

The Governing Triangle of Oil and Power in the Niger Delta

The Use of Laws by State and Non-State Actors



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Judith van Niekerk

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Supervisor: Dr. Ir. O. Hospes

Foreword

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Abstract

Keywords: Niger Delta, SPDC, local communities, oil production, governance, power allocation, scale jumping, institutional interaction arena

The Niger Delta is an area of Nigeria that is rich with oil, and therefore with oil companies. Many articles are written about the social and environmental problems that are caused by the oil production in the Niger Delta. In this research the central questions are: What laws are used by state and non-state actors to organize the production of oil in the Niger Delta? And how is decision-making power allocated to enforce these laws? The laws used and power allocation were assessed in a literature study of eight weeks. The structure of the research was to describe the laws and power allocation in three periods, from 1960 until present time, according to the different community development strategies of SPDC. The actors taken into account are SPDC, the Nigerian government, and the local communities. The results showed the use of different official and unofficial laws, but the most main outcome was the importance of scale jumping in the Niger Delta. Scale jumping is explained as the interaction between regional, national and international laws and its influence on the allocation of power. The discussion of the situation in the Niger Delta can be best explained according the concept of 'institutional interaction arena'.

1. Introduction

Nigeria is a country in West Africa with a population of 140 million inhabitants (UNDAF 2010). The state has many different tribes living next to each other. The Niger Delta in the South of Nigeria is an area of geopolitical importance at national and international level because of the oil production and its socio-economic and environmental impacts (Idemudia and Ite 2006). The Niger Delta region has a population of approximately 27 million people. Of the Niger Delta population only 25% lives in an urban centre, the other 75% lives in rural areas (Ite 2007).



Fig. 1 Nigeria – Core Niger Delta states (Stratfor 2009)

The Niger Delta is an area in Nigeria where non-state and state actors have different stakes in the production of oil. Key actors are the Nigerian government, the local communities and Shell Petroleum Development Company of Nigeria Ltd (SPDC). SPDC started with crude oil production in 1956 when the British colonial government granted a license for a monopoly on oil exploration for Nigeria. The Nigerian market was open for other oil companies, but Shell had a lease area of almost 31,000 kilometres and accounts for 40% of the oil production in Nigeria (Ite 2007). This area of exploration was mainly in the Niger Delta (Groves 2009). The growth of Shell in Nigeria led to a decline of economic sectors that were first dominant (Idemudia and Ite 2006). The oil sector became a dominant sector in the Nigerian economy. The oil production and exportation now covers approximately 90% of the national export earnings and approximately 70% of the revenues. SPDC is in a Joint Venture with the government in the Nigerian National Platform Corporation (NNPC). SPDC has more than 10,000 employees and 95% of the fulltime staff, which are 4000 persons, are Nigerians (Ite 2007).

The oil production did not only cause economic growth and a place in the international market for Nigeria, but there were also some enormous side-effects for the Niger Delta of this oil production. The oil exploration leads to negative social and environmental consequences, such as a lack of electricity and pipe-borne drinking water. The environmental degradation of the Niger Delta has led to a decrease in life expectancy of the population. On local level, the environmental degradation contained pollution of farmland and water supplies. On a global level the oil extraction has contributed largely to the emission of greenhouse gas (Groves 2009). Also more and more violence is

experienced from local organizations who fight the environmental degradation and the neglect of the citizens by the government in relation to the exploitation of oil (Ikelegbe 2005).

SPDC is the biggest oil company in the Niger Delta and is held responsible for the problems occurring in this region due to oil production. Shell has taken up some responsibilities in trying to work together with the community in relation to Corporate Social Responsibility (CSR), but this has not always been integrated successfully into the local communities (Ite 2007). Another important actor in the Niger Delta conflict is the Nigerian state. Observers note that the policy of the state is not adjusted to the local communities. Authors argue that this is because the perception and understanding of the notion of the security of oil production in the Niger Delta in a sustainable way is different for the local communities and the Nigerian government (Idemudia and Ite 2006). Many articles are written about the social and environmental problems that are caused by the oil production in the Niger Delta. A current paradigm in e.g. the Netherlands is that Western countries should not invest so much in governments of development countries, but let companies, scientists and societal organizations have an important role in development processes (Rijksoverheid 2011).

With this thesis an insight in how the state, SPDC and the local communities use laws on different levels with regard to the social and environmental problems of the Niger Delta. Different laws, including rights, procedures, values and principles, are used by these different actors. A form of law that can be used by companies is the concept of Corporate Social Responsibility (CSR). CSR has gained support over the last year and more companies are implementing this in their general policy. The problems of the oil production in the Niger Delta are contested and will be discussed regarding interactions of actors, laws and CSR. The influence of Shell's strategy towards community development in the Niger Delta can be divided into three periods where different paradigms were present. The first period was from 1960-1997 when SPDC developed the Community Assistance programme. The second period was about Community Development and lasted from 1998-2002. Finally, the period from 2003 until present time is characterized by the strategy of Sustainable Community Development (Ite 2007). The use of laws is described according to these periods.

For the purposes of this research the following research questions will be central in this thesis: **What laws are used by state and non-state actors to organize the production of oil in the Niger Delta? And how is decision-making power allocated to enforce these laws?**

Different goals are set to answer the research question in detail. Firstly the concept of governance according to Wiber and Bull (2009) is used to understand the use of laws by state and non-state actors as a mechanism of this theoretical concept applied on the oil production in the Niger Delta. The second goal is to contribute to the debate on Corporate Social Responsibility (CSR) on basis of this diagnostic case study of the oil production in the Niger Delta.

A literature study of eight weeks is used for this thesis. The method to find the acquired information is to find related articles to the case and the theories. This has been done on the internet, via Scholar Google and via de Wageningen UR library search machines, like Scopus and Web of Science. Once this literature was found, a critical analysis has been carried out to answer the research question and hypotheses.

In the second chapter the conceptual framework will be discussed. In the conceptual framework, the concepts of governance and CSR are explored and are elaborated on by using the notion of institutional void (Hajer 2003). The total study only took eight weeks, which is not enough to go into all the details that are involved in the theories and background of this thesis. The concept of governance has many explanations, which are not all discussed. The use of the definition of governance according to Wiber and Bull is chosen because it seems to be able to describe the situation in the Niger Delta the best. The third chapter of this thesis is about the use of laws by state and non-state actors in the period 1960-1997, when Shell executed the programme of Community Assistance. The fourth chapter focuses on the use of law by state and non-state actors while Shell promoted their Community Development programme. The fifth chapter concerns the developments from 2003 until present time in the use of laws by state and non-state actors in the Niger Delta. The final chapter of this thesis contains the conclusion and a reflection on the different goals of the thesis.

2. Conceptual Framework

2.1 Introduction to Concepts

In this thesis three concepts will be discussed. The first concept that is described is governance. Governance can be explained in many ways, but the focus in this thesis is on the allocation of power and decision-making in the Niger Delta (Wiber and Bull 2009). Within the concept of governance, there are situations that can be described as institutional voids (Hajer 2003). The institutional voids describe a situation where the governance process is uncertain. This situation is present in the Niger Delta for a number of years. This is described in time by means of the Corporate Social Responsibility (CSR) strategies used by SPDC. CSR puts emphasis on the role of the company within the debate on governance.

2.2 'Governance' as allocation of power and decision-making

To be able to analyse the laws that are being used to organize the oil production it is necessary to look at the way the Niger Delta is organized in relation to this oil production. Governance will be the central concept, described in the following definition: 'governance is the mechanisms and processes by which power and decision-making are allocated among different actors (Wiber and Bull 2009)'. The problems in the Niger Delta are influenced by multiple actors who have authority of different levels of governance within the state of Nigeria. Therefore it is decided to use the aforementioned definition of governance that analyses the relationships between the actors involved in the Niger Delta conflict. Another aspect of the definition of governance by Wiber and Bull (2009) is that it pays attention to the allocation of power and decision making. To find out what rules and procedures are used in organizing the oil production in the Niger Delta it is needed to know how power is divided among the actors.

Plural legal orders are existing within states. These legal orders are created by state and non-state actors who have decision-making power on laws. Law can be divided into two forms of law: official law and unofficial law. Official law is the law that is written by state actors and is formally binding. A violation of this laws is punished by an official court. Next to official law, there is unofficial law, decided upon by non-state actors. This kind of law includes a variety of processes which have a normative content, and are not officially binding (Benda-Beckmann, Benda-Beckmann et al. 2009). The concept of law can be described by different dichotomies. A widely accepted form is the difference between official and unofficial law, where official law is written law by state and companies and unofficial law is not written but still present and people live up to these, often normative, rules. Another way of distinguishing different forms of law is by formal and informal law. The difficulty with this distinction is that it is not clear what is considered formal law. The definition of official law is more clear. The distinction also implied by van Benda-Beckmann is between soft and binding law. Following the legalistic perspective on law, it is difficult to make this distinction since soft law can also be binding, depending on the power the actors account to the law. Public and private is also a common dichotomy, but this will not take into account the unwritten laws of e.g. the citizens.

The dichotomy central in this thesis is official and unofficial law, because this distinction is clear and the non-written laws or norms will be taken into account. The dichotomy made is not natural, but is made to oversee the general picture. In many cases these both factors will intertwine. This horizontal distinction of law is not the only distinction. In the case of the Niger Delta, also the levels of governance and therefore used laws are important. There is interaction between local, national and international law. The local law of the Niger Delta will be central, but cannot be analysed without looking to national and international law. The central concept of this thesis is governance described by its mechanisms and processes. The law, both official and unofficial law, can be seen as mechanisms of the state and non-state actors use to govern the state. Law is not the only mechanism that influences governance, other mechanisms are e.g. social relations and economic processes. The focus, however, will be on the laws used by state and non-state actors in the context of governance of the oil production in the Niger Delta.

The allocation of power and decision-making is also discussed by Swyngedouw (2005). He explained the interaction between different levels of governance as 'jumping scales', this means that the network of actors changes on all levels of governance. This involves also a change in actors, when new groups of participants enter the frame of governance or reinforce their power position, others become or remain excluded from the decision-making power. 'Jumping scales' is not a socially neutral process since it can be used as a strategy to gain more power, and thereby exclude other actors from participating (Swyngedouw 2005). The way of managing these complex, multi-scale and multi-level systems can be by integrated management. Integrated management focusses on connecting the bureaucratic and civil society organizations to work together to address management goals, like ecological protection, disaster management and economic development (Wiber and Bull 2009).

2.3 Institutional Void

Governance can also be described as governance-beyond-the-state: 'the emergence, proliferation and active encouragement (by the state and international bodies) of institutional arrangements of 'governing' which give a much greater role in policy-making, administration and implementation to private economic actors on the one hand and to parts of civil society on the other in self-managing what until recently was provided or organised by the national or local state (Swyngedouw 2005)'. Governance-beyond-the-state describes the situation where power is allocated to economic and social actors, as well as to the government. This form of governing is more and more common in rule-making, rule-setting and rule implementation on multiple levels. The allocation of power within this governance system is contested since the decision making power is not centralized, but divided over different actors on multiple levels (Swyngedouw 2005).

The context of policy making and politics is changing, leading to challenges to the classical-modernist institutions and creating conditions for new political spaces. The first challenge is the distribution of the decision-making power. This is caused because the international civil society is growing, the influence of (social) media has grown and powerful actors are responding to what happens in governments. The second challenge is the new spatiality of politics and policy-making, since scale-jumping has become a common strategy to gain power. The third challenge is the growing

international civil society, implicating the strengthening of national civil societies. The structures of influencing citizens in decision making processes are challenged. Another challenge to the classical-modernist institutions is that scientific expertise is no longer a guarantee that citizens will trust the decisions made, based on scientific knowledge. The last challenge is that the context of policy making is also expanding, since new fundamental themes are being brought into politics (Hajer 2003).

The change of the position of the state as from being the government to being part of the governance structure has some underlying causes. The state as institute is weakened, but also the international civil society has grown and there is an emergence of new citizen-actors and new forms of mobilization. In this situation the actions take place in what is called an 'institutional void' (Hajer 2003). An institutional void is when 'there are no clear rules and norms according to which politics is to be conducted and policy measures are to be agreed upon. There are no generally accepted rules and norms according to which policy making and politics is to be conducted (Hajer 2003)'. The new and already participating actors that will influence the process of decision making can participate here because they hold stakes with respect to the issues addressed by the government (Swyngedouw 2005). A double dynamic is present when making policy in an institutional void, because not only do actors deliberate to get favourable solutions for their problems, but also new institutional rules, norms of appropriate behaviour and new conceptions of legitimate political intervention are defined (Hajer 2003). When organizing solutions, official law for these issues can be created by implementing these solutions into the policy and laws of state and non-state actors. The way of organizing the new rules and norms between the state and non-state actors, is a form of soft law because it is not binding, but they are found important for all actors to live up to.

The institutional design of policy proceeds on basis of cases, which are negotiated by all participating actors to fit the preferred solution. Therefore, a problem with dealing with cases like the organization of the oil production in the Niger Delta, is with legitimacy, permissions and accountability and creating a collective decision arises. This is because many actors are involved in the process and this makes the process complicated. To deal with these problems, the institutional design can be addressed from two perspectives. The first perspective is about formal, organizational structures and arrangements of boards, membership, domains, accountabilities and constitutions. The second perspective addresses the informal norms about behaviour in and around these organizational structures. The goal of this type of governance should be to create new types of partnerships to improve the quality of policy output and to be accountable as well (Skelcher 2005).

2.4 Implications for Debate on Corporate Social Responsibility

The challenges and changes in the context of policy making and politics create an institutional void, where there is room for other actors that hold a stake in the issue of oil production, beside the government, to create rules and behavioural codes. This process leads to relations between the participating actors on multiple levels. These relations can result in more interaction between stakeholders and therefore also more involvement of actors with each other.

The relationship between a company and the communities that are involved by this company is an important example of a relations can be (re-)established. To take the environmental and social

aspects of the communities in account in making corporate policy is called Corporate Social Responsibility (CSR). CSR is often described by using three categories: people, planet and profit. 'People' stands for the social initiatives, where 'planet' stands for environmental initiatives. The financial accounts and profit generation are described by 'profit' (Cornelissen 2008). In an institutional void, the rules of the game are negotiated and new rules and norms are established (Hajer 2003). Companies can establish the concept of CSR as a new norm that is accepted by state and non-state actors. The norm of CSR will receive credibility and can be used as a new standard for the company to include in their new initiatives. CSR can be seen as both official and unofficial law when it is implemented into the law of the state and taken up into the policy of the company and also is a general norm that is accepted by the actors involved. CSR is not binding, when it is only an initiative of the company and the state does not implement it in their laws. If it is not part of the official law, violating the terms of CSR cannot be punished by courts. Then CSR can be seen as a form of self-regulation and mediation of the company (Comaroff 2009).

CSR is sometimes seen as window dressing, because it is would be done to create a good reputation of the company or state, but is not effectively implemented in policies. This is called an 'empty promise' because the promise is made to implement CSR but the intended effect is not reached. However, by designing CSR policy, the company or state can be held accountable and pressured by organizations or citizens, which can lead to implementation of the intended policy after all. This is called the paradox of the empty promise (Hafner-Burton and Tsutsui 2005). If CSR is an unofficial law, then who will control the situation of the company when the court has no legal responsibility for this way of operating? The actor that can be held accountable for the actions of the company is then only the company itself, but they are at the same who make the conditions for CSR in a way that are able to live up to their own standard.

There are two kinds of motives why companies implement CSR in their overall strategy. The first motive is for moral grounds, when a company genuinely believes that a sustainable world is a better world and that by working together this can be achieved easier. The other motive is based on reputational and economic arguments. Companies implement CSR so citizens are more eager to work together with us than against us, in this case CSR should lead to better reputational returns and an overall better financial performance (Cornelissen 2008). It is difficult to see what motive was leading for a company in implementing CSR into their policy, because it is also possible that both motives are present. The CSR of a company could do more than to only be involved in the local communities. An approach could be to also involve the local communities into the policy making of the company. In this way, the company is not only involved in the local communities, but the local communities are also involved in the company.

When CSR is only an initiative of a company, and therefore not enforced by law, there is no legal rule on how to implement CSR and what the consequences for both the company and local communities should be. CSR as soft law is then the common norm between all involved state and non-state actors, therefore the state and local communities can hold the company accountable, but there are no official legal grounds for this. In this case, when a good negotiating process is crucial for all actors, including the company, this could be ground for the company to value the concerns of the state and local communities. In an institutional void a lot of decisions need to be made because the former rules of the game are not clear anymore (Hajer 2003). Some crucial question that need to be

answered are: who decides on who has decision-making power? What is considered 'social' in Corporate Social Responsibility? Who can be held accountable for actions taken? What new rules of the game are negotiated? In the conclusion of this theses a retrospect on these questions will be given.

3. CSR Stage 1 (1960-1997)

3.1 Community Assistance (CA)

In this chapter the use of laws by SPDC, the local communities and the Nigerian state in the period from 1960 until 1997 is discussed. Since the 1900s Nigeria was a colony under command of Great Britain and Indirect Rule, an early form of local governance, was implemented. A process of political change was induced through the 'warrant chief system' (Watts 2004). The warrant chief system means that the British tried to rule Nigeria through the existing institutions of the colonized Nigerians, instead of direct ruling (Afigbo 1972). This led to the Independence of Nigeria in 1960. The government of the independent Nigeria represented only 30% of the population of Nigeria, while a lot of other ethnic groups were left out (Watts 2004). Since 1937 Shell has facilities in the communities of the Niger Delta. The earliest form of involvement by Shell in the development of the communities was in the 1960s. Before 1960, Shell was the only oil producer in Nigeria, due to the British regime. After 1960, when Nigeria became independent, other oil companies also became involved in the Niger Delta (Genova 2007). Shell organized a Joint Venture with different actors in Nigeria who are oil producing corporations. This Joint Venture involves the Nigerian National Petroleum Corporation (NNPC), Shell, Elf and Agip, these corporations each hold respectively 55%, 30%, 10% and 5%. The venture funds operations in proportion to the share they hold (Ite 2007). The operations are mainly onshore on dry land or in a mangrove swamp. The NNPC is under direct control of the government of Nigeria. NNPC has multiple Joint Venture with oil corporations, this is documented in a Joint Operating Agreement (JOA). In the JOA are the guidelines for running the operations, the level of participation of each party, the interest and obligations and finally the ownership of facilities by the parties (NNPC 2010). This Joint Venture is a form of official policy, since all agreements are binding by a contract. The main actors in this Joint Venture are the oil corporations, and also the Nigerian government.

Shell supported efforts made to improve the livelihood of the mainly agrarian communities in the Niger Delta (Ite 2007). The communities of the Niger Delta and the government have been depending on the multinational oil companies for efforts in social and economic development for a long period of time, due to the failing government of Nigeria. In the 1960s Shell implemented the Community Assistance (Britannica) approach in their policy, which had his emphasis on corporate philanthropy. This initial form of CSR was about giving things to community, like health care, water and roads. The first interaction with the communities was done by executing CA in the Niger Delta. CA was not an overall plan for the development of the communities, but just about some cases near the exploration facilities of Shell (Ite 2007). The communities experienced the measures of Shell as law, since this was the only way the development of the region was addressed. This can be seen as a form of unofficial law, since it is not in state law and cannot be prosecuted by courts (Benda-Beckmann, Benda-Beckmann et al. 2009). The citizens were not approached as capable actors in the developing process, therefore they were passive and dependent on Shell for developing the communities. The CA approach existed of giving goods to the community, but there was no re-allocation of power to the citizens to participate in the development of the area. Many authors agree that the CA approach of Shell was top-down, because Shell only developed what they thought was good for the

communities, but there was no insight in what was really needed to develop the communities. The top-down process has been found ineffective and with little success. There was no basis for future projects, because there were no partnerships with the communities or project owned by the community. The approach of Shell to put emphasis on gifts instead of development processes, proved to be unsuccessful (Ite 2007). It seems SPDC used this approach for reputational and economic arguments, to have more cooperation with the citizens which should lead to more profits (Cornelissen 2008).

3.2 Governing Actors

In 1971, Nigeria became a member of the Organization of the Petroleum Exporting Countries (OPEC). The Nigerian state was focused on regional politics because the political parties existed of regional groups. In the mid-1960s, the civil war started as a result of a lack of focus on politics on the national level and hereby 20 years of military rule was introduced in Nigeria. Political parties were allowed briefly in 1993 and again starting from 1998, but only parties with national rather than regional representation were legal (Britannica 2011). The oil companies were damaged during the civil war and Shell had to close their refineries in the Niger Delta from 1968 until 1971. In 1971 the civil war was ended and new oil techniques were developed by Shell, so Shell could re-open its facilities. The Nigerian state implemented several laws to nationalize the oil production. The colonial rules were replaced to ensure that the discovery of oil was not claimed by companies. Because of these new law, the oil producing companies had to restructure their relationship with their parent companies and the state was able to have more control on the oil production (Genova 2007).

The citizens of the Niger Delta suffered of starvation from 1972 until 1974 as result of severe drought. There was no wealth of the oil production allocated to the citizens and due to the civil war the environment was damaged and natural resources were exploited. In the 1970s and 1980s the people of the Niger Delta protested to express their grievances about the social and environmental problems in the region. These protests were not co-ordinated by the communities and existed of blocking the roads to the oil companies (Ikelegbe 2001). In the 1970s the protest started with mild individual claims, in 1980s this became a protest spread through the local civil society. The first protest were to gain self-determination, equity, justice and reform of national government. There came more emphasis on the mass platforms of civil society. This led to a change from negotiations between the region's elites and the state and SPDC, to direct challenges and confrontations by citizens. This caused more violent actions against the oil companies and the Nigerian government (Ikelegbe 2005).

In 1979 the military regime handed the governing power over to a civilian government (Okonta and Douglas 2003). The legitimacy of the state was weakened by all the protests by civil society and the state was exposed to several challenges by the Nigerian population. The state of Nigeria faced challenges to become a democracy based on oil on two different levels. The first challenge is to control the oil and to distribute the profits over the civil society and communities in the Niger Delta. The other challenge is to keep the multinational oil corporations, but not destroy the social and environmental conditions of the Niger Delta. In the early 1990s an economic crisis prevailed; there was known corruption, abuse of power and repression by state employees and the presidential elections were annulled. These factors made the position of the state towards the communities very

weak. The civil movements had several claims on the state for providing development and improvement of the quality of life instead of the neglect and marginalization they were experiencing now (Ikelegbe 2001). The state of Nigeria is depending on Shell and will therefore not stop the Joint Venture because of social and environmental reasons, but do the contrary by providing extra incentives for the company to stay. SPDC is a company that has access to expertise, technology and distribution networks that no other company in the Niger Delta has and is because of this very important for the economic and technological development of the region (Newell 2001). The state provided SPDC protection by lending their military forces to prevent the communities to attack the exploration facilities of SPDC. On the other hand, SPDC provided financial assistance to the state (Groves 2009). The Nigerian state and SPDC were working intensively together and thereby expanding their power.

3.3 The Use of Levels of Law

In the 1990s some new ethnic movements, existing of citizens of the Niger Delta, arose and mobilized against the strong relationship between the oil companies, like SPDC, and the Nigerian government. The civil society shifted some of their claims from the state to the oil companies, because the state was weakened and not able to provide the development of the region that was needed according to the population (Ikelegbe 2001). In this institutional void, there are no generally accepted rules and norms according to which policy making and politics is to be conducted (Hajer 2003). The state was weakened and there were no clear rules on how to engage in decision-making processes of policy making. The citizens felt SPDC had to take responsibility, now the state did not take its responsibility. In this way the power that was first allocated to the state was now appointed to SPDC. The allocation of this power shifted because of the citizens. The communities themselves also claimed more power in having a say in the development of the Niger Delta. The state and Shell responded to these claims by guaranteeing the protection of the facilities of Shell, instead of taking up the development issues. The state provided an unarmed army to Shell for protection (Groves 2009). Officially, this army had no weapons but Shell provided them with their own weapons. Here, the official state law was violated, but both the state and Shell agreed upon this way of dealing with violence problems. The norms, or unofficial laws, of the state and Shell were the same and they had enough power to enforce this.

The change of corporate strategy of SPDC had many different triggers. These triggers can be political, economic, social or technological changes. An important trigger for change in corporate strategy is the changing expectations of stakeholders about corporate behaviour (Ite 2007). A change in the political and social behaviour of the state and Shell occurred in 1995. The Nigerian state used armed forces to oppress the opposition and this led to more use of violence by citizens (Idemudia and Ite 2006). One ethnic group, the Ogoni people, was mobilized in the movement MOSOP by Ken Saro-Wiwa. This movement, which started with peaceful demonstrations against this relationship between the government and SPDC, demanded autonomy for the oppressed minorities in the Niger Delta. The claims placed by this movement were not heard and therefore they sought help of international organizations. With the support of these international organizations, MOSOP could put more pressure on the state (Groves 2009). As Swyngedouw (2005) discussed, this form of interaction on different levels of governance is called 'scale jumping'. The interaction with the international

organizations reinforced the power position of the civil society. The support of the international organizations granted the civil society of the Niger Delta more power than before. The relations between the state and the communities changes because of this change in the allocation of power. The relation between the MOSOP and state was severely damaged by the hanging of their nine leaders in 1995. The leaders were held responsible by the state for the murder of four traditional Ogoni leaders (Watts 2004). The state took advantage of the situation and seized the opportunity to oppress the MOSOP movement (Groves 2009). This was a trigger for the communities to protest even more and claim a change in behaviour of the state and Shell. The expectations towards SPDC of the citizens changed in that they want SPDC to change behaviour and to listen to the communities in the Niger Delta. The state and SPDC responded by acknowledging the problems in the Niger Delta and to pay attention to the development problems (Ikelegbe 2001). Another event that triggered a change in the policy of Shell was on the international level. The international community also put pressure on Shell to change its behaviour after the issues with the Brent Spar. Shell had plans to dump the Brent Spar oil platform in the sea and received a lot of negative critique on this by international organizations (Groves 2009). These event led to change of The Statement of General Business Principles of Shell. This new statement is adapted in 1997 and is the common document for Shell International. This statement includes a vision on sustainable development and human rights. In this year Shell also publishes a report about environmental activities and health safety (Newell 2001).

4. CSR Stage 2 (1998-2002)

4.1 Community Development (CD)

The shift of Community Development approach of Shell started in 1997, after the hanging of Ken Saro-Wiwa and the Brent Spar caused Shell a lot of damage to the reputation of Shell. Shell tried to take distance from the repressive measures taken by the Nigerian government. The engagement with the local communities of the Niger Delta and the international organizations was a central strategy of Shell. The wanted outcome of this strategy was to regain the license to operate again in the Niger Delta (Groves 2009). In 1997 Shell installed the Community Development Programmes Department. Shell developed a new strategy instead of the Community Assistance (Britannica) approach they executed from 1960. The new strategy was called the Community Development (CD) programme and focused on empowering the local communities in the development of the Niger Delta. Shell defined the CD approach as follows: 'A set of inter-related and coordinated activities that together achieve a development result or fulfil an identified need for the community, or a specific group of people in the community, of which the delivery can be measured (SPDC 2004).' This new strategy of Shell can be seen as an official law of Shell. The strategy of Shell is written in the policy of Shell Nigeria and is in accordance with the General Business Principles of Shell International. In 1998 Shell issued the report 'Profits and Principles – Does there have to be a choice?' where Shell acknowledges mistakes made regarding Ken Saro-Wiwa and Brent Spar. This report was to show that Shell did not want to be identified with these norms or principles as a company (Groves 2009).

The CD approach was intended to decrease the dependency of the communities on Shell for socio-economic development of the region. This approach is by Shell seen as empowerment of the local communities. The social capital of the communities is taken into account in developing the CD approach. This means Shell looked into the skills, adaptive strategies and traditional knowledge of the communities. Several communities were given the opportunity to make a community development plan. Shell stayed involved in these plans by involving their community development advisors or partners in the project to assist the communities to create their community development plans (Ite 2007). The issues addressed in the plans were women in development, micro-credits, youth training and conflict resolution (Zalik 2004). The communities seem to get a bigger say in the development of community plans, but Shell was still able to steer the plan because of their advisors and partners in the communities. For Shell, the CD approach was a formal law, but they were able to influence the projects by informal laws, e.g. by appointing their advisors to the projects.

An important difference with the CA approach is that the development of community development plans is according to a coordinated programme, instead of ad hoc projects. In the community development plans was attention for the economic, social and environmental problems. An advantage of this approach is that all factors of problems in the communities are discussed in relation to each other, instead of in separate discussions. Some foreign direct investments and international organizations were attracted to the Niger Delta area by promoting and assigning to partnerships and multi-stakeholder approach to decrease the poverty rate by Shell. The following table is about the CA and CD approach. The table gives an overview of the characteristics of the community development approaches used by Shell until 2003.

Table 1. Summary of characteristics of Shell’s Community Assistance and Community Development in the Niger Delta (Ite 2007)

Community assistance (1960–1997)	Community development (1998–2002)
Avenue for interaction with communities	Introduction of structured planning to project delivery
Responded to community wish list rather than needs	Some consultation through participatory rural appraisals
Projects not determined in a participatory manner	Weak synergy between community relations and community development departments
Project implementation contract driven with minimal community participation	Inadequate internal controls on community interface management
Absence of partnerships	<i>Ad hoc</i> relationship with other development actors
Absence of community ownership of projects	Sectoral emphasis in project delivery
Multiple faces of Shell in the communities	Few operational partnerships

The table highlights the focus of Shell within their approaches. The table is an evaluation by the author of the two approaches. The table is an evaluation of the two approaches on paper, but in practice, the differences between the two approaches are not this big. The table shows improvements of the CA strategy into the CD strategy, but these improvements are not proved. There was a mismatch between the new corporate policies on community development and the actual implementation of these policies in the communities (Ite 2007).

4.2 Governing Actors

In 1998, Shell hired Nigerian professionals to provide knowledge on societal issues like agriculture, education and health care (Ite 2007). Several international organizations had cut their ties with the Nigerian regime after the execution of Ken Saro-Wiwa in 1995. In 1999, Shell succeeded in renewing the ties with some of these organizations, like USAID and the European Union. The development activities that are taken over by Shell, are tasks that also could be done by the state. Since Shell has taken up these tasks, the communities call on Shell for development matters and also allocated decision-making power to Shell about these issues (Zalik 2004).

The change of strategy by Shell represents an instrumental move to protect the economic value of the company and to improve the profits. This can be seen as risk management of Shell by securing their reputation and value of the brand ‘Shell’ (Groves 2009). The involvement of the communities in the development of the region brought some difficulties for Shell. A producing company needs to

guarantee safety to maintain its production, but on the other hand, some treats to the production leads to rising oil prices and profits. Shell became a 'public company' when they introduced the CD programme and started to involve the communities in decision-making processes. A company like Shell goes for the highest profits possible, but in the situation as in the Niger Delta, this leads to high involvement in the political economy of the region (Zalik 2004). Some measures Shell took to decrease the violence in the area is to consult and engage host communities in creating greater awareness on the consequences of theft of oil and oil spills. Shell encourages communities to be responsible for the safety of the facilities of Shell in their community (SPDC 2004). The use of communities by Shell is mostly in events when it is could have a positive outcome for Shell, like decreased violence.

In 1998 a new Nigerian government was elected. This government said to acknowledge human rights and to focus on a new transition programme, which made that the activists felt supported in expressing their grievances. The civil society grew stronger and because of these growth they had more voices to express their claims. The clashes in the Niger Delta between the civil society and other actors also increased because of this manifestation by the civil society. The activists were supported by all sorts of organizations on local, national and international level. The low level of community development and employment of local citizens by Shell were the greatest grievances of the activists (Ikelegbe 2001). The low employment rate signifies a low level of technical skills with the local citizens (Idemudia 2010). Shell, on the other hand, claims that 95% of their employees is Nigerian and hereby denies the claim of the activists (SPDC 2004). This activism made the government more sensitive to the social and environmental responsibilities of Shell in the Delta. This led to negotiations with oil companies and the signing of Memoranda of Understanding (MoU). A MoU is 'a response to the specifics of fiscal incentives (NNPC 2010)' and is part of the official laws. The MoUs are agreements on paper and stakeholders can be hold accountable for their action according to the MoU. This is different from a Joint Venture, since a Joint Venture embodies the basic understandings of an agreement (NNPC 2010). Shell still claimed that the problems in the Niger Delta should be tackled by the Nigerian government instead of the companies in the area (Ikelegbe 2001). The United Nations Development Programme has also closed an agreement with Shell where they say to aspire a local government that is responsive; improved knowledge in the Niger Delta; solving the youth unemployment and restoring the natural environment (SPDC 2006).

4.3 The Use of Levels of Law

The civil society forced the Nigerian government and Shell to discuss the problems in the Niger Delta and because of this the levels changed from local to also a national level and thus an issue for the Nigerian government. By forcing the national level to take up the problems, the magnitude and the intensity of the problems increased. This shows that by bringing the problem to a higher level, or in other words scale jumping, the civil society can increase their level of power (Swyngedouw 2005). The allocation of power is changing, where the civil society gains more power. The other side of this powerful civil society is that it can also be a threat to the state, since the cultural differences within the civil society can cause friction and in this way an unstable state (Ikelegbe 2001).

Shell was not able to execute the CD approach as planned, this was mainly because the CA approach was still executed next to the CD approach. The transition from the CA to the CD programme had

failed, since Shell did not stop executing the CA programme (Ite 2007). The main structure used by Shell was still based upon social authority structures instead of empowerment of the communities. With this structure, the CD programme was for Shell a way to promote peaceful and good negotiations with the government instead of developing the Niger Delta. Shell denied this fact and argued that the vulnerabilities in the region are caused by oil-theft and violence between tribes, instead of deliberate ineffective development policies (Zalik 2004). Shell had written the CD strategy about the development of communities, but internally the old strategy, the CA programme, was still leading in the practices of Shell. Due to these reasons, the impact of the CD was less than anticipated.

The CD programmes did address some issues of sustainability on programme integration, doubling the community efforts and improving the active beneficiary involvement. The long term process of the projects was not guaranteed and therefore the projects were not sustainable (Ite 2007). The community development plans were not based on an overall plan for the development of the Niger Delta. The strategy was based on micro-development and ignored the macro-development issues (Idemudia 2010). The local communities demanded a more sustainable approach and the instability in the Niger Delta was still growing. This increased the community activism, as well as the pressure of NGOs on Shell on international, national and local level (Ite 2007). The instability in the Niger Delta caused insecurity on the allocation of power. The allocation of power is decided upon according to existing norms and regulations on policy making. In the case of the Niger Delta, the regulations and norms about politics and policy making are not clear. The situation is in an institutional void (Hajer 2003). The local communities did not have the official power to decide on the development of the Niger Delta, but they organized themselves and according to their view this was the best strategy to claim attention for the problems in the Niger Delta. The violence around the theft of oil is an international problem, since there are no private refineries in Nigeria but the oil is sold to international organizations. The violence is enhanced, because the local citizens are paid to sell the oil to international oil thieves. The Nigerian citizens do not have a common identity, because of the different tribes with their own identity and are therefore not loyal to the Nigerian state (Ikelegbe 2005). The violence between tribes was also caused by the competition for the community development projects (Idemudia 2010). The government is aware of the problems but is not willing to deal with the sources. Instead they punish the young activists, because they are the visible activists. SPDC has dealt with these issues of violence by no longer employing young locals (Ikelegbe 2005).

The Nigerian government is held responsible for the development, control over oil revenues and employment in the Niger Delta. According to Shell, the government fails in delivering rights to develop the Niger Delta region. Shell claims that the development of the Niger Delta region is an issue for the government and that Shell only has to take responsibility in the communities they operate. Shell is viewed by the local citizens as a rich and powerful player in the Niger Delta, but since Shell allocates the power to develop the Niger Delta to the state, there is a disconnection between the image and the actual willingness of Shell to develop (Ite 2007). The power of transnational companies like Shell is not dealt with properly. There are no existing regulations that can allocate the power to both the state, the civil society and the companies (Newell 2001). Newell (2001) calls this lack of regulation a governance deficit. In the institutional void that is present in the Niger Delta, the rules about who makes decisions are unknown to the actors. The actors allocated power to one and other without regulations. This did cause more problems, because the local

communities wanted to have power. Shell, on the other hand, had power to develop the Niger Delta, while Shell wanted to allocate part of this power to the state of Nigeria. The strategy of the international organizations to deal with this problems is to pressure at first the state and thereby indirectly force the companies to take action. This is because the state is not dealing with the problems and it is also in the interest of the companies that the problems will be solved (Holzer 2007). This strategy is an example of the paradox of an empty promise (Hafner-Burton and Tsutsui 2005). In this case it does not matter who has the actual power to execute the decisions, but who the power is given (Holzer 2007).

These external factors were a reason for Shell to revise their CD approach into a more sustainable approach instead of focussing on the number of community projects. Not only external drivers, but also the internal factors, like new knowledge of Nigerian advisors, caused the change in strategy. An independent audit of the CD projects showed that not even one-third of the projects was successful. This led to Shell developing the Sustainable Community Development (SCD) Programme (Ite 2007).

5. CSR Stage 3 (2003- present)

5.1 Sustainable Community Development (SCD)

The years of investing in the CD programme of Shell showed the flaws of this approach and in 2004 Shell implemented the Sustainable Community Development (SCD) programme. This programme was focused on the sustainable development in the Niger Delta (Ite 2007). Shell defines their CSR strategy in Nigeria as ‘..working with local, state and federal authorities as well as local communities in several ways to try and find solutions to the tensions and conflicts in the region. Our strategy is to be a positive contributor in any way we can. We cooperate with NGOs and other development partners to find practical ways to contribute to peace (Shell 2009)’. Sustainability is by Shell defined as follows: ‘The potential for the positive effects of a project/programme to continue for an extended period after the end of SPDC’s support (SPDC 2004)’. With this approach SPDC wants to minimize the impact of their operations on the environment and show their commitment to a sustainable development of the Niger Delta.

In 2004, SPDC focused on living up to the environmental laws in Nigeria and had their facilities re-certificated to the international environmental standards. The programme is the third phase of the transformation of Shell’s approach of the development of the Niger Delta, from Community Assistance to Sustainable Community Development. All activities of SDC are meant to improve and maintain the capabilities of the communities to generate socio-economic development (SPDC 2004). With this programme Shell seems to want to allocate a part of their decision-making power to develop the communities to the communities itself. Where in the CD approach the communities had the support of some advisors or local organizations, for the SCD programme SPDC had designed special teams that focus on a certain area in the Niger Delta and interact with the communities on a daily basis (Ite 2007). The SCD programme uses a thematic approach focused on human capital development, health care, economic empowerment and basic services (SPDC 2004). The rules for implementation of the SCD programme are presented in the SCD ‘Big Rules’; these rules can be found in attachment 1 of this thesis. The shift from the CA paradigm to the SCD paradigm shows acknowledgement by Shell of the flaws of the traditional CSR strategies, that were the basis for the CA approach (Edoho 2008).

In table 2 an overview is given of the characteristics of the community development programmes of Shell. This table is made by Dr. Ite (2007), who was part of the Lancaster University in Great Britain, but is since 2006 working for Shell Nigeria. The table is an extended version of table 1. The table seems to evaluate the strategies of Shell in a way that they have now accomplished the best strategy. The SCD described in the table is what the supposed intentions of it were, but the accomplishment of these points is not reached.

Table 2. Summary of characteristics of Shell’s Community Assistance and Community Development in the Niger Delta (Ite 2007)

Community assistance (1960–1997)	Community development (1998–2002)	Sustainable community development (2003–present)
Avenue for interaction with communities Responded to community wish list rather than needs Projects not determined in a participatory manner	Introduction of structured planning to project delivery Some consultation through participatory rural appraisals Weak synergy between community relations and community development departments	Seamless integration of community relations and community development More external expertise for the delivery community of development Participatory approach to ensure sustainability, and enhanced transparency for all social performance activities
Project implementation contract driven with minimal community participation Absence of partnerships	Inadequate internal controls on community interface management <i>Ad hoc</i> relationship with other development actors	Single face of Shell in the communities Operational synergy with other stakeholders
Absence of community ownership of projects	Sectoral emphasis in project delivery	Thematic focus e.g. economic empowerment, health and human capital development
Multiple faces of Shell in the communities	Few operational partnerships	More strategic partnerships

Shell tried to improve their CSR strategies, to maintain the license to operate in the Niger Delta. This table seems to attribute to the opinion, that Shell was bad in the past but has now grown and is a respected partner in community development in the Niger Delta. According to audits, the SCD approach has not been implemented yet (ECCR 2009).

In 2003 the Niger Delta Development Commission (NDDC) was established and the tasks of this commission was to channel the financial development funds for the Niger Delta. The ‘NDDC Act’ required the Joint Venture between SPDC and the Nigerian government to donate three per cent of their budget to the NDDC. The budget of SPDC for community development was US\$67 million in 2002. For Shell to follow the NDDC act, they had to contribute US\$24.5 million to the NDDC and reduced their community development budget to US\$30 million (Groves 2009).

5.2 Governing Actors

The best contribution to solving the problems in the Niger Delta is according to SPDC growing and sustaining their business in a sustainable way. Their main tasks are then maximizing revenues, providing contracts to Nigerian companies, protect jobs and develop the industry skills among the local communities. This year SPDC also introduced the Global Memorandum of Understanding, to give communities a central position in planning and implementing projects. Communities need to identify their needs, allocate the funding they receive and implement the projects (Shell 2010). The effects of the SCD programme are measured by the quantity and quality of the programmes and projects that are delivered by SPDC (SPDC 2004). SPDC claims to be important for Nigeria because she is able to combine economic performance with environmental protection and social responsibility. The important outcomes of this work are gained by executing direct business in an efficient way with a high profitability and to high standards (Shell 2010).

The tasks for the government with regard to the Niger Delta are clearly explained in the Nigerian constitution, but this is not enough to enforce the development of the area. The tasks of the government are not carried out, due to corruption, poor governance and the lack of accountability of the government. The tasks are divided on paper, but in reality they are not executed which compromises the power allocation in the Niger Delta. The allocation of the power and policy making in the Niger Delta is blurred; there is an institutional void (Hajer 2003). If the most power is with the actor that can execute the most decisions, this is not clear because this was supposed to be the government. As the government is not legitimized to execute their decisions, others, like SPDC, make decisions. The consequence of this behaviour is that the allocation of power is not according to rules, but it is vague for especially the communities who they should address. The failing of the execution of the development plans in the Niger Delta is not the responsibility of the government only. SPDC is stating that she is concerned with sustainability of the development plans, but the plans have not been sufficient and could be seen as mere window dressing instead of effectively dealing with the problems. Shell contradicts this statement by arguing that the SCD programme is not a PR stunt, but SPDC invests in this programme because they believe this is the right thing to do (Shell 2009). Although SPDC has changed her strategies towards a more sustainable programme, she is still part of the problems in the Niger Delta and not only the Nigerian government (Ite 2007).

Even though SPDC has made the transition from the CA approach to the SCD approach, the violence and the attitude in the communities worsened. Between 1998 and 2003 there were 400 attacks on the facilities on the facilities of SPDC, leading to an annual oil loss of one billion US dollars (Groves 2009). In 2004 an internal report of Shell leaked, revealing the conflict-inducing context of the oil production in the Niger Delta. The report describes how SPDC contributes to violence because of their complex network with their staff, contractors, government agents and community members (Zalik 2004). The conflict is increased in level and intensity, with a fast spread of weapons throughout the region to use against the government and oil companies (Idemudia and Ite 2006). The Niger Delta is still a chaos, despite the efforts of Shell. The perceptions of the communities are not taken up into the development of the programmes of Shell. The perceptions of the communities should be assessed at the start of the process for it to succeed (Groves 2009).

The SCD programme and its activities show potential that they can contribute to the sustainable development and the reducing of violence in the communities in the Niger Delta (Ite 2007). Shell is providing sustainable development in return for the security of its facilities in the Niger Delta (Groves 2009). The goal of the SCD approach can also be seen as to gain a social license to operate rather than a genuine effort to empower the local communities through sustainable development. This strategy could be developed to gain leverage as a form of subsidy of the government. The incorporation of NGOs and communities into the 'leveraged buy-in' is caused by the individualistic approach of the CD programme and the social welfare provision that implies opportunistic behaviour of Shell (Zalik 2004). The community development strategies have had a slightly positive impact on the relation between Shell and the communities, but they were not able to address conflict reduction in the communities. The impact of CSR seems limited and cannot be used as an effective strategy to prevent conflicts (Idemudia 2010).

The change of strategy of Shell can also be explained as a shift from the 'society of discipline' to the 'society of control'. In this case the 'society of discipline' is characterized by social norms and

sanctions, whereas the 'society of control' is based on self-discipline and the penetration of norms of e.g. Shell into the daily habits of the citizens. The shift shows a strategy of avoiding the disciplinary forms of rule and social regulation. First of all, by engagement with the groups and individuals of the community, Shell can ignore the communal authority structures. Further, Shell is able to focus on solutions instead of the problems in the Niger Delta. This focus on solutions suggests a denial of the legal forms of claiming problems and the by acting in this way, Shell makes it difficult to get an insight in the development structures and compensation (Zalik 2004). This behaviour of Shell creates more confusion in the institutional void, where it is then difficult to find the regulations and norms that define the politics in the Niger Delta. The confusion creates opportunities for SPDC to gain more power in the decision-making process, since SPDC can set some rules.

5.3 The Use of Levels of Law

Another aspect of the SCD programme is the arrangement of strategic partnerships with the Nigerian government, the communities, NGO's on local and international level and other stakeholders in the Niger Delta (SPDC 2004). SPDC has not enough resources to handle the development of the Niger Delta all by themselves, therefore they use the resources of their partners (Ite 2007). By these strategic partnerships SPDC involved multiple levels of governance in the development process and by initiating this scale jumping, SPDC could enlarge their decision-making power (Swyngedouw 2005). Shell does not have the intention to take over the role over the government (Ite 2007), but with the support of the government through strategic partnership they were able to execute development programmes Shell valued. An important role for the Nigerian government is to facilitate an enabling environment for sustainable development to take place in the Niger Delta (Idemudia and Ite 2006). The state is the main partner in the Joint Venture with the oil companies and can therefore be held accountable for not demanding the required environmental behaviour of the oil companies. The Joint Venture is a form of scale jumping by the oil companies. Scale jumping can be used a strategy to change the level of governance (Swyngedouw 2005). The oil companies have brought the environmental problems to the higher level of the Nigerian state and thereby reduced their accountability on this problem. The Nigerian state is given the power to deal with the problems in the Niger Delta, but this also assigned them more accountability on these problems. Another task of the state should be to provide funding to address developmental problems (Edoho 2008). Shell signed their own Memoranda of Understanding (MoUs) with the communities. These MoUs provided Shell access to land to perform constructions and installation projects. The MoUs were negotiated by community members and production staff of SPDC and were based on complaints and claims of both parties. The MoUs can be seen as unofficial laws between the communities and SPDC, since the government and their laws were not involved in the designing of the MoUs. The MoUs did have power, because this power was allocated to them by both the communities and SPDC to operate in the Niger Delta (Zalik 2004). This form of unofficial law was important for the communities and SPDC because they both valued this above the arrangement with the weak government.

The local communities are suspicious of the government and the oil companies in the Niger Delta, because of cases of corruption and arrogance. The actions of the communities do not have an overall strategy to keep the international organizations supporting them. The support of international organizations is important for the local communities to maintain their power towards the government and SPDC. The traditional leaders can influence communities in their actions, to prevent

the loss of international support and with this also the loss of power of the communities. Safety is the most important driver for the communities, but to gain individual safety the citizens should avoid to use violence and try to find a way for strategic and constructive negotiations with the state and companies (Edoho 2008).

The democracy in Nigeria is gradually strengthened since 2007 when the respect for the rule of law, an independent legal system and the role for the mass media and civil society increased (UNDAF 2010). According to Shell, the Niger Delta experienced stability in 2010, due to continued government amnesty for militants and hereby improving the security of the area. SPDC has renewed the infrastructure and built facilities to collect gas produced with to decrease gas flaring. In 2010 an independent audit was performed with the support of Cordaid, an international NGO. This audit concluded that SPDC was not living up to the international environmental and social standards. Common problems in the Niger Delta were still pollution of air, water and land; little integration of the communities into the decision-making processes about the development of the Niger Delta. Shell responded to this audit by stating that the government is the first and foremost responsible actor for these problems. SPDC did agree on looking into the discussion points for further development of the area (ECCR 2009). WikiLeaks showed a memo of a conversation of Shell's vice-president for Sub-Saharan Africa with the US ambassador in Nigeria in 2009, stating that the Nigerian government forgot how severe infiltrated Shell is in the Nigerian government. With this statement she claimed that Shell has knowledge about most of the plans of the Nigerian government (Smith 2010).

According to the global principles of Shell, SPDC should work according to the principle of 'best practice' in social performance, this means that only the superior methods and techniques can be used. Since the social situation in the Niger Delta is still not optimal, SPDC might be forced to leave the onshore facilities and only work offshore in Nigeria. This will bring new problems for Shell because this will be an expensive operation (Zalik 2004).

6. Conclusion and Discussion

6.1 Conclusion

In this thesis the research question: 'What laws are used by state and non-state actors to organize the production of oil in the Niger Delta? And how is decision-making power allocated to enforce these laws?' is assessed. The distinctions that are made in the different kinds of law are on one hand official and unofficial law, and on the other hand local, national and international law. Governance is described as 'the mechanisms and processes by which power and decision-making are allocated among different actors (Wiber and Bull 2009)'. The use of the different laws and the allocation of power to enforce these laws is described according to the periods of different community development strategies of SPDC.

The first strategy for community development by Shell was called Community Assistance (Britannica). This strategy was about supporting the community, like providing health care, water supplies and roads. The official laws used in the period of CA, from 1960-1997, were implemented by first of all the Nigerian government. These new laws were written to organize and nationalize the oil production. In this way, the Nigerian government could also control and gain by the oil production, not only the oil companies. The Nigerian state had an official relationship with Shell and the other oil corporations, in the form of a Joint Venture. This Joint Venture was an official agreement on how the oil corporations behave in the Niger Delta. If Shell does not comply to this Joint Venture, measures should be taken. However, the government was too eager to keep Shell as a partner in the Niger Delta, so no measures were taken. The government provided officially an unarmed army to protect SPDC, but they allowed Shell to arm this army themselves. This implies an unofficial law agreed upon by these two actors to use violence against citizens. This form of unofficial law underlines the strong beneficial relationship from the government towards Shell. SPDC also implemented new laws in their policy, namely the CA approach. These laws can be seen as unofficial laws, since they are not written in state laws. The unofficial laws of CA, however, were of great importance to SPDC and the local communities since this was the only development strategy known. The official ways for the communities to address their problems was towards the government, but since the government did not respond, they addressed SPDC and even international organizations to enforce change in the Niger Delta. The CA approach was about giving goods and not about re-allocation of power to the local communities. The profits and wealth in the Niger Delta were not shared with the citizens, but ended at the companies or via taxes at the government. The communities tried to change this power allocation, by claiming responsibility of SPDC instead of the government. This made SPDC a more powerful actor, but also an actor with more accountability for its actions. The support of the international civil society strengthened the position of the communities itself. By jumping scales, the communities had gained more power to their claims.

The second strategy designed by SPDC was the Community Development (CD) approach. The CD approach, from 1998-2002, was intended to decrease the dependency of the communities on SPDC for socio-economic development of the region. The official laws that were present during the CA approach still applied, but were complemented with MoUs between the oil corporations and the government. Shell still claimed, officially, that the problems in the Niger Delta should be dealt with by

the government. Even though Shell claimed that the government is responsible in the Niger Delta, they did steer the development processes by involving their advisors and partners in the development of community plans. This form of unofficial law, the values of the CD approach of Shell, were accepted by the government. The unofficial laws of the communities changed and they were able to demand a change in the behaviour of Shell. This was done because they started to organize themselves and gained the support of the international community. They could demand more involvement towards a sustainable approach in the Niger Delta. The allocation of power was unclear, because of the governance deficit present. The growing strength of the communities, brought the problems of the Niger Delta to a higher level of governance and demanded care of the government. The civil society was able to expand their power by scaling up; the international and regional pressure weakened the state power. Not only the civil society, but also SPDC had connected with international organizations to maintain their power.

The current strategy of SPDC, designed in 2003, is the Sustainable Community Development approach. With this approach SPDC wants to minimize the impact of their operations on the environment and show their commitment to a sustainable development of the Niger Delta. The empowerment of the communities is central in the official documents, but the control and steering of SPDC within the communities suggest there is hardly any empowerment. SPDC focused on living up to the environmental laws of the Nigerian government, to show their commitment. SPDC established several strategic partnerships, with the communities, NGOs and the government. These partnerships were official agreements. These partnerships enabled SPDC to be active on multiple levels of governance and thereby gain decision-making power. SPDC and the communities also signed MoUs about their cooperation and access to land. This was an unofficial law since the government was not involved. The MoUs did have power, because both the communities and SPDC valued them. The official statement of Shell was that they did not want to be involved in politics, however, evidence showed that Shell has infiltrated highly in the Nigerian government. In official laws, Shell will not interfere with political business, but unofficially they are part of the decision-making processes within the government. The allocation of power is blurred in this institutional void. The official tasks are clearly laid down, but not enforced by the official actor. The allocation of power in an institutional void, like the Niger Delta, is important and at the same time vague. The decision-making process was not clear, since the Nigerian government had not shown their ability to deal with the problems in the Niger Delta. The decision-making power is allocated to the actor with the most influence in the area and in the Niger Delta this seems to be with SPDC.

6.2 Discussion

The definition of governance as ‘the mechanisms and processes by which power and decision-making are allocated among different actors (Wiber and Bull 2009)’ was useful in this thesis. To define laws as a mechanism of power seems right in this case, because the existing laws define the power of the actor. The laws, especially the unofficial laws, in the Niger Delta are often used to gain more decision-making power or to reduce the decision-making power of other actors involved. The allocation of power changed several times between the actors in the Niger Delta. The aforementioned definition of governance includes both the concepts of decision-making power and

the allocation of power. A good insight in the situation in Nigeria is obtained through these concepts which clarified relations and activities of the state and non-state actors.

Another important theoretical concept used in this thesis is an institutional void, which is defined as 'there are no clear rules and norms according to which politics is to be conducted and policy measures are to be agreed upon. There are no generally accepted rules and norms according to which policy making and politics is to be conducted (Hajer 2003)'. The institutional void is a correct term for describing the political situation in the Niger Delta, but it is too narrow. The notion of institutional void only describes the lack of norms and regulation and suggests an political field that is chaos, but empty. In this case, the institutional void leads to uncertainty about the allocation of power and decision-making. This uncertainty leads to struggles about power, to include and exclude actors and most of all to gain power. Within the institutional void and its power struggles, the concept of scale jumping is of extreme importance. Since there are no rules about politics and policy measures, actors try to change the level of governance of the problem to gain more power. When new participants enter the arena, the power of alike actors grows. The use of scale jumping, and thereby regional, national and international law, is more important to look at in this institutional void, than official and unofficial laws. In this case it seems better to call the field of laws of decision-making and power an 'institutional arena'. This concept can be defined as an arena of decision-making and power, where the rules of the game are unknown and multiple levels of governance are involved.

This thesis paid much attention to the CSR strategies of SPDC. The three changes in CSR strategy from Community Assistance, to Community Development to eventually Sustainable Community Development are new insights in how community development should be in the Niger Delta according to SPDC. The shifts made imply acknowledgement by Shell of malfunctioning of the previous strategies and a willingness to evaluate, change and invest in a new strategy. SPDC let believe they were working on the development of the Niger Delta and in that way tried to satisfy the needs of the locals communities. However, the implementation of the plans was not a success. The second phase of their CSR strategy was only a strategy on paper while the former strategy of 'giving things to the community' was present. The shift towards the latest strategy would be the next step to take. Since the previous step of CSR failed, the next step could not be taken this easily. Some polluting activities are stopped or cleaned up, but the situation in the Niger Delta is still dangerous for the environment and the people living there.

In the activities in the Niger Delta over time there are some constant factors. The economic aspect of doing business is still the core element in the functioning of Shell. SPDC first has to make profit and next to this they invest in the development of the area. The CSR strategies can be seen as a way to create a good reputation in the area and thereby increase the profits. Another process that is constant is that the local communities turn to SPDC instead of the Nigerian government to develop the Niger Delta. The consequence of this action is that the local communities are not helped and need to turn to international organizations for support to pressure Shell. The international support to the local communities has been present in all three processes. The media also played an important role over time. Media connected the problems in the Niger Delta to the international activities of Shell and because of for example the media attention to both the Brent Spar and the hanging of the MOSOP leaders in Nigeria, Shell was forced to rethink their activities and position.

The changes that did happen in the Niger Delta, are about the way of operating of the actors. As the local communities looked for support of international organizations, also SPDC started to expand their network. SPDC developed multiple relationships with companies, international organization and local stakeholders to strengthen their position. The scale-jumping that was first only present at the local communities, did also became a strategy for SPDC. The involvement of the international organizations in several ways, did accelerate the process in the Niger Delta. Without this international attention for the problems, nothing might have happened in the Niger Delta, since SPDC and the government were more powerful than the local communities.

The development of the Niger Delta should start with examining the governance structure that is present. A governance structure, where the institutional arena is stable is needed to come to agreements on the development of the area. The allocation of power and decision-making should be known, to be able to hold actors accountable. In this way, actors are forced to take responsibility for problems in the development of the Niger Delta. In assessing the governance in the Niger Delta it is important to take all stakeholders, local, national and international, into account. The network of all actors has expanded and these new entries to the network have a significant influence on the development of the Niger Delta.

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Attachment 1: Sustainable Community Development “Big Rules”

Sustainable Community Development “Big Rules”

- 1) SCD sets the corporate direction and strategy of community interactions and manages corporate community interface and development activities in SPDC.
- 2) All community development projects/programmes must be in accordance with the agreed/approved 5-yr rolling SPDC community development plan, which is aligned to the Niger Delta Master plan where appropriate.
- 3) All community budget and expenditure must be approved and accounted for in accordance with SCD procedures.
- 4) SCD programmes/projects must have a sustainability plan and exit strategies and must be subjected to independent verification.
- 5) All new projects must have a baseline community survey and all existing projects must have a social evaluation review.
- 6) All community MOUs must conform to SCD guidelines and be approved by the Asset and SCD Managers.
- 7) Area teams are accountable for the implementation of SCD projects in line with agreed plans and SCD guidelines.
- 8) There shall be NO payments to communities other than those specified for legitimate business reasons.
- 9) No payment for ghost workers or stand-by employment.
- 10) Contractors/sub-contractors working under contract with SPDC must strictly adhere to the SCD policy and procedures for community interaction.
- 11) SPDC must deliver on SCD commitments.
- 12) SPDC will strictly adhere to SCD guidelines/policies at all times, even when operational continuity is threatened.
- 13) The MD of SPDC must approve any deviation from the above rules.