

EAST ASIAN OBSERVER

International Cooperation in Criminal Matters: Recent Jurisprudence of the Malaysian Courts

Jamil Ddamulira Mujuzi*

1. Introduction

Malaysia, like other Asian countries, has measures to cooperate with other countries in the fight against crime.¹ These measures exist at four levels—international, regional, bilateral, and national. At the international level, Malaysia has ratified multilateral treaties such as, the UN Convention against Corruption (“UNCAC”),² and the United Nations Convention against Transnational Organized Crime (“UNTOC”).³ At the regional level, she concluded the Treaty on Mutual Legal Assistance in Criminal Matters with-Brunei Darussalam, Cambodia, Indonesia, Lao, the Philippines,

* Associate Professor of Law, Faculty of Law, University of the Western Cape (“UWC”). The author conducted the research for this article during a research visit to the University of Oxford in September 2014. He is grateful to the Centre for Criminology at the University of Oxford (especially to Professor Mary Bosworth) for hosting him and to UWC for the funding to undertake the visit. This article is also based on the research supported partly by the National Research Foundation of South Africa (Grant specific unique reference number (UID) 86004). The author acknowledges that opinions, findings and conclusions or recommendations expressed in this paper are his. He may be contacted: djmujuzi@gmail.com

¹ Different Asian countries have enacted legislation to cooperate with other countries in the fight against crime. *See, e.g.*, Mutual Assistance in Criminal Matters Act (Cap 190A) (Singapore); Mutual Legal Assistance in Criminal Matters Ordinance, (Cap 525) (Hong Kong); and Law on Mutual Legal Assistance in Criminal Matters (Law No. 1 of 2006) (Indonesia).

² UN Office on Drugs and Crime, United Nations Convention against Corruption, Background of the United Nations Convention on Corruption, *available at* <https://www.unodc.org/unodc/en/treaties/CAC> (last visited on Nov. 16, 2015). Malaysia ratified this Convention on September 24, 2008.

³ *See* UN Office on Drugs and Crime, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, *available at* <https://www.unodc.org/unodc/treaties/CTOC> (last visited on Nov. 16, 2015). Malaysia ratified this Convention on September 24, 2004.

Singapore and Vietnam.⁴ At the bilateral level, Malaysia has signed treaties or agreements on mutual assistance in criminal matters with 13 countries including the US,⁵ Australia,⁶ the UK, Myanmar, India, and South Korea.⁷ At the national level, Malaysia has enacted the Mutual Assistance in Criminal Matters Act (hereinafter the Act).⁸

This article aims to highlight the jurisprudence of Malaysian courts regarding the evidence obtained from other countries to use in Malaysia, and also from Malaysia to use in other countries. The jurisprudence has been fast developing since 2002 when the Malaysian parliament enacted the Mutual Assistance in Criminal Matters Act in 2002. We will tackle the practices of the Malaysian courts before and after the Act.

2. Prior to 2002

The first case was *Dato Mohamed Hashim v. Attorney General of Hong Kong*, which was related to the issue of obtaining valid evidence in Malaysia for use in criminal matters in another country.⁹ Here, the Hong Kong Supreme Court issued a letter which requested the High Court in Malaysia (Malaya) “for the examination of 44 witnesses and production of documents for the purposes of criminal proceedings instituted in Hong Kong.”¹⁰ The applicant was one of the accused in the Hong Kong proceedings. The Chief Justice, in an *ex parte* order, directed that the evidence should be recorded before a high court judge and transmitted to Hong Kong. In making that order, the Chief Justice of Malaya invoked Order 66 rule 1 of the 1980 Rules of the High Court which provided that:

⁴ See ASEAN, Treaty on Mutual Legal Assistance on Criminal Matters, Jan. 17, 2004, available at <http://agreement.asean.org/media/download/20131230232144.pdf> (last visited on Nov. 16, 2015).

⁵ See Treaty between the Government of the United States of America and the Government of Malaysia on Mutual Legal Assistance in Criminal Matters, July 28, 2006, available at <http://www.state.gov/documents/organization/179065.pdf> (last visited on Nov. 16, 2015).

⁶ Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters of Dec. 28, 2006.

⁷ See Attorney General Chambers of Malaysia, Treaties signed for “Mutual Assistance in Criminal Matters,” available at http://www.agc.gov.my/index.php?option=com_content&view=article&id=429&Itemid=358&lang=en (last visited on Nov. 16, 2015).

⁸ Mutual Assistance in Criminal Matters Act, May 30, 2002, Act No. 621 of 2002, available at <http://www.agc.gov.my/Akta/Vol.%2013/Act%20621.pdf> (last visited on Nov. 16, 2015).

⁹ *Dato Mohamed Hashim v. Attorney General of Hong Kong* 2 MLJ 112 [1986].

¹⁰ *Id.* at 14.