



Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil

Christina Katsouris and Aaron Sayne

September 2013



CHATHAM HOUSE

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Chatham House
10 St James's Square
London SW1Y 4LE
T: +44 (0) 20 7957 5700
F: + 44 (0) 20 7957 5710
www.chathamhouse.org

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Cover image: © Getty. Barges laden with stolen oil are stationed along the Imo River at Abiya State on 31 October 2011.

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About the Authors

Christina Katsouris is an Associate Fellow of the Africa Programme at Chatham House and West Africa Correspondent for Energy Intelligence, where she covers oil and politics. She has worked on transparency and due diligence projects and has taught oil journalism in Africa.

Aaron Sayne is the principal of 104 Consulting. He advises governments and private investors on energy, security and anticorruption issues, foremost in Nigeria. He previously served as a financial crimes investigator and defence attorney for international energy companies.

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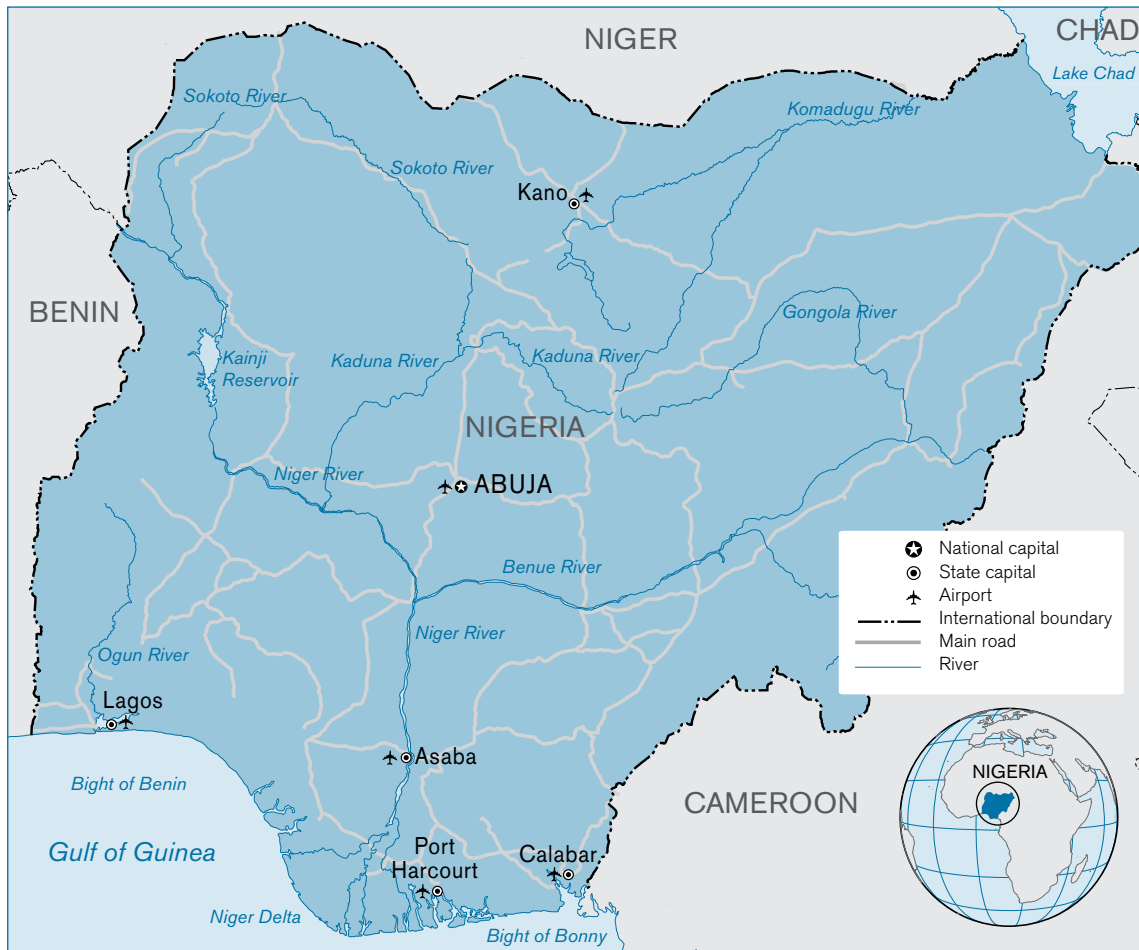
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Acronyms and Abbreviations

AIS	Automatic Identification System
bbf	Barrel(s)
b/d	Barrels per day
B/L	Bill of lading
CIF	Cost insurance and freight
COMD	Crude Oil Marketing Department
CSIS	Centre for Strategic and International Studies
DAP	Delivered at Place
DES	Delivered Ex Ship
DPR	Department of Petroleum Resources
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States
Ecopetrol	Empresa Colombiana de Petroleos
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
EFCC	Nigerian Economic and Financial Crimes Commission
EITI	Extractive Industries Transparency Initiative
EO	Executive Order
EUNAVFOR	European Union Naval Force
Europol	EU law-enforcement agency
FCPA	Foreign Corrupt Practices Act
FOB	Free on board
GATT	General Agreement on Tariffs and Trade
GFI	Global Financial Integrity
GGC	Gulf of Guinea Commission
ICE	Intercontinental Exchange
ICGLR	International Conference on the Great Lakes Region
IFF	Illicit financial flow
IMB	International Maritime Bureau
IMO	International Maritime Organization
Interpol	International Criminal Police Organization
IOC	International oil company
IOSCO	International Organization of Securities Commissions
ISPS	International Ship and Port Facility Security
JTF	Joint Task Force
LOOP	Louisiana Offshore Oil Port
LPG	Liquefied petroleum gas
MEND	Movement for the Emancipation of the Niger Delta
MoU	Memorandum of Understanding

MOWCA	Maritime Organization of West and Central Africa
MTISC	Maritime Trade Information Sharing Centre
NCP	National Contact Point
NCTL	Nembe Creek Trunkline
NFIU	Nigerian Financial Intelligence Unit
NGO	Non-governmental organization
NIMASA	Nigerian Maritime Safety Administration
NNPC	Nigerian National Petroleum Corporation
NOC	National oil company
NPA	Nigerian Port Authority
OCIMF	Oil Companies International Marine Forum
OECD	Organisation for Economic Co-operation and Development
OPTS	Oil Producers Trade Section
OSP	Official Selling Price
Pemex	Petroleos Mexicanos (Mexican state oil company)
Pertamina	Indonesia's state oil company
Petrobras	Petroleo Brasileiro (Brazilian national oil company)
Petronas	Petroliaam Nasional Berhad (Malaysia's national oil company)
PICOMSS	Presidential Implementation Committee on Maritime Safety and Security
PWYP	Publish What You Pay
RWI	Revenue Watch Institute
SDN	Stakeholder Democracy Network
SEC	Securities and Exchange Commission
SIR	Société Ivorienne de Raffinage – refinery
SOLAS	International Convention for the Safety of Life at Sea
Sonara	Société Nationale de Raffinage
STR	Suspicious Transaction Report
STS	Ship-to-ship
TOC	Transnational organized crime
TPA	Trade Promotion Agreement
Transneft	Russia's state controlled pipeline network
UNCLOS	UN Convention on Law of the Sea
UNCTAD	UN Conference on Trade and Development
UNODC	UN Office on Drugs and Crime
UNSC	UN Security Council
US EIA	US Energy Information Administration
US ICE	US Immigration and Customs Enforcement
USIP	US Institute of Peace
VLCC	Very large crude carrier
WMD	Weapons of mass destruction

Map 1: Nigeria



Executive Summary and Recommendations

Nigerian crude oil is being stolen on an industrial scale. Some of what is stolen is exported. Proceeds are laundered through world financial centres and used to buy assets in and outside Nigeria. In Nigeria, politicians, military officers, militants, oil industry personnel, oil traders and communities profit, as do organized criminal groups. The trade also supports other transnational organized crime in the Gulf of Guinea.

This report explores the international dimensions of Nigerian crude oil theft. It also tackles the thorny question of what the international community could – and should – do about it.

Background

Nigeria offers a strong enabling environment for the large-scale theft of crude oil. Corruption and fraud are rampant in the country's oil sector. A dynamic, overcrowded political economy drives competition for looted resources. Poor governance has encouraged violent opportunism around oil and opened doors for organized crime. Because Nigeria is the world's 13th largest oil producer – exports often topped two million barrels per day in 2012 – high rents are up for grabs.

The basic story of how Nigeria's crude goes missing has been told for years. To steal oil, thieves tap into pipelines and other infrastructure in the Niger Delta. They then pump the oil onto waiting barges and boats. Some of it is refined locally while larger vessels carry the rest abroad. There are also allegations that oil vanishes from at least some of the country's roughly two dozen export terminals.

This narrative, while mostly correct, is oversimplified. Lines between legal and illegal supplies of Nigerian oil can be blurry. The government's system for selling its own oil attracts many shadowy middlemen, creating a confusing, high-risk marketplace. Nigeria's oil industry is also one of the world's least transparent in terms of hydrocarbon flows, sales and associated revenues. Industry-watchers and policy-makers often think they know more about oil theft than they actually do.

The specifics of who steals oil are elusive, even in Nigeria. A typical large-scale theft network has facilitators, operations and security people, local and foreign transport, buyers and sellers, and a range of opportunists. Top Nigerian officials cut their teeth in the oil theft business during military rule. Over time, evidence surfaced that corrupt members of the security forces were actively involved. The country's return to democracy in 1999 then gave some civilian officials and political 'godfathers' more access to stolen oil.

Should foreign governments engage?

At present oil theft is a species of organized crime that is almost totally off the international community's radar. Officials outside Nigeria are aware that the problem exists, and occasionally show some interest at high policy levels. But Nigeria's trade and diplomatic partners have taken no real action, and no stakeholder group inside the country has a record of sustained and serious engagement with the issue. The resulting lack of good intelligence means international actors cannot fully assess whether Nigerian oil theft harms their interests. Governments need to know more about Nigerian oil theft and their options for engaging before they pledge major resources to confront the problem.

Outside governments probably would have to join forces to curb the export of stolen Nigerian oil significantly. Nigeria could not stop the trade single-handed, and there is limited value in other countries going it alone. However, an intelligent multi-state campaign could, in theory, close off markets and financial centres, and raise the costs of stealing.

Some arguments for outside intervention are more compelling than others. Stolen Nigerian oil and the money from it pollute markets and financial institutions overseas, creating reputational, political and legal hazards. It could also compromise parts of the legitimate oil business. On the other hand, oil theft has not been a big security risk for Nigeria or West Africa, although it has helped destabilize the Niger Delta and could do so again. And the idea that the international community should label stolen Nigerian crude 'blood oil', as is done with regard to the trade in blood diamonds or conflict minerals, is not borne out by fact or law.

Some think the scale of the trade is too big not to act, yet it is not entirely clear how much of the oil Nigeria produces is stolen or exported. Without better knowledge of how oil theft works, governments hoping to help solve the problem could find themselves out of their depth. Poor programming would be likely to waste taxpayer money, provoke diplomatic tension, misread the local political environment and legitimize rogue actors.

Assuming a foreign government did decide to act, with whom should its officials engage? The Nigerian government tends to crack down on oil theft only when it reaches hard-to-manage levels. Past administrations relied on ad hoc shows of military force and political settlements – a path that President Goodluck Jonathan may largely follow. Oil theft affects the five international oil companies that produce most of Nigeria's crude to different degrees. Some actors question the sincerity of the companies' public stances on theft, especially where it does not cost them much. No other industry stakeholders – from oil traders and militants to activists and host communities – seem to have the right mix of influence and will for change.

Recommendations

This report recommends the following four first steps for building a cross-border campaign against Nigerian oil theft.

- Nigeria and its prospective partners should prioritize the gathering, analysis and sharing of intelligence.
- Nigeria should consider taking other steps to build the confidence of partners.

- Other states should begin cleaning up parts of the trade they know are being conducted within their borders.
- Nigeria should articulate its own multi-point, multi-partner strategy for addressing oil theft.

Intelligence-gathering priorities

Future intelligence work on Nigerian oil theft should focus on the following four topics.

Volumes of oil stolen

Estimates of how much oil Nigeria loses to thieves vary widely. Fundamentally different pictures of the trade emerge depending on which figures one accepts. The best available data suggest that an average of 100,000 barrels per day vanished from facilities on land, in swamps and in shallow water in the first quarter of 2013. This number does not include what may happen at export points. It also assumes the integrity of some industry data. Factors that confuse the issue include poor measurement practices; confusion over how much oil is stolen as opposed to being spilled, and exported as opposed to being refined locally; conflicting claims about the export terminals; and mixed evidence that theft is spiking. To firm up estimates, investigators should focus on:

- The number and operational capacities of active export bunkering rings;
- The nature and size of any so-called 'white collar' oil theft;
- Transit, anchoring and fuelling patterns of ships suspected of stealing oil in Nigerian waters;
- A survey of small to mid-sized tankers regularly anchored offshore the Niger Delta; and
- Mapping of the main illegal bunkering hotspots.

Movements of stolen oil

Crude oil can move in complex ways once it leaves Nigerian waters. Buyers load multiple parcels of crude onto single ships, or transfer oil between ships. Others blend different grades of oil and place large quantities in storage. None of these moves are suspect *per se*, but thieves can use them to launder stolen oil into the licit market. Sources interviewed during the research for this report tentatively pointed to the United States, several West African countries, Brazil, China, Singapore, Thailand, Indonesia and the Balkans as possible destinations. Results from a 10-year comparison of Nigerian oil export figures with import data from 20 countries could partly support these claims. Going forward, intelligence personnel should seek to understand:

- The possible roles of commodities traders in oil theft;
- The main nationalities involved, particularly at higher levels of the business;
- Case studies of suspect refining companies;
- Blending and storage practices for Nigerian oil; and
- Any links between oil theft and fuel oil trading.

The money trail

The big Nigerian oil theft networks use foreign banks and other channels to store and launder their earnings. Thieves have many ways to disguise the funds they move around the world. These include bulk cash smuggling, delayed deposits, heavy use of middlemen, shell companies and tax havens, bribery of bank officials, cycling cash through legitimate businesses and cash purchases of luxury goods. Interviewees named various East, West, and Southern African countries, Dubai,

Indonesia, India, Singapore, the United States, the United Kingdom and Switzerland as possible money-laundering hotspots. It seems much of the money ends up in Nigeria; some avoids the financial system altogether. Investigators in this area could focus on:

- How oil thieves pay for large capital expenses, ships above all;
- The use of bulk cash smuggling to conceal oil theft proceeds;
- Nigerian banks used to launder proceeds;
- Profiles of the facilitators used by suspected oil thieves use to move their money; and
- Data on who charters, insures and issues letters of credit linked to ships carrying stolen oil.

Security risks

Historically, oil theft has been a symptom as well as a cause of violent conflict in parts of the Niger Delta. It could destabilize the area again, especially if law-enforcement agencies go after the wrong people, if rival theft networks start turf wars or politicians use stolen oil to finance election bids. In the longer term, Nigerian oil theft could harm broader strategic interests in the Gulf of Guinea by strengthening other types of organized crime that are known to destabilize governments. The biggest concerns are terrorism, drug-trafficking and piracy. To better understand the risks, intelligence officers could investigate:

- The roles Niger Delta militants play in oil theft, particularly since the 2009 declaration of amnesty for them;
- Current tensions and rivalries between oil theft networks;
- The nature and strength of northern Nigerian interests in oil theft;
- Links between oil theft, drug-trafficking and terrorism; and
- The possible use of oil theft as a campaign finance mechanism.

Engagement options for foreign governments

Governments wishing to tackle the international trade in stolen oil have three main options for engagement. Each option contains several possible interventions, some of which are more recommendable than others. This report assesses their relative strengths and weaknesses only to the extent that is possible outside the bounds of a detailed multi-partner strategy or action plan.

Control physical movements of oil

Foreign officials cannot do much to control Nigerian oil flows, especially those happening beyond their territorial boundaries. The three areas of intervention below have long been discussed.

Genetic fingerprinting of oil

Fingerprinting of crude oil is not a viable tool for preventing oil theft. The existing technology has serious limitations. It is also not clear how governments could use fingerprinting as a law-enforcement tool to hold oil thieves accountable.

Sanctions

No country should seriously consider banning Nigerian oil imports to stop oil theft. Doing so would create a fundamental mismatch of ends and means. Freezing oil thieves' assets, placing them on do-not-trade lists, blocking banks from lending or processing payments for them, or denying visas could be more helpful, if used alongside other measures.

Maritime security reform

Foreign aid to agencies that police the Gulf of Guinea could theoretically help corner oil thieves. But programmes would need to target true law-enforcement challenges and get buy-in from the Nigerian navy and presidency. Aid to multi-stakeholder bodies offers limited value on oil theft, as does training the navy and giving it new hardware. Tracking ships by satellite, another much-discussed option, is only as worthwhile as whatever law-enforcement work it supports. Arresting ships and persons caught moving stolen oil internationally would also face big, though not insurmountable, legal hurdles.

Regulate oil sales

Nigeria has broad powers to sell its oil as it wishes. No government should tamper with the fundamentals of world oil markets to treat an isolated sickness like oil theft. At least two relatively non-intrusive options exist, however.

Supply-chain due diligence initiatives

There is good reason to think that at least some refiners could be purchasing stolen crude without knowing, as due diligence practices vary with size, capacity, nationality, budget and location. A multi-stakeholder scheme that forces refiners and shippers to vet the oil they buy from Nigeria could help sanitize markets. But such a programme could become costly and mired in red tape if it were not well designed, or if other measures did not complement it.

Litigation against buyers and sellers of stolen oil

Foreign governments could hit oil thieves with a range of domestic criminal and civil penalties. Prosecutors might also be able to charge them with piracy, pillage and other violations of the laws of armed conflict. Nigerians could try dragging oil thieves to foreign courts for violations of Nigerian law, as some have recently done with the oil companies. Officials would need to follow a few best practices for prosecuting organized criminals if the cases are to generate more than headlines.

Follow the money

Following the money trail is a key step towards controlling oil theft. Profits drive the business, and lax law enforcement allows funds to move freely around sub-Saharan Africa and beyond. The most promising initiatives here are as follows.

Money-laundering cases and asset forfeitures

Convicting oil thieves of laundering money and seizing their assets should be a part of almost any cross-border strategy. Building strong cases would not be easy, and ideally Nigerian anti-corruption police would help other governments trace the money. But Nigerian paralysis should not excuse other jurisdictions from acting in cases where they have good financial intelligence.

Bribery prosecutions

Anti-bribery laws could offer outsiders another tool for catching oil thieves. Further analysis would be needed to see whether oil theft could meet all the requirements of bribery statutes.

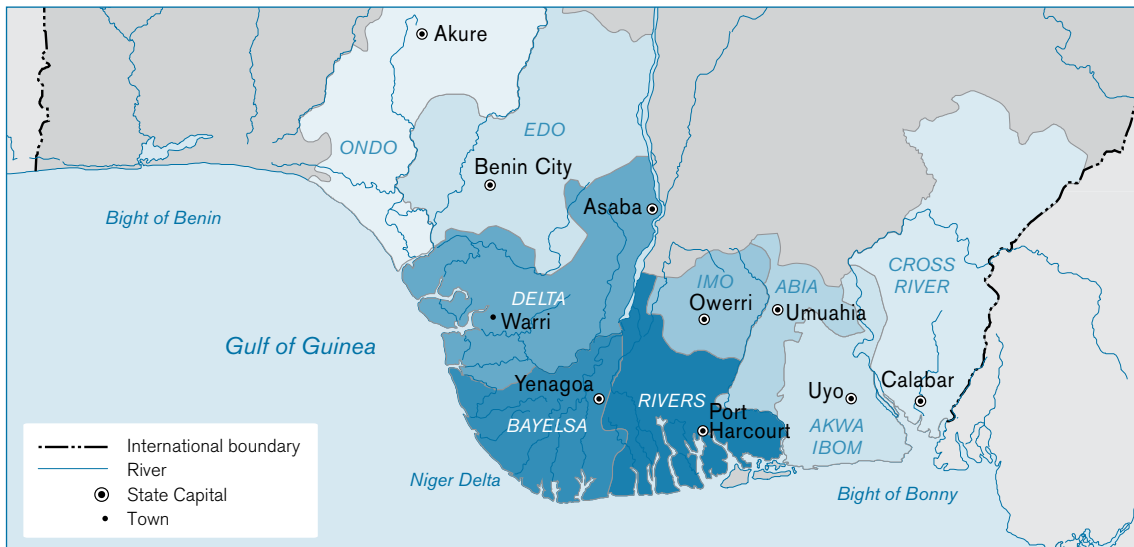
Support for transparency initiatives

Donor support for the Extractive Industries Transparency Initiative or other pro-transparency lobbies cannot do much to address oil theft. The types of information such programmes provide would not help most outsiders track stolen oil, and civil society might also find engaging too risky.

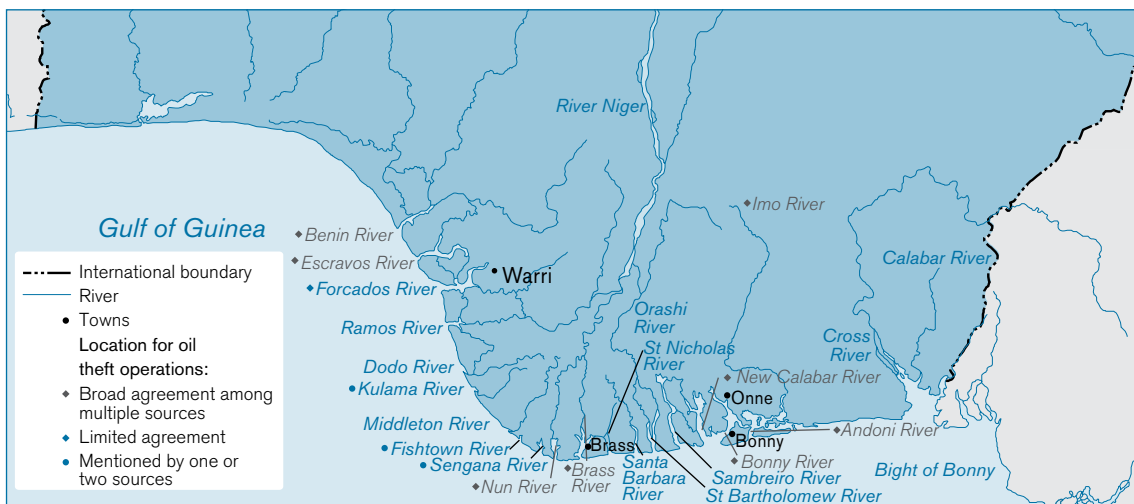
New financial-sector regulations – for example, to force disclosure of beneficial ownership, or place limits on use of shell companies – could have more value.

There are no easy fixes for Nigeria's crude oil theft problem. But there are options to help reduce the problem, which could, if managed well, have positive effects for tackling and reducing other forms of transnational organized crime. It is hoped that this report will inform more nuanced views of the problem – and act as a spur to some meaningful action.

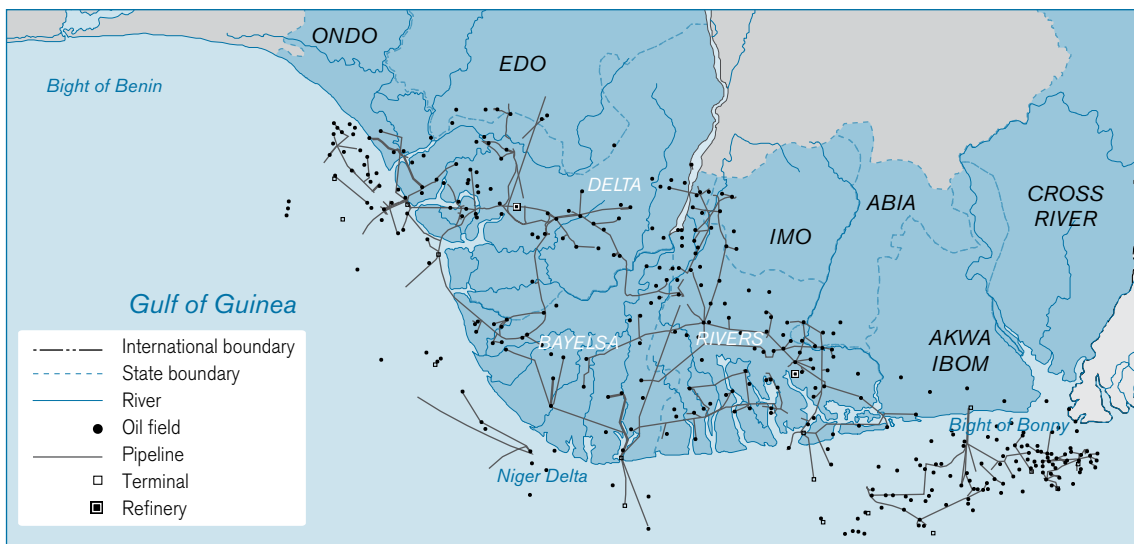
Map 2 : States of the Niger Delta



Map 3: Rivers of the Niger Delta



Map 4: Oil installations in the Niger Delta



1 Introduction

Nigerian crude oil is being stolen on an industrial scale. Some of this stolen oil – it is not entirely clear how much – is exported. Proceeds are then laundered through world financial centres and used to buy assets in Nigeria and abroad. In Nigeria, politicians, government security forces, militants, oil industry personnel, oil traders and community members benefit to varying degrees, along with organized criminal networks. The trade in stolen oil also supports the spread of other transnational organized crimes (TOC) in the Gulf of Guinea.

This report explores the international dimensions of Nigerian crude oil theft. It also tackles the thorny question of what the international community could – and should – do about it. Chapter 1 explains the socio-political context and *modus operandi* of oil theft in Nigeria. Chapter 2 analyses the history of, arguments for and risks of international engagement on oil theft, and suggests four first steps for such engagement. Chapter 3 then lays out four priority areas for future intelligence work on Nigerian oil theft and Chapter 4 evaluates the main engagement options foreign governments have.

The findings presented here are based primarily on field research in Nigeria and analysis of primary and secondary source data and documents. The authors conducted over 200 structured interviews and private conversations over a period of years, mostly under the Chatham House Rule.¹ They reviewed thousands of pages of official records, datasets and other unpublished documents. They also participated in two helicopter flyovers of oil theft hotspots, visited a Nigerian oil export terminal and interviewed personnel, and analysed oil tanker movements using ship tracking facilities.

Oil, rentier politics and crime

The Nigerian oil industry has a reputation for illegality. Corruption and fraud are present throughout the value chain.² The state-run Nigerian National Petroleum Corporation (NNPC) is widely seen as one of the most politicized and compromised institutions of any oil-producing nation. A dynamic, crowded political economy drives competition for looted resources. Given that Nigeria is the world's

1 Interviews and private conversations were conducted with current and former Nigerian government officials and members of the security forces; ambassadors and other members of the diplomatic corps; Nigerian and foreign anti-corruption police and financial intelligence officers; officials at international law-enforcement bodies (Interpol, Europol, UN); oil company executives, staff and consultants; crude and oil product traders; crude buyers and sellers; refinery personnel; representatives of shipowner trade associations; other shipping industry personnel and service providers; foreign military officers and consultants; private security company personnel working in Nigeria; militants, local elites and community members in the Niger Delta; representatives of Nigerian and foreign banks; various non-oil sector executives and workers; oil industry analysts, think-tank personnel and business intelligence consultants; NGO workers, journalists, and other civil society representatives; historians, academics and experts on sanctions, oil fingerprinting, maritime security, conflict diamonds and minerals, illicit financial flows, West African arms trading, transnational organized crime and the oil industries of other countries.

2 For an overview, see A. Gillies, *Reforming Corruption out of Nigerian Oil, Parts One and Two*, U4 Briefs, 2009. See also Petroleum Revenue Special Task Force (which was chaired by Nuhu Ribadu), *Final Report*, Nigerian Ministry of Petroleum Resources, 2012.

13th largest oil producer – regularly exporting around two million barrels per day (b/d) in 2012 – considerable rents are up for grabs. The country's former anti-corruption police chief, Nuhu Ribadu, claimed in 2006 that elites 'stole or wasted' \$380 billion over four decades.³

Political corruption is endemic in the Niger Delta, where most oil theft happens. The main oil-producing states – Bayelsa, Rivers and Delta – have some of the highest budgeted incomes per capita in Nigeria, which could top those of smaller West African countries, but much of the money has been squandered on patronage or transferred to foreign bank accounts.

The government has also set up many special funds and agencies to develop the region. But fraud and abuse of discretion are rife, and the record on service delivery is dismal.⁴ Between 2003 and 2007, Nigeria's Economic and Financial Crimes Commission (EFCC) probed eight of the delta's nine state governors for grand corruption.

These conditions have led to grassroots unrest – and opened doors for organized crime. During the 2000s, Niger Delta activists and politicians started to demand more of the nation's oil wealth. Some turned to criminal pursuits, including oil theft. Local participation in theft grew during the 2000s. Some thieves interviewed for this report justified their actions as part of the struggle for greater Niger Delta 'resource control'.

By the mid-2000s, a gaggle of non-state armed groups and their backers had made inroads into the stolen oil business. As top politicians looked on, well-connected local 'militants' provided security for theft rings or set up protection rackets around them. Such groups also imposed heavy costs on the nation: between 2007 and 2009, one government study found, attacks on oil infrastructure by Niger Delta militant groups shut down nearly half of Nigeria's onshore oilfields. These attacks slashed the country's oil exports, costing the state at least \$24 billion in the first eight months of 2008 alone.⁵ Once again, the criminal groups involved often described their activities as economically rational, politically necessary, morally defensible and socially productive.

Finally, Nigeria today is the main West African hub for other types of TOC. The Niger Delta is a locus for several of these, notably piracy, drug- and arms-trafficking. The networks involved sometimes overlap with oil theft networks.⁶

The basic *modus operandi* of Nigerian oil thieves

The basic story of how Nigerian oil goes missing has been known for years. Past research⁷ has uncovered three main types of theft, which are outlined below.

Small-scale pilfering and illegal local refining

At this level, local groups hacksaw, puncture or install illegal taps and siphons on pipelines or other onshore oil infrastructure such as wellheads and manifolds. Most of the crude oil stolen is refined

3 BBC News, 'Nigerian leaders "stole" \$380 billion', 20 October 2006.

4 Health and education services are especially problematic. The Niger Delta's public health profile is regrettable: past government surveys found that only half the population had access to safe drinking water, one in five children died before their fifth birthday, and life expectancy was just 47 years. Residents travelled an average 52 miles to see a doctor. 479,000 children squeezed into 3,200 primary school classrooms in Bayelsa State, with a student-teacher ratio of 102:1. For more statistics, see A. Sayne and A. Gillies, *Cash Transfers in the Niger Delta: A Skeptical View*, Center for Global Development, 2011.

5 Federal Republic of Nigeria, *Final Report of the Technical Committee on the Niger Delta*, 2008.

6 UNODC, *Transnational Organized Crime in West Africa: A Threat Assessment*, 2013.

7 See in particular, the pioneering work of Stephen Davis and Von Kemedi, available at www.legaloil.com.

for local sale and consumption using basic technology. Some stolen condensates can also be hawked on the street as fuel, or else are blended with refined products such as gasoline and diesel.⁸

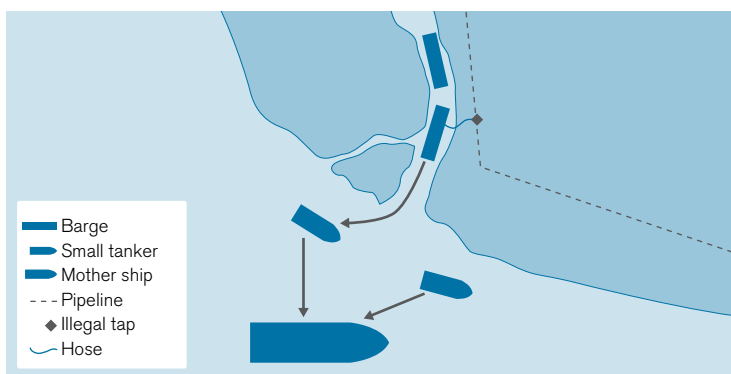
Large-scale illegal bunkering in the field

At this more industrial level, sophisticated networks of workers tap into oil infrastructure onshore or in the Niger Delta's swamps and shallow waters. The most sophisticated operators can tap pipelines on land, under the ground and under water. They then use hoses to load the stolen oil onto barges, or less commonly, into motorboats and dugout wooden fishing canoes (called 'Cotonou boats'). Thieves use a range of tapping pipes and hoses to fit the size of line being tapped, sometimes employing pipes of up to 12 inches in diameter to move more oil faster. The biggest operations can install multiple large taps in one place. Longer hoses – some of them measuring up to two kilometres – can pump the crude to less easily detected sites. Barges typically range from 500 to 3,000 metric tonnes (MT) in size, meaning they can transport from 3,000 to 18,500 barrels (bbl) of oil. This activity takes place both in daylight hours and at night, and is easily observable from the air or ground. Most illegal bunkering occurs in Bayelsa, Rivers and Delta states.

Next, the loaded barges or other vessels carry their cargoes through the Niger Delta's dense network of creeks, swamps and estuaries. Once they reach the coast, their crews transfer the oil onto small tankers that transport oil, refined products or chemicals. These anchor just offshore, often at the mouths of coastal rivers. The average capacity of these tankers is between 5,000 and 10,000 MT, or between 31,000 and 62,000 bbl. Some can be as small as 1,000–2,000 MT. Many are aged and dilapidated; more than a few have been earmarked for demolition and purchased as scrap.

Thieves generally use these small tankers to store and transport oil locally, though a few of the more seaworthy vessels may carry stolen oil to refineries or storage tanks within the Gulf of Guinea. Several small tankers can service a single oil theft network. Once the crude stored in them builds to a certain level, crews will transfer it to a coastal tanker or an international class 'mother ship' waiting further offshore. These ship-to-ship (STS) operations can involve 'topping up' a legal cargo of oil or filling up an entire mother ship. They typically happen at night. Most mother ships are chartered for oil export, and carry the stolen crude to destinations outside Nigeria (see Figure 1).

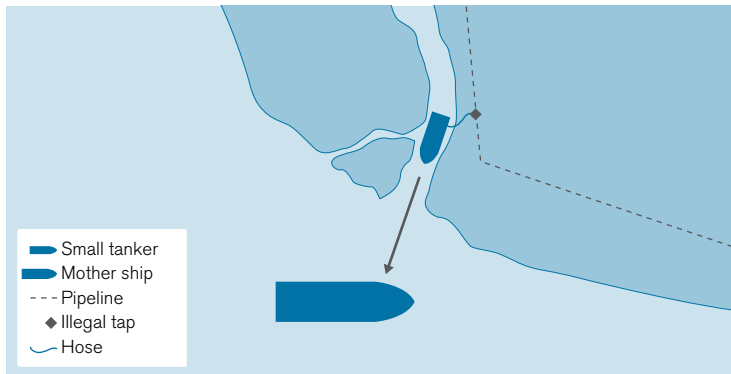
Figure 1: Large-scale illegal bunkering – barges siphon crude from pipelines through hoses, and transport the crude to small tankers



8 For more on this type of theft, see Stakeholder Democracy Network (SDN), *Illegal Oil Refining in the Niger Delta: Trying to Understand and Address an Informal Economy*, 2013.

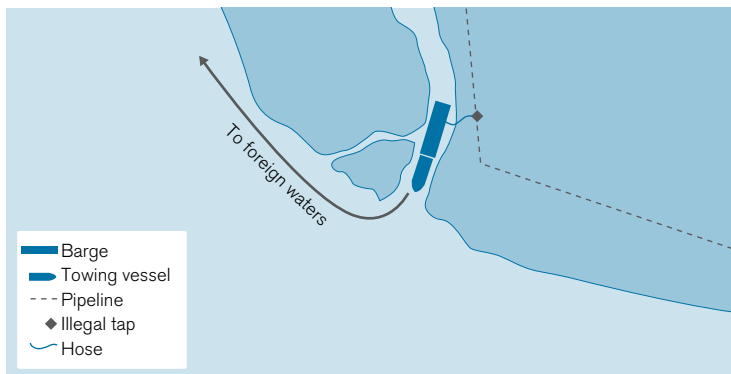
This basic supply chain has some variations. In spots of the delta where river drafts are deeper, small tankers can sometimes load oil directly from a pipeline, eliminating the need for barges (see Figure 2).

Figure 2: Small tankers sometimes steal crude directly from the pipeline without recourse to barges



A few thieves reportedly also use ocean-going tugs, anchor handling vessels or ships that service oil platforms to pull large barges directly up the Nigerian coastline, perhaps even into foreign waters. These barges ultimately transfer their loads to larger vessels. Some may dump the oil into storage tanks (see Figure 3).

Figure 3: Use of ocean-going tugs, anchor handling vessels or ships that service oil platforms to pull large barges



Theft at export terminals

This 'white collar' branch of oil theft allegedly involves pumping illegally obtained oil onto tankers already loading at export terminals, or siphoning crude from terminal storage tanks onto trucks. Bills of lading (B/L) and other shipping and corporate documents may be falsified to paper over the theft. For more on this topic, see Chapter 3.

This report focuses on the last two forms of theft, which are said to account for most of the stolen Nigerian oil that enters world markets. The analysis that follows refers to them collectively as 'export oil theft'.

The narrative above, while substantially correct, is also a simplification, however. Stolen Nigerian oil can move in more complex ways once it enters international waters. The truth of what happens around the export terminals is contested and largely hidden to outsiders. These issues will be discussed in Chapter 3. The three types of theft also are not mutually exclusive. The lines between domestic and international oil rings grow increasingly blurred as cooperation on the ground evolves. A single unauthorized pipeline tap can service both domestic and export theft businesses, as do boats and barges. For example, when taxiing back empty to tap points, some vessels that carry stolen crude for large-scale illegal bunkering operations earn extra money by transporting barrels of illegally refined diesel or kerosene to retail markets upriver. An unknown amount of ‘bush diesel’ made with stolen Nigerian crude is also exported regionally.

Official complicity in theft

Illegal bunkering of Nigerian crude oil probably started in the late 1970s or early 1980s, when the country was under military rule. In most versions of the story, some top army and navy officers began stealing oil – or allowing others to steal it – to enrich themselves and maintain political stability. Some say that oil theft also allowed Nigeria to bust tight OPEC quotas. It seems that local and foreign intermediaries did much of the legwork; Lebanese and Greek actors were most often suspected. While no data exist, the stolen oil trade was probably small at this time, perhaps a few thousand barrels per day. Lower global oil prices and Nigerian output, combined with the relatively closed group of actors involved, helped contain the business. Public claims that the Nigerian security forces were involved in stealing oil grew after military rule ended in 1999 (see Box 1).

Box 1: Signs of alleged participation by security forces in oil theft

- Over a dozen retired military officers, including a rear admiral, were arrested on suspicion of oil theft during the 2000s; all were later freed without charge.
- One brigadier general, then a commander in the Joint Task Force (JTF) – which combines army, navy, airforce and mobile police units – that patrols parts of the delta, was relieved of his post in March 2006 owing to alleged involvement with illegal bunkering.
- Ships impounded by the JTF or navy have allegedly been released under political pressure, or have gone missing, only to turn up later reflagged and repainted.
- Security and oil company sources report having seen ships engaged in oil theft pass freely through maritime check points, in full view of military patrols.
- Others claim to have observed rank-and-file JTF officers standing guard at illegal tap points and providing armed escort to ships loaded with stolen crude.
- Sources in the security forces also claim that officers lobby strongly to be posted to the delta region, while others pointed to cases where senior officers were redeployed for refusing to engage in or turn a blind eye to theft.

The return to democracy also gave civilian officials and political ‘godfathers’ more access to the illegal oil trade. Nigeria’s oil sector and political culture opened up dramatically in the 2000s. Rising prices and production allowed more oil to vanish, as did the local ‘resource control’ agitation. The larger profits and cast of characters in play made the ‘rights’ to steal oil more hotly contested. In the Niger Delta, oil theft became a source of stability as well as conflict as its ties to political violence, corruption and organized crime deepened.

Network structures

Information on the shape of export oil theft networks is elusive, even in Nigeria. This is partly due to the involvement of high-level actors and partly because of the trade's secretive nature. Some intelligence community sources interviewed for this report offered overly simplistic pictures of network structures. For instance, one IOC officer drew a clockwise flowchart showing 'sponsors', 'foremen', 'community' and 'buyers'. The local politics and sociology of Nigerian oil theft are also kept veiled from outsiders.

A few things are known, however. First, organization is more cellular than hierarchical. Nigerian politicians and the press like to speak of bunkering 'barons' and 'kingpins', or to describe oil-theft rings as mafias or syndicates. But most export operations are probably not run by one person, family or ethnic group, and management tends to be more cooperative than based on command-and-control.

Second, structures probably vary a lot from network to network. A network's membership depends on the size and location of its operations, its needs and its broader political entanglements. Members can enter and exit quickly as their standing fluctuates. For instance, a retired military officer supplying barges to transport oil might be forced out as his influence wanes, or someone else might offer to move the same oil for less profit. There does seem to be a common set of roles to fill, however. These fall under the following labels: high-level opportunists, facilitators, operations, security, local transport, foreign transport, sales and low-level opportunists. The details of the actions and identities involved are set out in Table 1.

Table 1: Anatomy of a typical large-scale oil-theft operation

Role	Actions	Alleged common identities
High-level opportunists	Collect profits from theft by virtue of their status and ability to restrict and control others' access to the trade	Mostly government officials and security force personnel; some traditional rulers and local godfathers
Facilitators	Source necessary equipment and cash for operations; serve as paymaster for ground-level operators; launder money	Accountants, lawyers, real estate brokers, money changers, corrupt bank managers or other staff
Operations	Install illegal taps; man taps and oversee loading; gather intelligence on oil, ship and state security service movements	Local youths; former IOC employees and contractors (alleged); small consortiums of local elites; militant groups
Security	Stand sentry at tap points; secure the transport corridor; escort vessels in the inland and coastal waters; gather intelligence; otherwise protect the network's 'turf'	Local armed groups or 'militants'; private security contractors; rank-and-file state security forces personnel (alleged)
Local transport	Provide the smaller ships, trucks and associated manpower needed to store stolen crude and/or carry it to ship-to-ship points in inland or coastal waters	Some local armed groups or 'militants'; local and foreign shipping concerns; current and former politicians
Foreign transport	Provide the commercial-grade tankers and other vessels needed to carry stolen crude to destination points outside Nigeria	Foreign shipping concerns and agents; some private commodities traders?
Sales	Broker sales of stolen parcels to foreign buyers; arrange for financing and shipment; remit profits to others in the network	Well-connected local middlemen, some private commodities traders?
Low-level opportunists	Operate various types of protection/extortion rackets around theft rings to profit by exploiting oil theft's illegitimacy and/or by providing political cover.	'Host' and 'passage' communities, local elites, local armed groups and various types of youth gangs, rank-and-file security forces personnel

Note: The information here is abstracted from interviewee descriptions of a (now-defunct) export theft operation and other relevant interviews.

Third, the stolen oil business is highly entrepreneurial and opportunistic, yet it is not open to all comers. To gain access to stolen oil, or the profits from it, an ambitious, well-placed individual can either start a protection racket or offer services to an existing network.

In the first instance, some high-level opportunists – mainly corrupt officers from the navy and JTF – reportedly form ‘unions’ that collect ‘dues’ or ‘returns’ from persons actively stealing oil. Thieves can pay their dues on a weekly, monthly or per-trip basis (see Table 2). Anyone who balks at paying the union can be shut down. Tap owners and installers, security operatives, barge and boat operators may all be ‘in the union.’⁹

Table 2: Sample of alleged protection payments by oil thieves

Item	Cost
Bribes to navy officers for tanker clearance	N1.5 million (\$9,150) for 500,000 litres (\$3/bbl)
‘Security’ payments at the tap point to:	
Local youth	N700,000/week (\$4,375)
Community	N1 million/week (\$6,250)
JTF	N2 million/week (\$12,500)

Sources: Author interviews.

Note: Figures could vary significantly from place to place and network to network.

Local armed groups have also extorted ‘rents’ from oil thieves in exchange for not molesting their taps and ships. In the 2000s, some ex-militant leaders elbowed their way into the trade with threats to attack the legitimate oil business. They later used similar threats to secure lucrative pipeline surveillance and oil-spill remediation contracts.

Offering to help an existing network move stolen crude is the other main option. A newcomer’s services can be of direct commercial value – low-cost barge transport, for example – or more political in nature. It is widely believed that a few Niger Delta former governors allowed militants to partner with illegal bunkerers during their time in office as compensation for their help in rigging the 2003 elections.

Nigerian crude oil sales

Buyer–seller relationships in the stolen oil trade can vary a lot. Some apparently are quite insular, with operatives in Nigeria shipping oil to a single refinery on pre-agreed terms. In other cases the stolen oil trades in the same markets as legal tanker-loads of crude. Thieves use various means to launder stolen oil into the licit market, all of which can blur the lines between legal and illegal supply.¹⁰ As such, pursuing stolen parcels requires an understanding of how legitimate Nigerian oil sales work.

Each year, most often in the spring or summer, NNPC’s Crude Oil Marketing Department (COMD) awards one-year term contracts to lift the government’s share of oil production – typically 22 to 27 tanker-loads per month in recent months. These contracts go a variety of customers, mostly private oil-trading firms. Fifty such contracts were awarded in 2012 (see Table 3).

9 See, for example, S. Davis, *Shifting Trends in Oil Theft in the Niger Delta*, Legaloil.com information paper No. 3, 2007; SDN, *Illegal Oil Refining in the Niger Delta*, 2013.

10 For details, see Chapter 3.

Table 3: 2012–13 NNPC term contract holders for crude oil

Oando	AMG	Petrobras
Sahara Energy	Eterna	PTT Thailand
Taleveras	Ibeto Petrochemicals	Petroenergy Refining
Azenith	Cento Energy	Duke Oil
Masters Energy	Mercuria	Calson
Mezcor	Vitol	Indian Oil Co.
Crudex	Trafigura	UNIPEC (Sinopec)
Voyage Oil and Gas	Glencore	Govt of Senegal
Ontario	Gunvor	Govt of Zambia
Tocomo	Socar	Govt of Sierra Leone
Tempo	Oceanbed	Govt of Burkina Faso
Avidor	DK Energy	Govt of Côte d'Ivoire
Lengard	Addax	Govt of Malawi
Aiteo	Lynear Energy	Govt of Ghana
Moncler	Elan Oil	Govt of Liberia
Havistar	Rheinoel Ltd.	Astana Energy
Tridax	Fujairah Refinery	

NNPC also allocates around 400,000 b/d of the government's oil to its four refineries. Because the refineries generally run at only around 20 per cent capacity, much of this oil is sold for export. Some of it is stolen from the pipelines that run from onshore export terminals en route to the refineries.¹¹ In addition to NNPC's regular export cargoes, the international oil companies (IOCs) ship and sell up to 30 more cargoes each month.

Under the NNPC term contract system, most legitimate cargoes change hands at least twice: first from NNPC to a trader, and then from the trader to another buyer, most often a refinery. Moreover, of the fifty term customers for 2012, perhaps only a dozen to twenty have the capacity or will to finance, ship and sell their own cargoes directly to refiners with all the market and price risks involved. Most of the remaining ones are so-called 'briefcase companies' – small entities which sell their allocations of crude to the main traders for a margin, most often at the higher end of \$0.25–0.40 per barrel in 2013. This adds a third layer of sales transactions.

The system attracts many shadowy middlemen and 'politically exposed persons'. This, in turn, creates a crowded, confusing, high-risk marketplace. A typical briefcase company is owned by one or more private individuals acting as a 'front' for top political office-holders and power-brokers. Traders and refiners say they receive regular calls from little-known Nigerians offering oil, often on suspect terms. A growing number appear to be businessmen and elites from the Niger Delta. Seasoned buyers spot most such offers as '419', the work of advance fee fraudsters.¹² But at least some of the middlemen have real oil to sell.

11 See Table 9, p. 29.

12 '419,' in Nigerian parlance, takes its name from the section of the Nigerian penal code that criminalizes advanced fee fraud. The term can be used colloquially to refer to any instance in which one person uses misrepresentation to extract benefits from another. For more, see D. Smith, *A Culture of Corruption: Everyday Perception and Popular Discontent in Nigeria*, Princeton, 2008.

Nigeria's oil sector is one of the world's least transparent when it comes to sales, associated revenues and physical oil flows.¹³ The resulting shadows and disorder could easily be exploited by organized criminal interests. Adding to the general bustle and opacity, the traders who hold NNPC term contracts sell their cargoes in the physical spot market – a vast, mostly unregulated space. Organized criminal pursuits such as export oil theft generally thrive in open markets. In Nigeria and other countries, relatively recent moves towards economic liberalization, integration with global trade and privatization of state resources, whatever their benefits, also help criminal elements access capital, technical expertise and global crime networks.¹⁴ In such an environment – where many parcels of oil change hands many times to travel in different directions under often opaque conditions – stolen crude can mix in the legitimate market with relative ease (see Table 4).

Research for this report found no hard evidence that any particular NNPC term customers stole oil. A few Nigerian indigenous traders have been investigated at home for suspected crude theft and fraud, but there were no definitive findings of guilt. Some in the West African crude trading market claim bribery is basic to how the business works, but scandals have been rare.¹⁵ Some international trading houses have been investigated for other offences around the world, from sanctions-busting to manipulation of benchmark prices and environmental damage.¹⁶ More recently, foreign anti-corruption police and NGOs are taking more notice of commodities trading.¹⁷ But if some traders do join forces with criminal networks to move stolen Nigerian oil, the exact mechanics of this remain unclear.

13 Nigeria received a 'weak' score on the Revenue Watch Institute's (RWI) 2013 Resource Governance Index. www.revenuewatch.org/countries/africa/nigeria/overview. A 2010 joint report by RWI and Transparency International rated NNPC the least transparent of 44 national and international energy companies surveyed. The last time the corporation published systemic financial information on oil sales was in its 2005 *Annual Statistical Bulletin*.

14 J.-F. Bayart et al., *The Criminalization of the State in Africa*, James Currey, 1999.

15 In one notable exception, Marc Rich, the now-deceased founder of Glencore, reportedly admitted paying a \$1 million dollar bribe to a former Nigerian transport minister to maintain his market position in the country. For more detail, see A.C. Copetas, *Metal Men: Marc Rich and the 10 Billion Dollar Scam*, Harper Perennial, 1985.

16 For some notable case studies, see Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, 2012.

17 The US government recently launched its first Foreign Corrupt Practices Act (FPCA) investigation against a commodities trading house with a probe of alleged bribes paid by agricultural trading giant Archer Daniels Midland. Some speculate that the ADM case could lead to an 'industry sweep' of the trading business similar to recent US anti-bribery enforcement work in the oil and gas and pharmaceuticals sectors. Swiss officials in 2012 announced they were probing the activities of a former Gunvor executive in the DRC who was suspected of laundering money for government officials.

Table 4: Estimated Nigerian loadings, March 2013 ('000 bbl)

Date	Volume	Seller	Buyer	Destination
Abo 38.8°API, 0.14%S				
16-17	500	Eni	BP†	Europe
Agbami 47.2°API, 0.05%S, TAN=0.05				
1-2	375	Petrobras‡		Latin America/Caribbean
5-6	975	Chevron‡		
9-10	975	Chevron	Petrobras	Latin America/Caribbean
13-14	975	Chevron	Petrobras	Latin America/Caribbean
18-19	975	Chevron	Petrobras	Latin America/Caribbean
22-23	975	Vitol	BP	
26-27	975	Chevron	Petrobras	Latin America/Caribbean
30-31	800	Gunvor	Shell	
Akpo 46.2°API, 0.06%S, TAN=0.05				
6-7	1,000	Gunvor	Total	Europe
12-13	1,000	Vitol	Exxon	
18-19	1,000	CNOOC	Unipet	
			Petrobras	Latin America/Caribbean
24-25	1,000	Petrobras‡		Latin America/Caribbean
30-31	1,000	CNOOC	Vitol	
			Exxon	
Amenam 40.70°API, 0.09%S, TAN=0.3				
5-6	950	Total‡		Europe
14-15	950	Taleveras	Sunoco	US
Antan 28°API, 0.3%S, TAN=0.65				
7-8	950	Taleveras	Exxon	
24-25	950	Sinopec	Unipet	
			IOC	Asia
Bonga 30.5°API, 0.258%S, TAN=0.59				
3-4	1,050	Shell		USGC
8-9	950	Taleveras	M.Stanley	
			Trafigura	
			Marathon	USGC
14-15	950	Sahara	SIR	W. Africa
21-22	1,000	Eni	Exxon	Europe
25-26	950	NNPC	SIR	W. Africa
30-31	1,000	Shell		USGC
Bonny Light 35.0°API, 0.16%S, TAN=0.19				
1-2	950	Shell		Europe
3-4	300		Tema	W. Africa
6-7	950	Total‡		Europe
20-21	650		Tema	W. Africa
23-24	950	Vitol	Trieste	Europe
26-27	500	PTT	Tupras	Europe
30-31	1,000	Shell	Trieste	Europe
Brass River 34.56°API, 0.22%S, TAN=0.3				
10-11	950	Eni	BP	Europe
24-25	950	Sahara	Exxon	Europe
EA 34.8° API, 0.09%S				
2-3	950	Trafigura	Shell	Europe
22-23	950	Vitol	IOC	Asia

Erha 31.7°API,0.21%S,TAN=0.35				
8-9	950	NNPC	Shell	
16-17	950	Shell	Sasol	S. Africa
25-26	950	Sahara	Sunoco	US
Escravos 33.70°API, 0.16%S, TAN=0.52				
5-6	950	Chevron	Sunoco	US
17-18	950	Chevron	Sunoco	US
30-31	950	Chevron	Cepsa	Europe
Forcados 30.43°API, 0.18%S, TAN0.34				
2-3	907	NNPC	SIR	W. Africa
5-6	955	Shell	India	Asia
11-12	955	Shell	OMV	Europe
16-17	907	NNPC	Rotterdam	Europe
19-20	475	Shell		
23-24	485	Eni		
		BP†	Hestya	Europe
26-27	907	Trafigura		US
Okono 40.7°API, 0.069%S, TAN=0.15				
9-10	900	NPDC	Taleveras	
			P66	US
26-27	900	NPDC	Sahara	
			Chevron	
Okwori 37.2° API, 0.2%S				
19-20	650	Sinopec	Petrobras	Latin America/Caribbean
Pennington 35°API, 0.08%S,TAN=0.22				
29-30	950	Chevron	Petrobras	Latin America/Caribbean
Qua Iboe 35.22°API, 0.12%S, TAN=0.32				
1-2	950	Trafigura	Chevron	
3-4	950	Exxon	Petroineos	Europe
16-17	950	Exxon	Total	Europe
19-20	950	Taleveras	M.Stanley	
			BP	
22-23	950	Mercuria	Cepsa	Europe
24-25	950	Exxon	Vitol	
			IOC	Asia
27-28	950	Glencore	BP	
29-30	950	Glencore	BP	
			IOC	Asia
Usan 32.6°API, 0.22%S,TAN=1.03**				
8-9§	1,000	Total‡		Europe
18-19	1,000	Exxon	Cepsa	Europe
27-28	1,000	Chevron	Cepsa	Europe
Yoho 39.30°API, 0.072%S, TAN=0.26				
9-10	950	Exxon	Sunoco	US
25-26	950	Sahara	Cepsa	Europe

Name of crude or crude blend (with specifications)

Government equity crude

Note: These loadings, published monthly by Energy Intelligence, are estimates based on information gleaned from crude market sources. Christina Katsouris, 'Overhang of Nigerian Cargoes Helps Weaken Global Crude Prices', *Energy Intelligence Briefing*, 10 May 2013.

2 Should Foreign Countries Engage?

The international community needs a far better understanding of export oil theft, the options for engagement on this issue and Nigeria's own priorities before pledging major resources to combating the problem. Cross-border action certainly should not be off the table, but officials first need to confront a number of challenges.

History of international engagement

Nigerian oil theft is a species of organized crime that is almost totally off the international community's radar. Foreign governments are aware that the problem exists, and occasionally show some interest at high levels. But Nigeria's trade and diplomatic partners have no real history of acting against oil theft. Successive foreign governments have mulled the same basic menu of policy options, some of them costly and of questionable value. But interest typically wanes when theft falls or talks stall.

There has been no international law-enforcement activity around Nigerian oil theft. No foreign police or prosecutors have major experience of investigating and prosecuting oil theft rings. Multilateral bodies are not active in the area either – Interpol confirmed, for example, that it does not have a single red or blue notice relating to oil theft. Interpol established an anti-piracy task force in 2008, and has a regional bureau in Abidjan, but the agency has engaged in no specific operations against crude oil theft. The UN Office on Drugs and Crime (UNODC) has no in-house expertise on this issue. Outside the law-enforcement community, industry analysts and civil society largely ignore the problem.

In part, others have taken their cues from the enforcement climate inside Nigeria. No stakeholder group in the country has a history of sustained, successful engagement on oil theft. Despite many arrests, the Economic and Financial Crimes Commission (EFCC), which has statutory powers to prosecute oil thieves, has won only a handful of convictions, all against low-level actors. No one above the ground level has been tried or convicted since at least the 1980s. All of this comes on top of the many widespread but vague rumours that Nigerian government officials condone and, in some cases, profit from theft.

Lack of information

The lack of granular, reliable intelligence on Nigerian export oil theft makes it hard for foreign governments to assess how the trade threatens their interests or to plan solid interventions. Oil theft is a significant dark spot in the global intelligence community. The absence of law enforcement accounts for much of the gap, though lack of information could also deter enforcers.

Inside Nigeria, EFCC officials confirmed that the commission does not collect much intelligence on export oil theft, and its institutional knowledge on the topic is weak.

Poor information-sharing also is a problem. A few foreign governments have engaged in limited intelligence-gathering around oil theft, but little of this feeds down to decision-makers. Officers charged with gathering intelligence are heavily siloed, and probably receive limited instruction on how to prioritize their efforts. A small group of US officers reportedly maps links between Nigerian oil theft and the Latin American cocaine trade, for example, but their findings are classified and closely guarded. The IOCs share some but not all of the intelligence they collect with the Nigerian security forces. The Nigerian presidency and NNPC have commissioned studies of oil theft, but these generally are not shared.

The secretive, violent, ‘need to know’ nature of the trade further discourages information-sharing. Obtaining good on-the-ground human intelligence carries risks of arrest, injury and death. Anonymity is built into the business model, and operatives on the ground seldom have a complete picture of what is going on. Even the IOCs claim they do not always know who is behind the illegal bunkering networks in their areas – though some industry sources say the companies may not genuinely want to know.

At the same time, years of government and IOC statements, press reporting and civil society coverage have built a general public narrative about Nigerian oil theft. Again, the basic contours of this narrative are mostly accurate, but the story is also oversimplified and short on actionable detail. As such, industry-watchers and foreign decision-makers may think they understand the trade better than they actually do.

The need for cross-border engagement

Outside interest in Nigerian oil theft has risen again in the last couple of years. Some IOCs and Nigerian government officials claim it has reached unprecedented levels.¹⁸ Privately, officials from several countries interviewed for this report expressed some interest and willingness to partner with the Nigerian government on oil theft, and the administration of President Goodluck Jonathan has made overtures to them.¹⁹

Foreign governments would need to pool efforts to cut the trade significantly. Nigeria could not stop crude oil theft without help. There is limited value in other countries going it alone. Unilateral state action has made only modest gains against similar threats from transnational organized crime (TOC). The networks involved are too flexible, mobile, creative and diffuse – when one node or market is cut off, others tend to emerge quickly. The stolen oil trade also touches too many nations: between 2009 and 2011, Nigerian oil found buyers in at least 37 countries, according to NNPC statistics. Stolen parcels probably travel to a range of countries.²⁰ By its nature, TOC, like oil theft, challenges the very sovereignty and relevance of states.

In theory, a well-implemented multi-state campaign could close off at least some markets and financial centres; and also raise the costs of theft, both ‘hard’ (loss of profits) and ‘soft’ (risk of

18 For an evaluation of these claims, see Chapter 3.

19 In early 2013, President Jonathan visited London and Paris and reportedly discussed oil theft among other topics with Prime Minister David Cameron and President François Hollande.

20 See Chapter 3.

imprisonment, reputational damage or other sanction). Over time, these changes could dismantle some existing networks and discourage newcomers from entering the field. But the business could not be shut down entirely, nor could losses be cut to zero. Oil trading and refining are increasingly low-margin, high-volume pursuits. As such, someone will always have an incentive to buy stolen crude. Foreign governments also have little influence over local drivers of Nigerian oil theft such as poverty, unemployment and corruption.²¹

Arguments for engaging

A foreign government that chose to act on Nigerian oil theft could do so on the basis of a number of rationales. Some of these hold more water than others, and officials would need better intelligence to assess any of them fully. The most commonly made arguments for outside action are considered below.

Stolen Nigerian oil and proceeds from it compromise the integrity of foreign markets and financial systems

This is probably the strongest justification for outside involvement. In a number of recent high-profile cases outside Nigeria, banks caught laundering money for organized criminal groups faced tough sanctions and reputational damage. The risks grow if oil thieves penetrate too far into the legitimate oil, shipping and financial services businesses. Signs suggest that a few groups thought to have traded stolen Nigerian crude are shopping for oil and gas assets elsewhere in Africa. Some may even have a shot at listing on foreign stock exchanges in the future. Lax enforcement and the trade's low-profile, secretive ways could keep the red flags hidden. To weigh the reputational risks of inaction, individual states would also need much better intelligence on where the oil and money are going.²²

Nigerian oil theft threatens national and regional security

Violent conflict around oil theft has helped destabilize parts of the Niger Delta, but little to date suggests the trade threatens the stability of Nigeria or West Africa, at least for now. Energy security appears unthreatened. Taking a longer view, Nigerian oil theft arguably could harm broader strategic interests in the Gulf of Guinea by strengthening other types of organized crime. For example, if money from oil theft continues to feed and embolden sea pirates, an escalation in maritime crime could damage oil and gas investment in West Africa. This could happen just as new and aspiring producers such as Ghana, Liberia or Sierra Leone try to move forward with developing their own industries. Currently, however, the links between oil theft and other types of TOC in the region are not well enough understood to make such arguments with confidence.

The tanker-loads of crude that Nigerian oil thieves steal is 'blood oil', akin to the trade in blood diamonds or conflict minerals

Even assuming 100 per cent of violent clashes in the Niger Delta could be linked to oil theft, related casualties and human rights abuses have been relatively low compared with war-time Angola, Sierra Leone or the Democratic Republic of the Congo (DRC). Guerrilla forces flush

21 Research on war economies that involve illicit commodities trading has found that targeting specific individuals and commodity flows has limited impact if not complemented by efforts to create jobs, build inclusive governments and wealth-sharing procedures, repair the social contract, and the like. See, e.g., K. Ballentine, 'Peace before Profit: The Challenge of Governance', in K. Ballentine and H. Nitzsche (eds), *Profiting from Peace: Managing the Resource Dimensions of Civil War*, 2005; P. Le Billon, 'Fuelling War: Natural Resources and Armed Conflict', *Political Geography*, 20: 561–84, Lynne Rienner: Boulder and London, 2005.

22 For more on this point, see Chapter 3.

with cash from illegal mineral sales have not murdered tens of thousands across the region, or left more to die from starvation and disease. The intensity of conflict has not been high enough to trigger obligations to act under the laws or norms of individual states, the UN Charter or international legal instruments.²³ Stolen Nigerian oil is also a relatively small part of total Nigerian crude oil production. Campaigning by NGOs spurred much of the global effort around conflict diamonds and minerals, but civil society has shown little interest in oil theft. Years of Nigerian and international press reporting has generated no public pressure for action, and no past campaign to raise awareness of the problem has taken off.

The stolen oil trade is too big not to act

For reasons discussed in Chapter 3, it is not clear how much of Nigeria's oil is stolen and exported. The best available data suggest that an average of 100,000 b/d vanished from onshore, swamp and shallow-water areas in the first quarter of 2013.²⁴ This figure does not include what may happen at export terminals. It also assumes the integrity of industry numbers. But whatever the size of the problem, stolen Nigerian oil represents a tiny fraction of global crude supply and consumption, and a diminishing share of rising light sweet crude production globally.²⁵ Global supply exceeded 86.1 million b/d in 2012, while global consumption topped 89 million b/d.²⁶ Even assuming Nigeria lost 250,000 b/d to theft, this would represent less than 0.003 per cent of global supply (see Table 5).

Table 5: Nigerian oil theft as a percentage of global supply (2012 est.)

Level (b/d)	% of global supply
50,000	0.0003
100,000	0.0009
150,000	0.0015
250,000	0.0027

Assumption: global supply=86.1 million b/d.

Oil theft also seems to be a relatively small phenomenon worldwide. As such, the global picture does not strengthen the case for action in Nigeria. Significant theft from oil pipelines has been seen in five other countries. Of these, Russia seems to be the only one with problems of Nigeria's scale (see Table 6).²⁷ Moreover, very little of the oil stolen in these countries reaches international markets. There are also no clear signs that export oil theft is rising globally. Occupation-era Iraq had a significant theft problem, with reports of high-level stealing at terminals in the southern port of Basra. However, Iraqi oil-sector experts think levels have since dropped. Recent evidence suggests some Russian oil thieves may be smuggling illegally bunkered crude from the Caspian

23 During the height of Sierra Leone's civil war, roughly 90 per cent of rough diamond production was smuggled through the country's neighbours, with revenues bypassing government controls and coffers. By some estimates, guerrilla groups and corrupt military officers may control half of Eastern Congo's 200-plus mines. Author interviews with conflict diamonds and mineral experts, 2011–12.

24 Author analysis of published and unpublished data provided by sources at the IOCs and NNPC.

25 In 2012, light sweet crude made up about 38 per cent of total world crude supply (where light sweet is >31 American Petroleum Institute (API) gravity and less than 1 per cent sulphur). Author communication, Turner, Mason & Co. (a US-based refinery consultant), 2013.

26 BP, *Statistical Review of World Energy*, June 2013.

27 Transneft reported 4,779 thefts between 2003 and 2012, 180 of them in 2012. Published data do not detail volume losses, however – market analysts VTP Capital provided the figure in Table 6. Other similarities between oil theft in Nigeria and Russia include the active involvement of corrupt local authorities and a well-developed domestic market. In Dagestan, trade sources explained, the illicit fare tends to be processed in mini-refineries or primitive facilities called 'samovars'. The resulting products are sold at local filling stations also controlled by political interests, all of which has kept big oil companies out of the region. Author communications, Russian oil sector and organized crime experts, 2013.

Shelf in and out of Dagestan.²⁸ Rumours have circulated for decades about organized oil theft in other countries, from Saudi Arabia and Angola to Sudan, but these have yet to be backed by evidence.²⁹ Other minor incidences of theft have been reported in China, Malaysia and India. But there is little evidence that oil thieves working in the different countries cooperate.

Table 6: Estimated global oil theft by country, excluding Nigeria (2011)

Country	'000 b/d	Principal methods
Colombia	0.4	Theft from Ecopetrol pipelines
Indonesia	1	Theft from Pertamina pipelines in South Sumatra
Iraq	10	Smuggling from Kurdistan into Iran and (possibly) Turkey
Mexico	10	Theft of condensate from pipelines
Russia	150	Theft from Transneft pipelines, esp. in Dagestan
TOTAL	171.4	

Sources: government data; industry analyst and expert reports and interviews.

Nigerian oil theft also has lower value and associated costs than other types of TOC (see Table 7). The evidence suggests that for most countries, it is more likely to be an embarrassment than a scourge. At a time of competing law-enforcement priorities and budget austerity, foreign governments will focus on the biggest threats coming from outside their borders. Oil theft is not on their lists of key criminal threats, for understandable reasons.³⁰ The greatest victims are ordinary Nigerians. The trade destroys the environment, weakens public institutions, swallows government revenue that could buy public goods, and imposes other social costs. Such damage is unfortunate, and deserves a remedy. But it may not carry much weight in foreign capitals.

Risks of engaging

Without better knowledge of export oil theft and its Nigerian context, foreign governments could easily find themselves out of their depth. Poorly designed and implemented initiatives could carry the following risks.

Wasting taxpayer money

Some cross-border interventions could conceivably cost billions of dollars, whether in direct outlays or in impacts on energy markets. Others could simply deliver low value for money. Governments might need to spend significantly to understand the trade better before acting.

28 In early August, Dagestani authorities detained the Azeri-flagged *Nafthalan* for allegedly attempting to smuggle 35,000 barrels of low-sulphur crude into the Azeri port of Sangachal. The oil, which was produced at Lukoil's Y. Korchagina field, was apparently stolen some time before it entered a pipeline in Dagestan en route to the Black Sea port of Novorossiysk. The tanker was detained and a criminal investigation was opened, though follow-up remains uncertain at this point. 'Dagestan Smuggling a Problem for Lukoil,' *International Oil Daily*, 13 August 2013.

29 Rumours have been circulating for decades of theft in Saudi Arabia and occasionally Angola (where trucks are said to have crossed the border from neighbouring DRC, filled up and disappeared again without invoices), and Sudan and South Sudan before the latter seceded in 2011. In other cases theft is mischaracterized, at least diplomatically, as export as between Iraq and Kurdistan. Author interviews.

30 The UK government, for instance, has highlighted 'drug trafficking, human trafficking, financial fraud, armed robbery, road freight crime and organized vehicle theft' as its largest concerns at home. UK Organized Crime Threat Assessment, 2011.

Table 7: Costs of Nigerian oil theft vs other transnational organized crimes

	Drug-trafficking	Illegal logging	Nigerian oil theft
Value of the trade	The annual value of drugs sold globally is \$550 billion Regional examples: <i>Mexico:</i> Amount earned from sales by local cartels is \$29.5 billion <i>US:</i> Amount earned in net US revenues is \$125.5 billion <i>West Africa:</i> Wholesale value of cocaine bound for Europe is \$1.25 billion	The annual value of illegally harvested timber is between \$30 billion and \$100 billion Regional examples: <i>Indonesia:</i> Trade in illegally harvested timber is worth between \$600 million and \$8.7 billion annually	The estimated annual value of oil stolen from Nigeria is between \$3 billion and \$8 billion
Public costs of the trade	Between \$200 billion and \$250 billion would be needed to cover the cost of drug treatment globally Regional examples: <i>United Kingdom:</i> Drug-related crime costs \$17.6 billion annually, the equivalent of 1.6 % of GDP <i>United States:</i> The loss of productivity because of drugs is 0.9 % of GDP	Illegal logging costs the global market over \$10 billion annually, and reduces government revenues by about \$5 billion per year Regional examples: <i>Indonesia/Papua Guinea:</i> Illegal logging has been linked to police corruption. Indonesia's anti-corruption agency is investigating \$146 million of transfers between known illegal loggers and police chiefs	In 2011, the Nigerian government is estimated to have lost revenue worth several billion dollars. From 2010 to 2012, the Nigerian National Petroleum Corporation spent \$2.3 billion on pipeline security and repairs
Direct casualties	There were between 102,000 and 247,000 drug-related deaths globally in 2011 Regional examples: <i>Mexico:</i> An estimated 60,000 people have been killed in drug-related violence to date	Regional examples: <i>Brazil:</i> In the past 20 years, over 1,000 rural activists have been killed by gunmen hired by loggers, ranchers and farmers to silence protests over illegal logging	At the height of conflict in the Niger Delta, there were an estimated 1,000 deaths each year – although not all of these would be directly related to oil theft There is an increased risk of kidnapping linked to oil theft in Nigeria
Environmental costs		Illegal logging has worsened the impact of flooding in typhoon-prone areas such as the Philippines and in Vietnam Changes to the natural environment can result in the loss of biodiversity and increased pollutants in local water systems	In Nigeria, significant oil spills are linked to crude oil theft Pollution of water and soil due to leaks from stolen oil have secondary impacts on human health, livelihoods, food and fuel stocks

Sources:

- 1 UN Office for Drugs and Crime, World Drug Report 2012: www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf.
- 2 UN Office for Drugs and Crime, World Drug Report 2013, www.unodc.org/unodc/secured/wdr/wdr2013/World_Drug_Report_2013.pdf.
- 3 Serious Organised Crime Agency, UK Government: www.soca.gov.uk/threats/drugs.
- 4 BBC, Q&A: Mexico's Drug-Related Violence, 16 July 2013: www.bbc.co.uk/news/world-latin-america-10681249.
- 5 C Nellemann, Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the World's Tropical Forests, UN Environmental Programme, 2012.
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- 8 'After Killings, Brazil Vows to Confront Amazon Violence', John Collins Rudolf, 1 June 2011, *New York Times*: http://green.blogs.nytimes.com/2011/06/01/after-killings-brazil-vows-to-confront-amazon-violence/?_r=0.
- 9 'Vietnam's Illegal Logging in Spotlight After Typhoon', Martha Ann Overland, TIME Magazine, 22 October 2009: <http://content.time.com/time/world/article/0,8599,1931907,00.html>.
- 10 'Illegal logging, mining worsened impact of Philippines' killer typhoon', Jeremy Hance, 6 December 2012: <http://news.mongabay.com/2012/1206-hance-typhoon-bopha.html>.
- 11 'A Review of the Social Costs of Illegal Logging', Coakes Consulting, June 2010: www.daff.gov.au/__data/assets/pdf_file/0007/1872655/Coakes_-_A_review_of_the_social_costs_of_illegal_logging.pdf.

Creating diplomatic conflict

Acting without Nigeria's blessing and support could harm bilateral relations. This, in turn, could block cooperation in higher-priority areas where Nigeria may play a more positive role. At present these arguably include counter-terrorism in Northern Nigeria and the Sahel; regional peacekeeping; counter-narcotics, particularly the arrest of cocaine, meth and heroin shipments bound for Europe; control of maritime piracy and armed robbery in the Gulf of Guinea; and promotion of trade in oil and gas, petrochemicals and related fields.

Misreading the political environment

Nigerian foreign policy offers foreign governments complexity and few strong levers. Aid dependence is low, especially at the federal level. Nigerian defence hawks tend to bristle at outside intervention on security matters: new hardware and low-level capacity-building is welcome; input into strategy or requests for intelligence less so. The continuing lull in the country's oil sector leaves other governments with fewer carrots to offer on trade and investment. As Asian and indigenous players partly fill gaps, the influence of Nigeria's established Western partners may ebb somewhat, particularly on oil theft and similar issues. Public admonishments by outsiders on corruption, democracy and human rights can close doors. Moreover, with elections looming in 2015, Nigerian officials could prove less open and available to outsiders. Discerning lines of influence can be a challenge: the presidency and the security forces are top-heavy yet informal crowded spaces, and officials with titular authority on oil theft may not actually control their own portfolios.

Legitimizing rogue actors

Lack of results is not the worst possible outcome for action by foreign governments on Nigerian oil theft. Ill-conceived, unrealistic involvement on their part could legitimize and provide cover for Nigerian institutions and individuals actively stealing oil, or turning a blind eye to theft. Foreign officials might find it hard to change course or push for progress once they found themselves in such a position.

Prospective partners in Nigeria

Foreign governments out to tackle Nigerian oil theft could struggle to find partners in the country. No group with an interest in Nigeria's oil has a record of sustained, serious engagement on theft. Past action on all sides has been weak and sporadic at best. The biggest limits on the size of the trade may be operational and logistical rather than legal.³¹

The Nigerian government

The Nigerian government tends to act mainly when too much oil starts to disappear. But how much is too much? Some oil company staff say that wells, flow stations and pipelines fail more often whenever illegal bunkering consumes 15–25 per cent of total production. As supplies to the export terminals are interrupted, operators declare more cases of *'force majeure'* on orders of oil.

31 The main limits are discussed at various points in this report. They include the shallow draughts of many Niger Delta rivers; West Africa's limited crude oil refining and storage capacity; a possible shortage of seaworthy small tankers in the delta; the tendency of pipelines and other infrastructure to fail when theft reaches higher levels; the unattractiveness of illegally bunkered crude to some buyers, given its high water and sediment content; and the troubles some aspiring thieves may have in establishing contact with international buyers.

This, in turn, can bring on serious public revenue shortfalls.³² In the past, the IOCs have fixed most of the infrastructure damage bunkerers cause within days or weeks, while the government moves to bring theft levels down. ‘We have never reached the breaking point,’ one executive said. ‘Something always happens that rights the ship. I’m not sure when disaster happens.’³³

Prior Nigerian governments have relied on ad hoc military crackdowns, patronage and political settlements to staunch illegal oil flows. The navy and JTF are the main law-enforcement bodies charged with combating theft, though there are several other actors involved (see Table 8).

Table 8: Nigerian law-enforcement agencies active on oil theft

Agency	Operating area	Duties
Nigerian navy	Territorial waters, esp. coastal and EEZs; international waters as permitted by law	Patrol relevant waterways; stop, board, search, seize and arrest vessels and suspects engaged in oil theft; establish and/or enforce vessel clearance practices; gather intelligence
Joint Task Force (JTF)	Communities in Rivers, Bayelsa and Delta States	Patrol for evidence of criminal activity; arrest perpetrators and seize instrumentalities and proceeds of criminality; gather intelligence; develop and enforce relevant security protocols
Nigerian Maritime Administration and Safety Agency (NIMASA)	Nigerian territorial waters	License, inspect and clear vessels and seamen in Nigerian waters; general surveillance and maritime domain awareness; (limited) patrolling, detention and arrest functions
Nigeria Security & Civil Defence Corps (NSCDC)	Mostly pipeline rights-of-way	Police pipelines to prevent theft and sabotage; arrest and hand over offenders for prosecution
Economic and Financial Crimes Commission (EFCC)	All Nigerian territory in which oil theft occurs	Investigate and prosecute cases of oil theft and related crimes; develop financial intelligence on oil theft networks

Other government or quasi-governmental actors have smaller duties and roles to play. These include the Nigeria Inland Waterways Authority (NIWA), presidential and state-level advisors on maritime security, the Nigerian Police Force, and the many private pipeline surveillance contractors hired by NNPC and other agencies.

Some interviewees argued that the navy and JTF are as much part of the problem as any solution, given the signs of complicity around them. The widespread rumours of high-level civilian involvement raise other suspicions (see Chapter 1). Under President Goodluck Jonathan, the navy³⁴ and JTF³⁵ have arrested ground-level operators and impounded significant numbers of ships and other illegal bunkering equipment. Ships transporting crude oil in Nigeria’s inland waters now must carry more types of documentation on board, and officials say they are checking

32 In August 2013, for example, Nigeria’s Accountant-General for the Federation made the dramatic announcement that the country’s gross oil revenues fell 42 per cent in July compared with the previous month, mostly owing to oil theft and related production stoppages. When such revenue shortfalls occur, officials are forced to dip into savings to meet monthly revenue-sharing obligations to the federal, state and local tiers of government.

33 Author interview, 2011.

34 The navy reports it helped destroy 7,378 illegal refineries and detained 908 canoes and about 40 larger vessels in the second half of 2012. Comm. J. Okojie (Director, Naval Operations), ‘Deterring Crude Oil Theft and Pipeline Vandalism in Nigeria’, presentation at Uyo maritime summit, February 2013.

35 According to the JTF, in 2012 its officials conducted 7,585 creek patrols; destroyed 4,349 illegal refineries; and captured 133 barges, 1,215 Cotonou boats, 187 tanker trucks, 5 storage tanks and 18 seagoing vessels. Source: 2013 JTF internal document. (It should be noted that many of the vessels arrested were likely to be carrying illegal refined finished products rather than stolen crude).

documents more rigorously.³⁶ The Nigerian Maritime Safety Administration (NIMASA) reports it is seeking a stronger mandate and operational capabilities on crude theft, but the organization also has some suspect political ties.³⁷ Altogether, the Jonathan government says it has ‘initiated measures to plug leakages by at least 100kbpd’.³⁸

While it may be too early to judge the success or sustainability of these moves, one could ask how far they address deeper, systemic issues. Institutional accountability is a serious concern: the last naval court martial for oil theft happened in 2005. Control of vessel traffic around oilfields also looks poor. Under settled international law and Nigeria’s own 1978 Exclusive Economic Zone Act, officials can curtail access to the waters around oil wells, pipelines, terminals and other infrastructure. But several interviewees working offshore and on the ground in the Niger Delta said they regularly saw suspect ships moving around without proper clearances. ‘There are standard operating procedures to follow,’ one oil company security contractor explained. ‘If you move around an oilfield, it should be logged and noted. When you arrive, you need to estimate how long you’ll be there, and keep informing of your movements by radio the whole time.’ The fact that compliance is spotty leads some to think certain vessels are ‘well connected’ or otherwise ‘off limits’. Other interviewees argued that the navy could catch most export oil thieves by policing a few ‘choke points’, though the particulars of this idea are underdeveloped (see Box 3, p. 56).

On the basis of all this, some industry-watchers conclude that oil theft is a ‘Nigerian political problem’ which officials could fix if they wanted to. History also leaves room to question whether help from other countries is truly welcome. Past high-level diplomacy seems to have achieved little, and Nigeria’s history of calling for international help looks half-hearted at best. President Umaru Yar’adua’s request at the 2008 G8 summit for help with ‘blood oil’ drew public offers of assistance from the UN, United Kingdom and others, but Nigeria never sent a written request stating the help it wanted. When Prime Minister Gordon Brown publicly proposed the United Kingdom examine how it could help Nigeria on oil theft, militant groups in the delta began threatening British interests. Four UN advisers were reportedly seconded to the presidency in early 2008, but UN sources said they left in frustration after six months when access to key people and information did not materialize.

This scepticism, while understandable, should not be taken too far. Given oil theft’s dense ties to local power structures, patronage deals and conflict-management, an immediate ‘zero-tolerance’ policy by Nigeria could pose serious security risks. Nigeria has almost no control over some key drivers of the trade, such as poor global regulation of money-laundering and strong foreign demand. Notable campaigns against organized crime in other countries – e.g. Hong Kong, Colombia and the United States – took a generation or more to show clear results. Instead of making easy assumptions, foreign governments should keep to a shortlist of best practices when mulling their options on Nigerian oil theft (Box 2).

The international oil companies

Theft affects the five super-majors that produce most of Nigeria’s oil differently. Shell Petroleum Development Company of Nigeria (SPDC) and Nigerian Agip Oil Company (NAOC) – two joint ventures with NNPC that are operated by Shell and Eni – are the most exposed operationally.

36 Vessels operators must now carry 1) a Nigerian Port Authority (NPA) Bunkering Permit; 2) a JTF Operation Pulo Shield Certificate of Registration for vessels engaged in the movement of crude oil; 3) a ship log; and 4) supporting shipping documents (cargo manifest etc.). Author interviews.

37 One NIMASA official said the agency is updating its existing MoU with the Navy on security in territorial waters, facilitating the setup of a ‘special interagency task force’ to deal with ‘maritime security threats,’ and exploring new tools and protocols for intelligence-sharing. Author interview, 2013.

38 Nigerian Ministry of Finance, 2013–15 Medium Term Expenditure Framework, 2012.

Box 2: Ten best practices for planning international action against oil theft

1. No foreign government should offer to get involved in ways that require more cooperation than Nigeria will give.
2. Foreign officials should make real efforts to understand the institutions and leaders with whom they want to partner.
3. Foreign officials should not assume they have leverage to force cooperation on an issue such as oil theft.
4. Offers of conditional or quid pro quo support should be used sparingly.
5. To ensure needed sign-offs and buy-in, all interventions should be based on detailed, real-time political economy analysis and regular, open consultation with Nigerian decision-makers.
6. Donors, analysts and decision-makers should avoid simplistic ideas about supporting 'change agents' or 'reformers'.
7. The Nigerian officials with power to force cooperation on a given intervention should help plan it whenever possible.
8. If foreign delegations cannot get access to the right leaders in Nigeria, or if interest seems lukewarm, they should trust their instincts.
9. At the same time, outsiders should remember how politically sensitive the issue is, and give their Nigerian counterparts space and time to negotiate the local landscape.
10. Any multi-state engagement on oil theft should happen in phases; probing, honest evaluation of successes and failures must accompany each phase.

SPDC, which has fields in Rivers, Delta, Bayelsa and Imo States, is the biggest onshore producer. It has the most pipelines and wellheads, and tends to lose the most oil in absolute terms. But NAOC is the hardest hit overall, especially its swamp operations in the Brass-Akassa axis of Bayelsa State. The Italian firm haemorrhages the most crude as a percentage of its total production capacity, and has more pipeline exposure per barrel than Shell. It struggles to guard itself against Niger Delta criminal interests, given its small size and weak political cover. According to NNPC data, Eni's and Shell's infrastructure has also suffered the most from sabotage recently (Eni reported 108 incidents between August 2011 and February 2012, as opposed to Chevron's six cases). By contrast, Chevron's mid-sized onshore assets, most of which are in Delta State, look more secure for now. Exxon's and Total's oilfields are mainly offshore, which makes theft a relatively small issue for them.

The IOCs also take different public stances on oil theft. Chevron, Exxon and Agip rarely discuss the problem openly, preferring to treat it as an internal security matter. Shell raises the most alarms; its executives are by far the most vocal in calling for international action. This makes some sense, given the environmental damage theft has caused in Shell's operating area, its higher losses to theft, its status as Nigeria's largest, most politically visible oil company, and its skill at public relations.

Some in civil society and the Nigerian government question Shell's sincerity on oil theft. The company has been singled out by environmental activists and faces potentially massive liabilities for Niger Delta oil spills in foreign courts. Repeatedly highlighting oil theft as a cause of pollution has changed the discourse on the causes of pollution, which ultimately could influence thinking in international courts. At the same time, few would dispute that oil thieves harm local ecosystems, something for which Shell is often blamed, sometimes wrongly.

There is room to question how much the IOCs truly care about oil theft and what operations, relations and arrangements they would be prepared to risk in any battle to combat theft. In recent

years, the companies have taken a range of steps to protect onshore assets from thieves. These include installing pipe-in-pipe technology and cages around infrastructure, trials of fibre-optic sensors, using flow stations and wellheads that trip during sabotage and line pressure drops, and more spending on pipeline surveillance. Nevertheless rumours persist that IOC contractors and staff are involved in theft.³⁹ No clear evidence points to active participation at the executive level, though some managers could possibly be looking the other way.

It is also unclear how much export oil theft actually costs the IOCs. The Nigerian state bears most monetary losses: IOCs pay no royalties on crude illegally bunkered from their pipelines, flow stations or wellheads, since the government charges royalties only on oil that reaches an export terminal. Anything stolen in the field is exempt. Of course, the companies do not get to sell their equity shares of stolen oil, and declaring *force majeure* to repair damaged infrastructure can defer sales.⁴⁰ But Nigeria's high onshore taxes and royalties put the government's effective take at around 95 per cent at current prices, according to oil executives. Thus oil theft is not a major source of direct revenue loss for the IOCs. Their more secure deepwater fields are more lucrative, thanks to more generous contractual terms on earlier production-sharing contracts. Onshore security provisions and oil spill remediation are probably the biggest costs of oil theft to the IOCs, even though these remain tax-deductible.

Most of the IOC staff members interviewed for this report were decently informed, well intentioned and genuinely concerned about oil theft. Few had concrete ideas on what could be done, especially at the international level. Many doubted that anything serious would be done. It is worth remembering here that IOCs, like government agencies, are complex institutions that struggle to share information internally, manage red tape and balance competing agendas. Realistically, they could not do much to stop oil theft without the cooperation of other stakeholders, the Nigerian government especially. For now, theft may simply not harm the IOCs enough to spur a more determined, comprehensive, investigative approach. Some top decision-makers may also have concluded that such efforts would frustrate their companies' larger goals in Nigeria, or cause more political and legal friction than they want.

Oil traders

Most of the big oil-trading houses that ship and sell the bulk of the Nigerian government's share of crude tend to be guarded, opaque entities. Over the years, long-term players have had to strike potentially compromising deals with their well-connected Nigerian sponsors to get lifting contracts. A handful said they had been asked to transport suspect parcels of oil for third parties at one time or another. Some traders – especially the least successful or politically compromised – are likely to have dealt at arm's length with thieves, or turned a blind eye as the price for maintaining their market shares, interviewees claimed. Most certainly would not welcome any action that shone more light on their activities in Nigeria, however legitimate they are. This is particularly so now that the global campaign for better governance of oil is starting to notice oil trading.

Shipowners and associations

Most tanker owners, brokers and shipmasters observe rigorous due diligence and safety procedures to safeguard their ships and keep their abilities to work with reputation-conscious oil

39 A series of incidents in June 2013 around a section of the Trans-Niger Pipeline in Rivers state, operated by Shell, raised the issue of misconduct by staff and contractors. Inquiries in the case are ongoing, but for an early report see the press pack available at www.stakeholderdemocracy.org.

40 In August 2013, Shell announced a \$700 million shortfall in its Q2 2013 operating profits, attributing much of the drop to Nigerian oil theft. The company said its average onshore Nigerian production in Q2 slumped to 158,000 b/d, down from 260,000 b/d in the corresponding quarter of 2012. Given that closures of some of its onshore pipelines were largely to blame for the Nigerian part of the shortfall, however, the profits at stake were probably mostly deferred rather than lost outright.

majors. However, their trade associations have shown little interest in reporting suspected crude oil theft or smuggling in the Gulf of Guinea at a time when such activity is growing more visible. A recession in the tanker market since 2009 has created a climate where some owners feel pressured to taking the line of least resistance in dealing with irregular demands from charterers. In terms of measures against organized crime, most have prioritized piracy, which unlike crude theft grabs headlines and incurs significant financial costs through vessel damage, ransoms and crew injuries. Some companies that service ships in different ways say they are aware of suspicious activity, but likewise look the other way as they do not want to be known as trouble-makers.

The grassroots

No group at the grassroots level in Nigeria has the right mix of influence and will for change. The top Niger Delta ex-militant commanders, some of whom once publicly lambasted ‘big men’ who stole the region’s oil wealth, now aspire to this status by stealing oil themselves. Some offer operational and security services to illegal bunkering networks; a few reportedly own stakes in barges, tugs and small ships. Support for oil theft at the community level is strong in some spots, if also ambivalent. Nigerian NGOs and activists have no history of speaking out on the topic, except as it overlaps with their broader oil-spill or anti-corruption work. Most civil society workers lack the skills, constituencies and political cover needed to push change from below. They may also fear quite legitimately for their own safety when talking about oil theft.

First steps

The following four initiatives could make up an appropriate first phase of multi-state engagement on oil theft.

Nigeria and prospective partners prioritize the gathering, analysis and sharing of intelligence

This would be the best use of resources in the current political, foreign policy and law-enforcement climates. Better intelligence is a prerequisite to successful law enforcement and diplomatic action, for all the reasons explained above. Joint intelligence work would help Nigeria and its potential foreign partners build their knowledge bases on oil theft, and establish channels for law-enforcement cooperation that do not exist now. The following areas should receive high priority:

- Volumes of oil stolen;
- Movements of stolen oil;
- The oil theft money trail; and
- Oil theft and security risks.

These are discussed in detail in the next chapter.

Nigeria considers taking other steps to build the confidence of partners

Some governments may expect Nigeria to prove its commitment by taking some preliminary actions.⁴¹ Otherwise, they may not trust the government is serious enough to warrant investing major resources.

41 Foreign officials interviewed suggested, for instance, that the Nigerian government could also create a designated oil and gas corruption unit within the EFCC; appoint an independent oil monitor (like Cameroon’s Independent Forest Monitor); prosecute higher-level actors and domestic bank officials involved in theft; create statutory rights for citizens to challenge the government’s oil-sector management decisions (class action suits, new whistleblower laws); cooperate in extraditing oil thieves to face charges abroad; and build more retail fuel stations in the delta. Author interviews, 2010–13.

Other states begin cleaning up parts of the trade they know are taking place within their borders

Showing the commitment to fight oil theft should be a two-way street. Countries with stolen oil or proceeds washing ashore should take appropriate steps. Early international action could help officials in Nigeria build a case for more home-grown efforts and cross-border cooperation on oil theft. Foreign arrests, convictions and sanctions in particular could also help destabilize theft networks, break down information barriers and create momentum for change.

Nigeria articulates and shares its own multi-point, multi-partner strategy for addressing export oil theft

The Nigerian government developing its own comprehensive anti-oil theft strategy would be a first in the nation's history. This step, if taken with due seriousness and resolve, would improve the quality of initiatives and help ensure Nigerian buy-in and ownership of any action that followed. It would also build trust among prospective foreign partners. Foreign governments could and should feed into such a strategy, but Nigeria has to lead. The major law-enforcement challenges – prosecution, maritime policing, financial intelligence – are Nigerian issues first. Nigeria is also a sovereign state facing the greatest risks from a cross-border anti-theft campaign, and has the best knowledge of the business.

Depending on the success of these first steps, countries could next create national and multinational action plans and strategies to scale up interventions. Once collaboration is agreed in principle, partners could take on different roles – for instance, convener, donor, diplomatic consensus-builder, intelligence-gatherer or enforcer.

Calls for action in front of the UN, EU or a multi-government discussion forum could in time be of some use.⁴² With complex transnational problems such as oil theft, action at high-level forums can help sustain focus and momentum or work out bureaucratic obstacles. A hastily agreed menu of support coming off the back of such meetings is no substitute for the steps laid out above, however.

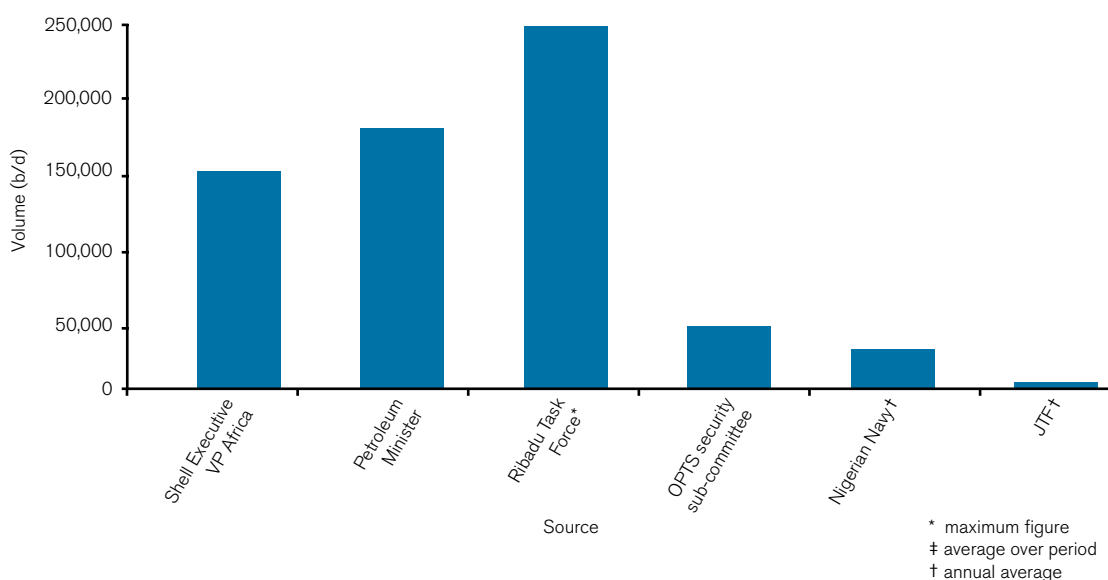
42 Multilateral work on illegal logging, for instance, picked up substantially after the G8 agreed an Action Programme in 1998 and the World Summit on Sustainable Development highlighted the topic in 2002. Shortly thereafter, the UK government formulated a comprehensive action plan and the US government rolled out its 2003–08 Presidential Initiative against Illegal Logging (US Department of State Publication No. 11072). The United Kingdom, France and the Netherlands coordinated action at the EU level, for example by convening the EU Working Party on Forests and a number of informal working groups. Interpol and other multistate police agencies were brought in to coordinate cross-border legal action. All of this happened only after significant intelligence-gathering, law-enforcement and diplomatic engagement by individual countries, however.

3 Intelligence-gathering Priorities

Volumes of oil stolen

No one can say with confidence exactly how much of Nigeria's oil is stolen. Estimates vary widely, and fundamentally different pictures of the trade emerge depending on which figure one accepts. Equally credible sources put out widely diverging numbers at the same time.⁴³ Ultimately, there may be no one in or outside Nigeria able to quote a totally reliable loss figure (see Figure 4). Knowing the size of the problem is essential in finding appropriate solutions: it would be foolish to think a 50,000 b/d loss could be handled the same way as a 250,000 b/d one.

Figure 4: Nigerian oil theft: publicly quoted estimates, 2012



The best available data suggest that an average of 100,000 b/d vanished from facilities on land and in swamps in the first quarter of 2013. This figure does not include what may happen at export terminals, or theft direct from IOC wellheads.⁴⁴ It also assumes the integrity of industry data. The estimation process is complicated by a number of factors, as shown below.

43 See S. Davis, 'Rubbery figures for Niger Delta oil theft', 2008, www.legaloil.com.

44 This estimate excludes potential theft from indigenous producers evacuating crude independently from the Shell and Eni pipeline networks.

Low-quality industry data

Oil-flow measurement practices in Nigeria yield poor baselines. The government tends to measure most onshore, swamp and shallow-water production at export terminals, and so cannot capture all the volumes siphoned off between wellheads and production stations. Oil companies monitor the pressure of crude moving through pipelines, and estimate theft using calculations based on sudden drops in incoming flows. If the crude is lost between the wellhead and production stations, they calculate output back from the wellhead by deducting an average of 30 per cent for oil and water. Theft from wellheads is harder to detect, as there often are no meters between wells and production stations.

The IOCs do not publish joint estimates of amounts stolen. Individual companies tend to announce numbers selectively, and sometimes in vague forms, preferring to keep their best data confidential for security or other reasons.⁴⁵ Industry sources can also 'spin' theft figures to serve ulterior motives.

Stolen versus spilled oil

Theft estimates regularly conflate amounts stolen with amounts spilled or deferred. The IOCs publish data attributing Niger Delta oil spills overwhelmingly to theft and sabotage. Shell regularly blames saboteurs for at least 75 per cent of all oil spill incidents in its operating area. Oil pollution in the region is a well-known problem, and illegal bunkering does compound the damage.⁴⁶

The relationship between spills, sabotage and theft cannot be measured systematically. Thieves sometimes sabotage pipelines to force operators to shut them down, so they can install new taps on the lines before the oil starts flowing again. Although newer techniques enable some theft networks to tap lines without causing leaks, thieves still spill unknown amounts of crude during tapping and loading. Theft can also interrupt oil production by damaging critical infrastructure. The arterial Nembe Creek Trunkline (NCTL), which transports crude to the Bonny export terminal, has been shut at least twice since January 2013 to repair damage caused by thieves, as has the Trans Niger Pipeline (TNP). All of the amounts involved, while unfortunate, do not enter the stolen oil trade.

Theft at export points?

There is disagreement over whether and how oil is stolen at Nigeria's roughly two dozen export terminals. Two competing narratives exist. In the first, loading excess crude onto tankers by manipulating meters and falsifying shipping documents is a standard practice. Under the second, controls around terminals are too tight to allow for major losses.

The authors of this report visited only one large onshore export terminal, and were told that practices are standard for all large operators. However, it would not be unreasonable to assume that conditions and habits may vary between companies.

Measurement and vessel-clearance practices at the terminal the authors visited did appear relatively robust. Terminal staff gave the following picture: prior to each loading, operators fiscalize oil storage tanks using both mechanical meters and physical tank dipping tools. Flow

45 The companies also exchange information at meetings of the Oil Producers Trade Section (OPTS), their trade association, which has a security sub-committee.

46 Shell publishes monthly data on spill incidents, causes and volumes lost on its local website www.shell.com.ng. One six-year-old study found that at least 13 million bbl have escaped into the environment – roughly equal to one Exxon Valdez spill a year for 50 years. Niger Delta Natural Resources Damage Assessment and Restoration Project, Phase 1 Scoping Report, 2006.

meters are checked for accuracy before loading starts, and flow rates and volumes are monitored throughout the loading process from the ship and terminal control room. Contractually, the terminal operator, ship master, and buyer and seller agents all have rights to participate in measurement. IOC staff stopped short of saying that meters could never be manipulated, though some claimed that one of the meters, called the ‘totalizer’, is designed so that it cannot be switched off. Tankers are reportedly cleared by at least seven government agencies before loading; some interviewees put the number of checkpoints in front of terminals as high as a dozen.

Even assuming some oil is stolen, it is very difficult to estimate volumes. Thieves could most likely move only small amounts of crude using illegal ‘top-ups’ alone, given the sizes of most vessels used to transport Nigerian oil. NNPC usually exports 22–28 cargoes per month; the average cargo size is 950,000 bbl. Most international buyers use Suezmax tankers (carriage capacity 1.05 million bbl) and Aframax (average capacity 500,000–700,000 bbl). Parcels can also be co-loaded onto Very Large Crude Carriers (VLCC) with capacities of around two million barrels. Even assuming half of all ships carried extra crude – which is highly unlikely – such ‘top ups’ of legal cargoes would probably account for only around 50,000 b/d stolen.

At the same time, the higher-end estimates of daily losses – especially those of 200,000 b/d or more – could be unrealistic without terminal theft. The exact structures and capabilities of illegal bunkering networks are not well known. Gauging the exact number of export oil theft networks is likewise next to impossible. The IOCs, which regularly operate flights over their pipeline right of ways, say they cannot count with precision how many bunkering operations are tapping their lines. Shell reported finding 90 tapping points on the NCTL in late March 2013.

Nonetheless, all active large-scale illegal bunkering operations combined may not be able to move the 200,000-plus b/d amounts some industry and government sources allege. Many of the taps on IOC pipelines are dormant, and a single network can use multiple taps. Interviewees said a single tap point could receive two to five visits per week.⁴⁷

Bunkerers also may not use enough barges and small storage tankers to push total losses far above 100,000 b/d. Even lower amounts of pipeline-based theft would require significant levels of aggregation from small to larger vessels. For example, a 10,000 MT coastal tanker (capacity 62,000 bbls) would have to make 10 to 15 journeys to fill an Aframax. A 5,000 MT vessel would need twice as many trips. Thieves probably could not finish all of this work at night, meaning much of it would be visible to the industry, navy, JTF and other government security forces. One IOC manager with oversight of maritime operations doubted there were enough 5,000 and 10,000 MT vessels anchored along the southern coast daily to move enough crude to fill an empty Aframax or Suezmax in a short period. Aggregating to smaller coastal tankers would be easier, as they could whisk quantities away to neighbouring West African countries without sitting around attracting too much attention. Some export theft networks reportedly use only a few small tankers to move and store oil taken from their barges. Crude deliveries to refineries outside the Gulf of Guinea in smaller vessels than an Aframax would be unusual and attract attention, unless they were production-field-specific shuttle tankers, and would most likely be rejected by most large refineries.

47 Some taps are left in place for security reasons; others might see no action for a period owing to ‘owner’ circumstance. When the JTF closes down bunkering sites, thieves will often decamp to another area or pipeline section.

Some interviewees said that most illegal top-ups happen at sea rather than at the terminals. In such cases, one or more small tankers filled with illegally bunkered crude transfer their loads to 'mother ships' already carrying oil loaded legally at a Nigerian export terminal or somewhere else. Analysts may also sometimes confuse terminal theft with legal top-ups, which are offered when supplies are plentiful.⁴⁸ Finally, a few interviewees said that most oil lost at terminals vanishes through other 'white collar' arrangements involving complex physical and financial accounting tricks. The sources were cloudy on details, however.

Export versus domestic theft

How much of the oil stolen in Nigeria goes to other countries as opposed to the domestic market is another open question. Most staff interviewed at one IOC said that roughly 80 per cent travelled out of Nigeria, while a minority saw local users as the main buyers. Patrick Dele Cole, a notable anti-theft campaigner and former aide to President Olusegun Obasanjo (1999–2007), announced in 2012 that 90 per cent was exported.⁴⁹ A recent study of illegal oil refining in the delta concluded that 25 per cent of all stolen crude is processed locally.⁵⁰

By most accounts, the Niger Delta has seen a boom in illegal refining since 2009 or early 2010. Likely reasons for this include a more permissive law-enforcement atmosphere following the federal government's June 2009 declaration of amnesty for Niger Delta militants, the removal of subsidies on diesel during the Obasanjo presidency, and rising local demand. The bush refining business is highly decentralized and secretive, however, which makes its size hard to estimate.

The relative profits of exporting and local refining are likewise unclear. The local trade is certainly less efficient: primitive refining technology yields smaller amounts of lower-quality products and creates more waste and spills than export theft. One former NNPC managing director said that 'waste' at some bush refineries exceeded 70 per cent.⁵¹ But entering the export market requires more capital and clout, and some interviewees said average margins could be lower.

Nigeria is probably a simpler place to hide stolen crude than overseas. The domestic market offers many avenues to blend, smuggle and hawk products on the street. Oil processed in bush refineries – mainly into diesel – is increasingly mixed with legal products. Nigerian gasoil imports plummeted to 1.3 million tons in 2012 (27,000 b/d) from 40,000 b/d in 2011, while NNPC's officially refined gasoil declined to 17,500 b/d from 22,000 b/d, according to African downstream specialists Citac. Such figures could suggest bush refinery production expanded, and domestic demand may be keeping pace – factories in major Nigerian cities are now running on blends of imported and bush diesel, some interviewees alleged.

Is theft increasing?

Evidence is mixed that Nigerian oil theft is a growing problem. In March 2013, Shell's chair of Nigerian companies, Mutiu Sunmonu, announced that theft from his company's operations had risen to 60,000 b/d. Shortly thereafter, Shell declared *force majeure* on Bonny Light shipments

48 Contractually, NNPC may offer buyers extra crude prior to or at loading on similar terms, assuming volumes are available. NNPC Crude Oil Marketing Department (COMD), term contract general conditions, Art. 10.

49 'Stolen Nigerian oil goes to Balkans and Singapore', BBC News, 23 October 2012.

50 SDN, *Illegal Oil Refining in the Niger Delta* (2013). This assumes total theft at 150,000 b/d and 1,000 refineries, each producing an average of 40 b/d.

51 'For those that engage in illegal refining, because of the crude method that they use, they just take crude oil, put it in a drum and boil; whatever boils off it is what they take, which often times is less than 25 per cent of the entire product. The remaining 75 per cent they don't need they dispose into the environment, causing huge environmental problems for us.' Austin Oniwon, quoted in 'Oil spills: tackling nation's worst environmental disaster', *Vanguard*, 28 July 2012.

and shut the 150,000 b/d NCTL pipeline.⁵² That same month, Eni said that bunkering around its concessions had reached ‘unsustainable levels’. The company claimed it was losing 60 per cent of output from its swamp operations – implying losses of roughly 22,000 b/d. By summer, company sources reported losses of 30,000 b/d. Around the same time, however, some in government said theft was falling.⁵³

Amounts stolen probably do correlate to spikes in production and global oil prices. The current climate – where Nigeria’s daily output ranges from 1.8 to 2.1 million b/d and light sweet crude trades above \$100/bbl – is an attractive one for oil thieves. One industry consultant with some knowledge of the trade commented: ‘Oil theft has been a feature of the industry in Nigeria for many years, but the sharp increase since the early 2000s coincides not only with the restoration of civilian rule but perhaps more significantly with a huge increase in oil prices, vastly increasing the potential profits and attraction of bunkering. Oil theft on this scale would not work if oil prices were \$20–25 a barrel.’ According to available data from NNPC and some IOCs, stealing of oil onshore dipped when oil prices fell sharply in mid-2008.

Subsequently the trend rose for some companies. Shell’s submissions to the 2012 Ribadu Task Force showed average losses in its operating area climbing from 10,000 b/d in late 2009 to over 50,000 b/d by March 2012. NNPC data suggest losses from the lines feeding its four refineries have also spiked (Table 9).

Table 9: NNPC refinery supply vs receipt, 2010–Q2 2012

Year	Supply (bbl)	Receipt (bbl)	Loss (%)	Loss (b/d)
2010	34,700,973	32,929,092	5.2	4,854
2011	45,393,392	38,926,370	14.2	17,718
2012 Q1	8,331,354	7,351,397	11.8	10,888
2012 Q2	8,926,915	6,870,804	23.1	22,846

Source: NNPC data.

By contrast, losses in Chevron’s operating area are said to have dropped from around 15,000 to 20,000 b/d four to five years ago, to around 1,000 b/d today.

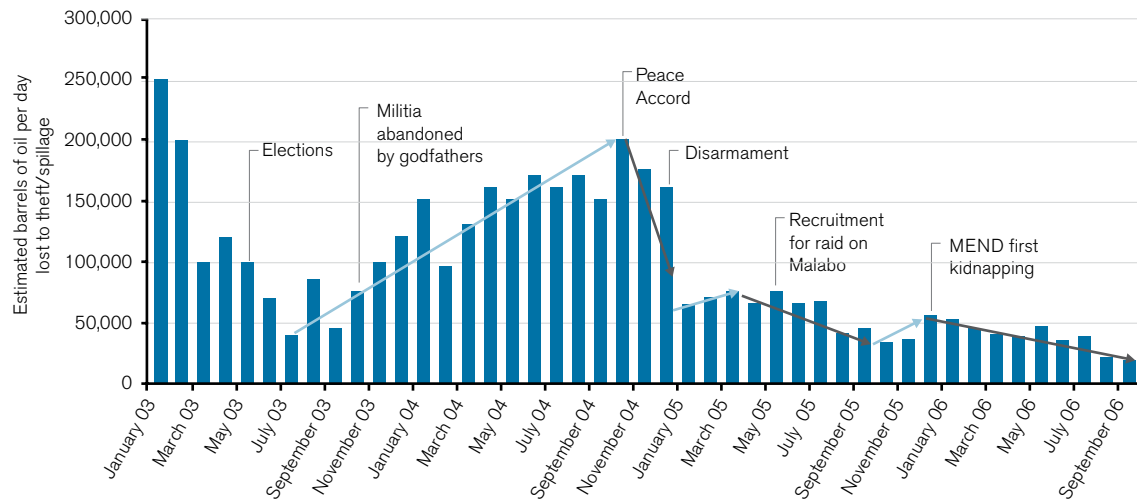
Outsiders should look closely at claims that Nigeria is losing oil at unheard-of rates, however. The high divergence in industry-wide estimates makes it hard to gauge trends reliably. Much depends on the time span and sources used. The historical picture is also complicated: older data from Shell and NNPC put theft above 200,000 b/d in the early to mid-2000s. Read together, these sources suggest that total losses today may in fact be lower than a decade ago.

Predicting future trends is no easier. Outcomes will depend on the quality of law enforcement and the details of political settlements. Nigeria’s upcoming presidential and gubernatorial elections, scheduled for 2015, are a particular wild card. According to some data and anecdotes, oil theft tends to shoot up in periods of heightened political instability and competition.

52 Available data suggest that Shell’s theft levels in the second half of 2012 ranged between 30,000 b/d and 50,000 b/d.

53 NNPC’s Group Executive Director for Exploration and Production, Abiye Membere, estimated losses at 50–80,000 bpd in a speech at the Nigeria Oil and Gas conference, February 2013, Abuja.

Figure 5: Comparison of theft levels and political unrest, 2003–06



Source: S. Davis, *The Potential for Peace and Reconciliation in the Niger Delta*, 2009.

In past election cycles, some elites reportedly ramped up theft in order to use proceeds to finance campaigns, or else allowed others to steal as a means to gain their support. The coming months will tell whether such practices recur in the run-up to the 2015 elections.

Recommended intelligence-gathering priorities

- The number and operational capacities of active export bunkering rings.
- The nature and size of any so-called 'white collar' oil theft.
- Transit, anchoring and fuelling patterns of ships suspected of stealing oil in Nigerian waters.
- A survey of small to mid-sized tankers regularly anchored offshore the Niger Delta.
- A mapping of the main illegal bunkering hotspots.

Movements of stolen oil

Clear evidence of the major destinations and transit points for stolen Nigerian oil is also lacking. This sets oil theft apart from other transnational crimes, where law-enforcement agencies, think-tanks and NGOs have gathered data on arrests, seizures and prosecutions. Information on ship movements is incomplete and only available through costly subscription services. The supply chain may also be uniquely complex.

How stolen oil travels internationally

In the general public narrative about Nigerian oil theft, tankers carry stolen crude to foreign refineries for instant processing and sales. The full picture is more elaborate. Crude oil can move in complex ways before and after it leaves Nigerian waters. None of these moves are suspect *per se*, but thieves can use the following complexities in normal everyday logistics to make stolen oil vanish into the legitimate market:

Co-loading, split cargoes and ship-to-ship (STS) operations

Buyers of Nigerian oil load their cargoes onto tankers carrying crude from other oilfields, or even other countries. This process, common worldwide, is called 'co-loading'. For example, Trader A

sends a VLCC (capacity over 2 million bbl) to Nigeria to pick up a 950,000 bbl cargo of Forcados crude and then travels to Angola to load a cargo of Girassol for delivery to India. In another example, Trader B sends a Suezmax tanker (capacity 1.1 million bbl) to Nigeria to lift a 700,000 bbl cargo of Abo grade crude oil. The tanker then travels to the Forcados terminal, where it picks up an additional 300,000 bbl of Nigerian crude for delivery to Europe.

Single tankers also commonly carry multiple ‘parcels’ of oil owned by different parties. The resulting full tanker-load of oil is called a ‘split cargo’. Each parcel onboard would come with its own bill of lading.

Co-loaded and split cargoes are perfectly legitimate. In some cases, however, thieves could disguise volumes of oil stolen at a terminal or in the field as a legal co-load. Mixed tanker-loads of stolen and legal oil could also be rebranded as split cargoes by forging a separate bill of lading for the stolen portion. It is common in Nigeria for legitimate shipments to have several bills of lading attached.

Complicated international delivery routes could also hide stolen parcels. After leaving Nigerian waters, a mother ship carrying stolen crude can:

- offload all of its cargo at a single refinery;
- offload parts of its cargo at different refineries;
- offload all or part of its cargo into storage (discussed below);
- transfer all or part of its cargo STS to another vessel; or
- transfer all or part of its cargo STS to multiple vessels.

Nigerian waters are not a standard point for transfers of crude oil between ships. Most STS transfers of stolen oil probably take place further out at sea. It should also be noted that legitimate Nigerian STS operations do happen offshore. For example, owing to the country’s shallow port draughts many gasoline marketers transfer cargoes of imported fuel from product tankers to smaller ships, which then ‘lighter’ the gasoline to jetties. Many oilfield service vessels are also refuelled by STS, but here again appearances could be deceptive: according to some interviewees, oil thieves can perform STS transfers of stolen crude at known refuelling sites to hide their activities. A few well-known, legitimate bunkering companies may also assist thieves by coming alongside ships laden with stolen crude and pretending to refuel them, while in fact siphoning off parts of the stolen oil for transport elsewhere.

A number of shipping industry sources argued that a non-standard STS transfer of crude oil is a *de facto* red flag for theft. Poorly managed STS operations at sea can seriously damage a vessel’s hull and cause devastating pollution. Reputable shipping companies have standard STS procedures that they demand charterers follow. These call for placement of quality fenders and hoses between large tankers during STS transfers – often provided by third parties such as Fendercare Marine – and manoeuvres that follow strict guidelines to avoid collision and fire.

Blending

Export oil thieves blend stolen Nigerian crude with oil from other countries and with fuel oil produced in or outside Nigeria.⁵⁴ A range of customers buy the adulterated goods that result once

54 Fuel oil is a residue of crude after distillation or catalytic cracking. It is, almost without exception, worth less than crude oil. Fuel oil is normally used as bunker fuel for vessels, fuel for some power stations, or feedstock for refineries’ upgrading units. Nigeria produces fuel oil locally, with refinery yields averaging 29 per cent of output in recent years. NNPC, *Annual Statistical Bulletin*, 2011, 10-year domestic product yield, Table 18.02.

they are mixed onboard tankers or at sites onshore. Some is probably sold as bunker fuel for ships. Most operators of quality vessels tend to avoid offers of suspect fuel, however, as the wrong blend could easily ruin the ship's main engine fuel pump. Elsewhere, some crude-fuel oil blends are sold as low-sulphur fuel oil to less discriminating power stations or other industrial facilities, most likely in Eastern Europe and Asia but also possibly within Nigeria. Portions may also be exported for sale by brokers in more developed countries.⁵⁵

Blending legal and illegally bunkered oil probably shrinks the market for stolen Nigerian crude. Blending does help mask stolen oil's origins, but it can also change a cargo's quality,⁵⁶ volume and weight in ways that are easily detected.⁵⁷ For example, the legal market for fuel oil has many specifications to ensure the oil is fit for purpose. Because the addition of crude oil would exceed flashpoint restrictions, some mixes would have to be re-refined before sale. As such, blends are likely to attract less discriminating buyers able to hawk, burn or process lower-quality oils. Blended crude should also trade at deeper discounts.

Playing with storage

Most traders place large amounts of oil into storage facilities around the world. This enables them to blend crudes, or hold them until a particular market improves. Most oil storage is on land, but some floats at sea. Due diligence and reporting regulations vary by location.

Selling crude oil into storage can allow sellers to disguise the oil's origins in future transactions. For example, an unscrupulous trader could receive a consignment of stolen oil into tanks it owns or rents, then blend or break it into smaller parcels. New bills of lading would be issued for each parcel when it was eventually sold, making less diligent buyers less likely to ask for an original bill of lading created in Nigeria. Many sales out of storage also happen on an 'outturn' basis.⁵⁸ In a typical outturn sale, a refiner pays for a parcel of oil that a ship pumped into the buyer's tanks, not the volume stated on any bill of lading. The fact that the ship was carrying more oil than stated on the original bill of lading is then mostly irrelevant. This makes outturn sales a potential vehicle for hiding illegal top-ups.

Crude oil storage practices merit further study. Outturn sales – often referred to 'delivered at place' (DAP) these days – are standard practice in many oil storage hubs. They raise no automatic red flags in the industry – nor should they, necessarily. But the locations, sizes and beneficial owners of crude oil storage facilities – many of which are trader-owned – are not well known outside the trading community. Interviewees for this report pointed to storage facilities in the United States, India and Singapore as locations of possible concern, along with smaller-scale facilities in West Africa. Much more detailed investigation would be needed to substantiate these claims, however.

55 Data and anecdotal evidence on export destinations vary. NNPC data tally 2011 exports at 754,656 metric tons (approximately 14,470 b/d). Traders intimately involved in the fuel oil trade say nearly all fuel oil exports have tended to go to the US market, though changing US crude slates may have changed this picture. However, US Energy Information Administration import data put Nigerian imports of distillate and residual fuel oil at just 2,150 b/d in 2011. Nigerian fuel oil is highly sought after by some US refineries, which process it in vacuum units and crackers to get gasoline and gasoil.

56 All legitimate cargoes of crude oil come with a sample taken at the point of loading. Buyers can test this sample's basic quality when they receive the oil. If stolen oil is pumped onboard after the sample is taken, the buyer's test will not match the sample. Contractually, the buyer will typically have the right to refuse delivery when this happens. Note that this basic quality-testing process differs from genetic fingerprinting, as is discussed at in Chapter 4.

57 Weight and volumes of legitimate and illegitimate cargoes would differ, as untreated crude contains a lot of water. The illegal cargo would have to be removed before arriving at the discharge point, otherwise measurements would not match.

58 Most Nigerian crude is sold on an FOB basis, which requires the seller to deliver goods on board a vessel designated by a buyer. However, term lifters also sell crude into the Gulf of Mexico and Europe on a 'delivered' basis, funding the passage and selling on the high seas or on arrival. Sellers usually opt to sell on a delivered basis in a weak market, where shipping has to be fixed and crude loaded before it is sold.

Countries of possible interest

Although much better information is needed, interviewees for this report tentatively suggested the following as possible hot spots.

The United States

Until recently Nigeria's largest market, the United States has long had the capacity to absorb stolen crude alongside legal cargoes. According to some West African oil traders, export thieves may dump illicit parcels into US-based offshore storage on an outturn basis, particularly in the Gulf of Mexico's Louisiana Offshore Oil Port (LOOP). Crudes are stored in caverns and tanks and segregated according to LOOP's crude specifications. However, one market analyst argued that it would be difficult to hide large quantities, as decent records are kept of stocks and ownership. US refiners may also feel compelled to check documentation more rigorously to avoid appearing non-compliant with anti-terrorism legislation in the wake of 9/11. Lately, falling US demand for Nigerian oil could reduce opportunities to hide stolen oil there. America has not seriously looked into the possibility that stolen Nigerian oil reaches its shores, a US diplomat and a military intelligence officer said.

West Africa

Some of Nigeria's neighbours in the Gulf of Guinea have also been seen as destination or transit hubs. A 2003 NNPC internal investigation reportedly suggested that Côte d'Ivoire's SIR and Cameroon's Sonara refineries were recipients of stolen Nigerian oil. The Obasanjo regime declined to prosecute culprits, preferring to resolve the matter through diplomatic channels. More recent press reporting also suggested that stolen Nigerian crude could be passing through Ghana's Saltpond field complex.⁵⁹ For example, Ghanaian authorities detained the Nigerian-flagged MT Madina in March 2012 for allegedly discharging stolen crude into another ship near the Saltpond field. Vessels have been noted loitering near Saltpond for long periods. Some may be waiting for legal ship bunker fuel, which is available nearby.

West Africa's refining and storage capacities probably are too small to receive all the oil stolen in Nigeria (see Table 10). There are other refineries in the region, but they are not configured to run on the sort of light sweet crude Nigeria produces.

Table 10: West African refinery statistics

Refinery	Capacity utilization (%)		Feedstock	Implied throughput*	
	2011	2012		('000 b/d)	
Tema Oil Refinery (Ghana)	43	20	Bonny, Brass, Forcados	18	8
Soc. Ivoirienne de Raffinage (Ivory Coast)	53	89	Bonga, Forcados	39	66
Soc. Africaine de Raffinage (Senegal)	53	57	Qua Iboe, Erha	13	14
Sonara (Cameroon)	102	77	EA, Okwori, Bonny, Abo	41	30

*Author's deductions based on CITAC data.

Latin America

Brazil emerged as a possible destination a decade ago, when industry rumours circulated that a privately owned refinery was buying stolen Nigerian cargoes. No evidence was published substantiating such claims, but Brazilian interests have popped up in unlikely places.⁶⁰ Today Brazil imports naphtha, solvents and LPG from Nigeria. It is also a significant upstream investor – though it is now selling its assets – and trading partner with Nigeria, importing more than 180,000 b/d of crude and modest volumes of refined products. Cuba was also mentioned as a destination for crude transported in smaller tankers.⁶¹

Asia

A number of interviewees said they suspected that China and Singapore receive at least some stolen volumes. Many commodities trading houses do maintain large corporate presences and oil storage capacity in Singapore, but to date there is no clear evidence they are channelling Nigerian crude through its port.⁶² India – Nigeria's largest Asian market – was the most frequently mentioned eastern destination. One interviewee described how an Indian middleman in Lagos openly approached him about providing security for a tanker of illegally bunkered crude. One large Indian refiner has a broad reputation for 'not being too particular' and having plenty of spare storage capacity, and a few interviewees were generally dismissive of Indian trader ethics. Such information is anecdotal and sketchy, as were source references to Thailand – where one investigator claims to have discovered a stolen cargo – and Indonesia. Nevertheless, further scrutiny of the Asian markets would appear worthwhile.

Eastern Europe

Eastern Europe's ageing refineries have a reputation for asking few questions about the origins of their crude. Traders also supply East European gasoline into West Africa – often of a quality that would be rejected elsewhere. The Balkan countries, particularly Romania, Kosovo and Bulgaria, were also mentioned by multiple sources. The area has long been a conduit for smuggling between East and West. Weak institutions, particularly in Albania, Kosovo and Bosnia and Herzegovina, together with poor border security and passport controls, have helped make the region a significant transit point for Latin American cocaine into European markets, trafficked sex workers, and heroin chemical precursors for use in Afghanistan. One security source mentioned Ukraine as a destination, while another cited Greece. Clear evidence is again lacking, however, not least because good market intelligence for the region is scarce.

In reviewing the above claims, this report compared 10 years of published NNPC data on destinations of Nigerian oil exports with import figures from approximately 20 countries. By way of example, Table 11 shows significant anomalies and gaps for the year 2011.

Some countries reported imports larger than NNPC export data over a period of years. In theory, these figures could support some of the claims made by interviewees. For example, the data show small amounts above NNPC's records going to Brazil and India, and a sizeable surplus in the United States (Table 12). By contrast, Singapore's official customs data register zero imports from Nigeria in 2011. No comparisons could be made for the major African importers, as most of their refineries and customs bureaus do not appear to publish breakdowns of crude oil import data by origin.

60 Brazil also supplied a single small parcel of Brazilian crude to Côte d'Ivoire in 2002.

61 The crude is said to have been transported in 10,000-tonne tankers. 'They can go all that way because there are no other costs,' the source explained. Author interview with industry consultant, 2013.

62 Also, Singapore's refining sector is dominated by established players whose preoccupation with reputation would preclude dealing in suspicious cargoes, trading sources say. Author interviews, 2013.

Table 11: Nigerian crude shipments, NNPC v. importers, 2011 ('000 b/d)

Importer	NNPC	Imports	Difference
NORTH AMERICA			
United States	623	767	144
SOUTH AMERICA			
Brazil	174	184	10
EUROPE			
Netherlands	153	88	(-65)
Germany	18	110	92
France	119	99	(-20)
Italy	118	47	(-71)
Austria	0	25	25
Belgium	3	22	19
Balkan countries	0	No data	No data
ASIA			
India	270	283	13
China	13	21	8
Singapore	8	0	(-8)
AFRICA			
South Africa	72	No data	No data
Ghana	30	No data	No data
Cameroon	33	No data	No data
Côte d'Ivoire	28	No data	No data

Sources: NNPC 2011 Annual Statistical Bulletin; country and OECD customs data.

The data in Table 12 are by no means conclusive proof of illicit oil flows, however. Poor record-keeping probably explains some of the differences.⁶³ Timing also needs to be factored in, given that ships arrive at destinations weeks after loading. Market factors are also important: equity and term lifters who opt to sell in transit or later will often name an interim destination on loading documents.⁶⁴ In other cases, buyers trade cargoes on the water.

Foreign nationals involved

A better understanding of which nationals are involved could also give clues to where stolen oil ultimately lands. While information on the national makeup of supply chains is elusive, given that few cases have been well investigated, there is broad agreement on some points. Nigerians, for example, dominate most in-country aspects of export oil theft, from pipeline tapping to security, inland transport, finance and arranging political cover. Some ground-level operators are foreign, however: crew members of small craft arrested in inland and coastal waters in recent years have included Russians, Filipinos, Ghanaians, Georgians, Romanians, Greeks, Ukrainians and Cameroonians.⁶⁵

63 NNPC has a contractual right to know where its crude goes. NNPC term contract, General Conditions Art. 1.5 requires buyers to send NNPC a report showing volumes discharged at final delivery points within 45 days of discharge. Art. 20.3 requires the buyer to provide NNPC documentation of the final destination, if NNPC requests to know. Trading sources noted, however, that not all buyers consistently comply with this obligation. The importer data are collected using a variety of methods, some more reliable than others. Some baselines may also be different: India, for instance, operates on a different reporting year from Nigeria's.

64 Such destinations would appear alongside the designation 'for orders', and in Nigeria's case would usually include large ports such as Rotterdam or those in the Gulf of Mexico.

65 Multiple EFCC press releases on arrests, 2008–13.

Table 12: Crude shipments to US, India and Brazil, 2002–11

Nigerian crude oil shipments to major buyers 2002–11 ('000 b/d)									
Year	Crude Shipments to US			Crude Shipments to India			Crude Shipments to Brazil		
	NNPC	EIA	Difference	NNPC	India	Difference	NNPC	Brazil	Difference
2002	631	589	-42	236	235	-1	105	103	-22
2003	833	832	-1	218	222	4	151	126	-25
2004	1,045	1,078	33	253	303	50	242	230	-12
2005	1,047	1,077	30	258	272	14	116	130	14
2006	1,051	1,037	-14	274	262	-12	154	144	-10
2007	1,140	1,084	-56	206	199	-7	163	180	17
2008	871	922	51	203	215	12	133	165	32
2009	676	776	100	239	270	31	138	192	54
2010	858	983	125	302	318	16	195	179	-16
2011	623	767	144	270	283	13	174	184	10

Sources: NNPC Statistical Bulletins; US EIA, US Imports by Country of Origin; Indian Petroleum Planning and Analysis Cell data; Brazilian customs data.

Foreign nationals traditionally get involved in shipping the crude to other countries, organizing documentation and payments, and banking the money. Larger detained vessels have flown under various flags, though Greeks were often named as the ship's owners. Greeks, Slavs and Lebanese reportedly control the coastal tanker business, together with some high-ranking Nigerians. Greek companies probably retain a role in global shipping arrangements today, though some interviewees claimed they are less involved than before in other parts of the oil theft supply chain.⁶⁶ Lebanese-Nigerian businessmen have also been mentioned as financiers in the past, but are likewise thought less active in recent years.

Other recent changes could reflect a shift in control of oil theft to southern elites using different channels and intermediaries. The rise of Nigerian trading houses with their own financial networks could be another factor.⁶⁷ Nigerian players reportedly have pressured some international trading houses to top up legitimate cargoes with mysterious consignments in the past. Indian crew featured significantly in one detention for alleged theft this year. The *MT Akshay*, an Indian-owned and -operated vessel, was detained in January 2013, allegedly carrying crude without shipping papers, a nomination date or a bunkering permit. The vessel was owned by Krishna Shipping Inc, and operated by Veesham Shipping Inc, with a crew that included 10 Indian nationals, 11 Nigerians and two Ghanaians.⁶⁸ A number of interviewees also argued that East European, Russian and Asian organized crime networks are playing larger roles on the international side, though they would not discuss specifics.

Recommended intelligence-gathering priorities include:

- The possible roles of commodities traders in oil theft;
- The main nationalities involved, particularly at higher levels of the business;

66 Author interviews with Nigerian maritime official and also private investigator, 2013. In the past Greeks reportedly also got involved in carriage finance and money-laundering, using Albanian, Russian and other intermediaries. However, their role in finance may have diminished.

67 Nigerian traders' liftings have varied from 300,000 b/d to 500,000 b/d in recent years. Locals make mark in Nigeria's crude marketing, *Petroleum Intelligence Weekly*, 4 July 2011.

68 EFCC press statement, 23 January 2013.

- Case studies of suspect refining companies;
- Trace blending and storage patterns for Nigerian oil;
- Any links between oil theft and fuel oil trading.

The oil theft money trail

The money trail is one of the least examined parts of export oil theft. More than any other topic, greater work is needed to understand the full state of play. Sources for this report agreed to discuss financial flows only in the abstract, without reference to specific companies, individuals, banks or transactions. The authors did not track proceeds themselves or carry out any related forensic work. No specific suspect transactions were identified. None of the governments consulted for this report appeared to be tracking oil theft proceeds, and none shared any financial intelligence to verify or inform the brief sketch that follows.

Network finance

The major capital and operational costs of an export oil theft ring include:

- buying, renting and/or maintaining boats, barges and small tankers;
- chartering and insuring mother ships;
- fuelling vessels;
- securing the tap point and transport corridor;
- paying ground-level operators;
- compensating financial intermediaries; and
- paying protection money.

In line with the cooperative nature of the business, interviewees said, each network member typically covers the equipment and labour costs associated with his or her role, and then is compensated out of sale profits. Lower-level actors tend to be paid on a fee-for-service basis, leaving those higher up to share the proceeds left under pre-agreed splits. Members may pool funds in a few cases, for instance to pay dues to the illegal bunkerers' 'union'.

It is not clear how much finance overseas lending institutions give to export oil theft networks. Some oil thieves probably cover their capital costs – buying a barge or small tanker, for instance – with cash from operations, embezzled public funds or Nigerian bank loans. If a network tops up a legal shipment of oil with stolen crude, the legitimate portion will come backed by a bank letter of credit. Most such letters are issued by US or European banks, though Nigerian banks also provide letters. The vessels involved may be insured abroad. Ultimately, the big export networks probably use foreign banks mainly to store, move and launder proceeds, though knowledge gaps in that area are large as well.

Money-laundering

Export oil thieves reportedly use a range of methods to hide the funds they move around the world and in Nigeria. First, Nigerian oil theft is heavily cash-based. Bulk cash smuggling in particular is used creatively to break transaction chains, interviewees said. Vast amounts of cash may circulate in Nigeria outside the formal banking system: some is run through legitimate local businesses, while other amounts are bagged, wrapped, sprayed for insects and stored physically in guarded stash houses. Nonetheless, one can assume that profits from oil theft are too large to be moved entirely in hard currency.

Other practices then support the heavy use of cash as a money-laundering technique. Time delay is one: facilitators, including accountants, lawyers, bankers, real-estate brokers and money changers, can wait long periods before placing funds in banks. Some may also begin layering oil theft proceeds using bank accounts in other sub-Saharan African countries with weak anti-money-laundering regimes. When proceeds enter these banks, launderers have the option of recruiting an insider – typically a corrupt branch manager or other mid-level member of staff – to personally oversee transactions to ensure the bank's suspicious transaction report (STR) mechanisms are not tripped. Otherwise, target accounts can be opened in the names of shell companies and domiciled offshore in known tax havens or other high bank secrecy jurisdictions.

As with the stolen oil itself, it is also unclear how much of the money trail passes through foreign markets. In at least some cases, thieves and their front men must use accounts and credit from major financial centres, especially when buying high-value foreign assets. Interviewees named various East and West African countries, South Africa, Dubai, Indonesia, India, Singapore, the United States, the United Kingdom and Switzerland⁶⁹ as destination points for oil theft proceeds, but would not discuss details.

It seems much of the money cycles back into Nigeria, some of it bypassing the financial system altogether. Some lower-level Nigerians involved in oil theft prefer cash payments, leaving the foreign players – ship masters or agents who charter tankers, for instance – to receive wires into foreign accounts. Settlement for ground-level actors uses hand-to-hand cash drops at points where the oil physically changes custody. Higher up, a combination of incurious sellers and cash sales can be used to buy imported luxury goods and real estate in Nigerian cities. Some operatives take in-kind transfers of illegal narcotics, weapons or other contraband. The incidence of this probably grows when stolen oil travels through existing Nigerian or West African smuggling routes. Finally, funds can vanish by manipulating otherwise licit transactions – through over-invoicing for carriage costs, for example.

Recommended intelligence-gathering priorities include:

- How oil thieves pay for large capital expenses, ships above all;
- The use of bulk cash smuggling to conceal oil theft proceeds;
- Nigerian banks used to launder proceeds;
- Profiles of the facilitators suspected oil thieves use to move their money;
- Data on who charters, insures and issues letters of credit linked to ships carrying stolen oil.

Oil theft and security risks

The causal relationship between export oil theft and Nigerian insecurity is not easy to prove. Violent conflict around oil theft has helped destabilize parts of the Niger Delta, but there is little evidence that the trade threatens the stability of Nigeria or West Africa. Theft arguably could harm broader strategic interests in the Gulf of Guinea by strengthening organized crime, but evidence of this is also limited thus far.

69 Commodities-trading companies are treated as exempt from Swiss anti-money laundering rules. As such, banks do not have to file STRs for funds moving in or out of trader accounts. This rule is based on interpretation of Article 2, paragraph 3c of Switzerland's Money Laundering Act.

Links between oil theft and Niger Delta insecurity

Oil theft is both a symptom and a cause of violent conflict in the Niger Delta. The trade weakens public institutions and aggravates known conflict drivers. It deepens corruption, funds political violence and damages the environment. Oil theft networks rely on violence – or at least the threat of it – to hold onto their turf and secrecy. In some communities, fights over rights to steal oil weakened local power structures and social resilience, especially when battle lines were drawn between ethnic groups or generations. Theft networks have also set up shop in some of the Niger Delta's most violent corners. Over time, the trade became part of a larger Niger Delta conflict economy that is lucrative and entrenched.⁷⁰

The involvement of local armed groups, or 'militants', further increases the risks of violent conflict around oil theft. Throughout the 2000s, various gangs, cults and militia groups, with support from powerful backers, manipulated inter-communal tensions to gain control of bunkering turf, or used the chaos that followed conflict as a cover for theft. In some cases wars over bunkering rights awakened old land and chieftaincy disputes among neighbours, sparking fresh violence.⁷¹ Involvement in bunkering also helped promote leaders of major Niger Delta armed groups, notably when some former governors allowed them to join the trade in exchange for political support. By the late 2000s, some gangs also turned to kidnapping and bank robbery, increasing insecurity in the area. A few militant commanders eventually outgrew their masters and assumed roles in politics and local economies akin, at least superficially, to self-sustaining 'warlords'. Some now receive lucrative government contracts to guard the same oil infrastructure they once attacked.⁷²

Future risks of theft-related violence in the delta

The Niger Delta has seen four years of relative calm following a 2009 amnesty for militants. However, there is a significant chance the region could see renewed violent conflict in the next couple of years. Predicting future violence is not easy. The local conflict landscape is highly complex and violent outbreaks can occur unexpectedly. Obtaining reliable human intelligence and early warning signals is tough, and flare-ups of violence can have local, state, national and transnational aspects. A more detailed scenario-planning, conflict assessment, profiling, mapping or other more structured analytical exercise would be needed to fully weigh risks going forward.

These caveats noted, the 2015 presidential and gubernatorial elections appear to be a major flashpoint for Niger Delta insecurity. It is possible that election season could pass without a major return to violence. But weak leadership on security, the expected end of the amnesty programme in 2015, decreased support for President Goodluck Jonathan's candidacy and close electoral results could all lead to unrest.

Against this backdrop, the export trade in stolen oil could become a significant accelerator of local violence in the next couple of years in a number of ways.

Turf wars between rival oil theft networks

In the current political landscape, fights over oil theft could pit militant leaders against one another, militants against local elites or military officers, federal against state politicians, and

70 For more, see A. Sayne, *Antidote to Violence and Something or Nothing*, Transnational Crisis Project, 2010.

71 In Rivers State, for instance, it is likely that former armed group leaders Asari Dokubo and Ateke Tom stoked chieftaincy and boundary disputes in Tombia, Buguma and Okrika partly to gain access to bunkering routes. Human Rights Watch, *Rivers and Blood*, 2005. See also Report of the Rivers State Truth and Reconciliation Commission, unpublished, 2010.

72 For more analysis of the warlordism issue, see A. Sayne, *What's Next for Security in the Niger Delta*, USIP Special Report, 2013.

civilian against military officials. Some of the most high-impact Niger Delta violence of the 2000s was allegedly linked to oil-theft turf battles between militant groups and corrupt members of the security forces.

Law-enforcement crackdowns

The ceasefire conditions that went along with the 2009 amnesty arguably gave some actors greater political standing and cover to engage in oil theft. Some of the larger networks could react badly to a crackdown on theft, not least those that have enjoyed periods of relative impunity. There are no serious signs of this so far.

Use of oil theft to support political campaigns

Oil theft tends to spike during periods of high political competition, as noted above.⁷³ Quantitative research shows that countries where officials steal natural resources have higher incidences of rebellion and violent crime. Niger Delta oil theft does seem to have deepened the area's culture of impunity, negative self-help and local distrust of the state. Conspicuous use of stolen oil profits to corrupt the democratic process could deepen these problems. In past election cycles, it is likely that some elites used proceeds from stolen oil to order targeted killings, buy votes or pay thugs to disrupt voting. Rumours abound that local militant leaders and their associates are stockpiling arms ahead of the 2015 polls. It is too early to predict how violent the elections will be, however.

National and regional stability

Whatever the localized security impacts of export oil theft, at this point it is hard to argue cogently and concretely that the trade is a direct threat to the greater political stability of Nigeria or West Africa. Research in other countries has found links between commodity theft, armed conflict and political collapse, but these are not inevitable.⁷⁴ A few interviewees for this report sketched doomsday scenarios in which fights between northern and southern elites for control of the stolen oil trade led to expanded terrorist attacks and guerrilla violence outside the delta, illegal attempts at regime change⁷⁵ or even a 'civil war' involving clashes or surprise alliances between southern militants and northern terrorist groups. Many contingent, unrealized causal steps would need to take place before such scenarios became likely, however. Nigerian oil thieves probably had some links to past West African armed conflicts, but these were tenuous and small in impact.⁷⁶

Perversely, one could also see oil theft as a source of national stability. Historically, public corruption in Nigeria has acted as a kind of glue that holds together the country's 36 states, 774 local governments and more than 250 ethnic groups. The impoverishment of over 100 million Nigerians today could be seen as the price of whatever unity all the stealing buys. In some ways, the political elites that band together to steal oil behave much the same as they do when

73 See Chapter 2.

74 The trade in blood diamonds sustained Charles Taylor in Liberia and fuelled war in Sierra Leone, while battles to control the trade in other stolen minerals have kept the Democratic Republic of the Congo in perpetual turmoil. See P. Collier and A. Hoeffler, 'Resource Rents, Governance, and Conflict', *Journal of Conflict Resolution*, 49 (4): 625–33, 2005. For criticism of this research, see K. Omeje (ed.), *Extractive Economies and Conflicts in the Global South: Multi-regional Perspectives on Rentier Politics*, Ashgate, 2008.

75 Some link the overthrow of military ruler General Muhammadu Buhari in 1985 to his crackdown on suspected oil thieves. Author interviews, northern Nigerian politicians and oil industry personnel, 2010–13.

76 Henry Okah, a figure in the Movement for the Emancipation of the Niger Delta (MEND), is alleged to have recruited other militants from his base in South Africa for an abortive coup in 2006 against the government of Equatorial Guinea. In other cases, suspected oil bunkerers are reputed to have formed business links with Liberian warlord Charles Taylor. However, there appears little causality between Nigerian oil theft and the upheavals in Liberia and Sierra Leone. Stolen crude may have helped sustain the Laurent Gbagbo regime during Côte d'Ivoire's civil war later in the decade, but evidence is again limited. Author interviews.

bargaining over other public goods such as government contracts or appointments. High-level ‘gentleman’s agreements’ are struck, under which a select few are allowed to siphon off public resources within agreed limits. Pacts cut across ethnic and religious lines – oil theft networks can be quite diverse in their membership. The parties also agree tacitly not to target one another personally with violence, or to betray one another’s crimes to the public. This helps explain both the limited violence around oil theft and its high barriers of secrecy.

The peace that such deals help to buy does not have to last forever, of course. No single grand bargain compels all Nigerian oil thieves and their enemies to live in peace, and no one actor controls the entire trade. Multiple power centres have sprung up in recent years, causing disputes. These tend to be settled quietly behind closed doors, but that pattern is not assured. The playing field is getting crowded, as more individuals get a taste of the business. And, critically, elite haggling over rights to loot oil wealth has looked more frantic, strained and treacherous in recent times. When President Jonathan replaced deceased President Yar’adua in 2010, this short-circuited the ruling People’s Democratic Party’s informal ‘zoning’ or ‘rotation’ system, which aimed to switch the presidency between the country’s north and south every eight years. This was a rule upon which the rules in other ‘gentleman’s agreements’ depended. Zoning’s demise is testing the country’s traditions of negotiation, consensus-building and ethno-inclusive wealth-sharing. Thus far, nothing suggests the old rules are broken or unbendable, but the coming elections will bring more stresses, and perhaps especially if oil theft is used to bankroll campaigns.

In the longer term, Nigerian oil theft arguably could also harm broader strategic interests in the Gulf of Guinea by strengthening other types of organized crime, particularly those that can destabilize governments. There is wide consensus that TOC like oil theft is expanding rapidly. Governments also agree TOC can pose steep risks to public and private interests across boundaries.⁷⁷ Nigerians have been implicated in all sorts of cross-border crime, from human-trafficking and money-laundering to so-called 419 scams.⁷⁸

Oil theft’s potential to boost TOC and insecurity in the Gulf of Guinea needs further scrutiny. Solid empirical research is scarce on the causal links between illicit resource extraction, insecurity and organized crime.⁷⁹ Furthermore, the political and commercial links between Nigerian oil theft and other regional TOC are not well enough understood for officials to be connecting the dots with confidence.

Narco-trafficking

Nigeria is a major transit point for illegal narcotics, notably Latin American cocaine bound for Europe. There have long been signs that some export oil theft networks help move this product. But evidence of links between Nigerian oil theft and drug smuggling is much less clear and compelling than in Latin America itself, particularly in Colombia⁸⁰ and Mexico.⁸¹ Furthermore, most cocaine trafficked through Nigeria today probably moves by private and commercial aircraft, following successful seizures of maritime shipments.

77 See, among others, US Strategy for Combating Transnational Organized Crime (2011); UK Strategy (2011).

78 UNODC, *West Africa Assessment*, 2013.

79 J.-A. McNeish, ‘Rethinking Resource Conflict’, World Bank World Development Report Background Paper, 2011.

80 Colombian drug-traffickers with long-term links to terrorists are known for tapping the Trans-Andean pipeline for crude to refine for cocaine-processing in their factories.

81 Court filings in the United States allege that violent Mexican drug cartels have expanded into the transnational trade in stolen Mexican condensate. See Chapter 4.

Terrorism

Research for this report found a few suspect business links that could suggest stolen Nigerian oil has funded foreign terrorist groups, or that actors from terrorist networks have helped launder stolen oil and proceeds. But further investigation would be needed to confirm such links, and overall connections appear slight compared with other countries, such as Iraq⁸² or Russia.⁸³

Maritime piracy

If money from oil theft continues to feed and embolden pirates in the Gulf of Guinea, the resulting escalation in maritime crime could deter oil and gas investment in West Africa. Links between oil theft and sea piracy are discussed elsewhere in this report.⁸⁴

Energy security

Concerning possible future links between oil theft and energy security, risks appear greater for Nigeria and West Africa than for the rest of the world. Stolen Nigerian oil represents a tiny fraction of global crude supply and consumption, as noted above.⁸⁵ Even though the oil stolen can trade at discounts as high as 50 per cent, there is no sign that this alone has a significant impact on world energy prices. In the past, production stoppages caused by Niger Delta factors tended to influence futures prices much more. For example, militant attacks were cited as contributing to hikes in oil futures prices in 2008 and 2009.⁸⁶ Disruptions, whether or not caused by theft, have also dented Nigeria's reputation for reliability on physical deliveries. This has reduced premiums paid for the worst-affected crude streams, but only to Nigeria's harm.⁸⁷ Production delays increase shipping costs and sometimes force refineries to run alternate crudes with less optimal yields. The impact can be worse for West African refineries, which have less flexibility than those in Europe and the United States.

Recommended intelligence-gathering priorities include:

- The roles Niger Delta militants play in oil theft, particularly since the 2009 declaration of amnesty for them;
- Current tensions and rivalries between oil theft networks;
- The nature and strength of northern Nigerian interests in oil theft;
- Links between oil theft, drug-trafficking and terrorism;
- The use of oil theft as a campaign finance mechanism.

82 In Iraq oil theft and smuggling became a symptom and cause of violence by and among clans, ethnic militias, criminal gangs, rival military factions, insurgents, resistance groups and terrorists, who battled for control of smuggling routes particularly around the export terminal in Basra, and the Rumaila oilfield complex. P. Williams, *Criminals, Militias and Insurgents: Organized Crime in Iraq*, Chapter 3, Strategic Studies Institute, US Army War College, June 2009.

83 In Russia, crude theft from the Transneft pipeline through Dagestan is a major source of concern to the authorities, who fear funds will flow to local terrorists and those in neighbouring Chechnya. Author interview, Russian oil-sector expert, 2013.

84 See Chapter 4.

85 See Chapter 2.

86 'New York crude rises on Nigeria pipeline attacks', Dow Jones Energy Service, 28 July 2008, and 'ICE Brent rises after Nigeria attack', Reuters, 25 June 2009.

87 During some disruptions in 2012, Bonny Light was assessed at a discount of 50 cents a barrel to Qua Iboe, which traditionally trades at the same differential over Dated Brent. The impacts on Brass and Forcados premiums are less perceptible. Author interviews, traders and oil price reporting services, 2012–13.

4 Engagement Options for Foreign Governments

This chapter looks at the relative strengths and weaknesses of the most often-discussed interventions for Nigerian oil theft, to the limited extent this is possible outside the bounds of a detailed multi-partner strategy or action plan. Initiatives are organized under three broad headings:

- controlling physical movements of oil;
- regulating oil sales; and
- following the oil theft money trail.

Most successful multi-partner, cross-border strategies would probably include at least one initiative from each option. The analysis largely glosses over a fourth option: raising awareness of Nigerian oil theft. Under this heading, other governments could put out statements about oil theft, back activists who ‘name and shame’ thieves, fund lobbies that explore the costs of stealing oil, or push industry stakeholders to divulge more of what they know, among others. How to spread information about oil theft in ways that help curb the trade is a big topic, worthy of its own study. Few of the resources spent to date have achieved much. Perhaps even more than the first three options, officials would need to see awareness-raising as part of a bigger strategy.

This report does not discuss general efforts to strengthen Nigeria’s law-enforcement capacity, civil society, the rule of law or other common areas of donor support. Rather, the analysis that follows is restricted to initiatives that specifically tackle oil theft.

Controlling physical movements of oil

Foreign governments have few ways to control Nigerian oil flows, particularly those happening outside their territorial boundaries. The movements of vessels carrying crude in Nigeria’s inland or territorial waters are governed mostly by local law, as is overland transport through pipelines or trucks and the physical loading of oil onto ships for export.⁸⁸ Once at sea, maritime law favours the free passage of ships. Most international treaties and codes that apply to oil tankers treat topics that are distant from theft, notably safety, environmental risks and insurance. Industry standards governing physical oil movements are also relatively weak, and Nigeria has not adopted most of these into its domestic law or maritime regulatory framework.

88 Relevant domestic legal instruments include the Nigerian EEZ Act, Territorial Waters Act, 1995 Oil in Navigable Waters Act, 2003 Coastal and Inland Shipping (Cabotage) Act, Crude Oil (Transport and Shipping) Regulations, Merchant Shipping Act and Armed Forces Act. Each export terminal also has its own set of detailed operational regulations.

The following three main areas of intervention have long been discussed as possible options for controlling physical movements of oil: genetic fingerprinting, sanctions and maritime security support.

Genetic fingerprinting of oil

Genetic fingerprinting of Nigerian crude oil has been proposed as a solution to oil theft since at least the mid-2000s. Crude oil from each reservoir has a unique chemical composition, or 'fingerprint'. Scientists using tools from analytic chemistry should be able to trace a given sample of crude back to its origin. Some think that fingerprinting shiploads of oil twice – once as the ship is loaded in Nigeria, and again when it offloads at a foreign port – could catch thieves red-handed whenever the two tests do not match.

However, genetic fingerprinting is not a realistic or desirable means to prevent theft at this time for the following reasons.

Technological problems

Current technology has big limitations.⁸⁹ Most of the IOCs already use fingerprinting in Nigeria, and keep their own databases of sample prints. Taking fingerprints can help companies find the source of oil spills or map reservoirs during exploration.⁹⁰ Each company uses a unique analytical method, however, meaning that tests of a single sample using the different methods could yield different fingerprints.

More importantly, the technology cannot analyse samples blended from multiple wells, as interviews with chemists and industry personnel confirmed. This is a serious problem in the Nigerian context: many shipments of oil, legitimate or otherwise, contain crude from multiple small fields. The crude is blended many times over in pipelines, flow stations and storage tanks before it reaches a tanker. Different oil streams can also be blended onboard tankers through co-loading at different terminals or through legal STS operations. And, even assuming all oil on board is from a single source, a given tanker-load's fingerprint may change as the oil shifts during transport, if the ship's hull is not cleaned before loading, or if the oil is exposed to other corrupting elements in transit. Fingerprints also change as reservoirs age. Finally, the testing process is slow: UK scientists said it could take three to four days to analyse some samples at the Nigerian end.⁹¹

Ultimately, fingerprinting would fail to detect most cases of theft. The technology could not catch top-ups at export terminals, for example, since the key marker there is excess volume, not suspect origins. Likewise, no major oil pipeline in Nigeria is owned or controlled solely by thieves; no oilfield produces only stolen oil. The fingerprinting process might help trace a few minor parcels moving along the coast – aboard a small tanker bound for a regional refinery, for example – if the oil were siphoned from a single wellhead. But such shipments are likely to form a very small part of the total export trade.

High costs

The costs of fingerprinting appear high relative to the benefits. No one has published a detailed cost assessment for implementation, either Nigeria-wide or on a smaller scale. But even assuming a single, industry-wide testing method could be agreed, associated research and development costs could be

89 For an earlier discussion of technological issues with fingerprinting as an anti-theft measure, see S. Davis, 'Fingerprinting Oil', *LegalOil.com* Information Paper No. 2, 2003.

90 When sinking test wells, for instance, fingerprinting can determine whether any oil intersected is from a new or existing reservoir. Author interviews, IOC personnel and fingerprinting experts, 2010–12.

91 Shell and Chevron maintain labs in Lagos, and Shell conducts some tests out of the country. Author interviews, IOC personnel, 2011–13.

significant. Given that the existing technology is proprietary, IOCs may not want to share details. To build and maintain a country-level database of prints, all of Nigeria's 2000-plus oilfields would have to be sampled and analysed periodically. The time spent testing individual shiploads of oil could rack up hefty demurrage fees⁹² if ships could only sail or be unloaded pending a successful test. Companies could also face serious reputational damage if a test wrongly found they were trading stolen oil – especially if such information reached the press. It is also unclear who would bear the costs.

Law-enforcement challenges

It seems no one has grappled seriously with the big questions around the use of genetic fingerprinting as a law-enforcement tool. These include:

- What other evidence would be needed to build a criminal or civil case, given that no responsible court would accept a mismatched set of fingerprints as conclusive or sufficient proof of theft?
- Who would take the required samples – particularly on the Nigerian side – if the integrity of actors around terminals were in doubt?
- What legal rules and processes would apply in foreign ports and beyond once prints did not match?

Assuming the technology improved, fingerprinting could alternatively be part of a multi-stakeholder tracking and certification regime for Nigerian oil. Such a scheme would need to learn from the experience of past initiatives, such as the Kimberley Process for rough diamonds and the Forestry Certification Scheme for timber.⁹³

The study of alternative technologies is ongoing: one IOC, for instance, is looking into the possibility of injecting synthetic DNA tracers into oil loaded at its terminals.⁹⁴ Under this system, assuming initial scoping work is promising, the company's flow stations could automatically inject one kind of synthetic DNA trace element (Tracer A) into oil as it passed through them on its way to an export point. Thereafter, staff at the terminal could inject a second element (Tracer B) into the same crude before it was loaded. If a cargo arriving in a foreign port tested positive only for Tracer A, this could provide at least some circumstantial evidence that the ship involved is carrying crude stolen from the company's pipeline network. The idea of a technological fix, especially one that could sidestep hard political problems, can be seductive. But thus far, genetic fingerprinting offers no such gains.

Sanctions

No country should seriously consider banning Nigerian oil imports to stop oil theft. Doing so would create a fundamental mismatch of tools and goals. Targeted sanctions against individual oil thieves could be helpful, if used alongside other measures. Imposing trade sanctions would be a poor way to deal with export oil theft, for several reasons.

Weak cooperation

Not enough countries would comply with a Nigerian oil ban to meaningfully disrupt trade. Global opinion has swung against trade sanctions for all but the most high-risk cases, with fewer than a

92 Demurrage is compensation payable to the shipping company for delays in unloading a cargo.

93 See, for example, Global Witness, *Implementing the Kimberley Process*, 2005; Partnership Africa Canada, *Diamonds without Borders*, 2010; Enough Project, *Certification: The Path to Conflict-free Minerals from Congo*, 2011.

94 A number of possible technical issues remain, and such a system may not detect stolen oil blended with a legitimate cargo. Testing could be relatively fast and inexpensive compared with genetic fingerprinting. The Turkish government used synthetic tracers to catch tanker trucks smuggling in oil from neighbouring Iraq. The Nigerian Trade Ministry also discussed a similar process with the firm Tracetag, but no work programme was agreed. Author interviews, IOC personnel, 2013.

dozen major ones since 1990. Sanctions on oil are especially rare, given its strategic importance. The EU and UN would probably fail to secure the votes needed to impose multilateral sanctions.

Governments do not levy trade sanctions merely to curb TOC or illicit commodities flows. Given Nigerian oil theft's modest security risks, traditional arguments for using sanctions as an alternative to military force also do not apply.⁹⁵ Even in past cases where rogue officials and militias clearly controlled illicit natural resource flows, foreign governments have not blocked commodity sales.⁹⁶ Finally, past studies found that without strong global participation, trade sanctions have small impacts on multilateral trade patterns and overall commodity flows out of a country.⁹⁷

Inability to target stolen oil

Even the best-designed multilateral sanctions would block legitimate oil sales and let stolen parcels slip through. Picking a target inside Nigeria would be hard, since no one field, pipeline, company or crude stream pumps 100 per cent stolen oil. Exempting oil sold under NNPC supply contracts would only work if no buyers or officials were stealing oil, and sale documents could not be faked.⁹⁸ Nigerian crude is likewise too mobile to exempt countries not known to import stolen oil. Past efforts to target specific commodity flows faced similar problems.⁹⁹

Hidden agendas

Governments designing an oil ban would have to lean heavily on advice from private-sector actors, who may not be reliable guides. For example, traders helped with the roll-out of oil embargos in Iraq and South Africa. After first carving out loopholes for themselves, the traders leveraged the threat of sanctions to ram through concessionary deals with Iraqi and South African officials. The most unscrupulous of them then busted the sanctions using transshipments, triangular trade relationships and physical cross-border smuggling.¹⁰⁰

Negative impacts on third parties

Past examples suggest an oil embargo would harm the Nigerian economy more than the illegal oil trade.¹⁰¹ Because the country relies on oil for 80 per cent of its revenue and has poor saving habits, even moderately tough sanctions could squeeze the Nigerian government hard. An oil import ban could subject Nigeria to prolonged fiscal crisis, inflation and political instability while oil thieves carried on with business as usual. The US government decided as much when it considered imposing an oil embargo following the 1993 military coup led by General Sani Abacha (1993–98).¹⁰²

95 Traditionally accepted goals for imposing major trade sanctions include preventing armed aggression against other states. Examples include the 1980 US grain embargo against the USSR (following its invasion of Afghanistan); curbing the development and acquisition of weapons of mass destruction (Libya, North Korea, Iran); and promoting regime change, particularly after a military coup (e.g., the US sanctions against Nicaragua (1985–90) and Niger (2000)). None of these apply to Nigerian oil theft.

96 The cases of the US and EU v. Zimbabwe (2002 – diamond sales excluded) and the UN v. DRC (2003 – minerals excluded) illustrate this point.

97 D. Cortright and G. Lopez (eds), *Smart Sanctions: Targeting Economic Statecraft*, Rowman and Littlefield, 2002.

98 Unfortunately, there is a large market for fake Nigerian oil sale paperwork, much of it run online and out of Lagos.

99 In 1999, in an attempt to end the Angolan civil war by starving rebels of cash, the UN required that all shipments of rough diamond from Angola be accompanied by certification papers from the ruling MPLA. But a bustling market for forged documents sprang up, and embargoed diamonds surfaced in new places. Major hostilities only ended in 2002 with the death of UNITA leader Jonas Savimbi. Author interviews, trade sanctions experts and Angola analysts.

100 Author interviews, trade sanctions experts. See also P. Levy, 'Sanctions on South Africa: What Did They Do?', AEA Papers and Proceedings, 1999.

101 This was arguably the net result of sanctions regimes imposed in Iraq (1990–2003) and Haiti (1991).

102 US General Accounting Office, *Issues regarding Implementation of an Oil Embargo against Nigeria*, Report to Congressional Requesters, November 1994.

Lack of legal authority

Governments may not have the legal authority to ban Nigerian crude oil imports because of theft. Grave national security threats must be present before the UN and some states are allowed to cut off imports.¹⁰³ Import controls may also violate international trade law if the imposing state cannot show they serve ‘essential national security interests.’¹⁰⁴ Nigerian oil theft probably would – and should – fail such tests.

‘Smart sanctions’ and aid suspension

Targeted ‘smart’ economic sanctions may be a better international option. A range of measures exists, including:

- Freezing the assets of individual oil thieves and their associated companies;
- Placing thieves on ‘do-not-trade’ lists;
- Blocking banks from lending or processing payments related to oil theft;
- Barring companies from offering theft networks goods and services (vessel insurance, for example); and
- Imposing travel bans on network members.

These measures could reduce thieves’ mobility, cut their access to finance and raise red flags that banks and prospective buyers would see. Such so-called ‘smart sanctions’ typically face limited political backlash from the business community, and officials now prefer them over trade sanctions as tools for combating organized crime and interrupting traffic in stolen natural resources.¹⁰⁵

Targeted sanctions against oil theft networks could be imposed in several ways. Many chief executives have constitutional or statutory powers to declare asset freezes, visa bans and similar measures.¹⁰⁶ Trade or financial regulators keep lists of targeted criminal actors and oversee implementation of sanctions. Some parliaments pass ad hoc legislation urging governments to act against specific crimes¹⁰⁷ or criminal networks.¹⁰⁸ The UN Security Council is also willing to consider sanctioning individuals and firms that trade stolen commodities. But the Security Council tends to impose such sanctions to cut funding for groups committing atrocities in conflict zones and not to control the illegal trade itself.¹⁰⁹

Individual sanctions are no silver bullet, and can be largely symbolic if they are not widely implemented and backed by other measures.¹¹⁰ Oil thieves could evade them, using fresh shell companies and front men. The cash-based nature of export oil theft could help avoid major disruptions. Past efforts against stolen natural resource traders – notably in the DRC and Iraq – fell short when governments did not follow up sanctions with criminal prosecutions or other law-enforcement measures. In other cases, analysts have noted, targeted sanctions aimed at

103 Article 41 sanctions imposed by the UN Security Council require a finding that there is an imminent threat to peace and international security. In the United States, the president can impose broad import bans for foreign policy goals only if such is necessary to prevent national security threats or a national emergency. See the 1962 Trade Expansion Act Section 232 and the 1977 International Emergency Economic Powers Act. The US Congress has broader sanctions powers.

104 General Agreement on Tariffs and Trade (GATT), Art. XXI.

105 Relevant cases include the US sanctions against individuals in Colombia and Venezuela relating to narco-trafficking.

106 See, for example, US Executive Order 13581 (2010), which ordered the freezing of assets of named individuals linked to the organized criminal groups the Zetas (Mexico), the Camorra (Italy), the Yakuza (Japan) and the Brothers’ Circle (Eurasia).

107 For a relevant example, see the US Foreign Narcotic Kingpin Designation Act of 1999.

108 The US Congress recently passed a law blocking the visas and freezing the assets of 60 Russian officials implicated in the death in prison of Sergei Magnitsky, a whistle-blowing lawyer who had uncovered a fraud of \$230 million in Russia.

109 See, for example, UN Security Council Resolution No. 1807, 1857 (DRC). UN sanctions would require the creation of a Nigeria Sanctions Committee to list investigate and list individuals, monitor violations and report on progress.

110 Swiss Confederation et al., *Targeted Sanctions: A Manual for Design and Implementation*, 2001.

traffickers of stolen natural resources have suffered from 'technical inadequacies, legal loopholes, institutional weaknesses, budgetary and staff scarcities and political constraints.'¹¹¹

Countries concerned that Nigeria was not acting aggressively on oil theft could also suspend bilateral aid. Nigeria's overall aid dependence is low, though withdrawing security assistance could get officials' attention. However, this is unlikely in the current period, in which a high priority is placed on cooperation on counter-terrorism and regional security.¹¹²

Maritime security support

Maritime crime may be the most closely watched security threat in West Africa today, after terrorism in the Sahel. Piracy and armed robbery in the Gulf of Guinea¹¹³ worry developed nations the most, followed by narcotics, illegal (IUU) fishing and weapons-trafficking.¹¹⁴ Nigerian crude oil theft gets relatively short shrift.

Foreign aid to agencies that police the Gulf of Guinea could theoretically help corner oil thieves. But programmes would need to target true law-enforcement challenges and get buy-in from the Nigerian navy and presidency. Aid to multi-stakeholder bodies offers limited value on oil theft, as does training the navy and giving it new hardware. Tracking ships by satellite, another much-discussed option, is only as worthwhile as whatever law-enforcement work it supports. Arresting ships and persons caught moving stolen oil internationally would also face big, though not insurmountable, legal hurdles.

Existing initiatives offer limited value on oil theft. Thus far, most donor work on Gulf of Guinea security has sought to improve operational capabilities and cooperation between states policing the region (see Table 13).

This approach makes broad sense, for several reasons. First, West Africa's maritime security agencies face porous borders, low controls on maritime trade, high crime, and serious funding and organizational capacity deficits. The Nigerian navy is by far the region's largest, but still has limited resources compared with more developed nations. It has an active force of around 15,000 men, over a dozen large patrol vessels to guard offshore installations, a dozen more coastal patrol vessels and other relevant hardware. The navy's 2013 allocated budget is N71.4 billion (approx. \$450 million) – roughly 20 per cent of the Defence Ministry's total allocation. With this level of resources, securing the Gulf of Guinea is too much for any one West African nation. Previous efforts to create regional guard forces flopped.¹¹⁵

Second, the Nigerian federal government would not tolerate a security response like the one offshore Somalia, where Western forces dictate planning and execution.¹¹⁶ Nigeria's foreign policy

111 A. Tostensen and B. Bull, 'Are Smart Sanctions Feasible?', *World Politics* 54 (3): 373–403, 2004.

112 For example, Section 620(M) of the US Foreign Operations Appropriations Act of 1997 bars aid to security forces in any foreign country if the secretary of state 'has credible evidence that such unit committed gross violations of human rights'.

113 There is no clear definition of the Gulf of Guinea. In its narrowest definition it is bounded by the intersection of the Equator and the Prime Meridian (0°0'0'; 0°0'0' – see Map 1), Ghana, Togo, Benin, Nigeria, Cameroon, Equatorial Guinea, São Tomé and Príncipe, and part of Gabon. In its widest definition it includes the region from Guinea to Angola (-15°0'0', -15°0'0').

114 For an overview, see A. Anyimadu, 'Maritime Security in the Gulf of Guinea: Lessons from the Indian Ocean', Chatham House, July 2013; International Crisis Group, *The Gulf of Guinea: The New Danger Zone*, December 2012; UN Security Council, 'Report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea (7 to 24 November 2011)', S/2012/45, 2012.

115 For example, unsuccessful efforts to create a Gulf of Guinea Guard Force go back some years. President Yar'adua called for the establishment of such a force in 2008, under the aegis of the Gulf of Guinea Commission, but talks did not progress. Author interviews, 2011.

116 Past multilateral naval forces in the Gulf of Aden – EUNAVFOR Operation Atalanta, Combined Maritime Forces Combined Task Force 151, NATO Operation Ocean Shield – have involved over 30 countries at time working jointly to patrol and respond to distress signals.

has never favoured outside intervention in security matters, particularly where oil is involved. Foreign patrols in Nigerian territorial waters would also face legal hurdles, as is discussed later in this section.

Table 13: Typical donor programming on Gulf of Guinea maritime security, 2010 to date

Type	Donors	Recipients	Description
Hardware and infrastructure	Mainly United States, United Kingdom	Nigeria, Ghana, Togo, Benin, Cameroon, São Tomé and Príncipe, Gabon, Sierra Leone, Guinea, Côte d'Ivoire	Donation and maintenance of vessels, radar, communications, automatic identification system and other monitoring systems, offices, ports, jetties
Training of maritime personnel	United States, United Kingdom, France, EU, Germany, Italy, Portugal, Netherlands, Norway, Brazil, Finland, Spain, Portugal	Nigeria, Ghana, Togo, Benin, Cameroon, São Tomé and Príncipe, Gabon, Sierra Leone, Guinea, Côte d'Ivoire, Equatorial Guinea, Senegal, Cape Verde, Burkina Faso, Liberia	Mostly coastguard visits, at-sea joint patrol exercises, posting of advisers. Main topics were anti-piracy, counter-narcotics, illegal migration, IUU fishing, signals intelligence, ports practices, border security, patrolling, and general seamanship skills. No training focused on oil theft.
Support to ECOWAS	EU, United Kingdom, France	ECOWAS member nations	Development of Regional Action Plan on Illicit Drug Trafficking, Organised Crime and Drug Abuse in West Africa (the Praia Plan); posting of advisers; creation of maritime unit
Other maritime security-related institution building	United States, EU, United Kingdom, UNODC, Spain, Portugal	Nigeria, various other countries, institutions	Set-up of regional information sharing hubs; creation of in-country maritime training centres; improving bilateral and multilateral cooperation on specific threats (e.g. drug-trafficking, IUU fishing), development of joint patrolling frameworks, law-enforcement needs assessments, institutional restructuring and consolidation

Sources: Oceans Beyond Piracy; various government databases; press reports.

Third, other nations do not have sufficient strategic interests in the Gulf of Guinea to commit serious 'hard security' resources such as ships, arms or helicopters. The area is not a major maritime transit point compared with the Strait of Hormuz, whether trade is measured by price, weight, traffic volumes or the strategic importance of goods involved.¹¹⁷ The Gulf of Guinea is the centre of sub-Saharan Africa's oil and gas business, but TOC in the maritime space has not really disrupted hydrocarbon flows. Piracy, not oil theft, is the top threat to Gulf of Guinea maritime traffic, yet even there costs have been low in relative terms, affecting a small group of actors.¹¹⁸

Most existing donor initiatives cannot do much to address oil theft by themselves, as is outlined below.

117 For example, an estimated 20 per cent of global trade passes through the Gulf of Aden annually on over 20,000 ships, carrying 25–30 per cent of Europe's oil and gas needs. UNCTAD, *Review of Maritime Transport*, 2012.

118 One study found direct economic impacts of \$740–950 million for piracy in the Gulf of Guinea in 2012, broken into the value of goods stolen (\$34–101 million), war risk, and kidnapping and ransom insurance costs (\$423–37 million), private armed guards and military expenditures (\$250–300 million), hazard pay for sailors (\$30–105 million). In 2012, similar expenses offshore Somalia totalled an estimated \$5.7–6.1 billion. See Oceans Beyond Piracy, *The Human Costs of Maritime Piracy*, 2012, and *The Economic Costs of Somali Piracy*, 2012.

Support for regional multi-stakeholder bodies

Developed nations spend several million dollars each year helping African multi-stakeholder bodies develop capacity and strategies on maritime crime. Candidates for support include the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC).¹¹⁹

Donors who back these organizations should not expect them to dig deep on an issue like oil theft. ECOWAS lacks the will and capacity, owing not least to diplomatic turf wars, differing bureaucratic cultures, long-standing maritime boundary disputes, fears of Nigerian dominance and Nigerian secrecy.¹²⁰ The organization's new maritime security office is crafting an integrated security strategy for West Africa, but the final document is unlikely to address oil theft in any depth, or have legal force.¹²¹ Past multilateral strategy sessions – the Gulf of Guinea Energy Security Strategy, for instance – never got past talks. And until Nigeria unveils its own strategy, it is difficult to see what role ECOWAS could play.

Creation of regional information hubs

The United Kingdom is currently also helping to set up a regional Maritime Trade Information Sharing Centre in Ghana (MTISC), coordinated by the Oil Companies International Marine Forum (OCIMF). The Centre should, when fully operational, gather and share intelligence on Gulf of Guinea security incidents with public- and private-sector actors through a secure website. Whether it will monitor oil theft incidents is questionable, however, and its establishment has been delayed.

Capacity-building for the Nigerian navy and its sister agencies

Interviewees differed over whether the Nigerian navy and its sister agencies could locate and seize stolen oil shipments without further training. The Niger Delta is unquestionably a tough place to police. Its tangle of creeks, rivers and estuaries is dense. Locals know the inland waters better than many JTF or naval officers, especially those from other parts of the country. An estimated 1,650 km of onshore and swamp crude oil pipelines weave through remote, often barely accessible terrain. The navy has several forward operating bases along the southern coast and a range of inland strategic deployment points, but much space remains loosely governed.

But no matter what challenges the delta offers, some government and industry sources argued, the navy and JTF have shown a lack of will to police oil thieves. To support this conclusion, interviewees pointed to chaotic vessel traffic patterns around oilfields and the historical evidence of military complicity in theft (see Chapter 2). Moreover, some claimed that the Niger Delta only gives thieves a few rivers that are broad and deep enough to get their fully laden boats and barges out to sea. As such, they argued, a simple 'choke point' patrol strategy, backed by one or more rapid response teams, could effectively block most shipments.¹²² Patrols would simply cordon off a few river mouths along the southern coasts of Delta, Bayelsa and Rivers States where barges emerge to rendezvous with waiting tankers. Different interviewees listed between seven and 14 possible points (see Box 3). The Bonny River in eastern Rivers State is the biggest – several

119 For more details on these bodies, see Chatham House, 'Maritime Security in the Gulf of Guinea', conference report, March 2013. The United Kingdom, for instance, has funded an ECOWAS maritime security officer since 2011, multiple foreign consultants and an ECOWAS maritime security seminar.

120 Author interviews, ECOWAS and Nigerian government officials, 2012–13.

121 The strategy, once finalized, will offer principles, guidelines and models for ECOWAS members to use in designing their own interventions. A draft version of the strategy viewed by authors contained these areas of focus: maritime security, maritime domain awareness, maritime governance framework, maritime safety, environmental issues, maritime surveillance, information-sharing, maritime education, training and development; maritime research and miscellaneous issues.

122 One IOC recently hired a leading British security firm to develop such a strategy. Author interviews, 2012–13.

hundred MT tankers can travel up it as far as Onne to load stolen oil straight from pipelines, without the help of barges.

Box 3: Policing maritime 'choke points' to prevent oil theft?

Some interviewees agreed that the Nigerian security forces probably could interrupt much of the export oil theft business by establishing tight controls on vessel passage in and out of a relatively small number of river mouths along the coast. While developing a viable 'choke point' strategy would require deeper study, interviewees pointed to the following areas:

Broad agreement among multiple sources

1. Benin River
2. Escravos River
3. Brass River
4. Nun River
5. Andoni River
6. Bonny River
7. New Calabar River
8. Imo River

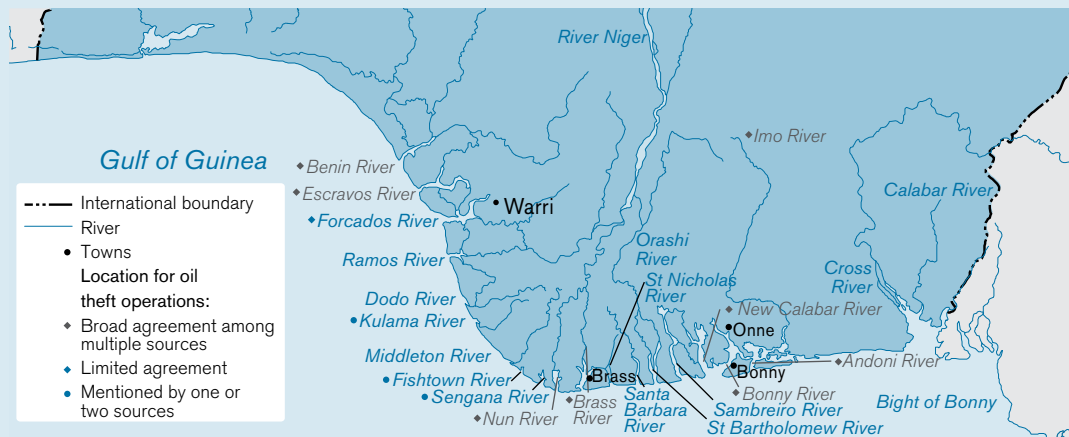
Limited agreement

9. Forcados River (some interviewees said the Forcados was impassable for large barges unless dredged)

Mentioned by one or two sources

10. Fishtown River
11. Sengana River
12. Kulama River

A few sources thought that instituting security checkpoints in parts of the inland waterways would be more efficient, for instance at one or more points in Rivers State's Cawthorne Channel or Jones Creek.



Not everyone thinks the solution is so obvious, however. Some interviewees said the number of possible coastal exit points for stolen oil is larger. The total area in which oil thieves operate may also be large. Altogether, while illegal bunkering is concentrated around perhaps 200–300 linear miles of coastline, the segments of Nigerian waters in which export oil thieves transit, store and transfer their cargoes could cover several thousand square miles. Including its EEZ, the navy has approximately 84,000 square miles to police.

On the operational side, the navy's existing fleet looks small and aged: many naval platforms are 30–40 years old and probably cannot stay more than two weeks on the high seas without maintenance and refuelling. 'The fleet doesn't have endurance,' one maritime intelligence source said. 'Bunkerers are patient and will wait.'¹²³

Assuming the Nigerian security forces were ready and willing to partner other governments in the maritime domain, which capacities should donors target? A detailed anti-bunkering law-enforcement needs assessment is outside the scope of this report. But without strong buy-in from the navy and presidency, bilateral or multilateral training exercises for the navy cannot do much besides build its general maritime law-enforcement skills (see Box 4). A series of one-off training sessions held in recent years, mostly for mid-level officers, offered instruction on basic topics including ship boarding, searches, signals work and general seamanship. Oil theft was not discussed. Some foreign military officers interviewed claimed that Nigeria had rejected offers of oil-theft-specific training. Officers at the highest levels appeared interested and professional, these sources said, yet negotiations stalled for unclear reasons.¹²⁴

Donating, maintaining or upgrading ships and other hardware

At this point, there are no clear grounds to think that bulking out the navy's fleet, arsenal or surveillance systems would help curtail oil theft. Some foreign diplomats and military officers complained that bilateral talks with Nigeria about maritime security tend to devolve into requests for hardware. The United States, for example, has donated at least five boats, most recently the former US Coast Guard *Cutter Chase*, re-commissioned as the *NNS Thunder* in early 2012.¹²⁵ But prospective partners should expect to see more aggressive action from Nigeria before committing such resources as a means to preventing oil theft.

Tracking ships

Satellite tracking of ships is another frequently mentioned solution. Maritime domain awareness, whether offshore Nigeria or in the Gulf of Guinea, is poor. Nigerian agencies reportedly do not cooperate well on tracking vessels. In recent years, the navy, NIMASA and PICOMSS have run parallel but un-linked surveillance systems. Some surveillance hardware and skills are suboptimal, and sea patrols regularly ignore vessels not using their Automated Identification Systems (AIS) in Nigerian waters.¹²⁶ A number of the IOCs have hired contractors to track suspect ships using satellite technology but do not share results. Foreign governments have provided Nigeria with coastal surveillance training and radar gear since at least the early 2000s, with the United States being especially active.

Assistance on tracking ships could be helpful if a broader crackdown against oil theft were expected. Satellite images of deforestation have helped convict illegal loggers in Latin American

123 Author interview, 2013.

124 Author interviews, 2010–13.

125 Author interviews, 2010–12.

126 Under SOLAS (subparagraph 2.4 of Regulation 19 of Chapter 4), all ships over 3,000 tonnes must install and use an AIS transponder at all times while in motion. The transponder broadcasts short messages about a vessel's identity, position and route. Coastal radar and satellite technology can receive and interpret these signals under secure connections. When used together with other means of surveillance, AIS should give a government an accurate Recognized Maritime and Air Picture for real-time activity in its territorial waters.

and Southeast Asian countries. As part of an international law-enforcement campaign, other countries could use satellite technology to track ships carrying stolen crude. The tools for this exist, and they could reveal tell-tale signs of theft. These include:

- Vessels that regularly switch their AIS transponders on and off;
- Commercial-class oil tankers that wait offshore Nigeria but do not dock at any oil export terminal; and
- Ships engaged in non-standard STS operations.

Box 4: Reforming maritime security to build partner confidence – options for Nigeria

To help sell prospective partners on a cross-border campaign against oil theft, the federal government could undertake the following actions.

- *Improving ship registration:* many vessels involved in illegal bunkering and foreign transfers of stolen oil likely are not registered with Nigeria at all. Ships easily change names and flags, partly because the registration system is poor. Under Section 22 of Nigeria's 2003 Coastal and Inland Shipping (Cabotage) Act, all ships carrying oil in Nigerian waters must register with the Registrar of Ships in the Special Register for Vessels and Ship Owners engaged in cabotage. This requirement extends to barges, tankers, bunkering vessels, tankers, floating storage. Registry listings must include details of the ship's beneficial ownership and compliance with international maritime safety protocols. The Merchant Shipping Act contains further registration provisions.
- *Regulating STS in Nigerian waters:* under Nigerian law, the petroleum minister may make regulations governing STS in territorial waters (1995 Oil in Navigable Waters Act, section 5). Existing regulations also say that no vessel carrying crude oil may 'top up' its cargo in Nigerian waters, and STS of oil is only allowed with the minister's approval (Crude Oil [Trans-shipment and Storage] Regulations, section 2). For some years Nigeria has promised new rules for STS, but these have not materialized. International law and the International Maritime Organization offer relevant baselines. The current regulations also allow the minister or 'any authorized person' to seize vessels, arrest individuals, revoke licences and permits, or impound real estate of parties performing illegal STS. Violations also are subject to fines and imprisonment of up to six months, but even these existing provisions are not enforced.
- *Strengthening vessel clearance practices around oil installations:* the authority and need for this were discussed in Chapter 2. Better practices would include arresting more suspect ships with their Automatic Identification Systems (AIS) transponders switched off.
- *Publishing names of suspect ships:* earlier this year, the navy released a list of ships it had recently arrested on its anti-oil theft website (www.cot.navy.mil.ng). The list was incomplete, however, and focused mostly on vessels engaged in illegal refining and other crimes. Campaigns against IUU fishing offer lessons in this area.

Such red flags notwithstanding, choosing which ships to watch on the high seas would be hard if Nigeria did not share intelligence about events in its own waters. Complex transport

arrangements could cause trails to go cold. Ships also have easy ways to hide in plain sight – switching off their AIS transponders being the simplest. Most successful seizures of major cocaine shipments into Nigeria have relied on tip-offs from the governments of the countries where the narcotics originated.

Better information on ship movements is, moreover, only part of the picture. A large law-enforcement campaign against export oil thieves, whether multilateral or by Nigeria alone, would require a mix of signals, human and open-source intelligence. Nigeria would need to employ means under its sole control – helicopter flyovers of its territorial waters, for example.

Ultimately, tracking ships is no more useful than the law-enforcement action it supports. Without rapid-response powers and a clear mandate to interdict red flag vessels, Nigerian officers using state-of-the-art surveillance gear could only watch as ships vanish into international waters. Satellite-generated maps of a tanker's journey from offshore Nigeria to a suspect refinery could be used as evidence against oil thieves in a foreign court, though prosecutors would need strong cross-border cooperation on other evidence. Otherwise, a government tracking ships by satellite could pass its findings to Nigeria and hope for the best.

International law-enforcement challenges are considerable

Arresting ships and persons caught moving stolen oil would face big, though not insurmountable, legal hurdles, as would any court cases that followed. Two examples are given below.

Getting jurisdiction

Transnational crimes like export oil theft come with major jurisdictional hurdles. Successful court cases would need to be supported by three types of criminal jurisdiction:

- Prescriptive, where the state has power to make laws criminalizing the conduct involved;
- Enforcement, where the state can investigate, arrest and prosecute those engaged in the illegal conduct; and
- Judicial, where the state's courts can hear and decide cases involving the conduct.

Jurisdiction issues in the arrest and prosecution of oil thieves could be the subject of another full-length study entirely, but an example pertaining to law-enforcement jurisdiction over ships is outlined here.

Settled maritime law greatly limits the ability of a state to stop, board, search or detain vessels suspected of carrying stolen Nigerian oil. The powers of a state over a ship, its crew and cargo depend foremost on the ship's location. As a coastal state, Nigeria has exclusive law-enforcement jurisdiction over its own territorial and inland waters up to 12 nautical miles from the coast, and over its 200 mile Exclusive Economic Zone (EEZ).¹²⁷ Foreign actors can only make arrest in Nigerian territorial waters based on express authorization by the Nigerian government (under a memorandum of understanding or treaty),¹²⁸ or possibly a UN Security Council resolution.¹²⁹ Neither of these is likely.

127 UNCLOS Article 2. Nigeria EEZ Act, Section 1.

128 Bilateral agreements can allow states to stop, board, search and detain vessels in one another's territorial waters. States can also confer jurisdiction over one another's flag vessels by agreement. Under an exchange of notes, for instance, the United Kingdom granted the United States blanket permission to search its flag vessels suspected of trafficking drugs in certain parts of the high seas.

129 For example, UNSC Res 1816, 1846 (concerning Somali piracy).

Once the vessel enters the high seas, it tends to be subject only to the enforcement powers of its flag state.¹³⁰ The principle of *mare liberum* (freedom of the seas), so basic to maritime law, leaves the oceans open to all comers outside certain narrow bands adjacent to coastal states. No treaty or general rule of customary international law allows a state to interdict a vessel on the high seas that is not flying its flag.¹³¹ Rather, the state must report the vessel to its flag state for action.¹³² Interviewees for this report said vessels involved in export oil theft typically fly the flags of Nigeria, Liberia, Greece, the Marshall Islands, Panama or St Kitts and Nevis. None of these jurisdictions have shown great capacity or willingness to investigate transnational organized maritime crime.¹³³ International legal instruments can create ad hoc procedures for boarding and searching vessels engaged in certain crimes, but the chances that states would develop and ratify such a document for oil theft are unlikely.¹³⁴

Foreign law-enforcement officers have more freedom once a ship carrying stolen crude enters their own waters or docks at one of their ports. Rules for boarding and seizure relax, and states can also deny entry to ships with undesirable cargoes.¹³⁵ Even here, though, the flag state's powers can trump those of the host state: the latter could probably only seize a vessel laden with stolen oil in its own territory if the state had some other jurisdictional ties to the theft or thieves in question. A handful of laws and treaties buck this rule for other maritime crimes, notably marine pollution and illegal fishing. Oil theft is not on the list.¹³⁶

Managing maritime crime scenes

Foreign investigators on board a ship suspected of carrying stolen oil would have a tough job. They must handle all relevant evidence so as to preserve the chain of custody under the evidentiary rules of the prosecuting state, gather the evidence needed to support charges, and transfer any subjects on board into proper custody if their arrest is sought. Political and time pressures could be high; the smallest misstep could quash an entire case. The suspects and military personnel aboard could also destroy or taint evidence, deliberately or not, before the investigators show up.¹³⁷

Piracy cases could provide some useful precedents and lessons learned in this area. The role Interpol plays in managing piracy and drug-trafficking crime scenes could largely be replicated in oil theft cases, if the agency were willing. Mostly through its Project BADA, Interpol has created a database of incidents, fingerprints, photographs and DNA of suspects known to be involved in piracy, and maintained an incident-response team to assist and train national police forces with

130 *SS Lotus Case* (France v. Turkey), 1927.

131 UNCLOS Article 89. The flag and interdicting states can agree to allow interdiction by treaty, though this is unlikely in the case of Nigerian oil theft. UNCLOS Article 92.

132 UNCLOS 94. Notable exceptions include the right of hot pursuit (UNCLOS 111) and the right of visit (UNCLOS 110, codifying customary international law). The right of visit is an umbrella term for various types of interference with a foreign flag ship on high seas, including asking the ship to show its flag, asking to inspect the flag, and stopping, boarding and searching. Stops, boards and searches are legal only under circumstances set out in customary international law or treaty. UNCLOS 110 requires 'reasonable suspicion' of piracy, slave trading and unauthorized broadcasting. States would have to make treaties to broaden the right (UNCLOS 110(1), 1958 High Seas Convention Article 6); the flag state would have to be a party to any treaties. Past conventions have extended board and search-type rights for ships carrying guns, liquor or illegal fish. N. Klein, *Maritime Security and the Law of the Sea*, 2011.

133 In one notable exception to this rule, stateless, unregistered vessels may be subject to boarding by other states. In essence, failure to register and fly a flag forfeits the right of free passage. The United States has been very active in pursuing stateless vessels engaged in drug-trafficking outside its territorial waters. For more information, see R. Reuland, 'Interference with Non-National Ships on the High Seas: Peacetime Exceptions to the Exclusivity Rule of Flag Ship Jurisdictions,' 22 *Vanderbilt Journal of Transnational Law* 1161, 1989.

134 In one possibly useful precedent, Article 17 of the Vienna Convention against Illicit Traffic in Narcotic Drugs (1988) creates ad hoc procedures for requesting flag state permission to board.

135 M. McDougall and W. Burke, *Public Order of the Oceans*, 1987.

136 Klein, *Maritime Security and the Law of the Sea*.

137 For further discussion, see H. Fouche and J. Meyer, 'Investigating Sea Piracy: Crime Scene Challenges,' *WMU Journal of Maritime Affairs*, 2012. The International Maritime Organization has also developed a code of practice for the investigation of crimes of piracy and armed robbery against ships. See IMO Resolution A.1025(26), adopted on 2 December 2009.

the evidence collection at maritime crime scenes. Relevant subjects for training include isolation, security, search, evidence collection, chain of custody, testing and analysis of samples.¹³⁸ This is despite the arguably limited value of counter-piracy work as a solution to oil theft (see Box 5).

Box 5: Counter-piracy as a solution to oil theft?

Some interviewees argued that stronger action on piracy in the Gulf of Guinea could also disrupt export oil theft. Circumstantial evidence does suggest that Nigerian pirate groups are drawing money, manpower and intelligence from oil theft networks. Some pirates and oil thieves may use the same ships. There are also geographic red flags: pirates have sailed several of the petroleum products tankers they hijacked around Lagos or in the Bight of Benin to points offshore Delta state, where smaller ships came alongside to siphon off parts of the gasoline on board.

Hunting pirates at sea would not do much to prevent oil theft. The number of successful pirate attacks dropped in 2012, owing partly to more aggressive Nigerian–Beninese joint naval patrols (codenamed ‘Operation Prosperity’). But more land-based operations would be needed to have positive knock-on effects for oil theft. Here again Nigeria would have to lead, at a minimum by seizing pirate ships, tracking profits and arresting backers based in Lagos and the Niger Delta. Most of the backers probably are based in Nigeria, with financing and sales run out of Lagos. Some backers may rarely travel outside the country.

Overlaps between export oil theft and piracy networks may be limited, however. Pirate groups in the Gulf of Guinea appear cruder and more parochial than those moving stolen crude. Maritime intelligence sources say most of the gasoline pirates steal trades in Nigerian grey markets in the South-West and South-South regions of the country. Illegal bunkering probably has supported piracy, but does support run the other way? During the 2000s, a few Niger Delta militant leaders allegedly used the cash and status they earned guarding oil theft rings to buy the boats and political cover needed to rob ships. However, interviewees said they had not heard of pirates bankrolling oil thieves. Some big export oil theft networks may have only one or two members who dabble in piracy, while the rest focus on stolen oil and other pursuits. Taking out such members probably would not cripple a whole network.

Regulating oil sales

Other countries have little control over how Nigeria sells its oil. Various international legal instruments and the country’s 1999 constitution empower Nigeria to produce and trade its natural resources more or less as it wishes. In December 2012, Minister of Petroleum Resources Diezani Alison-Madueke announced the country had ‘no plans’ to reform its oil sales.¹³⁹ Regulating sales between traders and refineries could be easier politically, but there are few precedents.

No government should tamper with the fundamentals of world oil markets to address an isolated phenomenon such as Nigerian oil theft. Notwithstanding occasional calls for more red tape, there

¹³⁸ Legal support for this role can be found in UNSC resolutions 1950 (2010) and 1976 (2011), and EU Council Decision 2010/766/CFSP (7 December 2010).

¹³⁹ ‘Nigeria says has no plans to reform its oil sales,’ Reuters, 13 December 2012.

is broad agreement that bad regulation would be worse than none. Options for restricting supply are few, apart from extreme steps such as trade sanctions and embargos (discussed above).

Regulating price might seem a better option, given that stolen Nigerian crude trades at discounts of \$5–50/barrel. Arguments against price controls are strong, however. Nigeria uses a formula pricing system – called official selling prices (OSPs) – to market its oil. This system links prices to international spot market movements and allows for considerable flexibility. Given that pricing physical oil is complex, maintaining flexibility is key to avoiding price distortions. Discounts can also be a legitimate way to move distressed cargoes and respond to short-term market shocks. At present Nigerian crude is experiencing high price volatility owing to structural shifts in its main markets, particularly the United States.¹⁴⁰

The following section evaluates the major remaining options.

Supply-chain due diligence initiatives

The idea that buyers should perform due diligence on their supply chains has become fashionable in the global fight against illegal commodities trading. Proponents argue these can help sanitize markets without disrupting them. Governments, industry and civil society have come out in support of various mandatory and voluntary due diligence schemes. Proponents of a due diligence scheme to target oil theft could look to campaigns against the trades in other stolen natural resources for examples (see Table 14).

Table 14: Due diligence initiatives for other types of natural resource theft

Intervention	Examples
Voluntary refiner due diligence standards	UN Due Diligence Guidelines for Companies Trading in Certain DRC Minerals (2010) ¹
	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) ²
Voluntary due diligence mechanism for Nigerian oil	ICGLR Regional Initiative on Natural Resources (2010) ³
	Conflict Free Smelter Program (2011) ⁴ Forest Stewardship Council Verification (200x)
Call for states to impose due diligence requirements on buyers of Nigerian oil	UN SC Res. 1857, 1952 (regarding DRC conflict minerals)
Require due diligence on Nigerian oil suppliers as a matter of law	Section 1502 of the 2010 U.S. Dodd-Frank Act ⁵

- 1 UN Group of Experts on the DRC, 2009 Final Report, Annex. These guidelines have no direct legal force of their own, though the GoE can recommend UN sanctions for actors not meeting them.
- 2 This document, which applies to OECD member states and non-member adherents, requires impacted companies to exclude from their supply chains any minerals known to benefit armed groups or criminal networks, establish chain of custody or traceability schemes, and conduct due diligence on suppliers. The document does not seem to apply to crude oil.
- 3 Under this initiative, participating states arrange for annual mine visits by an independent third party auditor and award 'ICGLR Certificates' to mineral shipments from mines whose audits raised no red flags. The Kimberley Process for conflict diamonds, which many diamond producing states eventually adopted into law, also includes a 'chain of warranties' system for rough diamond supply chains, but this aspect of the Process has not been well developed. Author interviews, conflict diamond experts, 2012–13.
- 4 This initiative requires processors of some conflict minerals present auditors with chain-of-custody paperwork showing their sources are 'reasonably considered' conflict-free.
- 5 Dodd-Frank Section 1502 requires publicly-traded companies who report to the US SEC and source certain minerals from Africa's Great Lakes region to 1) disclose annually whether minerals used in their products came from the DRC or adjoining country, 2) publish an independently audited 'Conflict Minerals Report' describing their supply chain due diligence efforts, 3) label minerals used 'conflict free' or 'not conflict free'.

140 For more background, see J. van Schaik, *When the Price is Right*, Revenue Watch Institute, 2012; IOSCO; B. Fattouh, *An Anatomy of the Crude Oil Pricing System*, Oxford Institute for Energy Studies, WPM 40, 2011.

A multi-stakeholder supply-chain due diligence scheme for Nigerian crude oil could form part of a larger campaign against oil theft. But such a programme could easily become buried in costly red tape if it was not well thought out, or if other measures did not support it.

Refiner due diligence practices

Refinery due diligence practices vary with size, nationality, capacity budget and location, interviews with traders and refiners found.¹⁴¹ Some larger, vertically integrated companies have big compliance departments that vet supply chains closely. 'Trading with a non-approved seller is a sackable offence. Approvals can take a month,' a buyer at one large US refinery reported. Others – and especially, some smaller refiners in developing nations – have few in-house due diligence functions. How strictly a refinery vets purchases can depend on the company's reputational exposure, management culture, private versus publicly traded status and history with higher-risk deals. On the whole, large US-listed companies may be more risk-averse than their European counterparts.¹⁴²

There are some common steps, especially for approving a new seller. Refiners first look at the seller's track record and political ties. To that end, refinery staff or agents check documents, including the seller's incorporation papers, annual accounts and director list. Online corporate registries such as Dun and Bradstreet or S&P may be used to verify details.¹⁴³ Once the oil has been loaded, the refiner will want to see other paperwork (see Box 6).

Box 6: Documents required with NNPC oil shipments

Bill(s) of lading* +	Master's receipt for oil samples taken*
Certificate of quantity* +	Vessel ullage report* +
Certificate of quality* +	Masters document enclosure*
Certificate of origin* +	Shore tank measurement records +
Terminal time sheet*	Ship measurement records
Terminal cargo manifest* +	

+*Required by NNPC.

+ Required by buyers.

Sources: NNPC term contract General Conditions, Art.5.5; Author interviews with traders and refinery buyers, 2013.

If the seller's paperwork checks out, the refiner may phone references or colleagues to drill down further. For example, a buyer could phone the coordinator of a terminal operator in Nigeria for confirmation that the cargo it wants to buy is in fact on the terminal's monthly loading schedule in the same size as offered.

When vetting new sellers, refiners look foremost for reputational red flags and signs of fraud. The most common worry with Nigerian crude is that the offered shipment is '419', meaning it does not actually exist. The usual signs of 419 include contradictory, error-ridden paperwork; a seller using Gmail, Yahoo or other non-corporate email addresses; too-good-to-be-true discounts; unknown sellers with no obvious political ties; irregular deal terms; and requests for advance payment.

141 This report focuses on refineries as the most common end-buyers of Nigerian crude. It does not consider the due diligence practices of commodities traders, storage-company owners, wholesale purchasers of products refined from Nigerian crude, or other possible buyers. These would be subjects for a larger study.

142 Exxon, Chevron and Conoco see themselves as the strictest: Exxon does not even like to sell oil to refiners on a delivered basis. Author interview, buyer with one US refiner, 2013.

143 Other documents reviewed before the sale is finalized include the cargo allocation notice and confirmation of the seller's vessel nomination from NNPC.

Confirming explicitly that the oil on offer is not stolen may not rank high among a refiner's priorities. Once a seller is approved, buyers at refineries may not inspect each shipment's origins. 'If I am buying a cargo for delivery in two months' time, nothing subsequent makes me demand the buyer show me the oil is legal,' one buyer said. Others agreed that the market for West African crude is something of a 'gentleman's club', where players tend to be on first-name terms and deals get done 'on good faith'.

Refinery due diligence processes show other weaknesses that clever thieves could exploit. Some larger refiners often split parts of the due diligence process between different departments – trading, shipping, refining and insurance, for examples. These departments do not always communicate well with each other. Some smaller shops may outsource due diligence altogether to freight clearance agents in foreign ports, or else leave it to the traders they buy from. Most focus is on the party selling the oil, not other actors in the supply chain. Shipowners, for instance, may be checked only for proper insurance, registration and the seaworthiness of their vessels, not necessarily for any past links to crime. Buyers at some refineries may simply be too busy to vet deals properly. Further muddying the waters, some oil thieves and 419 fraudsters use the same fake paperwork.

On balance, there is good reason to think at least some refineries could buy stolen oil without realizing it. Prosecutors and plaintiffs in the Pemex condensate theft cases (see next section in this chapter) did not think the refineries involved knew the hydrocarbons reaching them were stolen. One can also compare the conflict minerals trade, where buyers violating due diligence requirements regularly purchased minerals without proper certification paperwork or packaging; bought from concessions mined 100 per cent by non-state militias or criminal groups; or did business with middlemen widely known to be supporting violent actors. In the DRC, court cases and reporting by NGOs, the press and the UN already identified many of the most problematic sellers.

How effective would due diligence be?

Thus far no one has tried using a multi-stakeholder due diligence scheme to combat oil theft. To have a shot at success, a new initiative would have to tackle many hard design questions.

Box 7: Ten questions for designing a refinery due diligence scheme

1. What specific procedures would be required?
2. Who would decide what constitutes effective processes, and how? The lack of secretariat or other body to set and verify standards has been a major problem for other supply-chain due diligence and certification schemes.
3. What would a refinery be required to do if it found a seller marketing stolen crude?
4. What would be the penalty for non-compliance?
5. Who would hold refiners accountable for non-compliance? This could especially be an issue if the scheme was voluntary or the refining company was not publicly traded.
6. What paper trail would the scheme generate, and how could the paperwork become evidence for law-enforcement activity?
7. How much of the information gathered would be made public, and in what form?
8. Would a voluntary or mandatory initiative bring better results?
9. Would all refineries be subject to the scheme, or only a smaller subset that buy Nigerian oil?
10. Why would refiners participate if no law forced them to?

How far existing supply-chain schemes for other commodities actually help curb natural resource theft is an open question. Good data on the impacts of existing schemes are scarce – most are new and have not been rigorously studied. Some tout their own effectiveness based solely on how many companies are signing up. Critics suspect many of the schemes amount to little more than industry self-policing, self-promotion and good corporate social responsibility. Companies certified by some programmes were later found trading stolen goods.¹⁴⁴ Certainly there is no solid evidence that due diligence initiatives reduce illicit trade by themselves. At best, they might complement gains made elsewhere.¹⁴⁵

Fear of bad publicity and associated reputational damage could convince some refiners to join, assuming law enforcement around oil theft stayed flat. Individual refiners will be more or less sensitive about how they are perceived in the market. Of course, being caught with stolen oil could be less toxic for a firm's reputation than using 'blood diamonds' or conflict minerals. NGOs have not sensitized ordinary consumers to oil theft. Retail consumers may also be more likely to boycott luxury goods made with illegally sourced timber or minerals than to stop buying gasoline or other refined petroleum products. Given that the petroleum supply chain is especially complex, they would also struggle to know whether the products they purchase at the pump are refined from Nigerian crude, or by a particular suspect refiner.

While a full analysis of potential costs is outside this report's scope, they could be significant. Probing sellers of stolen Nigerian oil could be time-consuming and dangerous. Which party in the supply chain should bear the financial burden is debatable. Should it be the one with the best information? The one best able to bear the costs? The most culpable actor? And what if one of the major traders were found to have marketed stolen crude? A few interviewees argued that a mandatory due diligence scheme for crude could significantly disrupt the global supply chain, at least in the short term, if requirements were too exacting. 'If we drilled down 100 per cent nothing would ever happen,' one trader warned. Opponents of mandatory due diligence schemes for other commodities have argued that they bring unintended consequences.¹⁴⁶ Cost estimates for the existing schemes have been significant but not prohibitive.¹⁴⁷

Litigating against buyers and sellers

Foreign governments could impose criminal and civil penalties on oil thieves, or prosecute them for piracy, pillage and other violations of the law of armed conflict. Nigerians could also try to sue oil thieves in foreign courts for violating Nigerian law. Foreign officials need to follow a list of best practices for prosecuting organized criminals to ensure cases generate more than headlines (see Box 8).

Governments have a range of options for using their own courts to pursue Nigerian oil thieves. These are discussed below.

144 This was a major problem for the FSC and Kimberley Process. Author interviews.

145 The Kimberley Process was complemented by trade and economic sanctions, industry-driven integrity initiatives, parliamentary probes, lawsuits and prosecutions, and NGO and press reporting.

146 Critics of Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act claim, for instance, that the costs and difficulties tracing the origins and integrity of all DRC materials create strong disincentives to sourcing minerals from the that country, and could create a *de facto* trade embargo. Some argue further that the law places US-listed businesses at a competitive disadvantage, and may be placing more Congolese mines in the hands of violent, corrupt militias and rogue security force operators as legitimate companies exit the area. Author interviews.

147 In one survey of the costs of complying with forestry due diligence and certification initiatives, 60 per cent of buyers surveyed reported additional raw materials costs of between one and 10 per cent, while 30 per cent said that they incurred no additional costs. See Chatham House, *Illegal Logging and Related Trade: Indicators of the Global Response*, 2010. The US Securities and Exchange Commission estimated initial and ongoing compliance costs for Section 1502 of the Dodd-Frank Act at \$3–4 billion and \$207–609 million, respectively.

Criminal and civil actions under domestic law

First, countries could use their own criminal and civil laws to target actors who trade in, or otherwise move, stolen Nigerian crude within their borders. In jurisdictions where thieves bypass customs with help from corrupt officials, for example, prosecutors could charge them with failure to pay import duties. Charging conspiracy, aiding and abetting, other related crimes such as forgery could rope in shipping firms, financial management agents and other middlemen.

A series of recent US criminal and cases involving condensate stolen from fields operated by Pemex, Mexico's national oil company, suggests other options. The cases targeted a loose group of US-based importers, fuel traders and refiners who bought and sold tens of millions of dollars' worth of condensate stolen by Mexican drug cartels. Crimes charged included federal mail and wire fraud; transport, transmission and transfer of stolen goods; theft; illegal conversion; and money-laundering.¹⁴⁸

The Pemex cases offer valuable lessons for Nigeria, even though some aspects of them are unique to Mexico. The *modus operandi* and supply chains involved differed somewhat from Nigerian oil theft.¹⁴⁹ Surrounding facts also made proving theft easier.¹⁵⁰ But above all, the cases show the importance of cross-border law-enforcement cooperation. In June 2010, US court filings state, Mexican customs officials informed the US Immigration and Customs Enforcement (ICE) division of the Department of Homeland Security that they had discovered dozens of Mexican companies that appeared to be conspiring with US firms to export stolen petroleum products across the border. Thereafter, US and Mexican police created strong partnerships, and American courts built on prior actions taken on the Mexican side. Mexico filed charges against over 140 individuals involved in theft between 2000 and 2009. Mexican customs agents were jailed for allowing tanker trucks of stolen condensate to pass through checkpoints and into the United States with fraudulent export documents. Dozens of tanker trucks were seized.¹⁵¹ The initial intelligence also came from Mexico.

Lessons from illegal logging

Recent innovations around unlawful timber sales may also contain lessons. The first is in the area of subject-specific regulation. The EU's new Timber Regulations (2013) foresee criminal penalties for companies and individuals importing illegal timber into EU member states. Each state is left to set its own penalties and enforcement levels.¹⁵² Subject-specific legislation is another option. Under the US Lacey Act, for example, US courts can prosecute anyone who imports, transports, sells, receives, acquires or purchases timber in the United States harvested in violation of US or foreign law.¹⁵³

148 The criminal cases are *US v. Donald Schroeder*; *US v. Arnold Maldonado*, *Jonathan Dappen and Stephen Pechenick*; and *US v. Timothy Brink*. The civil matters are *Pemex et al. v. Big Star Gathering et al.*; *Pemex et al. v. BASF Refinery*; *Pemex v. ConocoPhillips*, *Shell Chemical Co.*, *Shell Trading (U.S.) Co.*, *Marathon Petroleum Co. (MPC)*, *Sunoco Partners Marketing & Terminals LP* and *FR Midstream Transport LP*. Defendants in the criminal cases faced up to five years' imprisonment and \$250,000 fines, but were eventually sentenced to short probation terms. The civil cases are ongoing.

149 According to court filings, the drug cartels stole condensate by tapping into PEP's Burgos Field transfer and delivery systems, hijacking at gunpoint Pemex tankers transporting condensate to Pemex's central storage facility near Reynosa, Tamaulipas, or building their own pipelines and tunnels to facilitate theft. Tanker trucks took stolen condensate to areas near the border, where it was transferred into new trucks meeting specifications required to pass Mexican and US customs. Defendants forged export documents misidentifying their cargo as legitimate Pemex exports, and may have misrepresented the condensate as naphtha. Defendants also regularly bribed customs officials. Thereafter, they stored the stolen hydrocarbons in above-ground containers in Texas, and then shipped it, mostly in barges, to end users.

150 For instance, court filings say that while the stolen crude reached US refineries through a series of small-time brokers, Pemex did not sell to small companies or through intermediaries. The only presumptively legal way to purchase Pemex condensate in the United States was by contract with Pemex. Pemex also stopped selling condensate in the United States in 2006.

151 Efforts by the Mexican government, it should be noted, have been far from perfect: to date only around two dozen sentences have been handed down from the more than 2,600 complaints filed. Author interview with Mexican oil theft expert, 2012.

152 Thus far, Germany has opted for fines of €50,000 plus two years in jail, while the United Kingdom set a maximum two-year sentence.

153 As enacted in 1900, the Lacey Act applied only to certain protected species in the United States. But in 2008 Congress broadened its application to address the problem of illegal logging. See US Forest Service, *Briefing: Recent Amendments to the Lacey Act*, 2009.

Recent action against illegal logging also offers examples of improved law-enforcement cooperation. In late February 2013, for instance, an Interpol-led sting arrested 200 traders in 12 Central and South American countries for illegal logging. The operation, which seized a reported \$8 million in timber, had cooperation from all the affected states. Defendants will face trial under the laws of countries where they were arrested.

Piracy prosecutions

Officials could lodge piracy charges against captured members of pirate networks that also stole oil. Given the limited overlaps between oil theft and piracy rings, this could be of questionable value.¹⁵⁴ The legal requirement that a ship must be boarded with force makes piracy charges unavailable for oil theft itself.¹⁵⁵

Prosecutions for pillage

Charging thieves in international or domestic courts with the war crime of pillage (also called plunder or spoliation) might also be possible. Pillage is on the statute books of most international criminal courts and many nations. The practice is also criminalized under Article 4(2)(g) of the Additional Protocols to the Geneva Conventions. To bring proper charges, prosecutors would need to show that the theft took place in an 'armed conflict' zone¹⁵⁶ and had some nexus to the conflict.¹⁵⁷ A handful of twentieth-century pillage cases involved stolen natural resources, though in most of these the alleged theft was only one count on a longer rap sheet.¹⁵⁸ Pillage cases can target both the individuals who physically harvest the stolen resources and others who move them through a supply chain.

Other violations of the law of armed conflict

If oil thieves colluded with Nigerian security forces to commit serious violence against locals in the Niger Delta, they could be guilty of offences under the law of armed conflict – torture, extra-judicial execution or rape, for example. Whether any of these could be proven in the delta is an open question, however. Ability to prosecute is another issue: war crimes are crimes of universal jurisdiction, meaning that in theory any state can try offenders. In practice, however, the law of armed conflict is subject to complex constraints of investigative process, immunity and obligation to prosecute.¹⁵⁹ Universal jurisdiction likewise has many limits and grey areas.¹⁶⁰

Suits for violations of customary international human rights law

Nigerian oil theft could contravene rules and principles of customary international human rights law.

154 See Box 5, above.

155 The competing definitions of piracy put forth by the International Maritime Bureau (IMB) and the UN Convention on the Law of the Sea (UNCLOS) Art. 101 both require boarding by force.

156 To prove nexus, prosecutors in past cases showed that war provided the opportunity for pillage, war created the motivation for pillage, the actors involved had ties to armed groups committing war crimes, and/or pillage helped finance the conflict. For more details, see J. Stewart, *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*, Open Society Justice Initiative, 2010, pp. 32–38.

157 Past cases considered the intensity and duration of violence surrounding the alleged theft, and the presence of military forces. Of possible relevance to the Niger Delta (at least before mid-2009), one leading case stated that 'an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State'. *Tadic' Appeals Chamber Decision on Jurisdiction*. See Stewart, *Corporate War Crimes*.

158 See, for example, the *Pleiger case*, where the US Military Tribunal at Nuremberg convicted Paul Pleiger, manager of Mining and Steel Works East Inc., of pillaging coal from Polish mines during the Second World War. More recently, pillage was charged in the ad hoc tribunal proceedings against Charles Taylor and Jean-Pierre Bemba.

159 For details, see Chatham House, 'Accountability for Violations of the Laws of Armed Conflict: A Duty to Investigate and Prosecute?', meeting summary, 5 July 2012.

160 Whether a state can exercise universal jurisdiction depends in the first instance on analysis of its own domestic enabling legislation for relevant treaties and other international legal instruments. For details, see L. Aritmatsu, *Universal Jurisdiction for International Crimes: Africa's Hope for Justice*, Chatham House Briefing Paper, April 2010.

One could argue, for instance, that theft of oil by criminal groups infringes the right of indigenous Niger Deltans to permanent sovereignty over the natural resources attached to their lands.¹⁶¹

Accessing justice for violations of such rights is hard, however. Existing law probably gives communities no meaningful venue or remedy. A three-part ‘rights-respect-remedies’ framework dominates the fledgling law of corporate liability for human rights abuses. This framework pays lip service to the need for redress, but related court action, diplomacy and scholarship to date have achieved few milestones. Under the 2011 UN Guiding Principles on Business and Human Rights, for example, corporations have a responsibility to respect human rights, and victims should have the right to access remedies for violations. The OECD’s Guidelines for Multinational Enterprises, adopted the same year, contain similar provisions. Neither document is legally binding on companies or individuals, however.

The OECD guidelines do require each member state to set up a National Contact Point (NCP) to hear grievances against a company headquartered in a member state or one of ten non-members adhering to the guidelines. NCPs offer mediation services to reach settlement and issue statements summarizing their findings and recommendations. In June 2013, an NCP panel in the Netherlands issued a statement criticizing Shell for publishing data that exaggerated oil theft’s role as a cause of oil spills in the Niger Delta. The statement was a limited victory for environmental activists in the region, but had no discernible effect on oil theft proper.

Use of foreign courts to enforce Nigerian law

Finally, Nigerians could possibly use foreign courts to enforce relevant provisions of Nigerian law against oil thieves. For example, locals could seek compensation from thieves who spill oil on their lands or in their waters, modelling their actions on recent suits against Shell in Europe and the United States. Such cases would come with high evidentiary barriers, jurisdictional complexities and risks of retribution.¹⁶² Globally, the current trend may also be towards limiting access to foreign courts for such actions.¹⁶³

To get the most out of legal action taken at home, foreign officials would need to follow some best practices for prosecuting organized criminals.¹⁶⁴ If they do not, court cases may make headlines without promoting real change. Even the ultimate impacts of the Pemex cases remain unclear: Mexican government data showed the number of illegal pipeline taps and volumes of condensate stolen both doubled in 2011, after a United States court convicted the first defendants.

161 As expressed in Article 25 of the International Covenant on Economic, Social and Cultural Rights, Article 47 of the International Covenant on Civil and Political Rights, UN General Assembly Resolution 1803 and the African Charter for Human and People’s Rights, among other instruments.

162 See, for example, *Bodo Community v. SPDC of Nigeria Ltd.*, in which Nigerian plaintiffs sued Shell in a UK court for violations of Nigerian oil spill laws. Or see *Oguru v. Shell*, a 2013 Dutch case.

163 Author interviews with expert on war crimes and international human rights law prosecutions, 2013. The US Supreme Court’s 2012 decision in the case of *Kiobel v. Royal Dutch Petroleum* could have a chilling effect on new suits.

164 These are culled from J. Gurule, *Complex Criminal Litigation: Prosecuting Drug Enterprises and Organized Crime*, 2nd edn, 1996; UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*, 2008; UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime*, 2010; H. Abadinsky, *Organized Crime*, 10th edn, 2012; UNODC, *Digest of Organized Crime Cases*, 2012.

Box 8: Best practices for prosecuting oil theft networks

1. *Base all actions on solid intelligence work:* to dismantle a particular oil theft network, officials will need to know its full human and material structure.
2. *Target networks, not 'barons' or 'kingpins':* taking out the suspected head of a criminal group often is not fatal to the group itself. This is especially true for cooperative, relatively non-hierarchical crimes such as Nigerian oil theft.
3. *Go after oil thieves for other related crimes:* these could include racketeering, tax evasion, extortion, bribery, obstruction of justice, perjury, conspiracy or participation in an organized criminal group.
4. *Use special investigative techniques as needed:* examples could include extended surveillance (wiretapping, shadowing, video tracking, satellite imaging), network infiltration, use of safe houses and controlled deliveries of stolen oil.
5. *Provide safe, reliable witness protection:* to get key informants to cooperate, prosecutors might need to relocate witnesses, withhold the identities of affiants and collect testimony through video links or scrambled phone connections.
6. *Cooperate across bureaucracies and borders:* officials may need to make contact early with other agencies and jurisdictions to speed up work and improve results. Inter-agency and intergovernmental working groups, contact groups, task forces, joint law-enforcement centres, and joint investigative teams can facilitate information-sharing and division of duties. Intelligence officers, legal attachés in embassies and liaison offices can serve as contact points and coordinators, as could Interpol or Europol. Some investigations may call for formal mutual legal assistance requests, whether by treaty, bilateral agreement or other instrument (e.g. Article 39 of the Schengen Agreement for EU states). Countries can also use trade agreements to bind themselves to reciprocal investigative duties (e.g. Annex 18.3.4 to the 2006 US-Peruvian trade promotion agreement, concerning illegal timber).
7. *Combine criminal prosecutions with other measures:* court cases will have better chances of dismantling networks and discouraging illegal trade if they are complemented by targeted sanctions, due diligence guidelines or other anti-theft measures.

Following the oil theft money trail

Chasing down the money trail is a key step towards controlling oil theft. Profits drive the business: even assuming high capital costs, operational risks and price discounts, stealing Nigerian oil for export must pay well. Cumulatively, the oil stolen is worth several billion dollars a year in the open market. Lax law enforcement allows proceeds to move freely, both within sub-Saharan Africa and to world financial centres.

Researchers have found strong links between illicit financial flows (IFFs) and the broader African oil business. There also are positive correlations between national oil exports and levels of IFF. Sub-Saharan Africa has the world's highest illicit capital flight measured as a percentage of GDP. The biggest losses probably flow down other drains – corporate tax avoidance in particular. But in Nigeria, oil theft must be a significant part of the total IFF picture.

There are some promising options for following the money.

Money-laundering cases and asset forfeitures

Convicting oil thieves of money-laundering and seizing their assets would be a key step in any cross-border strategy. By pursuing money-launderers, some countries are likely to have already cut the Nigerian IFFs that reach their shores. Many think that less Nigerian loot now goes to the United Kingdom after prosecutors there hunted former Nigerian governors James Ibori, D.S.P. Alamieyeseigha and Joshua Dariye during the 2000s. Anti-corruption police from several countries said they are willing and interested to chase down funds from oil theft, especially if their own banks were implicated.

A single case could send shock waves through the business. To date, not a single oil thief has stood trial outside Nigeria for theft-related financial crimes. ‘People steal our oil because it pays big and nobody gets caught,’ one Nigerian financial crimes investigator opined. ‘Expose one or two of them in court, and you’ll see people fleeing the business quick. Most of them have too much to lose.’¹⁶⁵

Building successful cases of money-laundering and asset forfeiture against oil thieves would not be easy. The trade’s complex, cash-based nature would disguise many movements and keep funds out of the system. The lack of strong, shared financial intelligence raises the costs and risks of early investigative work. Realistically, the first foreign anti-corruption body pursuing oil thieves would have to build their case files and institutional knowledge base mostly alone and from scratch. So long as Nigerian prosecutions for oil theft remain rare, other governments may have to rely on non-conviction-based civil asset forfeiture – a particularly tough area of the law.¹⁶⁶ Repatriating assets to Nigeria could be tricky if officials were tied up in the crime.

Ideally, Nigeria would partner with foreign governments to follow the money. At the very least, initial indications of financial intelligence probably would need to come from inside Nigeria. ‘My office could launch an investigation,’ one European police officer said, ‘but we would need really good evidence, and without help from Nigeria I could not make it an absolute priority.’¹⁶⁷ Nigeria’s anti-money-laundering rules are fairly robust, but bank reporting practices inside the country are mixed.¹⁶⁸ The EFCC has not done much to track funds from oil theft.¹⁶⁹ It is possible that a large, undeclared bank deposit alone could trigger an STR outside Nigeria. But without solid intelligence, bank and government investigators could overlook red flags. Oil thieves also know how to mask such transfers, whether by domiciling payments with intermediaries, layering funds using legitimate businesses in countries or ‘smurfing’ big deposits.¹⁷⁰

These challenges noted, Nigerian paralysis should not excuse foreign governments from acting, especially if their police have solid clues. Oil theft proceeds will continue to move freely

165 Author interview, 2013.

166 Provisions of the UN Convention against Corruption offer a basic framework, but the actual process tends to be much more convoluted. For a detailed discussion of the main challenges, see World Bank, *Barriers to Asset Recovery*, 2011.

167 Author interview, 2013.

168 The Money-laundering (Prohibition) Amendment Act and the Terrorism (Prevention) Amendment Act, both passed in late 2012, together, require bank officials and other relevant actors to report any single transaction, lodgement or funds transfer in excess of N5 million (individual) or N10 million (corporate body) to the NFIU; report on transfers to or from a foreign country of funds or securities exceeding \$10,000 or its equivalent to the CBN, Securities and Exchange Commission (SEC) and the EFCC within seven days; investigate all suspicious transactions and report their findings to the Nigerian Financial Intelligence Unit (NFIU) of the EFCC within seven days; pay significant fines or forfeit banking licences for violations of some rules on preventing money-laundering or on combating the financing of terrorism. Nigeria’s regime is much weaker on ‘know your customer’ rules.

169 Foreign police officers also report that cooperation with the EFCC on sensitive topics has dropped off since former chairman Nuhu Ribadu left. Author interviews, 2010–13.

170 Smurfing, in money-laundering parlance, involves breaking large chunks of criminal proceeds into smaller amounts that can be deposited over time in one or more accounts without tripping bank STR mechanisms.

through the world financial system until some agency takes a first step. It should also be noted that cross-border sharing of financial intelligence does not have to start with a formal mutual legal assistance request to or from the Nigerian attorney general's office. Many governments keep law-enforcement liaison officers in Nigeria, and there are other bureaucratic back channels for sharing evidence.

Bribery prosecutions

Anti-bribery laws could offer another hook for catching oil thieves, though the concept is novel. Nigerian oil sector corruption has figured in many US Foreign Corrupt Practice Act (FCPA) cases. Most defendants were caught paying bribes to win upstream oil contracts.¹⁷¹ Drawing on these examples, US prosecutors could argue that the physical oil a shipping agent, trader or other intermediary moved for an oil theft network constitutes a 'bribe' under the FCPA, assuming one or more politicians were network members. Sharing profits with government officials might also trigger anti-bribery statutes. The idea is attractive, though oil theft might not always meet statutory requirements.¹⁷² States also pass anti-bribery laws mostly to promote efficient markets, not to fight organized crime. As an alternative, countries could use their domestic bribery laws to snare oil thieves who pay corrupt officials at home to access privileged information, bypass checkpoints or otherwise fly under the radar.

Support for transparency initiatives

The global extractive industries governance movement has spawned many pro-transparency mechanisms and lobbies. These include the Extractive Industries Transparency Initiative (EITI), Publish What You Pay (PWYP) and various watchdog NGOs that track oil graft. Could donor support to such groups help combat oil theft?

The value of transparency depends on what information is published, who uses it and how.¹⁷³ Under new EITI rules on oil sales, for instance, governments must disclose the price, volume, grade, and buyer of every oil shipment they sell. While such disclosures will be welcome in Nigeria, industry outsiders likely could not use such data alone to track stolen Nigerian oil. Additional information would be needed – for example, shipment and invoice numbers, loading dates, destinations and vessel names. Most NGOs cannot access or process such sensitive information by themselves, and activists also could choose to avoid the topic for safety reasons. Multi-stakeholder transparency initiatives do not seem very willing to talk about oil theft.¹⁷⁴ Time delay can also be an issue – Nigerian EITI reports come out a year or more after the oil flows they audit have been traded and refined.¹⁷⁵

In theory, greater transparency could help at least some users shrink grey areas in the spot market where stolen crude trades, if married with other initiatives. For instance, if NNPC uploaded a monthly list of all oil cargoes it expected to sell, a refiner carrying out enhanced due diligence could check the list when offered a suspicious cargo. Such openness is far from the industry norm,

171 Five of the 10 highest FCPA settlements to date involved contractors paying bribes to win or retain business in the sub-Saharan African oil and gas sector, above all in Nigeria. The defendants were Panalpina, JGC Corporation, Technip, Snamprogetti Netherlands and Eni, and KBR and Halliburton; total fines paid topped \$1.58 billion. Other corporate defendants in the sector to date have included Shell Nigeria Exploration and Production Company, Transocean, Tidewater Marine International, Noble Corporation, Aibel Group, Willbros Group, Paradigm, Vetco Gray, ABB Vetco Gray, GlobalSantaFe Corporation, Pride International, Bristow Group and Baker Hughes.

172 Under the FCPA, for instance, prosecutors would need to establish that the oil or money involved was shared 'to obtain or retain business'. It is also unclear whether actors could be convicted of bribery under such statutes if they did not possess legal title to the oil or money at the relevant point(s) of transfer.

173 D. O'Sullivan, *What's the Point of Transparency?* Open Society Institute, 2013.

174 The Nigerian Extractive Industries Transparency Initiative (NEITI) expressly excluded oil theft from its latest audit's terms of reference (2009–11), though the final physical audit for the period did include some data provided by NNPC and the operators.

175 Note that national oil company oil sales are exempt from the disclosure requirements of the US Dodd-Frank Act Section 1504.

especially in West Africa. Traders would surely resist, on the grounds that it would undermine their competitive advantages in the market. Confidentiality provisions in NNPC contracts might also block some disclosures. Some errors would be inevitable: a static, monthly list would not capture all legitimate parcels in the market at a given time, and NNPC might also have trouble accessing timely information from all operators.

Opening up government oil sales could bring other rewards.¹⁷⁶ Overall, though, natural resource transparency campaigns are small, blunt tools for battling oil theft. Moving from transparency to accountability has also been difficult in the oil sector generally.¹⁷⁷ New regulations in the financial system – forcing disclosure of beneficial ownership, limits on registering shell companies and the use of bearer shares – could have more value if they were used to bring light to the darkened corners where oil thieves stash their money.

176 A. Gillies, *The Case for Transparency in NOC Oil Sales*, Revenue Watch Institute, 2012.

177 I. Kolstad and A. Wiig, 'Is Transparency the Key to Reducing Corruption in Resource Rich Countries?', in A. Wiig; L. Tøndel and V. Pinto de Andrade (eds), *Compendium of Natural Resource Management* (Bergen: Chr. Michelsens Institute, 2010); A. Heuty and A. Gillies, 'Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource Rich Countries', *Yale Journal of International Affairs* 6(2): 25–42, 2011.

5 Conclusion

The vast majority of the global oil industry works within the bounds of existing law. Seen from a broader perspective, Nigerian oil theft can look like a small, ugly anomaly, and in many ways it is. Foreign governments may prefer to do nothing, concluding that phantom shipments of stolen Nigerian oil are not their problem. Officials could then go on expressing modest concern from time to time without recognizing a new diplomatic and law-enforcement problem to worry over.

But a lack of action will come at a cost to Nigerians, and ultimately to some of Nigeria's foreign partners. Stolen oil from Nigeria is washing up in the legal system and blurring the lines between licit and illicit business. Unless industry stakeholders and officials in their home governments see a need to take some action on the problem, it is likely to get worse. This, in turn, will increase the risks of doing some forms of business in Nigeria.

Ultimately, without better knowledge of how the stolen oil trade works, not every government can ignore it with confidence. Foreign officials need to know more about how Nigerian oil theft affects security and the integrity of financial markets and the legitimate oil business. At the same time, Nigeria must take the lead in combating oil theft from within its own borders.

The four-point framework offered in this report provides an opportunity for engaged states to take first steps against Nigerian oil theft, through intelligence-gathering and analysis; Nigerian efforts to build international confidence; international efforts to clean up aspects of the trade taking place outside Nigeria; and a Nigerian government multi-point, multi-partner strategy for addressing oil theft.

There are no easy fixes for Nigeria's crude oil theft problem. The analysis in this report has tried to give some sense of the business's risks, complexities and entanglements. In future intelligence-gathering and strategic planning work, governments should also explore whether addressing oil theft could also have knock-on benefits for the ongoing fights against political corruption and other forms of transnational organized crime. This report is offered in the hope that it will inform more nuanced views of the problem, and act as a spur to some meaningful action.

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Chatham House, 10 St James's Square, London SW1Y 4LE
T: +44 (0)20 7957 5700 E: contact@chathamhouse.org
F: +44 (0)20 7957 5710 www.chathamhouse.org
Charity Registration Number: 208223