9 Revenue Flow and Human Rights: The Paradoxes of Shell in Nigeria

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A Nigerian "can of worms"

In February 2013, Alan Detheridge, former British vice president of Shell's External Affairs wrote an article for the reputable British broadsheet newspaper, The Guardian.[1] In it, he wrote:

> Oil companies can bring great wealth to the countries where they operate. The revenues from the industry have the potential to drive economic growth and be a powerful force in reducing poverty. However, in some resource-rich countries, these revenue flows are vulnerable to corruption and mismanagement, with little benefit going to the population at large.

Detheridge continued to point out the importance of transparency to tackle the threats of corruption and mismanagement, but also to press for oil companies, including his former employer, not to push for exemptions or oppose full and comprehensive transparency on monetary flows from extractive industry activities. He had good reason, based on long experience, to advocate for more transparency, not less.

When they retired around the same time in September 2006, Detheridge and Joshua Udofia, his senior Nigerian corporate advisor had managed issues in the Niger Delta during some of Shell's most challenging years. Their careers with Shell had both been long: 29 and 35 years respectively. They had seen it all, from NGOs pointing the finger at the environmental and social impacts of oil spills and gas flaring, to extensive media coverage of human rights issues that had occurred after the much-publicized Ken Saro-Wiwa execution in 1995. But by the end of 2006, both men would be retiring. In the run-up to retirement, they often found themselves

[1] Detheridge, Alan, The oil industry wants to water down transparency rules – Europe must resist, The Guardian, 7 February, 2013.

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discussing what the future would hold for their successors, and whether Shell's current strategies were likely to lead to successful outcomes. Detheridge and Udofia had long agreed that poverty was at the root of the problems of both Nigeria and the oil-bearing Niger Delta region. During their tenure, Shell had made significant changes in its approach to its community development program, including partnering with NGOs and development agencies. But NGOs remained generally unimpressed. Even if such programs delivered to its full potential, they knew that they alone could not improve the quality of life for most of the Niger Delta's 27 million inhabitants.

A fundamental problem was related to oil revenue flow. The corruption that was endemic to Nigeria was a serious impediment to desperately needed development. In addition, state politicians were enmeshed with war lords for the sake of political and personal gain and a new generation of more unpredictable militias had intensified hostage taking involving oil company staff. The Nigerian president's anti-corruption support had been encouraging but expected elections in 2007 might mean that efforts thus far would be jeopardized. The paradox was…no matter what Shell did, no matter how much money it ploughed into community development and programs, if revenue transparency was not sorted out, could attitudes change and life be improved for people in the Delta? But had Shell gone as far as it could to alleviate the human rights crisis in the Delta? Many of the international NGOs did not think so.

Shell and Nigeria

Royal Dutch was founded in 1890 in the Netherlands by Aeilko Jans Zijlker who first discovered oil in the Dutch East Indies. The Shell Transport and Trading Company was a British company founded in 1897 by the Samuel brothers. In 1907 the two companies merged and it was agreed that Royal Dutch would handle oil refining and production operations and Shell would deal with the transport, storage and marketing of the oil products. The two companies were separately traded holding companies owning 60% and 40% respectively of Royal Dutch/Shell Group's operating subsidiaries. In November 2004 the Shell Group moved to a single parent company, Royal Dutch Shell plc, (Shell) with headquarters in the Netherlands. Unification was completed on 20 July 2005. Shell was an impressive success story. By 2005, its revenues reached $306 billion with profits of $25 billion, maintaining its position as one of the world's top three private oil companies. Shell was a veritable "super major" with 112,000 employees operating in over 140 companies worldwide.

In 1937 Shell was authorized to prospect for oil in Nigeria during British colonial rule in equal partnership with British Petroleum (BP). Oil was discovered in the Niger Delta in 1958. On October 1, 1960 Nigeria gained independence. Its leaders faced the daunting task of holding 250 ethnic groups together as a nation. They organized a loose federation of self-governing states, each one with a large degree of constitutional autonomy. In 1973, following a period of civil war, military coups and turbulence, the two-way partnership with Shell and BP gave way to a joint venture with the Nigerian government. The Shell Petroleum Development Company of Nigeria Limited (SPDC) held Shell's share. By 2006, SPDC was the principle operator of Nigeria's largest oil and gas joint venture (Nigerian National Petroleum Company 55%, SPDC 30%, Total 10% and Agip 5%), producing approximately 40% of Nigeria's oil from over 1000 wells in the Delta.

By the 1980s, Nigeria had become an African success story, with the 33rd highest per capita income in the world. However, subsequent undemocratic military regimes, corruption and governmental inefficiency took their toll, together with a 3% per annum population growth. By 1997, the country was ranked the world's 13th poorest country. With the dawn of the new millennium, despite being the world's sixth largest exporter of petroleum, 66% of its 131 million population lived on less than $1 per day. In 2005 the NGO Transparency International classed Nigeria as the sixth most corrupt country in the world (Shell had more trouble with corrupt employees than in any other country, sacking several staff and delisting a certain number of contractors every year in line with its business principles). The UN ranked Nigeria amongst the world's top twenty "most unlivable countries," and per capita GNI was still only at a level of $400.

In 1999 General Olusegun Obasanjo, a former military ruler of Nigeria, was democratically elected. Initially, Obasanjo was revered for his commitment to democracy and fighting corruption (before becoming president, he was the Chairman of Transparency International's International Advisory Group). The first legislation Obasanjo put forward as elected president was a corrupt practices bill. He led a drive to recuperate billions stolen during a previous military regime. In spite of these efforts anti-corruption officials estimated in 2005 that 45% of Nigeria's oil revenues were being siphoned away yearly.

In 2000 a Memorandum of Understanding (MOU) to stipulate a method for the sharing of oil revenues was signed between the government and the major oil companies working in the Delta. The MOU hedged the multinationals for risk when oil prices were low rather than enabling them to benefit when prices were high. Joint venture partners including SPDC would receive a fixed margin as long as the oil price ranged from $15 to $19 a barrel. At higher oil prices, the Government share of the profit would gradually increase to 95% (refer to Exhibit 1 for the split of the barrel between partners and government within a range of oil prices) (Fig. 9.1).

By 2006, some 2.5 million barrels of Nigerian oil per day were being pumped, including onshore and offshore operations (3% of global oil production). Crude oil prices on the world market reached an all-time high of $72.35 a barrel in April 2006, giving the Nigerian government record revenues. SPDC paid $4.3 billion in petroleum profit taxes and royalties to the federal government in 2005, representing a considerable increase on the $2.2 billion paid in 2003. By 2006, petroleum accounted for more than 80% of government revenues, 90% of foreign exchange earnings, 95% of export receipts and 40% of gross domestic product.

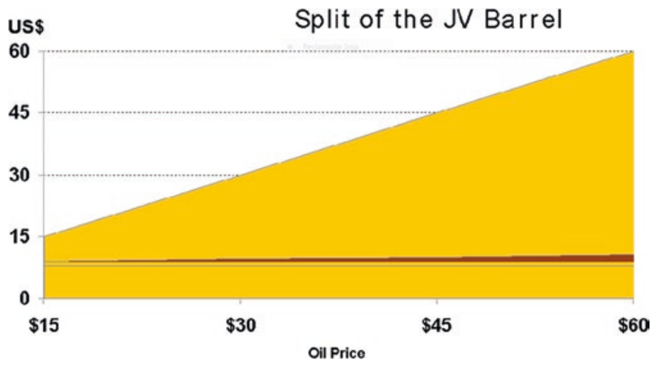

Fig. 9.1 Split of the barrel between partners and government within a range of oil prices (Source: Company information)

Human Rights in the Niger Delta

Oil majors in Nigeria operated in an extremely difficult economic and political environment, both nationally and locally. Detheridge pointed to the complexity:

> The more I know about Nigeria, the more I realize just how little I know. Some humility is not only sensible, but essential. As a Nigerian, my colleague Joshua Udofia knows more than we will ever know.

The Delta was a densely populated region that had been a major producer of palm oil in colonial times, ironically earning itself the name of "oil rivers" because of this agricultural heritage. The area was an extensive network of swamps and creeks over some 70,000 km (7.5% of Nigeria's total land mass). It included land from nine states (refer to Fig. 9.2 for a map of the area), of which four – Akwa Ibom, Bayelsa, Delta and Rivers – were the major oil producers. Of the 131 million population of Nigeria, some 20 million people (from over 40 ethnic groups) lived in the Delta. The primary activities of local people were fishing and farming.

As required under the constitution, the Nigerian government returned a significant proportion of the federal revenues it received to state governments (31.1%) and local government areas (15.2%) In addition, 13% of its revenues from oil and gas was returned to the states where production took place. But over a prolonged period, human rights groups claimed that various governments had either misspent or siphoned off into foreign bank accounts the very funds that should have gone back to develop the communities of the oil producing areas.

> Politics has become an exercise in organized corruption (….) large commissions and percentage cuts of contracts have enabled individual soldiers and politicians to amass huge fortunes.[2]

[2] "The price of oil". Human rights Watch, January, 1999.

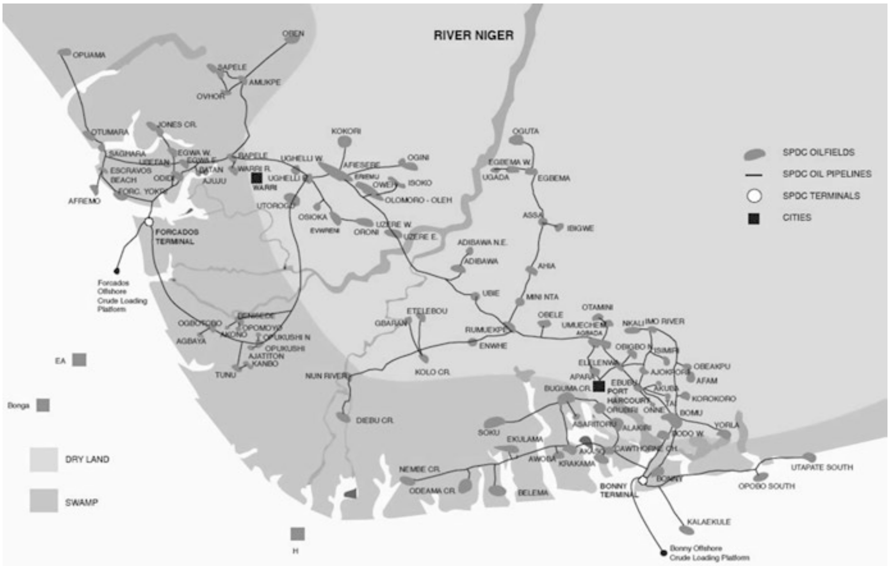

Fig. 9.2 Map of the Niger Delta area

It was a constant battle for companies to get successive governments to fund their agreed contribution to the joint ventures. It was also self-evident that oil revenues received by the government were not reaching the people that needed it most:

> Though the government is a 55–60% shareholder in oil operations and earns billions in royalties each year, local infrastructure at the source of these billions is in shambles, food shortages abound, malnutrition is common among Niger Delta children, power blackouts regularly occur, and roads are usually in terrible condition.[3]

Rising community resentment at the lack of improvement to quality of life in spite of rich resources gradually gave way to active protests against oil company activities – since protests to government had proved unfruitful. Hostage taking, closures of flow stations, intimidation of staff and even sabotage of oil installations became endemic in the Delta states as resentment increased.

During the 1990s, Shell came under immense pressure because of specific human rights issues. Confrontations between indigenous populations and Nigerian government security forces over human rights regularly occurred. In 1990, when an initially peaceful protest in Umuechem in Rivers State turned violent, Shell requested police protection. The police were attacked by the protestors, resulting in the death of a policeman, which in turn led to a large number of people being killed by the police and homes being destroyed. In 1994 the military sent security forces into Ogoniland in the southern part of the Delta where a movement for recognition of rights for the indigenous Ogoni people was growing. Ogoniland (with a population

[3] www.essentialaction.org/shell/report/section5

of 500,000) was home to the writer Ken Saro-Wiwa, a charismatic, outspoken human rights campaigner, who ultimately became leader of the Movement for the Survival of the Ogoni People (MOSOP). In 1990 MOSOP issued a bill of rights that demanded political autonomy for the Ogoni people, a fair share of the proceeds of oil extraction and the right to protect the Ogoni environment and ecology from further degradation. Saro-Wiwa and eight other Ogonis were hanged in November 1995, accused of instigating riots leading to the killings of four Ogoni elders, former founders of MOSOP. NGOs perceived the prosecution as politically motivated and the trial as unfair, but the appeal that was lodged fell on deaf ears, to some extent because the group was being judged by a military tribunal. External calls for clemency from multiple heads of state, intergovernmental organizations and human rights groups worldwide were ignored, provoking further widespread condemnation around the world and drawing international sanctions and suspension from the Commonwealth for Nigeria.

Human rights NGOs claimed that Shell, whilst not directly responsible, was heavily implicated by association with such incidents. Shell's business principles at the time of the Saro-Wiwa incident spelt out that Shell would abstain "from participation in party politics and interference in political matters." On advice from its lawyers, Shell limited its influence to pointing out the negative implications of going ahead with the executions to the government and petitioning it for clemency. But this was to no avail. Mark Corner, deputy managing director of SPDC, said:

> It took us too long to recognize that our voice should be heard. We were engineers interested in clever engineering, more introverted and conservative than we should have been. We are clearer now and feel that it is legitimate to have a more assertive position on human rights.

NGOs continued to accuse Shell of not using a potentially powerful influence to bring about change in the Delta. A conflict expert group commissioned by Shell in 2004 produced a confidential report (later leaked to the press) that stated "If current conflict trends continue uninterrupted, it would be surprising if Shell could continue on-shore resource extraction in the Niger Delta whilst complying with Shell Business principles." It also said that the SPDC "…could not ignore Niger Delta conflicts or its role in exacerbating these."

Because of Shell's close business relationship with the government, local communities perceived the company as working in cahoots with the authorities. This perception was compounded by the fact that the government seconded the so- called "supernumerary police" to Shell and other oil companies to protect staff and property. Like other oil companies Shell was dependent on the Nigerian government for security arrangements that were critically important to protect their facilities.

Local communities in the Delta objected to the degradation of their environment resulting from oil spills, much of which, according to Shell, was due to sabotage. The company argued that such sabotage was usually motivated by the desire for economic gain on the part of some, but by no means all, individuals in its host communities. The prospect of compensation (if incidents could be disguised as the fault of the company), employment opportunities during the spill clean-up and the attempted charging of "access fees" before staff and equipment were allowed on site, were all temptations for communities that felt cheated of the benefits of local oil production.

In 1999 and 2003, to compound problems, politicians financed local warlords to intimidate local people and to help rig elections. Given his political stance on corruption, President Obasanjo and his state governors lost credibility. After the elections, some Delta state governors continued to engage war lords to deal with political rivals. The governors also turned a blind eye – and almost certainly profited from – war lords' involvement in the theft of crude oil from existing pipelines. At the peak of the crisis, some 10% of total annual production was stolen by ethnic militias in this way. The lucrative dividends from this rich booty led to inevitable rivalry between competing groups.

The proceeds from the stolen oil helped to build up the arsenals of local militias. Over time, arms entering the Delta paved the way for violent clashes between these groups and an increasing lack of security in the area. Militancy reached a new high, and even ordinary villagers tended to want to possess arms as a measure of self-defense. Levels of corruption deepened; in January 2005, two navy rear admirals were court-martialed and ousted, implicated in the disappearance of an impounded tanker carrying stolen crude oil. Lack of employment in the Delta facilitated the recruitment into militias of numerous disillusioned and bored young men only too willing to earn some money.

During 2005, some 50 Shell employees were kidnapped. Although hostage taking of oil company staff had been commonplace since the early 1990s, the profile of these actions changed dramatically, with hostages being kept for 2–3 weeks rather than the same number of days, and increasingly difficult negotiations with kidnappers. In 2006 particularly violent militia group attacks in the Delta succeeded in cutting about 20% of Nigeria's 2.5 million barrel per day production. The main culprit was the Movement for the Emancipation of the Niger Delta (MEND), a loose coalition of guerrilla groups that were involved in crude oil theft and claimed to have local Ijaw support (the majority tribe in the Delta). MEND demanded the release of an imprisoned war lord and even a former state governor convicted for money laundering. Becoming more powerful in the Delta towards the end of 2005, MEND later demanded $1.5 billion from Shell to compensate for environmental damage, and demanded increased access to oil revenues from the oil-producing states of Nigeria.

MEND transformed the security context of the Delta. It had well-armed units and trained supporters with the potential to destroy oil facilities more effectively than any group before them. Hostage-taking episodes were often followed by military attacks by the federal government on the guerrilla groups, who hid in villages in the area. Local resentment increased even further. It seemed that there would inevitably be more militancy, more unrest and more chaos in the run-up to new elections in 2007.

Sustainability and Human Rights at Shell

In 1996, after the Saro-Wiwa incident and also as a result of the Brent Spar debacle,[4] three Shell had moved from a risk and reputation management focus to integrating sustainable development into its general business principles strategies and operations. It reviewed its community activities in Nigeria and made changes to its philanthropic Community Assistance Program, renaming it Community Development and placing more emphasis on capacity building and the empowerment of communities. It started to engage in more extensive stakeholder discussion. This was an eye-opener for the company, as Detheridge pointed out:

> We had discussions with international NGOs, Foundations and Government officials. Everyone, including Shell, sat in meetings pointing the finger elsewhere, effectively saying; "If only you did what **I** am telling you to do, we wouldn't be in this situation." Shell came at it from the angle of "You just don't understand – get better informed." Each party thought that others could solve the problem, not realizing that solutions were beyond the reach of a single actor. Not surprisingly, it took a while for these discussions to lead to anything positive happening on the ground in Nigeria.

Eventually, however, Shell began to set up partnership projects, first with local NGOs and later with international NGOs and development agencies such as UNDP and UNAIDS. Udofia commented:

> We moved from a stance of "We want to do everything ourselves," which was impossible, to the idea that collaboration would be more effective.

In order to place more emphasis on transparency and social accountability, in 1996 the company started publishing an annual SPDC People and the Environment report and began a yearly stakeholder consultation workshop to review SPDC's environmental and community programs. Starting in 2001, the company asked a team of independent experts (from international NGOs, UN agencies, and so on) to verify and grade the projects within its community development program. The resultsof these reviews were published in the People and the Environment report and in 2005, results indicated that 86% of the projects were functional and 64% were successful. Detheridge knew from discussions with developmental organizations (none of which published such figures openly) that this was a good track record, particularly in Nigeria. But there was considerable scope for improvement. Corner commented:

> In the past we tended to over promise and under deliver. The legacy of this approach is still around today – projects that we rushed into to get things done saying that we would worry about problems later. Also, the Niger Delta Development Commission, the body charged

[4] When Shell attempted to dispose of the Brent Spar in the North Sea, the NGO Greenpeace organized a worldwide, high- profile media campaign against this plan, including calls for boycotts of Shell service stations. Under enormous public pressure, Shell abandoned its disposal plans although it later transpired that this would have been the safest option, both from an environmental and a health and safety perspective.

> with doing development projects in the Delta is often under-funded, increasing reliance on SPDC. This situation is gradually improving but slowly. We have now learned that you need to work with community leaders, prepare well and hand over efficiently. Regaining the confidence of the communities is important.

The Extractive Industries Transparency Initiative (EITI)

The EITI was a voluntary partnership of companies, governments, investors and civil society organizations. It was launched by UK Prime Minister Tony Blair at the World Summit for Sustainable Development in September 2002 to improve transparency and accountability related to the payments that oil, gas and mining companies (including those that were state-owned) made to governments and the revenues that governments received from these companies. Shell was an active participant in the EITI and one of its main instigators.

Detheridge and Udofia believed from the start that this was an important initiative that was necessary, though not in itself sufficient, to improve the governance of oil revenue flows in Nigeria to ensure that they were put to good use. They realized that the \$3–\$40 million that Shell spent on community development could not, on its own, make a significant improvement to the lives of all the people in the Niger Delta and that better use of the substantial funds available to the state and local governments was essential.

The two men worked on bringing EITI to the president's attention, and from 2002 onwards, Shell began to publish the revenues it paid to the Nigerian government, having first obtained the requisite authorization to do so from the government. Corner commented:

> In fact, there was nothing to stop Shell as an organization helping to make the case for transparent revenue flow. We should have started sooner, but we balked at appearing overly paternalistic. The question is, are we a foreign company in Nigeria or a Nigerian company in Nigeria? It is actually more helpful to think of ourselves as the latter.

The EITI Principles and Criteria

The EITI Principles

1. We Share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in Lie domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.

(continued)

4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.

The EITI worked toward improving transparency in government budget practices as well as empowering ordinary citizens to hold their governments to account for the use of the revenues (refer to boxed text below for the EITI Principles). The main objective was to assure country ownership of the initiative. Given his political agenda of good governance and his keenness to secure relief for Nigeria's staggering $30 billion external debt, President Obasanja was one of the first leaders to support the initiative. The Nigerians set up a country-specific, Nigerian Extractive Industries Transparency Initiative (NEITI) in February 2004.

On January 1, 2005, Basil Omiyl was the first Nigerian managing director appointed to SPDC. Up to then, the post had been filled by expatriate staff. Corner commented:

> We gained a lot of credibility with this appointment amongst our senior stakeholders. Somehow a Nigerian managing director had more leeway to openly state that the federal and state government should be more accountable to communities.

Nigeria set up two statutory bodies with powers to investigate and prosecute corruption-related crimes. By 2006, the finance minister, Ngozi Okonjo-Iweala, a former World Bank vice president and corporate secretary, was making valiant efforts to model Nigerian practice on the World Bank's integrity unit. She pushed three new corruption-related laws and set up institutions for budget control, public procurement and oil and gas transparency. British government experts praised Nigeria for going further than any other country in terms of disaggregating payments and tracing production volumes and procurement practices. From the beginning of 2004, Okonjo-Iweala started researching and recording allocations of revenue paid since 1999 to the federal government, the 36 states of Nigeria and the national capital of Abuja, and to local government authorities in each state. SPDC assisted in the process. But Detheridge had a concern:

> In civil society in Nigeria, there is no track record of holding publicly elected officials accountable. It is good to publish the numbers, but government capacity building is needed to enable these to be presented in an understandable way to citizens. The same is true for civil society so that they can make use of the information that they receive.

When the figures were published, it was clear that the four main oil-producing states in the Delta received more revenues than other Nigerian states. In the first 10 months of 2005, for example, Lagos (not a Delta state but with a population of 10.6 million) received $200 million in revenues from the federal government. By contrast Delta states Rivers (pop. 5.7 million), Bayelsa (pop. 2 million) and Delta (pop. 4.2 million) received $790 million, $710 million and $570 million respectively. In total, the federal government allocated $6.8 billion to the 36 states in Nigeria. Nearly 35% of that amount went to the four major oil-producing states of the Delta (refer to Fig. 9.3 for the federal government's revenue allocation to states from 2001 to 2005).

Partly because of moves on the transparency initiative, Nigeria was granted $18 billion debt relief by international creditors and, from being bottom of the rankings of Transparency International's corruption index in 2000, Nigeria improved marginally by 2005 to sixth among the eight worst countries (out of 159).

In 2005 a British company, Hart Nurse Group, was asked by the NEITI to audit the accounts of payments made by the oil companies against government-reported revenue for the period 1999/2004. A three-volume report was produced in April 2006 with breakdowns of payments made by each company. The audit was only partial in that the auditors did not have a mandate to look at the destination of funds once deposited in the Central Bank, and did not address the controversial issue of oil block licensing rounds and how contracts were awarded. A National Planning Commission survey of the state governments revealed significant shortcomings in accounts maintenance, controls against payroll fraud, fiscal management, service delivery and procurement procedures in general. Few States had any level of transparency. Moreover, the federal government was not in a position to insist on such transparency as the Nigerian constitution stipulated the autonomy of the states on

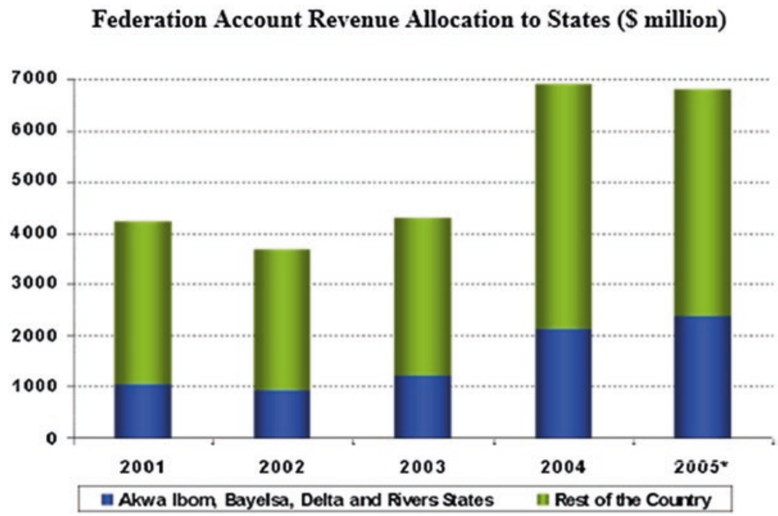

Fig. 9.3 The federal government's revenue allocation to states

matters such as revenue management. Olav Ljosne, regional external affairs manager for Africa (based in Nigeria), explained:

> The intention of the constitution is to prevent federal interference in state affairs. Only the state legislative, not even the president, has power to call state governors to account for moneys given to them.

Under the military dictatorships, control was centralized. Under civil rule, the states had considerably more power and autonomy. The Delta State's economic power was greatly strengthened by its 13% share of the federal government's revenues from oil. This did not stop its governors from campaigning at the July 2005 constitutional conference and elsewhere for an even greater percentage while diverting attention from the accountability issue that was also on the agenda.

Changing the Legacy: Shell's Next Steps

Back in 2006, Detheridge and Udofia realized that, given the complexity of Nigerian human rights challenges, a longer-than-usual series of briefing sessions with their successors would be necessary. They had to describe the learning process that Shell had gone through. Udofia's view was that Shell was at a "make it or break it" point. Where did a private company's role begin and end and where did the governments' begin – how far could Shell go with the values it espoused without exceeding its remit? What else needed to be done on the governance and transparency agenda? And crucially, what other longer term partnership initiatives, like EITI were needed?

While discussing this, they wondered what their best advice might be for Shell's next steps. They prepared an agenda for the upcoming session.

Analysis: Shell's Learning

Company Learning

Decision-making executives at Shell have learnt a great deal from the company's less successful and more reactive approaches of the past and clearly now encourage and promote proactive stakeholder-engaging attitudes that lead to more positive outcomes. Although stakeholders continue to criticize Shell for lacking a principled approach in the Niger Delta and for being slow to recognize and be vocal about ongoing corruption issues, progress has been made. Many suggested that Shell should have become more active in terms of its full social responsibility role much sooner, for example, by publicly objecting to the Ogoni executions. Although we are many years later, institutional learning from the past on such delicate issues is essential. It is important that the learning in Nigeria becomes integrated as part of Shell's corporate "DNA" This is a robust way of maintaining momentum and corporate readiness on such complex and sometimes "fuzzy" issues.

Strategy Development

Considering that Shell has now gathered some invaluable learning from mistakes made in the past, there is a real opportunity to put this into practice. However, the learning from issue management should also lead to fundamental changes in strategy, and not only contribute to risk management. Changes in Shell's actions over the last decade in particular illustrate the results of a much more reflective process where strategy and stakeholder engagement is concerned. Examples are:

- Shift from charity programs in local communities to community development activities.
- The company is more engaged, responsible and responsive.
- Shift to publishing financial figures and providing transparency on where Shell money goes.
- Promotion of a native Nigerian as head of SDPC.

Cohesive Focus

It is – still today – important that the focus on fighting corruption does not take away from other efforts on human rights issues in the field. While Shell is still trying hard to address the root problems, the situation in the Niger Delta has evolved to become even more dangerous, particularly for employees at risk of being kidnapped.

Increasing communication is a solution that the company has fully adopted, while continuing to push transparency to the utmost. However, one problem might be that some of the main actors, such as local communities and the “war lords,” are not actually part of the “coalition” around the transparency issues. Power in the Delta has become increasingly fragmented, and the situation, over the past few years has gained, not reduced, in complexity. Any new actor in this scenario will find it exceedingly difficult to get to grips with this complexity, which cannot be underestimated. Continuing operations in such environments is difficult and sometimes opportunities for influencing the situation are limited. The key lies in applying that limited influence in the right way.

Stay or Go?

In the context of “risk mitigation,” retaining a presence in Nigeria would still be the best option for Shell rather than considering moving out of Nigeria. Apart from the fact that the Nigerian operations are part of Shell’s core business (making it difficult to withdraw from that point of view alone), Shell has over time become a much more responsible player in the Delta. Should the company withdraw, it risks being replaced by another player with much less experience in the area, which could potentially escalate the already tense situation there. It takes years to develop successful working relations with government authorities in developing countries with tenuous political situations. The company has realized that its own social initiatives/programs, while an important demonstration of its goodwill, are merely a drop in the ocean in light of the endemic corruption and the resulting continuing poverty of the population. In spite of the ongoing tensions and challenges, Shell now appears to be headed in the right direction, pushing transparency initiatives and giving the population/voters information on the basis of which they can hold politicians/civil servants accountable.

The SWOT of Shell’s Position in Nigeria

Strengths and Opportunities

Shell’s Experience

Shell has had long and valuable experience in Nigeria. It has gained influence as one of the government’s key partners and can lead state players to better performance in oil production through special management solutions. Shell has strengthened its corporate social responsibility strategy since it first got involved in the Delta and has become a global leader in human rights/corruption issues. It has strengthened its image in communities by giving more thought to the most appropriate (or effective) social programs. It thus has increased its ability and scope to apply pressure on the government. Nigeria needs Shell’s know-how and technology, and the company has complemented this with development expertise and more coherent management systems. However, increasingly powerful Chinese/Indian companies are only too willing to step in and replace established multinational majors in the Delta, given the chance. We suggest that this would be detrimental to the tenuous situation in the Niger Delta, since an acute awareness of the complexities of working in the area and knowledge of "the playing field" are required if an even more difficult situation is to be avoided. Shell can still make a real business case for staying in the country and over the long term, Shell can invest in creating a more stable, sustainable operating environment.

Extractive Industries Transparency Initiative

International awareness of the issues of human rights and corruption is greater than ever (contributing factors are attention from the World Bank, IBLF – the International Business Leaders Forum, Transparency International, UN initiatives and the creation of the Voluntary Principles on Human Rights and Security[5] and so on). From a relatively weak earlier position as described in the case, Shell has now moved, particularly over the last decade – through the EITI – to a much stronger position. The EITI gives an opportunity to "play by the book." Also, in many ways, "a problem shared is a problem halved" – the involvement of other stakeholders serves to support Shell's moves in the Niger Delta and makes it more difficult for media and NGO players to paint the company in an entirely bad light. The EITI has demonstrated Shell's goodwill in entering into a positive dialogue with the government and other players on issues related to corruption with a commitment to transparency. In short, Shell is leading by example by being an honest corporation and good corporate citizen.

Corporate Influence: "He Who Pays the Piper…."

There is no doubt that the revenue that Shell provides to the government through the production of oil protects its position. The company is a major player and is listened to since it has the ear of Western governments to which it can provide good connections. Over time the company has come to recognize the importance of MNCs being outspoken about the need to recognize human rights issues and proactively promote anti-corruption efforts. Along with its expertise/credibility in the oil business, all of these factors will ensure that Shell's reputation will be more protected, not less. The decision to employ a local national to head up Shell's Nigerian company went a long way toward increasing Shell's credibility in Nigeria and in the outside world.

[5] See www.voluntaryprinciples.org: The Voluntary Principles on Security and Human Rights were created by governments of the United States, the United Kingdom, the Netherlands and Norway; companies in the extractive and energy sectors; and NGOs (all with an interest in human rights and corporate social responsibility) to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.

Weaknesses and Threats

Relationship with Government

Shell's dependence on government decision- making could, unless managed judiciously, make it a "hostage" of the government. The company is a foreign presence in Nigeria, operating as a "guest" in the country, and it has limited influence on many political levels, some of them extremely subtle. The same is true for many extraction industries. However, as mentioned above, the establishment of EITI is helping Shell to counteract the effects of earlier overdependence and inability to speak out forcefully on some issues. The company is still dependent on the government for the security of its personnel, which still constitutes a risk given past history and the continuing tense situation in the Niger Delta.

Threats to Reputation

Although the EITI has helped Shell to overcome its previously negative image in Nigeria, the company is still not always perceived as a "good citizen" by NGOs or the press. Countering the effect of this on public opinion requires a long-term effort. Rightly or wrongly, larger branded companies are constantly being attacked by NGOs that have a lot to gain from the exposure this brings to the sustainability issues they campaign for. Shell must be prepared to be under scrutiny for a long time to come. In addition, Shell represents an industry that is itself under increasing scrutiny because of climate change; media coverage is likely to continue to focus on the oil majors, thus potentially exposing any other visible issues. The boundaries of sustainability issues, therefore, may well overlap. In addition, the involvement in the EITI leaves Shell with little scope for error. Having such a strong role means that the company would lose considerable credibility if it were implicated in another scandal.

Ongoing Conflict

Nigeria is subject to ongoing political, social and economic instability. The situation in the Niger Delta is becoming even more tense, with increasingly serious breaches of the law through kidnapping and so on. There may come a stage when operating in the area will have to be seriously reviewed for security and safety reasons. There is already considerable risk to Shell employees and their families during an ongoing vicious cycle of kidnapping. The "tipping point" may be reached sooner rather than later as sabotage of installations and critical kidnapping incidents increase.

Economic Situation

Nigeria is one of the poorest countries in the world. Shell represents a capital-intensive industry that can only benefit a small number of people directly (employees). This is bound to continue to create tension in the areas affected and is exacerbated by the corruption of the feedback system, which might otherwise ensure that some wealth reaches the areas in a more indirect way. The business model is currently still not in line with public perception and, unless remedied, this will lead to a gradual loss of the license to operate in the Niger Delta area.

Cultural Divide

The cultural gaps between Shell (with a heavy expatriate weighting) and local cultures are difficult to overcome. However, by employing a local Nigerian as the CEO of Shell Nigeria, the company took an important step in the right direction. Shell's expatriate presence has been reducing over time.

Multinational Corporation Role

Some of Shell's actions may be perceived as a multinational acting in place of government. Many would question whether this is a role that an MNC should take on in Nigeria. The limits of Shell's role need constant attention and should be continuously reviewed. For example, the potency of the GmoU for sustainable development is hampered by a number of challenges such as the enormity and complexity of the development challenge in the Delta thrown up by the failings of an absentee state, the structural constraints imposed on corporations by the profit-maximizing motive and cultural factors that not only prevent effective participation but also promote disempowerment of marginalized groups such as women.

Recruitment/Retention of Qualified Personnel/Management

Given the risks to personnel in the Delta, Shell may experience increasing problems in getting qualified personnel willing to live and work there.

Political Situation

The smooth handover of government in a democratic election had as yet never happened in Nigeria. The background to the country's leadership had been fraught with conflict and violent incidents. There is no guarantee that the government's anti-corruption focus would be continued by any new incumbent, even though the

Nigerian government would lose considerable credibility by making an "about turn" (however, the history of conflict in Africa has meant that this is not always the most important criterion).

Sustainability of Oil

The fact that Shell is exploiting a non-renewable resource will remain an underlying and constant weakness of its business model, since the concept of exploiting the commodity will constantly be under attack.

Axes of Action Available to Shell

Shell's Position on Human Rights

Shell has to continue to make sure that it is not in any way complicit in the violation of human rights. This engages the company in being more vocal and adopting a rights-based approach. Conducting an ongoing human rights analysis of Shell's current situation in the Delta is pertinent and advisable.

Maintain Leadership Position in Transparency

Through a continuous improvement process and multi-stakeholder dialogue, Shell should be able to reach a position of complete transparency regarding its operations and wealth generated for Nigeria from activities in the Delta. Ensuring that Nigerian citizens (and particularly those from the Niger Delta) benefit from the EITI is a major focus of its activities. The company is involved in developing local awareness about revenue flows and thus the capacity of citizen groups to hold local (and federal) authorities accountable for oil revenue. The company can also support the Nigerian government in strengthening the judiciary system.

Act Local

Shell should continue to judiciously support local activities. Apart from a focus on money streams, there also needs to be more transparency on how to deal with problems at site, with communities. This will help the company to develop skills for dealing with the upcoming conflicts of Nigerian society. There may also be scope for being more ambitious on the local level by emulating already successful business models that, for example, provide micro-finance to women to help them own and run small enterprises (such as those funded by the Grameen Bank[6]). This would help switch the political focus to bolstering the economy in other ways (rather than relying on oil wealth) and to diversifying industries.

Use Other Stakeholders to Support Action

Given its past history in the Niger Delta, Shell has become adept at handling media attention on the issues that have constantly come up in the Delta. Over the past 10 years, there have been opportunities to use the media in a more proactive and positive way – to advertise and broadcast efforts being made to render Nigeria corruption-free.

Engage in Stakeholder Dialogue

Shell has evolved to think of itself as "just one other stakeholder" in the Niger Delta. The company could also use other (global) organizations (for example, the World Bank and the IMF) to help improve government practices/transparency. Shell could also partner with other entities (e.g. governments such as the US and UK which have substantial influence on mobilizing the Nigerian government) and NGOs (such as Transparency International). Relationships with NGOs could help clarify and identify future issues, therefore allowing companies to be closer to the ground in understanding the issues, and help protect the license to operate by obtaining the buy-in of local communities. NGOs can also help with the implementation of projects. Collaboration brings corporate financial and managerial resources together with local knowledge of NGOs – a powerful combination. Also, because of their local knowledge, NGOs can sometimes implement aspects of a project more quickly and cheaply than a corporation. Another benefit of working with NGOs is that it can give the corporation more credibility and build trust with communities. Association with an organization that is considered – in the communities' eyes – more credible than a company will help identify common ground on which to operate. In addition, NGOs have the advantage that they are able – even expected – to speak more openly about social and environmental issues than a company.

Indeed, Shell has become a conduit for bringing stakeholders together such as militias and local communities, and federal and state governments. The company can identify local leaders to work with (sometimes behind the scenes), other African

[6] The **Grameen Bank** is a microfinance organization and community development bank initiated in Bangladesh. It makes small loans (called micro-credit) to the poor to allow them to set up small businesses, e.g. weaving, pottery, storage and transportation services, without having to put up collateral. The bank also accepts deposits, provides other services, and runs several development-oriented businesses including fabric, telephone and energy companies. The organization and its founder, Muhammad Yunus, were jointly awarded the Nobel Peace Prize in 2006.

leaders/countries (through the African Union[7] for example) and other industry partners. Such action would support the Nigerian government's efforts to fulfill its role regarding human rights. Is to help build bridges with religious leaders, usually much respected by politicians and local populations alike. Moreover, Shell could facilitate dialogue with other oil-producing developing countries. In other words, the company could form a coalition of stakeholders to bring about change. Shell's advantage is that it has the convening power to bring these parties together to discuss/analyze problems and work on solutions. Shell arguably has still not done enough to exert its influence. Now is the time to exert that influence.

Moving forward, apart from keeping production going as a business goal, the priorities could continue to be general local development, continuing to "do the right thing" through reconciliation and engagement with communities, NGOs and media, while aiming for clarity – and asking what are the limits to Shell's responsibility/accountability? Shell could be a real catalyst for change in getting government to take on its role of developing the Nigerian economy and providing for basic human needs. The direct impact of Shell's efforts will remain limited, but indirect impacts in terms of multiplying effects could be substantial. Encouraging government to do things well in the medium to long term will be better for the country and population overall.

Epilogue: Ten Years Later……

Shell's Role and Direction in the Niger Delta in 2015

Since 2006 and up to the time of writing, SPDC had greatly improved on how it engages with local communities to deliver its social projects. Firstly, in 2006 a local national was appointed as Managing Director of the SPDC and this eased the way to better relations with stakeholders overall. In the course of 2006, the company introduced a new framework for working with communities called the Global Memorandum of Understanding (GMoU). This was an extremely important shift in approach, since it placed more emphasis on transparent, accountable processes, regular communications with the grassroots, sustainability and conflict prevention.

A GMoU is an agreement between SPDC and a group (termed "cluster") of several communities. Clusters are based on local government or clan/historical affinity lines defined in consultation with the relevant state government. The GMoU brings communities together with representatives of state and local governments, SPDC and non-profit organizations, such as development NGOs, in a decision-making committee called the Cluster Development Board (CDB). Under the terms of the GMoUs, the communities decide the development they want while SPDC – on behalf of its joint venture partners – provides secure funding for 5 years, ensuring

[7] The African Union (AU) consists of 53 African states. Its aim is to contribute to securing Africa's democracy, human rights and sustainable economies for its members, especially by bringing an end to intra-African conflict and creating an effective common market.

that the communities have stable and reliable finances as they undertake the implementation of their community development plans.

The advantage of the GMoUs is that they promote better ownership and a strong sense of pride amongst communities since they are responsible for implementing their projects. They are also a robust platform for additional local or international donors to fund development projects directly through the Cluster Development Boards (CBDs). They are popular with communities, since ownership in its turn promotes better projects, increasing sustainability and trust.

Every aspect of each GMoU is implemented in partnerships with communities and also a number – sometimes up to a dozen – facilitating non-profit organizations that handle sensitization and communication of the GMoU model to the communities while also developing the capacity of CDB members to handle community development processes.

They also ensure quality delivery of the GMoU projects and programs. By end of 2012, for example, SPDC had signed agreements with some 33 GMoU clusters, covering 349 communities, which represents some 35% of the local communities around business operations in the delta. In 2012, a total of 723 projects were successfully completed, and total funding for these projects amounted to over US$117 million in 2012 alone. Furthermore, some of the 33 CDBs had grown into registered foundations receiving third party funding.

Notwithstanding these positive developments on stakeholder management and dialogue, Shell, as a high profile international company with the tumultuous track record it has in the Niger Delta, continued to attract the ire of international NGOs. In January 2015, for example, some 15,600 Ogoni farmers and fishermen were awarded some £2,000 each as part of a £55 million pollution charge to Shell because of pollution caused by two oil spills in 2008 and 2009. Communities were given millions each to build health clinics and refurbish schools. While this would help to alleviate the sharp end of poverty in the Delta, issues around damage to the environment providing the wherewithal for people to live and make a living (fishing, farming), will not be resolved quickly. The company has traditionally claimed that most of the oil pollution is due to sabotage by rebels and others that tap into pipelines illegally. Court documents used during the proceedings showed that the company was aware of corroded installations and equipment faults as a significant risk factor. Organizations such as Amnesty International accuse Shell of evading its responsibilities and of clouding the facts. Whatever the reality is, there is increasing pressure on the company to be more transparent and to generally take more responsibility for past and future contamination of the Delta.

Moreover, in …., Shell took a decision to dissolve its centralized sustainability function at its corporate headquarters in London. One executive presented appoint of view on the impact:

> We were fortunate that Shell CEOs Mark Moody Stuart and then later Phil Watts saw value in profiling sustainability quite highly. However, since their time, successive CEOs did not necessarily see the same value in strategic sustainability. Maybe dismemberment of the sustainability function happened too soon and went too deep. When a new CEO comes on board, he or she will question if this or that activity is worthwhile. Often it depends on how

> well an argument is articulated to them by senior executives. The closing of the sustainability function left a gap in that respect. What you want to do is have sustainability in the hearts and minds of every employee first. Only then does devolving make any sense. Granted, having a large sustainability organization at the head office is ultimately not the way to go. Mainstreaming is necessary. However, if you dismantle thought leadership at head office level, then the senior leadership is not challenged enough on these issues. Business managers have a lot to attend to not least falling oil prices. Sustainability issues may tend to go to the bottom of the pile. Maybe this does not matter now, but if there is a scandal, it certainly will matter!"

Nigeria and the NNPC in 2015

Despite expansion in services, consumer industries and agriculture over the last 10–15 years, in 2015 Nigeria still depended on oil for in excess of two thirds of state revenues and virtually all of its export earnings. Nigeria's National Petroleum Corporation – the state oil company – continued to evolve in a web of patronage and allegations of criminality, allegedly setting up complex deals that opened up the way to fraud in fuel subsidy allocations and contracts, amounting to perhaps up to US$1 billion a month in national revenues from sales. In 2014 PwC called for the company to be urgently restructured after its audit revealed that billions of dollars were unaccounted for in its 2012 and 2013 accounts. According to a Financial Times article in mid-2015, the NNPC had amassed billions in dollars in debts to its joint venture partners (including Shell). The fact that government controls the oil through NNPC is preventing Nigeria from reaching its full potential of production of four million barrels a day of oil (almost double current output). Refineries in Nigeria are non-existent and paradoxically, the country has to import most of its own fuel.

Crude oil production in 2015 was in fact declining, and pipelines were still vulnerable to oil thieves, who were stealing about 232,000 barrels every day, costing the State further billions. The practices of "bunkering" – the trade in stolen oil – that became common in the early years of the new Millennium, has escalated. Satellite imagery reveals that artisanal refining has also increased across the Delta in the period 2008–2013 on an industrial scale. In addition, many independent, parliamentary and government sponsored investigations have found that revenues from oil sales are continuing to be siphoned off at epic levels.

In 2009, Nigeria's then-President Umaru Musa Yar'Adua had offered an amnesty deal to thousands of militants, whose vandalism, theft and attacks in six states in the Niger Delta region had cost Nigeria a third of its oil production. The Movement for the Emancipation of the Niger Delta rebels agreed to lay down their arms in return for an unconditional pardon and stipend. This was upheld by successive presidents since; in 2015, Nigeria's new president Muhammadu Buhari renewed the commitment to maintain the amnesty.

In July 2015, the NNPC banned more than 100 tankers from Nigeria's waters, under a directive from Nigeria's new president Muhammadu Buhari who is focused on tracing the large sums of money resulting from stolen oil sales. To reduce impact on its markets, companies – including Shell – asked ship owners exporting their Nigerian oil to sign off on a “Letter of Comfort” (LoC) guaranteeing that their loads were not stolen and promising to indemnify the NNPC against illicit use of their vessel.

We can therefore deduce from recent events in 2015, that the challenges of oil exploitation in the Niger Delta and the barriers to transparency of the system as a whole are far from over.

The Extractive Industries Transparency Initiative in 2015

In terms of the case story, the EITI had just started out on its long journey, a journey that continues today. Now, 10 years later, the initiative has exceeded all expectations in terms of numbers of member companies (there are currently 48). The initiative successfully promotes multi-stakeholder dialogue on a high level and this in itself is a major contribution to resolving some of the very complex issues it is set up to address.

Two crucial questions can be asked. First, in what depth and detail should information about monetary flows be made public? Should it go right down to project level? Nigeria still produces EITI reports that disclose revenues from the extraction of its natural resources. Joint venture partners (companies such as Shell and Exxon) disclose what they have paid in taxes and other payments and the government discloses what it has received. These two sets of figures are compared and reconciled. The Nigerian government also publishes amounts being paid to Nigerian States. EITI still settles for country level transparency, but has now set up a task force to look closely at other levels of transparency i.e. state and project level. Secondly, and more fundamentally, what exactly should be disclosed? For example, should each company’s contribution be accounted for separately?

In the end of the day, there is a major unanswered dilemma: Does it make sense to have a transparency initiative at all if parts of the system remain non-transparent? Whilst the EITI is dealing with very important issues of transparency and accountability in revenue flows related to extractive industries, it is unlikely that resolving this issue alone will solve the fundamental social, environmental and economic problems of countries like Nigeria.