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TAKE THE FUTURE

Shell’s Scandalous Deal for Nigeria’s Oil

26 November 2018

EXECUTIVE SUMMARY

A new analysis by world-class oil experts shows that Shell and Eni's deal for Nigeria's OPL 245 licence included very generous terms that deprive the Nigerian people out of nearly $6 billion in estimated potential revenues.

Shell and Eni's 2011 deal for the OPL 245 licence includes previously unreported terms that left Nigeria without any share of profits from oil produced to which it was entitled from the block, resulting in an historically poor deal for Nigeria.

An analysis carried out by oil experts at Resources for Development Consulting has evaluated the likely impact on Nigeria's revenue from the OPL 245 block over its lifetime.

This analysis reveals that the 2011 deal did not just hand the OPL 245 licence to Shell and Eni but hid hugely generous fiscal terms for the companies. The deal reduced the Government's expected revenue by an estimated US$5.86bn compared to the previous terms that had applied to the block.

Nigeria's most senior civil servant in the Department of Petroleum Resources protested the deal, calling it "highly prejudicial to the interests of the Federal Government". These concerns appear to have been ignored or overruled by Nigeria's ministers at the time, individuals who are now accused by prosecutors of receiving bribes from Shell and Eni's $1.1bn payment for the deal.

> "Highly prejudicial to the interests of the Federal Government."
>
> **– Director of Nigeria's Department for Petroleum Resources on the proposed OPL 245 deal, April 2011.**

Nigeria, one of the most oil-rich countries on the planet, has the world's highest number of people living in extreme poverty, at 87 million[1]. Eighty per cent of Nigerians live in poverty on less than $2 a day[2]. The projected lost revenue would be enough to fund Nigeria's combined Health and Education budgets for more than two years[3].

The 2011 deal for OPL 245, between Shell, Eni, Nigerian government officials and Malabu Oil and Gas, called for a "Production Sharing Agreement" (PSA) to be signed between only Shell and Eni's subsidiaries. This departs from the standard procedure of a production sharing contract (PSC) that is agreed between the contractor and the state, which in this case would have been the Shell/Eni consortium and the Nigerian government.

The exclusion of the Nigerian Government from the PSA resulted in the removal of a central feature of production sharing contracts, that a proportion of the oil produced, known as "Profit Oil", is allocated to the government.

The removal of Profit Oil means that the terms on which Shell and Eni produce oil are

Oil companies Shell and Eni are currently on trial in Milan, Italy for their part in a massive bribery scandal involving the OPL 245 oil block in Nigeria (Milan/October 2018/Global Witness)

very favourable to the companies. The International Monetary Fund recommends that mature oil producing countries receive 65% to 85% of oil revenues[4]. The current OPL 245 deal is projected to give Nigeria an historically poor share of just 41%.

The analysis shows why the Nigerian Government should revoke the OPL 245 licence rather than allow Shell and Eni to make enormous profits from their deal.

Shell emails reveal that company managers knew the description of their contract was deceptive and were concerned that the terms would be seen as unacceptable if they ever came to light.

Malcolm Brinded, Shell's then Head of Exploration and Production, told his fellow Shell board members "**this is no longer a PSC**" [original emphasis]. The companies nevertheless ensured that legislation applying to PSCs was applied to the block, resulting in the predicted poor returns for Nigeria. Shell and Eni also continued to represent the agreement as a "production sharing agreement" in the 2011 contracts through which they acquired the block.

Italian public prosecutors have put Shell, Eni and some of their senior managers – including Eni's current and former CEOs and Malcolm Brinded, Shell's former Head of Exploration and Production – on trial for corruption in the deal. Prosecutors allege that from the companies' $1.1bn payment, at least $520m was converted into cash and used to pay Nigerian public officials, including then-President Goodluck Jonathan, Oil Minister Diezani Alison-

Ex-President of Nigeria Goodluck Jonathan / Getty Images

Madueke and Attorney General Mohammed Adoke those these officials have not been charged in Italy. The trial continues and that Shell, Eni and the other defendants deny the charges.

Former Nigerian oil minister Dan Etete is also standing trial in Milan on charges of international corruption, while in Nigeria Etete and Mohammed Adoke are both facing charges of money laundering and conspiracy to commit corruption. Eni and a Shell subsidiary, together with several managers from both companies, have been charged in Nigeria with conspiracy to commit corruption[5]. The defendants have all denied wrongdoing.

Two intermediaries involved in the deal have already been found guilty of international corruption by a Milan court and sentenced to four-year jail terms. The court also ordered the seizing of more than US$120m held by them[6]. The Nigerian state is demanding damages from Shell and Eni as part of the Milan criminal trial. Nigeria's legal filings in a related lawsuit allege that the 2011 deal was a "corrupt agreement"[7].

This is the first time that a company as large as Royal Dutch Shell and such senior executives of a major oil company have ever stood trial for bribery offences.

The extractives industry has been dubbed the most corrupt on the planet by the OECD[8]. If those responsible for corruption in this case are properly held to account, this could help bring an end to shady deals that allow corrupt politicians and international companies to rob developing countries of their natural resource wealth.

Nigeria and the wider international community must ensure that contracts with extractives companies are fully disclosed to the public, as is already recommended by the Extractive Industry Transparency Initiative.

This new analysis shows the projected cost of this deal to ordinary Nigerians: citizens being starved of funds that could be used to fund healthcare and education. Nigeria must take action by cancelling this deal and removing the licence from Shell and Eni.

SHELL KNEW

Nigeria produces more than 1.5 million barrels of oil a day[9], but corruption is one reason why a third of its citizens live without running water and electricity[10].

In April 1998, Dan Etete, Nigeria's Minister of Petroleum during the dictatorship of Sani Abacha, awarded 100% of the control of the OPL 245 oil block to Malabu Oil and Gas, a company that he secretly owned[11].

Malabu had been created only five days earlier. The company had no experience, no assets and little cash. Just two months later, Sani Abacha died[12] and Etete lost his position of power. Nevertheless, he effectively still controlled the valuable OPL 245 licence, his shareholding hidden behind a fake name.

In 2001, Shell agreed to buy a 40% stake in the licence from Malabu[13]. Shell claimed it did not know of the link with Etete, telling the *Financial Times* years later: "Inspection of Malabu's company records as part of due diligence did not establish any connection between Dan Etete and Malabu."[14]

It has since emerged that Shell knew full well who it was dealing with. As far back as 2000, when Shell was first considering a deal over OPL 245, Shell executives discussed the names on the shareholders' register for Malabu, saying in leaked emails: "We will have to find out from Etete who is holding shares on his behalf."[15]

But before the deal was sealed, the new government revoked Malabu's licence. Etete and Abacha had abused their positions in the past, while in office, to award themselves the OPL 245 at a ridiculously low price, a presidential spokesperson reportedly said of the decision at the time[16].

Shell secured OPL 245 for itself in 2003, and put in place a production sharing contract between the company and Nigeria's state oil company, Nigerian National Petroleum Company (NNPC)[17]. Between 2003 and 2006, Shell drilled and explored the OPL 245 area and found two promising oil fields named Zabazaba and Etan[18].

Shell's control was short-lived. In 2006, despite Malabu's legal challenge to try to reclaim the licence having been dismissed by the courts, the Nigerian government arranged a settlement with Malabu returning the block on condition that Etete's company pay a $210 million signature bonus within a year[19]. The signature bonus – an upfront fee for the assignment of the license – was not paid for five years.

The FBI later traced $10 million from the 2011 deal for OPL 245 to the Attorney General at the time of the 2006 settlement, Bayo Ojo SAN[20].

The 2006 settlement with Malabu did not bring an end to the court battles. Shell proceeded to demand compensation and damages of $2 billion in the arbitration courts[21].

In 2007, Etete was convicted in France *in absentia* of laundering millions of dollars obtained through bribery, and was subsequently fined €8 million. The judgment in the court case found that Etete used the money to buy a twin-engine speedboat, a chateau in northern France and to settle bills from the Ritz[22].

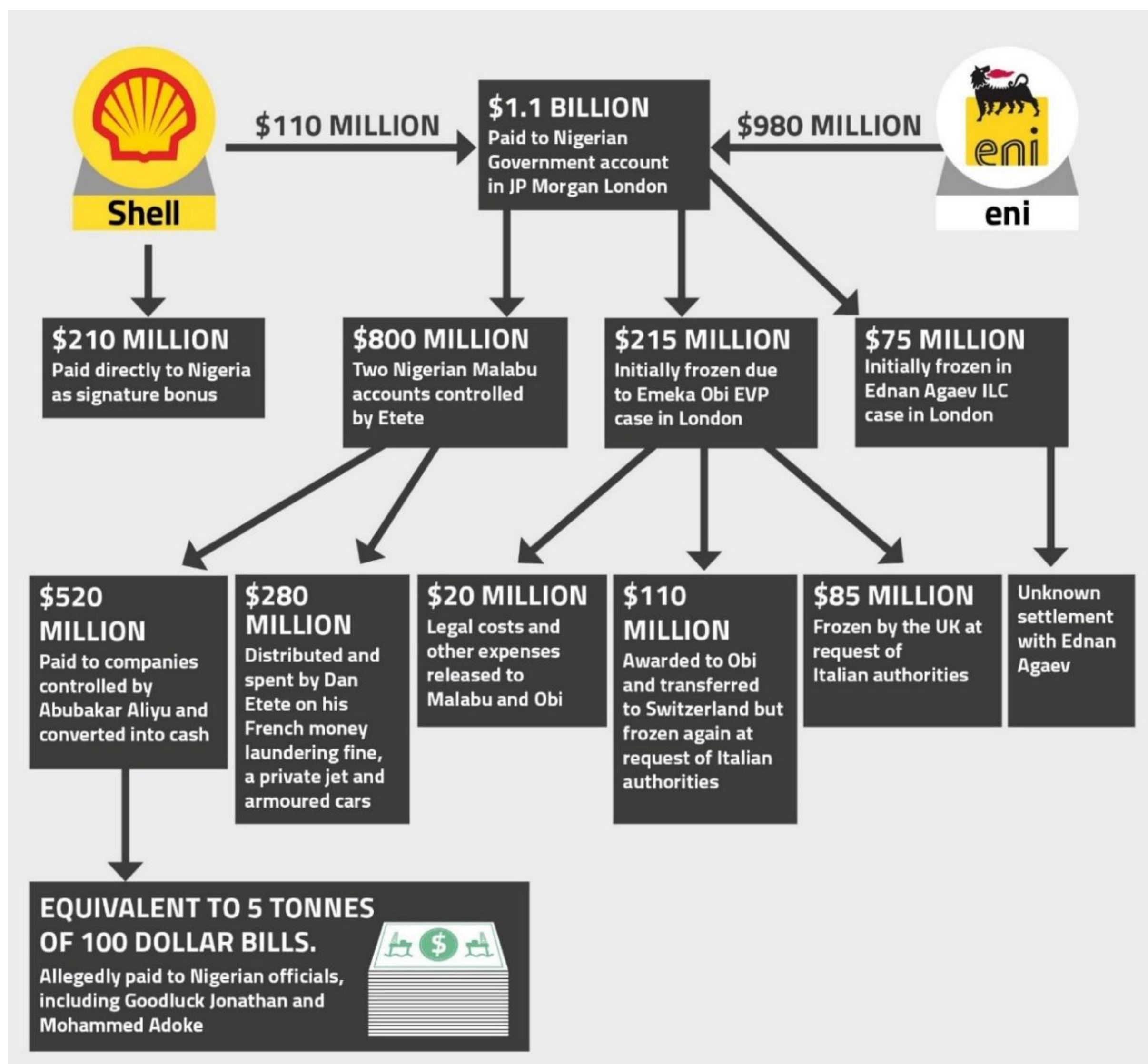
There were numerous warnings from Shell executives on the ground around the deal. In

2008, Simon Henry, Shell's Chief Financial Officer for Exploration and Production[23], and Malcolm Brinded, Head of Exploration, were told by their senior executive in Nigeria that the then oil minister was "involved (i.e. on the take)"[24]

In 2009, Shell Vice Presidents Peter Robinson and Ann Pickard were briefed that Etete would only retain a fraction of the money Shell was offering, as the "rest goes in paying people off"[25]

Etete later told an English court that he received $250 million out of the $1.1bn payment by Shell and Eni, a fee he justified by saying, "I put my blood, I put my life into this oil block."[26]

Etete further benefited from his connections to those in power in Nigeria. In July 2010, according to an internal briefing for Shell executives, Etete claimed that President Goodluck Jonathan had written a letter confirming that Malabu still held the block. This letter demonstrated Jonathan's support for Etete, strengthening his hand in the



Shell and Eni's $1.3bn payment for Nigeria's OPL 245 oil block in 2011 has been traced by authorities and is alleged to have flowed into a vast bribery scheme.

parallel negotiations he was having with Shell while they continued to fight in court over the licence.

Shell executives were briefed that the letter was: “clearly an attempt to deliver significant revenues to GLJ [Goodluck Jonathan] as part of any transaction”

Neither Goodluck Jonathan nor the oil minister “understand our legal position”, the briefing opined, adding “This is about personal gain and politics.”[27] This warning did not deter Shell and Eni from continuing their negotiations.

In November 2010, Nigeria’s Attorney General Mohammed Adoke took over brokering the deal, and hosted direct negotiations in his office with Shell, Eni, Malabu and Nigerian government officials sitting around the same table.

The parties soon came to an agreement: Shell and Eni would pay $1.1bn to Malabu via the Nigerian Government and Shell would pay the long overdue $210m signature bonus. Shell and Eni would construe the $1.1bn payment as being only to the Nigerian Government.

The Milan Public Prosecutor, in its December 2016 summary of findings, alleges that $520m of Shell and Eni’s payment was turned into cash. The cash – which would weigh five tonnes in $100 bills[28] – was “intended to be paid to President Jonathan, members of the government and other Nigerian government officials”. The prosecutor named the key ministerial decision makers in the OPL 245 deal as former Attorney General Adoke and former oil minister Diezani Alison Madueke[29]. These Nigerian officials have not been charged with any wrongdoing in Italy.

Former Nigerian oil minister Dan Etete is also standing trial in Milan on charges of international corruption, while in Nigeria Etete and Mohammed Adoke are both facing charges of money laundering and conspiracy to commit corruption.

Eni and a Shell subsidiary, together with several managers from both companies, have been charged in Nigeria with conspiracy to commit corruption[30].

The companies’ actions mean they now find themselves in the dock facing jail time while the company is in line for potentially enormous financial penalties.

All the defendants deny the charges and the Italian trial is ongoing. Shell and Eni’s responses to allegations against them can be found later in this report.

Mohammed Adoke responded through his lawyer emphasising that the President and other Nigerian agencies had agreed the 2011 deal and claimed that “he is not facing bribery allegations by the EFCC in Nigeria or in any other jurisdiction including the Italian proceedings as erroneously stated in your correspondence. For avoidance of doubt, our client was charged by the EFCC with other defendants for aiding the commission of money laundering offences. The Proof of Evidence presented by the EFCC in support of their charges did not disclose any allegation of bribery against our client but that he authorized payment of over $800 million to Malabu Oil and Gas Limited. Our client therefore views your questions and constant insinuations and portrayal of him as having been in involved in the collection of bribes as

an unjust attempt to malign and attract public opprobrium to him."

He additionally cited a 2018 Judgement of the Nigerian High Court that ruled that he could not be "held personally liable for discharging the functions of his office by carrying out such lawful directives of the President"[31]

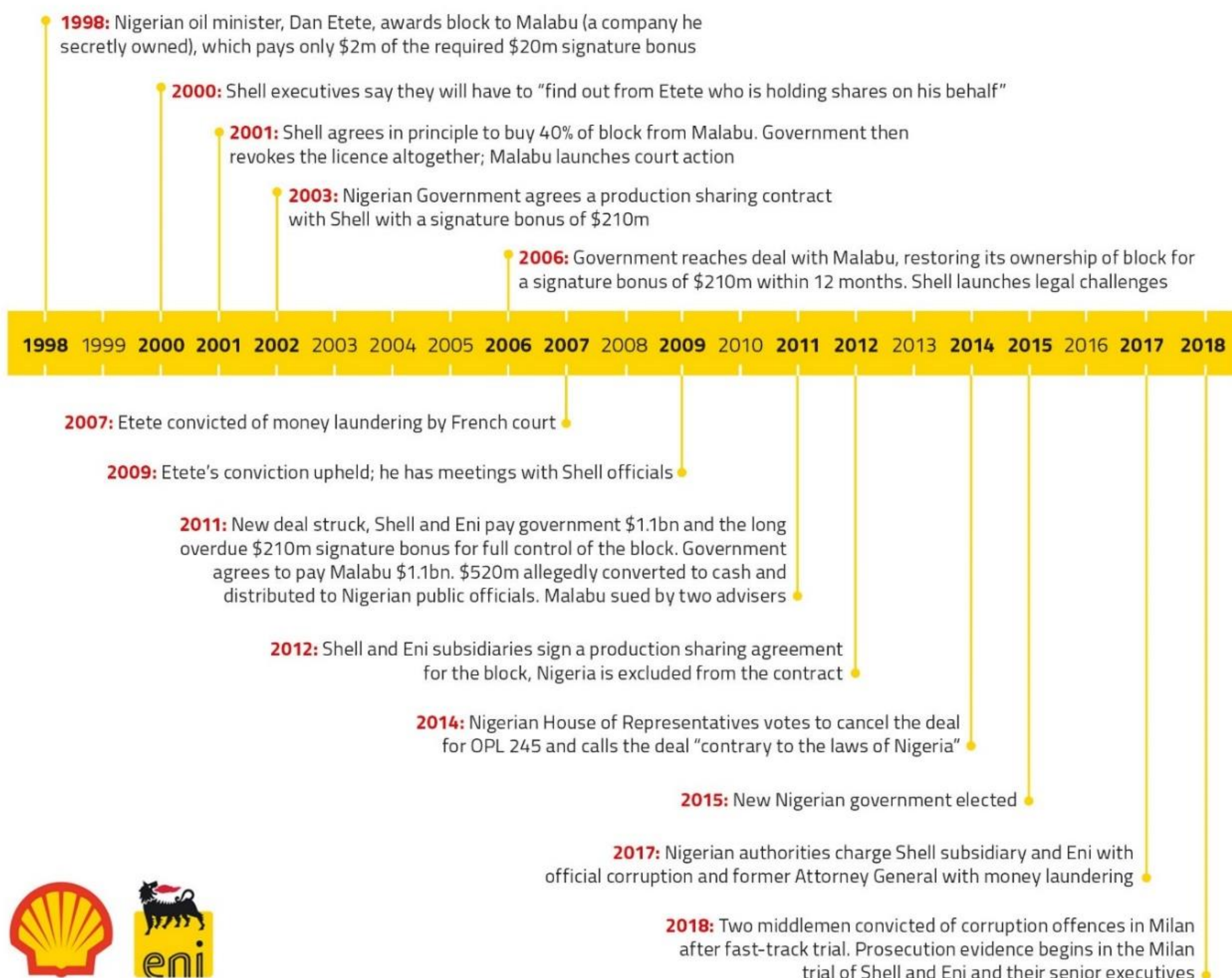
Adoke responded to the analysis's findings stressing that the deal was concluded following consultations with relevant ministries, no attempt was made to prevent civil servants voicing their concerns, and issues were resolved following inter-ministerial discussions. He noted that the PSA between Shell and Eni was not within his remit. He also noted that the current oil minister has reportedly written that the deal was a viable route to resolving disputes over the license. His full response can be seen on the Global Witness website.

The Nigerian offshore oil licence OPL 245 has changed hands numerous times since 1998 and has been the subject of many legal cases. The 2011 deal for the block is currently the subject of an unprecedented corporate bribery trial

Etete did not respond for a letter sent to his lawyer, but has previously stated his innocence and laid out his position in a two-page newspaper spread in 2017. "People who live in the dark fringes of our national life have spread unfounded propaganda through their equally dark agents of misinformation," he wrote. It was entirely untrue to say that he took state funds "for himself and shared [them] amongst his friends, associates and playmates," he asserted.[32]

Goodluck Jonathan did not respond to messages sent to his spokesman but, in January 2017, he released a statement, saying he "was not accused, indicted or charged for corruptly collecting any monies as kickbacks or bribes" in the OPL245 affair and did not send a middleman "to seek favour or collect any gratification on his behalf".[33]

Diezani Alison-Madueke did not respond to a letter sent to her UK lawyers but has stated in



2017 that "we took directives from the Chief

Legal Officer of the nation; the Attorney General and Minister of Justice. In all of these matters due process was followed to the letter at all times." The statement also says: "As Minister of Petroleum Resources, I did not participate in any activity relating to financial payments on the Malabu matter, other than those statutorily mandated to the Minister of Petroleum Resources by the Petroleum Act." She also stated that "In spite of all the allegations that have been made against me, not one has been factually proven."[34]

ON TRIAL: WHO'S WHO

Both Shell and Eni, as corporate entities, are standing trial in Milan on charges of aggravated international corruption in relation to the OPL 245 deal. Some of the companies' most senior executives are also charged. The Federal Republic of Nigeria has joined this case as the victim and is pressing for damages against the companies. The Prosecution began presenting its evidence in October 2018.

Eni Spa is one of 100 largest companies in the world by revenue[35]. The Italian state owns a 30% stake in the company[36].

Claudio Descalzi has been CEO of Eni since 2014 and was Chief Operating Officer – Exploration & Production Division from 2008 to 2014[37].

Paolo Scaroni was CEO of Eni from 2005 to 2014[38]. In 2014 he was appointed deputy chairman of Rothschild investment bank[39].

Roberto Casula is Eni's Chief of Operations, Technology and Development (currently on leave[40]). He was formerly head of Exploration and Production for Sub-Saharan Africa, 2011 to 2014, while from 2007 to 2011 he was Eni's head of operational and business activities for sub-Saharan Africa as Senior Vice President[41].

Ciro Pagano is currently Eni's Executive Vice President International Negotiations[42]. At the time of the 2011 deal he was Managing Director of NAE, Eni's Nigerian subsidiary[43].

Vicenzo Armanna was Vice President for Eni's sub-Saharan upstream activities at the time of the deal[44].

Royal Dutch Shell plc is the world's fifth largest company by revenue[45].

Malcolm Brinded was head of Upstream International for Shell. He remains a trustee of the Shell Foundation after stepping down from acting as the Foundation's Chair.

Peter Robinson was Shell's Vice President for Commercial Sub-Saharan Africa from 2008 to 2011.

Guy Colgate was a Senior Business Advisor at Shell at the time of the 2011 deal. According to Italian prosecutors, he was formerly employed by the UK's MI6 intelligence agency.

John Copleston was a Strategic Investment Advisor at Shell at the time of the 2011 deal. According to Italian prosecutors, he was also formerly employed by the UK's MI6 intelligence agency.

Dan Etete was Nigeria's Minister of Petroleum from 1995 to 1998. In 2007 he was convicted of money laundering in France for taking payments from several oil companies while in office.

Ednan Agaev is a former diplomat who served as ambassador to Colombia for Russia from 1994-1999[46]. He acted as a middleman in the 2011 deal for OPL 245.

Luigi Bisignani is a former journalist and lobbyist. He acted as a middleman in the 2011 deal for OPL 245.

Gianfranco Falcioni is Italy's Honorary Vice-Consul to Nigeria[47]. He is accused of involvement in an attempt to distribute money from the OPL 245 deal.

SHELL GAMES

Shell and Eni's deal for OPL 245 gave them more than an oil licence. For the companies, the true value of the licence lay in the terms on which they were allowed to extract oil and how they split their profits with the state. Shell and Eni's $1.1bn deal effectively excluded Nigeria from any share in the profits from oil produced.

An email thread previously reported by Global Witness in its 2017 report Shell Knew revealed that in March 2010 a deal for OPL 245 was being discussed at the highest levels within Shell. Managers were concerned that the deal was controversial both because of the history of the licence with Dan Etete and because they hoped to secure unusual changes to the fiscal terms of the block, affecting how profits from oil production would be split between the companies and the Nigerian state.

Malcolm Brinded, Shell's then Head of Exploration and Production, sought internal approval for the deal by writing to the company's most senior managers including CEO Peter Voser, Chief Financial Officer Simon Henry, and Beat Hess, Shell's legal director, and copying in Maarten Wetselaar, executive Vice President Finance in Upstream International and Keith Ruddock, Shell's General Counsel for exploration and production. Brinded wrote "This is one where your formal endorsement is appropriate given the history and the political/business principles issues involved."[48]

Brinded told his fellow managers about the unprecedented nature of the deal, writing "The solution proposed leaves NNPC without any economic interest in the Licence – a first in deepwater and obviously carrying some longer term risks."[49]

Their deal proposed removing a defining feature of a production sharing contract – Nigeria's share of oil produced, known as Profit Oil – yet still applying fiscal terms intended for PSCs under Nigeria's Deepwater Act. The change stood to massively enhance the companies' likely profits from the block.

Throughout the exchange, Brinded explained that the Nigerian Government would receive some taxes and the overdue signature bonus but clearly stated "Revenue being lost would be NNPC's profit oil share."[50]

Brinded knew that this meant the deal was not a production sharing contract, telling the group "One key point to note is that the settlement essentially scraps the PSC concept."[51]In an answer to a question from Simon Henry, Shell's then Chief Financial Officer, on how costs would be treated under the contract, Brinded removed any doubt: "Under the proposed settlement structure, **this is no longer a PSC** [original emphasis] … (although in settlement agreement we confirm fiscal treatment under relevant PSC law (precedents for this)."

> "Under the proposed settlement structure, this is no longer a PSC"
>
> **-Shell executive Malcolm Brinded briefed fellow executives on the structure of their deal.**

Without a share of Profit Oil, Nigeria only receives only tax and royalties from the deal. Simon Henry commented on this distinction in a later email, saying "Will be a challenge however I expect to get the effective exemption from a PSC regime as this in effect turns the block into tax royalty."[52]Henry appears to have understood the gravity of

this demand commenting “Will Govt try to back in once they realise no revenues for them at all?”[53]

As well as the lack of revenue the deal would provide to Nigeria, Henry was referring to Nigeria’s option to “back in” to the licence by buying a stake at a later date. This option was kept in the deal. However, if taken up, it would require Nigeria to fund its part of oil exploration or production – something it has been unable to do for many years in deep water blocks, which is why it has relied on getting a share of production in the form of Profit Oil.

Henry commented that it would be “a challenge for Keith’s team to paper this in a way which protects the agreement for posterity.”[54]

“Keith” is likely to be Keith Ruddock, at the time General Counsel for Shell’s international Upstream business[55].

The comment shows that Shell’s managers understood that the deal was unlikely to be considered acceptable when scrutinised in the future.

Shell internal documents formally noted a risk around the situation recording “The situation where NNPC no longer has an economic interest in the license would be first in deepwater”[56].

Nigerian civil servants where not silent of the issues presented by the deal. They objected in the strongest terms.

On 1 April 2011, just two weeks before the 2011 deal for OPL 245 was agreed, the most senior civil servant in Nigeria’s Department for Petroleum Resources wrote to Attorney General Mohammed Adoke protesting on numerous grounds that the deal was “highly prejudicial to the interests of the Federal Government”[57].

Despite this strong, clear objections from civil servants, Nigeria’s ministers agreed the deal just days later.

Shortly before midnight on 14 April 2011, after a hard day of negotiations, Shell’s Peter Robinson emailed a dozen colleagues. “Malabu initialled all agreements,” he wrote. “Compliments to our legal team who have done a brilliant job.”[58]

The emails show that Shell’s senior management clearly understood that calling their deal a production sharing agreement was misleading and that if ministers agreed the deal it would be against the strong objections of their civil servants.

SHELL'S SCHEMERS

Peter Voser was CEO of Shell from 2009-2013 after serving as the company's Chief Financial Officer from 2004 to 2009. He is currently Chairman of the Board at the Swiss multinational company ABB[59].

Malcolm Brinded was Executive Director responsible for Global Exploration and Production, otherwise known as Upstream International, from 2009 to 2012. He stepped down as Chair of the Shell Foundation due to the criminal trial him in Milan but has been allowed to remain as a trustee. Brinded joined the board of mining giant BHP Billiton in 2014 but was forced off in 2017 because of "his involvement in ongoing legal proceedings in Italy"[60]. He is currently Chair of Engineering UK and President of the Energy Institute[61]. He was awarded a CBE by the Queen of England in 2001 "for services to Shell and to the Oil and Gas industry"[62].

Simon Henry was Shell's Chief Financial Officer from 2009 to 2017 after being Chief Financial Officer and Executive Vice-President Finance, Exploration & Production from 2004 to 2009. In April 2017 Henry was appointed as a non-executive director of Rio Tinto[63]. In January 2018 he became a non-executive board member and Chair of the UK's Defence Audit Committee[64].

Maarten Wetselaar is tipped by some observers as a likely next CEO at Shell. In 2009 he became executive Vice-President Finance in Upstream International under Malcolm Brinded. He is currently a member of Shell's executive committee and integrated Gas & New Energies Director[65]. He joined the Shell Foundation as a trustee alongside Malcolm Brinded in August 2016[66].

Peter Robinson was Shell's Vice-President for Commercial Sub-Saharan Africa from 2008 to 2011.

Beat Hess served as Group Legal Director of Royal Dutch Shell from 2004 to 2010. He is currently Chairman of the Board of the Swiss multinational LafargeHolcim Ltd[67].

Keith Ruddock was Shell International's General Counsel for Upstream International from 2009 to 2012. He is currently Chair of the board of the trustees at the British Institute of International and Comparative Law and a board member of Scottish Ballet[68].

SHELL AND ENI'S GAIN, NIGERIA'S LOSS

Previous investigations into the OPL 245 deal have focussed on Shell and Eni's upfront payment of US$1.3bn, of which Nigeria only received the signature bonus of US$210m. The remaining $1.1bn went into private pockets, contrary to Shell and Eni's statements that their payment was only to the Nigerian Government.

US$1.1bn is enough to fund Nigeria's current health budget, but its diversion from the public purse is only a fraction of the cost of this deal to Nigeria. A country's revenue from oil should not come from large upfront payments, which are too easily stolen and rarely give good value to the country in the long term. Instead, oil-producing countries need to adopt strong fiscal terms that, through taxes, royalties and sharing the profit on the oil produced, provide revenues over many years in exchange for exploitation of their natural resources.

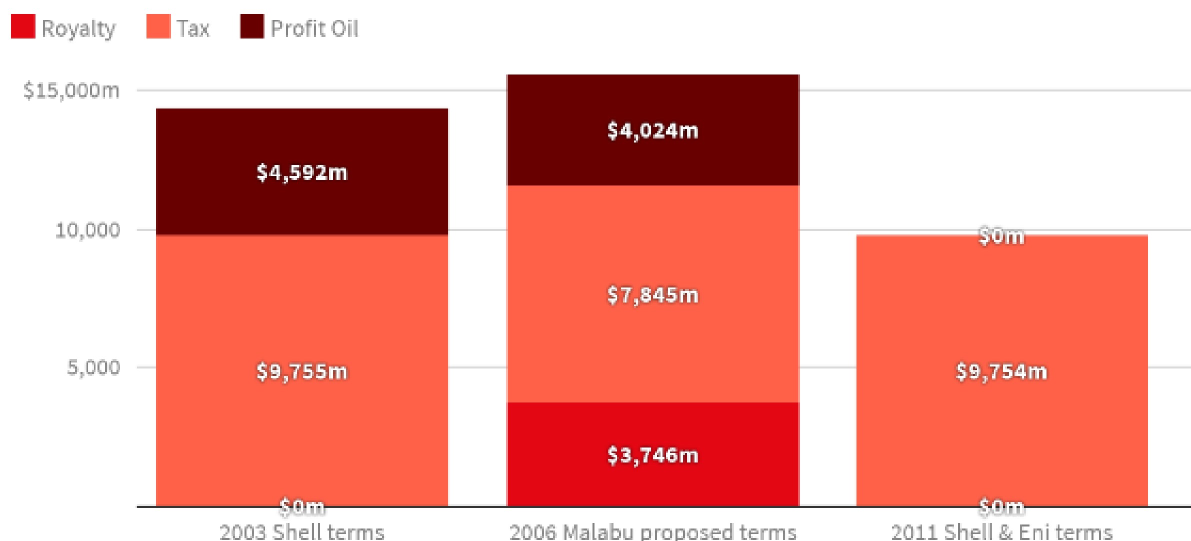
Global Witness, HEDA, Re:Common and The Corner House jointly commissioned an analysis of the likely revenues over the expected lifespan of the OPL 245 oil block. The analysis, "Government Revenues from OPL 245: Assessing the Impact of Different Fiscal Terms" by Resources for Development, was carried out using discounted cash flow modelling, an industry-standard methodology for assessing the potential value of an oil block[69]. Resources for Development has decades of extractive industry experience and has advised governments on dozens of resource deals.

This independent research provides the basis for this section of the report, which also includes our commentary.

The methodology combines available project information on oil reserves and project costs with the relevant fiscal terms, within an Excel spreadsheet. Year-by-year revenue forecasts for both the government and the contractor can then be generated based on differing oil

NIGERIA'S PROJECTED GOVERNMENT REVENUES FROM OPL 245 OVER ITS LIFESPAN

At $70 per barrel under different fiscal regimes



Source: Resources for Development Consulting

price scenarios. The spreadsheet has been made publicly available with this report.

The analysis was only made possible following key information coming into the public domain– including Shell's internal valuation reports on the block and the 2012 PSA[70] between Shell and Eni, which laid out how the block and its revenues should be managed following the 2011 deal to acquire the licence.

The analysis looked at the planned combined development of the Zabazaba and Etan oil fields in Block 245. Initial estimates of recoverable oil reserves, plausible oil production profiles, capital costs and operating cost estimates were drawn from a valuation document prepared by Shell in 2006[71]. These estimates have been updated based on additional information from Shell documents[72] and Eni's public statements[73], and data from analogous deepwater blocks in neighbouring countries.

More recently, various documents related to service contracts for operating the OPL 245 oil fields were leaked online in the wake of controversy around a proposed collaboration on a massive OPL 245 services contract between the Malaysian oil services giant Bumi Armada and Century Energy, a company run by Ken Etete, nephew of disgraced former minister Dan Etete.

The analysis focused on three different sets of fiscal terms that have been applied to the block since 2003, while a fourth scenario looked at the terms that might apply if the block was awarded in the near future.

ROCKY ROAD

In 2013 Ken Etete was appointed as a director of Rocky Top Resources, alongside his uncle Dan Etete. Rocky Top Resources has been charged with money laundering by Nigerian authorities for receiving money from the OPL 245 deal "when you reasonably ought to have known that the said funds formed part of the proceeds of an unlawful activity of Dan Etete and Malabu Oil and Gas Ltd"[74]. Rocky Top Resources received $336m from the OPL 245 deal.

Ken Etete's entry in company filings as a director of Rocky Top Resources lists the same Lagos address as is listed for Armada Century Ltd, the joint venture company between Century Group and Bumi Armada[75].

Ken Etete did not respond to a letter sent to Century Group seeking his comment. The company has previously stated in June 2018 "Mr. Ken Etete is not a member or director of Malabu Oil and Gas Limited and did not play any role or participate in any transaction in relation to OPL 245 nor did he benefit directly or indirectly from the proceeds of the transaction between Malabu Oil and Gas Limited, (Mr. Dan Etete or Eni and Shell)"[76].

Fiscal terms include the agreed taxes, royalties, fees and sharing of costs and oil produced between governments and contractors. Together, these terms govern the division of profits and costs of exploring, developing and producing oil. The fiscal terms used in the analysis appear in Nigeria's laws and in contracts between the Nigerian Government and contractors.

The three sets of terms analysed are:

- The OPL 245 terms dating from the 2003 Production Sharing Contract (PSC) signed by Shell,
- The Government's 2005 Model PSC that was in place when Malabu regained the licence in 2006; and
- The terms associated with the 2011 deal for Shell and Eni, including the 2012 PSA between Shell and Eni's subsidiaries.

The 2011 deal for OPL 245 agreed that the 2012 PSA should be signed between only Shell's and Eni's subsidiaries. This diverges from a normal production sharing contract, which is agreed between the contractors and the state, in this case the Shell/Eni consortium and the government. This deal prevents the Nigerian state from limiting the companies' recovery of costs – through what is known as Cost Oil – and also excludes it from its share of production after costs are taken into account, known as Profit Oil.

The changes in terms dating from 2003, 2006 and 2011 generate very different revenues for the Nigerian Government. Assuming a future oil price of $70 per barrel, the 2003 and 2006 terms would respectively generate more than $14.3 and $15.6 billion dollars in government revenue over the lifespan of the project.

In contrast, the 2011 terms would generate only $9.8 billion. The potential loss of almost $6 billion compared to the 2006 terms is principally due to the removal in the 2011 contracts of the central feature of a production sharing system: a share of Profit Oil for the government.

A final scenario was also tested using reasonable terms under discussion in proposed Nigerian legislation that might be applied if the block was re-awarded. These hypothetical terms also generate nearly $14.7bn in government revenue –nearly $5 billion more than the 2011 deal.The resultant government share of revenue from the oil block including taxes (Nigeria Petroleum Profit Tax [PPT]), royalties and Profit Oil, referred to as "Government Take" in the 2011 deal, is estimated to be just 41%.

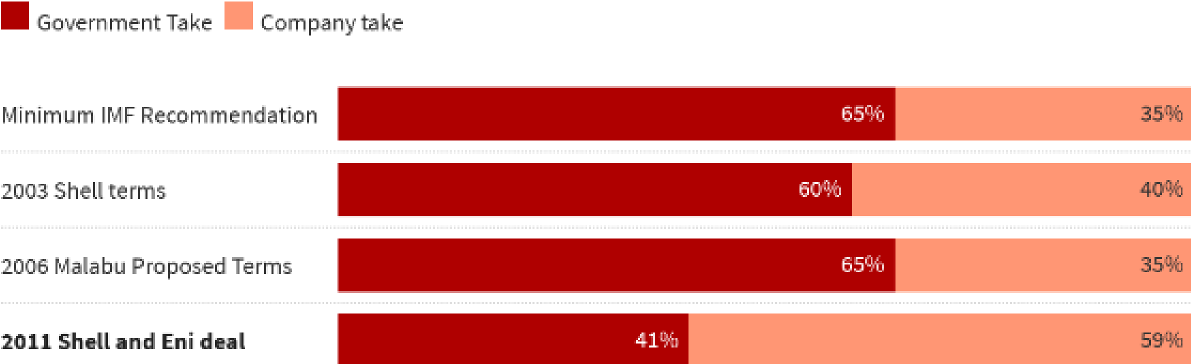
SUMMARY OF FISCAL TERMS FOR BLOCK 245

Fiscal Terms ▼	2003 Shell Terms	2005 Model PSC Terms	2011/2012 Shell & Eni Terms
Cost Recovery Limit	100%	80%	N/A
Education Tax	2%	2%	2%
Petroleum Profits Tax	50%	50%	50%
Profit Oil	30-65% based on cumulative production	30–75% based on R-factor	N/A
Royalty	0%	8%	0%

Source: Resources for Development • •

SPLIT BETWEEN GOVERNMENT AND COMPANY TAKE ON OPL 245 OVER ITS LIFESPAN

At $70 per barrel



Source: Resources for Development Consulting

The IMF recommends that mature oil producing countries should receive a government take of 65%-85%[77].

The analysis also showed that none of the fiscal terms applied in any of the scenarios would be considered as too tough by oil companies. As expected, the 2011 deal makes the project wildly profitable for the companies, increasing their revenue by nearly $6bn, compared to the 2006 terms, and by $4.5bn, compared the 2003 terms.

Due to the availability of internal company data in this case, the analysts have a high confidence in the accuracy of the modelling, which matches closely with Shell and Eni's own estimates[78].

The OPL 245 licence area is widely reported to be one of Nigeria's most promising remaining oil blocks. Statements by the Nigerian House of Representatives and numerous media reports have suggested that, according to industry experts, the block could contain up to 9 billion barrels of oil.[79] Eni estimates the volume of recoverable reserves at 550 million barrels of oil[80]. It is Eni's current estimate that has been used in the analysis.

Eni noted in a 2013 press release that its "appraisal of the oil field of Zabazaba in OPL 245 Block" had been an "exploration success"[81], though they have not subsequently announced any revised recoverable reserves estimate. The lack of updated information on the oil reserves in OPL 245 is a limitation in the analysis. A Shell internal document suggested that 875 million barrels might be present. This estimate has been used to generate an alternative set of results.

There are also believed to be considerable, though unspecified, volumes of natural gas present in the block. Technically it is no longer legal to flare gas in Nigerian oil projects, which means this gas must be collected in some way and is likely to be sold, generating additional revenue. However, due to the lack of solid data and the uncertainty around the terms under which the gas might be extracted, the value of producing gas has been excluded from the analysis (estimates of the costs have been included). Given the

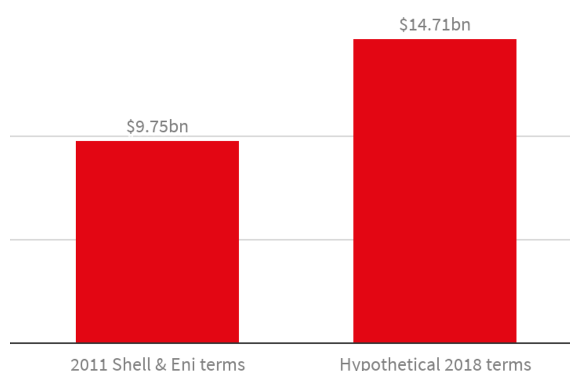
additional exploration prospects and the anticipated contribution of natural gas sales, the actual economic benefits for both the government and the companies are likely to be higher than those suggested by the analysis.

For nearly two decades, Nigeria has debated establishing a new framework to govern its petroleum sector, including revisions of its fiscal terms. This has been motivated in part by a feeling that Nigeria was not generating a fair share of revenue from deep water blocks governed by PSCs. New legislation has been contemplated under the Petroleum Industry Fiscal Bill (PIFB), but any new fiscal terms this would introduce have not been finalized. Neither has a model PSC, which would also affect future government revenue from oil. For the purposes of the analysis, likely future terms have been estimated on the basis of available public information on the new model PSC and in the draft PIFB.

The analysis of these hypothetical terms suggests that they would generate around $5 billion dollars more for the government than the 2011 deal currently in place.

NIGERIA'S PROJECTED GOVERNMENT REVENUE FROM BLOCK 245 OVER ITS LIFESPAN

At $70 per barrel



Source: Resources for Development Consulting • •

As with any modelling exercise, there are limitations, while some assumptions are necessary. The full methodology, including the model's information sources and assumptions made, are spelled out in the Resources for Development Consulting analysis[82].

A key factor in any estimate of revenue from an oil block is the future oil price. It is widely accepted that even the best oil price forecasts are little better than educated guesses. In the words of former BP CEO Lord John Browne, the future oil price is "inherently unpredictable." However, the aim of the analysis is not to predict future prices, but rather to test the different sets of fiscal terms that have applied to the block under a range of potential prices. The analysis uses a range of oil prices, from $70 per barrel to $100 per barrel. Different oil prices and other variables can be tested using the analysis model.

The differences in benefits grow under higher oil price scenarios. At $100 per barrel, the 2006 terms would generate $10.6 billion more than the 2011 terms currently in place.

In the early 1990s Nigeria began widespread use of Production Sharing Contracts (PSC) for oil production. Previously many Nigerian oil projects were run as joint ventures between the Nigerian state oil company, Nigerian National Petroleum Corporation (NNPC), and private oil companies. Under these joint venture projects, NNPC generated revenues alongside the private companies but was also required to pay its share of costs. As NNPC was frequently unable to meet its financial obligations (known as cash calls), the FGN decided to adopt the production sharing system for blocks in order to

encourage exploration in deepwater offshore.[83]

Under the PSC arrangement, NNPC is the holder of the concession and the oil company is a contractor. Under these contracts, the government generates revenue through three main fiscal instruments: the payment of a royalty (dependent on water depth); taxes, including an Education Tax and a Petroleum Profits Tax (PPT); and a share of production after costs have been taken into account, known as Profit Oil, which is allocated to NNPC.

This division of Profit Oil is normally based on a sliding scale. In some systems, the percentage of Profit Oil flowing to government increases with the volume of production (either on the basis of daily production or cumulative production). An alternative is to base the Profit Oil split on some measure of profitability; a common measure is known as an "R-factor."

Under the 2003 PSC, the allocation of Profit Oil would have been based on a sliding scale that provided a greater share to the government as cumulative oil production increased. In the Model PSC of 2005, the basis for the allocation of Profit Oil was changed to an R-factor, which in theory gives a greater link to profitability.

Extraordinarily, the fiscal terms associated with the 2011 deal and Shell and Eni's 2012 PSA do not include any Profit Oil for NNPC or the FGN.

Shell and Eni were asked for their comments on the findings of this analysis and offered the opportunity to update or correct the data used in the model.

Shell did not comment on the specific points put to them saying that "issues that are under consideration as part of a trial process should be adjudicated in court". It went on to state: "We maintain there is no basis on which to convict Shell or any of its former employees. We believe that the trial judges will conclude that there is no case for us to answer and we are vigorously defending our position accordingly"... "we dispute your characterization of the facts, your allegations of criminality and the legal conclusions you reach in your letter. The statements in your letter are based on faulty methodologies which do not meet adequate qualitative standard. They fail to take into account elements that are typically used by the industry (e.g., geology), make wrongful factual assumptions (such as by using obsolete of irrelevant data), misconstrue the terms of the 2011 settlement and even reference legislation which has not been passed."

Eni rejected "any allegation of impropriety or irregularity". They said in light of their ongoing trial it would be "inappropriate for us to comment on such circumstances outside the court". They did not comment on the specific points put them, other to say "the technical and contractual assumptions adopted as the basis for the analysis appear to be partial and inaccurate, if not misleading."

CONCLUSION

$1.1bn of the money Shell and Eni paid for the OPL 245 licence flowed into private pockets, according to prosecutors this fed a vast bribery scheme. Out of the deal Shell and Eni did not just receive the licence to drill, but also secured very generous new terms for themselves and their subsidiaries, secreted behind a contract entitled a Production Sharing Agreement. Managers at Shell and Eni knew that the deal they were asking for was no longer a production sharing contract but kept this hidden, effectively depriving Nigerians of billions of dollars.

The 2011 deal deprived the Nigerian people out of nearly $6bn in projected revenue from the OPL 245 block – enough to fund Nigeria's combined Health and Education budgets for more than two years. This at a time when 80% of Nigerians live in poverty on less than $2 a day.

Nigeria has already claimed in the English and Italian courts that it was the victim of a massive crime in the OPL 245 deal. In 2014, Nigeria's House of Representatives called for the deal to be cancelled. This new analysis shows just how unfair this deal is. Shell's and Eni's contract for OPL 245 must be revoked.

The oil, gas and mining sector is the most corrupt on the planet, according to a study of hundreds of bribery cases by the Organisation for Economic Cooperation and Development (OECD). Half of these cases implicated senior management. Three-quarters involved intermediaries who helped to funnel the bribe money, often using anonymously owned companies[84].

In recent years, governments across the world have enacted laws to counter corruption with increased transparency. Over 30 major economies, including the US, UK, and all 27 members of the European Union, now have laws requiring oil companies to publicly disclose payments made to governments for each of their projects. A transparency body founded in 2003 – the Extractive Industries Transparency Initiative[85] – tightened up its rules in 2016, requiring oil, gas and mining companies to report such payments for each project they operate[86].

The importance of these rules is even clearer in light of this case. The companies involved would have been forced to report the $1.1bn payment they claimed was destined for the government but which they knew would go into private pockets. They would also have been forced to disclose that they would be paying no Profit Oil to the Nigerian Government, revealing the remarkably poor deal Nigeria was receiving on the OPL 245 block.

The Extractive Industry Transparency Initiative (EITI), in which Shell, Eni and Nigeria are all participants, recommends the proactive publication of contracts. The findings of this analysis support this by revealing the price of a deal like the one for OPL 245 and showing the massive public interest that the full disclosure of extractive industry contracts would serve. Publication of contracts should be made mandatory under the EITI standard.

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