

# Issues on Evidence Collection of Cross-border Crime

**Zhang Haibo, Justice, President of  
Guangdong High People's Court of the People's Republic of China**

**Honorable President Zhang Jun, Justices, Delegates, and Distinguished Guests,**

Good afternoon, everyone! It is my pleasure to exchange views with you on the issue of “evidence collection for cross-border crimes”.

With the continuous evolution of cross-border crimes and the continuous deepening of international criminal judicial cooperation, evidence collection for cross-border crimes has increasingly become an important issue of general concern to the judicial bodies of every country. The cross-border factor separates the legal basis for obtaining and admitting evidence, which serves as the core feature of cross-border criminal evidence collection. However, it also results in a series of difficulties. China has always attached great importance to combating cross-border crime and has actively fulfilled its international obligations in the areas of combating cross-border organized crimes, drug-related crimes and corruption-related crimes. Through sustained legislative and judicial practical activities, China has developed a relatively comprehensive set of norms and practices in the areas of the collection of evidence from abroad and examining and reviewing the same as well as the enhancement of international cooperation in combating cross-border crime.

## **I. Provisions of Laws Regarding the Examination and Admission of Evidence Collected from Abroad**

*China's Criminal Procedure Law* stipulates that all materials that may be used to prove the facts of the case are evidence. Evidentiary materials from abroad can be used as evidence in the adjudication of criminal cases as long as they are able to prove the authenticity of the case and comply with the statutory requirements for evidence, and thus shall have the same effect as evidence from within the country. In this regard, the method of examination varies depending on the subject providing the evidence. With regard to overseas evidence obtained by the judicial authorities through criminal judicial cooperation, the court is required to examine whether the crime investigation authority has requested international criminal judicial assistance in accordance with legal procedures; the crime investigation authority shall provide explanation of the source of the evidence as well as the processes of keeping custody of and transferring the evidence. With regard to overseas evidence provided by the parties to the litigation, the defending party or the appointed litigation attorney, the court shall examine whether the evidence has been certified by notary organs in the country of origin, authenticated by the national diplomatic authority of the country of origin or its authorized organs, and certified by the Chinese embassy or consulate there, or whether

certification formalities stipulated in the relevant treaties concluded between China and the country of origin have been complied with. After going through the aforementioned examination procedures, the overseas evidence shall have the corresponding qualification as evidence. Whether or not the contents of the evidence is admissible requires the court to conduct a substantive review in terms of objectivity, relevance and legality. China's Criminal Procedure Law also attaches particular importance to the examination of the legality of evidence, requiring that the collection of evidence shall be carried out in accordance with legal procedures, that no one should be forced to incriminate himself or herself, and that rules for the exclusion of unlawfully-obtained evidence have been established. Due to different evidence collection procedures among different countries, the legality of overseas evidence needs to be determined by taking into consideration the specific circumstances of different cases.

## **II. Practical Exploration of Chinese Courts in Evidence Collection on Cross-border Crimes**

China's Criminal Procedure Law stipulates that evidence shall not be used as the basis for a verdict unless it has been verified by court investigation procedures such as presentation, identification, and cross-examination in court, and that evidence from abroad shall also be cross-examined in court. Guangdong Province has conducted frequent international exchanges, and courts in Guangdong have tried a larger number of cross-border crime cases. We have given special attention to three issues in our practice. The first is the issue of the conversion of overseas evidence. For evidence provided by overseas judicial institutions, if the overseas provider imposes no special limitations, the court may use it directly as evidence. If the overseas provider of the evidence has special requirements for the use of the evidence, the investigation authority shall, in response to the limitations and special requirements of the original overseas evidence, convert the process of collecting the evidence and the specific contents of the evidence into a statement of work, which shall be cross-examined in the trial. The second issue is the appearance of relevant persons in court. The appearance of investigators, witnesses, appraisers and interpreters in court is of great significance in ensuring a substantive and fair trial. Due to the different provisions in the laws of different countries with respect to the qualifications for testifying, the rights and obligations of the persons testifying, the immunity commitment offered to the informants, and the protection measures, etc., cross-border testifying has also been a difficult issue in judicial practice. At present, we are exploring the possibility of having relevant witnesses testify by video, subject to the laws of the countries concerned. Network information technology makes it unnecessary for witnesses to be physically present in the courtroom, thus relieving them of worries and burdens and allowing them to complete trial investigations and cross-examinations in a simple and speedy manner. We believe that, on the precondition of mutual respect for judicial sovereignty, strengthening cooperation through the Internet can enable courts to deliver justice in a more efficient and convenient manner.

Thirdly, we are actively assisting international judicial organizations in collecting evidence in China. With the review and consent of the Supreme People's Court, the relevant courts, in accordance with the provisions of the Law on International Judicial Cooperation in Criminal Matters, have assisted in the execution of many requests for video evidence collection made by the countries concerned and have presented in person to supervise such collection, thus contributing positive efforts to jointly combat cross-border crimes.

### **III. China's Efforts to Promote Cross-border Crime Evidence Collection through International Judicial Cooperation**

With the accelerated evolution of globalization and the rapid development and application of network information technology, new types of cybercrime continue to emerge and evolve rapidly, and traditional crimes such as fraud, gambling, money-laundering, drug trafficking, embezzlement and bribery are also more closely integrated with the Internet, so that cross-border crimes, especially cross-border cybercrime, will become the new norm in criminal offenses. Effectively combating cross-border crime requires bridging the differences between different criminal evidence systems of various countries and more in-depth judicial cooperation. China highly values international judicial cooperation in evidence collection of cross-border crimes. To date, China has signed bilateral treaties on judicial cooperation in criminal matters with more than 60 countries. In order to better perform its obligations under international treaties and strengthen international cooperation in combating cross-border crimes, China promulgated International Criminal Judicial Assistance Law of the People's Republic of China in October 2018, which sets clear provisions on international cooperation in various aspects of cross-border crime cases, including "investigating and collecting evidence" and "arranging witnesses to testify or assisting in investigations". The implementation of this Law has provided clear guidance and legal and institutional support for China's international judicial assistance in criminal matters with other countries.

China has also been consistently committed to promoting enhanced cooperation among countries around the world and supporting the United Nations in playing a leading role in cyberspace governance. In order to strengthen the effectiveness of the crackdown on cybercrime and form international synergy, the United Nations officially launched the drafting of the United Nations Convention against Cybercrime in 2019, and the basic framework of the Convention has now been completed. Among the rules of "international cooperation", the draft Convention emphasizes the strengthening of mutual judicial cooperation and law enforcement collaboration and proposes a number of specialized initiatives to deal with possible obstacles in the collection of evidence on cybercrime and cross-border collection of evidence, thus establishing guidelines for international cooperation in the collection of evidence on cross-border crimes. For example, at the level of the specifics of judicial cooperation, on the one hand, the traditional working method of the judicial cooperation mechanism is maintained, while on the other hand, the distinction is made between

collection of data evidence and data preservation, so as to ensure that the data involved in the cases are saved in a timely manner while respecting the sovereignty of the countries concerned.

The draft Convention represents the initial consensus reached by all Member States, including China, on issues related to combating cross-border crime in the cyber era. Here, I would like to advocate that all countries should continue to promote the coordination between domestic and international laws, the coordination between criminal procedure law and emerging digital law, as well as the collaboration between judiciary institutions and international organizations and relevant third-party entities, so as to make their own contributions in making the draft Convention a widely-accepted international convention, and to join hands in solving the problem of cross-border evidence collection within a common framework. Chinese courts are also willing to strengthen exchanges and cooperation with judicial institutions around the world and to contribute its judicial wisdom and strength to global crime governance.

Thank you!

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**Sonia Marlina Dubón Villeda, Magistrate of the Supreme Court of  
Justice of the Republic of Honduras**

## **Silk and walking route.**

*“The human being is neither a stone nor a plant, and cannot justify himself by his mere presence in the world. The human being is human only because of his refusal to remain passive, because of the impulse that projects him from the present to the future and directs him toward things with the purpose of dominating and shaping them. For human beings, existing means remodeling existence. Living is the will to live”.* Simon de Beauvoir.

Good morning to all of you, I join in the greetings of the president of the Supreme Court of Justice of Honduras. I thank the Judiciary of China, its president Zhang Jun, for having turned its gaze towards Honduras and inviting us to this important International Forum on International Cooperation. Starting in October 2023, Honduras walks hand in hand with China.

With enthusiasm, the Judiciary of Honduras joins the initiative of the People's Republic of China, which has rightly been called “Building the Maritime Silk Road Together.” And without a doubt, it has motivated this important “International Forum of Judicial Cooperation”, in which we will seek to promote precisely effective coordination between supranational jurisdictions at the highest level, between the countries that are or will be part of the design of transparency standards and justice in the transit of people, goods and services, and in the relationships of agreement and reciprocity that the construction of this important trade route entails.

In our legislation there is some complexity in the definition of cross-border crimes, since this discipline is not clearly defined with criminal rubrics, however, the accelerated transformation of society, and the parallel development of international law, have allowed us to subscribe to conventions that address these crimes, and due to the commitments and obligations undertaken, our domestic criminal law has had to adapt to incorporate international standards of typical framing and searches and construction of supranational cooperation to identify complex networks of transnational crime.

Our tax institutions, in charge of applying customs legislation and compliance with obligations at different levels, have a presence in the border areas for this purpose and to support the state's prosecution of the crime of smuggling, tax fraud, illicit trafficking of cultural goods and others. related to this matter.

These crimes can be related both to individuals and, above all, to organized crime, and as such, a catalog of crimes of this nature that can transcend borders has been determined in the international order: such as transnational bribery of public officials, human trafficking, illicit human trafficking,

sexual exploitation, organ trafficking, child sexual exploitation, arms and drug trafficking, terrorism crimes, crimes against collective security, crimes against transportation and communications services, money laundering, smuggling, computer crimes, and cybercrimes.

These behaviors are practically classified as “cross-border” crimes, and we consider the impact that these criminal actions could have when we warn that their effects can be very harmful beyond our national borders — a common aspect when we talk about this type of crimes—we can appreciate that regardless of the terminology used, our State recognizes in these activities the possibility of prosecuting and punishing them in accordance with the law.

Starting from the fact that the Silk Road construction project itself presents a commercial perspective, we will affirm that the prosecution of illicit acts is not limited to the fact that the criminal effect physically crosses the borders, which would be perfectly visible or in any case perceptible. Through the use of radars, but what has had the most impact in recent times is virtual crime, through which computer crimes or cybercrimes take over the confidentiality of personal data, secrets or confidential data of computer adulteration companies, the tampering of goods and services, the intellectual appropriation of copyrights and of course they attack the security systems of national states, commit financial and banking fraud and support illicit child pornography trading activities.

To counteract this crime, our country has taken advantage of regional cooperation, which is fundamental, and above all, mutual judicial assistance, which includes the participation of agents from the States involved, whenever an international requirement or request for assistance is appropriate. Mutual that has included measures aimed at investigation, border observation and cross-border persecution.

The Judicial Branch of Honduras considers that special legislation, and especially international cooperation, are essential elements to strengthen security and protect international supply chains, since eventually the fight against transnational crime greatly facilitates international trade, and this will be essential in the construction and development of the Maritime Silk Road, for the associated countries in this important initiative

I close my intervention by making my own the phrase of the president of the Supreme Court of the People's Republic of China “THE RULE OF LAW IS THE BEST BUSINESS ENVIRONMENT”.

# **Issues on Evidence Collection of Cross-border Crime**

**Musaev Nurlan, Deputy Chairman of the Supreme Court of the Kyrgyz Republic**

**Dear Heads of Supreme Courts of the countries participating in the International Forum on Judicial Cooperation "Maritime Silk Road", Dear Forum participants, ladies and gentlemen!**

First of all, let me express my sincere gratitude to the Supreme Court of the People's Republic of China for the excellent organisation of this event and the opportunity to participate in it, and express my high respect to all participants.

The Kyrgyz Republic is a landlocked country in Central Asia.

China is considered one of the main strategic partners with which Kyrgyzstan shares a land border, being one of the ways for the Kyrgyz Republic to reach the outside world, which is confirmed by our participation in this event.

Dear participants of the forum, today great changes are taking place all over the world, humanity is entering a new era of rapid development and large-scale transformations. Such processes and phenomena as multipolarity, economic globalisation, informatisation of society, transformation of the system of governance and world order, etc. are widely developing.

At the same time, the situation in the sphere of international and regional security is becoming increasingly complicated, and global challenges and threats are multiplying.

It must be stated that the process of globalisation, along with positive factors affecting the liberalisation of economic and humanitarian contacts, the development of international transport and trade, contributes significantly to the expansion of transnational crime, including cross-border crime.

Under these conditions, no State can independently confront the growing threats to national security from the activities of international organized crime, which has demonstrated its ability to infiltrate social, political and governance structures and to operate across national borders.

It should be emphasised that the Central Asian region, in which the Kyrgyz Republic is located, is situated at the crossroads of important trade routes and geopolitical interests. Therefore, criminal networks pose many challenges that require immediate attention and adequate strategic measures.

In addition, the complex interrelationship of cross-border criminal activities, which underlines the global nature of organised crime, necessitates the development of a set of coordinated measures to combat it.

Realising this, the Kyrgyz Republic has joined the international community and is successfully transforming itself within it.

Kyrgyzstan is actively cooperating with other countries in combating cross-border crime in all its manifestations, such as combating illicit trafficking in narcotic drugs, psychotropic substances and their precursors, smuggling, trafficking in persons and illegal migration, as well as crimes

committed through the use of modern information technologies, as we are well aware that cross-border crime is not so much a national problem as an international one.

Obviously, the commission of offences affecting the interests of more than one State, as well as the presence of a foreign element, significantly complicates the investigation of such cases. Difficulties arise in the process of the necessity to collect evidence in the territory of a foreign State, since usually the investigative actions of the competent authorities of a State are limited to its territory, whereas for the normal investigation and consideration of criminal cases with a foreign element it is necessary to collect evidence and conduct procedural actions in the territory of another State. It follows that the main problem of criminal cases with a foreign element is the problem of jurisdictions, more precisely the conflict ("collision") of jurisdictions and extraterritorial effect of foreign criminal procedural law in the sphere of national jurisdiction.

The Kyrgyz Republic is constantly working to expand international cooperation, strengthen and improve the legal and regulatory framework by acceding to the main treaties concluded within the framework of the UN and its agencies, including the UN Convention against Transnational Organized Crime of 15 November 2000 and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, of 15 December 2000, the Protocol against the Smuggling of Migrants by Land, Sea and Air of 15 December 2000, and the Protocol against the Smuggling of Migrants by Land, Sea and Air of 15 December 2000, The UN Convention against Corruption of 10 December 2003, the International Convention for the Suppression of the Financing of Terrorism adopted by UN General Assembly resolution 54/109 of 9 December 1999, and the implementation of international law into national legislation. Activities are carried out to conclude agreements on cooperation in criminal matters and to develop partnerships with neighbouring and non-CIS countries.

Within the framework of inter-State co-operation, joint operational and preventive measures and special operations are actively carried out to track down criminals, combat illicit trafficking in drugs, weapons, explosives, ammunition, illegal migration, human trafficking, suppress the smuggling of raw materials and cultural property, the activities of international criminal groups in transport, etc., and co-operation is carried out with international partners to collect evidence, provide testimony and share information to facilitate investigations and bring perpetrators to justice.

Of course, organised crime does not stand still; it is constantly transforming, adopting new methods and technologies, diversifying the ways in which it finances, communicates and operates.

Overcoming the challenges posed by organised crime is an extremely difficult task.

Thus, in the process of combating this evil, lessons should be learnt from the best practices of international experience and the issues of international cooperation aimed at improving the effectiveness and completeness of legal assistance in criminal cases, the performance of procedural and judicial actions in the execution of instructions from foreign states, as well as the legal validity of evidence obtained in the territory of a foreign state should be constantly improved.

States should seek new ways to share information and evidence and work together within



international organisations to develop common strategies and actions to combat cross-border crime in both pre-trial and trial proceedings.

There is a need to strengthen cyber security and co-operation in this area, as financial crime and cybercrime are invariably interlinked.

The Kyrgyz Republic clearly follows these principles.

Our goal is to build a strong and independent state, comfortable for living, in which the real protection of people's rights and freedoms and their security is ensured.

In that regard, participation in the global maritime cooperation platform "Maritime Silk Road", which covers more than 20 countries in Asia, North Africa and Europe, is invaluable to us and opens up new opportunities for expanding the horizons of international cooperation.

I am confident that the outcome of today's open and informative dialogue will make it possible to define new progressive approaches to combating international organized crime.

I thank you for your attention.

# **New Cybercrimes, Old Laws**

## **Gibuma Gibbs Salika, Chief Justice of the Independent State of Papua New Guinea**

Technology and its application in enhancing the quality of life for our people in Papua New Guinea (PNG) has its challenges. These realities are based on how people interact with each other through the lens of complying with the law for the preservation of good order. While the value of technology including the ushering in of what has been defined as the digital era is tremendous, it is necessary to ensure that behaviours which are counter culture to law is addressed as captured in legislation. In PNG the Cybercrime Code Act 2016 was passed “to establish acts or omissions constituting offences committed through the use of information and communication technology or cybercrime, and for related purposes”.

When we examine why laws are made, which is universally accepted for the regulation of behaviour which is deemed appropriate and anticipated to be compliant with the constitution, we are able to understand the importance of why cybercrimes have become a topic of much discussion. I intend to approach this topic today from a practical level because I believe there are opportunities for us to explore how best our Judiciaries tackle cybercrimes while also dealing with cases of what we shall call old laws.

Concepts such as harassment which happens and impacts a person without the use of a digital instrument at times appears inconsistent with harassment which is done via a smart phone, computer or other electronic device. I am mindful that societal norms prevail in large part to what one may consider acceptable and with technological usage there have been concerns which raise the issues to whether cybercrimes and traditional laws are so different that they may warrant different approaches to how courts tackle the problem.

All of us can accept that cybersecurity is necessary to safeguard data and protect our judiciaries from cyberattacks which compromise our ability to deliver justice. However, it is necessary to establish that old laws which have existed prior to cybersecurity legislation are still relevant and are not counter culture to the new legislation which are in place in the 21st century. The Budapest Convention “describes cybercrime as offences relating to computer-related data, fraud and network security as well as copyright infringement.”<sup>1</sup>

According to news reports in PNG, there are on average 10 cases of cybercrimes reported daily to the police<sup>2</sup>. This indicates that there is a recognition by persons in our society that they have recourse through the judicial system in relation to threats and actual offenses emanating from

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1. <https://www.lowyinstitute.org/the-interpreter/developing-png-s-cybercrime-policy-local-contexts-global-best-practice>

2. <https://www.postcourier.com.pg/several-cyber-crime-cases-before-court/>

cybercrimes. This augurs well for compliance in terms of persons not sitting back and accepting the past view that may have been espoused by some that when there are cybercrimes committed against them, they were limited in what they could do according to law.

There was a 2020 case which resulted in a conviction in the National Court in which a prisoner used a fake account in prison to make threats against the Prime Minister. We have resources through the detection mechanism of the Police that provided the foundation for building the case that resulted in this successful prosecution. It is therefore relevant to note that in addressing cybercrimes in the court, without the various law enforcement agencies having the capability to gather evidence and assist in building a good case that can be prosecuted, the court would be constrained in what it can do.

It is argued that developments in the law usually fall behind the advances of technology<sup>3</sup>. In PNG we have seen this reality and there was a time when there were scams involving people being bilked out of money in the hope of getting more money from schemes which never materialized in what it promised. Such activities happened by the use of phones covering multiple jurisdictions prior to the introduction of legislation which made these things offences. This is an example that demonstrates the courts must be aware of the changing dynamics of the times we live and be ready to address these challenges as they present themselves in our courts.

The academics may wish to debate on whether there is new legal doctrine that must be reshaped with cybercrimes and old laws<sup>4</sup>. I am open to getting considered views on that point but I will say that we cannot pretend in our experiences on the bench that at times some of the recent matters that are brought before us that appear seemingly novel in character can at times be perplexing to unravel given the complexity of technology and human rights and also in certain instances the lack of clarity in legislation which then become a sample of court theatrics for a distinguished Judge to preside over and make a determination.

Given my time on the bench which covers over three decades, I can say with certainty there have been radical changes in cases that come before the court that include significant technological components in criminal matters. These cybercrimes did not exist when I was first appointed to the bench and our judiciary has evolved to be able to handle any and all manner of cybercrimes that come before us. It is known that cybercrimes affect us all when we consider online transactions which are due to fraud that result in financial institutions passing the cost to all consumers in their attempt to recover such losses<sup>5</sup>.

With the proliferation of Artificial Intelligence (AI) including ChatGPT which is an AI powered language model used by various sectors we can see yet again how technology is rapidly changing with legislation which has fallen behind, trying to catch up and the courts then asked to help. We

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3. Manning, Colin, Old Laws, New Crimes: Challenges of Prosecuting Cybercrime in Ireland (February 8, 2016). <http://dx.doi.org/10.2139/ssrn.2729204>

4. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/gmlr9&div=16&id=&page=>

5. <https://ieeexplore.ieee.org/abstract/document/6061188>

are now in the age of automated hacking with the use of AI which creates significant challenges for law enforcement and prosecutors added to the cross-border component given many of these types of crime may not originate in your jurisdiction but wreak havoc in your jurisdiction nevertheless. We know that cybercrime transcends borders<sup>6</sup> and judiciaries should share ideas such as in this session on how to address such activities.

We know that at the United Nations level there is not a consensus on cybercrime and this in itself presents challenges for our judiciaries given the international impact and cross border realities of cybercrimes and cyberattacks<sup>7</sup>.

I am sure that we can all appreciate that this session will allow us to engage through discussion including questions on this topic of cybercrimes and how courts address these challenges when technology has moved far past the legislation that forms what we may call old laws. Ransomware attacks plagued some of our judiciaries in the pacific in the past four years. They continue to be a problem for some courts bringing all electronic activity to a halt due to the inability to prepare and/or combat its effect on our Information Technology Systems.

This certainly presents an opportunity at a regional level in our jurisdictions to develop a rapid response approach that could assist in mitigating damage that our judiciaries face from cybercrimes. And while this is not the focus of this presentation, I thought it was important that I mention it for consideration.

There are also concerns that some cybercrime laws may adversely impact free speech. This is yet another conundrum that permeates dialog when it come to new cybercrimes and old laws. When you have laws which may appropriately create penalties for online criminals it may face criticism where it takes more control over the social media and potentially affects free speech<sup>8</sup>. Such litigation to make constitutional determinations would likely be heard before courts to make a decision as to validity of legislation. There is no doubt a wide scope of areas for which we should ponder carefully as we critically analyse how judiciaries can improve access to justice given new cyber security threats which may or may not be crimes in your jurisdiction and which may exceed the ability of existing laws.

In June 2021, the Papua New Guinea Centre for Judicial Excellence (PNGCJE) of which I am the Chairman, hosted in collaboration with the Council of Europe a training course on Cybercrime and Electronic Evidence for Judges. We have recognized the importance of facilitating training for Judges and Magistrates in this area to prepare them to handle matters as they are brought before the courts. The Cybercrime Code Act 2016 and Criminal Code Act of PNG are critical to combatting cybercrime in PNG. I anticipate that the PNGCJE will be facilitating a few more courses next year for Judges and Magistrates on the topics of Cybercrimes, Artificial Intelligence and Electronic

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6. <https://dig.watch/topics/cybercrime>

7. <https://www.coe.int/en/web/cybercrime/-/the-global-state-of-cybercrime-legislation-as-at-january-2023->

8. <https://www.aljazeera.com/news/2023/7/28/rights-groups-opposition-slam-proposed-cyber-crime-law-in-jordan>

Evidence.

Old laws are required to be repealed, amended or updated to keep up with modern times. Our ability to meet the rapid changes of these times will create certainty for court users. The pace at which technology moves in application in the world is such that the law may struggle to keep up with it<sup>9</sup>. A decade ago, empirical information on cybercrime was scarce or limited in most of our jurisdictions<sup>10</sup>. Laws with reference to cybercrime are still emerging<sup>11</sup>.

With more data storage capacity available now, more than ever than in our history and this information potentially accessible by criminals who are hacking and using remote methodologies to illegally attempt to access, there are inherent risks associated with how we are functioning in the global community. In this vein, it is necessary to have robust laws to protect the rights of persons in ensuring that preservation of those rights is maintained and not eroded due to harmful illegal activities emanating from the use of digital means inclusive of technology.

It is not inconceivable that a complainant may go to make a complaint at a police station in remote part of the country where they may make a report to the police only to be told they should just turn off the computer<sup>12</sup>. Enforcing existing laws which do not address the reality of where we are in the digital age does not engender public confidence. The use of social media and mobile phones in PNG is regulated and as the courts hear more cases based on cybercrime legislation our jurisprudential development informs in providing metrics that can be examined with regard to the effectiveness of which the legislation has been in addressing societal behavior that are considered norms.

Cybercrime will continue to be a challenge in our realities in PNG and I dare say throughout the world<sup>13</sup>. Courts have to be able to keep up with these changes to be relevant and effective in the administration of justice and in being able to uphold the constitution. There is an expectation that with the new cybercrimes that are happening which correlates with appropriate legislation and old laws that are modernized to keep up with technology, our courts will be able to handle anything that it is required in the course of cases that are brought.

We have seen what digitalization has meant for our country over the past few decades in helping to transform our economy and provide a better quality of life for people within our jurisdiction. We also recognize that the court will continue to enhance its capacity to deal with cases as they are filed as we tackle new cybercrimes in the 21st century.

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9. Clare Chambers-Jones (2013) Virtual world financial crime: legally flawed, *Law and Financial Markets Review*, 7:1, 48-56, DOI: 10.5235/LFMR7.1.48

10. Koops, Bert-Jaap, *The Internet and its Opportunities for Cybercrime* (December 1, 2010). *TRANSNATIONAL CRIMINOLOGY MANUAL*, M. Herzog-Evans, ed., Vol. 1, pp. 735-754, Nijmegen: WLP, 2010, Tilburg Law School Research Paper No. 09/2011. <http://dx.doi.org/10.2139/ssrn.1738223>

11. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/gyil58&div=10&id=&page=>

12. [https://doi.org/10.1016/S0262-4079\(18\)30569-4](https://doi.org/10.1016/S0262-4079(18)30569-4)

13. <http://cpi.kagoshima-u.ac.jp/publications/southpacificstudies/sps/sps38-2/southpacificstudies38-2-pp39-72.pdf>

# **Issues on Evidence Collection of Cross-border Crime**

**Luis Fernando Damiani Bustillos, Justice, Member of the Constitutional Chamber and President of the Ibero-American Institute of Higher Judicial Studies of Bolivarian Republic of Venezuela**

## **1.- Importance of combating cross-border crime**

The ongoing regional and multilateral integration globally has led to a growing movement of citizens, bringing forth positive outcomes. However, this integration has also given rise to detrimental effects, particularly in the form of cross-border crime. This reality necessitates a thorough analysis of available legal mechanisms to enhance effectiveness in combating cross-border crime—a challenge that no country can afford to overlook.

The battle against both domestic and cross-border crime is fundamental for the consolidation, promotion, and protection of legal, economic, political, and social security on a broad scale. This imperative extends to both domestic and international spheres, highlighting the interconnected nature of security in today's interconnected world.

## **2.- Importance of evidentiary activity for punitive intervention**

In our legal studies, it is a common principle that the existence of evidence to support the prosecution is a cardinal basis for criminal liability and its legal consequences.

## **3.- Judicial cooperation in the fight against cross-border crime**

Solidarity, reciprocity, and international cooperation call for ongoing collaboration to effectively collect evidence and elements needed to prove crimes, especially those with cross-border implications due to their international impact.

In this context, it's important to note that Article 152 of the Constitution of the Bolivarian Republic of Venezuela outlines the fundamental principles guiding the country's international relations. These include independence, equality among states, self-determination, non-intervention in internal affairs, peaceful resolution of international conflicts, cooperation, respect for human rights, and solidarity among peoples in the pursuit of emancipation and global well-being.

In the context of the "Taking of Evidence," which also addresses cross-border crimes, Article 61 of the Organic Code of Criminal Procedure outlines the authority of the Public Prosecutor's Office, facilitated through investigative police bodies, in acquiring and preserving evidence. This power extends even when the accused is not within the territory of the Republic.

#### **4.- International cooperation and assistance in the field of cross-border organized crime offenses cross-border organized crime**

Special criminal legislation, in turn, directly addresses international cooperation, particularly in the context of cross-border crimes. For instance, Article 74 of the Organic Law against Organized Crime and the Financing of Terrorism outlines directives for international collaboration aimed at combating organized crime groups and tackling the financing of terrorism. This provision explicitly details:

1. Uncover and locate individuals involved in criminal activities, and collect the required evidence for prosecution.
2. Disrupt the operations of organized crime and terrorist financing groups.
3. Strip organized crime groups of the gains from their illicit activities using precautionary measures such as seizure, confiscation, or forfeiture.

Article 75 of the Organic Law against Organized Crime and Terrorist Financing addresses the communication and exchange of information, implying:

1. Information on stolen or stolen goods in order to prevent the illicit sale or legalization of stolen or stolen goods.
2. Information on typologies or methods for forging passports or other documents, on trafficking in persons, arms, drugs, money laundering and terrorist financing, as well as information on the concealment of goods in customs matters or any other activity of organized crime groups.

As evident, the communication and exchange of information extend to the concealment of goods in customs matters—a critical aspect for the cutting-edge and successful Maritime Silk Road and, by extension, international trade. This also encompasses any other activities of organized crime groups, which typically pose a higher degree of harm compared to crimes committed by individuals.

Concerning judicial assistance, Article 76 of the Organic Law against Organized Crime and Terrorist Financing stipulates reciprocity in investigations, prosecutions, and judicial proceedings when requested by another state. This aligns with treaties signed and ratified by the Bolivarian Republic of Venezuela.

In this context, the same law, along with other domestic regulations, outlines the authority of the Public Prosecutor's Office. This authority operates in collaboration with the Ministry of People's Power, which holds jurisdiction in foreign affairs, to handle requests for mutual legal assistance.

The Venezuelan legal system also allows for the potential establishment of international cooperation ties with other countries or international organizations. This collaboration is aimed at forming teams to conduct investigations into the criminal acts outlined and penalized in the Organic Law against Organized Crime and the Financing of Terrorism.

Regarding mutual assistance, Article 79 of the Organic Law against Organized Crime and the Financing of Terrorism specifies the following:

Mutual assistance in criminal matters shall be afforded for the following measures:

1. Receiving testimonies, statements, or taking interviews from persons.
2. Carry out inspections, seizures, and preventive securing.
3. Providing information, evidence, and evaluation of experts.
4. Providing certified copies of relevant documents and files, including public banking and financial documents, as well as corporate and commercial documents of commercial companies.
5. Facilitating the voluntary appearance of persons in the requesting State.
6. Executing service of decisions, documents, and measures relating to legal proceedings.
7. Obtain samples of bodily substances, deoxyribonucleic acid (DNA) results, or other scientific other scientific analysis.
8. Examining objects and places.
9. Any other action that may arise and is authorized by the Venezuelan legal system.

If the presence of a person is either not possible or deemed undesirable in the requesting State, videoconferencing may be employed. The principle of reciprocity between States is to be considered in the execution of all such proceedings.

#### **5.- Extradition as a mechanism for international cooperation**

In addition to facilitating judicial cooperation and assistance in cross-border evidence, the Bolivarian Republic of Venezuela has established various legal institutions to combat impunity. One such mechanism is extradition, which operates within a comprehensive national and international regulatory framework.

In this regard, it is particularly important to note Article 271 of the Constitution, according to which states that:

In no circumstance shall the extradition of foreigners, held accountable for crimes such as delegitimization of capital, drug offenses, international organized crime, acts against the public assets of other States, and violations of human rights, be refused. Judicial measures designed to prosecute crimes against human rights, public assets, or drug trafficking will not face prescription. Additionally, pursuant to a court ruling, assets derived from activities linked to crimes against public property or drug trafficking will be subject to confiscation.

The proceedings related to the aforementioned crimes will be public, oral, and expeditious, ensuring due process. The competent judicial authority is vested with the authority to issue necessary preventive precautionary measures against the properties owned by the accused or their intermediaries, ensuring the eventual imposition of civil liability.



### **Closing words**

It's clear that the Venezuelan legal system encompasses the gathering of evidence, elements of conviction, means of proof, and proof of crimes, extending to cross-border offenses. The system also establishes rules regarding cooperation and judicial assistance, notably in extradition matters, with the incorporation of telematic means. This effectively contributes to the prevention and punishment of crimes, including customs and economic illegality at large—an essential aspect for fortifying the Maritime Silk Road and fostering international trade.

China and other nations with judicial representations here have a crucial strategic ally in the Americas, particularly in the judicial arena: the Bolivarian Republic of Venezuela.

International cooperation stands as a constant premise within the framework of our constitutional principles, emphasizing sovereignty, self-determination, legal security, and complementarity between peoples.

