

ADVANCE FEE FRAUD

by

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I declare that **ADVANCE FEE FRAUD** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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Signature

DY TANFA

.....

Date

DEDICATED TO:
MY FAMILY

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“If something is good, do it even if it means taking a little bit of risk, for that’s what makes a man”.

SUMMARY

The focus of this thesis is on Advance Fee Fraud (419 scams) on how it is executed and more importantly, on how it can be prevented. The research addresses the origins of AFF, the nature and extent of this crime and how the perpetrators are able to defraud their victims. The research described, examined and analysed the crimes, the perpetrators, the victims, adjudication and the prevention strategies of this fraud. Information was gathered through literature and empirical research. A qualitative research method was used to gather information from AFF offenders who were incarcerated in South African prisons in 2005. The results of the empirical research were carefully examined, analyzed and integrated into the various chapters of this thesis. A theoretical framework was also developed in an attempt to explain this complex phenomenon. The findings and recommendations in terms of the crimes, the criminals, the victims, adjudication and prevention were also made and some suggestions for further research thereof were also cited.

KEY WORDS:

Advance Fee Fraud, perpetrators, victims, adjudication, prevention, Nigeria, West Africa, South Africa, United States, Corruption, *modus operandi*, extortion, money laundering, forgery, Internet scams, plea bargain, police investigation, sentence, punishment, criminals, victimisation, email, 419 scam, black currency, statement of victims, statement of perpetrators, banks accounts, organised crime.

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CHAPTER ONE

INTRODUCTION AND METHODOLOGY

1.1 ORIENTATION

Crime is a dynamic social phenomenon, which, to a certain extent, is the barometer of the well-being of society. Social, economic and political issues are interwoven, and collectively they sustain dynamics, which have a constant impact on safety and security, especially in developing countries. In countries most affected by fraud, the destabilizing impact on society constitutes a real threat to their security and sovereignty. The loss of superpower benefactors, unstable commodity prices and rising domestic and foreign debt make hard currency and profits connected with organized crime almost irresistible, especially in marginalised African countries (Snyman 2001:61).

The increased ability of criminal organisations to operate internationally is a potential danger for social and economic order in every country. The huge potential profits to be gained from such organised crime encourage criminals, who are already involved in the more less serious crimes, to extend their activities to organised crimes such as fraud, corruption, bribery, forgery, misrepresentation and money laundering on a national and international scale.

In terms of how much hard cash is involved, men armed with guns, or those equipped with pry bars to open doors and windows, do collectively less harm to a country's economy than smooth talkers (found among both sexes) who manipulate companies' books, offer unfounded securities, commit forgery, organize credit cards schemes, take bribes here and there, or induce the unfortunate and helpless to forego proper medical aid for quackery, as well as attempt other cute tricks to separate the unsuspecting and trusting citizens from their property. Armed robbers or those who

break and enter doors and windows, do collectively less harm to a country's economy than those who are able to manipulate others by their persuasive powers, manipulate financial statements of companies, offer unfounded securities, commit forgery, organise credit card schemes, accept bribes or persuade the helpless and unfortunate to forego proper medical aid for quackery. The total losses experienced each year due to fraud operations are virtually impossible to calculate accurately. This type of crime, from a policing perspective, is detectable rather than preventable, even a large increase in the number of patrols, or a separate detective division would have negligible effect (Glick, Newson & Graves 1974:4).

Contrary to popular belief, fraud occurs in companies, which are effectively managed. No-one can guarantee that fraud will not take place in the operation under his or her control. In fact, it would be untenable to maintain a control system that eliminated all risks, and even if it were possible, the resulting lack of trust and bureaucracy would make life intolerable. Trust and effective management are symbiotic, and fraud is the result when the former is abused. The best and most hard-working employees are often the easiest to deceive. These employees are often so focused on their primary work responsibilities that they do not have time to pay attention to details that appear unimportant, until it is too late. It is easy to be wise after the event, and fraud is always concealed in the detail (Comer 2003:4).

Fraud is a form of deceitfulness that involves theft of money by means of criminal deception, the use of false representation, dishonest artifice or trick to benefit thieving. It involves one or more parties taking money from others, without their knowledge (Lampe 1992:189). Complex fraud is merely artful and it is difficult to trace this form of activity, which usually involves a number of companies, the activities of companies' directors, large amounts of money or assets being shifted - sometimes offshore - and sometimes into other corporate entities, or luxury cars or homes, antiques, yachts etc. In essence, funds are taken out of the company or government structures where they ought to be and put into someone's pocket or corporate

structure or trust or Swiss Bank account, where they ought not to be. It may also involve transfers of funds from investors' accounts to the account of the perpetrator. Often the money chain is difficult to trace, as it moves around the world (The 419 Coalition 2003).

This type of fraudulent activity occurs very often, far more than the conventional fraud perpetrated against companies and governments. In recent times, one particular type of fraud has surfaced internationally; Advance Fee Fraud (AFF) that is also known as the 419 scam.

“West African fraud” is the term used by Interpol to describe the 419 type of frauds. This is largely due to the geographical location where such scams originate, as well as the nationality of many of the perpetrators who engage in such fraudulent activities (Nedbank ISS 1999). This type of fraud has become a major business and has, accordingly, generated very large profits for those who are successful at it. Despite the corresponding losses suffered by individuals, businesses and banks, it remains a little understood type of fraud, within the academic arena, law enforcement agencies and business community in general.

According to the 419 Coalition Website, the 419 scams have operated since the early 1980's under successive Governments of Nigeria. This crime is known as 419, named after section 419 of the Nigerian Criminal Code (Cap. 777 of 1990) that prohibits Advance Fee Fraud.

The gist of Advance Fee Fraud is to trick prospective victims into parting with funds by persuading them that they will receive a substantial benefit, in return for providing some modest payment in advance (Smith, Holmes & Kaufmann 1999:1). Smith *et al.* (1999:2) maintains that the characteristics of this type of fraud usually entails that the services of the prospective victim is enlisted to assist in an activity of questionable legality, thus providing some assurance that the victim, once defrauded, would be

unlikely to report the matter to the police. Victims would, quite rightly, be apprehensive and believe that they had aided and abetted some form of criminal activity and would also be reluctant to make public their gullibility. The perpetrator is thus able to replicate the scam, sometimes engaging the same victims, whilst the police are faced with the difficulties of finding witnesses and securing evidence.

During the past couple of decades, one particular endemic form of Advance Fee Fraud involved a group of expatriate Nigerians who are believed to operate from cells in the United States, Britain, Canada, Hong Kong, Japan, South Africa and other African countries, with the assistance of confederates within West Africa. This fraud is termed "Nigerian Advance Fee Fraud" (AFF) because it originated in Nigeria. However the term is not particularly accurate and the problem is now truly one of international dimensions, with victims and perpetrators located across the globe (Smith *et al.* 1999:2).

Unlike most other transnational problems, such as AIDS and population growth, transnational organised crime involves malevolence (Snyman 2001:62). The threat that AFF poses to national and international security, although subtle and indirect, is not easy to measure. Criminal organisations conduct their activities in what, for them, is in effect a borderless world, while law enforcement is significantly constrained since they have to operate in what is still very much a bordered world. According to Snyman (2001:62) the characterisation of a transnational criminal organisation as a security threat acknowledges both their growing importance and progression beyond a simple domestic law and order issue.

South Africa has no pre-1994 records of transnational crime, as the latter is not ideological: it is money-oriented, and has nothing to do with left or right wing politics (Snyman 2001:62). This is a greed-based criminal enterprise that decided to take on lawful institutions and civilised society. Advanced Fee Fraud is a form of organised crime that has developed to such an extent that it can be understood as a new form

of geo-politics, with its own character and logic, its own structures and support systems. There are no quick fixes or soft options when combating this form of transnational organised crime. This crime has a negative impact on the community structure, especially with regard to criminality and the need for stricter border control measures, which affects the freedom of movement of both trade and the individual. This must, however, be seen against the backdrop of the existing lack of control at several airports in South Africa and neighbouring countries. The influx of immigrants into South Africa is expected to increase even further, compounding most current socio-economic problems, especially this type of crime.

The next section focuses on the aim of this study, and methods that were employed in the execution of this research.

1.2 THE AIMS AND METHODS OF STUDY

1.2.1 Aims of study

The main aims of this thesis are to do a descriptive analysis of the phenomenon of Advance Fee Fraud and to explain this crime. This thesis also aims to make the world of social sciences more aware of the problem of Advance Fee Fraud, particularly in South Africa. The study is an attempt to indicate the severity of the situation of Advance Fee Fraud that exists and to investigate whether or not the existing research studies regarding fraud are adequate enough to describe this crime in its complexity.

It is also the view of the researcher that this study will illuminate the *modus operandi* used by the perpetrators of this crime. The study will also endeavour to determine whether the existing criminological theories can be used to explain this crime and whether existing victimological theories can be applied to explain Advanced Fee Fraud victimisation. The researcher aims to indicate the problems regarding the adjudication of this type of fraud and possible prevention strategies. Finally, the aim

is to develop a criminologically sound model to prevent these types of crimes in South Africa, Africa and the world at large.

1.2.2 Methods of study

The study methods that were used in this research were mainly literature reviews and empirical studies but the empirical research approach was qualitative. The empirical studies were performed according to the main areas of concern according to the findings of the literature research. The empirical research took place in 2005 and included structured scheduled interviews with offenders incarcerated in prisons in the Gauteng province of South Africa, namely: Pretoria Central prison, Pretoria Local Prison, Atteridgeville Prison, Johannesburg Medium B Prison, Odi and Leeukop Prison.

Some offenders who are out of prison and claimed to have 'stopped' or 'retired' (only two) were also interviewed. In all, five incarcerated 419-offenders were interviewed, one victim and an ex-girlfriend of one of the offenders. This indicates that a total of only nine people could be traced to participate in the research (see 1.5). To enhance the qualitative findings of the research where applicable, extensive use of word verbatim quotations was made by the offenders, victims and other interviewees.

The interviews were transcribed, and the statements carefully examined, analysed, interpreted and integrated into the various chapters. A logical framework was developed and the results of the empirical research were presented within this scheme. The results were continuously evaluated according to tested scientific methods and techniques such as induction, deduction, logical reasoning and critical evaluation to produce findings and recommendations. These processes led to a criminological contribution in the understanding of AFF and more importantly to its prevention.

Within the general field of any research, it is always important to indicate the delimitation and scope of the research field. Hence, a synopsis of the delimitations and scope of the study of Advance Fee Fraud (AFF) follows.

1.3 DELIMITATIONS AND SCOPE OF THE FIELD OF STUDY

The field of study will be delimited, in the widest sense, to the field of crimes that involve fraud. Within this wide sense, the research will still be delimited to AFF. The various types of AFF will be described, explained and analysed in terms of an eclectic theoretical framework, in a bid to establish the causes and possible prevention strategies of this crime.

The literature study was confined to books and articles concerning fraud and AFF. These consisted mainly of South African publications and those publications from abroad, which were readily available in South Africa and on the Internet. With regard to the information available in South Africa, and because of the varying concept of AFF and the different socio-economic, political and cultural (transnational) circumstances of the perpetrators and the victims, the offences are described as it occurs in West Africa, Nigeria and particularly in South Africa, where the empirical part of the research was done.

The research targeted offenders who are incarcerated in South African Prisons for AFF. The researcher was able to interview five offenders imprisoned in the following prisons in Gauteng, a province in South Africa: Pretoria Central Prison, Pretoria Local Prison, Atteridgeville Prison and Johannesburg Medium B Prison. Two offenders out of prison, one ex-girlfriend of an offender and one victim of this type of fraud provided information for this research project. Nine people took part in the case studies for this research. The information was gained through qualitative, semi-structured in-depth face-to-face interviews.

It would, however, be wise to define the main concepts that will be used in this thesis, as it relates to AFF. The key concepts, as they are utilised in this research, will therefore be defined in the next section.

1.4 DEFINITIONS

1.4.1 Crime

Schmalleger (1996:7) defines crime as behaviour that violates the criminal laws of a state, the federal government or local jurisdiction that has the power to formulate such laws. Tappen (Schmalleger 1996:7) defines crime as "... an intentional act in violation of the criminal law ... committed without defense or excuse, and penalised by the state as a felony or misdemeanour". Sutherland (Schmalleger 1996:8) said of crime that it's "...essential characteristic is that, it is behaviour which is prohibited by the state as an injury to the state and against the state for which the state may react by punishment". In the same vein, Reid (2003:5) defines crime as "... an international act or omission that violates criminal statutory or case law and for which the state provides punishment".

1.4.2 Fraud

According to Huntington and Davies (1994:3) English law does not define fraud. They do, however, maintain that fraud encapsulates the two key elements: 'to defraud is to deprive by deceit'. This description underlines the two essential elements in any fraud:

- deception or concealment; and
- deprivation or loss to the victim.

Le Roux (1991:2) defines fraud as "... an unlawful and intentional misrepresentation that causes actual or potential harm to another person". According to this definition,

four elements of fraud can be differentiated; unlawfulness, intention, misrepresentation and harm.

- A misrepresentation occurs when one party makes a representation to another that a fact or set of facts exist that are actually fictitious.
- According to South African law, intention refers to action. It must be proved that the action contravened legal prescription and that the perpetrator was aware of the fact at the time.
- The law imposes two requirements for intention, namely the intention to mislead and the intention to defraud.
- The law requires that harm must be suffered as a result of the misrepresentation.

Snyman (1995:487) defines fraud as the "... unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another". He said that fraud covers a wide field, and to understand it within the South African law, it is necessary to refer to its origin in South African common law.

The crime of fraud is derived from two different Roman laws, namely (a) *stellionatus* and (b) the *crimina falsi*. *Stellionatus* was the criminal law equivalent of the delict *dolus*. It involved an intentional misrepresentation which results in the harm of or prejudice to others. *Crimina falsi* was the collective term for a number of crimes relating to falsification, almost all of which were derived from the *lex Cornelia de Falsis* (Snyman 1995:487). However, Snyman stated that with regards to *criminal falsi* it was not required that somebody should necessarily have been prejudiced by X's conduct. Where *stellionatus* is concerned, there seems to have been some form of prejudice in most cases but, according to Snyman, it is doubtful whether the prejudices have to be actual or of a proprietary nature: potential or non-proprietary prejudice seems to have been sufficient (Snyman 1995:487). He states that South

African Roman-Dutch law writers did not clearly differentiate between *stellionatus* and the *criminal falsi*. Hence these two crimes have become conflated to form a new crime, now known as fraud. According to Snyman, fraud has sometimes even been referred to as *falsitas* or "*falsiteit*". Snyman is of the view that the result of this conflation is that fraud is committed even where there is no actual proprietary: even non-proprietary or prejudice may be sufficient (Snyman 1995:488).

Snyman also mentioned the elements of fraud; misrepresentation (or distortion of the truth), prejudice, unlawfulness and intention. He stated that the very first requirement of fraud is that there must be a misrepresentation or, as it is sometimes expressed, a perversion or distortion of the truth. In this case, X must represent to Y that a fact or set of facts exists when in truth they do not. Usually this misrepresentation takes the form of spoken or written words but may also take the form of conduct and may be expressed or implicit (Snyman 1995:488).

1.4.3 Advance Fee Fraud

On 1 April 1995, new legislation took effect in Nigeria: the Advance Fee Fraud and Other Related Offences Decree (No. 13 of 1995). This law proscribes three forms of conduct: obtaining property by false pretence, doubling, washing and minting of currency.

Advance Fee Fraud is therefore defined as an upfront payment, by a victim to a fraudster, to allow him to take part in a much larger financial transaction, which he believes will either bring him profit or will result in credit being extended to him. In this case, the victim is asked to pay an advanced fee of some sort such as "transfer tax", "performance bond" or "money to buy chemicals". If the victim pays the advanced fee, there are often many "complications" which require even more advance payments, until the victim either quits, or runs out of funds.

Advance Fee Fraud is a crime that involves misrepresentation (as described above), corruption and bribery, forgery and money laundering, extortion, kidnappings and even murder of the victim at some stage. Further elaboration regarding these concepts revealed the following:

Corruption and bribery

Corruption consists of unlawfully and intentionally giving or offering a benefit, of whatever nature, which is not legally due to someone upon whom some power has been conferred or who has been charged with some duty, with the intention to influence the latter to commit or omit to do some act in future in relation to such power, or to reward the latter for some act or omission in the past in relation to such power (Snyman 1995:362).

The World Bank and Transparency International define corruption as "...the misuse of public office for private gain" (The World Bank 1997). As such, it involves the improper and unlawful behaviour of public service officials, both politicians and civil servants, whose positions create opportunities for the diversion of money and assets, from the government to themselves and their accomplices. Corruption distorts resource allocation and government performance. The causes behind the development of corruption are many and vary from country to country. Among the contributing factors are policies, programmes and activities that are poorly conceived and managed, poverty, income disparities, inadequate civil servants' remuneration, and a lack of accountability and transparency (The World Bank 1997).

Corruption can also be categorised in other ways. A distinction can be made between benefits that are paid willingly (bribery) and payments that are extracted from unwilling clients (extortion). This is how corruption is associated with AFF and how it will be viewed in this thesis.

Forgery

Forgery is committed when a false document is made, unlawfully of course, with the intent to defraud the actual or potential prejudice of another (Snyman 1995:495). The document is used to create the impression of being something other than what it really is, for example: the forged document is manipulated to resemble another document or create the impression that it was drawn up by someone other than the actual writer (e.g. ID documents, companies and governments official letterheads and seals, signatures, passports etc.). In the case of AFF, perpetrators use professional forgers to falsify the signatures of the real owners of companies and governments officials. Letterheads of companies and governments and fictitious companies are created to furnish banks with false information in order to open accounts into which illegal funds can be transferred or deposited (Le Roux 1991: 3).

Money laundering

Most of the money collected by organised crime originates from illegal sources, and perpetrators are reluctant to report the income or its sources. Before spending or using these funds, they must give the money an aura of legality. This conversion is known as money laundering (Swanson, Chamelon & Territo 1996:526).

Extortion

Extortion is defined as money/property which is obtained from another person by the wrongful use of actual or threatened force, fear, or violence, or the acceptance of a fee by corrupt public officers, by virtue of their office, when they are not entitled to that fee (Reid 2003:284).

Organised crime

Organised crime has been defined as the ongoing activities of those collectively engaged in the production, supply and financing for illegal markets of goods and services (Gill 2001:198). This concept emerged first in the United States in the 1920s but is now used internationally. The United Nations G8 countries described it as a range of serious crimes that are deemed especially difficult to control. Organised crime has been considered a problem throughout the century, and no universally accepted definition of the term has been established (Reid 2003:329). The President's Commission on Organised Crime, defines the criminal group involved in organised crime as a "...continuing, structured collectivity of persons who utilise criminality, violence, and a willingness to corrupt in order to gain and maintain power and profit" (Reid 2003:329).

1.4.4 Perpetrators

According to South African law, a person is a perpetrator if his conduct, the circumstances in which it takes place (including, where relevant, a particular description with which he or she as a person must, according to the definition of a crime, comply) and the culpability with which it is carried out are such that he/she satisfies all the requirements for liability contained in the definition of the crime (Snyman 1995:245). The law states that, if two or more persons act together and they all comply with the above definition of a perpetrator, they are all co-perpetrators. Here it must be underscored that, for a person to be a perpetrator, it does not matter whether he/she commits the crime him/herself or makes use of an agent to effect the commission.

1.4.5 Victims

The United Nations (1992:211) define the victims of crimes as people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental

rights. These impairments of their rights can occur through acts or omissions that are in violation of the criminal laws operating within a specific country, including laws proscribing criminal abuse of power.

The above defined concepts will be utilised in this thesis, as described in the previous paragraphs.

As with any research, the next section highlights the numerous problems experienced during the course of the execution of this research.

1.5 RESEARCH PROBLEMS EXPERIENCED

The first problem encountered with this research project was the lack of funds experienced as a full-time student. It was not possible to follow the initial research process. Hence it was not possible to conduct the empirical research countrywide, in all the major cities where AFF is a common crime in South Africa. This also hampered the attempt to cover all the prisons in South Africa where the perpetrators are incarcerated.

The second problem that presented itself was that very little literature was readily available regarding the subject, and that many of the literature articles mainly focused on fraud in general. This made it difficult for the researcher to find scientifically reported studies of advance fee fraud, especially in South Africa.

The third problem experienced during this research was that of data collection for the empirical research. Despite the fact that permission was granted by the Assistant Commissioner Detective Service of the South African Police Service (SAPS) to the Head of Commercial Branch/Commander of the 419 Investigation Task Team to make the necessary arrangements to provide assistance with this research, the researcher was only interrogated and intimidated by the SAPS and the Immigration

officials. According to them the information requested was too sensitive to be provided to the researcher. Initially the police consented that the researcher be provided with the list of AFF offenders they have investigated and who are in prison, but they refused to furnish this list at a later stage. As a result the researcher had to request the list of all foreigners incarcerated in South African prisons for fraud and forgery from the Department of Correctional Services (DCS). This became time consuming because a list of approximately 600 prisoners was given to the researcher, which was used to select the AFF offenders for interviews.

The lack of co-operation by the SAPS posed a major problem, because the researcher intended to link a particular victim with a particular perpetrator. That is, to interview both the victim and perpetrator to verify the information from both parties and thus determine the particular *modus operandi* of the perpetrators. This lack of co-operation also made it difficult to determine the number of cases that have been reported to the SAPS so far, the cases that had been investigated, and the number of arrests, prosecutions, and convictions.

It was also very difficult to approach the victims of AFF for interviews. It would have been easier if the SAPS had co-operated, as they would have introduced the victims to the researcher for an interview. Since this did not happen, attempts to obtain interviews with victims of AFF (who most of the time do not report their victimisation to the police) were impeded. Those victims that the researcher managed to track down regarded the researcher as an undercover agent working for the National Intelligence, Scorpions/SAPS. As a result of this, the researcher was able to interview just one victim.

The Department of Home Affairs also refused permission to interview immigration officials (see appendix 1). The purpose of the interview with the immigration officials was to determine the status of AFF offenders in the country, and to discover more about their movements in and out of the country. These interviews were also meant to

verify the identity of these offenders.

Another problem experienced during this research project was the difficulty to trace the offenders in prison. The researcher was given a list of 600 prisoners but only managed to interview three AFF offenders. This was because most of the AFF offenders had been deported. Some paid a fine and others were released from prison. A second list was requested from DCS, and with the help of this list, the researcher identified 8 AFF offenders but managed to interview only two who were in prison in Gauteng. The six other offenders were imprisoned in the Western Cape and owing to lack of funds, the researcher could not travel to the Western Cape to interview these offenders.

Finally, due to the limited number of incarcerated offenders and victims interviewed, the analysis and interpretation of the statement became problematic with regards to generalisations. However, the information gained from those that were interviewed, was able to shed significant light on the understanding and prevention of this complex form of fraud.

In order to achieve the goals of this research within the given delimitation, the divisions of contents are discussed below.

1.6 DIVISION OF CONTENTS

In this research, AFF is approached in a chronological and systematic manner to expose the reader to the complex issues and dynamics related to this type of fraud. Readers are, through a strategic and sensitising orientation process of AFF emancipated and therefore able to follow the researcher's reasoning (criminological and victimological) throughout in a qualitative analysis, hence, promoting insight and allowing this complex phenomenon to be addressed, analysed and integrated in a holistic criminological approach.

1.6.1 Chapter 1

Chapter 1 primarily encompasses the research orientation, background and methodology. This chapter unequivocally outlines the mechanisms used for the development of this research study. It succinctly encompasses the following: the aims of the research, methodology, delimitation of and scope of the research, definitions of the key concepts used in the research, and the problems encountered during the course of this research.

1.6.2 Chapter 2

Chapter 2 provides a description of the origin of AFF, the nature and extent of AFF and its various forms. The chapter begins with the origin of AFF with the emphasis on the social and political background of Nigeria after independence in 1961, where this fraud is said to have originated. Here, the categories of crimes in Nigeria are also discussed, with the focus on elite crimes. The nature and forms of AFF are analysed accordingly, and the characteristics of this crime examined. The incidence of AFF around the globe is also discussed, as well as the causes and theoretical explanations.

1.6.3 Chapter 3

Chapter 3 presents the nature and organisation of AFF perpetrators. The characteristics of the perpetrators are examined and this is followed by a diagrammatical presentation of the e-mail cycle of AFF perpetrators and an explanation is made accordingly. The *modus operandi* used by perpetrators in the

execution of this fraud is also discussed. The theoretical explanations of the perpetrators are discussed to gain a clear understanding of these offenders. The sociological, rational, conflict, and the integrated theoretical perspectives were used in explaining these fraudsters.

1.6.4 Chapter 4

Chapter 4 of this research presents the definition of victims and victimisation in general. However, more attention is focussed on AFF victimisation in this thesis. The categories of criminal victimisation are also presented in this chapter. The types and nature of AFF victimisation and re-victimisation are discussed. This chapter also discusses the characteristics of AFF victims as the available literature research indicates. The ugly effects of AFF victimisation are discussed, in relation to individual victims, corporate body and nations. This is then followed by the theoretical explanation of the phenomenon (AFF victimisation) using the lifestyle and routine activities theories.

1.6.5 Chapter 5

Chapter 5 examines the most probable course of events, from the time the AFF is detected or reported to the police and the police consider criminal proceedings, to the arrest and detention of the suspect, followed by the charge, bail, prosecution and sentence. As a transnational crime, the focus of this chapter is also on the problems encountered in the adjudication of these offenders. This chapter also looks at some of the AFF cases that have been charged, and some decisive cases are quoted and penalties for the various offences in terms of sentences in Nigeria, South Africa and United States, are also indicated.

1.6.6 Chapter 6

Chapter 6 discusses how AFF can be prevented. It looks at some of the prevention strategies that have been implemented internationally, and in some countries where this fraud is common. It examines what crime prevention is all about, and the typologies of crime prevention as well as the theories of crime prevention. More importantly, the chapter discusses the strategies that can be implemented to prevent AFF in South Africa and internationally.

1.6.7 Chapter 7

Chapter 7 is the final chapter of this thesis, and it presents the findings, and discussions pertaining to the findings of this research. The findings in terms of the crimes, the perpetrators, the victims, adjudication and prevention, and theoretical explanations of AFF are discussed, and some recommendations are made. The chapter ends with suggestions for further research that would lead to a much better understanding and prevention of this fraud. Finally this chapter ends with the researcher's concluding remarks.

Due to the qualitative nature of the research, some chapters are longer than others.

1.7 SUMMARY

The above chapter discusses the general research orientation and background of AFF. It also highlights the methodology used in this research. The chapter outlines the mechanisms used to develop the research. It succinctly encompasses the following: the rationale of the research, methodology, delimitation of and scope of the research, definitions of the key concepts used in the research, the problems encountered during the course of this research and the division of contents.

The next chapter will focus on the nature and extent of Advance Fee Fraud in Nigeria/West Africa, and South Africa.

CHAPTER TWO

THE NATURE AND EXTENT OF THE CRIMES

2.1 INTRODUCTION

During the last twenty years, organised crime elements with ties to Nigeria began to dominate crime emanating from West Africa. These criminal groups, also known as the Nigerian Crime Enterprises (NCEs), are accustomed to executing transnational criminal activities, including fraud scams directed to most countries around the globe. Advance Fee Fraud (AFF) usually known as “419” even among the Nigerians themselves is a crime that has become a major business in recent times and has generated very large profits for those who are successful with it. The Nigerian scam, as it is also known in literature research, is the third to fifth largest industry in Nigeria. The 419 Coalition is of the view that, in effect, the elite, which constitute the successive governments of Nigeria, are themselves scammers, therefore, victims have little recourse in this matter, as money stolen by 419 operations are almost never recovered from Nigeria.

This chapter will investigate the origins of Advance Fee Fraud, the nature of advance fee fraud and its various forms. The incidence of AFF, internationally and in South Africa in particular, will be described, and the causes and theoretical explanations of this fraud will also be a major focus of this chapter. The applicable findings of the empirical research will also be examined, integrated and discussed in this chapter.

The next section will examine the origin of AFF, and since it is often referred to as “Nigerian Advance fee fraud”, the focus will be on Nigeria.

2.2 ORIGIN OF ADVANCE FEE FRAUD

It has been reported that AFF originated and is well developed in Nigeria and the perpetrators are mostly Nigerians. The proceeding subsection thus examines the socio-political and economic background of Nigeria.

2.2.1 The social and political background of Nigeria

Nigeria is a federation which consists of 36 states and is governed by an elected civilian President. It is the most populous African country with a population of approximately 125 million people, and covers approximately 925,000 square kilometres. Lagos is the economic capital and was the political capital until 1991. In 1900, the British Government took over the direct administration from the Royal Niger Company Chartered and Limited and retained its existing legal system. In October 1960, Nigeria became an independent country and has since then been ruled by a series of military dictatorships, interspersed with short periods of democracy. In 1993, General Sani Abacha became Head of State after the elections were declared invalid, allegedly following massive electoral fraud (Smith *et al.* 1999:2).

According to the Times (1998:13), during General Sani Abacha`s regime, billions of dollars were taken from the national treasury. However, after Abacha`s sudden death, his family returned \$750 million, which was taken from the state funds, to the government. An indication of the extent to which Nigeria is perceived as being corrupt is provided by the corruption index of Transparency International in 1988. This index for Nigeria is 1.9 on a scale of 1 to 10, where 1 represents the highest level of perceived corruption (Transparency International 1988:2).

Nigeria has vast deposits of oil, natural gas, coal and iron ore and its main source of export income of petroleum products and crude oil sales account for more than 90 per cent of export earnings and around 75 per cent of government

revenue (Robinson 1999:36-8). When world oil prices declined in the mid-1980s, the wealth of the country suffered considerably. This, coupled with the activities of increasingly corrupt elite, led to a general decline of the standards of living. In order to raise funds, some Nigerians began to devise various fraudulent scams, often with the assistance of expatriate nationals in the United States and other developed countries. It must be kept in mind that the political and social upheavals which had taken place created a scenario in which unsuspecting individuals could be persuaded that funds located in Nigeria, needed to be moved to Western countries in order to prevent them from being either confiscated or devalued.

The country has a history of social divisions, according to the regions of the country; the birthplace and "indigeneity", that is, origin and membership of a particular state of the federation; ethnic affiliations; religious beliefs; ideological dogmas, and class distinctions (Marenin & Reisig 1995:502). They also said that much of the public and private life is consumed with the struggle to live with and overcome the divisive tendencies within the country. Crime and disorder are handled informally, because of the lack of trust in the formal social control institutions and the belief that informal mechanisms yield immediate and just solutions. Adeyemi (1990:182) summarises the impact of the informal control on crime reporting and crime control by stating "It is clear that the informal procedure of crime control is applied in most cases, except in the serious cases or in cases of strangers who are in no relationship with their victim or with someone known to the victim". It is also reported that crime in Nigeria occurs within contexts that are characterised by conflicts, political instability, extreme differences in economic well-being, uncertainty about the courses of future events, and the shifting balance of formal and informal social control mechanisms (Marenin *et al.* 1995:503).

The country consists of over 250 different ethnic groups and about the same number of dialects. The three main tribes are the Hausa/Fulani (Moslems) in the

North, the Igbos (Christians) in the South-East and the Yorubas (Christians/Moslems) in the South-West.

The Hausa/Fulani Moslems of Northern Nigeria have lagged behind economically, educationally, industrially, as well as with regards to their infrastructure. Although there is universal free education in the country, they rarely complete elementary school and will more often than not send their children to Arabic schools to study the Koran instead. Most follow the strict Islamic code of Sharia that espouses amputation of limbs for stealing and women who commit adultery are stoned to death. Women are also subjugated and do not have the same rights as men (Adaora Reports 2002:2).

The picture in the South forms a stark contrast. The Igbo are the most educated group in Nigeria and are known for their aggressive entrepreneurial endeavours. They bore the full brunt of the 1967-1970 Nigerian Civil War when the entire southeast was raided and flattened to the ground by the Nigerian army. Within 8 years after the war had ended everything was rebuilt and they continue to prosper. The Yorubas follow closely behind the Igbos. They are mostly academics and have excelled in various fields.

According to the Adaora Reports (2002), the majority of the 419 scammers come from the South-Eastern/South-Western part of Nigeria. The reports found this difficult to explain, but they are of the opinion that the sheer complexity, audacity and 'intelligence' required to plan and execute this crime is way beyond the faculties of the illiterate Northerners.

2.2.2 Categories of crime in Nigeria

Crime in Nigeria can be divided into three categories; normal crimes (theft, assault and homicide), political-economic crimes (elite crimes and working-class crimes), and riotous crime (acts that are carried out during riots). For the purpose

of this thesis, only political-economic crimes will be discussed under different sub-headings.

Nigeria, like most developing countries, has to import consumer and economic investment goods from developed countries. The dependence on importation opens the doors for corruption, fraud, and economic elite white-collar crimes, for both Nigerians and foreigners. Foreign companies often sell second-hand goods as products intended for the second hand market as unused items, or sell low quality goods which they cannot sell in their own country, they also often overstate the price of goods, and understate the profits in order to minimise the tax they have to pay for doing business in Nigeria (Marenin *et al.* 1995:505). These activities require the induced co-operation of Nigerian nationals; their signatures are needed on imports permits, sales contracts, consultancy assignments, and directorship appointments. Foreign companies are willing to pay fees in order to increase their profits, and have found the Nigerians eagerly in pursuit of personal wealth. In this regard and based on a context analysis of articles published in one Nigerian newspaper, it is estimated that approximately 6.6 billion Naria was lost owing to fraud, bribes and kickbacks, direct stealing, extravagant expenditure, and general corruption during 1978-1982 (Marenin *et al.* 1995:505).

Marenin *et al.* (1995) maintains that the precise extent and impact of fraud and corruption in Nigeria is unknown, but occasional investigations reveal it is massive. Their research led them to a second form of economic crime, which is internal and mainly involves Nigerians. According to them, government contracts are extremely lucrative, competition for them is fierce, and performance standards are seldom enforced. Paying a bribe, padding contracts, taking a 'mobilisation-payment' and not doing the work, sub-standard performance, arranging for kickbacks, nepotism, or giving inappropriate gifts to the right person are ways to obtain contracts and money. A vast layer of middlemen and

“arrangers” extract a living from their positions between the state and private enterprises (Turner 1983: 76).

Elite political crimes take many forms as well. A military coup is, technically, a crime, and people who get killed in the process are actually homicide victims. Many Nigerians also believe that the military’s actions, despite the justificatory rhetoric it promotes over the airwaves, are executed mainly for economic gains, by an organisation that wish to protect its share of the budget and by the individuals to gain access to corrupt opportunities. Other forms of political crime are fraud and violence during election campaigns and the use of state power for political ends. The contest to control the government, since it is the largest source of legal and corrupt income, is intense and leads to considerable fraud, manipulation, thuggery, and violence during election campaigns, during vote counting, and when the results are announced (Marenin *et al.* 1995:506).

Working class economic crimes, committed both by government employees and workers in private business, are extensive and prevalent, but they generally yield small gains. Working people have little power and few opportunities, and are more limited in what they can accomplish. It is assumed by Nigerians that every government official, including the police and judges engage in corrupt activities. For example, to get hold of a form to apply for a passport, driver’s license, or contract permit of any sort requires the official who has to issue the forms must be paid a small and illegal fee (Marenin *et al.* 1995:506).

It is no surprise that the political and socio-economic background of Nigeria has led many to hold the view that AFF is/was a Nigerian issue. Today it is, however, an international phenomenon and perpetrators are of different nationalities from around the globe. However, the above assertion that AFF originated from Nigeria has been buttressed by the literature, based on statistical facts. An article published by the British Broadcasting Corporation (BBC) in 1998 titled “World: Middle East” revealed that Britain received approximately 50,000 419 scam

letters. According to the report, these letters came via the International Postal System. The article specifically stated "Over the last 10 years, Nigeria has been the principle base for such scam offers with more than 50,000 scam letters were read in Britain by the beginning of that year". According to Oyesanye (2004:2), an explosive increase in the volume of fraudulent e-mails originated from Nigeria is to be expected. Nigeria now accounts for a significant proportion of e-mail based Internet fraud. This also indicates that, with the increasing entry of Nigeria into the Internet sphere, so also does Internet fraud and AFF increase.

In the same vein, the American Federal Bureau of Investigation (FBI), in its 2001 and 2002 Internet Fraud and Complaints Centre Report, issued rather alarming data, putting Nigeria at the forefront of certain types of Internet crime activity. Nigeria accounts for 15.5 per cent of the total Internet crime activity reported to the American FBI in 2002, and Nigerian letter fraud accounts for the highest median loss. Overall, it appears that there is now a significant presence of Nigerian-based Internet crime activity that is global in nature, and accounts for a significant proportion of global financial loss.

AFF letters surfaced in the mid-1980's, around the time of the collapse of world oil prices. Oil is Nigeria's main foreign exchange earner. As a result of the fall in oil prices, some Nigerians turned to crime to survive. Fraudulent schemes such as AFF succeeded in Nigeria, because Nigerian criminals took advantage of the fact that Nigerians speak English, the international language of business, and the country's vast oil wealth and natural gas reserves, ranked 13th in the world, offer lucrative business opportunities that attract many companies and individuals (US Department of State 1997:5).

According to the 491 Coalition Website, most 419 letters and e-mails originate from or are traceable back to Nigeria. However, some originate from other nations, mostly West African nations such as Ghana, Togo, Liberia, Sierra Leone, Cote D'Ivoire, Democratic Republic of the Congo, and recently South

Africa and other European and Asian countries. In most cases, 419 e-mails from other countries are also Nigerian in nature because the “Home Office” of the 419ers involves Nigeria regardless of the source of the contact material. Occasionally there are some local copy-cats who try to emulate the success of the Nigerians. However, in the recent past South Africa has been the location of these so-called “West African criminals” where letters and e-mails are sent and received.

Literature research suggests that AFF originated from Nigeria. This notion has been confirmed by the findings of the empirical part of this research. This research found that AFF, although it originated from Nigeria, is now a worldwide phenomenon. According to the Perpetrator in Case 1 (where applicable, the exact words of the interviewee were transcribed) *“...But what I can tell you is, that this crime is not a South African-based crime. It did not originate from South Africa, and it is not based here. So it can happen anywhere. It can be in Swaziland, it can be in Congo, and it can be in Mozambique where this crime is going on. So the fact that you are here in South Africa and you can see that its also happening here, does not mean that it is ONLY happening here. It’s a crime that is all over the place. If you go to western countries, like America or Europe, you have a lot of people who are doing the same crime and they are based there. Most of these money transfers actually are between African countries and European countries. There is no money coming from Europe to Africa. The money is only moving from Africa to Europe. So you must see that the origin of this business is Africa”. The perpetrator continued to say that “... and the fact that when you travel to European countries, of every 5 African people, one is a Nigerian. This is a fact. If you go to London today, if you see 5 African people together, one of them is a Nigerian. So you must see that Nigerians travel a lot. And that makes them to be involved in this type of business, because by travelling they are exposed to a lot of things that are happening. And they can also send information back that this is what is happening. If you do this, or do that, you can also generate a lot of income. That is why there is a lot of*

Nigerians involved in this business. That is why they say this is a Nigerian crime. But that does not make it a Nigerian crime. I'm only saying because of the number of Nigerians that are in the population. It is based on the population". The perpetrator in Case 2 said that "...*Basically from West Africa. You know a lot of people are under the wrong assumption that it is only Nigerians who are into the 419 scam. It's not true. People from DRC are into it people from Ghana they are into it, okay Nigerians are into it. OK, but because of the fact that we are more or less popularized with the 419 word, I mean the numbers 419, and its part of our criminal code, you know, everybody sort of attach 419 to Nigerians".* This statement was confirmed by Respondent 2 in a street corner interview. He said: "... *most of 419ers are Nigerians".*

The next section examines the nature and various forms of AFF.

2.3 NATURE AND FORMS OF ADVANCE FEE FRAUD

Advance Fee Fraud is an organised crime that is complex and it is a relatively new universal threat, yet it has still not been debated or properly understood by those outside State organizations, such as academics, analysts and the public. Those inside the State, also had to come to terms with a new threat, in a short period of time, their understanding of this type of organised crime is thus limited. It is precisely due to the covert activities of organised crime syndicates that the public, in particular, is not aware of the destructive and corroding impact that it has on the society. Not only does it contribute to the high crime rate, but also corrupts law enforcement officials and threatens the very legitimacy of the state and its efforts to defeat such organised criminal activities.

Smith *et al.* (1999:1) indicated that the characteristics of this type of fraud usually entails enlisting the services of a prospective victim to assist in an activity of questionable legality, thus providing some assurance that the victim, once defrauded, would be unlikely to report the matter to the police. In this situation,

the victim would quite rightly be apprehensive that he/she had aided and abetted some criminal activity and would also be reluctant to make the fact of his/her gullibility public. Thus the perpetrator is able to carry out the scam repeatedly, sometimes involving the same victims, whilst the police find it difficult to locate witnesses and secure evidence.

2.3.1 Nature of advance fee fraud

This fraud essentially involves the payment of advance fees in the form of tax, brokerage, bribes and so on, under the pretence that such payment is needed to consummate a business deal, which the perpetrator knows will never materialise, as the objective is to defraud the other party (Snyman 2001:65). Advance fee frauds cases that have been discovered to date have taken a variety of forms. All entailed that victims were approached by letter or, recently, by electronic mail, without any prior contact. Victims' addresses are obtained from telephone and e-mail directories, business journals, magazines or newspapers. The perpetrators generally describe the need to move funds out of Nigeria and seek the assistance of the victim to provide bank account details of an account in an overseas country as well as so-called administration fees to facilitate the transactions. The victim is offered a commission, which could be up to 40 per cent of the capital involved. Capital sums of up to US\$20 to 40 million are often mentioned, thus creating a potential reward for the victim of up to US\$16 million. An advance payment that could total up to US\$50,000 is usually required, which represents the amount stolen (Smith *et al.*1999:2).

According to the 419 Coalition website, the scam operates as follows: The target victims receive an unsolicited fax, email or letter, often concerning Nigeria, South Africa or another African country containing either money laundering or other illegal proposals or you may receive a legal and legitimate business proposal through the normal channels. Common variations of this scam include "over invoiced" or "double invoiced" oil or other supplies and service contracts and the

fraudsters want to get the overage out of Nigeria, South Africa or another African country. Other scams involve crude oil and other commodity deals; “a bequest” left to you in a will, money cleaning, where the fraudster has a lot of currency that needs to be “chemically cleaned” before it can be used and he needs money to buy chemicals, “spooft banks” where there is supposedly money already deposited in your name, “paying” for a purchase with a cheque larger than the amount required and asking for change to be advanced, and fake lottery 419. These letters carry the names of former African presidents’ ministers and their deputies, bank managers, CEO’s of companies, military leaders and other big names.

Inside an official looking document or your e-mail box is an unsolicited “confidential business proposal” from someone purporting to be a Nigerian or South African top government official, wife or son of a late African president, bank managers etc. The offer usually states the following: “Having consulted with my colleagues, and based on information gathered from the Nigerian or (South African) Chamber of Commerce, I am pleased to propose a confidential dental business transaction to our mutual benefit. I and my colleagues have in our possession instruments to transfer the sum of \$35, 500.000 into a foreign company’s account in our favour. This amount emanated as result from an over invoiced contract executed, commissioned, and paid for about two years ago by a foreign contractor. We are therefore seeking your assistance in transferring this money into your account as it can only be remitted to a foreign account. The total sum will be shared as follows:

- 30% for the account owner (you)
- 60% for us
- 10% to settle any accidental expenses.

We shall commence the transfer of funds immediately as soon as you send the following documents/information through fax:

- Four copies of your company letter head and invoice papers signed and stamped

- Your bankers name, address and fax numbers
- The account number and name of the would-be beneficiary.

Please bear in mind that this is absolutely a private and personal deal, non-official, and should be treated with all measures of secrecy and confidentiality” (U.S. Department of State 1997).

After a victim responds positively to an AFF letter by sending the required documentation the victim is hooked. The primary reason for the documentation is not to rob the victim’s bank account, but to perpetuate the illusion that the deal is legitimate and moving forward. The blank signed letterheads are altered and used by the perpetrators as props in other frauds, letters of reference to obtain visas, or sold to other criminals (US Department of State 1997:10). Within the same week or the next, the perpetrators establish a level of trust with the victim. This is accomplished by sending the victim more “official” documentation verifying the *bona fides* of the deal and the people involved.

The most crucial point of the fraud can take a number of directions. A victim will be advised that the deal is near completion, but that an emergency has arisen and money is needed to pay for an unforeseen government fee or tax before the money can be released. If the fee is paid, the criminal will fabricate another “problem” that requires immediate payment by the victim. Each “problem” is supported by “official” documentation. The perpetrators can run this ruse for months or even years, depending on the gullibility of the victim or his or her desperation to recoup losses. One Western diplomat described it as “... kind of like gambling. You get in so deep you keep putting money in to get something out of it”.

Travel to Nigeria

At some stage of the fraud, the perpetrator will attempt to persuade the victim to travel to Nigeria, South Africa or a neighbouring country to finalise the contract, transfer the money or conclude other transactions. If the victim appears reluctant to go to Nigeria, the perpetrators will suggest a neutral country where an AFF team, unknown to the victim, is already established. If the victim meets the perpetrators in a neighbouring country, the victim may find that he or she must still travel to Lagos in Nigeria. Entry without a visa, gives the criminals leverage over the victim and leads to other forms of extortion (US Department of State 1997:12).

Usually in Nigeria, victims will be housed in one of the hotels close to the airport. At this stage, the victim is totally immersed in the scam, and the criminals have total control over the victim's every move. The victim is then taken to meetings with criminals posing as Nigerian Government officials, or possibly corrupt government officials, to finalise the deal. The meeting usually takes place in government offices or annexes that are rented by the criminals or in an office that is set up to resemble a government office. These offices are often located near government buildings to add authenticity to the fraud.

Travel to a neutral country

If victims are reluctant to travel to Nigeria, the perpetrators will suggest a neutral country and the victim will be requested to provide them with his or her flight itinerary and the name of the hotel he or she will be staying in. This is the first step to take control of the victim's movement during the scam.

Operating under the guise that the business contacts are in Nigeria, the criminal will convince the victim to send roundtrip airline tickets from Nigeria to the neutral country for face-to-face meetings with business contacts. The victim is also

requested to reserve hotel rooms in his or her name for the contacts. The hotel rooms are never in the same hotel as the victim's. Nine out of ten victims comply with these requests (US State Department 1997). The criminals then cash the airline tickets, and use the hotel rooms, which are reserved under the name of a legitimate businessperson, or his or her company, in other scams or sell to other AFF perpetrators (US State Department 1997:12).

Studies have indicated that the meetings with the victims are set up in areas of the city that are unfamiliar to the victim. This is to keep the victim off-balance and allow the perpetrators time to conduct counter surveillance; the criminals will schedule and cancel a number of meetings with the victim. Reports also state that once the victim is under the auspices of the criminals, and if at some point he decides not to pursue the deal, or if at some stage he stops paying, the criminals will not walk away from the victim. They will attempt to re-consummate the fraud, using various ruses. In this case, some of the perpetrators might pose as Nigerian Government or South African officials (depending where the scam takes place) and attempt to get the victim's money back or try to convince the victim that they are the legitimate government officials and the other men he or she (the victim) dealt with were fraudsters. Therefore re-victimisation will be perpetrated either by the original criminals, or sold to another AFF team to operate (US State Department 1997:13).

The findings of the empirical research indicate that the nature of AFF is much the same as indicated in the literature research. In this instance, the perpetrator in Case 1 said *"... What happened was that somebody here would contact somebody abroad and tell them that I have some money. It is possible that the money belongs to my father and I'm about to transfer this money from here to another account abroad and I want you to assist me with an account. If you can provide me with an account and I am able to transfer the money to that account I will travel down there and we will share the money. But you have to travel to South Africa to finalise the transfer"*. In the same vein, Respondent 2 said *"... If*

you reply positively to that letter that they send to you via e-mail, meaning that you start going into the business, and immediately they convince you that the money is really in the security company, where ever you are, wherever they are, they will invite you to come down and discuss with them. So when you come down they will probably tell you its \$5 million dollars”.

An analysis of these findings implies that most of the time, victims are invited to the country where the money is kept to finalise the transfer arrangement. This is usually where the fraud starts or where the actual monetary loss of the victim begins.

2.3.2 Forms of advance fee fraud

It must be noted that AFF confidence scams are only limited by the perpetrator's imagination. However, their proposals share a common thread. The proposals are often unsolicited, emphasise the urgency and confidentiality of the deal, and require the victim to pay various government and legal fees and taxes before receiving what turns out to be non-existent money. New variations of these scams are being developed all the time but the most common forms of these fraudulent business proposals fall into these main categories:

- Transfer of funds from over-invoiced contracts
- Contract fraud (C.O.D of goods and services)
- Conversion of hard currency (black-money, money cleaning or “wash-wash”)
- Sale of crude oil at below market prices
- Purchase of real estate
- Disbursement of money from wills (benefactor of a will)
- Held for ransom / Kidnappings and murder.

In the empirical part of this research most of the interviewees mentioned money transfers, contract fraud and the conversion of black currency (money cleaning or wash-wash). It was found that there are many forms of AFF. This was confirmed in a statement made by the perpetrator in Case 3 in which he said “... *my brother you see 419... 419 means there are one hundred and nineteen systems to commit this fraud*”. Another important form of 419 that was discovered in this research is what the fraudsters called “*Spiritism*” and “*Fimash*”. These forms will be discussed below.

Within this same premise, Respondent 3 concurs with the many systems of AFF. In his statement, he said “... *There are so many ways, because each and every...as time goes on they are changing. They know that people have been realising that things like this are going on. Things like these are going on. They are changing their methods. Someone...there is another system. Someone can tell you that they are coming from overseas. He has brought money, he wants to invest, but in order for him to invest this money he needs a South African partner, so that they'll open an account now in his name, and they put the money inside. That's how they approach you. So when you hear this that somebody is coming from outside with millions, he wants to invest, they will need another South African partner so that they can use his name, so now you are happy because you know that you are going to become rich. But now as time goes on now, you see now that the direction is going to change. Instead of them coming to invest actually, they will start telling you that you are the one who has to use money. They will start proposing business to you, how you can make money, and at the end now you are stupid to fall now as a victim, you are stupid to lose some amount of money. There are many ways, because one can never say that he is too clever to be duped, it is false. Even those people who is doing this business, they can still be duped by another person who is doing the business*”.

The scammers essentially need the victims' distant involvement in some illegal, but mostly white collar, criminal proposal. They will want to get money out of

Nigeria, South Africa, or any other West African country by using you as a conduit who will (supposedly) benefit greatly from your assistance and cooperation. While many such scams imply the victim's participation in an illegal act, there are various forms of so-called "legal" 419-schemes such as the Will Scam, the Real Estate Scam, the Scholarship Scam for which there is no basis for the victim to be considered a potential criminal and have their claims dismissed or even be charged under the 419 Act in Nigeria.

Each of these forms of AFF will be discussed in detail below.

❖ Transfer of money from over-invoiced contracts

According to the US State Department, about 90 percent of AFF are over-invoiced contract scams. The State Department reports that these scams involve an offer to transfer large sums of money into an overseas bank account owned by a foreign company. The money is usually alleged to have come from over-invoiced contracts from a Nigerian company or one of the Nigerian Government ministries (that is, Central Bank of Nigeria, Nigerian National Petroleum Corporation). The authors of such letters claim to be government or bank officials who are willing to pay the victim a generous commission of up to 40 per cent for assisting with the transfer of the funds.

It must be pointed out that there is an almost sweetness (swaddled in lavishly stilted prose excavated from an 18th century protocol handbook) in the letter's introduction: "It is with a heart full of hope..." reads one. "Compliments to season. Grace and peace and love from this part of the Atlantic to you" is how another one was started. "Good day to you, I would here crave your distinguished indulgence". And still another opens with "It is with my profound dignity that I write to you".

- Structure of such letters

The letters are structured in the following fashion:

Emphasizing confidentiality and trust

We are writing based on information about you and your firm we gathered from a foreign office of Nigerian Chamber of Commerce. We write with absolute confidence in the legality of our firm and that of you and your firm. Basically, the business we are about to introduce is based on trust and real confidence which we believe can exist between us.

Introducing the scam

For your introduction, we are a small but very influential firm of quality surveyors, construction cost consultants and projects managers who have been involved in the planning and execution of a number of projects for the Nigerian National Petroleum Corporation (NNPC) which were executed by foreign contractors. Most of these contracts were deliberately over-measured and over-invoiced at their planning stages. These projects have been commissioned and the contractors paid their rightful dues leaving the over-invoiced sums owed them by the corporation.

The military government of Nigeria is part of an effort to win international support has directed that we examine these contracts and recommend all outstanding debts due to all foreign contractors for payment. As consulting quantity surveyors on these projects, we and our colleagues at the corporation were able to discover these over-invoicing and over-management. At the end of this exercise, we are left with huge sums of money at the moment in a suspense account of the Central Bank of Nigeria (CBN) resulting from the initial over-invoice cost.

What they want from you

We are therefore introducing to you one of these contracts where the sum of US\$35 million was over-invoiced and over-measured. We now seek the assistance of a trusted foreign company in order to process, claim and remit these funds into a nominated account as debt owed to your company. In order to accomplish this therefore we shall require from you the following:

- i. A letter of trust and confidence to attest that we can trust and rely on you*
- ii. Three copies of your company or any other company letterhead and pro-forma invoice duly stamped and signed below with which you want us to process the claim.*
- iii. Particulars of bank account where you wish the funds to be transferred into*

You are expected to send these to me via fax number...

How the funds will be distributed

During our deliberations, we resolve that my firm and colleagues shall take 60 percent of the funds while 30 per cent shall be given to you for your assistance and the remaining 10 per cent shall be used to off-set all expenses that may be incurred by both parties during the course of executing the business. You are therefore advised to keep records of all your expenses in the course of executing the business.

Emphasizing confidentiality again

If this business interests you, please reply only by fax message so that we provide more details. While trying to reach us either by fax or phone, please dial direct. Do not go through the international operator in view of the confidential nature of the business.

Please trust with utmost confidence and urgency as we hope to hear from you soon.

The warning and the persistence of the perpetrators are illustrated by means of some lengthy verbatim quotations which were obtained during the empirical data capturing.

The empirical findings of money transfer indicated how this form of AFF is committed. In this regard, the Perpetrator in Case 1 said:

Contacting the victim

"...He just tells them this is the amount of money I have here. I cannot take out this money without somebody to assist me from abroad. Because I cannot go there to open another account. That is what he tells them. And then he ask them can you provide me with an account. And they say yes. And at the end of the day he is going to tell them well this money is in a social account over here. Which merely is a government account. So before the money can be transferred we have to show them that we have a job for them or whatever. We have to sign a contract or whatever for them. It could be anything [the contract]. So he's going to prepare the documents and send it to that man and say send these documents to them and they will release the money to you. And by the time he tells them that it is possible that people are gonna ask him how come you need this money? Are you not registered here in South Africa? You have to register in South Africa. So the man says I'll come and register in South Africa. And for you to register in South Africa, you have to pay some amount, maybe registration or whatever. So that is how it is going to go. So at the end of the day they say if you register here we are going to award you a contract. Based on that contract we are going to pay some amount of money into your account in advance".

Duration of the fraud

The perpetrator said "...*It depends on the victim. If the story is convincing to them, money can start exchanging hands from two weeks. But if the story is not convincing to them, they need to provide more evidence, because the man is going to say what the proof that this story is genuine is or that the money is there and based on that he starts giving them more information*". "... *But as soon as the man on the other side is committed, its going to drag on for longer periods. Because as soon as you are committed, by sending in \$1000 or \$2000 for a start, you're going to know that this man is already involved. The victim wants to see the end of the business. Therefore the story is now going to be prolonged. By the time you send in maybe a \$1000 to register a business here, the registrar is going to prepare a registration paper and send to him and say your business was registered successfully. This is the receipt of your payment. Then the next stage now is the seclusion of your contract. Which is now going to demand money from him. Which now says 'you are now registered, we are now going to tender for this business', so that this money can be paid to him. Now the man who is the original initiator of the business is now going to ask for him. So for him now, the man has taken over the business*".

Convincing victims

In this case perpetrator 1 said they would tell the victim that "...*You will not believe when I tell you that most victims will believe the story easily. Because they will tell you, hey, this story is true, because I have a friend who works in so-so bank, he tells me how much money came from Africa into that bank last week. A lot of African leaders; Presidents, Heads of State, government officials have a lot of stolen money in overseas bank. When they steal government money, where do they send that money to? It doesn't justify it, but it makes the victims believe it easily. Like for example, these Swiss Banks in Switzerland, the amount of African money in Swiss accounts. Even a lot of them, when they die here, the*

money get lost. When they die here, because the money is stolen, they are not going to reveal that so money is there, not even to their families, and the money will be lost forever. Because these fraudsters can convince people the money are from corrupt officials. But because I am not going to be able to take this money directly, I need somebody there to help me. So that they will not know that I am the one stealing the money from here”.

The perpetrator also said “... So whomever he is dealing with is perceived as dealing with government officials or the people involved directly. So him, he’s going to advise him: this is what I’m going there to do to negotiate on your behalf. If they ask you to do it, do it. Whatever they ask you to do you do it. So a third party has come into the business now. It could be the original initiator of the business himself or his partner. The point is what that man needs to know is hearing different voices and having different contact numbers/addresses, still in South Africa or somewhere in the world and this depends on the story line. If you tell him this money is in Congo or Zambia, the telephone lines have to change to that country. The important thing is that those who are involved on this side, they communicate among themselves and they plan the storyline. So whatever that man is responding, they know the next step to take to take more money from him. So if the man pays money for the first time then it drags on to the next stage. So it depends on how that man is committing himself”. The perpetrator in Case 4 said “... And then before that procession, they send you some papers, all the copies and papers they’ll send to you. Good papers, they are not...they are fraudulent papers, they are fake papers, but it looks good. They can even invite you here. They can invite you here, they can take you to the bank, they can take you wherever, they can rent a house in a big suburbs. They make as if he’s the director of a big company or he’s the manager of a bank, who will approve the transaction, and the lawyer who’ll be involved, you tip off the lawyer, and when you come here, they take you to all this places so you’ll be convinced. When you see all these things, and then you come to their house, their private house, and then from there, when you’re coming into the country, they’ll send somebody to

the airport to pick you, maybe with a limousine, everything luxury, like they are official government people. That's what they do, and when you see all these people officially, all these luxury things they do, and that's when you'll be convinced. You see the lawyer's paper, you see the bank manager, you can even go to the bank, and you see the bank. And then they make you to sign the paper. And then you say, ok, before this money can be transferred, I'll pay such and such amount. And they transfer that amount to another country, and then, you'll end up to lose your money".

Commitment

The perpetrator said "...The more money he commits, the more money he wants to commit. So if he pays you \$1000 now, he doesn't want to lose that money, so he says if in the next stage I have to pay \$2000, I'll pay it and then get all my money back. So after he paid them, they'll send him to the man who is supposed to release his money. Then that man is asking maybe for this or that. So the only way to get that man to release that money is to give him something. And he is asking maybe for \$5000 out of that money. And you know that money is big money, so you know \$5000 is nothing, so you give him that money. And it's also possible that the man can release the money somewhere else".

Complications

The Perpetrator said "... Like they can say the money cannot come to your bank directly, maybe it can go the Reserve Bank of another country. And they'll tell you the money is there, but its not really, and they'll give you the contact number of some person. He's going to tell you the money is there, but how can they be sure that you are the right person? Come down directly and let us see you, so he is going to come. They'll go and meet people there and sometimes they can meet money there. But the money of course is not going to be real money. It could be paper money. They can take brown paper and wrap it like money and put it in a

bag, and then put real money on top. The man is going to come, they'll open the box, say this is your money. He'll see it and say ok. They will have another story. Like you didn't pay your tax. While they are pretending to release the money to him, they'll take the documents from him and say oh the money is yours but you didn't pay tax, you didn't pay this or that. And they'll be closing the box again and tell him, well for such an amount of money you know you have to pay tax. For you to evade tax is a big offence. Because the people discussing with him are going to be talking like real government officials".

It was also found in this research that there are various patterns of money transfer. This was the statement of the perpetrator in Case 4 in which he spoke of a "Master Password". According to this perpetrator, this master password is used to enter the system of any bank, government department, Internet and e-mail facilities. The perpetrator said "... as soon as we transfer money from an account, we introduced virus into the account to make it difficult for authorities to trace the account in which the money was transferred into". He said that "...I came with this high-tech master password from Italy, and I have used it successfully in South Africa".

The second type will now be discussed.

❖ Contract fraud

This form of AFF is sometimes referred to as trade default and targets primarily small companies with little export experience. According to the US Department of Commerce, twenty-five percent of reported fraudulent business solicitations from Nigeria involve large orders for products from U.S. companies.

With this type of AFF, the target receives an order from a Nigerian company and a bank draft for items to be shipped via airfreight. The Nigerian company will attempt to solicit a sample of the product and/or introductory price under the

guise of planning to introduce the product to Nigeria. The Nigerian company will try to convince the targeted company that registration, import, and other fees are required to bring the product into Nigeria. They will do this by sending the targeted company documentation from real or fictitious law firms.

The Nigerian company usually places a number of small orders (less than \$10,000) with the targeted company, paying with legitimate bank drafts. This is to develop a business relationship with the targeted company and convince them that they have established an export opportunity and a new distribution system in Nigeria. At an advanced stage of the business relationship, the targeted company will receive an urgent letter with a bank draft indicating that the Nigerian company has just been awarded a lucrative contract by the government. They will request the targeted company to immediately send large shipments of their products. When the shipment is sent, the targeted company only learns too late that the bank draft is fraudulent. At that time, the goods are not recoverable, and only then does the supplier discover that the Nigerian company does not exist at all (US Department of State 1997:16).

Conversion of black currency (wash – wash/money cleaning) is another type

❖ Conversion of black money

The victim is shown a suitcase, which is allegedly full of U.S Dollars or Rands in 100-denomination bills that was temporarily defaced with a black waxy substance to mask their origin. The perpetrators tell the victim that there is \$40 million or Rand in the suitcase. However, in order to remove this substance, and restore the notes, the victim must purchase a special but very expensive chemical solution to remove the black waxy material. The cost of the special chemical ranges from \$50,000 to \$200,000 and afterwards the victim will receive 40 per cent of the \$40 million as his or her commission.

Research (The 419 Coalition 2003) indicates that the exotic and expensive mix of secret chemicals for cleaning money, which could be referred to as the SSD solution, is Vectrol Paste, Lactima Base 98 per cent, microtecine and Tebi-Matonic. In reality the secret chemical is actually ordinary cleaning fluid which reacts with the black mixture of vaseline and iodine.

In front of the victim, the perpetrators will wash/clean one of the bills with a special solution restoring the black money to its original form; either U.S dollars or S.A Rands. In an effort to assuage any doubts the victim may have, he will be asked to pick another bill at random to be cleaned. Before the perpetrator cleans the bill, the victim is momentarily distracted by one of the criminal's accomplices. During that split second, the criminal, using a slight movement of his hand, will extract a real bill from his sleeve, and clean it in front of the victim. The treated notes are given to the victim to take to the bank for verification.

In some instances, as a sign of good faith, the victim will be asked to keep the suitcase for a short time, until the victim has raised the money to buy the chemical solution to clean the money. Ammonia is placed inside the suitcase in the event that the victim opens the suitcase to give the impression that the money is disintegrating. However, the remainder of the material in the case is actually blank, blackened paper, often made by simply photocopying money notes without closing the lid of the photocopier and cutting the sheets down to banknote size.

In some instances, the perpetrators tell the victim that the procedure was introduced in South Africa during the apartheid regime in order to avoid the international boycott on weapon deals by transporting big amounts of cash in this manner. Some victims are told that the defaced currency were abandoned by U.S forces in Somalia and blackened as a security measure as part of the shipping process (The 419 Coalition 2003).

During the empirical part of this research, it was found that this particular form of AFF was more common in South Africa. The perpetrator in Case 3 said that he was arrested, charged and sentenced for this form of AFF. The perpetrator said *"... I told her that I came into the country with a briefcase, that the briefcase is in the embassy, I want to collect money from... I want you to help me with R3200 so that I can collect my money from so-so person, and I will bring the money here to you so that we can start business together"*.

To execute this type of AFF, letters are also used.

- Structure of such letters

Indicating where he got your particulars and why he needs you

Your contacts come to me through a friend who does business between your country and Lagos. But I was careful not to reveal to him why I needed a competent foreign link in the person of your respected self.

Introducing himself

In short I am a trained Chemist specializing in currency chemistry and top official in the Nigerian Security Printing and Minting Limited, in Lagos. During the last political dispensation in Nigeria, I was hired and involved in the chemical re-conversion of otherwise genuine US Dollar Bills brought into Nigeria under hidden circumstances by a powerful Arab national who was out to give financial support to a Moslem former presidential aspirant. And of course, this was with the tacit connivance of the then military government.

Introducing the scam

Now in the heat that followed the political crisis and the subsequent cancellation of the elections, the former Moslem presidential aspirant was clamped in jail and has since remained in detention, with the result that some package containing a little less than US\$40 million, awaiting re-conversion, were abandoned in my care and custody.

As a result of the discreet nature of the re-conversion exercise, which in fact is known only to me, I now have my exclusive control about (US\$40 million) dollars bills in cash, presently in the form of bonded re-contractable negative 267, 03 mint stage, deliberately defaced to elude detection and facilitate their importation into Nigeria. The bills now require only chemical re-conversion to grade A1 135 neon proof mint stage and subsequent movement outside Nigeria for choice investments preferably in your country.

After successfully re-converting the dollar bills by chemical process, and in the event that you accept to work with me, you shall entitled to 40 percent of this funds and the another 5 percent be set aside for expenses, while the remainder of 55 percent shall be for me and 2 subordinates.

Indicating what is required of the client

What in essence, the whole exercise entail, is that you shall be required to make a brief visit to Nigeria to see things for yourself and be convinced beyond doubts, that the re-converted bills would really meet any scientific or commercial test in terms of its genuineness, either in Nigeria, Europe or in the USA.

Your visit will also avail us the opportunity of knowing each other and collectively plan workable strategies for smooth conclusion of this exercise. A letter of invitation to enable you obtain a visa to Nigeria will be fax to you in due course.

Securing secrecy

Finally, it is important to keep the facts of this exercise to yourself, the way I have done all these months. You must agree with me, that we can not blow up a chance of a life time because we can not be discreet over a matter that would definitely work to our mutual satisfaction.

I await your urgent response, while I remain with best regards for your kind attention.

The empirical research found that this form of AFF is very complicated because it may start with money transfers and end up as money cleaning. Hence, the victim will be asked to give money to buy chemicals to clean or wash the money.

Introducing the business

In this regard respondent 2 said: *"... they are telling you that they are having a lot of money and its kept in a security company, and they need your help to come and help them to get that money". Respondent 3 said "...you can tell him you brought a consignment from abroad, and this consignment consists of black dollars, or it consists of dollars that have been stamped, and this consignment now have been given by the UN as a foreign aid to a country, for example a war-torn country like Liberia or DRC. Since this money was given now, it happened that a government official embezzled this money and you were working on with that government official, maybe as a driver. So it happens now that you were aware of this, and you stole some of this consignment now and then left the country. So you flew now into another country which is South Africa". Respondent 3 went further to say that "...you tell this victim (mugu) that it is at the airport and you need money now to clear the assignment. So what will happen now is the mugu is going to give you an advance say maybe R10 000".*

In this instance, respondent 2 said: *"...If you reply positively to that letter that they send to you via e-mail, meaning that you start going into the business, and immediately they convince you that the money is really in the security company, wherever you are, wherever they are, they will invite you to come down and discuss with them. So when you come down they will probably tell you its \$5 million dollars, and if you're a businessman, and you're a rich person, when you hear about 5 million you will be much exited. It's a lot of money. So the first thing they will ask you to do is to go and collect the box where the money is kept in the security company. Already in the security company, there are people there who are already aware"*.

Organised - Network

Respondent 2 said *"... So when you go there to that security person, with the person who invited you into the country, and you get to the security company, the manager is going to tell you. Yes, you have kept a box in the security company, but for me to give you that box, you have to give me the money, according to the period that I have kept it for you, so he will maybe say you have to give me 50 000, because I have kept the box for you"*.

Respondent 3 said *".... So they will look now for another person and he will dress as a pilot, and you will meet this person at the airport. You'll pay that person. It can even be a hundred thousand. So you'll pay this person the amount, and he's going to release the consignment. This person is going to act as a custom official. So you pay him the R100 000 at the airport"*. According to Respondent 3 it's a fake custom official. He is still one of the 419 guys. They will dress as the custom official, or the pilot. Mostly it is the custom official not the pilot. So now the custom official is going to hand over the consignment, so you the mugu now, is going to pay the custom official. And the custom official is not the real custom official. He's still a member of the team".

Convince victims

Respondent 2 said "... So the person that invited you, because you are already in South Africa, or wherever, so because he invited you, it means that you are already interested in the business, he will just tell you that he doesn't have money to take that box out of the security company. And he will tell you that there is R500 million in the box, and he will show the documents proving that inside that box is R500 million. Now what you must do, because you are excited, if you remove that money, we are going to share. If he was having money, he was just going there and removing it without anybody's knowledge. Because he doesn't have money, he's looking for a sponsor from somebody. So the manager of the security company he said he wants R50 000 to remove the box from inside the security company. For that period of time that the box has spent inside his company. So you, because you are interested in the business, you have to discuss with the manager, and you have to come out with a solution. Coming out with a solution is you have to guess... you have to say no I can't pay you R50 000, I can give you 30 000. Please please please. Now finally he is going to accept. Now you remove the amount of maybe, maybe R30 000, you agree on R30 000, so you remove the R30 000 and give it to the manager of the security company. The manager of the security company will give you the box full of money, and when he gives you the box of the money, you will take the box maybe to the hotel where you are staying". Respondent 3 said "...So they will take this consignment now to you, it will always come with a bit of a chemical, inside the consignment. And inside the consignment now there is a hangout. And inside this hangout there is the signature of George Bush, the President of America, and the signature of the UN also, the US secretary of state. And there's also now the signature of the UN secretary of state. There are going to be three signatures, yeah the secretary general. And then there are going to be the American Logo, and the logo also of the UN, on the hangout. So this hangout is now going to give you the directions of how they can clean the money. So they are going to use this small chemical now to clean the black dollar on

top". To further convince the victim that the business is genuine Respondent 3 said '...Actually when the mugu meets the custom official at the airport, and he pays the money, they deliver the consignment to him, the consignment is being kept by the mugu, so the mugu now takes the consignment to his house, and inside the consignment there is a small amount of the chemical. And they (perpetrators) will accompany the mugu to his house. So the mugu will prefer his house to a hotel, and the mugu now will prefer to keep it because he already invested some money there. Now they come now and they open it, there'll be cutting and powder. It will be dusted with powder as a means of preservation. And there'll also be cotton so that air does not get into the money. So they'll take the powder now and they'll take a few of those black dollars on top, and they'll put this chemical, so they'll put this chemical on top of that black dollar. The chemical now is going to clean that black colour. So they are going to tell you now, you see this is it. You see now how this money is coming all right? So when they clear it, it becomes a normal dollar and they then take OMO or any other detergent and they wash it and they iron it. So you'll be convinced now that the whole box is filled with that dollar".

Respondent 3 also said that to further convince victims to buy the chemical, they would tell the victim that "... So they will tell the mugu now if you want to clean it, in order to clean the whole box, you need now to buy one full litre of that chemical, and the chemical is coming from overseas, it is not made here in South Africa. So if you have brothers now overseas, Geneva, Switzerland, so they'll tell you now you should phone those people overseas dealing with the chemicals, they will give you a number of someone who is also their member, you phone that person about the chemical, he's going to give you now the price of that chemical in dollars, and when you convert it, its still going to amount to R250 000 this side. And you are going to be very convinced. And you are going to ask him how you are going to get the chemical because he's in Switzerland, you are in South Africa, and you need the chemical for business. So then what happens is that he's going to tell you he's going to arrange with a pilot on the

plane, he's going to give the pilot the chemical and when the pilot reaches the Johannesburg international airport he's going to phone you. And when the pilot phones you, you should come with exactly that amount of money. The pilot does not know you, he has no dealing with you, it's just him giving you the chemical and then you give him the money. This pilot is a fake pilot he's still a member of the team, so someone will just dress as a fake pilot. And then goes to the airport. Now, your consignment has been given to me, so you should come and collect it because I'll be leaving soon. I'll be leaving instead. So you'll be rolling instead. You'll be happy that things are alright. You are going to buy the chemical and then you are going to clean the money and then you'll be rich. So when you go now there, you give him the money and he gives you the chemical. And when he gives you now the chemical you take it and you go now home".

Complication 1

"...And when you get there, the person who invited you, the 419 man will say there is 500 million Rand, but the key of this box, I am not having the key of this box. You have already paid 30 000 Rand to the manager of the security company, now he will maybe tell you I have another company where I take keys always for safekeeping. We have to go and collect the keys. Now you go with him and collect the keys. When you arrive there to collect the keys of the box, the person is already there, waiting for you, because he knows you are in the country. He says that to give you the keys, you have pay maybe for the time that he has kept the keys. And you have to say how much? He's going to say R20 000. Now you have to guess: no, R20. 000 is too much. Or if you are really excited, you are going to remove the 20 000, and they give you the key. Now they give you the key, and you go back to the hotel".

Complication 2

"...Now you open the box, there is money in the safe, but that money is not clean. Its not clean as money... usually it has a colour. But I know the money inside the box is not the real money. It should be fake, let's say its fake money, or it is real money, but with the chemicals, says colours, different colours compared to the real money. So now when you go to the...when you open it you see there is money, but the money is not real, yes it doesn't look original. That money doesn't look original. But now the person, the 419 man is going to say to you, this money is dirty, because it has stayed there for a long time".

Complication 3

"... So now we must put this money into maybe chemicals or products so the money can be ready to use. That is already the 3^d stage. You have already spent money to take the box from the security company; you have already spent money to take the keys, so the next stage they will say to you that that money is not well cleaned. You have to pay for the chemicals or there's a special water to clean the money. Now you as a man, invited here by the 419 man, because you are excited, you have already started spending money. You haven't even spend half the money that are in the box, somewhere in the box they will show you, I don't know how you call it, they will show you how to make that money a real money. So for you to know how to make this money to be ready to be used anywhere in the world. Of course it's inside the box, now they will remove it and they will say to you this is the name of the product. That can make that money to be well used and ready to be used anywhere in the world. The guy who invited you he behaves as poor, as a person who doesn't have any parents, he's relying on that money to survive".

Chemicals

"...So because you are here now, by all means you have to help him. So you must now by all means, you have to buy that chemical to make sure that the money must be ready to use. So now you are going to go out looking for chemicals. 419 is a game. It's a game. Those people, I never heard that they killed people. It's a game. So now that you are looking for chemicals, they've got a friend, it can be an old black man or an old white man, he's very rich. It's that person that they are going to prepare, to make sure that they are going to sell you the chemical. Because he is the only person who's got the good chemicals".

Sales of chemical

The respondent said "... No he doesn't ask the victim to go and buy. He says to the victim lets go and call this number this is the chemistry, because the victim doesn't know this country, lets say he's in Kenya, he doesn't know Kenya, he doesn't know how things work there. Now he cannot go and give the victim an address to go look for chemicals, because the victim is invited. He's the one who invited the businessman to the country. The person who is there, the old man, the very rich man, who is the owner of the chemical, he's in the chain, (Network) because 419 is a game. It's a team. So now, in the team, there is someone who is just there ready to sell you chemicals. Because all those people where you always pay the money they are trustful people. Because when you pay the money, they take the money and they share it. So now when you go to buy the chemicals, they arrange someone already within the network to wait for you. If the person has an office, he calls the person: '...good morning sir, I'm looking for this type of chemical'. The person can say he doesn't have the chemical. And you'll say if you don't have the chemical, can you direct me somewhere where I can get that chemical. That person will give him the name of another person. Maybe it may be the same person or it might be another person from within the network. Now he calls the person. All this in front of the person invited, in front

of the victim. Now they make a plan, and they arrange where to meet to discuss the price. Now the victim, he'll say to the victim, no that man is speaking English, so you can discuss with him about the price. The victim will take the phone and say: 'good morning sir, my name is this and this, I would like to buy the chemical because I have a problem and this problem is just something that will help me'. He doesn't say he needs the chemical to go and wash the money. So now the person is going to say, yes I have that chemical, just half a litre is R400 000. So now, you have R5 million in front of you, you want the money, so what are you going to do? They say they want R 400 000. But you, you want the 5 million to be clean. But even then you haven't spent half of that 5 million. Because you are excited, you'll say I'll come and buy the chemical; I'll give you R300 000. He says no, I want the 400 000. He can even refuse. Because you have started spending, you must continue to spend. Now you make an appointment with him, you go there, you remove the 400 000, and you give him, and he gives you a bottle full of chemical".

Complications 4

"...So now he's going to take you back in the hotel. He'll say to you that this chemical, the person who sell to you said that this is not the chemical that you are supposed to work with it in the sun. Or this chemical is not supposed to be in the area where it is raining. Maybe outside it's already raining. But he's going to tell you to take the chemical, and you go and put it somewhere where it's not raining or where there is no sun. But where are you going to see where there is no rain or no sun. So now you are going to take the chemical with him, and you drive until your hotel. And maybe while driving, there was a sun, or maybe while driving it was raining. They already told you the chemical doesn't need sun or rain or what what". In this regard also, Respondent 3 said "... Now this chemical now, at times they make it in such a way that it is an explosive. When he gives you he will not tell you that it needs a certain temperature. You cannot keep the chemical in the fridge actually, and he will tell you now that you can keep the

chemical in the fridge, while you are not actually supposed to keep it. So what happens now is that you put it in the fridge, and overnight it explodes, and everything is going to come out. And you are going to be confused now and you will need another chemical. And in certain cases they are going to sell you the chemical, and when they come to your house, what happens that since they know its working as an explosive, they are going to shake it and the whole thing is going to come out. And when the whole thing explodes now, nobody is to be blamed because it happened when they were working. So they tell you now that you need now to buy another chemical from overseas. And if you don't have the money to buy the chemical you are going to be stuck. You'll still now have the business that you cannot continue. You'll still now be looking for me now to look for money".

Complication 5

"...So now when you get to the hotel, maybe now it's the process to wash or clean the money. Maybe after an hour, he'll say that he's received a call, a very urgent call, I'll be with you within the next two hours. And he leaves you there in the hotel. And maybe while you are there in the hotel there is a sun. and maybe after 30 minutes he's gonna call you and say, hey my brother, as you see things, its raining, and maybe in the conduct of this chemical you don't need to use it or walk with it when its raining. But you have already walked with it in the sun and now its raining. Which means the chemical is not good for you anymore, because when you receive the chemical, they say keep it under 20 degrees. But you have already walked with that chemical in a cool area and in a hot area, meaning that the powerfulness of this chemical is no longer the same. So what he is going to do is he's going to come back to you and tell you that this chemical...its raining and there is sun, we have to wait before the weather is nice before we can use it. They have already collected 400 000 from you. But on the box they say 5 million. And then that box, they give you the key of that box to keep. Because that box, you have to wash what is inside that box, you have to

make it ready to use. So now that the chemical has already passed through so many processes, that they were not supposed to pass these processes, meaning that the chemical is invalid, so now he'll say to you that because it is raining, this and this, in the code of conduct of this chemical, they say you cannot use it in this area, meaning that the chemical is not useful anymore, meaning that what? You have to buy a new chemical".

Buy more chemical

"...And to buy another chemical is money. And because you buy half a litre, you must buy another half litre for R400 000. That is how you'll keep pumping the money because you want the 5 million to be useful. So you'll keep pumping the money to buy that chemical. So you must make sure that you walk with on this money only when it's not raining and when its not hot. So anytime you are planning to go and buy chemical, you go and buy in good weather, and maybe on your way back, it's raining. Meaning that the chemical is damaged. Another R400 000. Meaning that the chemical is damaged, you cannot go back to the person and say the chemical is not good anymore and he gives you another one. Meaning that each time that you go there to buy another chemical, they will always tell you how the chemical should be kept. And if you are walking and the chemical is not in that weather where they told you it should be, it means that the chemical is not useful. And to precede you must buy another chemical. So you'll be busy buying another chemical. Maybe until when your money will be finished". Respondent 3 said "... If you can arrange more money to buy the chemical, they will still arrange for somebody to bring the chemical to you, and then, this business never goes to completion, it will always end halfway. If you still bring money, they can always arrange a way in which it can explode again, in such a way that you will never realise that this thing was fake. You'll think that it did not go through because of a lack of chemicals. You'll still believe that that consignment consists of black dollars".

Bank loan

"...they can ask you if you can go and do loan from the bank, or loan from any office. Maybe chemist said he's going to give us discount now, than to pay 400 000 you can pay R250.000, its better if you can go and get loan so that you mustn't lose all this money. If you have people who can give you loan, you can still go there and take loan. And then you must go and buy chemicals again. Just make sure that every time you go and buy chemicals...because there is a condition that they give you when they give you the chemicals".

In this research, other method of black currency was found which is known as "Fimash" or the "Box method"

❖ Fimash or Box method

Findings in this research indicate that this method of AFF is more common in South Africa. According to respondent 3 this method of fraud is committed as follows:

Approaching victim

Respondent 3 said *"...What happens is somebody approaches you, he tells you he has a negative to produce money. That he's short of chemicals. He can tell you that he has connections with the Reserve Bank, e.g. with Titus Mboweni. That people are supplying them with negatives. That the problem now is the chemicals. That the chemicals are very, very expensive. So what happens now is that they are always going to bring a bit of the chemicals to show you what they want to do. Now they are going to take the normal Rand, they are going to mix some other chemicals, they will dip this note into the chemical, and they will transform this note into a white piece of paper. So when it transforms now into a*

white piece of paper, they will tell you that that note now is the negative from the Reserve Bank”.

Convince victims

In this case, respondent 3 said “... *You’ll be convinced, you wouldn’t see that as a white piece of paper. So they are going to tell you now that they need chemicals to clean this money. In addition to that they need extra notes to give colour to that paper. So if you are coming into the business, they’ll need you to bring few notes to this paper, and you have to buy the chemicals. So they’ll take the normal note, they put the negative. So now they are going to spray that chemical on top. So when they smash it now, the white piece of paper on top is going to become black. All the two of them they are going to become black. The original notes and the white piece of paper, even though its money although they are claiming it’s a white piece of paper. Everything is going to become black. After it becomes black they are going to leave it for some hours. If it is in large quantities they are going to leave it for 24 hours. And the one is going to ferment”.* The respondent said they tell the victim that “*it’s going to go into fermentation, so the color is transferred from the original load to the other one”.* So before this they have copied the number of the original notes that you have brought them, they have copied the number to make sure that the number does not coincide with the original one. To proof to you that its not a duplicate, that its just the colour. So what happens is that, yeah they copy the number in front of the victim. If they are working with one million Rand they are going to copy all the number for the victim to see that they are not duplicating the money. That this money is already in the system, they did not clean it. And then they are going to wash it again and you can see that now it has come out to be a normal note. So if you bought R200, you brought two notes of 100/100 each, they’ll make it to become four. Since they know the number of your notes, they have copied the number of your notes, so in the end they will know the ones that they have made. So they’ll give you the two, they will keep yours, and you should use

theirs. You should go to the bank or you should go for shopping to see that the money is real. If you go to the bank, they'll accept it. If you go to any shop they will still take the money. So after they have taken this money now you are convinced".

The Respondent said "... Yeah after you have given him the money to go and deposit the money in the bank, after he has deposited the money in the bank and he realises the money is now ok, that's now when the real business begins. So he'll come now and realise that everything is ok. So it's now that if you are starting you are starting with a good amount of money".

Amount of money involved

Respondent 3 said "... it also depends on how much the victim, in certain cases, we use R200 to make R600. So R100 was making R300. So after we gave the money to this person, he went and he used it and it was all right. So he was not very sure. He was telling us that this thing he has heard from people that at the end there were going to be magic. So he's going to bring only 10 000. If we can make it to R30, 000 he's going to bring R350 000". The Respondent said: "... when the victim was bringing R10 000, actually we made R30 000".

Manipulation

The Respondent said "... We took R20 000, transformed it into white paper and we do the normal process again. So we put 2 negatives and one 100 Rand note. And then we still put the iodine solution in front of the victim. And now it was the victim who was doing it himself. So after we did this, they waited for 24 hours. After they took the money from the iodine solution and they washed it the money came out R30 000".

Chemical

The Respondent said at this stage, they will tell the victim that "... *now you have to buy the chemical, the chemical that you have to use to clean the money. And we are also selling it in litres. And you have to bring now the notes that will transfer the colour. So they are going to use you twice. First of all we are going to need money for the chemicals. They are going to tell you maybe that a litre costs R20 000. So you buy now the chemicals and you keep it*".

Defrauding victim

The Respondent said "... *Meanwhile we have cut pieces of paper in equal sizes, we are going to documentaries and they cut it to the size of money, and they can put it in so many boxes, and they can go and put it in your house. And they can tell you that pieces of paper are worth about R5 million. White paper. They are worth about R5 million. So to wash them now it needs 1 litre of chemical, which is R200 000. So first of all they bring you these negatives. You know that you now you have the negative. So you'll go now up to the extent of buying the chemical for R200 000*".

Respondent 3 said "... *They will connect it to another person who is selling the bottle of chemical, but that person is still one of them. So they will now sell you that chemical. So at the end now they will tell you must still bring them money that will transfer the colour. They can tell you to bring R300 000. This R300 000 they can use now to transfer colour to all this money. So if you bring now this R300 000 now, what happens is, if they know that you are going to work R5 million, they will also cut pieces of papers worth R5 million, and they will use aluminium foil, they can put them in packets of R100 000, R100 000. So when he's (fraudster) coming now, he comes with a bag, he's going to come with that bag full of pieces of paper that have been darkened. Since they are very clever, he'll come with you now, you're working together, he puts the negative, he puts*

the normal money, he puts the negative, he puts the normal money, and then you wrap it now with the aluminium foil, the same aluminium foil. So if maybe he had 20 packets of aluminium foil of R100 000 in his bag, he was also going to make sure that he had 20 packets of aluminium foil from the one you are wrapping. So after doing this now, you people are going to inject it. He's going to give you a certain chemical that you have to inject. When you inject it now, its going to transfer the colour. So after you inject it now, he's going to tell you that you people should have a walk, you should go out with him now maybe for a drink".

The Respondent also said "...Most people they are doing this in a hotel. If you are going out to the restaurant, maybe there's another friend, maybe before you do the business now, he took the key of that hotel, he goes and duplicates it, and he gives it to that friend, the friend is in the nearby room. So when you go now to the restaurant, the friend now is going to come and open the door, and since that friend now is having the same packet, he's having pieces of paper that has been cut and darkened and folded in aluminium foil, ten of them, he's going now to swap, he's going to collect...he use the negatives from the colleague, so he's going to swap, he use those ones from the bag and he carries those other ones out. And then maybe after 2-3 hours, he's going to bring you now back in. And when he brings you now in, he's going to give you now an excuse, that there is one guy that is supposed to take this final chemical that is supposed to clean this money. That he needs to go and see that guy, that you, you should be waiting there. That you should wait in the hotel, he will bring the chemicals and you should finish the business. Like this, he's leaving already. The money has left long time already. The other friend who swapped it has left with the money".

Complications

Respondent 3 said "... he also is going to use this excuse to leave. So after maybe one hour, he is going to phone you that hey, he has been arrested maybe

by the police. And when he took that chemical when he was coming there was a raid, and the police caught him with this chemical. So he has been arrested. At times he will arrange with the policeman. The policeman will go and keep him in the cell. So he'll say that he has been arrested, that he is in so and so police station, and that you should come for his rescue".

According to respondent 3 "... Since you (victim) know that you were doing an illegal thing, instead you are running away. You are scared that he can also involve you in the same thing. That is something that has been arranged between him and the policeman, so in the end you can't blame him. So they are gone now with the money. But you still believe that you are with the money, which are pieces of paper that has been changed into black colours. So you'll still believe that its money, but they are many pieces of papers. So he'll tell you now that you have to postpone the business. So he'll push it now to a further date. So you'll carry these things now you'll take them home while waiting for him to be released. And while waiting for him to be released, he's going to tell you now the chemical he bought was seized by the police".

Buy more chemical

The Respondent said "... So he means that now you have to buy another chemical. If you don't have more money you'll be confused. You'll still have the business and you'll be confused. So at times you'll be fed up with the man. You'll still go around to people now, asking them how you can get chemicals who is cheaper than the one he charged you. Maybe he charged you R300 000. You go and ask another person do you know about this thing. They will never refuse you, most of the people, anyone who has an idea, they will tell you I can sell it to you for R100 000. So you will still go to the extent of buying it again. Actually they'll bring the chemical, they'll sell it to you again, but since you know how to produce it yourself, when they are coming now to test the chemicals, they will tell you to take some samples from the one you have at home".

Testing of chemical

Respondent 3 said "... So you'll take it to the hotel, so those guys they'll have theirs also. It's the normal notes, but they have made it to be black. These guys they are very fast, he'll put it inside your pocket or maybe he'll put it in a suit. So when he gets inside now, he'll put it in his pocket, or they can put it in a suit. So when you get inside the hotel room, he will tell you that you must give yours and so you give yours and you are in the hotel he goes into the toilet as if he's urinating and he takes yours and he swaps it with his own which is normal money that he put some chemical to make it black. And then you come now and they use this chemical. He will inject it now with that note which will become clear. He's going to say now, you see if you buy this chemical you yourself can clean the money at home, you don't even need to call a technician, they call themselves technicians, now you yourself can do this, there's no need to involve someone if you involve someone like him, if you bring in someone to clean it you have to pay his chemical, first, and then secondly after cleaning it you have to share because he must give his own workmanship. And most of these people are greedy, because he will not also want to give his own share. So you'll prefer to buy his own chemical and allow him to go. So most of the time now you buy the chemical, since he has proven to you that it is working, so you want to clean it yourself".

Respondent 3 further said "...So when you go at home now, you put it on the negative you got, when you try to wash it instead of it coming out normal notes, its going to curl because its normal notes. So him, he brought the negatives you gave to him, he has prepared his notes at home, and transformed them to black, so you were cleaning his own notes that he brought from home. It was normal money but he has manipulated it to be black. And you are convinced now that this chemical is the right chemical, and meanwhile he has been playing with you. And you are going now to lost more money, until now you are tired, and you are

going to leave the business and at a certain stage now, when you come across them now, you are going to tell them no, you are tired of all these things. You cannot buy chemical any further. That you always want somebody who will bring his chemical, clean this money and then you share. Than for you to buy this chemical again is impossibility. At this point now the mugu begins to become wise. That there's something going on. He prefers you to bring the chemical, then you wash the money and you share".

The findings of this research reveal that when the victims has been defrauded about twice and has now become wiser and suspicious, the perpetrators would use another form of AFF known as "Spiritism". This form, according to the perpetrator, is to completely finish and drain the victims of whatever he/she still might have.

❖ Spiritism

In this form of AFF, Respondent 3 said "...Because they say, there is a saying that wherever there is money there is a demon. Spiritism will always come in when the victim has been duped up to the extent that he himself he is fed up with the business. That's now when they bring in spiritism. Spiritism now is to end...ya, now you are tired, now you can't go further, if they bring spiritism you'll be involved".

Respondent 3 said "... So most 419ers use spiritism when they see victims are becoming clever, that's when they use spiritism. And at times they can tell you that, uh, spiritism works in so many ways. They can come at the end of the business".

Approaching victim

Respondent 3 explained this as follows: *"... they can tell you that they can use their ancestors, or someone, one of those guys in a way, who have been dealing with you, can go and send someone who is dealing with spirits, most of the time these people are herbalists, they'll know something about herbs and all the like, so they will give your number to him, that phone this person, we've been dealing with him and now he's wise".* He said the perpetrators will contact one of their members and would tell him *"...That phone this mugu since you know much about spirits, that his ancestors revealed his name through a dream and his number, that he's got a packet in his house, and that they are here to help you"*.

The Respondent said the herbalist will tell the victim that *"...it's the spirit who gave your name and your number to me, that you are having something in your house, that you don't want to use it, that you are a wealthy millionaire, that he is here to help you".* The victims will be in doubt about who gave his number to them; he'll be confused. So the victim books an appointment. The Respondent said *"The victim will go and see the herbalist now, and he'll tell you what you've got in your house. Actually this thing he's been told from behind by the first perpetrators, so what will happen now is that he'll clean this money for you for free".* The Respondent said that the herbalist would tell the victim that *"...but what he needs to buy is, there is a certain perfume, that you are going to buy for R150. With this perfume everything is going to be clean. With just R150 they can clean R5 million for you"*.

Executing the fraud

In this instance, the Respondent said that *"... So what will happen now is you (the victim) arrange a day that he (the herbalist) is going to do it for the victim to see"*.

According to the Respondent *“... So you buy the perfume, you go to a hotel or any place that is comfortable for both of you, you put the money in a box, it can be any box, and those people they have their statues, they have their statues, idols, so he will open this perfume, and it is believed that this perfume attracts, it has a nice smell, it attracts the spirit, so the spirits now, are cleaning the money, the spirit hypnotises the victim actually, instead of you seeing papers there, you are seeing millions. Instead you’ll be seeing money that the spirits are playing with your eyes”*.

He continued: *“... So the perpetrator pray, and the victim see those pieces of paper now changing into his/her local currency, changing into money. So the victim will be pleased that no, God has answered his prayers. You’ve been struggling for a long time and now finally your prayers have been answered”*.

Complications

Respondent 3 said *“.... But there is always a clause. After it has been transformed, a letter will appear in front of you. It’s a spiritual letter, what happens is that the perpetrator will write a certain letter before going into business with you. He’ll write a certain letter, he knows your name, that if my name is Mr Moses, it says ‘ Mr Moses, you are welcome into the spirit world, now that your money has been cleaned, we just need R200,000 or R300,000 from you, we just need R300 000, that’s the only thing we are going to charge you. When you give R300 000, you can collect your R5 million”*.

He further said: *“... That’s now where they are going to crook you. So the letter is going to appear now, you are happy that the money is clean, and you know that you can take part of that money and give it to him, so the letter is going to appear now that no, before you can take this money, you have to give R300 000 first, you give to the spiritual healer, and then you go and collect your money. So at times if you know that R300 000 and 5 million, R300 000 is nothing, if you have*

the money, you are going to bring it, since you've seen box of money, so you are going to bring the money, or they are going to tell you, or unless you bring the money, and then you can come and collect your money, at times they can give you a few notes of that money, and then you can come, later on they pray again, and the money change into normal pieces of papers. So when you go and sleep at home, you'll be dreaming of how you are a millionaire".

He also said: "... So the victim will be struggling now to borrow money. So now is when he bring the R300 000, you give to the perpetrator, and they put the R300 000 on the floor, and they open the consignment, and they pray, and the R300 000 is now going to disappear, it'll burn, with fire, and it will become ash. And after they pray now, the money in the box is going to transform, the paper is going to transform now into money. And they'll tell the victim that 'that's your million, you should take your money and go home".

Complication

Respondent 3 said "... And they will give the victim a certain condition, 'that when you reach home you shouldn't tell anyone, and when you reach home you should open that box only after two days'. So when you collect it, you'll go, at home you'll be very happy, you cannot keep that, you are richer by 5 million, if you are having a wife, you are having a kid, you are having children, they must know that something is going wrong. So the way your mood is going to be now, you'll be smiling, and they'll know that something is wrong. So most of the time now you'll be forced to open the box, before the two days, so when you open this box now before this two days, it changes into normal pieces of paper. But it has changed already to normal pieces of paper from when you collected it. When you collected it and they closed it, it has changed already to normal pieces of paper. So the devil actually camouflaged your eyes. So now you start to think, this thing actually started to change because I didn't follow the law, they said two days, but actually I opened it after 1 day".

The Respondent explained further: "... So when you phone them now, they have to start afresh again, you have to bring money again. So at times if you don't have the money you just end like that and now you'll be scared. And even if you know the person, you cannot approach him, because you believe because he's a spiritual healer, he can kill you overnight. You know the person who did that, but you can't do anything because he tells you he can finish you in a second. He can pray for the spirit, and the spirit can take you while you are sleeping. The money has been taken by the spirit people, he's not gaining anything. But that money now, belongs to him. So that's how that one works, spiritism".

Other types of AFF/419 scams include:

❖ Sale of crude oil at below market value price

In these cases, the victim is offered special crude oil allocations at lower than market value. As in other AFF business proposals, the victim is required to pay special registration and licensing fees to acquire crude oil at below market price, only to find that the "sellers" have disappeared once the fees have been paid (US Embassy Lagos).

❖ Disbursement of money from wills

In this form of AFF, charities, religious groups, universities, and non-profit organisations receive letters or faxes from a mysterious benefactor interested in the group's cause and wishing to make a sizable contribution. Before the contribution can be released, however, the recipient must first pay an inheritance tax or various government fees and taxes (U.S Department of State 1997:23).

In one of these letters, the name of the deputy minister of mines and energy in South Africa was used. The letter said she was a member of President Mbeki's

cabinet and a beneficiary to millions of dollars inherited shortly after her husband had died while she was on an official trip to Trinidad and Tobago in 2002. The letter states "...After his death, I discovered that he had some funds in a dollar account... This fund emanated as a result of an over-invoiced contract which he executed with the South African government," the letter said.

It continues: "Though I assisted him in getting this contract, I never knew that it was over-invoiced by him". The letter says secrecy is essential as the government may investigate. If they discover this money in her bank account, they will confiscate it and seize her assets here in South Africa and it will definitely affect her political career in the government. The letter stated that because of her position in government, "Shabangu" should not be contacted and for security reasons her son would handle all negotiations (Naidu 2004).

It should be noted that the type of AFF used by these criminals depends on where they and their prospective victims are located. The structure of the letters also depends on the prevailing world situation. For example, some letters are reported to have been from Iraq because of the war in that country, Democratic Republic of Congo (DRC), Liberia, Zimbabwe (plight of white farmers) and South Africa.

❖ Held for ransom

More and more often reports appear of individuals who are being held for ransom after they had been lured to Nigeria/ West Africa or South Africa with the promise of these exceptional business transactions. For example, in July 2001 the Sunday Times reported on the exploits of a former deputy mayor who travelled from Northampton to South Africa and was subsequently kidnapped by the fraudsters (Sunday Times 2001).

After he had flown to South Africa to meet his new “business partners” he was met at the airport by a man and a woman who escorted him in a car to a rented house in order to meet a Mr. Ford. There he was confronted by two men, armed with a pistol, and informed that they were holding him prisoner.

Only after he had managed to alert his wife of his predicament in Polish, his home language, during a call he was allowed, was he able to garner police assistance and two detectives flew to Johannesburg to assist the South African Police. Three telephone traces led the police to a house in the East Rand of Johannesburg where the victim had been held captive in a locked room for nearly 48 hours where they threatened to cut off his ear or kneecaps.

Previously police also had to rescue a 42 year old Romanian businessman, who was kidnapped in 1999 and held captive in Soweto after he had flown from Bucharest, in response to one of these letters. A ransom of \$500,000 was demanded for his life. At the time, police arrested seven suspected gang members, five South Africans and two Nigerians who were being investigated for the kidnapping, and maybe even killing of a 65-year-old Norwegian millionaire, in September 1999.

A similar scam involved a Japanese businessman who managed to escape his captors without serious injury, ran into a hotel’s restaurant in Durban where he found refuge and summoned the police. Earlier he had been forced to call his son in Japan with the message, “I have been confined. They will not release me until the money is paid. Please send \$50,000”.

In one of the nine cases, a Canadian, who was a resident of Mauritius, was found next to the motorway south of Johannesburg in June 1999. He was bound and shot twice through the head. He flew to South Africa in response to a 419 letter which was later found at his home. After a few days his family received a demand for \$200,000 but the deal went wrong and he was murdered. Four

others had survived after a ransom had been paid, and the police freed a fifth victim.

While direct violence leads to several deaths each year as a result of this type of AFF, there are also several victims, often unreported, who eventually take their own lives, after they had been reeled in, to the point of financial or reputational ruin.

In a related case it is open to speculation whether the finance director of a company in Saskatoon knew he had been duped by the Nigerian prior to taking his own life in July 2001. What he did know was that his unauthorised transfer of \$105,562 from the company pension fund account had been discovered and he was about to be confronted (Sunday Times 2001).

The next subsection that follows discusses the characteristics of AFF in terms of structure and organisation.

2.3.3 Characteristics of AFF

Capability

This type of crime is not possible without some degree of criminal collaboration and infrastructure. Criminal capability is therefore not so much a matter of the skills and knowledge of an individual, although some individuals have some particular skills and knowledge that are vital to a particular criminal enterprise, but more a matter of the convergence of criminal contacts and associates. They either join forces to commit a specific moneymaking crime, or provide essential logistical support, buy or dispose of illegal goods or launder the proceeds. This need for collaboration lies behind the formation of organised crime groups. It is this capability of the AFF-schemes that enhances their power to defraud others.

Organised crime groups or criminal networks

The term 'organised crime groups' is often used to refer to the activities of very serious and organised criminals, and in some instances it best describes the way those concerned have organised and see themselves. However, the term can also be misleading. While there are certainly some organised crime that resemble the Italian mafia, with permanent members and each with a distinct role, a hierarchy in which there are clear chains of command and communication, there are other groups that are, in practice, loose networks. The members of these groups coalesce around one or more prominent criminals to undertake particular criminal ventures of varying complexity, structure and length. In the latter instance, the criminals may not think of themselves as members of any group, and individuals may be involved with a number of sub-groups within the network, and therefore may be involved in a number of separate criminal ventures at any one time. AFF is a classic example of the latter.

No clear consensus exists, however, regarding the degree of organisation in AFF networks. The New Jersey Commission of Investigation, as well as Enonchong (Jones 1993:66), state that controlling cells operate in various parts of the country, implying a high degree of structure. Enonchong (1988) suggests that a few Nigerian Mafia bosses tightly control Nigerian criminal activities on a global scale. A Sergeant of the East Baton Rouge Parish Sheriff's Office interviewed a Nigerian informant, who gave him the following response when asked about the degree of organisation in his cell: "...there's no formal organisation or informal organisation. See the way they are put these days, when somebody discovers a source of making quick money, he spreads it, you know like to his friends, partners and all that" (United States Senate, 1987:213).

It is clear that this capability of AFF-schemes, to utilise organised crime groups or criminal networks, makes them more dangerous and more likely to succeed.

In the empirical part of this research, the statements of the perpetrators and the respondent revealed that organised crime groups and criminal contacts are essential tools in the execution of AFF. In his statement the perpetrator in Case 4 said “... No, they work from there. Its just they send them jobs, they call them from here and say no there’s jobs. And that jobs will send them to people where there is money, you can’t do this job alone. You do it with a network. From South Africa, Nigeria, from Nigeria to UK to Chile, all those things they got a network”. The perpetrator also said that “...It’s a network also. You cannot do it alone. They’ve got that document maybe from the American Embassy to show that this paper is not allowed to be used by any person, it can only be used by government”. Supporting this stance, Respondent 2 said “... But to be clear is that people who are doing it is a team and it’s a game. Very well organised, very well organised. And you as a victim you can’t even know that this thing is a game or it’s a team. They are well organised. But you as a victim you can never realise that they are well organised. You’ll only realise they are well organised when you speak to another person, who was already victim. He’ll say to you no, those people, blah blah blah. Its only when you can realise they are well organised. And maybe stop pumping your money in”.

Criminal contacts

Where AFF is concerned, collaboration is crucial, as with any other serious and organised criminal activity. The desire or need to work with others encourages criminals to form groups and networks. However, these criminals routinely collaborate with people outside their immediate circle, not least with criminals that they buy from or sell to, and those that provide them with services, such as money laundering and transport. The ability to network and forge new relationships is thus an important factor in the success of many criminal rings, often opening up new money-making opportunities. Prison provides the ideal environment for criminals to network and make trusted contacts. In a number of cases, jailed members of serious and organised crime groups have come across

other prisoners who provided them with access to new networks or markets. It is this capacity to utilise criminal rings that further enhances the success rates of AFF-schemes.

Managing the risk from criminal contacts

Research conducted by the National Criminal Intelligence Service in the UK (NCIS 2001-2004), indicates that criminal contacts pose a risks to organised crime such as AFF. This risk exists because some of their contacts may turn out to be unreliable or indiscreet, or become a rival, or will be an informant, or even an undercover agent. In this regard, they try to manage these risks by working mainly with people they know well and trust. Shared experiences, gained for example through family connections, school, prison or previous criminal collaboration, are clearly important to establish trust. Common nationality or ethnicity is also important, particularly where there is a relatively small community involved and everybody knows everybody, or somebody can easily be checked out.

Increasing social or geographic mobility has, however, been eroding the relevance of nationality and ethnicity in terms of the people involved in specific markets, and around the interaction between groups of different nationalities and ethnicities.

Operate on strict 'need-to-know' basis

These criminal rings operate on a 'need-to-know' basis, so that associates only know part of the picture. They also try to steer clear of activity that may link them directly to their crimes, and thus use subordinates or intermediaries for hands-on jobs such as handling illicit materials and dealing directly with new criminal contacts. The latter may first be checked out through other criminals or corrupt law enforcement contacts. However, until they have gained sufficient trust, new

contacts are more likely to be kept at arms length. The process of building trust might involve performing a number of minor roles or high-risk tasks, successfully of course.

2.4 THE INCIDENCE OF ADVANCE FEE FRAUD

To assist in understanding AFF, literature studies of the statistical facts need to be articulated. It should be noted that several references used in this section of the thesis focus more on sources of international origin, as the researcher does not consider AFF data of Nigerian sources as accurate.

A report by the British Broadcasting Corporation (BBC) stated that Internet scams offer millions, and that Britain has received approximately 50,000 scam letters up to date (BBC 1998). These letters came via the international postal system. The article specifically stated, "Over the last 10 years, Nigeria has been the principal base for such scam offers with more than 50,000 scam letters were read in Britain by the beginning of that year. However, with the use of e-mail it is difficult to know the origin of these letters because perpetrators claimed to be located out of their location stated in the letter".

It is reported that in 2002, more than £8 million worth of losses were registered at the NCIS in U.K alone, with further losses reported directed to the U.K police forces. According to the NCIS, AFF has been a lucrative method of stealing money from gullible punters for more than 30 years, but the Internet boom has made it much more effective.

2.5 CAUSES OF ADVANCE FEE FRAUD

Motivation for AFF

Explanations based on financial strain feature in almost every type of fraud. According to Duffield and Grabosky (2001:2) this arises from imprudence, misfortune or a combination of the two. It should be noted, however, that financial strain is a very subjective concept. Even those with above average affluence (who are involved in AFF) may feel economically deprived in comparison to what they perceived to be the relevant standard. At times, “keeping up with the Jones’ ” may require other than lawful conduct (Duffield *et al.* 2001:2). This stems from the desire to possess what one cannot afford, even when true financial deprivation may not exist.

Inherent in the above, an element of ego is present, when a comparison with others, who are better off, is made, and a desire to match that standard in terms of lifestyle, comfort and material possessions. Other sources of financial stress may result from lifestyle choices, the most prominent of which is compulsive ostentation and even more ostentation is prevalent among AFF offenders. Duffield *et al.* (2001:3) stated that ego/power is a motivation that applies to all fraudsters. This can relate to power over people as well as over situations. In terms of the former, the sensation of power over another individual seems to be a strong motivating force for some fraud offenders to the point that it becomes an end in itself. As one con fraudster put it “... for myself, I love to make people do what I want them to do, I love command. I love to rule people. That’s why I am a con artist...” (Blum 1972:46).

The financial reward of AFF was found to be another motivating factor for this crime. In most cases it was found that the ease with which they make money through this fraud encourages individuals to take part in this crime. In his

statement, the perpetrator in Case 2 said: "... *Because the financial rewards are enormous. I mean how can, you've never worked in your life, maybe you've been selling sweets in the streets or maybe you've been working in a tuck-shop, and just because a letter you've sent, somebody pays you a million dollars? I mean obviously for a rationally thinking person, everybody would be interested in something like that would give you a financial reward for that kind of money*".

With regard to the manipulation of people and making fools of their victims, some perpetrators seem to take a contemptuous delight in the act itself rather than simply the outcome. As Stotland (1997:186-7) points out sometimes individuals' motivation for crime may have originally been relative deprivation, greed, threat to continued goal attainment and so forth. However, as they found themselves successful at this crime, they began to gain some secondary delight in the knowledge that they are showing their superiority to others. Similar to the sense of superiority over others is the gratification obtained from mastery of a situation. This is particularly prevalent in more complex, long-term and computer fraud where specialist skills are required. It also reflects the professional pride of the perpetrators.

The following quotation (Blum 1972:44) illustrates the thrill of the chase, "Half of being a con-man is the challenge. When I score, I get more kick out of that than anything; to score is the biggest kick of my whole life". Stotland (1977:88) calls this motivation "ego challenge" and it relates to the sense of mastery and excitement in meeting and overcoming challenges. As he pointed out, some fraud perpetrators work very hard at their trade, so they are not in it for an "easy buck".

It is acknowledged that the basic motivation for fraud is greed, a fairly robust and enduring human characteristic. Crime is also said to follow opportunity, and opportunities for fraud flow from economic growth. This implies that, the more

commerce grows, the more opportunities exist to commit fraud, and AFF is no exception.

In this regard, Opolot (1986: 196-199) is of the opinion that a political-economic paradigm explains the increase in organised crime in Africa. This is due to the major structural changes that occurred in many African countries during colonisation, which resulted in political realignments and social differentiations. This therefore created conditions favourable for organised crime groups such as AFF perpetrators to exploit. A number of other conditions, including the introduction of a money economy, the existence of political instability, the expanding international trade, price differences and price fluctuations in commodities like crude oil, coffee, urbanisation, and the high incidence of unemployment create favourable circumstances for this type of crime, especially in Nigeria/West Africa and Africa in general.

This subsection below will focus on the motivation of AFF in Nigeria and in South Africa and why this crime has become an international phenomenon with perpetrators and victims scattered all over the world.

2.5.1 Nigeria

According to the Adara Reports (2002) and as stated above, the North has ruled Nigeria for 36 out of the 42 years of independence, be it military or democratic. As a result of this, thousands of retired soldiers and their civilian accomplices are sitting on billions of dollars, stolen from public coffers. It has therefore been suggested that the exclusivity of the South in AFF business can be explained as their way of getting back at the northerners. Hence, the majority of the scammers could not do without the funds generated from it. However, there is a strong need in them to get even richer, and as the national cake remains as elusive as ever, the money has to come from somewhere else. Anger

(because despite all their intelligence and sophistication the northerners remain the 'kingmakers') is the motivation.

Some government officials suggest that Nigerian criminal activity is motivated simply by greed. However, if this were the case, one could also blithely assume that Nigerians are inherently greedier than other nationalities. Some answer this question by saying that Nigerians are an impoverished people, turning to crime as a means of escaping economic hardship. It should be noted that Nigeria is a poor country, but most other developing countries are poor too. Yet many of these nationalities are not disproportionately represented in this type of activity. It is also acknowledged that Nigerians involved in criminal networks are not impoverished; many have graduate degrees, and thus possible alternative explanations to the "poverty hypothesis" are offered (Jones 1993:60).

A contradiction: Oil wealth, yet poor

Nigeria is endowed with natural resources so vast that it would have been a very beautiful country, if only good governance had managed her natural riches. Nigeria has oil reserves of over 22 billion barrels and there are numerous oil fields that are still untapped. In 2000, the country was the 5th largest supplier of crude oil to the U.S.A. The fact is that Nigeria is oil rich, but at the same time, it is one of the world's poorest countries (Adaora Reports 2002). This could partly explain why the scammers use crude oil business to lure victims to Nigeria before defrauding them.

Corrupt leaders: past and present

The Adaora Report (2002) is of the opinion that the answer of AFF can be found in the activities of the country's past and present leaders. The report states that corruption is socially embedded and there is no political accountability. Corruption and power abuse is one of the worst examples of Kleptocratic rule,

and Kleptocracy and corruption are synonymous for Nigerian governments since independence. The report further states that, successive governments have used its resources to purchase support, while increasingly repressing its opponents. In the same vein, Ebbe (1990:285) suggests that corruption in Nigeria emanates from the top. He states political assassinations, acceptance of bribes, and other capitalistic crimes of the powerful provide the underprivileged elements in society with a technique for the neutralization of guilt. This explains why a reputed Nigerian “*mafioso*” is quoted to have said “...we are simply recovering by non-violent means the money extorted from Africa for generations. All means of getting rich are good so long as you are not caught. This is the law of capitalism. I am a capitalist, so is America” (Enonchong 1988:30).

Research indicates that poverty is not the reason why people indulge in AFF because a large percentage of the fraudsters are wealthy in their own right (not owing to AFF). They employ people to scam for them while they use their legitimate business as a front. Lower down the ladder are the newly qualified professionals who are caught up in the ‘get<->rich<->quick syndrome’ pervading southern Nigeria in recent times. This group would rather wait for the maturity of one scam than to work their way up the employment ladder (Adaora Reports 2002). It has also been said that these fraudsters do this because the input is miniscule and the returns astronomical. If the scammer sends out 2000 letters or e-mails, and he or she receives a response of 1 per-cent or lower, he or she has hit the ‘Jackpot’.

2.5.2 South Africa

Several aspects of the social structure, culture, and economic system of South Africa are conducive to AFF. Competition in the business world, unemployment, modernisation and corruption in the criminal justice system are factors that contribute to the increase of AFF in South Africa. Consequently, the results of this sometimes goes beyond “puffing one’s wares” to fraud, a crime

characterised by the intent to deceive (Conklin 2001:169). This situation became explosive after 1994, when South Africa opened its borders to the international world, which led to the influx of both legal and illegal aliens into the country.

Business opportunities

The transition to democracy in South Africa did not only end the country's isolation from the rest of the world, but also opened the country to an influx of international business people who do business of all sorts. This transnational movement brought the perpetrators of AFF, who pose as businessmen, into the country. Since South Africa is a growing economy that has just emerged with a lot of potential, investors from around the globe, especially Asia and Europe, are eager to set up businesses in South Africa. As a result of this, perpetrators of AFF have been using South Africa as their location to coin and defraud both national and international would-be investors.

In support of the above assertion the perpetrator in Case 4 said: *"... I came from Italy, I left there, I didn't have anything. No I just bring small money, I thought I was coming to visit, I just brought small money to guard myself, when I came to this place, I saw there was money. I just do small, small job. We took money. We took money from Europe, transfer it to South African bank account, I brought it, I bought my house, and then I clear the other money"*. The perpetrator in Case 4 also said *".... The problem is most of the people they think South Africa...South Africa they need more investment. That foreigner, they are very interested to invest here. No the problem is everybody wants to survive and to make money easily in South Africa"*.

In a similar statement, Respondent 3 said: *"...It's not that they are choosing South Africa. 419 is everywhere in the world. 419 is everywhere in the world, most people they choose South Africa because South Africa is better than any other African country. If the business is not moving, there are other things that*

they could be doing in the meantime while waiting for the business. But I still believe South Africa is on top because they still believe there are more people here in South Africa who have money than in other parts of Africa, their economy is...there is much economic activity here. So if you collect \$20 000 here in South Africa, it's not much for that person as compared to collecting \$20 000 from maybe Congo DRC, or Ivory Coast or any other country. Here, this person here doesn't feel it much".

High rate of unemployment

Crime rates are directly and often significantly associated with unemployment rates, but the relationship between the two rates is complex and difficult to unravel (Conklin 2001:184). In the case of South Africa, with an unemployment rate of about 40 percent, coupled with the influx of immigrants from other countries, the already complicated problem is complicated even more. The immigrants, both legal and illegal, are unable to find jobs, and then they become involved in criminal activities. However, it must be underscored that some offenders mix employment and crime by "moonlighting" as criminals. That is, they use their job or business as a front, or they use legitimate income as a stake for crime (Conklin 2001:84). It is argued that for moonlighters, more employment might increase criminal activity, but for those who use a job as a front or use their income as a stake, unemployment might reduce crime. However, research indicates that some perpetrators alternate between employment and crime, and in those cases more employment might increase crime, (Conklin 2001:184). Meanwhile, other offenders are committed to crime as a source of income. They would not work, even if jobs are available, and so a higher unemployment rate would not affect their criminal activity.

In the research it was found that the high rate of unemployment amongst immigrants contributes to their involvement in AFF. Respondent 1 made this comment in her statement: "...*Ja he told ... He started this fraud in South Africa.*

Because he told me everybody in Nigeria is creative and there is no business. So here in South Africa, most of us are lazy and they are coming here to do business. In Nigeria, he said to me he was studying...he used to complain that if ever you are from Nigeria, and you come this side, its very like difficult to get a job and everything. You know if you are a foreigner, and it's worse if you are from Nigeria. You know he used to say that it's very difficult to be employed. That's one of the reasons why he did that".

Modernisation and technological advances (Internet)

In England, the Home Office considers a possible change in the way crimes are recorded, in order to mandate the collection of information regarding any significant use of the Internet where the commission of crime is concerned (Carr 2004:24). The US Department of Justice is also said to have engaged in a similar study as well as several other governments. The obvious inference is that it is impossible for anyone to describe the impact or role of the Internet on the commission of crime with the kind of certainty one would prefer. However, there exist a growing body of circumstantial but objective evidence that point in the same direction (Carr 2004:24). AFF is a classical example, and is as old as the hills, but the Internet has given it a whole new lease of life.

The fact that South Africa is regarded as a modern society, with the most recent technological development compared to other developing countries serves as an attraction for AFF offenders. The good infrastructure, communication networks and free economy pave the way for these criminals to function and elude quick detection from law enforcement agents. The availability of fixed telephone lines and cellular phone, as well as Internet service providers, facilitates the establishment of Internet cafes used by these offenders to carry out their criminal activities.

In the next section of this thesis, the focus will be on an explanation of AFF, and those theories that can best explain this crime will be used.

2.6 THEORETICAL EXPLANATION OF ADVANCE FEE FRAUD

Hirschi and Gottfredson (Joubert 1998:61) have argued that fraud can be explained in the same way as conventional crime. They are of the opinion that these individuals tend to strive for short-term gratification without taking the possible long-term consequences of their actions into account, in this case crime. Such people are characterised by impulsiveness, aggression and indifference to the opinion of others. This tendency to seek the short-term gratification of desires does not necessarily lead to crime. Crime requires the opportunity, as well as the possibility of evading immediate punishment. According to Albanese (1995:103), this explanation of crime is based on the assumption that human behaviour is motivated by self-interest, that is; pleasure is sought in order to avoid pain.

In an attempt to test Hirschi and Gottfredson's theory, Benson and Moore (Albanese 1989:104) compared more than two white-collar offenders with the same number of conventional offenders. They found that white-collar offenders are different from conventional offenders. They reported that a typical white-collar offender does not display the same deviancy problems such as alcohol or drug use, poor performance or social maladjustment.

Meanwhile research carried out by Doerner and Lab (2005: 121-124) states that the theories of crime fall mainly into three categories. In this regard, their focus is on the intra-individual approach, socio-cultural and the social learning approach. With reference to Shaw and McKay's social disorganisation theory, Lemert's labelling theory, Sutherland's differential association and learning theory, and the opportunity theory, the researcher came to the conclusion that, within criminology, it is not possible to find a single theory that incorporates all the necessary requirements to explain the manifestation of this phenomenon. Hence,

the above named theories will not be viewed individually, but eclectically in order to serve as a possible explanation of AFF.

First, the cognitive theory will be applied to explain AFF.

2.6.1 Cognitive theory

Intelligence and cognition

It is acknowledged that intelligence falls under the biological perspective because it has a genetic basis. It is discussed separately in this section, because the main emphasis is on cognition. Research has shown that intelligence should be approached as a collection of aptitudes or abilities, such as verbal comprehension, word skills, number skills, spatial comprehension, memory, perception and reasoning. The product of intelligence may be measured by means of various tests, and the final score is called an intelligence quotient (IQ) (Van der Hoven 2001:27). Meanwhile cognition is a concept that is closely related to intelligence. Cognition refers to our intellectual knowledge or comprehension of the world. It also includes the ability to combine things and relate them to one another (Kohlberg 1969:349). With regards to criminology, it is important to study the intellectual processes of offenders in order to explain why they commit particular offences. It must also be noted clearly that the degree of intelligence does not play a decisive role in determining whether a person will commit offences or refrain from it. It does, however, determine the type of offence that the offender will be capable of committing (Van der Hoven 2001:28). Hence a person of low intelligence will not be capable of committing computer fraud.

This explains why literature research indicates that AFF perpetrators are intelligent, since this type of crime requires special skills and knowledge. The fact that AFF is a complicated form of fraud and that it can be perpetrated by

individuals with high intellectual capacity who are able to adapt to the changing methods of this fraud supports the validity of this theory. The writing of good and convincing letters, and the use of business, legal and banking language also lend some credence for the application of this theory to the explanation of this fraud.

Supporting this assertion is the fact that the degree of intelligence influences a person's social position in society and this in turn offers the opportunity to commit fraud. An intelligent person may have access to computer systems, a database of companies and governments, bookkeeping skills as well as the international business language needed to commit fraud (Conklin 2001:337).

Cognitive theorists assume that offenders are rational actors (Tunnel 1992:5), but people do not always make rational decisions. The way in which people make decisions is very important in understanding criminal behaviour. Similar to the biological and the psychodynamic perspectives, the cognitive perspective relates to the internal processes of a person. Rather than emphasising urges, needs and motives, the emphasis falls on how people interpret and use information to resolve problems and, specifically, commit crimes. Thus the cognitive perspective places greater emphasis on an individual's current thinking and problem solving strategies than that individual's history. The individual is regarded as an information processor and they gather, store, modify, interpret and comprehend internal and general information as well as environmental stimuli (Sarason & Sarason 1993:81). Through their influence on cognitive processes, schemes enable people to rapidly identify stimuli, group them into manageable units, and supplement missing information to develop a strategy in order to obtain further information and thus resolve a problem or realize an objective (Sarason & Sarason 1993:81).

2.6.2 Social ecology or disorganisation theory

Ecology studies the relationship between the organism and its environment. Social ecology focuses on a person's relationship with the social environment. Therefore with regards to criminology, ecology includes the study of the spatial distribution of delinquency and crime (Brown, Esbensen & Geis 2001:307).

Shaw and McKay (Joubert 2001:109) links the incidence of crime to the ecological properties of the environment. In this case, three variables are central, namely: poverty, mobility of residents and racial heterogeneity. According to them, these independent variables generate social disorganisation, which in turn, contributes to crime. These theories attempt to explain why crime rates are high in areas characterised by urban decay. In such environments there is a high turnover of residents, large scale unemployment and the key social control agents in society can no longer function properly. Shaw and McKay maintain that crime is associated with the physical structure and social organisation of the city. They claim that differential value systems exist in different communities. They also argued that this exposure to a multitude of different values meant that people in these areas would come into contact with individuals involved in criminal activities (Brown *et al.* 2001:311).

This theory can best be applied to explain AFF in Nigeria – West Africa where the socio-political and economic systems have fallen apart due to massive corruption, embezzlement, theft of public funds and massive unemployment which led to disorganisation of all fabric of life in this region. The rule of law and social order breaks down and, as a result, everybody wants to get rich through any means possible. The social disorganisation theory can be applied to explain AFF in South Africa in recent times. This crime is mainly perpetrated by immigrants who come to South Africa for a better life. On their arrival, they are faced with many social problems such as housing, unemployment and racial heterogeneity. Shaw and McKay argue that these immigrants would be exposed

to a multitude of different values and would come into contact with individuals who are already involved in this fraud.

2.6.3 Labelling theory

This theory focuses on the process that leads to crime and the supporters of this theory are concerned with the effect of the labels that are used to label a person. The concept of a label treats the label as an independent variable, a causal agent that creates criminal behaviour (William & McShane 1994:136). According to William and McShane, labelling may take place in two ways:

- The label may catch the attention of the labelling audience, causing the audience to watch and continue to label the individual accordingly, and
- The label may be internalised by the individual and lead to an acceptance of a criminal self-concept.

Either of these processes may amplify the criminal and create a career in crime (Wilkins 1965).

This process causes crime, because the label creates a reaction and individuals who have been labelled become more visible in the sense that people are more aware of them. This awareness often results that they are watched more closely. Especially important are those at the law enforcement agencies who closely watch individuals, once they have come to the attention of their agency (William & McShane 1994:137). In this regard, those who are labelled become the cliental of the criminal justice system, and, like any other good business, the system keeps close tabs on its customers. According to William and McShane (1994:138), it is difficult for those, once labelled, to escape the attention of this audience, and subsequent behaviour is likely to be identified and relabelled.

The point to note here is that people who are identified as 'criminals' have fewer chances to make good in the conventional world. This means that conventional

avenues to succeed are often cut off, and illegal means may become the only way left to them.

As an example, one reason why immigrants, Nigerians and West Africans, are involved in AFF is because they have very few legitimate opportunities available to them to get a job and make money. Hence, after they had been caught for committing a couple of crimes such as drug dealing, and after their release, the individual's opportunities for legitimate work certainly decreased. Employers, who would not hire the individual before are even less likely to do so now. There may therefore be little for the individual to turn to, except AFF. This explanation indicates that continued criminal behaviour is therefore not a matter of choice, but takes place because the person's choices have been limited by society.

2.6.4 Differential association theory

According to this theory, Sutherland maintained that criminal behaviour is learned through social interactions, and to describe this learning process, he developed the concept of differential association. He suggested nine fundamental principles that explain the processes whereby a person becomes involved in crime. His propositions are as follows (Brown *et al.* 2001:325-329):

- Criminal behaviour is learned
- Criminal behaviour is learned through the interaction with other people in a process of communication
- The principal part of the learning of criminal behaviour occurs within intimate personal groups
- When criminal behaviour is learned, the learning includes;
 - i. Techniques of committing the crime, which are sometimes very complicated, sometime very simple
 - ii. The specific direction of motives, drives, rationalisation, and attitudes.

- The specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable
- A person becomes delinquent because of an excess of definitions favourable to the violation of the law, over definitions unfavourable to violation of the law
- Differential associations may vary in frequency, duration, priority, and intensity
- The process of learning criminal behaviour by association with criminal and anti criminal patterns involves all the mechanisms that are involved in any other learning
- While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values, since non-criminal behaviour is an expression of the same needs and values.

According to Brown *et al.* (2001: 331) the principle that criminal behaviour is learned provides the foundation for differential association. This expressly rules out heredity, human nature, and innovation as the causes of aberrant behaviour. This means that people are taught how to behave, or misbehave in a social context.

The second and third principles of differential association specify that criminal behaviour is learned primarily in interaction with significant others such as family and friends.

The fourth principle, learning the techniques of committing crimes are said to be much less important than acquiring a mindset that is conducive to criminal behaviour. While a particular mindset is essential, familiarity with technique relates to the type of crime perpetrated and to succeed in committing the offence without detection. Some crimes, such as AFF, entail the acquisition of complex techniques. Research concerned with AFF illustrates that considerable skills are needed and must be mastered to be able to pursue these criminal paths.

Learning the motives and drives, which result in a relatively constant desire or persistent urge to do illegal things is, on the other hand, a requisite of criminal behaviour. Similarly, learning rationalisations and attitudes that define criminal behaviour as acceptable, supports criminal behaviour. For example, in the case of AFF the perpetrators are taught specific attitudes and rationalizations, such as “payback time” or “we are simply taking back what they took from us during colonialism”, in other words “reparations”.

In line with this theory, Sutherland claimed that differential association can account for offences committed by decent people with high social status during the course of their careers. His investigation revealed that lawlessness is common in the business, political and professional world. Research that focussed on AFF reinforces Sutherland argument that crime cannot be attributed to poverty, because most of these offenders are not subjected to poverty. Research also reveals that most of these offenders start their careers in good neighbourhoods and come from stable homes. When they enter the business world, however, they come into regular contact with illegal practices (Joubert 2001:136). The principle of differential association can therefore explain advance fee fraud.

2.6.5 Social learning theory

In order to appreciate and use learning theory as an explanation of AFF, a basic understanding of operant-based learning theory is necessary. Operant theory is concerned with the effect that an individual’s behaviour has on the environment and, subsequently, the consequences of that effect on the individual (William & McShane 1994:204). In the same vein, Skinner (1971:16) indicated that, behaviour is shaped and maintained by its consequences. Therefore, behaviour is a product of present and past events in the life of the individual.

Akers (Brown *et al.* 2001:331) expanded Sutherland's differential association theory by adding components of operant (voluntary response) and respondent (involuntary response) conditioning. While applying Sutherland's sixth proposition, Akers formalised the extent to which learning is the result of exposure to both conforming and criminal behaviour and definitions. Akers therefore assumes that criminal behaviour does not differ as behaviour from normative conduct and both forms of behaviour can be explained by his learning theory. Accordingly, Akers identifies four key elements that help to shape behaviour (Brown *et al.* 2001:322):

- Differential association
- Definitions of behaviour
- Differential reinforcement and
- Imitation.

Social learning theory states that people learn both deviant behaviour and the definitions that go along with it. The learning can be direct, as through conditioning, or indirect, like through imitation and modelling. The learned deviance can then be strengthened by reinforcement or weakened by punishment. Its continued maintenance depends not only on its own reinforcement, but also on the quality of the reinforcement available to alternative behaviour. If the definitions of deviant behaviour are reinforced, and if alternative behaviours are not reinforced as strongly, an individual is likely to engage in deviant behaviour. In the subsequent development and empirical testing of the theory, Akers focused on the principle processes of differential association, definitions, differential reinforcement, and imitation (William & McShane 1994:209).

This theory can be applied to explain AFF in the sense that the knowledge of this fraud is gained through social interaction and learning. AFF is said to be very lucrative for the perpetrators, and with this success and the resulting flamboyant lifestyle of the perpetrators those who admire them are attracted towards this

lifestyle and therefore imitate them and their criminal activities. This theory actually explains AFF when it is committed by Nigerians/West Africans, out of their country and region. The association between immigrants who are fraudsters and law-abiding immigrants in South Africa lead to the association of two different value systems. The successful values are therefore reinforced by the law-abiding immigrants, through imitation and learning. In South Africa for example, most Nigerians/West Africans congregate daily at street corners and Internet cafes to discuss their fraudulent activities and use the Internet. In this way, more and more Nigerians/West Africans get involved in AFF.

Compared with the other theories, social learning focuses more directly on behaviour and presents an obvious treatment or remedy for the crime. On the same stance, because learning theory is so focused on the individual, it is not difficult to classify it as a micro-theory. Although the theoretical principles are general enough to apply to all behaviour, it is a direct attempt to explain how individuals become engaged in criminal behaviour.

According to William and McShane (1994:209), this theory can be referred to as a processual theory. This is because it explains the process by which criminal behaviour takes place and tells us why that behaviour occurs.

2.6.6 Differential opportunity theory

Cloward and Ohlin use the term differential opportunity, and according to this theory criminals are seen as the victims of unequal opportunity structures and the obstacles to legal opportunities that lower-class citizens need to overcome in order to achieve success (Fattah 1993:247). According to the theory of Cloward and Ohlin, criminal behaviour is seen as a deliberate choice, which depends on the relative availability of legal alternatives for potential offenders (Van der Hoven 2001:56). The theory maintains that the motives of criminals are essentially the

same as those of law-abiding citizens (Fattah 1993:247).

The unavailability of opportunities and the obstruction of legal channels for success for lower-class citizens create feelings of injustice, frustration, helplessness and direct victimisation. At the same time such individuals develop a perception of relative deprivation and reject society's empty claim of equal opportunities for all (Van der Hoven 2001:57). The result is criminal activities, not only as substitute for legal activities, but also as a last resort. It must also be noted that professional criminals seek to create the opportunity to commit offences, whereas occasional offenders will use the opportunity when it presents itself (Fattah 1993:247).

It has also been argued that the opportunity theory may also be presented in terms of available means for committing an offence. This is also a situational theory because it shifts the emphasis from the characteristics of the offender to the characteristics of the situation. This theory provides a firm base for developing a stimulus-response model for criminal behaviour and an interaction model that combines the behaviour of both parties (offenders and victims) into one integrated scheme (Fattah 1993:249).

One must bear in mind that a criminal event occurs when a situation fortuitously brings together factors that facilitate it (Barlow 1996:493). From the above discussion, it is clear that AFF is a crime that occurs because the opportunities for committing it are readily available in South Africa. Advocates of a situational approach look at crimes that have occurred and ask what events came together to make them happen. According to Cohen and Felson (Barlow 1996:493-494), predatory criminal events contain the following minimal elements:

- Motivated offenders
- Suitable targets and
- The absence of capable guardians.

These elements offer the opportunity for crime to take place and AFF is no exception.

2.7 CONCLUSION

In this chapter, the researcher discussed the origin of AFF, with emphasis on the social and political background of Nigeria after independence in 1961, where this fraud is said to have originated. In this case, the categories of crimes in Nigeria were discussed with a focus on elite crimes. The nature and forms of AFF were analysed accordingly, and the characteristics of this crime examined. The incidences of AFF around the globe was also discussed, and the causes and explanations.

The findings in this chapter indicate that AFF usually begins with one form and ends as another form of AFF. A new form of AFF, which is referred to as "Spiritism" and "*Fimash*", was not available in the literature, and was encountered in the empirical part of this research. It was also found that this fraud may begin with money transfers and when the victim visits the resident country of the perpetrator, they would change to another form which is black currency or wash, wash/ *fimash* and end it up with spiritism. Interestingly, the whole process of black currency or wash-wash fraud was discovered. This research illuminates how the perpetrators introduce this fraud 'businesses' to the victims, how they contact victims, how they convince victims to pay them and finally how victims are defrauded. In this regard, the various ways of complications used by perpetrators was also illustrated. The findings also support that the high rate of unemployment and business opportunities, for investments, when compared to other African countries, was associated to this form of fraud in South Africa. The findings also support that AFF is very organised, specialised and well networked

Based on the socio-political origins and the nature (letters and travelling), the findings of this chapter regarding the crimes, can be presented in a table as follows:

Table 2.1 The crimes

Types	Characteristics	Structuring process	Causes	Explanations
Transfer funds	Infrastructure	Introduce the business	Motivated by greed	Cognitive
Contract fraud	Organized	Emphasise trust	Oil wealth Yet poor in Nigeria – West Africa	Social ecology
Currency conversion	Criminal contacts	Explain the scam	Corrupt leaders	Social learning
Crude oil sales	Manage risk	What they want from you	Business opportunities	Labeling
Real estate		How funds will be distributed	High unemployment	Differential association
Disbursement		Emphasise trust again	Internet access	Differential opportunity
Ransom, Kidnapping, Murder		Contact the victim		
Fimash		Convince victim that business is real		
Spiritism		Victim commit making advance payment		
		Manipulate the victim with 'complications' Spiritism		

Table 2.1 can be explained as follows:

The types of crimes include the transferring of funds, contract fraud, currency conversion, cheaper crude oil sales, real estate fraud, disbursements, and even ransom, kidnapping and murder.

The characteristics of these crimes include that they are organised around criminal contacts to manage the risk of being caught. All of these are supported by some kind of infrastructure.

To execute the crimes, the following procedural aspects are employed: The perpetrator first introduces the business and at the same time emphasises trust and secrecy. Then the scam, as well as what is expected of the victim, is explained. Next is explained how the funds will be distributed, and trust is emphasised again. Then the victim is contacted (usually via e-mail). Once the victim reacts, he is convinced, with the assistance of some other documentation, to commit him. Next a meeting is set up and the manipulation by complications is activated to get as much money as possible from the victim.

This chapter also revealed the causes and explanations of these crimes. The causes are greed; corrupt national leadership; business opportunities; high unemployment and access to the Internet. These crimes, it was found, can be explained by means of the cognitive, social ecology and social learning theories, labelling, differential association and differential opportunity theories.

In a nutshell, the types of AFF determine the nature and origin of this fraud. The origin, in the same vein, influences the characteristics, which in turn determine the causes. Why these causes actually cause AFF is in turn explained by the theoretical basis of these types of fraud. One can explain this type of fraud, because it is structured very clearly. Thus it is clear that the types are the basic building blocks for understanding this phenomenon.

In conclusion, considerable publicity has been given to the problem of AFF, and this offence continues to take place, fuelled by vulnerable and gullible victims and increasingly unscrupulous and violent organised criminals. It all began as a relatively simple adaptation of a traditional advance fee ploy, but now it has

developed to an extensive and intensive organised criminal ring with links to other major crimes internationally. The nature of this form of organised crime is such that displacement invariably occurs where law enforcement proceedings are taking place, with offenders moving away to nearby countries. Also, the use of electronic messages to disseminate AFF letters represents a particular problem, as this enables offenders to disguise their identity and canvass large numbers of victims. Unfortunately this crime has become an international phenomenon, and it would need careful study and analysis in order to fully understand it.

The next chapter will focus on the perpetrators of AFF their *modus operandi* and their characteristics.

CHAPTER THREE

THE PERPETRATORS

3.1 INTRODUCTION

The most common crime, theft in its widest sense, is motivated by human greed, which is acknowledged as a natural human trait. Fraud in general and Advance Fee Fraud in particular is said to be a crime where the primary motivation is greed. The AFF fraudsters prey upon human vanity, fantasy, loneliness, insecurity, and fear. According to Bohlen and Kerr (Friedrichs 2004:178) it is usually, during hard economic times, when people are desperate for money or savings that get-rich-quick schemes tend to flourish.

It should be noted that, when they decide to what category of fraud they commit themselves, and how, where, when and with whom to go about it, that Advance Fee Fraudsters are guided by considerations of profits, risk, opportunity and capability. The perpetrators aspire to do so without getting caught, and therefore they manage their risk. The decisions they make involve a balancing act of anticipated profit and risk, but also rely on identifying an opportunity and possessing the capability to exploit it. Studies state that different perpetrators approach these considerations in different ways, influenced by a variety of factors, including environment, culture, experience and individual temperament.

These criminals are highly fluid with regards to their personalities and their methods of operation. Although there is a degree of structure evident in these organisations, the hierarchical composition and relationships within these organisations are not comparable to the more traditional criminal organisations. In terms of structure, these enterprises seem to range from independent entrepreneurs to highly organised syndicates. They are able to change and adapt, as needed, both with respect to the criminal activities they pursue, and in the members they employ. This flexibility allows them to remain in operation and

insulate themselves from law enforcement. The speed with which some of these offenders react to law enforcement efforts and adapt to new techniques demonstrates the effectiveness of their inter-group intelligence sharing and the co-ordination between the various syndicates.

In this chapter the perpetrators of AFF in terms of their nature and organisation, their characteristics, and their *modus operandi* will be discussed. The findings of the empirical part of this research will also be discussed and integrated into the relevant sections of this chapter. The theoretical explanations of these career offenders will also be examined in order to fully understand them.

3.2 THE NATURE AND ORGANIZATION OF AFF PERPETRATORS

In the discussion that follows, the nature and organisation of AFF perpetrators will be examined as it is documented in the literature. First, the nature of these offenders will be discussed.

3.2.1 The nature of AFF perpetrators

The perpetrators of Advance Fee Fraud are said to belong to an underground network of influence that is characterised by evil, violence and dare-devilry. The machine of their trade is oiled by an over-arching determination to get wealthy by any means possible. The morality of their operation is akin to the code of ethics among thieves, assassins and the mafia. Detailed descriptions of their operations point to a sadism that is beyond human comprehension. These men and women have chosen to live dangerously, a step beyond the law. They dare the law. They manipulate the system. The tragedy is that they are good students of human psychology: they play on their quarry's greed. They exploit the insecurity of law enforcement officers (Abati 2003:4). According to Abati, AFF is a very sophisticated game with connections in the police, the judiciary and every other level of society. The 419 kingpins patronise hotels; they have their own taxi

drivers. Curiously they provide employment for both the innocent and the guilty, and they regard this type of fraud as a profession. Subjected to close interrogation, the 419 operators may even mouth an uncanny ideology namely: that he commits fraud as a Robin Hood. He steals from the rich what they have stolen from society; he is also engaged in a form of reparation. Many of their victims are unsuspecting foreigners; by robbing them he insists that he is correcting the injustices of colonialism (Abati 2003:5).

Research (The 419 Coalition 2003) reports that they are prepared to kill to get their loot, and are constantly surrounded by the threat of violence. The more successful ones are the role models of the underworld; they have apprentices who, while waiting for their own big break, function as part-time robbers or assassins. When the 'boy' also hits it big, he is required to respect his masters in the trade, and he soon acquires his own apprentices who help him to build a cult of influence around him. Studies report that the ingenuity of the fraudsters is magical, and according to Abati (2003:5), it is sustained by sorcery and cynicism.

Highly skilled and creative in fraud

According to literature research, the perpetrators of Advance Fee Fraud ranges from highly skilled to average individuals in terms of their intellect, wealth and status in society. Research also reveals that the driving force behind this crime is greed, and these fraudsters are said to have a talent for sniffing out the same vice in others, who, in their desire to get rich quickly, are too eager to put their trust and money in the hands of unscrupulous schemes. These scammers justify (neutralised) their actions by assuming that victims deserve their fate (Scammers & Cons 2004: 1).

Supporting the above statement, as per the complex nature of AFF, the perpetrator in Case 4 said "... *You know fraud, you must understand fraud has too much technicalities. You need thorough knowledge, and you need to be in*

that field to know what is fraud. If you don't know fraud, they can come to you today there, and you'll accept. Even me I do fraud, somebody can come to me today and defraud me myself. It's just the technicalities you must know, and the procedure, this, you must know these things".

These brand of fraudsters have charisma, which sometimes masks the fact that they are malignant narcissistic and like to feed on the insecurities and stupidities of the naïve and weak. They know that people who are down on their luck are easier to manipulate, and they have no feelings of guilt or remorse as they use all manners of trickery and deceit available to them. These criminals love to flaunt the spoils of their massive multi-million dollar deceptions. After spending as much as physically possible on luxury cars, fully equipped mansions and casino junkets, they try to hide the excess in offshore accounts.

Learned the techniques of AFF

Research (Jones 1993:63) determined that the perpetrators of AFF do not just come out of the blue; they actually study the techniques of this crime. A study by United States Senator Roth's sub-committee reported that the most common element of this crime is that individuals learn how to commit this fraud from one another, sometimes for a fee. The report states that, once this information is learned, one can live off the fruits of this fraudulent activity for years (Jones 1993:63). In a Secret Service raid conducted in Atlanta U.S.A, agents recovered what they named a "Nigerian Handbook". The document is a well-crafted instruction guide explaining how to commit various types of fraud. The Secret Service did not know if a Nigerian wrote the document, but the point is that it was distributed to Nigerians entering the U.S.A (Jones 1993:63).

The fact that this fraud is learned was also confirmed by the empirical part date presented in this research. This was made in a statement by the perpetrator in Case 1 in which he said "... *Yes it can be learned. If I had stayed in Mr. Ribado's*

house for a longer time, maybe I would have been a master in the business. If I had stayed there for maybe 6 months to one year, I would have been a master in the business from beginning to end. But because I stayed there for a couple of days, I don't have the details of how to start the business and end it. So that is the process of learning the business. So I can say that I was in the process of learning the business, although my mind was not there".

The perpetrator also said "... What I know is, when you are in the business, and it benefits you and it helps you, and you have a friend or a brother that you want to help, you are going to say ok, you come, come and stay with me. And you stay with them, and they can be sending you on errands, go and buy airtime for me, go and post this letter for me or go and send this money from the bank. This is the kind of errands they can send you on. And in that process, they are teaching you, this is how I make my money. If you are also able to do it on your own. And you ask them what must I do? And they tell you go and look for an address book, and like playing Lotto or whatever, you lie to them. If they reply its fine, you're serious. And if they don't apply then you are not lucky. And then it is possible that you don't even know how to write, and they'll tell you, this is a copy of what I wrote. Write a similar story to Mr. James. Then they are already teaching you".

The perpetrator in Case 4 said: "...No, I'm from Congo, DRC, yes. In this fraud, I was dealing with big, big shot guys. These big marshals, I was working as ... I was a refugee in Italy. And I was working at a big merchant house in Italy, and while I was working there, I was...from there I left. So they taught me how to do fraud. They taught me. No it was like school obviously. If you read about that experience that they do, they will explain to you. Yeah, I used to do...we do, we do jobs".

Impersonation

It should also be noted that the lack of face-to-face contact that typifies these crimes allows the perpetrators to impersonate government and corporate officials to increase credibility, and in some cases, to coerce reluctant victims. The anonymity of telephones and e-mails permits amateur perpetrators to impersonate middle age authority figures with distinguished names in order to gain credibility with their victims. These perpetrators can identify themselves as the “general manager” or “president” of a company, son or wife of a former African head of state, thus leading further credence to their claims that “Yes, this time your ship has finally come!” According to one of them “... I make them understand the importance of my position, being the promotional director. And right off the bat they are excited because when it is the owner, they think of you as the higher authority”. Impersonating government officials may also serve as the basis for subtle or even brazen coercion. For example: perpetrators sometimes pose as tax or customs officials and “remind” the victims that they are under legal obligation to pay taxes on the funds the perpetrators has promised them (the victims).

The research shows that impersonation by the AFF perpetrators is a common factor evident in all the letters that they send to prospective victims. It is acknowledged that they do not use their real names in this regard because they want to create the impression that their letters are from “General Managers”, ‘Presidents” “Chiefs”, “Mayors”, Sons/ Wives of former presidents, and Directors of companies, as seen in the annexed AFF letters in this thesis.

Ostentatious lifestyle of perpetrators

Research (Adaora Reports 2002:2) indicates that the life and mind of 419 perpetrators are all about ostentation, ostentation and more ostentation. It is reported that, one of the perpetrators had so many cars that his palatial mansion

resembled a car dealership. His wife would co-ordinate what she was wearing with the colour of the car she drives. If she drove a different car every day it would take her over six months to drive all the cars (Adaora Reports 2002:2-3).

The empirical research indicated that ostentation and more ostentation was part and parcel of the mind and lifestyle of an AFF perpetrator. This statement was made by the perpetrator in Case 2 when he said: “... *I mean you drive flashy cars; you can be able to buy maybe an A4 or BMW 3-series CASH. There are people who have these kinds of cars. They buy CLKs or SLKs Mercedes Benzes cash*”. The perpetrator in Case 3 said “... *But you know as a friend, I just needed money for a weekend in Nigeria, just for a weekend. So I can fly to Nigeria for the weekend, come back to SA*”. In a related statement, the perpetrator in Case 5 said “... *Yeah, yes, yes, yes, I had money, but I can only say most of my money I squashed it. Yeah I had money, but most of my money I squashed it because I was travelling, I was like travelling all over the world and sleeping in five-star hotels, you know, like going out with the best woman, like driving the best cars. Yes, I had money. I taste money and I had money*”.

World travellers

The research conducted for this thesis indicated that AFF perpetrators are well known travellers, both nationally and internationally. It was found that these fraudsters travel to complete a job/business, to enjoy their loot, to evade law enforcements agents and to stay away from their victims in cases of local victimisation. At times, it is said that they travel to invest their stolen money, especially in their native country.

In this regard, the perpetrator in Case 2 said: “... *You see me personally; I’ve never been in Nigeria for a long time. I’ve been in and out of Nigeria for 11-12 years. I left Nigeria when I was a very tender age. I go to the country and spend maybe 2 months, a month, and 3 weeks with my parents. I have studied in*

Tunisia for a long time. So from there I came to South Africa". The perpetrator in Case 4 said "...And then I used to travel. I did travel. I travel to Australia on 2000 1 July and when I come back, I was planning to leave for America, and then the same Wednesday my friend called me and I get arrested". The same perpetrator said "... I've been in Italy for 10 years, and I own property in France".

In an exclusive interview with one of the "reformed" perpetrators, Delio (The 419 Coalition 2003) reports that the perpetrator, who is a Nigerian student in the U.S, asked to be identified only as "Taiwo", detailed the workings of the business, which he said his family had been involved in for 15 years. Delio reported that Taiwo did nothing more than write letters intended to lure victims into the scam, that Taiwo said the con game is profitable enough to "nicely support" several dozen of his family members.

"We have the letter writers and the people who create the official documentation, the people who talk to our clients on the phone, the people who arrange travel and meetings and tours of government offices in Africa, Canada, Japan, and the United States...no, it's not a small business," Taiwo said. "But I want to make clear that very few Nigerians are *barawo* (criminals). Nigerians, too, are the victims of these crimes," Taiwo said. "This is not just something that Nigerians do; the business is organized and run throughout the world by people of all races".

Taiwo said he began composing letters for his family's 419 operations eight years ago when he was 11, after he had discovered he enjoyed "playing with words". The letters are intended to resemble soap operas, Taiwo said, but with language that evokes someone whom is "educated, upper-class, out of touch with the common people". "I was told to write like a classic novelist would," "very old world, very thick sentences". He said his family first became involved in the scam around 1986 when Nigeria's oil industry collapsed. "For many of my

relatives, there is much shame in the business,” Taiwo said. “Others have come up with ways to justify it. They say it is not our fault foreigners are so greedy”

During a telephone interview, Taiwo’s uncle told Delio that “You would be shocked at how many *wad* (rich people) want something more for nothing”. “Greed carries their heads and turns them foolish”.

“Many of the people who contact the family are laughing unbelievers. But once they realise there is a real person on the other end of the e-mail, they sometimes get interested, Taiwo said. “Then the game starts”. Small sums of money for bribes, processing fees and the like are then extracted over time from the “client”. But the optimum goal is to lure the prospects to Nigeria before their “eyes go come down sad” (they realize they’ve been conned), Taiwo’s uncle said.

Once in Nigeria, clients will be treated to what Taiwo’s family calls “dirty money *magó-magó*” (deal). The prospects will be shown a suitcase stuffed full of blackened pieces of paper and told that it is money, which has been disguised so it can be smuggled into or out of the country. “So the person thinks right away they are playing with him,” Taiwo said. “He gets all tense”. Then they ask him to select any bills at random from the suitcase. “And they take and rub the black off - yes; it is real money covered with Vaseline and something else... I think they use iodine, too. So he relaxes, and then asks for many thousands to pay for all the money to be cleaned”.

“We make sure the *wad* came into the country illegally (without proper documentation), so they have to pay big to leave with no trouble”. “There have been some more arrests recently. Six people were taken away in April” Taiwo said. “But I think there’s no stopping the game”.

3.2.2 The organisation of AFF perpetrators

The perpetrators of AFF are said to have a particular pattern of organisation to facilitate their activities. The manner in which these perpetrators organise themselves is discussed below:

Cross-sector criminal activity - the concept of crime sectors

While it is in understanding the scale and nature of the various activities and considering the best response, the division of AFF into different sectors is as much a reflection of the law and organisational responsibilities for its enforcement as it is a criminal behaviour. As part of their risk assessment, 419ers may take account of the fact that different crimes are tackled in different ways and by different organisations, are afforded greater or lesser priority, and attract more or less severe penalties. They are, however, unlikely to think in terms of discrete crime sectors (NCIS 2003).

The scale of cross-sector criminal activity

Studies (The 419 Coalition 2003) indicates that significant numbers of 419ers especially those that are larger and have been active for longer, are involved in two or more money making criminal activities. This excludes money laundering, which is common to nearly all groups of any consequence or durability, but includes drug trafficking which involves more than one type of drug. In this regard, the NCIS reports that the most frequent cross sector activities in the U.K. involve drugs plus other activities. However, combinations that do not include drugs are also seen, for example organised vehicle theft, kidnappings and extortion. Law enforcement emphasis is, however, on drugs, especially in South Africa and crimes that do not involve drugs, such as AFF, are less likely to be spotted and are almost certainly occurring more frequently than reported.

The spurs of cross-sector criminal activity

In their search for profitable ventures, many AFF perpetrators diversify their activities by combining AFF with drugs importation and distribution, acceptance of counterfeit currency, prostitution and use illegal immigrants as drug couriers (NCIS 2003). The perpetrators therefore have an interest in facilitating immigration crime and do so mainly by supporting deceptive methods of entry in and out of a country. Trusted contacts are, however, central to the spread of cross-sector criminal activity since they extend a group's range of skills and reach. In some instances, there is synergy between two distinct criminal activities. Some perpetrators' criminal capabilities are specific to a particular type of crime, but many, either separately or in combination, provide criminals with the means to carry out a range of crimes, thereby creating cross-sector criminal activity (NCIS 2003) For example; someone who owns vehicles and yards, and has access to warehouses, may be prepared to rent them out to be used to smuggle goods, drugs, people or any other commodity. This may encourage others to diversify into whatever commodities they can source and profit from. Similarly, someone who provides financial services opens the door to a range of crimes, such as AFF and money laundering. Research also suggests that the AFF perpetrators' risk management approach also leads them to diversify their criminal activities. They may be prompted to move from one crime area to another because they perceive the risk to have increased in an area, perhaps as a result of specific law enforcement actions such as arrests and seizures.

Players of the game

The perpetrators of AFF are well organized in their dealings with their victims. In this case, there is a "qualifier", also known as a "dialer", who identifies victims on the lead lists who have either lost substantial amounts of money or have the potential to, by making exploratory contacts. A "fronter" makes the initial sale, but then passes the lead on to a reloader who will then attempt to repeat the

process. A “closer” is a high-pressure perpetrator who completes the fraud. A “no saler” is someone who solicits people who have said “no” to prior solicitation. A “takeover” man will step in if a fraud attempt bogs down and needs new enthusiasm and a different line to convince the victim (The 419 Coalition 2003).

Organised and well-networked /Government officials as accomplices

This research found that AFF perpetrators are well organised and they operate as a network, both nationally and internationally. Nationally, it was found that they networked and operate with government officials, law enforcement agents and businessmen. This was evident in the statement of the perpetrator in Case 1 when he said: *“...Bank officials or government officials are involved. It could be a bank official or security companies. But what you must know is that there are some people working in the bank that they are going to get information from”*. Similarly, the perpetrator in Case 4 said *‘...Yeah, there I can’t mention their names. Yes these people, big people, big, big people. Big business people, in the government, big officials, big people. Well known in this country. Yes they were involved in this fraud. The fraud was for 9 million Rand, nine million Rand that fraud’*. He also said *“...Yes, they use government officials, they use government officials. They use big people to convince the victim. Yeah, they use all these people. They can use these people, they can use these people officials who work in the office”*.

He elaborated: *“... There are people, lets say he meets you in the U.K. You might have some friends who live there. And it is those people who give information for the business company there; they send them to meet people here. Now they work from there. Its just they send them jobs; they call them from here and say no there’s jobs. And that job will send them to people where there is money; you can’t do this job alone. You do it with a network. From South Africa, Nigeria, from Nigeria to U.K. to Chile, all those things they got a network”*. The perpetrator in Case 5 said *“...Because the thing is, those officials inside, those*

who are working in government institutions, those who work in banks, they also do fraud. They work with outsiders”.

Bankers assist perpetrators

This research also discovered the role bankers play in the facilitation of the commission of AFF. The research found bank officials assist these fraudsters by giving them information on how international banking transaction are carried out. This of course makes it easier for the perpetrators to convince victims of their legitimacy. The findings of this research also indicated that banks do not raise any questions in cases where large sums of money are transferred into the accounts of fraudsters. Supporting this stance is the statement of the perpetrator in Case 1 in which he said: “... Yes, *I’ve told you that government officials are involved, bank officials are involved, because a layman in the streets doesn’t know how money is transferred from one bank to another. Yes they can corrupt them. Like they can go and ask the bank official how does money leave from one bank to another? What are the instruments involved? Because if you have to tell somebody to transfer money from one country to another, you have to know the legitimate procedures to transfer money from that country. This means that you need information from the bank. This means that you have to source that information”.*

The perpetrator said: “... *You may pay for it, but it depends on how you get it. So, you can also get legitimate instruments like wire transfer documents, communications, different charges like commission or whatever the bank charges. This is the information that you’ll need”.*

According to this perpetrator, this information is meant to convince victims. He said “... *When discussing with somebody, you must tell them the information which is operative. Even when you’re discussing with somebody who is, he’s going to know that what this person is saying is true. Because you have to tell*

them something that is happening. You can't just go there and say you have to transfer money to me, and then the person ask you how you are going to transfer it, and if you don't know how to transfer it, then you're not going to have anything to say. So if the man says how I am going to transfer it, you begin to educate him like this is the procedure, and whatever you are saying is what is really happening. Which means for you to be able to have such information, you must source it".

This perpetrator also made mention of the fact that, banks do not query perpetrators when they receive huge sums of money into their accounts. He said in his statement that: *"...If the bank is raising questions, they wouldn't be getting money, because at the end of the day the money is getting to the 419ers. You understand? If the bank is raising questions, at the end of the day they can stop the perpetrator from taking that money. What is happening is the perpetrators are getting the money. If they ARE raising questions it is just trivial questions...because at the end of the day they ARE getting the money. Perpetrators are getting the money. And in most cases they can send the money maybe through wire transfer. So what kind of questions are you going to ask? So when they send money maybe through monogram all you need is to take your I.D and fetch the money. So the only thing they can ask you is who send you the money. They ask you who send you the money. You tell them this is the man who send the money. They can ask for his address and you can tell him this is the address. So my point is the one who goes there to get the money already has all the information about the person who paid the money. So if you pay that money to the bank, it is possible that they will ask questions but the questions are not sufficient to stop them from taking the money. For whatever question the bank is going to ask they are going to have an answer for it".*

The perpetrator in Case 4 said: *"...like they can take you to the bank, so the bank manager must be aware that they are taking this victim into the bank to show him here in South Africa".* He also said: *"...No, the bank doesn't ask questions.*

Usually, before we do these things, we usually tell somebody in the bank. For protection. And then you just contact him and negotiate. Someone who never raise any question when the money is coming. Any money which comes, like let's say if its dollars or pounds, if that enters the bank. Yeah some knows that it is fraud. Yeah you share the commission, whatever they want. Yeah I did the same thing in France. I make a lot of money in France”.

The perpetrators in Case 5 also said: “...*money transfers is when you...you get a connection in the bank, Yes, we work with...we worked with bank officials”.* He also said that: “... *We used to work with, with...inside, it was an inside job. Yeah, it was an inside job. So there I cannot say much. People do open accounts and it's just something like that. Even the database of all what we've got; the names, the account number, and then their job is done”.* Respondent 1 said: “...*Then they've got connections with managers from this... bank. Then they've got those extra bank accounts, so they give them those details so that they cannot trace them, you know? They don't give them their real details, so that's how they get their money and because they are having connections with the bank managers, its easy for them to get money, to withdraw the money, because they don't ask them a lot of questions”.*

Perpetrators commission / Outsource AFF

This research revealed that perpetrators of AFF commission or outsource their business. In this case it was found that the amateur perpetrator would hand over or transfer a victim that he has hooked to an experienced perpetrator. They would share their loot 50-50 when the fraud matures.

The perpetrator in Case 1 supported the above with the following statement: “...*It is possible that somebody cannot speak proper English but he can write. Or it's possible someone is not competent and he's having this business and want to seek advice from somebody else. So this person says: okay, you want me to*

give you the advice, when the thing happens I must also have something. Because you have a lot of new people that don't know how the business works but they have hooked victims and they don't have the procedures to take so they have to ask somebody who is already involved in the business to take over".

Respondent 3 also confirmed this and said: "... *But there are some people who are still beginning; those are the ones who struggle. For those who have been inside the business for years, they don't even need to approach what we call a mugu. For those who are starting, they are the people who go and contact this mugu, they go and search for them, and they propose business to them. And when now they believe the victim are inside the trap, they come now and hand them to those big ones who have been inside the business for a long time. They have their bosses. They have their boys. So when they take the money now, they take their own share. They learn how to do the job. With time now, you can do it yourself. You can speak to the mugu, and then sample him, and then you collect the money at the same time. But there are some people they are just good only in speaking. Maybe they are scared to go further than that. He'll speak and come and hand it, and when they take the money, even if it's a small share, he's going to be satisfied".*

Use of Internet cafes

It is known that Internet is one of the instruments that AFF perpetrators use to contact victims. They use these facilities to send e-mails in which they propose business investments, or transfers of funds from Africa or any troubled area around the world to Europe and America. This research found that these fraudsters spend most of their time at Internet cafes, sending e-mails to victims. The findings indicated that AFF use Internet cafes as their offices and they have special rooms and computers that they use. It is reported that at times these fraudsters use their mobile laptops that they take to Internet cafes in order to store their information and contacts.

In this case, the Respondent 1 said: "...And the other thing is when they sit the whole day there, in the internet cafes, that's where they normally go ... they use internet cafes as an office, they pay owners in advance like an account, and they give them this special room whereby nobody enters there, its only them, they go there and they do their thing". This Respondent also said "... More than ten in a room ... some of them they work together or they wait in turns. Like maybe you use the computer for two hours and then some other person uses it. Ja, they spend most of their times in Internet cafes. Ja, they pay them in advance".

3.3 CHARACTERISTICS OF AFF PERPERTATORS

Research published by the Australian Institute of Criminology regarding the characteristics of serious fraud offenders in Australia and New Zealand in 1998 and 1999 indicated that the offenders are usually males, in their mid-40s with no prior criminal record, with a relatively stable employment record with the victim organisation. They are usually directors or accounting professionals, motivated by greed or gambling, with a secondary education or some professional qualification and they act alone when they commission the offence (Crimes Facts Info 2003:1). However, the characteristics of AFF perpetrators are a little bit different.

3.3.1 Age

The 419 Coalition maintains that AFF perpetrators range from the age of 20 and above. It must be noted that the actual age of the perpetrators is very difficult to determine. This is because they do not give their real age when they write the letters to their victims. At one point, they may reduce or increase their age, depending on a particular situation. For example; in one case, a perpetrator stated in a letter to his victim that he was 29 years old and that he had been in this business for 18 years. This implied that, he had started this crime when he

was 11 years old. Therefore, the actual age of perpetrators varies and is not usually correct when stated by the perpetrators.

Findings in this research indicated that the average age of AFF perpetrators is 35 years. Of those perpetrators who participated in this research study, 28 per cent was 35 years of age, 28.57 per cent was 38 years, and 14.28 per cent was 34 years, 32 years and 30 years.

3.3.2 Gender

Literature research addressing 419 perpetrators indicate that both male and females are culprits. Often more males than females are associated with this crime. Females are said to act as accomplices and sometimes, when letters are written males pose as females. There is no doubt, however, that the perpetrators of this crime are mostly males.

These research findings suggest that the perpetrators of AFF are males. This is owing to the fact that all the incarcerated perpetrators who took part in this research were males.

3.3.3 Occupation

According to the United States Secret Service (1997:5) AFF perpetrators include university-educated professionals who are best in the world of non-violent spectacular crime. These offenders also include politicians, parliamentarians, accountants, business people, chemists, medical practitioners, the unemployed, pastors and many other professions. Consequently, perpetrators can be anybody from any profession.

The empirical findings of the research indicated that 71.45 per cent of the perpetrators were businessmen. This would probably suggest that it is easier for

perpetrators to present themselves (to victims) as businessmen than any other type of profession.

3.3.4 Nationality

The literature regarding AFF indicates that the perpetrators are of Nigerian nationality. This fraud is also referred to as Nigerian Advance Fee Fraud, signifying that the perpetrators are of Nigerian origin. The number of Nigerians involved in this crime is, however, difficult to assess. Shapiro, Staff Counsel for the United States Senate Permanent Subcommittee on Investigation, states that these estimations are speculative and without factual base (United States Senate 1987). One law enforcement officer told the Wall Street Journal in 1985 that about 1500 Nigerians were involved. Other sources told the Journal that the number is much higher (Penn 1985). A report issued by the U.S Customs Service stated that as of 1984, there were 30,000 to 50,000 Nigerians in the United States and that 75 per cent to 90 per cent (22,500 to 45,000) of these people were involved in fraud. From these reports, it seems as if an accurate estimate could not be made in 1984, let alone in the 1990s and to date (Jones 1993:61).

However, Alemike and Oladapo (Jones 1993:61) stated that some of the arrestees associated with Nigeria are not Nigerians, but possess Nigerian passports. According to them, some are from other West Africa nations like Ghana or Benin.

Another reason for the difficulty to ascertain the nationality of these perpetrators is that there has been no concerted centralised effort to obtain accurate numbers. Nigerians, understandably, raise claims of discrimination if law enforcement agents simply target them because of their nationality. According to Adeyemi, Martin and Stanton (Jones 1993:62) complaints against law

enforcement agents are common, and objections are raised towards newspaper articles that portray Nigerian nationals as fraudsters.

Perpetrators who were arrested for AFF were discovered to be South African nationals, Liberians, Cameroonians, British, Europeans, Americans, Pakistanis, Congolese (DRC), Togolese, Ivorians, Sierra-Leonians, Ghanaians, and Zimbabweans. However there is still some contention in this regard, for it is suggested that some of these perpetrators are Nigerians or have Nigerian origins and are in possession of foreign passports. The 419 Coalition maintains that the perpetrators of AFF in other countries are Nigerian because the “Home Office” of the 419’ers involve Nigeria, regardless the source of the contact material. According to the Coalition, however, there are occasionally some local copycats who try to emulate the success of the Nigerians.

This research indicated that 42.85 per cent of the perpetrators were Nigerians, 14.28 per cent from the Democratic Republic of Congo and 14.28 per cent from Zimbabwe, Pakistan and Malawi.

In his statements the perpetrator in Case 2 said: “... *People from DRC are into it, people from Ghana they are into it, okay Nigerians are into it. Ok, but because of the fact that we are more or less popularised the 419 word, I mean the numbers 419, and its part of our criminal, you know, everybody sort of attach 419 to Nigerians. I mean Angolans are doing it, South Africans are doing it now, really. It’s like everybody is doing it now. Even people who are living in London are doing it now*”. The perpetrator in Case 4 said: “... *other countries are doing it also. Not only Nigerians, other countries are doing it also*”. He also said that “...*Like around the world, the fraudster, they are Italian, they are Nigerian, they are Congolese, they are Zairian, and Uganda, Ugandans guys also, and Cameroon, né, Cameroonians are also there*”.

In the same vein, Respondent 3 said: *"... Yeah, South Africans nowadays they have been going into this business. Actually the fraud now have showed them there are easier means they can make money. Rather than them carrying the gun and shooting people, or robbing the security guard, or burglary, they can use their knowledge to trick people, then money comes out. So I know a good number of South Africans who are inside this business. What happens is, they go as far as, they go and bring other South Africans, they propose that they saw someone with this and this type of business, that it is nice, now they connect it to those people, so when they collect the money now they take their own share"*.

3.3.5 Race

Initial research stated that perpetrators of AFF were African. The explanation of this is due to the fact that this type of fraud originated from Africa and is regarded as a fraud perpetrated by Africans, especially black Africans. Over time and recently the offence has become an international phenomenon with offenders of all races. In this regard, Caucasians and Asians are now also being identified as perpetrators of AFF. In the empirical part of this research, all the perpetrators who took part were African.

However, it was found that not only Africans are involved in this fraud. In his statement, the perpetrator in Case 1 said: *"...No. White people are involved. White people are even more involved in the business than Africans. Here in South Africa, white people are involved"*. The perpetrator said that it is easier for a Caucasian man to convince somebody than an African man. According to him: *"... if a white man is coming from America to South Africa for this business, and the person who meets him here is a white man, it would be easier for him to bring more money. The whites can work on their own; they can work with the blacks they can work together if they want"*.

The same statement was made by the perpetrator in Case 4 in which he said: “... *Even white people they used to do it. No not...even South Africa, but white persons, they do it, they do it. No how can they give it to African people to do it*”.

3.3.6 Educational qualification

There is no doubt that a fraud of this nature would warrant a certain amount of skill to execute. The nature, structure and organisation of this fraud need special skills to pursue it. This explains why these perpetrators are mostly university graduates with knowledge of international banking, legal and financial parlance (jargons). They speak impeccable English and are up to date with current world issues and crisis situations around the world. Their higher educational qualifications enable them to be well spoken and professional in their dialogue and behaviour towards their victims, and they are renowned world travellers.

Studies (419 Coalition 2003) state that with their higher qualification, they are experienced in the ‘confidence game’. Perpetrators are careful not to victimise people in the country in which they conduct their criminal activity. They do this in order to isolate themselves from both victims and the police in order to avoid detection. Perpetrators often use aliases, fraudulent corporate identities and a variety of false documentation to convince victims of the legitimacy of their criminal enterprise.

The findings of this research indicated that the perpetrators of AFF are educated individuals. This is because all the perpetrators who took part in the empirical research had earned at least a university diploma. Moreover, in his statement the perpetrator in Case 1 said: “...*No no no. Not at all. This is a white-collar crime. It is strictly a white collar crime. Because for you to prepare a convincing letter, you have to be a learned person. You don’t expect somebody who’s carrying ammunition to go and rob these people... all people who are involved they are learned people. People who must have had some education. Because you must*

be able to write letters that are convincing to people. And armed robbers are not mostly learned people”.

3.3.7 Criminal records

Research reported that these perpetrators were not deterred by stringent security laws or by prison sentences with hardened felons. It therefore transpired that 419'ers have extensive criminal histories, including convictions for assault and narcotics offences and they must have been arrested and investigated as suspects in frauds or narcotic offences (The Nigerian 419 Coalition 2003).

3.3.8 Patience

This research found that AFF perpetrators are very patient. It was revealed that the perpetrators could wait for long periods of time for their deals to mature. Patience is one of the characteristics of these fraudsters. This character trait was supported in a statement made by the perpetrator in Case 1 when he said: “... *You don't expect somebody who's carrying ammunition to go and rob these people. You want somebody who is patient. What I know is even here in jail the armed robbers, when they ask you what are you in for and you say you committed fraud, they say I don't want to waste my time committing fraud. Because you write a letter and you wait for two weeks or whatever. They say if I want some money, I take my gun and go to the bank, and I know I'll get the money the same day. But for you to write a letter, you start waiting for 1 month, 2 months before you get money from that person. And the money you get from that person might be small money. They tell you they don't have such patience”.* The same statement was made by Respondent 2: “... *You know 419 guys they are very patient. They can send many letters to people for one year or maybe 2 years and they never get a reply. But one day there's going to be someone who is interested”.*

The next section depicts a sketch of the processes that indicate how AFF emails are initiated and finally executed.

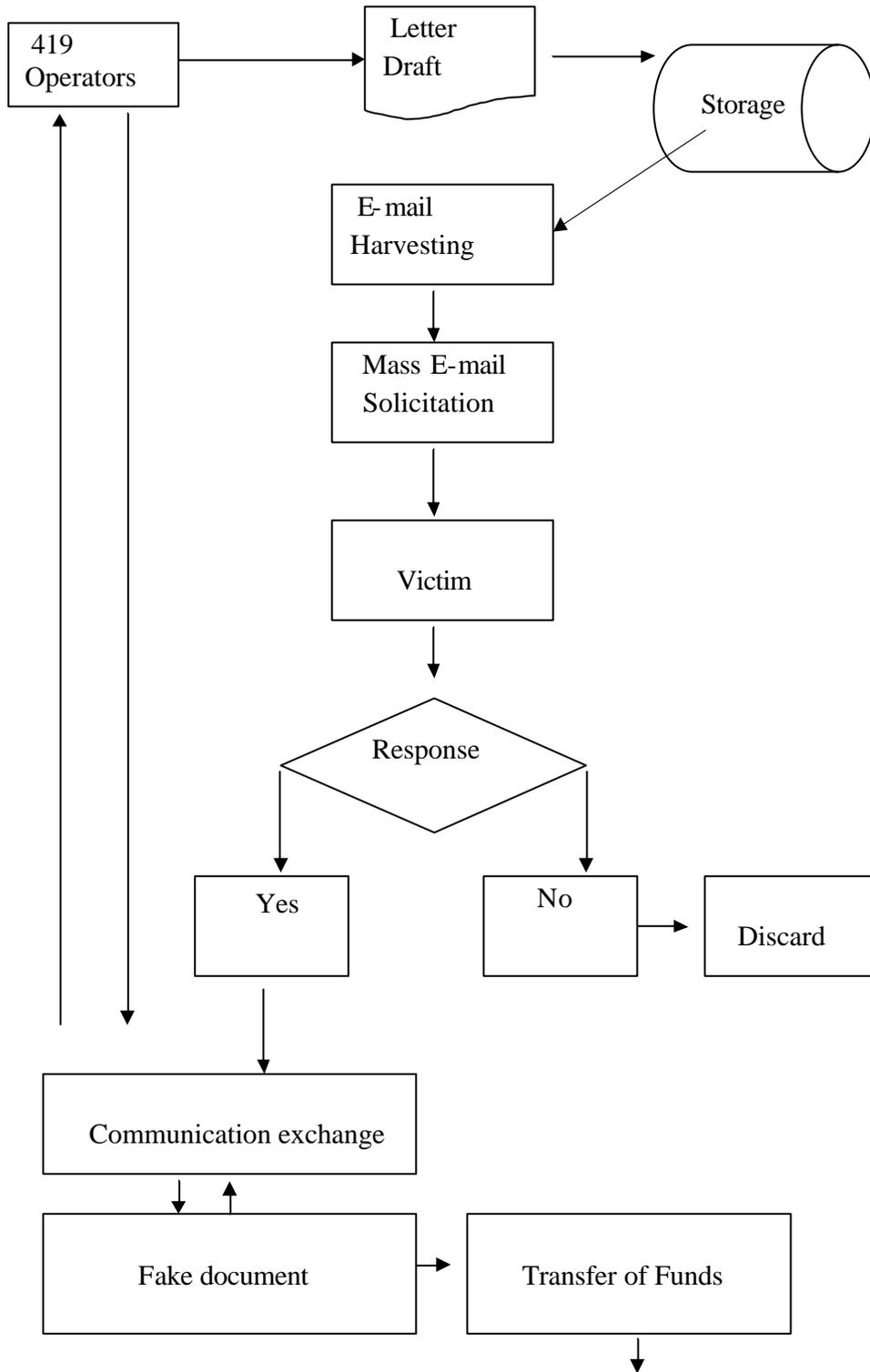
3.4 THE 419 PERPETRATORS EMAIL CYCLE

The steps used by AFF perpetrators in the execution of their crimes can be categorized as follows:

- Letter drafting
- Email harvesting
- Initial victim response
- Communication exchange and false documentation presentation
- Transfers of funds by victim
- Money laundering.

These steps, known as the '419 email life cycle' is presented in diagram 3.1 below (Oyesanya 2004). This diagram shows the steps involved in the commission of 419 fraud. It shows the start of the cycle when 419 e-mail fraud is first created, the steps involved in harvesting e-mail addresses on the Internet, the methods for the mass transmission of these e-mails to unsolicited victims on the Internet.

Diagram 3.1 419 Life Cycle



3.4.1 Letter drafting

According to Oyesanya (2004:3) AFF perpetrators commence their fraud by drafting letters. In most cases, the 419 letters are either saved to a floppy disk or to the hard drive of a laptop. The transient nature of a 419 perpetrator, moving from one cyber café to another, requires that he keeps his wares at hand. Hence, the 419 letters are thus written and carried around on a portable medium.

3.4.2 E-mail harvesting

During the e-mail harvesting stage of the 419 operators capture e-mail addresses. According to Oyesanya (2004:5), this can be done manually or by the use of automated e-mail harvesting software. He also maintains that it is possible for perpetrators to buy bulk e-mail addresses from Internet based email address resellers on the Internet.

Manual e-mail harvest

In his study, Oyesanya (2004:5) found that 419 operators also manually harvest e-mail addresses on the Internet by visiting guest books. He states that a website guest book is a website feature used by website operators to allow comments from their visitors. Internet visitors would sign an online guest book and usually leave a comment and an e-mail address. These e-mail addresses are the prime harvest target of the 419'ers. These perpetrators are so smart that they warn other would-be 419 e-mail harvesters; they usually leave a territorial marked comment once the e-mail address at an online guest-book has been harvested. Comments such as, "guyman", or "mugu" are used to mark a guest book that has been harvested.

Automated harvest

These e-mail addresses are harvested through specialised email harvesting software. These harvesting tools are website crawlers that are able to parse e-mail addresses embedded within HTML code on the website.

3.4.3 Initial mass solicitation

According to Oyesanya (2004:6) during this phase of the 419 fraud, the 419 operators take the drafted 419 letter, and transmit it via e-mail to the harvested e-mail addresses on the Internet. This process can be done manually or automatically. The manual transmission is the most popular approach and a free web-based e-mail client is used. In this case, the 419 operators manually send out the 419 letter, using a mail client and manual intervention by selecting a letter and the corresponding victim's e-mail address. The process of selecting the destination e-mail address is usually "cut and paste".

Automated transmission, on the other hand, can be done, using the automated mailing functions that are integrated into some of the more advanced e-mail harvesting software. Selecting and transmitting the 419 letters, using an automated form which is software-driven. No manual intervention is required to harvest and transmit the 419 letters. This phase is the spamming stage, and it is at this point, that the 419 operators begin to send unsolicited emails on the Internet. Most 419 perpetrators use cyber café facilities for the transmission of their bulk email operations.

3.4.4 Initial victim response

No 419 operation will be successful, without the collaboration of a victim. Once the 419 operator has transmitted his e-mail messages on the Internet, e-mail users at the receiving end will have to make a decision. Overall, most people will

discard the e-mail, but a collaborating victim will respond with a favourable or non-favourable feedback. Non-favourable feedback involves the communication exchange between victims that chooses to play along with the 419 operator, knowing full well the defrauding intentions of the 419 operator. Words such as, “baiting” have been used to describe this type of response. A favourable response on the other hand, describes the response of a victim that perceives this e-mail as an opportunity for financial gain, and does not suspect any fraudulent activities (Oyesanya 2004:8).

3.4.5 Communication exchange and false document presentation

Oyesanya (2004:8) states that once a 419 operator has acquired an unsuspecting victim, he must now maintain the dialogue through more e-mail exchanges and may even provide documents to validate the fraud. Most of the documents are either forged Nigerian institutional forms or actual documents obtained by the corrupt compromise of authentic Nigerian government institutions. These documents may include receipts of payments, banking account records, or invoices, all of which are non-authentic. The unsuspecting victim may also be required to forward personal information, such as personal bank accounts, passport copies, etc. These documents are either transmitted via e-mail, or through international mail carriers.

3.4.6 Transfer of fund by victim

As the exchange of communication proceeds, the 419 perpetrator gains the confidence of the unsuspecting victim. Over time, the 419 perpetrator will create an advanced fee request. At this stage, the victim is asked to make a payment of some sort in order to fulfil or partially fulfil the fraud. Oyesanya (2004:10) is of the opinion that, at this stage, the victim again, has the opportunity to withdraw from the relationship.

In most cases where unsuspecting victims are involved, the victims proceed and produce the money. There are various variations of the Advanced Fee Request. In some cases, the victim will be issued fake Nigerian Bank drafts for deposits into his bank account, and asked to remit money against the deposit. Remittance of money by the victim is usually done by depositing funds into Nigerian Bank accounts, or via international money transfer agencies.

Generally, once the victim has been defrauded, there is either a termination of activity amongst the parties, as the victim now becomes aware of his financial loss, or, in some rare cases, the victim may be again defrauded by an extended recovery plot. The recovery plot is an extension of the 419 scheme, where the victim is asked to invest more money to regain the money he has lost.

3.4.7 Money laundering

The money-laundering phase is the phase during which the 419 perpetrators, after a victim has been defrauded, schemes to turn 'dirty' money, into 'clean' money. This phase involves moving the ill-gotten 419 funds into various financial schemes in Nigeria or around the world, and sometimes these funds are reinvested into legitimate businesses in Nigeria and around the world (Oyesanya 2004:12).

3.5 MODUS OPERANDI OF PERPETRATORS

In the process of committing AFF, the perpetrators have some special methods of operation that are unique and distinct from other types of fraudsters. The study of the available literature reveals the following *modus operandi* often used by these fraudsters:

The *modus operandi* and certain idiosyncrasies of 419 perpetrators that illuminate the peculiar habits of these offenders, and which are of high

importance because of their individualised nature, have been carefully identified and described. The more unusual and absurd their actions are, the greater the possibility that the perpetrators will be identified (Prinsloo 1996:38).

3.5.1 Criminal specialist

As an elite crime, the use of criminal specialists becomes crucial for these perpetrators. Research by NCIS (2003) in the U.K indicates that these offenders need and employ someone with special skills or know-how, and the range of these 'specialists' is very wide. These specialists include chemists, accountants, and people with access to particular services, such as firearms or false identity documents or passports or those who are willing to carry out specific tasks such as murder or debt collection. It should be noted, however, that some specialists are low-level, expendable individuals who are used on a once-off basis or sporadically, but many are said to be professional criminals who provide their services on a continuing basis.

The findings of this research indicated that the AFF perpetrators make use of other criminal specialists in order to execute the fraud. In support of this assertion the perpetration in Case 2 said: *"... But you also need connections. Or maybe you want to do fraud from, you want to do fraud in First National Bank, you have to look for bank statements, for blank bank statements, for First National. So you have to go around to other friends and connections in the field. We know each other; we used to know each other"*. The perpetrator said that *"...even if you are not on speaking terms, but you know he's in the field. So you have to go to him or to her and say: Listen, help me with a blank bank statement, because I want to make a bank statement for First National Bank because I want to take something from them. That one, it was not my speciality. If I want a bank statement I have to jump around to look for it. Yeah, you just go to him, get that thing, do the transactions if he wants money then I pay him. Or maybe he says,*

listen, if your job is all right, it's through, then please come back to me. Please come back to me, and then you can pay me after you've done the job".

The perpetrator also said that "... Yeah I knew they were doing like listen...lets say you want to go open a gold card at a bank, or an American Express. And maybe they can organise you like, a school certificate, like a Masters degree from UNISA. The names that you want they can make them. They give you that certificate. And then you can go to any institution, banking institution, and you want to open a credit card, you know it comes with a budget, it comes with a budget, and it comes money, with money inside. Yeah, I knew something about that. I also knew that if you want a car, if you want a car, there are also guys from a country, you can also go to them, you choose what you want, and they go and get it for you from the garage".

3.5.2 Supporting other criminal activities

Research (NCIS 2003) states that perpetrators of AFF engage to a greater or lesser degree in criminal activities aimed at facilitating their main money-making activities or protecting themselves, their assets and their activities. This support take many forms, but given their broad aims, it is unsurprising that these supporting activities often revolve around money laundering or the use of coercion, corruption or deception. An example, in this case, is that the perpetrators engage in corruption (for inside information) possession and use of firearms (to threaten and intimidate) and forgery (of identity documents to open false bank accounts in order to launder money).

3.5.3 Violence and intimidation

The 419 Coalition (2003) notes that violence and intimidation is one of the methods of operation employed by the 419ers in the execution of their crimes. Coercion is regarded as the most widely identified supporting criminal activity.

This is meted against their victims and fellow perpetrators, and takes many forms, from unspoken intimidation, where they operate on a reputation for violence and ruthlessness, to the ready use of extreme violence or murder.

Intelligence suggests that violence and intimidation are used primarily to maintain the discipline and compliance of victims, group members and criminal associates, and to enforce criminal business deals as well as to recover debt. It is also used to avoid double-crossing or if someone is suspected of informing the police. Violence sometimes erupts because of disputes between members, although only a small minority becomes involved in turf wars. According to NCIS (2003:14), intelligence about the use of threats and actual violence are crucial to silence victims, potential witnesses, or to force victims to act against their will. It is also reported that, in some cases, violence and intimidation is the result of machismo or a predisposition on the part of the particular perpetrators, and is reactive and spur of the moment rather than planned and considered. This violence may also be calculated, for example when security personnel are sighted or noticed, victims are pressed to keep silent or to retract statements.

This research found that violence and intimidation is one of the *modus operandi* elements used by perpetrators to manage and maintain their fraud. This was confirmed by the statement made by the perpetrator in Case 1: “... *I know of 419ers fight over money, fraudsters can kill each other. Violence is minimum. Even if it involves sharing of money. The only time violence can creep in is when you feel you are oppressed by somebody. You feel he’s not giving you your share of the business or whatever, and you’ll now feel maybe this man is doing this because he is stronger than me or bigger than me. That is when it resorts to violence*”.

This perpetrator also said “...*I know they can fight physically, Sharing of money usually brings a lot of fights. Somebody can say I’m the initiator of this business and I involved you in this business, and it’s possible that while you were doing*

the business you didn't know the business is going to pay so much money. So you didn't put enough interest in it. So how are we going to share this money when it comes? That is where the problem comes. Because you didn't know eventually that the business is going to bring \$50 000. You say how can I give you \$40 000 because you are the owner of the business. Let me give you \$20 000. That's where the fighting starts. But if from the beginning you make a plan that this is the business – whatever comes out of it, 10 per cent is mine, 10 per cent is yours, etc – there will be no fighting”.

The perpetrator in Case 4 also said “...Everybody there they are afraid to speak, and be exposed. The problem is the law...this crime is like a massive organisation. You swear, (take an oath) when I handle these things, if they arrest me, let me go alone. If you point to this one, they kill you. Because if you point to this one and this one is involved, but when you're out of prison, you don't know who's going to be after you”.

Respondent 1 also supported the fact that violence is part of the *modus operandi* of AFF perpetrators. She said: “.... It is very dangerous. Those people they are very aggressive. And when they start fighting among themselves you are not safe, because they are very aggressive and secretive. They fight because of the money”. This Respondent indicated that these perpetrators resort to violence and intimidation in a situation when a dispute that involves money arises: “...Maybe he's supposed to give them their money...he's like having accounts you know, and people deposit the money in his account. Maybe, your friend or somebody deposited your money in my account and I need to give you the money. Ja, from the fraud. So I'm supposed to give you that money. If ever I give you half of the money, or something, that's when they'll start fighting. You understand. Ja it is. Most of the time they fight because of girls and money. Those are like, two things they fight about most of the time. Ja, money. Those people they are like money-conscious. They love money”.

3.5.4 Corruption

It is acknowledged in literature that addresses organised crime that the perpetrators use corruption to secure the help from people with access to information, influence or any other type of access they want or need. Perpetrators of AFF are reported to view corruption as preferable to coercion since threats may not work. The National Criminal Intelligence Service in UK (2003:20) reported instances where corrupt UK law enforcement officers colluded with criminals, some of which received extensive publicity.

Research (NCIS 2003:26) indicated that corrupting officials by AFF perpetrators is advantageous to them, since they can discover information about the status and direction of operations against them. This includes the identity of surveillance vehicles, informants or witnesses. Using corrupt practices, these perpetrators can also discover general information concerning law enforcement capabilities, procedures, operational priorities and resource deployments, which is very valuable, though of less immediate value to a career criminal or his associates. According to the NCIS (2003:27), these criminals maintain corrupt relationships not just with those involved in 'front-line' law enforcement, such as the police, customs officials and immigration officials, but also with others throughout the criminal justice system, including the Crown Prosecution Service, prison officials, and representatives of the legal profession. However, the NCIS (2003) also reports that corruption is not restricted to the criminal justice system, and has involved central and local government employees, accountants and others in the financial field, plus a range of other professionals.

Intelligence shows that while these offenders actively target those employed in the criminal justice system, this approach appears to be opportunistic, based on the accessibility and perceived vulnerability. 'Cold' approaches are unlikely, as they might backfire. On this note, research (NCIS 2003:30) reveals that the opportunity for these criminals to approach a corrupt official safely may arise

socially, through friends, family connections or in pubs or sports clubs or it may occur in a professional setting.

3.5.5 Identity fraud and other misrepresentations

Identity fraud is another most important *modus operandi* that underpins AFF perpetrators. These fraudsters reportedly produce, supply or use false personal identities documents. Misrepresentation occurs, for example, when documents provide false information regarding a company's identity, a perpetrator's identity, business accounts and transactions.

Research (NICS 2003:25) states that the primary purpose of a false identity is to enable these criminals to conceal themselves, their activities, and their assets in order to minimise the risk of detection, particularly when 'things are on the move'. Perpetrators' movements normally require proof of identity in documentary form, which will be recorded and copied. It should be noted that false identities are obvious means of disguising the audit trail and frustrating law enforcement enquiries. Intelligence reports (NCIS 2003:32) show that false identity documents are used to acquire vehicles, open bank accounts, apply for loans or credit cards, make money transfers, rent safety boxes, set up mailing addresses, subscribe to telephone or internet services, buy property, register companies, sign shipping documents, obtain other identity documents, book hotel rooms or plane tickets, and any other travel arrangements abroad to conduct their business (often they use one passport for one leg of a journey and a second for another).

This research revealed identity fraud and misrepresentation as one of the aspects of the *modi operandi* used by perpetrators of AFF. The findings of the empirical research emphasises misrepresentation, as confirmed by Respondent 1's comments: "... He's having like four I.Ds. His own personal IDs. He's having a South African I.D, a Nigerian, and Malawi, and I forgot the other one. But what I know is that they are four. People from Home Affairs they helped him to do it.

Yeah, that's what he told me. I even saw the I.Ds. Yeah, the South African ID, and Malawi, and Nigeria, of course, because he is coming from Nigeria. And the other thing, they are using girls too. In the bank, when they go to bank. Because it's like he's having a lot of savings accounts and cheque accounts. In his name and fake names, you understand me. So you need to gonna have somebody who's gonna go there and withdraw the money. Because they are gonna be suspicious every time you go there you withdraw money so they are using girls and they pay them so they get their money easily".

3.5.6 Intelligence gathering

Organised criminals like the 419 perpetrators gather intelligence about the activities of their rivals and the vulnerabilities of their potential victims in order to protect their criminal ring and identify opportunities. They value, in particular, information concerning law enforcement operations, intentions, techniques and capabilities. It is reported that corruption is an important means to acquire this intelligence, but perpetrators can also gain insight into how law enforcement operates by attending court hearings, following the media reports of investigations, and debriefing associates who have been arrested. Some perpetrators reportedly have employed surveillance and counter-surveillance techniques in order to protect themselves and gather intelligence regarding law enforcement activities. In this case, counter-surveillance ranges from basic evasion techniques to more sophisticated methods, involving observation or the deployment of surveillance technology. Some of these perpetrators have approached third parties with specific knowledge of law enforcement techniques, technology and procedures for assistance, for example; retired police officers who have entered the security advice or private detection fields (NCIS 2003:36).

3.5.7 The use of legitimate or quasi-legitimate businesses

AFF perpetrators, as well as other organised crime perpetrators, cannot operate exclusively within a criminal underworld. The NCIS (2003:32) finds that many, probably the majority, make use of legitimate or quasi-businesses to further their criminal activities. Their research also states that in some cases these perpetrators own businesses and they collude with or coerce businessmen and employees. These businesses are most obviously used to launder the proceeds of their crimes, but they are also used to facilitate illicit trades and in some instances to fulfil a desire for social acceptability and status. In such instances, front companies are essential for this type of fraud and these companies provide cover for purchases of regulated items such as precursor chemicals.

As with most organised crimes, operating legitimate businesses was found to be one of the *modus operandi* used by AFF perpetrators to disguise their ill-gotten gains. This research found that AFF perpetrators in South Africa are owners of Internet cafés, groceries shops, importer and exporters businesses, liquor businesses, night clubs and some are hawkers. It should be noted that these legitimate businesses act as fronts to justify what perpetrators do for a living and also serve as means to launder money.

In the statement made by the perpetrator in Case 1 he said: “... *apart from doing that they have legitimate businesses. Like people they have money and they say I want to invest in the legitimate business. There are a lot of 419ers when they are making a little money, they set up businesses, because the wise ones are the ones who are going to start a business*”.

In his statement, the perpetrator in Case 2 said: “... *I’ve been in South Africa for two years. I was already here two years before I got arrested. I basically buy things. Like I have things sent in from Nigeria like clothes, jewelries.*

Occasionally, I have this store, I buy retail vouchers at their real market cost prices, and I have shops I supply them to”.

The perpetrators also said “.... Quite a number of them do have businesses, because for you to maintain going to the Internet, sending fax machines, they need money to fund those things. So obviously whatever job or activity they can find to maintain that, they’ll do it. Even doing legitimate jobs, like he having a shop, like finding a legitimate business, he’ll do it. He has to do something to fund it. So he’ll do anything. It’s a legitimate business. Most of them have legitimate businesses. It’s just something they do on the side. Because you can’t live on it. You can’t. You don’t say I’m a fraudster and I’m gonna send letters and live on it. You cant, because you have a family, you’ve got wife’s, kids, you’ve got to pay the school fees, pay the rent, so basically, you have to have something very legitimate, you have to do it”.

The perpetrator in Case 4 said “...I had a office in Johannesburg, and the office where I was working, I had other...my workers, and then they get some vouchers from government departments, and then we fill them, and after filling them, we send them to the bank, to draw the money. I was doing imports and exports of clothes”.

3.5.8 Communications

It is generally accepted that any modern enterprise relies on effective communication in order to succeed. In the case of AFF perpetrators, communication needs to be either wholly secretive or sufficiently difficult to penetrate prevent that law enforcement agencies gain foreknowledge regarding their plans or enable them to piece together evidence that a crime has been/is being committed.

However, criminal businesses often involve complex logistics, with people and goods moving around the world, with deals and transfers negotiated with other criminals or associates, and with timings and locations to be managed against a background of unreliable partners and active oppositions from law enforcement. In practice, this means the extensive use of telecommunication.

Research by NCIS (2003:37) indicates that when organized criminals choose telecommunications products and services, they are guided by the need for security, anonymity and convenience. The research also stated that these perpetrators often strike a balance between security on the one hand and convenience and ease of use on the other. Mobile phones, in particular 'prepaid' or 'pay-as-you go' phones, remain particularly popular, since there exist no legal requirements to register these type of mobile phone and thus no need to disclose personal details. Moreover, these mobile phones are not expensive when bought in bulk and also make it possible for them to change their phones regularly. They are also reported to use public telephones quite often.

These perpetrators make increasingly use of the speed, accessibility and relative anonymity offered by Internet communication. They use e-mails, chat-rooms, instant messaging and 'peer2peer' networks, and are also beginning to relay messages via the Internet that were traditionally delivered in person or via the telephone. These perpetrators use Internet cafés or encrypt their messages as a further layer of protection (NCIS 2003: 37).

They also use illegal telecommunication operators whose primary business is to "dump" international calls in order to defraud members of the public. It is reported that in Lagos, Nigeria, these fraudsters rent offices located in skyscrapers and specialise in tracking of incoming international telephone calls via Very Small Aperture Terminal (VSAT) satellite-based gateways. Their facilities have the capacity to track both voice and data via signals, which are decoded so that they are able to defraud bona fide beneficiaries of these messages. The perpetrators,

whose mode of operation appears the same, install very sophisticated telecommunication equipment. These include:

- A Main Distribution Frame (MDF) on which they install acquired telephone lines from either the Nigerian Telecommunication Limited (NITEL) or any Private Telephone Operator (PTO) as the case may be.
- A satellite dish of a minimum size of 3.8 meters and linked to an antenna hoisted on a mast.
- A satellite modem for receiving and tracking signals at speeds of two megabytes per second (mbps).
- Personal computers
- Backup batteries of at least 12 volts
- Backup generators
- Uninterrupted power supply (UPS)
- Telephone handsets, among others.

It is reported that these fraudsters usually acquire a certain number of telephone lines from the public switched telephone network which they use to monitor every day's network traffic, especially calls from abroad. What shocked officials of NITEL was that these fraudsters collaborated with certain unnamed foreign operators who monitor calls coming into the country on their behalf, and these collaborators then dump these calls on the network of the Nigerian illegal operator, for a fee (Aragba-Akpore 2002:67-74).

3.4.9 Masters of manipulation

It has been suggested in literature (NCIS 2003:38) that the perpetrators of AFF are experts at manipulating certain human traits such as goodness, gullibility, greed or fear, which will influence people to voluntarily part with their money. Perpetrators have stated that in order to succeed they need a victim who displays greed, gullibility and the ability to be controlled (Crimes-of-Persuasion site 2003). Investigations focussed on these fraudsters showed that they use a

wide variety of influencing techniques, ranging from friendly conversations to outright demands or even threats, to persuade victims to part with their money. According to the 419 Coalition (2003), many calls made by perpetrators include the following elements intended to mislead victims and secure their compliance:

➤ Excitement

Perpetrators reportedly introduce statements that will excite their victims, and therefore interfere with victims' ability to think clearly and calmly. For example; one of the statements reads:

"Thelma, I can't tell you what you're getting, but I surely hope you live long enough to enjoy it all". 'If you recall, you were involved in a promotional campaign and you were promised you'd receive some very large corporate award, do you remember that? Great! Then you'd better sit down for this". "They told you the man in charge of the place would be calling you. Well, that's me! Take a deep breath now and try not to be nervous".

➤ Urgency

AFF perpetrators routinely include an element of urgency in their pitches, stressing that the prize, investment, or other item being offered will not be available unless the victims send the required funds quickly. This puts a lot of pressure on the victims to react before reconsidering the proposal. A key element to the AFF perpetrator's act is convincing his victim to pay quickly, so that they receive the funds before the victim has second thoughts or seek advice. For example; they would tell you that "you have to pay or transfer the funds today or I'm afraid we might lose the business"

➤ Anonymity

AFF offenders often use false names, and victims can only identify them by their voices, if at all, which creates a serious obstacle for criminal investigators and subsequent prosecutions. They usually receive payments at commercially rented "drop boxes" which make it difficult to trace the money.

They will try to avoid any witnesses to the fraudulent act and contact the victims when they are alone. They may even promise victims an all expenses paid trip to their company's "corporate headquarters" when, in fact, the headquarters is an upstairs office in a strip mall and the company's "Suite 2400" mailing address is a rented box at a commercial mail receiving agency at a different strip mall.

This research revealed that AFF is all about the manipulation and deceit of victims. Perpetrators reportedly have special manipulation skills to cajole and entice their victims to get involved into their business proposals. The fact that most of the proposals emphasised urgency, anonymity and at times excitement from the perpetrators, are geared towards preparing the victims for even more manipulation when the business commences. In this regard the perpetrator in Case 4 said: "... You cannot understand that. You cannot understand. Even if I explain to you, you cannot understand. Yeah, it's only the fraudsters; you won't understand. They steal your own money, and you won't understand. You are looking and you can't see. They'll take the original and give you the fake and say no take it. Yeah, me and you only, I'll take your money and you can't see".

3.5.10 Fake Internet website

Literature studies reveal that AFF perpetrators create and use fake websites to lure victims into their webs. According to NCIS (2003:48), these West African criminals used a fake version of a British bank's online service to milk victims for cash. The fake site was used to squeeze more money out of people whom they had already hooked. It is reported that the scam behind the fake web domain was the familiar one that offers people a share of huge sums of money that has to be moved out of various African countries. These criminals also used this method to set up a fake website that supposedly gave victims access to accounts held at the South African Reserves Bank. Typically, victims are given a login user name and password and are encouraged to visit the site so that they can see that the cash they will get is a share of what has already been deposited into an

account (at the supposed South African Reserve Bank) in their name. This is used to convince victims that the money is already in their names and before they can get their hands on the cash, they must hand over more of their own money to assist with the transfer process (The 419 Coalition site 2003).

It has been widely acknowledged in the findings of this research that, the use of fake Internet websites and fake documents are amongst the instruments used by these perpetrators lure victims into their traps. The statement made by Respondent 1 supported these findings: *"... They've got fake website of banks, governments departments, schools, companies that they send victims to check their information. These sites are similar to the original sites. They have fake documents and papers, those things they do them and sign them and they like fax everything and stuff, and that's how they do their thing"*. Respondent 2 also said: *".... And those people are very clever, because they can act in South Africa as South Africans with fake passports or fake ID's and you don't even know where they get these things. And tomorrow he's going to be in the United States and he's going to act as an American citizen with the fake ID's, passports, so that's how they try to change victims' minds about these things"*.

3.5.11 Use of law enforcement agents

This research study found that AFF perpetrators make use of law enforcement agents in the execution of their crimes. In this regard, police officers were found to have been used by perpetrators to "discharge"/scare victims. In some instances, police officers act as accomplices and are said to even give jobs to perpetrators. Hence police involvement in this type of fraud would suggest why these fraudsters are successful and at times able to avoid detection and evade the justice system.

The statements made by the perpetrator in Case 3 supported the above findings: *"... police are working for it. The police that arrested me asked for a bribe of*

R3000 for him to give me bail. I told him I cannot trust you because you are working with those fraudsters". He said: "...as a foreigner is a victim see police you are very scare, and if I know that the victim will be stubborn to pay we involve the police to discharge and at times arrest the victim, the victim will start calling to come and bail him. All this are arrangement with the police. They are part of the game".

In a similar statement, the perpetrator in Case 4 said: "...No, usually that happens among themselves. Maybe my customer's coming. You are away. I know that today I'll be making a sitting; they use to call it a sitting. I know that today I'll be making a sitting. And then you are away. And then when you are taking money from the mugu, and then you can call police contacts, the police arrest the mugu, and then arrest me also, and then the money that is going to remain, you share between you and the police. Yes some police know. Even this one, Scorpion, there are some Scorpion, they know, this big Scorpion leaders, they are involved in some big fraud. Even locally, there are some big men they are involved. Yes they share amongst them".

In the same vein, Respondent 2 said: "...So they can act as a police official, maybe they dress as a policeman, and they can behave as a policeman. So in this way that they act as a police, maybe those who are acting police are really police. But I know that it's a game, and it's a team. And in the team there are many people involved, and many people have their own role". This statement was also made the Respondent 3. He said: "...At times he will arrange with the police man. The policeman will go and keep him in the cell. So he'll say that he has been arrested, that he is in so and so police station, and that you should come for his rescue. Since you know that you were doing an illegal thing, instead you are running away. You are scared that he can also involve you in the same thing. That is something that has been arranged between him and the policeman, so in the end you (victim) can't blame him.

This Respondent also said: "... What happens is the day they go to collect the money, this people they usually arrange with the police, he arrange with the police that he is going to do this and this, this and this, this and this. The police know the business and he has a commission inside. The police have a commission. So what happens is, after they had taken the money from that victim, then, after they have swapped the money, and he'll tell that person now that he's going to collect the chemical, he goes out now, after one hour he's going to claim that the police arrested him. Actually you can see him now, actually you can see he had the bottle, he was arrested with that bottle, the police will arrest him actually with that bottle, its true, and they will take him to the police station, you will see they take him to the police station with that bottle, but there is something behind. There is something that has been arranged". The Respondent went further to say that "... there are certain situations where the police storm the hotel, but it is still an arrangement, these fraudsters arrange it with the police. And when the victim has brought the money and then put on the floor, they can just go and send a 'please call me' to the police, the police will just be hanging around. They know the room-number. So the police will just come into the hotel and then arrest all of them. And when the police arrest all of them, the police are going to carry the money. So they'll come with different police van. So the victim is going to be carried in the different van, the 419er is going to be carried in a different van and inside that van now that is there money. And then they are going to tell you now that they are taking all of you to the police station. So you (the victim) now, will be begging, that they should allow you to go, so that the money you don't mind whether you lost or not. So they will be threatening you that they will take you and they will take you round and round and you'll be begging, you'll beg them that you will never do this again. And at the end they can abandon you somewhere, they can just throw you and you can go. And they will go with that other guy now and they will share the money. The guy will never reach the police station, and they will share the money and the police will also have their own share".

3.6 THEORETICAL EXPLANATION OF PERPETRATORS

The most basic theories of criminality argue that criminals differ in some fundamental way from non-criminals. These theories then attempt to identify the nature of the differences (Friedrichs 2004:193). On the sociological level, criminality, the propensity to commit crimes, is shown to vary among different segments of the population or among different organisations. Therefore, the focus in this section will be to explore psychological and sociogenic explanations of criminality.

Psychological explanations

At first glance, a psychological explanation for fraud and AFF would appear simple – greed and dishonesty. Such an explanation is, however, overtly simplistic (Duffied & Grabosky 2001:2).

Criminality has also been explained as a psychological phenomenon. In this approach the focus is on personality, mental processes, the enduring effects of early childhood traumas, and the like (Friedrichs 2004:194). The most famous psychological explanations of human conduct were advocated by Freud.

From a Freudian approach, crime, including fraud, can be viewed as a reflection of the eternal conflict between the desires of the individual and the needs of civilization. In one of his discussions concerning crime, Freud suggested that individuals might commit crimes in order to bring punishment upon themselves for a pre-existing guilt (Friedrichs 2004:194). He further noted that at least some fraud offenders have engaged in such self-destructive acts of illegality, lending this notion some credibility. Friedrichs also reported that in the Freudian approach, fraud could be linked with defects in the superego (the conscience),

the ego (the balancing voice of reason or the idealized self), or the id (aggressive and libidinous innate drives).

Many limitations of the Freudian model regarding the self have been identified, but the core notion of tensions and conflicts amongst different aspects of the self intuitively makes some sense and can hypothetically be associated, in a limited sort of way, with the fraud criminality. Whatever the case, it must be emphasised that not all psychological theories follow the Freudian lead by emphasising the importance of early childhood experiences in shaping adult attitudes and behaviour. Whether fraud can be linked to childhood experience has not yet been subjected to systematic study (Friedrichs 2004:195). To the extent that one's moral sensibility is shaped by childhood socialisation, there may be some connections.

However, Duffield *et al.* (2001) indicated that not all dishonest people commit fraud. They maintained that behavioural scientists have been unable to identify psychological characteristics that serve as valid and reliable markers of the propensity of individuals to commit fraud.

Another general psychological aspect of fraud is the process of rationalisation, which reduces the offender's inhibitions. Such attempts at prospective excuses have been termed "techniques of neutralisation" by Sykes and Matze (Duffield *et al.* 2001:3). There had been a tendency in the literature to confuse motivation with neutralisation, but they differ in important ways. Duffield *et al.* (2001:3) pointed out that motivation is the drive behind the act of fraud, while neutralisation paves the way by nullifying internal moral objections. They maintained that most offenders seek to justify and rationalise their activity regardless the type of fraud they commit. In doing so, they will use "vocabulary of adjustment" (Cressey 1953, 1986; Krambia-Kapards 2001) that manufacture rationale and extenuating circumstances and remove the perception of criminality from the act (at least from the point of view of the perpetrators). According to

Benson (1985:583) techniques of neutralisation will vary depending on the type of fraud. Those types of fraud that require victims, willingly and knowingly, to enter into the process (AFF) are amongst the easiest for offenders to rationalise. In such case it becomes easy to believe that the victim “had it coming”.

In support of this a study of conmen conducted by Blum (1972:46) found that many attributed their successes to the inherent greed of their victims. He also pointed out that many conmen seemed to have a misanthropic view of human nature and assumed that others were as scheming and dishonest as they were. The idea that victims ‘get what they deserve’ is reflected in another conman’s statement: “... the victim has the same responsibility as the victimiser. If the victim never wanted anything from you, he’d never go so far to get in the condition to be conned”. In other words, you can’t cheat an honest man. Responsibility for fraud, in this case, is placed squarely on (or at least shared with) the victim.

Sociogenic explanations

According to Friedrichs (2004:197) some theoretical and empirical work that adopts the sociogenic framework also addresses the matter of criminality, especially in terms of alleged differences in criminal propensities amongst members of different social classes or groups. Gottfredson and Hirschi (1990:104) suggested that varying levels of self-control are fundamental factors in people’s decisions to commit crimes and that low social control (the inability to defer gratification) is more pronounced among lower-class individuals. People who commit fraud also have low self-control, but according to Gottfredson and Hirschi’s interpretation, those in the fraud classes typically have more attractive options than law breaking available to them, and thus the rate of such crimes is relatively low.

It has been argued that fraud can be unique, highly specialised, and thus not well explained by a broad claim of criminal disposition. It has also been commented that the conventional view: that criminality is more pronounced among lower-class individuals than middle- and upper-class individuals is not dictated by theory or supported by empirical observations. Others have suggested that middle-class criminality, for the most part, is relatively trivial in nature (Goode 2001; Tittle, Villemez, & Smith 1978; Tittle 1983). Still, other criminologists, including Hagan (1989) and Thio (1988) have developed the structural or power theories of crime, which claim that criminality is more pronounced among the powerful and the privileged than among the powerless and underprivileged.

In this interpretation, the advantaged have stronger deviant motivations, enjoy greater deviant opportunities, and are subject to weaker social controls. The claim regarding stronger deviant motivations is based on the contention that the powerful are potentially conditioned to aspire to material success; accordingly they experience relative deprivation much more strongly than the underprivileged or powerless.

Many explanations of fraud focus more on the crime rather than on the criminality. However, most of these explanations are sociological, and they emphasise differences in circumstances or opportunities rather than differences among individuals.

In a bid to explain the criminal behaviour of fraudsters, and especially AFF perpetrators, the sociological explanation is more relevant because fraud is a socially patterned phenomenon, and is not just a manifestation of individual psycho-pathology or other defects of personality, character or physiology. In order to understand AFF perpetrators, the sociological theories will be applied. In this regard, sociological theories, such as anomie and strain theory as well as differential association theory will be used to explain why some individuals commit fraud and Advance Fee Fraud. The rational choice perspective, the

conflict theory, and the integrated theoretical model will also be applied to explain AFF.

3.6.1 Sociological theories

Anomie and strain theory

This theory is at the heart of the sociological bid to account for crime. According to Brown *et al.* (2001:285) the thrust of theoretical agenda is that stress, frustration, or strain, generally a part of failed aspirations, increase the prospects of norm violation. As stated by Agnew (Reid 2003:126), "...strain theory has typically focused on relationships in which others prevent the individual from achieving positively valued goals". Therefore this theory maintains that norms are violated to alleviate the strain that accompanies failure. As Brown *et al.* (2001:285) puts it: "...blockage of legitimate goal attainment is said to encourage deviant solutions". Most strain theorists reason that the structure of the society creates the greatest pressure within the lower-class echelons, and consequently these theorists focus on explaining lower-class crime. Strain also tends to be associated with distorted aspirations, the attainment of unrealistic desires and class materialism. These distortions set the stage for individual failures and the desires for deviant solutions.

Agnew (Reid 2003:126) also maintains that strain theory should be expanded beyond the traditional emphasis on an individual's failure to achieve goals and include all types of negative relations between the individual and others. According to Reid, Agnew believes that there is more to strain than a person's failure to achieve desired goals. As a consequence, Agnew developed three types of strain that may produce deviances:

- First is the individual's failure to achieve his or her goals, which he divides into three subtypes. These goals include immediate as well as future

goals, and he went beyond Merton's anomie theory to include the inability to achieve these goals because of one's own inadequacies. Agnew also noted that the gap between one's expectation and achievements might result not only in disappointment but also in resentment or even anger. The third subtype includes the person's impression that there is a difference between the actual outcome and what the outcome should be, that is a fair and just outcome.

- Reid (2003:130) reported that Agnew's second type of strain occurs when an individual loses a source of stability, such as a loved one, through death or the dissolution of the personal relationship, such as the end of a romantic involvement. The person suffers strain through loss of stimuli that had a positive valuation.

- Agnew's third strain type occurs when an individual is confronted with negative stimuli such as; difficulties in school, crime victimisation, or even abuse by his or her family member/s. The young person cannot escape their school or family without acting in a deviant way, and that appears to be the solution to the troubled youth.

The above theory can therefore be utilised to explain AFF perpetrators in general and in South Africa in particular. The individual's inability to achieve his desired goals leads to strain, frustration and increases the chances of law violation. This explanation is especially related to immigrants in South Africa. It is suggested, therefore, that AFF perpetrators in South Africa are mostly immigrants from West Africa who enter the country in search of greener pastures. It can therefore be concluded that these West African immigrants become involved in this type of fraud because their immediate goals, such as finding a job, cannot be met because of their own inadequacies such as not being in possession of the correct working permits and other restrictions imposed by the State. This theory is used to explain not only AFF perpetrators in South Africa, but also in the country from which the perpetrators originate.

Differential association theory

In criminology, social process theories attempt to describe and explain the ways in which individuals become criminals. They deal with the link between an individual's interaction with others and that person's motivations, perceptions, self-conception, attitude, behaviour and identity (Barlow 1996:468). Although many interactionist theories seem to place greater emphasis on the behaviour of others than on the behaviour of 'self', the goal is the same; to explain the emergence and consequences of behaviour. Whatever the case, the underlying assumption is that criminal behaviour can be explained within this framework like any other behaviour. According to Barlow (1996:468), a common theme in many social process theories is that criminal behaviour is learned through interaction with others, hence Sutherland's theory of differential association.

Sutherland (Friedrichs 2004:205) promoted a theory of differential association, which views criminal behaviour as learned through contact with others who have a law violating orientation. This theory applies to both conventional and fraud crimes. In some respects, fraud may be better understood by reference to differential association than is true of conventional crime, because of the broader range of learning options generally available to fraud offenders and the complex nature of the offences themselves.

This theory is useful in explaining white-collar crime and fraud because of the learning of cultural goals, such as material success, and the pursuit of those goals through illegal means (Conklin 2001:278). Conklin is of the opinion that, because there is no enforceable code of business ethics to limit the pursuit of material success by legal means, definitions unfavourable to the violation of the laws are not readily learned in the world of business. This means that those who are mostly assimilated into a business organisation seem to be the most likely to violate the law. Those new to the world of business are less apt to do so because

they are more influenced by the unfavourable definitions associated with the violation of the laws, which they have brought with them from the outside world.

In an attempt to use this theory to explain AFF perpetrators, the fourth principle stated by Sutherland is of importance. This principle emphasizes the importance of learning the technique of committing fraud and learning the mindset (motives, drives, rationalisation, attitudes) conducive to criminal behaviour. While a particular mindset is essential, familiarity with technique relates to the type of crime perpetrated and the ability to successfully commit the crime without detection. AFF entails the learning of complex techniques. Studies of white-collar offenders (Sutherland 1947), confidence men (Maurer 1974), and professional thieves (Sutherland 1937) illustrate the considerable skills that must be mastered to pursue these criminal paths (Brown *et al.* 2001: 234). Research regarding AFF perpetrators indicates that learning the motives and drives, which results in a relatively constant desire or persistent urge to do illegal things is, on the one hand, a requisite for AFF would-be offenders.

In an application of this theory to explain AFF perpetrators, it is suggested that the high concentration of immigrants in big cities around the world, and especially Johannesburg in South Africa, supports the premise of this theory. The strength of this theory in explaining AFF perpetrators is supported by literature research, which states that amateur perpetrators learn to commit this fraud, and sometimes for a fee. It has also been noted in the literature (U.S State Department 1997) that, on arrival in the United States, young perpetrators are given a manual that contains the techniques and instructions on how to commit AFF.

Modification of differential association, such as Glaser's (1956), emphasizes differential identification (with a criminal role model) and Akers's (1985) emphasizes reinforcement (conditioning to engage in criminal behaviour when it is experienced as rewarding) and these concepts can also be applied to white-

collar and fraud offenders (Friedrichs 2004:205). In this regard, this theory can be applied to explain AFF perpetrators operating in South Africa.

It must be borne in mind that the overriding limitation of this theoretical approach is that it does not adequately account for the structural origins of the illegal patterns of behaviour and appears to confuse the process of involvement in criminal behaviour with the causes of such behaviour (Geis & Goff 1987: 98; Goode 2001:109). The theory also does not address the problem that some white-collar fraud crimes are individualistic in nature and that the collective forms of white-collar fraud crimes are committed by individuals who mainly hold attitudes that are favourable to obeying laws, Coleman and Goode (Friedrichs 2004:205). In the case of AFF perpetrators, the critique of this theory also applies to AFF perpetrators, because some perpetrators act alone when they commit this fraud. It is, however, equally true that individuals who are able to obey the law commit AFF.

Within this same premise, Tittle and colleagues (1986:145) focused on deficiencies in the causal framework set out by Sutherland. According to them, differential association presumes that definitions acquired through the association with others lead to deviant behavioural patterns. In other words, some associations were thought to cause criminal behaviour and others to cause non-criminal behaviour. Brown *et al.* (2001:330) supported this stance by saying that, some people may engage in criminal conduct for whatever reasons, and then seek out particular associations to match their criminal values and activities. In the case of AFF, some individuals become involve in this type of fraud because of their associations with other 419'ers and they commit this fraud for various reasons, for example; lack of legitimate job opportunities.

Another possibility is that the relationship between associations and behaviour may be reciprocal, that is, both may influence one another simultaneously. The causal nexus is also complicated by the possibility of intervening variables. Tittle

et al. (1986:146) found that excess associations with criminal definitions led to criminal behaviour only through intermediary factors such as criminal motivations (Brown *et al.* 2001:330). These motivations, in the case of AFF, are the rewards of this type of fraud; the ostentatious lifestyles of perpetrators.

3.6.2 The rational choice perspective

The rational choice perspective emphasises offenders' strategic thinking, or the ways that they process information and evaluate opportunities and alternatives. According to Conklin (2001:289), this perspective stresses calculated decision-making, and argues that offenders choose how to act after determining the likely reward of a particular kind of behaviour. He also stated that this perspective looks in detail at specific crimes, because different offences meet different needs. There is also considerable variation between offences in the situational context of decision-making and the information that must be considered.

The rational choice perspective focuses on the processes by which individuals initially decide to violate the law, choose to continue their life of crime, and eventually opt out of the criminal lifestyle. It should be pointed out, though, that not all people calculate rewards and risks in the same way. Some of the many factors that affect the choices people make are age, marital status, group ties, social class background, opportunities for legitimate careers, attitudes toward work, willingness to use violence, preferred life style, identity, and values (Shover 1996:89). As with all other crimes, this perspective will assist to provide an explanation for individuals' decisions to commit AFF and why they would decide to cease their fraudulent activities.

With this perspective in mind, it should be noted that offenders do not normally calculate the risk that is associated with theft, nor do they thoughtfully consider legitimate alternatives to crime. Instead, their decisions to commit crime are affected by lower-class and working-class values such as autonomy, toughness,

and excitement; as well as their lack of opportunities for legitimate careers; their low aspirations; and their desire to gain the respect of others. This is mostly applicable to property offenders whose decisions to steal are made in the context of a lifestyle characterized by a "life as party" attitude, in other words they seek the "enjoyment of good times" with minimal concerns for obligations and commitments that are external to their immediate social setting (Shover 1996:93). This explanation shed some light in the understanding of AFF perpetrators. This is because their decisions to commit this fraud is partly due to the lack of opportunities for legitimate careers in South Africa, and in Nigeria/West Africa as well as values like toughness, excitement and their low aspiration to succeed in their country of origin.

These offenders believe they are unlikely to be arrested and think that if they are imprisoned it will be for a short time. They approach their first prison term with some fear, but soon learn that they can survive incarceration, and even gain the respect of their peers for the crimes they have committed. In this regard, Conklin (2001:290) states that amateur offenders typically see imprisonment as a temporary setback, vowing to be more careful the next time they commit crime. Conversations with other inmates change the way offenders calculate rewards and risks, and they are encouraged to make money a more important goal and are taught which penalties they can expect for various offences (Shover 1996:104). When AFF perpetrators are arrested, charged and granted bail, especially in South Africa, they continue with the fraud.

Reward-risk and self-control

This theory emphasises that situational influences on criminal behaviour might appear incompatible with theories that stress individual traits (for example low self-control) that are established during childhood. Research by Nagin and Paternoster (1993:67) found support for both kinds of theories and concluded that there was no incompatibility between the theories. Also, Conklin (2001:291)

maintains that criminal behaviour is strongly associated with low self-control. In their research, Nagin and Paternoster (1993:83) took prior behaviour into account, the situational aspects of the crime, and the perceived rewards and risk for committing the crime. They also found support for the reward-risk theory: the intention to break the laws was substantially influenced by the accessibility and vulnerability of the target, perceptions of the sanctions apt to result from breaking the law, and the pleasure derived from committing the crime. All these aspects are applicable to AFF perpetrators when they decide to commit this type of fraud. Perpetrators therefore consider the reward and risk associated with AFF and apparently the rewards of AFF activities outweighs the risks involved.

An interpretation of this theory implies that the anticipated rewards for committing a crime would be more important than the perceived costs of committing a crime when one predicts the intention to break the law. Rewards are thus more immediate and risks are more uncertain and remote. As with AFF, rewards are immediate because they deal with cash. Nagin and Paternoster (1993:98) also indicated their support for both the reward-risk theory of criminal behaviour and the predispositional theories such as low self-control, and argued that both these theories are needed to fully understand the sources of offending behaviour. They suggested that people with low self-control focus on the pursuit of immediate pleasure and lack the commitment to the conventional line of actions, such as education, a career and lasting social relationships that provide long-term rewards and consequently have little to lose when they break the law (Conklin 2001:291).

However, before the rewards and risks of fraud and AFF are discussed, the researcher will consider the rewards and risks of crime in general.

Rewards

Many offenders find that the rewards of crime justify their violation of the law (Conklin 2001:91). Conklin also states that some of the offenders believe that the income they derive from crime is more certain and more substantial than the income they could earn from the legitimate jobs available to them. It has also been argued that, even if all offenders were paid the amount they realise from their criminal activities, many of them would continue to violate the law because of the non-economic rewards of crime. Supporting this notion is a study by Wood and Peter (1997:335), which found that the behaviour of habitual offenders is reinforced by the intrinsic rewards they derive from their crimes, specifically "...(1) the neurophysiological high such acts produce and (2) the symbolic meaning of the behaviour as it relates to self-concept and identity formation". Offenders "reported that when performing crime, particularly violate crime they were pumped up, experienced a substantial high, and felt they could do anything they wanted. They also felt intensely alive and had a sense of accomplishment" (Wood *et al.* 1997:360). This explains why, when AFF perpetrators have defrauded a large sum of money, they say "...they have hit big or they have hit a jackpot" and boast about their greatness.

Where AFF is concerned, one would suggest that one non-economic reward of criminal behaviour is the challenge of violating the law and getting away with it, this is important in many computer related crimes and fraud. The application of this theory to AFF perpetrators justifies why they referred to their victims as mugus. They believe they are more intelligent, cleverer and smarter than their victims.

Risks

The primary risk associated with crime is the threat of arrest, conviction, and punishment. Offenders often plan their crimes to minimise this risk, but most

people who continue to be involved in crime for any significant amount of time are eventually arrested (Conklin 2001:293).

Therefore, if offenders have an 80 percent chance of escaping arrest for a given offence, the chances of escaping any arrest if two such crimes are committed is reduced to 64 percent, the chances of not being arrested at all if three offences are committed is 51 percent, and the chances of no arrest if the offenders commit twenty crimes is only 1 percent (Conklin 2001:192). This means that the chances of not being arrested for a single crime are quite high, but the chance of never being arrested over the course of a criminal career is quite small. As a result, most criminal careers are eventually interrupted by an arrest. This explanation is applicable to AFF perpetrators who commit the fraud once off.

Research has indicated that continued criminal activity might make some offenders experts, thereby minimising their chances of being arrested, but with continued successes many offenders become over-confident and careless (Conklin 2001:294). Chance plays an important role in determining whether an offender will be arrested for a given crime, an offender's luck will eventually run out if he or she continues to break the law.

For criminals who commit fraud and AFF perpetrators, the risks are relatively small because few of them are convicted of a crime, and the courts usually treat those who are arrested, leniently. Perhaps the major risk they face is the loss of reputation (Conklin 2001:295). The instrumental nature of fraud lends itself to a careful calculation of the cost and benefits of violating the law.

Conklin's (2001:297) critique of the reward-risk model is that it fails to indicate exactly how potential offenders weight the various benefits and cost of criminal and non-criminal behaviour. He argues it is difficult for an offender to calculate the probability of an arrest, or balance a small chance of a prison sentence against the high probability of making a small financial gain. He concludes that

this theory seems to explain some offenders better, such as fraud offenders than other type of offences, like child molesters.

3.6.3 The conflict theory

The conflict theory has principally been concerned with the process of criminalisation. The theory rejects the consensus theory notion of the social world as an organic or integrated system (Friedrichs 2004:209). In its so-called “non-partisan” form, the conflict theory is concerned with determining how the values and interests of different groups conflict because the more powerful groups in society are disproportionately able to influence the character and content of the law (Vold, Bernard & Snipes 2002:286). In this view, the behaviour of the powerless is most likely to be defined as criminal.

The structure of contemporary capitalist society can be linked to the conflict theory, and can therefore be used to explain AFF perpetrators because the most basic form of fraud focuses on the nature of the society itself. This is because one principle version of the conflict theory is the Marxist or neo-Marxist theory.

Marxist theory

According to Quinney and Greenburg (Friedrichs 2004:210), Marx and Engels did not regard crime, in any form, to be a necessary or inevitable feature of human society. Rather, crime is essentially a product of a class society, and of capitalism in particular; to the extent that humans manifest such patterns of behaviour. Capitalism promotes these tendencies in human beings. The capitalist system dehumanises people, transforms many objects and dimensions of the human environment into commodities, and promotes “false needs” that generate a significant amount of property crime.

In Marxist view, the worst crime is committed in the name of capitalism: the systematic exploitation of the working class. Engels contends that the ownership class is, in fact, guilty of murder because this class is fully aware that workers in factories and mines will die violent, premature deaths due to unsafe conditions. The private ownership of capital results in many socially injurious acts that, in today's terms, can be labelled crimes of capital (Michalowski 1985:314).

According to Bonge, Gordon, Lynch, Michalowski and Groves (Friedrichs 2004:210) it must be pointed out that, beyond crimes that are intrinsic to capitalism, Marx, Engels and their intellectual heirs have suggested that crime by the rich and poor alike is a rational, inevitable response to an economic system that fosters greed, egoistic or individualistic tendencies, competitiveness, and the debasement of humans. In this regard, Reiman and Headlee (1981:24-27) noted that whenever the capitalist system undergoes an economic crisis, pressures to commit crimes increase, which supports the literature regarding AFF perpetrators, especially those from Nigeria/West Africa where economic pressures are rampant.

It has also been suggested that the alienating and inauthentic dimensions of contemporary capitalism promote complex patterns of collaborative crime between elite organisations and governmental power holders (Simon 2002:98). Pearce and Tombs (2002:187) state that, as capitalism becomes increasingly globalised, it becomes even less subject to state regulation in its relentless drive to expand markets and maximize profits. This opens the door for international fraudsters and AFF perpetrators to spread worldwide.

American society has been described as criminal or criminogenic on the basis of its modern, urbanised, bureaucratic character, which promotes impersonality and instrumentalism; its competitiveness; and its frontier cultural values, which promotes toughness and resistance to authority, according to Schur 1969 and Barron 1981 (Friedrichs 2004:211). It should be noted that Nigerian and West

African societies are suffused with contradictions and conflicts pertaining to its religious, ethnic, gender-related heritage, and their political systems celebrates democracy in an environment of gross misdistributions of real power. AFF perpetrators should thus be understood in terms of these structural attributes.

3.6.4 Integrated theories

In an attempt to explain white-collar crimes and fraud, criminologists have attempted to develop integrated theories of these crimes that incorporate insights from different theoretical traditions and account for fraud at different levels.

Coleman (1987:406) developed an integrated theory that centers on the co-existence of appropriate motivation and opportunity. According to him, a culture generates motives for lawbreaking when it emphasises possessive individualism, competition, and materialism, justifies rationalisation, and removes unified restraining influences. This means that a built-in structure of opportunity renders white-collar crime and fraud both less vulnerable to legal controls and sanctions (due to the disproportionate power of the elite in the formulation and administration of the law) and open to a variety of attractive possibilities for disregarding or violating the laws that do exist (Friedrichs 2004:214).

Various factors, including the structuring of opportunity, the nature of financial reimbursement, and the occupational subculture, can render some occupations more conducive to illegality than others. Accordingly, fraud is most pervasive in societies that encourage a culture of competition, in organisations that are financially pressured, and in occupations with special opportunities and subcultural values that promote illegality.

Within this same perspective, Braithwaite (1989:333) based his integrative theory on two traditions: structural Marxist theory, which links both fraud and conventional crime with the promotion of egoism in capitalist societies, and

differential association which argues that both fraud and conventional crimes are learned, relative to differential opportunity. Accordingly, nations with high levels of inequality of wealth and power will have high rates of both fraud and conventional crime because they produce a broad range of illegitimate opportunities that are more rewarding than legal opportunities (Friedrichs 2004:214). White-collar crime and specifically fraud are both responses to relatively more attractive illegitimate opportunities and a sub-cultural value system that rationalizes that it is appropriate to take advantage of those illegitimate opportunities. For Braithwaite, the theoretical challenge is to construct a “tipping point” explanation that predicts when a stake in non-compliance outbalances a stake in conformity with the law. His critical tipping factor is differential shaming. From this analysis, one would conclude that involvement in fraud and AFF could be understood as a function of relative vulnerability to shaming.

3.7 CONCLUSION

This chapter presented the nature and organisation of AFF perpetrators. The characteristics of the perpetrators' behaviour were examined and this was followed by a diagrammatical presentation of the e-mail cycle of AFF perpetrators and explanations were provided. The *modus operandi* used by perpetrators and by these offenders in the execution of the crime was also discussed. The theoretical explanations of the perpetrators were also discussed in order for one to have a clear understanding of these offenders. In this case, the sociological, rational, conflict, and the integrated theoretical perspectives were employed. In this chapter findings were made in terms of the nature and organisation of these perpetrators, their characteristics, and the *modus operandi* they often use when they commission this type of fraud.

The table below shows the findings of this chapter:

Table 3.2 The perpetrators

Nature of the perpetrators	Characteristics of the perpetrators	Organization of the patterns	<i>Modus operandi</i>	E-mail cycle	MO	Explanations
Highly skilled and creative	Age 20-35 yrs	Diversify	Intelligence gathering	Letter drafting		Moral insensibility
Learn techniques	Mostly male	Cross-sector criminals	Activate criminal specialists	Store letters		Neutralization techniques
Specialise in a function	Any occupation	Well-networked	Support other crimes	Outsource communications		Lacks social control
Impersonate people	Primarily Nigerian/West African nationals	Internet Café's	Use lawful agents	Harvest email addresses		Anomic strain
Ostentatious lifestyle	Race: African	Outsource AFF communications	Corruption	Mass email solicitation		Differential learning
World travellers	Graduates	Bankers as assistants	Misrepresentation and fraud	Victim response: Yes		Motivation and opportunity
	Extensive crime records	Game players (dialler, frontier, closer, takeover)	Fake Internet Websites	Initiate communication		Rational choices
	Patience		Manipulation	Provide fake documentation		Relative vulnerable shaming
			Violence and intimidation	Transfer funds		Integrated theory

Table 3.2 can be explained as follows:

The nature of the perpetrators determines their biographical characteristics, which in turn influences the way in which they organise themselves to commit the AFF. The *modus operandi* and specifically the e-mail *modus operandi*, flows from these organisational patterns. When all of these; the nature, biographical characteristics, organisational patterns, *modus operandi* and e-mail *modus operandi*: are integrated, one can understand the criminal (criminologically speaking) best.

Fraud, and particularly AFF, is clearly a complex, multi-faceted phenomenon. No single theory or explanation can comprehensively explain the perpetrators' behaviour. One must be clear about what exactly is being explained: criminality, crime, or criminalisation. The overarching view of this section is the complexity and diversity of fraud and AFF precludes any single comprehensive theory or explanatory scheme. It becomes evident that it is difficult to overcome the methodological barriers to demonstrate conclusively the validity of the competing theories of fraud and AFF.

However, given the large numbers of possible variables one cannot expect to easily explain AFF perpetrators' behaviour with propositions that possesses the reliability of a scientific law. Therefore one can only invoke the core motivation of 'greed' to largely explain AFF. The essential notion of this section is that such a simplistic, one-dimensional explanation does not clarify, either the endless complex mixture of factors that may be involved in the character of such offenders or the different ways of even thinking about what one want to explain, and motivation is only one element (Freidrichs 2004:216).

From the above discussion, analysis and findings, it becomes clear that AFF offenders come from different backgrounds. This makes it very difficult to study and understand them. Since face-to-face contact with their victims is rare victims are even less likely to discover that they are being defrauded. Hence, one would conclude that AFF perpetrators are smooth criminals, who can function for years without detection by the victims or law enforcement agents.

The next chapter will examine the victims of AFF and it will also attempt to explain AFF victimisation.

CHAPTER FOUR

THE VICTIMS

4.1 INTRODUCTION

Fifteen years ago, it would have been difficult to find anyone involved in either criminological research or any agency connected with criminal justice, who gave the problems of crime victims more than a passing thought. The primary interest then was focused on the motivation of the offender, as part of a search, either for general explanations of criminal behaviour, or for ways to prevent crime, particularly through rehabilitation or training. The victim was simply a source of information about the offending behaviour, or a witness when the case was heard in court. Today, however, interest in the aetiology of offending has waned dramatically, the focus of crime prevention strategies has shifted from offender rehabilitation to community action, and literature regarding crime victims is fast expanding.

It must be pointed out that this interest in victims is not only found inside these narrow professional circles. The professionals' responses have themselves been stimulated and accelerated, both by a general climate of opinion, sympathetic towards crime victims, and by the activities of increasingly well organised and influential groups, set up specifically to assist or campaign on behalf of victims. In the recent past, newspapers, magazines and the broadcasting media have frequently featured stories or commented on issues related to victimisation. Not surprisingly, politicians have noticed which way the wind blows and governments of some countries have thus legislated improvements that address procedures which compensate the victims of crime (Maguire & Pointing 1988:1).

Whatever the case, it must be underscored that the Federal Bureau of Investigation's (FBI) Uniform Crime Report (URC), and the Justice Department's National Crime Victimization Surveys (NCVS), usually provide annual tabulations

of property and violent crimes, based on crimes reported to the police and household surveys. They do not, however, provide information regarding people who have been victims of fraud. These types of white-collar/economic crimes target individuals and employ deception in order to obtain illegal financial gain. This involves the misrepresentation of facts and the deliberate intent to deceive, with a promise of goods, services, or other financial benefits that, in fact, do not exist or that were never intended to be provided (Titus, Heinzelmann & Boyle 1999:179). Lured by the simplistic and often error-laden correspondence, balanced against the potential procuring of millions, normal astute businessmen who come from very money-oriented societies vainly believe that they have the business acumen to deal profitably with what they see as a Third World country, never imaging the complexities and professionalism of the operation they are up against.

The criminal justice professionals and researchers have often highlighted the need for systematic information concerning the nature and extent of various economic crimes, including personal fraud, to influence both the action of potential victims and the policies and practices of the criminal justice system (Titus *et al.* 1999:180). Moreover, researchers and policy makers have not yet adequately addressed the needs of the victims of these crimes. The focus of legislation and victim assistance has been on the victims of interpersonal violence and street property crimes, not on the victims of economic crimes, including personal fraud. At the moment, research concerned with the nature of personal fraud is limited, and statistical data regarding these crimes and their victims is scarce.

Therefore, the aim of this chapter is to describe, analyse and comment on victims in terms of the nature or types, and incidences of AFF victimisation, victims' characteristics, and the effects of AFF victimisation, especially on individuals, corporations and nations, and the theoretical explanation of this type of

victimisation. In this chapter, the findings of the empirical research of AFF victims will also be integrated into the literature research.

First, the categories of victims and the concept victimisation will be examined as it relates to AFF.

4.2 CATEGORIES OF VICTIMS

Literature research indicates that not every crime has a direct, tangible, and easily identifiable victim. Acts that are prohibited and made punishable by penal law may thus be classified, according to the type of victims involved. In this case, Fattah (1991:90-96) classified the following categories of victims:

4.2.1 Crimes against specific victims

According to Fattah (1991:92) most conventional crimes are committed against specific, individual victims, referred to in law as the wronged, injured, or harmed party. This party can either be a natural person, juridical persons (a corporate body), or an animal. A natural person, in this case, is a human being, whether alive or dead. Certain offences, such as homicide, assault causing bodily harm and rape can only be perpetrated against a natural, live person. Dead people may also be the victim of some offences, such as in the case of desecrating dead bodies or tombs.

It should be noted that the modern penal law recognises the existence of juridical persons, that is, a number of natural persons grouped together in some form of association who have rights and obligations distinct from those of the individual members. The law acknowledges that juridical persons can be victims of crimes committed against patrimony, honor and so forth. In general, juridical persons may be public corporations, private corporations or international organisations

(Fattah 1991:92). These are common victims of frauds in general, and AFF in particular.

4.2.2 Crimes against non-specific victims

Research indicates that all criminal offences, whether against specific individuals or not, are supposed to be harmful to one or several social, political, legal, or religious institutions. However, there is a whole category of offences that, by their very nature, are not directed against a specific person, natural or juridical (Fattah 1991:93). In such cases, the victim is merely an abstraction, for it is not a definable, identifiable individual who is wrong or who suffers the injurious or harmful effects of the offences. Public peace is the abstract victim of offences such as the acts of propagating false news or rumours likely to cause fear among people, or acts of inciting people to disobey the law. Public authority is collectively victimised in cases of rebellion, the escape of prisoners and defilement of monuments. The constitution is the abstract victim in cases where the administrative and judicial statutes are violated or in cases of conspiracy by government officials (Fattah 1991:93).

4.2.3 Crimes against a potential victim

In this case, the offence is not perpetrated against a specific individual. Nobody is actually harmed, though the dangerous nature of the act implies a threat of potential harm to an, as yet, undetermined victim. Such is the case with all illegal possession of offensive weapons, dangerous driving or driving while one's faculties are impaired. In all these cases, the offences are determined by the perpetration of the act, even if no actual harm has resulted from it (Fattah 1991:93).

4.2.4 Crimes without victims

It must be underscored that in some offences, there is no victim, only two offenders who jointly perpetrate the prohibited act. A classical example is the case of incest between two consenting adults. In some jurisdictions, the law prohibits homosexual acts and other sexual deviation among adults. The two parties involved may be charged and convicted. If, in any of these incidents, one of the two individuals involved is a consenting or willing minor, the criminal law establishes a legal presumption in his or her favour, thus assigning him or her the designation of a victim (Fattah 1991:93). It must, however, be noted that this legal presumption of victimisation is established by the law in favour of minors, regardless of the facts of the case and the actual roles of the two parties in the commission of the offence.

Rubin (1971) defines victimless crimes as "... behaviour not injurious to others but made criminal by statutes based on moral standards which disapprove of certain forms of behaviour while ignoring others that are comparable". Packer (1968:67) views victimless crimes as "... offences that do not result in anyone's feeling that he has been injured so as to impel him to bring the offence to the attention of the authorities", and Schur (1965) who use the term "crimes without victim" defines the concept as referring to "... the willing exchange, among adults, of strongly demanded but legally proscribed goods or services" (Fattah 1991:94).

In some offences the victim may be a united person. This is the situation Von Hentig (Fattah 1991:93) refers to as the "doer-sufferer": an individual who combines the roles of the victim and the offender. The wounded party in duels and suicide attempts and individuals who mutilate themselves or get another to mutilate them to escape compulsory military service are all "doer-sufferers" liable to different sanctions in most jurisdictions. An act deemed harmful, dangerous, or threatening need not have a real victim or specific victim to qualify as a criminal

offence. There are, however, certain offences that cannot be easily classified in any of the previous categories. In such cases, there may be no discernible harm, and if the act involved any harm at all it is primarily harm to the participating individual's themselves.

Based on the above-mentioned types of victims, the next section will deal with victimisation as it relates to AFF.

4.3 VICTIMISATION

Victimisation is a process

According to the South African Law Commission (1997:3), victimisation is a process whereby a victim, either innocently, through negligence or intentionally, is exposed to the negligent and/or intentional unlawful conduct of a criminal, which is prohibited by law. It is not limited to conduct which the victim regards as criminal, but it includes the feelings, responses and the community's attitude towards the victim. From a humanistic perspective, victimisation is the process whereby a person (s) suffers harm through the violation of national criminal laws or of internationally recognised norms relating to human rights (NCPS Victim Empowerment Program June 1997).

AFF victimisation

The choice of AFF criminal victimisation and the decision not to deal with other types of victimisation is not meant to suggest that AFF criminal victimisation is more serious, more harmful, or more injurious than other types. Nor should it be interpreted as suggesting that the material cost of, and the human sufferings resulting from, AFF criminal victimisation are more substantial, more traumatic, or longer lasting than those caused by other forms of victimisation. However, for theoretical as well as practical considerations, it is necessary to circumscribe the

chapter and to reduce the enormously vast field of general victimisation to a single manageable area (AFF victimisation).

4.3.1 Types and nature of AFF victimisation

Types

With regards to AFF, there are direct and indirect victims. The direct victim, in this case, would be someone who suffered financial loss, physical or psychological suffering and even death as a result of this type of fraud. The indirect victim includes, where appropriate, the family members of the direct victim, as well as investors and shareholders of companies. The most common types of victimisation in AFF are, however, the direct victims.

Nature

According to research, during the first phase of this type of fraud, the victim receives a letter, allegedly from officials of a large institution. These letters request an urgent and confidential business relationship between the perpetrators of the fraud and the intended victim, in order to transfer funds out of one country to another, usually to the financial institutions in the victim's country of residence. The intended victim is falsely offered payment for his assistance, usually in the region of 10 to 30 per cent of the total contract amount (The 419 Coalition 2003).

The victim is asked to forward personal financial information, including banking information as well as copies of their corporate letterheads and invoices, so that the payment can be made through a contract claim in the victim's name. The victim is also asked to wire a payment of approximately \$US 10,000, supposedly for legal fees and administrative costs in order to secure the business arrangement. According to the 419 Coalition, once the victim discloses the

required personal financial information and corporate documents and wires the required payment, the “hook is in” and phase two of the scam begins.

In phase two, the victim receives a telephone call from confederates in the criminal organisation, posing as top executives of the corporation or bank. At this stage the victim is falsely informed that the full total of the contract funds have been cleared and are now in an alleged clearinghouse or merchant bank in the victim’s country.

Typically, the fraud continues when the victim is informed that, before the money can be claimed, there are further outstanding fees that the victim must pay. The 419 Coalition reports that these fees are alleged charges for such items as taxes, duties or environmental levies and can range from approximately \$US 50.000 to hundreds of thousands of dollars. Once these fees are paid, the victim is approached to pay even more fees. The scam continues until the victim is broke and the fraudulent business deal is never consummated.

Move funds to Europe

In one of the victim’s statements (involving marked currency), he explained how he fell prey to these fraudsters (The 419 Coalition 2003). In his statement, the victim said: “... after I replied, he responded back in a very convincing way, so I thought I could believe that he was to give me 30 percent of 40 million dollars if I help bring the funds to Europe and help him invest his portion”. The victim continued to say that: “... after speaking with him I came to believe it was real. Finally he asked me to go to Amsterdam to have the funds released into my name for transfer to my account in Italy”.

According to this victim, the fraudster said he was going to pick him up at the airport in Amsterdam. The victim said: “...there was no one waiting for me. I called him and he said he was busy and that I should take a taxi to a hotel. Three

hours later I opened the door to find a tall and very well-dressed African man with another African individual, with the title of Doctor, that I later discovered was the supposed chemist”.

The victim said: “Douglas hugged me with a ‘Hello my friend!’ greetings filled with warmth and sincerity. Again, everything seemed real to me. He explained that, for the release of the funds, the security company wanted \$38,000 USD and although he was only able to collect \$35,000 he said he had made an agreement with the company whereby they would bring one of the two trunk boxes, which contained \$20 million dollars, and we would pay them the remaining \$3000 directly from the funds. That seemed to be a perfect idea to me”.

The victim said: “He gave the \$35,000 to this doctor and told him to go to the security company for the release of the consignment. While Douglas and I stayed in the hotel room, waiting for the doctor to come back, we talk about families, religion, and other nice things. He was so pleasant and good-natured anyone would think he was a decent man” the victim said.

The victim said: “Two hours later the chemist came back with another African person carrying a normal travel case. He sat down and asked who the beneficiary was. I said it was me, so he asked me to show him my passport which I did. Then he took out some documents from a folder and asked me to sign them. He then asked me for the balance owing, and Douglas said there was a person who was going to bring the money in a few minutes”. The victim said the courier then became upset, saying that this was not the agreement, and that his boss would be upset with him if he did not come back with the \$38,000 USD.

According to the victim, Douglas implored the courier to wait for just ten minutes in the hallway and after some other terse words the man agreed and left the room. The victim said “...I was getting nervous because I realised that things were not going as smoothly and as risk free as Douglas stated in the beginning”.

Douglas and the chemist then opened the trunk, and inside was a locked metallic galvanized case. The chemist asked for the combination to which Douglas replied "431". The doctor opened the case and inside there was a strange container packed in foam which he took out, revealing the money below, hundreds of stacked US dollars, which filled the entire case.

The victim said: "...then our focus went to the strange container". The victim explained that "... there was a bottle inside and when they examined it they remarked, with dismay, that the solution inside had almost entirely solidified; leaving only a very small portion liquid. I asked what it was and the doctor explained that it was a chemical compound called Lactima Base 98 percent, used for cleaning the money". "...I thought here is another thing that Douglas did not tell me; so I asked him to explain further". He said that for security reasons all bills had been marked with a stamp which invalidate them and that the liquid is used to remove the stamp. He planned to wash \$3000 to pay the balance to the security company man, but there was only enough to wash \$200. This was confirmed by them actually cleaning two bills in front of me. Everything seemed so real!

The victim said: "...Douglas calling someone on his phone, shouting that the liquid had hardened in the bottle. Then he said to me he was stymied and he did not know what to do. I was scared, but my mind was still working on how to resolve the thing. I suggested we call in the courier and tell him the person who should have brought the balance could not make it, then ask him to return the case until we had the money to retrieve the cases".

The victim reported that the courier returned and again was upset, but finally decided to do what I proposed. After saying that he wanted to be sure the man actually went back with the consignment to the security company, Douglas went with him. "...But not before, as perfect IDIOT, I said that I could raise at lease

\$1500USD using my credit card. So off I went to the centre of Amsterdam accompanied by the doctor to get the cash advances at various ATMs”.

“Successful, we went back to the hotel and met Douglas, who said he had acquired the remaining money needed, took mine, and went off to the security company while I stayed at the hotel with the chemist who brainstormed that we had to somehow liquefy the solution to do the cleaning. He then called someone on the phone, asking about the possibility of melting it. After some minutes of talking he put down the telephone and said that Prime Chemical Company may be able to melt the solution, but they could not say just how much they would charge us for doing so. I had to fly back to Italy the next day so I told Douglas, when he returned, that he would have finished the operation alone. But wait, he said, first we had to determine how much the melting would be. I replied that as we, or certainly I, did not have any more money they should simply make an agreement with the Prime Chemical Company to have the solution melted and then pay them out of the cleaned money”.

The victim said: “...the next day Douglas brought me all the linked documents below and said the doctor was still waiting for a price for the melting. He later brought me at the airport and said goodbye like a true friend with a big hug”.

In his statement, the victim said “... I should have flown out at 6pm, but at 9pm I was still waiting for my delayed plane so I called him to see what was going on. He said that the Prime Chemical Company successfully melted a very small part of the solution as a test, and was asking for \$46000USD for the total melting. Knowing I was short of funds, he started asking me if I could talk with my father for ‘assistance’”.

“I guess, I was finally clueing into the possibility that it was a scam so his enthusiasm started to wane. After a couple of days he saw that I was not very convinced and said that he had been able to raise \$20000 and so I “only” had to

find the remaining \$26000". At this stage, the victim realised that he had been defrauded.

Dead foreign contractor transferred money

In another victim's statement, (The 419 Coalition 2003) the victims identified themselves as Shahla Ghasemi and Dr. Ali-Reza Ghasemi of Florida USA. In their statement, they stated how they got involved in AFF in 2000. In their statement, they said: "... we got a phone call from Nigeria by a man named Dr. Ali Abubabker though, I don't believe that is his real name".

The victims said the man introduced himself as the Director of Nigerian National Petroleum Company (NNPC) and used the number 234-1-774-1703. According to the victim, the man said he has a confidential message for my husband, but if we were to expose this message he could lose his job and his life. "... He told us that he would receive a very big commission from this".

The victims said that: "... the story that he told us was that one foreign contractor from our country (USA) who died transferred \$27,400.000 to Dr. Ali-Reza Ghasemi (my husband). We were very shocked as that is my husband's name. After that, he faxed all the documents and attached all the needed documents. We looked over everything and they seemed real, all bore the government's official seals and stamps. Then he faxed us a copy of our bank information, which we filled out and faxed back to him".

The victims reported that thereafter: "... we received a letter from the bank which stated that we needed to hire a power of attorney. His name is FA Williams and his telephone is 234-1-774-0939. We contacted Mr. Williams and he asked us to send him \$7, 250, 00 for the court registration fee through Western Union. We sent the money with a fee, which came out to be \$7.565.00 After they had

received the payment, Mr. Williams said that everything was ready but, calling from the bank asked us for a copy of SEPA”.

The victims reported that they had no idea what SEPA was, so they called Dr. Abubaker who said he didn't have the form and thought that maybe the original contractor hadn't paid for it. They then asked us for \$27,400 but with a fee we paid \$30,000 through Western Union. The victim said “Two days after, Mr. Williams had called and congratulated us. He said that our money had been transferred and he faxed me a copy of the transaction, which stated that our money had left the bank and was on its way into our account”.

The victims said: “...in that same week, Dr. Abubaker had faxed me his confirmation ticket saying that he was on his way to America, and that we should send him money to buy his ticket. The following day Mr. Williams called and said that our money had been stopped because of a shorting tax that needed to be paid which hadn't been paid. He faxed me an invoice for \$63,250 bill for the tax. We transferred this money through our bank to Prism Company at Nigeria. Two days later he called and said everything was fine. He said that we should be hearing from our bank representative very soon. Two days later we received a call from Carlos White from Atlanta, Georgia in America. He introduced himself as a NCB Bank Representative with the phone of 404-944-1842. He said that our money was ready and that we needed to fly to Atlanta to transfer the amount into our account”.

The victims asked why they had to go to Atlanta and Carlos replied that because it was such a big amount he had to transfer the money in front of us. Carlos told the victims to come along with their driver's licence, a copy of the contract, and \$11,500 in cash. That same evening, the victims and their daughter flew to Atlanta and got a hotel room.

The victims said that the next day they called Mr. Carlos White to make an appointment with him at their bank. According to the victims, Carlos told them that he was sending a bank representative to their hotel room. They said Carlos sent two men by the names of Mustafa Sharief and Agu Jbreh. The victims said that the two men received all the documents and \$11,500 in cash and they told the victims to wait for two hours at which time their money would be transferred into their account. The victims waited for a few hours and kept calling the bank and the bank said no transaction had occurred. At this stage, the victims decided to head back to Florida.

The victim said "...while we were in link checking our bags and receiving our tickets, we were contacted by Mr. White by our cell phone. We told him that we were leaving and ready to go back to Florida. He got very mad and said that we couldn't go back because the transaction hadn't been closed yet and that he still needed to talk to us. We went back to our hotel and we had to reserve another room.

The victims said they called Mr. White and he said he would be sending two people. The victim said these two men came and told them that the government of Nigeria had approved their payment to be physical cash. The victims said "...we asked them what that meant and they said that it was real cash. Then they asked us to go to their car and see the cash and get the cash or to wait and transfer the money into our bank account". According to the victims, the fraudsters told them that the money couldn't go into their account until it had been cleaned. "We asked them to what they meant and they went to the car and came back with five pieces of black paper. Then they went into the bathroom sink and with some chemicals cleaned the black paper and it turned out to be \$100 bills. We told them that it was fine. They could clean the money and deposit it into our account".

The victim said: “Mr. Sharrif called Carlos White and he said we had to pay for the chemicals, we asked how much they need and he said it was \$185.000. We asked if he could take the \$185.000 from the money but he said that he could not touch the original money. Then we decided to go back to Florida”.

From that night, they decided to contact the Nigerian government and their attorney Mr. Williams. They called Dr. Abubaker and Mr. Williams, and they acted normal. In the victims view, these two men did not know what Mr. White had told them. The victims said Mr. Williams told them that he had to go and speak to the president of Nigeria in Abuja (capital) and get his advice. The victims said “... two days later, he called me and said that we had no choice but to pay the money for the chemicals, but he said that we should send him a copy of the receipt so that after the government received their money from America and Japan they would reimburse my money that we paid for the chemicals”. The victim said “...Mr. White was calling me and asking me for the money for the chemicals. Finally we wired \$150.000 to them. Two days later, Mr. White called from Atlanta and asked for a Rolex watch for the president of Nigeria so that he could impress the president and get a better job in Nigeria. In addition, he wanted \$350.000”. The victim was told that the \$350.000 was for the purpose of opening an account for me for a Central Bank of Nigeria (CBN) transit account.

At this point, the victim spoke to their consultant and he told them that they had been scammed, and showed them various different stories and examples of Internet scams that had happened to different victims. The victims reported that they had lost almost \$400.000 to this scam. They said they had borrowed the money from different places, and now they have lost their credit.

This is just one of the many ways that AFF use to defraud victims and illustrate the process of victimisation.

These research findings found that individuals easily fall victim to money transfer and black currency (money cleaning wash-wash). This is because it is easy for victims to be convinced and contacted by the perpetrators. All the perpetrators who took part in this research said their victims were defrauded, either for money transfers or money cleaning. One victim, who took part in this research, said she was approached for money cleaning. The research also found that money cleaning was the most common type of AFF in South Africa.

As per money transfer, this research found that the victims were foreigners who were lured to South Africa by these perpetrators. In this regard the perpetrator in Case 1 said: *"...But what I know is most of the victims I was aware of are not locals. They are from the US or the UK"*.

This research also recorded that AFF victims can be just anybody. In this regard, the perpetrator in Case 1 said: *"...I don't think there is a category of persons. They target everybody. Sometimes the people that they target don't have money of their own, but when they hear the story, they will go and get money from somewhere to get involved in the business. So it's not as if they are targeting rich people or business people"*.

Similarly, the perpetrator in Case 2 said: *".... I mean a 419 person would knock anybody for money. That's just basically...its fraud. Even me as a Nigerian I can get knocked by another Nigerian or somebody from the DRC. You see the whole essence of 419 is greed"*. This perpetrator also said *"...All sorts of person, anybody. Even you and me, we are potential victims. Just like that, anybody, you or me. Victims could be anybody; it could be you it could be me"*.

In the same vein, Respondent 2 said: *"...No they don't have a special target. That's how they get their targets. You can be a pastor when he sends the letter to you, you can be a minister, you can be a businessman, and you can be a poor*

person". Respondent 3 also said "...They don't naturally have a profession. Anyone who has got, who they believe has got money, can be targeted".

The findings of this research also indicated that most victims of money transfer scams later became victims of black currency. This is because the perpetrators usually change their approach from one type of problem to another. In certain cases, the initial proposal was to transfer money from Africa to Europe or America and when the victim has paid the first and second instalments of the transfer fee, the perpetrator will change the story and ask the victim to come to their base country. From there he will be introduced to black dollars and then they will start to talk about money to buy chemicals to clean the money.

4.3.2 Re-victimisation

Reports received by Interpol indicate that AFF offenders are becoming so brazen and confident that they are contacting earlier victims of the fraud. They pose as Nigerian government officials who investigate the fraud in a so-called attempt to retrieve the victims' money, and request the payment of an up-front fee. There have also been reports of a spoof email being distributed, which claims a probe investigation has been set up by the Nigerian government to crack down on the fraudsters. It reads: "Operation Zero has been commissioned to investigate, treat and conclude in an accelerated hearing on genuinely reported cases of Advance Fee Fraud (419) under the criminal code name". In reality, no such probe has been set up. Instead, it is thought to be rival gangs of conmen who will charge victims to "investigate" their case. Victims will be fleeced a second time (NCIS 2004: 39).

Supporting the above statement, Smith *et al.* (1999:3) said that some victims, who have been defrauded, receive correspondence months later, ostensibly from Nigerian authorities advising them that their funds have been recovered. Again,

they are requested to send funds to enable the so-called recovered funds to be released, thus resulting in further losses.

According to Sullivan (2003:4) the perpetrators themselves refers to this as “reloading” where the con artist appears to be revisiting old potential victims. It is reported here that when someone loses money to AFF, the victim will often hear from another con claiming they can recover the lost funds. It is called ‘reloading’, a term used in the timeshare sales industry where the resort’s marketing people review their lists of ‘ups’ who did not buy timeshare and develop a marketing ploy or strategy to get them back at the resort for another go at them. In this case, people who have heard from a 419er are most likely to hear from a 419er again. They will either again hear from the same group with the same tale, or from the same group using a different approach. An individual in the group could also ‘branch out’ for himself, tell them that the original group just didn’t have the juice to get the job done, but he does (The 419 Coalition 2003). In a related case, fraudsters will inform the victims that they are police officers who heard about the scam and that they are able to arrest the offenders/or recover the money lost by the victim. The fraudsters will mention that the police department have no resources to make the arrest or recover the money, and then request the victim to pay an amount, ranging from between \$US2000 to 10,000 in order to apprehend the fraudsters (419 Legal 2004).

This research found that multiple or repetitive victimisation usually takes place. Most victims of this fraud lost money more than once to the same perpetrators or to different perpetrators within the same network. It was found that the moment a victim gets involved in the ‘business’ he/she will be victimised repeatedly.

Supporting this stance was the statement made by the perpetrator in Case 4 when he said: “... *about ten times...by different persons. Me, I take money and I finish, and I call you, go and take money from him also. Hey, you can tell him that this person this and this, you want some money, this and this and this, I’ve*

got some money, which is dirty, I want to clean it. Here I can clean it. No, the others they will come around to where you are, and they'll start talking business. For you to give attention to hear, and from there, they'll attract your attention, and then they'll take money from you".

Similarly, Respondent 2 said: *"...if they said to you the target is 5 million rand, and you have already spend R100 000, or R300 000, you haven't even reached a quarter of that money, meaning that you'll always try to spend, so that the money must be well and ready to use, for you also to get your part, and for him also to get his part. So that's why from the day you start investing money in, you will continue, until the day you'll be satisfied or the day you get tired".*

Re-victimisation can also be explained as follows:

Pease and Laycock (1999:3) suggested two reasons that help to explain the occurrence of repeat victimization. They said that the first pertains to risk assessment by offenders. They cited an example of burglary in an area of poor housing which is likely to be regarded as a low-risk opportunity by any passing burglar. The second is that victimisation itself makes a repeat more likely. However, common sense argues for an offender to victimise a person more than once. A burglar walking down a street for the first time sees houses he presumes are suitable targets and those he presumes are unsuitable. He successfully burgles one home. The next time he walks down the same street he sees not only houses he presumes suitable but also one he knows is suitable. Why not burgle the latter - again? He knows his way in and out of the home and knows the value of what he had to leave behind the first time (Pease *et al.*1999:4). Apart from common sense, street corner interviews support the above position that past victimisations of a person plays an important role in generating Advance Fee Fraud against him or her by the same or other offenders.

In the case of AFF re-victimisation, this research found that the hope of completing the 'business' deal successfully hooks victims and sets them up to be re-victimised. The findings also suggest that when a victim has made an advance payment, and despite the usual complication that arises, he/she will still continue to pay fees. So when a victim starts paying he/she pays until he/she becomes dry or very broke. It should be noted that all the complications that arise are meant to make the victim pay more and more money. With this in mind, the perpetrator in Case 2 said: *"... you see hope is the issue, most people have hope that one day the business will pay them. So they continue to give more to make sure that the money is clean or the transfer goes through into their account. So hope makes victims to continue to lose money in so far as they have it, they may even go and borrow, make bank loans or even steal money from their company just to invest into the business"*.

The above-mentioned scamming techniques tell something about the characteristics of these victims. These will now be highlighted.

4.5 CHARACTERISTICS OF AFF VICTIMS

According to criminological research, victims' studies have emerged as a separate component. With regard to AFF victims, the main area of interest in this section includes their personal characteristics. Studies (Collier 2002:4) indicate the vast majority of victims who are targeted are individuals and small businesses. Most of the individuals who fall victims to AFF broadly fall into one of these two categories. Either they or their business is seeking credit and they have difficulty in obtaining it elsewhere, or they are persuaded that they have the opportunity to join a business deal which is going to make them a great deal of profit. It is often difficult to persuade these victims that they have been defrauded, even after they have lost their money. It must be pointed out that individuals and business people find it hard to believe that their judgment has allowed them to be fooled into losing money that they will not recover. According to Collier (2002:4)

this pride, along with the embarrassment when they do realise that they have been duped is one of the major contributory factors in allowing these fraudsters to successfully get away with their crimes, as victims are often reluctant to make a report to the authorities.

Research (The 419 Coalition 2003) indicated the following characteristics of AFF victims:

4.5.1 Age

According to literature research the definitional restriction limits the age range of AFF victims between the ages of 25 to 70 years old.

The findings of this research indicated that AFF victims vary, but in most cases the perpetrators target those who they believe have money. In this regard, the perpetrator in Case 1 said: *"...Multiple – there are no restrictions. If you are a small girl, for example, and tell them that you are interested in the business, the first thing that they will tell you is: 'Look, I'm not ready to deal with you, you are too young. My intention is to deal with your father'. Because when they make contact with them and hear their voice, they ask you how old you are, and you tell them you are 20 or 21 years, and they say no, I don't think you can handle this because we are talking about a big business here. So they are now trying to see the response of that person. If that person says: No I can handle this business, my father is not here but I can handle this business; they'll say no, let me speak to your father. And that is where the issue of greed comes in. Because that person doesn't want the father to know how he can make some quick money. He'll say: don't worry; even without my father I can do it. This is how young boys and girls get involved. And by getting involved it is even possible that he doesn't have money of his own, he is going to take his father's money or his mother's money, or somewhere, somehow. He can sell his father's property to get involved"*.

4.5.2 Gender

In terms of gender, studies indicate that AFF victims belong to both sexes. However, it is acknowledged that males are more often defrauded than females. In some cases, husbands and wives have both been reported as victims of this form of fraud.

This research indicated that, many of the victims were found to be males and all declined to take part in this research study, although a female victims was also found. However, the only female victim that was found in this research took part in the research study, sceptically.

4.5.3 Marital status

Research states that most victims of AFF are married, although there are some cases that involved singles. This research also found that most victims of AFF, both males and females, are married. This is probably because of the age group that the perpetrators target.

4.5.4 Occupation

Literature research states that victims of AFF include busy professionals from all walks of life, a cattle rancher, an insurance agent, a hotel chain owner, a brewery consultant, an importer-exporter, farmer, police officer, bankers, top government officials, lawyers and clergymen are reported to have been victimised by this form of fraud.

Although victims of AFF may come from all walks of life, this research found that AFF perpetrators target mostly business people. The reason for targeting mainly business people is probably because they always have cash available. This was

according to the statement of the perpetrator in Case 1 who said: “.... Sometimes the people that they target don't have money of their own, but when they hear the story, they will go and get money from somewhere to get involved in the business. So it's not as if they are targeting rich people or business people”. The perpetrator in Case 4 said: “...The mugus? Most of these mugus they are big business people. They own companies...they are big, big, big rich business guys. Civil servants...? No, they don't have money”.

Similarly, respondent 3 said: “...Anyone who has got, who they believe has got money, they can be targeted. But they prefer business people, those who are involved in business. Because somebody who is involved in business has some money in his account. Even if you are a civil servant you are struggling at the end of the month to have salary to pay the rent and all those things, you are not suitable for this business. They prefer to target those who are maybe sole proprietors, or they own a company, or they have a business in general. So they know that this people they got money on their own. So they prefer this type of people to go into the business”.

It should also be noted that the findings indicate that the occupation of the victims of money transfer are mostly involved in businesses. However, the victims of black currency were found to belong to all professions.

4.5.5 Race

It is estimated that most of the victims of AFF worldwide are Caucasians. However, this form of fraud has also victimised Asians and Africans.

The finding in this empirical research indicated that both Africans and Caucasians are victims of AFF. Race would come into play depending on where the victim is based. Most victims of money transfer were found to have been foreigners from Europe and America. This means that they will automatically be

Caucasian. However, the victims of black currency in South Africa are both African and Caucasian, whereas the victims in other African countries are Africans only.

4.5.6 Nationality

In terms of nationality, people from all nationalities have been victimised by AFF. The 419 Coalition, however, maintains that most of the victims of this fraud are non-Africans.

In this research it was found that victims of black currency were mainly local South Africans, however, the victims of money transfers were foreigners. Accordingly, the perpetrator in Case 2 said: *"...Basically Europeans and Americans, people from the Middle East ... Asia and all those things. Not South Africans... its victims from outside the country. It's people from overseas, not here. It's very rare for you to hear that a South African has lost \$500 000 or R500 000 from a fraudster"*.

The perpetrator in Case 4 said: *"... The most of our victims are foreigners, they are not South Africans, and they are foreigners"*.

4.5.7 Greedy

According to studies, if you're greedy and gullible, you become a victim. Victims of AFF are greedy, gullible, and their love for money is unmistakable. These victims are those who want something for nothing. According to reports, this fraud is all about the psychology of greed. A website for victims of AFF maintains that some victims want to believe so badly that they are going to profit in the end that they ignore explicit personal warnings sent to them by fraud-baiters (The 419 Coalition 2003).

In this research, greed was found to be the imbedded characteristic of all victims of AFF. Most people fall victim to AFF because of greed and love for money, those who love money and want something for nothing are more likely to become victims. This characteristic of victims was found in the statements of all those who took part in this research.

The perpetrator in Case 1 said: *"... Its greed. It's the same greed. Both sides they are greedy. Both parties are greedy. And you on the other side that is giving the money, you are not giving the money simply for the sake of giving; you are giving the money because you feel that you can get something out of it".* The perpetrator in Case 2 said *"...You see the whole essence of 419 is greed. The part of the victim more or less...But you must realise if somebody writes you a letter or sends you a letter that he's got \$18.5 million dollars stashed up, that he doesn't have access to it. Basically that you must get this money out from the security company, or maybe the bank, or maybe he's in Angola or South Africa and all those things. I mean, common sense says that you should wait before you start investing on these things. But the greed on that person's part doesn't allow him to do that. Because also on his part he's imagining that \$18.5 million is also going to do a lot on its bits. I mean at the end of the day the perpetrator says he's going to give you 20 percent if you help him to get it out. I mean it's not your money, who would entrust 18.5 million dollars or 20 million dollars to somebody he doesn't know? You don't know this person from Adam. So if there is no greed on your own part, you wouldn't even consider it as an option".* The perpetrator in Case 4 said: *"...Well the problem is greed. They want to get more money for free. I say okay, help me to transfer \$100 million dollars to Australia. But before that, you have to give me maybe \$20 million dollars, and I will give you \$40 million dollars. Then that greediness, they'll fall in that trap".*

Respondent 2 said *"... Yeah, and to be honest, people who are falling into this business are people who like money. Yeah, there are certain people in this world who don't want to work; they just want to get money easily. It's always business*

people who are getting into this business". Respondent 3 made a similar statement.

4.5.8 Crimonogenic

It has been reported that victims of AFF are susceptible to commit crime because in the process of being defrauded, they accept to do something of questionable legality. They are often informed of the confidentiality and illegality of the business. According to the US State Department report (1997), when victims finally realize the business offer is fraudulent, they are reluctant to turn to law enforcement agencies because they essentially agreed to do something illegal. After all, many of the scams are based on moving money while evading custom duties.

According to Lannucci, the Assistant Special Agent in charge of the Secret Service's New York office "... once a person engages in this form of activity with a suspect, they are sort of co-conspirator in a crime that doesn't occur".

This aspect of the characteristics of AFF victims was confirmed by this research study. It was found that, the fact that the victim accepts to take part in a deal of questionable legality eventually linked them to any criminal charges that might arise. Hence, they are victimized repeatedly and hardly report this fraud to the police.

Supporting the above was the statement made by Victim 1 in which she said: *"...No, I didn't report the crime to the police, because at the end of the day, it would be like me, I'm involved. So I don't want to involve myself. Remember, I have to protect myself. I am working. Sometimes when you report this thing to the police you are also linked. So I can't let it go that way. It's not easy, that's what I'm telling you, because you are afraid that you'll be linked. That's why people don't come forth, to be honest. Because they are afraid they'll be linked*

to that thing, even if you are victims. You don't see yourself as victims sometimes, you are involved, so they'll say you are linked. So that's why you don't say anything. It's not easy like I said".

In this regard, Respondent 3 also said *"...Oh, I think they don't report to the police because they themselves they are aware that they are criminals themselves. By them trying to make money is already a crime. I think they are going against the Reserve Bank, because it is only the Reserve Bank that can produce money. So if they are trying to do this business from the house, or hidden, they are trying to enrich themselves, they know that they are doing something wrong. So that's why at times, they really find it difficult to expose it out. Some people they don't even tell their wives or their kids what they are undergoing, they can lose millions of rands but they sit silent. Because they are scared if they inform their wives, people now of the surrounding they are going to be aware of what is going on". He further said "...That's why most people when they are duped, they don't tell the police, but some, some people tell the police, and when they tell the police action is being taken. There are very few people who have reported to the police, and then instead now of the police going to the victim, the police are now involving them in the problem".*

However, in some cases victims are reported to have reported the matter to the police and the perpetrators were arrested, charged and convicted. This research study found that the perpetrators in Case 2 and Case 5 were arrested when the victims reported the matter to the police. The perpetrator in Case 2 said *"... So I arrived in there I met her by her car so the next thing that happened she said I must get into the car, so I get into the car, so the police, different guys they come to me, they ask me where is my passport, so I show them my passport, so they ask me what am I doing, shut up, find up, and I was arrested".*

4.5.9 Mind set of victims

This research project found that the minds of the victims are filled with excitement, happiness and projects to accomplish when they are introduced to this “business”. They become more excited when they fly to the base country of the perpetrators or when they have been given the washed sample of the black dollar to use it and bank some.

However, when the victims finally realise that all the promises and documents were fake and he/she was defrauded, they react violently against the perpetrators. This research found that perpetrators have been shot, killed and kidnapped by victims. In a situation where perpetrators are kidnapped, the associates of the kidnapped perpetrator usually refund the amount that the victim has lost. Respondent 3 said: “...At times they shoot these guys, I’ve seen a situation when someone was shot; at times, if maybe you are driving and he’s crossing the road, he knows this is the person who duped you he is behind, you can use the car and hit him”. Victim1 said “...It was like attracting me to get more money. You know sometimes when you’ve got your own problems, and guys come up, because they were having rolls of moneys. And they showed me that ah man. They said we can double it or whatever. And I thought they were definitely...to do it and I thought I be rich and pay off my debts. They did find out that I’m looking for money”.

The next section will discuss the effects of this type of fraud on victims.

4.6 EFFECTS OF AFF VICTIMISATION

Fraud is a complex or complicated offence that affects all facets of a society. It is a crime that has a negative impact on individuals, corporations and governments. Fraud currently costs the community in excess of \$3.5 billion and at least the Commonwealth states lost over \$150 million. It cost big business megabucks, though the dollar value is hard to ascertain. White collar crime costs South

African businesses around R40 billion a year with 71 percent of companies falling victim to fraud as opposed to 31 per cent globally (Cairns 2004:48). In South Africa business leaders operate in a state of naiveté when it comes to the risk they face with regards to fraud. One reason is that those companies that have been stung are reluctant to go public with details and warnings because of the sheer embarrassment. The belief that market confidence will be affected negatively if a company admitted to - and divulged details of - how they have been hoodwinked is what keeps most cases behind boardroom doors.

However, the effects of AFF on individual victims, businesses and governments cannot be underestimated, considering the amount of money that has been lost by victims, and the reputation or image of governments that have been tarnished in the international business arena. Businessmen and organisations are targeted, therefore the losses per incident can range from tens, to hundreds, of thousands of dollars and is currently estimated at over \$1million per day in the US alone (419 coalition website).

Therefore, this section of the thesis focuses on how the victims of AFF are affected, and special attention will be focussed on individuals (direct and indirect) who have suffered money losses, property losses, and lives; as well as losses suffered by business organisations and the governments.

4.6.1 Individuals

Apart from the millions of dollars lost by individuals due to this type of fraud, victims are said to have been threatened with violence unless they co-operate from the start. Smith *et al.* (1999:3) reported that victims have been held hostage until a ransom is paid. They also reports that, since 1991 seventeen people have been killed in Nigeria who attempted to recover their funds, and the US State Department has documented over 100 cases in which American citizens have been rescued from Nigeria. According to Canberra Times (1995) one US investor

who went to Nigeria to recover his money was found dead on the steps of a hotel, after he had been set on fire. In a related incident, a victim collapsed and died in London while trying to recover \$4million lost to AFF. According to sources, the victim died of a heart attack. He was a director of the Ashburton stock firm that collapsed, owing millions to farmers. The victim, in his late 40's were in London for months, where he tried to recover \$4 million he had siphoned from company funds for the scam (Van Beynen 2002:15).

In Durban, South Africa, a Greek national was brutally murdered just before Christmas in 2004. He was lured into the country under the pretence that he could earn hundreds of thousands of Rands. He was then kidnapped and summarily killed when his family refused to pay the ransom (419 Legal 2004).

AFF is said to have escalated to the extent that victims involve themselves in fraudulent activities in order to obtain further funds to ship to fraudsters. Smith *et al.* (1999:4) reported a case where a Sydney victim of AFF fraud allegedly defrauded Australian investors of \$700.000 in order to transfer money to Nigeria in the hope of recovering funds that he had already lost. He used the same kind of AFF methods that had previously been used to defraud him.

4.6.2 Corporations and businesses

In recent years, a number of surveys have been carried out to determine the extent to which organisations have been victimised through fraud, that is crimes which entails an element of deception in which the offender seeks to derive some financial benefit (Smith 1999:1).

However, in as much as AFF affects individual victims, there are cases where large corporations or banks were affected and these institutions are at times the intended victims of the fraudsters. Collier (2002:5) states that AFF perpetrators are often involved in many other types of fraud and financial crimes. According to

Collier one day they may be involved in approach a bank with prime bank guarantee fraud and the next day they are involved in a tested telex scam involving the same institution. They may also be simply laundering the proceeds of their frauds through the bank concerned.

How AFF affects banks

In his research, Collier (2002:5) states that banks are affected by AFF in a number of different ways. He maintains that, at the lowest scale, considerable executive time can be wasted. These fraudsters, according to him, are keen to obtain signed letterheads which they can then alter and use to convince potential victims that a bank is actively participating in a deal.

Research (The 419 Coalition 2003) points out that in order to obtain the maximum number of signed correspondence, perpetrators will frequently send numerous letters and faxes to the bank which relate to deposits and remittance which they claim will be made or received at some time in the future. It is a fact that junior, or even medium level executives, spend a great deal of time answering this correspondence and making other arrangements, in the mistaken belief that he or she is promoting a very profitable deal for his bank, meanwhile he is doing the contrary.

It is reported that sometimes these fraudsters approach the banks through a middleman, perhaps a trusted customer whom they have managed to convince and who is willing to invest in their scheme. This trusted customer may wish the bank to loan money to the scheme, hold documents against receipts, issue guarantees or any number of other actions which all add up to the same thing – involvement by the bank and possible financial exposure. Collier (2002:5) reports that attempts to advise this trusted customer that he is being defrauded is an uphill task. He may not wish to believe that he is a victim of fraud and may well go directly to the fraudster and repeat what he has been told. In many

jurisdictions this may lead the fraudster to threaten with legal proceedings for defamation.

It must be noted here that knowing that a scheme is fraudulent and proving it are two different things. It is not unheard of, under these circumstances, for banks to make *ex-gratia* payments to fraudsters simply to extricate themselves from possible legal action (Collier 2002:5) hence, great care and sensitivity needs to be exercised when dealing with these cases. The threat of legal action can be a potent one, particularly in Western countries. This can lead to publicity and possible damage to the bank's reputation, even when the bank concerned is absolutely blameless.

In this regard, Collier (2002:6) cited a case in Asia where two large banks inadvertently became involved and issued some perfectly genuine low value guarantees to a particular company. Unknown to the banks, the individuals behind this company were involved in a major fraud that was designed to dupe a large number of investors. Crucial to the victims' decision to invest in the fraudulent scheme was their belief that it was guaranteed by these two banks, something that was deceitfully claimed in the fraudsters' investment literature. These investors lost \$US 100 million whilst the fraudsters fled, and left the banks to proclaim their innocence and to defend themselves against claims of compensation and demands for the repatriation of funds that were transferred overseas.

In another case a European bank was used to defraud a group of investors from the United States for over \$US 300 million. They had lost money and claimed that the bank, which has a spotless reputation, was party to the fraud that cost them their money. Understandably the victims' claims largely rest on bank letterheads that had been provided by the fraudsters. In some cases most fraudsters will attempt to involve or defraud a bank directly, and they often target

a small branch or a junior or susceptible manager that they believe they may be able to deceive.

It is reported that the worst incidence of a 419 case was a bank in Brazil that filed for bankruptcy when a corrupt bank official invested USD\$250 million in a scheme which was suppose to extend the airport in Abuja, Nigeria (SAPA-AFP 2005).

4.6.3 Nations

It is a fact that AFF fraudsters do not only affects individuals and businesses, but they also have a huge impact on countries in which they operate. Countries are affected because AFF leads to corruption and bribery, forgery, money laundering and loss of business confidence in countries and regions where such offenders are located (The 419 Coalition 2003).

Corruption and bribery

One of the effects that AFF has on nations is that it leads to the corruption and bribery of law enforcement and government officials. As stated in chapter three, these offenders use corruption as their *modus operandi*. It is acknowledged in the literature that the perpetrators use corruption to secure the help of people with access to information, influence or any other access that they want or need. Perpetrators of AFF are reported to view corruption as preferable to coercion, since threats may not work. The National Criminal Intelligence Service in UK (2003:40) has reported instances where corrupt U.K. law enforcement officers colluded with criminals, and some of these cases received extensive publicity.

Research (The 419 Coalition 2003) indicates that the advantage of corrupt officials is that AFF perpetrators can discover information about the status and direction of operations against them. This includes the identity of surveillance

vehicles, informants or witnesses. Using corrupt practices, these perpetrators can also discover general information concerning law enforcement capabilities, procedures, operational priorities and resource deployments, which is important information, though of less immediate value to a career criminal or his associates. According to the NCIS, these criminals maintain corrupt relationships, not just with those involved in 'front-line' law enforcement, such as the police, customs officials, immigration officials, but with others throughout the criminal justice system, including the Crown Prosecution Service, prison officials, and individuals in the legal profession. However, the NCIS also reported that the use of corruption is not restricted to the criminal justice system, and has involved central and local government employees, accountants and others in the financial field, plus a range of other professionals. In West Africa and Nigeria in particular, there are reports of police officials who have been arrested for assisting and colluding with these fraudsters (The 419 Coalition 2003).

It is widely recognised that corruption is ultimately destructive to society at large. Research suggests that corruption affects government revenue collection, or its expenditure, or its enforcement of regulations. These categories may be extended to include the ways in which corruption destroys different aspects of culture. According to Osborne (1997:26) corruption undermines governments, it subverts company cultures, destabilises society as a whole, threatens global security and threatens everybody everywhere.

Forgery

Forgery committed by AFF perpetrators has one of the most devastating effects on nations. These fraudsters forge Government and company's documents such as letterheads, stamps and seals in order to execute their crimes. There are reports of fake websites of the South African Reserve Bank, South African Police Service, and websites of banks and companies around the world created by

offenders to convince their victims and potential victims that they are dealing with the right people (419 Legal 2004).

Money laundering

AFF is an offence that involves the movement of the proceeds of this fraud from one country to another, in order to avoid detection by the authorities. Money laundering has serious consequences if allowed to take place because the integrity of financial markets depends heavily on both the reality and perception that high legal, professional and ethical standards apply (Sithole 2003:2). If proceeds of crime are laundered through a financial institution, or employees of the institution are corrupt or turn a blind eye to the criminal origins of funds, the reputation of the institution will be seriously damaged. This could affect the willingness of law-abiding customers and other institutions to deal with them, and could also affect the market and loss of revenue by the state.

Loss of business confidence

As a result of AFF, most countries in West Africa and Nigeria in particular have lost their business reputation in the international business community. It has been stated that doing business in these countries are risky and international businessmen are advised to seek counsel before engaging in any business transaction in these countries. Due to the losses suffered by US citizens, the American governments and 38 other governments have warned their citizens about doing business with Nigeria. In this regard, the U.S. Department of State, Bureau of Consular Affairs, produces Consular Information Sheets on all countries providing warnings, country descriptions, entry requirements, as well as information on air travel safety, currency regulations, and commercial fraud in West Africa and Nigeria (US Department of State 1997).

This research found that the consequences of AFF mainly affected individual victims. It was found that these victims usually lost millions of dollars as a result of this fraud. In this research, the perpetrator in Case 1 said: "... No I don't know the amount of money. But according to the Scorpions and the complainants they said something within the reach of \$100 000". The perpetrator in Case 2 said: "... I know people paying as much as a million dollars, getting a million dollars from the 419 scams. I've seen lots of people making as much as \$500 000, or 200 000 pounds". Relating to the financial loss suffered by AFF victims, Victim 1 said: "...I lost R10.000, other people they lost more".

The next section that follows will focus on the theoretical explanation of AFF victimisation.

4.7 THEORETICAL EXPLANATION OF AFF VICTIMISATION

The task of applied victimology, grounded in science, is to articulate theory into policy and to translate the policy into action. Hence victimology strives, like other social science disciplines, towards the formulation of theory (Fattah 1991:21). Fattah pointed out that to develop a global or macro theory of general victimisation is not only a futile endeavour, but also a hopeless task. According to him Criminology is a case in point, and there is a good lesson to be learned from historical development. He maintains that, despite continuous, strenuous efforts extending over more than a century, Criminology has not yet succeeded at the development of a grand or a macro theory of criminality. This can be attributed to the enormous heterogeneity of criminal behaviours and the elusiveness of the cause of crime.

Fattah (1991:22) also said that victimology is a much younger discipline than Criminology, and attempts to speak of a victimological theory are premature. According to Fattah there is not yet sufficient knowledge and understanding of the phenomenon of victimisation that would enable the development of a causal

or an explanatory theory. It may then be said that one cannot understand or explain a phenomenon, such as criminal victimisation, unless it is defined, observed, measured, described, classified, analysed and interpreted. One cannot develop rational policies and undertake effective action aimed at controlling and preventing the phenomenon unless, and until one gained some understanding of that phenomenon and have developed some propositions, models, or theories aimed at explaining it. However, such knowledge and understanding are essential for achieving the primary goals of this thesis - to understand, explain and prevent AFF victimisation. In a bid to achieve the said goals, the lifestyles and routine activities theories will be applied.

4.7.1 Lifestyles and routine activities theories

Some theorists believe that the concepts of the rational offender do not adequately explain the causes of crime. They argued that illegal behaviour cannot be linked only to the rational actions of the offender, but it also depends on the behaviour of potential victims and those whose duty it is to protect people, such as the police (Van der Hoven 2001:50). In this regard, Siegel and Senna (1991:86) said that crimes do not only occur because an offender has decided to break the law, but also because the victim is in the wrong place at the wrong time and because there was no law enforcement agent in the area.

The lifestyle theory is grounded in the empirical findings derived from analyses of victimisation data and other sources of information about crime (Fattah 1986:136). Fattah (1986) argued that victimisation is not distributed randomly across space and time – there are high-risk locations and high-risk time periods. Similarly, some characteristics are disproportionately represented among criminal offenders relative to the general population; there are high-risk persons. It must be stated that lifestyle patterns influence the amount of exposure that people have to places and time with varying risks of victimisation as well as the

prevalence of associations that people have with others who may be more or less likely to commit crimes.

At the same time, the lifestyle theory was developed to explain personal victimisation. Cohen and Felson (1979:593) formulated a similar theory that they referred to as the routine activity approach. They defined routine activities as "... any recurrent and prevalent activities which provide basic population and individual needs, whatever their biological or cultural origins. Thus routine activities would include formalised work, as well as the provision of standard food, shelter, sexual outlet, leisure, social interaction, learning and childrearing". In order for these offences to occur, three minimal elements; motivated offenders, suitable targets, and absence of capable guardians must converge in space and time.

Lifestyle theory

In an attempt to explain personal victimisation, Hindelang, Gottfredson and Garofalo developed the lifestyle theory. They wanted to know why certain groups of people are more vulnerable to victimisation than others. In this case, they found that the lifestyles or pattern of activity of people gave rise to differences in the incidence of victimisation which are characterised by the daily functions in respect of both work and leisure activities.

Hindelang *et al.* (1978:241) define the concept of lifestyle as routine daily activities, both vocational and leisure activities. They maintained that lifestyles are influenced by three basic elements (Williams & McShane 1994:224):

- Firstly there are social roles of people in society, and in line with the expectations of others, people behave in certain ways and develop lifestyles that are to a greater or lesser extent conducive to victimisation. According to them, this is the reason why young people are victimised

more often, because they fulfil social roles that demand more regular activities outside the typical places that are visited. In the case of AFF victimisation, this explains why the middle class and the affluent are often victimised. They want to get more (money) so as to maintain their social role in society.

- Secondly, lifestyles are influenced by people's position in the social structure. In general it may be said that the higher a person's position, the lower the risk of victimisation. This may be attributed mainly to the type of activities in which a person participates and the typical places that are visited. This element explains AFF victimisation, for it acknowledges in the literature that most of the victims are people with influence in society with access to a computer and Internet facilities.
- Thirdly is the rational component in which decisions are made about desirable behaviour. Based on social roles and structural position, a person's decisions may confine his or her routine behaviour to relatively safe activities, or otherwise the risk attached to activities has to be accepted. Hence young people tend to increase their likelihood of victimization by electing to participate in activities with high levels of risk in terms of time and place, such as nightclubs. This again would explain AFF victimisation in the sense that victims choose to reply to AFF letters and finally found themselves caught, hook, line and sinker.

However, Van der Hoven (2001:53) stated that role expectations and structural limitations depend on the individual person's combination of demographic features, such as age, gender, race, income, marital status, education and occupation. She noted that role expectations vary according to a person's age, and the role expectations for married and unmarried individuals vary. Strijdom and Schurink (1992:42) also indicate that economic factors limit the choices available to a person in respect of residential area, type of leisure activities and access to educational opportunities.

In the same vein, a multivariate analysis of robbery by Fattah (1986:141) indicated that the type of direct-contact victimisation on which the development of lifestyle model was based, found that age, race, income, household size (a dichotomy of living alone versus not living alone), and major activity (a dichotomy of employed, unemployed, and home centred) were all related to the likelihood of victimisation. Accordingly, Africans, the young, and people with low incomes who are more likely to interact with potential fraud and AFF offenders had higher risks than Caucasians in South Africa, older persons, and those with higher incomes, persons who live alone and who, by definition, spend less time in the company of household members had a higher risk than person not living alone, and the risk of AFF would be high for the unemployed, about average for the employed.

Findings from the British Crime Survey by Hough (Fattah 1986:144) provided additional support for the lifestyle-type theory. The British data show that violent victimisation is positively associated with the frequency of going out in the evening and regular drinking habits, particularly among people between 16 and 30 of age.

Hindelang *et al.* (Van der Hoven 2001:53) list some requirements that must be met before there can be any possibility of personal victimisation. They are;

- There must be an offender and a victim who meet at a particular time and place.
- There must be a dispute of some sort and one has to demand something from the other, so that the offender regards the victims as a suitable object of victimisation.
- The offender must be willing and able to use violence or the threat of violence in order to achieve the desired result.
- The circumstances must be such that the offender considers it rewarding to use threats or violence to achieve the desired result.

According to Van der Hoven (2001:54) different lifestyles imply that there are different possibilities for individuals to be at specific places at specific times and under certain circumstances and to interact with specific people. Hence lifestyle influences the likelihood of victimisation.

However, from the offender's perspective, not all individuals are equally desirable targets for victimisation. If the motive of the offender is to steal, the apparent wealth of the victim plays a significant role. Also, an important factor that determines the desirability of the victim is whether the offender believes that the individual is unlikely to report the crime to the police (Hindelang *et al.* 1978:265). Vulnerability in respect of personal victimisation increases in relation to the offender's perception of the potential victim as an individual who will be unable to defend himself or herself successfully, examples are lone individuals, the elderly, someone under the influence of alcohol or drugs (Van der Hoven 2001:55). In the case of AFF, a vulnerable person will be an individual who would not report the matter to the police.

4.7.2 Other theoretical developments

There have been other theoretical approaches regarding the macro and micro level which have been developed to explain criminal victimisation. Some of these approaches and especially those that adequately explain AFF victimisation will be examined below.

Macro level explanation

Macro level approaches to criminal victimisation focuses on the wider social context in which individuals operate (Barlow 1996:430).

According to the social-cultural perspective, victimisation is the reflection of the economic and power structure of a society, which result in marginalisation, and

powerless individuals become victims of crime (Davis 2005:48). Davis indicated that within this context, the social pressures placed on the disenfranchised, which result in social disorganisation and the decay in relations to communities causing a propensity to become a victim of crime, explain victimisation. Despite the critique of this explanation on some categories of criminal victimisation, it has a bearing on AFF victimisation because poverty, especially on the previously disadvantaged South Africans has been sighted as one reason why people become victims to this fraud.

Micro level explanation

Barlow (1996:431) maintained that micro level approaches to criminal victimisation focus on the activities of individuals and the way in which people interact with each other. Applying the socio-interactionist perspective, Schneider (Davis 2005:49) indicated that this perspective focused on the misrepresentation of the victim's behaviour by the offender.

Although the situation-oriented model is often controversial and often misinterpreted as victim co-responsibility, as victim blaming, Davis (2005:49) suggests that it is not based on determining guilt or responsibility. According to Davis it merely states that victimisation is often the result of misguided perpetrator-victim interaction, where the perpetrator action is provoked by the victim's behaviour. In the case of AFF victimisation, this perspective is applicable when the individuals respond to e-mails related to business proposal and goes ahead and furnish their bank and personal details to the perpetrator.

The interactionistic approaches focus on the inter-changeable role of the victim and the perpetrator and acknowledge that many incidents of victimisation are the result of dynamic and explosive interaction between individuals (Davis 2005:49). This approach also explains AFF victimisation because the perpetrator and the victim interact intimately during the course of the victimisation. In support of this

assertion Fattah (2000:39) said that the stereotyped view of the innocent victim and guilty perpetrator should be replaced by the view of two human beings caught in a web of complicated social relationships and human “financial” (in case of AFF victimisation) emotions.

Victim precipitation theory

This theory maintains that individuals might initiate confrontation/interaction that may lead to their victimisation. This theory attempts to explain what actions performed by the victim, triggered victimisation (Doerner & Lab 2002:271). Research concerned with AFF supports the position of this theory. The victim takes the bait the perpetrator presents on the Internet by means of an AFF-letter. It is suggested that this explains AFF victimisation when victims go around looking for people with a special chemical to clean darkened or defaced dollar/rand notes. During the course of searching for the right chemical, they are repeatedly victimised by the same perpetrators or other perpetrators of AFF.

4.8 CONCLUSION

In this chapter, the research presented the definition of victims and victimisation in general. However, more attention was placed on AFF victimisation as AFF is the focus of this thesis. The categories of criminal victimisation were also presented in this chapter. The types and nature of AFF victimisation and re-victimisation were discussed. This chapter also discussed the characteristics of AFF victims as the available literature research indicates. The effects of AFF victimisation were discussed, in relation to individual victims, corporate bodies and nations. This was then followed by the theoretical explanation of the phenomenon (AFF victimisation) using the lifestyle and routine activities theories.

An analysis of AFF victimisations suggest that the victims see themselves as very lucky to have been recommended by the Chamber of Commerce of a

foreign country or by someone else. They also take this as an opportunity to get rich within a short space of time.

Hence, one is tempted to conclude that victims of AFF are those who favours riches but depreciate hard work, they are those who want crops without ploughing the ground, they want rain without thunder and lightening, and they want the ocean without the awful roar of its water.

The findings of this chapter indicate that victims and perpetrators of AFF belong to an equivalent group, and the explanations portray victims who engage in certain high-risk lifestyles. Victims and perpetrators share the same interests, participate in the same activities and are drawn from homogenous or overlapping lifestyle groups. Offenders even select their victims from their own circle of adversaries, acquaintances and even former friends. Adherence to and participation in the norms of certain deviant subcultures sharply raise the chances of becoming a casualty. Victims might even be seen as fair game or easy prey because of their own involvement in criminal behaviours discourage them from turning to the authorities for help. The following are the findings of this chapter presented in the table below:

Table 4.1 Victimization

Types	Nature	Characteristics	Effects	Explanations
Direct	False offers	Individuals	Embarrassment	Lifestyle
Indirect	Real payments	Small businesses	Financial loss	Routine activities
	Telephonic confirm	Age: 25-70 yrs	Ransoms, violence and murder	Economic and power structure of society
	More fees	Gender: Both (more males)	Become fraudsters themselves	Misrepresentation of victims actions
	Re-victimisation	Marital status: married	Wasting executive time	Interchanged roles of victim and perpetrator
		Nationality: Non-Africans	Extrication payments	Victim-triggered behaviour
		Greedy and gullible	Deception, bribery and corruption	
		Co-conspirators	Money laundering	
		The Criminogenic/victimogenic person	Loss of business confidence	
			Forgery	
			Damaged reputations	

These findings can be explained as follows: The nature of the victims is determined by the types of victims. The nature of the victims determines their characteristics, and who they are (characteristics) lead in turn to the way they are effected by AFF. When everything is put together; their nature, biographical characteristics, and the way in which they are affected, the explanations become intelligible. The victim is seen as a criminogenic/victimogenic person. The fact that the victims initially accept to participate in a “business” of questionable legality makes him/her criminogenic. The fact that victims are repeatedly victimized also makes them victimogenic.

The next chapter of the thesis will look at the adjudication of AFF perpetrators and their victims.

CHAPTER FIVE

ADJUDICATION

5.1 INTRODUCTION

Advance Fee Fraud, as with other forms of transnational organised crime, is difficult to detect, investigate and prosecute. Most fraudulent acts are almost never reported to the police because of the integrity of the firm, the reputation of the institution, the honour of the family, embarrassment of the victim, personal obligations, or some other weighty factor on the social scale may be a more important consideration and duty. Hence perpetrators of this fraud had used various strategies to thwart official investigations, and coupled with that, the victims are often reluctant to co-operate with the police, because they believe that they will be implicated in a criminal conspiracy and could be prosecuted, either in their own country or in Nigeria and or South Africa. Victims are also reluctant to co-operate with police through fear of the reprisals of the organised criminals involved. Difficult legal jurisdictional questions also arise in determining where the offence has been committed and in which country a prosecution should take place (Smith *et al.* 1999: 4).

Fraudulent practices over the years have become sophisticated and varied with the social and technical developments in commerce and industry that the term “benko”, which was all-inclusive in its original usage, now normally applies to what is euphemistically called the “short con” or the “street con”; descriptive of the fast moving, short duration, high mobility operation with a commensurately smaller take but with a higher frequency rate.

However, from a criminological perspective, the adjudication of fraud, AFF and related offences in particular, include the reporting of such cases to the police or a special unit thereof, arrests, investigations, prosecutions and the punishment of offenders and their victims by the criminal justice process.

The ringleaders and true beneficiaries of AFF, although identifiable through investigations, are masked from the operational structure they are part of, the 'shadows' behind what is immediately visible. According to the 419 Coalition website (2004), most of AFF perpetrators brought to justice, are at the 'front end' of the operation, and are invariably 'fall guys'. These individuals will have some assets but often nothing like the sums involved in the victim's loss. The real individuals who the law enforcement agencies want to identify and prosecute, stand well back from any obvious involvement, but will be responsible for funding the operation, as well as the subsequent laundering of the money (The 419 Coalition). These are usually the well connected and politically influential guys (big fish), some of which are in governments, especially in West Africa.

This chapter will examine the most probable course of events, from the time the AFF is detected or reported to the police, and the police consider criminal proceedings, to the arrest and detention of the suspect, followed by the charge, bail, prosecution and sentence. As a transnational crime, the focus of this chapter will also be on the problems involved in the adjudication of these offenders. This chapter will also look at some of the AFF cases that have been charged, and some decisions will be quoted and penalties for the various offences in terms of sentences in Nigeria, South Africa and United States. The findings of the empirical research will also be examined, analysed and integrated into this chapter.

In the next section attention will be given to the legal processes regarding the arrests, investigations and prosecutions of AFF perpetrators in Nigeria, South Africa as well as the situation in the United States.

5.2 CRIMINAL JUSTICE PROCESS

The criminal justice processes in most Western democratic jurisdictions are the same and are divided into three time frames: before trial, during trial and after trial. In most cases, a complaint by the victim or detection by law enforcement agents trigger arrests, and the criminal process against the accused is set in motion. In others, the procedure is initiated through the filing of a complaint that leads to the issuance of a warrant to arrest the suspect, search and seize documents that may assist in the investigation and prosecution, especially in fraud cases (Del Carmen 1991: 25).

In relation to conventional fraud (and, in essence, of all crimes committed for gain), the social control system involves a succession of stages through which people must pass before they become defined as convicted offenders. Given that the conduct is punishable by the criminal law, a problematic issue in fraud, the first set of stages relate to crime commission, and take the form of barriers to entry: moral, social, technological and, particularly in the case of the more elaborate frauds, intellectual/imaginative (Levi 1987:109). According to Levi (1987:110) those potential offenders who cross the initial barriers of technique and morality and who consider participating in fraud are influenced in the decision to go ahead or not by their subjective perception of the risk from the criminal justice system and the salience to them of the expected consequences of involvement in crime for them personally and for the people to whom they may be attached.

The criminal process in any fraud case and especially AFF is very complex. The labelling of an act as a crime and a person as a fraudster or criminal is the product of whether the official agencies with the formal competence to impose the labels actually do so. This is a universal principle that applies to all crimes. However, Levi (1987:110) stated that before an act becomes a recorded fraud, the following processes have to be undergone:

- The legal framework within which the social problem will be managed has to be negotiated, which entails defining the nature of the problem in such a way that rules can be formulated, either very broadly or very narrowly.
- The act has to be prohibited, either by the judiciary alone (in common law) or (in the case of statute law) by both the established law-making bodies.
- The victim of fraud (or, in some relatively rare cases, a regulatory agency representing investors or consumers as a class) has to define his/her experience as an example of (1) a 'rip-off', and (2) an illegal act.
- The victim has to decide to report the matter to the criminal authorities (such as the police) rather than, say, putting it down to experience or treating it solely as a civil debt.
- The police have to concur with the victim's interpretation that what happened was a crime (rather than, say, a civil matter or in police parlance, an 'unsatisfactory business transaction').

He also maintains that, for someone to become a convicted fraudster there has to be:

- a police investigation
- a decision to prosecute and
- a conviction.

The role of the police

Most serious fraud offences and AFF cases are investigated by the police and handled by groups of officers like the fraud squads in England (Roskill 1986:11). It was contended that the police working in this field are under constant pressure. Hence, the setting up of these fraud squads was a valuable innovation, but it has become plain in recent years that, particularly in relation to large-scale and complex frauds, investigations conducted by the police in isolation of those concerned with the prosecution process can be time consuming and inefficient.

The police role in relation to fraud is not a novel one. In England, the police are sometimes involved in lengthy investigations, which include the tracking of suspects overseas. However, the pursuit of fraud largely depends on the chance availability of detectives with both an interest and time for it (Levi 1987:120). The police have to provide a range of services for the public. These include not only crime investigations but also an array of activities best described under the umbrella of the 'service role'. In principle, the police can adopt two different types of approaches to their roles. The first is primarily proactive (as in the stronger form of community policing), where policing resources and strategies are police-initiated, albeit perhaps in response to general public request for action. The second is generally reactive, where police activity is initiated by a specific complaint from a victim.

The rationale for proactive policing is to intervene where victims are weak and disorganised, or may find it difficult to know whether or not an offence has occurred. In the case of AFF where victims are often reluctant to report the offence, the state must intervene to detect offences in order to prevent harm as well as do justice. However, given the reactive mode of operation with regards to the policing of fraud and AFF by the police, it is clear that, although it is important to study the role of the police as gatekeepers of the criminal justice system, victims and professionals play a primary role as initiators of actions via their decisions to report fraud or not. It is reported by Levi (1987:123) that from time to time the police in London complain in the media about the lack of co-operation they receive from business and individuals, not only regarding the investigation of fraud, but also in the initial reporting of it. It must be pointed out that very little is known about the criteria that individual victims use when calling the police to deal with allegations of fraud.

The reporting of fraud to the police

It must be noted that, before any case of fraud is reported to the police, it normally goes through a filtering process by which an individual or group acting on their own or on behalf of an organisation, has to make a symbolic statement that 'something should be done' by the state rather than the civil courts (by suing for the debt) 'or putting it down to experience'. There are some rare exceptions to this: complain or, more common, the threat to complain, may be made to the police as a way of putting pressure on the suspects to provide compensation.

Individual victims of AFF often perform some kind of cost-benefit analysis before making the decision to report the crime, though, if their calculations were purely economic, it is possible that they would not report anything at all (particularly if the costs were 'personal' and were not 'externalities'). Discretion in the use of formal justice is an important feature of all types of fraud including AFF, which predominantly uses informal methods of dealing with perpetrators. However, it is equally important to note that the use of informal discipline is influenced by the background of civil and criminal sanctions that could be applied (Levi 1987:125). It is suggested that, the decision to report fraud is commonly a reflective choice rather an emotional or habitual response to loss.

The above explanations about the decision to report AFF victimisation were found in this research. These calculations regarding the decision to report this crime often become a problem to law enforcement officers when they have to investigate and apprehend suspects.

In order to trace the victim's money and bring the perpetrators to justice, the 419 Coalition, through its investigative agency, systematically processed the money transfer trails, until the key beneficiaries are identified. Although the money is always dissipated through extensive laundering mechanisms, the true beneficiaries can ultimately be pinpointed. The Coalition maintains that

sometimes this process is quite swift and in other instances it can be very protracted. Accordingly, when they have the identified key beneficiary, along with the signatures of the primary bank accounts, they would identify their assets in the form of bank accounts, companies and real estates.

The next subsection examines the criminal justices process as it relates to AFF, and the efforts of various governments in the adjudication of this fraud.

5.2.1 Nigeria

In 1992, the Nigerian Government issued a white paper detailing its actions and planned actions regarding 419. However, the Nigerian 419 Coalition (2004) note that according to the Nigerian government's own figures, there were only 22 convictions of AFF for the period 1993 to June 2001 and that only a minimal amount of stolen money was recovered. The 419 Coalition criticises the \$4 million of the Central Bank of Nigeria (CBN) spent abroad for education on 419. The Coalition reiterates its opinion that the money would have been much better spent on counter-419 enforcement activities in Nigeria. Others can be educated regarding the topic of 419 but only Nigeria can punish the 419 criminals operating within its own borders.

The Nigerian government launched the Nigerian Crime Initiative (NCI) in compliance with the Presidential Decision Direction 42 (PDD-42), which was aimed at combating international organised crime and which directed agencies to collaborate with each other to fight international organised crime more effectively (Buchanan & Grant 2001:42). In keeping with this mission, the NCI has helped to develop:

- An interagency working group in order to share information and help make policies

- The Anti-Drug Network (ADNET) computer system for collecting and tracking data relating to Nigerian crime, and
- Interagency Nigerian Organized Crime Task Forces (INOCTF), which are located in cities where Nigerian crime is more prevalent and investigate local Nigerian Crime Enterprises.

The NCI Working Group

The NCI working group brings together representatives of every important federal law enforcement agency, as well as the Department of Justice and the Department of State. The NCI includes the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Immigration and Naturalisation Service (NIS), National Drug Intelligence Centre (NDIC), U.S Customs Service (USCS), U.S Secret Service, Financial Crimes Enforcement Network (FINCEN), IRS – Criminal Investigation Division (IRS-CID), U.S Marshals Service (USMS), U.S Postal Inspection Service (USPIS), Department of Defence/ Information Systems Agency (DISA). Buchanan *et al.* (2001:42) stated that, because of the sophistication of multi-faceted AFF, the response to it must draw upon all the resources of the government working in concert. According to them, the working group helps to pool information among the law enforcement agencies by discussing the latest issues and ensuring that ADNET becomes a useful tool for investigators and prosecutors.

The crux of the NIC working group was aimed to develop policies and plans to track international AFF by supporting the task forces. The working group selects task force cities and assures that the task force cities carry out the mission of the NIC. The working group also addresses policies issues, such as privacy in criminal cases (Buchanan *et al.*2001:43).

ADNET

In a bid for proper arrests, investigations, prosecutions and convictions of AFF perpetrators, the Nigerian government launched ADNET. It is a computer network with powerful capabilities for the storage and retrieval of data concerning AFF. ADNET is a secure system and can be accessed through a dedicated ADNET terminal in the task force cities. In conjunction with the working group, an outside private contractor trains and provides support to investigators working with AFF cases. ADNET terminals are located in Lagos, Nigeria and Accra, Ghana so that data can be accessed close to the sources of much of the AFF activities (Buchanan *et al.* 2001:43).

It has been reported (Buchanan *et al.* 2001) that several federal and law enforcement agencies in the United States contribute and access ADNET data. The report maintained that the number of records in the NIC database has increased dramatically, making the network a potential valuable resource to law enforcement. Some of this data consists of information collected from prior criminal investigations, including aliases used by individuals involved in AFF.

Inter-agency Nigerian Organised Crime Task Forces

The Inter-agency Nigerian Organised Crime Task Force (INOCT) consists of several law enforcement agencies in a number of United States cities where AFF activity has been particularly troublesome. INOCTF targets AFF and investigates it in a co-ordinated manner (Buchanan *et al.* 2001:43) and Task force cities have access to ADNET terminals, so that data from other cities can be used in investigations.

It must be emphasised that the co-ordinated NCI approach expects that, through information sharing, investigators would be able to spot connections between different types of Nigerian/West African criminal activities. Indeed, research

(NCIS 2003) has shown that AFF offenders rarely engage in one type of criminal activity to the exclusion of all others.

The predecessor to the INOCTF was the Secret Service task force which was already in place to counter AFF. Under the NCI, the forces of the Secret Service task force were transformed into a multi-agency task force, but the Secret Service continues to host these task forces. This has allowed the NCI to tap into expertise that has been developed by the Secret Service since the 1980's in areas such as access device fraud (Buchanan *et al.* 2001:43).

Equally important to note is that in 2002 a number of financial houses issued statements that the Nigerian government was doing nothing to curb AFF perpetrators. The attention of the Nigerian Government was therefore drawn to the black listing and classification of Nigeria as a non-cooperative country in the fight against money laundering by the Financial Action Task Force (FATF) based in Europe. FATF claimed that Nigeria's money laundering law was too narrow and focused mainly on drug trafficking (Nigeria 419 Coalition 2004).

In the same vein, the Financial Crimes Enforcement Network (FinCEN) of the United States Department of Treasury in April 2002 indicted that the Nigerian Legal System harboured deficiencies in its anti-money laundering law. The 419 Coalition (2004) stated that this indictment, which came in the form of an advisory note, to all American banks and financial institutions dealing with Nigeria, warned of the risk of being duped by conmen exploiting the loopholes in Nigeria's anti-money laundering law.

The financial advisory notice to all American banks maintains that:

- Nigerian law fails to criminalise the laundering of illicit proceeds other than those derived from narcotics

- Nigerian banks are not required by law to report all suspicious transactions
- There is no penalty under Nigerian law for failing to report suspicious transactions
- Nigerian's legal supervisory and regulatory systems create significant opportunities and tools for money laundering and increase the possibility that transactions involving Nigerian entities and accounts would be used for illegal purposes.

As a reaction to the advisory note by the US State Department, the Government of Nigeria made some efforts towards the investigations, arrests, seizures, and convictions of AFF offenders (The 419 Coalition 2004). These include:

- The establishment of the National Drug Law Enforcement Agency (NDLEA) via NDLEA Act No.48 of 1989, to check drug trafficking and associated money laundering
- Promulgation of the Money Laundering Act No.3 in 1993, the main instrument criminalising money laundering in Nigeria
- Constituting the Joint Steering Committee on Money Laundering Act with membership drawn from relevant ministries, parastatals and agencies to fashion out the Guidance Note on Money Laundering
- Establishment of a Special Fraud Unit within the Nigerian Police to Investigate and prosecute cases bordering on criminal deception (419)
- Establishment of a Presidential Task Force on Trade Malpractices in 1991 to check Advance Fee Fraud
- Enactment of the Advance Fee Fraud and other Related Offences Act No. 13 in 1995
- Enactment of failed banks (Recovery to Debts) and Financial Malpractices in Banks Act No. 18 in 1994
- Appointment of a Senior Assistant to the President on Drug and Financial crimes

- Security raids on car dealers and bureau de change that are suspected to have links with drug or AFF money
- Publication of the names of Nigerians convicted abroad for drug and other related crimes to arouse public awareness, concern and control as well as the retrial of offenders in Nigeria once they have been deported
- Publication of a dictionary of business registered by the Corporate Affairs Commission and the names of persons and businesses implicated in business scams and swindles
- Establishment of an Independent Commission on Corrupt Practices in 2000
- Establishment of a National Committee on Financial Crimes in 2001.

In 2002 the international community could no longer tolerate Nigeria's attitude towards financial crimes. The International Financial Task Force (IFATF), a Paris-based organ of the G8 group of industrialised countries issued an ultimatum that Nigeria should strengthen its laws on financial crime, or get blacklisted by the international financial community (Abati 2003:2). According to Abati, IFATF was concerned that Nigerian banks are so easily used for money laundered by AFF. In other developments, the World Bank/IMF also declared that the Nigerian financial system is under-developed, shallow and porous. Hence the National Assembly was required to make tougher laws. In this regard, the National Assembly passed a law creating the Economic and Financial Crimes Commission (EFCC), led by Nuhu Ribadu (Abati 2003:3).

Abati (2003:3) reported that within a week of his appointment, Ribadu was drawing the line in the sand. He said. 'We are dealing with human beings and they naturally would want to exploit everything to their advantage. But you see, Nigeria's image has been severely battered by the very few people who engage in these unwholesome acts. The Obasanjo administration says it can't allow that to continue. Our job is not just to tackle established 419 fraudsters, but also to make fraud unattractive. And by God's grace, we shall succeed. We won't

concede an inch; we shall battle all the way". Abati (2003) states that a week after the Ribadu statement, his commission moved against the known 419 kingpin, arresting two of the fat cats and through these actions, the commission sent out a signal to the community of 419 fraudsters: a New Sheriff is in town.

Some of the arrests made by the EFCC, included that of Chief Fred Chijudu Ajudua who was among those arrested for defrauding two Dutch businessmen of \$1.69 million. Briefing the media, Ribadu said that: "...The Dutch Businessmen Cina and Vijgen, were defrauded of the sum of \$1.693.300 between July 1999 to September 2000 by a syndicate of international fraudsters headed by the notorious 419, Fred Ajudua" (Oditia 2003:2).

According to the State Prosecutor, the accused fraudulently conspired and duped the German by presenting sundry payments of \$18.000.000 on contract FMA/PED/3040/X-92, purported to have been executed by the German and which is thus due for payment.

The State Prosecutor read the charges as follows:

- That the conspiracy was contrary to Section 8 (a) and 1 (3) of the Advance Fee Fraud and other Related Offences Act No. 13 of 1995 as amended by Act No. 62 of 1999.
- That the accused and his partners had induced the payment of money by false pretences, contrary to Section 1 (1) (b) and 1 (3) of the AFF Act
- That the accused had obtained money under false pretences, contrary to Section 1 (1) and 1 (3) of the AFF Act.

The Central Bank of Nigeria's Effort

The CBN has been on the forefront of the fight against AFF and money laundering ever since the government of Nigeria subscribed to the global war against financial crimes, especially as it is known that banks all over the world are the most convenient vehicles used by the fraudsters to realise their inordinate ambition (The 419 Coalition 2004). In reaction to this advisory note by the U.S state Department, the Central Bank of Nigerian (CBN) also made some efforts in the detection of this fraud. The CBN included the following:

- Emphasizing the policy of transparency in financial transactions through the CBN monetary policy circular
- Establishment of a money laundering surveillance unit in the Bank Examination Department in 1994, preparatory to the criminalisation of money laundering in Nigeria in 1995 – Under the Act, financial institutions are expected to;
 - Render three mandatory returns to the appropriate authorities using the prescribed format
 - Adhere strictly to the principle of Know Your Customer (KYC)
 - Co-operate with the law enforcement and regulatory authorities and observe the procedure for disclosure of suspicious transactions by promptly reporting such transaction to the CBN
 - Maintain records of transactions for a minimum of 10 years and
 - Establish an effective means of retrieving information at short notice.

The Nigerian Police Effort

The Nigerian government established a Special Fraud Unit (SFU) under the Nigerian Police, charged with the responsibility to investigate, arrest and prosecute Advance Fee Fraudsters. This Unit is also charged with the responsibility of recovering money and/or properties that were obtained fraudulently. The Nigerian Police, through the SFU has accomplished a lot in their attempts to combat the menace of Advance Fee Fraud. These successes include:

- Arrest and prosecution of a large number of Advance Fee Fraudsters
- Recovery of money and goods fraudulently obtained from various victims
- Disruption of the operations of 419 syndicates in Nigeria by carrying out raids at their hideouts and confiscating their tools of trade such as computers, fax machines, telephones and forged documents
- Blocking of bank accounts used to receive 419 funds
- Seizure of cars, electronic and other items purchased with the proceeds of 419 funds
- Liasing with other law enforcement agencies of other countries, especially the U.S Secret Service to track down AFF perpetrators. Collaborating and sharing of information with other law enforcement agencies within Nigeria.

The unit reported some modest achievements in the area of arrests, prosecutions and convictions of AFF offenders from 1993 to 2001. Below are the statistical data of the number of cases dealt with:

- Number of persons arrested = 1,954 (100%)
- Number of cases charged to court = 254 (13%)
- Number of cases prosecuted = 154 (7.9%)
- Number of convictions = 22 (1.1%)
- Number of persons acquitted = 7 (0.35%)
- Number of cases pending at the legal section = 52 (2.7%)

The effective enforcement of law in AFF, which provides, among other things, for the following offences, gave rise to a decrease of the activities of the fraudsters in Nigeria (Snyman 2001:66):

- Obtaining property under false pretences: a person who is found guilty of this offence is liable, if convicted, to imprisonment for a term of not less than five years, without the option of a fine.
- Use of premises with the express purpose to commit a criminal offence: a person found guilty of this offence, when convicted, will receive a sentence of imprisonment for a term of not less than five years, without the option of a fine
- Fraudulent invitation to entice a person to partake in a fraudulent scheme: a person found guilty of this offence, if convicted, will receive a sentence for a term of not less than seven years, without the option of a fine
- Laundering of funds obtained through unlawful activity; receipt of fraudulent letters; and possession of fraudulent letters: this constitutes an attempt to fraud on the part of the sender and receiver. A person found guilty of this offence will receive a prison sentence for a term of at least 15 years or more than 25 years.

However, despite all the investigations and arrests of 419 perpetrators in Nigeria, prosecution remains a challenge. Abati (2003:2) maintains that Ribadu's commission only need to arrest the kingpins and if the fraudsters cannot beat Ribadu's trap, can all the same be said of the larger Nigerian police system? Or the courts? In this regard, Abati (2003:2) states that the fraudsters are assisted by the banks, and what is worse: the laws that address money laundering and financial malpractices have so many loopholes that bankers and fraudsters are

always able to manipulate them for their own purposes. He concluded that the war against 419 is like the war against corruption: the extent of its success will depend invariably on the strength of the institutions of state, and the political will to sustain the process.

It should also be underscored that the Nigerian Parliament instituted a law by which not only the perpetrators of AFF will be prosecuted but also the managers and owners of Internet cafés and offices from where such frauds are committed (SAPA-AFP 2005).

In reaction to the Nigerian government's efforts to investigate and arrest suspects, the 419 Coalition (2003) commented that: "... we have heard it so many times over the years from successive Nigerian government and whole panoply of officials. But we remain hopeful and welcome any sustained, tangible, and quantifiable effort by the Nigerian government that arrests 419ers, convicts 419ers, seizes their assets, and repatriates stolen monies to the victims of 419ers". The Coalition hoped that prosecutions, convictions and the recovery and repatriations of funds in these cases follow in a timely manner.

5.2.2 South Africa

Like so many other countries, organised crime groups exist in South Africa and a recent report drawn up by the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) for the United States' President, identified South Africa as an important centre for international criminal activity (Irish & Qhobosheane 2003:1). Numerous investigations have been conducted about organised crime groups' activities in South Africa, and most of the police investigations focused on the actual crimes committed by such groups, and the arrests of individuals or the seizure of goods.

In South Africa this crime is investigated and prosecuted under the Prevention of Organized Crime Act no. 121 of 1998 as amended by Prevention of Organised Crime Amendment Act, No. 24 of 1999 that describes this form of fraud. This Act introduces measures to combat organised crime, *inter alia* money laundering and criminal gang activities to prohibit certain activities relating to racketeering activities and to provide for the prohibition of money laundering and the obligation to report certain information.

The South African Police Service and the elite service (Scorpions) adopt aggressive and spontaneous sting operations to apprehend these fraudsters. Their approach led to the successful investigation, arrest and conviction of some of AFF perpetrators in South Africa.

Investigation and arrest

The procedure for the investigation of fraud serves two basic functions. The first of these functions is the preparation of evidence for the subsequent use in the sanctioning process. The second goal of investigation is essentially remedial. In most cases it might be appropriate to employ fairly intrusive investigative techniques against suspected perpetrators of AFF. These might include telecommunications interceptions, body wires (microphone concealed on the person of an investigator or agent), the use of undercover agents, and techniques of covert facilitation or sting operations such as those used by the FBI and the South Africa Police Service and the Scorpions.

According to a July 1999 Interpol survey, the highest number of related arrests occurred in South Africa, which reported the arrest of 56 individuals. Out of those arrested, 22 came from Liberia, 12 from Cameroon, 8 from Nigeria, 6 from South Africa, 3 from Rwanda, 3 from DR Congo and 2 from Zimbabwe.

In South Africa, the investigation of AFF is led by the South African Police's (SAPS) detective service and the National Prosecuting Authority's (NPA) Investigative Body (Scorpions). Their investigations led to many busts and arrests of 419 - perpetrators in South Africa. According to Engelbrecht (2002:1) four Nigerians were arrested in 2004, three in South Africa and one in London after a joint operation between the South African police and the New Scotland Yard police. Engelbrecht (2002:2) reported that the victim was lured to South Africa by a Nigerian criminal syndicate operating a 419-scam letter. The arrest of the perpetrators followed the kidnapping of the victim, a French national shortly after he had arrived in South Africa. The perpetrators contacted the victim's daughter in London and demanded a ransom. She then called in the London Metropolitan Police detectives based at New Scotland Yard who alerted the South African police through Interpol.

As a result of Interpol's involvement, a joint operation was launched to rescue the victim. Hence two London detectives came to South Africa and supported by the South African's Commercial Crime Unit detectives simultaneously raided properties in Roodepoort, Randburg and Orange Grove. New Scotland Yard officers raided a London premises at the same time. Equipment and documents used by the 419 fraudsters were also confiscated (Engelbrecht 2002:2).

In a related case, Hosken (2002:1) reported a three week intelligence operation that netted two criminal operatives who were working for Durban's biggest West Africa crime ring. In this raid, police from the Durban Metro Specialised Investigations Unit, Organised Crime Unit and the KwaZulu-Natal Tactical Intervention Unit stormed three Point Road Internet cafés and seized computers, cell phones and business documents. The raid followed a similar operation in which police closed down a Brickhill Internet café after it was learnt that it was used as a front by a Nigerian fraud ring. This unit is said to form part of Project West, a campaign aimed at crushing all West African crime syndicates who use the city as a base for their criminal activities.

A 20 month investigation led the courts to grant an order to the Scorpions to seize a 419 suspect's R1.8m home and two luxury cars. Scorpions believe the suspect is one of the South African kingpins of the 419-scam. This investigation was sparked by the South African Finance Minister, after two U.S. companies alleged that the would-be Member of Parliament had defrauded them using documents purporting to be from the South African Presidency and the Reserve Bank (Padayachee 2003:2).

In this research, it was found that the South African law enforcement agents used a variety of methods to track and arrest AFF perpetrators in South Africa. In his statement, the perpetrator in Case 1 said: *"...then during that process he travelled they apparently they had been making arrangement with somebody from abroad over transfers of money of course the money is non - existence and then it happened the person they have dealing with contacted the SA authority so then now he contacted the scorpion and they started monitoring the telephone line of Mr Ribado. So during the process of their monitoring they were able to trace the house of Mr. Ribado through the telephone line which the man who was abroad gave to them. Then incidentally I was in the house during August 2002 when the cops came. They came in early in the morning of August 2002 so when they came in we opened the door for him, and they recovered the telephone in question from the house, they also recovered the computer"*.

The perpetrator in Case 3 was arrested because of a set-up that involved the victim. The perpetrator said: *"... So I arrived in there I met her by her car so the next thing that happened she said I must get into the car, so I get into the car, so the police, different guys they come to me, they ask me where is my passport, so I show them my passport, so they ask me what am I doing, shut up, find up, and I was arrested"*.

The perpetrator in Case 4 said: "...*That the police, before they arrested me, they called on my phone. My partner called me on my cell phone. When he called me he said no, there's an appointment to my house, can you come and see me. I said I'm willing to come. And I drove to his place. When I reached there, I find the Scorpions they are there. I didn't know first they are Scorpions. I knocked to his door, when I knocked the door, they caught me they say, and no we want you, and I was arrested*".

The perpetrator in Case 5 said: "...*How did they arrest me? How they arrested me is uh, it was just my girlfriend. My girlfriend knew. Yes my girlfriend. Yeah, South African girlfriend. She knew what I was doing. Although I was hiding to her, but she knew I was always having money, all the time I was having like 50 / 60 000 in my house. And also I was driving my cars, and I was going on holidays all over the world. And it came a time when I decided that we should separate. She should go her way, and I should also go my way. Because I had a new girlfriend. So I told her that she should take everything that she wants, and then we go separate ways. And that is the time she complained me to the police. Well, you can say, informed the police about my activities. And then they came to arrest me, and I had so many evidence in the house, you know like bank statements, and uh...I can just say a lot of illegal things, like bankcards which were not mine, which I could not account for, so that's how I was arrested. That is how I ended up in the hands of the police. But I didn't give them any problems. Because I pleaded guilty from the word go*".

Prosecution in South Africa

The South African law enforcement agents have adopted an investigative technique for AFF perpetrators that assist them to arrive at a successful conviction of the accused. In the first place this research found that, despite the complicated nature and processes involved in the adjudication of AFF

perpetrators, South African authorities succeed to put some of these offenders behind bars.

Plea bargain

The main reason, revealed in this research, which led to the successful conviction of the offenders was that the offenders were persuaded to enter into a plea bargain for a lesser sentence or a fine. Usually, the state would succeed in convicting these offenders when they plead guilty, and the court would impose the minimum sentence.

In support of this assertion the perpetrator in Case1 stated that: *“... Then a friend of mine got a lawyer for me. The lawyer came in and I explained the situation to him. Then he now advised me that there was no problem in this case, since I know the man responsible for the matter, and that I should just say that I was guilty, because they were not going to sentence me for a long time. That is what they told me. The lawyer was advising me. Then I was not conversant with the judicial system here and I was not with how the court procedure worked especially. So the Monday I went to court. So they asked me if I know anything of the things they took from the house. I said yes. They asked me who owned them. I said Mr. Ribado. So that was what happened during the first day in court. So the Wednesday of the same week they asked me to come back to court. So the lawyer briefed me, ‘that there was no problem’ that he has discussed with the prosecutor... I should just tell them that I was guilty, and they’ll just give me a fine. So he said if that is the case I must just tell the court that I’m guilty, and they will give me a fine. If I am able to pay the fine they won’t arrest me. So then in court on the second day they asked me if I’m guilty of this offence. I told them yes I am guilty. So on the Friday of the same week they sentenced”*.

He also said: *“.... So at the end of the sentence I was speaking to my lawyers and he told me that I shouldn’t worry, that he was going to appeal against the*

sentence. So then it became clear to me that the lawyer and the Scorpions they were working together because if they go on trial they will not be able to find enough grounds to convict me because I am not the owner of the house and I am not the owner of the properties. So that was actually the easy way out to convict me”.

Similarly, the perpetrator in Case 2 said: *“... the system of the Scorpion I appreciate it (plea bargain). I learnt it come from America that when a fraud boy is caught take him into plea-bargain, because this is not a violent crime and it is difficult to prove the crime”.*

The perpetrator in Case 4 said: *“...From the South African police and the Scorpion...They just produce a plea bargain and then...”* The perpetrator in Case 5 also said: *“...But I didn't give them any problems. Because I pleaded guilty from the word go, and I started to realise that no, it was a mistake. What I was doing was a mistake to accept to plea guilty”.*

5.2.3 United States

In view of the mass losses suffered by the U.S citizens since the 1980s, as a result of the 419 scam, the government took a multi-pronged approach to the problem of AFF. It is being actively pursued on the law enforcement and foreign policy front. Because of the devastating effects of this fraud to its citizens, senior-level meetings chaired by the Department of State, and attended by members of the U.S intelligence community and U.S law enforcement officials, including the U.S Attorney General have been ongoing to address the Nigerian/West African criminal activity. A United State Government working plan has been drafted to combat this issue, and a number of recommendations have been implemented (United States Department of State 1997:26).

Internationally, in 1996, the Political Eight (G-7 plus Russia) met in Lyon France to co-ordinate enforcement efforts against transnational crimes. One outcome of the meeting was the formation of a subgroup dedicated to combating AFF.

The United States Secret Service was designated, in 1998 by the Attorney General, as the lead investigative agency for Nigerian/West African criminal activities in the U.S. Through the Secret Service Internet website, and its Financial Crime Division in its Washington headquarters, the Secret Service acts as a central repository for complaints about AFF (Buchanan *et al.* 2001:44).

The Secret Service accumulates all the complaints it receives that relates to AFF in an investigative database. In cases where the victims have suffered losses, they initiate an investigation. In cases of solicitation, that is where the recipient has not fallen for the scam and has not sustained financial losses, the Secret Service will save the information for future cases. The database helps to link victims of the same perpetrator, since the fraudsters always send out numerous solicitations and attempts to hook as many victims as possible with the same offer. It must be noted that proof of these multiple victims is powerful evidence in demonstrating a defendant's fraudulent intent (Buchanan *et al.* 2001:44).

In the United States, a case analysis in 2001, revealed a number of Nigerian AFF cases that have been prosecuted successfully in the Southern District of Texas as a result of aggressive investigation by the Houston Area Fraud Task Force. The task force comprises of representatives from a number of Federal and Local law enforcement agencies, including the Secret Service, the Federal Bureau of Investigation and the Immigration and Naturalisation Service, the Postal Inspection Service, the Houston Police Department, the Harris County Sheriff's Office, the Texas Rangers, the State Department and the Drug Enforcement Administration. The combination of expertise and assets provided by the representatives of these agencies allow for the rapid response to ongoing AFF as well as the ability

to work through complicated, long term fraud investigations (Buchanan *et al.* 2001:44-47).

In the United States, two African men pleaded guilty, and admitted that they had attempted to sell a useless counterfeit scheme to someone they believed was a wealthy businessman. The businessman was actually an undercover FBI agent investigating the black money scam. Both men who pleaded guilty cooperated with investigators. One of the men implicated three of the four African immigrants charged with the plot. Each pleaded guilty to a conspiracy charge and will face up to five years in prison when they are sentenced. A superseding indictment accused them of a conspiracy to alter the U.S currency, which carries a sentence of up to five years in prison, and three counts of altering currency, each of which carries a sentence of up to 20 years in prison (WINS Radio, New York 2003).

From the above it should be clear to the keen reader that there are also problems regarding the adjudication of AFF perpetrators. However, the next section focuses on the problems associated with the investigation and adjudication of AFF offenders.

5.3 ADJUDICATION PROBLEMS

Despite the measures already in place and although law enforcement agencies in Nigeria and the United States are inundated with letters and telephone calls from victims and targets, AFF have continued to defy traditional investigative and law enforcement techniques. As a result, very little progress has been made to curb the crime. It was against this backdrop that Hamza (2002:5-7) came up with an in exhaustive list of issues, arbitrarily classified into legal and practical obstacles that have stood in the way of the successful arrest, prosecution and conviction of AFF perpetrators. These included the following:

- Legal impediments: There are several possible explanations for the apparent historic failure of the Justice System to successfully apprehend the perpetrators. Chief among them are; loopholes that are inherent in exiting legislations, jurisdictional question, evidentiary problems, differences between legal regimes in different countries, perception of interference with sovereignty and socio-political concerns in certain jurisdictions.

- Practical difficulties: Even where the legal impediments have been overcome, practical difficulties remain, for example, victims refusal to cooperate, inadequately equipped law enforcement agencies, stratification of a criminal group into such that arrest, prosecution and conviction of a member does not necessarily lead to the demise of the group. Technology has now also made it possible to have virtual customers who are able to conceal their identity, perpetrators can relocate to other countries to escape arrest, law enforcement agencies are unsympathetic towards victims especially as it is perceived that greed was their prime motivation and the fact that multiple agencies are often require to solve a given case.

In the recent past throughout the world, there have been instances where high technology frauds are being investigated by law enforcement agencies. These crimes are often investigated by specialist, high tech crime units in the U.K, USA, and Australia. Makkai (Smith 2004a:2) stated that, along with the increased workload has come the realisation that crimes that involve computers, either as the target of offending, or as one of a range of tools, or the principal tool used in the commission of offences, are technically difficult to investigate and many legal and practical problems arise. Smith, Grabosky and Urbas (2004:4), and Sussman (1999:14) noted that these concerns often arise because of the transitional nature of the conduct involved. This necessitates a degree of cooperation which was rarely required of investigators in the past.

The next section of this thesis therefore focuses on the barriers of the successful investigation of cross border high-tech fraud, and identifies policy responses that may be appropriate to deal effectively with this global crime phenomenon. In this regard, Smith (2004a:4) identifies the following barriers:

5.3.1 Identifying suspects

One of the common impediments that investigators face when they deal with AFF is to identify the suspects. Occasionally, this can lead to considerable problems when the wrong person is arrested. It must be noted that in cyberspace identification problems are magnified because digital technologies enable people to disguise their identity in a wide range of ways. These disguises make it difficult to know for certain who used the terminal when an illegal communication was made. Smith (2004a:3) maintains that this problem is more prevalent in business environments where multiple users may have access to a workstation (Internet cafés) and where passwords are known or shared, than in private homes where circumstantial evidence can often be used to determine who was using the computer at a given time.

Online technologies make it relatively simple to disguise one's true identity, to misrepresent one's identity, or make use of someone else's identity. A classical example in this case is the re-mailing services that can be used to disguise one's identity when an email is sent. The messages are stripped of identifying information and an anonymous identifier is allocated, or messages are encrypted for services, therefore users can make their communications almost impossible to follow.

It must also be pointed out that (Smith 2004a:4) anonymity can also be achieved in cyberspace using less technologically complex means which include:

- Using a false name when purchasing pre-paid Internet access from an Internet service provider and when renting a telephone line from a carrier
- Registering for a free e-mail service using a false name and address and
- Using Internet cafés/kiosks to send messages without disclosing one's true identity.

In a recent study of online anonymity, Forde and Armstrong (2002:2) argue that those Internet services that provide the highest level of anonymity are most likely to be used for criminal purposes.

The problems experienced with the identification of these crime suspects are usually resolved by traditional investigative techniques. This might include the use of video surveillance, or gathering indirect circumstantial evidence to prove the accused was at the terminal at a particular time of day. The use of intrusive surveillance is not always successful, and raises issues of human rights and legal privileges, problems which exist in both digital and non-digital environments.

In an attempt to solve this problem, Smith (2004a:5) indicated that some investigators are beginning to use biometric means of identification. He maintained, however, that few computers have biometric user authentication systems at present (for example, a fingerprint scanner for logging on). Research also indicates that DNA samples may also be gathered from keyboards, which have been used to link an individual with a particular computer. Smith is of the opinion that when such techniques become more widespread, problems of identification may be reduced although, of course, once a person has logged on, this does not prevent someone else from using that terminal without the person's knowledge if they are absent. A more complicated problem in this regard is the need to link the time at which a suspect was using a computer (as disclosed in computer forensic evidence) with biometric evidence of the whereabouts of the

suspects at a given point in time, because DNA or fingerprints, for example cannot be time stamped.

This research study found that the identification of suspects impedes the arrests, investigations and prosecutions of the fraudsters. The perpetrators in Case 1 maintain that: *“... the prosecution is the one difficult thing. Because the offenders are all over the place and they move from place to place and from country to country”*. It was found in this research that perpetrators have multiple identities, and this make it very difficult for law enforcement agents to track down suspects.

5.3.2 Criminal law and securing extradition

Where an accused AFF perpetrator is resident in a country other than the one in which the criminal proceedings are taking place, it is possible for the person to be extradited to stand trial. However, the procedures involved in extradition are complex and difficult, making applications costly and slow (Smith 2004a:5). Based on this same hindrance, the Commonwealth Directors of Prosecution (2003:46) notes: *“... there have been cases where an extradition request has been withdrawn because the delay has been so long that criminal charges can no longer proceed and cases where a person has died of natural causes while contesting extradition”*.

Extradition requires not only that an appropriate treaty exist between the two countries concerned, but also that the conduct in question be criminalised in both the referring and receiving country. In the case of computer crimes such as AFF, this is not the case. A survey of cyber laws in 52 countries in 2000 found that 33 of these countries had not yet updated their laws to address any type of computer crime (McConnell International 2000:5). Of the remaining countries, nine had enacted legislation to address five or fewer types of computer crimes,

and 10 had updated their laws to prosecute six or more of the 10 types of computer crimes identified (Smith 2004a:6).

In support of the extradition problem, Bell (2002:45) stated that in 2000 a student in the Philippines was alleged to have sent out the so-called 'Love Bug' virus. This virus infected Microsoft Windows operating systems by sending e-mail attachments, which then replicated itself by sending similar messages to all the addresses in the infected computer's address book. The virus was traced to an Internet service provider in the Philippines who co-operated with police to locate the residence in question. The student was arrested, but the Philippines' law did not proscribe the creation and release of a computer virus at the time. This conduct was not illegal in the Philippines, thus the principle of dual criminality precluded extradition to the United States where such an activity was a crime.

Criminal law and procedure makes the adjudication of AFF perpetrators very difficult. This is because of lack of evidence and the fact the complainant usually does not report the real events that took place, if they report it all. The perpetrator in Case 2 confirmed this: *"... if you follow the procedures of the 419 scam. Legally you cannot prosecute the perpetrator. You cannot call that stealing from somebody, because if that person who is the victim in this case, had a little common sense, and he wasn't as greedy as he is, he would have realised that it's something which is not there".*

This perpetrator also said: *"... They are not being convicted. What the government is doing is just incarcerating them. It's the same thing like here in South Africa, if I tell somebody I am a businessman, I have a business, I have money in Angola for instance, and he comes all the way from Canada for instance, and he gives me money, believing that the money he is giving me is going to facilitate the money from Angola, how can the government call it fraud? How sure is the government that the money is not there? How sure are they. It's just not a question of using the motion of following the legal procedure. Where is*

the evidence? What if he came with the money cash? Obviously if somebody comes in, we have more than \$10 000, it's money laundering. How can you arrest somebody? If somebody come and complain, I came with a \$100 000 and paid it to Tanfa. Where is the evidence that he came in with \$100 000? You didn't declare it at the airport. If you weren't greedy you wouldn't transfer \$100 000. You come with it cash. And you hand it over to somebody. But the thing is the criminal justice in South Africa, accepts blindly the words of the victim. The law is blind, I accept that. I'm not saying the perpetrator is right. But you must also follow, if you want to follow the law without being emotional about it, I mean you can't convict that person, because there is no evidence that the money was handed over to him".

It has also been found that the law enforcement officers do not actually follow the criminal procedures when they investigate AFF cases. This is due to the complex nature of the crime. Hence if they have to follow the prescribed legal procedure, then they would hardly secure a conviction. In this regard, the perpetrator in Case 4 said: *"...When they opened the case...you know, they are after somebody without going through the real procedure of investigation. But they didn't give me a chance to justify myself; they just put me behind bars".*

The perpetrator said: *"... They did take a statement. It was under pressure. Because they were saying, it's you, it's you, it's you, you understand what I am saying... In their offices, it was in their offices. No in court they didn't give me chance to make statement".* This perpetrator also said *"...This 419 is complicated. This fraud is complicated. You can investigate fraud now, but the technicalities that are there, it can make the case too complicated".*

5.3.3 Choosing an appropriate jurisdiction

Difficult legal jurisdictional questions also arise when determining where the offence has been committed and in which country a prosecution should take

place (Smith *et al.*1999: 4). Smith (2004a:7) states that one of the foremost problems of computer related crimes investigations (such as AFF investigations) is determining the jurisdiction in which proceedings should occur. Where offences are committed in various countries, or where the offender and the victim are located in different places, questions arise as to which court should deal with the matter. If charges can be laid in the country in which the offender is located, then problems of extradition will be avoided. However, if the charges originate from the country in which the victim is located, or where the effect of the conduct occurred, then the offender may need to be extradited to that country. Importantly, it will often be the case that only some of the essential elements of the offence occur within one jurisdiction, making prosecution practically impossible.

The problem of negative international jurisdiction' also arises. According to Smith (2004:8) this refers to cases that are not investigated because they could not be prosecuted in one single country, since many countries are involved but nobody wants to take action. There is also the reverse problem if too many countries want to prosecute a particular noteworthy case. Smith states that in order to deal with this situation the creation of an international instrument along the lines of the United Nations protocol regarding the negotiation of jurisdictions, setting out the jurisdiction is best determined in these cases. Generally, the rule is that if a country refuses to extradite an offender and if it has the power to take action, then it should be obliged to do so (Smith 2004a:8).

5.3.4 Search and seizure

In the successful adjudication of AFF cases, the search and seizure of documents and equipments are crucial evidence in this regard. This means that data has to be recovered from the suspect's computer. However, two methods of obtaining data from a computer system can be distinguished based on technical and legal criteria (Smith 2004a:9):

- The first method involves obtaining data during a physical search of the premises where the computer system is located and
- The second method involves the interception or monitoring of data transmitted from, to or within the system.

According to Smith (2004a:9), this is an important distinction because remote access to computers via the Internet can sometimes result in the search amounting to an interception of telecommunications that may require a warrant in order for it to be legal.

Whatever the case may be, difficult problems arise when obtaining digital evidence regarding crimes committed via the computer although in some ways, computers have made the process easier through the ability to conduct remote searches of hard drives via the Internet. Smith (2004a:10) stated that some of the main difficulties include:

- Obtaining permission to conduct remote searches - this is still illegal in Australia
- Securing the relevant access device, such as a password
- Imaging a hard drive without interfering with the evidence and
- Conducting searches quickly so that data cannot be removed.

Often transnational computer related crime operations have to be closely coordinated. Warrants may need to be executed simultaneously in different countries in order to ensure that suspects do not collaborate to alter or destroy of evidence (U.S. Customs Service 2002). In recent times police managed to execute such operations successfully, such as the case mounted successfully by the South African Police and their New Scotland Yard counterpart in 2002 who acted simultaneously in London and Johannesburg.

It has been acknowledged in this research study that the search and seizure of equipment used in the commission of AFF hinders the investigations and prosecution of these fraudsters. Owing to the transitional nature of the fraud search and seizure would at times become difficult for investigators. However, this research found that in cases where the investigation takes place where the perpetrators are based, the search and seizure of equipment could be easy. During the course of this research, some of the perpetrators spoke of some equipment that was seized at their premises, which served as important evidence and eventually led to their conviction.

In his statement, the perpetrator in Case 1 said: *"...and they recovered the telephone in question from the house, they also recovered the computer... the documents...a copy of those letters that he was sending to the man involved. And cellophanes which they were using for transactions... and the computer and equipments: two computers and one printer and one fax machine"*.

The perpetrator in Case 3 said: *"...In the court, they opened the briefcase in the court, and they are telling the magistrate actually that there is a paper, paper and tissue inside the briefcase... Actually I told her I came into the country with a briefcase; actually I've been doing fraud for a long time.... he came he gave me the briefcase, and go with her to her house... So they took the chemical to the house, they tried to wash the money, see I already arranged the briefcase. I arranged it. I put paper inside, this liquid water, whatever it is. When I get to the place, it's my arrangement, I take some notes out, which I have washed already, so I tried to wash it out, the chemical was finished so actually I wanted to have money for buying, to keep buying the chemical"*.

5.3.5 Mutual assistance

In order to facilitate international criminal investigations in AFF cases and other computer related fraud, mutual assistance treaties are often used. This provides a legal basis for authorities in one country to obtain evidence for criminal investigations at the request of authorities in another country (Smith 2004a:12). In this case, Smith said that instruments of this kind cover a range of activities including:

- Identifying and locating persons
- Serving documents
- Obtaining evidence, articles and documents
- Executing search and seizure request and
- Confiscating the proceeds of crime.

In Australia, victimised citizens of AFF, perpetrated by offenders located overseas, may still be able to mount prosecution in Australian courts. Each State and Territory has different cross-border legislation that supplements or reproduces the Common Law position. In the State of Victoria, for example, Section 80A of the Crimes Act of 1958 would enable a 419 fraudster who lives in the U.S. to be prosecuted in Victoria where a Victorian person was deceived into paying money into an overseas bank account.

However, various evidentiary problems arise, such as the loss of original documentation, which are often retrieved from victims by the offenders in order to defeat attempts at prosecution. Difficulties have also been experienced when extradition, has to be arranged, even if offenders can be located. In Australia a package of legislative measures was adopted in the late 1980s to facilitate the prosecution of organised crime and serious fraud. The Mutual Assistance in Criminal Matters Act 1987, which established mechanisms to facilitate international cooperation between investigators with respect to obtaining

evidence, the location of witnesses and suspects, the execution of search and seizure warrants, the service of documents, the forfeiture of property and recovery of fines and various other matters. The Proceeds of Crimes Act 1987 also enable investigators to follow the trail of the illegal proceeds of crimes internationally, and allow them to confiscate assets whilst the Extradition Act 1988 extended Australia's ability to enter into extradition arrangement internationally. The International Branch of the Commonwealth Attorney-General's Department administers these sections of the legislation, all of which have helped considerably in prosecuting offenders located overseas (Smith *et al.* 1997: 4).

In the same vein the cost of mutual legal assistance are borne by the party providing the assistance. This creates hardships for small and poor West African nations that would process many requests for assistance from large countries, but rarely seek assistance themselves. This means that smaller countries are subsidizing the legal process of much larger nations. Smith (2004a: 16) did indicate that in bigger nations, problems also emerge. He said that in the U.S. requests from around the world for information concerning e-mail accounts of companies such as Hotmail and Yahoo are dealt with by the FBI, which sends request to corporate head offices located in the United States rather than local branches. This has the effects of overburdening the FBI with the administration of such requests.

It has also been suggested that obtaining evidence through the use of formal assistance arrangements between nations can be exceedingly slow and ineffective. This suggestion is buttressed by the fact that searches need to be conducted immediately in order to preserve evidence held on computer servers. Hence, the prospect of waiting weeks or even months for official diplomatic procedures to be complied with is daunting.

5.3.6 Logistical and practical barriers

It must also be underscored that conducting investigations across national borders raises many practical problems that delay matters and increase cost. In addition to the issues already referred to, Smith (2004a:17) noted that some other problems include:

- Investigators have to contact people on the other side of the globe at inconvenient times
- Documents have to be translated, particularly if required for diplomatic purposes and
- Witnesses from English-speaking countries need the assistance of interpreters, which can be expensive and can slow down investigations.

One should also bear in mind that, countries have different priorities in terms of the importance of computer-related fraud investigations. For instance, economic crimes that are committed using a computer may be at the bottom of the hierarchy in countries where violent crime is prevalent. The result is that requests for assistance in some cases may simply be given a much lower priority, especially if they have been requested from a country with no history of co-operative action.

5.3.7 Lack of evidence to prosecute offenders

A fundamental finding in this research that hinders the adjudication of AFF perpetrators is lack of evidence. All the perpetrators who took part in this research raised this factor. In this regard, most of the cases are thrown out of court or the perpetrator would receive a small fine and subsequently be deported to his native country.

Within this frame of reference, Respondent 2 said: “...it’s difficult for the police to investigate because that is a network as I told you..... I don’t know if the police can assist in this fraud. But what I know is that once the police have arrested a person who was doing it, with a victim as a witness with evidence, then they can succeed to convict. And every time the police suspect you and they have a proof that you took this person to this place, they must have a proof”.

5.4 SENTENCES

A sentence is a measure imposed by the courts on an accused that is found guilty of an offence. It concludes the trial process in court. Glick (1995:463) defines a sentence as a criminal sanction that is imposed by the court on a convicted defendant.

Given the diverse manifestations of AFF in the world, authorities should have a range of sanctions or punishments available, so as to best achieve the varied ends of deterrence, rehabilitation, restitution, and denunciation.

5.4.1 Nigeria

In Nigeria, this fraud is punishable under the Advance Fee Fraud and related offence Act of 1995 as amended. The average sentence of AFF offenders in Nigeria is 10 years and up and there is a provision for restitution in the law. In Nigeria many of the AFF fraudsters have been arrested, but it has not been easy to convict them.

5.4.2 South Africa

In South Africa, the Prevention of Organised Crime Act no. 121 of 1998 as amended by Prevention of Organised Crime Amendment Act, No. 24 of 1999 prescribes this form of fraud. This Act introduces measures to combat organised crime, *inter alia* money laundering and criminal gang activities; to prohibit certain activities relating to racketeering and to provide for the prohibition of money laundering and an obligation to report certain information.

There have been a number of arrests and convictions in South Africa. The first person to be found guilty of AFF in South Africa was a Nigerian who was sentenced to 12 years imprisonment in the Commercial Crimes Court in Pretoria (Otto 2002).

In terms of the sentencing of AFF perpetrators, this research revealed that there have been a number of convictions in South Africa. However, the few cases that were scrutinised in this research indicated that the perpetrator received severe sentence. It should be noted that some of the perpetrators were not happy with their sentences, and according to them, they were not treated fairly by the justice system in South Africa just because they are Nigerians.

The perpetrator in Case 1 said: *"...they sentenced me to 12 years. I was shocked. So I asked them what the basis of this sentence was. So at the end of the sentence I was speaking to my lawyers and he told me that I shouldn't worry, that he was going to appeal against the sentence...I did not benefit from the crime, I did not mastermind the crime, I did not plan the crime, but I'm here because of the crime. I have no regrets of being here, because I have hope that one day I will be out, and I'll be able to teach others that this is what I suffered because of this crime. Even though I did not benefit from the crime. I did not expect that the magistrate will say 12 years imprisonment for not benefiting from the crime. I did not expect that. That is my only disappointment with the judicial*

system. I appear in court three times: Monday, Wednesday, and Friday, its 12 years, without saying this man, you actually took money from this person, you actually benefited from this plan, and you executed this plan. They played on my ignorance on that aspect. That is my only regret”.

The perpetrator also said: “...I’m not with the sentence. I can never be satisfied. Because it is shocking. To me it’s shocking. First of all, first offender. Second of all, I didn’t plan the crime, I didn’t benefit from the crime, and I was only at the wrong place at the wrong time. My only crime is I am at the wrong place at the wrong time. So I listened to my lawyer’s advice in the beginning, he said no don’t worry, because they are not going to give you a harsh sentence, they are going to give you a fine, because you were just there. So based on that, I fell into this trap of twelve years. If I had gone on trial, believe you me. Yes! If I had gone on trial, I would have been outside by now. In fact, I wouldn’t have stayed more than two or 3 months in trial. I would have been outside. That is my assumption ...[that the lawyer was working with the Scorpions. From his attitude and the way he behaved. I paid him so much money. That is my assumption. Because how can you be somebody’s lawyer and you cannot even cross-examine any of the state witnesses in court?”

The perpetrator in Case 2 said: “.... The sentences they gave us were quite bad, they were such that they were optional. Like in my own instance, they gave me 3 years, which means I was supposed to spend 6 months in jail. And after 6 months I was supposed to be let out under correctional supervision. On that day they gave us that option and told us if we do not take it, they were going to postpone the case for 6 months. I’ll be stupid not to take it. It would be stupidity on my part. And at the end of the day...and we were reliably informed, that the court, the magistrate, the prosecutor, in the court we were, had already formed an opinion on us...that they had already made up their minds that we were going to be found guilty. No matter what happens. No matter how expensive or how knowledgeable the advocate would be; that they had already made up their mind

and that they were going to be found guilty. They said the option of the plea bargain we got was the best they could offer us so that we should take it”.

This perpetrator also said: “...I’m not satisfy with the sentence. Because we are meant to pay money back to the state. And the words that the prosecuting officer and the investigator used was a You are a Nigerian, you should be made an example of, and besides, your case was in the newspaper, so you must sit in jail. It wasn’t a fine. We were asked to refund money that the state was taken in all the other cases that they’ve been defrauded. Apparently, the state said that it was the same modus operandi that was being used. That based on the papers they said they had, that this amount of money that they said was lost, pay back, and you will be given a fine and a suspended sentence. But on the day in the court that we were supposed to finish our case, our lawyer came to me and said, no the prosecutor said we must sit in jail, me and my other friend, that we had to sit, that we are Nigerians and the case was already in the papers. So if you say was the sentence fair, no it wasn’t, because I should’ve...I’m a first offender, I don’t have any previous records, I have a legitimate business in South Africa, I’m living a legitimate life, but because of my race now, where I come from, and there’s already this stigma of you being a Nigerian”.

He continued to say: “... We returned back the money...we paid back about R250 000 a friend of mine, my friend’s girlfriend, my own personal friend with whom I was arrested, they gave us an option that these three people would walk free, would be given a fine. But they reversed it the day of the judgment ... which goes to show you the legal system seems to have its own problems”.

The perpetrator in Case 3 said: “... That is why I get my 2 years sentence. Actually they gave me 3 years sentence, 2 years inside prison, 5 years once outside prison if I ever make any dishonesty, that I will be arrested for one year within a period of 5 years”.

The perpetrator in Case 4 said "... they said, I was the mastermind of the syndicate. So he was sentenced for three years, and I was sentenced for seven years. I am ok with the sentence because ... They searched the office, they didn't find anything. They went through the phone call, my accounts. Even the witness, there was four witness, from the bank manager, the corporate manager, everywhere from Cape Town, Durban, they came, they didn't know me. .. Even me I was shocked".

This perpetrator further said: "... Yes, I'm satisfied and I'm regretting. It's not ok, it's too much, and it's too much ... It's an offence, it's an offence, but you know, I am a first offender in this country. But I deserve a second chance; give me fine or other things. Yes, even the amount was too big, but there was another person who defraud R150 million, they give him fine and he's out. The same day they arrested him the same day they release him. He stole R150 million through fraud. He's a white man in one company, the same day, he's out. Yes, he's a white South African. Even him, they gave him bail, but me they didn't give me bail".

The perpetrator in Case 5 was sentenced for 12 years in prison. However, this perpetrator said he was satisfied with his sentence. He said: "... I'm satisfied with the sentence. Of course, first time, when I was given the 12 years, I was saying to myself, because I was sentenced by a white magistrate, he's a racist. That is how...that is what I was saying. But anyway, those people who I was going with to court, commercial crime court, especially white guys, they could get a suspended sentence, right, or maybe a 10 year sentence with supervision. That means he comes to prison, he does 10 months, he goes out and then he's supervised".

5.4.3 United States

In the U.S, there have been some successes in the investigations, arrests, prosecutions, convictions and sentences of AFF perpetrators. Below are some of the facts and cases, and the sentences that were imposed on the perpetrators:

United States v. Okonkwo

After several attempts to arrest 419 perpetrators, the Houston task force attained its first success in June 2000 with the arrest of John Okonkwo, Jerome Okwudi, and Kingsley Ireke. This case combined elements of both Advance Fee Fraud and black money schemes. All three were charged and convicted of conspiracy and inducing another to travel in interstate commerce in furtherance of a scheme to defraud. A videotape proved to be compelling evidence and helped to induce all three defendants to plead guilty. Okonkwo and his two co-defendants received sentences ranging from 8 to 21 months. After they had completed their stay at the Bureau of Prisons, they will be release to the INS for deportation proceedings to Nigeria (Buchanan *et al.* 2001:44).

United States v. Okiti

According to Buchanan *et al.* (2001:45-46) a second successful investigation of AFF scheme was in 2001. The task force was contacted by Siler, a businessman. He told the task force that he had been contacted by a group of Nigerians who requested him to invest a large sum of money on their behalf.

The facts of this case were that in September 2000 Mr. Siler received a letter via fax entitled "Abacha Family Estate". The letter outlined a business proposal in which Dr. Maryram Abacha requested that Siler invest \$25.6 million of her money in the United States. The letter indicated that the funds were the result of some deal between her late husband and a Russian firm. After the Nigerian

government had revoked Abacha's license to manage a financial company she had removed the funds and packed the money into two trunks. Because of the oppression of the Nigerian government, she was supposedly looking for a way to quickly sneak the money out of Nigeria.

Mr. Siler responded to the letter via e-mail requesting that the trunks of money be sent to him in Portland USA. A series of faxes and e-mails followed with Abacha insisting that Siler travel to Europe to receive the money and pay shipping and insurance costs. Siler refused.

In December 2000, Abacha advised that the money would be in Houston with a family representative named Mohammed and that Siler should contact Mohammed to make arrangements to obtain the trunks containing the money. From December 2000 through March 2001, several telephone calls were placed and recorded between Siler and Mohammed.

On March 11, 2001, Siler arrived in Houston and met with task force members. Agents wired a room in a hotel and waited for Mohammed to arrive. A Secret Service Agent posed as Siler's secretary. Mohammed arrived at the hotel with two large bags. Once inside the room, he opened the bags and told Siler that they contained \$6 million each. Inside the bags were numerous individually wrapped stacks of money. The money was stamped with the initials "U.N.". According to Mohammed, the U.N. stamp meant that the money was from the United Nations and could only be used overseas. A special chemical was necessary, according to Mohammed, to clean the money. Mohammed then removed two hundred dollar bills from one of the stacks and cleaned the initials with a small amount of liquid. He stated that he needed \$23,000 to purchase additional chemicals to clean the rest of the money. After receiving the money, the agents arrested Mohammed and identified him as Victor Okiti. The suitcases contained numerous stacks of paper, along with the counterfeit hundred dollar bills Mohammed had washed during his demonstration. A search warrant

executed at Okiti' home revealed more suitcases and more counterfeit money (Buchanan *et al.*2001:45)

Okiti was charged with wire fraud and possessing counterfeit currency. In the face of the videotaped evidence of his crimes, he pleaded guilty to the charges. Despite the fact that this was a "no loss" case, Okiti received a sentence of 33 months in prison, after which he was to be deported (Crm. No.H-01-261 (S.D.Tex.2001).

Despite the challenges in the prosecution of AFF offenders, the successes achieved in Houston was attributed to the commitment of the various agencies in the task force, the cooperation of the banks and credit card industry, and the United States attorney's office that had dedicated a prosecutor to coordinate the prosecution of these cases (Buchanan *et al.* 2001:46).

Recently, courts in the United States, Europe and Australia have experimented with sanctions, which require that the computer of an offender of high-tech computer related crimes be forfeited, or seek to prohibit the offender from undertaking certain or all computer related activities or use computers or gain access to the Internet. Some courts in these countries have also imposed requirements that the offender's computer activities be monitored (Smith 2004b:1).

5.5 CONCLUSION

With the high and ever-increasing rate of AFF crimes around the world, and few arrests, investigations and convictions, these offenders are encouraged to continue their fraud. In this regard, there have been some suggestions on how these criminals can be brought to justice. Smith (2004a) suggests that the solution of arrests, investigations, prosecution and convictions of AFF offenders lie in harmonising laws and procedures globally, improving the technical

capabilities of investigators, and sharing of information between public and private sector investigators to enhance international co-operation.

Smith (2004) maintains that continuing harmonisation of laws and the adoption of international conventions on high tech crime and transnational and organised crime will make prosecutions easier and will greatly improve mutual assistance and extradition of AFF offenders. The investigation of cross-border fraud incidents requires adequate forensic and technical expertise. This implies the formulations of training programmes and the development of software tools. International training programmes could be developed and expertise could be shared between different nations. The United Nations, under its crime programme could examine the desirability of reviewing its manual on computer crime and further support the work already undertaken by other international organisations.

The following are the findings of this chapter:

Table 5.1 Adjudication

The policing process	Barriers to arrest
Pro-active and re-active	Identification of suspects
Threat to lodge complaints	Securing extradition
Cost-benefit analysis	Criminal law of referring and receiving countries
Complain – report the crime	Lack of evidence
Follow the money transfer trails	Lack of reporting
Pinpoint the beneficiaries	Determining the jurisdiction
Policies and plans to track down	Negative international jurisdiction
Computer networks	Too many countries want to prosecute
Inter-agency task forces	Search and seizure from computers
Compile data-base	Intercepting/monitoring transmitted data
	Lack of mutual assistance treaties
	Loss of original documentation
	Determine who foots the bill
	Logistical / practical barriers
	Lack of evidence to prosecute
	High cost of equipment

From the findings of this chapter and as indicated in the above table, it is clear that the pro-active policing strategies, albeit successful up to a point, highlight the barriers that prevent the arrests of these offenders. It is exactly because of the policing deficits and barriers to arrests that the prosecution usually makes use of plea-bargaining and, by doing so, imposes lesser sentences, thus sending a “no big problem” message to the victims and the perpetrators.

The next chapter of this theses focus on the prevention of AFF. It will therefore explore and analyse the various prevention strategies that are in place in a bid to combat this complex type of fraud. The prevention programmes in Nigeria, South Africa and the United States will be the focal point.

CHAPTER SIX

PREVENTION

6.1 INTRODUCTION

The prevention of crime is one of the most difficult priorities of the state and in particular for businesses, individuals and the community. Crime prevention in its broadest sense has a long history, stretching as far back as the first use of locks and bolts to protect people and their property. However, it was only during the last three decades of the 20th century that it emerged as a key institutional feature of the criminal justice systems and related sites of social control across contemporary societies. It is also during this period that a massive output of criminological writing aimed at classifying different types of crime prevention approaches emerged.

According to the United Nations (1993:13), criminal justice and the prevention of crime are universally considered as fundamental to social progress and better standards of living. To keep pace with the changing nature and dimensions of crime and to be able to come to grips with practical crime prevention strategies, a panel of 27 experts from a number of countries have been nominated to set priorities and practical guidelines for criminal justice and the prevention of crime in order to assist member countries of the United Nations with the crime problem.

Many countries have also developed national crime prevention policies to deal with the crime problem in their countries and these policies normally function at national, provincial, state and local or area level (Naude & Maree 2002:148). The prevention and control of crime is one of the most important and most difficult priorities of the state and the community in particular. According to the literature the state has a special duty to prevent crime against its subjects by means of an effective judicial system, adequate control of firearms and a comprehensive community development policy.

However, no single crime prevention package exists as a blueprint for success in high crime areas, indeed, many initiatives have met with mixed results. One option is to join forces with the victims of crime and harassment in the implementation of a crime prevention project. Most countries have adopted this victims-based approach to crime prevention. The extent and nature of crime, and how residents respond to 'vicarious' and direct victimisation, varies in subtle but important ways in different high crime localities. In this regard, Simpson and Farrell (1990:56) said that crimes and crime related problems should be targeted, and how they should be tackled, are the first stages in the development of a crime prevention package for a particular locality.

A case in point, fraud prevention involves a complex and sensitive process of balancing an organisation's diverse interests and limited resources. Some solutions may be totally effective in terms of reducing fraud but may have the consequence of stifling commerce and making everyday business transactions so unwieldy and costly to manage that no one would be willing to do business with them (Smith 1998:1). Fraud prevention should therefore aim to maximise crime reduction without imposing unrealistic burdens on legitimate business activities.

Whatever the case, this chapter of the research study discusses how AFF can be prevented. Some of the prevention strategies that have been implemented internationally, as well as in some countries where this fraud is common, will be studied. This chapter will also examine and discuss the findings of this research pertaining to the prevention of AFF.

But firstly, a discussion of what crime prevention is all about; typologies of crime prevention and the theories of crime prevention will be discussed.

6.2 THE APPLICATION OF CRIME PREVENTION

Crime prevention is widely misunderstood (Sherman 2003a:2). The debate over crime often treats prevention and punishment as mutually exclusive concepts, polar opposites of the continuum of the soft versus the tough responses to crime: midnight basketball versus chain gangs, for example. The science of Criminology, however, contains no such dichotomy. It is like the public debate over physics, which had drawn a dichotomy between flames and matches. Flame is the result. Matches are only one available tool for achieving that result. Other tools besides matches are known to cause fuel to ignite a flame, from magnifying glasses to tinderboxes.

Similarly, crime prevention is the result, while punishment is only one possible tool for achieving that result. Both midnight baseball and chain gangs may logically succeed or fail in achieving the scientific definition of crime prevention: any policy which results in a lower number of crimes in the future that would have occurred without that specific policy (Sherman 2003a:2). It should, however, be noted that some kinds of punishment for some kinds of offenders may be preventive, while others may be criminogenic or crime causing, and still consists of a legally imposed punishment, which is justified by a goal to prevent crime.

From the above analysis and according to Sherman (2003a:4), crime prevention is defined, not by its intention, but by its consequences. These consequences can be defined in at least two ways. One is by the number of criminal events, the other is by the number of criminal offenders (Hirschi 1987:109). Some would also define it by the amount of harm prevented (Reiss & Roth 1993:59-61) or by the number of victims harmed or harmed repeatedly (Farrell 1995:89).

Crime prevention involves any action that causes a reduction in the level of criminal activity, or in the number of criminal offenders and their victims (Smith

2004c:1). It has been described in terms of three stages or levels - primary, secondary and tertiary (Cameron & Laycock 2002:315).

However, for a better understanding of this phenomenon Hughes (2001:63) defines it as "...any action or technique employed by private individuals or public agencies aimed at the reduction of damage caused by acts defined as criminal by the state".

Plumber as quoted by Nelson and Clark (1986:3) describes prevention as follows:

- Prevention is an active intervention plan comprised of various components with the ultimate goal of averting or avoiding negative outcome in an offense.

Mayer, Currie, Macleod, Gilles and Warden (1992:43) provide the following definition:

- Preventing crime can be seen as a process of altering the potential perpetrator, the potential victim or the environment in which both exist. They states that prevention should therefore not only be directed at the victims, but also be aimed at changing the environment in which they live, and, if possible, it should be directed at the potential perpetrator.

Daro (1991:3) claims the following:

- Prevention efforts need to target the victim and the potential perpetrator simultaneously, as well as those aspects of the social fabric that nurture criminal behaviour.

Given that crimes are events prescribed only by legal statute, it is not surprising that there is a great plethora of activities and initiatives associated with the term crime prevention.

Crime prevention is a chameleon concept, which cannot be neatly or effortlessly defined. There continue to be many different meanings associated with crime prevention and in turn divergent policies and practices associated with the notion (Hughes 2001:63).

There is no consensus among criminologists with regards to how best define the phenomenon of crime prevention. Instead competing models and typologies exist, often of limited theoretical nature, and seemingly driven by rather narrow technical concerns about the measurement and evaluation of success or failure (Hughes 2001:64).

The next subsection that follows, will discuss the various typologies of crime prevention.

6.2.1 Typologies of crime prevention

Hughes (2001:64) maintains that a popular means of defining crime prevention in terms of Criminology in the late 20th century has been in terms of the distinction between the situational and social strategies of prevention.

For the purpose of this thesis, however, the next paragraph will on focus social crime prevention integrated with primary, secondary and tertiary prevention. Social crime prevention is focused chiefly on changing the social environment and motivations of the offenders. It often tends to focus on the development of schemes in order to deter potential or actual offenders from future offending.

Another approach, which, from an academic point of view slots in better with social crime prevention, classifies types of crime prevention in three major models of crime prevention, borrowed from theorizing in medical epidemiology (Weiss 1987:67). He stated that there are three types of crime prevention, primary, secondary and tertiary.

Primary crime prevention

Smith (2004c:1) said that primary prevention is directed at stopping the crime before it happens. This could involve reducing the opportunities for crime, such as fraud control policies, or strengthening the community and social structures that influence an individual's likelihood of committing fraud.

According to Weiss (1987:70), this type of crime prevention involves the reduction of criminal opportunities, without reference to criminals. In this type of prevention, attention is turned to the crime event rather than the motivated offender. Schutte (2000:8) described it as those efforts targeted at the perpetrators who have been least effected by the problem. The broader population is targeted in the hope that they have not yet been introduced to the problem, and that they will be able to take a stand against it when confronted with it in the future.

In the case of AFF prevention, the research revealed that primary prevention would, in some way, prevent people from becoming victims of this fraud. From the perpetrators' perspectives, they suggested people should not reply to unsolicited mails, and people should discuss any business proposals with their friends and family members or business advisers/ consultants.

In this regard, the perpetrator in Case 1 is of the opinion that stopping corruption amongst African leaders would be the first step needed to prevent this type of fraud. According to this perpetrator there are huge sums of money owned by African leaders, hidden in Foreign Banks and the perpetrator uses these funds as a method to entice and convince potential victims. He calls on the African Union to step in and address the issues of corruption amongst African leaders.

The perpetrator said: "... *I think they can start from the top. First of all government officials must stop stealing African money abroad. That's the first thing. They can*

stop that. I think they have the African Union who can check that. I think they know what is going on but they don't want to get involved. But if these different countries can check themselves. Remember I told you this business is thriving because a lot of African money is lying abroad. Most of these victims see the money there. You won't believe, but the fraudster will tell them, go to so-so bank, check so-so- account and you'll see this money there. So if the top can be cleared, then this fraud will reduce".

Secondary crime prevention

It is acknowledged that secondary crime prevention seeks to change people, typically those who are high at risk of embarking on criminal activities. The focus can be on early intervention programmes that seek to educate people about ethics and honesty (Smith 2004c:1). Schutte (2000:8) described it as prevention, which is aimed at people who seem to belong to a high-risk group, and who may even have been in contact with the problem.

This research study also indicated that secondary crime prevention is also a strategy that may be employed in the prevention of AFF. It was found that business people are high risk candidates for victimisation, hence intervention programmes need to focus on these group of professionals. In this regard honesty, patience and consultations in any business-related matters were encouraged amongst business people.

In support of this prevention strategy was the statement made by the perpetrator in Case 3 in which he said: *"...You see in that aspect, people must be honest with themselves. So in situations like that, you have to be careful with people, and try to be close to honest people, real honest people, and people with integrity. You see in this life now, a lot of people believe what is everything, so if they come to you and they tell you they have money or whatever, according to the idea that I got when I was growing up, in a situation like that you don't have to*

listen to people that you don't know before. And number two, you must be careful when leasing your money out. You must be very intelligent, and you must know the business your doing, and you must know the person you're doing your business with".

Tertiary prevention

This prevention model focuses on the criminal justice system and deals with offending after it has occurred. Smith (2004c:1) indicated that the primary focus is on intervening in the lives of known offenders in an attempt to prevent them from re-offending, either through periods of incarceration, community-based sanctions, or monitoring during periods of probation. The criminal justice system responses also seek to deter other potential offenders in the community by making an example of the convicted offender and educating the community concerning the penalties associated with crime. Schutte (2000:8) maintains that these types of prevention programmes are offered to those members of the population who have been victims. The goal is to avert and avoid future victimisation.

This type of prevention strategy was found to be one of the most successful when applied to prevent this type of fraud. It was found that the long-term imprisonment of the perpetrators would send a message to potential perpetrators and hence will serve as a deterrent to others. The perpetrators who took part in this research favours incarceration as a prevention strategy of AFF.

The next subsection that follows looks at the criminal justice crime prevention model.

6.2.2 Criminal justice crime prevention model

The criminal justice crime prevention model involves the role of the police, the courts and the correctional facilities. The legislation, policing, punishment by the courts and correctional services are important crime prevention methods. The criminal justice system must function in an integrated and holistic manner to be effective. Laws must be just, the police must be impartial, effective and geared to the community's needs, the courts must also be just and punishment must protect the community and rehabilitate offenders (MacKenzie 2003:4).

Criminal justice system prevention seeks to deter other potential offenders in the community by making an example of the convicted offenders and educating the community concerning the penalties associated with crime. It should, however, be noted that the main aim of the criminal justice crime prevention model is to punish the offenders. In this regard, Brown *et al.*(2001:58) maintains that deterrence, rehabilitation, retribution and incapacitation have to be taken into account during punishment and sentencing by the courts.

In this research, it was found that the complex nature of AFF would warrant the application of primary, secondary and tertiary crime prevention strategies to be used to prevent this type of crime. The findings in this regard will be discussed below.

Since the focus of this thesis is on AFF, the next section will attempt to analyse and examine the various strategies that are in place to prevent AFF.

6.3 ADVANCE FEE FRAUD PREVENTION

6.3.1 Background to AFF prevention

The prevention and control of fraud and AFF are two great challenges for Africa and the international community. While crimes of deception are well established in history, technological, social, demographic and economic developments have brought about changes in the form fraud takes and how it is perpetrated. The basic motivation of fraud is greed; a fairly robust and enduring human characteristic. It is not easy to eliminate greed in humans, so counter measures have to be more than psychological or the deployment of feel-good tactics. Grayer and Smith (2003:128) pointed out that crime follows opportunity and opportunities for fraud flow from economic growth. The more commerce there is, the more opportunities are created to commit fraud. Nobody wants to pull the plug on electronic commerce, close down the stock market, or the health insurance system, just because they may be vulnerable to fraud. Rather, the challenge lies in designing systems, which allow commerce to flourish while blocking opportunities for fraud. Research (Sakurai & Smith 2003:4) indicates that fraud prevention is a lengthy process especially when identifying offenders.

What follows are linked to primary, secondary, tertiary and criminal justice crime prevention. This is because of the complex nature of AFF, and how it is perpetuated by the offenders.

6.3.2 Preventing AFF in highly concentrated places

Most places have no crime and most crime is highly concentrated in and around a relatively small number of places. If crime can be prevented in these highly concentrated places, then it would be possible to reduce crime in its totality. Eck (2003:1) indicated that places have received relatively little attention in crime prevention policy and, he defined place as "... a very small area reserved for a

narrow range of functions, often controlled by a single owner, and separated from the surrounding area". These may include stores, homes, apartment buildings, and street corners. In the case of AFF, places such as Internet cafés can be targeted as part of the prevention strategies.

The prevention of AFF in places where it is highly concentrated was found during the course of this research to be a good method of prevention. The findings of this research acknowledged the use of Internet cafés in the execution of AFF, especially money transfer. It was also found that some foreigners spend their whole day at Internet cafés and some even use it as their office. Hence the findings suggest that prevention should focus on Internet cafés. In this case, Internet café owners should check their clientele and notify them regarding the use of their facilities to commit any criminal activities.

Within this premise, Respondent 1 said: "...I think they should trace the calls they do, and since we know that they are forever using the Internet cafes, maybe they could put something in the computer to like trace everything they do, especially illegal stuff. I think its better like that. They should like trace the computers and call for Internet café owners to monitor and report any suspicious illegal use of Internet to the police".

Therefore it is suggested that the prevention of AFF should focus on Internet cafés, the owners and of course, the Internet service providers.

6.3.3 Judicial punishment to prevent AFF

The use of legal prosecution and punishment is one of the principal means of deterring criminal conduct in both digital and non-digital environments. Although the process may be time-consuming and costly, the publicity, which a criminal conviction and sentence of imprisonment attracts, can be beneficial in terms of

ensuring that potential offenders take the consequences of their illegal actions seriously.

When one applies the tertiary crime prevention to prevent fraud, Smith (2004c:2-4) suggested that the seven (retribution, proportionality, denunciation, incapacitation, deterrence, rehabilitation and restitution) recognised objectives of judicial punishment could be imperative in this regard.

In this research, judicial punishment was indicated to be more effective in the prevention of AFF. However, this can only occur if the victims report to the police or if the police are able to detect the fraud, and arrest the offenders with sufficient evidence to secure a conviction. The perpetrators who took part in this research concur that the judicial punishment is a valid strategy to prevent AFF, most especially the deterrent effects of punishment.

Retribution

Retribution is the justification for punishment based upon the idea of an eye for an eye and a tooth for a tooth. This of course raises the problem of how the seriousness of fraud offenders can be matched, or its moral blameworthiness, with a range of available sanctions.

Smith (2004c:6) indicated that a survey carried out to determine the community's perception of the seriousness of crime have found that the public do, in fact, regard white collar crimes as serious where they entail serious harm. The harm that results from fraud offences lies not only in direct financial losses suffered, but also in consequential losses associated with the investigation of the incident, the recovering of losses, and the prevention of re-victimisation. Retribution seeks to match the extent of the harm suffered with the punishment imposed. Applying this in the prevention of AFF would imply that the punishments imposed on AFF offenders should match the harm suffered by the victim.

Proportionality

The modern form of retribution is known as 'Just Deserts' or proportionality in punishment. This means that the severity of punishment should commensurate with the seriousness of the wrong. In the case of fraud this raises difficulties, as the consequences of some types of offences can be devastating, and yet the conduct itself involved no physical violence which traditionally attracts heavy sentences.

Denunciation

Denunciation involves the imposition of sanctions in order to express the public's abhorrence of the crime committed. According to Smith (2004c:2) denunciation acts as a symbolic statement that society considers a particular crime as being sufficiently serious to warrant punishment, and that society will not tolerate the law-breaking conduct of the offender. In the case of AFF perpetrators the aim of this punishment would call for harsher and tougher sentences to be imposed on offenders.

In order to be effective in this sense, the imposition of a sanctions for AFF offenders must be widely publicized, and unlike some other crimes, fraud invariably attracts wide media attention. However, the risk arises that notoriety such as that obtained by famous individuals, could undermine the seriousness of the crime involved and be seen as attractive to some people, keen to make their mark in the world.

Incapacitation

Incapacitation simply means that, because the offender is isolated from society, generally through imprisonment, he or she will be prevented from committing

further crimes of the same or similar nature, while in isolation. In the case of fraud offenders, however, prison has sometimes allowed them to continue their activities, and we have seen cases of fraudulent scams being carried on from prisons, sometimes through the use of prison computers and mobile telephones smuggled into the prisons (Smith 2004c:2). The incapacitation of AFF perpetrators would help to remove them from the society and may lead to a reduction of this fraud. Hence the incapacitation of these offenders through imprisonment would prevent this fraud.

Legal Deterrence

The deterrent effects of criminal prosecution and punishment represent the final means of deterring fraud, although quantifying the extent to which they are successful is problematic, to say the least (Smith 1998:5).

Deterrence can take two forms which were concisely summarised by Cesare Beccaria in 1764: punishment aims to dissuade the criminal from doing fresh harm to his compatriots (special deterrence), and to keep other people from doing the same (general deterrence) (Young 1986:23).

In the case of financial crimes, to determine whether punishment is effective, evidence is needed of both the extent to which individuals are aware of the possible punishments, which may result from their individual criminal conduct, and also whether or not individuals will act upon any such knowledge by modifying their propensity to commit crime.

Smith (2004c:17) found in his survey that offenders rarely know what penalties govern their conduct. It has also been reported that offenders rarely make a rational decision to carry out their offence or to desist, based upon the possibility of being punished. It should also be noted that the many impediments in the

investigations and prosecutions of economic crimes mean that the probability of detection and punishment is generally low.

Smith (1998:5) indicated that whilst small-scale property offenders behave more or less impulsively, and are unlikely to be deterred by the possibility of criminal sanction being imposed, white collar offenders are much more likely to engage in rational calculations, and make some assessment as to the prospective benefits and costs of a given course of action. In these circumstances, the greater the perceived likelihood of conviction and the more severe the expected punishment, the less the inclination will exist to offend. This means that individuals who are aware that their assets may be confiscated realise that committing the fraud is not worth their while. In this regard, Smith (1998) argues that the continued use of assets forfeiture legislation is beneficial and deserves increased publicity.

The empirical part of the research indicated that legal deterrence through imprisonment would serve as the best prevention for AFF. Apart from the fact that imprisonment removes them from society, it also serves as a period of education and rehabilitation for these offenders.

In this regard, the perpetrator in Case 1 said: *"... because I know I have spent here long enough... But having spend so much time in here and I'm still here, I'm sure by the time I leave I won't have any more regrets, because I will be able to tell others that I suffered because of this so that they can stop it. I'm writing a book, and when I publish it, it will serve as a source of information... for both the victim and the perpetrator... Because you cannot look at somebody and say this victim-to-be or this perpetrator"*.

Concerning the deterrence, incapacitation and rehabilitation effects of imprisonment in AFF prevention, the perpetrator, in Case 5 said: *"... Because you know, one, if I didn't come to prison, I could not change. That I tell you, I could not change. And then the second thing is, prison, you know people can*

say prison is a dark place or it's not a good place, but it's also how you conduct yourself. The first thing when you come to prison, you uncondition your mind. You accept you did wrong, yes. Then you accept. You uncondition your mind. Then you move on. You've got time to study, right? When I came to prison, I only did Marketing, somewhere, somehow, but I managed to finish it up to Diploma Level in prison. And I'm now studying towards my degree. Which is something I could not do while I was outside....Because outside I was only running with beers, women, things of the world, wild things and doing fraud".

Similarly, Respondent 2 said: *"...I think the court must just put a law that if we have a person coming to court for 419, he must be sentenced to 30 years in jail. And if at anytime you get a victim, and you get the person who did it, if you have him in court, the court should don't hesitate, give him 30 years. When you have 20 people doing 30 years of the 419 guys, I don't think the other guys will not have courage to do it, because if you arrest them, they must also do 30 years. I think the court must put very strong sentences in the number of years that you must spend in jail".*

However, it should be recalled that the effect of judicial punishment is relative, it depends on the individual, because there will still be some offenders that would re-offend after they had served their sentence. Supporting this stance is the statement made by the perpetrator in Case 5: *"... Listen, you can go to prison, even for 30 years, 20 years, but if you don't want to change, nobody can change you...no matter whom, no matter what. But I think change, comes from the person inside. If you decide to change, it's yourself. Me I decided to change, not because of prison, no, I decided to change myself. Because maybe I didn't get this chance, because if you live in the world, you don't know, you're just doing anything. The person only change when he decides to change. It's just like maybe going to church. You can't force a person to go to church. But he goes to church when he decides to go... so I say, change is inside".*

The conclusions that may be reached from extensive research into the deterrent effects of criminal sanctions, are that while incarceration acts as a general deterrent to an unsubstantiated extent for some members of the community, increasing the use of incarceration will not create a greater deterrent effect nor result in an overall reduction in AFF. On the other hand, well-publicised prison sentences for AFF offenders will help send an important message to the community, and particularly potential AFF offenders that their actions are not tolerated.

Monetary penalties

Worldwide fines are frequently used as criminal penalties for a wide variety of cases in courts. However, many of these fine sentences are composites of fines and other non-custodial sanctions and do not stand alone. Judges may use their own discretion when setting fines and therefore these fines are not uniformly imposed. Jail sentences are sometimes used as alternatives to fines particularly for the poor (MacKenzie 2003:9). In terms of crime prevention, fines may act as a deterrent to AFF and other criminal activities. MacKenzie (2003:9) stated, however, that most studies of fines have focused on setting just and proportionate levels for the amount of the fine, or on compliance, cost saving, or prison population impact issues. Overall, there exist limited research that examines the effectiveness of fines in the reduction of fraud. A study conducted by Gordon and Glaser (1991:651) suggests that fines, as addition to other sanctions, may be effective in the recidivism of fraud offenders. When imposing monetary penalties, the possibility that the fines would be afforded by fraudulently obtained money, should be considered by the courts.

It is obvious from this review of the research regarding crime prevention in the criminal justice system that no one strategy is appropriate for all offenders and all situations. Careful planning is required to maximise the crime prevention potential of these different strategies.

Whatever the AFF prevention models discussed above, it would still be imperative to discuss international strategies that are in place in this regard. Therefore the next subsection will examine the international strategies that have been developed in order to prevent AFF.

6.3.4 International strategy

The international community has played and must continue to play a key role in the fight against AFF. The problem is definitely one of international dimensions and efforts must be made to harmonise international criminal laws and international cooperation in matters of extradition, the enforcement of assets forfeiture laws, as well as the research and training of law enforcement officers (Hamza 2002:9).

Hamza (2002:11) is also of the opinion that international pressure on nations considered safe havens for corrupt government officials and other criminals to revamp their laws in accordance with international standards and to ensure that their countries are not used to conceal ill-gotten wealth would go a long way to prevent AFF.

Within the same premise, the Nigerian government and the American Information Technology (IT) Company, Microsoft (MS) have joined forces to apprehend AFF perpetrators. Microsoft and the Economic and Financial Crime Commission (EFCC) of Nigeria confirmed that they would stand together in order to bring such criminals in West Africa to justice (SAPA-AFP 2005).

It is acknowledged that publicity, awareness and education are some of the best instruments available to crime prevention. Therefore it would be important to examine what is being done regarding awareness and education to address AFF prevention.

6.3.5 Awareness and education

Informing the public of the need to protect themselves from AFF is a simple and effective strategy which can produce highly beneficial results. In the United Kingdom, one particular effective plastic fraud prevention strategy involved a high profile publicity and education campaign by the Association for Payment Clearing Services to raise public awareness of the problem and to encourage credit card holders to take more care of their cards. This approach was highly successful in reducing plastic card fraud (Webb 1996:23).

There are also many other practical steps, which individuals can adopt to detect the possibility of AFF. Educating users and particularly the vulnerable groups about the ways in which AFF may be perpetrated has also been effective, although care is needed to ensure that individuals are not alerted to ways in which they may act dishonestly when they receive legitimate businesses proposals. Conducting close examinations and investigations of any business proposal is recommended by both law enforcement agents and business organisations (Dyson & McKenzie 1996; Van Leeuwen 1996:49).

Public awareness and education was found to be another important prevention method for AFF. It is believed that information about a particular type of crime and its manifestation would prevent individuals from becoming victims. Hence this research found that awareness and education about AFF would assist in the prevention of this fraud.

It should also be underscored in this regard that, all the participants in this research agreed that awareness would indeed go a long way in the prevention of AFF. Indicating the importance of public awareness in the prevention of AFF, the perpetrator in Case 1 said: "... You just have to create awareness. That should be an open statement. That whoever has ears let him hear it. A lot of awareness

is already going on. But some of them are giving it in a bad faith. The education has to be properly done. Let people be aware in a proper way this fraud is done”.

Victimisation focus has also been regarded as a crime prevention strategy. Therefore, attempts will be made to see how feasible it can apply to AFF.

6.3.6 Victimisation focused

Pease and Laycock (1999:1) pointed out that preventing crime and preventing repeated victimisation could be one of the AFF prevention strategy employed by the criminal justice system. According to them, an individual's past crime victimisation is a good predictor of his or her subsequent victimisation, often inflicted by the same offender. They also maintained that the greater the number of victimisations, the higher the likelihood the victim will endure victimisation in the future.

The characteristics of the re-victimisation phenomenon provide a reliable early warning indicator of where and when AFF may strike next. Armed with this knowledge, the police can maximise the potential of AFF prevention. It should be noted that when one focus on the recently victimised, AFF prevention is seen as an integral part of victim support. It is acknowledged that, a police officer's visit to an AFF victim is directed at preventing a next possible incident as well as addressing the current one. Concentrating on preventing re-victimisation by targeting efforts to and around repeat victims emphasises the importance of detecting offenders and makes detection an important component of AFF prevention (Pease & Laycock 1999:2).

A number of crime prevention efforts in the United Kingdom have been based on the prevention of repeat victimisation. However, to oversell the role of repeat victimisation would be foolish. At the same time, knowledge that a person would

be defrauded does not necessarily enable deployment of resources to prevent the crime. Nonetheless, the temptation is to regard the repeat-victimisation approach – after a period of unmerited neglect – as exiting and as an integral component of crime prevention.

In support of victim focused prevention of AFF, Pease and Laycock (1999:4) cited the following advantages:

- Crime prevention is thus seen to be integral part of victim support. Victim support without crime prevention denies practical help to the people who are in most immediate need of it. Pease *et al.* (1999) said that because the tradition has been to reassure victims of the improbability of crime recurrences, dealing with it (and preventing it) is the challenge for the integrated role.
- Repeat victimisation defines a natural pace of activity for prevention. According to them, the tracking of offences implies constant (hopefully declining) efforts. They referred to this as “drip-feeding crime prevention”, in contrast to “on-again, off-again efforts”.
- Repeat victimisation is highest in areas with the highest crime statistics. Put the other way around, certain areas have substantially high crime rates because of the incidents of repeat victimisation. Thus deploying efforts to and around repeated victims of crime serve to direct efforts to the areas in greatest need. Pease *et al.* (1999) suggested that one tactic is the cocoon watch, whereby residents of very few houses in the closest proximity to one that has been burgled are invited to watch for signs that indicate attempts at a repetition.
- Concentrating on the prevention of repeated victimisation underscores the importance of detecting the offender and makes detection an important component of prevention. If the same offender returns, detection at this time confers a very particular benefit on the victim and sends a very special message to the offender.

As per victimisation focus prevention strategy of AFF, this research has found that it is absolutely necessary to focus on the victims and potential victims. This is because the victims were found to be susceptible to repeat victimisation. In this instance, Respondent 2 said: *"... So I think it's the victim himself who should try to be careful and to make sure that before getting involved in any business, he must maybe talk to the wife, or a close friend. In life you must have a wife or a girlfriend or a close friend. But you have to get advice from a close friend"*.

This Respondent also made it clear that the prevention of AFF lies with the people themselves. He reiterates the fact that the community where this fraud is being perpetuated should assist in the prevention of this fraud. He said: *"... To prevent this crime, I think it's citizens themselves who can prevent this crime. By staying aware of any people who are coming to talk to them about business that is not in his domain so before getting involved into a business he must think... So it's people themselves that must prevent"*.

In the same vein, the perpetrator in Case 2 maintains that for victims' prevention to bear some fruits, victims of this type of fraud must be arrested and prosecuted for taking part in an illegal action. He said: *"... First the person who's bringing in the money has already contravened the laws of the country. He's doing money laundering... Because if you are arresting the perpetrator you must arrest the victim as well. Obviously when you are reading the letters, you, who are the supposed victim now, you know what is involved. It is illegal. .. There's nowhere where they said the money is legitimate. As a victim, you already knew that you were doing something illegal so you are guilty as charged. It's simple... You are guilty as charged. Because obviously you know that what you are doing is wrong, so why do you go ahead and do it? The letter says that the money is not mine, because very few individuals can afford to have \$5 million dollars cash stashed somewhere. I mean, it's either government money, or the money of the corporation or money that was supposed to do something for the greater good of*

the society. But one way or the other you were made to believe that it was stuck somewhere. I mean if you want to exonerate yourself, if you want to claim yourself as a victim, I mean in the first place you should have said no this money should have been used on all these people, I don't want to get myself involved in all these things. I mean, when they go to court, the court must sometimes see it from this perspective that he who comes to be questioned must come with clean hands. If your hands are not clean, so how can you justify yourself?"

According to this perpetrator, the victims of AFF should be prosecuted because they are part of a conspiracy to siphoned, or become the beneficiary of ill-gotten funds. This would mean that prosecuting the victim would send a message that those who engage themselves to these types of activities will face the ugly side of justice.

Victims must stop being greedy

It also surfaced in this research study that this type of fraud could best be prevented if people or potential victims stop being greedy. It should be recalled that, victims of this fraud are found to have been very greedy. Hence, to desist from this human trait would prevent this fraud. The perpetrators are fully aware that victims of this fraud are greedy and they use this character trait as a motivating factor for repeated victimisation.

From the above analysis, it is evident that victims of AFF need some sort of assistance from the community and law enforcement authorities to prevent re-victimisation. However, this can only happen if the victims of AFF come forward or speak about their victimisation.

In the prevention of crime, focus has also been on the role of the media in terms of communication. Thus, attempts have been made to prevent AFF by addressing at the role the media plays.

6.3.7 Communication for social change

There is a significant body of research regarding the role the media plays in influencing public perception about crime. While the public largely depends on the media such as newspapers and television for its information about crime and the criminal justice system, the information they receive can be affected by the limited sources used by journalist to create news stories, Graber 1980, Ericson, Barenek and Chan 1991 and Chermak 1994 (Capobiano 2001:2). Responses in this regard have focused on ways to harness the media to support crime prevention through public service announcements, public education and awareness campaigns or through civic journalism.

In this regard, Capobiano (2001:2) suggests a more inclusive role of communication within current policy, practice and research in crime prevention and community safety; focused on the emerging field – communication for social change.

In the case of AFF prevention, this would serve as a means to empower victims and community members to avoid and report any attempt of repeat victimisation. It would also inform, initiate and encourage people to engage in collective action to fight this form of fraud. It may also help people to make better decisions when approached by these fraudsters.

This factor was also found to be important in the prevention of AFF. In this case, the role of the media would be imperative because it creates public awareness and serves to change people's minds and the society's perception regarding an involvement in any business of questionable legality. Victim 1 affirmed this stance when she said: "... I think the people when they get, uh...I think there must be adverts. And community must be informed, I don't know how, maybe by TV. I think the SABC must come forth and explain to the community there's this kind of

fraud going on. Don't be a victim, its not real money... because TV's are easy to advertise, or newspapers or whatever".

After discussing the various international strategies that are in place to prevent AFF, the next section will look at the various national initiatives that are in place to prevent this complex phenomenon.

6.4 NATIONAL INITIATIVES

The creative and innovative methods used by AFF operations require creative and innovative measures by all hands to fight and prevent this form of fraud. As an international phenomenon, many countries have developed programmes to prevent and control this form of fraud. This section focuses on the prevention strategies in Nigeria, South Africa and the United States.

6.4.1 Nigeria

From the Nigerian government, to the international committee and Nigerians in the Diaspora as well as victims and concerned individuals, everyone has a role to play in the renewed war against AFF. It is agreed that increased law enforcement focussed on AFF offenders would help to capture more of them. However, the possibility of such an approach is questionable.

Sentences for these types of non-violent offences are usually light. Prisons and jails are overflowing. Adding more numbers to prisons, jails, probation caseloads, and court dockets will not stop this criminal activity (Jones: 1993:70).

Therefore, if imprisonment fails to stop this type of fraud then prevention efforts would hold some promise. In this regard, Jones (1993:70) suggested that companies, banks and government agencies may be forced to tighten their procedures when granting services to some individuals. As noted in the Nigerian

Handbook, one reason these offences are committed is that the private and public agencies involved simply do not perform a thorough check and verify the information of individuals they deal with.

As a Nigerian phenomenon, Hamza (2002:7-9) indicated that, in order to make meaningful progress in the prevention of this type of fraud, the Nigerian governments need to:

- Develop a comprehensive anti-money laundering regime to take care of all aspects of this fraud. She said the best way would be to revamp Nigeria's money laundering laws that they are in line with the recommendations of the Financial Action Task Force on Money Laundering.
- Enact laws and develop a far-reaching asset forfeiture regime to deal with confiscations and seizures to enable law enforcement agencies to effectively tackle the problem. This should include:
 - Expanding the scope of the provisions of Advance Fee Fraud relating to asset forfeiture within the framework of the United Nations convention against organised crime.
 - Participating in international cooperation through bilateral and multi lateral agreement to facilitate tracing, freezing, confiscating and forfeiture of proceeds of crime, as well as the domestic and foreign assets of scammers upon indictment and/or arrest.
- Enact enabling legislation to facilitate the speedy prosecution of organised crime. This may include:
 - Dedicating one court to adjudicating matters relating to AFF to ensure a speedy disposition of cases
 - Declaring immunity to all victims of the scams where the fraud involves participation in an illegal act, in return for coming forward with information and assisting law enforcement agencies with their investigations

- Improving existing mechanisms in facilitating international and regional cooperation between investigators with respect to obtaining evidence, the location of witnesses and suspects, services of documents and the execution of search and seizure warrants.
- Reorganise and adequately equip the Nigerian police force to face challenges posed by the menace of crime in general. An incorruptible law enforcement agency is also imperative to any nation's fight against crime.
 - In this case, the government should consider setting up a fund to boost the police force and other law enforcement agencies.
- Enact law, providing stiff penalties for intercepting calls, especially international calls, and make it mandatory for NITEL and other telecommunication companies to follow-up on reports of interference with telephone lines and trace the sources of interference.
- Enact laws that provide for closer financial sector regulation and supervision, including onsite inspections. Such laws should:
 - Make it mandatory for banks to trail and freeze any account to which a scam money trail leads, and arrest the account holders – this should be fairly easy to do as all banks typically have a picture record of all account holders
 - Provide for banks to conduct a mandatory dual diligence for all new accounts with deposits above a certain thresholds or for unusual financial activity with existing accounts
 - Sanction banks and *bureau de change* for failure to comply with requirements for anti-fraud and anti-money laundering measures, including suspending or revoking their licences, and conduct routine onsite inspections to ensure compliance with anti-money laundering regulations.
- Enact laws that provide for closer regulation of service providers such as lawyers, accountants and auditors. Such laws should:

- Provide for stiff sanctions for lawyers and other professionals who colluded with criminals, and empower professional regulatory bodies to enforce the laws
 - Include mandatory reporting requirements if a professional is aware that his client is seeking advice for fraudulent purposes, of course in the case of attorneys, professional secrecy principles such as the attorney-client privilege would require delicate attention when fashioning a regime.
- Publicise and expose criminals. This can be done in several ways:
- Develop a system that ensures that competent authorities are kept informed regarding the activities of criminals, including publicising the names of convicted criminals and maintaining a record with the Securities and Exchange Commission, as well as other relevant agencies to prevent such criminals from holding management positions or ownership of large stakes in financial institutions
 - Maintain a central public directory that contains a periodically updated list of directors, share holders and principal officers of all companies at the registry of the Securities and Exchange Commission in Abuja and make such a record readily available online for easy access.
- Closely monitor and regulate Internet cafés. This can be achieved mainly by:
- Employing technology to trace emails to a particular computer and then notifying the owners of the Internet cafes about the abusive use of their facilities
 - Requiring mandatory installation of hidden cameras in Internet cafes to keep a record of all patrons. This way it should be fairly easy to identify AFF perpetrators once a scam letter has been traced to a particular Internet café

- Empowering law enforcement agencies to shut down or impose fines on Internet cafés that tend to be susceptible to be used repeatedly for sending the 419 letters, this would serve as an incentive for the owners of cafés to pay attention to their patrons.
- Encourage the co-operation in matters relating to technical assistance and exchange of information between the Nigerian law enforcement agencies and other jurisdictions that have successfully dealt with this form of organised crime.

In an effort to prevent 419 scams, the Business Council for the Development of Nigeria (BCODEN) held an International Conference on AFF in New York in 2002. According to BCODEN, speakers at the conference were top-level policy makers from within the U.S. and Nigeria, including representatives of the Central Bank of Nigeria, various Nigerian law enforcement agencies; and various U.S. and other law enforcement agencies, including the Federal Bureau of Investigations. The organisers said that the purpose of the conference was "...to be a working session where we can develop instruments to cure this 419 problem which has been associated with our country..." (BCODEN 2002:10).

In this conference, it surfaced that the Central Bank of Nigeria will penalise banks over 419 scams. The Bank pointed out that the sledgehammer might soon descend on any bank operating in the country that covertly or otherwise aids the AFF. The Central bank said that if a bank were found to have been careless in allowing a criminal to defraud another person, they would be required to refund the money involved.

In his address to this conference, the Nigerian President Olusegun Obasanjo said that the crime has done incalculable damage to Nigeria. The president said: "... what is even more worrisome is the widespread perception within the international community, especially in the U.S. that our government is not doing enough to apprehend the culprits". He noted that it was apparent that the

advertorials often used by the government to warn potential victims against the scam have failed both to achieve the desired result and to convince the international community of the government's genuine efforts to check the crime (BCODEN 2002:11).

In a related strategy to prevent this type of fraud in Nigeria, the Economic and Financial Crimes Commission (EFCC) said it has seized property worth \$100 million from over 100 suspected AFF and money launderers across Nigeria (Babajide 2003:1). The chairman of this commission said that the properties were seized to send out the message that there would be no sacred cows in the assault launched by the commission against AFF, money laundering and other economic crimes. The chairman indicated that the anti-money laundering statutes allows anything to be seized and it was used to facilitate the commission of a range of crimes, or if the assets are been acquired through the proceeds of crime. According to him, seizing the property of these fraudsters sends a message that Nigeria was not a safe haven for AFF and money launderers (Babajide 2003:1).

Technical solution for Nigerian AFF

According to Oyesanya (2003:1), from a technical standpoint Nigerian e-mail crime is rather challenging. He argues that while the rest of the world tries to engineer technical controls to filter incoming unsolicited e-mail, Nigeria is faced with the rather unusual task of controlling massive amounts of outgoing unsolicited e-mails. He maintains that most technologies are not designed to address outgoing e-mails such as those in Nigeria.

Traditionally, spammers reside outside the external network, although some might try to harvest internal network resources to convey or relay their messages, SPAM traffic is generally seen as incoming traffic of an external

nature (Oyesanya 2003:1). Hence most technologies combating unsolicited mail tend to address it as undesirable incoming mail.

In his study and analysis of this technology Oyesanya (2003) pointed out that the solution for the Nigerian outgoing email 419, is a reverse engineering for unsolicited e-mail technologies, that filters these e-mail before leaving its source address. In the case of Nigerian, he indicated that the primary source is the Nigerian ISP. Nigerian unsolicited e-mail leaves the Nigerian ISP in two forms:

- A. As regular SMTP E-mail and
- B. As HTTP Web Based mail.

An effective solution needs to address both types of unsolicited mail formats to be effective.

From his study, Oyesanya (2003:3) developed the processes to prevent outgoing 419 e-mails from leaving its source. He emphasised that the 419 e-mail solicitation system is an advanced network system that inspects both outgoing e-mail and HTTP packets, performs Paul Graham's Spam Filter Bayesian statistical analysis, and then makes a decision on denying or granting a particular outgoing e-mail or http request. According to Oyesanya (2003:2) to prevent the Nigerian 419 email will consist of the following components :

- A. Packet Re-assembly
- B. Bayesian Statistical Classification Component
- C. Decision Component
- D. Spam database
- E. Non-Spam Database

He suggested that for an effective result, the system should also be integrated with other unsolicited technologies such as:

- A. RBL Blocking System (IP Black list database)

B. Open relay testing system

Packet re-assembly component

The packet re-assembly module separates outgoing SMTP and HTTP packets and combines them into individual whole messages. There will be two types of messages; e-mail and http requests. Each type of message will be stored in separate databases, and then forwarded to the Bayesian classification component.

Bayesian classification component

The Bayesian classification model uses the training data in the 419 and non-419 database to assign a probability weight to each individual message, and classifies the message as 419 or not 419.

Decision component

The decision component evaluates the weighted probability of individual HTTP and SMTP messages; discard those that are probable 419 messages and forward non-419 messages. Denied messages will be granted appropriate feedback, either in the form of a browser message, or in the form of e-mail non-delivery reports.

Filtering at the centralised Internet exchange model

In a bid of technology to prevent this fraud, Oyesanya (2003:5) said that a consortium of African Internet Service Providers, have been actively lobbying for Centralised Internet Exchange Points (IXP). The IXP's are centralised Internet service points, where national ISP's can collectively source Internet connectivity and distribute it to their customers.

The most efficient level of content filtering can be implemented at these IXP's due to the configuration of the centralised model. However, it should be underscored that IXP's in Nigeria and many other countries in Africa are still conceptual. The limitation of this model includes: economic feasibility and the general limitations owing to the infrastructure such as consistent electricity and the availability of an integrated fibre optic network. In this regard, Oyesanya (2003:4) suggests that the implementation of IXP does include 419 filtering solutions for HTTP as well as SMTP traffic in regions with high cyber crime traffic.

Whatever the case may be, the prime issue of concern regarding this model (which aims to prevent AFF) is its feasibility in most African countries, where these e-mail letters originate. Oyesanya (2003:4) maintained that there are three companies in Nigeria that are engaged in the production of telecommunication cables using imported copper and other local resource like poly vinyl chloride materials for insulation. There is no company that produces fibre optic cables in that country. The copper cable companies produce only low pair capacity cables of 50, 100 and 200 pairs. Hence there is a need for a plant that will produce high pair capacity cables that will enhance massive provision of lines to the teeming population.

This anti-419 system serves as a prevention strategy because it would prevent SMTP and HTTP from leaving its source. Moreover, it can be implemented anywhere at the ISPs Internal Network and can also be implemented as a hardware solution.

South Africa has been identified as one of the countries where AFF is common. Hence, the next subsection will examine the efforts made by the South Africa authorities to prevent this fraud.

6.4.2 South Africa

The growth of organised crime and AFF in South Africa has its roots in the 1990s. However, during the 1980s cross-border crime proliferated and crime syndicates were ready to take advantage of the favourable conditions promoted by the political transition in the early 1990s. In recent past, South Africa was the focal point for international crime syndicates.

Berg (1998:22) is of the opinion that in order to prevent organised crime and AFF, there should be an increase in policing activity to actually consolidate these criminal groups and strengthen linkages between international and local groups. She said that South Africa has responded inadequately over the years and has demonstrated a lack of co-ordination and information sharing – a factor that has been emphasised by most research.

It has also been suggested that a single national investigative agency, to pool resources and skills, should be developed due to the low success rate of actually bringing offenders to trial, despite successful monitoring of offenders' activities. However, with the increasing concern of international players in the fight against this fraud, importing the best prevention practice from abroad may assist in this regard.

Criminal justice initiative in AFF prevention

There are policing initiatives and law enforcement strategies that have specifically been directed at organised crime and the AFF problem in South Africa. The Organised Crime Unit was created as a specialised unit to deal with organised crime but due to the transitional factors, crime prevention was not at the forefront of policing activities (Berg 1998:22).

In 1995, there was the formation of the Southern African Regional Police Chiefs Coordinating Organisation (SARPCCO). This was not formed in response to organised crime but it has proved to be the only concrete regional policing organisation employed to address organised crime and AFF with the goal of co-operation and joint strategies with those regions involved. This would include information exchange and the joint management of criminal records (Berg 1998:23).

The focus on co-operation and communication is seen in the South Africa Police Service (SAPS) policing priorities and objectives in the prevention of organised crime and AFF. The establishment of reaction forces to assist in combating this fraud and by increasing co-ordination between intelligence services, and between departments as well as the SAPS and foreign agencies would, to an extent, prevent AFF. Presently in South Africa, there is the 419 task team unit of the SAPS which is meant to primarily investigate AFF.

Berg (1998:23) indicated that the SAPS identification and infiltration of AFF syndicate is a three fold strategy:

- Prevention through patrols
- Response through reaction force
- Investigation through specialised units and through teams.

The more police in the streets, the less crime there will be. While citizens and public officials often espouse this view, social scientists often claim the opposite extreme: that police make only minimal contributions to crime prevention in the context of far more powerful social institution (Sherman 2003b:1). However, whether additional police will prevent crime may depend on how well they are focused on specific objectives, tasks, places, times and people. Most of all it may depend upon placing the police where serious crime is concentrated, at the time it is most likely to occur.

Sherman (2003b:1) pointed out that the most striking finding is the extent to which police themselves create a risk factor for crime simply by using bad manners. He maintained that scientific evidence supports the hypotheses that the less respectful police are towards suspects and citizens in general, the less people will comply with the law. This implies that changing police style may thus be as important as focusing police substance. Making both the style and substance of police practice more legitimate in the eyes of the public, particularly AFF offenders and potential offenders may be one of the most effective long-term police strategies for the prevention of AFF in South Africa.

Given the historical roots of community policing, and perhaps the most theoretically compelling version of its crime prevention hypotheses addresses police legitimacy, or public confidence in the police as fair and equitable (Eck & Rosenbaum 1994:39). Recent theoretical and basic research work in procedural justice, Tyler 1990 (Sherman 2003b:4) provides a more scientific elaborate version of this hypotheses that it proposes. The claim in the regard is not that the police must be viewed as legitimate in order to win public co-operation with law enforcement. The claim is that a legitimate police institution fosters more widespread obedience of the law itself. Gorer (1955:269) attributes the low levels of crime in England to the example of law-abiding masculinity set by 19th Century police, a role model that became incorporated in the English character. There is even evidence that the police themselves become less likely to obey the law after they have become disillusioned with its apparent lack of procedural justice (Sherman 1974:134).

Community based intelligence, justifies the many community meetings (Sherman, Milton & Kelly 1973:98) and informal contacts police sought through storefront offices, foot patrols (Trojanowick 1986: 234) and other methods: increasing the flow of intelligence from citizens to police about AFF and offenders, which increases the probability of arrest for this fraud and the

deterrent incapacitative effects of arrest. The increased flow of citizens' intelligence can also increase police effectiveness at crime prevention through problem solving strategies in South Africa.

Legislative frameworks

Three Acts were enacted in 1996 to aid the SAPS, and they relate to the problems of organised crime in a transnational sense, in that it provides for co-operation, information sharing and the enhancement of judicial legislation in this case. The acts are as follows:

- The International Co-operation in Criminal Matters Act 75 of 1996: This Act was meant to facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between South Africa and other countries, and to provide for matters connected therewith
- On the same day Proceeds of Crime Act 77 of 1996: Meant to provide for the recovery of the proceeds of crime, for the prohibition of money laundering and an obligation to report certain information and to provide for matters connected therewith
- The Extradition Amendment Act is an amendment of the Extradition Act of 1962, and in terms of a section of the Amended Act: Any person accused or convicted of an extraditable offence committed within the jurisdiction of a designated state shall be liable to be surrendered to such a designated state, whether or not a court in South Africa has jurisdiction to trial such a person for such offence.

The Prevention of Organised Crime Act 24 of 1999 as amended, introduces measures to combat, amongst others; AFF, organized crime, money laundering and criminal syndicates and prohibit certain activities relating to racketeering activities. This Act also provides for the prohibition of money laundering and an

obligation to report certain information, and criminalises certain activities associated with gangs, as well as provide for the recovery of the proceeds of unlawful activity, civil forfeiture of criminal assets that have been used to commit an offence or assets that are the proceeds of unlawful activity, and to amend the International Co-operation in Criminal Matters Act.

The Regulation of Interception of Communication and Provision of Communication-Related Information Act, number 70 of 2002, and also known as RICA, was passed by Parliament and promulgated on 30 December 2002. However, the date of coming into effect was suspended until a notice appeared in the Government Gazette.

Of particular importance regarding the prevention of AFF, this Act places the onus on Internet Service Providers (ISPs) and cellular network providers to make it possible to intercept emails and cellular phone calls. The Act further stipulates that Service Providers will have to install the necessary technology and set up data lines to provincial interception centres at their own cost. Furthermore, ISP's and cellular phone operators will have to retain e-mail and call related information for specified periods. This would go a long way in preventing AFF, because of the vast use these perpetrators make of Internet and cellular phones.

The high incidence of AFF and money laundering in South Africa paves the way for the establishment of the Financial Intelligence Centre (FIC). The FIC is a Government agency meant to receive financial information from accountable institutions; a range of financial institutions that have a responsibility to report to the FIC in terms of the Financial Intelligence Centre Act of 2001.

The Financial Intelligence Centre was established under the Financial Intelligence Centre Act, 2001 which came into effect in February 2002. However, it started receiving reports of suspicious and unusual transaction in February 2003 (Financial Intelligence Centre Act 2001). The Act also set up a regulatory

anti-money laundering regime that intends to break the cycle used by organized criminals groups and AFF perpetrators who benefit from their illegitimate business transactions.

In order to fulfil its objectives, the Centre collects, processes, analyses and interprets information reported to it in terms of various statutory reporting obligations. The Centre then uses the information to inform and advise law enforcement authorities, supervisory bodies, the South African Revenue Service and the Intelligence Services and cooperate with these bodies in the performance of their functions.

It is also worth noting that the Financial Intelligence Centre Act of 2001 introduced a comprehensive anti-money laundering regime in South Africa which satisfies the major Financial Action Task Force (FATF) recommendations (Financial Intelligence Centre Report 2005).

FATF, which is a de facto international coordinating body responsible for combating money laundering, consists of twenty-nine member countries and two regional bodies. The report maintains that FATF has developed a set of Recommendations that spell out the principles of the body and acts as a global standard for combating money laundering and other financial crimes such as AFF. It is reported that this set of Recommendations is known as the FATF 40+8.

It should be noted that cross border financial crimes could not be dealt with in isolation, by one country, because of the ease with which money is able to flow across borders. Hence, any attempt to prevent this would require a co-ordinated and mutual support between countries. More importantly, South Africa's membership of FATF makes it easier for FIC to access other financial intelligence units on a continuous basis, thereby enabling it to share information and expertise in the fight and prevention of financial crimes and AFF.

The next subsection discusses the initiatives of the United States Government in the field of the prevention of AFF.

6.4.3 United States

Due to the high rate of victims of AFF in the United States, the U.S Representative Edward J. Markey introduced the Nigerian Advance Fee Fraud Prevention Act of 1998 which was meant to bring its perpetrators into the forefront of the American public, and focus the government's attention on the implementing a national and international strategy to combat this fraud. According to Markey, the Act was aimed to direct the Secretary of State and the Secretary of the Treasury to jointly report on actions taken by the Nigerian government in apprehending the perpetrators of AFF, efforts taken by the United States to inform America about such fraud, and other such actions which are or should be undertaken to end it, including the imposition of sanctions on the Nigerian government (Markey 1998:1).

In the late 1980s, the U.S. Secret Service took a proactive approach to combating Nigerian organized crime by establishing and maintaining task forces throughout the United States whose main focus was the investigation of financial fraud committed by Nigerian nationals and their accomplices (The 419 Coalition 2003:1).

In May 1996, pursuant to the PDD-42, a Federal law enforcement interagency working group was created to develop a domestic law enforcement strategy addressing AFF. The strategy that was developed targeted both domestic and international Nigerian criminal activities, and emphasised the increased coordination of U.S. law enforcement, the sharing of investigating leads and information, and enhanced co-operation with foreign law enforcement counterparts to co-ordinate multinational cases and investigation (Nigerian bust 2003:2)

Moreover, by providing co-ordination and dialogue with the government of Nigeria, especially Nigerian law enforcement officials, this strategy strengthened their ability to combat crime occurring within Nigeria, and assist in combating crimes committed elsewhere in the world, by individuals and organisations located in Nigeria (Nigerian bust 2003:2).

The proposed enforcement efforts of the strategy became known as the Nigerian Crime Initiative (NCI). The working group also proposed to utilise a computer database to share Nigerian case data electronically. It was later agreed that the Department of Defense/Defense Information System Agency's Anti-Drug Network (ADNET) would be the mechanism used to share this information. ADNET uses web based data technologies and a classified communication system to enable participation and to securely exchange data.

In 1988, the then Attorney General approved the recommendation of the working group to established the Interagency Nigerian Organised Crime Task Force (INOCTF). Additionally, it established the installation of the ADNET-NCI system to support these task forces and selected foreign sites. As a result, the Secret Service hosted the INOCTF that was established from existing Secret Service Nigerian Crime Task Force located in New York, Chicago, Houston and Atlanta. Overseas ADNET terminals have also been installed at the U.S consulate in Lagos - Nigeria and Accra - Ghana. The Secret Service provides the following resources as host to a task force:

A full-time Criminal Research Specialists (CRS), trained in the use of the ADNET terminal, is assigned directly to each task force. This individual acts as a point-of-contact for all participating task force personnel.

Due to American efforts to prevent AFF, a global Americanisation of foreign systems has occurred. Their efforts, in this case, have shaped the evolution of the criminal justice systems of many countries. Most countries, in response, have

signed extradition and law enforcement treaties, and hosted American agents. Gerber and Jensen (Berg 1998:16) contend that although the United States has not solely spread the war on AFF and transnational fraud, it has taken the lead and its approaches are dominant. The United States has law enforcement representatives in most countries; it has also demonstrated the most powerful influence on criminal laws, procedures and investigatory tactics; it has created a global police presence and thus its role in the containment of AFF and transnational organised crime has been invaluable in this regard, Nadelman (Berg 1998:16).

The strategies employed by the United States agencies and organisations have been directed at global co-operation and the sharing of initiatives, with Nigeria and other countries, to combat this fraud. The transnational and organised nature of AFF makes it inevitable that countries establish some prevention mechanism.

6.5 DIFFICULTIES IN THE PREVENTION OF AFF

6.5.1 Lack of Understanding

Law enforcement agencies or the government usually experience difficulties with regards to the prevention of most crimes and the case of AFF is no exception. Difficulties in the prevention of crime would arise because of the inconsistencies within the law, in terms of detection, investigation, inefficient evidence to secure a conviction and more importantly, insufficient knowledge regarding the phenomenon to be prevented.

The findings of this research indicated that there are some difficulties that are associated with the prevention of this complex form of fraud. This research found that preventing this fraud is difficult because law enforcement officials and the society outside West Africa do not fully understand the manifestation of this fraud. Also, owing to the fact that there are many systems and methods used to

execute this fraud further frustrates any prevention efforts. It was also found that so long as man remained egoistic and aspire to live beyond their means, this fraud would be difficult to prevent. The collusion with government and bank officials were also found to be a stumbling block in any prevention efforts.

The perpetrator who took part in this research acknowledged these difficulties. In his statement, the perpetrator in Case 2 said: *"... men will continue to aspire to be rich, men will always aspire to have the best things in life, and they will follow whichever way they think will be able to give him that. So it's basically impossible for you to say to stop. Because even if you offer that kind of person incentive of say R100 000 salaries a month and he still believes he can convince somebody to pay him half a million dollars cash. I tell you my brother he wouldn't stop. He wouldn't stop. A lot of people are entering it these days. Even people you look at as very legitimate people. Obviously you cannot get statistics, but they are there. You find kids of the school, you find a lot South Africans, Angolans, Mozambicans, Zambians, and everybody is into it. Because it's not something that stresses you, you send letters, a fax letter, and that's it. That's the work you do. And the turnover of it, if you are successful, it's more than enough, so why would anybody leave it?"*

The perpetrator in Case 4 said: *"... Yes you cannot. Hey my man, there, it is difficult. You can stop...like now, they stop 419, no, they stop it. But people are using other methods to make money. People are changing their methods. Ok, this one they discovered. They will build a new one. Its something...it's hard to stop it. If you say you'll stop it, which is a lie. If there are more jobs and things...from here, what you are doing, I can guarantee you that you will never succeed"*.

Similarly, the perpetrator in Case 5 said: *"...I've also made my own research. I've been here for three years now. I've made my research, I've come down to my senses, I've only found out that...there's nothing...you cannot prevent*

fraud...Because the thing is, those officials inside, those who are working in government institutions, those who work in banks, they also involve fraud. They work with outsiders. So how can you prevent it? It is so hard to prevent. That's what I can say".

6.5.2 Use of fraudsters to overcome these difficulties

Despite the difficulties associated with the prevention of AFF, this research found that these difficulties can be overcome if the same fraudsters/West Africans are used to investigate themselves. This would therefore mean that the fraudsters will make it possible for all evidence to come to the fore and he would shed light and assist law enforcements agents in the understanding of the variations and *modus operandi* often use by perpetrators.

In the regard, the perpetrator in Case 4 said *"... It's better for you to use the same fraudster. Without that there's no way to stop this fraud. I've been in Italy for 10 years, but when I reached there, fraud was still growing".* He also said *".... the system here that they are using to investigate fraud, it's very poor. From the South African police and the Scorpion, it's very poor. They just produce a plea bargain and then...But if you want to investigate fraud, use a fraudster to catch a fraudster, they'll tell you what happened. But just to take somebody who doesn't know fraud to investigate fraud, it's very difficult. What you are giving to him, what you will offer him, and he's going to help you to get enough evidence. No they know. They can tell you this, this, how these things happen. And which part of the business, they'll explain you. And from that investigation, you'll get a clue of how to start with this one. Not to say that to get evidence is difficult. You can get evidence, but that evidence is not enough to convince the court, to convict someone... even the FBI... I was in Europe; my friends, they used to be arrested for the same fraud. It took two months from America to Italy. But the FBI from Italy, more than 6 months full time, they couldn't get anything. And even the guys sue the FBI. He took the money from a victim, and when they come to him,*

he said that you are taking chance, and he sued them". This perpetrator further said: "... we can prevent fraud, we can prevent it. You must use the same fraudster to prevent it. If you don't use a fraudster you can't prevent it. Whatever I am explaining to you here, if you go and try the same fraud, you can't do it. Somebody can take your money. Without that information, you won't be successful to prevent it".

6.6 CONCLUSION

The review of crime and fraud prevention indicates that taking criminal action in the area of fraud is however, neither simple nor quick. In a study of serious fraud cases, the average time that occurred between the commencement of the criminal conduct and the imposition of sentence was over four years. In one case approximately 16 years progressed between the commencement of the criminal conduct and the final termination of court proceedings, which included an appeal.

Financial consideration mean that only the most serious cases involve substantial monetary losses and if the victim was killed the cases are likely to be investigated and tried, with the added possibility of convicted offenders receiving the most severe sanction of a term of imprisonment. The legal response to AFF control has, therefore, been severely restricted, although the possibility of criminal prosecution and sanction has always remained open. The extent to which severe sentences should be used for AFF offences has been subject to considerable debate over the years. It has been argued by the 419 Coalition that the sentences imposed on AFF offenders in Nigeria have sometime been inadequate, although some lengthy terms of imprisonment have been imposed in some serious cases. Criminal prosecution and punishment should, and will always remain an option for AFF offenders, but there are compelling reasons to suggest other remedies to supplement other traditional forms of punishment – prevention: public awareness and education, recruiting West Africa to assist

investigators and the intervention of the African Union to stop massive corruption in African countries.

The findings of this chapter are presented in table 6.1 below:

Table 6.1 Prevention

CJS prevention	National prevention	International prevention
Police, courts, prison	Tighten service granting	Harmonize international fraud laws
Deterrence	Asset forfeiture laws	Educate potential victims
Rehabilitation	Speedy prosecution	Identify potential repeat-victims
Incapacitation	Specialise dedicated courts	Spread AFF information
Just deserts	Increased co-operation	Prosecute AFF victims also
Retribution	Stop intercepting international phone calls	Desist greediness
Denunciation	Freeze scam accounts	Institute preventative civic journalism
Imprisonment	De-register professionals co-operating with fraudsters	
Hard sentences	Expose offenders	
Monetary fines	Monitor Internet Café's	
	Punish banks with AFF accounts	
	Prevent 419-e-mails to leave their source	
	Co-ordinate intelligence	
	International global co-operation	
	Increase policing of AFF	

In table 6.1 the typology of prevention nourishes the prevention strategies. These in turn funnel down to CJS-prevention techniques. However, these are hampered by some difficulties, including lack of understanding and lack of law enforcement. It is clear that national prevention strategies and international ones should be integrated and co-ordinated. Thus the prevention of AFF can become, criminological speaking, an effective AFF-reduction tool.

However, by suggesting that the effectiveness of some AFF prevention efforts may depend upon their institutional contexts, one does not present a pessimistic vision of the future. While some might say that no one strategy can work until the root causes of AFF can be cured, there is no scientific base for that conclusion, and substantial evidence against it. What this research suggests, is that the potential for something much more precise and useful exist, based on a more open view of the role of scientific evaluation in the prevention of AFF: a future in which strategy evaluation carefully measures, and systematically vary, the institutional context of each strategy. That strategy is essential for a body of scientific knowledge to be developed.

The next and final chapter of this thesis will focus on the findings, recommendations and the scientific contribution of this research in terms of understanding this complex phenomenon and its prevention.

CHAPTER SEVEN

FINDINGS AND RECOMMENDATIONS

7.1 INTRODUCTION

This research has attempted to empirically and scientifically explain, examine and analyse AFF. In this attempt, the researcher has endeavoured to provide a coherent, credible and comprehensive exposition of AFF, facilitating the understanding of this complex form of fraud, and most importantly placing it in a criminological and victimological perspective.

This research has not only promoted focused intervention with regards to the impasse in the investigation and prevention of AFF, but it has also shed some light within the wider fraud milieu, thus recognizing and ultimately elevating the status of criminological crime from parochial pariah to principle priority in the understanding and explaining this form of fraud. This research reveals that AFF is no longer an issue limited to West Africans/Nigerians or race, but a criminal conduct that requires actions similarly to other forms of fraud and organised crime, prevalent in South Africa.

The next sections provide – findings and recommendations – highlights the contributions of this research to this field of study.

7.2 FINDINGS

In this research five intrinsic themes have essentially been examined, analysed and explained, namely: the nature and extent of AFF, the perpetrators, the victims, the adjudication, and prevention of AFF. The focus on these themes provided a chronological, lucid and holistic perspective of AFF, exposing the fundamentals which underpin this form of fraud as well as those factors that serve to endorse and perpetuate it. AFF is founded on the argument that bad

governance (corruption) in West Africa needs to be understood and addressed within this sphere and that only through structured, good governance and the focused integration of theory with practical intervention that this complex phenomenon will be eliminated.

It should also be underscored that the empirical research presented in this thesis has unequivocally shown that AFF can be ascribed to a combination of factors, working together in the execution of this fraud. It was also revealed in this thesis that deficiencies regarding compliance/investigation, extradition, lack of evidence, compounded with the diverse international legislation, as well as other peripheral issues poses a major obstacle in the prevention of this fraud. A concerted effort to eliminate these elements is imperative to the success of AFF prevention. Hence, it is submitted that the interdependent and indivisible management of international resources to fight this fraud is of absolute importance.

The findings that adequately encapsulate the central issues of this thesis are discussed below in more detail:

7.2.1 The nature and extend of the crimes

The initial phase of this research was directed at exposing the nature and extent of AFF, as it occurs and is perpetuated worldwide. This part of the research exclusively and effectively unravelled the findings of this form of fraud. This research study found that AFF, although it originated in Nigeria, it is now a worldwide phenomenon. The research found that there are many forms of AFF and the most common form prevalent in South Africa is money transfer or wash-wash.

It was also found that AFF usually begins with one form and end up as another form of AFF. A new form of AFF, which is referred to as: “spiritism” and “*fimash*”,

of which no information is available in the literature, was uncovered during the empirical research. This research found that this fraud may begin as money transfer and when the victim visits the resident country of the perpetrator, the perpetrator would use another form which is black currency or wash-wash/*fimash* and end it with spiritism. Interestingly, the whole processes of black currency or wash-wash fraud were uncovered. This research illuminates how the perpetrators introduce this fraudulent 'business' to their victims, how they contact the victims, how they convince victims to pay them and finally how they depart with the victim's money. In this regard, the various complications used by perpetrators were also uncovered. The findings also support the fact that the high rate of unemployment and business opportunities for investment, comparable to other African countries, was associated with this form of fraud in South Africa. The findings also support the premise that AFF is very organised, specialised and well networked with associates all over the world.

From the nature of these findings it can be deduced that AFF is indeed a complex criminal activity, and this explains why the perpetrators usually succeed to defraud victims as many times as they can, without the victim coming to their senses. The complexity of this fraud was also found to be the reason why it is difficult to detect, investigate, arrest and prosecute offenders.

7.2.2 The perpetrators

In order to sensitise and orientate readers to the perpetrators of AFF and to furthermore foster an understanding of the complexities and interactions of perpetrators with their victims, this section of the thesis has endeavoured to provide a succinct but systematic and comprehensive overview of these particular groups of perpetrators *inter alia* emphasising the nature and organisation of these perpetrators, their characteristics, whilst simultaneously illustrating their *modus operandi*.

Nature of perpetrators

As per the nature of these perpetrators, it was found in this research that the lack of face-to-face contact in this crime, at the initial phase, allows the perpetrators to impersonate government and corporate officials to increase their credibility, and in some cases, to coerce reluctant victims. This was found to be a common factor in all letters that they sent to prospective victims. It is acknowledged that they do not use their real names because they want to create the impression that their letters are from the General Manager, Presidents, Chiefs, Mayors, Sons/Wives of former presidents, and Directors of companies.

The findings of this thesis reveal that the lifestyle of perpetrators is all about ostentation, ostentation and more ostentation. Ostentation and more ostentatious goods/materials were found to be part and parcel of the mind and lifestyle of AFF perpetrators. These groups of individuals are well known travellers, both nationally and internationally. These fraudsters travel to complete a job/business, to enjoy their loot, to evade law enforcements agents and to stay away from their victims in cases of local victimisation. This research also indicated that these fraudsters travel to invest their stolen money especially in their native country.

Organisation of the perpetrators

In terms of organisation, it was found that AFF perpetrators are well organised and they operate as a network, both nationally and internationally. Nationally, it was found that they networked and operated with government officials, law enforcement agents and businessmen. As a matter of fact, research submitted the role the bankers play in the facilitation of the commission of AFF. The research found that bank officials assist these fraudsters by giving them information regarding the processes involved when conducting international banking transactions. This, of course, makes it easier for the perpetrators to deceive their victims. It also became evident that perpetrators of AFF

commission or outsource their business/crime. It was found that amateur perpetrators would hand over or transfer a victim that he has hooked to an experienced perpetrator for a 50-50 sharing of their loot when the fraud matures.

The Internet was revealed to be one of the instruments that AFF perpetrators used to contact victims. They use this facility to send emails that propose business investments, or the transfers of funds from Africa or any trouble area around the world to Europe and America. This research found that these fraudsters spend most of their time at Internet cafés, sending emails to victims. The findings indicated that AFF use Internet cafés as their offices and they have special rooms and computers that they use.

Another significant finding is that a typical AFF perpetrator was found to be male with an average age of 35 years, and business as his profession. Contrary to other fraudsters, this research found that AFF perpetrators are very patient. It was revealed that the perpetrator would wait for a long time (from 3 months to 1 year) for their deal to mature. So patience is one of the outstanding characteristics of these fraudsters.

Modus operandi of perpetrators

In terms of the *modus operandi* used by these fraudsters in order to commit AFF it was found that they did not act alone, that criminal specialists or low-level expendable individuals are used on a once-off basis or sporadically, but many are said to be professional criminals who provide their services on a continuing basis. The use of violence and intimidation also emerged as a means to manage and maintain their fraud amongst themselves and their victims. Corruption was found to be a *modus operandi* used by these perpetrators to penetrate the systems in the country where they operate. In this study it was found that AFF perpetrators, in order to facilitate and get away with their fraud, corrupted law enforcement officials, government officials and banks official. Identity fraud and

misrepresentation by perpetrator were found to be reasons why perpetrators were able to insulate themselves from law enforcements agents, as this facilitates their movement in and out of a country.

As with most organised crime, operating legitimate businesses was found to be one of the *modus operandi* used by AFF perpetrators in order to disguise their ill-gotten funds. In this research, it was found that AFF perpetrators in South Africa were/have been owners of Internet cafés, groceries shops, importer and exporters businesses, liquor businesses, night clubs and some were hawkers. It should be noted that these legitimate businesses act as fronts to justify what perpetrators do for a living and as means to launder money.

This research found that AFF is all about manipulation and deceit of victims. Perpetrators have special manipulating skills to cajole and entice their victims to get involved into their business proposals. The fact that most of the proposals emphasised urgency, anonymity and at times excitement, are geared towards preparing the victims for manipulation when the business starts.

This research stated that AFF perpetrators even make use of law enforcement agents in the execution of their crime. In this regard, police officers were found to have been used by perpetrators to discharge/scare victims. In some instances, police officers act as accomplices and are said to even employ perpetrators. Hence police involvement in this type of fraud would suggest why these fraudsters are so successful and at times are able to avoid detection and the justice system.

Throughout this thesis, it was found that the perpetrators are usually very successful at executing this type of fraud and their success partly explains why most people with legitimate jobs perpetrate this fraud.

7.2.3 The victims

In this research, the researcher explored AFF victimisation as it occurs, from the time an individual is introduced or coerced to take part in a business that he/ she is informed is illegal, up to the time the perpetrators depart with their money. Interestingly, this research has actually shed some light into the lives and minds of these victims, from the perpetrator's perspective.

In terms of categorisation, it was found that individuals easily fall victim to money transfer and black currency (money cleaning /wash-wash). The victims of the money cleaning type of AFF were found to be local South Africans and victims of the money transfer type of AFF were mostly foreigners. However, it was also found that those foreigners who were victims of money transfer, once they come to South Africa to finalise the deal, they may also become victims of the black currency type of AFF. This happens because the perpetrators usually change their approach from one type of problem to another. In certain cases, the initial proposal was to transfer money from Africa to Europe or America and when the victim has paid the first and second instalment of the transfer fee, the perpetrator would then change the story and ask the victim to come to their base country. From there he will be introduced to black dollar and then they would start talking about money to buy a chemical to clean the money.

The research found that the change of the business motive would lead to multiple or repeated victimisation of AFF victims. Most victims of this fraud lost money more than once to the same perpetrators or to different perpetrators within the same network. It was found that the moment a victim got involved in the 'business' he/she would be victimised repeatedly. According to the findings of this research, these victims were repeatedly victimised because of their hopes to recover part of the money they have invested into the business. Hence they continue to pay, despite all the complications, hoping that the business will bear fruit.

The findings in this research indicate that AFF victims vary, but in most cases the perpetrators target those whom they believe have money. In this regard business people are their prime targets. In terms of gender, studies indicate that AFF victims are of both sexes. However, it is acknowledged that males are more often defrauded than females. In some cases, husbands and wives were found to be victims of this form of fraud.

The findings of the empirical part of this research indicated that both Africans and Caucasians are victims of AFF. However, the findings suggest that race would come into play depending on where the victim is based. Most victims of the money transfer type of AFF were found to be foreigners from Europe and America. This automatically means that they will be Caucasian. The victims of the black currency type of AFF in South Africa are both African and Caucasian whereas the victims in other African countries are only African.

A fundamental finding in this research is that greed was found to be a core characteristic of all the victims of AFF. Most people fall victim to AFF because of their greed and love for money. Hence, those who love money and want something for nothing are more likely to be victims.

It was found that, only those who are greedy would accept to take part in a deal of questionable legality. This eventually linked them to any criminal charges that might arise. Hence, they are victimised repeatedly and hardly ever report this fraud to the police.

7.2.4 Adjudication

Despite the problems associated with the adjudication of AFF perpetrators, this research was able to find that the South African law enforcement agents have made breakthroughs. The research study found, however, that the role of the

police is very paramount in the arrest and investigation of AFF perpetrators. In this regard, the South African Police Service and the elite service (Scorpions) adopt an aggressive and spontaneous sting operation to apprehend these fraudsters. Their approach led to successful investigations, arrests and convictions of some of the AFF perpetrators in South Africa.

The South Africa law enforcement agents adopted an investigative technique that assists them to arrive at a successful conviction of the accused. In the first place this research revealed that, despite the complicated nature and processes in the adjudication of AFF perpetrators, South African authorities had succeeded to put some of these offenders behind bars. In this case it was found that, the introduction of a plea bargain by prosecutors made it possible to put these fraudsters behind bars.

Plea bargain

The main reason identified in this research study which led to the successful conviction of the offenders was that the offenders were persuaded to enter into a plea bargain for a lesser sentence or a fine. Usually, the state would succeed in convicting these offenders when they pled guilty, and the court would impose the minimum sentence.

Problems in adjudication

In this research it was found that the identification of suspects was one of the impediments when it came to the arrests, investigations and prosecutions of the fraudsters. The offenders are everywhere and they move from place to place and from country to country. It was also found that perpetrators had multiple identities, and this makes it very difficult for law enforcement agents to track them down and apprehend them.

In this case, the research revealed that the criminal laws and procedures made the adjudication of AFF perpetrators very difficult. This is because of lack of evidence and the fact that the complainant usually does not report what really took place, if they report it at all, they change the scenario and this complicates the already complicated situation.

It has also been established in this research study that the law enforcement officers do not actually follow the criminal procedures when they investigate AFF cases. This is due to the complex nature of the crime. Hence, if they have to follow the prescribed legal procedure, they would hardly ever secure a conviction. It has been acknowledged in this research that the transnational nature of AFF leads to difficulties regarding the search and seizure of the equipment that would serve as evidence used in the commission of AFF, and this hinders the investigations and prosecutions of these fraudsters.

It was established that in cases where the investigation takes place where the perpetrators are based, the search and seizure of equipment could be an easy task. Some of the perpetrators referred to some equipment that was seized at their premises which served as an important piece of evidence that eventually led to their conviction.

A fundamental finding in this research is that the adjudication of AFF perpetrators is hindered owing to lack of evidence. All the perpetrators who took part in this research raised this factor. In this regard, most of the cases are thrown out of court or the perpetrator would receive a small fine and subsequently be deported to his native country because of lack of evidence.

7.2.5 Prevention

Throughout this thesis, the techniques or strategies that had been used to prevent this type of fraud were found to be inadequate. The way with which these

fraudsters execute this crime and the complex nature of their operations, hampered any attempts to prevent this fraud. However, this research made some significant findings that could be applied in order to prevent this type of fraud.

As is the case with most crime prevention strategies, this research found that primary prevention would, in some way, prevent people from becoming victims of this fraud. The perpetrators perspectives revealed that people should not reply to unsolicited mail and people should discuss any business proposals with their friends and families or business advisers/ consultants before getting involved.

In the case of secondary crime prevention, it was found to be a strategy that may be employed to prevent AFF. Business people are highly at risk to become victims of AFF, since AFF perpetrators target them, hence intervention programmes need to focus on this group of professionals. In this regard honesty, patience and consultations in any business related matters should be encouraged amongst business people.

This research study highlights that prevention that occurs at places where this fraud is most common is a good method of prevention. The findings of this research acknowledge that Internet cafés are used in the execution of AFF especially, especially where the money transfer type of AFF is involved. It was also noted in the research that most foreigners spend whole days at Internet cafés and some even use it as their office. Hence, the suggestion that prevention should focus on Internet cafés. Internet café owners should be mandated, by law, to check on their clients and notify them that they are not allowed to use the Internet cafés' facilities to commit any criminal activities.

In this research, judicial punishment was found to be more effective strategy in the prevention of AFF. However, this can only occur if the victims report the crime to the police or if the police are able to detect the fraud, and arrest the offenders with sufficient evidence to secure a conviction. The perpetrators who

took part in this research concur that the judicial punishment was a good strategy to prevent AFF, especially the deterrent effects of the punishment - imprisonment. It was found that legal deterrence through imprisonment would serve as the best preventative method for AFF. Apart from the fact that imprisonment would remove them from the society, it also serves as a period of education and rehabilitation for these offenders, as acknowledged by some incarcerated offenders.

It has also been strongly argued and found in this research that public awareness and education will assist to prevent AFF. It is believed that information about a particular type of crime and its manifestation would safe-guard individuals against victimisation. Hence, this research indicated that awareness and education about AFF would assist in the prevention of this type of fraud. The role of the media, radio and television, would assist with the education of the public and create awareness amongst victims and potential victims.

As per the victimisation focus prevention strategy of AFF, this research has found that it is absolutely necessary to focus on the victims and potential victims. Some perpetrators submitted that victims of AFF should be prosecuted because they are part of a conspiracy to siphoned or become the beneficiary of ill-gotten funds. According to them prosecuting the victim would send a message to those who engage in these types of activities that they will face the hostile side of justice.

This research also revealed that this fraud could also be prevented if people or potential victims stop being greedy. It should be recalled that, victims of this fraud were found to be very greedy. Hence, desisting from this human trait would prevent this fraud. The perpetrators of AFF are fully aware that victims of this fraud are greedy and they use this character trait as a motivating factor to repeat the victimisation.

It should however be noted that law enforcement agencies or the government usually find it difficult to prevent crimes, and AFF is no exception. Difficulties in the prevention of crime would arise because of the inconsistencies within the law, as well as difficulties in terms of detection, investigation, and inefficient evidence to secure a conviction. More importantly insufficient knowledge regarding the phenomenon to be prevented creates one of the biggest barriers with regards to the prevention of AFF. These research findings therefore indicated that preventing this fraud is difficult because law enforcements officials and the society outside West Africa do not fully understand the manifestation of this fraud. Owing to the fact that there are many systems and methods in place that allows this fraud to be executed further frustrates any prevention efforts. It is also revealed that as long as man remains egoistic and aspire to live beyond his means, this fraud will be difficult to prevent. The organised nature of the perpetrators and the fact that governments and bank officials assist/ work with these fraudsters poses a stumbling block for any prevention efforts. These difficulties were acknowledged in this research, and suggestions to overcome these impediments were made that would lead to prevent this type of fraud.

Despite the difficulties associated with the prevention of AFF, this research found that these difficulties could be overcome if the same fraudsters/West Africans are recruited to assist with the investigations. This would therefore mean that these recruited fraudsters, who are either reformed or retired fraudsters, would shed some light onto the investigations (of evidence) and an understanding of the variations and *modus operandi* often used by perpetrators would come to the fore.

7.2.6 Theoretical explanations

Based on the salient features of AFF identified in this thesis, this research was undertaken with the intention to develop an integrated, authentic and plausible justification for the existence and persistence of this complex phenomenon.

Ideologies such as the classical, positivist, and conflict schools of thought, through which criminology evolved, were concisely examined as a precursor to the creation and formulation of an integrated theoretical explanation of AFF, the perpetrators and the victims.

The theoretical explanation produced for AFF was constructed from existing theories by assimilating their relevant elements into an integrated model, capable of adequately and logically explaining this phenomenon, and not only one particular theory was forced or manipulate into explaining something it cannot.

In an attempt to explain AFF, it was found in this research that these individuals tend to strive for short-term gratification without taking account of the possible long-term consequences of their actions, in this case crime. Such persons are characterised by impulsiveness, aggression and indifference to the opinion of others. Accordingly, this explanation of AFF is based on the assumption that human behaviour is motivated by self-interest, in that pleasure is sought and pain avoided. This research also found that a typical AFF offender does not display deviancy problems such as alcohol or drug use, poor performance or social maladjustment.

It was also found that cognitive behaviour plays a role in the explanation of AFF. Hence a person of low intelligence will not be capable of committing computer fraud, convince or manipulate people, and write complex letters. This explanation indicates that AFF perpetrators are intelligent, since the crime requires special skills and knowledge which is supported by this research.

Supporting this assertion is the fact that the degree of intelligence influences a person's social position in society and this, in turn, offers the opportunities for overseas travel and possible contacts or opportunities to commit fraud. An intelligent person may have access to computer systems, a database of

companies and governments, bookkeeping skills and international business language which is used to commit fraud.

Cognitive theorists assume that offenders are rational actors. The way in which people make decision is very important in understanding criminal behaviour. As with the biological and the psychodynamic perspectives, the cognitive perspective relates to the internal processes of a person. Rather than emphasising urges, needs and motives, the emphasis falls on how people interpret and use information to resolve problems, and of course, commit crimes. Thus the cognitive perspective places greater emphasis on current thinking and problem-solving strategies than on a person's history. The individual is regarded as an information processor and they gather, store, modify, interpret and comprehend internal and general information as well as environmental stimuli. Through their influence on cognitive processes, schemes enable people to rapidly identify stimuli, group them into manageable units, and supplement missing information to develop a strategy for obtaining further information in order to resolve a problem or realise an objective.

The labelling theory focuses on the process that leads to crime and the advocates of this theory are concerned with the effect of labels on the person who is labelled. In the case in point most West Africans/ Nigerians have been labelled in South Africa/Western countries as drug dealers and fraudsters. This concept of label treats the label as an independent variable, a causal agent that then creates criminal behaviour in some of these individuals.

This process causes crime because the label creates a reaction and individuals who have been labelled become more visible in the sense that people are more aware of them. This awareness often causes them to be watched more closely. Especially important are those at the law enforcement agencies who closely watch individuals once they have come to the attention of their agency. In this regard, those who are labelled become the client of the criminal justice system,

and, like any other good business, the system keeps close tabs on its customers. Accordingly it becomes difficult for those labelled (West Africans/Nigerians) to escape the attention of this audience, and subsequent AFF behaviour is likely to be identified and relabelled. The point to note here is that West Africans/Nigerians who are identified as 'criminals' have fewer chances to make good in the conventional world in South Africa. This means that conventional avenues to success are often cut off, and illegal (AFF) means may become the only way left open to them.

The findings of this research suggest that one reason why immigrants, Nigerians and West Africans are involved in Advance Fee Fraud is because they have very few legitimate opportunities for employment and make money. This is exacerbated by their arrest and subsequent criminal record which makes it difficult for them to find legitimate employment. Employers, who would not hire the individual before are even less likely to do so once the immigrant has a criminal record. Hence there may be little for the individual to turn to except to AFF. This explanation indicates that continued AFF behaviour is therefore not a matter of choice, but takes place because the person's choices have been limited by society.

In order to appreciate and use learning theory as an explanation of AFF, this research found that AFF is a learned behaviour. It is a criminal behaviour that requires the young recruits to actually receive some training from those already in the profession. This theory is supported by the use of the Nigerian Handbook, which outlines the processes involved in the execution of AFF.

The rational choice perspective was found best able to explain AFF. This perspective stresses calculated decision-making, arguing that offenders choose how to act after determining the likely payoff from a particular kind of behaviour. The rational choice perspective focuses on the processes by which individuals initially decide to violate the law, choose to continue in a life of crime, and

eventually opt to desist from crime. However, it was found in this research that not all AFF offenders calculate rewards and risks in the same way. Some of the many factors that affect the choices people make are age, marital status, group ties, social class background, opportunities for legitimate careers, and attitudes towards work, willingness to use violence, preferred lifestyle, identity, and values.

It was found that their decisions to commit this type of fraud are affected by lower-class and working-class values such as autonomy, toughness, and excitement; by their lack of opportunities for legitimate careers; by their low aspirations; and their desire to gain the respect of others. This was found in this research to be applicable to AFF offenders whose decision to commit fraud are made in the context of a lifestyle characterised by a “life as party” attitude, meaning that they seek the enjoyment of ‘good times’ with minimal concern for obligations and commitments that are external to their immediate social settings.

This research also found that many AFF offenders find that the rewards of crime justify their violation of the law. Some of the AFF offenders argue that the income they derive from AFF is more certain and more substantial than the income they could earn from the legitimate jobs that are available to them. Some of these offenders also argue that, even if they were paid the amount they realise from criminal activities, many of them would continue to violate the law because of the non-economic rewards of AFF. In this case, one would suggest that non-economic reward of criminal behaviour is the challenge of violating the law and getting away it, which is important in many computer related crimes and fraud.

The primary risk associated with crime is the threat of arrest, conviction, and punishment. Offenders often plan their crimes to minimise this risk, but most people who continue with their criminal activities for any significant amount of time are eventually arrested. This explanation was found to be one of the reasons behind the increase incidence of AFF in South Africa and even internationally. It was also found that continued AFF activity increases some

offenders' expertise, thereby minimising their chances of being arrested, but with continued success many offenders become over-confident and careless. Chance plays an important role in determining whether an offender will be arrested for a given crime, an offender's luck will eventually run out if he or she continues to break the law. Hence some of them end up being arrested.

For AFF perpetrators, the risks are relatively small because few of them are convicted of a crime, and the courts usually treat those who are arrested leniently. Perhaps the major risk they face is the loss of reputation. The instrumental nature of fraud lends itself to a careful calculation of the cost and benefits of violating the law.

Criminologists have attempted to develop integrated theories that explain white-collar crimes and fraud by incorporating insights from different theoretical traditions that account for fraud at different levels. Coleman (1987) developed an integrated theory that centres on the coincidence of appropriate motivation and opportunity. He stated that culture generates motives for lawbreaking when it emphasises possessive individualism, competition, and materialism; justifies rationalisation; and removes unified restraining influences. This means that a built-in structure of opportunity renders white-collar crime and fraud both less vulnerable to legal controls and sanctions (due to the disproportionate power of the elite in the formulation and administration of the law) and opens to a variety of attractive possibilities for disregarding or violating the laws that do exist.

In this research, it was found that various factors, including the structure of opportunity, the nature of financial reimbursement, and the occupational subculture, could render some occupations more conducive to illegality than others. Accordingly, AFF is most pervasive in societies that nurture a culture of competition, in organizations that are financially pressured, and in occupations with special opportunities and sub cultural values that promote illegality.

The findings in this research support Braithwaite's (1989) integrative theory which is based on two traditions: structural Marxist theory which links fraud with the promotion of egoism in capitalist societies, and differential association which holds that fraud is learned relative to differential opportunity. Accordingly, nations with high levels of inequality of wealth (West Africa/Nigeria) and power will have high rates of both fraud and conventional crime because they produce a broad range of illegitimate opportunities that are more rewarding than legal opportunities. As a result, AFF specifically is a response to relatively more attractive illegitimate opportunities and the sub cultural value system that rationalises the taking advantage of these opportunities. For Braithwaite, the theoretical challenge is to construct a tipping point explanation that predicts when a stake in non-compliance outbalances a stake in conformity with the law.

In conclusion therefore, one would argue that AFF is clearly a complex, multifaceted phenomenon of which no single theory or explanation can comprehensively explain the perpetrators. One must be clear about what exactly is being explained: criminality, crime, or criminalisation. The overarching view of this finding is that the complexity and diversity of AFF precludes any single comprehensive theory or explanatory scheme. It is evidently clear how it is difficult to overcome the methodological barriers to demonstrating conclusively the validity of competing theories of AFF.

7.3 DISCUSSIONS

Advance Fee Fraud has been a lucrative method of stealing money from gullible punters for more than 30 years, but the Internet boom has made it much more effective. The Internet was also accompanied by a subtle change in tactics. While criminals were once happy to steal cash, they are now increasingly prepared to steal their identities as well.

It should be noted that AFF have accounted for losses estimated to be billions of dollars worldwide. This fraud is diverse and target not only individuals and businesses but government offices as well. Document fraud, used to develop false identities, contributes to the difficulties law enforcement experience in all the countries to stem the flow of these fraudsters' activities.

The findings of this research would suggest that AFF is on the increase in South Africa. According to the findings of this research, this increase was because of the success of the fraudsters and luxurious lifestyles of mature perpetrators and hence serves as a motivating/pull factor for amateur perpetrators. The lifestyle of perpetrators also convinces their victims of the legitimacy of the proposed business.

Throughout the entire thesis, it became evident that AFF is a very complex phenomenon to understand, explain, adjudicate and prevent. The manner with which the fraud is executed is so complicated that at times even the perpetrators may become victims of this fraud. Accordingly, no one would say he/she couldn't become a victim of AFF, because there are so many variations of AFF and perpetrators would at times study their target very well to determine what they like and where their interests are. In this regard perpetrators would approach a potential victim based on the interests of that victim.

The styles with which these fraudsters draft their letters are able to convince individuals to get involved. In one case, a church minister received an AFF letter that stated the perpetrators had funds, which were meant for the advancement of the gospel of God, but these funds needed to be transferred into the church's account for that purpose. The minister was very excited and went ahead and paid the transfer fee, and he was definitely defrauded. Charity organizations have also been victimised by promises that they are the beneficiaries of millions of dollars of late so-and-so, but they have to pay a certain amount as a transfer fee. One would argue that, to escape AFF victimisation is just a matter of luck. Some of

these frauds definitely start and function as legitimate businesses for quite some time and, then the complications start, so that the investor lose his/her investment to the business.

Although the fraud is complicated, it is somehow simple to understand the trick used by these fraudsters to defraud people. In the case of black currency, the issue of buying chemicals is just one method of parting victims with their money. These fraudsters blackened the notes themselves. What these fraudsters do is that, after they had convinced the victim and collected the money to go and collect the consignment from overseas or a supposed security company, they would buy a silver box. They would cut papers into dollar size notes, buy black paint, at times they mix it with paraffin, or they with petrol, and would dip the cut papers inside the paint mixture and allow it to dry. The "money" consequently becomes black. It is then packed into the silver box along with some real dollars. At this stage, they use some other chemicals to change the colour of the real dollar notes into black notes and they put the real blackened dollar bills on top. They then deliver the consignment of blackened notes. The chemical used to clean the real notes is vitamin C. Vitamin C. is always the solution they use to clean the notes that they put on top in the box. In essence, AFF is complicated and a simple trick to the fraudsters.

It should also be pointed out that what makes this fraud even more complicated is the greed of the victim. Most of the victims do not discuss the business proposals with their friends, family members and other associates. They just want to get all the money for themselves; hence, at the end of the day, they do not disclose it to anybody even after they have lost a substantial amount of money. This fraud would not be a problem to law enforcement agents if victims report the first contact with perpetrators to the police, for early detection and arrest with substantial evidence would enable the successful conviction of offenders.

The international network associated with AFF and the assistance received by the fraudsters from law enforcements officials, governments and bank officials make this fraud a lucrative business for the fraudsters. This has in many ways encouraged law-abiding citizens to become involved and has even prompted some victims to become perpetrators.

As an African phenomenon, the entire African continent and West African countries in particular suffer due to the high incident rate of this fraud. The negative impact of this fraud cannot be underestimated. Apart from driving business away from Africa, it also destroys Africa's social and human capital and undermines the State.

The interpretation of this research appears to suggest that there is a moral crisis in Africa. Politicians, religious leaders and social commentators have all spoken about the breakdown of morality. The most commonly cited evidence of this crisis is fraud, specifically corruption that involves those citizens who avoid their basic duties and obligations to the state or to each other. The moral regeneration initiative in South Africa was the response to this crisis, emerging to the countless initiatives aimed at reducing crime. The link between South Africa's moral regeneration and the African Union's Peer Review Mechanism should be created in an attempt to prevent the spread of this fraud into the bloodstream of new generation of Africans.

Based on these findings and the brief discussion, attention will now be given to some recommendations. The recommendations are also presented as an integrated Criminological model for the prevention of AFF.

7.4 RECOMMENDATIONS

Now that some fundamental challenges regarding AFF prevention have been identified, it is imperative to provide some remedial proposals which by no means should be considered to be exhaustive, to address these existentialistic issues. With the application of these initiatives, either singularly or in combination/integration, it is envisaged that it would have some bearing on the prevention of AFF. The recommendations provided herein are to provide a focus for the intervention strategies and initiatives directed at those prominent AFF variables identified in this research, detailing the motivational and contributing factors pertaining to AFF, as well as those causative elements around which the integrated explanatory theory was developed.

7.4.1 The administration of the judicial system

It is common knowledge, as well implicit throughout this thesis, that minimal knowledge regarding AFF is available within the investigative agencies. Consequently generic prosecutions regarding this fraud, if and when initiated, are not afforded a high priority. The seriousness of these cases are subsequently undermined, resulting in poor investigation and insufficiently prepared prosecutors and of course, inconsistent, and more often than not, extremely insignificant sentences. To alleviate these problems, it is therefore recommended that the South African law enforcement agency should set up its own West African fraud unit to deal with the burgeoning number of these criminal activities operative in South Africa. In this regard, West Africans with an in-depth understanding of the manifestation of this fraud should be recruited by the South Africa Police - the South African Police 419 Task Team to shed light on the variations of AFF, their *modus operandi* and assist with the interpretation and analysis of false documents. There are indications that, if these recommendations were adhered to, there would be a positive impact on the prevention of AFF in South Africa.

It is a well-known fact that AFF perpetrators are renowned travellers; they are always in and out of the country. They usually, after 'hitting a jackpot' leave the country and wait for the dust to settle before they return. In this regard, any efforts to prevent AFF in South Africa would warrant routine indictments in absentia of all perpetrators by the names they are using at the time.

The South Africa law enforcement should set up a joint Task Team composed of representatives from Justice, the Chamber of Commerce, Banks, and Revenue Services to collect all the data regarding this fraud. In this case, the Banks should also have their West African fraud unit to monitor the accounts of foreigners and report any suspicious activities for further investigations.

Within the justice system, and more importantly where the prevention of this fraud is concerned, immunity of prosecution and confidentiality should be announced for all victims of AFF in South Africa in return for their testimonies, particularly regarding the money trail. This would help to provide investigators with more insight into the fraud, how it is perpetrated and the syndicates involved. To achieve this goal, an aggressive media advertisement campaign is needed, on television, involving all the channels, and in newspaper in all the languages of South Africa.

The legal reforms that have been taken in most countries may not have sent a sound message to AFF perpetrators. However, these reforms have been celebrated because they bring to an end the capacity of AFF bosses to insulate themselves from prosecution by financing operation or using associates as subcontractors. It is therefore recommended that the law be amended to address the money defrauded by AFF and the opportunities available to AFF perpetrators.

After the money

The Proceeds of Crime Act 77 of 1999, which provides for the assets recovery from offenders in South Africa, should be introduced to address and adjudicate even the least cases of AFF. To support the enforcement of this, the Act should place responsibility upon banks, *bureau the change* and other financial institutions to report any suspicious transactions over R50 000, by mostly African immigrants and especially West African immigrants to the National Intelligence Agency (NIA). The NIA would then collate and coordinate the intelligence upon which the police/ Scorpions will base their investigations for a proper prosecution. This responsibility should be extended to lawyers, accountants, casino, managers, estate agents, car dealers who can all be prosecuted for withholding information that could secure the successful prosecution of AFF perpetrators.

It is thus argued that by recovering assets from amateur AFF perpetrators operating in South Africa, the overall volume of activity can be reduced more effectively and finances for the investment in future deals better curtailed, than if one were to focus exclusively on the 'bosses' who are actually easily replaced and whose direct involvement in AFF is limited.

After the opportunity

Whether this implementation reflects a gross overestimation of the asset recovery strategy or poor performance from law enforcement agencies remains a moot question to which there is no research-led answer. More certain are, however, the theoretical claims about the causes of AFF that are presupposed in the asset recovery strategy. This classical conception of crime is a consequence of the rational calculations made by actors about the relative risk, the efforts and rewards involved in the offending behaviour. If the proceeds of crime can be seized, so the logic goes, criminals will be deterred from further offences, and increase the efforts needed for AFF and accentuate the risk of apprehension.

This logic is also present in opportunity reducing strategies for controlling crime. Ascertaining criminal opportunities through research into the routine activities that generate crime, the confluence of motivated offenders, suitable targets and absent guardians, has been an increasingly influential feature of 'ordinary' crime control but is now being applied to the specific field of organized crime. It is, for example, the causal accounts that underpin the work of the National High-Tech Crime Unit, established in England and Wales in 2001, which, amongst other things, aims to secure software programmes and computer operating systems against hackers employed by AFF perpetrators.

7.4.2 Diplomatic meetings

In view of the fact that most of these fraudsters are immigrants from other African countries, it is recommended here that the South Africa government should constantly hold meetings with these countries to discuss the havoc caused by their citizens in South Africa. In this case, issues such as the extradition of offenders who flee to their native country and mutual assistance in the cross border investigations should be discussed. If this happens, joint investigations with law enforcement officials from mostly West Africa countries are recommended.

The recommendation is therefore that an effective preventive approach to AFF and its associated harm should involve the establishment of partnerships among the relevant key actors at all levels, in order to tackle in the short, medium and long term the causes and opportunities for AFF, and the risk for potential victims.

It is therefore submitted that partnership amongst countries would help to prevent this fraud. In this regard, it is recommended that governments:

- Recognise that the responsibility for AFF prevention should be shared in society and that partnership approaches are practical means to share this responsibility and pool diverse resources.
- Ensure that the legal context is appropriate and enables but does not constrain partnerships, and review proposed new legislation and regulation for the impact on AFF prevention
- Establish a wider understanding among politicians, administrators, practitioners, private business, the public and the media regarding the diversity of the causes and variations of AFF.
- Identify the areas for possible partnerships to address AFF and the agencies and institutions responsible for them (law enforcement and criminal justice system, education and the media).
- Gather and make available reliable and valid knowledge and data as well as facilitate the exchange of practical expertise and experience among actors across fraud prevention partnerships, while respecting professional confidence and data protection.
- Promote scientific research and evolution of the partnership approach regarding AFF prevention in terms of its operations, results and legitimacy.
- Encourage the development of a system and a rigorous knowledgebase on partnerships to share, disseminate, and apply that knowledge nationally and internationally and support evidence based, innovative, evolutionary and improvement oriented approach which is capable to adapt to changing AFF patterns, social conditions and legislations.

The fact that some offenders and victims justify their involvement in AFF because of the massive corruption prevalent in Africa and especially amongst African leaders and politicians, send a strong signal that corruption within this sphere need to be addressed as a matter of urgency. Transparency International (1998) places most African countries very high on their corruption index. This then,

would justify the intervention of African Union *via* the Peer Review Mechanism in an attempt to prevent this fraud.

7.4.3 Massive education and awareness

Although the above recommendations are chiefly directed at preventing AFF through the criminal justice system by increasing the investigative techniques to secure convictions (reactive), this particular recommendation is aimed more at a reducing the opportunities for AFF victimization (proactive). One should bear in mind that increased education and awareness of the activities that result in AFF victimisation should not be implemented in isolation but rather in parallel with extensive and ongoing media coverage of how this type of fraud perpetuates. In the case of black currency, the process of blackening the notes and washing them should be demonstrated in the public media. Although it would be naïve to expect that public sentiment regarding AFF will change overnight, such initiative would definitely make the public more aware of the precarious effects when they accept such business proposals.

Apart from raising awareness, AFF data should be used to support interventions. Research may also indicate that unrecognised problems exist, or that they are connected in unrecognisable ways. It is submitted here that information regarding AFF gathering, however modest its scope, be continual to keep the public informed about the new developments in the execution of AFF. Africa is a continent in flux, and new issues/nature of AFF emerges all the time. Early intervention through education, awareness and the sharing of AFF data with the public can prevent this complex practice from spreading, curb the cycles of fraud, and arrest the development of AFF criminal networks in South Africa and beyond.

It should also be noted that AFF had developed quickly since the 1980's due to the globalisation of the world's economies and the great advances in the

communications technology. The ease of international travel, expanded world trade, had enabled AFF offenders to expand their roles from more traditional local and regional criminal groups to that of targeting international victims and developing criminal networks within countries and regions of the world with greater prosperity. The political, social, and economic conditions in African countries, especially West Africa have contributed significantly to the development of some of the AFF groups worldwide. It is therefore recommended that the African Union (AU) and specialised bodies such as the New Economic Plan for African Development (NEPAD) play a leading role in addressing this so-called Nigerian/West African fraud in order to enhance business confidence and trust between Africa and the outside world.

In conclusion, it is submitted that none of the countermeasures noted above can be expected to render South Africa and the international community invulnerable to the risk of AFF. Given the diversity, which characterises South Africa and the world at large, some approaches will be more appropriate in some settings than others. It is therefore incumbent upon governments to identify and implement the most effective and efficient mix of countermeasures.

A summary of the findings and recommendations of this research are presented in table 7.1 below for more clarity and understanding.

Table 7.1 Findings and Recommendations

Findings	Recommendations
<p>Crimes: Various forms and begins with one form and end up as another form, process of black currency, complicated phenomenon, spiritism, fimash.</p>	<p>Crimes: Education and awareness of how this fraud is committed, how the criminal approach victims, display of black currency on T.V.</p>
<p>Perpetrators: Impersonate ostentatious lifestyle, operate as a network, use of Internet, and work with corrupt officials, mostly males, average age 25 years.</p>	<p>Freeze accounts, seize properties, and close their front businesses, monitor foreigners who live a flamboyant lifestyle.</p>
<p>Victims: Individuals are mostly victimised, anyone can be victimized, greedy, re-victimisation, both African and Caucasian, of all nationality.</p>	<p>Stop being greedy, immunity from prosecution, encourages victims to report fraud to police, verify background of any business proposals.</p>
<p>Adjudication: Plea bargain, court impose minimum sentence, problems in adjudication, lack of substantial evidence to prosecute.</p>	<p>International cooperation of law enforcements agents during investigations, use fraudsters to assist in investigations.</p>
<p>Prevention: Strategies inadequate, complicated nature of this fraud hampers any prevention attempts.</p>	<p>People should not reply to unsolicited emails, verify any business proposals, prevention be directed mostly at business people, focus on Internet cafés and owner should be compelled to check on their clients, public awareness and tougher sentences.</p>

This table can be explained as follows:

The crimes take various forms and the perpetrators utilize even spiritism to achieve the goal of attaining an ostentatious life style. These 25-years and older offenders target any greedy and/or gullible potential victim and even re-victimize them. These crimes are very difficult to adjudicate and prevent because some victims do not report their victimisation to the police. Adjudication is especially hindered by lack of evidence and extradition treaties between countries. Prevention is difficult because the victims are also participating in an illegal scam and they also do not want to get caught .

The Criminological model to prevent it proposed in this thesis (the recommendations) include that massive awareness campaigns be launched, accounts of suspects be frozen, international co-operation regarding these crimes be extended, and that people should be made aware of the effects of being greedy, and not to react to 419-suspicious e-mails or snail mail.

7.6 SUGGESTION FOR FURTHER RESEARCH

However, further research is required in order to determine the extent to which patterns of these findings that were obtained in this research apply to South Africa. Such research has to be longitudinal in nature in order to identify and document temporal changes in the nature and scope of the organization of AFF and the *modus operandi* of offenders. It is also suggested here that intensive research needs to be carried out on the victims of AFF to determine how this fraud can be prevented. Any research of this nature should involve the participation of all the investigation agencies involved in the investigation of AFF. One would then be able to determine the problems these investigators are face with from which holistic prevention programmes can be drawn.

7.6 CONCLUDING REMARKS

The actual dynamics of AFF are only beginning to be explored and very little of what is known to the society and the world of social sciences of the phenomenon has penetrated public consciousness. The current research provides a foundation for understanding the problematic and complex situation of AFF.

This research is important for the processes of the repressive policing of AFF perpetrators, and its value lies in the possibility of revealing the identity of the perpetrators. The study increases the chances of the individualisation of this fraud through the continuous process of identification by law enforcement agents,

involving the act of a specific persons or group of persons. The research enhances the knowledge and classification of the *modus operandi* of AFF perpetrators in a Criminological way, which can be applied in practice by means of scientific comparison in the future.

It is hoped that this research would increase an understanding and stimulate further research on the nature of this form of fraud and the *modus operandi* of AFF perpetrators, as this information is imperative in the investigations of this fraud, and would spur the development of prevention programmes. In this regard, Du Plessis (Prinsloo 1996:34) argued that, with a better understanding of the *modus operandi* of offenders, particular patterns of crime can be predicted and resources can be used meaningfully to maintain, and or restore the social order.

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