



**NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES  
LAGOS, NIGERIA**



**ROUNDTABLE ON TELECOMMUNICATION OFFENCES:  
UNVEILING OF BORDERLESS CRIMINALITY**

4th March, 2010

**COMMUNIQUE**

**INTRODUCTION**

Considering the different aspects of crime being committed through electronic communication or improper use of public electronic communication network, the Chike Idigbe Centre for Media Communications and Information Technology of the Nigerian Institute of Advanced Legal Studies, held a One Day Roundtable on the topic: Telecommunication Offences: Unveiling of Borderless Criminality. The Roundtable, which took place on the 4<sup>th</sup> of March 2010, was organized in fulfillment of part of the Institute's mandate as the apex legal Institution for legal research in Nigeria.

The Roundtable focused on the following issues - The Developments in the Nigerian Telecommunication Sector; the Current wave of Illegal Mobile Phone cloning and Reprogramming; Unlawful content in Electronic Communication: the Improper Use of Public Electronic Communication Network; Interception of Communications An Investigative Tool for Law Enforcement Agencies; the Role of the Nigerian Communication Commission as Regulators in the Operation of the Telecommunications Industry; the Role of Service Providers; the Role of Economic and Financial Crimes Commission; and the Need for Governments Renewed Efforts towards the Development of the Nigerian Telecommunication Industry.

Present at the Roundtable were notable figures such as the representatives of the late Honourable Justice Chike Idigbe, representatives of relevant organizations such as the EFCC, the CBN and the NCC as well as notable members of the legal profession and the NGO community. Renowned professionals in the telecommunication industry, regulatory and enforcement agencies led discussions at the Roundtable. It is however, necessary to note that though all the telecommunication service providers were duly invited, none of them was present at the Roundtable.

**OBSERVATIONS**

The Roundtable observed that

1. The development in the telecommunication sector of the Nigerian economy in the past ten years has been monumental.
2. There is an increasing wave of telecommunication crimes globally and Nigeria is not isolated from this grey technologically based and evolving crimes, which also manifests in the form of cyber crimes.
3. The existing laws on telecommunication crime in Nigeria are grossly inadequate and do not address the myriad of offences committed by subscribers. They primarily address service providers while leaving out the subscribers.
4. Likewise, existing international laws and instruments to which Nigeria is a signatory have not sufficiently addressed the issue of telecommunication offences or cyber crimes as there is no tribunal like the ICC to prosecute telecommunication crimes from an international perspective.
5. There is a need for a specific legislation that holistically addresses the problem of telecommunication offences and cyber crimes.
6. The establishment of International criminal tribunals and, in particular, the ICC has given impetus to the evolution of a body of International criminal law proper and we can now look forward towards the formation of a fully-fledged body of law in this area. This is not yet the case with telecommunication offences. Consequently, there is a lack of uniformity in the laws of various countries, which results in the criminalization of certain acts in some countries and not in others. This creates the problem of jurisdiction in the prosecution of telecommunication cyber offences.
7. The present Nigerian law of evidence is archaic and does not adequately address the admission of electronically generated evidence relevant for the effective prosecution of modern day telecommunication and cyber crimes.
8. 11 Several Bills on telecommunication and cyber crime that have been presented for passage at the National Assembly are still pending.
9. All sectors of the economy including banks, administrators, manufacturers, universities, governments, ICT practitioners, law firms and individuals, among others, have come to depend to a high degree on the efficiency and security of the ICT infrastructure. However, because of the negative activities of cyber criminals, this infrastructure has become vulnerable to attack thus requiring protection.
10. Telecommunication is a vital element in the growth and development of nations and the economy. Telecommunication infrastructure is, therefore, critical to Nigeria's economic, social and political well-being.
11. Though Nigerian statutes like the Penal Code, Criminal Code, EFCC Act and Money Laundering Act contain a wide spectrum of telecommunication offences, some telecommunication offences or the genre of crimes now classified as cyber crimes are not adequately covered by the criminal codes and general common law.
12. So far there has been no effective prosecution of telecommunication and cyber offences because most of the acts constituting such offences have not been criminalized in Nigeria as required by the provisions of section 36(8) of the 1999 Constitution.
13. One of the challenges facing law enforcement agencies is the refusal of witnesses to come forward to give evidence because of threats and harassment from suspects.
14. Roaming of telephone numbers, cloning of websites and non registration of SIM cards pose challenges to the detection and tracking down of fraudsters.
15. The nature of telecommunication crimes, which are usually committed from the comfort of the bedroom, makes it difficult to detect the location of such crimes and the culprit, except with the full cooperation of service providers.
16. The reluctance of service providers to supply information on subscribers as well as the ease with which SIM cards are obtained without relevant data of subscribers pose serious challenges to enforcement agencies.
17. Nigeria does not have a central cyber data collection, despite the fact that technologically it is quite easy to detect telecommunication crimes. The lack of such a system makes it difficult to track fraudsters.
18. Unemployment is one of the main reasons why people commit crimes particularly telecommunication and cyber crimes.

19. There are insufficient facilities and provisions for proper training of our law enforcement agents.
20. The commission of offences through the use of face book on the Internet by which means children could be negatively influenced or corrupted has not been criminalized in Nigeria.

## RECOMMENDATIONS

The Roundtable after an extensive discussion of its subject matter, made the following recommendations:

1. That because of the importance of information technology and globalization, Nigeria should develop telecommunication and cyber law as a core academic subject to be taught in tertiary institutions in Nigeria either alone or as part of Criminal Law. Studying cyber space legal issues will force us to re-think established doctrines that have hitherto been taken for granted and assist in the development of the elements of the offence of cyber crime.
2. That the development of Nigerian law in relation to telecommunication and cyber offences should be pursued along the following lines
  - a.) harmonization of existing laws, where they are substantially conflicting,
  - b.) evolution and enactment of new laws, where necessary,
  - c.) transplant of telecommunication offences law from other jurisdictions with necessary local modifications
  - d.) cooperation and collaboration with international and regional organizations to formulate or adopt uniform laws, where appropriate.
3. That the National Assembly should expedite action on the various Bills on varying aspects of telecommunication offences pending before it. These include:
  - a.) Draft Cyber Security and Data Protection Agency (Establishment etc.) Bill, 2008
  - b.) Electronic transaction Protection Bill,
  - c.) Mobile Telephone Lines Registration Bill, 2009
  - d.) Computer Security and Protection Bill, 2009,
  - e.) Electronic Commerce (Provision of Legal Recognition) Bill, 2008,
  - f.) Security Communications Interception and Monitoring Bill, 2009, among others.
4. That alternatively, all of the above Bills could be harmonized by the National Assembly so they could come out with one comprehensive law that holistically addresses all aspects of telecommunication and cyber crimes.
5. That in this regard, there should be a platform and better strategy for agenda setting spearheaded by the Nigerian Bar Association to lobby the National Assembly into passing the necessary laws.
6. That the Nigerian Procedural and substantive laws of evidence, especially the tremendously outdated Evidence Act, enacted by the colonial masters in 1945 be repealed and replaced with a modern one which adequately provides for safeguarding the admissibility of technologically based evidence that will enhance the effective prosecution of fraudsters.
7. That in determining the actus reus and mens rea of terrorism under the Rome Statute, cyber terrorism should be included. It is noteworthy that it is one of the offences under the currently before the National Assembly. Alternatively, a separate tribunal should be established for telecommunication and cyber crimes.
8. That the United Nations through WIPO and UNESCO should further develop intellectual property law to criminalize telecommunication and cyber crimes to ensure that the elements of the offence of cyber crime are the same in all jurisdictions such that what is illegal in one jurisdiction is also illegal in others. This will ensure that no criminal escapes from punishment.
9. That the Bill for an Act to Amend the Nigerian Communications Act, (HB. 352) empowering the Nigerian Communications Commission to issue and serve notice on any telecommunications service provider registered and operating in Nigeria directing that a register of all subscribers be opened and maintained should urgently be passed into law.
10. That Intellectual Property Laws should be strengthened in order to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.
11. That new technology can raise jurisdictional issues without precedent, but there is often a solution to be found. In the realm of cyberspace, entities that want to limit their international exposure could clearly indicate on their websites that the information therein is targeted solely to users in a particular jurisdiction.
12. That websites could also block access to users from jurisdictions that do not recognize certain activities (cyber crimes) as offences that are actionable.
13. That there is no need to set up a separate agency to tackle telecommunication offences. As is done in order jurisdictions, what is needed is a specialized arm of the police for instance to deal with such issues.
14. That Regulatory Agencies such as the CBN, NCC other stakeholders in the telecommunication Industry should collaborate for more effectiveness.
15. That there is need for telecommunication companies to be more patriotic in their attitude towards Nigerian citizens as against over emphasis on the protection of foreigners.
16. That there is need for government to step up efforts towards the provision of employment opportunities for the teeming youths, who constitute the bulk of telecommunication and cyber fraudsters in the country.
17. That the success of the internet depends on its security. Industries and businesses must be assured that information transmitted over computer networks is safe from attacks.
18. That there should be stiff penalty for offences of threat through the use of telephone in order to successfully tackle the vice.
19. That the use of telephone in facilitating payment of ransom for kidnap victims should be criminalized and serious offences should be defined to include kidnapping. There should be absolute liability and imposition of imprisonment without an option of fine as is done in Australia.
20. The commission of offences through the use of face book by which means children could be negatively influenced or corrupted should be criminalized in Nigeria.

*Signed:*

**Professor Epiphany Azinge, SAN**  
*Director General*