

Crimes And Criminal Proceedings In Omani Criminal Justice System

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Abstract:-The Omani criminal justice systems is founded upon principles of civil law and Shari'a therefore, an inquisitorial model of criminal justice system adopted which juristically influenced from the Islamic law and French system of administration of justice. Over the years, Oman has developed an integrated judicial system. Since 1970 many legal reforms have been introduced in the criminal justice system including criminal law and procedures to conduct fair investigation of crimes, prosecution and trial and judicial system. Whereas criminal offences are divided into three categories such as felonies, misdemeanours and minor offences by envisaging different types of penalties including capital punishment (i.e. life sentences and prison sentences that can span from three years up to fifteen years) and minor penalties such as prison sentences to extent of ten days to three years, and fines. Therefore, the aim of this paper is to achieve a good understanding of the Omani criminal justice system in order to provide a sound background upon which a critical and analytical discussion of the right of access to a lawyer in Oman can take place. This paper will also focus on main areas of the criminal justice system including an overview of the historical background, the criminal procedures, investigative and prosecution authorities, and a general overview on the function of the defence lawyer in Oman.

Key words: *criminal justice system; Omani penal procedure code; investigation; prosecution; Royal Oman Police; Defence Lawyer;*

I. INTRODUCTION

The Omani Criminal Justice System, like that in most Arab countries, is based on the Egyptian system,¹ which in turn is originally based on the French model.² Thus, it could be generally stated that the Sultanate of Oman adopts the inquisitorial model in its CJ system,³ albeit with strong influences from the Islamic system.⁴ Islam has a fundamental¹ For more details see N J Brown, *The rule of law in the Arab world: courts in Egypt and the Gulf* (Cambridge University Press 1997)² See Ibid 233 As the situation in all Arab countries' legal systems

role in the Omani Criminal Justice System; the Basic Law of the State 1996⁵ makes Islam the religion of the state and the Shari'a a main basis of legislation.⁶ In fact, the law that predominated in Omani society during the twentieth century up until the early 1950s was the Islamic Shari'a law.⁷ Nevertheless, it is important to note that even if laws in Oman can be built upon the Islamic base, not all of them have to spring from the Shari'a.⁸ The Basic Law of the State applies the term "asas" (basis) rather than "masdar" (source) for the Shari'a's function for further legislation.⁹ Thus the Omani legal system is founded upon civil law principles and Islamic Shari'a law,¹⁰ which both constitute the guiding principles and sources of law.

Oman has two basic sources of law. Firstly, the fundamental source is Islamic law, which is derived from the Quran, the Sunna¹¹, the Ijma¹² and the Qiyas.¹³ Islamic law is mostly applied through a system of Shari'a courts. Such courts specialise in family issues and disputes which are solved in accordance with the principles of Shari'a Law.¹⁴ The Omani Personal Statues Code 1997, which regulates family issues and disputes, is drafted in accordance to such principles.¹⁵ Secondly, there is the statutory system of law expressed in Royal Decrees, which are considered primary legislation, and through Ministerial decisions, which are secondary legislation. Omani legislation tends to be formulated into a number of major codes, which provide the general principles of law (primary legislation), with a large amount of subsidiary legislation (secondary legislation). Primary legislation is based on Royal Decrees issued by His Majesty the Sultan, which in turn derive their authority from the Basic Law of the State. Secondary legislation involves the⁴ It is stated in Article 2 of the Basic Law of the State 1996 that "The state's religion is Islam and the Islamic Shari'a is the basis for legislation." For more discussion about the influence of Shari'a Law on Arab legislations in general see H J Liebesny, *The law of the Near & Middle East: readings, cases, & materials* (SUNY Press 1975)⁵ The Basic Law of the State set down in Royal Decree 101/96. It provides the system of governance in Oman and the fundamental rights of nationals and expatriates, including the protection of personal liberty and property interests. In addition, it establishes the main principles that all other laws in within the state legislation should be based on

6 The Basic Law of the State 1996, Articles 1 and 2 7 M Al-Moqatei, 'Introducing Islamic Law in the Arab Gulf States: A Case Study of Kuwait' (1989) 4 *Arab Law Quarterly*, 138

8 N A Siegfried, 'Legislation and Legitimation in Oman: The Basic Law' (2000) 7 *Islamic Law and Society*, Brill, Leiden, 359, 372 <<http://www.jstor.org/stable/3399272>> accessed 17 March 2010

9 Article 2 of the Basic Law of the State states that "The state's religion is Islam and the Islamic Shari'a is the basis for legislation" 10 Shari'a Law is all the rules and regulations that were laid down in the Quran, in reports of the life and actions of the Prophet Muhammad, and in the unanimous opinions of jurists.

11 Any action or statement or report issued by the Prophet Muhammad peace is upon him, for more details see W B Hallaq, *A history of Islamic legal theories: an introduction to Sunnī usūl al-fiqh* (Cambridge University Press 1999)

12 Consensus, that is, acceptance of a matter by a specified group of Muslim Scholars, see M A Khadeer, *Ijma and legislation in Islam* (Khadeer 1974) 18

13 It can be defined as to establish and achieve a decision, a rule and judgment for a case due to a certain cause just because of the existence of the similar cause, rule and judgment in another particular case. See M Izzi Dien, *Mū'il Yūsuf 'Izz al-Dīn, Islamic law: from historical foundations to contemporary practice* (Edinburgh University Press 2004)

14 For the role of Shari'a Law in Gulf Countries see H A Radhi, *Judiciary and arbitration in Bahrain: a historical and analytical study* (BRILL 2003)

15 All Articles of this code are based on Shari'a Law

implementation of Regulations based upon specific powers delegated in the Royal Decrees to the concerned executive body or ministry. Both the primary and secondary legislation are published in the Official Gazette of the Sultanate of Oman (O.G.S.O).¹⁶

II. HISTORICAL BACKGROUND OF THE OMANI CRIMINAL JUSTICE SYSTEM

Despite the fact that Oman is one of the least-known Gulf jurisdictions and that the degree of legal development has been carried out in a quiet way over the past forty years, many laws have been promulgated.¹⁷ Since 1970 the Omani criminal justice system has known a number of important reforms. The first reform was achieved by the introduction of the Police Code, which was enacted in 1973, whereby the police were given the authority to conduct criminal proceedings.¹⁸ In addition to their original authority in preserving the peace, they were given the power to take the decision to prosecute. In the same year, the police court was established.¹⁹ This court had full jurisdiction until 1984 when the criminal judicial authority was reformed and a criminal court was established, which simultaneously coincided, with the establishment of the prosecution office in the Royal Oman Police.²⁰ Before this occurrence, it was the responsibility of Criminal Investigation Department officers²¹ to carry out the prosecution functions and advocate charges before the courts.

A second key reform in the modern Omani legal system was the Basic Law of the State, which was promulgated and came into force in 1996.²² It was the first legislation of its type. It should be known that the term "*Basic Law of the State*" is equivalent to "*constitution*" in other jurisdictions. It recognised the legal structure of the Sultanate, and deemed that it should be upon this model that all future laws will be based.²³

An important aspect of this law is the reform of the recent Omani Criminal Justice System. For example, it recognised the creation of an independent Public Prosecution²⁴ and the establishment of a Supreme Council.²⁵ This council has been deemed to have the authority to supervise the appropriate implementation of the courts and auxiliary bodies. The Basic Law of the State deals with the judiciary's role in twenty one articles,²⁶ it makes it clear that the judiciary is independent²⁷ and judges are subject only to the law.²⁸

¹⁶ T W Hill, 'Commercial Legal System of the Sultanate of Oman' (1983) 17 *Int'l L.* 507, 507

¹⁷ For example, the Penal Code 1974, the penal procedures code 1999, the Judiciary Code 1999, the Public Prosecution Code 1999, the Police Code 1990

¹⁸ This law was the first Code in Oman to recognise investigation of crimes in Oman

¹⁹ For more information about the Police Court see section 2.3.3. of this chapter: The Omani Courts System

²⁰ Royal Decree No. 25/1984

²¹ Ibid.

²² Royal Decree No. 101/1996

²³ The Basic Law of the State 1996, Article 79

²⁴ Ibid Article 64

²⁵ Ibid Article 66

²⁶ Ibid Articles from 17 to 25 and from 59 to 71

²⁷ Ibid Article 60

²⁸ Ibid Article 61

Moreover, judgments are issued and executed in the name of the Sultan,²⁹ and he is the one who may appoint and dismiss senior judges.³⁰ Over the years, Oman has developed an integrated judicial system. The Ministry of

Justice supervises current efforts to simplify procedures. Moreover, it works to improve staff performance levels, build and maintain modern facilities and introduce better working practices. After the Basic Law of the state came to force, responsibility for all courts transferred to one authority, namely the Ministry of Justice.

A third reform involved the issuing of Royal Decrees in 1999, which are considered to be a significant change to the Omani Legal System. The first Royal Decree introduced the Penal Procedures Code.³¹ Such a Code has been considered a vital change in the Omani Criminal Justice System development; it is the first time that the rules which determine and direct the work of agencies and individuals accountable for the criminal justice system have been amalgamated into one Code. The second Royal Decree issued the Judicial Authority Code,³² which regulates the Omani courts and describes their role and authority. It achieved the organization of courts and defined their hierarchy and jurisdiction.

The third Decree entailed the creation of the Supreme Judicial Council, which has the duty to formulate the general policy of the judiciary, in addition to ensuring its independence and sustained development.³³ Finally and perhaps most fundamentally of all, is the Decree which issued the Public Prosecution Code,³⁴ whereby an independent body was established to investigate and prosecute crimes. However, as will be discussed in the next few pages, the claimed independence of this body has frequently fallen into the shadows of doubt.

It is important to note that drafting and proposing laws in Oman is carried out by the ministry or institution that requires such laws, and reviewed by the ministry of legal affairs. Following this process, proposed laws are then submitted to the 'Shura Council'³⁵ and later to the 'State Council'³⁶ for review, before they are submitted to his Majesty the Sultan, in their final form, for signature and issuance as Royal Decrees. It is important to note that the Oman council, which contains both the Shuraa Council and the State

29 Ibid Article 71

30 Ibid Article 42.8

31 The Penal Procedures Code No. 97/1999

32 The Judicial Authority Code No. 90/1999

33 Royal Decree No. 93/1999

34 Royal Decree No. 92/1999

35 The Majlis al Shuraa is an administrative and financial independent body, inaugurated in 1991. Its members are fully elected to represent their respective cities. It has an important role in reviewing draft laws before steps are taken to promulgate them; it submits its recommendations on the draft laws referred to it to the Council of Ministers. Also, it plays a role in proposing improvements to the economic and social laws in force in the Sultanate where it considers this appropriate

36 The State Council (Majlis A'Dawla) is a financially and administratively independent legal body, established in 1997. It plays a central role in national development by acting as a link between the government and the people. Its Chairman and members are appointed by His Majesty the Sultan from Omani nationals of not less than 40 years of age with good social standing and reputation. It reviews matters referred to it by the Sultan, drafts laws before promulgation and prepares studies on development-related issues including human resources. Council,³⁷ has no legislative power; in fact, it does not possess the ability to draft laws. Rather, such power resides exclusively with the Sultan.³⁸ Thus, it has been argued that no real changes can be identified as a result of the division of powers, which has been accomplished through the Basic Law of the State.³⁹

III. CRIMES AND CRIMINAL PROCEEDINGS IN OMAN

In accordance with the Omani Penal Code 1974, criminal offences are divided into three main categories: felonies, misdemeanours and minor offences.⁴⁰ The discretionary criteria used in the Penal Code to distinguish between these three kinds of criminal acts are of a completely formal nature and depend on the different types of penalties envisaged. In the case of felonies, envisaged penalties include capital punishment, life sentences and prison sentences that can span from three years up to fifteen years.⁴¹ Misdemeanours' punishments consist of prison sentences that may from ten days to three years, and fines ranging between ten to five hundred Omani Rials.⁴² Finally, for minor offences punishments include a prison sentence from 24 hours to ten days and fines from one to ten Omani Rials.⁴³ For an act to be considered as one of these crimes it must first be clearly stated by the law and any applicable punishment must already be expressed in law. One of the most absolute and fundamental principles of the Omani criminal legal system is that of legality. Article 1 of the Penal Code states that 'no act can be considered a crime if it is not expressly considered an offence by law, nor can sanctions be imposed that are not established by the law.' This principle is, also, confirmed by the Basic Law of the State, Article 21, which states that 'No crime or penalty is cognisable as such except by virtue of a Law, and (there shall be) no punishment except for acts subsequent to coming into force of the Law wherein such acts are provided for.'

IV. THE OMANI PENAL PROCEDURES CODE 1999

The Penal Procedures Code 1999 is the main guide to all of those who are involved in the criminal process. It regulates criminal proceedings from the point that an offence is reported, to the point it is completed when a final decision is made by the court. The criminal proceedings are, in fact, divided into three stages: the suspicion and evidence collection stage, where the police have a significant role; the preliminary investigation stage in which the public prosecution has a fundamental role; 44 and the trial stage, where the contending parties put their evidence before the court. These three stages are governed by the Code of Penal Procedures. A key feature of this Code is that it is a modern inquisitorial law; it follows the inquisitorial model by giving a greater emphasis

37 The Council of Oman (Majlis Oman) is made up of member of the State Council (Majlis A'Dawla) and Consultation Council (Majlis A'Shura) as stipulated in Article 58 of the Basic Law of the State. The Council of Oman assists the government in drawing up the general policies of the state

38 The Basic Law of the State 1996, Article 58

39 N A Siegfried, *Supra* note 353

40 The Penal Code 1974, Article 29 explains that there are technical meanings for these terminologies

41 Ibid Article 39.1

42 Ibid Article 39.2

43 Ibid Article 39.3

44 As it will be seen in the next few pages, pre-trial stages are controlled by the Public Prosecution to the pre-trial stages, and it almost rules out the involvement of the defence lawyer at these stages.

Since 1970 the burden of prosecution has been taken over by the state from the general public, as it was originally practiced by the victims themselves. The duties of collecting and preparing the evidence for use at a criminal trial and conducting the case in court have recently been put in the hands of the Public Prosecution, 45 as will be discussed in the next few pages. All criminal actions are prosecuted in the name of and on behalf of the people of the Sultanate and the inhabitants of the state. 46 Moreover, the judge conducts a broad investigation at the trial stage. This is called "judicial investigation" through which the judge has the broad authority to proceed with whatever is deemed necessary for the truth to be exposed. For example, the judge may call witnesses in addition to those required by the parties, or visit the scene of the crime in question. 47 Again, this will be discussed further in the following chapters.

The Code of Penal Procedures generally covers most of the universal principles and safeguards of criminal proceedings, such as the right to defence throughout criminal proceedings. 48 In fact, the most important principles with which the criminal proceedings should comply are mentioned in the Basic Law of the State, which also contains the aforementioned significant procedural rules. Those articles of such law which deal directly with criminal proceedings are: the exclusive jurisdiction of the judiciary over decisions in all criminal issues; 49 the independence of the judiciary; 50 and the accused's right to defence. 51 Moreover, aside from these directly procedural constitutional rights, all other human rights guaranteed in the Basic Law of the State remain applicable throughout the criminal trial. Consequently, breaching these rights may result in a constitutional complaint, which can be directed to the High Court.

The aim of the Omani Penal Procedures, like that of the most countries in the world, is the determination of the objective truth based on the framework of a procedural form, which such law prescribes to ensure fairness. This requires the rules and regulations of criminal proceedings to be constructed in such a manner that they produce an appropriate environment through which truth can be sought and factual errors avoided. 52 Moreover, such rules should serve to protect the equality of the rights of both the Public Prosecution and the accused and his lawyer. They should contribute to the protection of the accused's human rights throughout all of the proceedings. Its role is to construct a balance between the fight against crime by extending the powers of the investigation and prosecution authorities while still safeguarding the rights of those being accused of committing

45 Royal Decree No. 92/1999, which established the Public Prosecution in Oman and introduced its Law

46 The Basic Law of the State 1996, Article 64

47 The Penal Procedures Code 1999, Article 198

48 Ibid Article 115

49 The Basic Law of the State 1996, Article 61

50 Ibid Articles 60 and 61

51 Ibid Articles 22 and 23

52 H H Jescheck, 'Principles of German Criminal Procedure in Comparison with American Law' (1970) 56 Va. L. Rev, 239-240

crimes. 53 However, most articles in the Omani Penal Procedures Code are formulated in general terms, which lead to them being interpreted and enforced in different ways.

The code articles, consequently, cannot be considered as a clear and accurate guide to the investigation and prosecution authorities in terms of discerning all their procedural and actual powers. If the Omani criminal system is compared with other jurisdictions such as England and Wales, it emerges that the situation is completely different in this regard as is highlighted by the Police and Criminal Evidence Act 1984, which presents comprehensive provisions concerning police powers and practices in relation to the main criminal proceedings matters. For example, it provides detailed provisions for issues of evidence gathering and the identification, arrest, questioning and charging of suspects.⁵⁴ In contrast, the Omani Penal Procedures Code does not achieve this level of detail.

Neither can a clear explanation of most of the provisions of the Omani Penal Procedures Code be found in the decisions of the Omani courts. Detailed provisions or guidelines would help police and public prosecutors to know their duties and powers, consequently ensuring the safeguarding of the accused's rights throughout criminal proceedings.⁵⁵ This could be provided by producing accurate guidelines, which detail Penal Procedures Code, under the supervision of the professional legal community.⁵⁶

V. INVESTIGATIVE AND PROSECUTION AUTHORITIES IN OMAN

The investigative and prosecution authorities in Oman include three administrations: the Royal Oman Police, the Public Prosecution and the courts. The role of these authorities in regard to the accused's right of access to a lawyer is hereby analysed. However, a brief explanation of the structure and function of these authorities is provided in this chapter with special reference to the Public Prosecution, as it is the practicing of the right of access to a lawyer in pre-trial stages, which the Public Prosecution controls, that is the most controversial subject matter.

VI. THE ROYAL OMAN POLICE

In spite of the fact that there was no legal statute governing the police in the Sultanate until 1973, the police held the responsibility of handling criminal proceedings before courts on behalf of society from 1970. It should be noted that at this stage no Public Prosecution service existed. In 1973, the Police Code came into force and granted this duty to the police,⁵⁷ Article 18.1 of this Code states that

... The police force has the duties of preserving the state general security and order, protecting persons and properties, and enforcing the laws. The force will take necessary measures to prevent the commitment of crimes,⁵³ G G Al-Suwaidi 'The Independence of the Public Prosecution Service in the UAE: Issues and Proposals for Reform' (2009) 23 *Arab Law Quarterly*, 217, 265

⁵⁴ The Police and Criminal Evidence Act 1984, Codes of Practice A - H

⁵⁵ G G Al-Suwaidi *Supra* note 398, 263

⁵⁶ H Nasr, J Crystal and N J Brown, 'Criminal Justice and Prosecution in the Arab World' (October 2004) a study prepared for the United Nation Development Program, 18

⁵⁷ Royal Decree No. 5/1973

arrest offenders, and conduct prosecution before courts on behalf of the Public Prosecution whenever it is necessary and possible.

In 1984, the Organisation of the Criminal Judicial System was promulgated, and in the same year, the first Criminal Court in the Sultanate was established, replacing the Police Court.⁵⁸ Despite this, the responsibility for criminal prosecution remained under control of the police authority. Article 10 of the Criminal Courts Code 1984 states that 'the Royal Oman Police undertake the jurisdiction of criminal prosecution before criminal courts along with its original jurisdiction in conducting criminal inquiry, collecting evidence, and investigation.'

Nevertheless, from the wording of Article 18.1 of the Police Code 1973, which is mentioned above, it is clear that from 1973 there was an intention to create a public prosecution system in Oman. This can also be seen in Article 64 of the Basic Statute of the State 1996, which states that 'the public prosecution will conduct criminal proceedings on behalf of the society, supervise criminal investigation, attend to the enforcement of criminal law, pursuit of the guilty, and execution of judgements.' However, the police controlled the pre-trial stages of cases until 1999 when the Public Prosecution was established and took over the control of such stages from the Royal Oman Police, as it will be discussed in the next paragraphs.

In spite of the fact that in the modern Omani criminal justice System the Public Prosecution has taken over investigation proceedings and controls the pre-trial stages of criminal cases, the police still play a vital role in the criminal justice system today. The police are authorised to exercise many administrative duties, such as licensing, traffic regulation, immigration and residence in accordance with police regulations.⁵⁹ Additionally, most judicial tasks at the suspicion and evidence collection stage⁶⁰ in Oman are exercised by the Police, where they take on the role of Judicial Officers. They exercise judicial duties, such as arrest, detention, search, seizure, and some investigative power yet the practicing of such exercises should be supervised by the superintendants of the Public Prosecution.⁶¹ Furthermore, although the decision to arrest and to detain is finally taken within the

police station by a limited number of senior police officers, however, the initial decision is made on the street by lower ranking officers and may have a considerable effect upon any later decisions that relate to criminal proceedings.

The police have the authority to detain the accused for up to forty-eight hours in order to collect evidence and perform an initial investigation, which may include the initial questioning of the accused.⁶² This initial questioning during the suspicion and evidence collection stage should not be confused with formal interrogation, which is regarded as the duty of the Public Prosecution, after which the police are not allowed to exercise further any of their initial tasks.⁶³ However, in practice, the stage of suspicion and

⁵⁸ Royal Decree No. 25/1984, The Criminal Courts Code 1984

⁵⁹ The Omani Police Code 1990, Article 11; the Omani Traffic Code 1993, Article 2; the Omani Passport Code 1997, Article 2

⁶¹ The Penal Procedures Code 1999, Article 32

⁶² Ibid Articles 50 and 75

⁶³ Ibid Articles 41 to 51

evidence collection, which may include questioning the accused, often, plays a decisive role in the proceedings of the case and the Penal Procedures Code does not establish practical conditions relating to this stage that safeguard the accused's rights. The police have a judicial authority in investigating criminal cases at such a stage, although this authority should be fully supervised and controlled by the Public Prosecution.⁶⁴ Since the pre-trial stages are under the authority of the Public Prosecution in Oman, examining such an institution in detail is significant for understanding the position of the right of access to a lawyer, especially in regards to pre-trial stages.

VII. THE PUBLIC PROSECUTION IN OMAN

7.1. Establishment and Structure

The Public Prosecution in Oman used to be a department within the Royal Oman Police administration. In 1990 it became a department that was directly supervised by the office of the Inspector General of the Royal Oman Police. In 1992, it was further up-graded to the control of the directorate-general under the office of the Royal Police Inspector. However, although this department was fully controlled by the office of the Royal Police Inspector,⁶⁵ the majority of the Public Prosecution members, since 1990, were qualified lawyers and are totally dedicated to legal professionalism.

In 1999 the investigation and prosecution system of the Sultanate were subject to probably the most fundamental reform agenda seen in the history of the Omani criminal justice system. In this year, the legislator recognized that it was time to have independent institutions for investigating and prosecuting crimes.⁶⁶ The recognition of the new independent service in 1999⁶⁷ made a substantial change to the investigation and prosecution process in Oman, albeit prior to 2001 the police were responsible for both the investigation and prosecution of cases. The system of Public Prosecution was introduced in 2001 in order to establish effective supervision over the conduct of the police, and also to bring independent judgment and objectivity to the prosecution decisions.

The Royal Decree No. 92/2001 promulgated the Public Prosecution in Oman as an independent body under the administrative supervision of the Inspector General of Police and Customs.⁶⁸ However, in 2011 the Public Prosecution was pronounced to be a completely independent body.⁶⁹ Since then it is administratively and judicially independent, thus the responsibility to act in criminal cases on behalf of the public, monitoring the enforcement of penal codes, and the enforcement of judgments have been taken over by the Public Prosecution.

The Public Prosecution in Oman is a quasi-judicial body, often considered part of the judicial branch of the state. It is headed by the General Public Prosecutor.⁷⁰ Concerning the administrative formula of the Public Prosecution, it consists of the Public Prosecution

⁶⁴ The Penal Procedures Code 1999, Article 32

⁶⁵ The Royal Police Inspector is the Head of the Omani Police Institution

⁶⁶ Royal Decree no 92/1999, which established the Public Prosecution and its Law

⁶⁷ Ibid.

⁶⁸ The Public Prosecution Code 1999, Article 1

⁶⁹ Royal Decree no 25/2011

⁷⁰ The Public Prosecution Code 1999, Article 6

authority in Muscat which includes general directorates and specialized departments such as the Inspection Department, the Verdict Execution Department and other departments spread across the Sultanate. Moreover, there are several specialized departments within the Public Prosecution office, devoted to specific matters such as state security, personal status, and financial crimes. The Public Prosecution Code 1999 ranked the Public Prosecution members in Article 5 as follows: the Head of Public Prosecution, Deputy of the Head of

Public Prosecution, the Head of the Public Prosecution Assistant, the Heads of Public Prosecution Departments, Senior Prosecutors, Junior Prosecutors and Public Prosecution Assistants.⁷¹ The amended Article 8 of such code considers the head of the Public Prosecution responsible for the Public Prosecution affairs.⁷²

It is important to note that in regard to the Public Prosecution structure, the Omani law structures the indivisibility of the Public Prosecution in such a way that public prosecutors represent the head of the Public Prosecution when carrying out their duty.⁷³ Moreover, in criminal proceedings any member of the Public Prosecution may replace another and continue on with the work already started. Article 4 of the Public Prosecution Code states that ‘the Public Prosecution cannot be divided and any member may act on behalf of the other unless the law states that a certain action or procedure is among the specialties of the Head of the Public Prosecution or his deputy.’

In addition, the Public Prosecution members adhere to the guidance of their superiors or the head of the Public Prosecution,⁷⁴ thus all public prosecutors are under the supervision of the head of the Public Prosecution,⁷⁵ whereby they must follow instructions and be subject to his authority.⁷⁶ The Public Prosecution is responsible for implementing the criminal policy of the Sultanate through its members.⁷⁷ The head of the Public Prosecution has the authority to carry out or to order the Public Prosecution members to carry out the prosecution of any criminal misconduct.⁷⁸ Prosecutors are obliged to follow such instructions but they should be free to express their opinions orally in courts.

The Public Prosecution members cannot be held responsible by the accused for proceedings taken against them, even though these procedures may cause damage or harm to the accused or any members of his family or others.⁷⁹ This is so long as the members are seen to be applying their authority in good faith, ensuring their job requirements are fulfilled and take into account all the requirements of their job. Their immunity, in fact, is significantly important for allowing prosecutors to carry out their work properly. However, the accused’s rights are also significant and must be protected against any abuse that may arise as a result of the prosecutors’ immunity. Thus, public

⁷¹ Ibid Article 5

⁷² Paragraph 3 of the Royal Decrees 25/2011 states that the head of the Public Prosecution shall practice all the Royal Police Inspector powers that are stated in the Public Prosecution Code 1999

⁷³ The Public Prosecution Code 1999, Article 4

⁷⁴ Ibid Article 6

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid Article 4

⁷⁸ The Public Prosecution Code 1999, Articles 1 and 4

⁷⁹ E al-Dhahabi, *The Criminal Procedures in Egyptian Legislation* (1st edition, Dar Alnahdha Alarabiah 1980) [66 (1980) العربية] نهضة دار الأولى، الطبعة المصرية التشريعية في الجنائية راءات الإح الذهبي، غ

prosecutors are responsible for their actions if they commit criminal acts, or if they participate in serious professional misconduct. This has been regulated through the legislation of the Public Prosecution Code Articles 12 to 15, and the Judicial Authority Code Articles 73 to 90.

7.2.Function

Generally, the function of the Public Prosecution in Arab countries can be divided into two main types. Firstly, in countries, such as Egypt and Jordan, the investigation and prosecution of crimes are tasks to be carried out only by the Public Prosecution. In Egypt, which introduced the legal system to the most of Arab countries, the investigation and prosecution tasks were originally separated, but are now combined.⁸⁰ Thus in most Arab countries, the Public Prosecution combines investigatory and prosecutorial tasks. However, in some other Arab countries, such as Lebanon and Morocco, the Public Prosecution has only the prosecutorial powers, while investigatory powers are handled through investigation judges.⁸¹ Nevertheless, in regards to the former situation where the Public Prosecution combines investigatory and prosecutorial tasks, the possibility of having a judge carry out the investigation exists, as for example in Egypt.⁸² Oman has adopted a Public Prosecution system similar to that of Egypt, where public prosecutors have investigatory and prosecutorial powers. By the establishment of the Omani Public Prosecution in 2001, the responsibility for both the investigation and prosecution of criminal offences was removed from the police and invested in the new judicial body. Thus now the Omani Public Prosecution has complete responsibility of conducting criminal proceedings on behalf of the society, whereby it covers the investigation process by carrying out all coercive actions in respect of the accused’s liberties. The Public Prosecution members are considered representatives of society in fighting crime and ensuring security as well as protecting human rights.⁸³ The Public Prosecution has broad powers in relation to the investigation of cases and decides whether to transfer cases to the court or to issue an order to render the case as groundless.⁸⁴ It directs the prosecution process in being responsible for making the decision to prosecute or not to prosecute. The Public Prosecution also has a purely judicial function, in deciding whether to

keep the accused in custody during the period of investigation,⁸⁵ and prosecutors do not have to get the permission of a judge to do so for

80 H Nasr, J Crystal and N J Brown, *Supra* note 401, 4

81 *Ibid*.

82 See A A Ramadan, *the Investigating Judge in Comparative Criminal Law* (Dar Al Fiker Al Arabi أ ع رمضان، (2004 2004) [العربي الفكر دار) المقارن الجنائي القانون في التحقيقات قاضي

83 H Nasr, J Crystal and N J Brown, *Supra* note 401, 4

84 The groundless order is a judicial order issued from the public prosecutor at the end of the investigation to not continue with the case if reasons are available. It is worth mentioning here that such reasons are not determined by the law. In this regard, see J Jehad, *Explanation of the UAE Criminal Procedures Law: Federal Code No. 35 of the Year 1992*, Part One (Dubai, Albayan Trading Press 1994) 415 [شرح جهاد، م ح ج [(1994 ل ل نشر البيان دبي،) الأول الجزء المتحدة، العربية الإمارات دولة لجزاء الإجراءات قانون

85 The Public Prosecution Act 1999, Article 53

the first 30 days in some crimes and 45 days in other crimes. This, however, may cause confusion between investigative and judicial functions.⁸⁶

Additionally, the Public Prosecution is responsible for ensuring that all penalties and orders imposed by the courts are enforced.⁸⁷ Beyond this, the Public Prosecution is responsible for the execution of sentences given out by the court. Furthermore, the prosecutors supervise and oversee the prisons within their jurisdiction to ensure the legality of detention and the treatment of prisoners.⁸⁸ In addition, one of the most significant roles that the Public Prosecution started to play from 2001 is to supervise and control the judicial police officers' tasks during the investigation of crimes. The establishment of an independent Public Prosecution to supervise the judicial police officers' exercise of their powers was a highly significant reform. However, the controlling and supervision of the work of the judicial police officers is no easy task.⁸⁹ Many public prosecutors do not know the actual scope of their supervision over judicial police officers. For example, some public prosecutors exercise supervision over irrelevant issues that are outside their jurisdiction. Moreover, many Public Prosecution members cannot cope with the most important aspects of supervision. Therefore, the presence of a lawyer acting on behalf of the accused during the initial stages of police enquiries may stand to protect the accused's rights in a better way.

The Public Prosecution is the only body with the authority to prosecute for a criminal offence in Oman, which makes it one of the central institutions in the Omani criminal justice system. However, such authority in Oman has not had an easy start, as initially there was a lack of staff, and even then many of the staff were inadequately trained and ill prepared for the transition.

VIII. INVESTIGATION AND PROSECUTION AUTHORITY

There is a little doubt that the pre-trial stages are significantly important as the way in which evidence is presented at the trial stage is influenced strongly by the processes of the former stages. In addition, the evidence collected in the pre-trial stages determines whether to proceed to trial. In the Omani Criminal Justice System, as mentioned above, as a general rule, the investigation is carried out by the Public Prosecution, which is assigned the task of gathering evidence. In fact, the whole pre-trial stages' proceedings are conducted under the control of the Public Prosecution; there is no judge for preliminary investigations a feature which is present in many other inquisitorial systems. The Sultanate of Oman follows the Public Prosecution system where investigative and prosecution powers are seen as judicial tasks practiced by public prosecutors. Thus, there is no other party that controls the work of the Public Prosecution members, or guarantees the rights of the accused during the investigation. However, the Public Prosecution has to get the court of first instance permission to extend measures which might restrict personal freedom, upon a request being submitted by the Public Prosecution, as will be discussed

86 G G Al-Suwaidi *Supra* note 398, 266

87 The Public Prosecution Act 1999, Article 285

88 *Ibid* Article 1

89 G G Al-Suwaidi *Supra* note 398, 265

in the following chapters.⁹⁰ At this point then the court hearing emerges merely as a way through which the pre-trial stage is controlled.

The discretion of public prosecutors⁹¹ in respect to the investigation and prosecution process is one of the most important powers that are provided to public prosecutors. It is widely believed that the separation of investigation and prosecution tasks is essential in order to ensure the rule of law is maintained.⁹² Investigation and prosecution should be separated, as practicing these powers within the same institution removes a layer of review from the criminal proceedings. In addition, this separation places the prosecution power in the hands of a party other than that has already decided on the guilt of the accused,⁹³ thus hampering a just course for the proceedings. It is significantly important for the cases to be reviewed by another institution other than the

investigation party before bringing them to courts, as this feature enables the reviewing party to consider the cases facts objectively and fairly. In order to be able to do this it is fundamental for the review party in question to be free of influence, and void of pre-existing personal knowledge or beliefs regarding the matter at hand. It is the secondary institution, which should take the final decision over the course of prosecution with no input or interference from the investigating party.

The prosecution party must make sure that the system allows for the guilty to be convicted and the innocent to be acquitted. The prosecution authority holds an even more important duty, which is to make sure that prosecutions are applied only in cases where there is adequate evidence and where prosecution is justified by the cause of public interest.⁹⁴

In addition, it is argued that containing the powers of investigation and prosecution within one institution affects the neutrality of public prosecutors,⁹⁵ because public prosecutors aim to collect evidence which supports the impending prosecution. They are regarded as a party aligned towards the case motivated by the aim to prove the guilt of the accused. It is stated that

...since the public prosecutor may have satisfied himself that the suspect is guilty, he may become psychologically committed to the prosecution and his aim will be to win the case. It will be difficult for him to change his direction even if he discovers later that his case for the prosecution was wrong. ⁹⁶

Furthermore, it is confirmed that

...Putting these different powers in the hands of one authority and the absence of either internal or external judicial control over these powers

⁹⁰ See for example, the Penal Procedures Code 1999, Article 54

⁹¹ Very little is known about the way in which public prosecutors exercise their discretion in Oman

⁹² Y Dandurand, 'The role of prosecutors in promoting and strengthening the rule of law' (September 2007) 1, *Springer Science & Business Media*,

<<http://www.springerlink.com/content/m5n71g742g317037/fulltext.pdf>> accessed 20/06/10

⁹³ H Nasr, J Crystal and N J Brown, *Supra* note 401, 24

⁹⁴ A B Poulin, 'Prosecutorial Inconsistency, Estoppel and Due Process: Making the Prosecution Get its Story Straight' (2001) 89 *California Law Review*, 1423

⁹⁵ S Uglow, 'Independent Prosecutions' (1984) II 2 *Journal of Law & Society*, 233

⁹⁶ G G Al-Suwaidi, *Supra* note 398, 228

means that there is insufficient control and supervision of the Public Prosecution Service. This makes abuse more likely and is contrary to the aims of the justice system.⁹⁷

IX. THE OMANI COURTS' SYSTEM

Many studies indicate that the first judicial organization in Oman was created in 1920,⁹⁸ when two courts were established: the Civil Court and the Commercial Court.⁹⁹ Prior to 1971 civil and criminal issues were decided by the Shari'a Courts, in addition to personal status matters. At this time, the Shari'a Courts were handling the main bulk of the judicial activity in Oman; however, such a role has been greatly expanded in the last 30 years. His Majesty the present Sultan has ushered in a new age of judicial and administrative reforms in the judicial system in the state. The first step towards having a separate service of criminal courts in Oman was taken in 1971, when the Police Court was established.¹⁰⁰ This court was administratively and judicially controlled by the Royal Oman Police and was formed by a single judge.¹⁰¹ In 1981, the structure of this court fundamentally developed when a president was appointed by the Sultan.¹⁰² In the same year, the court received independence in its judicial work, yet still remaining to be administratively supervised by the Royal Oman Police.¹⁰³

The year 1984 was a landmark year for the criminal justice system in Oman, as the legal system of the Omani criminal courts was introduced.¹⁰⁴ The Criminal Court in Muscat and the courts of first instance in the other parts of Oman were established alongside the Police Court. Moreover, the legal system of these courts and an outline of their tasks were provided in the law upon the courts establishment. The law declares that only felony crimes and Appeals are considered by the Criminal Court of Muscat, while other crimes are to be considered by the other courts out with the Capital in the cities.¹⁰⁵ In 1986, the Criminal Court of Muscat was legally constituted by the law an independent body, both administratively and judicially.¹⁰⁶

In 1996, when the Basic Law of the State was introduced, the Omani courts system started to get more attention. The Basic Law of the state specifies the general principles of the judiciary power and determines the legal framework for expanding courts, their levels and specialties. According to Article 59 of the Basic Law of the State, the main qualities of the Omani judiciary are impartiality and justice. It stipulates, 'The sovereignty of the Law is the basis of governance in the State. Rights and freedoms are

⁹⁷ *Ibid* 234

⁹⁸ H Almahfudi, *The Criminal Justice System in the Sultanate of Oman* (1st edition, Oman, Alkhauri 2004) 9 [ح 9 (2004) الخوير عمان، الأولى، الطبعة عمان في الجزاء في القضاء في النظام المد فوضي،

99 Ibid 11

100 Royal Decree no 4/74

101 A Al-Ismaili, *The Development of the Judicial System in the Sultanate of Oman* (Oman 2001) 30 [أ
30] (عمان 2001) عمان، سلطنة في القضاء النظام تطور الإسماعيل،

102 Royal Decree no 65/1981

103 Royal Decree no 116/1981

104 Royal Decree no 25/1984

105 Ibid.

106 Royal Decree no 58/1986

guaranteed by the dignity of the judiciary and the probity and impartiality of the judges.' Furthermore, the independence of the Omani judiciary is emphasized in Articles 60 and 61 of the Basic Law of the State, as previously mentioned.

In addition, the Basic Law of the State orders all the state authorities, each according to its specialty, to facilitate the judiciary proceedings for the litigants and to increase the speed at which judicial proceedings take place.¹⁰⁷ Under the Basic Law, the judiciary proceedings are also designed to have one supreme reference, namely the Supreme Court. However, it is important to note that this unity does not mean that every court is a mere copy of the other courts in regards to the verdict outcomes. Rather it means that all courts are subject to one main Supreme Court. Moreover, the Judicial Authority Law 1999 makes it clear that judges are not allowed to carry out commercial activities or any work which is inconsistent with the independence of the judiciary while in post.¹⁰⁸ Also, they are not permitted to express political opinions or to engage in any political activities.¹⁰⁹

It is important to note that the judicial system in Oman is not regulated only by the penal procedures code but, in addition to the principles laid down in the Basic Law of the State, by special laws such as the Judicial Authority Law 1999 and the Public Prosecution Law 1999. The Judicial Authority Law 1999 is one of the most important developments witnessed by the Sultanate under the leadership of his Majesty, the Sultan. According to the Royal Decree No (99/90),¹¹⁰ and the subsequent related laws including the Administrative Judiciary Court Law,¹¹¹ the Royal Decree No (99/93) put in place to establish the Supreme Council of Courts and the Royal Decree No (47/2000) which was created to define the specialties of the Ministry of Justice, the Judiciary system has been clearly formulated in its new status and comprehensively organized in a bid to indicate that the judiciary units are consistent with their required specialty.

The courts in Oman have been unified according to the Judicial Authority Law and supervised by one financial and administrative authority: namely the Ministry of Justice.¹¹² All the judiciary bodies are in one judiciary set, and the Administrative and National Security Courts perform their legal work based on one judiciary notion and is supervised by the Supreme Judiciary Council. The Judicial Authority Law has classified the courts in Oman into three types: the Supreme Court, the Appellate Courts and the first instance courts.¹¹³ After the Judiciary Code came into force, the Supreme Court was given the power to exercise appellate jurisdiction over all courts in the state. It has been established in accordance with Article 2 of the Judiciary Code ...A Supreme Court is constituted with a court president and a number of the vice presidents and judges. It is constituted, when necessary, to revise

107 The Basic Law of the State 1996, Article 25

108 The Judiciary Code 1999, Article 51

109 Ibid.

110 dated on 21/11/1990, its execution on the first of July 2001

111 Issued in accordance with the Royal Decree No (92/1990)

112 The Judicial Code 1999, Article 6

113 The Judicial Authority Code 1999, Article 1

the appealed verdicts referred to it. The court shall be presided by the president of court or one of his deputies or the senior judges.

The Supreme Court is not considered to be of the same class as the judiciary chain of courts below it, albeit it is the highest appellate court in Oman. One of its purposes is to rule on the extent to which laws and regulations comply with the Basic Law of the State and its provisions. In its administrative capability, it guarantees the correct implementation of the Law by the courts and regulations on appeals filed before it.¹¹⁴ However, it does not only have the competence to evaluate whether the correct procedures were used, but also whether the criminal provisions were correctly applied when making the decisions.¹¹⁵ Moreover, the President of the Supreme Court heads the judiciary's Administrative Affairs Council, which is responsible for considering every aspect of personnel affairs.

Nevertheless, the role of such court is limited to reviewing the decisions of lower courts on legal issues. The Court has no power to judge on the merit of the conviction.¹¹⁶ In some cases, however, the Supreme Court may consider the facts of some cases. One example is Article 17 of the Supreme Court, which stated

...in cases of execution sentences or imprisonment for 15 years and above, the case shall be automatically referred to the Supreme Court even if it is not requested by the convicted. The General Prosecution shall refer the whole case file to the Supreme Court within thirty days from the date of pronouncing the verdict and notifying the concerned parties. The Supreme Court is authorized to hear the facts as it is done in a subject Court.

Article 264 of the Penal Code, also, stated that 'if the verdict is appealed in the Supreme Court, the Supreme Court is authorized to render its judgments according to the trial procedures of the crime.' From this overview of the Omani Supreme Court, it is clear that such a court is established in order to control and supervise the ordinary courts in terms of applying the law. In addition to the Supreme Court, the courts in Oman comprise of two other types of courts: courts of first instance and courts of appeal. Both have a civil division, a criminal division, a commercial division and a Shari'a division. They hear civil cases, criminal issues, commercial disputes and civil matters for Muslims, which relate to family matters such as divorce and inheritance. Courts of first instance consist of one judge, while appeal courts consist of three judges. It is important to note that in Oman there is no system of precedent; nevertheless, judgments of the Supreme Court are published. This is not because their rulings are binding on lower courts, but rather are released in order to provide useful evidence for future judicial interpretation and practice. The criminal courts hold the authority to punish offenders, and also to demand that compensation be paid to the injured party. This effectively diminishes the difficulty that an injured party tends to have seeking

114 The Penal Procedures Code 1999, Article 245

115 Ibid.

116 Ibid.

compensation, as there is no need to resort to separate civil proceedings in order to attain redress. 117

X. THE FUNCTION OF THE DEFENCE LAWYER IN OMAN

The defence lawyer in Oman should be understood as an independent organ within the legal system, equal in rank to the court and prosecutor. The defence lawyer should act within the limits of the Penal Procedures Code, but he may take any potential advantage at trial in pursuing the interest of his client. The role of the defence lawyer is limited, as he only can give moral support to the accused and give him basic information, such as, informing him of his right to silence. The Omani defence lawyer, this paper will argue, mostly does not engage in any meaningful participation with the initial stages of the enquiry process.

When the lawyer attends criminal proceedings with his client, the law has determined that his role entails following up and monitoring the investigation proceedings, without interfering in the process. He does not have the right to answer any questions on behalf of the accused or even to talk unless the investigator permits him. Omani law dictates that the defence lawyer must not give any gestures or signs to the accused when he does not approve of the question, wants to clarify any vague questions or ask the defendant to withhold answering certain questions. However, if the lawyer who attends with his client in the interrogation is not allowed to speak, this has to be recorded in the investigation minutes to be monitored by the court later on. Also, when the investigator gives the defence lawyer the permission to speak it should be written down in the minutes, whether his comments are in the form of questions or comments made on behalf of the accused. Hear the prosecutor may take the defence lawyer's comments and requests into account and his decision may be made according to this comments.

XI. CONCLUSION

From the experience of the criminal justice system in Oman and the arguments that have been discussed in this chapter, it has become clear that the developments in such a system are important. Recently, there has been a clear achievement in regards to the overall rights of the accused in the Omani legal provisions. However, many challenges still exist, and must be re-considered in such a way that the accused's rights are ensured, especially in terms of the right of access to a lawyer being respected throughout criminal proceedings. With the very broad powers that the Public Prosecution in Oman have - as discussed briefly in this chapter - the guarantee of meeting accused's rights, including the right of access to a lawyer, should carry greater weight. For example, the defence lawyer's role in pre-trial stages is mostly controlled by Public Prosecution members as investigators. As has been discussed in this chapter, the defence lawyer cannot even say anything to his client during the interrogation without the permission of the public prosecutor. The role of the defence lawyer within the Omani criminal proceedings will be examined in the next chapters by considering the place that he is allocated within the criminal process. Moreover, the role that he should be expected to play within that procedure and 117 T W Hill, *Supra* note 361, 512 the ways in which existing legal practice and principles either help or challenge the development of this role will be examined in depth.