



Action Plan 2010-2012

Sherpa, a not-for-profit association governed by the law of 1901, was set up in 2001 to protect and to defend victims of economic crimes.

Sherpa uses the Law as a development tool and through its action; it aims at contributing to the concrete implementation of the Millennium Development Goals (MDGs).

CONTENTS

I. Strategic directions

1. Illicit financial flows and development	4
1.1 Work in progress.....	4
1.2 Objectives for 2010-12	7
2. Globalization and human rights	8
2.1 Work in progress.....	8
2.2 Objectives for 2010-12	10

II. Structural Development

1. Communication and public relations	11
1.1 Assessment	11
1.2 Communication strategy	11
2. Funding	12
2.1 Assessment	12
2.2 Financial strategy.....	12
3. Daily management	12
3.1 Assessment	12
3.2 Internal reorganization.....	12
4. Composition of the association - Governance	13
4.1 Assessment	13
4.2 Restructuring the Board of Directors.....	13

I. Strategic Directions

SHERPA's activities are divided into two programmes:

1. Illicit financial flows and development
2. Globalization and human rights

1. Illicit financial flows and development

Whether linked to corruption or to multinational corporations' tax evasion, illicit financial flows are a big part of the development issue. They reduce the amount of available resources for essential public services and worsen the burden of southern countries' debt.

As a consequence, most governments in developing countries fail to fulfil basic human needs.

SHERPA conducts campaigns that aim at denouncing these illicit financial flows.

1.1 Work in progress

1.1.1 Our Campaign: **Ill-gotten gains**

Many officials particularly in developing countries put personal gain before the good of the country. Supported by the banks and other financial intermediaries, these corrupt ruling elites pillage their country's resources and hide the stolen assets in the economies of the North. The name for this phenomenon is *kleptocracy* (from the Greek *klepto*, theft and *kratos*, power) and it constitutes a serious obstacle to development.

Article 51 of the United Nations Convention against Corruption (Merida Convention) establishes the restitution of illegal assets as a fundamental principle. While it is a laudable provision, the convention is State-centric: conceived *by States for States*. In other words, although the Merida Convention considerably strengthens the means to act to recover stolen assets, these means are only at the disposal of the legal entity of the victim State. What if the very ruling elites of this State are the very ones who are given to pillaging the resources of their country.

SHERPA intends to give victim populations, who are the first affected by this pillaging, the means to act. This is the rationale behind the launch of our "Ill-gotten gains" campaign.

In 2007, Antoine Dulin and Jean Merckaert from the CCFD, a French NGO, issued a report titled « Stolen Assets -Dictators' Wealth and Western connivance » which estimated the amount of stolen assets located in Western countries.

Following this publication, in March 2007, Sherpa, together with two other French NGOs, filed a legal complaint before the French Public Prosecutor against the ruling families of Angola, Burkina Faso, Congo, Equatorial Guinea, and Gabon alleging that they owned millions of Euros worth of properties in France that could not be the fruits of their official salaries.

In June 2007, a police investigation was launched in response to the complaint. It confirmed most of the allegations and further uncovered tens of millions of Euros worth of luxury properties and cars and hundreds of bank accounts belonging to the Heads of State, their family members and close associates.

Despite these very probing results, the court decided to dismiss the case on 7th November 2007 and our associations have battled ever since to launch a judicial inquiry and ultimately to return the embezzled assets to the victim populations.

1.1.2 Our Working Groups

→The association, in partnership with various associations from civil society, performs the dual task of reflection and pleading to prevent and fight illegal capital flight.

Currently, the association is focussing its efforts on the following *four themes*:

Merida Convention

On 9th December 2003, 114 countries signed the United Nations Convention against Corruption (UNCAC) in Merida. This is the first international anti-corruption instrument.

The convention considers all forms of corruption (laundering, abuse of power, influence trafficking etc.) by public or private figures, and also compels signatory countries to make the different forms it takes into penal crimes. The convention has provisions that are as much preventative as punitive in the fight against corruption. It organizes procedures in order to facilitate international cooperation and technical assistance. In particular, it is the first convention to establish restitution of illegal assets as a fundamental principal.

Alongside the UNCAC Coalition (<http://www.uncaccoalition.org/>), SHERPA is campaigning for the Merida Convention to be ratified and for its provisions to be implemented effectively.

Mining industries

The resources curse defines the paradox that sees countries and regions where there are abundant natural resources tend to have the weakest economic growth and worse development indicators than countries with few natural resources.

SHERPA wishes to reverse this paradigm and is campaigning in favour of transparency in the mining industry as part of the *Publish What You Pay* coalition (<http://www.publishwhatyoupay.org/fr>) - an international campaign to make mining companies publish the amount of taxes and royalties they pay to the governments of the states where they operate.

Financial opacity

According to a report by the Norwegian government on tax havens, almost 20% of deposits in tax havens originate from developing countries i.e. “a sum between 2 200 and 2400 billion dollars, or 30 times the amount the developing countries receive in aid.” (“Tax Haven and Development”, Commission on capital flight from developing countries, 2009).

Of course, tax havens are so attractive because of the banking secrecy, the impenetrable legal structures and their lack of judicial cooperation. They are the preferred locations to hide and/or launder criminal assets.

The fight against illegal capital flows will remain in vain as long as the scandal of offshore financial areas continues. Therein lies the importance of the struggle led by SHERPA within the *PFJ-Paradis Fiscaux et Judiciaires platform* (www.argentsale.org/)

The debt issue

Is it right for peoples in the South to bear the burden of debts which have enriched only the individuals in the corrupt elites?

While being against the principle of a total and unconditional debt cancellation, SHERPA sees this as a true development issue that demands an appropriate legal response. The association has furthermore devoted two studies to this question and published these in a work on the same theme: “How to Challenge Illegitimate Debt: Theory and Legal Case Studies”, Aktion Finanzplatz Schweiz, November 2009).

The association also campaigns within the *Debt and Development* platform (<http://www.dette2000.org/>).

1.2 Objectives 2010-12

Tax justice - Aware of the fact that illegal capital flight is not just the work of corrupt ruling elites, SHERPA wishes to launch a new campaign precisely to denounce fraud and tax evasion by multinationals, which are the main financial haemorrhages from the economies of the South, far ahead of corruption and criminal money.

2. Globalization and Human Rights

The European Commission defines Corporate Social Responsibility (CSR) as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (Green Book on Corporate Social Responsibility, 2001).

Such a position is insufficient to Sherpa which strongly advocates for the settlement of a comprehensive corporate accountability framework.

2.1 Work in progress

2.1.1 Our Campaign: **Resources and conflict**

The link between natural resources and conflicts is two-fold. First, as a much-needed asset, natural resources are the source of many conflicts that aim at controlling mining regions - and are therefore a key factor in assessing the risk of civil war in a given country ("On economic causes of Civil War", Collier, P. and Hoeffler, 1998). Second, as a source of wealth, the financial gain from exploiting natural resources can fuel continued conflict (i.e. buying arms and munitions, paying soldiers).

The situation then often arises where corporations profiteer from these conflict situations.

Sherpa is currently dealing with a case in Liberia addressing the role of European timber traders in fuelling the civil war (1989- 2003). Between 2001 and 2003, timber from Liberian companies directly linked to Charles Taylor was purchased, imported in France and distributed throughout Europe by DLH. During those years, DLH was purchasing timber from companies specifically targeted by several UN reports for their responsibility in human rights violations, breaching of UN arms sanctions, environmental destruction and corruption.

2.1.2 Our Working Groups

In partnership with various civil society organisations, SHERPA conducts advocacy campaigns with the aim to contribute to the implementation of a comprehensive legal framework for transnational corporations.

Hard Law

SHERPA wishes to strengthen the legal responsibility of multinational companies.

Since 2007, SHERPA has been an active partner with the *European Coalition for Corporate Justice* (ECCJ - <http://www.corporatejustice.org/?lang=en>) in drafting and promoting three proposals:

1. **Enhancing parent company liability:** parent companies should be held liable for their subsidiaries and the contractors which they have right to control, for environmental and human rights impacts;
2. **Require companies to have a Duty of care:** companies should take reasonable steps to identify and prevent human rights and environmental abuses within their sphere of responsibility;
3. **Require large companies to report on their environmental and human rights impacts and risks:** large companies should have clear standards to which they report risks and impacts of their activities within their sphere of responsibility.

In France, these proposals are promoted by the *Forum citoyen pur la RSE* (<http://forumcitoyenpouurlarse.org/>) and the *Alliance pour la Planète* (<http://www.lalliance.fr/>). SHERPA is an active member of those platforms; the association brings its legal expertise.

With respect to the advocacy work carried out at the national level, SHERPA also contributed to the writing of the texts relating to corporate governance introduced by the Law *Grenelle II*. The association is currently working with the Forum Citoyen pour la RSE and in collaboration with the state agencies involved, on the implementation decrees.

Soft Law

SHERPA also works to strengthen the soft law tools (standards, ethical charters, codes of conduct, etc.)

In particular, SHERPA is member of the *OECD Watch* (<http://oecdwatch.org/>) coordination committee which campaigns for the reinforcement of the OECD guidelines towards multinational companies. The association is currently working on the revision of these guidelines.

SHERPA also participated to the writing of the norm ISO 26000 and in particular to the chapter relating to human rights. Within the AFNOR, the association continues to participate to the debate surrounding its concrete implementation.

To support its advocacy work, the association carries out legal studies. For instance:

- “Guiding OECD principles towards multinational companies: A changing legal status” (On behalf of OECD Watch, June 2007)
- “Redefining Corporation - How can new EU corporate liability rules help?” (On behalf of the ECCJ, Sept. 2007)
- “Supply chain and responsibility” (On behalf of the ECCJ, Nov. 2007)
- “Proposals for European regulation on transnational companies and activities” (On behalf of CCFD-Terre solidaire, March 2009)

Sherpa also contributes to a number of publications. We might note in particular:

- “Commerce, Crime and Conflict: Legal remedies for Private Sector Liability for Grave Breaches of International Law- A Survey of sixteen countries” (FAFO report, Sept. 2006)
- “Corporate complicity and legal accountability” (International Commission of Jurists, Sept 2008)
- “What legal tools for an effective regulation of the activities of transnational companies?” (To be published in September 2010 into the collective work, I Daugareilh, (dir.) “Responsabilités de l’entreprise transnationale et globalisation de l’économie” Ed. Bruylant-LGDJ, 2010)

2.1.3 Our areas of intervention

To date, the association provides assistance to victim groups in the following areas:

Social Justice - SHERPA ensures the defence of workers whose working conditions fall below international standards as set out by the International Labour Organization (ILO).

→The association is currently giving its legal support to the AREVA miners in Gabon and Niger as well as to a collective of ex-COMILOG workers - a mining company belonging to the French multinational Eramet - who were made redundant without notice or indemnity.

Environmental justice - SHERPA provides legal assistance to communities whose environment and/or health are affected by the activities of multinational companies.

→The association is currently working on the social and environmental impacts of commercial oil palm tree plantations in southern Cameroon.

2.2 Objectives 2010-12

SHERPA wishes to launch a campaign on **Fair washing**. No matter how encouraging the proliferation of CSR standards may be, the fact remains that this has not led to a reduction in human rights abuses.

Furthermore, it appears that ever more multinational companies are profiteering from these soft law instruments in order to turn the ethical commitments they proclaim into sales arguments.

In SHERPA's view, these instruments are not *a-legal* meaning that the companies that infringe them should be held to account.

II. Structural Development

1. Communication and public relations

1.1 Assessment

→ Under the dual effect of success encountered on a large number of iconic projects (such as the *Biens Mal Acquis*, AREVA, ...) and partnerships that the association has formed with renowned organizations such as *Transparence International*, SHERPA's actions seem to be gaining greater visibility in the media. Moreover, the association has developed special relations with many journalists (particularly in the written press).

However, , it has come out that the public has had difficulty grasping specifically what our association does. This is mainly due to the very specific nature of SHERPA. In certain aspects, the association looks like a law firm; in other aspects it evokes a *think tank*, in such a way that it is not referred to the usual criteria of the NGO. We are, in fact, a combination of these three structures, which makes SHERPA a unique organization in the NGO landscape yet complicates our communication efforts at the same time.

Likewise, the media attention is currently too specific. As it happens, the litigation cases that SHERPA works on often take many months, even years, of effort, during which it is clearly impossible to communicate.

Communication constitutes an extremely important element, the sort that advances the causes that SHERPA defends on a daily basis. Besides, visibility in the medias could sustain SHERPA's funding research. It is an aspect that the association has neglected for a long time, but on which it intends to strengthen its abilities.

1.2 Communication strategy

The association intends to develop public relations. To achieve this, the association anticipates doing the following, among others:

- Revamp its website to make it more lively and also more accessible to the English-speaking public;
- Heighten its visibility on social networking site such as Twitter and Facebook;
- Revise presentation documents (brochures/leaflets);
- Create a biannual newsletter;
- Hold a meeting in conjunction with the release of the annual report that brings together members, financiers, as well as media partners;
- Organize events (colloquiums/seminars) open to the public.

2. Funding

2.1 Assessment

→The year 2009 was particularly difficult for SHERPA due to the withdrawal of a number of sponsors (themselves affected by the financial crisis). Consequently, the association was forced to part with six of its employees.

2.2 Financial Strategy

The difficulties encountered in 2009 allowed SHERPA to realize the need to diversify its financial resources in order to be less dependent on any of our sponsors. However, the task has not been easy since the financial possibilities are limited, due to the very specific nature of our activities (both very original and offensive). Sponsors who are prepared to form a partnership with SHERPA are in fact rare.

Convinced that the causes defended by SHERPA are likely to reach the largest number of people yet, the association intends to call on the generosity of the public as well.

3. Daily Management

3.1 Assessment

→Today, the permanent team includes three employees:

- The managing director also head of the program “Illicit financial flows “;
- The head of the program “Globalization and Human rights”;
- One researcher-administrative assistant.

3.2 Internal Reorganization

Although the team has been downsized, it is no less effective thanks mostly to the generous support of volunteers, interns, and attorneys working *pro bono*.

However, in order to fulfil the strategic directions that the association has set for the next three years, SHERPA expects to increase its permanent staff and to move forward by hiring three new employees: one legal advisor, one researcher and one communication officer.

The association expects furthermore to expand its network of *pro bono* lawyers.

4. Composition of the Association - Governance

4.1 Assessment

→The Board of Directors of SHERPA is only composed of jurists (attorneys, law professors, judges, etc...). This is easily understandable because the law is the driving force of the association, but the fact remains that the association wishes to broaden its horizons.

4.2 Restructuring the Board of Directors

SHERPA intends thus to rework the composition of its Board of Directors.

The association does not, however, have the capacity to manage memberships so that, to date and conforming to its statutes, the statute of membership is limited to sole physical persons that shall be distinguished by signal services rendered to the association and/or by their exceptional financial contribution.

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