Safe sex in Nigeria

Court documents shed light on the manoeuvrings of Shell and ENI to win a huge Nigerian oil block and on the dilemmas of their industry

Deals for oilfields can be as opaque as the stuff that is pumped from them. But when partners fall out and go to court, light is sometimes shed on the bargaining process—and what it exposes is not always pretty. That is certainly true in the tangled case of OPL245, a massive Nigerian offshore block with as much as 9 billion barrels of oil—enough to keep all of Africa supplied for seven years.

After years of legal tussles, in 2011 Shell, in partnership with ENI of Italy, paid a total of $1.3 billion for the block. The Nigerian government acted as a conduit for directing most of that money to the block's original owner, a shadowy local company called Malabu Oil and Gas. Two middlemen hired by Malabu, one Nigerian, one Azerbaijani, then sued the firm separately in London—in the High Court and in an arbitration tribunal, respectively—claiming unpaid fees for brokering the deal.

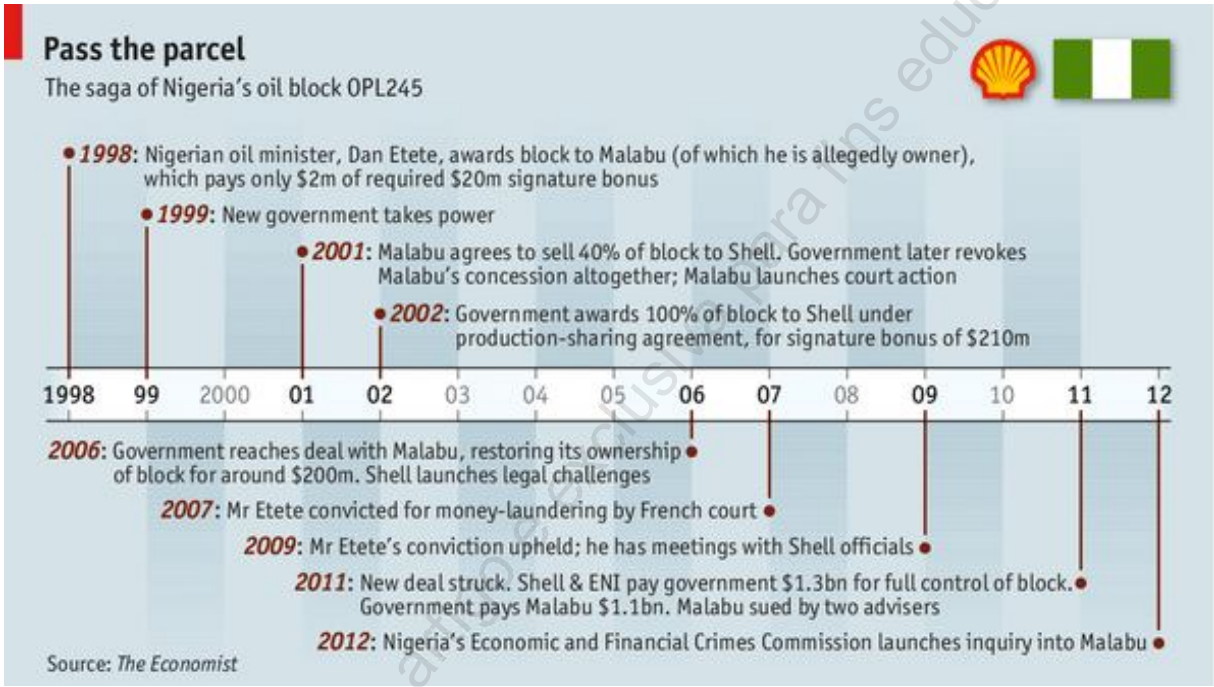
The resulting testimony and filings make fascinating reading for anyone interested in the uses and abuses of anonymous shell companies, the dilemmas that oil firms face when operating in ill-governed countries and the tactics they feel compelled to employ to obfuscate their dealings with corrupt bigwigs. They also demonstrate the importance of the efforts the G8 countries will pledge to make, at their summit next week, to put a stop to hidden company ownership and to make energy and mining companies disclose more about the payments they make to win concessions. On June 12th the European Parliament voted to make EU-based resources companies disclose all payments of at least €100,000 ($130,000) on any project.

The saga of block OPL245 began in 1998 when Nigeria's then petroleum minister, Dan Etete, awarded it to Malabu, which had been established just days before and had no employees or assets. The price was a "signature bonus" of $20m (of which Malabu only ever paid $2m).

The firm intended to bring in Shell as a 40% partner, but in 1999 a new government took power and two years later it cried foul and cancelled the deal. The block was put out to bid and Shell won the right to operate it, in a production-sharing contract with the national petroleum company, subject to payment of an enlarged signature bonus of $210m. Shell did not immediately pay this, for reasons it declines to explain, but began spending heavily on exploration in the block.

Malabu then sued the government. After much legal wrangling, they reached a deal in 2006 that reinstated the firm as the block's owner. This caught Shell unawares, even though it had conducted extensive due diligence and had a keen understanding of the Nigerian operating climate thanks to its long and often bumpy history in the country. It responded by launching various legal actions, including taking the government to the World Bank's International Centre for the Settlement of Investment Disputes.

Malabu ploughed on, hiring Ednan Agaev, a former Soviet diplomat, to find other investors. Rosneft of Russia and Total of France, among others, showed interest but were put off by Malabu's disputes with Shell and the government. Things moved forward again when Emeka Obi, a Nigerian subcontracted by Mr Agaev, brought in ENI (which already owned a nearby oil block). After further toing and froing—and no end of meetings in swanky European hotels—ENI and Shell agreed in 2011 to pay $1.3 billion for the block. Malabu gave up its rights to OPL245 and Shell dropped its legal actions (see timeline).



The deal was apparently split into two transactions. Shell and ENI paid $1.3 billion to the Nigerian government. Then, once Malabu had signed away its rights to the block, the government clipped off its $210m unpaid signature bonus and transferred just under $1.1 billion to Malabu.

Tom Mayne of Global Witness, an NGO, has followed the case closely; he believes things were structured this way so that Shell and ENI could obscure their deal with Malabu by inserting a layer between them. Mr Agaev, Malabu's former fixer, lends weight to this interpretation. It was, he says, structured to be a "safe-sex transaction", with the government acting as a "condom" between the buyers and seller.

It is not hard to see why the oil giants would want to avoid being seen to be dealing directly with Malabu, a shell company with tainted provenance. Its ultimate beneficial owner is widely believed to be Mr Etete, the very minister who had awarded it the block while serving under Sani Abacha, the late, staggeringly corrupt dictator.

In 2007 Mr Etete was found guilty of money-laundering by a French court. His conviction was upheld in 2009. The trial centred on bribes he had allegedly demanded from foreign investors while in government. He used these to buy, among other things, a French mansion and about €1m-worth of Art Deco furniture, according to French court documents.

Then in 2011 Mr Obi, one of the middlemen in the final deal with Shell and ENI, took his claim for unpaid fees to the High Court in London, calling on Mr Etete to give testimony. For unclear reasons, he agreed to do so—but the hearings had to be moved briefly to Paris so that Mr Etete could give evidence, because he had been barred from Britain for failing to disclose his French conviction on entering the country.

Mr Etete claims he has never been more than a consultant to Malabu. If so, he is unusually hands-on. He was the company's main negotiator and its representative in the High Court, where he admitted to being the sole signatory on its bank accounts. Indeed, there is no evidence of anyone else making decisions for Malabu.

When asked in court about others purportedly linked to the company and its record-keeping, Malabu's company secretary, Rasky Gbinigie (who describes Mr Etete as a "family friend"), insisted that he had lost the firm's copy of the register of shareholders and all minutes of meetings, that there was no written correspondence between him, the directors and the shareholders, and that he had no documents to verify who put up the company's original share capital.

A not-so-secret alias

Last year Nigeria's Economic and Financial Crimes Commission (EFCC) looked into Malabu after Mohammed Abacha, a son of the former dictator, complained that he had been a founding shareholder but had been illegally cut out. In an interim report later in the year, the commission said that one Kweku Amafegha "stood in" as a nominee director for Mr Etete. In the High Court's hearing in Paris Mr Etete admitted that he had himself used the surname Amafegha to open accounts in the past. It was, he said, an alias that "I have always used when I go out for secret missions internationally."

In the same hearing Mr Etete said of OPL245: "I put my blood, I put my life into this oil block"—quite a commitment for a mere consultant. Yet, when asked directly if he was its owner through Malabu, he denied it. When presented with transcripts of a recording in which he supposedly claimed that "It is my block", he dismissed the transcripts as inaccurate.

Shell and ENI did not respond to The Economist's questions about whom they believed to be the beneficial owner of Malabu. Whether or not they suspected it to be Mr Etete, their dealings with him were extensive. He met ENI executives repeatedly. High Court testimony indicated that Shell officials had met him as recently as December 2009, after his money-laundering conviction was upheld. In an e-mail that came out in court, a Shell man talked of having had lunch and "lots of iced champagne" with Mr Etete, who had requested figures from Shell on what it was willing to pay Malabu for the block.

ENI says it considered cutting a deal with Malabu directly, until it emerged that the firm might not have full ownership of the oil block because of "existing disputes", including with Mr Abacha. Mr Obi testified that Shell broke off direct talks with Mr Etete for the same reason, and because he was "an impossible person to deal with".

But the oil giants were clearly reluctant to throw in the towel. Shell was loth to walk away from a block in which it had already invested tens if not hundreds of millions of dollars. (The company will not say how much.) ENI was attracted by the size of the block, the prospect of accompanying tax holidays and a waiver of the usual requirement that production revenues be shared with the national oil company.

Shell and ENI reject the suggestion that their joint purchase was a thinly disguised transaction with a dodgy brass-plate company. Shell says it made payments to the Nigerian government only and that it has acted at all times in accordance with Nigerian law. It previously said it had "not acted in any way that is outside normal global industry practice". ENI says its payments to the government "were made in a transparent manner through an escrow arrangement with

a major international bank". That bank was JPMorgan Chase. A Lebanese bank had earlier declined to handle the payments, it emerged in court.

The companies' claim that they bought the block from the state, not Malabu, is disingenuous, says Mr Mayne of Global Witness. It is also contradicted by Nigeria's attorney-general, Mohammed Bello Adoke, who told a parliamentary committee last July that the companies "agreed to pay Malabu", with the government acting as an "obligor" and "facilitator."

The attorney-general was unusually active in helping the deal along. He held meetings with Shell, ENI and Malabu, helped to structure the final agreement and even advised on payments to middlemen, according to Mr Obi. In Nigeria it is highly unusual for an attorney-general to be so involved in a big oil deal. The lead is typically taken by the petroleum ministry, which in this case was said to be livid at being sidelined—particularly when Mr Adoke requested that it extend the deadline it had given Malabu to pay its long-owed signature bonus. Mr Adoke, it was suggested in the High Court, had been lawyer to none other than Mr Etete before serving in government. (Mr Adoke could not be reached for comment.)

Where did the money go?

The attorney-general has rejected as "without basis" claims in the Nigerian press that much of the money the government paid to Malabu in the 2011 deal was "round-tripped" back to bank accounts controlled by public officials. But where that money did end up is shrouded in mystery. Of the $1.1 billion, $800m was paid in two tranches into Malabu accounts. This was then transferred to five Nigerian companies that appear to be shells. One of these, Rocky Top Resources, received $336.5m, some of which seems to have been passed on to unknown "various persons", according to the EFCC's report. Some $60m went to an account controlled by Mr Etete, who has said that he received $250m in total for his role in the deal. He said in court that "Malabu shareholders decided to spend their money the way they deemed fit" and that he is investing on their behalf.

Among the listed owners of three of the recipient companies is Abubakar Aliyu, who is reported to have close business ties to a senior politician, Diepreiye Alamiesegha, the former governor of Bayelsa state. Mr Alamiesegha's skills in escapology would impress Houdini. Detained in Britain on money-laundering charges in 2005, he jumped bail. After returning to Nigeria, he was sentenced in 2007 to two years for each of six corruption-related charges, though he served only a few hours in prison. In March 2013 he received a controversial pardon from Goodluck Jonathan, Nigeria's president. Local press reports have made unsubstantiated allegations linking both the president and Mr Alamiesegha to the Malabu deal.

The EFCC's report states: "Investigations conducted so far reveal a cloudy scene associated with fraudulent dealings. A prima facie case of conspiracy, breach of trust, theft anmd [sic] money laundering can be established against some real and artificial persons." Officially, the EFCC's investigation is still open, but a source familiar with it says that its sleuths have been discouraged by higher-ups from moving forward. However, other countries' fraudbusters have taken an interest. At least one of the parties involved in the oil-block sale has been contacted by America's Department of Justice.

As for the legal actions brought in London against Malabu by the middlemen, the High Court is expected to rule soon on Mr Obi's claim for $200m. Mr Agaev's separate arbitration case, in which he sought payment of a $65.5m "success fee", was recently settled behind closed doors.

Shell and ENI now each own half of an attractive oil block. To get it, however, they have had to strike a deal that brings with it reputational and legal risks. They might conceivably face action under their home countries' anti-corruption laws, if enforcers reject their claim to have dealt only with the Nigerian government, not Malabu. Shell "would obviously have preferred to secure OPL245 without going within a million miles of Malabu and Etete," says someone who was involved in the negotiations.

Ethical dilemmas

The saga is a striking example of an ethical dilemma that is growing more acute for international oil companies. They are desperate to replace their shrinking reserves with new finds, but many of the most attractive fields are in unstable or poorly governed places. Worse, the industry has to contend with increased resource nationalism in oil-producing countries, making it harder for outsiders to secure reserves, and with greater competition from state-owned firms in Asia, Latin America and the Middle East, which may not have to operate to the same ethical standards.

As a result, firms that refuse to touch any deal with the slightest whiff of impropriety risk eventually going out of business, says Peter Hughes, an energy consultant and former BP executive. They may feel that the best they can do, short of walking away, is to put as much distance as possible between them and the source of the bad smell, as Shell and ENI apparently tried to do with their two-part transaction.

Mr Etete in his heyday as oil minister

How arm's-length is arm's-length enough? That depends on the company's "threshold of ambiguity", says Cory Harvey of Control Risks, which helps companies to manage political and reputational risk. This will vary from company to company and will be perceived differently by management, regulators and NGOs. Ms Harvey has seen oil-industry clients walk away from deals because of concerns about the reputation of, or lack of reliable information on, a seller or local partner. But energy transactions in difficult places can be "spectacularly complex", she says, making it hard to gauge the acceptable level of risk. Nigeria is "arguably the most complex environment of all".

Mr Hughes argues that when foreign companies turn a blind eye to questionable aspects of a deal, it can sometimes benefit developing countries with natural resources. The publicly traded oil majors are, on balance, a force for good, raising overall standards of behaviour by trying to operate as cleanly as possible in most circumstances, he says; better that than leaving the field to less scrupulous operators. Ethically speaking, the industry "has to be viewed in relative, not absolutist, terms," he argues. Mr Hughes points out that Shell periodically talks of scaling back its Nigerian operations, which he believes to be "part of a political-risk management strategy" to exert pressure on the government to act more cleanly and predictably.

Global Witness prefers to see the OPL245 affair as "a lesson in corruption" that demonstrates how important it is for rich-world governments to press on with transparency initiatives, on two fronts. The first front concerns payments to governments. In the past year America and the EU have begun to require resources firms listed there, and large unlisted firms in the EU, to report, project-by-project, their payments to governments. Had this been in force at the time, it would have picked up the $1.3 billion transaction with Nigeria. This would have prompted public scrutiny of the deal and the subsequent money flows through Malabu, which in the end came to light only because the two middlemen decided to sue.

Shell says it favours greater transparency, if applied globally. It opposes the existing project-by-project initiatives because they omit companies not listed in America or Europe, thereby handing them a competitive advantage.

The second front for improving transparency concerns the use of murky corporate vehicles. Hopes are growing that the G8, which meets next week with Britain's David Cameron in the chair, will take steps towards ending the use of anonymous shell companies. Had corporate registries been collecting, and making publicly available, information on beneficial owners back in 1998, the identity of Malabu's owners might have been clear from the start. And it would have been much more difficult to move the proceeds of the sale to Shell and ENI into the corporate equivalent of a black hole, seemingly out of the reach even of Nigeria's anti-corruption commission.

Fonte: The Economist, London, v. 407, n. 8840, p. 63-65, 15 a 21 Jun. 2013.