In 2020, the investigation chamber will have to decide on Sherpa's admissibility.

### Other litigations

**Another case of international corruption is underway of instruction: Vinci-Russia**

In May 2016 Sherpa, together with CEE Bankwatch Network, filed a complaint with a claim for criminal indemnification against Vinci in Russia with the Nanterre's chief investigating judge. The charges related to the corruption of foreign public official in connection with

the attribution, in 2009, to the North West Concession Company (NWCC), wholly owned by the French company Vinci Concessions Russia, of a public contract for the construction of the motorway between Moscow and Saint Petersburg.

### Networks

Publiez Ce  
Que Vous Payez

Sherpa is a member of the platform Publish What You Pay (PWYP), which aims to make the extractive sector more transparent and accountable.

CIVIL  
UNCAC Coalition  
SOCIETY

Sherpa is also part of the UNCAC Coalition, which aims to promote the ratification and implementation of the United Nations Convention against Corruption. The Coalition was formed in 2006 with the objective of mobilising the civil society on these actions at the national, regional and international levels. It is composed of 350 civil society organisations in 100 countries.

# TAX HAVENS AND MONEY LAUNDERING

Tax havens are a mass-dissimulation weapon for financial transactions used by ultra-rich individuals and multinationals, helped in their opaque arrangements by a series of financial or legal intermediaries. Civil society, NGOs, whistleblowers and journalists regularly highlight the economic and social consequences of such practices. Indeed, corrupt practices enable economic actors to hide the potentially fraudulent origin of their income or turnover (corruption, money laundering) and deprive many States of income, particularly tax revenue, which is essential for the delivery of quality public services and thus for the fulfilment of economic, social and cultural rights.

Opacity and arrangements are also levers for ensuring impunity by exporting the harmful impacts of activities to less willing jurisdictions.

## Balkany

**Target persons:** Patrick et Isabelle Balkany  
**Legal basis:** tax fraud, corruption, laundering of tax fraud and bribery

### \* Faits

For almost twenty years, the Balkany have not only been able to personally benefit from their office but also to avoid any tax or legal declaration on their incomes. On 6 December 2013, the Public Prosecutor's Office of Paris opened a judicial investigation into the Balkany couple for tax fraud laundering. In October 2014, they were indicted for laundering tax fraud, corruption and corruption laundering.

### \* Sherpa's work

On 20 April 2015, Sherpa filed a complaint with a claim for criminal indemnification in this case and followed the investigation in order to underline and denounce the financial engineering put in place.

The trial took place in June 2019. Sherpa had to withdraw at the time of the hearing due to the temporary unavailability of its anti-corruption accreditation. On 13 September 2019, Patrick Balkany was convicted of tax fraud and sentenced to four years in prison and ten years ineligibility, a sentence which he has appealed. The execution of the judgment is therefore suspended pending a final sentence. On 18 October 2019, Patrick Balkany is again sentenced for money laundering, to five years' imprisonment and ten years' ineligibility; however, he is released for the corruption charge.

In this case, it was essential to denounce the role played by financial intermediaries, as pointed out in a Sherpa Op-ed published in October 2019 in Le Monde newspaper. The facts show that the financial engineering put in place by a trust company would have provided funds whose real source was accounts held with a Swiss banking institution. The assets thus escaped all the reporting



obligations required by French law. The role of banks and financial actors in the evasion of financial resources and money laundering can no longer be ignored.

### *Law clinic: Science Po Clinic "Environment and tax evasion"*

In 2018, economists have highlighted the statistical correlations between, on the one hand, tax evasion practices upstream of productive activities and, on the other hand, the environmental damage itself downstream of the financed activities. The study reveals that a certain number of highly polluting and notoriously environmentally damaging activities are effectively and for the most part legally constituted in tax havens, thus escaping the various established protection regimes, particularly declaration obligations.

The study shows that 68% of the foreign capital invested in the nine largest multinationals associated with the deforestation of the Amazonian forest (soya, beef production) between 2000 and 2011 had been transferred via tax havens. A total of 16 billion euros would not only have escaped the authorities, but would also have been used to finance activities that destroy biodiversity.

In this context, Sherpa wished to explore legal means of making multinationals and States accountable for the environmental impacts of their financing and tax policies. The Association, in collaboration with the Sciences Po

Law School Clinic for the 2019 - 2020 academic year, worked on the project entitled «Tax evasion practices and environmental damage: how to make companies and States accountable? ».

### *Networks*



Sherpa is a member of the Judicial and Tax Haven Platform, which carries out collective expertise and advocacy work on the measures to be adopted to reduce financial opacity, effectively combat tax evasion, promote greater regulation of capital movements, lift bank secrecy and finance sustainable development.

# Contributions and publications

Thanks to your support and commitment, we have continued to reach historic milestones in the fight against corruption and human rights violations by companies. The year 2019 was marked by several media highlights: the indictment of Samsung France for misleading commercial practices, the confirmation of Lafarge's indictment and of eight of its former executives by the Investigation Chamber, our battle with the Ministry of Justice to obtain our corruption accreditation, the trial of Rifaat Al Assad, first member of the Assad family to be tried, and the first formal notices issued against Total and Téléperformance on the basis of the Duty of Vigilance law.

While communication spaces are monopolized by large corporations, our media visibility is important because not only does it allow us to flag up the issues we work on, but also to raise the voice of the communities and victims that we represent.



## Sherpa's communication in a few figures

7  
op-ed published

Several  
dozen  
interviews  
given

9,000  
subscribers  
in December 2019

40  
press releases

5 newsletters  
sent to our 14 347  
subscribers

10,500  
subscribers  
in December 2019

### Le Monde

#### « L'affaire Balkany permet de lever le voile sur les montages off-shore méconnus du grand public »

Le procès Balkany ne doit pas occulter le rôle joué par les banques et les intermédiaires financiers dans la prolifération de ces pratiques illicites, affirment les experts du blanchiment et de la fraude fiscale Chanez Mensous et Laura Rousseau, dans une tribune au « Monde ».

Publié le 18 octobre 2019 à 09:45 | Lecture 2 min.



### MEDIAPART

#### Qui veut empêcher Sherpa d'agir contre la corruption?

21 MARS 2019 | PAR ASSOCIATION SHERPA



## Contributions and publications

Sherpa's expertise was regularly sought out in 2019, in particular on the duty of vigilance law, the Lafarge case or the fight against corruption.

### Publications

#### — 10 janvier

op-ed – « Esclavage en Mauritanie, les États-Unis ont haussé le ton et ils ont raison ! »

#### — 16 janvier

S. Cossart; T. Beau de Loménie; A. Lubrani, « Extension du domaine de la vigilance, la loi sur le devoir de vigilance, au-delà de la compliance », *Revue des Juristes - Sciences Po*, n°16.

#### — 12 février

Publication of the Vigilance Plans Reference Guidance.

Op-ed – « Les droits des investisseurs ne doivent pas être mieux protégés que ceux des citoyens ou de la planète », *Le Monde*.

#### — 21 février

Publication of the joint report by Sherpa, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette and Amis de la Terre France: « Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre – Année 1: les entreprises doivent mieux faire »

#### — 12 mars

Interview with S. Cossart – « Les ONG doivent réfléchir à leurs méthodes », *Dépêche AEF*.

#### — 13 mars

Op-ed – F. Lenapy et S. O'dy – « Loi PACTE et devoir de vigilance : un rendez-vous manqué ? », *La Croix*.

#### — 25 mars

Publication of the report by Mighty Earth, France Nature Environnement and Sherpa: « Devoir de vigilance et déforestation – Le cas oublié du soja ».

#### — 27 juin

Publication of the report by Sherpa, CCFD-Terre Solidaire: « Le radar du devoir de vigilance – Identifier les entreprises soumises à la loi ».

S. Cossart et L. Chatelain, « What lessons does France's Duty of Vigilance law have for other national initiatives? » *Business & Human Rights Resource Centre Blog*.

#### — 1er juillet

S. Cossart, « De la loi sur le devoir de vigilance à la loi PACTE », *Cahiers de droit de l'entreprise* n°4, July-August 2019.

#### — 22 juillet

Op-ed – « Rendez-vous pour la rentrée climatique et sociale les 20 et 21 septembre ! », *Médiapart*.

#### — 30 août

M.-L. Guislain, C. Gonzales, « Samsung's indictment in France: fighting transnational corporations' human rights' violations through consumer law », *Blog, Global Initiative, The Freedom Fund*.

#### — 31 août

Joint op-ed – « Amazonie : des députés et ONG français appellent à agir pour ne pas être complices de la déforestation », *Journal du Dimanche*.

#### — 1er septembre

Op-ed – C. Gonzales, Sherpa; W. Bourdon, lawyer; S. Mabile, lawyer; E. Higonet, Mighty, – « Les entreprises françaises, complices des feux en Amazonie », *Libération*.

#### — 10 septembre

Op-ed – « Yémen : 17 ONG demandent l'arrêt immédiat des ventes d'armes françaises. »

#### — 18 septembre

Open letter to Mr António Guterres, UN Secretary General: « La gouvernance globale sous l'emprise des entreprises : L'accord de partenariat entre le Forum économique mondial (FEM) et l'ONU est une menace dangereuse pour le système onusien ».

#### — 26 septembre

Joint op-ed – « L'urgence climatique et sociale nécessite une refonte du système économique international », *Libération*.

#### — 16 octobre

Op-ed – « Champs d'éoliennes d'EDF: des populations mexicaines dénoncent la violation de leurs droits fondamentaux », *Nouvel Obs*.

#### — 18 octobre

Op-ed – L. Rousseau and C. Mensous, « L'affaire Balkany permet de lever le voile sur les montages off-shore méconnus du grand public », *Le Monde*.

#### — 4 novembre

S. Cossart, L. Chatelain, « Key legal obstacles around jurisdiction for victims seeking justice remain in the Revised Draft treaty », *Business & Human Rights Resource Centre Blog*.

#### — 10 décembre

ML. Guislain, C. Lavite « Affaire Lafarge en Syrie : « c'est la première fois qu'une entreprise est mise en examen pour des faits aussi graves », *Actuel Direction Juridique*

#### — 20 décembre

Op-ed – L. Rousseau et C. Mensous, « Retour sur le procès Rifaat Al Assad, étape historique contre les biens mal acquis », *Mediapart*.

### Contributions

#### — 25 janvier

CSR and PED Webinar, Presentation of the VPEG by S. Cossart.

#### — 29 janvier

« Quelle place pour les droits de l'Homme dans l'entreprise ? », contribution by Sandra Cossart at the Conference organised by ELSA-Paris 1 Panthéon-Sorbonne, Paris.

#### — Du 29 au 31 janvier

L. Rousseau's participation in PWYP Global Assembly on Transparency of extractive industry, Dakar.

#### — 13 février

Contribution by S. Cossart, Forum on Due Diligence in the Garment and Footwear Sector, OCDE, Paris.

#### — 21 février

Contribution by S. Cossart, at the request of Bundesregierung for « Expert conference on sustainable supply chains », Federal Ministry for Economic Cooperation and Development (BMZ), Berlin.

#### — 20 mars

Contribution by S. Cossart: « Expert meeting sur le régime de responsabilité associé à la loi devoir de vigilance en France et le régime de responsabilités des sociétés pour violations des droits humains à porter au niveau européen », *ECCJ, Bruxelles*.

#### — 27 mars

Conference at the National Assembly on the 2<sup>nd</sup> anniversary of the Duty of Vigilance Act, co-organised by Sherpa.

#### — 11 avril

Lunch-Debate France / Netherlands « Due diligence in the global production chains », Permanent Representation of the Netherlands to the OECD, Paris.

**— 17 avril**

Sustainability Action Day, contribution by S. Cossart, University College Dublin.

**— 9 mai**

Contribution by S. Cossart, «Litigating Business and Human Rights for victims: the French experience», IBA Annual Litigation Forum, Berlin.

**— 22 mai**

Contribution by S. Cossart, «Improving access to remedy in the area of business and human rights at the EU level», Consultation FRA Study.

**— 28 mai**

Contribution by S. Cossart on the Vinci case, «Breaking the cycle of corporate impunity», Freedom Forum, Oslo.

**— 12 et 13 juin**

Contribution by S. Cossart, UN Global Forum on Responsible Business Conduct, Bangkok.

**— 17-19 juin**

Participation of L. Rousseau in the Extractive Industries Transparency Initiative (EITI) global Conference at the OECD, Paris

**— 21 juin**

Contribution by L. Chatelain: «Publication des plans de vigilance. Transparence et secret des affaires», CSR and EDP Webinar.

**— 1 juillet**

Hearing of L. Chatelain by the Conseil Général de l'Économie, as part of the mission to assess the implementation of the Duty of Vigilance law.

**— 3 juillet**

Contribution by S. Cossart: «Le rôle des parties prenantes», Podcast Amicus Curiae

**— 31 juillet**

Contribution by M.-L. Guislain on the Lafarge case at the Festival «Syrien n'est fait».

**— 8 octobre**

Hearing of S. Cossart by the Haut Comité Juridique de la Place Financière de Paris (HCJP) on the consequences of the modification of articles 1835 and 1833 of the civil code.

**— 17 octobre**

Contribution by M.-L. Guislain – Legal clinic: « Justice environnementale et Transition écologique» - Law school of Sciences Po.

**— 25 octobre**

«Lafarge en Syrie: le rôle des multinationales dans les conflits armés», conference organised by Sherpa and the Association des juristes de Sciences Po with M.-L. Guislain, C. Gonzales (Sherpa), C. Lavite and C. Tixeire (ECCHR), Paris

**— 31 octobre**

Hearing of J. François - Dutch Embassy with the Director in charge of Foreign Trade and CSR of the Dutch Ministry of Foreign Affairs in order to discuss the issues of the Duty of Vigilance law.

**— 5 novembre**

Contributions by C. Gonzales and L. Chatelain at the workshop «Social Responsible Public Procurement as a tool for the fulfillment of Human Rights», Barcelona.

**— 7 novembre**

Contribution by L. Rousseau during the presentation of the open letter to Emmanuel Macron on the status of whistleblowers written by the MLA (whistleblower's house), published by Mediapart.

**— 9 novembre**

Communication by L. Rousseau in the Debate on the definition and status of whistleblowers, Nature & Progrès film conference, Paris.

**— 13 novembre**

Contribution by J. François on the Duty of Vigilance law, mHRDD Seminar, Milan.

**— 15 novembre**

Contribution by L. Chatelain at the conference «Turning Down the Heat» organised by MiningWatch, Ottawa.

**— 21 novembre**

Contribution by S. Cossart, Ariadne Webinar organized for foundations.

**— 21 novembre**

Hearing of L. Chatelain at the National Assembly, on the bill on the creation of a public certification of social and environmental performance of companies and experimentation of a 21<sup>st</sup> century accounting.

**— 25 novembre**

Contribution by S. Cossart on the Duty of Vigilance law and Samsung case, United Nations Forum on Business and Human Rights, Geneva.

**— Du 4 au 5 décembre**

Contribution by C. Gonzales: «Innovative approaches to establish liability of companies», seminar on strategic litigation organised by SOMO, ActionAid, BothENDS, Clean Clothes Campaign, Milieudefensie, and the Transnational Institute, Amsterdam.

## The team

The association brings together committed jurists, lawyers and specialists with diverse profiles and international experiences. Sherpa also operated thanks to the commitment of its 8 administrators and the generous

support of our volunteers, whom we warmly thank. Special thanks to the six talented interns: Chanez Mensous, Karen Azoulay, Lisa Doumenjou, Julie Chantelot, Eugénie Denat and Claire Deniau.



**Sandra Cossart**  
*Director*

On November 1, 2017, Sandra became Sherpa's Executive Director. Before this position, she was the head of Sherpa's Globalisation and Human Rights department for 8 years. Sandra Cossart, an international lawyer, began her career in international organisations, such as the European Parliament and the Council of Europe, before working for several years in Moscow as head of a European Union cooperation project in Russia. She then joined a law firm where she practiced as a lawyer, advising and litigating while also being involved in refugee aid associations. In 2002, she moved to London and developed a consulting business for Russian companies before joining the Business and Human Rights Resource Centre. She joined Sherpa in 2010.



**Marie-Laure Guislain**  
*Head of litigation for the Globalisation and Human Rights department*

Lawyer by training she has worked in Argentina on economic and social rights in a human rights organisation, in the management of development projects and in the production of a documentary on migrants. In Colombia, she accompanied communities displaced as a result of the armed conflict, to protect their rights and natural resources before joining Sherpa in 2012.



**Laura Rousseau**  
*Head of the Illicit Financial Flows department*

A lawyer specialising in international and European law, she worked for four years in a major public institution on issues relating to the fight against money laundering and the financing of terrorism, as well as in the field of financial security as an analyst in a bank. She joined Sherpa in 2018.



**Simon Quet**  
*Fundraising, administrative and financial manager*

He has worked in the humanitarian sector for 7 years, mainly in the field of access to water and food, in South Sudan, Iraq and the Central African Republic. He joined Sherpa at the beginning of 2018.



**Clara Gonzales**  
*Litigation and communication officer*

With a background in law, she worked with the Tchadian victims in the Hissène Habré trial in Senegal, with Human Rights Watch, and then advocated for women's rights in France. She joined Sherpa early 2018.



**Lucie Chatelain**  
*Advocacy officer, Globalization and Human Rights Department*

Trained as a lawyer, Lucie has practiced international arbitration in a law firm in Paris. She has also worked with the United Nations Special Rapporteur on the situation of human rights defenders, while being involved with several associations for the defence of foreigners' rights. She joined Sherpa in February 2019.



**Jean François**  
*Advocacy Officer, Globalization and Human Rights Department*

Trained as a lawyer, Jean has worked for the association France Terre d'asile in running of accommodation and support centres for asylum seekers. He also contributed to the works of the Institute for Human Rights and Business. He joined Sherpa in May 2019.



**Franceline Lepany**  
*President*

After a career in labour law and having held several professional elective offices (CNB, Paris Bar Association), she is now an honorary lawyer. As part of her work with associations, she has also taken an interest in problems relating to trafficking in human beings through sexual exploitation (former president of the association Les Amis du bus des femmes) and labour (member of the Board of Directors of the Committee against Modern Slavery).

Board of directors:

**Franceline Lepany**, *President*  
**Laurence Sinopoli**, *Treasurer*  
**Sylvie O'dy**, *Secretary*

**William Bourdon**,  
*President-founder*

**Jean Merckaert**, *Member*  
**Eric Alt**, *Member*  
**Geraud De la Pradelle**, *Member*  
**Mireille Delmas-Marty**, *Member*  
**Chantal Cutajar**, *Member*

## Budget\*

2019 Resources: 781,791 €

Funding from foundations	754,084 €
Donations from individuals	22,108 €
Services provided	5,598 €

2019 Expenditures: 597,435 €

Programmatic expenditures	465,900 €
Operating expenses	131,534 €

\*Due to the COVID-19 epidemic, the 2019 figures could not yet be audited.

## Thanks to our partners

Sherpa warmly thanks those who make possible these successes, including:





In 2019, Sherpa, its team, its lawyers and its partners committed to working upstream of ever more numerous and devastating economic crimes, upstream of war crimes, environmental disasters, modern slavery and the misappropriation of state resources, by going step by step up the chain of production and responsibility of the most powerful economic actors: multinationals, financial intermediaries, senior officials...

In order to make these actors accountable, Sherpa initiates pioneering litigation, dusts away legal knowledge and catalyses the evolution of the legislative framework, so that it no longer protects the richest 1% of the world but the remaining 99%.

Multinationals flee from restrictive jurisdictions, but Sherpa takes them back there, using the same legal tools they use, appropriating commercial law to make it more protective, with our own means.

Our work is made possible thanks to foundations and partners, but also members, or individuals: they are the ones who enabled us in 2019 to obtain Samsung's indictment, call on Total to respect the law and its duties regarding climate change, and to continue to advocate for pioneering actions with a lasting impact.

Thanks for this support.

