Compelling multinationals to respect human and environment rights

Strengthening the civil liability of multinationals to facilitate compensation for victims

Preventing and sanctioning environmental violations

Fighting corporate capture and multinationals’ influence strategies

Holding corporations liable for international crimes and fuelling armed conflicts

Giving the victims of globalisation the resources to defend themselves

Fighting against predatory practices on resources in developing countries

Sanctioning the use of instruments facilitating illicit financial flows and developing the accountability of intermediaries and enablers

Protecting public debate

Facilitating access to information and ending opacity and secrecy

Fighting SLAPP suits and protecting whistleblowers

Strengthening the legal action of associations

Focus on: Capacity Sharing

Our Organisation

Communication and publications

Transparency

Alongside Sherpa

Team
For 20 years, Sherpa has been initiating innovative strategic litigation for an effective legal framework that protects the environment, communities and workers by strengthening the accountability of economic and financial actors.

Convinced that sharing knowledge and experience can help prevent and fight economic crimes, Sherpa has developed capacity sharing activities alongside strategic litigation. Through a map, Sherpa wants to look back at all the litigations and capacity-building actions developed by the association since its creation. It is also an opportunity to highlight news for 2022.
Capturing the essence of a year in a few lines is always a challenge. For more than 20 years, Sherpa has been working relentlessly against a globalisation that is ever faster and more destructive of human beings and the planet, fuelled by the impunity of multinationals and financial actors. In a singular political and economic context, troubled by the war in Ukraine and conscious of the climatic and environmental emergency, Sherpa continues to combine legal actions, advocacy, legal research, and sharing of expertise, to meet the challenges of today and tomorrow.

Indictment of Vinci Construction Grands Projets for its activities in Qatar, confirmation of Lafarge’s indictment for complicity in crimes against humanity in Syria, a landmark victory against Bolloré alongside Cameroonian communities, and a positive decision against business secrecy... Sherpa’s judicial successes in 2022, sometimes after more than a decade of litigation, have only strengthened our commitment. 2022 was particularly marked by Rifaat al-Assad’s conviction, uncle of the dictator in power, in the case of Syrian ill-gotten assets. A historic decision that allowed Sherpa to highlight the difficult restitution of assets to despoiled populations.

It is indeed through the courts that multinationals and financial actors must answer for their actions. This is why Sherpa has taken action against Yves Rocher, for the respect of workers’ fundamental rights, against Perenco, a little-known French oil company with disastrous impacts, and against French arms companies, despite the huge difference in resources and power.

We are far from seeing the necessary binding measures at the national, European or global level to regulate these new giants. Sherpa has therefore continued its advocacy work, for an ambitious European duty of vigilance, as well as for the regulation of lobbying in France, a subject at the centre of the news following various media revelations. Finally, by transmitting our knowledge and sharing our experience, Sherpa aims to go beyond borders to ensure that everyone can have the key to access to justice.

With your support, members and donors, Sherpa will not give up, despite the obstacles, whether they come from the State or from economic actors. Beyond our actions and close to the needs, we are acting every day, in the face of climate change, resource grabbing, shrinking of democratic debate and attacks on fundamental freedoms, to allow the emergence of new models of society respectful of human rights and the environment.
**COMPPELLING MULTINATIONALS TO RESPECT HUMAN AND ENVIRONMENT RIGHTS**

The impunity of economic actors requires a legal framework that guarantees social and environmental justice in a globalised context, thanks to the recognition of their legal responsibility.

Sherpa denounces the loopholes of the existing law, which facilitates strategies to avoid responsibility, as companies transfer the human rights and environmental abuses caused by their activities to countries where rights are not respected, while claiming to have ethical and sustainable practices.

Sherpa’s actions aim to strengthen the civil and criminal liability of parent companies and instructing companies when it comes to human rights, social and environmental abuses that result from their value chains. These strengthened corporate obligations must be accompanied by reforms to facilitate access to justice for foreign victims and enable them to claim their rights.

Aware that these legal changes will only take place in a paradigm where protection of fundamental rights and the environment takes precedence over the private and lucrative interests of economic actors, Sherpa is working to counteract the influence strategies of companies, in order to restore the place civil society deserves in the democratic debate.

**STRENGTHENING THE CIVIL LIABILITY OF MULTINATIONALS TO FACILITATE COMPENSATION FOR VICTIMS**

Sherpa continues to work to strengthen the civil liability of companies and thus facilitate access to compensation for victims of human rights and environmental violations.

After having long advocated for the adoption of a law on the duty of vigilance for parent companies and instructing companies, which was promulgated in March 2017, Sherpa is working to ensure the effective implementation of its provisions and to raise awareness among its partners so that they take up the issue. Sherpa is actively leading this battle in courts by taking up litigations to ensure that victims have access to justice and reparation.

Sherpa is also working for the adoption of binding legislation at European and international levels, and is working closely with its European partners to encourage the adoption of an ambitious European directive on vigilance duty.

**Implementation of the duty of vigilance law**

**DUTY OF VIGILANCE RADAR**

The duty of vigilance radar (www.plan-vigilance.org), an initiative launched by Sherpa and CCFD-Terre Solidaire in 2019, aims to contribute to the monitoring of the implementation of the duty of vigilance, by publishing a non-exhaustive list of companies subject to the law and compiling their vigilance plans and a follow-up of ongoing cases. For the 2022 edition, our organisations have updated the vigilance plans of companies identified in previous years and added a description of legal actions taken since the 2021 update.

This work exposes both the opacity of information relating to corporate groups, the loopholes in the law’s enforcement criteria, and the position of many companies, which perceive the duty of vigilance as an administrative formality that they could carry out as they please.
Compelling multinationals to respect human and environment rights

Sherpa

→ FACTS
Cattle ranching is the main cause of deforestation in South America, especially in Brazil and Colombia. This activity also has consequences in terms of human rights, as cattle farms encroach on the territories of indigenous populations and frequently use forced labour. The Casino Group is the leader retailer in Brazil through its subsidiary GPA and in Colombia through Grupo Exito.

In June 2020, based on samples of beef sold in Casino supermarkets in Brazil, Envol Vert identified several farms responsible for deforestation and indigenous land grabbing in the group’s beef supply chain.

→ SHERPA’S WORK
After a formal notice in September 2020, the coalition of associations and organisations representing indigenous peoples took Casino to court in March 2021 for failure to comply with its duty of vigilance. The coalition accuses the company of not having implemented the necessary preventive measures to ensure that the beef sold by its subsidiaries does not come from farms that have contributed to the deforestation of the Amazon rainforest, the appropriation of indigenous territories and to forced labour. The coalition requests the court to order Casino to take the necessary measures to exclude beef linked to deforestation and land grabbing of indigenous territories from its supply chain in Brazil and Colombia, and seeks compensation for the damages suffered by the indigenous peoples.

In March 2022, although Casino had initially raised an exception of lack of jurisdiction, requesting the case to be brought before the Commercial Court, the Judicial Court took note of the new provisions of the Code of Judicial Organisation which entrusts litigation based on the duty of vigilance to the Paris Judicial Court, and therefore transferred the case.

In June 2022, the Pre-Trial Judge proposed to the parties to enter into mediation. Following the first mandatory meeting with the appointed mediators, the organisations announced in December their refusal to engage in mediation. For the coalition, this case must be the subject of a public debate and of a legal decision in accordance with the legal provisions. It cannot be resolved by a negotiated solution behind closed doors, and even more so in a confidential manner.

YVES ROCHER - TÜRKİYE


PARTNERS: ActionAid France, Petrol-Iş

→ FACTS
A subsidiary of Groupe Rocher, Kosan Kozmetik manufactures Flormar brand products in the industrial basin of Gebze, Türkiye. In 2018, Kosan Kozmetik dismissed more than 130 employees, mostly women, who had just joined the Turkish trade union Petrol-Iş and wanted to assert their rights regarding the working conditions described by the employees, including very low wages, exposure to harmful products in the absence of appropriate equipment, and allegations of discrimination against women.

→ SHERPA’S WORK
After a formal notice in April 2020, Sherpa, ActionAid France, Petrol-Iş and 34 former employees, in March 2022, took the cosmetics company to court for failure to comply with its duty of vigilance with respect to union freedom and fundamental rights of workers.

Sherpa, ActionAid France, Petrol-Iş and the former employees are asking the court to recognize that the Rocher group has failed to comply with its duty of vigilance, to enjoin it to take appropriate preventive measures, and to order it to compensate the damages suffered by the employees and by the union.

Advocating for a European duty of vigilance

Adopted in 2017 thanks to a long mobilisation of a coalition of associations, trade unions and MPs, the French law on the duty of vigilance is a world first that prompted the mobilisation of European civil society in favour of a European legislation. Sherpa, as a founding member, has contributed to the work led by the European Coalition for Corporate Justice (ECCJ) for the adoption of an ambitious directive.

After the publication in February 2022 of a directive proposed by the European Commission, Sherpa published an analysis underlining its concerns: this proposal tends to transform the duty of vigilance into a compliance exercise aiming at reinforcing the legal security of companies, to the detriment of the protection of the environment and of the rights of affected persons. Based on this analysis, Sherpa has continued to raise awareness among decision-makers and its partners on the importance of an ambitious European directive and to follow closely the negotiations over the coming months. At the end of 2022, Sherpa and its partners called on the French government which, in the discussions between Member States within the Council of the European Union, appeared to want to reduce the scope of the duty of vigilance.

All of these efforts were reinforced by the launch of the European campaign “Justice in Business” in September 2022, supported by more than 100 European civil society organisations and trade unions, including Sherpa, the Citizen Forum for Corporate Social Responsibility and ECCJ.
ENVIRONMENTAL AND CLIMATE DAMAGE IN THE FUTURE EUROPEAN LEGISLATION

With its European and French partners within the ECCJ and the Citizen's Forum for CSR, Sherpa has been advocating for the obligations of companies to be significantly strengthened when their activities affect the climate and the environment. In 2022, Sherpa published a position paper as well as a doctrine article analysing the flaws of the Commission’s proposal and offering specific recommendations concerning the definition of environmental damage included in the text, the nature of corporate obligations, and access to legal mechanisms to prevent this type of damage, which is difficult to repair once it has occurred. In coordination with the general advocacy for a European duty of vigilance, the team brought up these recommendations with its partners to MEPs and the French government.

Private international law adapted to the challenge of corporate accountability

By its very nature, the regulation of globalisation calls for recourse to the rules of international law, which, to be effective in protecting human rights and the environment, must be adapted and efficient. In March 2022, a draft codification of French private international law was submitted to the Chancellery. Within its legal laboratory, Sherpa has led a reflection in collaboration with academics specialised in the field to assess whether or not private international law is adapted to the challenges. This reflection has led to the drafting of doctrinal works in which Sherpa has formulated its recommendations, part of which was published in 2022.

Access to evidence and justice

For several years, Sherpa and Friends of the Earth France have been leading a legal battle against the French oil company Perenco, with the aim of gaining access to information held by the company that would enable them to assess its responsibility with regard to environmental damage denounced in the Democratic Republic of Congo (DRC).

In its decision in March 2022, the highest French jurisdiction ruled in favour of Sherpa and Friends of the Earth France. The Court of cassation refused to follow Perenco’s legal reasoning, which would have complicated access to justice and evidence for the associations. Sherpa rejoiced to see the case law concerning the assessment of the possibility for an association to take legal action in France in a transnational case was now clarified, even if the solution could be improved.

→ On the same subject: Perenco – Democratic Republic of Congo, p. 15
PREVENTING AND SANCTIONING DAMAGE TO THE ENVIRONMENT AND THE CLIMATE

In a context of climate and environmental emergency, Sherpa continues to develop its strategy and activities aimed at putting an end to the impunity of multinationals responsible for environmental damage and strengthening existing legal frameworks.

Sherpa is involved in innovative litigations against two French oil companies, TotalEnergies for the climate impact of its oil and gas products and Perenco for pollution in the Democratic Republic of Congo. The association has implemented a new strategy aimed at combating the financing of activities that damage the environment. Legal research also supported advocacy in the context of the revision of the Environment Crime directive and the draft directive on the duty of vigilance of companies.

After an initial victory in February 2021 regarding the jurisdiction of the Judicial Court of Nanterre, confirmed by the Versailles Court of Appeal in November 2021, the law on confidence in the judiciary granted the Paris Judicial Court exclusive jurisdiction to hear actions based on the duty of vigilance law. The Nanterre Judicial Court therefore transferred the examination of the action against TotalEnergies to the Paris Judicial Court in February 2022.

In September 2022 the coalition was joined by the cities of Paris, New York and Poitiers, and by Amnesty International France. TotalEnergies then put forward a large number of defences seeking to have the lawsuit declared inadmissible, once again delaying the case. Sherpa and its partners responded in February 2023 by asking the court to confirm the admissibility of the action and also filed requests for provisional measures to suspend new oil and gas projects in light of the emergency.

PERENCO - DEMOCRATIC REPUBLIC OF CONGO

LEGAL BASIS: Preparatory inquiries in futurum (article 146 of the Civil Procedure Code), civil liability (1240 and 1241 of the Civil Code) and compensation for ecological damage (1246 and following of the Civil Code)

PARTNER: Friends of the Earth France

→ FACTS

Perenco Group, the sole oil operator in the DRC, specialises in the optimisation of oil wells at the end of their lives, whether onshore or offshore. For years, the oil company has been implicated in numerous reports, investigations and interpellations by the Congolese Senate, local associations and international NGOs for serious environmental and health problems in the coastal region of Muanda, in the west of the DRC.

→ SHERPA’S WORK

Given the opacity of Perenco’s operations and organisation, Sherpa and Friends of the Earth France took an initial legal action using Article 146 of the Code of Civil Procedure, aimed at obtaining more evidence of the link between Perenco France and the companies operating locally in the DRC. In 2019, the associations were authorised to have evidence seized from the premises of Perenco France, but the company refused to execute the decision.
After a new request was rejected at first instance and on appeal on grounds concerning the jurisdiction of French judges and the applicable law in the event of an international dispute, Sherpa and Friends of the Earth France filed an appeal to the Court of cassation.

In March 2022, the Court of cassation ruled in favour of the associations, holding that the possibility for the associations to launch this action was decided according to the French law, not to foreign law.

Given the time elapsed since the first request for access to documents, the risk of losing evidence and the urgency of obtaining an end to and compensation for the damage caused, Sherpa and Friends of the Earth France, supported by the NGO Environmental Investigation Agency, have summoned Perenco to appear before the Paris Court of Justice in November 2022.

The organisations request that Perenco be ordered to compensate for the environmental damage caused in the DRC, under its civil liability. Sherpa and the Friends of the Earth France are also asking the court to force the company to take measures to stop the environmental damage and prevent further environmental degradation.

STRENGTHENING CRIMINAL LIABILITY OF MULTINATIONALS FOR ENVIRONMENTAL VIOLATIONS

As part of the revision of the European Union directive on the protection of the environment through criminal law, Sherpa has alerted MEPs to ensure that environmental violations committed by multinationals abroad could be sanctioned under criminal law. Sherpa had underlined the need for companies to be held accountable and to considerably increase the level of sanctions.

Sherpa has also established a partnership with students of the legal clinic of the University of Paris Nanterre on multinationals accountability for environmental damage committed abroad, whose work was completed in 2022.

→ On the same topic: Environmental and climate damage in the forthcoming European legislation, p. 12

HIGHLIGHTING THE IMPACT OF FINANCIAL ACTORS ON THE CLIMATE AND THE ENVIRONMENT

In 2022, Sherpa developed new activities to fight financing of economic activities that may impact the environment and the climate. Within a consortium of NGOs and Brazilian investigative journalists, Sherpa has worked on a project aiming at increasing the accountability of financial actors, first and foremost French banks, which finance companies in the Brazilian agro-industrial sector that supply themselves with beef from illegal deforestation.

→ On the same topic: Role of the financial sector and tax havens in deforestation, p. 34

FIGHTING THE INFLUENCE STRATEGIES OF MULTINATIONALS

Multinationals deploy influence strategies in a global, complementary and quite visible way. Whether it is to influence the elaboration of laws within the parliamentary circle, or public opinion via their CSR communications, they are organised to defend their interests and their image. To better circumvent the regulations that they try to thwart upstream through their lobbying actions, they also develop their own control tools downstream.

In 2022, Sherpa focused its efforts on four manifestations of this influence:

- fairwashing, by working to have it effectively prosecuted;
- voluntary initiatives, by using the law to make them binding;
- lobbying, by questioning its legitimacy and calling for a stricter control;
- audits, by alerting to their lack of reliability and reminding that it is essential that they do not replace the effective and continuous exercise of the duty of vigilance.
Fighting fairwashing

In 2022, with its partners, Sherpa continued its legal fight against fairwashing based on deceptive commercial practices.

**AUCHAN - BANGLADESH**

**LEGAL BASIS:** Deceptive commercial practices  
**PARTNER:** ActionAid France – Peuples Solidaires, Éthique sur l’Étiquette

**FACTS**  
In 2013, the collapse of the Rana Plaza in Bangladesh caused the death of more than 1,000 textile workers, trapped in a weakened building whose cracks were known by management. A tag from the In Extenso brand distributed by Auchan was found in the rubble.

**SHERPA’S WORK**  
Regarding the discrepancy between Auchan’s ethical commitments and the working conditions of the employees of its subcontracting companies, Sherpa alongside its partners filed a complaint against the company for deceptive commercial practices.

While no investigation has been carried out in Bangladesh due to the failure to obtain an international letter rogatory, and despite requests for additional investigations in France, which have remained unsuccessful, the courts dismissed the case in April 2022, arguing that there was insufficient evidence and that Auchan had resorted to verification audits. Sherpa and its partners appealed the decision. The dismissal was confirmed by the Court of Appeal of Douai in December 2022, the judges having considered that Auchan had taken sufficient precautions to verify the veracity of its communication.

The associations have appealed to the Court of cassation to contest, among other things, the sufficiency of the measures put forward by Auchan, namely the recourse to social audits and the signing of contractual clauses.

**SAMSUNG – CHINA, SOUTH KOREA, VIETNAM**

**LEGAL BASIS:** Deceptive commercial practices  
**PARTNER:** ActionAid France – Peuples Solidaires

**FACTS**  
NGOs, including China Labour Watch, through investigations by undercover workers in the factories, have published reports denouncing numerous violations of fundamental workers’ rights in Samsung factories in Asia: child labour, inhuman working conditions, lack of safety measures, etc.

**SHERPA’S WORK**  
Given the discrepancy between Samsung’s ethical commitments and these reports, Sherpa filed a complaint with a claim for criminal indemnification in 2018 against the multinational for deceptive commercial practices. In 2019, the investigating judge indicted Samsung Electronics France, the French subsidiary of the electronics giant, for deceptive commercial practices. Samsung argued that NGOs could not file a complaint under consumer law, the law that covers deceptive commercial practices.

In 2021, the investigating chamber declared the associations inadmissible, cancelling therefore certain procedural acts, including the indictment of Samsung. Sherpa and ActionAid took the case to the Court of cassation. In March 2022, the Court of cassation rejected their appeal, confirming at the same time the cancellation of the indictment of the electronics giant. Sherpa and its partners denounced this move to restrict associative legal action.

Strict control of lobbying

In 2022, Sherpa continued to raise awareness of the importance of stricter regulation of lobbying.

When the first scandals concerning working conditions in the value chains of some multinationals broke out several decades ago, they turned the situation to their advantage by publicly announcing “voluntary commitments”. However, these “commitments” are not binding and are therefore misleadingly named. Sherpa has experienced the inefficiency of voluntary measures developed by companies. This is why Sherpa’s position strategically favours the development of binding legal instruments, so that companies are really compelled to act.

Making “soft law” binding

In the wake of the Uber files and McKinsey scandal, in September 2022, Sherpa participated in the drafting of an op-ed within a collective of civil society organisations. The op-ed, published by Le Monde, called for regulation to restore balance to the public debate and to put the general interest ahead of private lucrative interests in the drafting of the law.

Then, under the proposed law aimed at regulating the government’s recourse to consulting firms, Sherpa formulated amendment proposals in support of an effective framing of these services, and recalled the need to take in parallel measures to stricter control lobbying. This work has led to the publication of amending proposals and of an analysis note revealing the widespread hold of multinationals and containing recommendations.
**BOLLORÉ – CAMEROON**

**LEGAL BASIS:** Forces execution of contractual obligations

**PARTNERS:** ReAct, GRAIN, FIAN-Belgium, Pain pour le Prochain, Synaparcam, FODER, SNJP, L’Amicale des Riverains d’Edéa

→ **FACTS**
Socapalm, the largest palm oil plantation in Cameroon and a subsidiary of the Belgian plantation holding Socfin, a company of the Bolloré Group, is the largest palm oil plantation in Cameroon. Its activities generate numerous tensions with the local communities. Their complaints include allegations of environmental degradation, land deprivation, health risks, undignified working and housing conditions.

→ **SHERPA’S WORK**
In 2010, Sherpa filed a specific instance with the French NCP of the OECD, in order to identify and remedy their breaches of the OECD Guidelines for Multinational Enterprises by the companies concerned. A mediation was opened under the French NCP between Sherpa and the Bolloré group, leading in 2013 to the conclusion of an “Action Plan” for the improvement of the living conditions of the communities affected by Socapalm’s activities.

As Bolloré had not fulfilled its commitments, Sherpa and its partners took the company to court to force it to implement the Action Plan, as a contract that has not been executed to date.

In 2020, the company Bolloré raised procedural objections, arguing that the NGOs’ action would violate the confidentiality applicable to the NCP mediation. In 2021, the Court of First Instance considered that the agreement resulting from a mediation conducted before the French NCP could be produced in court to seek compulsory execution. In June 2022, the Court of Appeal again rejected Bolloré’s request for nullity on this basis. As Bolloré has not appealed to the Court of cassation, the debates on whether or not it has complied with its commitments can finally take place.

**Condemning the development of self-regulation and its dangers**

Like its foreign partners, Sherpa observes that, in response to legal action seeking recognition of their liability for human rights and environmental abuses, multinationals brandish audit reports in order to avoid any legal liability. With its partners, Sherpa is raising awareness among decision-makers, in particular the European MPs in charge of drafting the European directive on the duty of vigilance, as well as among the general public about the inadequacy of social audits with regard to the protection of human rights and the environment. This unfitness has been documented for years by academics and civil society. Sherpa therefore keeps making the case that audits must not be considered, on their own, as sufficient evidence to establish that companies have respected their obligations of vigilance, and to exclude their responsibility.
HOLDING CORPORATIONS LIABLE FOR INTERNATIONAL CRIMES AND FUELLING ARMED CONFLICTS

Awareness of the potentially criminogenic nature of economic activity has been reflected in criminal law by the progressive incrimination of many offences related to business and by the recognition of the criminal liability of legal persons. However, there are still limits to the criminal liability of multinationals.

Indeed, when offences are committed abroad, jurisdictions are often reluctant to prosecute, and criminal law is still poorly adapted to the economic reality of corporations. By resorting to multiple subsidiaries and subcontractors in foreign countries, with which international judicial cooperation can be complex or even impossible, multinationals organise opaque value chains, thus guaranteeing their impunity.

Sherpa also denounces the limits that remain to bringing cases before national jurisdictions for foreign victims and the increasingly frequent recourse to negotiated justice, which is part of a worrying trend towards decriminalisation of business life.

Fighting impunity within value chains

National disparities in workers’ protection allow companies to set up systems of labour exploitation aiming to maximize their profit margins. Sherpa is working to raise awareness of the systemic nature of the problem and to bring criminal sanctions against these practices.

Based on innovative legal grounds such as concealment of international crimes, Sherpa works to ensure that the actors of globalisation can no longer evade respect for human rights.

CLOTHING COMPANIES – CHINA

LEGAL BASIS: Concealment of genocide, crimes against humanity, crime of trafficking in human beings in an organised gang, crime of aggravated bonded labour

PARTNERS: Collectif Éthique sur l’étiquette, The European Uyghur Institute

FACTS

Uyghurs are the target of systemic political violence by the Chinese government, which, under the pretext of fighting poverty, aims to put them under globalised social control. In addition to mass internment for ideological “re-education”, the government has instituted a vast system of forced labour, which also extends to other regions of China through government-sponsored labour transfer programs.

This policy and the crimes committed against the Uyghurs are documented by researchers, associations, and international organisations.

20% of the world’s cotton production originates from the Uyghur autonomous region. Many clothing companies are said to use cotton from this region or to subcontract part of their production to factories exploiting Uyghurs. They are suspected of marketing products made by forced labour of Uyghurs and thus of enriching themselves at the expense of human rights.

SHERPA’S WORK

In April 2021, Sherpa, its partners and a Uyghur plaintiff filed a complaint before the Paris Judicial Court against four multinational clothing companies – Inditex France, SMCP, Uniqlo France, and Skechers USA France – suspected of profiting through their commercial links from crimes committed against Uyghurs minorities.

A preliminary investigation into the concealment of crimes against humanity was opened in July 2021 and handed over to the Central Office to Fight Crimes against Humanity, Genocide and War crimes. Sherpa is continuing its research into the case.
Companies involved in armed conflicts

Sherpa seeks to mobilise and strengthen existing instruments in criminal law to combat the persistent impunity of multinational corporations for the commission of the most serious crimes, such as crimes against humanity, war crimes or genocide.

**LAFARGE – SYRIE**

**LEGAL BASIS:** Complicity in crimes against humanity and war crimes, financing terrorism, deliberate endangerment of others, work incompatible with human dignity

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

**FACTS**

In 2010, Lafarge opened a cement plant in northern Syria. The plant is then managed by a subsidiary, Lafarge Cement Syria, 98.7% owned by Lafarge.

As civil war broke out, Lafarge decided in 2012 to repatriate its foreign employees, while asking Syrian employees to stay to run the plant. In 2013, the Islamic State took over the northern Syrian territory. The risks for the employees increased. Arrangements worth at least €13 million were made between the company and several armed groups to keep the factory running. In September 2014, alerted to an imminent attack, the employees fled the factory by their own means, as no evacuation plan had been put in place by the company.

**SHERPA’S WORK**

In November 2016, following revelations in the media, Sherpa collected more than 200 documents, including testimonies by eleven former Syrian employees of the plant, and filed a complaint in France against Lafarge and several executives.

In 2018, one year after the judicial inquiry was opened, the company was indicted for complicity in crimes against humanity, violation of an embargo, financing a terrorist enterprise and endangering others’ lives.

In November 2019, Lafarge’s historic indictment for complicity in crimes against humanity was overturned by the Investigating chamber of the Court of Appeal.

In September 2021, the Court of cassation ruled that the indictment had been wrongly quashed and ordered the case to be referred to the investigating chamber, and confirmed in May 2022 Lafarge’s indictment for complicity in crimes against humanity.

This ruling confirms that a company suspected of having knowingly paid several million euros to a criminal organisation can be prosecuted for complicity in crimes against humanity, regardless of whether it acted in pursuit of a commercial activity. The judges also upheld Lafarge’s indictment for endangering the lives of its Syrian employees. Lafarge appealed against this ruling. It contested the jurisdiction of the French courts and criticised the Court of Appeal for applying French labour law to the Syrian employees. A new decision by the Court of cassation is expected in 2023.

Furthermore, following the decision of the Court of cassation interpreting restrictively the conditions of admissibility of associations, Sherpa reconstructed itself as a civil party by intervening in 2022 and is therefore once again a party to the case.

Lafarge case also illustrates the increasing use of negotiated justice. In October 2022, in separate proceedings in the US, the company pleaded guilty for supporting foreign terrorist enterprises, agreeing to pay a $778 million fine in order to avoid trial. In this context, Sherpa stressed the importance of holding a trial in France to allow the victims to be heard and obtain compensation.

**BNP PARIBAS – RWANDA**

**LEGAL BASIS:** Complicity in genocide, crimes against humanity and war crimes

**PARTNER:** Collectif des Parties Civiles pour le Rwanda, Ibuka association France

**FACTS**

While the genocide of the Tutsis was underway and an arms embargo against Rwanda had been established by the UN Security Council, BNP Paribas bank would have agreed to transfer in June 1994, $1.3 million from an account of its client, the National Bank of Rwanda (BNR), to the Swiss account of Mr. Eilers, a South African arms broker. This transfer would have allowed the purchase of 80 tons of weapons in the Seychelles, which were then flown to Goma in the Democratic Republic of Congo and then to Gisenyi in Rwanda, with the support of Théoneste Bagosora, a Hutu commander later convicted for genocide by the International Criminal Tribunal for Rwanda.

**SHERPA’S WORK**

In June 2017 Sherpa and its partners filed a complaint as a civil party against BNP Paribas for complicity in genocide, crimes against humanity and war crimes. This is the first complaint on these grounds against a bank.

In September 2017, a judicial inquiry was opened with the appointment of an investigating judge. Sherpa was heard as a civil party. As part of the investigation, the judge unsuccessfully asked the Malian authorities to question Théoneste Bagosora, who was in prison in Mali for genocide. Bagosora died in September 2021.

The judicial investigation is still underway, and Sherpa remains mobilised so that possible responsibilities can be established, by making requests to the magistrates. Sherpa is continuing its advocacy efforts to highlight the responsibility of financial institutions and investors in armed conflicts, and more largely in serious human rights violations.
Combating opacity and impunity in the arms sector

Global arms trade is still one of the deadliest activities in the world. Despite an Arms Trade Treaty regulating international transfers since 2013, French and European arms sales are still flourishing and continue to fuel the commission of serious human rights abuses, including violations of international humanitarian law and possible war crimes.

Existing legal framework shows that states authorise arms transfers in complete opacity, thereby giving a blank cheque to manufacturers who hide behind these authorisations and defence secrecy to pursue their trade, claiming complete ignorance of the abuses that may be committed.

DASSAULT AVIATION, THALES AND MBDA FRANCE – YEMEN

LEGAL BASIS: Complicity in crimes against humanity and war crimes
PARTNERS: Mwatana for Human Rights, ECCHR, Amnesty International France

FACTS
Numerous reports indicate that the Saudi-led coalition has committed serious violations of international law through air strikes with military equipment provided by other states.

Despite overwhelming evidence that since 2015 the coalition has carried out disproportionate and indiscriminate strikes against the civilian population in Yemen, French companies have continued to supply Saudi Arabia and the United Arab Emirates with war materiel, munitions and maintenance services worth more than €8 billion for the period 2015 to 2020. Dassault Aviation fighter aircrafts as well as missiles and guidance systems produced by Thales and MBDA France are reportedly being used by the coalition in the Yemen conflict.

In June 2022, Sherpa, Mwatana for Human Rights, and ECCHR, with the support of Amnesty International France, filed a complaint before the Paris Judicial Court against the arms companies Dassault Aviation, Thales and MBDA France. The organisations are calling for the opening of a judicial inquiry to shed light on their possible complicity in war crimes and crimes against humanity committed by the coalition in Yemen, due to their continued arms exports to Saudi Arabia and the United Arab Emirates.

The complaint also echoes the work of Sherpa and five other associations which in November 2019 filed an appeal with the Council of State following the rejection by the Paris Administrative Court of Appeal of a request to suspend French arms export licences to coalition countries involved in the war in Yemen. In January 2023, the Council of State rejected the appeal of the associations. The high jurisdiction refused to rule on the request for suspension of the arms export licences on the grounds that the decisions related to these licences fall within the scope of France’s international relations and as such are acts of government that cannot be examined by a judge. At the same time, the Council of State rejected the request to declassify the licences and the information that would enable an assessment of their compliance with France’s commitments. For Sherpa, this decision constitutes a new obstacle to the control of French arms sales, which is already hampered by the total opacity surrounding the granting of the licences.
Giving the victims of globalisation the resources to defend themselves

Illicit financial flows, particularly through corruption, money laundering and tax evasion schemes, have a considerable impact on the development gap and contribute to the diversion of essential resources from the most vulnerable populations. Every year, huge amounts of capital are illegally transferred out of developing countries, depriving them of resources that could be used to fund essential public services such as health and education, and weakening their financial systems and economies.

At the centre of the diversion of resources, tax and judicial havens play an essential role. Serving as black boxes, they absorb part of the flows and make the responsibility chain of the actors involved completely opaque.

These practices have serious consequences not only for social and economic development, but also for the political stability of already fragile countries. Illicit financial flows are an instrument of violence of globalisation on peoples, that is why Sherpa acts against these criminal and human rights abusing practices in order to give back to the victims the resources they need to live decently, and to defend themselves.

GIVING THE VICTIMS OF GLOBALISATION THE RESOURCES TO DEFEND THEMSELVES

Fighting illicit financial flows is a key element of development and poverty reduction policies. Illicit financial practices threaten the notion of general interest, affect the functioning of public services and fuel citizens’ distrust of governments.

Through its actions, Sherpa aims to make the economic actors who allow capital to flow out of Southern countries responsible and to return the embezzled sums to the looted states.

International corruption

Among the criminal charges against illicit financial flows at the international level, corruption is the perversion of a decision-making process for the corrupting person or organisation to obtain undue advantages through the complacency of certain political decision-makers.

Corruption leads to the diversion of public funds intended for public use to private expenditure, thereby jeopardising the fundamental principles of good governance and the financing of basic public services that are essential to the population. Corruption also taints the notion of public interest, fuels mistrust of governments and diverts wealth that should normally go to the people. The difficulty in identifying the victims of corruption, despite the numerous studies and work carried out by the OECD to demonstrate its direct social effects on the population, contributes to the idea of a “victimless crime” and feeds the feeling of impunity of political and economic decision-makers.

Combating predatory practices on resources in developing countries

NICOLAS SARKOZY AND OTHERS - LIBYA

LEGAL BASIS: Passive bribery, illicit financing of an electoral campaign, concealment of misappropriation of Libyan public funds, criminal association, bribery of a foreign public official (Airbus)

FACTS

The 2000s marked the return to grace of Muammar Gaddafi, previously ostracised by the international community for his autocratic methods and alleged links with terrorism. In August 2011, after several decades of undivided rule, Tripoli fell to rebel movements and Muammar Gaddafi was captured and assassinated in October 2011.

In 2012, Mediapart published the first revelations concerning the politico-financial affair known as the “Libyan financing of Nicolas Sarkozy’s campaign”. The former head of state is suspected of having illegally financed his first presidential campaign in 2007 without declaration.

The investigation has also revealed acts of corruption committed by Airbus via its subsidiary in Libya and diverts wealth that should normally go to the people. The difficulty in identifying the victims of corruption, despite the numerous studies and work carried out by the OECD to demonstrate its direct social effects on the population, contributes to the idea of a “victimless crime” and feeds the feeling of impunity of political and economic decision-makers.
**SHERPA’S WORK**
In April 2013, a judicial investigation was opened against X on charges of corruption, misuse of corporate assets, forgery, money laundering, concealment and complicity in these offences. Sherpa filed a civil suit in June 2013. In September 2020, after requests for nullity from the Sarkozy clan, the Investigating Chamber of the Paris Court of Appeal confirmed Sherpa’s admissibility. In October 2020, Nicolas Sarkozy was indicted for criminal association.

In December 2021, the Court of cassation reconfirmed the admissibility of Sherpa.

In December 2022, the Paris Judicial Court validated the CJIP concluded between Airbus and the National Financial Prosecutor’s Office concerning the corruption facts. Sherpa submitted a Priority Question of Constitutionality (PQPC) to raise questions about the conformity of certain aspects of the CJIP with constitutionally guaranteed rights and freedoms, and in particular, the insufficient rights granted to victims under this mechanism. The president of the court refused to transmit the PQPC to the Court of cassation for examination, on the grounds that the law does not provide for victims to be parties to CJIPs, either during the negotiation or the validation. The decision highlights once again the problematic nature of this mechanism, which effectively excludes the victims of corruption, depriving them of the ability to assert their rights equitably and in particular to receive fair compensation for their damages.

**SBM OFFSHORE – INTERNATIONAL**

**LEGAL BASIS:** Corruption, money laundering and concealment

**FACTS**
In 2014, whistleblower Jonathan Taylor, former legal director of SBM Offshore, a Dutch oil services group based in Monaco, denounced an international network of bribes paid by his former employer to obtain oil contracts. Numerous investigations have been launched around the world following these revelations.

**SHERPA’S WORK**
In March 2022, Sherpa submitted a request to the National Financial Prosecutor’s Office to open an investigation for corruption, money laundering and concealment into SBM’s offshore activities in order to shed light on the involvement of French figures in widespread corrupt practices allegedly employed by the multinational in most of the zones where it operated.

**BOLLORÉ – TOGO**

**LEGAL BASIS:** Bribery a foreign public official and breach of trust

**PARTNER:** Anticor

**FACTS**
In 2013, a judicial investigation was opened against companies of the Bolloré group, suspected of having financed the re-election of the President of Togo, Faure Gnassingbé, through a subsidiary of the group, which reportedly under-invoiced its services. In exchange, the African leader allegedly allowed Vincent Bolloré to acquire the concession of the port of Lome, the only deep-water port on the West African coast.

In February 2021, Vincent Bolloré and two other executives involved pleaded guilty to active bribery of a foreign public official and complicity in breach of trust in Togo and agreed to pay a fine, of €375,000 each, in a court appearance on prior admission of guilt. The procedure was not approved by the judicial court, which considered the facts too serious. For these same facts, the Bolloré SE company, benefited in 2021 from a CJIP under which it will have to pay a fine of €12 million, thus avoiding other criminal sanctions.

**SYRIE ILL-GOTTEN ASSETS – SYRIA**

**LEGAL BASIS:** Concealment of embezzlement of public funds, corruption, aggravated laundering in organized crime

**FACTS**
A former head of the Republican Guard who was involved in the 1982 massacre in Hama, Rifaat al-Assad, is said to have a fortune estimated at a minimum of €160 million, which cannot be explained by his salaries and remuneration received in the context of his political and professional activities known to date. His various properties would be scattered between Paris and Bessancourt in the Val d’Oise. All or part of these assets are likely to be the product of illicit acts of corruption and embezzlement of public funds.

**SHERPA’S WORK**
In July 2011, Sherpa and Transparency International France filed a complaint against Rifaat al-Assad and twenty other people. After the case was dismissed a few months later, the two associations filed a second complaint in September 2013 with constitution of a civil party, which led to the opening of a preliminary investigation. Rifaat al-Assad was indicted in June 2016, his French assets worth €30 million were also seized by the courts. In June 2020, Rifaat al-Assad was sentenced in the first instance to 4 years in prison and the confiscation of all his assets seized on French territory, in particular for laundering in an organised gang of misappropriated public funds in Syria. In September 2021, the Court of Appeal confirmed the sentence.

In September 2022, the Court of cassation confirmed this decision, and the assets held by Rifaat al-Assad in France seized during the proceedings were definitively confiscated. Approximately €90 million are to be returned to the Syrian population, as provided for in the law adopted in July 2021 in France, creating a pioneering mechanism for the restitution of assets derived from corruption.

Sherpa published an op-ed on this historic case and on the challenges related to the restitution of stolen assets.

**Negotiated Justice – Judicial Agreement of Public Interest (CJIP)**

In 2022, negotiated justice developed exponentially through the implementation of CJIP benefiting companies that would recognise financial or related offences. Since its introduction in the French law in 2016, Sherpa has denounced this instrument on numerous occasions, underlining its non-dissuasive character, and the risk that it will be misused to create a parallel criminal liability regime for companies.

Sherpa, in line with the opposition to the principle of negotiated justice, joined a group of journalists and anti-corruption associations in an op-ed published in Le Monde concerning the CJIP concluded by LVMH-Moët Hennessy-Louis Vuitton (LVMH), which enabled the luxury company to avoid a trial by paying a cheque for €10 million after having had the newspaper Fakir spied on. This agreement has very worrying consequences: the acts of espionage recognised by LVMH go far beyond the simple financial offences that are the only ones covered by this procedure, which opens the way to an arbitrary interpretation of the concept of related offences by the courts.

**Embezzlement**

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The deprivation of resources in developing countries is made possible by the action of financial intermediaries and the existence of tax and judicial havens that allow the laundering and concealment of the illicit origin of funds.

Tax and legal havens offer economic actors, both individuals and companies, many services and advantages, such as banking secrecy, tax secrecy, easy company creation and a high degree of opacity, linked to the non-cooperative nature of these jurisdictions.

Opacity of tax havens and the complexity of money laundering and tax evasion schemes enable economic actors to conceal illegal profits derived from corruption and tax evasion.

The impact of these activities on the environment, social and gender justice is considerable. Activities of multinationals are largely facilitated by the intervention of financial and non-financial intermediaries such as the legal profession. Their central responsibility in laundering criminal activities and in the predation of the fiscal resources of states must be highlighted and fought.

Money laundering and concealment: intermediaries' liability

**LIBAN ILL-GOTTEN GAINS - LEBANON**

**LEGAL BASIS:** Corruption laundering, embezzlement
**PARTNER:** Collective Association of Victims of Fraudulent and Criminal Practices in Lebanon

→ **FACTS**
Since the mid-1990s, corruption has been intimately linked to the functioning of the Lebanese state. Corruption and the Ponzi scheme set up by Lebanese banks in agreement with the Central Bank of Lebanon are at the origin of the recent unprecedented crisis that benefited political leaders. Various organisations have gathered information about money laundering related to the outsourcing of capital during the autumn 2019 crisis. The suspicious conditions for the acquisition of real estate by private or public Lebanese officials were also raised.

Some of the officials are said to have held bank assets in France, in French banks and/or foreign banks with activities in France.

→ **SHERPA'S WORK**
In April 2021, Sherpa and the Collective of Victims of Fraudulent and Criminal Practices in Lebanon filed a complaint against X before the National Financial Prosecutor's Office for whitewashing fraud, deceptive commercial practices, criminal association, lack of justification of resources, laundering and concealment of bankruptcy, fraud, corruption, illegal taking of interest and embezzlement. After the opening of a preliminary investigation in June 2021, a judicial investigation was opened at the end of 2021. Sherpa and the Collective also launched a similar procedure in Luxembourg in December 2021.

In December 2022, a relative of the Governor of the Bank of Lebanon Riad Salamé was indicted for criminal association and money laundering.

**BGFI - DEMOCRATIC REPUBLIC OF CONGO**

**LEGAL BASIS:** Aggravated laundering of misappropriated public fund
**PARTNERS:** Mouvement Unis and Transparency International France

→ **FACTS**
“Congo Hold-up” is an unprecedented investigation carried out by nearly 100 journalists from 19 international media and 5 NGOs. After analysing millions of documents from the Banque Gabonaise et Française Internationale (BGFIBank), the investigation has revealed the murky role played by the bank and its subsidiary in Kinshasa, Democratic Republic of Congo, in the laundering of millions of euros of public funds embezzled by the regime of former president Joseph Kabila.
In February 2022, Sherpa, Transparency International France and the Mouvement Unis asked the national financial prosecutor’s office to open an investigation for money laundering, complicity in money laundering and complicity in financing terrorism, following recent revelations against BGFIBank - DRC for its central role in the embezzlement of at least $138 million from public treasuries for the benefit of former president Joseph Kabila’s clan. In July 2022, a preliminary investigation was opened for aggravated laundering of embezzling public funds.

Role of the financial sector and tax havens in deforestation

As deforestation in the Brazilian Amazon reaches its highest level in more than 15 years, Sherpa, Reporters Brasil, Disclose, Harvest and the Center for Climate Crime Analysis published a report in November 2022 showing that French banks continue to finance Brazilian agribusinesses with a proven record of deforestation in their supply chains, despite their recent commitments on investment and credit acceptance.

According to an analysis of more than 12,000 financial transactions between 2013 and 2022, French banks have supported the Brazilian agricultural sector, mainly soy and cattle farming, with more than €743 million. A large part of these transactions was channelled through tax and judicial havens, demonstrating once again the link between the use of tax havens and the destruction of the environment. Between 2000 and 2011, nearly 68% of foreign investment in the capital of the top 9 beef and soy suppliers went through these states. Banks must be held criminally responsible for financing deforestation.

Publicity and free access to registers of beneficial owners

As part of its efforts to combat money laundering, the European Union introduced a public register of beneficial owners in 2015. These registers are essential in the fight against money laundering, as they allow everyone to know the identity of the owners of companies and thus to shed light on hidden or illicit financial schemes. In November 2022, the Court of Justice of the European Union, in charge of controlling the conformity of Member States’ laws with European Union law, invalidated the free access to these registers, obliging States to restrict access to these registers to persons with a “legitimate interest”. According to the court, these registers would disproportionately infringe the right to privacy of the beneficiaries.

While all international organisations are urging States to strengthen financial transparency, this decision is an unprecedented step backwards.

At a time when the European Union is preparing to adopt a sixth anti-money laundering directive, Sherpa has been reflecting with the organisations of the Platform against Tax and Legal Havens, which carries out a collective work of expertise and advocacy on the measures to be taken to reduce financial opacity, fight effectively against tax evasion, promote greater regulation of capital mobility, lift banking secrecy and sustainably finance development. This work consisted in making proposals to States and European MPs to maintain, despite this judgment, an acceptable level of transparency regarding the identity of beneficial owners. Sherpa and its partners call on parliamentarians to give full access to the registers not only to journalists and NGOs, but also to academics, essayists and bloggers.
In addition to strengthening the obligations and liability regimes for multinationals, it is necessary to ensure that victims have effective access to justice to assert their rights. Unfortunately, within this context, there are many practical and legal obstacles to access to justice. They are both upstream and downstream of the referral to the courts.

Sherpa denounces the lack of transparency and access to information on multinationals as a major obstacle to the collection of evidence.

Besides being mobilised against gagging procedures, obstacles to freedom of expression, as well as threats to associations and rights defenders, Sherpa’s actions also aim to protect those who fuel the public debate on multinationals’ activities and accompany victims in their quest for justice.

**PROTECTING PUBLIC DEBATE**

**FACILITATING ACCESS TO INFORMATION AND ENDING OPACITY AND SECRECY**

Access to evidence is an inseparable part of the right of access to justice and to a fair trial. However, the lack of transparency and access to information about multinationals hinders the gathering of evidence about their activities and hampers their accountability.

Multinationals’ activities and the violations they commit are by nature largely hidden. This is due, on the one hand, to the private character of their activities and, on the other hand, to the fact that violations and infringements are kept at a distance within complex value chains. This opacity is reinforced by the legal protection given to various secrets such as business, tax and banking secrecy. Sherpa is fighting for the consecration and the protection of a right to information about companies.

As part of the preparation of a study on the links between multinationals and conflict minerals, Sherpa had requested in November 2019 from the Ministry of Ecological Transition the list of French companies subject to the EU Regulation known as the Conflict Minerals Regulation. This regulation notably imposes new due diligence obligations on companies that import a certain volume of gold, tin, tantalum or tungsten.

Despite a favourable decision by the Commission for access to administrative documents, the Administration refused to disclose the list, invoking business and customs secrecy. In 2020, Sherpa filed an appeal with the Paris Administrative Court to have this decision overturned and to require the Administration to disclose the list.

In November 2022, a first hearing took place before the Paris Administrative Court which later in the month ruled that the names of companies subject to the EU Conflict Minerals Regulation were not covered by either business or customs secrecy, in particular because of the transparency obligations in the Regulation. The court annulled the Administration’s refusal and ordered to communicate the list within two months of the notification of the judgment.

This judgment highlights the way in which the various legally protected secrets can guarantee impunity for companies by hindering access to information and evidence. It also underlines the limits of control by administrative authorities under new legislation aimed at regulating multinationals.

** MINISTRY OF ECOLOGICAL TRANSITION - FRANCE **

**LEGAL BASIS:** Appeal for annulment against a refusal to grant access to administrative documents
FIGHTING SLAPP SUITS AND PROTECTING WHISTLEBLOWERS

Freedom of expression and its corollary, the right to information, are pillars of democracy. Journalists, activists and whistleblowers therefore play a crucial role in using this freedom for the benefit of the whole society. Unfortunately, these actors, who normally contribute to the public debate on multinationals and help victims obtain reparation, are facing increasing attacks through laws and repressive tactics. Murders, violence and harassment against environmentalists and journalists, illegal surveillance of activists, reprisals against whistleblowers... these attacks on civic and democratic space are a worldwide phenomenon and France is no exception. Although France has adopted a general whistleblowers statute to protect them, it remains very incomplete. Moreover, gagging procedures, which aim to stifle freedom of expression through judicial intimidation, are frequently used by companies or institutions against rights defenders when they denounce their practices.

Using SLAPP suits to silence civil society

Gagging procedures consist of bringing or threatening to bring legal proceedings against people who legitimately exercise their freedom of expression. The purpose of these proceedings is not judicial victory but censorship and intimidation. They aim to hinder the ability of targets to intervene in public debate on issues of general interest and create a viral self-censorship effect within civil society. The Maltese journalist Daphne Caruana Galizia, who was investigating corruption scandals at the time of her murder, was the target of 47 defamation suits.

Sherpa, which has been the target of these practices on several occasions, created the “On Ne Se Taira Pas!” collective in France as early as 2017, alongside several partners, which aims to shed light on these practices, support targeted individuals and encourage reforms to end gagging lawsuits.

Sherpa is also a member of the Coalition Against SLAPPs in Europe (CASE). CASE is a coalition of more than 30 organisations calling on the European institutions to take action against SLAPPs, in particular through the adoption of a directive. It also seeks to strengthen the resilience of victims of gagging lawsuits through the provision of legal and other resources. In addition, the coalition is working to map the extent of the phenomenon in Europe to improve its understanding and visibility in the public debate. As a member of the Coalition, Sherpa follows throughout the year the activities and participates in working groups on legal aspects, campaigns, and advocacy. In particular, Sherpa participated in October 2022 in the European Anti-SLAPP Conference and in the first collective meeting of CASE in Strasbourg, to discuss the work of the Coalition and especially the proposal for a directive by the Commission. In April 2022, the European Commission published a proposal for a directive to combat “Strategic Lawsuits Altering the Public Participation”, accompanied by a recommendation to Member States.

In parallel, Sherpa and the Maison des Lanceurs d’Alerte ensure the coordination between CASE and the French network fighting against gag procedures. Sherpa and the Maison des Lanceurs d’Alerte have set up a legal working group at the national level, which includes jurists, lawyers, academics and journalists, and which provides food for thought on protection mechanisms allowing the fight against gagging procedures. The first meetings of the working group were held in December 2022 and a note deciphering the draft directive will be published in the first semester of 2023. Sherpa has also initiated discussions with the French government on the draft directive, with the Member States of the Council of the Union being seized at the same time as the Parliament, in accordance with the ordinary legislative procedure.
SLAPP SUITS AGAINST SHERPA – FRANCE

LEGAL BASIS: Defamation

FACTS
In March 2015, Sherpa filed a complaint for forced labour against entities of the Vinci group in relation to their construction activities in Qatar. In response to publications concerning the complaint, Vinci filed a defamation suit against Sherpa and two of its employees in April 2015. Vinci also filed a complaint for violation of the presumption of innocence, which was definitively rejected in 2016. The defamation lawsuit is still pending. Faced with the growing importance of the SLAPP suits in the public debate, the company, which initially asked for hundreds of thousands of euros in damages, dropped its demand in 2018 to a symbolic one euro.

SHERPA’S WORK
In 2022, Sherpa obtained to maintain the stay of proceedings previously granted, pending the outcome of the criminal proceedings concerning working conditions on construction sites in Qatar.

From whistleblowers to whistleblowing

Whistleblowers are individuals or organisations who reveal facts or behaviour that present a risk to the public interest. In the complex and opaque globalised economy, these individuals play a fundamental role in shedding light on the risks and violations of probity, fundamental rights, health or the environment linked to the activities of multinationals.

For Sherpa, legally enshrining the status and the protection of whistleblowers is an imperative to make companies accountable and to allow access to justice by facilitating access to information about them.

Sherpa is one of the co-founding organisations of the Maison des Lanceurs d’Alerte (MLA), created in October 2018. The association works to improve their protection in France. It accompanies them on a daily basis and mobilises policy makers and public opinion to make legislation change in their favour.

In March 2022, the law aimed at improving the protection of whistleblowers (known as the “Waserman” law) was definitively adopted. This law is the result of more than a year of advocacy and mobilisation to ensure an ambitious transposition in France of the European directive on the protection of whistleblowers adopted in 2019.

This law, which entered into force in September 2022, contains significant progress on the definition of whistleblowers and lifts some of the constraints that previously weighed on them. However, important loopholes remain, particularly with regard to public disclosure and protections in the transnational context. Moreover, the conditions for implementing the protection regime remain relatively complex, suggesting that whistleblowing will remain an obstacle course.

The MLA and its members thus stayed largely mobilised in 2022 to ensure the most ambitious possible implementation of the text and adequate support for whistleblowers, in particular with the publication in September 2022 of “Lancer l’alerte: guide à usage du lanceur d’alerte et de ses soutiens” (Launching an alert: a guide for whistleblowers and their supporters). The association also carried out several advocacy actions in the course of the adoption of the application decrees of the “Waserman” law, in particular a decree of 3 October 2022 on the procedures for collecting and processing whistleblower alerts and establishing the list of external authorities instituted by law of 21 March 2022 to improve the protection of whistleblowers.

As a member of the Administrative Board, of the Bureau and of the strategic orientation college of the MLA, Sherpa has actively followed the association’s work on this subject all along the year 2022.
STRENGTHENING THE ACTION OF ASSOCIATIONS

Considered by the European Court of Human Rights as “watchdogs of democracy”, associations play a key role in engaging citizens in the democratic debate and in making up for the shortcomings of the judicial system, in particular, to ensure the protection of victims or the environment. However, they are the targets of repeated attacks to criminalize or hinder their activities.

The increase in public discourse and legislation aimed at regulating or repressing the activities of associations and activists illustrates the growing hostility towards civil society. Another source of concern was revealed by the controversy surrounding the renewal of the anti-corruption ministerial approval of the associations Sherpa and Anticor. It relates to the restrictions imposed on the legal action of associations, particularly in criminal matters.

Institutionalised mistrust of associations

The recent law reinforcing the respect of the principles of the Republic, adopted in 2021, constitutes a strong example of such liberticidal drifts. Indeed, the law now makes the granting of public aid and accreditation to associations conditional on compliance with a “contract of republican commitment” with vague provisions. These provisions were strongly criticised, notably by the National Consultative Commission on Human Rights, which recommended that the contract be abandoned altogether. The Constitutional Council unfortunately remained deaf to these calls.

In spite of the climatic and social emergency, the civic space is thus severely challenged and the action of associations, whether in the street or in the courts, is thus strongly threatened.
Associations’ action before the criminal courts

Legal action of associations is an essential tool for access to justice and the fight against impunity in globalisation. Indeed, it makes it possible to initiate proceedings against the alleged offenders and to provide support to affected communities and individuals who encounter numerous obstacles in accessing French courts. In principle, the law also allows associations to take legal action to defend their statutory object, i.e. the causes they aim to defend, whether it be the fight against corruption, the defence of victims of international crimes or the protection of the environment.

However, there are increasing restrictions on the legal action of associations, particularly in criminal matters. Through the creation of a long list of legislative authorisations and accreditation systems, action of associations before the criminal courts has been strictly regulated, with consequences that are not very equitable for the associations and the victims they support. The resulting regime is also complex and unclear.

In 2022, Sherpa published an analysis note on admissibility of associations’ actions in criminal matters. Reviewing the current regime and its flaws, Sherpa formulated solutions that would simplify it and make it accessible to a larger number of associations, which is an imperative for advancing the fight against human rights and environmental violations.

This year, the association also had the opportunity to highlight the specific difficulties linked to the administrative approval system, when renewing its own anti-corruption approval (“agrément”), obtained in November 2022.

With a three-year duration, unsuited to judicial time, this administrative approval is delivered by the Minister of Justice, on vague criteria. Its issuance depends on a government decision, whereas it should mitigate the effects of the hierarchical submission of the prosecutor to the executive. This situation generates a significant risk of arbitrariness, undermines the legal security of the structures and jeopardises the continuity of their activities.

Sherpa also recalled that this mechanism, created in 2015, is a step backwards as previously any association whose purpose was to fight corruption could act against breaches of probity, without any limit as to the offences in question. At present, apart from the offences covered by this administrative approval, anti-corruption associations are no longer allowed to act on other grounds, even if they are part of their social purpose and are linked to a corrupt scheme.

Sherpa also participated in the construction of the database of the UNCAC Coalition’s working group on victims of corruption, by providing a detailed written analysis of the conditions of admissibility of citizens, associations and States in corruption cases. This analysis was published on the Coalition’s website in December 2022.

→ On the same subject: Lafarge – Syria, p. 24
→ On the same subject: Samsung – China, South Korea, Vietnam, p. 18
FOCUS ON: CAPACITY SHARING

Convinced that sharing experiences can contribute positively to preventing and combating economic crimes, Sherpa develops awareness-raising, exchange and training activities with its partners and supports some of them in their strategic litigation and advocacy efforts so that they can set up their own strategies to access justice, obtain redress and make economic actors accountable. The association also shares its expertise at the French, European and international levels, through contributions and interventions.

VIGILANCE PROJET – TOGO, BENIN, SENEGAL

Drawing on the experience of the legal caravans organised by the association between 2012 and 2014 in six West African countries, Sherpa has been implementing the Vigilance project since 2021, together with RSE et Développement France, RSE et Développement Togo, RSE Benin and La Lumière (Senegal), with the aim of “developing the capacities of civil society in Benin, Togo and Senegal to ensure that companies respect human rights and environmental law, and to enable the implementation of more protective public policies”. The project, supported by the Agence Française de Développement (AFD), is justified by the lack of supervision of economic actors, who are the source of environmental damage and human rights violations in these three countries.

In 2022, 30 civil society organisations from Benin, Togo and Senegal took part in training sessions on corporate responsibility with regard to human rights and environmental law. These training sessions crossed Sherpa’s expertise, notably on the French law on the duty of vigilance and on the construction of a binding law at the national and international levels, and that of experts specialised in the legal frameworks of the three countries. During the workshops, the participants have identified the most problematic sectors and companies and have analysed the needs for reform or effective application of the laws in force.

Three national networks are now being formalised to carry out advocacy for institutional actors, as well as awareness-raising activities for workers, communities affected by industrial projects, and journalists, with the support of Sherpa. A first day of reflection between civil society and Senegalese institutional actors took place in November 2022.

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OUR ORGANISATION
COMMUNICATION AND PUBLICATIONS

Thanks to its supports, Sherpa continues to reach historic milestones battles in the fight against corruption and human rights violations by companies. While communication spaces are monopolized by large corporations, Sherpa’s media visibility is important, because it allows not only the topics on which its team works to exist, but also the voice of the communities and victims we represent to be heard.

For the past few years, Sherpa has sought to make its voice heard as widely as possible, and has thus intensified its communication via its website and social networks. Within the framework of investigations or via ad hoc requests, Sherpa also works closely with the media, in France and internationally. Communication, which is now at the heart of the association’s actions, constitutes a real catalyst for its expertise and its advocacy messages.

SHERPA’S COMMUNICATIONS IN A FEW FIGURES

MORE THAN 500 MEDIA MENTIONS IN 2022 (print, TV, radio, etc.)

“...the first time a company is charged on this basis for one of its subsidiaries’ activities abroad,”

Sandra Cossart, Executive Director, in Reuters regarding Vinci Construction Grands Projets indictment for forced labour, reduction to servitude, working and housing conditions incompatible with human dignity, and the obtention of services in exchange for remuneration that is clearly unrelated to the importance of the work performed, 9 November 2022.

31 PRESS RELEASE

4 NEWSLETTERS SENT TO 12,300 SUBSCRIBERS

10 000 FOLLOWERS IN DECEMBER 2022 (+ 200 FOLLOWERS)

12 950 FOLLOWERS IN DECEMBER 2022 (+ 450 FOLLOWERS)

3 724 FOLLOWERS IN DECEMBER 2022 (+ 1,625 FOLLOWERS)

+ 80,000 VISITS TO SHERPA’S WEBSITE
+ 3,000 DOWNLOADS ON THE WEBSITE (focus on, analysis notes, press kit, etc.)
**PUBLICATIONS AND CONTRIBUTIONS**

**Publications**

**JANUARY 2022**

**FEBRUARY 2022**

**MARCH 2022**
- Anna Kiefer and Claire Tixeire, “Corporate complicity in crimes against humanity: the Lafarge Case”, Business & Human Rights Resource Centre

**APRIL 2022**
- Op-ed, “Panama Papers : 6 ans après des systèmes financiers toujours trop opaques”, Médiapart

**MAY 2022**
- Laura Rousseau and Nada Nabih, “Sustainability due diligence - draft directive on corporate disclosure”, Sherpa

**JUNE 2022**
- Op-ed, “Capture of international climate governance - Why have we gone backwards in the fight against corruption?”, Ecoyra and DG Home

**JULY 2022**

**AUGUST 2022**
- Sandra Cossart, conference, “Itf companies are accountable”, Syndex Europe & International

**SEPTEMBER 2022**
- Théa Bounfour, conference, “Corporate complicity in crimes against humanity: the Lafarge Case”, Sherpa

**OCTOBER 2022**
- Anna Kiefer, conference, “Corporate crimes and international criminal law: Moving beyond the Nuremberg Paradigm”, ECCHR, Asser Institute and Amnesty International

**NOVEMBER 2022**
- Lucie Chatelain, conference, “If companies are accountable”, Syndex Europe & International

**DECEMBER 2022**
- Théa Bounfour, conference, “Corporate complicity in crimes against humanity: the Lafarge Case”, Sherpa

**Contributions**

**JANUARY 2022**
- Lucie Chatelain, Dr Virginie Rouas, Esther Sebillotte, “A handbook for practitioners: Civil Liability for Human Rights Violations – France”, Bonavero Institute of Human Rights, Oxford University
- Lucie Chatelain, Laura Bourgeois, and Manolo Clearc’h-Chalony, “Projet de code de DIP – Un aperçu des enjeux pour la responsabilité des entreprises en matière d’atteintes aux droits humains et à l’environnement”, Dallaz

**FEBRUARY 2022**
- Lucie Chatelain, Laura Bourgeois, “Corporate complicity in crimes against humanity: the Lafarge Case”, Sherpa

**MARCH 2022**
- Lucie Chatelain, Dr Virginie Rouas, Esther Sebillotte, “A handbook for practitioners: Civil Liability for Human Rights Violations – France”, Bonavero Institute of Human Rights, Oxford University
- Lucie Chatelain, Laura Bourgeois, and Manolo Clearc’h-Chalony, “Projet de code de DIP – Un aperçu des enjeux pour la responsabilité des entreprises en matière d’atteintes aux droits humains et à l’environnement”, Dallaz

**APRIL 2022**
- Lucie Chatelain, Laura Bourgeois, “Corporate complicity in crimes against humanity: the Lafarge Case”, Sherpa

**MAY 2022**
- Laura Bourgeois, conference, “Corporate complicity in crimes against humanity: the Lafarge Case”, Sherpa
- Lucie Chatelain, Laura Bourgeois, and Manolo Clearc’h-Chalony, “Projet de code de DIP – Un aperçu des enjeux pour la responsabilité des entreprises en matière d’atteintes aux droits humains et à l’environnement”, Dallaz

**JUNE 2022**
- Lucie Chatelain, conference, “Belgium: accountability”, DCIP Watch

**JULY 2022**

**AUGUST 2022**

**SEPTEMBER 2022**

**OCTOBER 2022**

**NOVEMBER 2022**

**DECEMBER 2022**
To preserve its independence and carry out its missions, Sherpa is pursuing its strategy in resource mobilisation with a diversification of its sources of funding and an increase in its resources, in France and abroad. Since our victories are the fruit of work that spans several months, even several years, the long-term commitment of our donors represents an essential support for our action.

Operating expenses have slightly increased compared to 2021 due to inflation but still represent only 14% of total expenses which reflects Sherpa’s continuing policy of pooling operating costs.
**ALONGSIDE SHERPA**

Sherpa warmly thanks its members, donors and foundations who have made its actions and successes in 2022 possible. It is your donations that allow Sherpa to act and react independently; together we will succeed in shaping a fairer world.

For more than 20 years, Sherpa has been advocating for an effective legal framework that protects the environment, communities and human rights. In this fight led by Sherpa and its team, associations, unions or collectives working alongside us are essential.

Advocates for Community Alternatives
ActionAid France
Amicale des Villages Riverains de la Plantation Socapalm
Amnesty International France
Antico
Avocats Sans Frontières
Canopée
CCFD-Terre Solidaire
Center for Climate Crime Analysis
Centre for Research on Multinational Corporations
Cappeco
Coalition Against SLAPPs in Europe
Collectif des Parties Civiles pour le Rwanda
Collectif Éthique sur l’Etiquette
Collectif d’organisations de solidarité internationale et de mobilisation citoyenne
Coordination Sud
Coordination des Organisations Autochtones de l’Amazonie Brésilienne
Collectif En ne se taira pas
Collectif des Victimes des Pratiques Frauduleuses et Criminelles au Liban
Comité contre l’Esclavage Moderne
Daphne Caruana Galizia Foundation
Disclose
Envol Vert
Environmental Investigation Agency
Environmental Investigative Forum
European Center for Constitutional and Human Rights
European Coalition for Corporate Justice
Fédération des Peuples Autochtones du Mato Grosso
Fédération des Peuples Autochtones du Pará
Fian-Belgium
Forêts et Développement Rural
Fondation Grain
Forum Citoyen sur la RSE
France Nature Environnement
Greenpeace France
Harvest
HEKS – EPER
Ibuka France
Info Birmanie
Informer n’est pas un délit
Institut Ouighour d’Europe
Justice For Myanmar
Kirche Schweiz
L’Amicale des villages riverains de la plantation Socapalm EDEA
La Maison des Lanceurs d’Alerte
La Synergie Nationale des Paysans et Riverains du Cameroun
Les Amis de la Terre France
Les Eco-Maires
Les Mêmes Droits pour Tous
Mighty Earth
Mouvement UNIS
Mwatana for Human Rights
Notre Affaire à Tous
OECD Watch
ONG La Lumière
Organisation Nationale des Peuples Autochtones de l’Amazonie Colombienne
Petrol-Iiş
Plateforme contre les Paradis Fiscaux et Judiciaires
ReAct Transnational
Reporters Brasil
Reporters sans frontières
Ressource Naturelle pour le développement
RSE Bénin
RSE et Développement France
RSE et Développement Togo
La Synergie Nationale des Paysans et Riverains du Cameroun
Transparency International France
Service National Justice et Paix
ZEA

**AND LA FONDATION CHOISY CLUB**
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).

Sherpa brings together committed jurists, lawyers and specialists with varied backgrounds and international experience. Sherpa also operates thanks to the commitment of its 8 administrators and the generous support of its volunteers. Sherpa team would like to thank in particular its six talented and committed interns of 2022: Justine Cassar, Manolo Clearch-Chalony, Annabelle Dulac, Sabrina Fillion, Nada Nabih.

Board of Directors

Franceline Lepany, President
Gregory Regaignon, Treasurer
Evrino Serverin, Secretary
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Chantal Cutajar, Member
Laurence Sinopoli, Member
Julia Mello Neiva, Member
Jonathan Kaufman, Member
Gregory Regaignon, Member

Sandra Cossart
Executive Director

Before taking this position in 2017, Sandra led Sherpa’s Globalisation and Human Rights programme for 8 years. In this capacity, she played a pivotal role in developing the groundbreaking duty of vigilance law adopted in France in March 2017. She has simultaneously initiated and participated in the most innovative litigations in the fight against human rights violations by economic actors.

Sandra is an international lawyer and began her career within international organisations, before working for several years in Moscow as head of a European Union cooperation project. She then joined a business law firm, while being active in refugee aid associations. In 2002, she moved to London and developed a consultancy business before joining the Business and Human Rights Resource Centre. After eight years in England, she joined Sherpa in 2010. Sandra is a graduate of Science Po Paris, University of Paris 1 Panthéon-Sorbonne, College of Europe in Bruges, INALCO (in Russian) and the London School of Economics. Sandra is the author of numerous academic articles, press articles and op-eds, and a lecturer at Science Po Paris.

Sandra would like to pay a special tribute to Sylvie O’dy who passed away in November 2022. Member of its Board of Directors since 2020, she was an unfailing supporter of Sherpa’s work.
Kim Aumonier  
Project Officer – Capacity sharing

After graduating in Political Science and Economics (University of Paris I – Panthéon-Sorbonne) and International Relations (University of Paris III – Sorbonne Nouvelle), her studies first led Kim to work on the issue of transitional justice in Latin America. She then coordinated international solidarity organisations focused on the accompaniment and protection of victims of economic crimes and other human rights violations, in France and Guatemala, before carrying out a mission as a Protection Officer in South Sudan. Within Sherpa, she manages since 2021 a capacity sharing project constructed with civil society organisations from France and West Africa.

Tiphaine Beau de Loménie  
Advocacy and Litigation Manager – Civic Space

Within the team, Tiphaine works on the protection of civic space, including free speech and access to information in the digital era. She previously worked for the Permanent Mission of France to the UN in Geneva and assisted companies in their Corporate Social Responsibility initiatives within a consulting firm. She has a Master’s degree in Economic Law from Sciences Po Paris and holds the French CAPA. She also studied in the United States, at the UC Berkeley School of Law and lived in India for a year. It is after an experience as a litigation lawyer in a Parisian law firm that Tiphaine joined Sherpa in September 2020. She had previously joined Sherpa between 2016 and 2018, to work on the duty of vigilance law for parent companies and instructing companies.

Lucie Chatelain  
Advocacy and Litigation Manager – Civil Liability of Parent Companies

Prior to joining the team in 2019, Lucie was an associate in the international arbitration team of a law firm in Paris. She also worked for the United Nations Special Rapporteur on the situation of human rights defenders, while volunteering with several organisations involved in the defence of migrants’ rights. She holds a Master’s degree in Economic Law from Sciences Po Paris and a LLM in International Law from the University of Cambridge. She also studied in Brazil and in Ecuador, where she lived for a year.

Laura Bourgeois  
Advocacy and Litigation Officer – Corporate Influence Strategies

Before joining Sherpa in 2020, Laura practiced business litigation in a law firm of the Hauts-de-Seine Bar, focusing on civil procedure and private international law (conflict of laws). In addition, Laura has served in various operational and supervisory roles within Rotaract. She is a member of the UC Berkeley Comparative Equality and Anti-Discrimination Law Research Center and supports the EUCLID legal clinic at the University of Paris Nanterre. She holds a Master’s degree in International Litigation from the University of Paris Nanterre, and has also studied in England and California.

Théa Bounfour  
Advocacy and Litigation Officer – Environment

Prior to joining Sherpa in 2021, Théa worked for several years as a lawyer in environmental law. After a first experience in advising and defending companies on the development of renewable energy projects, she worked on litigation cases, notably before the French Council of State, for environmental protection associations in the fields of air pollution, biofuels, and urban planning. Meanwhile, Théa has taught administrative and environmental law at Sorbonne and Paris II universities and has been involved as a volunteer in environmental protection associations. She holds a Master II in environmental law from the Universities of Paris 1 and Paris 2 as well as a Certificate of Aptitude for the Legal Profession (CAPA).

Carmen Chaumet  
Development Manager

Before joining Sherpa in 2022, Carmen worked as a partnerships manager in Paris for a company in the social and solidarity economy sector. Prior to this, she volunteered in a fundraising project in Madagascar with a local NGO. She also worked in Germany as a project manager for an organisation conducting projects in the development aid sector, funded mainly by the European Commission. Carmen holds law degrees from the University of Cologne (LL.B.), the University of Paris I Panthéon-Sorbonne (Master), and an interdisciplinary degree in development aid from the University of Bath (Msc).
Jean-Philippe Foegle
Advocacy and Litigation Officer – Illicit Financial Flows

Before joining Sherpa in 2022, Jean-Philippe worked as a coordinator and then a lawyer and advocacy officer for an NGO dedicated to protecting whistleblowers. As such, he actively contributed to drafting and then passing the whistleblower protection system instituted by the “Waserman” law of March 22, 2022. Previously, Jean-Philippe held the positions of doctoral fellow and Temporary Teaching and Research Fellow at Paris Nanterre University, and Resident Fellow at the Information Society Project (Yale Law School). Simultaneously, he acted as a whistleblower protection expert for several international organisations (OIF, Council of Europe) on the issue of the protection of whistleblowers and was involved in several NGOS assisting exiled persons.

Anna Kiefer
Advocacy and Litigation Officer – Armed Conflicts and International Crimes

Prior to joining Sherpa in 2021, Anna worked at different organisations defending human rights through advocacy and litigation: first in the United States at a research centre on the death penalty worldwide, then in India with an NGO fighting bonded labour and trafficking, and lastly in the United Kingdom with a charity providing face-to-face support to refugees and migrants to remove barriers to their integration. Anna holds law degrees from the University of Cologne (LL.B.), the University of Paris 1 Panthéon-Sorbonne (Master), and Cornell Law School (LL.M.). She is admitted to the New York Bar.

Laura Rousseau
Advocacy and Litigation Manager – Illicit Financial Flows

Before joining Sherpa in 2018, Laura worked in the field of money laundering and terrorism financing prevention for an important public institution for four years as a legal expert specialized in international and European law. Prior to this experience, she worked as an analyst in the financial security sector for an investment bank and for an energy trading platform. Laura also acquired an extensive criminal litigation experience with a law firm in Paris.

Dorine Planté
Communications Officer

Prior to joining Sherpa in 2022, Dorine worked in a foundation dedicated to women’s rights. In addition, she has worked for charities in the same sector, as well as in a charity fighting HIV. Later, she developed her fundraising and event management skills in London, in an NGO committed to preventing and resolving deadly conflicts. After managing communications for a research project in a British university, she then worked for a French university foundation.

Dorine holds a master’s degree in political and Institutional Communication (Sciences Po Grenoble, Grenoble Alpes University).
*Sherpa