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Demystifying the advance-fee fraud criminal network

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Introduction

Nigeria, a West African state, is famous for its oil wealth. However, this oil wealth has contributed to the country's infamous and notorious reputation, with anecdotal evidence suggesting that as a result of oil wealth mismanagement, corruption became entrenched in the Nigerian psyche. Consequently the Nigerian state has abdicated its duties, leaving its people to fend for themselves. Such abdication of state functions could have been one of the factors that gave rise to individual criminality in Nigeria. As a result of the collusion of the political elite with foreign companies and individuals to divert the nation's oil wealth to foreign banks, the genre of crime infamously named '419' developed and has become widespread.

Keywords Nigeria, advance-fee fraud, organised crime

This type of crime originally existed on the local and domestic scene and was known as ‘obtaining by tricks’. It later became internationalised because the perpetrators targeted foreigners, and is generally known as ‘advance-fee fraud’ (AFF). The ‘419’ designation refers to a section of the Nigerian Criminal Code that criminalises the act of obtaining something under false pretences.¹

While different studies have suggested that the AFF perpetrated by Nigerians constitutes an organised crime network,² empirical evidence seems to suggest otherwise. What does seem to exist are a number of loose criminal networks that come together when the need arises to execute a particular ‘job’. This article attempts to interrogate the organised nature (or lack thereof) of such criminal networks and to propose ways in which the international community could tackle this crime that has forced its presence onto the international crime scene.

Tracing the origin of advance-fee fraud

AFF in its present form is generally associated with Nigeria, particularly from the late 1970s. However, this does not mean that AFF is indigenous to Nigeria, as this genre of crime has been in existence since the 16th century.³ In what was originally known as the ‘Spanish prisoner scheme’, wealthy merchants were contacted by scammers to assist in smuggling the child of an imprisoned family member out of Spain. Later, for instance, in the 1840s, in Sydney, Australia, a Mr Monies was tricked by one Mick Bell in Sydney, Australia, into providing him with funds to finance the smuggling of £20 000 worth of goods out of the country. On discovering that the scheme was fraudulent, Mr Monies reported the matter to the police, after which Mr Bell was arrested, prosecuted and sentenced to two months’ imprisonment.⁴

The current manifestation of the crime has its roots in Nigeria in the late 1970s and early 1980s as a locally based crime. While the oil revenue of the 1960s and 1970s led to the influx of petro-dollars into the country, it also created a massive opportunity for the country’s elite to loot the economy. In most cases, they acted in collusion with foreign businesses. This would later come to haunt the international community, as anecdotal evidence supports the view that the first set of Nigerians that sent out what is today known as AFF letters were mainly dismissed civil servants who worked either at the Central Bank of Nigeria or the Nigerian National Petroleum Corporation.⁵ Evidence suggests that because they were privy to situations where their bosses in the past had siphoned off Nigeria’s wealth with the assistance of foreigners, they used the same scheme, albeit with the intention of defrauding their ‘business partners’. They reasoned that since such people were aware that Nigeria’s wealth was being siphoned off, they would jump at the opportunity to make more money, and they were right.⁶ Most of their initial contacts were fruitful. In fact, there is a popular anecdote amongst AFF scammers

that in the early days of Nigerian AFF, when they send out ten letters 'requesting assistance' for transferring funds abroad, they would receive 12 responses signifying interest.⁷ However, with the decline in world oil prices in the 1980s and the practices of corrupt Nigerian elite, the populace faced hard times and in order to cushion the effect, some resorted to fraudulent schemes.

The end of Nigeria's civil war was possibly another factor that gave rise to the crime. It is argued that as a result of the hardship experienced by Nigerians during the war in which about 3,1 million Igbo died, they resorted to a non-violent way of survival. Still others have pointed to what they regard as the innate nature of man to take advantage of others in any business dealings.⁸ The citizens' use of violence and deception for economic gain has also been linked to the weakening of the state.⁹ The devaluation of the naira, the local currency, in the 1980s could be regarded as one of the factors that led to internationalisation of the crime. Before the devaluation the naira was stronger than the US dollar and most fraudsters were content with making money locally, but devaluation had the added benefit that a few dollars could be exchanged for a large number of naira.

The earliest Nigerian form of the crime was 'contact non-violent crime' where the perpetrator meets with the potential victim and tells him or her either a hard-luck story that will elicit sympathy, or a story setting out a business opportunity. Once the potential victim shows interest in either assisting the person, or investing in the said 'business', the scammer reverts to his original plan – to obtain money under false pretences. This is done through tricks, the most popular being the 'doubling' or 'washing' of money.

In the 'doubling' of money, the scammer convinces the victim that naira notes of whatever denomination can be doubled by an act of 'magic'. He demonstrates the 'authenticity' of the scheme by encouraging the victim to give the scammer the smallest denomination he has. Through the chanting of 'incantations' the money presented gets 'doubled'. For instance, where a potential victim presents 100 naira, the scammer 'doubles' it to 200 naira. In order to convince the victim of the authenticity of the doubled currency, he is given the 200 naira to spend.

Convinced that the doubling is genuine, the victim wants the scammer to 'double' more money. In most cases the 'reluctant' scammer only agrees after some persuasion by the victim. If the victim is unable to obtain cash, he is encouraged to bring valuable goods, especially jewellery. On the appointed day and time the victim is taken to an out of the way location, generally a stream and river that is associated with a local god or is used by one of the prayer churches along the shoreline. The victim is instructed to place the cash and other items on an altar-like podium. The scammer in a show of ritualistic reverence puts the items and cash in a box and while chanting his incantation, switches the box with an identical one which was hidden from view. He hands the false box to the victim with strict instructions on when and how to open the box (such as after three days of

fasting or at the stroke of midnight). The scammers might also instruct the victim not to speak to anyone for the certain number of days or to abstain from all forms of sexual activity before opening the box. When the box is eventually opened it is of course filled with paper or stones. The ritualistic actions associated with this trick have led many to think that it has an occult nature, but this notion was dismissed by one of the scammers interviewed as ‘merely a psychological gimmick’.¹⁰

In the ‘washing’ of money, the scammer convinces the victim that he has a box-load of currency defaced by black ink. He then demonstrates ‘washing’ a small amount to the victim, only to discover that the cleaning ‘chemical’ is either finished or has congealed in the container. The victim is encouraged to spend the money and the scammers extract an oath of secrecy from the victim not to reveal the transaction. They then ask the victim for money to buy more chemicals, and in order to further secure the victim’s trust, he is given the box-load of ‘currency’ to keep until they are able to buy more chemicals to wash the rest of the currency. After the scammers disappear with his cash, the victim eventually opens the box, which will again be full of old newspapers or other paper cut to note size. In reality, of course, the only real currency that was ever in the box was that used to lure the victim. It is unlikely that the victim will be able to locate or trace the perpetrators, as they would have moved to another location. Even if the victim is able to trace the scammers and does report the scam to the police, the police are more often than not unable to prosecute them, either as a result of lack of evidence or because of police connivance with the scammers.

It is this brand of ‘wash wash’ that was transformed into the international form of the crime where potential victims are presented with a ‘trunk load of currency’ waiting to be transferred to the victim’s foreign account.

In the letter-writing form of the crime, the target shifted from the local Nigerian community to international fora. Initially, most of the letters were purported to have originated from the Central Bank of Nigeria, Nigerian National Petroleum Corporation, Ministry of Finance, and other such official-sounding places. Most of the letters had one thing in common – the over-invoicing of government contracts – and the potential victim was invited to present himself as a legitimate foreign contractor who had completed a contract for the Nigerian government and is now seeking payment.

It is important to note that the early scammers actually used state or quasi-state facilities to execute their scams. For instance, some victims arriving in Nigeria to ‘sign off’ their ‘payments’ were escorted from the airport by armed ‘government’ security operatives to meetings at the Central Bank of Nigeria where official-looking papers were presented for signature. It must be pointed out, however, that it is possible that such offices designated as the Central Bank of Nigeria were never the real offices of the nation’s apex bank, but makeshift arrangements presented as the bank.

Contextualising the advanced-fee fraud

The above is not the only variant of advance-fee fraud. There are other variants of fraud that seek to prey on the greed of people or their gullibility. These include Internet auction fraud, dubious lotteries, and clairvoyant scams that are offered daily via the Internet.¹¹ Yet others include Feymen confidence tricksters (mainly from Cameroon although the system is spreading to other African and non-African states, including Saudi Arabia, Yemen and Indonesia) and Bindo tricksters (derived from the name of the ‘conjuror’ Bindo Bolembé whose scheme was in vogue in the Democratic Republic of Congo in the early 1990s).¹² Because of the global nature and the media hype surrounding 419 letters, any fraudulent venture has been tagged ‘419’ in Nigeria and elsewhere.

While the initial wording of such scam letters were premised on business deals, later variations were based on situations resulting from conflicts. A third variation of such letters purported to emanate from banks and was premised on the greed and callousness of potential victims, since they are normally recruited to play a part in defrauding the ‘estate of a deceased’. For instance, a letter received by this author when he was researching the article purported to originate from the African Development Bank in Burkina Faso. It stated that the sum of US\$17.5 million was lying in an unclaimed account of the bank and all efforts to trace the relatives of the deceased owner had proved futile. The author was invited to present himself as a relative of the deceased to claim the funds. The illicit nature of the acquisition acts as bait to entice the potential victim.¹³

The early letters, which were based on an inflated contract sum waiting to be claimed from the government treasury, reflected the corrupt nature of the Nigerian state. However, with post-Cold War conflicts springing up in Africa, the scammers – who seem to be very knowledgeable about world affairs – switched their story from mainly Nigerian situations to African conflict issues. In this version letters were ‘signed’ by for example Major Johnny Paul Koromah (the notorious leader of the Armed Forces Revolutionary Council of Sierra Leone), Foday Sankoh, and even Chucky Taylor (the warlords that reigned in Sierra Leone and Liberia during their wars). Yet others were ‘signed’ by Joseph Kabila, Mobutu Sese Seko, and Jonas Savimbi – all associated with conflicts in Africa. Some letters were ‘authored’ by the relatives of ‘white Zimbabwean farmers’ who had either managed to escape the violence unleashed by the Robert Mugabe regime, or were trapped in Zimbabwe but had knowledge of the existence of a ‘trunk load of currency’ deposited by their parents at a security company in for example South Africa or elsewhere.

Once the recipient of the scam letter shows interest and contacts the scammer, the scammer generally requests personal or company details, including banking details. If provided, the scammer produces fake documents supposedly issued by the government authorities or a security company. Some researchers believe that the banking details of such victims are used to access the money in their accounts.¹⁴ However, it is more likely

that the scammer's aim is to give the transaction the flavour of a genuine business deal. Possibly the scammer will try to use the victim's banking details if he does not succeed in convincing the victim to transfer funds to him, but this would entail a higher level of expertise and organisation than the AFF perpetrators generally possess.¹⁵ While this type of crime might require a better organisation, it does not necessarily mean that it will qualify as organised crime as it might be a once-off event amongst the group.

Once details have been provided, the next step is to convince the victim through a series of telephone, fax and e-mail communications to pay an advance fee to the scammer in order to settle a myriad of 'unforeseen' problems. This is determined by the storyline used by the scammer and could entail payment of a government-imposed tax on the funds before it can be transferred, to secure the services of an attorney, or to bribe a corrupt government official to release the funds.¹⁶ In some situations, the victim is convinced to meet with the scammer, especially where the scam involves a trunk or box of money. Here money is again elicited to 'wash' or 'clean' the money in order to get the victim to commit more funds for the purchase of the 'chemical'. The scammer will come up with a whole series of different excuses to explain why the victim needs to pay more money, until the victim either becomes suspicious or simply gets tired of committing still more funds.

With the transformation of the communications industry, the AFF scheme also transformed. While the scammers originally posted or faxed letters to foreign destinations, the Internet made it possible to reach a greater number of potential victims more easily and more cheaply. The Internet to a large extent led to the proliferation of the crime. Before Internet access a novice in the crime network would require the sponsorship of a 'boss' to post or fax letters, but the novice could now pay for Internet access at one of the many Internet cafés allowing him to operate on his own.

The revolution the Internet brought about in AFF can be better understood when one reflects that there are Internet cafés that offer overnight browsing facilities in most cities where AFF letters are said to originate. Anecdotal evidence suggests that such facilities allow the scammers to send out e-mail propositions throughout the night without being disturbed.¹⁷ The extent of the new wave of communication on AFF is aptly captured by Findlay, who states that it has led to the 'transformation of crime beyond people, places and even identifiable victims'.¹⁸ The added advantage of the technological explosion is that it makes it extremely difficult to trace the perpetrators, for individual criminals who are targeted by law enforcement agencies can simply wind up the scam network and acquire new identities.¹⁹

Another 'advantage' of the Internet is that it enables AFF scammers to communicate with a wide range of people through online software, such as d-mailer, advanced mail sender, extreme extractor, and e-mail address finder. These enable the scammer to send

out over a million letters at the touch of the button without being physically present, as the software harvests e-mail addresses and sends out the scam letters to them.²⁰ A further implication of the Internet is that while the scam letters were originally sent mainly from Nigeria, they now originate – or at least bear an address from – Burkina Faso, Togo, Ghana, Cameroon, Liberia, Côte d'Ivoire, Sierra Leone, the Democratic Republic of Congo, Kenya, Zimbabwe, South Africa, the United States of America, Canada, the United Kingdom, the Netherlands, Japan, China or Hong Kong. This wide geographical spread indicates that the crime has assumed a serious transnational dimension and needs to be addressed as such.

The international spread of this crime presents us with two assumptions. One is that as a result of Nigerians' penchant for foreign travel they carry on with the crime in whatever country they reside in. Second, other nationalities may have tapped into the transnational nature of the crime to defraud others.

Evidence suggests that the two propositions above account for the transnational proliferation of the scam. For instance in 2000, the Southern District of Texas successfully prosecuted a number of Nigerians for AFF²¹ whereas an Australian victim of AFF allegedly defrauded Australian investors of \$700 000 using the same technique that was used to defraud him.²² There is also evidence that a large number of AFF scammers moved to South Africa where they continued their fraudulent activities.²³ It has been suggested that criminals are attracted to South Africa because it has a first-class infrastructure and an apparently weak policing system that was originally focused on fighting communism and the emergence of blacks on the political scene.²⁴ However, there is no indication that these scammers are all of Nigerian origin.

Despite the network of criminal gangs engaged in AFF, there is no indication that it is organised and structured under any type of hierarchy. Most of the time individual criminals could operate alone and without cooperating with each other. This is always the case where a particular scammer has perfected the art to the extent that he can assume multiple personalities. He could then start and execute his scam all by himself, especially where there is no need for physical contact between himself and the victim.

There is a definite link between AFF and other crimes, especially drug smuggling, and recently also stolen cheques. During the course of this research the author found that there was occasionally a 'cross-over' between the two types of crime, especially from the drug-dealing world to the world of AFF, as the drug 'route' tightens. Since one does not require any expertise to start the scam, a drug dealer would have little difficulty to start using it himself. If the process becomes complicated, he could turn it over to an 'expert' but still retain a percentage share of the proceeds. Another link is to drug criminals, as especially one of the 'bosses' could sponsor the scam, from sending the letters to the final steps. It was not clear whether the reverse was true and if AFF perpetrators cross

to drug smuggling. However, this does not entirely rule out the possibility that it might happen, especially since the proliferation of the AFF scam letters and because people's awareness of the scam have reduced considerably the number of victims. Research further revealed that there are 'feeder' crimes that are linked to AFF. These include currency counterfeiters who sometimes work with the scammers by providing the fake currency used in the 'washing' scheme. Illegal telephone operators have also been known to work with the scammers.

Some of the perpetrators see the AFF as a way of acquiring start-up capital for a legitimate business, but others see it as a business on its own. It is likely that this second category of scammers would gravitate from AFF to other crimes in order to maintain their lifestyle. It is equally likely that this group will stop at nothing to get their potential victims to provide them with funds, and once they realise that AFF is no longer lucrative, they may diversify into other criminal activities.

The AFF scam is no longer geographically restricted to Nigeria, and neither are the perpetrators and victims. It could therefore be argued that the stereotyping of the crimes as Nigeria AFF denudes the crime of its international dimension. Therefore, to better understand AFF, the crime 'must be located within the framework of this transnational ... crime rather than being treated in isolation'.²⁵

Legal responses to advance-fee fraud

Despite the world focus on organised crime, there are still debates about its parameters, which are fuelled in part by the preoccupation of Americans and others with the Mafia and other organised crime groups.²⁶ The difficulty in defining organised crime led Robert G Blakey to conclude that 'it is probably best to avoid trying to use "organized crime" as a legal concept'.²⁷ The terminology is often loosely used as a 'catchphrase to express the growing anxieties of national and supranational public institutions and private citizens in view of the expansion of domestic and world illegal markets, [and] the increasing mobility of criminal actors across national borders'.²⁸ Peter Reuter defines organised crime as consisting of 'organizations that have durability, hierarchy, and involvement in a multiplicity of criminal activities'.²⁹ It is defined in the Federal US law, the Omnibus Crime Control and Safe Streets Act of 1968, as 'the unlawful activities of members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labour racketeering, and other unlawful activities of members of such association'.³⁰ The South African Police Service has adopted the definition of organised crime of the International Police Organisation's Organised Crime Unit, namely '[a]ny group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption'.³¹

In contrast, the United Nations Convention against Transnational Organized Crime did not attempt to define the term 'organised crime', but rather defined an 'organised criminal group' as 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'. It further defines a 'structured group' as 'a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of membership or a developed structure'.³² While the definitions differ with regard to the technical aspects of what constitutes organised crime, one common denominator is the structured nature of such organisations.

From the discussion on the modus operandi of the AFF scam network, it is clear that it is not 'a structured group' since it generally requires only a single individual to operate the scam. Even where a group is formed, it is mostly a temporary arrangement for the execution of a particular job and hence does not qualify as a 'structured group' as defined. Therefore AFF does not qualify as organised crime. With regard to organised crime it should further be borne in mind that the term does not by itself refer to a particular subset of crime, but to any type of crime that is being carried out by a highly organised group.³³

The transnational dimension of AFF has resulted in suggestions that there should be a targeted international prosecution of the crime. However, this presents some challenges, including the question of cost and delay in such cases.³⁴ Furthermore, it may not be easy to extradite the suspects, because not all states have extradition treaties. The other legal challenge, arising from the method of sending letters via the Internet, is to determine where the fraud occurred. This is compounded by the fact that these messages may be sent via anonymous re-mailing services which would not only make the origin of the letters difficult to trace but also the person who sent them.³⁵

As was argued earlier, it would be a mistake to treat this crime as organised crime, first because of the non-structured nature of the criminal network and second because the 'network' is fluid and not confined to one place. This does not mean that states should not address the transnational nature of the crimes: they should make collaborative arrangements to track down and prosecute the perpetrators. However, it will not be sufficient to focus only on the Nigerian criminal network.

The use of local legislation to prosecute the crime seems to be the most effective route for the present. In Australia, for instance, the court can prosecute the perpetrator of an AFF scam in which an Australian is the victim, even where the offenders are located abroad.³⁶ In Nigeria, chapter 77 of the Criminal Code Act of 1990 provides in section 419 that '[a]ny person who by any false pretence, and with intent to defraud, obtains

from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of felony, and is liable to imprisonment for three years'.³⁷

With the advent of Internet scams and the proliferation of AFF in Nigeria, the government enacted the Advance Fee Fraud and Other Related Offences Act,³⁸ because the government felt that the Criminal Code Act could not adequately deal with the Internet scams. Nigeria also wanted to show that it was serious about curbing the crime.³⁹ The new law widened the scope of the AFF as originally defined under section 419 to include an invitation of foreigners for the purpose of committing an offence.⁴⁰ It is noteworthy that section 5(1) of the AFF Act also makes it an offence to send a letter that conveys a false pretence.⁴¹ Despite these laws, the crime has continued to proliferate in Nigeria and, in response to international pressure, Nigeria renewed its resolve to tackle the crime by enacting the Economic and Financial Crimes Commission Act in 2004. While the Act does not expressly bring the AFF under its jurisdiction, sections 6(b) and 7(2) empower the commission to investigate and prosecute AFF-related offences.⁴²

The corrupt nature and inefficiency of the Nigerian judiciary has been singled out as key challenges to the successful prosecution of the AFF fraudsters in Nigeria.⁴³ The weakness of the state structure in Nigeria, especially during the military era, has often been cited as a reason why Nigeria could not effectively implement the laws to curb the activities of AFF scammers in its territory, despite a vast array of regulatory frameworks. This has led to the suggestion that the scammers were enjoying the protection of the government of the day.⁴⁴ Some of the AFF scammers argue that the scam is an indirect, albeit illegal, way in which Africans can recover the continent's wealth that was looted by the West during the colonial era.⁴⁵ While this argument is shallow, it does provide a psychological insight into the reason why the security apparatus in Nigeria did not vigorously implement the law when AFF made its debut on the international scene.

However, one would expect countries where the state structures are strong to be able to implement the laws for effective prosecution of AFF. This implies that states need to criminalise AFF in general, and not only Nigerian AFF, as it is no longer a localised Nigerian crime. The overemphasis on its Nigerian origins will defeat the overall essence of the legal action, as the law enforcement agents would channel their energy towards tracking down Nigerian scammers while other nationalities perpetrating the same crime would fall through the cracks.

Although the legal route is regarded as effective in tracking down and punishing the perpetrators, efforts at prevention must be stepped up, too, particularly with regard to public enlightenment.⁴⁶ In this regard the Nigerian Embassy in the US posted a bold warning from the Central Bank of Nigeria about the AFF scam on its website.⁴⁷ The Embassy, together with the Business Council for Development in Nigeria, further

convened an international conference on advance-fee fraud and related offences in New York on 24 September 2002.⁴⁸ The governments of most countries also warn their citizens of the dangers of AFF, especially with regard to engaging in business proposals from Nigeria. This warning should extend to engaging in any business that promises the payment of a percentage of the proceeds for an illegal activity originating in any part of the world.

Conclusion

While research indicates that the AFF-type of crime originated in Nigeria, fraudulent scams had existed long before the debut of the so-called Nigerian 419 scheme. In order to tackle AFF and its spinoffs, attention should focus on all the different countries and regions where such criminal networks operate. Instead of focusing on the so-called organised nature of AFF, it would be more helpful to focus on the connectivity of crimes. This means that crimes that ordinarily would have been treated as single unrelated events would provide a better understanding of their organised nature if their connection to other types of crimes are uncovered and investigated.⁴⁹ Such connectivity would help to define whether organised crime is involved.

Notwithstanding the non-organised nature of AFF crimes, countries need to coordinate their efforts to track down these fraudsters, since globalisation has made it possible for scammers to move from one location to another with ease. Major target and 'host' states need to form partnerships for discouraging potential victims of the crime from responding to such fraudulent propositions. Furthermore, Internet service providers should filter unsolicited mail messages, especially those originating from bulk mail services. This should of course be undertaken in such a way as not to disadvantage legitimate bulk mail messages and services. In the final analysis, it is incumbent on states to enact laws that would address the incidence of AFF within their individual jurisdictions.

Notes

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