

Shell's OPL 245 oil field, Nigeria: What leaked emails reveal

The Corner House, Global Witness, HEDA, Re:Common

**Presentation to Committee on Foreign Trade and Development Cooperation
House of Representatives of the States General
The Netherlands
17 June 2019**

Background to the OPL 245 deal

- Located offshore from the Niger Delta in Nigeria.
- 1998: Licence granted by oil Minister Dan Etete to Malabu Oil and Gas, a company in which he has a significant interest.
- 2001: Shell entered into an agreement with Malabu but Malabu's licence is revoked.
- 2002: licence granted to Shell's Nigerian subsidiary on a production sharing basis.
- 2006: the government revoked Shell's license and restored the block to Malabu, prompting court challenge by Shell under Netherlands Bilateral investment agreement.
- 2010: Etete sought to sell the block directly to Shell and Eni but negotiations break down after Mohamed Abacha, the son of the former dictator, claimed he was part owner of Malabu.
- 2011: Shell and Eni devise a revised structure for the deal whereby they avoided acquiring the block directly from Malabu but instead use the Nigerian Government as an intermediary.

Shell on Trial

- \$1.1 billion dollars allegedly paid in bribes
- Shell, together with a number of senior managers, is currently being prosecuted for corruption in Italy and Nigeria.
- Two intermediaries in the deal have already been convicted.
- An investigation is under way in The Netherlands.
- The company has disclosed that it has been told that the Dutch investigation has revealed prosecutable offenses.
- A civil action in Nigeria by HEDA is seeking to have the licence revoked on the grounds that it was corruptly awarded.

Procura della Repubblica, Richiesta di rinvio a giudizio, Al Guildice per L'Udienza Preliminare presso il Tribunale di Milan, 7 February 2017

Landmark prosecution as Nigerian authorities charge Shell and Eni over shady \$1.1 billion OPL 245 deal, 3 March 2017, <https://www.globalwitness.org/en/press-releases/landmark-prosecution-nigerian-authorities-charge-shell-and-eni-over-shady-11-billion-opl-245-deal/>

Nigerian authorities bring money laundering charges against former Nigerian Oil minister Etete and former Justice Minister Adoke over OPL 245 oil deal, Global Witness, 22 December 2016, <https://www.globalwitness.org/en/press-releases/nigerian-authorities-bring-money-laundering-charges-against-former-nigerian-oil-minister-etete-and-former-justice-minister-adoke-over-opl-245-oil-deal>

Importance of Shell in Netherlands

- Shell is one of the biggest companies in The Netherlands, employing some 82,000 people worldwide and thousands in Holland itself.
- Many Dutch pensioners who are not employees of Shell also have an interest in the company since their pensions are invested in Shell.

Implications for Shell

- Shell could face possible debarment in the EU and US from bidding for public contracts.
- Shell's licence to operate OPL 245 revoked. This could be a severely blow to its business in Nigeria.
- The company could face major fines and damages claims.

Wider Concerns

- Internationally, the reputation of The Netherlands would be damaged if it fails to prosecute where there is the evidence to do so.
- Crippling damage caused by corruption fuels injustice and poverty – and is a cause of economic migration

OECD Guidelines – Due Diligence Guidance for Responsible Business Conduct

“NOTING that the Guidelines **recommend that enterprises carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts related to** disclosure, human rights, employment and industrial relations, the environment, **bribery and corruption**, and consumer interests in their own operations, supply chains and other business relationships”

Source: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

What the emails reveal

- Shell was the architect of the deal and the decisions were made by the most Senior Management in The Hague not in Nigeria.
- Shell Senior Management knew that bribes would be paid.
- Senior Management knew that Nigeria would lose out from the deal – in our estimate to the tune of nearly \$6 billion.

From: Brinded, Malcolm A RDS-ECMB

Sent: 22 March 2010 15:50

To: Voser, Peter R RDS-CEPV; Henry, Simon P RDS-ECSH; Hess, Beat W RDS-ECBH

Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP

Subject: FW: Draft 245 PCN

Hence please find attached the proposed PCN which sets out in detail the summary I gave recently. This is one where your formal endorsement is appropriate given the history and the political/ business principles issues involved.

Interview with Peter Robinson
By telcon 16th November 2012

10. Was there anything about the negotiations relating to the settlement agreement or the basis on which the deal was done which made you uncomfortable? Did you discuss these with senior management/legal?

Absolute transparency in terms of the rest of the deal team and up to the line to IC, ECMB and, ultimately, to ECPV and ECSH.

Source: "Interview with Peter Robinson By telcon 16th November 2012"

OPL245 Brief for ECMB Call with Descalzi - 23rd August 2010

- In country view is that the President is motivated to see 245 closed quickly – driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence – reinforces need for a solution quickly;

From: Brinded, Malcolm A RDS-ECMB

Sent: 25 March 2010 16:08

To: Henry, Simon P RDS-ECSH; Voser, Peter R RDS-CEPV; Hess, Beat W RDS-ECBH

Cc: Wetselaar, Maarten SIEP-EPF; Ruddock, Keith A SI-LSEP

Subject: 245 PCN

Under the proposed settlement structure, **this is no longer a PSC** and thus no cost recovery takes place (although in settlement agreement we confirm fiscal treatment under relevant PSC law (precedents for this). We thus only rely on tax law to determine tax deductibility.

- The solution proposed leaves NNPC without any economic interest in the Licence – a first in deepwater and obviously carrying some longer term risks (whatever assurances we get now in the agreement regarding FGN committing not to back in etc);