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**The Role of the Commission for Investigation
and Public Prosecution (CIP) and its Impact on
the Criminal Procedures in the Saudi Criminal
Justice System**

Zuhair Alharthi

**A Thesis Submitted for the Degree of
Doctor of Philosophy in Law
at the University of Kent at Canterbury
February 2005**

ABSTRACT

This thesis outlines the reasons that the Commission for Investigation and Public Prosecution (CIP) was established in 1994 and examines it in the context of the Saudi Arabian criminal justice system. It both describes the organisation and its role and compares it to the pre-1994 system. The whole Saudi criminal justice system is outlined, by both a theoretical concentration on its ideas and history and through a procedural analysis of how drugs crimes in particular are tackled and a field study comprising the opinions of members of the CIP, police officers, judges, lawyers and some prisoners. The field study analyses to what extent the changes that have been made have led to an efficient and competent criminal justice system.

Comparisons with other legal systems are made in the expectation that they will further illuminate the nature of the Saudi system and also to show the extent to which the Saudi general prosecution is rooted in concepts that originated in France. Additionally, in order to aid an overall understanding of the Saudi system, Islamic law is examined in some theoretical and historical detail. The thesis shows the diversity of ideas underpinning Islamic law and demonstrates its flexibility. This background shows exactly what the Saudi system is designed to protect: the five indispensables of Islam, and emphasises that the 1994 changes were made with this fact in mind.

Finally, having thoroughly scrutinized the workings of the CIP through a look at its practices, the opinions of those working in or with it and a depiction of the benefits and some drawbacks, the research offers some recommendations for how improvements could be made.

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INTRODUCTION

As crime becomes increasingly sophisticated, so the need for a corresponding improvement in crime investigation bodies becomes more pressing. Pre-1994, the police had the role of attending the scene of a crime, collecting evidence, investigating and finally forwarding the case to the judiciary and acting as the public prosecutor. However, the CIP Law¹ established the Commission for Investigation and Public Prosecution, meaning that the duties of investigation and public prosecution were transferred from the police to that new Commission.

Although, as mentioned, the CIP currently undertakes the duties of public prosecution, investigation, supervision and control of jails and implementation of penal sentences, this study and analysis focuses on investigation and public prosecution because the previous police system undertook the same tasks. The study can be summarized as follows:

- A look at Islamic Law, including the concepts of crime and prosecution.
- A description of the organisation of the CIP.
- An analysis of the role of the CIP and its relationship with other agencies.
- A comparison between criminal case procedures before and after the establishment of the CIP. Drug offences are chosen as they have been amongst the first ones investigated by the CIP in a way to decide to what extent establishment of this authority is feasible and its role played in the Saudi criminal justice system.
- An analysis of the effectiveness and fairness of the new agency.

There were a number of reasons for the establishment of CIP. The Minister of the Interior in Saudi Arabia, the government, experts and the commission of ministers all debated the issue. Some of the arguments raised concerned the inadequacy of the police to cope with the various requirements of their occupations. It was difficult for the police to balance the maintenance of social order while effectively investigating crimes. Therefore it was concluded that the police's main responsibility was to prevent crimes, and obtain all possible evidence from a crime scene to present to members of the CIP for

¹*Promulgated by Royal Decree # (M/56) for 1989*

further investigation. This research analyses whether the changes have improved the Saudi criminal justice system, as they were obviously supposed to.

Organization of the thesis

The first chapter of the thesis looks at the origins of Islamic law, taking into account Islamic definitions of crime and sources and principles of Islamic criminal procedure and moving on to an analysis of the development of the prosecution in Islamic Shari'a. Following that, it examines prosecution in the Saudi Arabian criminal justice system both pre- and post-1994, culminating in how the current system deals with Qissas crimes.

The second chapter begins by attempting to answer the question of why prosecution systems were established and how they changed from personal prosecution to public prosecution. It traces the development of prosecution to France and from there to England. Following that, there is a discussion of prosecution in the Egyptian system. In this way, both the English and Egyptian systems can provide a foil for the discussion of the reasons for the CIP's establishment and a description of the roles of the prosecutor in Saudi Arabia that conclude Chapter 2.

The third chapter covers reasons for the foundation of the CIP and its organisational structure, looking at investigation and public prosecution procedures, the main duties of the police and guarantees for the accused under the new system. The requirements for joining the CIP are also investigated in this chapter and contrasted with those of their counterparts under the General Security Department. The latter part of the third chapter demonstrates the guarantees that the CIP member is afforded in their position and also details situations under which the independence of the CIP member is affected. The accountability of the CIP member is also described here, and the disciplinary action they might face. As a natural consequence of the areas covered in this chapter, the relations between the CIP and the judiciary are mentioned, but the fourth chapter provides more specific details about these relations.

The fourth chapter tackles the relationships that tie the new body to the institutions of justice especially those with which it has direct contact such as the police, emirates (principality), courts, jails & custody (detention) homes. It outlines the relations between

the CIP and other criminal justice organizations through a procedural approach, indicating the relevant codes defining those relations.

The fifth chapter, by using the example of drugs crime, concentrates on the specifics of procedure, what the different operational levels are, how mechanisms fit together and how these have evolved in Saudi Arabia since 1994. There is also some comparison with the CPS system of England and Wales. The chapter is designed to answer the question of the extent to which the CIP is capable of undertaking its functions efficiently.

The sixth chapter deals with the field study that was carried out. The results and the analysis provide an interesting range of perspectives on the CIP from those who work in and with it. In doing so, this chapter takes us beyond a look at the establishment, organisation and procedures of the CIP and allow us a look at the heart and mind of the agency.

Finally, the thesis concludes with a seventh chapter, giving overall conclusions in addition to a number of recommendations.

In all, this thesis assesses what the goals of Saudi criminal justice are, from the most basic fundamentals of Islamic instruction to the day-to-day necessities of modern Saudi Arabia. It goes on to consider the extent to which the CIP's methods have been effective, questioning whether it has improved criminal procedure through its claims to process the formalities of criminal prosecution as quickly and accurately as possible. Finally, it looks at how well the new body acts as a safeguard. Does the CIP, as was hoped by many supporters, uphold the rights and safety of defendants more capably than the previous system did? Conclusions about the study will be presented in the final chapter, based on the findings of the research.

Research method

This research is divided into two parts:

Theoretical Part : which addresses the establishment of CIP and its world counterparts, former studies conducted in this field, handling drug crime being among the first crimes investigated by the CIP, then conducts an analytic study on the formalities undertaken in drug crimes by the (former) police system and the (present) CIP system, starting from

the arrest of the suspect until he is prosecuted in court. I should mention here that there was a lack of Saudi references and material due to the recent establishment of the CIP; in addition the papers' studies I am going to focus on were not published as books for two reasons: first, some of the researchers were not interested in publishing their papers as they conducted them in order to be promoted in their jobs; secondly, to political sensitivities and the strict censorship on such a subject; Therefore the researcher will refer to the Egyptian and English material to draw similarities and differences when it is relevant.

Practical Part :The field study - which utilizes a descriptive and scientific method – was conducted on judges, members of the Commission for Investigation and Public Prosecution (CIP), police officers and lawyers. The questions are generally about their opinions as to the effectiveness of the CIP and the nature of the changes to the public prosecution since its establishment in 1994. This takes the form of responses to a questionnaire developed by the researcher and distributed to a sample of the research community. Their responses are shown in tables in the appendix but the analysis of those tables is threaded through the text in the relevant sections of each chapter.

In addition, I conducted interviews with some prisoners in Briman prison in Jeddah. Questions were designed to bring out differences in criminal procedures now and under the General Security Department System. Prisoners were asked about their personal experiences during arrest, interrogation and trial as well as in custody. From those responses it was possible to draw conclusions about the changes that have occurred since 1994.

The research findings are thus based on interviews and questionnaires and the responses give a clear idea of the feelings towards the changes of 1994 of those most directly involved in and affected by the Saudi criminal justice system. Additionally, it illuminates differences in perception amongst the CIP members and the police towards the changes. Finally, some of the responses can be taken as a comment on the relations between the three institutions: judiciary, CIP and the police.

Difficulties Encountered

Several problems were encountered which rendered the study problematic.

- There was a lack of Saudi materials regarding the topic, so I tried to compensate by using materials from other countries, especially Egypt. As a result of that, we have been able to use information on the formulation and operation of the cited provisions in other countries.
- I encountered difficulty in meeting some officers of the CIP due to the nature of their jobs, especially those in charge of supervision and control, and also some prosecutors, as they are frequently required in court or are inspecting jails and stoppage points.
- There were some problems meeting some officers working in the General Security Department due to the nature of their jobs, especially those working on a shift basis, which obliged me to visit the police station during different shift periods.
- Some employees hesitated to fill in the questionnaire form for fear of giving incorrect information that may affect their position, a fear which I alleviated by convincing them of the main objectives of this research and that their input would only be exploited for research objectives.
- Due to the workload and being new to the CIP, some employees did not fill in the questionnaire, which necessitated much time and effort in contacting the individuals in hope of a response. The same also applied in some divisions of the General Security Department.
- I wasn't permitted to distribute a questionnaire to the prisoners but I managed to interview them and wrote notes as the given time was limited.
- Lawyers were helpful, but they were very busy, so I had to visit them in person many times to collect questionnaires.
- There was a lack of access to courts' decisions as the Saudi judicial system is unfamiliar with the system of law reporting and review. As a consequence of that, the chapters are based on a procedural analysis but lack examples from real cases, an unfortunate shortcoming which could not be helped.

Research Significance

There were a number of reasons for the establishment of CIP. The Minister of the Interior in Saudi Arabia, the government, experts and the commission of ministers all debated the issue. Some of the arguments raised concerned the inadequacy of the police to cope with the various requirements of their occupations. It was difficult for the police to balance the maintenance of social order while effectively investigating crimes. Therefore it was concluded that the police's main responsibility was to prevent crimes, and obtain all possible evidence from the crime scene to present to members of the CIP for further investigation. This research analyses whether the changes have improved the Saudi criminal justice system, as they were obviously supposed to.

Research Objectives

This research aims:

1. To recognize to what extent the CIP's role has been effective in improving the Saudi Arabian criminal justice system.
2. To compare the criminal procedures applied by the CIP to those of the police both in the stage of investigation with the defendant and in the stage of public prosecution.

Research Queries

To achieve the targets mentioned above, we investigate the following:

1. The reasons that resulted in the formation of the CIP.
2. The nature of the role undertaken by the CIP.
3. The extent that the CIP is capable - in terms of adequacy, efficiency, experience and scientific competency - of undertaking its functions.

CHAPTER ONE

ISLAMIC LAW AND PROSECUTION

1.1 INTRODUCTION

The Saudi Arabian state, with an area of about 865,000 square miles, occupies the bulk of the Arabian peninsula and was first established when Sheikh Muhammad Bin Abdul Wahhab called on Muslims to return to the original form of Islam. Initially persecuted, he later found protection in the town of Diriyah, which was ruled by Muhammad Bin Saud, a member of the prominent Al-Saud family. The partnership between these two men eventually led to the foundation of Saudi Arabia in the early 18th century.

For approximately the following two hundred years, the fortunes of the region were intricately tied to the tribal system that existed as well as the relative strength of the Ottoman Empire. Modern Saudi Arabia, however, was founded in 1932 by King Abdul Aziz Bin Abdul Rahman Al-Saud and is a monarchy with a political system rooted in Islam's traditions and culture. Its rules and regulations are governed by the Holy Quran and the Sunna (teachings and sayings of the Prophet Muhammad), which call for peace, justice, equality, consultation and respect for the rights of the individual.

The Shari'a, the Islamic code of law based on the Holy Quran and the Sunna, is the foundation of the legal system.¹ The Holy Quran itself is considered the constitution of the country and provides ethical values and guidance. The judicial system is based on the Shari'a and the Ministry of Justice administers the Shari'a legal system through the Shari'a Courts.² In 1928, King Abdul Aziz decreed the organisation of the court system and the procedures to be followed. Subsequent decrees in 1936 and 1952 for the Civil Procedures Rules, in 1955 for the establishment of the Board of Grievances and in 1970 for the formation of the Ministry of Justice enabled the judicial system to better deal with the country's needs as it continued to develop.³ In 1994 the Commission for Investigation and Public Prosecution (CIP) was established to investigate and prosecute all criminal cases, to be responsible for any appeal, the

¹ *Shalbi M., Introduction to Islamic Jurisprudence, p. 220*

² *Article (48) of the Basic Ruling Law (Saudi constitution)*

³ *Al Qady M., The legal position of public prosecution in the Saudi procedural system, p.44*
Khalil A., Saudi Administrative Law, p.25

supervision of the execution of penal sentences, and the inspection and control of jails.

These changes were a turning point in Saudi law - ending 62 years of the police playing a pivotal role in criminal procedure - with a definitive impact on the course of criminal justice. This thesis, designed to provide a clear picture of the Saudi criminal justice system for those unfamiliar with it, examines the system after the establishment of the CIP and it therefore illustrates the rare situation of the change of a whole legal system in the span of only a few years.

This first chapter will begin to put the 1994 changes into historical and cultural context. The first part is designed to illuminate the latter discussion of the modern Saudi prosecution system by describing the background of Islamic Law and its inherent theoretical assumptions, which retain such importance in any discussion of the Saudi system, where the criminal justice procedures are rooted in Shari'a. Following that, we detail the sources of Islamic Law and the phases of its historical development and then there is a section on the concept of crime in Islamic Law, followed by an examination of the sources and principles of criminal procedure, which moves on to an analysis of the development of prosecution in the early Islamic community. This culminates in describing how Qissas crimes are prosecuted under the CIP system in Saudi Arabia.

1.2 BACKGROUND TO ISLAMIC LAW

Islamic Law has a long and complex background and origin. It is argued that the theoretical assumptions of Islamic Law are to protect the five indispensables of Islam (religion, life, intellect, offspring and property).⁴ Islamic Law, providing worldly punishment in addition to that in the hereafter, exists in order to protect the three types of rights classified by Islamic Jurisprudence: first absolute divine rights, second divine and individual rights, with the former being predominant; and third both individual and divine rights, but where individual rights are predominant.⁵ Any act violating the first two types of rights receive Hudud punishments. Violation of the third type of rights entails Qissas or retaliation punishment. Punishment is meant to

⁴ Dennis J., Jerry D., and Azarian M., *Islamic Law: Myths and Realities*, p.1

⁵ al Awa M., *The Basis of Islamic Legislation*, p.141

prevent the commission or omission of any act violating these rights. As it involves essentially religious concepts to understand Islamic Law, however, one must first understand the assumptions of Islam and the basic tenets of the religion. Muslims must first and foremost obey and submit to Allah's will. The most difficult aspect of Islamic Law for most non-Muslims to grasp is that there is no separation of religion and state: the religion of Islam and the government are one. Islamic Law is controlled, ruled and regulated by the Islamic religion: the theocracy controls all public and private matters,⁶ although there are civil laws in Muslim nations for Muslim and non-Muslim people. Shari'a is only applicable to Muslims.

Western writers often point to the rigid nature of Islamic Law and one common myth is that Muslim judges must always impose a fixed and pre-determined punishment for each crime. Whilst judges under Islamic Law are bound to inflict certain punishments for some very serious crimes found in the Quran and Sunna, they possess much greater discretion in punishment for less serious crimes.⁷ Common law is at least equally filled with precedents, rules and limitations that inhibit creative justice - in English law for example, the judgement of a higher court must be followed and for murder, the sentence must be life imprisonment, entirely regardless of the facts or individual circumstances of the case.⁸ Despite this similarity, Islamic Law is very different from English Common Law or European Civil Law traditions. Muslims are bound to the teachings of the Prophet Mohammed whose translation of Allah's will is found in the Quran. Muslims are held accountable to the Shari'a Law, but non-Muslims are not bound by the same standard.⁹ Both Muslims and non-Muslims are required to live by laws enacted by the various forms of government such as tax laws, traffic laws, theft, etc. These and many other crimes, similar to those covered by common law, are tried in modern 'Muslim Courts', which can also hear civil law, family law and other cases. Islamic Law has separate courts for Muslims for 'religious crimes' and contemporary non-religious courts for other criminal and civil matters.¹⁰

⁶ Doi A., *The Islamic Law*, p. 24

⁷ Dennis, Jerry and Azarian *op. cit.* at 2

⁸ *ibid*

⁹ Moore H., *The Criminal Justice System of Saudi Arabia, International Criminal Justice Systems II.*, pp. 139-198

¹⁰ Dennis, Jerry and Azarian *op. cit.* at 8

Islamic Law is a complicated social phenomenon. Its gradual development began in the seventh century with the disintegration of the tribal order and establishment of early feudal statehood in the west of the Arabian Peninsula. In the primary stage of development of the Muslim Communities (Ummah), legal norms were basically indistinguishable from other norms of behaviour in the united Muslim social regulative complex. It was no coincidence that the Islamic dogma and law of that time were closely intertwined and did not form a separate part of Muslim ideology.¹¹ This remained so until the middle of the tenth century when law was separated from Muslim dogmatic theology and Muslim law schools were established. By the end of the first millennium the first feudal Muslim state had been established, accompanied by Islamic Law, a system of legal norms mainly depicting the will of the core part of a feudal rules-based society protected by the state.¹² Thus it is a characteristic feature of Islamic Law in the modern era that the state creates laws indirectly by sanctioning the conclusions of Muslim legal schools.¹³ Islamic rules were set down in the two basic sources of Islamic Law, the Quran and the Prophet's 'Sunna'. These were later joined by two other sources - consensus (Ijma') and independent reasoning (Ijtihad).¹⁴

1.2.1 Sources of Islamic Law

Like English law, Islamic Law has its own sources that make it sometimes a binding force and sometimes flexible. Sources are the Quran, the Prophet's Sunna, unanimous opinions of the scholars (Ijma'), and, when there is no provision stated in these three sources, analogy (Qiyas).¹⁵ Other sources explained here are Istihsan (consent), Almasaleh Alomorsalah (raising of necessary interests) and Common Practice.

The Quran is the book revealed to the Prophet Mohamed and Muslims believe that it is a duty to follow the Quran as an applicable reference law and a source of legislation, provisions and guidance. The provisions contained in the Quran deal with worship, faith, prayers, fasting, Zakat, alms, charity, pilgrimage, holy war, swearing of oaths, and other matters in the relationship between humans and their God. There are provisions pertaining to transactions such as deeds and sayings released by humans, humans' relationship with other humans and the community, and the mutual

¹¹ Al-Din R., *Brief Introduction to Islamic Law*, p. 1

¹² *ibid*

¹³ *ibid* at 2

¹⁴ Al Fitlawy S., *History of Law*, p. 213

¹⁵ Shalbi *op. cit.* at 221

relations of nations. The Quran also details the positions of family affairs, and a husband's relationship with his wife.

The Quranic method of stating such provisions can be summarised as follows:

1. To what extent an act is obligatory;
2. To what extent an act is prohibited; and
3. To what extent an act is permissible or not obligatory.¹⁶

The Prophet's Sunna is the second written source of Islamic Law and elucidates what has been stated in the Holy Quran. The Sunna is split into three categories: Utterance (sayings), Action (deeds) and Acceptance. Utterance means the sayings issued by the Holy Prophet on different occasions and events. Action means actions or deeds taken by the Holy Prophet to state an act to be adopted by the Muslim, such as the act of saying prayers and performing pilgrimage. Acceptance means the non-commenting of the Prophet while witnessing a person doing or saying something.¹⁷

The definition of *Ijma'*, or consensus, the third source of Islamic Law, has been much debated. However, the description to be preferred is that "it is the coincidence of the reasoning of Muslim scholars at any time after the Prophet's death, of a legal provision." This means that when an event has taken place since the Prophet's age and there is no specific provision, then all reasoning scholars severally and jointly attempt to reach a unanimous conclusion regarding the question. If any deviate, then such *Ijma'* is not valid. *Ijma'* must be based on decisive evidence such as a provision from the Quran or Holy Prophet's Sunna, or an analogy.¹⁸

Qiyas, or analogy, is based on using reasoning and logic on the issues where no provision or unanimity exists. Accordingly, analogy is to give the provision of one question to a similar one based on the similarity of cause and effect. Analogy consists of four pillars: principal, branch, cause, and conclusion.¹⁹

¹⁶ Abou Al Anien B., *The Sources of Islamic Jurisdiction*, p. 62

¹⁷ Al Fitlawy *op. cit.* at 226

¹⁸ Abou Al Anien *op. cit.* at 112-113

¹⁹ Abou Murad A., *History of Law*, p.21
Shalbi *op. cit.* at 251

Istihsan, or consent, is the application of discretion to a legal decision or, as stated by Hanafis, “To apply a decision to a question differently from what had been applied to a similar question based on the existence of stronger evidence. Some jurists defined it as ‘implicit analogy’. In other words, it is to disregard the evidence and apply that dictated by justice, necessity and need.”²⁰ Hanafis classify *Istihsan* into four categories: Sunna, *Ijma’*, Implicit Analogy and Necessity.²¹

Almasaleh Almorsalah, or raising necessary interests, is the legislator’s intent by the legitimacy of the provisions, to act in the public interest and avoid harm. The aim is to reach a situation with more advantages than disadvantages. Allah says, “If desires are followed, the heavens and earth will be in disorder”,²² and “Judge among them by the Book revealed to you and do not follow their wishes.”²³ Accordingly, interest falls into three types:

1. Interest of lawful evidence to be considered;
2. Interest of lawful evidence to be disregarded; and
3. Interest of no lawful evidence to not consider nor disregard; such type of interest being a public interest, i.e. acting according to the potential interest.

An example of public interest is the legitimacy of levying taxes contrary to the rule of illegitimacy of taking another’s property without due reason. As an analogy, it is prohibited to levy taxes for any money other than expenses for public utilities and services.²⁴ Also, the idea of public interest allowed the imposition of fines as a punishment for crime. Therefore the ruler has the right to do that which is good for society. It was on this basis that the CIP was set up.

The term “Common Practice” refers to a matter which does not contradict fundamental principles of Islamic Law, but which is not a firm provision. There are some jurists who consider practice and custom as synonymous.²⁵ There is the common practice of the whole population at a specific time and there is also private

²⁰ Hafez H. , *Legal History* , p. 207

Abou Al Anien op. cit. at 195

²¹ *Al Fitlawy op. cit. at 227*

²² *Quran 23, verse 71*

²³ *Quran 5, verse 49*

²⁴ *Shalbi op. cit. at 211*

²⁵ *Al Fitlawy op. cit. at 228*

practice, which prevailed among some countries or tribes. Valid practice is that not in conflict with Shari'a rules. Invalid practice is that which conflicts with Shari'a rules, such as drinking or gambling. In order for the legislator to consider practice, it must be frequent or dominant, and not contradict a valid condition, impair the application of a provision, nor argue with a decision of lawful principle.²⁶

1.2.2 The Era of Islamic Law

As we have seen, the sources of Islamic Law laid down basic foundations and ties for human relations, and brought new concepts of right, goodness and justice in economic and family affairs, which corresponded with intellectual developments.²⁷ As well as considering its origins, a historical study of Islamic Law is essential to provide a backdrop for the description of the modern Saudi prosecution system to come.²⁸ Researchers differ in their portrayal of the evolution of Islamic Law before it reached what we have today. Here, though, Islamic legal history is described chronologically on the basis of four ages: the age of the Holy Prophet, the Orthodox Caliphs, imitation and stagnation, and juristic renaissance.

The Age of the Holy Prophet, at the beginning of the seventh century, witnessed the birth and establishment of Islamic Law at the hands of the Holy Apostle, who created its basis by correcting the creed, initiating practical legislation and organising state affairs.²⁹ The revelations dealt with correcting the creed, worship and issues pertaining to Islamic Law. Islamic legislation was not revealed in one instalment but in the form of verses corresponding to events in the Islamic community. The provisions of usury, saying prayers, Zakat, fasting and adultery were all made gradually, so as to facilitate understanding, justification and acceptance.³⁰

Extending from 610 to 650, the age of the Orthodox Caliphs was the age of the Prophets' companions who lived at the time of the Prophet, heard his sayings and witnessed his actions and deeds. Thus they were more familiar than others with the

²⁶ Jafer A., *Legal History*, p.251

Abou Al Anien op. cit. at 224

Shalbi op. cit. at 260

²⁷ *Abou Murad op. cit. at 187*

²⁸ *Jafer op. cit. at 157*

²⁹ *Al Fitlawy op. cit. at 193*

³⁰ *ibid at 220*

commentary of the Quran, and the reasons for revelation.³¹ When events occurred but no texts yet existed, the Caliphs and their companions consulted and inferred a legal opinion from the Quran and Sunna, applying Qiyas. This attitude was called consensus, or as we have also seen, Ijma'. Accordingly, the sources of Shari'a became four: the Quran, the Prophet's Sunna, Qiyas and Ijma'.³²

As the Islamic state expanded and Islam encountered other civilisations, it became necessary to introduce new provisions to organise social relations. The Muslims developed new laws to lay the foundations of right, justice and community in view of the teachings of the various heavenly laws in practical life and religious issues.³³ Some researchers are of the opinion that the Ammowyan age is an extension of the age of the Orthodox Caliphs in its adoption of extracting judgements from the Quran and the Sunna, in addition to Qiyas and Ijma'. Jurisprudence divided into two schools: the Hadith school where Islamic Law was revealed and the Prophet's Sunna was formulated, and the 'School of Opinion' that arose in Kufa in Iraq.³⁴ The Abbassian age started in the middle of the 8th Gregorian century. It is characterised by the expansion of civilisation, commerce and economic activity, as well as by the progress of science and the translation of the Persian and Greek languages to Arabic. There was now a growth of jurisprudence and the Islamic state expanded to include different religions, customs, social and legal systems, including Persian and Roman customs and practices.³⁵

In the phase known as "Imitation and Stagnation", which lasted from 920 until 1866, jurisprudence stagnated due to the weakness of the Islamic nation, which split into several states. Jurists were not active and depended on the thoughts of the known schools. Despite such stagnation, scholars appeared who advocated the revival of independent reasoning and returning to the Quran, and the Prophet's Sunna and the attitudes of his followers.³⁶

The final phase, juristic renaissance, started in 1866 and continues up to the present day. It has witnessed a gradual rise and restoration of jurisprudence, especially

³¹ *ibid*

³² *ibid. at 222*

³³ *Jafer op. cit. at 176*

³⁴ *Al Fitlawy op. cit. at 224*

³⁵ *Abou Murad op. cit. at 193*

³⁶ *Jafer op. cit. at 194-195*

comparative jurisprudence, to its previous status. Laws extracted from Islamic jurisprudence were enacted without discrimination between the various juristic opinions and took public interest into consideration. Muslim scholars and jurists paid attention to new issues, discussed them and established proper solutions, for example after several conferences held by the Islamic Jurisprudence Council.³⁷ It can therefore be convincingly argued that Shari'a is a developing law that responds to and complies with all requirements of a modern legal system and has jurists who discuss innovative issues and can establish practical and respected solutions.

1.2.3 The Sunni and the Shia

The Sunni and Shia³⁸ traditions vary in a number of ways, some of which are relevant to this research, but which essentially derive from different approaches to governance. Based on specific provisions of the Quran and the Sunna, Sunnis believe that the Muslim people are to be governed by consensus (Ijma') through an elected head of state, the khalifa. In contrast, the Shia believe the leader of Islam, the imam, must be a descendant of the Prophet.³⁹

The rift between the Sunni and the Shia generated some different approaches to jurisprudence. An example is that the Shia view the sayings of Fatima, the daughter of the Prophet, and his cousin Ali, the fourth khalifa of the Islam, as authoritative as the Sunna of the Prophet, whereas the Sunni do not. Other differences involving the structure of Islam exist, such as an organized Shia clergy, which the Sunni tradition does not recognise. The Shia allow the imam wider authority in government than the Sunni ever could considering the importance they place on the principles of consensus and equality. For this research, however, the most significant difference relates to the interpretation of the Quran. The Sunni look more to the letter of the Quran, the Shia look more to its spirit.⁴⁰ Saudi Arabia is a Sunni Muslim state and it is this aspect of Islam that we shall continue to concern ourselves with.

³⁷ *ibid*

³⁸ *Sunni comprise 85-90% of all Muslims, Shia the rest.*

³⁹ *Al 'Alwani T., Source Methodology in Islamic Jurisprudence , p.16*

⁴⁰ *ibid*

1.2.4 Sunni Jurisprudence

Four scholars from the ninth to eleventh centuries - Imams Ibn Hanbal, Abo Haneefah, Malek, and Shaafi`ee – initiated the four major schools of jurisprudence which Sunni Muslims follow, with different schools dominant in particular areas—Maliki (N and W Africa), Hanafi (Turkic Asia), Shafei (Egypt, E Africa, SE Asia), and Hanbali (Saudi Arabia, although the country follows more closely the teachings of imam Muhammad Abdal-Wahab, a Hanbali reformer of the early 1800's). Although these schools of jurisprudence vary on certain rituals and practices, they are generally perceived as complementary.

An important principle in Islamic jurisprudence is Ijtihad, the extension of Shari'a to situations neither covered by precedent nor explicable by analogy to other laws. These establish codes of action and for the evaluation of individual and social behaviour. All actions are divided into the classifications of obligatory, meritorious, permissible, reprehensible and forbidden.⁴¹

1.2.5 Schools of thought in Islam

Islamic jurisprudence has developed over fourteen centuries, during which various schools have emerged and splintered, each with their own interpretations and application of the Shari'a. The difference which existed between different schools was naturally passed on to whoever adopted the methodology of any particular school. The intensity with which this difference was maintained was later reduced considerably. Nevertheless, nothing prohibits a state from codifying the Shari'a, which they may do to provide for more certainty of the law and clarity and consistency in its application.

Three leading scholars are considered jurists of Hadith and the established precedents of the Companions of the Prophet. Their jurisprudence was that of the people of Madinah. Imaam Abo Haneefah, however, was the inheritor of the jurisprudence of upholders of independent reasoning (ahl al ra'y), becoming the chief advocate of this school. The three other scholars - Maalik, al Shaafi`ee, and Ibn Hanbal - were quite similar in their methodology but differed in some approaches in using deduction. The methodology of Imaam Abo Haneefah, however, was considerably different.⁴²

⁴¹ Kamaalee D., *The Principles of Islamic Jurisprudence*, p.23

⁴² Al 'Atwani *op. cit.* at 41

The principles of Abo Haneefah's methodology are summarized best as resorting firstly to the Quran, then to the Sunna and authentic precedents which have been handed down and finally, to the statements of his Companions. If the line of enquiry descends to the rank of Ibraaheem, al-Sha'bee, or Ibn al Musayyib, then he felt entitled to use his Ijtihad in the same way as they had done. Abo Haneefah is reported to have said: "We know that this is an opinion and it is the best we were able to produce. However, whoever comes with a better opinion, we will accept it." These are the cardinal principles but there are, however, some subsidiary or secondary principles that appear to give rise to differences with other scholars.⁴³

Maalik adopted a different method. He is reported to have asked: "How is it that whenever someone comes to us [with an argument], we abandon what Jibreel [Gabriel] brought to Muhammad, God's peace and blessings be on them, and argue with them?" Maalik's methodology may be summarized as five principles with regard to reliance on the Quran, its unequivocal verbatim text, clear or manifest meaning when it is general, valid evidence of a divergent meaning, validation of a harmonious meaning or finally, reliance on the Quran's warnings or cautioning. After these five principles with regard to the Quran, there are ten others from the Sunna.⁴⁴

The principles of the school of thought of al Shaafi'ee are contained in his book al Risaalah, which is considered the first and most comprehensive book on the principles of Islamic jurisprudence. He sees the Quran and the Sunna as the equal original sources in formulating legislation and where there is no clear evidence, resorting to Qiyas was acceptable. No condition should be imposed on a Hadith except its authenticity and correct chain of transmission, since it is in itself a (primary) source of law. Unlike the Maalikeeyah and the Hanafeeyah, al Shaafi'ee rejected istihsaan as a source of Islamic Law. He also rejected the formulation of laws on the principle of the "public interest" (al maslahah al mursalah) together with the proofs advanced to support this principle. These are the salient and the most important principles and the differences between them and those formulated by the schools of Maalik and Abo Haneefah are quite obvious.⁴⁵

⁴³ *ibid* at 57

⁴⁴ *Kamaalee op. cit.* at 43

⁴⁵ *Al 'Alwani op. cit.* at 67

The principles of the Hanbalee school of thought are extremely close to those of the Shaafi'ee school. One difference is that if no text is available on a question, Ibn Hanbal resorts to the juristic judgments of the Companions. Next come the Hadiths, which have priority over analogical deduction. In his opinion, analogy should only be resorted to as a source of law when there is a necessity of passing verdict on an issue that cannot be settled by referring it to any one of the above-mentioned sources and principles.⁴⁶ The Hanbalee school, as has been mentioned, especially through the teachings of imam Muhammad Abdal-Wahab, has most influence on Islamic Law in Saudi Arabia.

This section has explained the origins of Islamic Law, described its historical development and some of the differences between both Sunni and Shia traditions and amongst Sunni schools of jurisprudence. This description should also help us to understand the geopolitical background not only for the development of Islamic Law, which would become so important across the Muslim world, but also for the discussion of the development of the Saudi system in Chapter Two⁴⁷, since modern Saudi Arabia is the direct political descendant of the first Islamic state. We now delve further into Islamic Law with a look at the way in which crime is defined and classified.

1.3 ISLAMIC CRIMINAL LAW

Islamic criminal law is part of Islamic Law and is based upon Shari'a text. It has been argued that Islamic criminal law is not a code of statutes but a product of the jurists' interpretation of textual sources. The formulation of the criminal law is based on doctrinal interpretation of Muslim jurisprudence.⁴⁸

Human acts, under Shari'a principles, would be categorised under one of the following: forbidden, obligatory, recommended, reprehensible and indifferent.⁴⁹ We will examine the first two categories as they are relevant to Islamic Criminal Law. As their names suggest, forbidden acts are those that individuals must absolutely refrain

⁴⁶ *ibid* at 81

⁴⁷ *infra* at 73

⁴⁸ Schacht J., *Introduction to Islamic Law*, p.71

⁴⁹ Abu zahara M., *Usul al-Fiqh*, pp.21-43

from doing⁵⁰, the Qur'an says: "Nor take life, which Allah has made sacred, except for just cause"⁵¹. Whilst obligatory acts are those that the Shari'a absolutely requires to be done.⁵² The Qur'an says: "Allah doth command you to render back your trusts to those to whom they are due; and ye judge between man and man, that ye judge with justice..".⁵³ In Shari'a, sin (thanb) constitutes the omission of obligatory acts (Wajib) and the commission of forbidden acts (Haram).⁵⁴ As a result of sin (thanb), either expiation (kaffarah) or punishment (oqobah) is imposed.⁵⁵

When Shari'a demands punishment, two distinct types of it are provided. These are discretionary punishments, which are not specified in either the Quran or the Sunna, and determined punishments, which are laid down in the Quran and the prophet's Sunna.⁵⁶

1.3.1 The Concept of Crime in Islamic Criminal Law

Moving on from the description and analysis of the sources and historical development of Islamic Law, it is paramount that we define our terms before we go on to look at the applied modern systems. A crime is the commission of a prohibited act or the omission of a duty that is commanded.⁵⁷ Ibn Abidin and al-Qadi Zadah define 'crime' as a 'forbidden act'. Ibn Qudamah considers it 'A grossly unjust act'. Abu Ya'la al-Qadi considers it "an act prohibited by God and punishable either by fixed punishments (Hudud) or discretionary penalties (Ta'azir)."⁵⁸ The accepted definition by modern writers on Islamic jurisprudence and adopted by the Saudi legal system is "crimes are acts prohibited by the Shari'a discouraged by God with Hudud or Ta'azir punishment."⁵⁹

Under Islamic Law, there are three broad categories of crime⁶⁰, which are Hudud, Qissas and Ta'azir.

⁵⁰ *ibid* 33

⁵¹ *Qura'n 17, verse 33*

⁵² *Abu zahara op. cit. at 23*

⁵³ *Qura'n 4, verse 58*

⁵⁴ *Odah A., Criminal Legislation in Islam, pp.128-129*

⁵⁵ *ibid*

⁵⁶ *Abu zahara M., Crime and Punishment in Islamic Law, p. 24*

⁵⁷ *ibid*

⁵⁸ *Ibn Jubeir M., The Definition of Crime, p. 24*

⁵⁹ *Almohibd A., Criminal Procedures Relevant to Crime of killing in the Kingdom of Saudi Arabia, p.29*

⁶⁰ *Al Awa M., Punishment in Islamic Law, p.41*

1.3.1.1 Hudud Crimes

Hudud crimes are established by God to prevent the commission of these offences [Zina (Adultery), Baghi (Transgression), Sarqah (Theft), Shurb al-Khamr (Drinking alcohol), Hirabah (Robbery), Al-Riddah (Apostasy), Qadhf (Defamation)] which are prohibited in the Quran with punishments laid down in the Quran or Sunna and cannot be altered by any judicial authority.⁶¹ Such crimes have an exact punishments include lashing, hand amputation and stoning to death. Four of the punishments are set by Quran: (hand amputation for theft)⁶², (death penalty for armed robbery)⁶³, (100 lashes for fornication)⁶⁴, (80 lashes for slander)⁶⁵. The remaining punishments are set by the Sunna.⁶⁶

There is no plea-bargaining or reducing the punishment for a Hudud crime, which have no minimum or maximum punishments attached to them. This category of crimes, under Islamic law, are regarded as crimes against God. *Allah says: "These Hudud are the limits ordained by Allah, so do not transgress them"*.⁶⁷

The Hadd punishment is only imposed when a person confesses to the crime or there are sufficient witnesses to it, the usual number being two, but in the case of adultery, four witnesses are required. When there is doubt about the guilt of someone accused of a Hadd crime, the judge must treat the crime as a lesser Ta'azir crime. If there is no confession to a crime or insufficient witnesses, Islamic Law requires either that such a crime to be treated under Ta'azir doctrine, penalties for which are discussed later,⁶⁸ or that the defendant is acquitted.

⁶¹ Al-Jaziri A., *Kitab Al-Fiq Al-Mazahib Al-Arba'a*, p.9

⁶² Quran 5, verse 41

⁶³ Quran 5, verse 32

⁶⁴ Quran 24, verse 2

⁶⁵ Quran 24, verse 4

⁶⁶ Alsegtani S., *Sunan Abu Dawud*, p.1212

⁶⁷ Quran 2, verse 229

⁶⁸ Madkour M., *Islamic Jurisdiction*, p.57

1.3.1.2 Qissas Crimes and Diya

Qissas means equality in Arabic. In legal usage it describes a method of punishment whereby the offender is punished in the same way, and by the same means, as the crime that she or he committed.⁶⁹ It is stated in the Quran:

“In the law of equality. There is (saving of) life to you O ye men of understanding; that ye may restrain yourselves “.”⁷⁰ Also :”O ye who believe! The law of equality is prescribed to you. In case of murder: The free for the free, the slave for the slave, the woman for the woman...”⁷¹

Qissas crimes include: Qat al-‘amd (Murder), Al-qatl shibh al-‘amd (Quasi-murder), Qatl al-khata’ (involuntary manslaughter), Jarh al-‘amd (Intentional maiming), Jarh al-khata’ (Unintentional maiming). Qissas is a refinement of the biblical and pre-Islamic Arab notion of punishment for personal crimes. In pre-Islamic Arab culture, revenge for murder often involved escalating tribal warfare where, typically, several lives were taken in response to a single killing.⁷²

The advent of Islam limited this pattern in two ways. First, Qissas was restricted to “a life for a life” and could only be used against an intentional killer. This is stated in the Quran where Allah says: *“We ordained therein for them, life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.”⁷³*

Second, the death penalty could only be applied at the request of the victim’s heirs, who are provided with and encouraged to utilise alternative methods of retaliation: Diya or forgiveness.

Diya refers to a form of compensation, or blood money, which is to be paid by the person charged with the offence and by his relatives, to the victim or his family as reparation for an injury or murder. Diya is also prescribed in Islamic law as a primary retribution against the guilty party, when the crime is classified as unintentional killing.⁷⁴ The prophet says: *“killing with a rod or stick is not murder, but only quasi-*

⁶⁹ Sharabasi A., *Qissas In Islam*, p.17

Bassioni M., *The Islamic Criminal Justice*, p.203

Al awa op. cit. at 69

⁷⁰ Quran 2, verses 179

⁷¹ Quran 2, verses 178

⁷² Al awa op. cit. at 70

⁷³ Quran, 5, verses 45

⁷⁴ El-Sheikh M., *The Application of Islamic Penal Law*, p.168

murder, and the fine for it, is a hundred camels".⁷⁵ It is also stated in the Quran: "And whoever kills a believer by mistake, it is ordained that he should free a believing slave and pay blood-money to the deceased's family unless they remit it freely..."⁷⁶

1.3.1.3 Ta'azir Crimes

Ta'azir crimes means any transgression, against God or an individual, not covered by the Hudud, which do not have any specific punishments mentioned in the Quran or the Sunna.⁷⁷ Therefore, the punishment of Ta'azir is left to the discretion of the Islamic judge who should take the public interest and changing requirements of the times to mete out an appropriate punishment. However, Shari'a judges can at their discretion, criminalize and penalize any act violating the public welfare of the society.⁷⁸

It was observed that: "Ta'azir punishments vary according to the circumstances... They vary according to the gravity of the crime and the extent of the criminal disposition of the criminal themselves."⁷⁹ Judge has wide discretion in determining the punishment, according to the principle of Ta'azir offences, to fit a particular offence.⁸⁰ This is shown schematically in Figure 1.⁸¹

We shall return to the notion of Qisas crimes later in the chapter, when we see how there is some tension between the original understanding of retaliation in this type of crime and the reality of how Qisas punishments are carried out under the CIP in contemporary Saudi Arabia.

⁷⁵ Ibn Qudamah M., *al-Mughni*, pp.767-768

⁷⁶ Quran 4, verses 92

⁷⁷ al Awa op. cit. at 71

⁷⁸ Odah op. cit. at 213

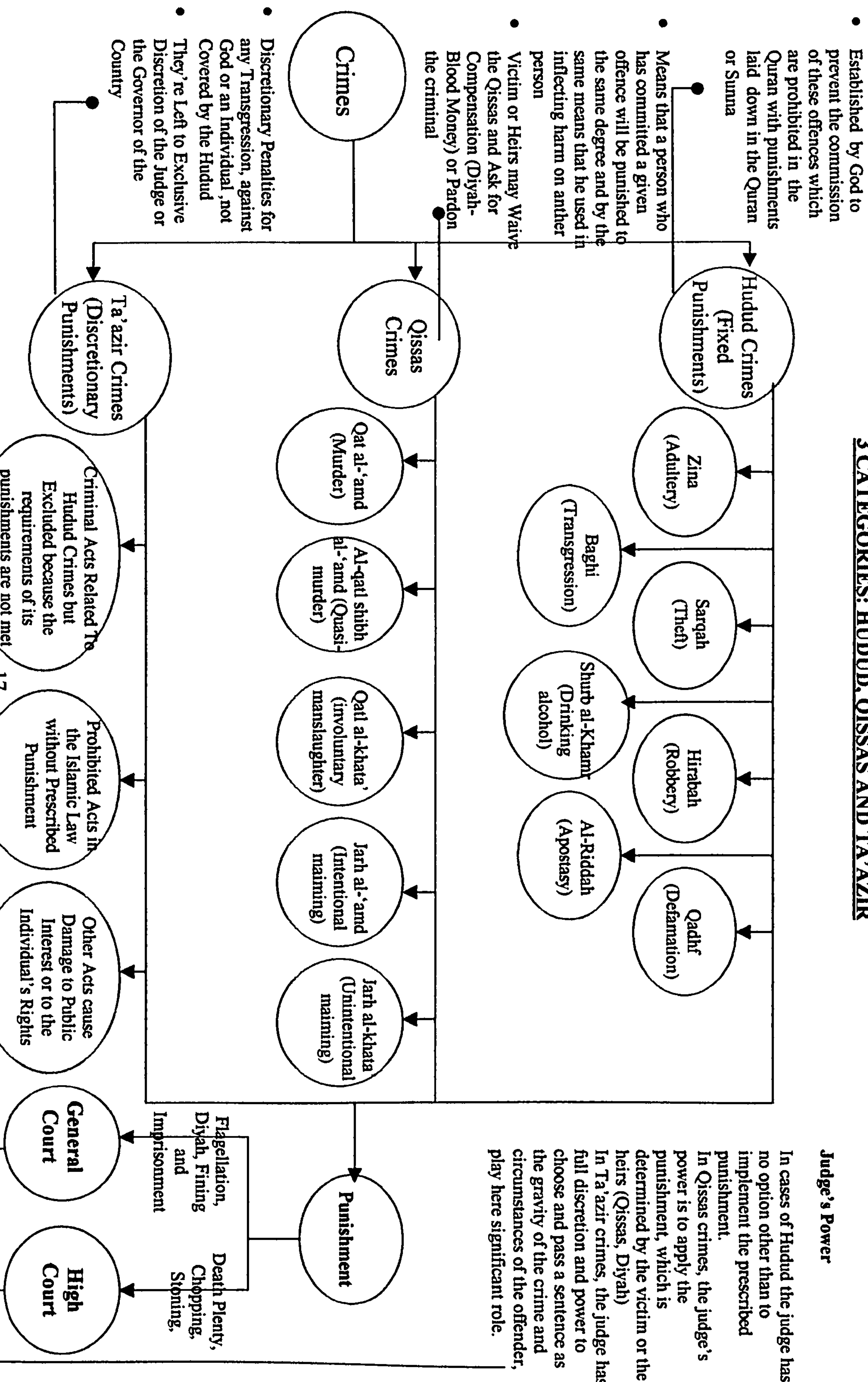
⁷⁹ Madkour op. cit. at 58

⁸⁰ Siddiqi M., *The Penal Law of Islam*, p.164

⁸¹ Original figure.

Fig (1)

CRIMES IN ISLAMIC LAW (SHARI'A)
3 CATEGORIES: HUDDUD, OISSAS AND TA'AZIR



1.4 ISLAMIC CRIMINAL PROCEDURES

Islamic Criminal Procedures are historically rooted in the Quran, the Sunna, and other Islamic sources. They aim to respect and protect human rights by establishing rules for treating defendants with justice and dignity. However, the specific procedural details were not prescribed in detail in either the Quran or the Sunna, but left to the discretion of the ruler.⁸² The ruler's formulation of these procedural rules is guided by various Shari'a principles as well as the doctrinal interpretations of provisions of Shari'a text established by Muslim jurisprudence.⁸³

The main objects of Islamic Criminal procedures are:⁸⁴

- To protect human rights, and ensure that the accused is to be presumed innocent until proven guilty.
- To maintain that the burden of proof must rest upon the accuser, and any doubt as to guilt is to be taken in favour of the accused⁸⁵
- To ensure that the accused shall not be subject to torture or other inhumane treatment.
- To establish that it is not permissible to coerce the accused to confess under pressure or intimidation.
- To affirm the rights of the defendant during custodial detention and during trial and to clarify rules of evidence.

In accordance with Islamic law, new regulations concerning criminal procedure such as those outlined in the following chapters are not deemed part of Shari'a and would not be applied in Saudi Arabia unless they were totally consistent with the aims of Islamic law. Accordingly, Islamic criminal procedures in Saudi Arabia are generally considered to be historically rooted in the Quran, the Sunna, and the other Islamic sources. For instance, Allah says, "*Allah commands justice, the doing of good, and giving to kith and kin, and he forbids all indecent deeds and evil and rebellion: He instructs you, that ye may receive admonition.*"⁸⁶ Justice as mentioned in this verse forms part of the fundamental precept of criminal procedure in Islamic law. Allah

⁸² Bassioni *op. cit.* at 92-93

⁸³ Al-mawardi A., *Alahkam Alsultaniyyah*, p. 236

⁸⁴ Bassioni *op. cit.* at 94

⁸⁵ Al-Bayhaqi A., *al Sunn al Kubra*, p.26

⁸⁶ Quran, 16, verse 90

also says, “O ye who believe! If a sinner comes to you with any news, ascertain the truth, lest ye harm people unwittingly, and afterward become full of repentance for what ye have done.”⁸⁷ “O ye who believe! Avoid suspicion as much as possible. For, suspicion in some cases is sin.”⁸⁸ These verses conceptualise the need for impartiality and the need to investigate without pre-judging any possible crime.⁸⁹

Some criminal procedures were established by the Sunna. Bahz B. Hakim reports: “The Prophet detained a man on suspicion.”⁹⁰ Also Abu Hurayrah says, “The prophet put a man in custody for a day and night.”⁹¹ These Hadiths (traditions after the Hadith school) indicate that to detain or remand the suspect is a permissible procedure in Islamic law for the purposes of public interest. Abu Hurayrah also reports: “There was a man who came to the Prophet while he was in the Mosque and called to them: ‘Allah’s messenger. I have committed adultery’. The Prophet turned away until the man said that four times. Then as he testified four times against his own self, the Prophet asked them, ‘Are you married?’ he said, ‘Yes’. Thereupon, the Prophet said, ‘Take them and stone them.’”⁹² The above Hadith implies an example of a criminal procedure that should be considered in cases when a criminal has confessed to the crime of adultery. The companions of the Prophet also established some criminal procedure. For example, Abu Waqid al-Laythi states, “A man came to Umar Ibn al-Khattab when he was in Syria and informed them that he had found a man sleeping with his wife. Then the Umar sent Abi Waqid to the wife to ask her about this and to find out the truth.” Therefore it is seen to be appropriate criminal procedure to ask the accused and to confirm the allegation.⁹³

In addition, Islamic criminal procedure is based on various other jurisprudential sources such as maxims known as ‘al-qawa’id al-fiqhiyyah’, which means ‘basis’ or ‘foundation’ of Islamic Jurisprudence.⁹⁴ This is illustrated in the Quran, where we are told, “and remember Abraham and Isma’l raised the foundation of the House.”⁹⁵ Jurists define al-qawa’id in a legal framework as general rules that apply to their

⁸⁷ Quran, 49, verse 6

⁸⁸ Quran, 49, verse 12

⁸⁹ *Almohibd op. cit.* at 26

⁹⁰ *Termezi I., Sunna Al Termezi, p. 311*

⁹¹ *Al sanai A., Almusannaf, p. 217*

⁹² *ibid* at 26

⁹³ *ibid*

⁹⁴ *Al Zaragh M., An Introduction to Islamic Jurisdiction, p. 940*

⁹⁵ Quran, 2, verse 127

particulars.⁹⁶ Mahmassani states: “These maxims are but general principles grouping together most particulars and based upon the majority of them.”⁹⁷ The use of these maxims is to facilitate the understanding of individual problems by propounding a principle. A judge therefore may not base his verdicts upon these maxims unless they are supported by specific provisions in Shari’a, as in the case of the maxim “The burden of proof is on them who alleges; the oath on them who denies” which was drawn from the statement of the Prophet.⁹⁸ The five general maxims⁹⁹ in Islamic jurisprudence are:

1. Necessity renders prohibited things permissible
2. Matters are determined according to intention
3. Hardship begets ease
4. One must choose between conflicting interests
5. In principle, words shall be construed according to their real meaning

These general principles or maxims encompass most subsidiary maxims, which number about ninety-nine.¹⁰⁰ Jurists in Islam pay attention to these maxims as principles that comply with the intent of Islamic law.¹⁰¹ The above shows that many criminal procedures were initially established in Islam in order to protect human rights and apply justice. These procedures are still applicable and sufficient to cope with the requirements of contemporary legal development in Saudi Arabia. However, the specific procedures are not prescribed in detail in either the Quran or the Sunna, and so are left to the discretion of the ruler, who bears responsibility for public welfare. The ruler’s formulation of these procedural rules is guided by various Shari’a principles.¹⁰²

Criminal procedure in Islam aims to respect and protect human rights by establishing rules for treating the individual with justice and dignity. For example, statements against the persecution of individuals are repeated 229 times in the Quran. The word

⁹⁶ *Al Zaragh op. cit. at 941*

⁹⁷ *Ziadeh F. & Leiden E., Philosophy of Islam, p. 151*

⁹⁸ *Almohibd op. cit. at 27*

⁹⁹ *ibid*

¹⁰⁰ *Al Zaragh op. cit. at 957*

¹⁰¹ *ibid at 942*

¹⁰² *Bassioni op. cit. at 22-23*

'adil' (justice) is used at least fourteen times, and the phrases 'adalah' (justice) and 'al-musawat' (equality) appear at least sixteen times each. This reinforces the notion that criminal procedure attempts to strike a fair balance between the interest of the accused and that of society.¹⁰³

1.5 PROSECUTION IN ISLAMIC SHARI'A

We have examined the sources of Islamic Law and its historical development as well as looking extensively at the concept of crime in Islamic Law as well as the sources and principles of Islamic criminal procedures. Now follows a section of the development of prosecution authorities in Islamic Shari'a. This first section comprises an investigation of how the role of public prosecutor arose to defend Islamic Law. Examples of how the role of public prosecutor is fulfilled in twenty-first century states will follow in Chapter Two¹⁰⁴.

In pre-Islamic society there had been bodies responsible for security in the Arabian peninsular but they were not based on certain well-defined principles. Rather, they were a collection of various customs which differed from place to place and from one tribe to another. There were systems for inheritance, retribution and leadership meaning that when a person became prominent he¹⁰⁵ became responsible for tribal affairs. He thus became the emir and ruler regulating tribal affairs and ensuring security without having any independent institutions for this purpose.¹⁰⁶

With the emergence of Islam there came a system for government and rules on which the state system was based: to ensure justice, to establish security and welfare for all citizens in accordance with a Godly law to preserve life, property and personal dignity of the people. Thus, there arose regional authorities responsible for organizing peoples' life affairs such as judicial authority, complaints¹⁰⁷, municipal affairs (*Alhesbah*), fatwa authority, army, revenues authorities and others that enabled the Islamic state to perform its functions.

¹⁰³ Lippman M. & McConnville M., *Islamic Criminal Law and Procedure and Introduction*, p.60

¹⁰⁴ *infra* at 64

¹⁰⁵ The masculine pronoun will be used throughout much of the thesis instead of the gender-neutral 'they' for positions which it is customary (in Islam or Saudi Arabia) for only a male to fill.

¹⁰⁶ Awad M., *Jurisdiction in Islamic Law*, pp. 10-11

¹⁰⁷ *Almathalim*, which is a complaint against a grievance or grievances. We shall use complaint for short.

In this section., I shall examine some of these authorities concerned with combating crime and which were oriented towards creating a balance between rights and responsibilities in addition to dealing with criminals, spreading virtue among the people, promoting good deeds and discouraging misdeeds (enjoining what is right, and forbidding what is wrong) and providing security for the Islamic society.

1.5.1 Designated Law Authority

Alwilayah in Arabic means “to come to assist” and has been translated as designated authority. It describes any person or entity authorized to undertake a function and may be defined as: “The execution of judgment on others with consent or without”.¹⁰⁸ Designated authorities are of various types such as a designated authority to enforce, give free choice, to recommend or to prefer as a choice. They have various divisions such as a personal designated authority, designated authority on self, special and general.¹⁰⁹

The word “*Alqada*” (law) in Arabic is derived from the word “*Qada*” which is a root from which the verb “*Qada*” has many meanings such as “died” or “finished with”,¹¹⁰ “*Qada*” also means “to exact a thing and to finish with it”. This is as in the meaning in the Quranic verse: “So He completed them as seven firmaments in two Days”.¹¹¹ “*Qada*” also sometimes means “settled his debt”. Linguistically, in general, “*Qada*” means “verdict”, “creating certainty and clear statements”. These are the meanings of “*Qada*” in Islam.¹¹² But, in the jurisprudence meaning many definitions were mentioned such as “giving a just verdict between people”.¹¹³ Ibn Rushd defines it as the informing of a verdict on the way of enforcement.

The legal validity of “*Alqada*” is shown by what was mentioned in Quran and Sunna as Allah says: “And when you judge between man and man, that you judge with justice.”¹¹⁴ And The Prophet Mohammed says: “If a judge perseveres and gives a right

¹⁰⁸ Aljorjani A., *Definitions*, p.329

¹⁰⁹ Alyan S., *Judicial Authority in Islam*, pp. 97-98

¹¹⁰ Ibn Manzoor J., *Lesan Alarah* , p.46

¹¹¹ The Quran 41, verse 12

¹¹² Al Omary N., *Islamic Jurisprudence and its role in Crime Prevention*, p. 59

¹¹³ AlkasanyA. , *Bada'a Alsana'a fiTarteb Alshara'a*, p. 4078

¹¹⁴ The Quran 4, verse 58

judgment then he is rewarded twice and if he is mistaken, after perseverance, then he is rewarded once”¹¹⁵.

The first assuming responsibility for justice (*Alqada*) was the Prophet Mohammed. Afterwards, this was assumed by his Caliphs (the followers who assumed his position as head of the faithful). There was no specific job allocated as such specifically for justice in the beginning as it was assumed by the Prophet in his capacity as a law giver, enforcer and leader of the Islamic Nation. Caliph Abo Bakr followed in his footsteps. After the great expansion of the Islamic state, the burden increased on the Caliph who had to allocate people and time to look into resolving disputes. In the era of the Caliph Omar there emerged the position of judge, devoted to the resolving of disputes.

The judge with general authority was concerned with several issues such as¹¹⁶:

1. Resolving disputes by mutually agreed settlement between adversaries or handing a verdict that he deems fit and which the party receiving the verdict may accept or appeal against.
2. Looking into the affairs of guardians of children and those who under garnishment to see if they are legally fit for responsibility.
3. Looking into ways to facilitate for unmarried women, being a widow, divorcee or those who do not have next of kin and guardians, to get married. He instates a guardian for such a woman to care for her affairs.
4. Preserving the finances of those who are not legally fit, such as the ill, the mentally incapable, the bankrupt, slaves and others where he instates a guardian to run their affairs.
5. Looking into crimes where he is to deliver the verdict of Allah, whether crimes of retribution, *Hudud* (Crimes whose punishment is prescribed by Allah or the Prophet) or *Ta'azir* (Crimes whose punishment are left to the state to decide)¹¹⁷.

¹¹⁵Authenticated by Moslim in the book of verdicts in the chapter of the reward for the judge if he perseveres and succeeds or is mistaken. It was authenticated by Alnisaey in the book of good manners of the judiciary and was authenticated by Abo Dawood in his Mosnad in the book of the judiciary.

¹¹⁶The Islamic clerics mentioned the judge with general jurisdiction has many jurisdictions but I mention only those related to our subject.

Almawardi *op. cit.* at 138-139

Alfarraa A., *Alahkam Alsultaniyyah*, pp. 65-66

¹¹⁷Alyan *op. cit.* at 293

6. Looking into public intersects (*Almasalih Alammah*) and into all that may cause harm to people, such as deception, fraud, lies and causing inconvenience to people in market, obstructing people from doing their work¹¹⁸ and the like that may arise and need a just verdict.

1.5.2 Complaints Authority

Almathalim means encroachment from justice to injustice wilfully. It is also defined as taking action with somebody else's property in a way that exceeds the norms.¹¹⁹ The objective of *Almathalim* Authority is to stop encroachments of the powerful on the weak, or a way to appeal against decisions and statutes issued by governments. In this case, one of the adversaries is powerful and has prestige in government that makes it difficult for an ordinary judge to look at the case. This is why this authority was created during the era of the Prophet when a dispute arose between Azzobair Ibn Alawam, who was one of the great followers, with one of Alanasar, who were the Almadinah supporters of the Prophet. The dispute happened about irrigation when the Ansari wanted the water stream to pass by his palm trees and Azzobair refused. They took their dispute to the Prophet who ruled that Azzobair irrigates first the Alansari. The Alansari was very angry, hinting that Azzobair was the cousin of the Prophet.¹²⁰

After the Prophet, his Caliphs followed the legacy of looking into complaints that may arise against governors. An example was Omar Ibn Alkhattab, who used to recall governors (*Alwolat*) during pilgrimage time to investigate them. He would announce guilty governors to all without hesitation, such as in the case of his retribution against Amr Ibn Alaass for the benefit of a complaint from the Egyptian Copt and such as his release from office of Ammar Ibn Yassir when the people of Koofah complained. After the death of the last Orthodox Caliph, corruption and injustice prevailed amongst people to the extent that Umayyad Caliphs had to allocate certain times to look into complaints from people¹²¹. This continued until the era of the Caliph Almahdy who created a special department for complaints and thus made that

¹¹⁸ *ibid*

¹¹⁹ *Aljorjani op. cit. at 186*

¹²⁰ *Authenticated by Ibn Majah in his Sonan in the introduction in chapter of putting in high esteem the hadith of the prophet.*

¹²¹ *Almawardi op. cit. at 150*

department a legal and independent office which was limited to looking into complaints against powerful princes and governors¹²².

The jurisdiction of a complaint judge is many-fold, some he can look at without an allegation from the rightful owner.¹²³ Some of the fields of jurisdiction of a complaint judge may be generalized as follows:

1. Looking into encroachments by statesmen and governors on individuals to insure that they do not overstep and subjugate people. He follows up their procedures, prevents injustice and pushes them to follow the road of justice.
2. Looking into and following up works of government employees who are responsible for collecting state income, regarding how much they collect and how much they delivered to the general budget department (*Bait Almal*).
3. Looking into cases of illegal confiscation of land or property whether delivered *Bait Almal* or kept by the governor. If the latter, then he orders its return to the lawful owners if known or made to be kept pending future complaints by the owners if not known.
4. Supervising public mortmain to insure dividing their income among the poor, the needy, ill people, hospitals, mosques and schools; in order for all to proceed on the conditions of the mortmain's donors.¹²⁴
5. Follow up to insure upholding of worship such as Friday prayers, Holiday worship, Alms giving and Jihad.
6. Looking into complaints by government employees, concerning, for example, deprecation of their means of livelihood and delays in receiving their salaries.

The court of the complaint judge consists of five types, the absence of any of which leaves the court lacking. These are: the protectors (*alhomat*) and assistants who help against violence or escape, the judges and rulers to decide on rights and know what is going on in the court proceedings, the clergymen (*alfogaha*) and consultants to help him on verdicts when he needs and the registrars who record all proceedings between adversaries and finally the witnesses to witness the verdicts that are issued.¹²⁵

¹²²Albeshr K., *Crime Prevention in Saudi Arabia*, p. 98

¹²³Almawardi *op. cit.* at 152

¹²⁴Altehkani M., *Judicial Theory in Islam*, pp. 87-88

¹²⁵Awad *op. cit.* at 141

1.5.3 Municipal Authority

Concerning municipal jurisdiction, both Alghazaly and Alamardy define *Alhesbah* as “advising people towards virtue and away from abominable action” (enjoining what is right, and forbidding what is wrong).¹²⁶ This function is sometimes described as “the promotion of virtue and the prevention of vice” and is limited ordainment, which means when some part of the people undertake it, it is then sufficient for the others.

Alhesbah in Islamic jurisprudence is divided into general and special. General *Alhesbah* is a call to what has been ordained by Islam of actions, texts, orders and proscriptions; which when seen in their totality are a call to maintain true belief (*Eeman*) in Allah, submit to his worship alone, his obedience in what he orders and refraining from his proscriptions.

As for the special *Hesbah*, it is when a certain person undertakes the call for enjoining what is right, and forbidding what is wrong when authorized by Wali Alamr (Head of the Islamic state); and thus it became his duty to fulfil such a role. He, thus, follows up on markets to prevent deception, to prevent fraud, to follow up on roads and public meeting places, to do his duty on enjoining what is right, and forbidding what is wrong; and in general, to work for goodness, wherever he is, and wherever he finds in execution or saying.¹²⁷

Given this, we find that in the role of *Almohtasib*, some parts are concerned with the rights of Allah such as the correct norms of religious belief, performing prayer on time, fasting in Ramadan, preventing deception in dealings, fraud and deception in prices, cheating in weights and measurements, observing those who overstep the bounds of Allah by drinking and selling of alcohol or establishing brothels or places of debauchery and immorality. *Almohtasib* has, in all these cases, the right to stop it and to prevent it spreading amongst people.

As for the matter pertaining to people’s rights, *Almohtasib* has the authority to repair public utilities such as roads, hospitals and schools. He has the right to request from the head of state that action be taken in this regard and financed from the general budget. This is because it is a public right benefited from by all. He also has the

¹²⁶ *Almawardi op. cit. at 391*

¹²⁷ *ibid at 39*

obligation, when called to assist, to oblige when debts payments are being denied or delayed.¹²⁸

In addition, *Almohtasib* jurisdiction includes marrying *Alayama* (women widowed or divorced with no guardian next of kin) to suitable husbands if the women so wish. He also has the authority to force slave owners and animal owners, if they have any shortcomings, to provide for good living conditions and without putting unbearable burdens on them.¹²⁹

Alhesbah is one amongst many jurisdictions founded by the Islamic Government System.¹³⁰ It came to be known that the Prophet assigned Said Ibn Alaass to Makkah market after the conquest and this example was followed by the Orthodox Caliphs where Omar Ibn Alkhattab followed the same path himself and delegated it to others when he assigned Assaeb Ibn Zaid and Abdullah Ibn Otbah Ibn Masoud to Almadinah market where he assigned women as well.¹³¹ *Alhesbah*, as an independent portfolio, came into existence during the Fatimioon era (The Fatimids) where deputies' positions were created for *Almohtasib* with monthly salaries.¹³² *Alhesbah* became, thus, an integral part of the Islamic state system.¹³³

1.5.4 Police

The word "*ashartah*", denoting 'the police' in Arabic, means a mark and from this they were called "*alshorat*" as they have taken marks to distinguish them.¹³⁴ *Ashortah* is defined as the institute that is responsible for keeping order, maintaining security and enacting government orders and statutes.¹³⁵

During the era of the Prophet we find some examples for the concept of the police when we look at the fact that the Prophet used guards and security keepers. He made

¹²⁸ Alyan op. cit. at 493

¹²⁹ Alwardi op. cit. at 41

¹³⁰ There is a disagreement between clerics about whether *Alhesbah* Authority is independent or a part of the judiciary.

¹³¹ Madkour op. cit. at 148

Albeshr op. cit. at 106

¹³² Madkour op. cit. at 106

¹³³ Awad op. cit. at 126

¹³⁴ Alfairoozabadi M., *Kamous Al-Moheet*, p.37

¹³⁵ Alhamdany N., *Policing in Islam*, p.19

Saad Ibn Abi Waggass guard him one night.¹³⁶ Also, the prophet took a concierge and a doorkeeper as a kind of guard to regulate people's attendance. He also kept some of his comrades during military campaigns to guard the women and houses of Almadinah. Additionally, he sent his comrades to chase and arrest. As examples of this, he sent Ali Ibn Abi Talib to arrest the wife of Hatib Ibn Abi Baltaahah and ordered Abdullah Ibn Omar to go to the markets to tear apart any alcohol containers if he found any. The Prophet also used some of his comrades to execute some verdicts such as the amputation of hands, canning, capital punishment and stoning¹³⁷ and after the Prophet passed away, the Orthodox Caliphs followed his examples (Sunna).

What distinguishes the Prophet's era and the era of Abo Bakr is the fact that there was no standing body with a police function as per our modern concept and an absence of men designated to undertake these works exclusively. This was due to the simplicity of social life then and due to the strength of belief in the hearts of Muslims in addition to the relative lack of crime.

This trend continued until the era of the Caliph Othman Ibn Affan, who is considered the first to take a head of police when he assigned it to Ibn Gonfoth Ibn Omair Algorashi and, thus, police jurisdiction took its official nature. Then came the era Of Ali Ibn Abi Talib, who was the first to build a prison in Islam. He provided clothing and food for prison staff.¹³⁸

1.5.5 The Effects of these Agencies on Crime

We can see from the preceding paragraphs that the designated law (*Alqadaa*), complaints (*Almathalim*), municipal (*Alhesbah*) and police (*Ashortah*) are authorities whose objective is to provide security and stability in the Islamic society.

The designated law authority, via complaints to be looked into for a judgment, aims to eliminate disputes between people, to check the aggressor and to deliver justice to the weak who, then, gain their rights after clearing all matters of difference between them. It has a vital role in combating crime by virtue of enforcing Islamic jurisprudence statutes and thus making justice prevail among people. The role of law

¹³⁶ The story was mentioned in the Hadith authenticated by Albokhary in Saheeh Albokhary in the book of wishing

¹³⁷ Alhamdany op. cit. at 16-93

¹³⁸ ibid at 105-107

is the protection of lives, property, and honour. The strong, the weak, the old and the young are equal in front of the law.

Islamic jurisprudence shall be enforced by Allah-fearing judges who take their law statutes from the Quran, Sunna and consensus of the Moslems who can not mutually agree on wrong. The culprit, when he commits a crime, knows for sure that his punishment is prescribed and that he will be punished. In this way, justice is designed to deter disobedience.

As for the complaints authority, it arose to complement the designated law authority in order to ensure against heavy handedness on the part of authority. It follows up on any violations and mistakes that may be committed by officials against the people. Whenever there is injustice in applying the rules, the complaint jurisdiction will attempt to delimit the extent of the application of power. The law jurisdiction judges carry out their multi-faced functions as a type of administrative authority in directing and management and looking into administrative law, with or without a complaint.¹³⁹

When a government department behaves in a heavy handed manner in a decision against a citizen and when this citizen feels that injustice is being done, or when a person of prestige and authority in a high ranking position trespasses on the rights of the weak and powerless; and when normal justice has failed, then the complaints authority is supposed to uphold justice and to prevent injustice.

The role of *Alhesbah* (municipal authority) is no less than that of the complaints authority in combating crime since it is considered the first hurdle confronting crime, acting as a means of crime prevention. Authorised officers warn members of society about the dangers of some actions and in doing that, act as a preventive warning so that an individual may change their behaviour. They also prevent annoyance to people, guiding and advising people about their religious duties as prescribed by Islam, guiding people to distance themselves from doubtful situations and committing sins, avoiding following bad habits and traditions, avoiding new ideas and acts contrary to true belief or infringing on common ethics or in contradiction with good manners and public values.

¹³⁹ *Altehkani op. cit. at 86*

The police work by reducing the opportunities available for committing crime. This is achieved through its prestige and the many functions that it caters for such as using guards, providing patrols during day and night, limiting wrong-doers via continuous follow up and observation in public places and taking precautionary measures to combat crime.

All of these Islamic authorities are meant to enjoin what is right, and forbid what is wrong. The safety of society is not the sole responsibility of one authority to the exclusion of other authorities. There is no dividing line between them. It is a shared responsibility between all authorities where each does its utmost to provide security and welfare to society.

1.5.6 Public Prosecution

After the Islamic community had developed and the Muslims had become an influential power, they established an administrative and political base in Medina, which was reliable in protecting public interest on behalf of the individuals of that community. Later came the founding of a state of Islam with its power, influence and capability of defending the interests of individuals, community and government alike.¹⁴⁰ When the community of Holy Medina was established and the Holy Prophet combined his prophetic message with running the affairs of the community, individual and public prosecution developed and arose to protect the individuals of this community against those who broke its practices and against any aggression that may extend to it.

The Islamic message in this stage was in conformity with the prevailing conditions and acknowledged the idea of retaliation (Qissas). This was designed to prevent aggression and punish the criminal, and can be found in holy verse: "If then any one transgresses the prohibition against you, transgress ye likewise against them"¹⁴¹ and "if anyone is slain wrongfully, we have given his heir authority to demand Qissas or to forgive but let them not exceed bounds in the matter of taking life: for he is helped (by the Law)."¹⁴² Allah also said "And if ye do catch them out, catch them out no worse than they catch you out: But if ye show patience, that is indeed the best

¹⁴⁰ *ibid at 33*

¹⁴¹ *Qura'n 1, verse 194*

¹⁴² *Qura'n 17, verse 33*

(course) for those who are patient.”¹⁴³ All these verses acknowledge the idea of Qissas but limit it with two main qualifications, which are deed and similar punishment.

After the Islamic state had developed and Muslims became influential, the right of the public prosecution was entrusted to the state. Attribution was paid to the public prosecution, as guided by the Holy Quran, which was considered a power vested to the governor, the party in charge of protecting the individuals' rights and taking care of their interests. Imam Taftazani states: “The nation should have an imam (leader) that applies the religion, Sunna and justice.”¹⁴⁴ The imam cannot undertake this duty unless he is in charge of the public prosecution that punishes lawbreakers through judges. So the power of the governor represented by the holy prophet and his successors is devoted to protecting and caring for the community individuals. Formerly, jurists said what is done by duty is only considered a duty. There is no way to apply ritual impurity (Hadd) but by observing public prosecution in the name of the community to apply punishment to whoever breaks its prohibitions.¹⁴⁵ Consequently, undertaking the role of the public prosecutor in ritual impurity (Hadd) crimes and public offences and applying punishment is called the public prosecution. Of course, the governor is entitled the right to assign whomever he chooses to undertake this role on his behalf due to the overload and diversity of the burdens undertaken by the governor in the state. The person entrusted by the governor to carry out public prosecution in the criminal field is called the public prosecutor.

It was reported to the Holy prophet that a Jewish man in Medina had killed a woman and stolen her wealth and then confessed his crime. The prophet judged that he should be killed in the same way as he killed the victim. Such killing is considered a (Ghaiela) deceit assassination and the scholars did not consider it a hadd, except Imam Malik, who is of the opinion that it is an unforgivable hadd. Nevertheless, it is crucial that the governor, who is in charge of maintaining the people's souls and rights, should not wait until the blood guardians act since they might refrain from doing so and consequently the lives of the group may be in danger and its security

¹⁴³ *Qura'n 16, verse 126*

¹⁴⁴ *Saeed M., The right of the aggravated party to institute the public lawsuit, p.160*

¹⁴⁵ *Al Najar E., Prosecution in Saudi Arabia, p.38*

threatened. The blood guardian does not lose his right to claim the blood money if wished as it is a financial entitlement in the criminal's inheritance.¹⁴⁶

In view of the above example, it is evident that Islamic Law applies the idea of the public prosecution based on an idea which confirms that when a crime is committed in the Islamic community, it affects not only the victim but the whole community. This is well demonstrated by ritual impurity (Hadd) crimes, where normally the guardian is given the right of discretionary punishment in satisfying public rights of the Qissas, but where this right is disregarded or withheld for any valid reason. Consequently, public prosecution is a communal reaction against crime and the criminal in the name of the community to protect it and defend Allah's Shari'a (law).

We can see, then, that the concept of prosecution associated with Islamic Law has developed over time. This evolution indicates that there is no fixed notion of what prosecution should be and means that the regulator in Saudi Arabia had a great deal of latitude when making decisions about the nature of the prosecution authority that would come into force in 1994. There was always scope to look at other systems and to take from them what was deemed suitable for the particular needs of Saudi Arabia.

1.5.7 The Infliction of Qissas in Saudi Arabia

Before moving to Qissas as one of crimes of Islamic Criminal Law and its application in Saudi, we should mention that the Commission for Investigation and Public Prosecution (CIP)¹⁴⁷ is responsible for investigating and prosecuting all criminal cases, supervising the execution of penal sentences, and the inspection and control of jails in Saudi Arabia nowadays.

This section will outline the role of the CIP in a Qissas crime, murder, in order best to tie in the theory surrounding Islamic Law and Islamic concepts of crime and prosecution that we have seen in this first chapter with the practice of the CIP. The main role of the CIP member during the trial is obviously to secure a conviction, with the judge reaching the verdict and applying the punishment that the victim's family determines. It is stated in the Quran that "if anyone is slain wrongfully, we have given his family authority to demand Qissas or to forgive".¹⁴⁸

¹⁴⁶ *ibid*

¹⁴⁷ *More details about the CIP will be in next chapters*

¹⁴⁸ *Qur'an 17, verse 33*

When defining murder in Islamic Law, in addition to “intentionality”, the murderer must also be responsible (mature, adult, and sane in mind), and the victim should be inviolable.¹⁴⁹ According to Ibn Duyan, and also the rules in Saudi Arabia,¹⁵⁰ Qissas is possible only when the murderer is shown to be a responsible person, but not for a minor, or an insane person.¹⁵¹ The punishment of murderers will be the first act on the Day of Judgement according to Islamic law.¹⁵² However, the prohibition against taking life is qualified in regard to just cause e.g., in legal punishment for murder.¹⁵³ If murder has been committed, there are two consequences under Islamic criminal law: Firstly, that the murderer is a sinner who is deserving of Hell, unless he is punished as a mortal being.¹⁵⁴ The second consequence is that his act deserves the punishment of Qissas.¹⁵⁵

In Qissas offences the CIP member must attend the crime scene and is responsible for protecting evidence found there, the collection of which is made under the supervision of experts¹⁵⁶ All evidence must be carefully examined, packed and, submitted to a laboratory when necessary.¹⁵⁷ Finally, no one method can be absolutely recommended for every case; the choice of method must ultimately depend on the circumstances surrounding each case. Report writing is an important aspect of a prosecutor’s work. Almost every action he takes along with each observation that he makes must be carefully recorded in the report on official forms, which are countersigned by the head of the CIP branch. Generally, judges do not go to the scene of a crime, but plans their work and base their initial conclusions upon what the reports, which form the basis for most prosecutions.

A suspect may be detained by the CIP during the initial stages of an investigation, which is referred to as custodial detention and means: “Depriving the accused of his

¹⁴⁹ Al-Howesh M., *The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia*, p.372

¹⁵⁰ Resolution of the Supreme Judicial Council , No. 214 dated on 23/08/1392 A.H.(1972) , sanctioned by the royal decree No. 2071 dated 12/11/1392 A.H.(1972)

¹⁵¹ Ibn Duyan I. , *Manar al-Sabil* , p.16

¹⁵² Lippman & McConnville op. cit. at 50

¹⁵³ Abd Allah Y., *Translation of the Holy Qur'an*, p.1052

¹⁵⁴ Hughes T. ,*Dictionary of Islam* , p.422

¹⁵⁵ *ibid* at 423

¹⁵⁶ Articles (40-47) of the CIP Bylaw

Law School, *Criminal Procedures*, pp.81-83

¹⁵⁷ Article (497) of the CIP Bylaw

Law School, *Criminal Procedures*, p.84

liberty in order to enable further investigation to be made.”¹⁵⁸ It is one of the most serious orders that can be issued during the pre-trial investigation stage. This is perhaps not least because it is considered an exception from the general principles of Islamic law, which state that no person may be deprived of their liberty, except for in the enforcement of lawful punishment. However, most people accused of murder in Saudi Arabia are detained although the initial period of detention should not exceed the specified limits, which is five days, without reasonable grounds.¹⁵⁹ Extensions of up to forty days in the first place can be granted with further extensions up to a maximum of six months. On being detained, a suspect should be informed of the reasons for his detention and should be allowed to contact a relative or friend to inform them of the arrest.¹⁶⁰ In the former system, police used to ask the governor of the city for an extension, in order to complete investigation. The periods were not specified which means that such a procedure could violate the defendant’s rights. In this way, the CIP represents an improvement in the guarantees to a suspect’s rights.

There are two possible outcomes to an investigation into a suspect’s involvement in a crime.¹⁶¹ The first is that an order is issued to lodge the criminal case and to safe-keep the investigation. The second is that an order is issued to refer the criminal case to the judiciary for a decision. In this context, the criminal case is considered to be in the possession of the judiciary.

In criminal proceedings, a confession given in the pre-trial stage may include any statement made by the suspect that incriminates them in whole or in part. Such statements are only accepted in the court if the judge is satisfied that these statements are legally valid. Therefore, in murder cases, the judge’s panel always asks the suspect to re-confess in order to validate such a confession.¹⁶² When there is no conclusive evidence such as a confession or testimony, the judge’s discretion is trusted to decide upon the power of circumstantial evidence in proving criminal cases in Saudi Arabia. In other words, if the judges are sufficiently satisfied that such

¹⁵⁸ *ibid* at 178

¹⁵⁹ Article 3 from resolution of the Council of Ministers, No. 725 dated on 23/12/1380 A.H.(1960) Ministry of Interior, *Criminal Procedures*, p.50

¹⁶⁰ Promulgation of the Ministry of Interior, No. 1\1598 dated on 22/09/1399 A.H.(1979) Ministry of Interior, *Criminal Procedures*, p.81

¹⁶¹ *Infra* at 240

¹⁶² *Infra* at 228

circumstantial evidence is adequate as legal grounds to prove guilt, they may convict the accused.¹⁶³ Once the final report of the CIP has been prepared, it must be referred to the General Court, in which the panel would comprise three judges. In cases of murder or quasi-murder, such a referral should be made as soon as possible by the CIP because of the detention of the suspect in pre-trial custody.¹⁶⁴

On some rare occasions, an accusation of a crime of killing may be brought directly by the victim's family to the local general court.¹⁶⁵ If so, the court immediately notifies the CIP in order to carry out the initial investigation procedures and prepare a final report. The court notifies the CIP because such crimes are relevant to both public and private interests, and as such must be presented by both the "use plaintiff" (i.e. the victim's family) and the public prosecutor.¹⁶⁶

Once the assigned judges receive the case, they should determine the earliest possible date for trial, as the crimes of killing are always prioritised. Consequently, the notary of the judge's office where the case is to be heard should order a summons notice, and make sure that all parties have been notified in person. This notice may be brought by the summons officer, or through the CIP branch where the case was initially investigated.¹⁶⁷ The defendant must sign an official form in order to confirm the receipt and acknowledgement of such a summons. The official form is then submitted to the General Court.¹⁶⁸ On the appointed date, all parties are expected to be present in court and the trial can't take place unless the CIP member is present. Three judges will firstly hear from the plaintiff. The notary takes notes and then reads the written statement and asks the plaintiff to sign it. Following this, the defendant's plea is also recorded by the notary, and signed by the defendant.¹⁶⁹ Next, the "use plaintiff" or the public prosecutor, and the defendant or their lawyer may challenge each other's arguments. However, if the defendant voluntarily admits to the charge, the judges must confirm that this confession is legally acceptable and then move on to a verdict on the grounds of the defendant's confession. On the other hand, if the defendant

¹⁶³ *Almohibd op. cit.* at 274

¹⁶⁴ Article 75 of the Organisation of Administrative Functions in Shari'a Courts System.

¹⁶⁵ Walker J., "The Rights of the Accused Saudi Criminal Procedure", *Loyola of Angeles International and Comparative Law*, p.872

¹⁶⁶ Promulgation of the Ministry of Interior, No. 41 dated on 21/11/1395 A.H.(1975) Ministry of Interior, *Criminal Procedures*, p.209

¹⁶⁷ Articles 1,2,3,7-9,and 75 of the Organisation of Administrative Functions in Shari'a Courts System

¹⁶⁸ Articles 3,7,and 8 of the Organisation of Administrative Functions in Shari'a Courts System

¹⁶⁹ Articles 18-19 of the Organisation of Administrative Functions in Shari'a Courts System

denies the charge, the plaintiff is obliged to present legal evidence which should prove it.¹⁷⁰ This evidence may comprise either legal testimony or circumstantial evidence as we saw above.

In cases where legal testimony is available, the witnesses will be summoned under oath in front of the judges and the parties. Before the witnesses are heard, their good character must be attested to by two other people. The testimony must be introduced by an oath in the name of Allah, which pronounces that a witness is going to tell the truth. This is based on the teaching of Islam, for example: the Prophet says: *"He who has to take an oath, he must not take oath but by Allah..."*¹⁷¹ It is stated in Sahih Muslim that Uqail narrated: "I did not take an oath by anyone else except Allah, since I heard Allah's messenger forbidding it..."¹⁷² In trials of crimes of killing, it is essential that the witnesses have seen the actual act, and that there are no discrepancies in the testimony regarding time, place, identification, or other circumstances.¹⁷³ Again, the notary records each testimony and asks the witnesses to sign their statement. The defendant may refute the testimony if he can and is given sufficient time in order to present evidence to do so.¹⁷⁴ If the defendant cannot do so, a conviction will be issued on the grounds of the legal testimony provided by the witnesses.

It is worth noting that jurists maintain that if witnesses deliberately give false evidence in their testimony, they will suffer the same punishment as was received by the accused. An example would be if the defendant is beheaded on the grounds of testimony, but later it is found that this testimony was false, the witnesses shall themselves be beheaded.¹⁷⁵

After a decision has been made, the notary will record the verdict. The record must contain a summary of the case, including evidence and the decision of the judges, together with the legal basis for the verdict. The signed statement of the losing party, which may imply either acceptance or dissatisfaction, must be included in the record.

¹⁷⁰ Solaim S., *Constitutional and Judicial Organisation in Saudi Arabia*, pp. 115-116
Moor JR., "Court, Law, Justice, and Criminal Trials in Saudi Arabia", *International Journal of Comparative and Applied Criminal Justice*, p.65

¹⁷¹ Muslim A., *Sahih Muslim*, p.875

¹⁷² *ibid*

¹⁷³ *Odah op. cit. at 407*

Lippman & McConville op. cit. at 70

¹⁷⁴ *Article 34 of the Organisation of Administrative Functions in Shari'a Courts System*

¹⁷⁵ *Ministry of Interior, The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia*, p.188

The record will be signed by both the notary and the judges, and registered in the General Court.¹⁷⁶ A copy of this record must be completed within ten days and kept in the registrar's office.¹⁷⁷ The verdict is automatically reviewed in of Qissas crimes of killing. Death penalties are reviewed by five judges and anything less than capital punishment is reviewed by three judges in the Court of Appeal. The judges should give priority to such crimes, specifically when the defendant is kept in detention.¹⁷⁸ The judges may approve or reject the verdict and the decision is made by majority vote.¹⁷⁹ In the case of a rejection, the case returns to the General Court for retrial or with some other specific directions.¹⁸⁰ In the case of a retrial, a different panel would hear the case.¹⁸¹ An approval of the verdict is final if the sentence is not the death penalty although this would still need to be confirmed by the Justice Minister¹⁸² There is also the possibility of an appeal by the losing party in extraordinary cases. Any approval is referred to the Supreme Judicial Council, where a panel of five judges discuss it and again decide by a majority vote, which must then be sanctioned through royal decree.¹⁸³

The verdict of the court results in an acquittal, the death penalty, the payment of Diya, or imprisonment. The information the CIP receives should include the decision of the court and a fully detailed description of the punishments.¹⁸⁴ More specific procedural rules in Saudi Arabia are detailed in 2.6 below, but suffice to say here that it is essential that the CIP member is informed immediately the verdict has been officially established. The court's decision in crimes of murder cannot be implemented if it has only been given by telephone or orally.¹⁸⁵ Therefore, an official written document must be sent to the CIP member (sentences enforcement department). Once the CIP

¹⁷⁶ *Article 35 of Judicial System in Saudi Arabia*

Article 42 of the Organisation of Administrative Functions in Shari'a Courts System

¹⁷⁷ *Solaim op. cit. at 117*

¹⁷⁸ *Article 20 of Legal Instruction for Reviewing Judgments in Saudi Arabia*

¹⁷⁹ *Articles 12, 13, and 16 of Judicial System in Saudi Arabia*

¹⁸⁰ *Article 27 of Judicial System in Saudi Arabia*

Article 47 of the Organisation of Administrative Functions in Shari'a Courts System

¹⁸¹ *Articles 15-17 of Legal Instruction for Reviewing Judgments in Saudi Arabia*

Solaim op. cit. at 121

¹⁸² *Article 50 of the Organisation of Administrative Functions in Shari'a Courts System, Ministry of Interior, Criminal Procedures, p.235 and Article 20 of Judicial System in Saudi Arabia*

¹⁸³ *Almohibd op. cit. at 235*

¹⁸⁴ *ibid at 21*

¹⁸⁵ *Articles 70 of Legal Instruction for Reviewing Judgments in Saudi Arabia Ministry of Interior, Criminal Procedures, p.241*

member receives a written statement of the verdict, it should initially be recorded on official forms.

The death penalty as punishment for murder is stipulated in the Quran.¹⁸⁶ In this context, Yusuf Abd Allah argues that the translation of 'Qissas' as 'retaliation' is inaccurate and that Islam has much mitigated the horrors of the pre-Islamic custom of retaliation.¹⁸⁷ A type of Qissas was prescribed for the Jews in the Torah, and by extension for Christians.¹⁸⁸ This is stated in the Quran where Allah says: "*We ordained therein for them: life for life, eye for eye...*"¹⁸⁹ Two principles can be seen to arise as a consequence of this idea. The first is that the victim's family cannot exact a greater level of retribution and the second principle involves the equivalency of treatment inflicted on the offender.¹⁹⁰

This also means that Shari'a judges' involvement in Qissas capital punishment is limited to reaching a verdict that the death penalty is available. Even the Saudi King has no power to commute the death penalty in these circumstances. The procedural requirement that all such matters be referred to the King does not mean the need for approval of the sentence, only confirmation of the guilty verdict pronounced by the courts.¹⁹¹

All categories of residents in Saudi Arabia are equally subject to Qissas punishments for murder. Thus, if the elements of Qissas are proven, the judges are obliged to apply the penalty chosen by the victim's family, regardless of the particular circumstances, religions and even nationalities.¹⁹² According to the criminal law in Saudi Arabia, intention and foresight in murder is considered during the trial. This is based on the statement of the Prophet: "*Acts are judged according to intentions and every person shall gain what he intended.*"¹⁹³ Nevertheless, in contemporary Saudi criminal law, Qissas may be commuted to Diya, which is paid in specie, whether it is the

¹⁸⁶ *Qur'an*, 2 verses 178 and 179

¹⁸⁷ *Abd Allah op. cit.* at 72

¹⁸⁸ *Al Awa op. cit.* at 86

¹⁸⁹ *Qur'an*, 5 verses 45

¹⁹⁰ *Bassioni op. cit.* at 204-205

¹⁹¹ *Al-Howesh op. cit.* at 376

¹⁹² *Article 1 from the Resolution of the Supreme Judicial Council, No. 153 dated on 25/08/1397 A.H.(1977)*

¹⁹³ *khan M., The Translation of the Meaning of Sahih al-Bukhari, p.60*

government's fixed price or more.¹⁹⁴ In order to prevent further bloodshed, both the Shari'a and Saudi authorities are committed to trying to convince the victim's family to waive their right to the death penalty.¹⁹⁵ The authorities may intercede with the victim's family in order to persuade them not to ask for the Qissas, and accept Diya instead.¹⁹⁶

Preferable even to this in contemporary Saudi Arabia is for the victim's family to forgive the criminal without demanding compensation. Ultimately, the decision remains a personal matter for the victim's family. However, according to the legal system, if the family do forgive totally, the criminal may be subject to a discretionary penalty (Ta'azir) for the public right.¹⁹⁷ An interesting example of this occurred in Riyadh, where the killer M. deliberately shot and killed his brother. During the first stage of the investigation, he confessed that he committed his crime while angry. As a result of the confession, the judges decided that the criminal was to be executed, but the victim's parents - who were (obviously) also the parents of the criminal - waived the penalty. Thereupon, the judges issued a judgement (Document No.18 dated 16/9/1409 A.H.(1989)), which stated that the killer was to be imprisoned for a period of five years in the public interest.

If the family of the victim consists only of minors, then the criminal is imprisoned and the (rest of the) punishment will not be decided until the minors reach the age of majority. If there is no family, the judge in such cases has the discretion of choosing Qissas or Diya (translated as 'blood-money' as we saw earlier) depending on the circumstances. Diya in such cases is paid to the public treasury.¹⁹⁸ As a general rule in Saudi Arabia, if even one member of the victim's family decides against capital punishment, the death penalty will not be carried out. Similarly, where there is more than one family member and they disagree, the most lenient position is applied.¹⁹⁹

¹⁹⁴ *Fatwa of the chief justice in Saudi Arabia, No. 2372 dated 21/06/1389 A.H.(1969) , sanctioned by royal decree No. 17016 dated 26/08/1389 A.H.(1969)*

Ministry of Interior, Criminal Procedures, p.266

¹⁹⁵ *Al-Howesh op. cit. at 378*

¹⁹⁶ *ibid at 377*

¹⁹⁷ *Royal decree No. 17155 dated 17/07/1393 A.H. (1973)*

Ministry of Interior, Criminal Procedures , p.267

Al Alfi A., Criminal System in Saudi Arabia , p.46

¹⁹⁸ *Ibn Qudamah op. cit. at 791-792*

¹⁹⁹ *Al-Jaziri op. cit. at 197*

Although in Islamic criminal law, it is permissible for the victim's family either to choose one of themselves or an agent to carry out the execution of Qissas personally (with certain conditions), the death penalty is usually carried out in Saudi Arabia by an official executioner, appointed by the government. This is because members of the family will usually lack the required expertise to perform this function in the most humane way. In addition, the execution should be under the supervision of the CIP member.²⁰⁰ According to the principle of the Shari'a, the death penalty should be carried out in public, in order to serve as an example for others. Consequently, in Saudi Arabia, it is usually performed in squares outside the central Mosques of the cities, on Fridays after prayer. There is some disagreement among jurists on the means of execution, but in Saudi Arabia it is a sword (most frequently), which is supported by the Sunna where the Prophet said "*There is no Qissas except by means of the sword*"²⁰¹ or a gun.²⁰² The names of both the murderer and the victim are announced, along with a brief account to be read over the criminal at the time of execution.²⁰³ The convict is given sufficient time to write a will and any other instructions to be considered after execution. Those instructions ought to be witnessed by the CIP member and two competent individuals, in the presence of a judge who has been appointed to visit the convict during their imprisonment.²⁰⁴

We have seen in this section that in contemporary Saudi Arabia, the reality with regard to Qissas laws is that the CIP has taken on the function of prosecuting these cases, although Islamic criminal law traditionally permits the family the right to prosecute. Additionally, the death penalty would usually be carried out by a professional executioner – supervised by the CIP member – rather than by a family member. In the slight procedural conflict between the role of the CIP and the dictates of Qissas, the reality in Saudi Arabia is that the CIP carries out these functions.

Further discussion of the CIP role in sentence supervision and execution is given towards the end of the next chapter.²⁰⁵ What this section has shown is that Qissas judgements remain an element of the modern Saudi system and the CIP member has

²⁰⁰ Resolution of Ministry of Interior, No. 2/S/6302 dated 26/8/1392 A.H.(1972)
Ministry of Interior, *Criminal Procedures*, p.246

²⁰¹ *Odah op. cit.* at 758

²⁰² Resolution of Ministry of Interior, No. 2/S/6302 dated 26/8/1392 A.H. .(1972)
Ministry of Interior, *Criminal Procedures*, p.246

²⁰³ *Al-Howesh op. cit.* at 377

²⁰⁴ *Almohibd op. cit.* at 297

²⁰⁵ *infra* at 98

an important role throughout the process. In addition, it has illustrated a connection between the application of Islamic Criminal Law and the operation of the CIP in practice.

1.6 CONCLUSION

This chapter has attempted to frame the modern in cultural and historical context and, through a look at Islamic Jurisprudence and the differing methodologies, to illustrate the flexibility and breadth of Islamic Law. The chapter also emphasised differences between Islamic Law and English Common Law or European Civil Law traditions, not least of which was that there is no separation of religion and state. Muslims are bound to the teachings of the Quran.

Islamic Law recognizes three main categories of crime and provides punishment in order to protect the five indispensables of Islam. As we will see in the following chapter, the changes in the Saudi system over the years, up to and including the changes in 1994 that are the main subject of this thesis, have been designed never to lose sight of this fact, but only to ensure more efficiency and fairness in the criminal justice system. This research will evaluate whether those aims have been met. What this chapter has shown is that the area of punishments, being so different to contemporary western systems', will inevitably lead to differences in the role of the prosecutor in Saudi Arabia and England, for example.

As well as indicating some sources of and principles for criminal procedures in Islamic Law, the chapter also illustrated how Muslims prosecuted suspects in medieval times and outlined which bodies had authority to carry out prosecutions before the emergence of the public prosecution system and ultimately the CIP. The logical progression was to show a practical application of the implementation of Qissas punishment in contemporary Saudi Arabia in order best to frame how the contemporary Saudi system continues to incorporate Islamic traditions. From here, we shall move on to examine prosecution in modern states in the following chapter. This first chapter has set the background for a thorough examination of the CIP, but this will be thrown into sharper focus with a look at some origins of public prosecution, which we turn to first of all in the second chapter.

CHAPTER TWO

MODERN PROSECUTION SYSTEMS

2.1 INTRODUCTION

This chapter will embark upon a general investigation of the origins of public prosecution before turning specifically to Saudi Arabia and the prosecution system there. We shall look at the roots of public prosecution and then trace them forward through their modern French influence and examine the English system in the light of that. After a look at models of prosecution, there will be a detailed analysis of the development of the Egyptian criminal justice system, a useful foil for the Saudi system with which this thesis is most concerned.

Following that, we will look at the development of the prosecution authority in Saudi Arabia. This will involve briefly outlining the origins before looking at the prosecution under the General Security Department System in Saudi Arabia, taking in statements and opinions about reasons for the establishment of the CIP and then examining the Criminal Procedure Code, which saw the CIP replace the prosecution body attached to the police. Next there will be a section on the conflict of interests that many would argue occurs when a single body has authority for both investigation and prosecution. To finish this chapter, we shall look at a variety of roles the prosecutor carries out under the current system which were the responsibility of the police under the previous system.

2.2 MODERN WESTERN PROSECUTION SYSTEMS

This section of the chapter looks at modern prosecution systems in the west and traces the influence to England in order to provide a comparison and contrast with prosecution in the Islamic tradition, which comes later in the chapter. To this end, we begin with a discussion of the origins of contemporary prosecution systems.

2.2.1 The origins

No prosecution system can be considered in isolation. Although as described below, many systems can trace back a prosecutorial role a long time, the concept of public prosecution they both now use had its origins more in other countries, and especially France, which itself has roots in Rome. The first legislative provision that indicates

the existence of 'public prosecution' appears to be an order passed by Philip Lopel on 23 March 1303, when the French King's representatives were assigned to undertake judicial work. They swore an oath before the judiciary, and were not allowed to interfere in personal affairs. It may be that the appearance of the public prosecution in this context was due to the fact that the king gave up judging alone, whereby the judicial body became separated from the king, and therefore for the first time became an independent judicial and political body.¹ As discussed below, this has many parallels with the evolution of judges on Eyre and justices of the peace in England. By way of comparison, it was Dicey who first contrasted the English courts with the French, noting that 'across the channel' they distinguished between actions between individuals and those between individuals and state officials, where, through administrative law (*droit administratif*) and special administrative tribunals (*conseil d'état*) courts were biased in favour of public officials - breaching his constitutional principle of equality before the law. By contrast, he claimed, nobody in England was above the law 'be ye ever so high, the law is above you'.² As with other aforementioned theories of the English constitution, however, this can also be seen as somewhat out of date, for example a recent Master of the Rolls, Lord Donaldson, stated that "it is silly to say that the security service is obliged to follow the letter of the law. It isn't real."³ Similarly, the Queen cannot be sued.

Academic opinion is seemingly unanimous that the origins of public prosecution lie in France, and indeed the French can point to the enactment of their modern criminal investigation code in 1808 as predating anything else that can be found. It is also noteworthy that the modern French system, with its many advantages, has changed little since its original enactment, and has been extended to the various legal systems that have applied it. A certain body of French legal academics have attempted to find the origins of public prosecution in the system that prevailed in Roman law, the so-called 'classic' theory.⁴

Modern jurisprudence appears to have confirmed this classic theory after consideration of such features as the controllers' system, the city defenders, police

¹ *Al-Ishmawi A., Criminal lawsuit and individual rights, p. 20*

² *ibid at 135*

³ *Wright P., 'Spy Catcher 2/3', Intelligence Quarterly*

⁴ *Al Ghareeb M., Legal Position of the Public Prosecution, p. 57*

officers, the so-called heads of standard matters, and Caesar's representatives it is submitted that the classic theory has held up well. The so-called controllers' system was enacted in 435BC. The controllers were judicial staff assigned the task of investigating and searching for violators of the law. There are many similarities between this system of controllers and the French public prosecution system. There was also a system of city defenders, whereby cities were allowed to select defenders through balloting among the city's notable inhabitants. The role of the defenders was to maintain public order and also to protect the public against any attempt of the staff of the Roman Empire or the municipal council to misuse power. The defenders' powers, however, were ended as soon as the matter was referred to the judiciary.⁵

Other opinion focuses instead on the police officer system as the origin of the public prosecution - although it can be seen that their jurisdiction was limited to superintendence and informing higher authorities of the crimes and violations they found through their patrolling of the districts. Police officers would inform the courts about crimes that came to their knowledge. They were not, however, permitted even to issue an arrest warrant, let alone prosecute further, and hence, this system cannot be considered the real source of public prosecution. In addition to the police, there were the so-called heads of standard matters, whose task was to collect fines in order to preserve public properties. They also instigated proceedings for murder. One school of thought sees the role of the head of standard matters as that of pursuing prosecution in some crimes. However, as instituting criminal law suits is only one of several functions of modern public prosecution, this can only at best be considered a partial source.⁶

Finally, there is the most common theory - Caesar's representatives. This attributes the origin of public prosecution to representatives appointed by the Roman emperor to run his properties and lands, and to collect his revenue. Coupled with the task of confiscation of property after conviction, these representatives were also assigned the task of bringing relevant lawsuits. Their influence therefore extended from the start to the end of proceedings, and indeed into what today would be termed supervising the execution of the sentence. Nevertheless, not everyone agrees⁷ that in these

⁵ *ibid*

⁶ *ibid* at 58

⁷ *ibid*

representatives, albeit in a relatively narrow realm, we find the closest match to today's French public prosecutors.

2.2.2 France

From whatever origins, it is the French system that is accepted as the first modern public prosecution system, and therefore the first system to be studied is the French, and its general law of prosecution. Consideration of this begins with a sketch of the social and economic conditions that led to such a legal framework.⁸

The French Monarchy was formed from a collaboration of groups of feudalities, and so royal power was mirrored at its outset in its feudal powers. The judicial function in the feudal era was distributed between the feudal powers - Church and King. The Church had the right of civil and criminal judiciary for all accounts of their properties, as per Charlemagne's bill executed in 806. Each feudality had its own court, and penalties contributing a financial source to the feudality were applied.

As will be seen, this was also largely the case in England; prosecution in the feudal era was limited to the crime-affected party alone, or to his kin if he died. It was not generally permissible for any individual to institute a suit unless he himself or any of his kin were affected by the crime, although there were some exceptions: an employee for example could institute a suit for his employer.⁹ Again as shall be seen in England, it appears that the public prosecution first came to light with the appearance of the bourgeoisie in the thirteenth and fourteenth centuries.¹⁰ Not surprisingly, many French professors, such as Faustin Helie and Esmein, are of the opinion that the public prosecution is French in origin. They are supported in this assertion by the majority of Arab Jurists.¹¹

In France, the King relied on the bourgeoisie, using them against the nobility to expand his powers. As the King's power became more influential in the early fourteenth century as a result of the rise of the bourgeoisie, he wanted to further his influence. He therefore sent representatives to the feudalities to attend trials such as

⁸ Horiou A., *Constitutional law and political institutions*, p. 112

⁹ Al Ghareeb *op. cit.* at 58

¹⁰ Al Asuiti T., *Law and Philosophy in View of the Social and Economic History*, p. 401

¹¹ Souror F., *Principles of Penal Proceedings Code*, p. 88
Al Nazrawi S., *Study on the Principles of Penal Trials*, p. 51

'Gene due Roi'.¹² The representatives' authorisation was temporary, but eventually became permanent. Al Asuiti argues, however, that not only is the scientific methodology of this contention questionable, but that anyway the mere exercising of this and other functions cannot be considered evidence of the existence of a public prosecution or a recognisable criminal law.¹³ Whether or not at this time such activity constituted public prosecution, it can be seen that at the outset the aim of the public prosecution was not at all to further the public interest. Nor did the attorneys even represent the government. Rather, the whole exercise was financially motivated.¹⁴ Hence, the terminology for the public prosecutor comes from the fiscal prosecutor, the King's attorney at his original appearance.¹⁵

Once the King's power had been consolidated, when a crime was committed within the monarchy, the need arose for the King's attorney to appear before the judicial courts.¹⁶ It was from approximately the same period that the ideas of the modern state started to compete with the idea of the divine rights of the King. In the early sixteenth century, a group of judges appeared for the first time to represent the public interest rather than being the King's attorneys pursuing penal matters. It was then that the foundations of the present organisation were laid.¹⁷ That notwithstanding, however, the public prosecution was regarded with great suspicion¹⁸ in the late monarchical period due to its perceived role as the King's attorneys using the law as a tool to punish and torture whomsoever it wished. The public prosecution's role became diminished within the judicial organisation of the state, and the role of filing suit was predominantly assigned to the plaintiff.¹⁹

As with so much modern French history, matters came to a head with the French revolution in 1789, which swept away the domination of feudalism and monarchy. It also ended privileges and the class system and everybody came under the same law and taxation rules. However, the new ruling members of the constitutional council did

¹² Alkholi F., *Penal Right Manual*, p. 54

¹³ Al Asuiti *op. cit.* at 451

¹⁴ Souror *op. cit.* at 42

Marouf M., *Primary Principles in the Penal*, p.118

Al-Ishmawi *op. cit.* at 80

¹⁵ Abdullah M., *The Control of Prosecution*, p. 23

¹⁶ Al Akili A., *Explanation of Penal Proceeding Code and Amendments*, p.54

¹⁷ *ibid*

¹⁸ Alkholi *op. cit.* at 76

¹⁹ Al-Ishmawi *op. cit.* at 42

not support the total disappearance of the public prosecution and a need arose to restore the public prosecution to undertake the prosecution function in the name of the state; consequently, under the 9th Anniversary of the Revolution Laws²⁰, the public prosecution department was duly restored. This restoration was applauded and supported by the members of the constitutional council, and so when the criminal investigation code was duly issued in 1808, it was the members of the public prosecution that were entrusted with the function of instituting and initiating criminal suits²¹. The subsequent two centuries have seen the development of the public prosecution system, and have brought it to its present structure.²² A public action is initiated by the public prosecutor, who has the discretionary power of prosecution. This means that it may fall to him to decide which actions seem to represent a breach of criminal law and which do not, and which offences do not seem to be of a sufficiently serious nature to merit prosecution. Before beginning this classification, the prosecutor may prescribe measures of mediation or penal composition.

The task of the public prosecutor is to collect both evidence related to an infringement of the penal code and useful information about the individual under charge before proceeding with the referral to the court where the trial will be heard. The prosecutor does this with the assistance of the Criminal Investigation Department (CID) over which he has the power to direct the inquiry, and more generally supervision and control. It also falls to the prosecutor to verify the value of the evidence obtained and to give any necessary directives. Furthermore, only officers and agents of the CID who have been especially chosen by the public prosecutor are able to carry out acts of penal procedure, such as compiling reports, carrying out searches and seizures, or placing a suspect in police custody.

These sections provided a crucial function by explaining the beginnings and development of public prosecution, facts that are necessary if we are to have a full understanding of the principles underpinning the procedures governing such systems around the globe. Because, despite the fact that there exist difference, there are far

²⁰ Article (1) of the French criminal investigation code has provided that the general suit demanding to apply the penalty is limited to the general prosecutors only.

²¹ *ibid*

²² *Al Akili op. cit. at 49*

Al Akili A., Principal of Criminal Proceedings in the Penal Proceedings Code, p.115

more similarities in public prosecution systems internationally. As we shall see later in this chapter and through the thesis as a whole, there are many parallels between the power of the public prosecutor in France and in Saudi Arabia. Although this may appear strange at first, given the Islamic background to the Saudi system that we saw in the first chapter²³, as this section has shown, secular France was the origin of the public prosecution as we know it today. In fact, its influence extends to most countries, whether they have adopted the Latin system or the Anglo-Saxon system. This chapter will also show the influence of the French system on Egypt's public prosecution, which in turn affected the contemporary Saudi system, as we shall see in the fifth chapter.

2.2.3 England

The second modern western system that we will look at to provide a foil for the Egyptian and Saudi models to come is the English one. Prosecution in England today is the work of the CPS. However, as we shall see below, it was not always so. Prior to the introduction of the CPS, England had never had a public official with the duty to oversee prosecutions.²⁴ Even in the early nineteenth century, though the English courts had already existed for many centuries, and difficult though it is to imagine today, there were at that time, no regular full-time paid police forces in England. The first such force that we would recognise today was the Metropolitan Police of London, which was established in 1829 and rapidly came to be seen as having an 'almost magical quality'²⁵ in its putative effectiveness. Similar 'borough' forces were established in other areas following the Municipal Corporations Act 1835, but it was only in 1856 that such forces became compulsory, completing the move from an 'unpoliced' to a 'policed' society.²⁶ Prior to the existence of such police, it was incumbent on the victims of crime themselves to bring the wrongdoers to court, usually using their own time and money. Cases are recorded where the constable was not included at any stage in the entire process or where the constable was only called before making the arrest, i.e. after the searching and detection.²⁷

²³ *supra* at 2

²⁴ Uglow S., 'Independent Prosecutions', *Journal of Law & Society*, p.233

²⁵ Philips D. & Storch R., *Policing Provincial England 1829-56*, p.45

²⁶ Silver A., *The Demand for Order in Civil Society*, p.2

²⁷ Gyford E., *Men of Bad Character*, MA Thesis quoted in Philips & Storch, *op cit.*, p.22

It was generally the victim that shouldered a large part (if not all) of the investigation, arresting and prosecuting of the offender. Philips and Storch²⁸ recount at length how passive or even unhelpful the average constable could be. In the period they cover (1829-1856) a distinction becomes clearly drawn between a constable and a policeman. The former was unpaid, temporary and reactive, while the latter paid, permanent, proactive and preventative. The reasons for the change lie in “the consequences of the profound agricultural and social crisis of rural England after the Napoleonic Wars: the plight of the labourers, the intensification of friction between and within social classes, the fraying of paternalistic relations, a heightened sensitivity to rural crime and apprehensions regarding the effects of the change in the Poor Law.”²⁹

Uglow sees the traditional system in a communal context.³⁰ He concentrates on local juries, an undoubted communal element who ‘presented’ malefactors to the justices on Eyre. Like their French counterparts, these justices were royal officials unconcerned with the general investigation of crimes but instead looking after the personal interests of the Crown. The communal element was formalised in the sixteenth century when the Marian statutes institutionalised Justices of the Peace (JPs) as investigating officers and prosecutors. The system, however, depended on the energy and commitment of individual Magistrates. As outlined above, the Magistrates had to rely on private citizens to initiate prosecutions. Citizens sometimes had support, for example from associations for the prosecution of felons. It was not just the nature of individual prosecution therefore that was problematic, but also its frequency. The reason the associations for the prosecution of felons existed was that individuals were generally very loath to prosecute: “it involved much travel, loss of time, inconvenience and expense.”³¹

In the wake of the reformed police forces, pressure soon developed for reform of the prosecutorial system.³² The system was seen as ineffective in allowing too many criminals to go unprosecuted because it placed too great a burden on the citizen in terms of cost and inconvenience. Corruption amongst police and justices’ clerks

²⁸ *ibid*

²⁹ *ibid at 23*

³⁰ *Uglow loc. 48*

³¹ *ibid at 234*

³² *E.g. Lord Cockburn C. J.: Judicature Commission, Fifth Report (1875; C 1090) p. 19*

dividing up fees and costs was also a negative factor. Numerous Parliamentary attempts to legislate failed as, according to Uglow, maintaining control over law enforcement symbolised the primacy of the individual in his relations with the state.³³ There was some experimentation, for example in Leeds and Liverpool in the 1840s, where local lawyers were hired as public prosecutors. In some counties, the justices' clerks themselves organised prosecutions. After long enquiry a House of Commons Select Committee³⁴ came out in favour of a system of district officers responsible for superintending but not running prosecutions.

What slowly emerged, however, was the system of police prosecution that essentially survived until 1986. Sometimes they acted as lawyers in Magistrates' Courts, sometimes they were bound over to prosecute at Quarter Sessions or Assizes. Within fifty years the practice of victims conducting their own prosecutions had all but disappeared. Instead, prosecuting lawyers' departments developed within police forces. As police forces and powers gradually grew throughout the nineteenth and twentieth centuries, victims came to expect the police to initiate and conduct prosecutions for them.

The assumption of the role of prosecutor by the police was not planned. In fact it was such a fear that led to the Prosecution of Offences Act 1879, which first created the office of the Director of Public Prosecutions (DPP). The Act limited the DPP's role to advice and the occasional complex case, thus failing to stop prosecution becoming inexorably the responsibility of the police. Just as police powers, for example of arrest, search and interrogation were originally no greater than those of ordinary citizens, no special prosecution powers were provided. Private prosecution remained the model and the right of private prosecutions has remained to this day, though extra arrest powers were provided to the police and they developed the practice of 'charging' suspects, whereby suspects were taken before the Magistrates without laying any information in advance. Although the Treasury Lawyer handled the prosecution, the role of the DPP quietly grew and another Prosecution of Offences Act in 1908 gave the DPP a separate department. Even in 1928, however, the DPP

³³ Uglow *op. cit.* at 234

³⁴ *The Eighth Report of Royal Commission on the Criminal Law 1855 PP 1854-55*

still played a role in only a tiny number of prosecutions - and could only complain that the police were not always the right people to prosecute.³⁵

In the absence of specific laws to regulate their prosecutions, the police evolved their own system, with some forces allocating specific officers to undertake this task. Gradually, and particularly in the 1960s and 70s, the larger police forces began to employ their own lawyers.³⁶ As clients of the police, however, under the traditional lawyer-client relationship, the lawyers had to carry out the instructions of the police whatever they themselves thought of the prosecution - something that we now know from testimony to the Royal Commission on Criminal Procedure (the Phillips Commission) set up in 1978³⁷ was the cause of considerable disquiet. The Phillips Commission spent three years assessing the criminal justice system and its report, published in 1981, did more than anything to instigate the reform of the criminal justice system that had been 150 years in the making: the creation of an independent public prosecuting agency, the CPS, that was not - as in the case of the Saudi CIP - an investigating authority. This seminal report pointed out that there was no uniform system of prosecution in England and Wales, and that there was a strong civil liberties' case for an agency, independent of the police, to review the conduct of the prosecution in criminal cases. It also stressed that the roles of investigating crimes, collecting evidence and arresting suspects were likely to interfere with the impartial review of a case and decisions about whether prosecution was necessary and likely to be successful. In addition, there were also concerns from an efficiency viewpoint about the number of weak cases proceeding to trial where evidence is not sufficient to lead to a conviction.³⁸ The report highlighted problems with a lack of uniformity, inefficiency, unaccountability, and separation between investigation and prosecution.³⁹

The recommended structure was decentralised and modelled on the police, with a separate CPS for each police force area. A Chief Crown Prosecutor should be responsible locally to a supervisory body and nationally to the DPP. Despite its

³⁵ Sir Archibald Bodkin, 'The Prosecution of Offenders', 1 *Police Journal* 353, p. 235

³⁶ Uglow S., *Criminal Justice*, pp.30-34

³⁷ Royal Commission on Criminal Procedure, Report op cit. para 6.27

³⁸ Davies M., Croall H. and Tyrer J., *Criminal Justice: A Introduction to the Criminal Justice System in England and Wales*, p. 123

³⁹ Royal Commission on Criminal Procedure quoted in Hansard, 16th April 1985 cm149

persuasive arguments, the initial reaction of the government to the Phillips Commission was that an independent prosecution service would be too expensive to set up.⁴⁰ It was not until the government won a new term⁴¹ that it realised it would be unable to get its flagship police bill - what became the Police and Criminal Evidence Act 1984 (PACE), itself based on the findings of a separate Royal Commission which had reported in 1981 - through both houses of Parliament unless something was done by way of counterbalance to giving greater powers to the police in the area of an independent prosecution service. PACE replaced the mixture of statutory and common law rules that regulated police investigation. Powers of arrest, detention, stop and search of persons and vehicles, entry and search of premises, and seizure of prohibited articles were extended.

Eventually therefore the Phillips Commission cleared the way for the Prosecution of Offenders Act 1985 (POA) which created the CPS. The POA established the DPP as the head of a government department that incorporated the former department of the DPP and the various police prosecuting lawyers' departments. By 1st October 1986 the CPS was fully operational and it now conducts all prosecution cases in England and Wales that are commenced by the police, with the exception of some specified proceedings, including minor traffic cases - where cases are allowed to be presented by the police themselves - serious and complex frauds, which are prosecuted by the Serious Fraud Office (SFO), and cases run by Customs and Excise. All police procedures - up to and including the initial decision to prosecute - remained unchanged by the POA. The introduction of the CPS therefore did not directly affect decisions to arrest, charge, summon, caution, or take no further action. Following that initial decision however, the CPS has complete power over whether to alter, drop, or pursue the case.

The Head of the CPS is the DPP, whose role is to provide national guidelines and procedures, to intervene in difficult or complex cases, to appoint and supervise personnel and to manage resources generally. The DPP is overseen by the Attorney-General, who is the Minister responsible to Parliament for the conduct of most

⁴⁰ Lord Whitelaw quoted in *Hansard* 16th April 1985 cm 172

⁴¹ Following the General Election of 1983

criminal prosecutions. The Attorney-General's responsibility is considered more for general policy than for individual cases.

Today, the CPS has 2,000 full-time lawyers, who are all civil servants and whose role is moderated by the Code for Crown Prosecutors (see below) and their professional ethics as lawyers which provides that at least in theory unlike their first duty is always to the court. The functions of the CPS were stated to be:⁴²

1. to give advice to the police and other law enforcement agencies on the admissibility of evidence;
2. to review cases in terms of whether there is sufficient evidence for a case to proceed and whether it is in the public interest;
3. to oversee the progress of the case after the papers have been passed from the police;
4. to conduct the prosecution of cases in the Magistrates' Courts;
5. to instruct counsel on cases in the Crown Court; and
6. to liaise with other agencies in the criminal justice system.

The main role of the CPS is to take over cases originally investigated and charged by the police. Its powers also include the ability to discontinue a prosecution at an early stage in the proceedings. In this case a court hearing may still be requested if the accused insists on being cleared in public under the provisions of Section 23 (7) of the POA, although this provision cannot be used as a device to require the prosecution to continue to offer evidence in a case which has been dropped.⁴³

Once an accused person has been charged or summonsed, the papers are forwarded to the relevant branch of the CPS, which deals with cases from the police station of the area where the offences originate. On receipt of these papers the CPS is under a duty to review the case in accordance with two criteria: that there is sufficient evidence to continue the case, and that it is in the public interest to continue.⁴⁴ If the accused is brought to the Magistrates' Court in custody, the CPS normally receives the papers on the morning of the first hearing. They are then expected to represent the prosecution

⁴² *Davies, Croall, & Tyrer op. cit. at 123*

⁴³ *Cooke v DPP (1992) 1995 Cr. App.R 233*

⁴⁴ *Dennis J., Jerry D., and Azarian M., Islamic law: Myths and Realities, p.12*

on adjournments and applications for bail. Once papers are received, the CPS is entirely responsible for the conduct of the case. This includes deciding which charges should be proceeded with, what evidence is relevant and admissible and whether or not there is a sufficient prospect of success. Its role also includes assessing whether it is in the public interest to continue with any particular prosecution and, if so, to ensure that the case is prepared and ready for trial.⁴⁵ As we shall see later, this has an exact parallel with the role of the CIP in Saudi Arabia.

Although the POA confined the vast majority of all prosecutions to the CPS, the right of a private individual to institute and conduct criminal proceedings was specifically preserved, though subject to the right of the DPP to intervene at any stage.⁴⁶ The right of bodies other than the CPS or the SFO to prosecute is preserved by the wording of the POA, which provides that the CPS shall take over prosecutions instituted by a 'police force'.⁴⁷ Accordingly 'regulatory agencies' such as a local authority, (a body constituted for the purpose of public service), or a nationalised industry may continue to prosecute their own cases. Where offences contrary to the Customs and Excise legislation occur (such as the importation of drugs) it is specifically provided that such cases are prosecuted by officers of HM Customs and Excise.⁴⁸ The right of the Commissioners of Customs and Excises to prosecute such cases is not affected by the fact that the accused may originally have been charged at a police station.⁴⁹ In the case of certain offences the consent of the Attorney-General or the DPP is required, and as with all prosecutions the DPP may intervene and take over the proceedings.⁵⁰

The duties of the CPS and the general principles to be applied in determining whether proceedings should be instituted are contained in the Code for Crown Prosecutors (the Code).⁵¹ The code has been issued in various forms since the POA was passed.⁵² If it can be shown that a decision not to prosecute was reached in a way that failed to apply the settled policy of the Code, the decision may be reviewed judicially and the Court has power to remit the case for further consideration by the DPP. The power to

⁴⁵ *ibid*

⁴⁶ *Prosecution of Offences Act 1985 s.6(1) and (2)*

⁴⁷ *Prosecution of Offences Act 1985 s.3*

⁴⁸ *Customs and Excise Management Act 1979, s.145*

⁴⁹ *R v Stafford Justices, ex p. Customs and Excise Commissioners [1991] 2 QB 339*

⁵⁰ *Prosecution of Offences Act 1985 s.6(2)*

⁵¹ *Prosecution of Offences Act 1985 s.10*

⁵² *The latest version is printed in full at www.cps.gov.uk/publications*

remit for further consideration would also arise if the decision not to prosecute was as a result of some unlawful policy⁵³ or was perverse.⁵⁴ A CPS decision to discontinue a prosecution can also be judicially reviewed but only in rare circumstances and only in respect of someone who has the *locus standi* to challenge the decision.⁵⁵ Subject to these exceptions a court has no influence on the decision to pursue a prosecution unless such proceedings are an abuse.

In its short history the CPS has already been the subject of several reviews and reorganisations and has faced heavy criticism about its performance and its independence. To begin with, there was the Runciman Report⁵⁶, which was critical of the CPS's pre-trial review arrangements in the Crown Court, which they found to be ineffective. They called for increased, though not total, use of plea and directions hearings on a national level. It also commented on the uneconomical cost of many cases going to the Crown Court, though for the reason for many elections was obvious - the report quoted research by Vennard⁵⁷ that whereas the acquittal rate in the Magistrates courts was 30 per cent, at Crown Court it was 57 per cent. Runciman recommended that defendants should not be able to elect to be tried by jury in cases that Magistrates have indicated they would be competent to hear. Though not implemented at the time, this recommendation was repeated in the Narey Report. Runciman also noted "undue pressure from the CPS" on prosecuting barristers.⁵⁸

In 1993, following an internal report, the 31-area structure was rejected in favour of 13, placing increased emphasis on the 111 local branches as the basic operational units. It is little coincidence that this reorganisation paralleled that occurring in the police at the time. The enlarged areas become responsible for the performance and management of the branches. At the same time a headquarters organisation was put in place and the DPP took over the chief executive duties formerly exercised by the deputy DPP, whose post was put in abeyance. There remained discontent both inside and outside the CPS, however, and in February 1997 a senior Home Office civil servant, Martin Narey, published a report entitled 'Review of Delay in the Criminal

⁵³ *R v Metropolitan Police Commissioner ex p Blackburn* [1968]

⁵⁴ *R v Inland Revenue Commissioner, ex p Mead* [1993] 1 All ER 772

⁵⁵ *R v Chief Constable of Kent and Another, ex p.L* [1991] 93 CR. App.R416

⁵⁶ Runciman Report (1993) Report of the Royal Commission on Criminal Justice (London, HMSO)

⁵⁷ Vennard J., *The Outcome of Contested Trials*, in Moxon (ed) *Managing Criminal Justice*, p.57

⁵⁸ Professor Zander, quoting his work on Runciman in a letter to the Times 1999.

Justice System: a Report' (Narey). While not ostensibly about the CPS itself, Narey recommended that one of the answers to delays in the criminal process was "a closer working relationship between the police and the CPS."⁵⁹ The report sparked the Narey initiative, and the changes Narey recommended were subsequently enacted, for example on increasing the CPS's rights of audience.⁶⁰

Sandwiched in between these two events, the newly-elected government of 1997 came to power with a promise to reorganise the CPS and offer a fundamental review of its functions. The former was achieved in mid-1997 after the publication of the Glidewell Review, carried out by the National Audit Office under the chairmanship of Sir Iain Glidewell, which included heavy criticism of the 1993 reforms, accusing them of making the CPS "too centralised and bureaucratic."⁶¹ Glidewell recommended three main changes to the CPS: decentralisation, prioritisation and clearer delineation between itself, the police and the courts. Most of the recommendations were accepted and numerous changes have been introduced.⁶²

One of the reasons for the lengthy discussion of the English system is because the details of the development of the transformation are important as a foil for the changes in the Saudi system. As the examination of the CIP will show later, there are obvious comparisons to be drawn from the development of the public prosecution in England and in Saudi Arabia. In both countries, the police originally handled the functions of investigation and prosecution and a similar concern with the civil liberties of suspects was a catalyst for change. In England, however, the CPS only took control of prosecution, whereas in Saudi Arabia the CIP was given control of investigation, inspection of custodial centres and supervision of the execution of sentences as well. In this regard, it is important to note that the CPS plays a much smaller role in the English system than the CIP does in Saudi Arabia.

⁵⁹ Home Office, *Review of Delay in the Criminal Justice System: A Report* (1997) p. 1

⁶⁰ s53, *Crime and Disorder Act 1998*

⁶¹ *Glidewell Report pt 1. para 5*

⁶² *CJB 2003*

2.3 MODELS OF PROSECUTION

The previous section gave substantial detail about some prosecution systems, specifically in France and England, with some comments on their relevance to the discussion of the Saudi system. Before we take a look at the Saudi prosecution system, it is worth examining models of prosecution systems, in order that they may also provide a framework of reference. Among the different models of prosecution systems, two – the investigative and mixed systems – are compared and contrasted here and an examination of them will illustrate again that despite differences in culture and sources of criminal code, the French, English, Egyptian and Saudi systems all retain common features from a procedural perspective.

The investigative system concentrates on the strength of state power, influence and control on its security and individuals' interests. The state considers any crime committed on its land as an aggression against the state itself rather than the aggrieved party. This conception was elaborated upon when the Roman state became influential, and has resulted in penal or criminal cases being handled by the state, which represents the public. Hence, it was called "criminal case" or "public lawsuit", and litigation is no more individual or personal but a set of procedures taken by the official authorities in view of punishing the wrongdoer who is the subject of these procedures. This system practiced by the state through the magistrates used to be conducted in secrecy so as not to enable the suspect to pursue it from the very beginning and affect the evidence. Moreover, such authority had the right to jail or restrict his movements until the investigations were completed.

The judge had the right to take all necessary arrangements to find out the truth, such as searching the suspect and their residence, even beating them to confess as the confession is the master of evidence. Accordingly, the investigator has become an adversary to the delinquent, collecting evidence against them so as to penalize them. Furthermore, some systems have given the right to the investigation magistrate to apply penalties to the criminal for minor crimes.⁶³ Thus, the role of the aggrieved party in the public prosecution has become limited and was assigned mainly to the state. This was confirmed by authorizing the judge to challenge the crimes they

⁶³ *Souror op. cit. at 52*
Hussni M., Explanation of penal procedures code , p.45
Al Nageeb A, Principles of Lebanese penal trials, p. 24

witnessed or those brought to their knowledge without interference from the aggrieved party.

This system was closely connected to the legal evidence collected by the examining magistrate and the supreme judge. The phases of prosecution developed with the collecting of relevant information and data and this was scrutinized and investigated and finally judgment was passed accordingly. This was enhanced by the fact that the concept of revenge on the offender started to diminish as the ruling authority was assigned the role of confronting them. In addition, the penal objectives had been widened as they were no more intended to cause pain and agony to the offender but to protect the community and defend its security and interests, which dictated that the community should seek to achieve this end by relying on the public prosecution to reach a collective reaction against them.

As a natural result, the proceedings of instituting the prosecutions differed from civil ones in litigation and procedural rules came to light and were known as the “general criminal procedures” to distinguish them from the civil procedures applicable in the accusatory system, where no distinction is made between civil and criminal litigation.⁶⁴

It is argued that this system may be attributed to following:⁶⁵

1. When the state’s influence became powerful and assumed responsibility for justice and defending the community’s security, an entity was to be established to act in its name to institute the public prosecution, so the matter was not left in the hands of individuals to handle as they wish. This entity is called the Public prosecution or “general attorney.” The matter was not limited to that extent but the state monopolized the judiciary and the country’s judicial authority is represented in the state courts to decide all disputes, especially criminal ones. As a result, jurisprudence was established and developed in addition to researching jurisprudence and the opening of law faculties.

⁶⁴*On the contrary in the Egyptian Pharoaic era where the courts were relying on the written arguments only: Their justification is that the litigants’ tears and sweat may not affect the judge, see Zonati M. , History of Legal Social Systems in the Pharoaic Egypt , p.19*

⁶⁵*AlAwdi A. , Rule of Criminal Court Compliance with the Prosecution, p.13
Al-Ishmawi op. cit. at 248*

2. As the state is the main party in accusation through public prosecution, the proceedings were held secretly, away even from the accused. Under this system, proceedings were taken by the state to collect evidence, and the authority was careful of not enabling the accused to affect the evidence by frightening the witnesses nor affecting their stories, or the possible misguiding of the investigator and, therefore, such systems found it better to prevent the accused from attending most of these proceedings.
3. If secrecy was applied to the investigations and trials, then it was necessary to record them for reference when necessary, and to assess the role undertaken by the accused and to confront them in view of information and facts extracted.
4. In addition, this law has relied on the principle of legal evidence with which the judge complies to issue a decision and no chance is given to them to evaluate and scrutinize, so long as there is evidence found by the judge and relevant procedures are followed as stipulated by the law, even if the judge was not convinced, and the judge may declare innocence despite being convinced that the accused is guilty.
5. If the verdict could be in conflict with actual reality, this law allows a review of the verdicts through challenge and appeal. While these verdicts are made by the state, consequently it is permissible to review their proceedings through challenging these verdicts. These are the most outstanding factors of the search and investigation system and are in conformity with the development of the state and appearance of its effective role in the community so long as it monopolizes justice and confronts criminality and criminals in the name of the community and for its benefit.

However, this system aims in general to develop the role of the state, and consequently this system significantly infringes rights of the suspect. It acknowledges the authority's role in torturing the suspects and limiting his freedom as a method to keep them away from the investigation. It does not allow the suspect to realize his defence. Furthermore, the judgments are not signs of justice as much as they are just responses to the applicable laws in the field of the penal procedures, which could render these judgments breaches of the rules of justice.

We have seen that the investigative system supports the community as a representative for the state to the suspect's detriment. In contrast, the accusatory system is primarily concerned with the suspect's rights in litigation. The disputing parties are treated equally and the judge makes no attempts to follow procedures to investigate the truth, the role being limited to managing the discussion among litigants. This means relying upon the open oral testimonies of those directly involved, which takes into consideration the principles of trials and declaring the individuals' liberty and right to a defence. The essential disadvantages are that it is not easy for individuals in communities to prosecute those they do not know or cannot identify. A similar problem occurs with establishing witnesses and the claimant may expose themselves to impeachment if they fail to establish evidence of the accusation in the event of the accused being declared innocent.⁶⁶

Each system is skewed toward only one party. This led to the "mixed system" in an attempt to find balance and compromise. This system dominates modern legislations and divides the procedural stages upon instituting the criminal case into two phases: investigation and trial. It entrusts the public prosecutor powers in excess of those granted to the other adversary, "the suspect", where he might be temporarily detained, jailed, have his house searched, messages seized and searched, without of course, torture, which is no longer lawful in any modern procedural legislation.⁶⁷ Consequently his communication might be monitored and seized, movement limited and domicile confined. Some proceedings may be done in absence of the suspect and he may review them later on. Furthermore, secrecy is required in this prosecution stage so as not to enable the suspect to affect the evidence and the course of truth.⁶⁸

At the trial stage, the mixed system applies the approach of making the arguments and trials oral and open. Oral argument is meant to be in an audible voice so as to enable the suspect to hear it. The minutes of these open arguments are recorded in application to the idea of minute writing observed by the search and investigation system, and this recording is just an image to the events of the open argument while in trial. Openness and publicity were imposed so as to avoid deciding the suspect's

⁶⁶ *Hussni op. cit. at 39*

Mostafa M. , Explanation of Penal Procedural Code, p. 18

⁶⁷ *Al Hussini M., Torturing the Suspect to Force them to Confess , p. 28*

⁶⁸ *Sourour A. , Alwasit in the Criminal Procedural Code ,p.3*

fate in secrecy and to allow the public to keep track of what is happening in the trials, and monitor them (monitoring in this context does not mean participating nor affecting but following-up⁶⁹) and to extend confidence in the judges' duties.

The suspect should attend all proceedings undertaken while the trial is conducted. Nobody is allowed to stand between the suspect and his judge except in exceptional circumstances, such as when the suspect causes too much disorder and confusion to make the judge complete the trial, where he has the right then to order removal of the suspect temporarily from the session hall. The system acknowledges the judge's leading role in the trial as he has the right to take any necessary arrangements to revise and reinvestigate the collected evidence, but he remains attorney for the state and not at the litigants' disposal. Thus his decisions are revocable and subject to appeal, as they are not passed by the public but by the state through its officers.⁷⁰

In general, the mixed system has dominated and prevailed over other systems due to its flexibility and ability to meet different conditions demanded by the community. As a matter of fact, the procedural system compromises between conflicting interests and parties and it is not easy to compromise between the different attitudes and each community establishes what it needs of solutions relying on both systems.

The criminal procedural system in Saudi Arabia follows the mixed system, as it combines the privileges of the accusatory system regarding litigation of criminal cases and their expiry together with the aspects of the characteristics of the trial phase in regard to verbal procedure, public proceedings, direct encounter of adversaries, the strict adherence of the judge to a certain type of evidence to prove some kinds of crimes. Also, it possesses the advantages of the investigative system in some instances, particularly in those concerned with supervision of the government upon the management of criminal justice, as well as the characteristics of the criminal investigation regarding secrecy, writing down facts, permissibility of excluding some adversaries and distinguishing judgments.⁷¹ In some limited cases, the Saudi criminal procedures follow the characteristics attained from the social defence system, especially concerning the separation between the two stages of fixing the

⁶⁹Al Najar E., *Prosecution in Saudi Arabia*, p.32

⁷⁰Obied R., *Criminal Procedures*, p.17

⁷¹Al Qady M., *The legal position of public prosecution in the Saudi procedural system*, p.54

condemnations, imputing them to the accused and deciding the penalty in some types of crime.⁷²

Saudi criminal justice is unique in using the Islamic concept of Ta'azir (Rules open to the judge to decide) with a characteristic to distinguish it from comparable systems that allow the executive authority to participate in deciding the punishment for Ta'azir crimes (regarding its magnitude, type and how far it is permitted to postpone the execution of punishments). In these cases, the case shall be conveyed to the Shari'a court - after the investigation stage - to adjudicate on one part of it, which is whether it has been proved beyond doubt that the suspect committed the crime together with proven necessary conditions for responsibility. If the answer is in the negative then the case is terminated but if the answer is affirmative then the court role stops there, as it cannot legally decide upon the penalty, as another authority should do that, which is determined by the state. In the same way, the case file may be conveyed, after investigation, to one of the executive governmental departments to decide the penalty.⁷³

It appears that such a system has its advantages, since it involves a significant amount of flexibility in administering criminal justice in what concerns Ta'azir crimes and lowers the burden on Shari'a courts, especially because most of the investigated crimes are strongly connected to daily life, and are therefore organized and supervised by the executive authority. However, the national interest requires that this should not exceed its reasonable limits since it is considered an exception of the original premise that should not be expanded or taken as a measuring example.⁷⁴

No doubt these characteristics that distinguish the criminal procedural system in Saudi Arabia are merely a reflection of the flexibility of Islamic jurisprudence and its capacity to be adaptable to recent developments and to involve solutions that are compatible with the public interests that the Islamic jurisprudence aims to guard. This means that all directives, regulations, fatwa, decisions and generalizations that regulate criminal procedures in the kingdom are drafted by the head of state taking

⁷² *Al Najar op. cit. at 35*

⁷³ *Awad A., Comparative Criminal Procedures, p. 124*

⁷⁴ *ibid at 125*

into consideration the premises of Islamic legislation and jurisprudence on the one hand and on the other, receiving guidance from the Islamic idea of *Almasalih Almorsalah* (to fulfil general public interests) on which judgments in the Islamic jurisprudence are based and which do not contradict any of the basics of Islamic jurisprudence.⁷⁵

Since the aim of the criminal procedural system is to reveal the facts and punish the guilty and acquit the innocent, then that is the essence of justice which the ruler (Waly Alamr) is responsible for. Islamic jurisprudence did not specify the exact procedures required in order to reveal the mentioned facts nor did it prevent evolution in methodology as long as all is within the basics of Islamic Jurisprudence. Consequently, the idea of “*Almasalih Almorsalah*” represents the legal support for most of the procedural basics used by state to regulate the various stages that a case goes through.⁷⁶

The conclusion is that it could not be said that the Islamic procedural system fits with a certain system rather than others of the previously mentioned regulations, but it expands to accept what is useful from all of them and is able to utilise the characteristics obtained from a certain form in a certain stage of the allegation over the characteristics of the other systems. In this manner, the right categorization for the procedural system that is compatible with Islamic jurisprudence lists it within the mixed system without limiting it to specific comparative systems.⁷⁷

2.4 MODERN ARAB PROSECUTION SYSTEMS

With other countries’ systems as a foil and the models of prosecution as a theoretical background, now we shall move on to examine the historical development of prosecution in the kingdom. This section is divided into the development of prosecution in Egypt and the creation of prosecution in Saudi Arabia respectively. The second part, especially, is designed to add substance to the description in chapter one of the development of the prosecution system in Shari’a⁷⁸, while both sections show how the role of public prosecutor is fulfilled in twenty-first century Arab states.

⁷⁵ *Al Qady op. cit. at 55*

⁷⁶ *ibid*

⁷⁷ *Awad op. cit. at 179*

⁷⁸ *supra at 21*

Consideration will first be given to Egypt, which is a particularly pertinent example given its Islamic Law antecedents and also because it provides an illustration of the spread of the French model. The historical approach will underline the development from a Roman through an Islamic system that will be explained in detail and on to one based on the French model.

2.4.1 Egypt

As one of Saudi Arabia's larger neighbours, the development of the Egyptian system has undoubtedly played a part in the changes which were made in Saudi Arabia. The development of the Egyptian system will be discussed here, and useful comparisons and contrasts with the Saudi changes can and indeed, will be explicitly made in Chapters Three, Four and Five.

Egypt clearly adopted its present system of prosecution from French Law, which was incorporated with some changes when the Egyptian civil courts were established in 1883. A review of studies conducted in this field, however, shows equally clearly that the Egyptian judicial system is extremely old, dating back in fact to the time of the Pharaohs. When the Muslims came to Egypt, Islamic criminal procedures replaced their Roman counterparts, and Islamic Law was applied until the beginning of the nineteenth century when Mohamed Ali Basha constituted his state.⁷⁹ The nineteenth century changes moved Egyptian Law into line with French Law, which led to the abandonment of Islamic penal procedures completely. Thus, it was the application of French Law that paved the way for the appearance of the current public prosecution.⁸⁰

As noted, Shari'a had been applied in Egypt from the time of the western conquest and remained even when Egypt was under Ottoman reign in the sixteenth century, although during that period, the application of Islamic Shari'a deviated somewhat. Among those deviations was the fact that the Ottoman state, in the middle of the sixteenth century, replaced doctrinal provisions with other penalties that did not agree with their religious functions, and also gave the power of chastisement to judges after limiting them to specific penalties such as whipping and fines.⁸¹

⁷⁹ *ibid*

⁸⁰ *Al Ghareeb op. cit. at 44*

⁸¹ *Rashed A., Criminal Law, p. 88*

This continued until the beginning of the nineteenth century, when Muhammad Ali Basha established his state. The Islamic Law system of indictment, however, continued even further, taking the form that has been outlined above, until the Egyptian code was rewritten along the lines of the French code. This led to neglect of Islamic Law as its various rules and systems fell into disuse in Egypt. The new system paved the way for the system of public prosecution still used today, and first codified in the regulation of the Central Assemblies, issued by Basha. The regulation stipulated in its third section the establishment of central Al-Khabtit commissions, each of which was competent in investigating criminal cases, and acted like an office for lawsuits. Following investigation, anything not relevant to the prosecution was put on one side, and the rest was referred to the Central Assembly to resolve. The duties of these offices were supervised by the head of the region, who had 'real' power to such an extent that he held the right to interfere in the very core of the offices' tasks.⁸²

The regulation regarding the organisation of the courts was responsible for the resolution of mixed cases. This is detailed in the second section of the Central Assembly regulation, which dealt with public prosecution. Similarly the regulation of the organisation of the civil courts⁸³ stipulated that "representatives for the Defendant of public rights in the prosecution at the presence of the [Ismail] Khidiwi [ruler of Egypt 1863 - 1879] should be appointed and their Chief should be the General Deputy for the presence of the Khidiwi."⁸⁴ These commissions continued until the foundation of the mixed court system in 1875 and the introduction of civil courts in 1883, which - as noted previously - is the generally accepted date of the birth of modern public prosecution in Egypt. As also noted, the proceedings for investigations were derived almost entirely from the model of French proceedings. Article (2) of the French Law of the Investigation of Serious Crimes states that "public lawsuits should not be instituted except through public prosecution in the presence of the 'Khidiwi'."

Legal organization of criminal procedures in general and public prosecution, specifically, went through two main stages, the first of which is the legislative and judicial pre-reformation stage. This stage started at the beginning of the nineteenth

⁸² *Al-Ishmawi op. cit. at 24*

Nash'at H., Explaining the Investigation of Serious Crimes, p.108

⁸³ *Issued on the 14th of May 1883*

⁸⁴ *Malash K, 'Egyptian public prosecution', Legal and Economic Magazine, pp. 328-333*

century and continued until the issue of the Egyptian Laws in 1883. During this period, criminal procedures were not systematically dealt with and usually resorted to the rulings of Islamic Shari'a.⁸⁵ When the French Expedition was launched (1798-1801), Napoleon introduced some judicial reforms but did not have an opportunity to make reforms within the criminal judiciary.⁸⁶ One of the most evident consequences of the French Expedition was that it made the Egyptians aware of and able to express their political rights, evidenced when Mohamed Ali was selected as a ruler of Egypt in 1805. However, the legal situation was still in some confusion and at different times the Islamic Shari'a, the ruler's will and opinion, the principles of justice and the French Laws were all referred to.

Mohamed Ali and his successors issued some laws of a criminal nature, some of which included, within their clauses, some rules for criminal procedures; for example, giving the right of accusation injunction to the victim to file the lawsuit before the judiciary. When the crime was murder, the victim's family could ask for parity of punishment or compensation, and beyond the Islamic jurisdictions, the law permitted the public authority to become involved and apply punishment that didn't comply with these jurisdictions even if there was mutual consent on Diya.⁸⁷ The laws were gathered in one code called "Electives Law" (1848), which took that name due to the fact that besides the Islamic jurisdictions concerned about parity of punishment or Diya, some rulings were selected from other laws, and still others were created and derived from the French Codification in 1810, such as legitimate defence, fraud and forfeit.⁸⁸

During the reign of "Saeed", the law of "Hamyonie Punishment" (January 1855) was passed, which represented the first punitive code issued in Egypt that is similar to the modern systems to a great extent.⁸⁹ An administrative official was put in charge of the judiciary, combining judiciary functions and his own job. In this way, those laws did not separate the authorities. In addition, some legal texts related to criminal procedures did not conform to general principles.

⁸⁵ *Elmarsafawy F., Study of the Islamic legislation (Shari'a) in Egypt, p. 11*

⁸⁶ *Moustafa M., Development of Criminal Procedures Code in Egypt and other Arab countries, p. 41*

⁸⁷ *Khalifa A., The Incrimination General Theory, p. 200*

Elsiefy A., The Country Right in Punishment, p. 298

⁸⁸ *Rashed op. cit. at 90*

⁸⁹ *Akida M., High lights on the Project of Islamic Penalty Law, p. 391*

The second stage that legal organization of criminal procedures in general and public prosecution went through was the legislative and judicial reformation, which occurred partly as a result of the desire to remove foreign privileges from Egypt. In 1875 combinations of mixed laws were issued to reduce the effect of foreign privileges.⁹⁰ Accordingly, for the first time Egypt had a modern legal system. The mixed Criminal Investigation Law was a copy of the French Criminal Investigation Law 1808. This introduced Egypt to the public prosecution system. Nevertheless, its application was limited by the restrictions of the foreign privileges over the power of mixed tribunals.

In 1883 legislative and judicial reformation started in Egypt by establishing civil courts. The Criminal Investigation Law, as issued in 1883, derived from the French Criminal Investigation Law of 1808. It adopted the principle of the separation of criminal judiciary functions (investigation, prosecution, trial). The public prosecution was put in charge of prosecution, while investigation was made the responsibility of the investigation judge.⁹¹

Both were permitted to combine the two functions in conditions of flagrante delicto. The Public Prosecution was permitted to execute the investigation by itself, and the investigation judge could initiate it without a request from the prosecution.⁹² Nevertheless, it was unfortunate for Egyptian citizens that its application was combined with a noticeable rise in the rate of crimes, which forced the state to nullify it⁹³ and form special committees that replaced the prosecution and investigation authority.⁹⁴

Consequently, criminal courts no longer specialized in serious crimes, which were transferred to these committees. A supreme committee was formed in the Ministry of the Interior to review the decisions of those committees, which abused their power permitting torture to obtain the suspect's confession. They often did not hear a

⁹⁰ Soror A., *The Constitutional Legality*, p. 72

⁹¹ Hussni *op. cit.* at 619

Soror A., *The Reference Council*, p. 238

⁹² Abdel Malik J., *Criminal Encyclopaedia*, p. 223

Nash'at A., *Explanation of Criminal Procedures Code*, p. 51

⁹³ Alkollaly M., *Fundamentals of Investigating Crimes Law*, p. 7

⁹⁴ Soror *op. cit.* at 73

Salem N., *Explanation of Criminal Procedures Code*, p. 34

defence or witnesses. Under the influence of public opinion, the Committees of Criminals were cancelled by a decree issued on 15 May 1889.

Nevertheless, as it was observed that the initial investigation by the investigation judge delayed the course of justice without a satisfactory return for this delay, it was decided to reform this condition by strengthening the administration in criminal investigations authorizing the managers and governors to execute the investigation while it was still in the hands of the judicial power. On 12 June 1889, a decree was issued and was then amended by the decree of 17 June 1891, and permitted both governors and managers to perform the investigation themselves even for cases other than *flagrante delicto*. They also had the power, if they desired to use it, to ask the prosecution for one of its members to assist the investigation. The prosecution was not authorized to take the investigation from them. Nevertheless, it could request the "Consultation Room" in the court of first instance to delegate a judge for investigation. In this case, the delegated judge investigated the case himself.⁹⁵ It seems that those rulings only had trivial results, therefore they were replaced by the decree of the superintendent council, issued on 18 April 1895, which was restricted to authorizing the managers and superintendents to supervise the investigations taking place within their departments.⁹⁶

A decree of 28 May 1895 authorized the prosecution authority to take on powers of investigation. The prosecution also had the power of transfer to the criminal court, which used to conduct the hearing in two stages.⁹⁷ The position of investigative judge remained. Nevertheless, the number of cases that he was asked to investigate gradually decreased until they vanished in 1903.⁹⁸ To make up for the defects of some clauses of the law of 1883, and to include the many modifications that were previously issued in separate laws, the Criminal Investigation Law was issued in 1904, which was combined with the issue of the Criminal Law, which kept the power of investigation with the General Prosecution.

When foreign privileges were cancelled by the Montry Treaty, which Egypt entered into with the countries that had privileges, it was one of the most significant moments

⁹⁵ RezkAllah R. , *Personal Freedom in the Egyptian Criminal Legislation*, p. 9

⁹⁶ Abdel Malik *op. cit.* at 225

⁹⁷ Aloraby A., *Basic Principles of Criminal Procedures*, p. 229

⁹⁸ Hussni *op. cit.* at 620

in Egypt's modern legal history as it reasserted complete power, with regard to legislation and judiciary, over everyone residing there. The legislative movement was active in every respect as never before in Egypt, largely due to the fact that it was necessary to confront the cancellation of these foreign privileges. Therefore, a committee was formed to prepare and study the project of the new Egyptian Criminal Procedures Code. This preparation, study, and discussion in the Parliament took approximately ten years. It was issued under Law Number 150 in 1950. Nevertheless, this law went through many modifications that damaged many of the principles on which it was based.

The system of national public prosecution, therefore, only really dates from 1883, but laws were issued, amended and replaced until the 1950s. The first clause of the first article of the present law stipulates that the public prosecution has absolute jurisdiction over the bringing and instituting of suits, and no authority has the right to dislodge it, except in cases specifically allowed by the law. Since the issuing of this new law, minor amendments have continued to be made, but the relevant law in its basic form has been retained.⁹⁹

The foundation of this modern public prosecution system was French Law, which as described and considered above began essentially as creating tools to represent the King and protect his interests - clearly the aim as shown from the systems' historical antecedents. These historical origins are evident in the evolution of the public prosecution in France and Egypt, and, in the case of Egypt especially, where its Islamic law and ancient Egyptian predecessors show a clear contrast, have had a noticeable effect on the current judicial state of public prosecution, and on its relationship with the executive power. Like the French system, there used to be a separation of the investigation and prosecution functions in Egypt but these powers were combined in the general prosecution authority, which may well have had an influence on the Saudi regulator when it came to making the changes that established the CIP.

⁹⁹ *Al Gareeb M., Public Prosecution, p.45*

2.4.2 The limits of the public prosecutor's authority in criminal cases

In the first part of this section I will look at the limits of the public prosecutor's authority in criminal cases in the comparative system, Islamic jurisprudence and Saudi Arabia, highlighting any significant differences between the latter two, especially. This should highlight the workings of the Saudi system from a procedural perspective.

First: The comparative systems

The public prosecution has absolute freedom to revive the criminal case or not and its freedom is neither restricted by punitive and administrative trials nor abandonment of the victim of his rights and his forgiveness of the criminal. However, the public prosecution does not have the right to abandon the case in any phase.¹⁰⁰ Also, it is not permitted to abandon its right to appeal against a judgment as long as the period opened to appeal is still valid. Any abandonment is considered an infraction of the general regulations. However, the freedom of the public prosecution is restricted in specific cases, such as cases which arise from complaints. These three restrictions limit the authority of public prosecution in reviving criminal cases and they are restrictions of the same nature.¹⁰¹

Second: Islamic jurisprudence

The authority of the public prosecutor to revive criminal cases differs according to different crimes, so we find that this authority is restricted in Hudud crimes, but in other crimes we find that there is some discretion. As the ruler "Waly Alamr" has no discretion in Hudud Crimes, the general prosecutor – as he is the chief of the public prosecution authority – has no discretion in reviving the criminal case in these crimes. Once the public prosecutor ensures that the legislative and regulatory evidence is available, then he has to pursue the prosecution against the accused and this is what we expressed as "the necessity of general prosecuting".

The source of the public prosecution in these kinds of crimes goes back to the Quran.¹⁰² This means that Waly Alamr or whoever represents him in the public prosecution has no right in failing to undertake public prosecution. Al Mawardy said

¹⁰⁰ *Revised cassation of 7 May, 1931 the legal rules part 2 no. 253 p. 393*

¹⁰¹ *Sourour op. cit. at 177*

¹⁰² *For example see Quran 24, verse no. 2 or Quran 5, verse no. 8*

in his discussion of the duty of Waly Alamr in facing Hudud “he shouldn’t take sides in Hudud and if any one committed (Hudud crime) or calls for it, then he has to be punished”. Al Mawardy also added that Waly Alamr has to wangle to forgive not to punish as long as it is not a grave offence in religion or corruption in reign”.¹⁰³ The public prosecutor’s lack of discretion concerning a criminal case against a suspect in Hudud crimes is similar to what is expressed in the German law as “the necessity of the criminal case” where it is a necessity to transfer the criminal to judiciary whatever the circumstances are.¹⁰⁴ In any other crimes, whether it was legislated by Waly Alamr to defend a general interest or private benefit, then the authority of the public prosecutor over it widens to incorporate some discretion.

The rule in Islamic jurisprudence (fekh) stipulates that it is not permissible to exempt anyone in a criminal case, but the international development in the relations between the countries and joining of interests, created considerations of exempting the leaders of countries from submission to criminal cases and so is the case with ambassadors and the rest of the people with diplomatic credentials.¹⁰⁵ This is based on the fact that Islam respects the emissaries, and what was signed by different countries concerning this principle in the Vienna Treaty. Egypt and Saudi Arabia were among these countries. It is worth mentioning that this immunity is not a reason of allowance but it is only a restriction over the authority of the public prosecutor and the investigation authority.

Most clergymen believe that it is obligatory to litigate for the public right in Hudud crimes against all people who commit them in Islamic countries whether Muslim or not. The Hanafi followers exempt non-Muslims’ drinking of alcohol from this because this obligation is one of the fundamentals of Islam. The same absolute territorial ideas are applied to people who commit the crimes of parity punishment and compensation in Egyptian society. The same principle is also basically applicable in Ta’azir crimes. The ruler (Waly Alamr) enjoys an authority in these crimes that permits him to use some discretion, especially in what concerns people who enjoy diplomatic immunity as he can order to have them driven out of the country and to

¹⁰³ *Almawardi A., Advice of kings, p. 178*

¹⁰⁴ *Al Najar op. cit. at 63*

¹⁰⁵ *Odah A. , Islamic Criminal Legislation ,p.263*

ask their countries to put them on trial for the crimes of Ta'azir they have committed in Islamic countries.¹⁰⁶

As an application of this, the general rule is to litigate a criminal case on all everyone who commits crimes whatever the nature (Had or Ta'azir or Qissas) on the kingdom's residents without discrimination between them according to religion, nationality or social rank. The basic rule states that there are no privileges, no immunities in Islamic countries for one person rather than the other, no difference between the governor and the governed people, weak or strong, rich or poor, etc. The ruler (governor or Imam) doesn't enjoy any kind of immunity that prevents litigating a criminal case against him without differentiation according to the kind of committed crime whether it is parity (Qissas) or censure (Ta'azir) or penal (Had) and whatever the right that is affected by the crime. The "Had" is God's right and God's rights are executed by Waly Alamr according to the authorities entitled to him by Allah. He cannot execute it on himself, however. Money and blood are rights of people and permitting the people to execute the "Had" on the "Imam" could cause chaos in Islamic society.¹⁰⁷

Third: The situation in Saudi Arabia

In Hudud crimes, the public prosecutor has no discretion, he only discusses its legality once the conditions of the hadd penalty are available, then there is a necessity to prosecute and so is applied in Qissas crimes. Article 46 of CIP Bylaw allows the exercise of some discretion in public prosecution in certain cases.

This article permitted the investigator to safe keeping the investigation in cases of censure crimes after the consent of the CIP committee and the following cases:

- If the damage or danger resulted from the case is venial.
- If tracing the criminal will cause more damage than caused by the crime.
- When the crime is committed inside the province of a tribe or the family where a trial will increase the danger and misunderstanding and increase the enmity and disputes in a way that threatens the unity of the family or the tribe and the threat of the occurrence of greater crimes.

¹⁰⁶ Abu Zahara M., *Crime and Punishment in Islam*, p. 344

¹⁰⁷ Awad op. cit. at 616

- If the governmental department and the alleged administration see that there is no essential effect.
- If the criminal action is a result of the carelessness of the parents or the sons and nobody is hurt except for the family members.
- Occurrence of an honest mistake in practising the right of custody or education or job duties.
- Settlement of enmity in financial crimes or crimes which are concerned with friendly interests and when the accused has removed the effects of the crime once asked.
- Satisfaction with the enormous tangible and psychological damage to the criminal caused in the course of the crime.

In all these cases discretion may be exercised and the public prosecution is thereby rendered capable of confronting different conditions. Nevertheless, there is clearly some tension with the letter of Islamic Law as we saw in the previous section.

After all, the decision by the public prosecution not to attempt to find the criminal in cases where more damage is done than was by the crime is surely a subjective one and could, in theory, be used to protect the reputations of the more powerful in society, which would be highly un-Islamic. Still, some exceptions seem to be reasonable and as long as the prosecutor's discretion is used wisely, there does not seem to be too much conflict here.

This section was able to shed some light, again from a procedural perspective, on how Shari'a is implemented in Saudi Arabia, and how its application has an influence on the criminal justice system. As we have seen from the limits of prosecution, the establishment of the CIP has allowed a certain amount of flexibility. For example, Article 46 indicates that punishment is not always a solution and that there could be other way to prevent crimes. Such an article did not exist in the previous system.

2.4.3 The Development of Prosecution in Saudi Arabia

We move now from to Saudi public prosecution. First we will trace the development of Saudi criminal procedure from the pre-Islamic era, and then we will detail elements of the previous system in order that we can use it to make contrasts with the CIP. Additionally, there will be an examination of why the CIP was set up, referring to the statements and opinions of a number of sources. The last part of the section is

concerned with the roles the prosecutor plays under the contemporary system and the degree of consent the CIP has for assuming these responsibilities.

In the pre-Islamic period, the Bedouin enjoyed equality within the tribe and considered themselves superior to others. The Arabs lived independently but collaborated in the ways of right and duty. It was the practice that before the tribe's chief took his place, the tribe's men gathered and swore an oath of loyalty to them.¹⁰⁸ A greater legal system applied in that the greater community adhered to unwritten practices and binding customs. In Mecca some laws and acts governed civil and commercial dealings, as well as environmental customs and traditions.¹⁰⁹ The judicial system was limited to arbitration, which was considered unbinding, and people generally resorted to the tribe's chief or to another prestigious and influential person.¹¹⁰ Litigants went to a mutually agreed judge, there was no higher authority to execute the sentence but the judge would extract a promise from the parties to implement the sentence. Both parties could agree to the type and amount of the guarantee upon arbitration.¹¹¹

The Pre-Islamic society was characterised by the principle of private justice or personal revenge. Besides personal revenge, some tribes applied the penalty of limits to some crimes, such as cutting the right hand off a thief, or stoning to death an adulterer.¹¹² Later, the principle of revenge was replaced by the principle of 'Qissas' or requital, where only the criminal was to be punished. Acceptance of Diya, which varied according to the tribe's power and position¹¹³, in place of requital was an option in some circumstances. It was against this background that Islam appeared with the message to fight polytheism and advocate worship of the one god, 'Allah', and to do good deeds.¹¹⁴ Islam aimed to cancel the tribal system that weakened Arab solidarity and to establish a social, political and legal system based on the unity of the nation: the holy Quran says boldly, "Your nation is only one."¹¹⁵ It greatly altered the pre-Islamic system.

¹⁰⁸ Fawzi I., *Family Provisions in Pre-Islam and Islam Era*, p. 24

¹⁰⁹ Jafer A., *Legal History*, p.164

¹¹⁰ Al Fitlawy S., *Legal History*, p.215

¹¹¹ Yaken Z., *Legal History*, p.406

¹¹² Abou Murad A., *History of Law*, p.177

¹¹³ Al Termanini A., *Legal History*, p. 519

¹¹⁴ Jafer op. cit. at 163

¹¹⁵ Quran 21 verse 92, & Quran 23 verse 53

It now remains to tie in the Islamic background, which was covered in more detail in the first chapter¹¹⁶, with the particular circumstances of modern Saudi Arabia, which has a Sunni majority and a Shia minority. As we have seen, there are four Sunni schools of law and the Hanbalee school of thought has the most influence on Islamic Law in Saudi Arabia. Principles of this school are used in all laws that are issued in Saudi Arabia and all judges consider it and its application and conditions when deciding a verdict in criminal cases.

Saudi Arabia has an extensive legal structure and a police agency in all its regions that, prior to the introduction of the CIP, investigated all criminal cases after collecting relevant evidence. Such cases were forwarded to the judiciary, with the police acting as public prosecutors.¹¹⁷ As we know, the procedural code/judicial system in Saudi Arabia is based on the Islamic Shari'a. All rules, regulations, decisions and circulars organising criminal procedures are established by the guardian (the King), taking into consideration Islamic legislative and juristic principles on one hand and on the other the notion of 'Almasaleh Almorsalah', or 'raising necessary interests', upon which dealings in Islamic jurisprudence are built. By 'raising necessary interest' it is meant those laws which meet man's changing needs without having any basis in the Holy Quran, Sunna, Ijma' and Qiyas, the sources of Islamic law already discussed¹¹⁸, and which enable the King to organise all stages of criminal procedure. Shari'a has given the guardian (King) vast powers to achieve justice, security and protect people's rights and liberty in line with the Islamic Shari'a principles and decisions taken in view of Almasaleh Almorsalah. An example of this is the compulsory purchase of land with compensation for the general interest in view of establishing schools, hospitals and roads. It is necessary for the rising interests to avoid harm.¹¹⁹

In the previous legal system in Saudi Arabia, criminal procedure was a collection of regulations established by the authorities and royal decrees, in order to specify the regular relations between individuals and the relevant authorities/executive powers,

¹¹⁶ *supra* at 2

¹¹⁷ Al Harthi Z., *Criminal Procedures in the Saudi Arabian Criminal Justice System*, p. 10

¹¹⁸ Al Qatani F., *Public Prosecution and its Role in the Criminal Justice System in Kingdom of Saudi Arabia*, p. 15

¹¹⁹ *ibid* at 16

with the purpose of maintaining legal rights consistent with human rights in Islam.¹²⁰ Proceedings in Saudi criminal procedure include consideration of the rights of the accused. In the pre-trial legal process for example, the Saudi rules allow not only for searching a suspicious person in the street and for searching his home and other premises, but also include specify the rights of the accused on trial, together with balanced rules of detention.¹²¹ These procedures were not codified in the pre-CIP system, which was having difficulty coping with an increasing population and a growing number of foreign workers who were not bound by the Shari'a. The government used to issue regulations to solve problems that occurred in daily life, whilst the interior minister used to issue regulations and orders for conflicts or disputes and problems occurring in police station or jails, which took into account the spirit of Shari'a. This was inefficient and not always consistent, and a lot of complaints were sent to the king and the interior minister, as well as there being pressure from human rights organizations. There was a need to issue a code that dealt with such procedures, which occurred when the CIP was established, and the criminal procedures were issued, and lawyers were given the right to attend trials. All these changes would have an enormous impact, vastly improving the criminal justice system in Saudi Arabia.

In Saudi Arabia, it is the sovereign who has responsibility for the safeguarding of human rights, maintaining the legal system, and observing public interest when promulgating measures of criminal procedure by royal decree. Placed in a modern context, this includes the regulation of investigation, imprisonment and the judicial system. This is due to the change in circumstances from the time of the Prophet, the increase in corruption, falsehood, false allegation, and the evasion of criminal responsibility.¹²² One way that the Islamic-based criminal procedure defines and protects individual human rights is by ensuring, in common with English law, that the accused is innocent until proven guilty. To maintain this, the burden of proof must rest upon the accuser, and any doubt as to guilt is to be taken in favour of the accused. The Prophet said, *"If people were given according to their claims, they would claim the lives of persons and their properties, but the oath must be taken by the*

¹²⁰ *Almohibd A., Criminal Procedures Relevant to Crime of Killing in the Kingdom of Saudi Arabia, p.25*

¹²¹ *ibid*

¹²² *Almohibd op. cit. at 28*

defendant.” He also said, “*The accuser is bound to produce positive evidence, and an oath is required of one who denies.*”¹²³

Another aspect of the protection of human rights is to ensure that the accused is guaranteed a certain level of treatment at the primary investigation and questioning stages. For instance, that the individual should not be subject to unreasonable searches and seizures and is not subject to torture or other inhumane treatments. Although there have been criticisms in practice, especially as regards the treatment of Western prisoners, by law, quite clearly, it is not permissible to coerce the accused to confess under pressure or intimidation and the rights of the accused are supposed to be affirmed during custodial detention and during the trial, and the rules of evidence clarified. The system determines the duties of the police and judges in their tasks by enforcing procedures that comply with the order of Islamic law.¹²⁴

2.4.3.1 Prosecution in the General Security Department system

Having begun the story of the development of public prosecution in Saudi Arabia, we turn now to examine the prosecution in the precursor to the CIP, the General Security Department system. This will provide a lead-in to the next section, which is a discussion of the establishment of the CIP.

The royal decree¹²⁵ creating the position of public prosecutor made it obligatory for all competent courts of public right cases to inform the concerned parties in the police department, so that they could lodge general cases when victims extinguished their personal rights but the case concerned public rights. The Criminal Division was obliged to present the papers of the general case to the competent court upon expiry of the necessary investigation as required by law. This justice division was formerly known as the Criminal Investigation Department – General Security Directorate. The public prosecutor was selected from the criminal division’s members or whoever the police commander deputed. In the villages, where there was no public prosecutor available, the governor deputed a representative to lodge the general right in the court of his region. In the regions where there were no police stations the regional governor

¹²³ *ibid*

¹²⁴ *ibid* at 29

¹²⁵ Royal Decree #1310/813 on 6.4.1353 H(1933), supported by Shoura Council resolution #171 dated 1.8.1352 (1932).

had to depute a representative to act on his behalf in lodging cases of public rights in court.¹²⁶ That representative, acting as public prosecutor, was supposed to be known for their experience, integrity and efficiency and had to have the capability to undertake the function of public prosecution.

The procedures for lodging criminal cases were that the public prosecutor had to narrate the facts of the case before the judge, establish the charge and present the evidence. If a public rights case was lodged before the court, the public prosecutor had no right to discontinue the case or demand a verdict. It was taken as granted that the public prosecution only possessed the right to lodge criminal cases. When it had been lodged, it was no longer in the jurisdiction of the public prosecutor, so he could not enter into reconciliation with the defendant or the private lawsuit. Meanwhile, he was not entitled the right to discontinue the case or disregard it as the case had come under the jurisdiction of the court, which proceeded with it through demonstrating the facts and demanding application of sentence.

The public prosecutor could not lodge criminal cases without having sufficient evidence to convict or possibly convict the accused. In cases where the investigation was made based on a complaint or personal prosecution without sufficient and satisfactory evidence that may convict the accused person, the victim was advised of the result of the investigation. If he insisted on lodging his case and the investigation did not reach any result, it was understood that he could lodge his case directly. When the complaint reaches the court, the judge fixed the hearing date.

In view of what is outlined above about the function of the public prosecution under the General Security Code, it is evident that there was no separation between the prosecution and investigation Departments. No doubt such a procedure had an effect on the public prosecutor's performance as he was very cautious to protect what has been achieved by the investigative body,¹²⁷ and it was better to have separation between the prosecution and investigation powers in terms of legislative policy so as to ensure the impartiality of the investigative power while it was performing its function.

¹²⁶ Ministerial circular # 9652 on 11.9.1380 H (1960)

¹²⁷ Belal A., *Criminal Procedures in Saudi Arabia*, p.608

Many of the differences of the General Prosecution from the CIP system will be implicit in the description of the procedures that are given in this and later chapters. Nevertheless, it is worth briefly noting some of the more important at this stage. First, there was no code laying out criminal procedures as there is now, which meant that the role of the prosecutor involved much more discretion. It was not obligatory that the prosecutor attend the trial once the file containing the accusation letter which was written by the prosecution department in the police station was forwarded to the court. In contrast, under the CIP system, the criminal procedures code has codified the prosecutor's power and the trial can not take place without the presence of the prosecutor, whose role is vital as he confronts the defendant with evidence.

2.4.3.2 The establishment of the CIP

In view of the fact that the investigation and prosecution of cases had become more complicated, a 1981 draft referred to the King proposed establishing a professional authority for investigation and public prosecution. Like any other significant project, extensive studies and efforts were made by committees formed for that purpose and the Royal Decree was passed in 1989. As we will see in detail in the following chapter, the CIP is headed by a president who supervises all its departments, branches and public prosecution and investigation departments.¹²⁸ This president exercises powers and authorities vested to him in the CIP Law.

With regard to studies passed to King Fahd Bin Abdulaziz (King of Saudi Arabia) by the Minister of Interior, stated reasons for requesting the establishment of the CIP can be summarized as: ensuring the police are dedicated fully to their main duties, which concern crime prevention, while the prosecution and investigation duties are assumed by an independent and appropriate body; requiring a new body fully dedicated to increasingly diversified and complex crime; availing a new guarantee to the accused; developing justice agencies in line with international conventions. In my research, sample individuals were asked whether or not the establishment of the CIP was in the right time and approximately 90% of the CIP and a similar if slightly smaller proportion of the lawyers as well as 60% of the police agree that it was. Adding into this the fact that nearly all judges also agree, mostly because they believe that CIP

¹²⁸ *infra* at 110

would confront crime diversification, complexity and the need to comply with international rules and legislation.¹²⁹

In the view of judges, the main reason given for the need for the CIP was the poor educational level of the employees involved in the former Public Prosecution. The second most commonly given reason was the necessity of having specialized cadres with experience, which underlines the importance of a degree in law for joining the CIP. This is in contrast to the fact that the highest degree that police officers usually hold is a high school degree attained before joining the police academy. Finally, only half of the judges mentioned that the CIP may have been set up to guarantee the rights of defendants, although more of them believe it has actually achieved this end (albeit as an apparently unintended consequence in their opinion). The judges are of the opinion that the General Security System would not be capable of handling criminal cases nowadays because crime itself has developed and criminals resort to more sophisticated methods. The General Security Law was issued in 1979, the implication being it cannot deal with the investigation and prosecution of cases that have become more complicated and diversified. This also coincides with the recommendations of the committees which were set up by the King of Saudi Arabia to examine and evaluate the Saudi Criminal Justice System.

When asked about the advantages of the CIP, the judges provided a wide range of responses, from its independence and the protection it afforded defendants to the fact that it expedites processing correspondence and has become a more organized, appropriate and accredited authority. Some answered that there are several advantages and others that it is more specialised in investigation.¹³⁰

Lawyers, Police Officers, and CIP members¹³¹ were also asked about the reasons they thought the CIP had been established. There was broad agreement that a number of factors had been involved, with the police and CIP centring on the increased complexity of crime, the necessity of a more highly educated and specialist investigative force and defending the rights of the accused. In addition to these factors, the two groups agree that the CIP gave more scope for the police to undertake

¹²⁹ See Appendix B, Tables 12, J21.

¹³⁰ Refer to Appendix B, Tables J1-J5.

¹³¹ A more detailed breakdown can be seen in Chart 1 in Chapter 6.

their tasks – presumably by lifting the burden of investigation and prosecution. In view of that, the establishment of the CIP should result in a drop in the crime rate and a rise in security. A further reason which obtained general consensus among the CIP and police officers was that the establishment of the CIP shortened the time spent on investigation and prosecution although the lawyers thought this was the main reason why the CIP had been established. There had been frequent complaints about the time taken in deciding the investigation and public prosecution cases, which is mainly attributed to the extensive load on the shoulders of the police officers in addition to investigations and preparation of the prosecution pleading etc. Each task has its own priority, and therefore the investigations were delayed and consequently the time taken in deciding such cases was prolonged. Accordingly, one of the main reasons for establishing the CIP was the quantity of the outstanding and postponed cases. The CIP was founded with its different jurisdictions to expedite deciding such cases.

In terms of commonness of the responses, it can be seen that the most popularly given reason among the CIP members was the availing of a new guarantor to the accused within the criminal justice bodies. This factor is ranked the foremost followed directly by widening the scope to the police officers to undertake their main duties. On the contrary, least consent is given by the CIP to the idea that the spread of education throughout the Kingdom of Saudi Arabia is a contributory factor to the establishment of the CIP. On the other hand, the sample individuals of the police officers were of a completely different opinion as the development of criminal justice and spread of education throughout the kingdom of Saudi Arabia is ranked foremost, followed by the importance of availing a new guarantor to the accused within the justice bodies. Amongst the police officers, the idea that the CIP was set up to confront the increasing complexity of crime found the least agreement.¹³² Nevertheless, more than half of the police officers agreed there was a high to very high degree of benefit for police officers with the establishment of the CIP. This would largely be in their new-found ability to dedicate more time to undertaking the tasks entrusted to them and safeguarding security and stability.¹³³

¹³² See Appendix B, Tables 1 to 8; Tables L4-L9

¹³³ See Appendix B, Table 13

Lawyers were far less likely to agree that one of the reasons for the establishment of the CIP was to avail more guarantees to the accused. However, agreement was still well over sixty percent. The same group were also less likely than the CIP or police to agree that the reason was to give the police more scope to do their work or that it was related to the increasing complexity of crime in the country. They had higher levels of agreement than any other agency that the spread of education and the development of criminal justice bodies were reasons, however.¹³⁴

Whether or not the CIP was actually established in order to offer more guarantees to the accused, my research shows that shows that 86% of prisoners with CIP were allowed to seek the assistance of their lawyer during interrogation sessions with the CIP, whereas the previous system didn't stipulate any article for a such a procedure. Not surprisingly, then, 100% of the prisoners who were interrogated by the police under the previous system did not have their lawyer present. This would appear to indicate that the establishment of the CIP has had benefits for prisoners.¹³⁵ Similarly, all of the prisoners with the CIP were allowed to seek a lawyer's assistance during the trial whereas, again, the previous system didn't stipulate any such procedure, also confirmed by 100% of the police sample.¹³⁶ It would be hard to argue anything other than the fact that the establishment of the CIP has meant that the Saudi system has improved in terms of the human rights of suspects/defendants.¹³⁷

Finally, it can be seen that there is significant disagreement between the CIP and police on the hypothetical question as to whether the old security department would be able to undertake investigation and prosecution cases contemporaneously. Less than 8% of the CIP support the opinion that the General Security Department would be capable while 43% disagree. Amongst the police, agreement almost reaches fifty percent, whereas fewer than thirteen percent disagree. Obviously there is a great deal of departmental pride at play in these answers, but it is worth noting that the single most common answer in both cases is qualified agreement.¹³⁸

¹³⁴ See Appendix B, Tables L4-L9

¹³⁵ See Appendix B, Table P7

¹³⁶ See Appendix B, Table P8

¹³⁷ See Appendix B, Tables P7 & P8

¹³⁸ See Appendix B, Table 9

2.4.3.3 Criminal Procedures Code

The criminal procedures code¹³⁹ consists of a set of rules, which determine the mechanisms adopted by the police and the CIP after the occurrence of a crime in order to identify, pursue and arrest the criminal and how to collect evidence. It also delineates the rules that organize the process of investigation and the powers of the CIP. The procedural code determines the rules that specify the Shari'a courts and trial procedures until issuance of judicial verdict and application of the sentence. Since we will be referring to the CPC throughout the thesis, it makes sense to provide an early examination of what it is and what it does.

The new code provides greater protection for personal rights and establishes the necessary controls for preserving them in the event of any violation or default by the parties in charge of implementing that code in the different stages: arrest, investigation, accusation, condemning and punishing as stated under Articles (2 & 3) of this code which are considered an application of the legal principle and rule: "No crime nor punishment without express provision." In Article (4), legislation gave the accused the right to seek the assistance of a lawyer in the investigation and trial stages, which is a greater guarantee to their rights by balancing the prosecution and defence before the judge. As we shall see, however, the view of the CIP and police in this regard is not quite as progressive.¹⁴⁰

The new law established significant CIP control over police officers by subjecting them, without exception, to the supervision of the CIP. It is worth noting, however, that there was only limited agreement among both police and, perhaps surprisingly, the CIP itself, that the CIP should have this power.¹⁴¹ Nevertheless, the hierarchical element is clear: the new law stipulates that the police officers should inform the CIP directly they detain a suspect and such an immediate reporting is the most important factor affecting the CIP relationship with the police.¹⁴² Such a procedure is supposed to secure the required protection of the accused until they are proven guilty, as the original assumption is innocence. This principle is based on the fact that what has been established by concrete evidence is eliminated only by concrete evidence and

¹³⁹ Issued under the Royal Decree #200 dated 14.7.1422 (2002)

¹⁴⁰ See Appendix B, Tables 42 & 43

¹⁴¹ See Appendix B, Table 26

¹⁴² See Appendix B, Table 23

that laws taken from the Islamic Shari'a are to be given priority over others in protecting and respecting the suspect as assured by the provisions of the law. The protection provided by the law is not limited to the accused only but it is extended to housing, office and car. Article (46) preserves his privacy by giving the landlord or his representative the right to be present during the inspection, with special procedures applying in the event of the existence of females in the house.

Legislation included rules to control the behaviour of the investigator in section 1 of chapter 4, and has stated the privacy of the investigation and its results.¹⁴³ Further, it states that whoever discloses such secrets will be held accountable.¹⁴⁴ The law grants the accused, defendant and special right claimant and their respective attorneys the right to attend all investigation formalities. In addition, it obliges the investigator to inform the litigants about the result of the investigation within days of its issuance.¹⁴⁵

The law stipulates interrogating the accused in a manner considered protective of the accused and an application of the principles of human rights. In Article (162), the law stipulates that the court should listen to the accused and discuss the charge in order to ensure any confession is valid and does not require any further evidence. The law allows the investigator to detain the accused for up to 5 days and renewal may be extended by the CIP branch head for at most 40 days and the president of the CIP has the right to extend the detention period for at most 6 months in total. This is all without reference to a court – the criminal procedures code affords the investigator this power. After that, the accused will be referred either to the court or released. Further, the investigator is allowed to release the accused temporarily if the detention is not justifiable and there is no harm to the investigation and no fear of his escape or disappearance.

The new law established some procedures that were not available in the past such as:

1. Introducing a right to the accused to seek the assistance of an attorney or a lawyer in both stages of investigation and trial. Further, it resolved that the investigator has no right to detain the papers, documents or correspondence exchanged between the accused, his lawyer or attorney in the case. The law

¹⁴³ *infra* at 146

¹⁴⁴ *infra* at 137

¹⁴⁵ *infra* at 150

has confirmed in several provisions that the accused has the right to contact his lawyer or attorney.

2. Further, legislation introduced under Article (211) of CPC which emphasises the principle of moral and material indemnity for those found not guilty. Compensation in principle rectifies the harm done to individual or community.

A question may be raised in this regard on how the accused appoints his lawyer upon his arrest or while being detained. The lawyer's attendance with his principal is considered an additional guarantee in order not to affect the accused and assists in evaluating the attributed charges and determining to what extent they are valid and it confirms the role entrusted to the lawyer. The Grievances Board and Committees formed under rules, orders, decisions, official authorities and investigation bodies are enabled to provide the lawyer with the necessary facilities and allow them to go through the papers and attend the investigations and not to reject his requests without valid reasons. The executive bylaws answer such questions and the necessity to specify a space to the lawyers in the CIP bodies fit for their position as a principal party in achieving justice.

2.4.3.4 Prosecution in the CIP systems

The issuing of the CIP Code¹⁴⁶ represented a watershed in the statutory organization of criminal procedures in Saudi Arabia because the CIP replaced the conventional public prosecution body attached to the police. The CIP members lodged public prosecution cases in criminal cases carried out by the police, anti drug and traffic agencies before judicial bodies and supervised sentences enforcement in Jeddah.¹⁴⁷ What is true for judicial bodies is applied to the Shari'a courts and grievances board in compliance with the judicial body in Saudi Arabia. For the administrative bodies of judicial jurisdiction, Article (4/3) of the CIP Code stipulates that the public prosecutor has to lodge and follow up criminal cases before the courts and competent judicial bodies and this provision includes the semi-judicial committees available in these bodies.

¹⁴⁶ Royal Decree #M/56 dated 24.10.1409 H (1989)

¹⁴⁷ 1.3.1416H (1996)

Because the investigation and public prosecution is entrusted to only one agency, the CIP, its members may combine the powers of investigation and public prosecution at one time as Article (5/4) of the CIP Bylaw stipulates that an investigator or public prosecutor may replace each other in any prosecution or investigation stage. The head of the competent department may assign the investigator to present the criminal case before the judicial bodies in the case he has investigated. However, this statutory position is refuted by practical reality. The resolution of the administrative organization committee allocated CIP duties to various departments and a separate department was allocated for the public prosecution that reports to the vice president. This department studies the cases referred to them by investigators and prepares a prosecution plea for cases worth referring to the judge and revokes some cases to the investigators for completion. Accordingly, the powers of investigation and public prosecution have become completely separate from the practical stage the case goes through. As to practical and organizational terms, it is seen that the public prosecution department in the Jeddah branch is completely separated from the investigation departments and reports to the branch head directly.

The public prosecutor carries out the prosecution under a dossier that contains the case facts, criminal descriptive evidence, tools, the criminal role undertaken by each suspect and refers to the Shari'a or statutory provisions of the applicable punishment and demands their application to the accused persons. This is based on the evidence and/or charge sheet.

2.4.3.5 The CIP in Investigation and Prosecution: A Conflict of Interests?

As we saw in the description of the Egyptian system above, there are a number of countries where the powers of investigation and prosecution are invested in one body. Such systems, however, are not without their detractors in the field of international jurisprudence.

The subject of limiting the process of initial investigation to a certain department which does it in a pre-determined legal procedure, is a matter of agreement amongst most international law divisions. But, there is disagreement amongst these law divisions about deciding on which department should be responsible for investigation. We can see that some law divisions allocate this authority to investigators and

members of the judiciary in defined cases. On the other hand, other law divisions allocate the authority to the department of public prosecution.

We shall look first into the system of separating the twin authorities of investigation and prosecution. It is argued that this separation leads to the fair distribution of responsibility and the possibility of entrenching high technical expertise in each process. Perhaps more importantly from the point of view of justice, the separation leads to providing maximum guarantees to suspects due to the fact that the process of investigation runs in a spirit of neutrality contrary to prosecution, which is based on confrontation.¹⁴⁸ The main, admittedly weak, argument against the system is that it may waste time when the case circulates between the two authorities. However, such a problem may be avoided by close cooperation between the departments.

As for combining the two authorities, the justification is speeding up procedures and protecting cases from loss or corruption in a way that confines the case with one entity. This system faces many criticisms such as the argument that combining the two authorities for the sake of speed is fraught with danger as speed is not necessarily the friend of justice. More seriously, there is the argument that there will be a vested interest in the investigation and that in the prosecution the individual may not be given sufficient opportunity to properly deliver their defence. A further argument is that combining the two authorities makes public prosecution an adversary and interrogator at the same time; thus, the adversaries cannot be neutral and achieve their interest at the same time. The combining of the two authorities may also lead to heavy handedness and actions that may threaten the freedom of individuals.¹⁴⁹

Some writers and law clerics counter such criticisms directed to such a system by saying that combining these two authorities does not affect the way investigations proceed because public prosecution, being an interrogator and adversary, does not hinder investigation since this dispute at best is theoretical from the practical point of view. Public prosecution is a fair adversary and the important thing, from this point of view, is the acquittal of the innocent or the condemnation of the guilty. The point of view that a Public Prosecutor is under the executive jurisdiction whereas An

¹⁴⁸ *Aboud Z. , The Separation between the Investigation and Prosecution Authorities , p. 23*

¹⁴⁹ *Al Morsfawi H., Principles of Criminal Procedures, p. 331*

investigator is independent and is guided by conscience is meaningless in real life since conscience is the governor for both. As for the saying that a Public Prosecutor is influenced by the preliminary facts of the case, it can be countered that the investigator, too, can be influenced by them.¹⁵⁰

Others are of the opinion that these arguments are overcome when the legal nature of the public prosecution is known. Public prosecution is an arm of the state (law jurisdiction): a procedural department whose objective is to achieve justice and nothing else. This makes it perform two duties at the same time; the first of which is prosecuting with all it entails or necessary procedures to move and deal with the general allegation against the culprit and the second is the follow up to insure the law is applied in the right way by the divisions that enforce legal procedures.

Having seen the pros and cons of both systems, it is necessary for us to evaluate. It is argued that it is better to allocate investigation to investigators, and to delegate members of the police who know the law in addition to people acquainted with human rights to investigation functions under their supervision. The public prosecution should be dedicated to the process of prosecution and nothing else. This leads to the better management of accusations from the time they are made to the time of the final decision on them on the one hand and on the other hand because it leads to a better guarantee of the freedom and rights of the accused. This is because the investigator cannot achieve complete justice if their mentality remains that of an adversary. This adversary mentality leads members of the investigation, on purpose or not, to heavy handedness with the accused and suspicion in addition to being more concerned with prosecution evidence than with defence evidence. This evidence could lead to acquittal if given due care.¹⁵¹

Despite the strong arguments that I have examined above, the reality in the Saudi system is that the powers are combined in the hands of the Commission for Investigation and Public Prosecution (CIP). This means that the regulating authority has adopted a narrow approach in how it views the two authorities. Certain arguments have been made regarding the specifics of the Saudi Arabian situation, some of which I will examine now. The first, which is hardly a justification for the system, is that the

¹⁵⁰ *Abood op. cit. at 26*

¹⁵¹ *Al Morsfawi op. cit. at 164*

regulating authority was influenced by the system in Saudi Arabia that had been prevalent for a long time which gave the police the right to undertake both roles. Hence, the Saudi regulator adopted this solution despite criticism rather than the opposing legislative approach that separates the two authorities.

As we saw in the more general discussion of the controversy above, there is a school of jurisprudence that argues the integration of the two authorities can have many practical advantages, the most important of which is the simplification of procedures and insuring the proper path for criminal justice. From the point of view of some clerics, the integration of the two authorities has no effect, from the practical point of view, on the spirit of justice and objectivity, which are the target of procedural criminal jurisprudence. In this, they view the CIP member as similar to the single and independent investigator whose conscience is his governor and who is only concerned to condemn the guilty and acquit the innocent.¹⁵²

Undoubtedly, the Saudi legal code has been influenced, in this respect, by some neighboring legal codes and past experience of a similar system in Saudi Arabia of not separating the two authorities. Additionally, there seems to have been some important practical factors that pushed the Saudi regulating authority in this direction. On the one hand it may be difficult, under the existing criminal justice system, to create two independent authorities, as this may require reconsidering the various structures of the existing criminal jurisdictions by uniting them into one legal authority in which some of its members undertake investigation, which requires a lot of time and effort due to the variety of legal criminal authorities in accordance with specific types of crime. Additionally, it could be construed as the process of the gradual separation between the authorities of administrative registration and law on the one hand and the authorities of investigation and prosecution on the other, taking into consideration that the police force in Saudi Arabia is the authority delegated the responsibility of functions of administrative and legal registration. Because of this, the CIP Bylaw has defined the various administrative and legal persons in their different roles – in accordance with what is followed by most similar procedural systems – given that they are all members of the internal security force who were conducting the interrogation and prosecution and who were delegated – with the start

¹⁵² Noor O., *Attributes of the Investigation and Prosecution in Saudi Arabia*, p.3

of the CIP – to assistant departments for matters related to search, collection of evidence, search for the culprits and all possible leads.¹⁵³

But, even though the police authority lost its entire jurisdiction in the domain of investigation and prosecution when the new prosecution authority was created, this does not by necessity mean that some departments responsible for investigation in some types of crime, as per current applied statutes, forewent their functions as soon as the CIP started its duties. The truth is that Article (4) of the CIP Code stated that: “the council of Ministers may decree to delegate investigation and prosecution to other state departments”. This means that many departments concerned with investigation, apart from the police, will continue doing their duties of investigation on crimes in their jurisdiction unless a decree from the Council of Ministers orders the transfer of the functions to the Council for Investigation and Prosecution. It seems that the objective of the statute’s rules regulator meant not to over burden the CIP right from the beginning.

For this reason we may say that the authority undertook the jurisdictions of investigation and prosecution for crimes under the jurisdiction of the police who had those powers up until that point. These crimes generally include crimes with prescribed jurisprudence punishments (Hudud), retribution (Qissas), victim-compensation (Diya) and the crimes whose punishment is left to the judgment of the state (Ta’azir). As for Ta’azir crimes such as bribery, forgery and defalcation – i.e. for which laws and punishments have been prescribed – their jurisdiction belongs, from the point of view of investigation and prosecution, to the departments proscribed by the same laws for undertaking the functions of investigation and prosecution. This shall be the case until the issue of a decree from the Council of Ministers, in the right time, to transfer the functions from the prescribed department to the Investigation and Prosecution Authority.

It follows that there is no way to say that the various state departments undertaking investigation for some types of crimes will continue doing so for ever despite the presence of the authority fulfilling its duties prescribed by its statutes. But, what Article (4) refers to is a necessity which exists in order to move from a system that

¹⁵³ *ibid*

had functioned for a long time to another new system which required a lot of new arrangements.¹⁵⁴

There are some mitigating factors, then, in the fact that the two authorities are combined in the contemporary Saudi system, but in the light of the arguments we saw at the beginning of this section and, more worryingly, in the claims of human rights abuses that have been made of the system, it is fair to say that a separation of these two functions would - at the very least – have been a good public relations decision and perhaps in reality have better served the cause of justice.

Certainly, my research indicates that lawyers feel that the lack of a separation is not conducive to justice. There is unanimity in the sample group on this question and also on the related issue as to whether a separation of these two powers would have provided more guarantees to the suspect.¹⁵⁵

2.5 FURTHER CIP ROLES

We have seen how the position of public prosecutor arose and developed in Saudi Arabia, especially with the establishment of the CIP after the General Security Department system. The rest of this section will be employed in examining the role of the contemporary Saudi public prosecutor in certain aspects of the criminal justice system. This first section deals with the role of the public prosecutor during trials.

2.5.1 Role of the Public Prosecutor during trials

As we saw in the previous section, the public prosecutor is responsible for lodging criminal cases and handling them before the courts. Thus, he is considered a representative for the community during the trial as he demands application of the punishment to the criminal. The Minister of Interior, as the supervisor of the CIP, specified the role undertaken by the public prosecutor and assigns the CIP members to carry out the public prosecution in Jeddah. The prosecutor must have specialized in Shari'a in order to assign the applicable punishment. Saudi Arabia requires a degree or above as a condition to be employed by the CIP, whether the field of specialization is the Shari'a sciences or other specialties such as law.¹⁵⁶ In addition, legislation

¹⁵⁴ *Al Gharib M, Procedural Code in Saudi Arabia*, p. 43.

¹⁵⁵ *Appendix B, Tables L55 and L56.*

¹⁵⁶ *See Appendix B, Table vi for a breakdown of specialties*

stipulates that the public prosecutor has to attend the trial sessions as scheduled and to conduct the necessary plea and thus the trial session may not be held unless the public prosecutor attends.¹⁵⁷

Further, the availability of the public prosecutor in the trial session requires them to challenge the accused or his attorney if they try to evade the accusation or interfere with the investigations conducted by the investigators and evidence established against them. During trial the public prosecutor may not demand the acquittal of the accused but has to leave the matter for the court to decide. The public prosecutor in this regard represents the community whose interest is to convict the guilty and to clear the innocent if there is negative evidence during the trial sessions of the court who will decide the dispute (see Article (62/3) of the CIP Bylaw). Consequently, the public prosecutor has to establish the evidence and leave the matter to the court to resolve.¹⁵⁸

2.5.2 Role of the Public Prosecution in challenging verdicts

A further ability of the public prosecutor is to challenge verdicts. Generally, the judge's verdict cannot be questioned, a fact justified in that challenging the verdict may reduce the prestige of the verdicts and the judiciary and it undermines the judiciary's ability to resolve the dispute.¹⁵⁹ On the other hand, judges are human beings that may be right or wrong. If their verdicts were found in violation to the Shari'a or statutory rules, there is no way to amend such fault except by challenging them. Such a procedure does not degrade the prestige of the courts and judges whereas execution of the wrong sentence would.

The position in Saudi Arabia indicates a general rule confirming that the verdicts are of the same grade and that litigation as a rule cannot be repeated in the same dispute. However, a challenge may be accepted by cassation so long as the verdict was issued with a defect that may invalidate it. Both prosecutor and defendant can appeal according to the criminal procedures code. The cassation court is authorized to correct and revoke verdicts and to repeal any previous reasoning if it is in favour of public interest, if necessary. Accordingly, cassation is one way to challenge verdicts.

¹⁵⁷ *Al Qatani op. cit. at 261*

¹⁵⁸ *ibid at 263*

¹⁵⁹ *Al Najjar op. cit. at 259*

Under the Judiciary Code, the court of appeal (cassation court) comprises one president and a sufficient number of judges - among them vice presidents – who are nominated as to requirement and seniority. It will have a department to resolve the cases of personal affairs and a department for resolving other cases. These departments may be extended to as many as needed and each department will be headed by a president or vice president. The vice presidents are nominated by a resolution passed by the Minister of Justice as proposed by the Higher Judicial Council. The permanent location for the cassation court is in Riyadh and its sessions may be held in other cities and branches for this court may be opened when necessary.

The resolutions of the cassation court are generally passed by a panel of three judges except crimes involving killing, stoning and amputation punishments, when the resolution is passed by a panel of five judges. Should the court wish to revoke an independent reasoning, Article (14) of the judiciary code has laid down how to change such independent reasoning. The general management of the cassation court comprises all judges employed by the cassation court at their different specialties and the scope of the departments they are working in.¹⁶⁰

Some verdicts cannot be appealed against and consequently they cannot be brought before the cassation boards. These verdicts are presented in Article (3) of the statement of cassation of Shari'a judgments¹⁶¹ stating that the following verdicts cannot be heard by the cassation boards:

- A) Any verdict appealed by the judiciary presidency or under cassation.
- B) Any verdict that was satisfactory to the convicted (if he accepted the verdict, then there is no need to refer it to the cassation court).
- C) Any verdict communicated to the convicted with a lapse of 15 days but not returned to the judge within this period.
- D) Moral and religious awareness and chastity.

¹⁶⁰ *Al Qatani op. cit. at 266*

¹⁶¹ *Issued under high consent #24836 on 29.10.1386 H (1966)*

- E) Health care, medical treatment and health release for those caught with disability or diseases that threaten their lives and isolation of those with contagious diseases.
- F) Social care for the convicted.
- G) Disciplinary actions and rewards.

This section showed how the public prosecutor challenges verdicts, a fundamental feature of a modern prosecution system. We now move on to further investigate the role of the CIP.

2.5.3 CIP Supervision of prisons and detention homes

The state has vested the CIP the power to supervise the affairs of prisoners and detainees, to hear complaints inside the prison, to check the prisoners' records and files to ensure their availability in these places as prescribed by orders and/or verdicts and to raise their complaints to the higher authorities as required in a way that achieves justice inside the prison. This means regular, continuous work to account for each prisoner according to Shari'a and to recognize their condition and ensure that the sentences are enforced according to Shari'a principles. In this function the CIP constitutes a guarantee for those kept in prison or detention houses that he will be subject to Islamic law or secular law and that there will be a measure of accountability.

Thus, the prisoner or detainee does not wait for a lawyer, specific party or journalist to broach a case inside the prison, as this is the function of the CIP in Saudi law. Many examples are given by commentators of caliphs' and governors' interest in supervision of the affairs of the prisoners.¹⁶² It is clear that the Muslims' prisons were subject to inspection campaigns conducted by the judges, caliphs, governors and Mohatisbs. Further, some jurists consider this a lawful duty.

As for Saudi Arabia's prisons, the Imprisonment and Detention Code issued in 1978 assigned the task of supervising and inspecting prisons to the administrative governor, deputy, head of Shari'a court or his deputy of the judges as well as the police

¹⁶² *Abu Saad M., Altabaqat Alkobra, pp.356-357*

commander or his assistant to ensure application of what has been stated in the Executive Bylaw as earlier explained.¹⁶³

The jurisdiction of the CIP includes controlling and checking prisons, detention stations and any other places at which sentences are executed.¹⁶⁴ The CIP member pay attention to the complaints of the prisoners and detainees and verifies the validity of imprisoning or detaining them in prison or in a detention home after the expiry of the period. Therefore, it was stated in the CIP's bylaw that no one is imprisoned nor detained without authoritative grounds issued by the competent authority as per the applicable rules. Thus, the CIP started to undertake its duties for supervising the prisons and detention homes.¹⁶⁵ In view of this consent, the CIP member is entitled to enter the detention stations and prisons and meet the detainees and prisoners, check them and ensure the validity of the procedures applied to them and to check the reasons for delay in deciding their cases or extending the period of their detention or imprisonment if any.

A number of the inspection tours conducted by the members of Supervising Jail and Sentence Enforcement Department have been scheduled at a rate of two unexpected daytime tours and one night time tour a week. Upon entry to the prison or detention station, the CIP member checks the following:

- A) Statutory supporting evidence for the arrest, imprisonment or detainment of the person to ensure that it is not in violation of the applicable Shari'a and statutory principles and rules.
- B) The detention period of the detainee to ensure that it is in compliance with what has been stated in the Regulation of Detention, Seizure, Temporary seizure and Custody Seizure.¹⁶⁶
- C) The proper treatment of those detained according to the provisions of the Imprisonment Code and its Executive Bylaws.¹⁶⁷
- D) The proper treatment of those sentenced to jail, socially, educationally, culturally and healthily and proper handling with the prisoner (not to expose them to bodily or psychological harm).

¹⁶³ Article (5) of Imprisonment and Detention Code

¹⁶⁴ Royal Decree #56 dated 24/10/1409 H (1989)

¹⁶⁵ Effective from 1.3.1416 H (1996) after the consent of the Minister of the Interior

¹⁶⁶ Ministerial Resolution #233 on 17.1.1404 H (1984)

¹⁶⁷ #M/31 on 21/6/1398 H (1978)

- E) That confessions are not extracted from the accused involuntarily or forcibly.
- F) The trial proceedings at the time of the issuing of the verdict. The CIP member must follow the trial and inform the executive party, detention and imprisonment executive body of the outcome, especially in the event of a not guilty verdict so as to effect a hasty release of the accused.
- G) Any reasons that hindered the release of those who are cleared – and the reasons for any delay in presenting their cases to the court.

If the CIP member found a person imprisoned or detained without a valid reason or discovered that the detention regulations or other laws and instructions provide for their release, then the president of the CIP branch has to inform the department concerned with the supervision of jails to take the necessary procedures.

A CIP member conducting inspection tours to prisons may demand that representatives from the Ministry of Health, Ministry of Labour and Social Affairs, Emirate or Directorate General for Prisons supervise the cleaning, security, penal work progress, disciplinary, hygienic, health and nutritional system according to the instructions and to report to the Minister of Interior each six months on any remarks and recommendations on the conditions of the prisoners and detainees.

Imprisonment is not meant to torture or degrade but to prevent crime and isolate the convicted from the community to avert recurrence of their crimes by amending and rectifying their manners and to clear their aggressive and criminal tendencies against the community.¹⁶⁸

This section has indicated that supervising jails and custody homes is among the most important jurisdictions and duties of the CIP. The research shows that, in general, there is a high level of consent between CIP members, police officers and lawyers that it falls within their jurisdiction. There is agreement that the CIP should receive daily statements informing them of the names of those in custody and follow procedures for releasing those who've completed their sentence and that they should conduct inspection tours of jails, ensuring the application of the regulations and

¹⁶⁸ *Al Qatani op. cit. at 289*

reviewing the jail records as well as hearing the complaints of those in custody and taking up those complaints with the prison authorities. The high level of consent is attributed to the awareness and understanding of each group to its job nature, jurisdiction and how to implement these duties. It could also be attributed to a mutual understanding a counterpart's duty and their assistance to each other so as to enable them to implement the tasks effectively.¹⁶⁹

The Egyptian general prosecution has less power than the CIP in the inspection of jails and supervision of sentences. The police in Egypt are more involved in these procedures and that may be why there has been some criticism about Egyptian jails. The Saudi system was under similar pressure and this power of inspecting jails and supervising sentences was given to the CIP to try to prevent such abuse and miscarriages of justice. The Human Rights Commission of the UN visited Saudi Arabia ten months ago, and welcomed the change in the Saudi criminal system and mentioned in its report that there has been an improvement and that it was looking forward to a continuation of the progress.

My research indicates that the situation has improved under the CIP of the prisoners imprisoned under the police system, nobody answered that there had been inspections or that their general welfare had been enquired after (although the number of 'don't knows' was particularly high) whereas all those who have been in prison under the CIP reported that CIP members visited and asked about conditions.¹⁷⁰

2.5.4 Supervision of Sentences

Both the CIP's Code¹⁷¹ and the consent of the Minister of Interior stipulate that the CIP's jurisdiction includes supervising sentences. While the CIP strongly agree that this falls within their jurisdiction, only about half of the police did likewise.¹⁷² Due to the significant role played by the CIP in this regard, the research separates this section into three parts: those judgements involving killing, stoning and amputation; those involving whipping and those concerned with custodial judgements.

¹⁶⁹ See Appendix B, Tables 52-58; Tables L41-L47

¹⁷⁰ See Appendix B, Tables P10 & P11

¹⁷¹ M/3/1/H

¹⁷² See Appendix B, Table 59

2.5.4.1 Sentences involving killing, stoning and amputation

The CIP member undertakes the task of supervising the implementation of sentences involving killing, stoning and amputation. His role here is to make sure that all procedures of the sentence are taken place. He must check the name of the convicted person and the charge. He reads the verdict aloud before punishment is carried out. Therefore, the presence of the CIP is important and a guarantee to the accused by protecting his rights. Further, it supervises the implementation of amputation or stoning punishments to ensure that it is implemented in the position specified by the Shari'a governor for amputation and in the way provided in sentences for stoning. These punishments cannot be implemented without the presence of the CIP member, who is representing the sentence supervision department of the CIP.

The Control Department¹⁷³ for implementing sentences supervises the processes of amputation, stoning and Qissas once the administrative governor notifies the executive power about the consent of the higher authority (the King) to implement the sentence, as such punishments are implemented only by issuance of higher order. My research indicates that there is high consensus that the responsibility for ensuring issuance of the high orders is the CIP's.¹⁷⁴ The department studies the case papers to ensure the final verdict and consent of the higher authority to the verdict. It is known that such punishments have several guidelines and that they must be fulfilled according to the following:

- 1- The sentence of killing, stoning and amputation is to be issued by the Felony court of three judges (Article (23) of the Judiciary Code).
- 2- The decision of the Cassation Court in the cases killing, stoning and amputation is to be issued by the general courts of five judges (Article (13) of the Judiciary Code).
- 3- Revision of the verdicts issued by the Higher Judicial Council in the cases of killing, stoning and amputation provided that verdicts in such punishments should be made in the presence of all members of the Permanent Board, comprising 5 members (Article (9) of the Judicial Code).

¹⁷³ *infra at 107*

¹⁷⁴ *See Appendix B, Table 60*

- 4- Consent of the higher authority (the King) to implement what has been decided by Shari'a Law, as the governor has the right to forgive Ta'azir offences - unlike Had offences, which are extinguished by forgiveness - as verdict may not be executed unless it satisfies these conditions and if there is no doubt, execution is to be made on time.

Sentence execution is a jurisdiction of the governor of the region: each region's manager will run it and shall implement the sentences after they are handed down.¹⁷⁵ The Region Emirate¹⁷⁶ executes sentences and the CIP members supervise implementation of these sentences to ensure that they have been executed.

The Control Department supervises the writing of the will of the convicted by notary public to document his rights and obligations provided that the notary public is requested by the prison department a day before execution to meet the convicted and convince them to write his will. Again there is strong agreement between CIP and the police in my research that this is rightly the responsibility of the CIP. There is near-unanimity among the CIP but weaker support among the police for it being the responsibility of the CIP to inform the family in Qissas on the day of execution.¹⁷⁷ In addition to this, the CIP inform them of their right to execute the convicted in person if they wish and that the end of the attendance of the guardians is to forgive, disregard Qissas and accept Diya or both as disregarding in Qissas crimes is possible up to pre-implementation.¹⁷⁸

The victim's family may avenge their loss either by implementation of the sentence (which is not the usual case and may only occur under certain conditions, despite Shari'a) or by witnessing it. However, if the victim's family did not attend after they have been notified, it will not affect the execution after the CIP member confirms the identity of the convict. Having supervised all the above, the CIP has the right to refer to the administrative governor in any moment before execution in necessary cases as applied in the event of confession denial made by the convicted or forgiveness of the family in the Qissas yard or the occurrence of a fault in the sentence execution where

¹⁷⁵ Article (7/b) of the Regions Code # A/92 on 27.8.1412 (1992)

¹⁷⁶ Article (56/1) of CIP Bylaw and Article (120) of the Criminal Procedural Code (CPC)

¹⁷⁷ See Appendix B, Tables 63 and 61.

¹⁷⁸ Al Qatani *op. cit.* at 292

the CIP member has the right to make sure of the sentenced person in the execution yard. In effect, this means the governor can stop implementation of the sentence at any time on the advice of the CIP member.

Implementation of the death sentence is executed only by the tool stipulated by the government and if the sentence did not stipulate the execution tool, then implementation is to be made by sword or shooting as decided by the region's governor. Execution is usually carried out by sword, as scholars see it as the sharpest tool for killing.¹⁷⁹ It is the CIP's responsibility to check the tool and to ensure it is in line with established procedures and research shows again that there is a high level of consensus amongst the CIP and police that it should be so.¹⁸⁰

The same applies to the punishment of stoning and amputation, as the tool used to punish should be in conformity with the applicable rules of the law and Shari'a. After the hand or foot is cut off, the stump is put into boiling oil so as to prevent bleeding that may result in the death of the person. With amputation, the CIP supervises the execution of the sentence to ensure that it is in conformity to the applicable rules of Shari'a law. It is necessary to ensure that the amputation is carried out in the presence of an expert and physician to prevent any complication after amputation, which is an application of the Islamic law. The Criminal Procedural Manual contained a provision stating that it is necessary to observe the reasons that prevent any complication that may result from amputation to the other organs of the body where the amputated hand or foot is dipped in boiling oil after being amputated or any other preventive material as advised by experts. Thus, there is scope for the use of physicians so as to enable them to conduct the amputation process especially in compliance with medical advice. The convicted sentenced to amputation may be anaesthetized while undergoing amputation in order to limit physical pain. If the sentence to be implemented is complete in all respects and the judged person is a female, it is necessary to make sure that she is not pregnant before fixing the execution date and to carrying it out whether the punishment is killing, stoning or amputation. The original rule in this application is adopted from the Islamic law in view of Hadith (Holy

¹⁷⁹ *ibid* at 293

¹⁸⁰ *See Appendix B, Table 62*

Prophet's saying) on the story of the Ghamadi woman.¹⁸¹ It is understood from this Hadith that execution should be postponed until after birth in the interests of the baby.

2. 5.4.2 Enforcement of whipping sentences

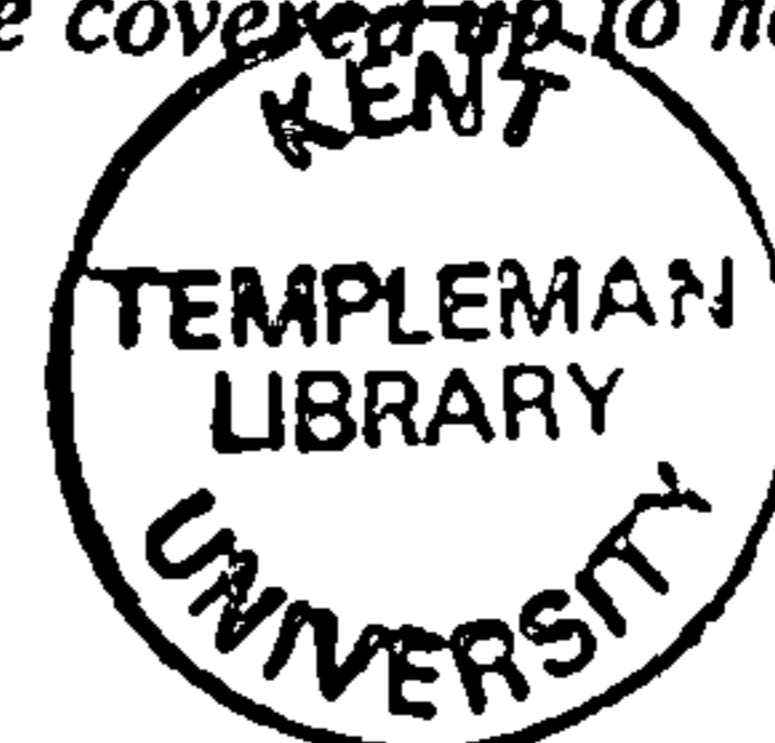
The Shari'a prescribed whipping punishment for adultery committed by unmarried people as a hadd punishable crime as applied to the crimes of defamation, wine drinking and other offences. Consequently, it is necessary to apply whipping both to the woman and the man guilty of adultery or fornication in an application to Almighty Allah's saying in Surrah Alnur – Verse 2: *the woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day.* It was also reported in the Holy Prophetic Sunna that the Holy Apostle said: follow me, follow me, Allah has made a way to them, the unmarried committing fornication is to be whipped 100 times and to be exiled for one year and the married committing fornication is to be whipped 100 times and to be stoned to death.

As for the offence of defamation, the Hadd applicable punishment is prescribed in the Holy Quran: *and those who launch a charge against chaste women and produce not four witnesses to support their allegations - flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors – unless they repent thereafter and mend their conduct; For Allah is Forgiving, Most Merciful.*¹⁸² By these Shari'a provisions, the Saudi legislator has assigned the task of supervising this punishment as required by the laws to the CIP member as follows:

- 1- The sentenced should be of sound body and able to bear whipping and that whipping (flogging) may be postponed pending an improvement in their condition or they may be flogged according to their endurance.
- 2- To ensure that the execution of the flogging punishment is carried out by a legally permitted tool that should not be too strong nor weak for

¹⁸¹ *She was from the tribe of Johiyana and appeared illegally pregnant through adultery before the holy prophet and said: I have committed a hadd sin. Then the holy prophet ordered her guardian to take her back and treat her in a good manner until she gave birth and bring her back to them. Her guardian obeyed and when she reappeared before the Holy Prophet, he told her to take the child back, and feed them until weaning. After weaning them, she took them to the holy prophet who took the child and entrusted them to a Muslim then ordered a hole be dug and she be covered up to her breast and stoned.*

¹⁸² *Qura'n 24, verses 4 & 5*



fear of not rendering the just punishment. So, it is understood that the CIP members have to supervise the enforcement of sentences and ensure that the flogging tool is in accordance with Shari'a standards.

- 3- To observe compliance of the execution in the way in which a man is flogged in that he should be standing and that a woman should be sitting with stretched hands and that they are prevented from wearing clothes that protect their bodies.
- 4- Flogging sentences executed in the fasting month of Ramadan will be at night after Tarawiah prayers (Article (61/4) of the CIP Bylaw).

Likewise, flogging is made a punishment for some crimes for which no prescribed punishment is made. The CIP member in charge of supervising the execution of the flogging should ensure application of the above mentioned procedures as the purpose of controlling the flogging sentences is to ensure their conformity to the Shari'a rules and applicable laws and their commitment to the sentences in terms of the quantity and periods of flogging whether the punishment is a Hadd (Shari'a prescribed) or Ta'azir (Other).

Naturally, there is no equivalent to these punishments in the English system, but the prosecution's role is to ensure that punishment is applied consistently, a function that exists within all judicial systems if carried out by different elements of it. An extension to the responsibility is dealing with custodial sentences.

2. 5.4.3 Enforcement of custodial sentences

Finally in this section dealing with the role of the CIP member in supervising penal judgements, we deal with custodial punishments, by which is meant the period that the imprisoned spends in jail as provided under Article (1) of Imprisonment and Detention Code, stipulating that the punishments are executed in prisons and those who are ordered by the competent authorities to be detained are to be kept in the detention homes according to the provisions of this code and its executive bylaw without infringing the rules pertaining to treatment of minors. The jurisdictions of the CIP include supervision of imprisonment sentences and ensuring that they are implemented according to the prescribed rules. The most important rules in this

regard are to ensure the prison management applies the main practices for the disciplinary treatment and care of the prisoners, namely:

- 1- That there is classification and isolation for each class of prisoners based on age, punishment period, type of offence, former convictions and to isolate sentenced people from detainees¹⁸³ (Quoted from Article (63) of the CIP Bylaw).
- 2- That the instructions of the Prison Department are implemented in respect of health care, medical treatment, medical release for people with total disability or life threatening diseases and to isolate those with contagious diseases.¹⁸⁴

Therefore, the Department of Prison Control and Sentence Enforcement in Jeddah has established a work plan covering all prisons in the Makkah region where the Detention Homes and Prisons have been allocated to four supervisors. This organization aims to control these homes and prisons. The supervisor and inspectors check and follow up the cases of each centre that fall under his supervision weekly and avail control to inspectors to facilitate their tasks and to expedite the resolution of any violations.

Each supervisor has a sufficient number of inspectors who, at the end of his inspection tour, will report his remarks to the departmental head through a work paper called Result of Inspection Tour to Police Stations and Detention Homes. The report covers the following:

1. Number of detainees whose names are not included in the daily statement and notice was made regarding them.
2. Number of detainees who have been contacted to present the necessary bail or security.
3. Number of detainees whose cases were commented for non investigation within 24 hours.

¹⁸³ This isolation has been indicated under Article (2) of the Imprisonment & Detention Code "By virtue of resolutions passed by the Minister of Interior, prisons are established for men and others for women and detention homes for men and others for men provided to observe upon establishing them the administrative division units of Saudi Arabia and that the Executive Bylaw is to determine the rules of running the prisons, detention homes and records as well as rules of guarding them and the hygienic standards and relative safety media." See also Article (10) of the imprisonment and detention code.

¹⁸⁴ Consent of the Minister of Interior that the CIP members have to undertake the duties of control and inspection to the prisons and detention points under # H/11/2676 on 3.12.1415 H (1995)

4. Number of detainees ordered to be transferred from individual detention to group detention because of the invalidity of detaining them individually.
5. Number of those who were released based on negotiations with the Station Commander or case officer.
6. Number of detainees of minor offences whose cases were noteworthy due to their staying in the detention station longer than the legally prescribed period.
7. Nothing to be commented on.

The inspector from the Department of Prison and Detention Control normally fills in the remarks and the statement is signed by the Centre Commander. The Control Department in the CIP attempts to discover reasons for prolonged detention periods for detained people and reports to the District Administration or the emirate where the detainee is available in Jeddah City.

This section of the chapter has underlined the responsibilities and roles the CIP member has, some of which the police did not have in the pre-1994 system. As well as a role during the trial, it is their responsibility to challenge verdicts. The CIP also has to supervise institutions of detention, a function which is not normally associated with a prosecuting body. In relation to sentence enforcement, the CIP has a list of further functions, which largely because of the nature of the punishment, extends their role beyond what is usual in either Egypt or England, both of whose prosecutions systems we looked at earlier in the chapter.

2.6 CONCLUSION

This chapter investigated some origins of public prosecution and detailed some models of prosecution systems by way of a prelude to a description of the development of the Egyptian system, and the Saudi system both pre- and post-CIP. This included some research on stated reasons for the establishment of the CIP and moved on to look at further roles of the prosecutor.

The French origins of modern prosecution were detailed in order that they could be used as a framework over which to describe other public prosecution systems. In addition, theoretical models were discussed so that we could see how the “mixed

system” has come to dominate and also so that we could discuss the English, Egyptian and Saudi systems with an understanding of the ideas underpinning them. Again, it would be fair to say that this chapter demonstrated a number of similarities between the countries’ prosecution systems and this is partly because many articles in the French system were used in the Egyptian code and then the Saudi criminal procedures copied many articles from the Egyptian code, which we shall see in more detail in Chapters Three, Four and Five. Nevertheless, there are obvious differences. Clearly, the notion of Qissas that we saw in Chapter One plays an important role in Islamic Law and it remains an element that cannot be compared with anything in the other prosecution systems we examined here.

Having detailed the origins and history of Islamic Law in the first chapter, in this chapter we examined the more specific development of the pre-CIP Saudi prosecution system, relating one with the other. This chapter clearly demonstrated that Saudi criminal procedure is rooted in Islamic Law, as laid out in the Quran, the Sunna and various other jurisprudential sources. The discussion touched upon the subject of human rights and saw that, in theory at least, they are protected both by Islamic Law and elements of the Saudi criminal justice system. My research showed that under the CIP system, suspects and prisoners were afforded more guarantees by the presence of their lawyer at the interrogation and trial stages than they had under the previous system. Ultimately, though, the King has responsibility for the protection of human rights.

Questions relating to the subject of human rights post-CIP will be considered later but another subject related to that is the fact that the roles of investigation and prosecution and both assigned to the CIP (as they both were to the police under the previous system). There are strong arguments from international jurisprudence about the flaws in this type of system and despite the particular reasons given for the Saudi situation, it must be acknowledged that creating separate bodies for the separate powers may have been an approach more in tune with the demands of twenty-first century justice.

Finally, we saw that within the Saudi criminal justice system, the role of the prosecutor differs in many ways to the English CPS, but that it is comparable. One significant difference is the supervisory role the CIP plays in the implementation of

punishments, which was covered in some detail in the latter part of this chapter. My own research indicates that on the whole there is a high to very high level of agreement between the CIP and the police on the jurisdiction of the former in relation to this supervisory role. Additionally, the judges view the CIP as a more effective and progressive body than its predecessor in Saudi Arabia.

What we can say is that whereas the CIP has specific roles that are very different to the English, Egyptian and French public prosecution bodies we looked at in this chapter, those functions exist in modified form as the responsibility of some other element of the system in those countries and therefore that it is working within the same general criminal justice framework. Beyond that point is the fact that the investigative and prosecutorial roles are very similar to those in any other model which could be deemed “mixed system”.

CHAPTER THREE

THE ORGANISATION OF THE CIP

3.1 INTRODUCTION

The previous chapter described the development of the public prosecution and examined its role in modern Saudi Arabia. This section will begin by outlining the organizational structure of the Commission for Investigation and Public Prosecution. Following that, it will detail the method of appointing CIP members, their guarantees and their accountability. The reason for this procedural focus is that the CIP code was designed to contemporise the Saudi criminal justice system and establish norms where there were none previously. In this chapter, I will also include my research on the current capabilities of the CIP branch in Jeddah as well as factors affecting its performance.

3.2 CIP ORGANIZATIONAL CHART

A Royal Decree stipulated consent for the CIP law and its personnel bylaw.¹ Article (1) of the CIP Code stipulated that the CIP would report to the Minister of the Interior, whose ministry would provide the head office in Riyadh, where the headquarters of all official bodies are located, with its budget for that office and any other branches deemed necessary.² The budget strengthens the CIP in its duties especially upon transferring jurisdiction from the police to the CIP members as the minister supervises both sectors at one time. The significance is the creation of a new agency to investigate criminal cases as well as represent the prosecution authority before the courts instead of the police officers who were in charge of this function formerly.³

This reporting to the Minister of the Interior is not unusual as the Saudi Ministry of the Interior does not carry out a purely security role as applicable in some other countries. The Ministry of the Interior in Saudi Arabia is in charge of municipal governance through supervising the municipalities of regions, governorates and associated centres (towns, villages) and is also involved in development processes and human and economic fields. The CIP reports to the Minister of the Interior in order to carry out its functions according to the provisions of the Islamic Law (Article (5) of the CIP Code). This means that the CIP's reporting to the Minister of the Interior is an

¹ #M/56 dated 24.10.1409 H (1988)

² Article (1) of CIP Code

³ General Security Department System issued under the Royal Decree #3594 dated 29.3.1369H (1948)

organizational process in the administrative organization as the CIP members enjoy complete independence according to the same code. We will look more closely at the subject of CIP independence later in the chapter.

Article (2) of the CIP Code stipulated the organisation of the new body. The CIP is chaired by a general president who is in charge of the supervision of all personnel and whose duties cover the whole country through the supervision of all branches, submittal of annual reports and suggestions to the Minister of the Interior. The CIP's president is appointed under a Royal Decree in view of nomination made by the Minister of the Interior provided to satisfy the standards required to occupy the position of vice president at least.⁴ Article (3/1) of CIP Bylaw stipulates that the president's supervision shall only be technical and administrative. The CIP's president has one or more vice presidents as seen as appropriate by the High Administrative Reform Committee, which was also given the task of nominating them. The vice president of the CIP has been appointed to take over the duties of the president in the event of his absence in addition to other representatives for investigation and public prosecution (Article (3/2) of CIP Bylaw).

The administrative structure has determined certain departments be in charge of investigating criminal cases. Each department is chaired by a head in charge of direct supervision of the work and case progress within the department. The head is considered the investigator's reference in criminal matters and allocates the work duties to those working in the department. The department head is supported by an undersecretary of a lesser grade who represents the head in their absence and carries out the duties assigned to them in the presence of the departmental head. Each department consists of a number of investigators at different grades, such as senior investigator and junior investigator, to investigate the cases that fall within their departments. In addition, a number of the investigators and lieutenants should be available to help the investigator in investigating some minor cases so as to allow the investigator to concentrate on significant and major cases.

⁴ Article (10) of the CIP Act stipulates that the CIP's president is appointed at privileged grade under a Royal Decree as nominated by the Minister of the Interior provided to satisfy the standards for filling in the position of Vice president at least. The other positions of the CIP are filled and relocated under a Royal Decree based on decision of the CIP Management Committee and as recommended by the Minister of the Interior.

a- The presidency of the Minister of the Interior

The first white paper of the CIP Bylaw authorized the Minister of the Interior to delegate the region's governors to authenticate the preparatory and final decisions issued from the investigator (Article 253). In addition, only he and his deputy had the power to close the investigation in Ta'azir crimes (Article 168) and this was sufficient to demonstrate that the Minister of the Interior would have technical and administrative presidency over CIP members. Then came the CIP Bylaw, without these two articles, and the right to close the investigation in Ta'azir crimes became the jurisdiction of the investigator after receiving the consent of the higher committee of CIP (Article 46). As a result of this, the Minister of the Interior has nothing but administrative presidency over the members of the CIP as it is bound to him and its budget is bound to the Ministry of the Interior. The second article of the CIP Bylaw states that the CIP is bound to the Minister of the Interior, who supervises its work. In addition, the coordination of work between the branches of the CIP, security circuits and the governors of the regions is set according to the specifications of the Minister of the Interior.

The work of investigation and prosecution in Saudi Arabia had been entrusted to the public security system, which was also entrusted with finding evidence in addition to its original role in combating crime, arresting criminals and guaranteeing security. Establishing the CIP was a turning point in the Saudi procedural system, where the general security system became dedicated to fulfilling its basic role in preventing or revealing crime and arresting suspects after a crime takes place. An additional role was in detaining suspects under the supervision of the CIP, while the CIP has jurisdiction over investigation and public prosecution. This separation between the work of criminal detention and the jobs of investigation and public prosecution means more independence and neutrality in performing each of the tasks.⁵

These considerations required the supervision of the Minister of the Interior to make coordination between it and the public security systems easier. Thus, the course of justice wouldn't be postponed by any disputes that may happen in the practical application of duties.⁶ This supervision obliges the president of the CIP to inform the

⁵ *Al Qady M. , The legal position of public prosecution in the Saudi procedural system, p.66*

⁶ *Al Najjar E., Prosecution in Saudi Arabia ,p.47*

Minister of the Interior of all the important cases and receive his directions and instructions (which don't include interference with the jurisdiction of the CIP and don't violate its independence or force it to abandon its duty). Article (4/B) of the CIP Code entitled the CIP committee the right to study the matters related to investigations and prosecution and the same article obliged the CIP committee to prepare an annual report to the CIP including notes and recommendations about its work and what it suggests regarding the applied regulations and procedures. This report is presented to the Minister of the Interior in order to be passed on to the King with the inclusion of the minister's own opinion. To guarantee that this supervision remains within this framework, the CIP Code didn't authorize the Minister of the Interior to punish the members of the CIP as is the case for the Minister of Justice in French law, but it gives this power to the CIP committee as a punitive council in Article (13) of the CIP Code.

In contrast to the previous system, which allowed the interference of the Minister of the Interior or his deputy through their authority as head of security agencies, the CIP is operationally independent. This is clearly an improvement in terms of guarantees of fairness and the reduction in interference can also be seen as implying that the CIP is likely to be more effective in its field work.

b- The presidential authority of the CIP's president

As was mentioned above, the president of the CIP handles technical and administrative supervision of the work of the members of the CIP according to the third article of the CIP Bylaw. His deputies assist him in performing this role and fulfilling the objectives of the CIP. The president has the right to issue any instructions or directives he finds necessary as an application of the principle of gradual subordination; and the members are committed to abide otherwise they will be subjected to punitive questioning.

The authority of the CIP's president doesn't end at administrative supervision, like the interior minister's, but extends to include technical supervision and it makes no difference whether these instructions concern the work of prosecution or investigation. It should be noted that the CIP's president is not concerned with criminal cases as he is not a delegate of society in undertaking this litigation; but he is

the president of the board entrusted with it. The CIP has jurisdiction over this litigation as a delegate of society.⁷ Consequently, the CIP members are not delegates of the CIP's president as with the Egyptian public prosecution, since the members of the public prosecution in Egypt are deputies for the General Prosecutor - as he is considered a delegate of society in pursuing the authority of prosecution. Instead, the CIP members are considered deputies of the authority in undertaking the investigation and public prosecution as it is the responsible department of these two roles.

Having described the relevant organisational articles of the CIP Code, we can see that the reporting, organization and jurisdiction of the CIP is regulated according to the basic ruling law.⁸ The president of the CIP is in charge of and responsible for all the technical and administrative work, in an improvement on the operational involvement of politicians under the previous system.

3.2.1 The Structure of the CIP

The Higher Commission for Administrative Reform organised the administrative structure of the CIP, whether for the head office or its branches throughout the country, according to its basic law and criminal functions as follows:

A) The CIP's president is limited at present to only two vice presidents located in the CIP headquarters, one of them for investigation and public prosecution and the other for supervising the jails and enforcement of the judgments. The number of the deputies may be increased in future to meet the workload as the CIP represents the investigation and prosecution in the criminal cases in full. A department was incorporated in the headquarters to follow up the expansion of the CIP's activities called "Administrative Development Department".

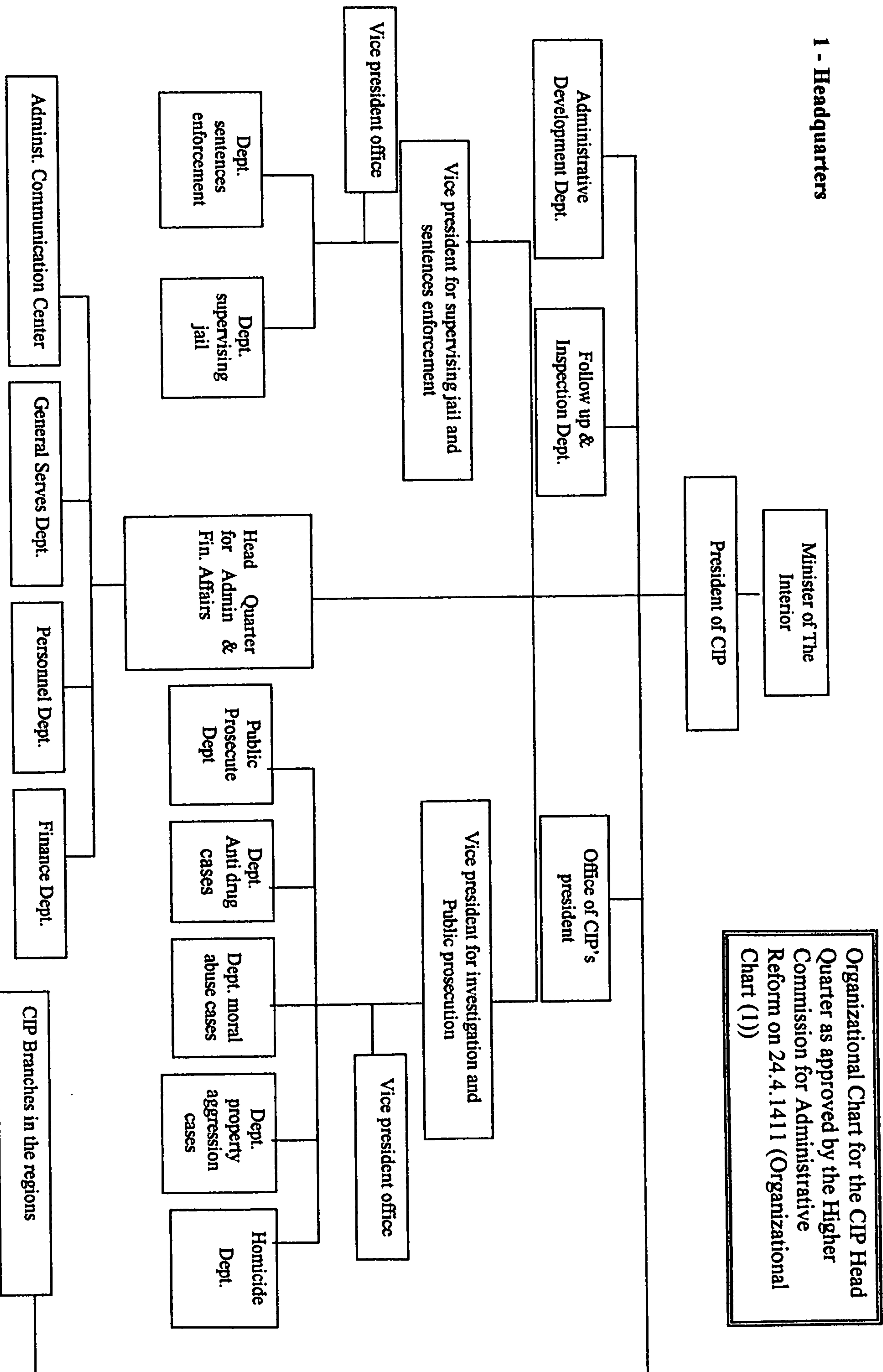
B) The administrative organization for the CIP and its branches is as follows in Figure 2.

⁷ *Al Qady op. cit. at 67*

⁸ *Article (54) of the Basic Ruling Law (Saudi constitution) stipulates that: "The law is to show reporting, organization and jurisdiction of the CIP".*

Figure 2

1 - Headquarters



Organizational Chart for the CIP Head Quarter as approved by the Higher Commission for Administrative Reform on 24.4.1411 (Organizational Chart (1))

3.2.1.1 Non-dissociation in Secular Law

Non-dissociation of public prosecution is an old principle, and it is justified in its modern position by the fact that the prosecutor represents 'all of society when performing their assigned tasks. No matter how many members of the public prosecution there are, they are all partners so if any one of them takes an action, it is as if they all have done so.⁹ Non-dissociation requires that any member of the prosecution may replace the other to complete what has been started in the same case.¹⁰ So, one can start the investigation and the second complete it, the third deal with it, the fourth argue the case in court, the fifth appeal against the verdict and so forth. The public prosecutors differ from the judge in this, as the latter acts personally and his verdict is never to be imputed to someone else and no other judge commits to it. On the other hand, it is not permitted for anyone but the judges who heard the pleas in court to join the discussion and judgement, otherwise the verdict would be null.

However, the principle of non-dissociation of the public prosecution is naturally restricted by area and type of crime jurisdiction; an example of the type of crime jurisdiction is that the prosecutors cannot undertake the jurisdiction of the General Prosecutor in proceeding with felonies cases. An example of the area jurisdiction is that the prosecutors in a certain court province cannot pursue the jurisdictions of prosecutors in another court province.¹¹ This restriction doesn't apply for the General Prosecutor, as he represents the public prosecution all over the country, and his power includes the authority of investigation and prosecution. He has the right to perform these authorities by himself and to delegate other prosecution members to pursue them instead of him.¹²

3.2.1.2 Non-Dissociation in the CIP System

The president of the CIP undertakes the jurisdictions of the CIP in its name and the members of CIP work not as personal deputies, but as deputies of it. According to the principle of non-dissociation of CIP Code, any member of the CIP can replace another in proceedings whether he is an investigator or a prosecutor. This principle was

⁹ *Al Qady op. cit. at 68*

¹⁰ *Cassation, 22 February, 1943 group of rules part 6 no.118, p. 170*

¹¹ *Obied R. , Principles of Criminal Procedures in Egyptian Law, p.59*

¹² *Cassation 15 November 1964, group of judgments, serial 17, no.166 p.865*

confirmed by Article (4/4) of the CIP Bylaw.¹³ It is clear from this article that the CIP's work involves non-dissociation, as it represents society in investigation and public prosecution.

Consequently, the job of any member can be completed by another; the member may continue an investigation started by another or attend as a public prosecutor in a criminal case conveyed to the court by another member, etc.¹⁴ However, the rules of area and type of crime jurisdiction must be observed in applying this principle, as the investigator is not permitted to safe keeping the investigation by him in Ta'azir crimes because this requires approval of the committee that manages the CIP (Article 46 of CIP Bylaw). Also, the investigator is not permitted to relegate an accused to the Shari'a courts in a crime whose punishment is execution, stoning or amputation, but he should return the indictment to the CIP committee to revise it according to Article (4/C/1) of the CIP Code (Article 49/3 of CIP Bylaw). Additionally, the investigator or the prosecutor has no right to replace another from outside of his province or his local area.

As with many of the procedures we will see codified in the CIP Code, there were no provisions for non-dissociation under the general security system. This is an emphasis on the fact that the CIP was introduced in order to systematically normalise some of the most common international practices. Because of this, it is fair to argue that the inclusion of non-dissociation provisions in the CIP Code is another significant element of a better investigation and prosecution system than Saudi Arabia had before.

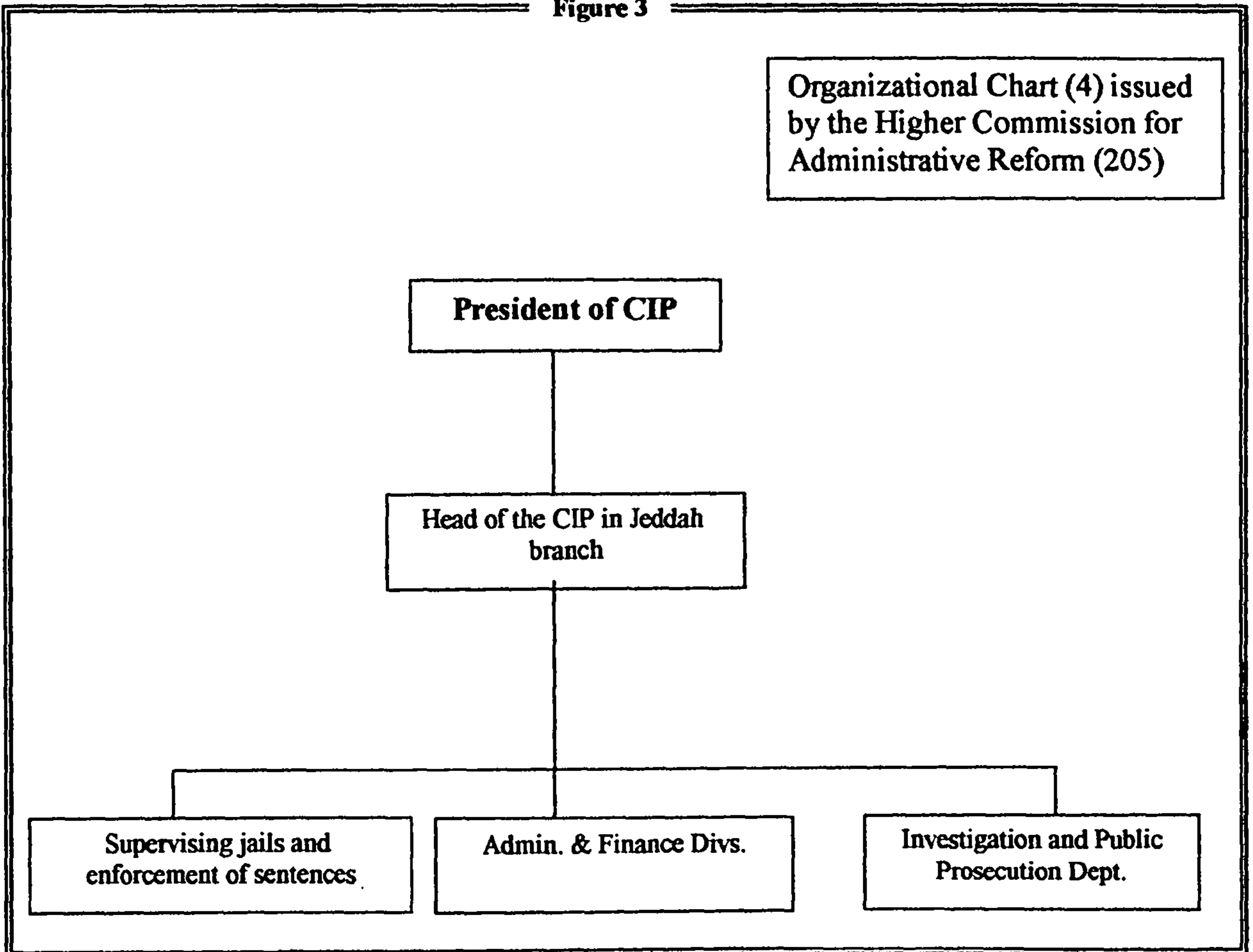
¹³ *The first white paper of the CIP Bylaw Article 188 also stated that "it is permitted for the prosecutor to replace another in any phase of the criminal case"*

¹⁴ *Belal A. , Criminal Procedures in Saudi Arabia, p. 948*

3.2.2 Cities Belonging to Jeddah Branch

The administrative organization passed by the Higher Commission for Administrative Reform on 24.4.1411 H (1991) included the cities belonging to any main branch. As there are several cities and governorships that report administratively to the Jeddah branch, there is an organizational chart for these cities (see Figure 3) to undertake their duties regularly and report directly to the Departmental Head in the main branch.

Figure 3



The structure has only two departments: one for investigation & public prosecution, while the other is designated for supervision of the control of jails and sentence execution. The number of CIP members available at any time varies, however, because some investigators may be transferred to/from cities that are located outside Jeddah, even though they still report to the CIP branch there.

From the organizational chart of the CIP, it can be seen that the CIP members carry out their job duties in compliance with two jurisdictions.

A) Area Jurisdiction:

As we saw in section 3.2.1 on non-dissociation, this means that the CIP member is restricted to the geographical limits of the region where he is employed and that he may be relocated within its scope, deputed or temporarily transferred (seconded) under a resolution passed by the CIP Administrative Committee. The deputation or seconding period will be one year extendable for another year. However, the Minister of the Interior may in exceptional cases depute one of the CIP members to work inside or outside the CIP for at least three months a year, according to Article (15) of CIP Code. The investigator's jurisdiction is determined by the place where the crime was committed or where the accused resides or was arrested (Article (5/5) of the CIP Bylaw).

B) Type of Crime Jurisdiction:

This second category means that the CIP member is to initiate his duties in the crimes entrusted to his department. However, he may be utilized in the other departments when necessary according to specific controls.

This restriction in jurisdiction applies to the CIP's head office, branch of Jeddah, cities and associated governorships which fall entirely within its jurisdiction especially in the headquarters and its Jeddah branch. Drug crimes are not referred to homicide for instance. Thus, this represents specialization in investigation that will affect the performance in each department by the investigators. This is in contrast to work in the police, as the investigation division - "Justice Division"¹⁵ - investigates all cases without specialization, and this requires great efforts from the investigator. However, the principle of specialization and work division into departments in the CIP will affect the qualifications of the investigator in each department as to the cases offered. Nevertheless, Article (5/4) of the CIP Bylaw stipulates the principle of non-dissociation and allows the president of the department to assign any investigator to process cases before the judicial authority concerned.

The departments that were created for investigation at present may be increased in future as the legislation allows the CIP to create new departments if other cases that were processed by other governmental bodies are referred to it (excluding the provisions

¹⁵Article (89) of the General Security Department System stipulated that: "Justice Division is the justice and criminal investigation department."

of Articles (19) & (20) of the Council of Ministers Law stating that by virtue of a resolution from the council of ministers that investigation and prosecution may be assigned to the CIP as stipulated by the provisions of the laws of other governmental bodies).¹⁶ Finally, the investigator has to collect, compile and evaluate the evidence and to carry out all investigative procedures to reveal the truth according to the applicable rules and instructions as well as the organizational bylaw. The public prosecutor has to lodge the criminal case and to expedite it before the courts (Article (5/2-3) of the CIP Bylaw).

We have seen that the structure of the CIP allows some CIP members to specialise in certain areas, a fact which may be quite common in other countries but was not a formal part of the old General Security Department system in Saudi Arabia. In that sense, it is clear that the new system ensures a more effective allocation of duties than the previous one did.

Overall, this section of the chapter has had a focus on the first few articles of the CIP Code, which deal with the organisation of the CIP, and we have seen that the removal of politicians from the organisational equation has guaranteed the CIP more independence, and changes in the CIP Code (from the original white paper) attest to the fact that this was a deliberate move by the Saudi legislator. In addition, the CIP member's job involves the principle of non-dissociation and is limited by two types of jurisdiction. These codifications of principles are not uncommon in contemporaneous prosecution systems and are advances for Saudi Arabia in this regard and that is a fact which holds true for much of what we see in the following section of the chapter.

3.3 CIP MEMBERSHIP

Having described the organisation of the CIP, we turn in this section to an examination of various aspects of the membership of the CIP, namely the conditions of employment, the guarantees they have and possible disciplinary action they face. First, though, we look at the results of research into the views of the police and CIP as to the state of the current capabilities of the CIP.

¹⁶ *Article (3/4) of CIP Code*

3.3.1 Current material and manpower capabilities

The following information relates directly to my research on the question of to what extent the Jeddah branch of the CIP has the capability required to perform its functions as effectively as possible and the overall response indicates that this is not the case. In terms of simply covering the assignments and duties of the Jeddah department, that is to say performing the work stipulated in the CIP's organisation and jurisdiction, the majority of the sample individuals of the CIP have indicated that the current manpower is insufficient to cover all functions of the department, which implies that more staff are required. Half of the CIP agree with the idea of seeking more professional expertise for help with temporary assignments pending completion of the organizational and job structure. This seems therefore to reflect a real need and should be acted upon in order to assist the CIP in the completion of its duties. There is also qualified agreement with the idea of possible cooperation between the CIP and other security bodies or police officers through deputation, which reinforces the previous points made about the necessity for more CIP members and more training. Additionally, less than 10% of the CIP agree with the proposition that current material capabilities are adequate. The CIP should evidently be provided with the necessary scientific equipment and the latest techniques and practices in order that it may improve its performance.¹⁷ An impressive organisational structure does not amount to much unless sufficient resources are in place to support it.

3.3.2 Employment of CIP members

As we have seen, the Commission for Investigation and Public Prosecution is the party entrusted with instituting criminal cases. Accordingly, it represents the interest of the community and public interest, which requires that the criminal procedures undertaken by the CIP, whether in the stage of investigation or prosecution, should, in theory, be of a high degree of scientific specialization and practical training. Therefore, the legislation established special conditions for those to be employed in the CIP. Article (1) of CIP Code of the Members & Personnel of the Investigation and Prosecution stipulates that a person who is appointed as member of the CIP must satisfy the following conditions:

¹⁷ See Appendix B, Tables 65 to 69

First: Must be of Saudi nationality. This requirement is logical as such work is regarded as a sovereignty factor and obtaining ready cadres to undertake it depends on the institutes and universities spread throughout the Kingdom of Saudi Arabia.

Second: Must be of good character and behaviour. This is a compound condition that regulates two basic ideas i.e. the person's image of himself and people's image of that person. The prospective member should be of the best manners and have a good reputation in the community.

Third: Must hold the prescribed qualifications. This is a normal standard for capability to comply, soundness of mind and senses i.e. to be free from any mental defect.

Fourth: Must be the holder of a certificate issued by a Shari'a college in the Kingdom or an equivalent certificate or is the holder of a certificate (degree) of specialization in laws issued by a university in the kingdom of Saudi Arabia or an equivalent degree and in case of equivalence he must successfully pass an examination to be held for this purpose. In fact, my research shows the diversity of specialities among the sample distribution of police and CIP, but the CIP is heavily skewed towards Shari'a Sciences and Law Sciences, whereas the police are mostly specialised in Security Sciences. The CIP's specialities seem to support the reasons for its establishment. However, perhaps there should be some more training in security and administrative specialities so as to enable the CIP to undertake all the duties and functions assigned to it. The tasks of inspecting jails and detention centres as well as the supervision of sentence enforcement require a background in security and administrative tasks.¹⁸

There is a comparison between this condition and the standards of the Royal Decree in the public prosecution.¹⁹ Those undertaking the public prosecution should be experienced, honest and efficient. They must be capable of undertaking the task of the public prosecution and should be of stable and fair character. The law did not stipulate only the legal or Shari'a law but extended that the candidate should obtain at least a

¹⁸ See Appendix B, Table vi

¹⁹ Public prosecution (1310/813) on 6/4/1353 H (1932). See conditions of employment in the General Security and Justice divisions promulgated under the General Security Law enacted by the Royal Decree (3594) on 29.3.1369 H(1949).

“Good” grade in his graduation year. The purpose of this objective is to obtain the best graduates to occupy these important positions.

Fifth: Must not be less than twenty two years of age; this is reasonable as graduates are usually of this age.

Sixth: Must be physically fit for the service; the fitness standards are determined by the medical bodies. However, this position does not require an extraordinary health standard. Other defects that do not stand between performing regular activity may be disregarded.

Seventh: Must not have been convicted of a “hadd” offence or ta’azir (chastisement) or have been dismissed by an order from a public office even when he has been rehabilitated. It is known that rehabilitation requires removing the criminal or administrative case from the personal file. However, judicial positions require a high degree of commitment as the one appointed to such a position should have a record free from any deviation i.e. the CIP members should be free from suspicion.

Eighth: Must pass successfully the test that is carried out for the purpose of appointment.

Ninth: Must subject themselves to an intensive training program for at least 6 months. This period is equivalent to carrying on similar works for one year. The CIP Executive Regulation shows the rules of implementing this program and due to the significance of training in forming and building up the member’s character, this condition must be met before the member can start to work. This procedure is applied in most countries so as to make the person ready for work when assigned the position. The training period differs from one country to another (3 years in Turkey, 1 year in Egypt, and two years in France²⁰). In Saudi Arabia it lasts a minimum of 6 months and may extend to two years with professional bodies such as the High Institute for Judges in Imam Mohamed Bin Saud University and Shari’a & Islamic Studies Faculty in Um Al Quara University, General Administration Institute, High Institute for Security Sciences and Naief Arab

²⁰ Al Najar E. , *Prosecution in Saudi Arabia* , p.47

Academy for Security Sciences. The objective is that the member should acquire experience that qualifies him for work when carrying on his job duties.

When asked whether there was a large differential in the qualifications attained by CIP and police, there was unanimity amongst the lawyers and near unanimity among the CIP members that there was, confirming the belief that there is a significant difference in the method of preparing the CIP compared with the old system, while slightly less than half the police officers agreed. Almost 90% of the judges thought that the pre-qualifications of the CIP were different from the General Security Department, largely because each member of the CIP has specific duties. Five out of eight judges believe the training courses have significantly affected CIP performance, whereas the remainder believe those courses provide occasional benefits.²¹

In addition to professional training, the member should obtain a certificate from a Shari'a faculty in Saudi Arabia, which qualifies them for work in the judiciary as judges are graduates of Shari'a faculties. Accordingly, this leads the member to carry on the duty of investigation or prosecution in accordance with Islamic law teachings. Further, the CIP is allowed to employ those obtaining certificates equivalent to those of Shari'a faculties. However, it is conditional in this case upon the member passing the examination held for that purpose and perhaps demonstrating the Shari'a background if they hold equivalent certificates. On the other hand, obtaining the required certificate does not qualify the member to join the CIP like passing the examination held for that purpose does. This exam is an essential condition for joining the judicial agency and some significant positions including the CIP. However, Article (2)²² indicates that just meeting these conditions may not in itself enable the member to work in the CIP.

The CIP Key officers establish a training program with the maximum length to be determined in view of the type of the training to be provided to the CIP members. The CIP members qualified in the High Institute for Judges, King Fahd Security Faculty and Naief Arab Academy for Security Sciences. This qualification is basically applied to the new CIP member in the field of security, whereas for those transferred to the CIP the researcher is of the opinion that they may be exempted from the training program

²¹ See Appendix B, Tables 11, J4 and J5

²² CIP Code issued by the council of ministers' resolution (140) on 13.8.1409H(1989)

especially if his past employment was in similar work provided that he should have worked for one year so as to be exempted from this training program.

Similar work means what has been defined in the CIP's Personnel Bylaw as follows.²³

Upon the motion of the Minister of the Interior, the Council of Ministers shall determine what is meant by "similar duties" as provided for in the preceding articles; teaching subjects of the Islamic Shari'a or the laws in a college is tantamount to carrying out 'similar duties'; also carrying out duties in the judiciary, investigation and Shari'a and legal consultations is deemed as having carried out 'similar duties'.

- A) A Masters degree in business and a diploma of Law studied in an institute of General Management is tantamount to working in similar duties for four years;
- B) A doctorate in business is deemed to be equivalent to carrying out "similar duties" for a period of six years.

The Council of Ministers is the only party that decides what is meant by similar duties as recommended by the Minister of the Interior.

- A) Teaching staff specialized in Shari'a subjects or laws in a university faculty.
- B) Past employment in the judiciary is considered similar duty and the experience of some judges wishing to join the CIP as members may be utilized, which is also considered a similar duty.
- C) The CIP may make use of people who carry out investigations, which is also considered a similar duty.
- D) The Council of Ministers considers those working in the field of consultancy, whether Shari'a or law, as doing a similar duty.
- E) Professional academic qualification is considered a similar duty especially in the field of high studies only as seen by the Council of Ministers for specialized masters in the job field, Management Institute Diploma as well as a specialized doctorate certificate.

²³ Article (12) of CIP Code

Having met the above standards, a decision is made on whether to employ him as a CIP member under probation for one year. Article (4/A) of CIP Code sets out that the CIP's Management Committee will be established, comprising the CIP's president as chairman, CIP's Vice President and five members holding the rank of deputy head of an investigations and prosecutions department "grade A" and above to be selected by the Minister of the Interior. The competence or incompetence of the newly appointed member is decided after the year's probation (at the latest) by a resolution of the Administration Committee as stipulated under Article (13) of CIP Code of the CIP members and personnel. The CIP's decision to appoint the member obviously entails the fact that he is not allowed to practice any business activity that conflicts with his job in the CIP (Article (7) of CIP Code). To this end, the Administrative Committee may decide to impose a ban on a member of the CIP from carrying on any business which it deems inconsistent with the good performance of the duties of his position.²⁴

All of the above shows that the powers of investigation and public prosecution in Saudi Arabia are undertaken by personnel who are qualified in Shari'a and law as well as having academic scientific qualifications. This contrasts with their counterparts under the General Security Department, as they were entrusted to the law division i.e. Criminal and Judicial Department. The legislation paid considerable attention to them and delegated them the main jobs required to preserve security and law.²⁵ The Law Division is usually headed by a graduate of the police school, which is currently called King Fahd Security College. The standards to be satisfied by the candidates admitted to the police school are similar in some regards but different in others to those appointed to the CIP and are as follows:

- 1- To be a subject of the Kingdom of Saudi Arabia.*
- 2- To hold the primary certificate or equivalent or to pass the examination established by the CIP Board formed for that purpose. Certificate holders are preferred.*
- 3- To be physically fit and to be free from any chronic diseases, disabilities and deformities.*

²⁴ This provision is in compliance with Article (13/A) of the Civil Service Law 1397 H (1977).

²⁵ Article (92) of the General Security Department System has stipulated the following: "Positions of Law Division are major important ones to whom preservation of security and law rely and that they should be occupied by qualified people having experience in investigations and if such cadres are not available within the police personnel, then they are hired from outside the department"

- 4- *To be of good manner and not have any previous charges (as evidenced by a certificate issued by an official authority).*
- 5- *Not to be less than 18 years old and not to exceed 30 years old.*
- 6- *To swear loyalty to His Majesty the King, his government and country after graduation before the general security director.*
- 7- *To comply with the police regulations and the school internal instructions.²⁶*

With the development of education in Saudi Arabia, some conditions have changed: only high secondary school certificate holders are admitted and the study period has been extended to three years. The school was converted into a college and the student graduates at the rank of lieutenant with a degree in the security sciences.

However, a comparison with the conditions and standards of employment of the CIP members produces several points that are worthy of note. First is that a CIP member should be specialized in specific fields and hold a specific major, in contrast to the graduate of the police school or King Fahd Security College, who must be ready to work in any security sector including the law divisions. Secondly, academic qualifications of CIP members are higher than those working in the law divisions, especially those working in the police stations. A third contrast is that the CIP concentrates on Shari'a and legal matters while the police concentrate on Shari'a, security, social and some other areas. The CIP member enjoys greater independence than those working in the Law Divisions. He may take certain actions in view of the provisions of the Islamic law and applicable laws and none may interfere in his job field whereas those working in the law division should report to their immediate supervisors. My research shows that the CIP are most familiar with the latest practices in the investigative field as the degree of familiarity exceeds 68%, largely due, undoubtedly, to their specialist background. Fewer than 28% of the police were familiar with latest practices, but this is largely attributable to the emphasis on security duties entrusted to them.²⁷ The General Security Department law did not specify the grades of those working in the law division except the head,²⁸ who is called privileged delegate. On the

²⁶ Article (24) of the General Security Department system issued under Royal Decree (3594) dated 29.3.1369 H (1948)

²⁷ See Appendix B, Table 10

²⁸ Article (91) of the General Security Department system stipulates that: "the Law Division is chaired by privileged delegate who has experience in the investigation matters and is called in the capital as the Head of Law Division and in the attachments called Delegate, Law Division".

other hand, Article (9) of CIP Code and its Personnel Regulation²⁹ has specified their grades as follows:

- Investigation Associate;
- Assistant Investigation Officer;
- Second Investigation Officer;
- First Investigation Officer;
- Deputy Head of a Department of Investigation and prosecutions (Grade B);
- Deputy Head of an investigations and Prosecutions Department (Grade A);
- Head of an investigations and Prosecutions Department (Grade B);
- Head of an investigations and Prosecutions Department (Grade A);
- Vice President

The salaries of the CIP members shall be paid according to their grade as attached in its law and they are dealt with in the same way as their counterparts working in the judiciary in the event of transfer and deputation.³⁰

We have seen that the requirements for CIP members are of a higher academic standard than for the police under the old system, which goes some way to ensuring a better level of performance, although obviously doesn't ensure it. However, much of the information given in this section has to be regarded in the light of the answers to the research laid out in the previous section, which indicates that there is still room for improvement as regards the provision of resources to the CIP once they are employed.

3.3.3 Guarantees for the CIP members

Guarantees are important in making the CIP and its members the representative for society in criminal cases and the CIP aims through any action it takes to satisfy the public interest. That assessment of the public interest in criminal cases is left to the view of the CIP and its members as the case trustee and attorney for the community. In order to enable the CIP to perform its duties in conformity with the public interest, specific guarantees have been availed to its members concerning independence while performing job duties and immunity, which we shall examine in two sections below.

²⁹ Issued by the Royal Decree (M/56) on 24.10.1409 H (1988).

³⁰ *Al Qatani F., Public Prosecution and its Role in the Criminal Justice System in Kingdom of Saudi Arabia*, p.91

3.3.3.1 Independence of the CIP members while performing their job duties

“The members of the CIP enjoy complete independence (full autonomy) and shall not when transacting business be subject except to the rules of the Islamic Shari’a and the provisions of the laws in force and no one may intervene in the field of their work.”³¹

This statement is clear enough. The public prosecution shouldn’t be subjected to interference from the executive authority, the legislative authority or the judicial authority.³² The jurisdiction of the public prosecution requires non-subordination to any organization even though the work may be directly linked, as the public prosecution ought to commit to neutrality and integrity and never take sides. In this section, we shall look further at the limits of this independence from the executive, the legislative and individuals. There will be a section on the public prosecution’s independence from the judicial authorities in Chapter Four.³³ In looking at the independence of the public prosecution from the executive authority, we will first examine secular norms and then progress to analyse the system in contemporary Saudi Arabia.

In Egypt, the role of the prosecution is to pursue the criminal right to punish criminals and this is not just executive work, considering that the country’s power in punishment is related to its sovereignty. Furthermore, in many cases the prosecution carries out roles such as the primary investigation.³⁴ Italian law has confirmed that the public prosecution is a judicial authority not just an administrative institution.³⁵ The 9th International Congress for Penal Code, 1964, confirmed the principle of independence of the public prosecution from the executive authority.³⁶ This despite the ongoing controversy about the nature of the public prosecution: Is it a branch that follows the executive authority or the judicial authority? The prevailing idea was that the public prosecution is a branch of the executive authority.

Before issuing the juridical regulations law in 1949, the Egyptian court of cassation ruled that “the public prosecution is a principle branch of the executive power to pursue

³¹ Article (5) of CIP Code

³² Al Najar op. cit. at 57

³³ infra at 182

³⁴ Al Qady op. cit. at 71

³⁵ ibid at 72

³⁶ ibid

criminal case on behalf of it and has given it the only right to proceed with it under the supervision and administrative monitoring of the minister of Justice.”³⁷ However, the Egyptian court of cassation changed this ruling at a later date and decided in a recent verdict that the public prosecution is the principle branch of the juridical authority. The legislator empowers its members with the power of investigation, which is a judicial role.³⁸ The Supreme Court confirmed this direction in its explanatory decision, which was issued in April 1st 1978.

The power of the Minister of Justice over the public prosecution members doesn't exceed supervision and direction. The minister does not have the right to intervene in the prosecutor's work nor to give him an obligatory order to follow certain procedures. Even if he gives such an order, it does not have any legal value. The prosecutor may legitimately ignore the order and take different action. The law of judicial authority gave the prosecution some guarantees towards the executive authority, among them the appointment of the general prosecutor (the president) and the general attorney, who are chosen by seniority and in consultation with “the high council of judicial authorities”. The seniority of the prosecution members is determined in the same way as the determination of the seniority of judges (Articles 50, 51, 124) and the punitive council of judges is empowered to punish prosecutors and follow the same procedures and regulations that are followed in the litigation of judges (Article 129) and they are judged under the same penalties (Articles 108, 128).³⁹

Similarly, the public prosecution in Saudi Arabia has also gone through two stages. The first was in 1932 when King Abdul Alaziz Al Saud made the public prosecution a branch of the executive authority represented by the Ministry of the Interior. Hence, the police pursued public prosecution before the courts, which meant that the police had the right to pursue investigation procedures and prosecute before the courts.⁴⁰ Later, the regulations decree of the public security department was issued in 29/3/1369H (1948). and stated that the public prosecution authority was within the executive authority and pursued by police officers.

³⁷ Cassation 31 March 1932 groups of legal rules Part 2 no. 342, p. 492

³⁸ Sourour A., *Alwaseet in Criminal Procedural Law*, p. 191

³⁹ *ibid* at 193

⁴⁰ *Al Najjar op. cit.* at 76

The second stage was the independence of the public prosecution from the executive authority and was implemented by the royal decree in 24/10/1409H (1988), establishing the CIP, which conducts investigations and prosecution separately from the police, who are concerned only with administrative detention which aims mainly at preventing crime from occurring.⁴¹ It is clear that the Saudi legislator has taken into account and therefore benefited from other countries regarding its Criminal Procedures Code. Although there are differences between the Egyptian and Saudi systems, there are many similarities between them from a procedural perspective and in terms of the duties of prosecution members.

As we saw at the beginning of this section, Article 5 of the CIP Code stated the principle of the independence of the CIP members.⁴² This independence is not affected by the relation of the CIP to the interior minister as a member of the executive authority, as he has no power but the administrative supervision without interfering with its technical work. There are, however, some administrative rules that tie the CIP to the presidential bodies and to the Shari'a courts.

1- Relationship between the CIP members and presidential bodies

We have seen that the CIP members report to the president and that the Minister of the Interior supervises them administratively and that he is a member of the executive power as stipulated under Article (1) of the CIP Code and that he may depute the power of supervision to each of the Regional Governors in his authority.

The CIP members are considered police officers⁴³ in their respective departments and accordingly they fall under the supervision of the Regional Governors, in an application of Article (7) of the CIP Bylaw and they report to the CIP's president and their supervisors technically and administratively.⁴⁴ These supervisors may demand the appropriate authority to call any officer to account for neglecting or defaulting in performing his duty as stipulated under Article (16) of CIP Code.

⁴¹ Al Alfi A., *The Criminal System in the Kingdom of Saudi Arabia*, p.54

⁴² The first Article of the judicial system article 64 in 14/7/1395 H. stated that judges are independent and there is no authority upon them in their judgment but for The Islamic Jurisdictions and the legal systems and no one is to interfere in judiciary.

⁴³ Article (26/3) of the CPC stipulates that: "Criminal investigations are carried out by the CIP members each in his jurisdiction".

⁴⁴ Article (7) of the CIP Bylaw

In the event of a written warning, a committee is formed for that purpose and if the member objects, then it will review his objection and it may support or disregard this warning and if the violation is repeated or continued after the warning is supported by the committee, a disciplinary suit will be lodged by the committee against the member.

2- Relationship between the CIP members and judiciary

This CIP relationship will be examined in more detail in chapter four⁴⁵, but Article (3/1) of the CIP Code stipulates that:

”Action must be initiated before the judicial authorities in accordance with the provisions of the CIP Bylaw.”

This shows the relationship between the judiciary represented by the judges and the attorney of the suspect. Consequently, the role of the CIP members is to represent the prosecution before the courts. The CIP member is obliged to institute and expedite the criminal case before the judicial authorities according to the applicable rules and has to submit evidence of the crime and demand the conviction of the accused and application of the prescribed punishment. Hence, deciding the case is the principal role of the judge without any intervention from the CIP. Furthermore, the judge is not obliged to implement the demands of the prosecution towards convicting the accused or applying a punishment to him as demanded by the public prosecutor. Meanwhile, the judge does not interfere in the formalities of the prosecution’s authority unless it is breaching the provisions of Islamic law.

3- Independence from legislative authority and individuals

A relationship between the public prosecution and the legislative authority has only been discussed in socialist laws as the constitutions of those countries embraced the unity of authorities as a principle. The public prosecution in these countries was subordinate to legislative authorities as is the case with the judiciary. Normally, public prosecution shouldn’t be subject to legislative authority simply because this would call into question the political impartiality of the prosecution. It is argued that the power of appointment of the public prosecution members and judiciary is only nominally in the hands of a country’s political leader but depends on the nomination of the supreme council of judicial authorities.⁴⁶

⁴⁵ *infra* at 180

⁴⁶ *Sourour op. cit.* at 192

Alghareeb M., The Legal Position of General Prosecution , comparative study , p.275

The public prosecution practises its power independently of the desires of individuals, as it is not restricted to executing what comes in statements or complaints, yet it has the right to safekeeping them before its investigation or collecting of evidence. If the law allows the victim of a crime to revive a criminal case with a direct allegation if he was harmed by it, this doesn't obligate the public prosecution to take a certain attitude in this case as it can support the charge or oppose it according to the duties of the job. Also reconciliation of the victim or his relinquishment of the civil lawsuit doesn't bind the prosecution.⁴⁷

The public prosecution has its independence towards the victim of the crime, as the crime is an aggression towards society and not towards an individual; and he is in a position to litigate the criminal case and pursue it and is the one evaluating its suitability. But even for exceptional cases in which the law restricts his rights in reviving the criminal case through the presentation of a complaint, the public prosecution has the right to decide the suitability to prosecute whenever the restriction is removed.⁴⁸

If the prosecution starts pursuing a case, the course of the litigation is not affected by the victim's relinquishment of the complaint unless the law states specifically that relinquishment of the complaint terminates the criminal case. The accused is not permitted to reject the members of public prosecution as they are not judges, and they have the right of public prosecution and are considered opponents of the accused.⁴⁹

3.3.3.2 The non-responsibility of the public prosecution

The public prosecution is not responsible for the result of its litigation, so the accused has no right to claim any compensation or expenses if they were acquitted.⁵⁰ However, the principle of prosecution non-responsibility for pursuing the criminal case is not absolute, but it is restricted by rules of controversy and rejection as follows:

⁴⁷ *Al Qady op. cit. at 80*

⁴⁸ *Hussni M., Explanation of Penal Procedures Code, p. 93*

⁴⁹ *Al Qady op. cit. at 81*

⁵⁰ *ibid*

3.3.3.2.1 Controversy in positive law

Pleas law states special rules that allow the controversy of the judges and prosecution members (Articles from 494 to 500). According to Article 494 (new pleas law corresponding to Article 797 old pleas law) “it is permissible to dispute with judges and members of the prosecution if any of them acts dishonestly or makes a dangerous professional error, and the country is responsible for the indemnity judgment that will pass against the judge or prosecution member as a reason for these deeds and it has the right to claim over him.”

The dishonesty mentioned in this article is could be the bribing of the prosecution member by one of the opponents or that that the prosecution member acted in the favour of one of the opponents driven by personal motives not by welfare of the justice that should be leading the prosecution member in all of his actions.⁵¹ A dangerous professional error is a very obvious error, and it differs from dishonesty - according to the clarifying brief of pleas law - in that it is “a mental difference in most of the cases, as seriousness of the breach mostly reveals dishonesty.”⁵²

3.3.3.2.2 Rejection in positive law

If controversy is permissible to prosecution and judiciary according to plain provisions in the civil pleading law, the matter is different when it comes to rejection, as it requires differentiation between two cases:⁵³

The first case: If the prosecution is a principle opponent in the litigation, its rejection is not allowed because the prosecution is an opponent of the accused in the criminal case, and the opponent has no right to reject his opponent. This was confirmed by Article 248/2 of Egyptian Criminal Code.

The explanatory note has justified this provision, indicating that the acts of the prosecution members or officers of judicial detention in litigation are not considered a judgment. Actually, this position is worth consideration when the prosecution pursues the investigation and it requires complete neutrality in its performance. It would be more suitable to create a system that allows the rejection of the investigating member whenever the reason for the judge’s rejection is revealed so that the investigation could not be thought to be taking sides.⁵⁴

⁵¹ *Hussni op. cit. at 99*

⁵² *ibid at 82*

⁵³ *Sourour op. cit. at 204*

⁵⁴ *Alghareeb op. cit. at 295*

The second case: When the public prosecutor becomes a joining opponent as in civil and commercial lawsuits. Article 163 stated the permissibility of rejection by saying: “when rejecting the member of public prosecution if he is a joining part for one of the reasons stated in Articles (146,148), the developed procedures and rules must be followed and in such cases the prosecution is not an opponent to any of the adversaries in the civil lawsuit, but its role is to give a neutral opinion. If there is a concern that the opinion of the member will be affected by his personal motives, then he can be rejected, as it is the case for judges following the same rules and procedures used for the latter.”⁵⁵

3.3.3.2.3 Rejection in the Saudi procedural regulations

The Saudi procedural system follows the rejection system as follows:

- **The decision of the council of ministers no. 190 – for the year 1409 H.**
Article 25 of the council of ministers’ decision number 190 issued 16/1/1409 concerning rules of pleading and procedures before the council of complaints (*Dewan Almathlim*), states that the accused or anyone concerned with the lawsuit has the right to reject any of the court members if there is any reason that requires the rejection. Once the demand is presented, the case ceases until a decision is reached regarding the court member. The president of the council adjudicates this demand and his decision is final.
If there are any reasons for embarrassment to a member of the court during the trial, he has the right to present a request for withdrawal to the president of the council.
- **The CIP Bylaw**
Article 13 of CIP Bylaw granted the dismissal of the investigator from the investigation as follows:
 1. Article (13/1) of CIP Bylaw permits any of the opponents to ask the head of the CIP to dismiss the investigator from investigating the case before or during the undertaking of the main procedures of the investigation for reasons explained in the request, and the head of the CIP has the right to accept or refuse the request.

⁵⁵ *Al Qady op. cit. at 85*

2. Under Article (13/2) of CIP Bylaw, the investigator has the right to ask his superior to dismiss him from the litigation, with a causation note if he has reasons that make the case inconvenient and his superior has the right to accept or refuse the request.
3. Article (13/1) of CIP Bylaw obliged the investigator to abstain from pursuing the investigation or investigating any other case or to issue any decision in it in the following cases:
 - If the investigator is the victim of the crime or a direct relative of one of the adversaries or related by marriage up to the fourth degree of kinship.
 - If there is a friendship or enmity between him and one of the adversaries, which is likely to affect the course of the investigation.
 - If he had testified in it or had handled any work as an expert or a judge in the same case.

It is clear that prosecution has a great deal of power and there is always some concern about its responsibility and whether there are rules regarding this. What this section has shown is that these factors were taken into account in the CIP Bylaw, ensuring both the independence and responsibility that the agency has. One of the criticisms of the previous system was that it did not have any rejection articles, but the CIP code is in line with international legal rules and this demonstrates how the Saudi system has developed by stipulating such provisions.

3.3.3.3 Immunity of CIP members

Immunity in this regard means not challenging the CIP member in any form as a guarantee of his independence and respect to the profession that he carries out for the community in protecting them against the dangers of crimes and criminals. A CIP member may not be arrested with the exception of only one case where the member is arrested in flagrante delicto.⁵⁶

⁵⁶Article (84) of the Judiciary Act 1395 H (1975) has stipulated that "In case of being caught red handed, the judge will be then arrested and jailed, then the matter is to be referred to the judicial council within the next 24 hours where the judge council will decide whether to continue jailing him or release him under a bail or without it. The judge may demand to hear his testimonies before the council when referred to it. The council determines the jail period in the decision of jailing or resuming it and the necessary applicable formalities are to be observed. Otherwise, the judge may not be arrested, no investigation actions taken against him nor lodging penal suite against him without a permission from the said council. The judges are jailed and the sentences are applied to them in special places." There is also a similar article in the Grievances Board Act issued in 1402 H (1982) under article 4th thereof.

Article (19) of the CIP Code states the only case where the CIP member may be arrested and it is evident to what extent he enjoys immunity as follows:

- 1- A CIP member can only be arrested in the case of flagrante delicto.
- 2- Arresting a CIP member in flagrante delicto does not entitle the arrestor to initiate an investigation but the matter is to be referred to the CIP Administration Committee within the next 24 hours and that procedure is similar to the allowed procedure in the event of arresting a judge in flagrante delicto as the matter should be reported to the higher judicial council within 24 hours of arrest.
- 3- The decision to keep the arrested member detained or release him on bail or without bail is taken only by the CIP Administration Committee or the Higher Judicial Council in respect of judges. Consequently, the Administration Committee is the only party that may interfere in the process of continuity of detention or release.
- 4- The CIP member may demand his say before the committee upon the referral of the matter to it so as he may guarantee that he has communicated all what he wants to the Committee. In this case, the judge has also the right to demand the Higher Judicial Council to hear him when referred to it.
- 5- Determination of the imprisonment period against the CIP member or its continuation under a decision issued by the CIP Administration Committee as decided by the Higher Judicial Council in the event of determining or resuming the imprisonment against any judge. These procedures should be observed if it is resolved to resume temporary retention after completion of the period fixed by the CIP management.
- 6- The immunity granted to the CIP includes that he may not be arrested nor may he be the subject of an investigation or penal proceedings be commenced against him except on the strength of permission given by the Administration Committee.
- 7- Imprisonment and enforcement of the penalties will be in separate places. This is intended to keep the CIP members the same as the judge and to maintain his character before the community who granted him the confidence to defend it.

These are aspects of immunity extracted from the provision of Article (19) through which the CIP member is dealt with as if he were a judge (through the handling of his case by the CIP Administration Committee, which is almost similar to the procedures applied by the Higher Judicial Council when a judge is arrested in flagrante delicto). Any CIP member arrested in flagrante delicto is dealt with in the same way as a judge in order to maintain their image before the community.

In view of the above, it is evident that the statutes pay attention to the course of criminal justice in a way that is designed to achieve equality between adversaries and preservation of the prestige of the CIP. Such practices are again comparable to those in numerous other countries around the world. Under the general security system there were no explicit stipulations on how to deal with violations by police officers in the performance of their duties. The existence of such procedures in the CIP code is therefore an obvious improvement.

3.3.3.4 Dismissal of CIP Members

In French law, judges enjoy judicial immunity that doesn't permit their dismissal except in a punitive way that is handled by the supreme council of judiciary. On the contrary, members of the public prosecution can be dismissed and the minister of justice has the power to punish them, as he is the supreme president of the public prosecution. He has the right to inflict punitive penalties on them including dismissal from their job. The minister is only restricted by the opinion of the punitive committee of the prosecutors,⁵⁷ which is not a sufficient guarantee because it is a non-binding opinion. Besides, this committee consists of four members, three of whom are chosen by the minister and the prosecution members elect the fourth.

The members of prosecution in Egypt could be fired or transferred to non judicial jobs without punitive regulations, after the consent of the supreme council of the judicial organization.⁵⁸ This is a point of criticism as the consent of the supreme council of the judicial organization should not be sufficient, as the mentioned decision is not restricted to certain cases defined by the seriousness of what the member has done. In addition to this, the executive authority had a clear influence on the formation of the supreme

⁵⁷ *Sourour op. cit. at 186*

⁵⁸ *Article 149/4 of Judicial Authority Law #46, 1972.*

council of the judicial organizations, as its president is the president of the republic, the vice president is the Minister of Justice and among its members are the chiefs of the administrative prosecution organization and the organization of the country's cases, the president of the constitutional court and the General Prosecutor. In addition, all of them are appointed to their original jobs by the choice of the executive authority.⁵⁹

This ability to dismiss or transfer the members of prosecution could be argued to have a negative effect on the other guarantees of independence of members of prosecution relating to their employment, promotion, etc. Moreover, this ability also attacked the immunity of judges, as nothing was to prevent the transferral of judges to the general prosecution and then their dismissal.⁶⁰ The Egyptian legislator confronted these considerations by issuing Law no.35, 1984, reforming the judicial law. Article 67 stated that members of the judiciary and public prosecutors are not liable to be dismissed, except for the prosecution assistant. Also, according to Article 3 of the same law, the supreme judicial council replaced the supreme council of the judicial organization. This council consists of the Egyptian court of cassation's chief and the most two senior chiefs of the appeal courts. Thus for the first time since the establishment of prosecution in Egypt in 1883,⁶¹ prosecution members in Egypt enjoy judicial immunity and non-liability for dismissal just like judges.

The CIP Code guaranteed the independence of the members in their job in a similar way to judges despite the fact that there is no clear provision concerning their non-liability for dismissal. So, Article 12 of the CIP Code determined when it was possible to terminate the employment of its members and the conditions are the same as for judges as stated in the Saudi Judicial regulations issued in 1395H (1975). This article stated the following reasons:

- 1- Acceptance of resignation.
- 2- Becoming 65 years old.
- 3- Acceptance of the retirement request according to the retirement regulations.
- 4- Put to retirement and pension according to Article 25 of this Code.

⁵⁹ *Obied op. cit. at 92*

⁶⁰ *Alghareeb op. cit. at 300*

⁶¹ *The explanatory note of law no.35 for the year 1984 of modification of judicial authority law.*

- 5- Achieving grades less than average in the efficiency report in three consecutive reports.
- 6- The loss of trust.
- 7- Significant physical or mental disability
- 8- Unproven efficiency during the probationary period.
- 9- Death.

Article 13 of CIP Code stated that: for cases other than death, reaching the official age and unproven efficiency during the probation period then the duty of the CIP member might be terminated by royal decree according to a decision from the CIP committee and the request of the interior minister. Article 10 of the CIP Code allowed the transfer of the members of the organization - except for its chief – to other locations according to a royal decree based on a decision of the CIP committee and the recommendation of the interior minister.

Again, as we have seen with many of the provisions in this chapter, there had been no explicit codification under the previous system and therefore the CIP code represents an attempt to bring the Saudi system into line with international norms.

3.3.4 Accountability

As we have seen above, the CIP members enjoy independence in performing their duties according to their Code which is based on Islamic law provisions while undertaking investigations or working before the courts. The laws in force specify how to undertake these procedures in view of Islamic law provisions that do not prevent disciplining CIP members in the event of any violations while performing their duties. However, the special position of the CIP member has been taken into account with specific conditions and rules that apply to them while being tried. Article (14) of CIP Code stipulates that CIP members cannot be tried except in accordance with the conditions and rules governing their disciplining. Obviously this leaves open the question of such discipline, but included in part 3 of the CIP's Code is the discipline the members of the CIP might face. It is the three elements of that we turn to now.

A. Procedure of Disciplinary Council

The CIP member is granted specific immunities while being tried so as to keep the prestige of the agency before the community. Therefore, the disciplinary council

comprise the CIP Administration Committee,⁶² which consists of CIP's president as chairman, CIP's Vice President and five members holding the rank of deputy head of an investigations and prosecutions department "grade A" and above to be selected by the Minister of the Interior as recommended by the CIP's president.

This is the formation of the disciplinary council of the CIP member as stipulated under Article (15) of its code, which shows that the CIP Administration Committee is the disciplinary council. Further, the statement states that if the CIP member to be tried is a member of the administration committee, such membership does not stand between him and the proceedings and that the law has vested the president the right to depute a new member to replace this member during the proceedings. However, such a deputation is to be made for a higher grade member i.e. Head of Investigation and Public Prosecution (A) even if such member or the new member has demanded the retirement of the accused as a punishment that may be applied to the CIP member⁶³ or a disciplinary case was formerly lodged against him.

The council may issue a decision to discontinue proceedings if they are seen as unnecessary according to the provisions of Article (20) of the CIP Code and its members. Among the powers of the disciplinary council upon deciding to resume the trial, are proceedings to issue an order to prevent the accused CIP member undertaking his job duties. Further, it has the right to reconsider the order of suspension at any time if new evidence comes to light that negates the charge from the member as per Article (21) of the CIP Code.

The Disciplinary Council hold any trial of a CIP member secretly. This privacy is intended so as not to disclose the faults of the persons who represent the community in defending it. The judgment of the Council is issued after hearing the defence of the CIP member orally or he even has the right to submit it in writing and the member against whom a case is lodged is allowed to depute a CIP member to reply to the demands of the Disciplinary Council on defence. However, the Disciplinary Council has the right to summon the accused in person and to try the member in absence if his case is verified

⁶² Article (4/A) of CIP Code

⁶³ Article (25) of CIP Code stipulates that: "The disciplinary penalties which may be imposed on a member of the CIP are reprimand and retirement."

and he did not depute anybody to attend on his behalf as stipulated under Article (23) of the CIP Code.

B. Warning the CIP member in the event of any violation

The CIP member may be called into account if they neglect or default in performing their job duties. The departmental head has the right to serve the defaulting CIP member a warning after hearing their statements, which stresses the necessity of the warning and such a warning may be written or oral.

Article (16) of the CIP Code emphasises how serious the warning is that is served to a CIP member, especially in the case of a written warning, which incorporates several guarantees that ensure proper consideration is taken by the departmental head in serving it. These guarantees include:

- A. The written warning is copied to the Minister of the Interior, which means that the violation that resulted in warning the member in writing is extremely serious as it needed to be presented to the Minister of the Interior to keep him advised on the behaviour of this member.
- B. The investigator on whom a written warning was served may object within 15 days of serving the said written warning and also has the right to demand investigation on the reason of this warning.
- C. Upon the objection of the investigator, a committee is formed for that purpose consisting of the CIP's president, Deputy Head of an Investigation and Prosecution Department (grade A) or the vice president of the CIP and the deputy head of an investigations and Prosecution Department (grade B).
- D. The Committee may undertake an investigation on the matter by one of its members if necessary. By this investigation, the Committee may support the written warning or disregard it. If a decision is taken in this regard, it will be communicated to the Minister of the Interior.
- E. If the violations are recommitted or continued by the member after supporting the warning to him by the Committee, then a disciplinary case is lodged against him.

This is the procedure adopted upon the serving of a warning to an investigator by the departmental head/s upon the committing of any violations by the member while performing his duties, in the same way as a warning served to a judge according to Article (72) of the Judicial system law,⁶⁴ which is almost identical to Article (16) of the CIP Code.

C. Disciplinary cases and types of punishment

A disciplinary case means a case that is lodged against a CIP member as a result of a written warning issued to him by his supervisor for violating his duties. This case is lodged as ordered by the Minister of the Interior as recommended by the CIP's president. Article (17) of the CIP Code indicates that the position of the CIP member is preserved and that no disciplinary action is to be lodged against him except by compliance with the following procedures:

- 1- For lodging a disciplinary case against the CIP member, the CIP's president has to submit a motion to the Minister of the Interior, who may or may not support the case.
- 2- The lodging of a disciplinary case is conditional upon the investigation of the member by another senior member. No investigation may be undertaken by a subordinate investigator.
- 3- The case is lodged under a memorandum that specifies the charges attributed to the member supported by the evidence as provided under Article (18) of the CIP Code.
- 4- The Disciplinary Council is responsible for issuance of a resolution where the accused member is summoned before the Council after submission of the disciplinary case memorandum that includes the charge.

⁶⁴ Article (72) of the Judicial System stipulates "The court head has the right to warn his judges to any violation committed by them in break to their duties or job requirements after hearing their verdicts. The warning shall be served orally or in writing. In the latter case, a copy thereof is to be forwarded to the Minister of Justice. The judge may object such written warning within two weeks of notification date and demand investigation on the subject incident and that a committee is formed for the same purpose under a decision passed by the Ministry of Injustice to form a committee comprising the Head of Cassation Court or any of his deputies and two judges. This committee may after hearing the statements of the judge assign one of its member to conduct the investigation if necessary and that it may if it deems the same to be appropriate, and may confirm the warning or consider it as null and void; it will communicate its decision to the Minister of The Interior; in case of repetition of the contravention (violation) or if it has persisted after confirmation of the penalty (the warning) by the Commission the disciplinary case is eliminated"

If these procedures are satisfied, there is a discussion with the member on the charge attributed to him by the disciplinary council. The council may depute a member to interrogate the accused on some aspects seen as necessary for resolving the case. However, Article (22) of the CIP Code states that a disciplinary case lapses with a member's resignation. This, however, does not have any effect on penal or civil cases arising from it. If the member does not resign and the charge is established against him, a judgment will definitely be issued in the disciplinary case. It is necessary to state the justifications of the judgment issued against the member and the reasons are stated with the judgment in a secret sitting and the purpose of the secrecy of this sitting is to maintain the image of the party that represents the community against crime. Further, the judgment issued by the disciplinary council is final and irrevocable as provided under Article (24) of the CIP Code.

If a disciplinary case is lodged against a CIP member and a sentence of the disciplinary council is passed, then there are two punishments that may be applied to the accused member: reprimand and retirement as provided under Article (25) of the CIP Code. The punishments are applicable to the CIP member the same as those applied to a judge⁶⁵ in view of preserving the prestige of the CIP in the community and making it the same as the judiciary stipulating that the penalty should be issued from certain bodies. The retirement resolution is issued under a Royal Order⁶⁶ and a reprimand is issued by a resolution from the Minister of the Interior based on the recommendation of the CIP's president as stipulated under Article (26) of the CIP Code on how to communicate the decisions of the disciplinary council.

The disciplinary procedures outlined here are applied in many countries and are similar to those in Egypt. There were many criticisms of the general security system, one of which is that it didn't have such provisions, and therefore it is crucial that the CIP Code addressed these concerns. Although trials should be open by law, the secrecy of any trial of a CIP member is exceptional due to the effect on the reputation of the CIP or the judicial system as a whole. Many countries worldwide implement such procedures in

⁶⁵Article (82) of the Judicial System stipulates that: "The disciplinary penalties which may be imposed on a judge are reprimand and retirement".

⁶⁶Article (83) of the Judiciary System stipulates that: "The decisions of the disciplinary council are referred to the Ministry of Justice where a Royal Order is issued to apply the penalty of retirement and a decision from the Minister of Justice to apply the reprimand penalty".

order to maintain image and respect for the prosecution authorities that represent the community against crime.

Overall in this section of the chapter, we have seen that the CIP code has been influenced by other countries' laws regarding immunity, the non-responsibility of public prosecution, independence from legislative authority and conditions of dismissal. Additionally, all of these provisions in the CIP code contributed to the development of the whole of the criminal justice system. The previous system did not have such provisions, and was therefore lacking in important ways that needed to be amended if it were to be brought into line with international standards.

3.4 PERFORMANCE LEVELS OF THE CIP

Having examined the employment requirements for the CIP and also the independence they are afforded and aspects of their accountability, we move now to look at research concerned with its performance. In prosecution, statistics can measure the efficiency of a system in regard to how many cases were successfully prosecuted but this is not the only factor that measures performance. The majority of the sample group of judges are of the opinion that there is a significant difference in the time taken by the present and previous systems to process drug cases and that the CIP is faster, which implies a new guarantee to the defendant in these cases. Delays under the old system were attributed to the fact that investigation was assigned solely to the police officer, which prevented them processing correspondence on time.⁶⁷ In this regard, at least, the CIP seems to be meeting some of the expectations for it there were on its conception and we can say that it is proving more efficient in this regard.

We have seen that the educational requirements for the CIP are higher than under the previous system and this research is concerned with CIP effectiveness. Consequently, we shall examine responses when the sample individuals of the CIP, police and lawyers were asked to rate various factors' effect on the performance level of the CIP. On the whole, police officers and lawyers were less inclined to say that any factor had a high to very high effect on CIP performance, while the CIP itself rated the effects highly. The highest level of police agreement came for the notion that the required academic

⁶⁷ See Appendix B, Tables J9 & J11

qualifications and training courses were a significant factor, supporting the idea that the higher the qualifications and training, the correspondingly higher the performance levels and obviously this got strong support amongst the CIP too. Judges also felt that this background had significantly affected CIP performance. The CIP itself nearly reached unanimous agreement with the idea that familiarity with the rules and instructions pertaining to CIP jurisdiction was the key factor affecting their performance. Lawyers concurred in seeing this as significant.

There was agreement on most of the other factors too. All groups felt that the variety of academic backgrounds played a role in improving investigative practices, though figures for the police fell below half here.⁶⁸ Similarly, cooperation with the police officers was agreed to be an important element in a successful CIP performance. Lower police agreement here could indicate that proper grounds for cooperation between the two bodies needs to be established and the necessary rules developed in order to provide the best possible cooperation.⁶⁹ When the CIP assumed its role, the transfer of jurisdiction between the bodies was incremental, and this gradual assumption of duties was seen as having a further positive effect on CIP performance by all the groups. It is widely said that “prevention is better than cure” and the increased police dedication to crime prevention in the wake of the loss of an automatic investigative role is also seen by most CIP and police officers as a significant factor in the performance levels of the CIP.

Least support amongst CIP and police (less than 50% in both cases, but there was strong agreement from the lawyers) is given to the assertion that the CIP delegation of investigation to police officers, either wholly or partially, affects the CIP performance. This may be due to a shortage of experienced human resources in this area, a fact which needs attention and action. Most of the responses, including this with its low level of agreement, seem to support the call for the employment of more academically and professionally qualified officers and back up the argument for more training, especially in the field of investigation.⁷⁰

⁶⁸ See Appendix B, Tables 16

⁶⁹ See Appendix B, Tables 17

⁷⁰ See Appendix B, Tables 14 to 22 and Tables L14 to L20

3.5 CONCLUSION

The first part of this chapter delineated the organisational structure of the CIP. Generally, we saw that the President of the headquarters in Riyadh answers to the Minister of the Interior and receives funding for each department from that same source. In contrast to the previous system, however, the Minister of the Interior now has no authority to interfere operationally with the CIP. This reduction in interference could also imply an increased effectiveness in the CIP's field work.

Within the city structures, there are two departments, concerned with investigation and prosecution on the one hand and supervision (of sentences and places of detention) on the other. There has been a certain amount of flexibility built into the CIP Bylaws so as to sanction extension of the structures should future requirements dictate it. Additionally, and again in contrast to the general security system, CIP members can now specialise in certain areas, a fact which again ensures a more effective allocation of duties than the previous system did.

Although structural flexibility and specialisation may be desirable, the CIP members feel that budgetary issues are more pressing. The picture we obtained of their ideas concerning current CIP capability is not as pleasing as it could be. They feel that inadequate material and manpower resources have been made available for them to do their job as effectively as would otherwise be the case, which is a significant comment on the changes that have been made post-1994.

The requirements for joining the CIP include qualifications in Shari'a and law as well as academic scientific qualifications. This fact contrasts with their counterparts under the General Security Department, which was less specialised, and reflects the seriousness with which the Saudi criminal justice system is determined to confront the increase in crimes of a more sophisticated nature than previously. My research indicates that these higher academic requirements are perceived to be an important factor in the performance of the CIP in Jeddah. Nevertheless, as the previous paragraph underlined, there is room for improvement, even in training, which on the whole is of a very high standard. Inspecting detention centres and supervising sentence enforcement require a

background in security and administrative tasks so there could be some more training in those specialities for the CIP members.

This chapter also examined other elements of the CIP member's role and responsibilities including the fact that they have to comply with jurisdictions of place and crime type, which conforms to what could be found in many prosecution systems around the world; indeed, it is impossible to deny the influence of the Egyptian experience on the Saudi changes. We saw an outline of the guarantees that the CIP member is afforded in their position and examined the relevant sections of the CIP Code in relationship both to the situations under which the independence of the CIP member is affected and also how a member is to be dealt with in the case of a dereliction of duty or perhaps something more serious. In terms of accountability too, I think the CIP is comparable to its counterparts around the globe. The important fact here, however, as was stressed throughout the main body of this section of the chapter, is that these roles and responsibilities have been codified in Saudi Arabia for the first time under the CIP system.

Finally, we looked at the factors thought to be affecting the performance of the CIP. There was no clear agreement over the most significant factor, but lawyers, police and CIP seemed to agree that education, qualification and knowledge of the rules and instructions were important. There was some disagreement with the notion that CIP delegation of investigation to police officers was affecting the CIP. Nevertheless, the point can be made, again, that it's felt that an increase in resources is likely to cause a reciprocal rise in performance.

As a natural consequence of the areas covered in this chapter, the relationships between the CIP and the judiciary were touched upon, but the following chapter will provide more specific details about the CIP's relationships with other organisations within the criminal justice system.

CHAPTER FOUR

CIP'S RELATIONSHIP WITH CRIMINAL JUSTICE AGENCIES

4.1 INTRODUCTION

As the CIP reports directly to the Minister of the Interior, as we saw in the previous chapter, coordination between it and district governors and other security departments is determined according to what is seen as appropriate in view of the public interest by the minister, who acts as administrative supervisor. The duties and functions are coordinated between the CIP, district governors and other security departments.¹ However, as we saw in the previous chapter, Article (5) of the CIP Bylaw stipulates the independence of the CIP so while there is administrative supervision there is no operational supervision.

In this chapter we examine the existing relationships between the new agency and other bodies in charge of criminal justice in Saudi Arabia. Specifically, we will examine relationships with the police, the emirate (or city councils), the judiciary and finally with the prisons. A description of these relationships should illuminate further the nature of the CIP and its roles and highlight the fact that although the operational independence of the CIP is one of its crucial elements (as we saw in the previous chapter), there is a real necessity to cooperate in order to maximise its performance and enhance the whole criminal system.

4.2 CIP AND THE POLICE

The police were the official body that undertook investigation in criminal cases and pleaded before the court. Article (98) of the General Security Department system² stipulates that the Justice Division Commissioner is authorized upon receipt of a report on a crime incident to undertake the following procedures:

- 1- To attend the scene as soon as possible to determine how it was committed if it is a major crime.
- 2- To seize the evidence left by the suspect, prevent anyone from approaching the scene - especially in murder cases - and preserve the original conditions as far as possible. If appropriate, they should

¹Article (1/2) of the CIP Code and its Organizational Chart

²General Security Law issued under the Royal Decree #3594 on 29.3.1369 H (1949)

assign whoever necessary to pursue and arrest the suspect immediately.

- 3- To note down the testimonies of those interrogated in the reports.
- 4- To search for any previous crimes committed by the accused for guidance.
- 5- To separate between witnesses while taking their testimonies in order to reach the truth.
- 6- To resume investigation after returning to the station and to document all minutes in the relevant report after demanding the witnesses and interrogated persons sign their statements and fix their handprints on them and to certify the same.
- 7- To initiate taking the testimonies of the seriously injured and accused once arrested.
- 8- The Justice Division Commissioner may resume a primary investigation that was conducted by a third party if he was not satisfied with it, and he has the right to discuss with the regional heads any points that seem unreasonable or consider only the primary investigation if seen as complete or to complete it if necessary.

Article (125) of the General Security Department system stipulated that all commissioners and investigation officers have to observe certain rules.

- They must inquire into the circumstances of the incident from the mayor and other guards and witnesses at the scene and then collect evidence and separate it and the same procedure is to be applied to the accused. Then he has to interrogate the accused and note down his confession, denial or defence.
- They have to attend the scene immediately to inspect it and to describe it accurately and to seize all material traces and remains that may help in detecting the crime and to preserve the conditions and if necessary to be guided with any person related to the incident.
- They should initiate the investigation, observing accuracy in noting down the testimonies starting with the plaintiff, defendant and

witnesses and not to omit anything that has any relationship with the incident. If the testimony of the accused contradicts those of the witnesses, then he has to confront them and to discuss them in order to reach the truth.

The above articles are taken from the General Security Department system, where the jurisdiction of the policemen (called commissioners earlier) involved attending the scene if a major crime was committed. This law assigned the police officer the duty of searching for evidence at the scene and writing an inspection report. Specified rules helped the investigator when undertaking investigations into crimes and also in seeking the assistance of mayors, the public and police officers. The testimonies of the witnesses had to be taken separately in order to avoid them affecting each other.

The appearance of the CIP and its assignation to the functions of investigation and prosecution is of some significance for the police and will be dealt with in four sections of this part of the chapter. We shall look at criminal investigation police officers, their collecting and compiling of evidence, investigation procedures and their supervision by the CIP. First, though, it is worth mentioning that there was unanimous agreement among the sample group of judges that the establishment of the CIP has played a contribution in freeing up police time for them to carry out their duties and in this sense has justified one of the reasons for its formation.³

4.2.1 Criminal investigation police officers

Examining the rules concerning the criminal investigation police officers under the general security department, it can be seen that the law did not separate between the party in charge of collecting the evidence and investigation in criminal cases. The police in general were the official party in charge of criminal arrest and primary investigation as well as public prosecution in criminal cases. Under the Code of the CIP that entrusted the investigation to the CIP members, it was necessary to clarify who were entrusted criminal investigation duties. Article (26) of the Criminal Procedural Code (CPC) stipulates that they will be carried out by:

A- CIP members in their job fields.

B- Police directors and their assistants in the regions, districts and centres.

³See Appendix B, Table J8

- C- General security officers and personnel while undertaking their job duties; general intelligence officers, investigation and immigration officers each as per the duties entrusted to them in the crimes falling within their jurisdictions.
- D- Frontier forces, special security officers, National Guard, armed forces, prison commanders and officers each according to the duties entrusted to them in the crimes falling within their jurisdictions.
- E- District Governors and centre heads.
- F- Masters of the Saudi marine and aircrafts for the crimes committed on their board.
- G- Personnel and officers vested powers of the criminal investigation by virtue of special rules.
- H- Commissions, bodies and persons entrusted to undertake investigation as required by the rules.

It is clear that there are many bodies with the power to investigate and arrest those attempting to commit any crime and hand them over to the judicial authorities whether through the internal security forces with all its branches or through other sectors of the government such as defence, National Guard, commissions and personnel authorized to undertake this task by virtue of special rules such as committee of public morality, customs officers, labour and social insurance inspectors. The internal security forces code⁴ stipulated that the internal security forces are responsible for maintaining discipline and internal general security on land and sea especially by preventing crimes, the protection of souls, honour and properties as proposed by the royal orders and rules, cabinet resolutions, high orders, decisions and orders issued by the Ministry of Interior.⁵ “The capacity of the administrative investigation of the criminal investigation officers is established before the occurrence of any crime and detection and accordingly, they will have the capacity of initiating the procedures which might prevent crime and thus it has a preventive nature.”⁶

⁴ Issued in 1384 H (1964) – Article (2)

⁵ Article (2/1) of the General Security Department system issued in 1369 H (1949)

⁶ Obied R., *Principles of the criminal proceedings in the Egyptian law*, p. 246

4.2.2 Collecting evidence as a principal function

It is worth mentioning that by entrusting the investigation and prosecution functions to the CIP, the police officers - especially the investigation officers – are supposed to be capable of undertaking their duties more effectively, especially in finding evidence through collecting information and particulars pertaining to the crime through investigating and searching the criminal in all statutory means and ways. Qualitative research, as we saw above, suggests that this may be the case. Before detailing the procedures for finding evidence, we have to indicate that these procedures do not override the liberties of the individuals or touch the privacy of their housings in contrast with the actions of the investigation procedures.

The most important procedures for finding evidence include:

1- Receipt of reports and complaints of crimes

Article (8/1/B) of the CIP Bylaw confirms that the CIP have responsibility for complaints, reports and records of crimes and ensure the appropriate member of the CIP is informed. A complaint is a claim filed by the plaintiff or his attorney or the affected or the heirs to the criminal investigation officers or the competent CIP member orally or in writing or to the competent court against a person who has committed a crime.⁷ Reporting the crime means informing the investigative police officers, which is a public right for all individuals to practise even if they were plaintiff or affected by the crime.⁸

2- Inspection

Article (8/1/C) lists, among the necessary procedures that the CIP must perform, attendance at the scene to carry out the necessary inspection and the preservation of any existing evidence. Inspection considered one of the procedures for finding evidence is carried out in a public place, whereas inspection conducted in special places is considered an investigation procedure. Further, the criminal investigation officers shall – upon occurrence of any crime – take all precautionary means that facilitate catching the criminal before he escapes from the scene and identify those

⁷According to the recent draft of the Organizational Regulation.

⁸Al Qatani F., *General Prosecution and its Role in the Criminal Justice System in Kingdom of Saudi Arabia*, p.122

who may be potential accomplices in the charge and take all statutory procedures towards them.

3- Questioning a suspect

The duties of the criminal investigation officers include questioning suspects and obtaining information on the charge attributed to them in general and to summon any other person involved in the incident and to take their testimony.

4- Stopping passers by

Stopping is a procedure under which the officers demand a person stop to ask them about their identity, destination and his situation.⁹ It also means “the procedure which is taken in confronting a person who places himself voluntarily and optionally in an apparently suspicious position, which dictates interference of the police officer to identify him”.¹⁰ Article (1) of the Regulation of Principles of Stoppage and Arrest in Saudi Arabia states that the police and other public authority officers have the right to stop whoever is found in suspicious circumstances.¹¹ Furthermore, Article (33) of the CPC stipulates the same.

The above two articles mean that the criminal investigation officers have the right to stop any person to verify his identity as well as stopping any vehicle and opening it. This is not considered a search but such procedure falls within the tasks assigned to the police officers who are allowed to stop vehicles and anyone attempting to conceal his existence from the policemen or whoever is suspected of planning to commit a crime.¹²

For example, if people deviate from their course once they notice the police, this permits their stop and investigation and such a procedure is not considered an arrest.¹³ Also, if the suspect is seen carrying a weapon and fleeing on seeing the police officer, this is valid reason for the officer’s involvement.¹⁴

Stoppage differs from arrest in several aspects as follows:

⁹CIP Bylaw, Chapter (1): Definitions, p. 2

¹⁰Al Qatani *op. cit.* at 124

¹¹Issued by virtue of the Minister of Interior’s resolution #333 for the year 1404 H (1984)

¹²Obied *op. cit.* at 230

¹³Cassation. 10.11.1958 G. Series of Cassation Judgments – s.9 #220, p.894- Egyptian Cassation Court

¹⁴Cassation. 23.1.1967 G. Series of Cassation Judgments – s.18 #1479, p 87

1. A stop may be conducted by any public authority officer in contrast with arrest, which must be undertaken only by criminal investigation officers.
2. A stop does not allow the searching of the accused in contrast with valid and statutory arrest, which allows the search of the accused in person.
3. A stop is considered a security procedure vested to the public authority officers while arrest is considered an investigation procedure.
4. A stop allows seizing the accused for only a short period pending the authority identifying him in contrast with arrest, which allows detaining the accused for at most three days by the criminal investigation officers.¹⁵

The establishment of the CIP may mean not only that the investigation and prosecution are carried out in a more effective manner, but also that the police are now better able to undertake their role in collecting evidence and performing other tasks that make up their overall responsibility.

4.2.3 Investigation procedures adopted by the police officers exceptionally

The CIP Code stipulates under Article (1/1/A) that *“the CIP is in charge of investigating offences”*; consequently, the power of the criminal investigation officer has become limited to finding evidence and where those procedures do not affect the freedom of persons and the privacy of their premises. However, the organizational power has entrusted the criminal investigation officers a power to initiate some investigations exceptionally in the cases of flagrante delicto and in the case of delegation.

Article 30 of the Egyptian Criminal Procedures Law defines “flagrante delicto” by stating “it is to be flagrante delicto while the crime is taking place or immediately after. “Flagrante delicto” is when the victim or the public chase the perpetrator, screaming after the crime takes place or when the perpetrator is found, shortly after the crime takes place, carrying tools or goods or other things that indicate that he is

¹⁵Article (10/2) of the CIP Bylaw stipulating that: *“The criminal investigation officers should bring the arrested suspect with the evidence report to the concerned investigator for interrogating him within at most twenty four hours of the arrest time”*

the doer or partner in the crime, or when indicating traces or signs are found at that time, connected to him”.

Article 53 of the French Criminal Procedures Law defines “flagrante delicto” stating: “a felony or misdemeanor gets this property. A felony or misdemeanor at the time it takes place, or immediately after. Also, when after a very short duration of the action, the suspect is chased by a great number of people, or when he was found to possess items or had signs or evidence that lead to believing that he took part in a felony or misdemeanor”.

Forms of “flagrante delicto”:

1- In Egypt:

It is understood from the Egyptian procedural legislator’s definition that it is two types:¹⁶

1. The precise technical meaning of flagrante delicto ,which consists of two forms of :

- **Witnessing the crime as it takes place:** This form is fulfilled by witnessing the crime in the course of its execution, i.e. surprising the criminal as he is committing the act or acts that form its physical element or attempt¹⁷, surprise is usually through seeing or watching¹⁸.
- **Witnessing the crime shortly after it was committed:** Being “flagrante delicto” shortly after the crime is committed means that the criminal has already committed and completed the crime a few moments earlier, “yet its effects are still clear indicating its occurrence”.¹⁹

2. Virtual or assumed flagrante delicto, which consists of three forms:

- **Chasing the criminal after the crime occurred:** The state of being “flagrante delicto” is fulfilled in this form when the victim of general public chase the criminal, screaming, immediately after the crime takes place in this case, it is evident that it has three conditions: First,

¹⁶ Ahmed H., *The Accused Guarantees in Confronting Detention between the Islamic Legislation (Shari'a) and the Positive Law in France , Egypt And the Kingdom of Saudi Arabia* ,pp.44-54

¹⁷ Cassation, 16 October, 1944, Group of legal basics, Part 6 no. 375, p.515

¹⁸ Ahmed op. cit. at 46

¹⁹ Obeid R., *Principles of Criminal Procedures in the Egyptian Law*,p.353

there should be a chase of the perpetrator, whether chased by the victim himself or the general public, whatever their number was. Second, this chase should take place after the committing of the crime, i.e. shortly after. Finally, this chase should have an external aspect represented by “screaming”. The term “screaming” applies to all sounds, despite being of an unstable lexical meaning, and it indicates accusing the criminal of committing the crime.²⁰

- **The presence of the criminal, shortly after the occurrence of the Crime, carrying tools, weapons, goods, papers or any other items that indicate that he is the doer or a partner in doing it:** The condition of being “flagrante delicto” is fulfilled in this case, as it is obvious now, when the criminal is caught while possessing the tools used for committing the crime, or the items resulting from it. Undoubtedly, the criminal’s possession of those tools or items is a strong evidence of his committing of the crime. This is all conditioned to seeing those tools or items shortly after the crime took place; i.e. within duration of time not long after committing the crime.
- **Traces or signs are found in the criminal, shortly after committing the crime, indicating that he is the doer or a partner in the crime:** The condition of being flagrante delicto is fulfilled when the criminal is caught shortly after the occurrence of the crime carrying traces or signs indicating that he is the doer or a partner in it. This is due to the fact that the presence of such traces of signs in the criminal is considered as strong evidence indicating that he participated in committing the crime.

2 – In France:

The French Criminal Procedures Law, as we referred to earlier, stated the cases of “flagrante delicto” in Article 53. These resemble the cases stated in the Egyptian Law, with a few differences in details. This is clear when the French Jurisprudence calls, what is referred to in the Egyptian jurisprudence as “virtual or assured flagrante delicto”, as “being flagrante delicto with an evidence”, In addition the French legislator replaced the phrase “shortly”, stated in the Egyptian Criminal Procedures Law, which is originally derived from the French Criminal Procedures Law, with the

²⁰ *Hussni M., Explanation of criminal procedures Law ,p. 554*

phrase “very shortly”. In addition, he added another type of flagrante delicto, in its accurate technical meaning that he coined as “flagrante delicto of resemblance” crimes.

Based of what is stated earlier, the France jurisprudents consolidate the forms of flagrante delicto into three classes²¹:

1. **Flagrante delicto in the accurate technical sense:** This class includes, as it is the case in Egypt, two forms: witnessing the felony or misdemeanor as it is taking place, or immediately after.
2. **Flagrante delicto with evidence:** Three forms are included in the class of flagrante delicto with evidence, known in the Egyptian jurisprudence as, virtual or assumed flagrante delicto. These are: Following or chasing the suspect by common people very shortly after his committing of the criminal act, or to catch him possessing items that indicate his participation in the crime.
3. **Flagrante delicto of resemblance crimes:** Flagrante delicto with resemblance, is stated by the French legislator in section of Clause 53: “Every felony or misdemeanor is considered as a counterpart of being flagrante delicto with a felony or misdemeanor, in case they do not take place in accordance with the conditions stated above, taking place in a house whose owner pleas to the General Attorney, of the Republic, or the Law officer to inspect it”. This means that according to this section, any crime, even if not under the conditions of being flagrante delicto, is treated as those crimes of flagrante delicto in case they were committed inside a house whose owner requests from the General Attorney, of the Republic, or the Law officer to inspect it”.

3- In Saudi Arabia:

Flagrante delicto cases are “offences which are committed in the presence of the criminal investigation officer or when the criminal investigation officer attends the scene and its traces and results make him believe that it is about to occur or that the criminal is chased by people or the criminal appears after a moment holding weapons or things or traces that mean that he is the criminal or contributor therein”.²²

²¹ *Ahmed op. cit. at 55-57*

²² *CIP Bylaw, Chapter (1): Definitions, p.4*

By this definition the cases of flagrante delicto in Saudi Arabia may be summarized as follows:

- 1- Arresting the crime immediately on committal of the crime.
- 2- Arrest shortly after the crime is committed.
- 3- Chasing the criminal whether by the victim or by the public.
- 4- Finding tools and things in the possession of the criminals from which it is inferred that a crime was committed.
- 5- Finding traces or marks which confirm that he is the criminal or accomplice.

The reason for vesting the police officers with a power to conduct some investigation procedures in flagrante delicto cases without obtaining permission of the investigator is that arresting the criminal in flagrante delicto obviously requires special speed in moving and attending to the scene and taking some immediate investigation procedures to preserve the existing available evidence. In addition to attempting to preventing the accused from escaping, the authority in charge of investigation does not wait to undertake their role in the investigation procedures before disappearance of the marks of the crime and hence the escape of the criminal.

If the crime was a case of flagrante delicto, this enables the police officer to initiate some investigation procedures that do not come under its jurisdiction in principal without obtaining permission from the investigation authority. These procedures include the following:

A) Arresting the suspect:

In terminology, the Egyptian laws of Criminal procedures, similar to the French and other criminal jurisdictions, did not give a general definition for "Arrest", leaving this mission for jurisprudence. Consequently, jurisprudence gave different definitions in accordance with the different opinions.²³

In Egypt, the Egyptian jurisprudence carries many definitions of Arrest. Professor Hussni defines it as "depriving a person from his freedom by Arrest in the place

²³ *Ahmed op. cit. at 18*

assigned by law for that purpose, for a short duration.”²⁴ Professor Sourour defines it as “Depriving a person from the freedom of movement even for a short duration”.²⁵ The Egyptian Court of Cassation defines it as “a set of temporary precautions to identify the suspect and execute the preliminary investigation. These precautions are related to Arrest the suspects and locking them in any location under the authority of the police for enough time, hours, to collect evidence that may lead to a conclusion of the necessity and legal validity of their temporary Arrest”.²⁶

These definition, regardless being numerous, all state that the core of Arrest is that it is a procedure that aims at limiting a person’s freedom of movement for a defined duration for the purpose of taking investigate him and decide whether the matter requires or releasing him.

When comparing the Latin and Anglo-Saxon systems, we reach no differences with regard to the definitions of “Arrest”.²⁷

Differentiating between “Arrest” and similar procedures:

After defining the notion of “Arrest”, we should, by necessity, differentiate it from similar procedures in the other systems, which might cause an effect that resembles “Arrest” such as, summon, stoppage, and Custodial detention

A – Arrest and Summon:

Summon is calling the suspect to appear before the investigator at a specific time and place, in this regard, to question or investigate him – clause 126 of the Egyptian Criminal Procedures Law²⁸, which is equivalent to clause 122, section 1.2 of the French Criminal Law, states that “The investigation Judge has the right, in all clauses, to issue, according to the circumstances, a summon injunction to bring the suspect.”²⁹ Summon differs from the previous concept of Arrest in two ways. First, summon is a mere simple invitation to appear that is not permitted to be executed by force, and consequently it does not include and effect on individuals’ freedom³⁰ contrary to “Arrest” which is an assignment from the judge to the general authority officials to

²⁴ Hussni *op. cit.* at 568

²⁵ Sourour A., *Alwaseet In the law of criminal procedures*, p. 630

²⁶ Cassation, 15 June, 1912 The official group S. 13, p. 207

²⁷ Ahmed *op. cit.* at 19

²⁸ *ibid* at 20

²⁹ Hamzawy A., *Instructions Encyclopedia on Criminal Procedures Law*, pp.561-562

³⁰ Ahmed *op. cit.* at 21

catch and bring the suspect. They can execute that against the suspect's will³¹, in case he refuses to willingly come at once.³²

Secondly, summon can take place in all crimes whereas a Arrest injunction is not a general rule except for in cases where Custodial detention is permitted.³³

B- Arrest and stoppage:

Despite the many definitions in jurisprudence for stoppage³⁴, they all within the definition that it is a mere administrative procedure executed by the police officers against a person who willingly and with his own choice put himself in a position of evident suspicion, to stop him to discover the reality of his position.

From this definition we realize that stoppage is an administrative procedure executed by the general authority of officials to verify a person's identity. Therefore, it is not among the investigation procedures with its corresponding effects.

This definition also clarifies that the reason for stoppage is that a person puts himself in a position of suspicion. One instance ruling that "chasing the suspect after his escape to investigate his matter is "stoppage"³⁵ and that the officer's call for the accused to investigate his matter after discovering that he carrying an amount of drugs, is considered stoppage and not Arrest".³⁶

Arrest is restrained to the conditions and cases stated by the legislator whereas stoppage is permitted in all cases that reflect a person placing himself under suspicion. To illustrate that in detail we can state that stoppage is not one of the investigation procedures in its narrow sense, on the contrary it is an administrative procedure of the administrative Arrest procedures³⁷, or it is, according to what is perceived through the Egyptian Court of Cassation rulings, one of the inferential procedures that is obtained by the exception of the general authority officers³⁸. It can also be considered as one of the convenient preventive procedures referred to in Article 2/35 of the Criminal Procedures. Consequently, only the investigation

³¹ Hamzawy op. cit. at 562

³² Clause 127/3 of the Egyptian law of criminal procedures

³³ In addition to exceptional case, that is the case of the absent suspect who has been summoned but he failed to appear without any acceptable reason. 2- The case of the suspect feared to escape. 3- The suspect who doesn't have a known place of residence in Egypt. 4- Flagrante delicto suspect.

³⁴ Obied op. cit. at 329

³⁵ Cassation, 27 may, 1981, Group of cassation judgments, S.51, no. 101,p.574

³⁶ Cassation, 29 December, 1974, Group of cassation judgments, S. 44 no. 192, p. 884

³⁷ Sourour op. cit. at 635

³⁸ Obeid op. cit. at 334

authority or the Law officer in a case of being *flagrante delicto* is permitted to injunction the Arrest, whereas stoppage can be executed by any official of the general authority even in case he is not among the Law officers.

Stoppage also differs from Arrest in that it is only sufficient for the former that a person willingly puts himself in a suspicious position even if there was no crime, and the extended objective from it is to investigate the reality of this person's issue. Whereas Arrest necessitates the availability of efficient evidence to accuse a person of a crime that already took place with the objective of turning over the detainee to the investigation authority. Therefore, stoppage is permitted in all cases of suspicion and doubt whereas Arrest is only permitted in specific crimes and under specified conditions stated by the procedural legislator.

Finally, stoppage differs from Arrest with regard to their consequent effects. Arrest results in the right to search the detainee in accordance with Article 46, Criminal Procedures that states: "in the cases that permit to legally Arrest a suspect, the police officer is permitted to search him, and in case the suspect is a female, the search should be executed by a female delegated by the police officer for this purpose". Arrest permits search in its accurate technical sense to search for evidence of the crime, which is in the possession of the suspect and to seize it. Arrest also permits preventive search to withhold the suspect from any possible weapon he might possess for fear that he uses it in defense or to attack himself, whereas stoppage does not result in searching the suspect's body in search for the tool of the crime or anything related to.

C- Arrest and Custodial detention

Custodial detention is defined as "the deprivation of the freedom of a suspect for a specific duration by sending him to jail under initial or final investigation and in correspondence to the conditions and restrictions stated in the criminal procedures law".³⁹

Arrest and Custodial detention both have investigation procedures and deprive the suspect from his freedom due to a crime that was already committed. Nevertheless, Arrest differs from Custodial detention in that the former has a very short duration as the suspect should not remain under Custodial detention without a Custodial detention injunction for duration longer than twenty four hours, in case the Arrest is

³⁹ *Ahmed op. cit. at 38*

executed by the investigation authority⁴⁰, and forty eight hours if by the evidentiary authority, twenty four hours to send him to the public prosecution, then another twenty four hours for a hearing by the competent investigation authority⁴¹, to consider his case . On other hand, the duration of Custodial detention is relatively long and differs depending on the authority injunction the imprisonment. Arrest is permitted through the injunction of Law officer in certain cases whereas imprisonment is only through an injunction from the investigation authorities.

In Saudi, reporting of a crime is not considered sufficient evidence to arrest the accused but the police officer should undertake the necessary investigations regarding the contents of the report and if investigations reveal sufficient evidence with a notification on the flagrant offence, then the police officer shall attend the scene and observe its circumstances and then compile sufficient evidence with which to convict the accused. In either case, the accused may be arrested, Article (9) of the CIP Code and Articles (33) and (35) of the CPC state:

“The Criminal Inspection officers have the right of arrest in the following cases including if the crime is flagrant with existence of sufficient evidence”.

Arresting a person affects his personal freedom and privacy, which is protected by the Basic Ruling Law (Saudi Constitution) except in the case of a violation of the law. The arrest differs from temporary detention in only one aspect: i.e. the term specified for both of them. The criminal investigation officer has the right to detain the person for at most three days as long as they provide an evidence report to the concerned investigator.⁴² The criminal investigation officers have to present the detainee together with the evidence report to the CIP within at most twenty four hours of the time of arresting him for interrogation. Thus, the arrest period vested to the police officer is fixed at that time in flagrante delicto cases.

The criminal investigation officer has the authority to arrest persons in cases other than flagrante delicto and those cases are specified under Article (10) of the CIP Bylaw:

⁴⁰ Article 131 Egyptian Criminal procedures Code

⁴¹ Article 36/2 Egyptian Criminal procedures Code

⁴² Article (10) of CIP Bylaw

“The criminal investigation officers have the right of arrest in the following cases:

- 1- If a valid order was issued to them by the authority as per the law.*
- 2- If the accusation is made of a major crime and there is strong evidence.*
- 3- If there was a possibility that that a person has committed a crime other than a major one and that his domicile was not located or if there were strong evidence that he attempted to escape or that he did not furnish necessary and sufficient information on his character.*
- 4- Other than above cases, an order should be obtained from the competent investigator if necessary.”*

This provision means that the police officer possessing valid order from the investigator or from the authorized authority may arrest the suspect by virtue of this order. For major crimes the criminal investigation officer may arrest the suspect when there is strong evidence. Otherwise, he may undertake the arrest for crimes other than major ones for which sufficient evidence is established to the police officer that the accused has attempted to escape, his domicile is not located or if he did not provide sufficient particulars on his identity. In these cases, the suspect may be arrested and handed over together with the evidence to the investigative power for action. In cases other than the above ones, when the police officers has sufficient information on a specific person to arrest him, then the police officer has to first obtain an order of arrest from a competent investigator.

B) Searching the accused person:

Search means: “Seeking evidence of a crime and anything that might be useful in revealing the truth for establishing or attributing it to the accused whether such search is made to thing, place or person”.⁴³ Article (31/1-2) of the CIP Bylaw and Article (45) of CPC stipulated that:

“flagrante delicto is a state which is inseparable from the crime itself, when there is sufficient evidence established against him”.

This statement means that if a valid flagrante delicto is established, then the criminal investigation officer shall have the right to search the suspect without obtaining

⁴³CIP Bylaw, Chapter (1): Definitions, p.6

permission from the investigation authority. "Searching the accused person is considered attachment to arresting him as letting the arrested suspect go without inspection may result in losing the purpose for which arrest was made."⁴⁴ It is also said that "a valid arrest of the accused person will be followed automatically by valid searching of him in person not only for finding evidence but for prevention as well".⁴⁵

The objectives of search include finding tools or any evidence that is of value in uncovering the truth. If the arrest is valid, then the search will be valid. However, the legislator did not vest the criminal investigation officer the right to search females in the event of arresting them but they should be searched by a female officer as provided under Articles (33) and (34) of the CIP Bylaw and Article (41) of CPC.

Article (31/3) of the CIP Bylaw and Article (45) of CPC stipulate the place to be searched by the criminal investigation officer:

"As applicable, a search is made of the accused person and to everything related to him such as his clothes, effects and movable items and to what he uses, his car or his business place".

The search which is related to the accused person means man's external organs (such as hand, foot, hair, fingers, toes and mouth) and is applied to man's internal organs in the event of the culprit's swallowing any drug for instance, or to ensure that he hasn't placed it surgically within his body, then the police officer may conduct an examination of the accused person's stomach. The police officer may search the accused person's underwear and outer clothes as well as the items that he carries in effects or portable items such as a handbag. Further, the accused person's car can be searched as the privacy of the car is withdrawn from the privacy of its owner.⁴⁶

The second case in which criminal investigation officers are entrusted the power to initiate some investigations is that of delegation. Delegation means to "to delegate the criminal investigation officer the power to take some investigative procedures. It is issued by the authority in charge of investigation in principle".⁴⁷ The delegated police

⁴⁴Al Qatani *op. cit.* at 132

⁴⁵Obied *op. cit.* at 170

⁴⁶Al Qatani *op. cit.* at 133

⁴⁷*ibid*

officer is vested the investigation in respect of the action for which it was delegated.⁴⁸ This procedure shall have all advantages guaranteed by the law as if it were undertaken by the investigation authority.

The law allows the investigator to delegate the investigation police officer the right to undertake any investigation function under Article (15/1 and 15/2)) of the CIP Bylaw. Each of these articles, which vest in the investigation officer the right to undertake the investigation, make it evident that delegation is also allowed in the case as a whole. It could be argued that it is better in this case to limit the delegation to investigation procedures as it is an exception and the rule is that the CIP member is to undertake the duties he has been assigned.⁴⁹ As we saw in the previous chapter, Lawyers unanimously agree that the CIP performance is affected by delegation of investigation to the police, whereas both the police and CIP themselves are not so convinced.⁵⁰

In order to make the delegation valid, specific standards are to be satisfied as follows:

- 1- A crime must have been committed and the police officer should be aware of this crime and the suspect through his investigations and evidence.
- 2- The permission should be issued from the authority in charge of investigation stating the name and designation of the officer that issued it as well as the accusers' names and validity term of the permission.
- 3- The permission should be written and clear.
- 4- The permission should be issued to the police officer in charge of the incident.
- 5- The permission should cover the procedures vested to the police officer.

If these standards, seen by the researcher as provided under Articles (65) and (66) of the CIP Bylaw, are satisfied by the investigation police officer, certain effects will be achieved.

⁴⁸ *Obied op. cit. at 389*

⁴⁹ *Article (5/1) of CIP Bylaw.*

⁵⁰ *Appendix B Table 18 and Table L8.*

- 1- Valid delegation will result in vesting the commissioner a power within the scope for which he is delegated.⁵¹ Accordingly, the capacity for investigation is vested to the police officer within the limits of delegation, as he will initiate an investigation when preparing the report. Accordingly, he has to comply with the investigative procedure whether in interrogating or searching the accused person or even when hearing the witnesses' statements.
- 2- The power of the police officer upon delegation is restricted to a specific period as the time and crime type are fixed.
- 3- The delegation order expires through the implementation of the required procedure and consequently the procedure cannot be repeated even if the time stated in the warrant is extended. If a part of this procedure such as searching the accused person's house, needs to be repeated, then the police officer shall issue a new delegation order as applicable in the Egyptian Criminal Code.⁵²
- 4- Delegation that is issued to the police officer from the investigation power is not transferable as the rule is that the delegation is personal and consequently the commissioner cannot assign this delegation to any other party to replace him but he may seek the assistance of any of the official parties under his supervision as applied in arrest and search.

Having demonstrated the delegation and the authority in charge, standards and effects, whenever they are satisfied, the delegated police officer shall acquire the capacity of investigator and shall undertake its duties within the limits of this delegation. The researcher is of the opinion that delegation as an investigation procedure allows the CIP members the opportunity to make use of the experience of the police officers in the investigation tasks especially as the CIP is still in its infancy.

⁵¹*Obied op. cit. at 399*

⁵²*Cassation 17/10/1938 Legal Rules Part(4) #249, p.285 and Cassation 19.9.1961, Cassation Judgments Series (12) #136, p.710 and Cassation 3.1.1980 Cassation 19.9.1961, Cassation Judgments Series (31) #5, p. 33*

4.2.4 CIP supervision of police officers

All criminal investigation laws agree to vest the officer in charge of the investigation a power over and above all his subordinates as they remain assistants to him whether they are from the criminal investigation police or any other authority or experts who prepare reports on certain cases as directed by the investigator. Therefore, assigning the task of investigation and prosecution to the CIP members in Saudi Arabia has imparted police officers the capacity of criminal investigation in all crimes and cases that are reported or assigned to them for investigation.⁵³

Article (24) of the CPC state that the original investigation power is entrusted to the CIP and that the police officers should implement the orders and decisions of the CIP issued in this regard. The CIP has the right to make the police officers accountable to them. Such disciplinary accountability is undertaken by the party to whom the police officer reports. This is believed to be designed to achieve proper cooperation with the orders and decisions of the CIP members. In order to prevent misuse of power, the investigator has the right to institute a criminal case against any police officer should he commit a criminal offence such as torturing a suspect, invading the privacy of a house or jailing a person without a valid reason.

The investigator shall undertake investigation in all cases referred to the criminal investigation police officer according to the provision of Article (15) of the CIP Bylaw. In addition to the above, the CIP supervises the criminal investigation officers while they perform their duties. This is the power vested to the CIP to disregard the investigation and maintain evidence reports, called administrative filing.

The investigation police officers are in charge of executing reports they prepare, inferring evidence and submitting it the same to the competent party in the CIP.⁵⁴ The concerned party in the CIP – investigator or public prosecutor as applicable⁵⁵ manage

⁵³*AL Qatani op. cit. at 137*

⁵⁴*Article (8/1/D) of the CIP Code*

⁵⁵*Article (15/2/D) of the CIP Bylaw stipulates that "The reports executed by the investigation police officers should be presented to the investigator or public prosecutor as applicable to manage them either by filing, investigating or instituting the criminal case against the defendants"*

the evidence reports whether by investigation, referring it to the competent court without investigation or by filing it administratively.⁵⁶

Accordingly, the power of supervising the police officer is vested to the CIP members to ensure that the case procedures are not delayed, which would negatively affect the progress of criminal justice and time taken in resolving these cases.

4.2.5 Factors affecting the relationships between the CIP and the police

Having examined some of the elements that contribute to the professional relationships between the CIP and police, it is time to analyse some research into the factors which affect those relationships. By far the most important factor seems to be the importance of speed in reporting to the CIP when arresting a suspect. Three-quarters of the CIP and just under sixty percent of the police agreed that there is correlation between early reporting and the strength of the relationship. In other words, it is fair to say that the faster the reporting, the stronger the professional bond.

There was a medium level of agreement for the proposition that the police executing CIP-issued arrest orders affected the relationships. This may be because there is no clear vision on the tasks entrusted to the CIP and an absence of the organizational rules that clarify the nature of the relationships. There was a similar, if slightly lower, level of agreement on the importance of police officers responding to the investigator's demand to complete reports with any information that may have been omitted. A higher result may well imply negligence in the performance of this duty, so perhaps the result can be seen as confirmation that this is a standard part of police procedure.

The factor which has least effect, with agreement at less than two out of five CIP members and around 46% of police officers, is the CIP practicing some control of the police. It may be that these figures can be explained in terms of the obligation to perform them having an inverse relationship with the effect they have on the dealings

⁵⁶Article (15/2) of the CIP Bylaw provides that "The investigator shall, once the evidence report is forwarded to him by the police officer, take any of the following procedures:

- A) To institute the case based on referring the papers to the public prosecutor for raising it to the competent judicial body.
- B) To file the papers administratively without investigation if thought that no offence was committed.
- C) To investigate the case in person or delegate one of the investigation officer to undertake it or undertake any investigation duty then follow it in person.

between the two organisations. Since the CIP practices control of the police, it could be taken as a defining factor rather than one modifying the relationships. In contrast, the amount of time taken in reporting arrests to the CIP was seen as very important to the relationship and, on the whole, it could be said that it is where there is some choice for the police in how (or how soon) to act that relationships will be most affected. Obligation leaves little room for manoeuvre.⁵⁷

The last word on the subject is given to the judges. When asked how they found the relationship, using the evidence reports included in drug offence files as a basis, three-quarters answered that the relationship is a cooperative one with no contradiction. The other 25% answered that differences frequently occur, implying that investigation and interrogation formalities are different.⁵⁸ On the whole, then, we have to accept that the relationship is a dynamic one involving the interplay of rules and procedures as well as people and that there are always bound to be areas of conflict.

The only question that the prisoners were asked which might have any relation to the police's behaviour pre- and post-CIP regards their treatment by the police during arrest and the figures indicate that the behaviour has improved.⁵⁹ While the reasons for this have to remain a moot point, the codification of procedures regarding such behaviour obviously cannot be ruled out.

4.2.6 The plaintiff in criminal cases in the Saudi system

Litigation in criminal cases does not necessarily follow certain procedures or take a certain form. This is true for the Shari'a courts in Saudi Arabia, but if the litigation is against an ex-judge or one of the administrative governors, then it is necessary to convey the litigation to a court determined by the presidency of judges or the presidency of the administrative authority, according to letter number 1032 – 1352 from the ministry of interior affairs to the presidency of judges. The reason for this is a conventional rule in Islamic Jurisprudence that aims at protecting the judges and governors from deceitful litigation. The criminal procedural system in Saudi Arabia allows many organizations to litigate for public right, such as individuals, the general

⁵⁷For all information in this section, see Appendix B, Tables 23 to 27

⁵⁸Appendix B, Table J10.

⁵⁹See Appendix B, Table P3.

presidency of promotion of virtue and the prevention of vice, courts, administrative authorities, and the CIP.⁶⁰ In this section we shall examine some of those organisations.

1st: Individuals

The base in Islamic society is that ordinary people have the right to litigate for any crime that affects the public right but it is a limited ordainment (*fard kifayah*) i.e. being done by one person is enough for all. This is considered an application of a (Hesba) principle (municipal affairs) known in Islamic jurisprudence. The municipal affairs duty {Hesba} means to promote good virtue and to prevent vice. This principle represents a very important feature in regulating Islamic society. "Maroof" (virtue) is every thing that the Islamic legislator permits or recommends to be done, and the "Munkar" (vice) is everything that opposes Islamic jurisprudence, which is a wider concept than disobedience of God.

Hesba was stated in Islam to create a virtuous society by conforming to the religion and applying the legislations of God and, to promote virtue and eliminate vice.⁶¹ The person in charge of it is called Al Muhtaseb and tries certain cases that are presented to him or that may come to his knowledge, like litigations of deception, deceitfulness and manipulations with weight and prices, upon those who committed contraventions or forbidden things that do not reach the seriousness of Hudud, or Qissas.⁶²

2nd: The general presidency of promotion of virtue and the prevention of vice

The origin of promoting virtue and preventing vice are verses in the Holy Quran.⁶³ These were emphasized by the "hadith". Virtue is every thing that must be said or done according to the provisions of Islamic Jurisprudence, its general principles and its spirit, as promoting virtuous behaviour, forgiveness when one is capable of punishment, reconciliation between two adversaries, charitable works and being kind to the poor, supporting wronged people and calling for consultation (shoura) and respecting the opinion of the group or of society.⁶⁴ Vice is every act that is forbidden by Islamic. Preventing vice may be verbal like forbidding people from drinking alcohol or it may be an action like stopping the drinker by force.

⁶⁰ Belal A. , *Criminal Procedures in Saudi Arabia* ,p. 600

⁶¹ Alwardi A., *Alahkam Alsultaniyyah*, p.242

⁶² Odah A. , *Islamic Criminal Legislation* ,p.489

⁶³ Quran 9, verse 71 and Quran 3, verse 110

⁶⁴ Odah op. cit. at 492

The role of the general presidency of promotion of virtue and the prevention of vices is to guide and advise people to follow the religious obligations that are determined by Islamic jurisprudence. In order to accomplish this purpose, the organization was entitled to catch people who violate this principle for questioning, investigation and punish them as they see right by the Islamic rules of Ta'azir.

In important matters defined by the agreement between the interior minister and the general president of the foundation, a delegate from the competent administration collaborates in the investigation. If the suspect was caught by a branch of the foundation, the latter has to send the suspect to the central quarter in order to continue the investigation, which is carried out by a committee that is formed through the orders of the general president of the foundation; among its members are the religious legal investigators.

The duty of the committee according to fourth article of its code is the following:

1. Investigating cases and forbidden actions that will be conveyed to the Shari'a court.
2. Determining the penalty.
3. Punishment is carried out by regional supervisors and officials in the centre after the consent of the Governor. If he agrees, then the case has to go back to the foundation to have its agreement to perform the punishment unless the governor sees that it should be conveyed to Shari'a courts and so whenever the judge pronounces his verdict, it is sent back to the foundation to execute the punishment.

It was expected that disputes will happen between the competence of the foundation member and the police in investigation as the foundation member enjoys the position of the seizure officer. So, the high Royal decree no (36335) p. 21/11 year 1394 H (1974) was issued to regulate the cooperation between policemen and the organization in investigating common cases. The most important thing included in the regulatory decree is the contribution of the foundation delegate with the police in all of the investigation procedures like questioning and inspection even if the arrest has been made by the police.

The authority of the foundation⁶⁵ before the courts in what is related to crimes affecting religious and moral principles has fluctuated and this has sometimes led to conflict with other agencies, like the police.⁶⁶ However, its power was curbed by the foundation general president directive number 2740 in 24/12/1407 (1987) including detailed rules concerning the investigations made by the organization.

The foundation's work is similar to a police role, except they usually deal with moral offences. They may conduct a primary investigation and send the case file to CIP, but they do not carry out full investigations and they do not have any prosecuting role.

3rd: Courts

The comparative procedural system permits the court, trying a litigation of a certain case, to try another different crime if it comes to light through studying the papers of the first case. Under the description of "opposition", which is an exception that opposes the rule of separation between the authorities of prosecution and judgement, it was decided by law to impose a kind of censorship practiced by some judicial authorities over the public prosecution, if it fails to litigate as result of a deficiency in investigation or even disagreement in evaluation.⁶⁷

In the Saudi procedural system, the court can try litigation spontaneously, without it being conveyed to her from any other authority in two cases.⁶⁸ The first case is when the crime is linked to a case that is already litigated before the court and to apply this, the judiciary presidency issued the circulated note number 1983/3 in 15/8/1381H (1961). Under this circular, if a criminal case is conveyed to court, then the court has to proceed trying the case even if it becomes clear that the private lawsuit is the prevailing matter in the case. In return for this, the court should adjudicate in the criminal case at once if it becomes clear during the trial that it represents criminal case. The court is not obliged to acknowledge the CIP member in this case, assuming that the prosecution evidence is proven from the papers, and the case is ready for the

⁶⁵ This organization was first established at Alhijaz in 1926, shortly after crowning of his majesty King Abd Elaziz Ben Abd Elrahman Al Saoud, and from the beginning it was meant to be the modern Saudi model or application of the Municipal affairs system (Alhesba), known in the Islamic jurisprudence, without enjoying the authorities that were enjoyed by Almouhtaseb In previous ages.

⁶⁶ Alalfy A., *The Criminal System in the Kingdom of Saudi Arabia*, p.49

⁶⁷ Obied R., *Principles of Criminal Procedures in Egyptian Law*, p.115

⁶⁸ Al Qady op. cit. at 150

judge to adjudicate it. However, if the case needs an extra investigation in order to clarify the truth, then it is referred to the police to take its common procedural course.

The second case when a court can try litigation separate of other authorities is when a crime occurs in the judicial council, (i.e. during the session), what is known as “session crime”.⁶⁹ Regarding this, Article 73 of the system regulating the administrative work in the religious legal provisions which is confirmed with a recent authentication no. 109 in 24/11/1374H.(1954), stipulates that: “In case of a misdemeanour or felony the judge has to decide punishing (Ta’azir) the felon and any other one who deserves penalty with suitable punishment that deters crime and preserves the dignity of the religious council, and submit this decision to the judiciary presidency to detect what is necessary, following the example of Ta’azir decisions. This is if he is in the capital of the country, but if he was in other governorates, it would be sent to the administrative governor to execute the punishment.”

4th: Administrative authorities

The regulatory rules in Saudi Arabia have permitted many administrative authorities to contribute in conveying litigation to the judicial authorities. Some of these authorities pursue criminal cases independently before courts. The most important among these authorities are the governor and other departments specialising in crimes such as national security crimes and customs crimes.

The regional governor may supervise criminal investigations which have been presented to him to take action, whether to refer the investigation to the competent authority or to the ministry in important cases or releasing or referring the case to the Shari’a court. The decision of the governor to refer the case to the Shari’a court must mean that the crime has occurred within his province. He also should consider referring the case to the ministry in cases in which he is not permitted to transfer it directly to the judiciary.

⁶⁹ Article 244 procedures, modified with decree with the law no 353 of the year 1953 stated that : “ if a misdemeanor or an infraction occurred in the session , it is permitted to the court to litigate upon the accused instantly , and judge it after hearing the statement of the public prosecution and the defense of the accused.” Depending on this article, every criminal court even if it was board of the court of summary justice or appealing curt, or court of cassation or criminal court has the permission to litigate the lawsuit for any misdemeanor or infractions occur in the session what ever its kind is. But for the felonies, the law entitled the head of the session the authority to revive the lawsuit without trial of the accused as it is with misdemeanor and infraction by issuing an order to transfer the accused to the prosecution, and to write a report, and he has the right to arrest him if it requires Penalty (had).

Shari'a courts are the other authority that has jurisdiction to try disputes and cases except for what is clearly excluded by regulations. Many regulations have been issued to entitle specific authorities of judicial criminal jurisdictions to try certain cases, taking them out of general jurisdiction and into special jurisdiction. The motive behind establishing these special judicial authorities is to find specialized judges to comprehend the provisions of the new regulations. The public interest demanded these new provisions as a consequence of the complications of modern life and the diversity of cases and the prevailing of the technical aspects that judges of the Shari'a courts were not aware of. This was emphasized by Article 26 of the judicial regulation. It is worth mentioning that the rules of investigation in some crimes ought to be applied even if it is opposing other rules and this is only an application of general rules, which exist to prioritise special provisions over general provisions.⁷⁰

These crimes could be divided into groups in which each is distinguished by characteristics that justify violation of the general rules as follows:⁷¹

- Groups of crimes that occurred due to a special characteristic of the felon, and this includes many crimes but the most important are:
 1. Crimes of doctors, doctors' assistants and people who claim to be doctors.
 2. Crimes of pupils and teachers.
 3. Crimes of military men.
- Crimes of special nature: includes many crimes but the most important are:
 1. Crimes concerning national security.
 2. Traffic crimes.
 3. Crimes concerned with documents and commercial disputes.
 4. Crimes that are related to legitimate duties.
 5. Crimes related to security discipline.
- Crimes that occur in specific place:
 1. Infraction of border security.
 2. Infraction of port security.
 3. Customs crimes.
- Group of crimes that affect the public interests where the most important are:

⁷⁰ *Alghareeb M., The Legal Position of General Prosecution , comparative study , p.221*

⁷¹ *Al Qady op. cit. at 153*

1. Crimes of bribes.
2. Crimes of forgery.
3. Crimes of embezzlement.
4. Infractions of food supply.
5. Infractions of commercial cheating.
6. Crimes that affect public utilities.
7. Infraction of the regulation of civil status.

None of the agencies we have seen in this section of the chapter have the power to prosecute. Their role is investigation of the minor crimes that are related to their field. The CIP may not investigate some of these crimes, but it prosecutes all of them and therefore case files must always be sent to the CIP. There is a white paper⁷² stating that all these agencies should be under the supervision of the Ministry of Justice. However, there is a strong case for the argument that all these crimes should be investigated by the CIP as it was, as we have seen, established to improve procedures in this field. There is no practical reason why all of these investigators could not work under the name of the CIP.

4.3 RELATIONSHIP WITH THE EMIRATE

We have examined the CIP's relationship with the police and now move on to look at the relationship with the emirate. By the issue of the Regions' Code,⁷³ the responsibility of the region's governor was determined before the Minister of Interior through implementing sentences after their issue and not affecting privacy or freedom without valid reason and maintaining the security, discipline and work for developing the region socially and economically. The region's governor shall manage the districts and centers, maintain the state funds, prevent any aggression and supervise the governmental bodies of his region.⁷⁴

Article (7/H) of the Region Code stipulates that each regional governor shall manage his region according to the government general policy and according to the provisions of the code. The fact that staff of the ministers and various bodies in the region report

⁷²*Alhayat Newspaper, No.15314, on 05/01/1426 A.H.(2005),p.6*

⁷³*Royal Order #A/92 dated 27.8.1412 H (1992)*

⁷⁴*Sa'tti A., Shoura in Saudi Arabia, p.144*

to them means that the region code has established the supervision process of powers and jurisdictions of the region's governor. Thus, it is necessary to establish relationships between the emirate in its capacity as the high administrative body in the region and other bodies including the CIP. This relationship may be divided into three sections, which I will outline below.

4.3.1 Search of houses

The relationship that links the emirate and the police officer by virtue of the General Security Department system that is currently in force is both directive and supervisory, as the police, after completion of investigation, refer the case to the emirate for proper action. This procedure is Article (145) of the General Security Department system: "the privacy of the houses is preserved where they are not to be entered with the exception of cases stipulated by law".

Article (146) of the same law says that:

"The police officers in charge of investigations may enter the houses and search them if the culprit was seen flagrante delicto according to the following conditions:

- A) After being convinced of the validity of the allegation to the householder.*
- B) After obtaining permission from the immediate supervisor and stating sufficient reason for such a search excluding the Royal Palace and the Palaces of the Royal families, embassies and foreign representations where permission to enter is to be obtained under a high order."*

The police officers shall undertake this procedure after obtaining written permission from the regional governor.⁷⁵ The search order should be justifiable and specify names of the persons in charge of implementing the search and hence the search is considered investigation procedure. Accordingly, the search is to be conducted by those who are duly vested with the investigation power. The regional governor is authorized to supervise all investigations according to the regulation of the powers,

⁷⁵*Circular of the Minster of Interior #S/3778 on 18.9.1411 H(1991) for the emirates, general security and general investigation and immigrations.*

then he is vested the power to issue the order of search.⁷⁶ This determines the necessity of specifying the house to be searched accurately and that search order is for only one time and to be conducted during daylight excluding cases of flagrante delicto which dictate haste for fear of losing any evidence of the crime. Females in the house are allowed to screen themselves (females are searched by female officers).

All these procedures are documented in official records where all searches are noted down and the original report is given to the administrative governor and the investigation is to be accompanied with a copy thereof. After the appearance of the CIP and in an application to Article (7) of its bylaw, the administrative governor within the jurisdiction of his region has the right to supervise the criminal investigation and the proper progress of justice undertaken by the competent authorities.

However, the CIP Bylaw provides under Article (31) and Articles (41-45) that:

“1- The warrant of searching the houses, persons or things is executed in writing by the competent investigator and such an order should include the name of the issuing officer, his position, department, time and date of issue, signature, location and name of the person or thing to be searched and the time to be taken in this process.

2- The search warrant must be justifiable for existence of crime and serious accusation.

3- The search warrant is issued only once and if required, fresh The warrant is issued.”

An analysis of the provisions of this article shows the regional governor no longer has to grant permission to search houses as the investigator may make an inspection in person or order it without permission from the regional governor. This means that the CIP has the ability to act more speedily than the police had under the old system.

⁷⁶*Guide of Criminal Procedures, p.69*

4.3.2 Custodial Detention

With regard to custodial detention⁷⁷, we refer to the General Security Department system and what has been stated in the Regulation of Principles of stoppage, seizure, arrest, temporary and custodial detention,⁷⁸ which is considered one of the executive regulations for Jail and Detention Code.⁷⁹

The police are duly authorized to undertake custodial detention procedures as Article (12) of the Regulation of Principles of stoppage, seizure, arrest, temporary and Custodial detention Law stipulate that:

“The memorandum of the precautionary detention issued by the investigation authority on a person accused of committing a major crime shall be valid for 21 days from the arrest date.”⁸⁰

The laws have restricted the investigator’s power to extend the period of custodial detention unless such is granted by the regional governor as Article (13) of the said regulation. If it was impossible to complete the investigation before expiry of the period specified under Article (12), the following procedures are to be applied:

- 1- The investigator shall, at least three days before the expiry of this period, present a summary of the case, particulars and evidence established against the arrested person that led to detaining him preventively. As well as that, they should state reasons that prevented completion and the estimated period for completing the investigations and request permission to continue detaining the arrested for a period not to exceed 30 days of the expiry of the detention period as provided under Article (12).
- 2- The referral indicated under the preceding clause shall be made to the regional governor or his representative.

⁷⁷ *infra* at 233

⁷⁸ Issued as per the resolution of the Minister of Interior #333 on 17.1.1404 H (1984)

⁷⁹ Issued by virtue of the Royal Decree #M/31 on 21/6/1398 H (1978) based on Articles (1,7,30) of this code by virtue of the resolution of Minister of Interior #18/3431 on 17.1.1404 H (1984) for issuance of this regulation

⁸⁰ Regulation of Principles of Stoppage, Seizure, Arrest Regulation of Principles of stoppage, seizure, arrest, temporary and Custodial detention Law issued as per the resolution of the Minister of Interior #333 on 17.1.1404 H (1984)

- 3- The investigation party shall advise the detention house or jail where the arrested person is kept under the date and reference no. of the memorandum.
- 4- The commander of the detention house or place where the arrested person is kept has to demand the investigation party to furnish him with evidence of requesting the emirate to continue detention of the arrested person on expiry of the detention period issued by the investigation period under Article (12).
- 5- The person under custodial detention will remain in jail and the investigation body shall resume the investigation pending directions received from the emirate and that the investigation body shall advise the detention house or jail about the emirate's resolution.
- 6- The emirate may order the continued imprisonment of the preventively retained person for the period seen necessary for completing the investigations provided it doesn't exceed 30 days of the expiry of the custodial detention memorandum issued by the investigation body as provided under Article (12).

However, under this regulation, the preventively retained person may be prejudiced and may appeal against the executive authorities. Therefore, Articles from (19) to (22) arrange the appeals of those detained persons on one hand and their right to appeal to the high authorities, ministry and the regional emirate on the other hand. The detainee may present an objection to the emirate after the expiry of the detention memorandum issued by the investigation body.⁸¹ On the other hand, the regional emirate or its representative may order the formation of a committee if it is necessary for a legal or Shari'a advisor and representative for the police to resolve the appeal, hear statements and present its recommendations on the matter as stipulated under Article (20) of the Regulation of Principles of stoppage, seizure, arrest, temporary and Custodial detention Law.⁸²

⁸¹*The Regulation of Principles of stoppage, seizure, arrest, temporary and Custodial detention Law has specified this period by 21 days issued by the investigation body for the preventively detained person.*

⁸²*"The regional emirate or its representative may order to resume imprisoning the preventively detained person to form a committee if it is necessary from a legal or Shari'a advisor and representative for the police to resolve the appeal presented by the preventively retained person, hear his statements and to present its recommendations on the matter"*

The CIP member in charge of investigation or public prosecution at present does not depend on the General Security Department, nor the Regulation of Principles of stoppage, seizure, arrest, temporary and custodial detention in practicing the CIP's jurisdictions in this field.⁸³ In view of the CIP Bylaw and according to provisions of Articles (40/3,42) and Articles (112-114) of CPC the emirate no longer has any reference capacity to extend the period of the custodial detention period.

4.3.3 Disposal of Investigation Records⁸⁴

The regulations of the power granted to the regional governors has provided that the regional governor is the competent authority in charge of supervising all investigations conducted by the Emirate authorities regarding all incidents that may occur within its jurisdictions and that he is authorized to complete all investigations pending the criminal descriptions are revealed entailing from the public right case, convicted persons and particulars of their convictions.⁸⁵

The researcher has analysed the role of the emirate towards searching houses and custodial detention and it was found that it directs the investigator as appropriate in view of the General Security Department Code for the year 1369H (1949) and imprisonment and detention law for the year 1398H (1978). This code directs the investigator as well as case filing and disposal of the case document as appropriate, consequently the investigator may not take any procedure to disregard the case by filing it automatically, but the regional administrative governor must be kept advised accordingly.

The CIP's code vested the investigator several powers to apply them as seen appropriate, which include – after completion of investigation – disposing of it negatively or positively i.e. by accusation or safekeeping. Article (45) of the CIP Bylaw and Article (124) of CPC have specified how the CIP member disposes of the investigation as follows:

⁸³ *Approval of the Minister of Interior to the CIP's members to carry on some of its jurisdictions under # (H/11/2667) on 3.12.1415 H (1995) and # (H/1/2773) on 8.12.1415 H (1995)*

⁸⁴ *infra at 240*

⁸⁵ *Guide of Criminal Procedures, p. 96*

- 1- The investigator shall, after completion of the investigation in person or by delegation, take a decision either to halt the investigation or make an accusation and demand trial.
- 2- The decision to file the investigation is issued by the investigator in the following cases:
 - A) If the action attributed to the suspect is not a crime.
 - B) If the criminal case is extinguished for any public or special reason.
 - C) No evidence established against the accused that he has committed the charge attributed to him or invalidity of the facts charged to him.
 - D) If the criminal is still unidentified, then the investigator shall instruct the security bodies to resume searching for the criminal.
- 3- The resolution to file the investigation shall be temporary if the criminal is still unidentified or if no evidence were established that the suspect has not committed the charge attributed to him.
- 4- The decision to file the investigation will be final if the statements attributed to the suspect were not established or there was no crime at all.

Thus, it is evident that the investigator's power under the CIP's code regarding disposal of investigation is no longer controlled by referring to the administrative governor as applicable in the law in force.

The relationship with the Emirates is a vital element in demonstrating how the criminal procedures in the Saudi Criminal Justice System have changed. A comparison with the pre-trial procedures in the old system shows that the region's governor used to have a significant amount of power over the police regarding criminal procedures. Police officers would ask for permissions from the governor regarding many procedures such as extending periods of custodial detention, entering and searching houses, and disposal of investigation records. With the establishment of the CIP, the code has vested several powers to CIP members in order that they can undertake their duties efficiently and effectively. Under the previous system delays

often occurred, as the police had to wait for replies from the governors or to apply through civil servants to extend periods of custodial detention. The accumulation of these powers in one agency speeds up procedures and reduces bureaucracy.

4.4 RELATIONSHIP WITH THE JUDICIARY

During the discussion of the independence of the CIP member in Chapter Three, we had cause to examine briefly the relationship with the judiciary in terms of the CIP's independence. Here, however, we shall look in more detail at the relationship and the differences between the CIP system and the previous one.

Under the General Security Department system, the position of the general investigator was created⁸⁶ for the purpose of guaranteeing rights and establishing justice as the Royal Decree stipulates that the head of justice division in Makkah or his representative of the police commanders and attachments had to lodge the case in the Public Rights in person and that in the event of his sickness or contingencies, he could delegate any staff in his department to act on his behalf for all cases of offences and crimes of public interest which had no plaintiff originally such as drinking alcohol or a plaintiff who had disregarded his cases. All competent courts for resolving cases of public interest informed concerned parties in the police departments to lodge public cases or those whose owners waived their personal rights.⁸⁷ The public prosecutor undertook the responsibility of presenting this case to the judges in the Shari'a Courts.⁸⁸

With the appearance of the CIP, the trial proceedings start by filing the case through the public prosecutor to the Shari'a Court stating a charge and there is high consent among the research sample for this to be in the CIP's jurisdiction.⁸⁹ Cases of personal rights may be filed by the public prosecutor before the competent court.⁹⁰ However, Hasba cases may be lodged directly with the Shari'a Court by ordinary people if they

⁸⁶Royal Decree #1310/813 on 6.4.1353 H (1932) supported by Shoura Council's resolution #171 on 1.8.1352 H (1931)

⁸⁷Guide of Criminal Procedures, p.208

⁸⁸As stated in the ministry's letter on 27.3.1392 H(1972)

⁸⁹See Appendix B, Table 45

⁹⁰Article (6/1,2) of the CIP Bylaw stipulates that: "The defendant, his attorney, affected or heirs might lodge the criminal case against the accused in all cases before the competent courts whereby the court should advise the public prosecutor to attend and carry on his task before it taking into consideration the procedures of hearing the case"

do not need any investigation.⁹¹ The procedures applied to the Penal Departments of the Grievances Board are different as the public prosecutor for the crimes heard by these departments is represented by the Control and Investigation Commission, which is notified sufficient time before the session is held without the attendance of the representative of this commission.⁹² Further, Article (3/C) of the CIP Code stipulates that the CIP undertakes prosecution before the judicial authorities according to the Code. Additionally, Article (5/3) of the CIP Bylaw and Article (51/1-2) of CPC stipulate the following:

- 1- The public prosecutor initiates the public right claim before the competent judicial body in person as scheduled and presents the crime establishing evidence and demands the conviction of the accused and the prescribed punishment to him.
- 2- The public prosecutor initiates the public right claim by virtue of pleas that contain fixed statements in the case, criminal descriptions, details of tools used and the criminal role undertaken by each accused and reference to the Shari'a or statutory provisions of articles for the applicable punishment. This plea should be based on the inductions and/or accusation decision. Article (51/3) of the CIP Bylaw stipulates that:

“a. The public prosecutor has to challenge all pleas made by the accused or his attorney to evade or invalidate the charge, challenge investigations or evidence.

b. If negative evidence appeared during the case, then the public prosecutor may not demand verdict of innocence to the accused person but the matter is to be left for the court's decision.”

Having reviewed the above two statements, we can see the essential role undertaken by the public prosecutor in offering the case to the judge, initiating the case and displaying the charge attributed to the accused person and also in stating its descriptions and the role undertaken by the accused. Further, the public prosecutor states in a special plea the penal statutory and Shari'a provisions that may be applied

⁹¹As per the High Order #13512 on 25.11.1380 H (1960) and the circular of his eminence deputy chief judge issued under #8745/3 on 22.12.1380 H (1960) and the circular of his eminence #3515 on 10.11.1380 H (1960)

⁹²As per Articles (9) & (15) of code of Procedures before the board as per the Cabinet's resolution (190) for the year 1409 H (1988)

by the judge to the accused person. However, the judge is not obliged to apply these provisions. Further, the CIP Bylaw (Articles (53 and 54)) have vested the public prosecutor with the power to demand cassation of the judgments in view of the conditions and terms that will be tackled by the researcher hereinafter.

The research sample agrees that the CIP has jurisdiction over the task of accusation and preparing the execution of the case in court. Although it is rare to find shortcomings in the case papers, there is moderate to low consent for it being within the jurisdiction of the CIP to return those cases to the investigator for completion. Most responses were that it was 'sometimes' the CIP's responsibility, which may reflect the fact that the investigators are not supposed to proceed with the charge unless all the correct investigation procedures have been completed and all reports pertaining to the cases which are in their possession are satisfied. There is almost unanimous agreement amongst the CIP that it is their responsibility to demand the prescribed punishment for the accused and strong agreement for the same amongst the police. There is agreement too that the charge should be presented to the CIP management board before prosecution. However, when it concerns the newly created task of preparing the plea for the sentence cassation, there is low agreement that this is within the CIP's jurisdiction. This function was not carried out by the police under the old system and perhaps because of this the most common response was that the CIP should 'sometimes' perform this duty.⁹³

4.4.1 The independence of the public prosecution from the judicial authority

The public prosecution should be independent from the judicial authority in order to accomplish its mission. Before clarifying the limits of this independence, it must be determined whether the prosecution is considered a part of the judicial authority and thus enjoys the guarantees and immunities of its role or not.⁹⁴

A) The criteria of the judicial role

There has been some debate about determining the criteria of this role. One opinion defines it on the basis of who is performing it and his association to an authority with

⁹³See Appendix B, Tables 45 – 50

⁹⁴Al Qady *op. cit.* at 74

distinguished employment regulations, this person is the judge and this is what is called the shape criterion of the judicial role.⁹⁵

The other opinion stated that the judicial role is not distinguished according to the shape criterion or the capacity of the person doing it and how he pursues the role, but it is distinguished with its relation to adjudications of arguments or allegations that require judgment of the law and its application. Thus the judicial role according to this direction requires the following:⁹⁶

- A claim that the law has been broken.
- A basis to adjudicate this claim.
- A decision to terminate this claim on the aforementioned basis.

This is called the subjective criterion of the judicial role. It is argued that the latter opinions are concerned with the judicial role in its precise or narrow meaning designated in adjudicating litigation with a juridical judgment. Yet, beside this narrow concept of the judicial role, there are other roles that depend on adjudicating opposing claims and clarifying the judgment of law in it. Also, it requires independence and neutrality in the persons pursuing it and bestowing the guarantees of the judicial role upon it, and the most important among these roles is the public prosecution.⁹⁷

First: the role of the public prosecution is a judicial role

The role of the public prosecution is considered a judicial role for the following reasons:

- 1- The narrow concept of the judicial role couldn't exist unless there is a criminal case; the charge brought by the public prosecution begins this litigation, and therefore this is an essential element in the judicial role.
- 2- The public prosecution contributes in forming the criminal court whatever its type or rank is (Article 269 of the Egyptian Criminal Code), so it is not permissible to assemble the criminal court without the presence of a representative of the public prosecution otherwise its assembly will be null.
- 3- In the past, it was said that every judge is a public prosecutor, and the judicial accusation system was the most powerful manifestation of

⁹⁵ *ibid* at 75

⁹⁶ *Obied op. cit.* at 75

⁹⁷ *Moustafa M. , Development of Criminal Procedures Code in Egypt and other Arab countries, p . 69*

⁹⁷ *Al Qady op. cit.* at 77

combination between the authorities of accusation and judgment in one hand. This means that the judiciary pursued the public prosecution. But after the French revolution, judicial accusation and judicial judgment were separated to guarantee the neutrality of the judge.

- 4- The public prosecution has no personal interest in the criminal case but revealing the truth - which is the case with the judge too - and may demand the acquittal of the accused, if it is proved before the court (in Egypt, for example).
- 5- The public prosecution performs the primary investigation, which requires neutrality and is performed by judges in many countries.
- 6- The public prosecution pursues the adjudication of the criminal case, when the penalty is compensation in some minor cases.

Second: the role of the CIP is juridical:

The function of the CIP is considered a judicial function for the following reasons:

- 1) The CIP begins litigation of the general right and follows it before courts and other judicial authorities in application of the first article of the Bylaw.
- 2) The CIP takes over the primary investigation and proceeds with it.
- 3) The CIP demands distinction in the judgments that opposes the Shari'a.
- 4) Members of the investigation and public prosecution are independent in their work.
- 5) Members of the CIP enjoy judicial immunity, as it is not permissible to take any investigating procedure against them like arresting or searching them except when they are caught red-handed. (As we saw in the previous chapter)⁹⁸

B) Independence of the CIP members from the judiciary

Members of the CIP enjoy independence in their work as we saw in the previous chapter.⁹⁹ The same reasons for this independence apply both in secular Egypt and in Saudi Arabia. However, during a trial, if the judge decides that someone has a

⁹⁸ *supra* at 133

⁹⁹ *supra* at 107

connection with the crime and was not brought before the court by the prosecution, the judge has the right to revive a criminal case against that person and the judge would ask the prosecutor to litigate the case against them. The judge is not punishing the defendant but can revive criminal cases during trials. This provision wasn't stated in the CIP code, but stipulated in the justice ministry rules. Also, it obliged the judge to advise the public prosecutor to present his litigation immediately in cases involving public rights only; thus the judge revives the criminal case and adjudicates it at the same time.¹⁰⁰

Under Article 10 of the Saudi CIP Code, the members of the CIP are assigned and transferred to other authorities according to royal decree depending on a decision from the CIP committee and the recommendation of the interior minister. In some countries like Egypt and France, the justice minister has the authority to supervise and monitor (administratively) members of the prosecution. This power can include transferring members to other cities, discipline and delegation. In Saudi Arabia, this is not the case: the justice minister has no interference in CIP work. The CIP is independent and supervised by the interior minister as we explained earlier and here are some examples.

Article 4 of the CIP Code states that the CIP committee plays the role of the supreme council of Judiciary in what concerns judges, it consists of the head of the CIP as president and five members of the CIP who are ranked as delegate of the chief of investigation and prosecution province class (A) and higher; and they are chosen by the interior minister depending on a suggestion from the head of the CIP.

Under Article 15 of the CIP Code, only the CIP committee has the authority to transfer CIP members within its limits or delegate them or second them.

The CIP committee is considered a punitive council concerned with punishing members of the authority according to Article 15 of the CIP Code. It is not permitted to litigate against members of the CIP except with an order from the interior minister and depending on the suggestion of the head of the CIP.

Despite the power the police used to have, they were not independent, and their duties were not stipulated by laws. It can be argued that their role was discretionary, though based on regulations issued by the Interior Minister. In contrast, the CIP is

¹⁰⁰ *Al Najjar E., Prosecution in Saudi Arabia ,p.87*

independent, its procedures are codified and it has a judicial function. Although this does not mean that the CIP performs its tasks perfectly, it is growing and gaining more experience by practicing its authority. From what we have seen of the CIP's relation with the judiciary, it is clear that there is a state of mutual independence even though the CIP - in its role as public prosecution - can be said to be a judicial authority. This underlines the determination of the legislator to ensure fairness in the trial stage of cases.

4.5 RELATIONSHIP WITH THE JAILS AND DETENTION HOMES

The final section of this chapter on the CIP's relationships with other criminal justice agencies looks at the work it does with places of detention. In Chapter Two, we saw how the supervision of prisons and detention homes was an important element of the CIP role¹⁰¹ and that there was strong agreement between the police and CIP in my research that this role falls within the jurisdiction of the CIP. Seven out of eight judges agreed that these roles are an achievement for criminal justice accomplished by the CIP.¹⁰² In this section, we progress to examine the procedures concerning that relationship in a little more detail.

Many laws entrust implementation of freedom-restricting punishments to a body independent of the judicial authority that issued the judgment and that party is known as the Prison Department. Article (3) of the Imprisonment and Detention Code¹⁰³ stipulates that:

“The implementation of punishments and detention orders are supervised by a general directorate for prisons that reports to the Ministry of Interior and carries on its jurisdictions in the various regions of Saudi Arabia through bodies belonging to it according to the conditions determined by the Executive Regulation”.

However, supervision stated in the Prison Code by the Directorate General for Prisons does not affect the right recognized by the judiciary to inspect and check prisons to ensure that order implementation does not contradict Islamic law or other applicable rules. Further, the law allows some institutions to check on things such as social institutions and health affairs.

¹⁰¹ *supra* at 94

¹⁰² See Appendix B, Table J24

¹⁰³ Imprisonment and Detention Code issued by the Royal Decree #M/31 dated 21/6/1398 H (1978)

In addition to the above, the Imprisonment and Detention Code applies the latest practices in the field of the bodies that supervise the implementation of freedom-restricting punishments. Article (6) of the said code states that the Minister of Interior passes a resolution to establish a higher council for prisons, whose task is to undertake studies to develop the prison and detention houses in a way that achieves their objectives, makes them more efficient in reforming and rectifying convicted people and that body is a professional scientific body in all aspects of the prison and handling the prisoners. The resolution of the Minister of Interior¹⁰⁴ approves establishing a higher council for prisons based on Article (6) of the Imprisonment and Detention Code.

The counterpart advanced laws have similar agencies called “Higher Council for Penal Management”, which are concerned with evaluation, planning and developing penal implementation affairs comprising professional experts, representatives for the ministries and bodies in charge of implementing the penal punishment”.¹⁰⁵ The CIP Code stipulates a close link between the CIP members and the Penal Institutions and the CIP’s jurisdiction includes, as stated under Article (3/ 1) of CIP Code the control and inspection of such institutions, including the hearing of complaints and checking the legality of imprisonment. This is what has been stipulated under Articles (67) and (68) of CIP Bylaw as shown elsewhere in this research. However, this supervisory and control capacity of the CIP through the Prison and Detention House Supervision Department does not conflict with the functions of the Directorate General for Prisons in implementing the punishments, detention orders and its tasks in managing the functions of the prisons according to its act.

We have seen that the Prisons and Detention Houses Supervision Department of the CIP is considered to be one of its most important departments since it offers guarantees to prisoners and defendants whether they are in prison or detention houses. Members of this department have to visit all detention houses in the region at least twice a week. They have the power to release whomever they believe is innocent. The role of the Directorate General for Prisons is technical and administrative, but the CIP has the power of supervision and surveillance. As we saw in the research in Chapter

¹⁰⁴Resolution #284 on 11.2.1400H (1980)

¹⁰⁵Belal *op. cit.* at 233

Two¹⁰⁶, the transfer of authority from the police to the CIP seems to have worked well in protecting defendants' rights.

4.6 CONCLUSION

This chapter outlined the relationships between the CIP and other criminal justice organizations through a procedural approach, indicating the relevant codes defining those relationships. One significant factor of the relationship with the police was the fact that the CIP has taken control of the investigative side of what was a police function. Apart from the case of *flagrante delicto* – for obvious reasons – the police can be involved in investigation only if delegated by a CIP member. This is undoubtedly to afford the CIP members the benefit of the experience of the police officers. Nevertheless, the CIP remains in charge of the investigation and police, experts or others called in to help ultimately answer to the CIP.

Among factors affecting the relationship between the police and the CIP, speed is viewed as the most important of all. On the whole, research in this area was inconclusive, with medium levels of agreement for the other named items. It seems clear that there is some professional rivalry between the two agencies, which is not entirely surprising, but they seem to work effectively and efficiently together with the CIP as the “senior partner”.

In regard to its relationship with the emirate, the CIP does not have such authority. The administrative governor within the jurisdiction of his region has the right to supervise any criminal investigation and the proper progress of justice. On the other hand, in contrast to the old police system, the CIP does not require the regional governor's permission to search houses. Similarly, the CIP may choose to halt an investigation without referring to the administrative governor. A little of the CIP's role with regard to the judiciary was examined in the previous chapter, but we can add here that the essential role undertaken by the public prosecutor is to present the case to the judge in its entirety. Further, the public prosecutor makes a special plea, which lists the penal statutory and Shari'a provisions that may be applied by the judge to the accused, although the judge is under no obligation to apply these provisions. In addition, the CIP has the power to demand cassation of judgments.

¹⁰⁶ *supra* at 97

Finally, and this was also partly dealt with in the previous chapter, the recent system has vested the CIP the power to supervise the jails, hear the complaints of the prisoners and to release people where there is no valid reason for keeping them in prison. The CIP in this role has strong support amongst other elements of the Saudi criminal justice system and I think that, overall, this chapter has shown that it has become an integral cog in the workings of that system, with a carefully defined role.

CHAPTER FIVE

THE CIP AND DRUG OFFENCES

5.1 INTRODUCTION

The previous chapters have been a discussion of the establishment and role of the CIP, including its relationship with other agencies in the criminal justice system. In this chapter, we are concerned with an examination in more detail of criminal procedures under the CIP. The case study for this exploration will be those related to drug offences in the Kingdom. Drug offences are chosen as they have been amongst the first ones investigated by the CIP in a way to decide to what extent establishment of this authority is feasible and its role played in the Saudi criminal justice system. Obviously, the CIP is not a crime-prevention agency and therefore it will not be expected to have had an effect on crime rates in the country. My intention is merely to show that the procedures of the CIP have made it more effective in dealing with drugs cases.

Drug abuse is one of the most difficult problems facing governments today. But while efforts have been made worldwide to restrict drug trading, distribution, smuggling and use, the problem remains unresolved. In Saudi Arabia, despite strict laws in this conservative society, findings from studies indicate drug abuse among young people whose ages range from 15-30 years.¹ In order to cope with this phenomenon, the government has taken strong measures as regards both punishment and increasing awareness. So while, on the one hand, there are police drug departments in every major city of the country working to stop the spread of this phenomenon, there are, on the other hand, three specialist hospitals in three main cities of the country treating drug addicts. Additionally, there are awareness programmes that are the speciality of the General Presidency for Youth Welfare aiming to protect Saudi youth from the dangers of drugs.² There are strong arguments that drug abuse, in short, is a side effect of the economic change and rapid growth that Saudi Arabia has witnessed since the discovery of oil in the 1950s.³

¹*Al-Jahni M., A study of some of the psychological and sociological factors affecting drug abuse, p.20*
Badar M., The problem of drugs, p.54

²*Albadaiwi M., Youth and Drug Abuse Prevention in Kingdom of Saudi Arabia , p.1*

³*Al-Alyan A., International co-operation to deal with drug trafficking: an assessment and its application to Saudi Arabia ,p.70*

This chapter will examine some of the main factors contributing to drug abuse as seen by various commentators, it will outline the legal position and then move on to a procedural perspective of how the CIP has been involved in dealing with drug offences, contrasting the present system with the pre-1994 one in places and underlining the changes that are supposed to have made the Saudi criminal justice system more effective in fighting exactly this sort of crime.

5.2 THE PROBLEM

Many different drugs are marketed and used in Saudi Arabia, the most important being narcotic pills, cannabis, and khat. Narcotic pills are the most commonly used drugs, and include captagoon, seconal, and mandrax. Captagoon is manufactured in Germany and smuggled to Saudi Arabia through Turkey, Syria, Lebanon and Jordan. Seconal is often manufactured in France and Holland and brought into Saudi Arabia through African countries. Mandrax is manufactured in America and Europe and mostly smuggled through certain African countries. Methoxymethlenedioxy-amphetamine (MDMA) and Lysergic acid diethylamide (LSD) are other types of drugs smuggled into Saudi Arabia from Europe but not on such a large scale. Whilst these pills are normally first manufactured for pharmaceutical purposes they are brought into Saudi Arabia in large quantities for narcotic uses. After narcotic pills, cannabis is the second most smuggled type of drugs in Saudi Arabia. It is smuggled through numerous countries such as Pakistan, Turkey and Lebanon crossing through Jordan and Syria. Finally, khat is the third most commonly smuggled drug traded and used in Saudi Arabia.⁴

Table (1): Drug crime development and related cases in Saudi Arabia

YEAR	NO. OF DRUG CASES	NO. OF ACCUSED	DRUGS QUANTITY IN Kg.	DRUGS QUANTITY IN TABLETS
1993	3917	6089	15219,191	2968487
1994	4353	6923	17410,842	4171484
1995	7303	10328	82986,954	6794493,25
1996	7474	10685	101870,867	4040346
1997	7539	10794	143925,12	10934945
1998	7736	10465	211758,24	3574655
1999	9407	13838	219661,14	7562413
2000	10727	15297	226001,513	7317635

Source: The annual statistical book of the ministry of interior affairs (1993 – 2000)

⁴*Al-Alyan op. cit. at 361*

Table (1) shows the latest figures available for volume of drugs confiscated by the Saudi Security Authorities in the Kingdom. It indicates the size of the problem and gives some idea of how much effort is exerted in the fight against drugs. In the seven years indicated by the table, the number of cases and the number of accused have both risen by more than 150%, while the quantity of drugs seized has more than doubled. These statistics appear to confirm that Saudi Arabia is targeted by international smuggling gangs and that this area is an appropriate one to focus on for an analysis of the different procedures used by the prosecution in the Saudi criminal justice system.

The numbers are huge and lead to the question of how such a situation came to pass. Although it could be argued that the factors which contribute to drug use are beyond quantification, there are some which have been regularly cited and this section will provide an overview. However, it is expedient to reiterate at this point that the role of the CIP is procedural and it has no part in crime prevention. Obviously then, the CIP has no causal relationship to these figures. Its role is merely to improve the processing of crimes.

First, it is worth mentioning that the proximity of Saudi Arabia to the countries of the Golden Crescent, which produce huge quantities of drugs (especially cannabis and opium), made it a transit area in the early period of the national state. Later, with oil wealth, an internal market for drugs developed when Saudi citizens suddenly became very wealthy and had a lot of spending money. Indeed, the importance of economic factors cannot be overstated. Within the last three decades of the twentieth century the country was transformed from one of the poorest in the region to one with a gross national product ranking within the top ten in the world. Economic change and rapid growth has brought about a great increase in the income of Saudi citizens and also an enormous change in living standards – urban areas progressing at the expense of the rural. This resulted in large scale migration from the countryside to cities and large towns. Al-Alyan argues that economic change and financial growth caused rapid social change. Rural migration undermined and challenged the traditional way of life and many social conventions.⁵ As a result, Saudi society underwent a process of radical change, a process which is still continuing. This has reshaped Saudi society

⁵*ibid* at 84

and had many negative effects, one of the most important of which is the misuse of drugs.⁶

Simultaneous with the period of rapid economic growth, the phenomenon of Saudis travelling abroad for business, economic, educational and leisure reasons became very common. This resulted in interaction at different levels with different cultures, traditions and religions. Moreover, as a result of assimilation perhaps, examples of negative behaviour began to spread among Saudi youth, and taking drugs was one of them. For example, there is some evidence that shows travel abroad by young Saudis correlated with an increase in drug use among the same age group. Another study of drug use in the Arab Gulf area shows that 53% of drug users had travelled outside the region.⁷ In addition, Al-Bahooth shows that of the 62% of the Saudis studied and who had travelled to such countries as Egypt, Thailand, India, the Philippines, USA, Britain, Germany, and Morocco, 54.17% had used drugs while away.⁸ It appears therefore that travelling abroad can have negative outcomes and lead to deviant patterns of behaviour. It may be argued that drug use among youth travelling abroad has contributed to the increased spread of drug abuse in Saudi society. Associated with this negative effect is the controversial subject of migrant workers.⁹

Economic development brought a need to attract a workforce from societies of different cultures and conventions to those of the Saudi society. A large proportion of migrant workers were from the "origin" countries, i.e. countries producing organic drugs (i.e., opium and cannabis) such as Afghanistan, Egypt, India, Pakistan, the Philippines, Thailand, and Yemen, or from countries known to have large numbers of drug users, e.g., USA, Britain, France and Germany.¹⁰ Many studies indicate that foreign workers in Saudi Arabia have an impact on the spread of drug use. It's argued, for example, that migration to the Kingdom was one of the factors that appeared to be linked to drug delinquency. Expatriates brought with them their cultures, traditions and lifestyles. Official statistics of drug prevention in Saudi Arabia show that many expatriates became involved in smuggling and promoting drugs.¹¹ Furthermore, there

⁶Al-Saud S., *Drug Abuse in some of the Gulf Countries: An Exploratory Study*, p.61

⁷Al-Burak M., *Social Change and Drug Related Crime*, p.32

⁸Al-Bahooth A., *Drug offence in the Kingdom of Saudi Arabia: A Study in Cultural Geography*, p.47

⁹Albadaiwi op. cit. at 16

¹⁰Al-Bahooth op. cit. at 63

¹¹Taaleb H., "Treating Drug Addicts", *Arabic Magazine for Security Studies*, p.177

was a correlation between the distribution of foreign workers and the incidence of drug-related offences. The following is an official bulletin by the Ministry of the Interior:

“A large percentage of suspects [in drug involvement] are non-Saudis, due to the increase of manpower in the Kingdom and the variety of categories and nationalities, which play a big role in selling, smuggling, and using of these kinds of illegal substances. The percentage of non-Saudi suspects is 43.5% of the total number of suspects in drug-related cases according to the prison statistics.”¹²

Al-Saud relates the new problem directly to the immigration of foreign workers as well as to the massive developmental changes which took place in Saudi Arabia at this time. He suggests that many foreign workers involved in Saudi modernisation were young Americans/Europeans involved in professional or technical work. This category of foreign worker had the disposable income, and presumably the access in their own country, to obtain drugs. Poor migrant workers from other countries in the Middle East and from the East Asia might also represent a source of access to drugs. They might introduce drug usage to a lower socio-economic class within Saudi Arabia more often than the American or European workers.¹³

Closely related to this line of argument is one concerning non-Saudi pilgrimages to holy sites, which Saudi Arabia cannot prevent any Muslim from undergoing.¹⁴ During the annual festival of Hajj, some two million pilgrims from the Islamic world converge on the holy cities. Throughout the year also, many come into the Kingdom in order to perform the lesser pilgrimage, the Umrah. It is believed that the huge numbers of pilgrims also significantly influence the spread of drug delinquency although there is no accurate estimate of the number of those pilgrims perceived to be involved in the distribution of illegal drugs. The government of Saudi Arabia became aware of this and in 1980 the Cabinet Council in Saudi Arabia stated that large amounts of narcotic pills had been detected amongst African pilgrims.¹⁵ Nevertheless, although there is a perceived adverse influence of foreign pilgrims, it has to be said that there has been little or no hard evidence to support this view as Mubarak (1989)

¹² Ministry of Interior, *The Ninth Statistical handbook*, p.48

¹³ Al-Saud *op. cit.* at 77

¹⁴ Al Saif F., *Drug Smuggling Crime*, p.11

¹⁵ Menna (1995); 71 citing Cabinet Council Decree, No. 172 of 23/6/1400 (1980), p.1

clearly showed in his study of Saudi drug control policy. In fact, it might be argued that Saudi Arabia suffers less from this problem because it applies strict Islamic Shari'a Law for those convicted of drug offences, especially smuggling and dealing. The Senior Scholars Commission (Highest Religious CIP in Saudi Arabia) decided to impose the death penalty for convicted drug smugglers, but this has not clearly resulted in a significant reduction in drug smuggling to Saudi Arabia.¹⁶

As is the case in many Islamic societies, among the young in particular there is some misunderstanding about Islamic prohibition of drug use. This has been well illustrated by studies of the attitudes among Egyptian Muslim drug-users, where the Islamic tradition differs. The position in Saudi Arabia is that of the Hanbali tradition of Islamic law; any substance that causes intoxication or affects the ability to think rationally is *haram*, i.e., forbidden. Although there is no substantive evidence to support the supposition in the Egyptian studies, this difference of interpretation of Islamic law is a potential source of encouragement for drug misuse.¹⁷ We shall look more at the Islamic position on this subject in the next section.

In addition to the above-mentioned factors, there were some internal factors that helped the problem of drugs to emerge and spread in Saudi Arabia. With the establishment of central state governmental authority, many changes took place in the tribal structure. The heads of the tribes lost their authority, financial and legal control, and became subordinate to the Princes of the Royal family of Saud, who govern the provinces in the name of the State. The migratory process of people to urban areas for work or education resulted in changes in the tribal value system. Young men who migrated to the cities in search of employment were most affected by the loosening of social and cultural constraints; and social bonds weakened considerably. Migrants tended to adopt new urban social customs many of which would have been forbidden in tribal society, e.g., drinking and smoking, listening to Western music and dancing in mixed company.¹⁸ It is stressed that "bad" friends appeared to be the primary factor causing the spread of drug use among Saudi youths.¹⁹ The unproductive use of time is

¹⁶*Al Saif op. cit. at 12*

¹⁷*Albadaiwi op. cit. at 118*

¹⁸*ibid*

¹⁹*Al-Bahooth op. cit. at 74*

Al-Asmary A., A Field Study of Drug Addicts and their treatment Methods in the Kingdom of Saudi Arabia, p.51

also considered a causal factor in the spread of drug use within Saudi society.²⁰ It is argued that in more traditional social environments, the same youths would be in the company of older, more mature adults who would guide and informally supervise them and prevent them from deviating from the accepted social norms.²¹

There has been criticism of Saudi Arabia, as with other Islamic countries, for being very slow in recognising the seriousness and extent of the drug problem.²² This failure arose for several reasons but was often based on an erroneous belief in the power of public morality to exercise proper restraint in an Islamic society. Government authorities found it extremely difficult to admit publicly that the social order was flawed by the presence of a drug sub-culture. Although drug use was increasing rapidly from the early 1970s onwards, government efforts to deal with it were not adequate, and it was not until the mid 1980s that the government began to address the problem seriously and publicly. Al-Beshr argued that the slowness in recognising and dealing with the drug problem in most of the Islamic countries including Saudi Arabia gave time for the drug culture to develop fully and pervade the entire society.²³

Now that we have seen some of the factors which contribute to drug abuse in Saudi Arabia, we shall go on to look at how intoxication is dealt with under Islamic Law before seeing how the problem has been tackled in the Saudi statute books.

5.3 ISLAM AND DRUGS

In this section we shall see the views of Islamic jurists on drugs and also on intoxication as a cause for further crimes. This will tie in some of the information from the first chapter to the focus of this chapters' procedural analysis of the CIP's work. Following that, we shall look at the practical application of Islamic Law in Saudi Arabia regarding drugs crimes.

Islam came to Arabia at a time when the great majority of Arabs consumed wine. It's noted that during the lifetime of Prophet Mohammed (i.e., between 570 and 632 AD),

²⁰ *ibid*

²¹ *Albadaiwi op. cit. at 120*

²² *ibid*

²³ *Al-Beshr M., An Analytical and Descriptive Study of a Communication Company against Drugs in Saudi Arabia, p.27*

the use of hashish was unknown.²⁴ It seems that the Arabs did not become familiar with the intoxicating properties of hashish until the 9th century, i.e., after the establishment of the Abassid Caliphate in Bagdad (A.D. 750), when Arab scholars translated the Greek texts of Dioscorides [Asia Minor, first century] and Galen, [A.D. 130 -201] and only then became familiar with the medical properties of cannabis. However, hashish was first consumed by members of religious Persian and Iraqi sects located on the eastern periphery of the Islamic empire, very close to the region of natural origin of the plant.²⁵

Intoxication is forbidden in Islam. Because of the harm it can cause, even the slightest amount of any intoxicating substance is not allowed. In this context Allah says:

"They question thee concerning wine and gambling. Say: "In them is great and some profit, for men; but the sin is greater than the profit."²⁶

Allah also says: *"O ye who believe! Intoxication and gambling, sacrificing to stones, and (divination by) arrows, are an abomination, -of Satan's handiwork: Eschew such (abomination), that ye may prosper." "Satan's plan is (but) to excite enmity and hatred between you, with intoxication and gambling."²⁷*

Abd Allah states: "Wine: literally understood to mean the fermented juice of the grape; applied by analogy to all fermented liquor, and by further analogy to any intoxicating liquor or drug. There may possibly be some benefit in it, but the harm is greater than the benefit, especially if we look at it from a social as well as an individual point of view".²⁸ Drugs such as marijuana, cocaine, opium, and the like are definitely included in the prohibited category of wine.²⁹ The Muslim jurists were unanimous in prohibiting drugs. Foremost among them was Ibn Taymiyyah, who clearly states that the Hadd should be imposed for smoking hashish.³⁰ As we shall see below, however, that opinion does not hold sway in Saudi Arabia.

Regarding the question of what the punishment is for somebody who commits murder as a result of intoxication, there are some jurists (e.g. Ibn Hazm, Abu Yusuf and Zafar among the Hanafis, al-Mazini from the Shafi'i Madhhab, and Ibn al-Qayyim) who

²⁴ Nahas G. , *Hashish in Islam: 9th – 18th Century* , *Bulletin of New York Academy of Medicine* , p.814

²⁵ *Albadaiwi op. cit. at 106*

²⁶ *Qur'an* , 2 verses 219

²⁷ *Qur'an* , 5 verses 90

²⁸ *Abd Allah Y., Translation of the Holy Quran, p.93*

²⁹ *Al-Qaradawi Y., The Lawful and Prohibited in Islam, p.6*

³⁰ *ibid*

believe that intoxication is considered a defence. This view is based on the ground that the criminal was not in control of his actions when he committed the crime and was also unaware of the nature of the act. Accordingly, there is no Qisas against the killer, regardless of the substance that intoxicated him and regardless of whether the killer was coerced into intoxication or drank voluntarily. All that is examined is the intoxication itself, which caused the absence of *mens rea* at the time when the crime was committed.³¹

Thus, in such a case, the intoxicated person is subject to eighty lashes as a Hadd penalty if he took the intoxicating substance voluntarily. In cases of killing, blood-money is due as compensation to the victim's family on the basis of the private interest.³² As Odah says: "This view has been abandoned by the majority of jurists."³³

The other opinion, which has been accepted by the majority of jurists in the four schools, holds that intoxication is not considered as a defence in cases where the person takes the intoxicating substance voluntarily. Therefore, the intoxicated person will be held fully liable for his criminal act and the imposition of the death penalty (as a Qisas) for murder will, therefore, still be due because the inability to choose or to discriminate between good and evil in such cases has been caused by the criminal himself in a way that is prohibited by the Shari'a. They add that the responsibility of the voluntarily intoxicated criminal should not extend to cases where, for instance, the criminal does not know that it is an intoxicating substance, takes it by mistake, for medical reasons, or is coerced into taking it. These persons are exempted from being held responsible during the period of intoxication, but, as mentioned heretofore, in crimes of killing, blood-money is still due on grounds of private interest.³⁴

³¹ *Ibn Qudamah M., al-Mughni*, p.307

Al-Shirazi A., Al-Muhadhab, p.82

³² *Abu Zayd B., Al-Hudud and Taz'air*, pp. 251-342

³³ *Odah A., Criminal Legislation in Islam*, p.583

³⁴ *Ibn Qudamah op. cit.* at 305

Al-Shirazi op. cit. at 80

Abdul Majid M., Criminal Legislation, p.294

5.4 DRUGS AND SAUDI LAW

The Saudi legal system reflects the attitudes to intoxication in Islamic Law that we saw in the previous section. It expressly forbids alcoholic beverages or any other intoxicating substances. Accordingly, alcohol is prohibited in Saudi Arabia, where it is by itself a crime of Hudud, whether it causes intoxication or not. Other intoxicating drugs such as hashish are also prohibited but are considered Ta'azir crimes.³⁵ This point is a good example of how Muslim jurists vary in their interpretations of Shari'a. Some argue that although drugs are prohibited in Islam, drugs punishments are not specifically mentioned in the Quran or Sunna, so drug crimes would be punished as Ta'azir. On other hand, others believe, and Ibn Taymiyyah is one of them as we saw in the previous section above, that the effect of drugs (i.e. hashish) is similar to wine's effect and that it should therefore be treated as a Hadd crime. In Saudi, drugs offences are Ta'azir crimes and punished as Ta'azir offences. The penalty of Ta'azir is left to the discretion of the judge, but in any case it is not less than the penalty for alcohol, which is eighty lashes.³⁶

Drug-trading was prohibited in the Kingdom of Saudi Arabia in 1933.³⁷ Later, laws concerning punishment were modified to be fifteen years imprisonment, confiscation of the smuggled material and a 20,000 Saudi Riyal fine. In addition, the culprit is subject to another punishment. He is forbidden from travelling abroad if he is Saudi, and is deported from the Kingdom if he is a foreigner, and his details are distributed to airports, harbours and borders in order to bar him from re-entering the kingdom. On 10/07/1407H (1985) another Decree (No. 41/B/9666) gave authority to the Ministry of Justice and the Ministry of the Interior to work according to the unanimous juristic opinions of the Council of Senior Scholars, the religious body.

1. A drug-trafficker is liable to beheading due to the great damage which drug smuggling causes to the smuggler himself and society as a whole. People who buy drugs from him or who deal in drugs are treated in the same way.

³⁵ Ministry of Interior, *Criminal Procedures*, pp. 156-171

³⁶ Ibn Jubeir M. , *The Definition of Crime*, p.44

³⁷ Article No. (3318) of 09/03/1353 H (1933)

2. With regards to drug dealers, the Council of Senior Scholars³⁸ stressed that for a first offence, a drug dealer suffers Ta'azir (i.e. at the discretion of the authorities) by imprisonment, lashing or fining or all together, depending on the judicial view. If there is a recurrence, the Ta'azir enables other punishments to protect society from the offender's deeds. So, this may include the sentence of death.³⁹

In Saudi Arabia, the penalties for crimes of killing committed by an intoxicated person depend on which of the two possible types of intoxication was involved. The first is where the criminal voluntarily consumes the prohibited intoxicating substance for pleasure. In such a case, he will be held criminally responsible. This is to protect the interests of society. Similarly, when a person commits a crime while under the influence of narcotics, he is legally responsible. In fact, addiction to narcotics is considered to be worse than alcoholism.⁴⁰ However, the distinction between a person who voluntarily takes an alcoholic beverage or narcotic drug for medical reasons, and a person who voluntarily takes such a substance for pleasure is considered at the trial. Thus, on medical grounds, the former is exempted from criminal responsibility, as opposed to the latter, who is held criminally responsible. In this context, the medical reason will not annul the civil liability which gives the victim's family the right of compensation as Diya.

The second type considered is involuntary intoxication. Intoxication is considered involuntary if it is due to coercion, necessity, or even mistake. Thus, if before committing a crime of killing a person was, for instance, compelled to drink alcohol or he took it by mistake, used the substance for medical treatment, or for any other necessity, he is exempted from criminal responsibility on the ground that he committed the crime without knowledge.⁴¹ In Saudi Arabia, killing in such circumstances may be considered under the rules of manslaughter. Hence, justifiable intoxication, which rules out the possibility of intention or recklessness, may be given in evidence to prove a killing by mistake.

³⁸Decree #85 of 11/11/1401H (1981)

³⁹Albadaiwi *op. cit.* at 123

⁴⁰Ibn Taymiyyah A. , *Al-Siyasah al-Shar'iyah*, p.54

⁴¹ Ibn Qudamah *op. cit.* at 306
Al-Shirazi *op. cit.* at 81

Finally, from the above observations, it can be concluded that intoxication is considered as a defence in cases where it is caused by a lawful act and it is not considered as a defence where it was taken illegally. These defences are considered at the trial in order to annul criminal responsibility in cases when involuntary drunkenness negates *mens rea*, but not civil responsibility.

This section illustrated that Saudi Arabia takes an extremely harsh line against the dealing of drugs, which is a capital offence. Furthermore, the punishment for intoxication follows Islamic Law. The Kingdom is also in line with the majority of Islamic jurists, who do not consider voluntary intoxication to be a defence in crimes committed whilst under the influence. This section also contextualised some of the analysis of Islamic Law and concepts of crime in Islam that we saw in Chapter One.⁴²

Punishments are harsh as we saw above, but initiatives against drug abuse include international co-operation, legislation, police and other enforcement agencies, government publicity, educational efforts, and the development of treatment programmes and re-socialisation efforts. Of the several government agencies which are involved in enforcing these laws, it is the effectiveness of the CIP which we are concerned with and progress to now.

5.5 PROCEDURES WITH DRUG OFFENCES

The next part of the chapter is designed to illuminate the workings of the Saudi criminal justice system more holistically through an examination of drug offences procedures. The focus on drug offences is expected best to illustrate and contrast the pre-CIP system in Saudi Arabia (established under General Security Department system) and the contemporary one and thereby bring out the changes the system has undergone. Where appropriate, I will also be contrasting the CIP's operational procedures with the CPS in order to further underline some of the points that have been made. Hopefully, this look at the application of legal mechanisms will prove a useful balance to the earlier chapters.

First, though, it is worth pointing to the judges' opinions on the matter of the performance of the CIP in this area. Three quarters believe there is a significant difference in the investigation procedures of drug offences as carried out under the

⁴² *supra* at 13

CIP, with half of the total sample saying they were more accurate and concentrated, which reflects well on the 1994 changes.⁴³ It is some of those procedures, organised into ten sections, that we will look at now. Although not comprehensive, these sections should give an indication of a basic methodology for approaching procedural analysis. Within each, there will be a comparison with the pre-CIP system and analysis from a procedural perspective of how the system has changed since the old General Security Law, which delegated power of prosecution to the police. The section concerned will normally round off with comments on differences (or occasionally their absence).

5.5.1 Evidence and disposal

Evidence finding undergoes three main stages. The first is receiving reports and complaints about crimes (Article (8) of CIP Bylaw and Article (27) of CPC)), the second is investigating evidence and finding facts on the reported case and the third is initiating a record of evidence procedures.

Generally, some drug offences are those for which investigation is made before the court. Therefore, many laws permit the filing of a criminal case for some crimes immediately without investigation.⁴⁴

*“Primary investigation is not a condition for trial validity except for serious crimes, and thereupon the suit may be lodged with the court in view of evidence”.*⁴⁵

The stoppage bylaws distinguish in Article (9) between major and minor crimes where the bylaws have indicated that minor crimes should be referred immediately to the court provided evidence are established against the detained suspect. In the old system police used to have the authority to determine whether or not to lodge a criminal case in minor crimes. We know that police and anti-drug department both worked under the General Security System. if there was a major drug case the police would transfer it to the anti-drug department for completion of the necessary investigations, but if it was a minor case the police would perform the primary investigation and take the case to the court based on evidentiary findings. Whereas in the new system, any case must be investigated and prosecuted by the CIP. But in

⁴³See Appendix B, Table J7

⁴⁴Al Gharib M. *Procedure code in Saudi Arabia*, p.111

⁴⁵Al Faiez I., *Disposing the record of evidence in CIP*, p.54

minor cases when there is no need for full investigation, the police would do the primary investigation but they must send the case file to the CIP prosecution department.⁴⁶

The safe-keeping of criminal case in police system is completed administratively through the regional governor and not through judicial procedure as applicable in most countries. In Saudi Arabia the administrative affairs in each region are presided over by a Governor appointed by the King, and those Regional Governors report to the Minister of the Interior, who delegates some of his powers to them. The safe-keeping of cases may be due to the expiration of a criminal action or a culprit's death, forgiveness or waiver (i.e. in Qissas offences), or for subjective causes such as insufficient supporting evidence or invalidity.⁴⁷ Drug offences are among those that cannot be waived nor compromised since it is a crime against the public interest that affects the community.⁴⁸

The stoppage bylaws did not specify the causes for case safe-keeping but stated in Article (8) thereof that if there are no evidence against a detained person indicating he committed a specific crime, the matter is to be referred to the Regional Governor to approve the safe-keeping or direct as necessary. The effects of reservation in this context include the fact that it is not binding and a safe-keeping order may be appealed. Safe-keeping orders do not prevent the defendant from activating the private lawsuit, and the safe-keeping order has no evidence to be considered by the magistrates.

Article (180) of the CIP bylaw states that disposal of the record of evidence may take one of two approaches. The first is disposal through investigation: Article (15) of the CIP Bylaw and Article (165) of CPC state that the investigator has to investigate crimes specified in the said article where the case will not be accepted by the court unless such investigation is carried out. Thereupon, the investigator has no right to dispose of the relative records of evidence unless they themselves have investigated them. The second method of disposal is through safe-keeping. The CIP Bylaw did not provide specific stipulations for maintaining the evidence records but Articles (44-47)

⁴⁶*ibid*

⁴⁷*infra at 240*

⁴⁸*Al Gharib op. cit. at 114*

stipulate the safe-keeping of the investigation records and there is no objection to considering those articles in the field of evidence. Article (45) states causes for safe-keeping that could be classified as follows:-

1. Legal Considerations

- Cases in which the incident does not constitute a crime.
- Existence of permission or liability impediment or an excuse exempting punishment.
- Abatement of the lawsuit due to the defendant's death or because of a general amnesty.

2. Subjective considerations

- Incident invalidity
- Insufficient evidence
- The offender is unknown.

3. Insignificant Cause

Article (45) assigns the safe-keeping order to the Minister of Interior or his deputy. In this context, the investigator shall only execute a memorandum to raise the matter to the Minister of Interior. Therefore, the CIP member has to issue a safe-keeping order stating the reason which must be one of those mentioned above. He must, according to CIP Bylaw, inform the private and public prosecutor of his safe-keeping order too. If the safe-keeping order is based on a violation or mistake in law application, Article (48) has granted the Public Prosecutor the right of objection to the safe-keeping order within five days of its issue. Should the CIP's vice president be convinced by the Public Prosecutor's objection, he has the right to repeal the safe-keeping order, if new evidence is found and may nullify the cause upon which the safe-keeping order was based. Articles (44-46) of the CIP Bylaw and Article (124) of CPC state the phases of repealing the safe-keeping order as follows:

The impacts of safe-keeping will result in the following:

- 1) The criminal case can be lodged without any effect on the civil lawsuit, which means the civil lawsuit can take place even when a criminal case has been dropped.
- 2) The release of the suspect unless he is detained for another liability.

- 3) The disposal of the seized items, if any, either by returning them to their owners, if lawful funds, or otherwise to confiscate them. Confiscation in this regard is a measure and not a penalty.
- 4) Instruction of the security bodies to resume the search and investigation in order to identify the actual criminal.
- 5) Informing the public and private prosecutors of the safe-keeping order.

The jurisdictions of the anti-drug officers show that they are based on collecting evidence and that they have the right to arrest and search, as two exceptional procedures in case of *flagrante delicto*, and that they are only required to refer the record of evidence to the anti-drug prosecutor in the CIP for completion of the investigation.

In conclusion, it is fair to say that, in the CIP Code, several weak points and shortcomings that existed previously in the General Security code and the stoppage bylaws have been rectified and the code provisions have come in line with the legislation applied in other countries such as the Arab Republic of Egypt. It is also clear that much similarity exists between the Saudi and English systems, when looking at the by-laws of the CIP and PACE in regard to the procedures of search and arrest.

5.5.2 Primary investigation

The criminal procedures for drug offences start with the collection of evidence (called "Initial Inspection"), which is followed by the primary investigation and ends with the verdict execution. The primary investigation is considered the most important stage in proving the charge or discharging the suspect. Many of the world's countries have assigned the evidence-finding stage to law officers, while the second stage (investigation) is undertaken by well-qualified professionals. In addition, the criminal process will be legally started with these procedures.⁴⁹ In the past, the police, then later anti-drug officers, were authorized to collect the evidence and conduct investigations in drug cases before the establishment of the CIP, because the primary investigation is a pure judicial jurisdiction as is so in most countries. Saudi Law has granted investigation authority to the CIP. The primary investigation is a group of

⁴⁹ *Al Gharib op. cit. at 15*

procedures assumed by the investigation body to review the evidence of the crime, its perpetrator and preparing the criminal case for trial and verdict. It differs from the evidentiary finding procedures that come under its scope in several respects. First, is the capacity of the person undertaking the procedures and secondly is the nature of the procedure itself. If the procedure affects personal liberty or house privacy, then it is an investigative procedure regardless of the capacity of the person who conducts it.⁵⁰

Under the pre-CIP system, Article (89) of the General Security Law issued in 1976 assigned the justice division the power to investigate all crimes including anti-drug cases. Also, Article (125) granted power of investigation to some General Security men. A circular was issued in 1973 granting power of investigation to the General Security Commander, police directors, assistants, criminal divisions' managers and officers seen as capable and efficient by the police director. In 1960 came the establishment of the first professional anti-drug body as a division of public intelligence, which converted in 1975 to become the Central General Department reporting directly to the General Security Director. From then until the CIP took over the responsibility of investigation of drug cases in 1996, in the major cities of Saudi Arabia covering Riyadh, Dammam and Jeddah, the Anti-Drugs Department was the appropriate body in charge of collecting evidence, investigation and prosecution in drug cases.

Due to the serious effects of drugs on individuals and communities, most of the world's countries have established special agencies for fighting drug smuggling, dealing and addiction, and special police forces and divisions for drug control and fighting have been formed. For example, in the Arab Republic of Egypt, a Special Department and police force called the Anti-Drugs Department has been created, with its headquarters in Cairo and offices in districts.⁵¹

As stated earlier, any security body in Saudi Arabia is duly authorized to fight drugs.

“After seizure, the lawsuit is forwarded to the anti-drug headquarters branch located in the area in which the perpetrator was caught, to interrogate him. Therefore, the

⁵⁰Al Sayed N., *Lectures in CIP System*, p.41

⁵¹Al Amrous A., *Drugs, effects, types, crimes and penalties*, p.69

anti-drug headquarters branches are the appropriate authorities for anti-drug lawsuits."⁵²

In Egypt, Collecting Evidence procedures are stated in Articles 85-125 of the Egyptian Criminal Procedures Code , and they are manifested as; seconding experts (Articles 85-89), moving, inspecting and seizing items related to the crime, (Articles 90-100), hearing witnesses, (Article-110-112), interrogation and confrontation. (Article 123-125) Collecting evidence procedures represents the investigation in its limited meaning,⁵³ as it aims at searching for the truth about confirming the conviction. Worthy mentioned is that these procedures are not stated for listing purposes.

Thus, the legislator does not oblige the investigator to use them. However, he can use any means useful for the confirmation, as long as no violation for individuals' freedom or the sanctity of their homes have been consequent.⁵⁴ Hence, it permits some investigation procedures, although not issued by the legislator as the legal display, to identify the suspects through checking and confrontation of fingerprints.

These procedures come under the general rules of investigation, as long as the law does not systemize them.⁵⁵ Originally the investigator is the person who determines adapting certain procedures in searching for the evidence, but any party of the allegation is allowed to ask for it, from his point of view or interest adapting certain procedures. The investigator has the estimating authority to approve or disapprove the request⁵⁶. The legislator didn't oblige the investigator to a certain sequence when taking these procedures, but he left this to him to arrange it in the way he sees suitable for the nature and the specific conditions of each crime⁵⁷ he have the right to start the investigation with witnesses hearing or with observation if there is a fear for its result from passing of time or he can start with the inspection if he feared for the quick

⁵² Al Nasr A., *Drugs and Penalty in Islamic Shari'a and Law* , p.87

⁵³ Abo Elroose A., *Criminal Investigation, its Disposal and Criminal Evidences*, p. 17

⁵⁴ Abd Elhameed A., *The General Prosecution and its Role in the Phase Prior to Trial*, p.267

⁵⁵ Ramadan O., *Principles of Criminal Procedures Code* , p. 371

Obied op. cit. at 349

⁵⁶ Hussni M., *Explanation of penal procedures code* ,531

⁵⁷ Cassation 26/12/1961: Group of cassation judgments, S. 12, no. 213, p. 1010

hiding of the evidences of the crime⁵⁸. Or with deputizing the experts or questioning the suspect if he had confessed and there is a fear that he will change his confession. Also the law didn't oblige the investigator to perform all of the investigation procedures that it stated, but it permitted him to use what he sees necessary to reveal the truth and to leave the unworthy procedures. The law didn't except but cross-examining of the suspect as it make it due to the investigator and a right to the suspect in some times. If the investigation is free from the interrogation is a shortage in it.⁵⁹ And if the legislator had given the investigator an estimating authority to chose the procedures that he sees essential to be followed to search for the truth, but it is restricted with the principle of legality of the procedure. There fore, any forbidden procedure in the law, isn't permitted to the investigator to embark it, even if it leads to revealing the truth otherwise the procedure is nullified. Consequently, any evidence resulting from any procedure that includes physical harm or psychological torture or any threat are null according to Article 42 of Egypt Perpetual Constitution for 1970.

Originally, the investigator should personally conduct the investigation procedures. Yet, due to his burden of plenty tasks, lack of time, and the necessity of conducting the investigation on time; secondment is permitted as a necessity for the progress of the investigation. Thus, the legislator permits seconding an investigation officer for a task or more in accordance with Article 70, 200 of the Egyptian Criminal Procedures Code . However, the investigation officer is not permitted to investigate the whole case. It is also illegal to second the suspect for interrogating, as interrogation is the most dangerous procedure, as it may push the suspect for an early confession of the crime. Thus the legislator has surrounded it by guarantees that are only available for the interrogation authority. As a result of prohibiting secondment in investigation, secondment in confrontation is also prohibited, for their resemblance in characteristics and judgment. Also, temporary detention injunction is banned, as for the detention injunction to be valid, interrogating the suspect should precede it; the procedure in which law has banned secondment.⁶⁰

⁵⁸ Ramadan *op. cit.* at 372

⁵⁹ *ibid*

⁶⁰ Abd Elhameed *op. cit.* at 266

In Saudi Arabia, Articles (11-14) and (18) of CIP Bylaw and (45-55,79-82) of CPC state that the CIP is the principal investigative body for all crimes. Investigation and prosecution in the presence of the judicial authorities are subject to the rules laid down in the law of the General Security Department, and since the issues of investigation and prosecution have become very diversified and complicated, it was seen as necessary to incorporate a professional body for public prosecution and investigation reporting to the Ministry of Interior (Minister of Interior in person). Article (18) of the CIP Bylaw stipulates that all investigation procedures must be in writing, and Article (11/2) of the same code and Article (47) of CPC stipulate that the investigation minutes are to be written by an indictment law clerk. Article (11/8) of the same code indicates that if the law clerk was not used, the report will be a mere evidentiary finding record. Article (11/3) of the same code stipulates that each page in the record is to be signed, at bottom, by the investigator, clerk and the interrogated person. The intent of these procedures is to ensure a permanent record of the investigation, delegate work clearly to law clerk and investigator and prevent forgery within reports.⁶¹

The primary investigation is originally based on openness (publicity) for adversaries (Public Prosecutor – accused and lawyer) and privacy for the non-adversaries. This is intended to prevent public pressure on the investigator and to guarantee impartiality and fairness. Such openness and privacy is a guarantee for the accused, enabling him to prepare his defence and abide by his position as stated in the case. The General Security Law stipulated the presence of adversaries during the investigation and prohibited them from divulging the investigation procedures and entailing results. As a common practice, nobody accompanied the suspect while investigating him for drug offences. The principle of adversary attendance is not absolute and the law stipulated the conduct of the investigation in absence of adversaries, when necessary.⁶²

Investigation procedures are to be carried out as stipulated by the laws and legislation (to be private for the party and open for the adversaries). The principal rule is to conduct investigation in the presence of the suspect and to confront him, unless it is impossible. Article (19) of the CIP Bylaw has given the investigator the right to allow

⁶¹Articles 11,14,18 of CIP Bylaw

⁶²General Security Department system issued by the Royal Wish No. 10/8/2817/28/691 communicated under the High Order (359) on 29.3.1369 H (1949)

the suspect to seek the assistance of an attorney. However, there are some comments on this article:

1. Seeking an attorney's assistance is not a right granted to the suspect but to the investigator who has the right to apply or disregard it.
2. The attorney's role is negative, since he is not allowed to interfere in the investigation proceedings without the investigator's permission.
3. If the attorney is permitted and the suspect is insolvent, then the investigator is not obliged to mandate an attorney at the state's expense.

It is obvious that the CIP system was established to develop investigation and prosecution work, and to raise the educational levels of the officers in charge of this body.⁶³ In an effort to prevent any abuse, laws and legislation have provided a set of guarantees that confirm justice to be the sole target for whoever conducts the investigation procedures. Mahamoud Hussni has specified five conditions as security for primary investigations: secrecy; openness to adversaries and attorneys; proper minutes; completion of the investigation; the integrity and impartiality of the investigator.⁶⁴

With regard to the previous conditions, it can be said that the General Security by-law did not contain any articles regarding the independence of the primary investigation authority in a way that guarantees care of the indictment evidence and realizing the suspect's defence simultaneously, nor anything about his impartiality. As we saw in some detail in Chapter Three⁶⁵, the CIP have considerable independence and this is one of the facts that indicates it is a substantial improvement on the general security system. The CIP Bylaw also states the guarantees that are beneficial for those investigated according to CIP rules.⁶⁶

⁶³*Al Saif op. cit. at 189*

⁶⁴*Hussni op. cit. at 617*

⁶⁵*supra at 126*

⁶⁶*Both English and Saudi systems deal with juveniles in a similar fashion concerning the guarantees of the defendants and implementing the international conventions regarding this issue.*

5.5.2.1 Authority in charge of evidentiary findings on drug offences

Drug offences are among those that require the availability of specific authorities to detect them and collect substantial evidence once a crime is committed. The subject of judicial control has been intensely debated and discussed in many international conferences, where several recommendations were made, to the effect that judicial police officers should carry out the investigation and evidence finding duties since these procedures have serious implications for personal liberty. Consequently the legislators have stipulated the need to comply with the legal rules.⁶⁷

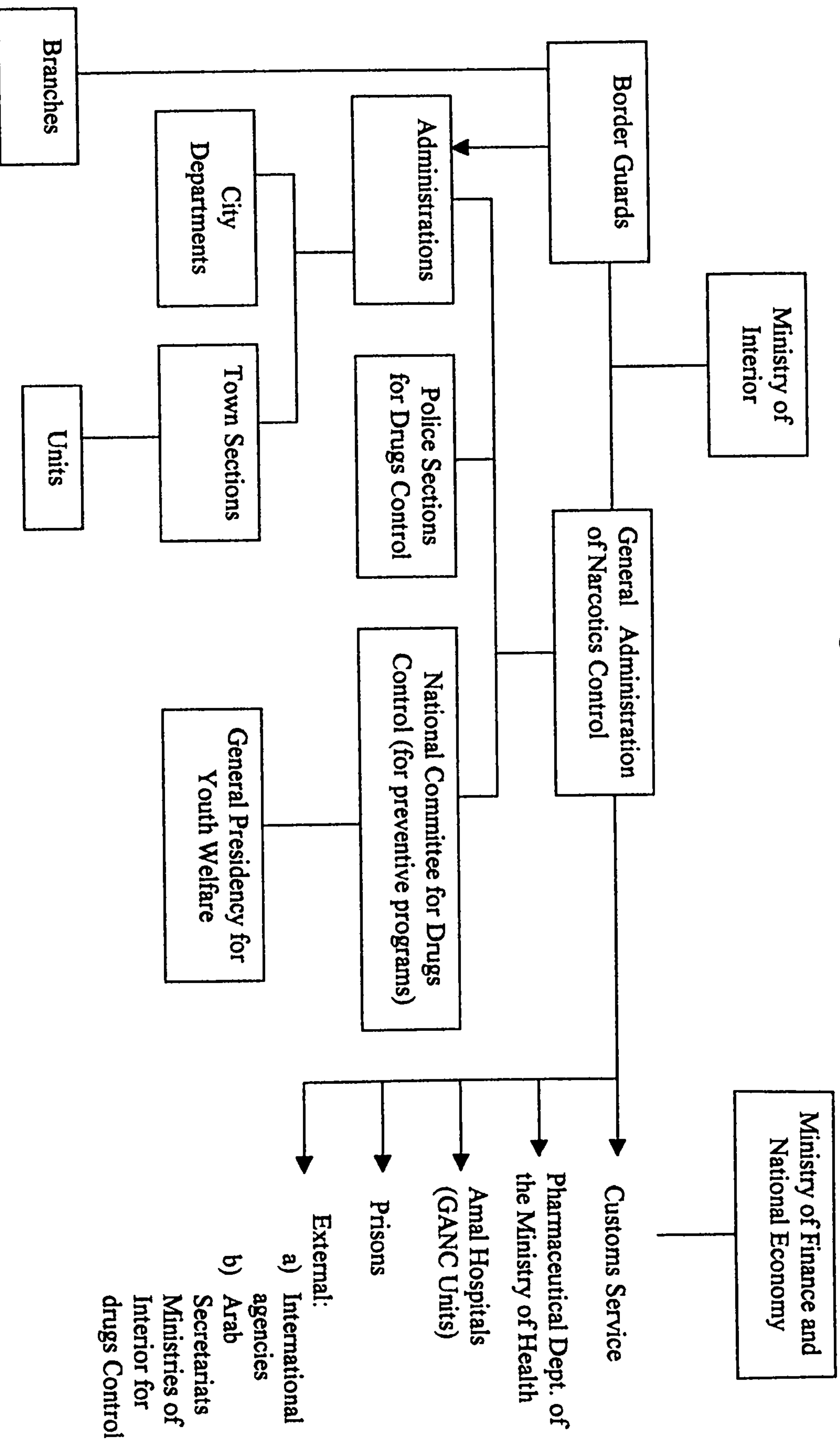
In Saudi Arabia there are several authorities in charge of investigation, evidentiary fact-finding and seizure in drug offences (see fig. 4). The appropriate authority in charge of seizure, evidentiary finding and investigation of drug offences before the establishment of the CIP was the General Directorate for the Anti-Drugs Department, reporting to the General Security Department, through its branches spread kingdom-wide. This totalled 52 departments, divisions, sections and units according to the following:

- Anti-drugs Department in each major city.
- Anti-drugs Division in each non-major city.
- Anti-drugs Section in each average city.
- Anti-drugs Unit in each small town⁶⁸

⁶⁷*Hussni op. cit. at 618*

⁶⁸*Circular of Ministry of Interior No. 2/S/4602 dated 23.6.1392H (1972)*

Anti-Drugs Enforcement in Saudi Arabia



Although the CIP was delegated responsibility for drug offence investigation in three major cities on its creation (Riyadh, Dammam, Jeddah), the Anti-Drugs Departments reserved the power of seizure and evidentiary finding, and handing over the suspect and relative evidence to the CIP branch in the region. Article (25) of CPC has specified the appropriate police officers in charge of evidentiary findings. The governors of regions, each in his jurisdiction, supervise the criminal seizure activities and smooth progress of justice while the police officers carry out their duties.

It is worth noting that the law control officers mentioned are subject to restrictions of qualitative jurisdiction (crime type) and place of jurisdiction. However, the police officer's capacity in this regard is associated with administrative control and judicial investigation. The former authorizes him to initiate crime prevention procedures, while the latter is triggered by the occurrence of a crime and authorizes him to take procedures for detecting crime ambiguities and identifying its perpetrator. Judicial investigation is different from administrative control. Duties determined by the police to achieve stability and security, normally called "prevention", where the police take several measures to prevent crime through applying their bylaws and orders is seen as administrative control. While the police judicial function is to identify the committed crimes and involved criminals, it is normally called the "corrective" stage, i.e. it starts from the functional end point of the administrative police.⁶⁹

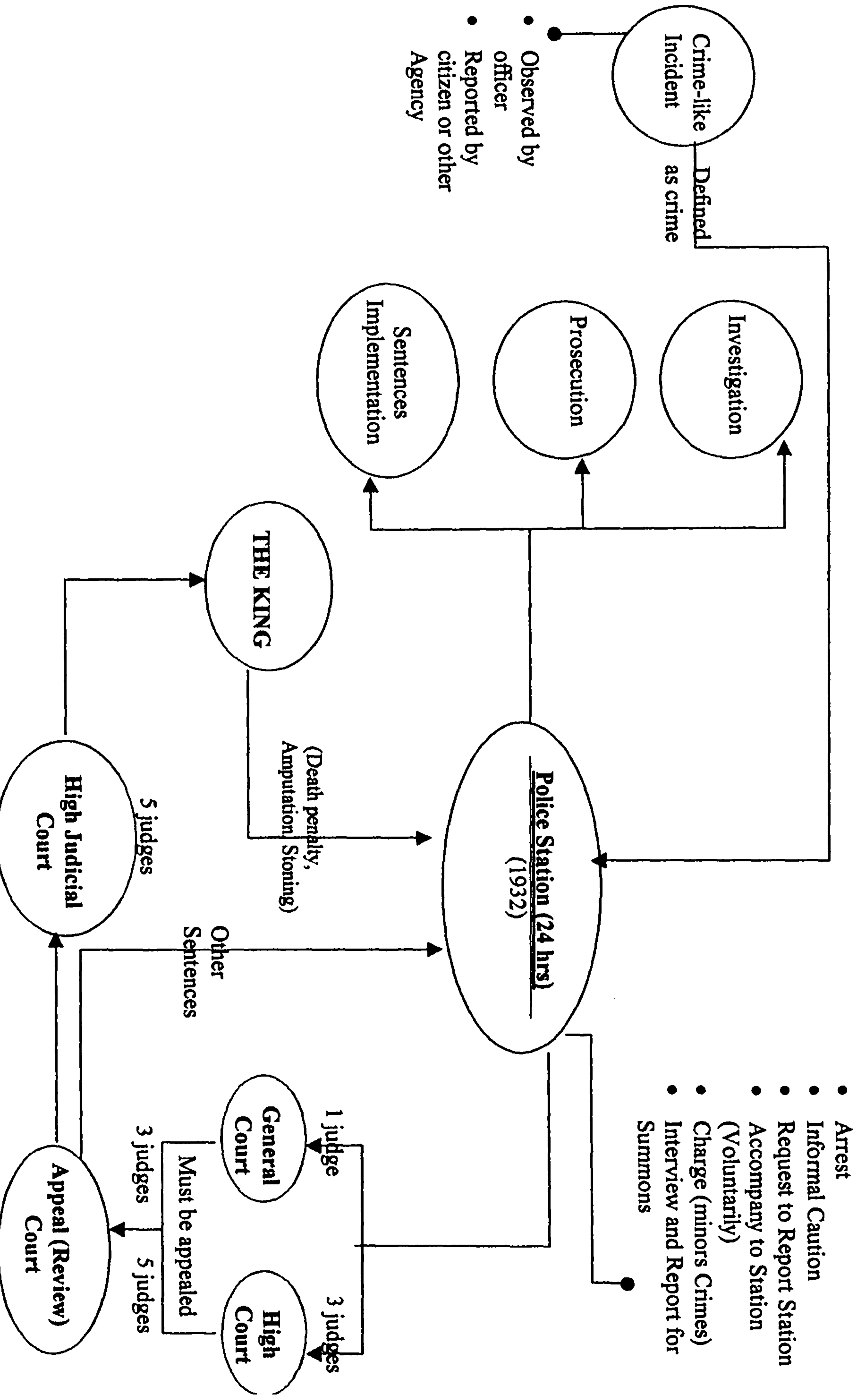
In the past, the police in Saudi Arabia were assigned both duties of judicial control and administrative control without distinction (see fig 5). Under administrative control, the police were responsible for maintaining order, patrolling, dealing with disorder in the street, etc. This could be labelled crime prevention. The police also had the power to seize suspects, collect supporting evidence, and then investigate. This was called judicial or criminal control. Responsibility for the latter functions changed when the CIP was established to take over judicial control in the Kingdom. Evaluation of much of the effects of this was covered in Chapter Four.⁷⁰

⁶⁹Al Sabani M., *Police Management in Contemporary Countries*, p.102

⁷⁰ *supra* at 165-166

Figure 5

The Criminal Process pre-1994: from Suspicion to Conviction



5.5.2.2 Agencies in charge of evidentiary finding on drug offences

The General Directorate is concerned with fighting the smuggling and dealing of all kinds of drugs.⁷¹ It reports to the General Security Department in the Ministry of the Interior. In 1960 came the establishment of the first professional anti-drug body as a General Security division, to be developed later into a department in the Riyadh area called the Anti-Drugs Department in 1971, with branch offices in all major regions of Saudi Arabia. In 1975 this department became Central Directorate General reporting to the General Security Director. Later, this Central Directorate General was separated from the General Security to report directly to the Deputy Minister of Interior.⁷²

Article (244) of the Executive Bylaw of Customs Law states that customs officers are considered judicial control officers in the performance of their duties. The bylaw also states the customs officers' duties. Customs' cooperation with anti-drug officers includes preparing seizure reports and also primary investigation (conducted by customs for those caught red handed in the act of drug smuggling), completing the investigation procedures, then handing smugglers to the Anti-Drugs Department for interrogation. At present, customs hands over the suspects caught in the drug cases to the CIP branch located in the same area for completing the necessary actions of investigation and public prosecution. This is not such a change from the previous system, under which the suspects were handed over to the Anti-Drugs Department (police) who used to interrogate them.

Frontier Forces are considered among the security bodies that assume an important role in drug fighting especially in cases of drug smuggling through non-official exits, where the frontier forces "chase and seize upon attempts of smuggling along the Saudi borders, with adjacent countries (whether land or sea borders), then the seized drugs and the accused are referred to the appropriate department which will in turn investigate the incident".⁷³ At present the frontier forces refer these cases immediately to the CIP, since their role is limited to seizure and search only as stipulated under Article (8) of the executive regulation for frontier forces law stating

⁷¹Mosa A., *Narcotics and Methods of Control*, p.30

⁷²*Al Salf op. cit. at 143*

⁷³ *ibid at 144*

Article (8) of the executive regulation for frontier forces law stating that the frontier forces are considered judicial control officers upon seizure and search.⁷⁴

Article (10) of the General Security Law stated that expert assistance was necessary for some incidents. The expert could not initiate his duty in the criminal case automatically but had to be mandated by an investigations authority. An expert's role in drug offences focused on the type of the seized substances, whether they were narcotics or not, or on examining those suspected of hiding drugs internally. Instructions stipulated sending an amount not exceeding three grams or a sample of the seized pills or substances for analysis. It was common practice for punishment to be applied to whomever has a narcotic substance found in his possession.

The crucial factor is the actual substance and not the suspect's thinking. Sample results are accomplished through professional laboratories belonging to the Ministry of Health, results issued by those of the Anti-Drugs Department are not considered. The official report must contain the result, and then be forwarded to the Investigation Authority (Formerly the Anti-Drugs Department and now the CIP), to be attached to the case's file. If the sample was proven to be narcotics, then that report is considered as strong evidence upon which the judges relies when passing his verdict.⁷⁵

Article (28) of the CIP Bylaw and Article (76) of CPC permit the assistance of experts and specifies their fields. Of course, these technical issues require an expert opinion. The said article states that the investigator has the right to demand an expert report stating the specialty of the required expert and performance period. There is, therefore, no difference between the former and the present system when seeking the assistance of experts.⁷⁶

The General Security Law stipulated that all delegates (officers), also applied to the investigators of Drug Departments and to any officer designated under an investigation order of the General Security staff, had to move immediately upon occurrence of major crime and public incidents, to the scene (Article (251/B)). Inspection in drug offences was considered among evidentiary finding procedures if

⁷⁴ Article (8) of CIP Bylaw

⁷⁵ Ministry of Interior, *Criminal Procedure Guide*, p. 166

⁷⁶ Article (30) of CIP Bylaw

conducted by any control officer other than the Anti-drug officers, as stipulated under Article (120) of the General Security Law, but if conducted by an Anti-drug officer, then it was considered an investigation procedure. The purpose of the inspection was stated as: *“a recording of the position of the places, things, persons and existence of the crime substantially and all relevant things”*.⁷⁷ In this context, the General Security Bylaw did not contain any articles on transfer and inspection.

In contrast, Articles (29) and (30) of the CIP Bylaw state the rules of transfer and inspection, and Articles (16,17) and Articles (77-78) of CPC stipulate:

“1- The relevant bodies have to inform the investigator immediately of major crimes and serious incidents.

2- The investigator will move to the crime scene immediately after being informed so as to conduct the necessary inspection.

3- Experts will accompany the investigator when necessary, depending on the type of crime.

4- If the investigator is unable to attend the crime scene, they have to inform the department so that they can take the necessary action in this regard or delegate a replacement.”

The fact that such articles have been established is another example of how the CIP system has brought the Saudi system into line with world norms.

Article (17) of the same code and Article (79) of CPC state that the actions to be taken by the investigator immediately on his arrival at the incident place where he will thoroughly inspect the crime scene, substantial impacts, hearing quickly and orally the initial information on how the incident occurred, identity of perpetrators and witnesses. Furthermore, the investigator will instruct the criminal evidence experts to search any things or remains left by the criminal that will be beneficiary to investigation and to preserve the left out criminal remains, and to order to put seals on things that may be of benefit to identifying the truth. The same article indicates that it is necessary to mention in the investigation report the investigator's shift at the incident scene. It is obvious that the code established general rules to be applied to all incidents but inspection of drug offences definitely differ from those of murder.

⁷⁷ Article (125/B) of General Security Department system

However, as a matter of principle, these rules have been established for guidance to reach the best results sought by the investigator. Areas seen to be lacking in the Public Security Department Bylaw concerning transfer and inspection have been developed by the CIP Code, which established general rules that save the investigator's efforts and time, as well as expedition in reaching the truth. Even at this early stage in our analysis of the procedural differences, then, we can see that there are many areas which the 1994 changes attempted to improve.

Research indicates that there is still room for improvement, however. The views of the police, lawyers and CIP on who should be involved and what make up appropriate practices in the field of inspection are quite revealing. First, considering that inspection falls within their jurisdiction, the 37% of CIP and police who agree that the CIP should participate 'frequently' or 'always' seems low when contrasted with the larger numbers who said 'sometimes' to 'never'. Only the lawyers were unanimous in agreeing that this was a CIP role although the inspection is normally shared between investigator and police officer. In fact, lawyers did not seem to believe the police had an important role in inspection, while the CIP and police both gave approximately 75% support for police inspection of the scene. Experts (chemists; fingerprint experts; engineers; explosive experts) may also assist and issue reports in this regard and there is very high agreement amongst all three groups for their participation, which can be attributed to a realisation of the considerable benefit they obtain when experts become involved. This only further reinforces arguments we saw earlier about the importance of making more experts available to the CIP more often. There is also high consent for the ideas that the CIP should review the inspection reports and that scene inspection is essential to reveal the truth, although the vast majority (almost 90% and 80% respectively) see it as frequently or always necessary. It may be worth stressing the necessity of the inspection and a thorough execution and reading of the inspection report covering all data and experts' statements (where applicable) since they are vital components in revealing the truth. There is a high degree of agreement about the importance of seizing items at the scene, each of which should be recorded in the inspection report to facilitate investigation. Controls should be established for

inspecting the scene, recording the minutes and attaching all necessary items with the report.⁷⁸

What we receive is something of a mixed message. The analysis of procedures shows the improvements since the general security system, both in the fact that certain areas have been codified for the first time and that a better educated group are carrying them out. On the other hand, my research indicates that there is still the need for clarification in regard to roles and some procedures in relation to certain areas of work.

5.5.3 Search

The third procedure we shall examine is that of search, which is an investigation procedure undertaken by an authority stated by the law. The objective of a search is to find substantial evidence of a crime that occurred in a private place regardless of the owner's will.⁷⁹ In Saudi Arabia, search is defined as an investigation procedure aimed to identify actually committed crime and has been attributed to a certain person, by issuance of a written order from the investigator stating full identification of the person to be searched, his nationality and the address. A search is made of the accused in person or his house or another site where evidence is believed to be hidden.⁸⁰

Searches are made to seize evidence, whether a thing, place or person, useful in detecting the truth to prove or attribute it to the accused. No person can be convicted and penalized without evidence and accordingly the law is authorized to take procedures that may affect the suspect's liberty and his right of privacy for the community interest. A person is initially considered innocent and hence conviction requires establishing evidence that is to be proved through either inspection or search and seizure. Different legislation has stated this common principle within specific frameworks and certain guarantees in order to preserve the rights of individuals and

⁷⁸See Appendix B, Tables 28 to 34; L21 to L26

⁷⁹Mostafa M., *Evidence in the Criminal Substances*, p. 118

⁸⁰Guide to criminal procedures. Directorate General for rights. Ministry of Interior, p.68

to avoid abuse and aggression. Saudi Law has stressed the privacy of individuals and their houses.⁸¹

There is now the opportunity to move to focusing on aspects of procedure that are considered to be the principal jurisdiction of the CIP member. A search is normally made of the clothes worn by the suspect, his pockets and underwear to search for drugs and prohibited items. Therefore, administrative or preventive search is not considered a legal investigation procedure, since they are not included within the principal jurisdiction of the control law officer. We saw earlier that the flagrante delicto condition gives the police officer authority to search and arrest the suspect. Otherwise, a search warrant is to be obtained from the anti-drug officer that investigates the drug offences. A search must not be conducted unless required by the investigation.

In view of above, the validity of the search and reliance on consequent evidence are conditional to its pillars. Should any of these conditions not be satisfied, the suspect has the right to plead its validity under the criminal laws that consider the search invalid applied in the Arab Republic of Egypt. Plea to abatement is not applicable in Saudi Arabia, which observes the Islamic Law (Shari'a, which objects the plea notion).

Plea to abatement is a controversial issue among Muslim jurists. Hanbali, Malki and Shaifis think that in Hudud and Qissas offences abatement is not accepted because there are no such cases in the Quran or Sunna and the ruler is not allowed to pardon in these crimes.⁸² In Ta'azir crimes, there are two opinions on abatement.⁸³ The Hanbali School, which applies in Saudi Arabia, objects to abatement in all crimes.⁸⁴ The head of the judiciary sent a letter to the King in 1380H. (1960) concerning his opinion in a case (No. F144) about a person who had committed a murder 30 years previously and escaped. He stated in his letter that the length of time did not abate the punishment.⁸⁵

⁸¹Article 37/1 of the main constitution law, Articles 145, 253 and 306 of General Security Department system, and Article 31 of CIP Bylaw and Article 2 of CPC have provided the above stipulations.

⁸² Odah op. cit. at 178

⁸³ Al jundi H., *Panel Procedures in Islam*, p.46

⁸⁴ Ameer A., *Ta'azir in Islam*, p.526

⁸⁵ *Fatawa Mohammed Al Alshek*

Article (31/1-2) of the CIP Bylaw and Articles (2,41) of CPC stipulate the importance of privacy of people and their homes. Therefore, certain conditions must be satisfied in order to search the suspect. These are the following:

- There should be evidence from the appearance of the suspect that a crime has been committed.
- Sufficient evidence for conviction must be available from inspections conducted by the police officers.
- There are strong signs and evidence indicating that the suspect is hiding things useful in detecting the truth.

Article (31/3-5) of the CIP Bylaw and Article (45) of CPC stipulate that a search will include – as applicable - all a suspect's clothes, luggage, portable items and whatever else he uses, such as a car or shop. Searching a person includes all transportation, such as his car or his animal on the public road. This grants the investigator the right to search persons other than suspects, whenever there is strong evidence of the existence of things useful in detecting the truth. This article contrasts with Article (200) in Egyptian Law, which does not allow the public prosecution (which is the equivalent investigation authority) to search any person other than the suspect nor instruct the judicial officer to search him without obtaining permission from a judge, even if strong signs are established indicating that he is preserving or hiding things useful to detect the truth. Search warrants must be justifiable and their terms are 30 days at most.⁸⁶ The broader range of the Saudi search warrant over the Egyptian one is probably advantageous to the Saudi case, in the sense that the investigator has greater abilities.

Article (31/2) of the CIP Bylaw stresses observing the general rules upon searching suspects and non-suspects. Article (150/7/F) of General Security Department system complied with Article (31/1) of the CIP Bylaw in respect to searching females. Both articles state that females should search females. Consequently, the control officer is not allowed to search females but can search items she carries, such as bags or any other external items.⁸⁷ Islamic Law prevents searching the person or house, spying on them or interference in their private life unless evidence or signs indicating involvement in crime is established. The executive authority is the body which

⁸⁶Article (34) of CIP Bylaw

⁸⁷Article (150/7/F) of General Security Department system and Article (35/3) of CIP Bylaw

decides what constitutes such evidence. Search is an investigation procedure which the control officer is not allowed to conduct unless *flagrante delicto* is established in compliance with Article (146) of the General Security Department system (Article (31/1) of CIP Bylaw and Article (54) of CPC). A reason had to be established for the Investigation Authority to pass a search warrant.⁸⁸ Article (145) of the General Security Department system stipulated that the privacy of houses are maintained and that they may not be entered except in circumstances specified by the law, the conditions of which would need a longer study to be detailed.

In the details of the search procedure, there are again differences between the two systems, but this time it is not so clear that the authorities really tried to develop this area in 1994 as significantly as the other two stages of procedure we have examined. This may be simply because the rules governing search under the General Security Law were deemed adequate, but the importance of Shari'a law in this area may also be a significant factor which limits the flexibility the regulator has to change the rules. The CIP Code and Criminal Procedures Code have the same articles, but the main difference is that CIP has the authority to take action, whereas the police used to have to ask the governor for permission to take action. Now we move on to a detailed look at all aspects of interrogation, an area where some significant changes have been implemented.

5.5.4 Interrogation

Interrogation is a procedure common to all prosecution systems, and we shall look here at some of the bylaws regulating it in the Saudi system. This subsection will include a discussion of confrontation, guarantees, defendant's lawyers and confession recording, among others. Additionally, we will examine here some of the ways that interrogation is hampered by state authorities and discuss the structure and nature of confessions.

Interrogation is an investigation procedure, and hence it must be undertaken by a professional authority. This procedure is applicable in most countries in the world. For example, in the Arab Republic of Egypt, the Public Prosecution assumes investigation in all criminal offences. In Saudi Arabia, the CIP has the authority to

⁸⁸*Al Saif op. cit. at 204*

investigate all criminal offences. Interrogation is a procedure conducted with a defendant. For instance, interrogation is not called after the witness' or suspect's statements, because there is strong evidence and pleas are established. Additionally, interrogation must consist of confronting the defendant with the established evidence.

Acceptance of a proof of certain basic facts and circumstances is required in the establishment of 'a case' against an individual. These fundamental aspects - the prohibited act (the *actus reus*) and the forbidden state of mind (the *mens rea*) - are 'the primary facts' of the case. Although it is assumed in black-letter law books (and in many sociological studies) that these primary facts 'exist', they are the outcome of a process of construction.⁸⁹

The interrogation is the principal forum for case construction and, though there is an increasing presence of third parties such as lawyers, parents and social workers, these interrogations are still very much under police control. In legal theory, while the police are free to question any citizen, there is only a moral and not a legal duty to answer. Indeed, unless subject to an arrest, the citizen is not obliged to submit to questioning at all. Suspects, however, are placed in a very different position. They too have a legal right to remain silent but they are obliged to submit to police detention and to police questioning, which is supposed to be a process by which the police extract 'the facts', pure and undiluted. According to the same rhetoric, the *purpose* of interrogation is to elicit *from the suspect* those facts, which are relevant to resolution of the case, at least so far as the suspect is concerned. The accused is seen as the repository of information, which can confirm or dispel police suspicion, and it is the task of the police to uncover this information.⁹⁰

Now, of course, it is acknowledged that this process is not unproblematic and that a suspect may on rare occasions be induced to disclose information which is untrue. Where this does occur, however, the false information is seen as an *inadvertent* product of an otherwise valid process. In such cases, 'errors' occur *despite* the wishes

⁸⁹ McConville M., Sanders A. and Leng R., *The Case for the Prosecution: Police Suspects and the Construction of Criminality*, p.65

⁹⁰ *ibid* at 66

of investigators to arrive at the 'truth' and are not in any way a deliberate or predictable product of the investigative process.⁹¹

These claims cannot withstand scrutiny. The literature on interrogation is filled with examples of the dangers of interview practices which may produce so much anxiety and stress in suspects that, in the words of Williams, 'in order to end an atmosphere of suspicion and hostility they will say and sign anything that seems to produce for a moment a more favourable feeling'.⁹² It follows that many of these practices are not the result of inadequacies of interrogation technique on the part of the police. 'Although little formal training in interviewing skills is provided within the police, officers do acquire 'on the job' expertise, tricks of the trade handed down from officer to officer, and learn by experience what 'works' and what does not'. Officers, who noted the absence of formal training, said they had acquired interview techniques through on-the-job experience. However these skills were acquired, police deploy them consciously in order to maximize the chance of a confession.⁹³

The important point to appreciate is that 'confessions' may not be the consequence of deviant interviewing practices but are systemic products of standard forms of interrogation. They may result from leading questions, or from the adoption of police-formulated statements of admission, or from the assimilation of information contained in police questions, which was unknown to the suspect prior to the interview, or as a result of broken resistance to varying degrees of compulsion.

5.5.4.1 Interrogation and confrontation guarantees

Confrontation is a type of interrogation, but limited to verbal evidence, where the investigator makes the witness face the defendant so as to hear the latter's statements and lets the witness reply to him either supporting or refuting. In practice, the defendant is often interrogated first, then confrontation is to be conducted to verify the statements extracted from the interrogation. Confrontation is also defined as placing the defendant face to face with another defendant or witness (one or more) so as to make him hear information stated by them on an incident, whereby he will reply

⁹¹ *ibid*

⁹² *ibid*

⁹³ *ibid* at 74

in support or refute. Confrontation is similar to interrogation and its guarantees.⁹⁴ The action taken by an investigator between two witnesses on a case regarding their different statements on an incident is not a confrontation, so long as the defendant is not a party to the confrontation.⁹⁵

Thus, such evidence will be admissible in the court as long as the defendant was present during the confrontation. Due to the significance of interrogation and/or confrontation in primary investigation, it is secured with a group of guarantees that make the investigator's foremost objective upon interrogation to reach truth as follows:

- **Interrogation initiated by the investigator**

There are specific crimes stated by the law where the investigator himself must conduct the required investigation as Article (64) of CPC stipulates. The Anti-Drugs Department investigators used to interrogate the defendant themselves. At present, the CIP's members in the drug department interrogate the drug defendants. The control officers are not mandated for conducting this procedure.

- **Prohibition of anything that may affect the defendant's will**

At present, the principles of human rights have been passed in bills⁹⁶ demanding the protection of the accused against torture and other confrontational methods affecting their will. Nevertheless, my research (and the claims of certain human rights groups) indicate that torture has not been eradicated.

1. **Moral and physical compulsion:** an action brought by the investigator affecting a defendant's body, will or control in order to force him to confess to an offence. Islamic Shari'a (from which the Saudi criminal code draws its provisions) stipulates fair conduct being maintained with the defendant. Article (99) of the General Security Department system

⁹⁴ Khalil K., *Defendant's interrogation*, p.42

⁹⁵ Al Mosa M., *Defendant's interrogation*, p.2

⁹⁶ Article (5) of Bill of Man's Rights has prohibited torture and applying it to others, and that Islamic Conference held in London in 1980 on (Man's Rights in Islam has prohibited torturing the defendant to compel him for confession).

as well as disciplinary instruction and Article (18/2) of the CIP Bylaw and Article (2) of CPC state regulations concerning the defendant, prohibiting threats, using violent tools, drugs or sleep deprivation methods in order to obtain a confession or information because he will be, under such cases, unconscious and out of his will, a matter which makes his evidence invalid (null and void). The CIP Bylaw permits using police dogs for identification and not as evidence against the defendant. Thereupon, “if a man was forced to confess and he acknowledged accordingly, probably he thought that his acknowledgment in this regard would help him avoid the harms of compulsion. Therefore, his admission is not considered since it is not true or probably not true”.⁹⁷

2. **Prohibition of interrogating when the suspect is hand-cuffed:** Article (99) of General Security Department system and Article (2) of CPC stipulate that: “*the suspects may not be interrogated when hand-cuffed*”. Likewise, the CIP Bylaw has indicated the same under the interrogation rules.
3. **Prohibition of certain questions:** By this are meant non-straight forward questions dressed by the investigator to the defendant in order to trap and make him confess contrary to his will. The General Security Department system has indicated under its Articles (101, 131, and 11/6) of CIP Bylaw, and also Articles (70, 102) of CPC stipulate interrogating the suspect without ambiguity or obscurity.

McConville sets out four kinds of question form that are encountered in police interrogations and which overtly manipulate the suspect’s decision making: leading questions, statement questions, legal-closure questions and imperfect syllogistic questions.⁹⁸ It is exactly these type of questions, which are almost never followed by ‘neutral’ questioning designed to elicit the suspect’s own story and, indeed, are used in a context in which there are explicit efforts to suppress any attempt by the suspect to introduce exculpatory material into the interview, which are so questionable. It

⁹⁷ *Al Mula S., Defendant’s Confession, p.144*

⁹⁸ *McConville, Sanders and Leng op. cit. at 69-70*

remains that ‘confessions’ obtained in this way are very often conclusive, resulting in a guilty plea or being otherwise unchallenged in court. Simple acceptance of the police assertion is regarded as proof.

▪ **Defendant Seeking a Lawyer**

The General Security Department system did not stipulate that the defendant should seek a lawyer’s assistance. It was common practice for the Anti-Drugs Department in Jeddah when investigating drug offences for the suspect to be interrogated alone. According to CIP Bylaws, the suspect has the right to seek the assistance of an attorney to attend them while they are investigated, which brings it into line with Egyptian practice.⁹⁹ The investigator may not separate the suspect and his attorney.¹⁰⁰ Article (19) states:

“1. The suspect has the right to seek the assistance of an attorney to attend the investigation as applicable.

2. The attorney may not interfere in the investigation affairs without the investigator’s permission. They may submit a written memorandum containing comments to the investigator. The investigator may attach this memorandum with the case file.

3. The investigator may not separate the suspect from his present attorney while investigating, unless in accordance with applicable laws.”

The suspect’s attorney may go through the case papers before interrogation unless it is deemed impossible to do so as stipulated under Article (64) of the CPC. This change can be seen as a significant addition to defendant’s rights, a guarantee which they did not have before 1994 in Saudi Arabia. Nevertheless, in practice, as we shall see at the end of this section on interrogation, many CIP and police officers disagree with the assertion that a defendant’s attorney should be present at the interrogation.

‘In the English System access to legal advice whilst in police custody has always been regarded as of fundamental importance to the police-suspect relationship’.¹⁰¹ Legal reformers tend to see a lawyer as the suspect’s ally in the alienating and hostile

⁹⁹ Article 124 of the Egyptian Procedural Code has stipulated “the crime investigator may not interrogate the suspect nor confront him with other suspects or witnesses unless his lawyer is called for presence substantiating evidence and to discuss them with him in detail”

¹⁰⁰ Article 19 of the CIP Bylaw and Article 4 of CPC, both of which comply with the same article stated in the Egyptian Criminal Procedural code.

¹⁰¹ McCorville , Sanders and Leng op. cit. at 47

environment. Lawyers have been seen as able to protect defendants from making unintentional admissions in these conditions of severe psychological stress. In the police view, lawyers are seen as obstacles to gaining an admission precisely because legal representatives bring strength and support to the suspect. By coming between the suspect and the police and thus inhibiting the creation and development of that bond between the detained and the officer which is basic to many 'effective' interrogations, the lawyer is also seen as a disruptive influence.¹⁰² Indeed, to some police, lawyers are outsiders who suppress the truth and whose presence at the interrogation may seem inconsistent with the pursuit of justice they believe they are undertaking.

Some police could exploit the uncertain state of the law prior to PACE as well as the ignorance of suspects as to their 'rights'. The pioneering study by Zander (1972) showed that few suspects were allowed to consult a lawyer before or during the interrogation, a finding that was reinforced by later studies.¹⁰³ Softley's study showed that no mention was made of the right of access to a lawyer in 84 per cent of interrogations observed and lawyers attended only two of 168 interrogations. Just as they had done in the *Confait*, *Guildford Four* and *Birmingham Six* cases, the police were able to keep legal advisers out of police stations.¹⁰⁴ In spite of justified complaints by English lawyers, they still have more room for dealing with their clients than their counterparts in Egypt or Saudi Arabia.

5.5.4.2 Recording of confession

In my research, confessions from five out of seven prisoners under the CIP system had led to their convictions.¹⁰⁵ Although "confessions are not always necessary to the prosecution case"¹⁰⁶ and may be disputed at trial, nonetheless the interrogation is the central investigative strategy of the police.¹⁰⁷ If the investigation results in a suspect's confession of the drug offence he is charged with, then he is to be sent together with the report containing his acknowledgment to the concerned judge to record and ratify this confession. This arrangement was applied formerly by the Anti-Drugs Department and is at present done by the CIP. Under Islamic Criminal Law,

¹⁰² *ibid*

¹⁰³ Baldwin J. and McConville M., *Jury Trials*, p.56

¹⁰⁴ Softley P., *Police Interrogation: An Observational Study In Four Police Stations*, p.67

¹⁰⁵ See Appendix B, Table P5.

¹⁰⁶ Baldwin and McConville *op. cit.* at 61

¹⁰⁷ Vennard J., *The Outcome of Contested Trials*, p.39

the declaration is valid only if made by a competent adult. Declarations made by minors, the insane and such like are not valid and, in general, declarations made involuntarily are not acceptable.¹⁰⁸ Having said that, it is clear that the two prisoners with the CIP and the three with the police who complained to the judge during their trial that they had been badly treated during the interrogation, got nowhere with their complaints.¹⁰⁹

In contrast to that, little attention has been paid to understanding the structure and nature of confessions. It has to be asked to what extent interrogation is a process of 'extracting' a confession. Do confessions pre-exist, just waiting to be elicited by the skilled interviewer? How far are confessions a product of the suspect? How far are they a product of the police? Perhaps they should best be seen as a joint product of the interaction of interviewer and suspect? These questions are worth asking because the answers to them have consequences on our willingness to accord confession evidence a central place in the system of investigation and in trials.¹¹⁰ Interrogation is, however, a highly problematic process quite apart from the issue of psychological pressure or physical coercion. It is an error to assume that the suspect is the repository for 'the facts' and that these flow in a unidirectional manner from suspect to officer. 'facts' are not elicited, they are created.

This creation is not an unusual or aberrant feature - they are generated during interrogation as the product of a complex process of interaction between suspect and officer. Much of this product, as has been said above, is directly traceable to the style and manner of the police questions. Nor are such products accidentally created: they are precisely what the process sets out to achieve.¹¹¹ Psychologists have identified 'two general categories of erroneous confession evidence: the coerced-compliant confession and the coerced-internalised confession'.¹¹² The former is elicited by the nature of the interrogation process but the suspect remains fully aware that they did not commit the crime in question. The suspect may confess, for example, in order to achieve some immediate instrumental gain. In the coerced-internalised confession, however, suspects become persuaded (at least temporarily) during the interrogation

¹⁰⁸ *Al Sartawi M., Involuntary Confession, p.57*

¹⁰⁹ *See Appendix B, Table P6.*

¹¹⁰ *Al Sartawi op. cit. at 58*

¹¹¹ *McConville, Sanders and Leng op. cit. at 67*

¹¹² *ibid at 66*

that they might have or did in fact commit the crime and begin to accept suggestions offered by the police. The third category is the coerced-passive confession. Confessions of this kind occur when the process of questioning induces suspects to adopt the confession form, without necessarily adopting or even understanding the substance of what has been accepted or adopted. In this situation also, suspects may internalise the confession by accepting the police assertion that they have committed a crime. Equally, they may simply adopt words which amount to a confession without even appreciating that they have made such an admission.¹¹³

One of the central features in the production of these kinds of confessions is the approach adopted by the police. Although very little interview training is given to the police, officers soon adopt various strategies which are believed to 'work'. These are well documented in the literature and include, for example, confronting suspects with damaging evidence; using information bluffs; manipulating self-esteem; befriending the suspect; persuading the suspect that it is in the suspect's best interest to confess. These strategies are forged in the day-to-day empirical world of the police officer.¹¹⁴

Under the CIP system, every member of the CIP must attend a training course of not less than 6 months before performing his duties.¹¹⁵ The CIP members are lectured by experts in different fields and this intensive course has theoretical and practical work focusing on how to deal with crime procedures, including much time spent on interrogation. Such a course did not exist under the former system, which means a vast improvement for CIP members on the system whereby once officers graduated from security college, they were recruited into police stations without attending training courses.

The police are not interested in 'anything further' than a confession. This is shown in the fact of abandoning the old practice of allowing suspects to prepare their own written statements. A written statement is, or can be, the suspect's story, on the suspect's terms. It is not just that statements from the suspect can be ambiguous or even exculpatory: they simply contain what *suspects* want to say, which is of no interest to the police (unless it is in their terms). As in court, witnesses and suspects

¹¹³ *ibid* at 71

¹¹⁴ *ibid* at 79

¹¹⁵ *supra* at 120

are not given a free hand to tell their story.¹¹⁶ Obviously before the establishment of the CIP, as Al Khaled pointed out in his study where the administrative judiciary had convicted some anti-drug officers for not protecting a suspect's rights in a drug case,¹¹⁷ such a state existed in the Saudi Criminal System.

5.5.4.3 Sample Opinions on Interrogation

We have seen that much surrounding the interrogation procedure remains the same, but that important changes took place in 1994. There is still some doubt as to whether the CIP has a better interrogation system, but it could be convincingly argued that in terms of a procedural perspective, it is more effective. Before we move on to the subject of custodial detention, we shall briefly examine the research to see what sort of levels of agreement there are amongst the judges, CIP, police and lawyers in terms of the 'who' and 'how' of the process.

First and foremost, amongst all the bodies there is a high level of consent for the interrogation being carried out by the CIP member. Though it used to be their duty, two-thirds of the police now agree it is a CIP task and another quarter offer qualified agreement. A similar number agree that police officers should be deputed to participate in interrogation, but this idea meets strong resistance amongst the CIP and lawyers, a mere 15% and 20% respectively of whom offer unqualified agreement against a disagreement figure of 43% for each group.¹¹⁸ However, the judges tended to criticise the actual performance of the CIP, saying that the present interrogators are in need of more experience. Despite this, they tend to think that overall results of interrogation in drug offences are better than those of the former Anti-Drug Department's investigators.¹¹⁹

There are similar levels of agreement on other factors related to the interrogation. The CIP, police and lawyers all offer consent to the idea of confronting the accused with the evidence established against them upon interrogation. Likewise, there is agreement among these three groups and the judges that investigation and interrogation lead to valid confessions, something which depends on methodology.

¹¹⁶ *McCorville, Sanders and Leng op. cit. at 80*

¹¹⁷ *Al Khaled I., Guarantees of defendant in Arrest and Search Procedures in Saudi Arabia, p.87*

¹¹⁸ *See Appendix B, Tables 35, 36, L27 & L28.*

¹¹⁹ *See Appendix B, Tables J9 & J11*

The idea of using experts' reports on interrogation, where available, also receives a high level of consent, though highest amongst the lawyers.¹²⁰

There is less consent for a practice which is commonplace in the UK, which is that any interrogation should be conducted in the presence of the attorney of the accused. Less than a third of the CIP agree, with disagreement exceeding fifty five percent, and even fewer of the police are in favour. Some of those questioned believe that advocacy is a mediation, which is not permissible in many crimes, especially those pertaining to doctrinal punishments. For example in Hudud crimes (i.e. a theft offence (serigah)) the CIP member while investigating it, he will make sure that Shari'a requirements covering the act have been met, so he could ask for imposing the Hadd punishment which is cutting off the hand of the thief. But if one of its conditions is missing (i.e. the stolen item is not sufficient value to qualify for imposing the Hadd punishment), or the defendant denies the allegation and does not confess during interrogation and there were no witness (evidential requirement are not met). Then, the CIP member will treat this case as Ta'zir offence which a lesser penalty might be imposed.¹²¹

Since the defendant's right to an attorney is a new development, perhaps some of the disagreement reflects a traditional conservative trust of the religious judiciary. However, obviously the lawyers are aware of their duties and there is unanimous agreement amongst this group that they should be present.

Just over forty percent of the CIP and just above thirty percent of the police agreed that the attorney's attendance serves justice and assists the interrogator in reaching the truth. It seems that neither group accept that the attorney helps the judiciary and is not an adversary. Again, the figures for the lawyers differ greatly, with over 63% asserting that the attendance serves the cause of justice, which, however, is lower than one might have expected. It is therefore necessary to clarify the role undertaken by the attorney and emphasise the services it renders to justice by way of reaching the truth.¹²² The judges are more enlightened in this regard, with three-quarters believing that the presence of an attorney helps reach the truth.¹²³ Among the prisoners, six out of seven interrogated under the CIP system were allowed to have their lawyer present,

¹²⁰See Appendix B, Tables 37, 38, J1 L29-L31.

¹²¹Bassioni M., *The Islamic Criminal Justice*, p.212

¹²²See Appendix B, Tables 42, 43, L34 & L35

¹²³See Appendix B, Table J15

whilst none of the five interrogated under the police system were allowed to have their lawyer present.¹²⁴ This indicates that the CIP system has certainly secured suspects additional guarantees.

Research also shows that there is a strong tendency to see interrogation as ending in accusation. Around 16% of the CIP and 23% of the police agree that interrogation can end by setting processes and releasing the accused, whereas disagreement with this almost reaches two-thirds of the CIP and half the police. On the other hand, more than 84% of the CIP and 81% of the police agree that interrogation ends with accusation and referral to trial while no more than four of the thirty lawyers agree with this. It is important to emphasise that interrogation is also a defence tool and should be used to clear and protect the innocent.¹²⁵

The final point to make in this section concerns the opinions of the prisoners. When asked about the treatment they had received during interrogation, 60% of the prisoners interrogated under the previous system claimed they were tortured while the remaining 40% said they were subject to threats and abuse. Under the CIP system, only 1 prisoner (14% of the sample) claimed to have been tortured, 28% said they were subject to threats whereas the majority claimed they had been treated well during the interrogation. As a result, complaints were made to the judge during the trial by two in seven of those interrogated by the CIP and three in five of those under the general security system.¹²⁶

5.5.5 Custodial detention

We mentioned Custodial detention briefly earlier in chapter four¹²⁷ in the regard of relation between Emirates, CIP and Police. Custodial detention is considered among the most serious procedures taken by the investigation authority since it confines the suspect's liberty during the investigation period. In this subsection we will define and take an overview of the procedure, incorporating justifications for its use and look at the terms and conditions applied to custodial detention both before and after the 1994 changes.

¹²⁴ See Appendix B, Table P7

¹²⁵ See Appendix B, Tables 40, 41 & L33.

¹²⁶ See Appendix B, Table P4 & P6

¹²⁷ *supra* at 176

Originally, depriving the suspect of his liberty is a legal procedure applied only under a final verdict.¹²⁸ Under another definition, it is a criminal investigation procedure passed by whoever is granted this right by the legislator, including an order dressed to the jail commander to admit the suspect and jail him, where he will remain jailed for a long or short period according to conditions of each lawsuit where it will be completed either by releasing the suspect during the primary investigation or during trial, or by passing a judgement of innocence or punishment and execution.¹²⁹

International constitutions have guaranteed personal liberty and stipulated it in their procedural codes for achieving justice. Justification for custodial detention may be summarized as follows:¹³⁰

- To prevent evasion of the prescribed penalty.
- To protect the interests of the community and suspect, through protecting him from being attacked by the victim and to avoid recurrence of his crime.
- To maintain the evidence and secure it against any tampering or erosion.
- To prevent the suspect from contacting his accomplices or finding false defence witnesses.

Arab and Non-Arab legislations do not coincide in defining a fixed term to indicate this procedure. It is termed "Stoppage." in Syria, Lebanon, Jordan and Iraq, while termed "custodial detention" in Egypt, Algeria, Kuwait. In France it is known as "temporary detention" as stipulated under Article (137) of the French Procedural Code and in Switzerland termed "temporary stoppage." as stipulated under Article (51) of Code of Federal Penal Procedures.¹³¹ In Saudi Arabia, the term "custodial detention" has been used as indicated in the bylaw of stoppage, seizure, temporary detention and custodial detention. It is worth differentiating in this context between stoppage and custodial detention, where the former is a procedure implemented by the control law officer which grants him the right to stop the person in suspicion or doubt through questioning him about his destination, identity and residence. Article

¹²⁸ Al Marykhan A., *Under the Custodial detente on Procedures*, p.22

¹²⁹ Helali A., *Suspect's Legal Position in the Primary Investigation Stage*, p.726

¹³⁰ Al Marykhan op. cit. at 23

¹³¹ *ibid* at 26

(1) of the Bylaw of Stoppage, Seizure, Temporary Detention and Custodial Detention in Saudi Arabia gives patrol officers the right to stop suspicious people. Also, Article (2) of the bylaw allows stoppage, which is a suspicion and inspection procedure and accordingly it differs from custodial detention, which is a necessary procedure for investigation.

We may also distinguish between temporary detention and custodial detention. Temporary detention is a reserve procedure practiced by the police while collecting evidence and that procedure is limited to a specific duration in order to protect the suspect's liberty. Article (5) of the Bylaw of Stoppage, Seizure, Temporary Detention and Custodial Detention allows a written order of detention for a maximum of three days if sufficient grounds exist. This procedure was applied formerly by the Anti-Drugs Department in Jeddah while investigating drug cases and is now applied by the CIP in Jeddah, the period extends to 5 days according to Articles (113 and 144) of CPC. Temporary detention terms differ from one country to another. It is determined as 3 hours in the Netherlands, 24 hours in France, 3 days in Ecuador, 4 days in Kuwait,¹³² 5 days in Chile and Portugal, 10 days in Korea and two weeks in Bulgaria and Sri Lanka. In the legislations applied in Argentina, Brazil, Japan and Egypt, it is stipulated that the suspected person be presented immediately, without delay, to the investigative judiciary. In Saudi Arabia, the term of the custodial detention has been determined as three days at most.¹³³

5.5.5.1 Conditions and terms of custodial detention

Article (11) of the Bylaw of Stoppage, Seizure, Temporary Detention and Custodial Detention in the General Security Department system specifies the custodial detention conditions and circumstances since a custodial detention memorandum may not be executed against any suspect except for the following cases:

1. Involvement in a major crime as specified under Article (10) of the bylaw, which covers drug smuggling, production, cultivation, possession, dealing, and addiction.
2. A custodial detention stipulator must exist represented as follows:

¹³²Ahamed S., *Legitimacy and Criminal Procedures*, p.224

¹³³Article (5) of the Bylaw of Principles of stoppage, seizure, temporary detention and custodial detention law

- a- The criminal is caught in flagrante delicto.
- b- When the defendant voluntarily confesses that he has committed a crime.
- c- Sufficient indictment evidence has been established against the suspect.
- d- If left free, the suspect may jeopardize himself or others, abuse the general security, create a riot or raise rumours.
- e- If his place of residence is not fixed nor known in Saudi Arabia for fear of his escape or effect to the course of the bylaw.

In view of the above, there are stipulations and rules established by the bylaw of Detention Principles, in order to prevent abuse of this procedure in a way that affects people's liberty. Therefore, the investigator is legally liable for conducting this procedure without having strong evidence against the suspect. With regard to the custodial detention term, Article (12) of seizure and detention principles bylaw states *"The detention memorandum executed by the investigation authority against any accused of committing a major crime will be valid for at most twenty one days from the seizure date."* If the investigation could not be completed before the lapse of this period specified by the bylaw, Article (13) of the same bylaw states the procedures to be conducted in this regard:

1. The investigation authority (Anti-Drugs Department for instance) at least 3 days before expiry of the said period (determined as 21 days) writes a summary of the lawsuit (drug case), established evidence, incomplete aspects in investigation and justifications for incompleteness and the period required to complete investigation, which must not exceed 30 days of the expiry of the previous detention period (21 days).
2. A request to extend the detention period is to be submitted to the region governor if permitted, then the investigation authority (Anti-Drugs Department in Jeddah), Detention Home or jail in which the accused is detained are to be informed accordingly.
3. The custody detainee will continue to be jailed while the investigation body completes investigation.

4. The pre-CIP system indicated that the governor may order the continued jailing of the detainee for the period seen as necessary to complete the investigation, provided it did not exceed 30 days of the expiry date of the custodial detention memorandum issued by the investigation authority (30 days duration).
5. Under all circumstances the investigation party has to submit the correspondence to the governor thirty days before expiry of the custodial detention memorandum issued by the investigation authority. The governor has the right to decide appropriate action to be taken in view of the powers granted to him under the Regulation of Powers for Regional Governors.

The conditions of custodial detention were stated under Article (50) of the CIP Bylaw and Articles (112-113) of CPC as follows:

1. The accused must have committed a major crime such as murder, theft or smuggling drugs or been involved in committing it.
2. Sufficient indictment evidence is established against the suspect that he has committed a major crime.

Article (40/3,42) of the CIP Bylaw and Articles (113,114) of CPC state other specific rules for execution of the custodial detention. The investigator may issue a custodial detention memorandum against the arrested person for periods not to exceed five days from the detention date, if sufficient evidence were established against him indicating his involvement in a major crime.¹³⁴ If the investigation could not be completed within the said five days, the investigator may request extending the period of the custodial detention to the detainee for a period not to exceed forty days from the expiry date of the said five days, through which investigation is to be conducted with him after obtaining the approval of the Head of the CIP Branch in the area or his Deputy as applicable.¹³⁵ If the investigation is not completed within this period, the head of the CIP branch in the area must inform the CIP President on the non-completed investigation under a memorandum stating actions taken in the case. The

¹³⁴ Article 40/3,42 of CIP Bylaw
¹³⁵ *ibid*

CIP President has the right to extend it for a period of thirty days or more. These periods must not exceed six months from the date of detention.¹³⁶

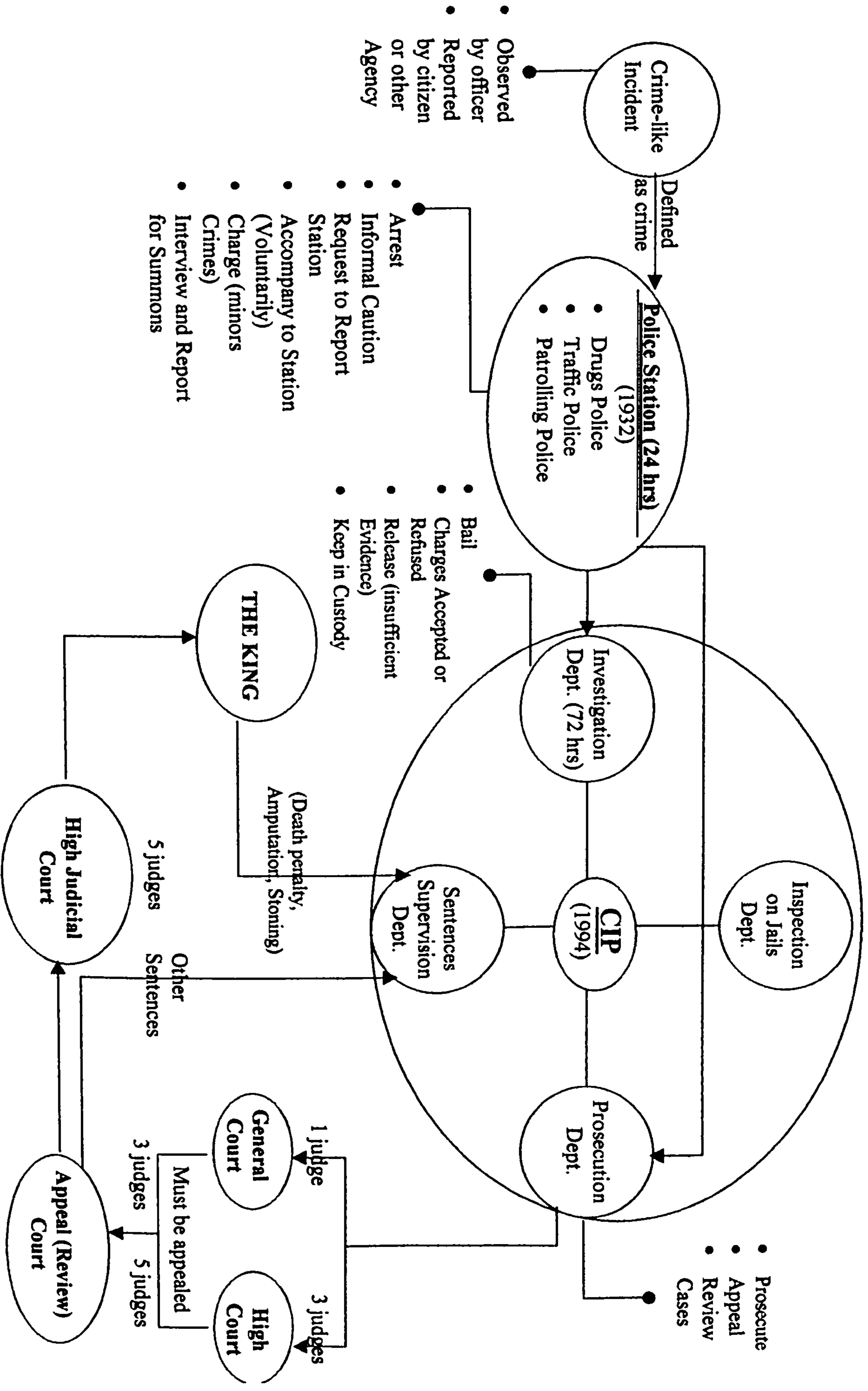
Having compared this procedure in both judicial systems (former and present), it is found that the power to extend the custodial detention period is vested in the CIP's investigators in drugs cases. Such an approach has provided motivation to decide the cases quickly. Formerly, there was a considerable wait for a permit from the region's governor due to administrative procedures. It is worth mentioning in this regard that the custody detainee under the CIP system has the right to lodge a grievance against the detention order, through a request to be submitted to the Head of Investigation Department whom the investigator reports (for instance, Anti-Drugs Department), or CIP branch head in the area as applicable. This grievance is to be decided within five days of its lodging date.¹³⁷

The General Security Department system did not contain articles similar to those incorporated in the CIP Bylaw, where it is deemed necessary to consider the grievance lodged by the accused and to inform him about the decision within five days of the grievance submission date. The 1994 changes can, in this regard, again be deemed progressive (see fig 6).

¹³⁶ *ibid*

¹³⁷ *ibid*

The Criminal Process post-1994: from Suspicion to Conviction



5.5.6 Disposal of investigation

We mentioned disposal of the investigation briefly earlier in chapter four¹³⁸ as one of Emirate's jurisdictions dealing with cases and how the CIP Code regarding disposal of investigation is no longer controlled by referring to the administrative governor as applicable in the law in force. But here we will examine it from procedural perspective in order to clarify the significant difference between the police and the CIP dealing with criminal cases.

When the investigation authority has completed the procedures of the criminal case and after studying and scrutinizing all aspects of the case, it has to be decided if:

1. An order is to be issued to lodge the criminal case and to safe-keep the investigation.
2. An order is to be issued to refer the criminal case to the judiciary for decision. In this context, the criminal case is considered out of investigator's possession and in possession of the judiciary.

Investigation safe-keeping is an order for investigation disposal passed by the duly appropriate investigation authority whereby the criminal case will be disregarded and it will have a temporary plea so long as safe-keeping is justifiable.¹³⁹

Under the old General Security Department system, when the investigation of drug cases was completed and it was seen by the anti-drug director that there was no reason to institute a case, then his point of view was recorded and attached with the case file and forwarded to the region's governor, where his security office reviewed it, and then the papers were returned to the investigator together with the governor's decision to safe-keep the case. A decision to release the detainee in drug offence was made by the anti-drug director after obtaining permission from the region's governor. Legal reference for this statement is cited from Article (8) of the detention bylaw.

Under the CIP, the decision to safe-keep an investigation will result in discontinuation of the criminal case. After the establishment of the CIP, investigation safe-keeping became one of its areas of jurisdiction as stipulated under Article (45) of

¹³⁸ *supra* at 178

¹³⁹ *Al Sayed op. cit.* at 639

its code and Article (124) of CPC. Consequently, the investigator completes the investigation procedures so as to reach his decision either by safe-keeping the investigation or bringing an accusation and requesting trial". Articles (45/2,46,47) of the CIP Bylaw and Articles (22-23) of CPC state the reasons that dictate safe-keeping as follows:

1- Safe-keeping for legal reason

- a) *No crime*: When non-criminal action is charged to somebody, consequently he will not be interrogated.
- b) *Expiry of case*: Either due to the death of the accused where criminal liability does not exist anymore but the civil lawsuit remains valid and to be resumed against the heirs.
- c) *When a permissible cause or inability for punishment are established*: for example when father beats his son for discipline.

2- Safe-keeping for subjective reason

- a) *Incident invalidity*: meaning non-occurrence of action substantially.¹⁴⁰ Article (45/2) of the CIP Bylaw indicates that incident invalidity is a procedural cause to safe-keep the case by the investigator due to invalidity of the charges levelled at the accused.
- b) *The perpetrator is unknown*: If the perpetrator of a crime with fixed and perfect evidence as stated in the evidence record was not identified, the incident will be entered against unknown perpetrator as stipulated under Article (45/2) of the CIP Bylaw. The present position applied by the drug directorate of CIP branch in Jeddah is that it requests the Anti-Drugs Department to search and investigate the unknown perpetrators in drug cases. Safe-keeping is a temporary procedure until the perpetrator is identified.
- c) *Insufficient evidence*: The investigator will safe-keep the case papers if a fault was found in crime conformation or deficiency in completing the evidence as stipulated under Article (45/2) of the CIP Bylaw.

In view of the above, the CIP role is to safe-keep the drug case papers if evidence stated in the investigation record is found insufficient to refer the case to court. This is considered a subjective cause for paper safe-keeping.

¹⁴⁰Alam H., *Criminal procedures code*, p.337

3- Safe-keeping for insignificance

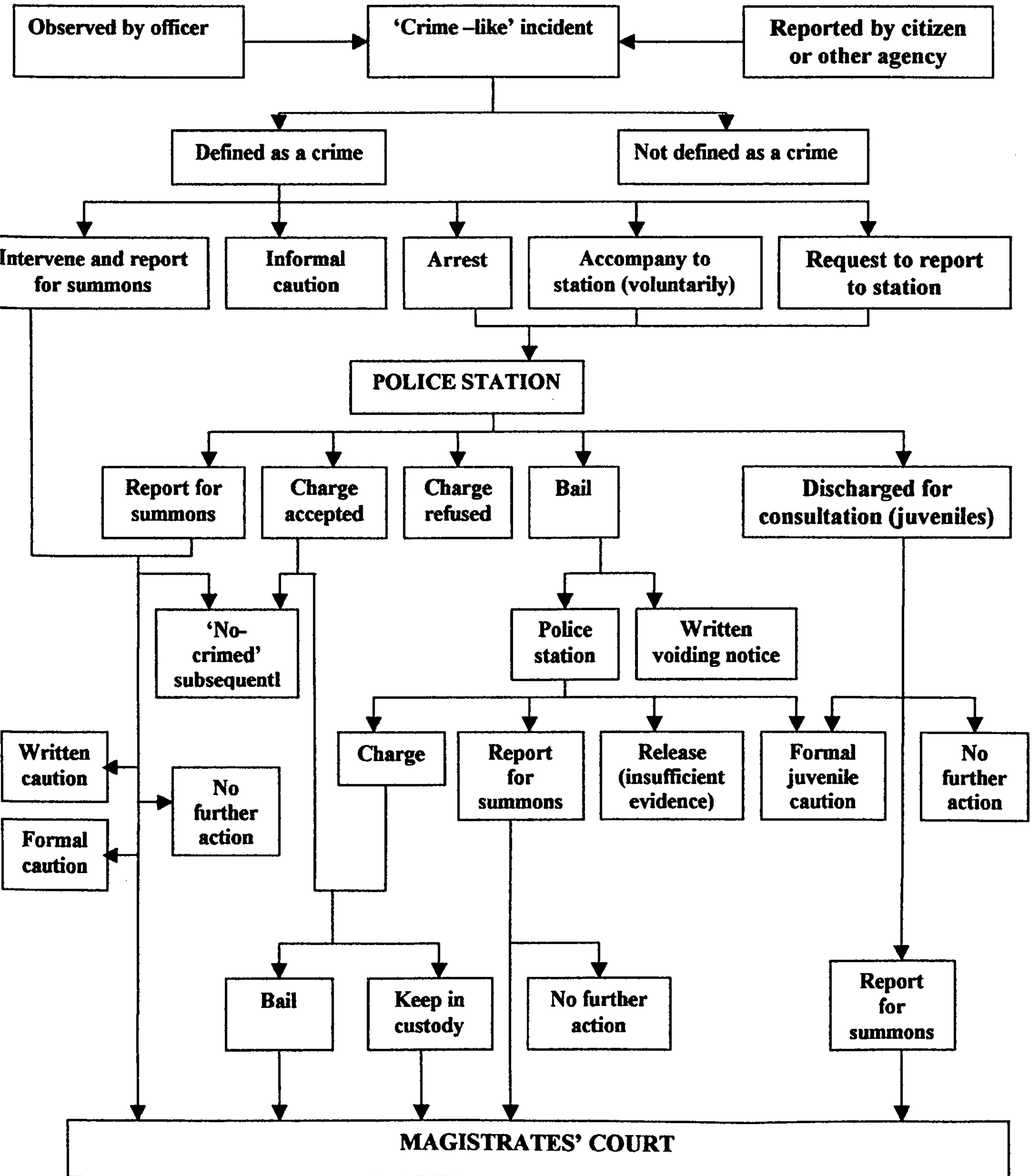
Article (46) of the CIP Bylaw states the circumstances under which investigation is to be kept safe for some cases even after the offences were committed, via consent of the CIP's management. Insignificance is determined by the investigator due to the triviality of the harm entailing from the offence and for public interest considerations. Here is a brief summary of such circumstances:

- a) If the harm resulting from the case is minor.
- b) If chasing the criminal will result in a scandal whose harms exceed the anticipated results and the entailing harm is severer than the crime.
- c) If a danger is expected to be aggravated and enmity to develop.
- d) If the offence entails from negligence of parents and children and none get harmed except the family.
- e) If the materials or moral harm inflicted on the perpetrator are found sufficient such as the moral and psychological harm to a mother over a missing child.
- f) If burdens of procedures and seizures and investigation with the accused were found sufficient.
- g) To stress non-mixing of the young with culprits imprisoned in jails and detention stations.

An example of this might be a young student, who lives alone at home with his mother, caught with a small amount of hashish. The CIP may safe-keep the case, so he could go to school and not destroy his future. Such reasons are taken into account.

The CPS in England is a police-dependent body, confining review to evidence-sufficiency questions, ignoring public interest criteria, using the contradictory nature of the principles in the codes to further narrowly conceived objectives and, at its worst, adopting uncritical support of the police mandate. This is similar to the CIP in Saudi Arabia, which also has the power to drop cases until such time as they may choose to resurrect them. However, the CIP has more power regarding these procedures than the CPS (see fig.7), and they seem to be used more often. More significantly for the thrust of this chapter, is the fact that the CIP system has codes which cover areas far beyond the scope of the old police system in Saudi Arabia, especially as concerns the security of the defendant.

Figure 7
The Criminal Process in England & Wales: from suspicion to conviction



5.5.7 Criminal cases referral to court

When the investigator completes the investigation stating the offence description, evidence and pleas regarding the accused, he refers it to the court. Principally, the Shari'a courts are the courts of general jurisdiction to decide in all disputes and crimes, excluded unless otherwise stipulated by court law.¹⁴¹ In this subsection on case referral, we will very briefly compare and contrast the points of significance pre- and post-1994.

Under the former system, whenever the Anti-Drugs Department completes the necessary procedures for drug offence, represented by the investigating officer, he referred the papers to the department director who in turn referred it to the area principality (governor), to study the conclusions reached by the investigator. Having studied the papers, the Principality (Emira) either directed the completion of some aspects of the investigations, referred it to the court or passed an order about the causes to institute a criminal case (safe-keeping order). If an order was passed for referral of the case to the court, then it was in the trial stage (final investigation stage). The judge would look over the crime and investigation with perpetrators, re-interrogate and confirm the statements, testimonies and confessions laid down in the investigation record as Article (174) of CPC stipulates. Having completed these procedures, the judge would record the conviction, specify the criminal description and pass his judgement in some drug cases such as smuggling and merchandising for a second time. The principalities (Emira) referred these cases especially to the Ministry of Interior, which in turn studied the case papers and sent its comments to the Principality (Emira).

According to the 1994 laws, the CIP disposes of the investigation through instituting or safe-keeping of the case as specified by the bylaws. At present, common practices applied in drug cases by the CIP, represented by its Jeddah branch, rely on provisions of Article (45) of the CIP Bylaw, Article (124) of CPC, and item (4) of the letter of the Minister of Interior regarding delegating CIP members to investigate drug cases, stating that if evidence exists indicating that the suspect has committed the criminal act after completion of the investigation, the investigator will pass a charge and

¹⁴¹Article 26 – Judicial code Promulgated by the Royal Decree for 1395 H (1975)

referral order, where the charge order will be forwarded to the Public Prosecution Directorate which will review it, and then write the general plea and refer the case to the court without resorting to the procedure formerly followed by the Anti-Drugs Department in respect to forwarding the papers to the Principality for necessary action to be taken.

With regard to the cases of drug smuggling and merchandising for the first time, they undergo the same procedures. Before being dispatched to the court, they are forwarded to the CIP committee (Headquarters) to scrutinize the charge orders passed for that case. The charge order must contain the name of the investigator who passed the decision, the name of the convicted, his age, place of birth, place of residence, occupation, nationality, narration for the committed acts and deeds, date and time, methods employed, culprit's role or his partners' roles and all parties involved in the crime. Additionally, it must include a statement of the established evidence, verbal testimonies, all places signed and findings extracted and reached, specify the description of the crime together with the legal grounds upon which the perpetrators will be penalized, and stating the start date for the culprit's detention. After the investigation procedures are completed and the conviction is scrutinized by the CIP Ministration Committee (for major crimes including drugs), the case is referred to the Public Prosecution Directorate to institute the case in the courts. It is noted that the decision to convict includes the incident details in full and that the Public Prosecutor relies upon it in his writing to the general pleading statement he reads to the judge, and that such an arrangement was lacking in the General Security Department system.¹⁴² Although this is only a minor improvement in procedures, it is an improvement nonetheless.

5.5.8 The public prosecution

As we saw back in Chapter One¹⁴³, Islamic Shari'a observes the concept of public prosecution as being based on the fundamental notion that when a crime is committed in the Islamic Community, it does not affect only the victim but the whole community. Therefore, the public prosecution is the community's reaction against the crime and criminal for protection. Under Islamic Criminal Law, the action is

¹⁴² Stipulated in article (51) of the CIP Bylaw and article (157) of CPC

¹⁴³ *supra* at 32

instituted against the defendant by the guardian (represented by the King in Saudi Arabia). The function of public prosecution was established in Saudi Arabia in 1933. This function was assumed by the justice division or his representative of the police commanders until the General Security Department was established in 1949, when the Royal Decree granted this department the authority to initiate the public prosecution and investigation procedures since it originally assumed this role. Then this power was delegated to the CIP, which in turn took over the duties of the public prosecution in all crimes including drugs in 1994.

As mentioned, the General Security Department in Saudi Arabia had responsibility for public prosecution authority from 1933 through 1994. The public prosecutor used to be chosen among the Criminal Divisions' members reporting to the police or whoever was mandated by the police commander. In villages where no public prosecutor was available, the area governor used to mandate a representative to lodge the public prosecution cases in his area court.¹⁴⁴ The public prosecutor's role contains a narration to the case minutes before the judge, establishing the accusation and presenting the conviction evidence. The public prosecutor has no right to waive the criminal case or demand an innocent verdict of the accused.¹⁴⁵ In drug offences, the public prosecutor writes a general pleading about the case based on its file forwarded to him by the Anti-Drugs Department. The public prosecution action cannot be lodged unless evidence that convicts or may convict the accused is established against him. According to the administrative work organizing law issued by the Ministry of Justice, when the case arrives in court, a judge will be appointed, who in turn will appoint the date for the hearing for the public prosecutor and prison department to bring the accused.¹⁴⁶

In view of the above, it is obvious that the function of the public prosecution under the General Security Department system is not separated from the authority conducting the judicial investigation (Anti-Drugs Department), and no doubt this has an effect on the role played by the public prosecution, because it will attempt to confirm the conclusion reached by the investigating authority which is the same body

¹⁴⁴*Circular (41) of Ministry of Interior on 1395 H (1975)*

¹⁴⁵*Circular (10694) of Ministry of Interior on 11.8.1388 H (1968)*

¹⁴⁶*ibid*

it reports to,¹⁴⁷ and it is preferable to have a separation between the prosecution and investigation authority in respect to legislative policy so as to ensure the fairness of the prosecution authority while assuming its duties.¹⁴⁸

In contrast, Article (5/3) of CIP Bylaw and Articles (157,160) of CPC stipulate that CIP jurisdiction includes *“public prosecution before the judicial authorities according to the CIP Bylaw”*. Article (51/1-2) of the CIP Bylaw states that *“the public prosecutor is to lodge and institute the criminal case before the appropriate judicial authorities and courts”* and consequently there is a dependent department for public prosecution in every branch. This department is separate from the investigation department, a significant improvement on the pre-1994 situation. The public prosecution department in the CIP branch in Jeddah has returned several drug cases to the investigators in the investigation department for completion.¹⁴⁹

The public prosecutor assumes the public prosecution case under a pleading he writes based on the charge order attached with the full package of the case forwarded to him by the investigation department in charge of drugs cases. The prosecutor will state in the pleading the fixed facts of the case, criminal descriptions, evidence and criminal roles committed by each suspect and indicate the legal articles stipulating the applicable penalty and request applying it to the perpetrators. The public prosecutor attends the trial sessions before the judicial authorities as appointed and will conduct the necessary plea. There is to be a public prosecution officer in each court. There are two public prosecution offices in Jeddah, one in the high court and the other in the primary court.¹⁵⁰ Having such a prosecution office in the court, in order to improve contact between judges and the Prosecution Department in the CIP, will speed up procedures regarding arrangement of the date of trial, or bringing witnesses or meeting any other request from the judges. This office coordinates the work between the court and the CIP branch in a way that assures justice. There was no such system under the previous system, meaning delays existed and took longer to deal with. The judge had to send his request to the main department of the police. This would take time and would affect the trial procedures.

¹⁴⁷ Ahamed A., *Comparative Criminal Procedures and Procedural Code in Saudi Arabia* , p.608

¹⁴⁸ Al Qatani F., *Public Prosecution and its role in the Criminal Justice System in the Kingdom of Saudi Arabia* , p.221

¹⁴⁹ I was employed as a Public prosecutor for three years

¹⁵⁰ Article (51/1-2) of CIP Bylaw

The public prosecution office coordinates both courts and the public prosecutor department concerning appointing the sessions, lodging the drug cases and following up their procedures after they have been judged. The organizer stipulates that the public prosecutor should attend the session since the trial cannot be held without them. In addition, the public prosecutor's attendance at the trial session is not formal but he should plea when necessary.

In England and Wales, the introduction of the CPS radically changed the system of prosecution, creating a new organization. Since then, according to statistics, the number of cases reaching courts is falling. This could reflect the activities of the police, who may be using more cautions, and anticipating CPS views on whether a prosecution should be continued.¹⁵¹ However, recent studies show that the CPS discontinues cases on public interest grounds as well as on the grounds of evidential insufficiency.¹⁵²

A final issue to be raised is if the victim does not wish to proceed with a case. Obviously, if a victim is unwilling to give evidence then the prosecution is likely to be unsuccessful. Thus the victim's role in the provision of evidence may be crucial. In addition, as with cautions, a failure to prosecute may deprive the victim of compensation, although some diversionary schemes provide for mediation between victim and offender. Any further role for the victim is problematic as it could be argued that to take the victim's attitude into account might conflict with any public interest there may be in prosecuting the offender to ensure that they are duly punished.¹⁵³

The significant procedural difference in this examination of the public prosecution was undoubtedly and unsurprisingly shown to be the separation in 1994 of the powers investigating from those prosecuting, the very creation of the CIP.

¹⁵¹Davies M., Croall H. and Tyrer J., *Criminal Justice: A Introduction to the Criminal Justice System in England and Wales*, p.130

¹⁵²CPS survey (January, 1994): 41% of all cases discontinued during the month of the survey were minor motoring offences.

¹⁵³Davies, Croall and Tyrer *op. cit.* at 132

5.5.9 The judiciary

The next aspect of the prosecution system that we will describe is the judiciary in Saudi Arabia.¹⁵⁴ The Judiciary Code introduced fundamental amendments on the line of the courts in Saudi Arabia, which has been applied since 1926. The courts in Saudi Arabia, since the code of Shari'a courts were passed in 1926, consist of: the Court of Urgent Matters, the Second Court of Urgent Matters, Shari'a Court and the Control Council which was replaced by the Discretion Council under the code of the Shari'a Courts in 1930. However, the Judiciary Code stipulates in Article (5) that the Shari'a courts consist of:

- High Judiciary Council.
- Discretion Court.
- Higher Courts.
- General Courts.

Each court has its jurisdiction for the matters lodged to it according to the applicable law. According to this provision, some amendments have been introduced to the order of the courts or its formation, i.e., the High Judiciary Council was established. The name of the High Shari'a court was changed to the General Court and the names of the two Courts of Urgent Matters were also changed to "Courts of First Instance".

Article (6) of the Judiciary Code and its amendments stipulate that the high court council comprises eleven members: Five (full time) members at grade of President of discretion court appointed by a Royal Order who form the council permanent board presided by its chairman or representative (most senior), and five (part time) members. Discretion court's present or deputy, under-secretary of Ministry of Justice and three senior presidents of the General courts are located in Mach, Minah, Riyadh, Jeddah, Dammam and Gizan. They, together with the members referred to the previous paragraph from the General Council Board presided over by the president of The Supreme Judicial Council.¹⁵⁵

The discretion courts comprise one president and sufficient number of judges where the vice-presidents are nominated from them as needed. The discretion courts have departments to decide penal lawsuits, departments to decide family affair lawsuits and departments to decide other lawsuits. These departments may be multiplied as

¹⁵⁴The Judiciary Code was promulgated by Royal Decree No. (M/64) in (1975), and some of its articles were amended by Royal Decree No.(M/76) in (1975).

¹⁵⁵Judiciary Code promulgated by the Royal Decree No. M/64 (1975)

needed and each department will be chaired by head or a deputy (Article (10)). The discretion court is located in Riyadh. General courts comprise one judge or more. The formation of such courts, the location and jurisdiction is made in a decision passed by the Minister of Justice. The Courts of First Instance are comprised of one or more judges. The formation of such courts, their location and jurisdiction is also made in a decision passed by the Minister of Justice (Article (24) of Judiciary Code). It is stipulated that the Shari'a courts are to comprise a certain number of judges. This number of judges varies according to the courts and judicial grades. The public prosecutor must always attend the court in criminal aggression offences and the session clerk is to be present. Article (1) of the Saudi Judiciary Code has stipulated that judges are independent, no power supersedes their judgements except the provisions of the Islamic Shari'a and applicable rules, and nobody has the right to interfere in their judicial affairs.¹⁵⁶

Drug smuggling cases in which the death sentence is the outcome are carefully reviewed and considered by the High Court, Discretion Council and High Court Council, i.e., thirteen judges before the papers are forwarded to the High Order. The case must also be forwarded and decided upon in the High Shari'a court by three judges. Other drug cases are decided by the primary court (one judge) provided the judgement is to be referred to the Discretion Council for review and action by the three judges. The definitions of possession, supply, and production are quite similar in both Saudi and English systems, but the penalties differ greatly. On a genuine conviction for drug trafficking in Saudi Arabia, the death penalty will be carried out.

The CIP Bylaws had no significant effect on the structure of courts or the judiciary, so we will move swiftly on to the last procedure to be described in this chapter.

5.5.10 The Right to Appeal

After a judgement is passed by the court, the defendant may not be satisfied and think that such a judgement is severe and is not in proportion to the act he has committed or he may continue claiming his innocence. Therefore, the Saudi Judiciary Code grants the defendant the right of objection to the judgement issued against him within 15 days of the date of issue. Such a procedure is carried out through the Discretion

¹⁵⁶ *ibid*

Council (A Judicial Authority higher than the Shari'a Court). The Discretion Council may ratify the court's judgments or reverse them. While the defendant has the right of objection to the judgement passed against him, the public prosecutor also has the right of objection to the judgments passed by Shari'a courts. In drug smuggling crimes, the decision made by the senior scholar's board passed under No. 138 issued in 1987 has allowed for the death sentence being passed against drug smugglers at the Discretion Council and Higher Judiciary Council.¹⁵⁷ The death sentence may also be passed if they have tried to evade the accusation, refute investigations or corrupt evidence¹⁵⁸ according to the bill that contains all facts, minutes, evidence and descriptions related to the crime. The public prosecutor may not during trial demand a judgement of innocence for the defendant if negative evidence is proved but the matter is to be left for the court in application to Article (51/3) of the CIP Bylaw.

The General Security Department system's articles did not pay much attention to the procedures of appeal against judgments nor state any general rules to be observed by the public prosecutor upon pleading against the judgement and his request to be discrete, while Articles (53-55) of the CIP Bylaw and Articles (193-197) of CPC state reasons that make the public prosecutor object to the judgement summarized as follows:

- 1) If the judge did not comply with, or violated a text stated in the Holy Quran, Holy Prophet's traditions or Ijma.
- 2) The judgement is in violation to the rules and laws:
 - a. When there is misapplication or misinterpretation, i.e., the judge imposes a fine for an offence while the law stipulates a jail sentence.
 - b. When there is non-compliance with the essential procedures on trial, i.e., passing a judgement in the absence of the defendant who has not been informed of the session date.
 - c. Essential deficiency in the judgement or justifications such as stultification in designation of stating the criminal minutes.

In England, when a person is sentenced in a magistrates' court they may appeal to the Crown Court. The appeal is usually heard by a judge sitting with two magistrates, and

¹⁵⁷ *Al Najjar E., Prosecution in Saudi Arabia, p. 87*

¹⁵⁸ *Article (51/3) of CIP Bylaw*

it takes the form of a re-hearing. The Crown Court is then empowered to pass any sentence which the magistrates' court could have imposed, either more severe or more lenient than the original one. The possibility of a more severe sentence tends to discourage appeals. Where there is a disputed point of law, the defendant may appeal to the Divisional Court by means of case stated or for judicial review. A person sentenced in the Crown Court may appeal to the Court of Appeal (Criminal Division) on a point of law. Otherwise an offender may apply for leave to appeal against sentence to the Court of Appeal. Applications for leave to appeal are given to individual High Court judges: little is known about how these decisions are made. If an offender is granted leave to appeal the Court hears submissions, usually from defence counsel only, and increasingly including reference to other cases. The Court may substitute any sentence, which is not more severe than the original sentence. The Court hears appeals from about 7 per cent of defendants sentenced in the Crown Court, about a quarter of which succeed.¹⁵⁹

In England and Wales there is no prosecution appeal against sentence. The closest approximation to it is the power of the Attorney General to refer to the Court of Appeal cases in which the sentence is considered too lenient. The power, introduced by the Criminal Justice Act 1988, is now exercised in some fifty cases per year. Shute argues that the Court of Appeal may increase the sentence if it is found to have been outside the normal range for the offence, and in a majority of cases it has increased the sentence. These decisions undoubtedly contribute to the corpus of sentencing guidance for lower courts.

We have seen that the CIP has authority in appealing cases, which cannot be said for the CPS. There are very different structures for appealing in the English system, where the courts or Attorney General decide whether a case may be appealed. This shows the power that the CIP has to make decisions concerning the case long after the CPS has lost any such authority. More importantly, there was no codification of appeal processes under the previous system and the CIP Bylaw and CPC remedied this. Again, as with many of the procedures we have examined, the 1994 changes in Saudi Arabia seem to have produced more efficiency and effectiveness in this stage of the prosecution.

¹⁵⁹*Davies, Croall and Tyrer op. cit. at 141*

5.6 CONCLUSION

This chapter, by using the example of drug offences, has concentrated on the specifics of procedure, what the different operational levels are, how mechanisms fit together and how these have evolved in Saudi Arabia since 1994. As a lesser part, it has attempted to draw out further details and further comparisons with the CPS system of England and Wales.

The decision to focus on drugs crimes was taken because of the seriousness of the problem as well as the fact that it is a highly profitable area. As such, those involved have the resources to test the effectiveness of law enforcement agencies, which is in part one of the reasons for the establishment of the CIP. Although the punishments for such crimes are severe, as we saw here, it has not acted as an adequate deterrent.

In this chapter's examination of drugs crime procedures, numerous conclusions have been drawn. In summary, it is fair to say that, in the CIP Code, several shortcomings that existed previously in the General Security Code have been addressed and rectified. The separation in 1994 of the powers investigating from those prosecuting, the very creation of the CIP, has meant effective, progressive changes in areas such as evidence and its disposal, primary investigation, stopping suspects, interrogation, custodial detention, disposing of the investigation and to a lesser extent search. It would be fair to say that it has brought the CIP more into line with the role of the CPS in England than its predecessor, the General Security Department, was.

Nevertheless, a note of caution should be sounded with regard specifically to interrogation. Although the establishment of the CIP offered the right to an attorney at this stage where the previous system had none, research among both the CIP and the police indicates that there is still significant disagreement with the idea that the attorney necessarily be present. With the criticism that the Saudi Arabian criminal justice system receives from abroad, especially in relation to its treatment of foreign (Western) suspects and accusations of torture, there is a need to underline the rights of the accused during the interrogation and more progressive change could take place in this regard. Even the judges, despite accepting that there have been improvements in the area, believe that the interrogators require more experience.

However, on the whole, what becomes apparent when looking at procedural areas, particularly those of investigation procedure and the role of the Public Prosecutor, is the extra power and independence wielded by the CIP system in contrast to both its predecessor and the English CPS and the ability this gives it to deliver a significant improvement in criminal procedure over the pre-1994 arrangements.

CHAPTER SIX

PERSPECTIVES

6.1 INTRODUCTION

The previous five chapters have concentrated on various aspects of the organization of the CIP including its relationships with other agencies and the roles and responsibilities of its members. In the course of that examination, we also looked at the attitudes and beliefs of some of those working within the Saudi Arabian criminal justice system. This chapter is designed to extend an interpretation and analysis of those perspectives.

Obviously, the importance of this chapter is its insight into the 'heart' of the post-1994 justice system. This thesis is interested not merely in the establishment of the CIP but also the success it has had in improving that system. Hearing these voices is an essential part of our understanding of any improvements that have been or could yet be made.

After the examination of how the CIP is perceived by those working in and with it, the chapter will end with a number of conclusions which can be drawn from it. These will focus on summarizing the preceding analysis and as a prelude to the recommendations which follow in the last chapter. First, though, is a look at the nature of the field study from which this data was taken.

6.2 THE FIELD STUDY

The data from the field study is in three parts. The first comprises interviews with the eight judges who agreed to participate among the twelve working in Jeddah courts. All of the sample individuals are Saudis. They have been employed for relatively long periods in the judicial field, accruing half of their total experience within the justice system. The interviews were a tool for comparing drugs crime procedures pre- and post-1994 as well as a comment on other aspects of the CIP. There were specific questions on pre-investigation, investigative and prosecution procedure in addition to ones on defendants' rights.

The second part of the field study took the form of questionnaires distributed to members of the CIP and the investigators and assistants of the General Security Department in Jeddah. A random sample was chosen from both groups and the total number of the chosen sample from the first group was 69 individuals, which is half

CIP manpower. The total from the second group (officers and assistants of the Public Security Department) was 81, a rate of 50.31% of those working in that field.

The third part of the field study focussed on lawyers. Thirty agreed to take part in the study and answered questions on their own background as well as on their views concerning the CIP. The range included lawyers trained in a variety of job specialities and with differing levels of experience. Unfortunately, in terms of variety, the entire sample was made up of graduates, with none having completed a post-graduate degree.

The questionnaire was divided into three main parts. The first part covers personal, educational and professional areas.¹ The second is concerned with the main functions of the CIP and lastly, the third part asks about other issues related to the timing of and reasons for its establishment as well as its present capabilities. As well as the questionnaire, informal interviews were also used, through explaining the study objectives and fielding the relative queries.

More detail on the procedures followed in relation to preparing and carrying out the field study can be found in the Appendix. Now we turn to an interpretation of the results of the second and third parts of the questionnaire, and of the interviews with the judges.

6.3 INTERPRETATIONS

The questions are generally about the jurisdiction of the CIP and its performance as well as the procedures and participation in processes such as inspection and interrogation. The analysis is illuminating because the responses given to the 1994 changes is coming from those most directly involved in the Saudi criminal justice system. It highlights differences in perception of the changes amongst the CIP and police officers. Some of the data can be taken as a comment on relationships between the three institutions.

Much of the data concerning the jurisdiction of the CIP is unremarkable. A look at tables in the Appendix shows that in the fields supervising jails and other centres of detention and supervision of sentence execution, there is a high level of agreement for

¹ *A complete breakdown of the personal, educational and professional backgrounds of the judges, CIP members and police officers can be found in Appendix B.*

the CIP's role. Police levels of agreement are lower than those of the CIP, while lawyers levels tend to fluctuate but generally are higher than the police's. Nevertheless, these trends are consistent through the data. The relatively high levels of consent indicate that these are areas where there are few questions about jurisdiction and cooperation is effective. Taken together, the statistics underline the necessity to clarify the duties, responsibilities and jurisdiction of each agency and to explain the methods of implementing such tasks and the required grounds of mutual cooperation.

On the question of whether the old General Security Department would be capable of undertaking the duties of investigation and prosecution, the difference in the numbers can be assigned to loyalty to the old department amongst the police and a high opinion of its capability, but fifty percent is not that high. The numbers can still be seen as broadly supportive of the CIP's capabilities in the areas. The CIP has the higher degree of familiarity with the latest investigative practices, but it is crucial to maintain this in all areas of its jurisdiction, but even amongst them, investigation obviously requires specific knowledge of techniques which are improving continuously.

While some of the data broadly confirms expectations regarding the role and jurisdiction of the CIP, some of it raises important questions which are worth examining. This data follows in chart form, accompanied by an analysis.

Chart 1
Reasons for establishing the CIP

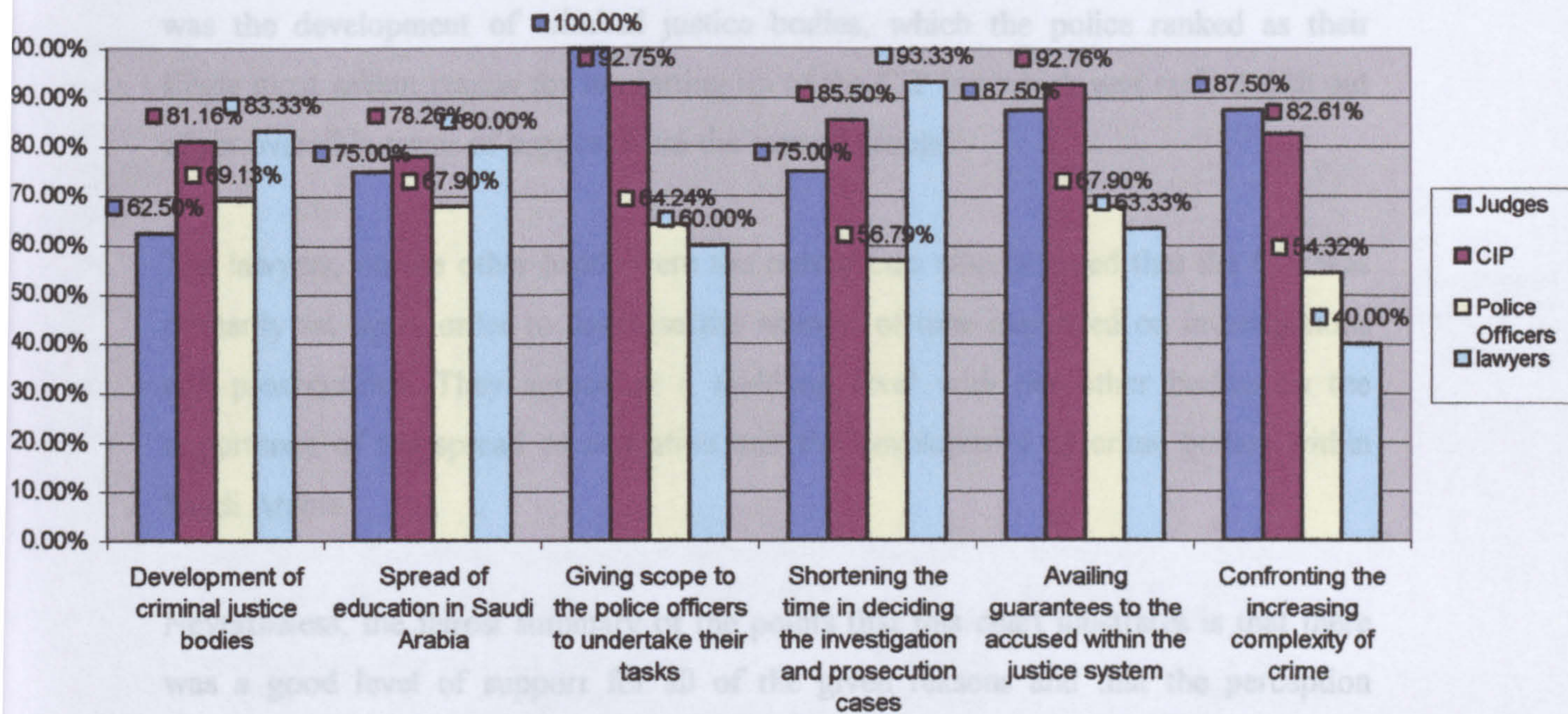


Chart 1 illustrates a comparison of perceived reasons amongst the samples for the establishment of the CIP. Of the six reasons given, it can be seen that the one given most support is the idea that the CIP was set up in order to free up some of the police officers' time in order that they may better fulfil their duties. Indeed, among the judges there is unanimous consent for this idea although the police officers rank this fourth in the responses.

Both the CIP and judges strongly agree that the new prosecution system was established at least in part to offer new guarantees to the accused, a response which appears to make the CIP a progressive body in terms of its relations to suspects in Saudi Arabia. However, the lawyers do not agree with this assertion to such a degree. A close third amongst the CIP and judges was the response that the CIP was established to confront the increasing complexity of crime in the kingdom, although the same response had the least support of any of the answers among police officers and lawyers. Although it is impossible to know why this received such little agreement, there is the possibility that some among the police would like to assert that they could have continued to handle the responsibilities they had before the changes.

In fact, the police offered consistently lower support for each discrete item than the judges and the CIP, while the results from the lawyers varied much more widely. It was the development of criminal justice bodies, which the police ranked as their single most salient reason for the setting up of the CIP but which was ranked fifth out of six overall in terms of support from the sample groups.

The lawyers, on the other hand, were the only group who believed that the CIP was primarily set up in order to decrease the amount of time expended on investigations and prosecutions. They agreed at a middling level with the other bodies on the importance of the spread of education and the development of crime bodies within Saudi Arabia.

Nevertheless, the fairest summary of the points that this chart illustrates is that there was a good level of support for all of the given reasons and that the perception amongst those working in the criminal justice system in Saudi Arabia is that there were a number of connected reasons for the introduction of the CIP in 1994.

Chart 2
Factors affecting the performance levels of the CIP

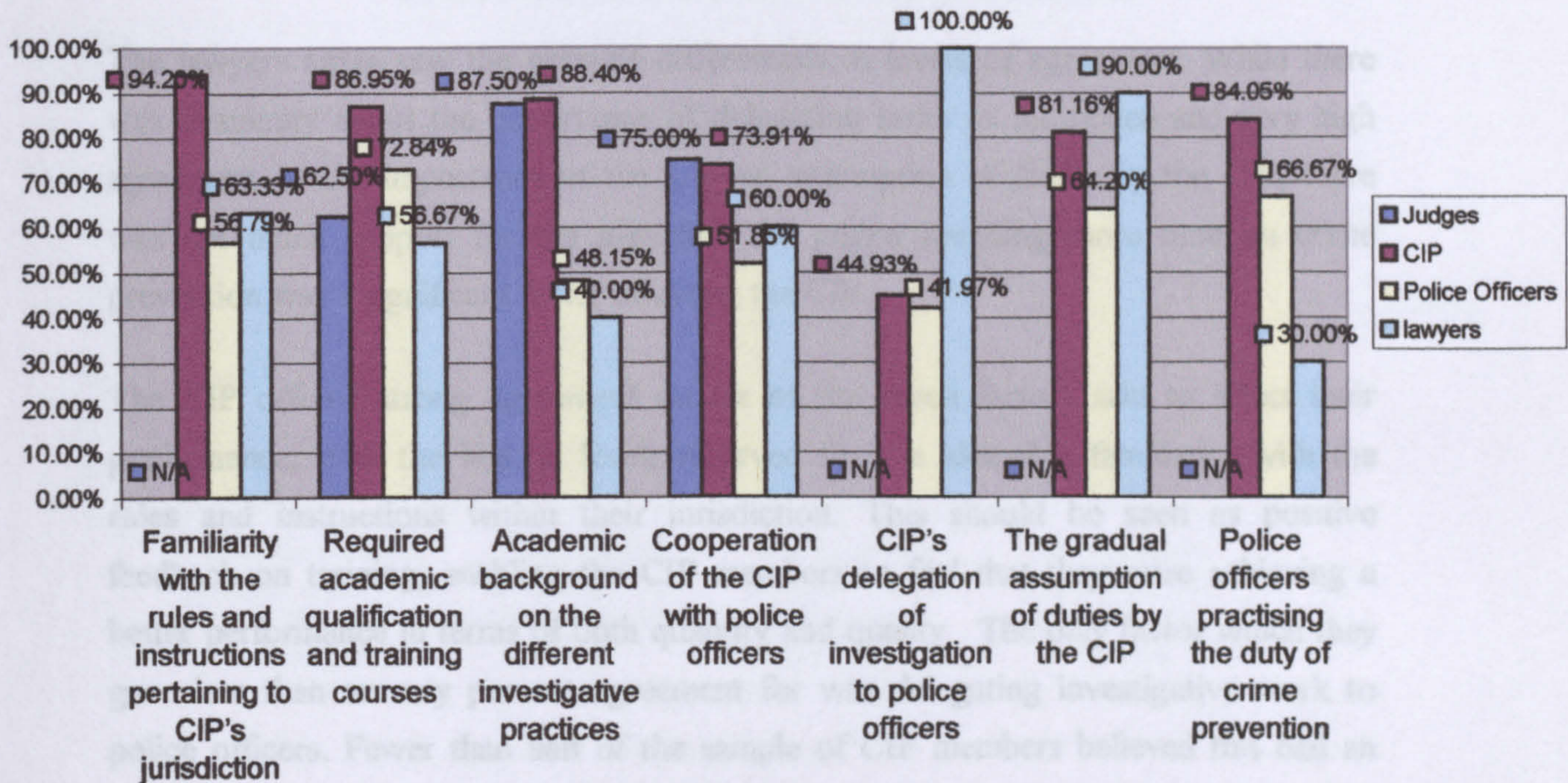


Chart 2 shows sample groups' opinions as to what factors affect the performance level of the CIP. Although the judges were asked about three of these items, they were not questioned about four of the others. The chart shows that the judges saw the academic and scientific background for the different investigative practices as the factor most affecting performance, which underlines the importance of providing relevant experience and training within the CIP. This same reply received a lot of support among the CIP, too, who ranked it as the second most significant factor, but it was not a popular response with the police, with less than half of the officers opting for it, nor with the lawyers, who gave even less support to this assertion.

The police again offered less support than the CIP and judges for each discrete item bar one. This time it was that the required academic qualification and training courses were a significant element of the CIP performance. To some of the judges, therefore, there is a relevant difference between the effects of the academic background on investigation and the effects of the required qualifications and training, one that is not immediately obvious and may require further investigation. Nevertheless, the general consent for this item entails attention should be paid to selecting the best-qualified cadres, which is also an important factor in performance levels. Obviously, training is

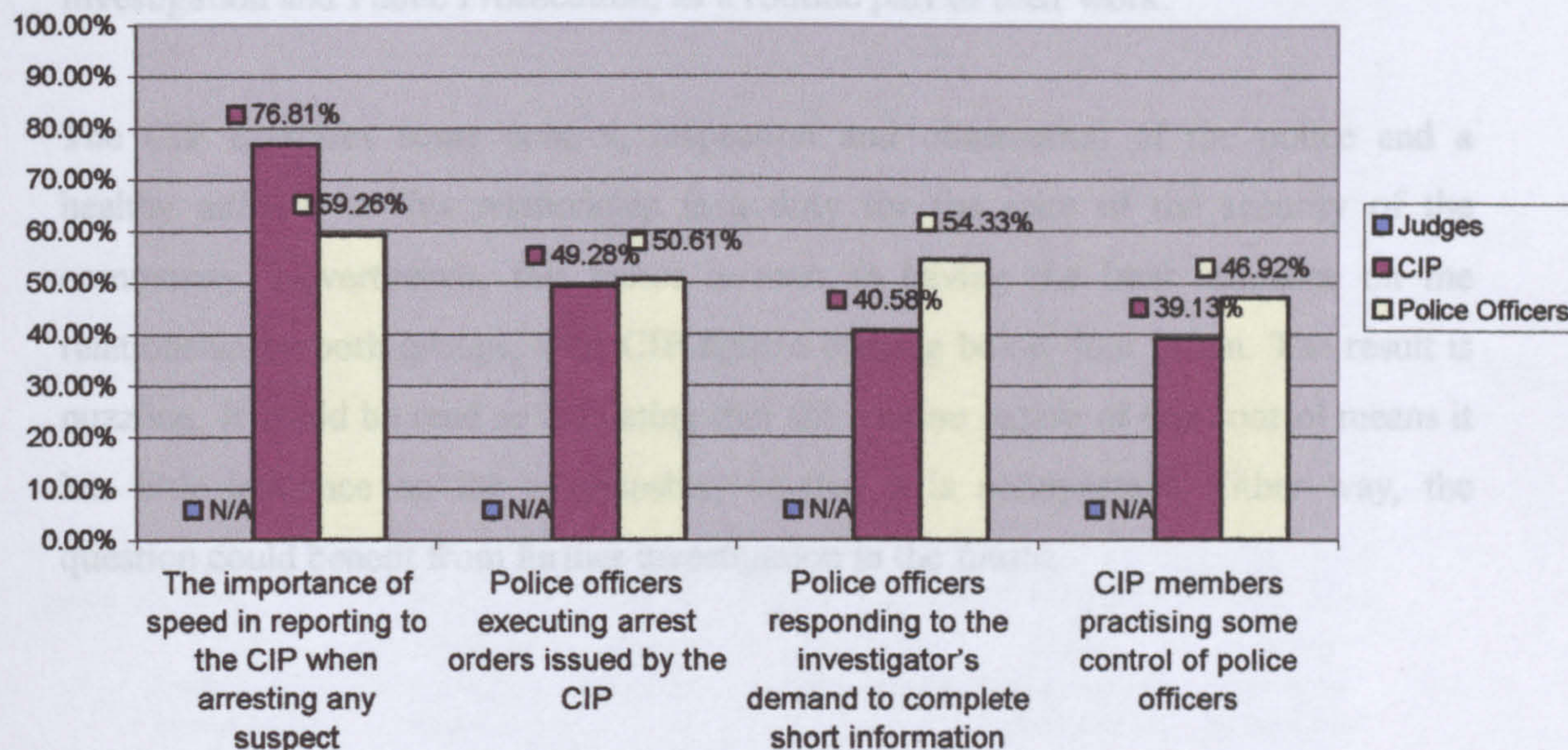
a significant factor and perhaps one that some feel could have a greater effect on performance levels.

The lawyers again saw the greatest differentials in levels of agreement. While there was unanimity about the importance of delegating tasks to the police and very high agreement on the importance of the gradual assumption of duties by the CIP, there was not much support for the idea that the police spending more time on crime prevention was a significant factor affecting the CIP.

The CIP offered strong agreement on six of the seven factors said to affect their performance, with the highest levels reserved for the idea that familiarity with the rules and instructions within their jurisdiction. This should be seen as positive feedback on training, enabling the CIP members to feel that they were achieving a better performance in terms of both quantity and quality. The only factor which they gave less than seventy percent agreement for was delegating investigative work to police officers. Fewer than half of the sample of CIP members believed this had an effect on their performance level. The police concurred with this view. This emphasises the importance of there being established grounds and rules for delegating the police to undertake investigation work in cooperation with the CIP where necessary. However, the question remains open as to why delegation is not considered an important factor in how the CIP perform. The answer may be that there is a need for the CIP to be able to delegate to academically and professionally qualified experts, especially in the field of investigation.

There are higher levels of agreement for the assertions that cooperation between the CIP and police affect performance, but these numbers are not as high as perhaps they could be, when compared with other factors ranked here. Only slightly more than half the police officers saw this as a relevant factor and just less than three quarters of the CIP, noticeably lower than their agreement with all other factors except the issue of delegation, which we have looked at. The CIP's duties begin with the completion of the police officers' tasks, but there is an element of overlap within the two bodies, where some duties are jointly performed. It seems necessary, therefore, to establish proper grounds for cooperation between the two bodies generally, not only in regard to delegation. The answer is for a more systematic approach to the relationship in order to assure that cooperation is perceived as an important element of the CIP's performance, which it undoubtedly is.

Chart 3
Factors affecting the relationship between the CIP and the police



The third chart illustrates the CIP and police officers' views on the effect of certain factors on their relationship. It clearly shows that both samples give their highest agreement to the importance of speed in reporting to the CIP on the arrest of a suspect. Having read the opinions of the CIP research sample, it is evident that there is a direct correlation between early reporting and the strength of the relationship. Both groups appreciate that early reporting facilitates detection of the facts and expedites the investigation procedures. The importance of this fact should therefore be reinforced in police training in order to further strengthen the relationship.

Two other working practices receive between forty and fifty five percent agreement, which is not a high level of consent. Half of each of the two groups seem to agree that the role of the police in executing CIP-issued arrest orders does not have a major effect on their relationship. Again, this can perhaps be attributed to there being an absence of organisational rules clarifying the nature of the relationship. Surely an efficient execution of arrest orders would positively benefit this relationship and therefore be considered to have a larger effect on it? A similar pattern exists in relation to the completion of short information by the police at the behest of the CIP, except with even less support as an influencing factor amongst the CIP. The higher

level of consent among the police may be an indication that they see the carrying out of this duty, which is regulated by the Executive Bylaw of the Commission for Investigation and Public Prosecution, as a routine part of their work.

The CIP exercises some control, inspection and observation of the police and a healthy attitude to this relationship is a duty for the sake of the security of the community. Nevertheless, this factor is seen as having the least influence on the relationship by both groups, with CIP figures dipping below four in ten. The result is puzzling. It could be read as indicating that the routine nature of this control means it has little influence on the relationship, or that it is unimportant. Either way, the question could benefit from further investigation in the future.

Chart 4
Participation and influence in inspection

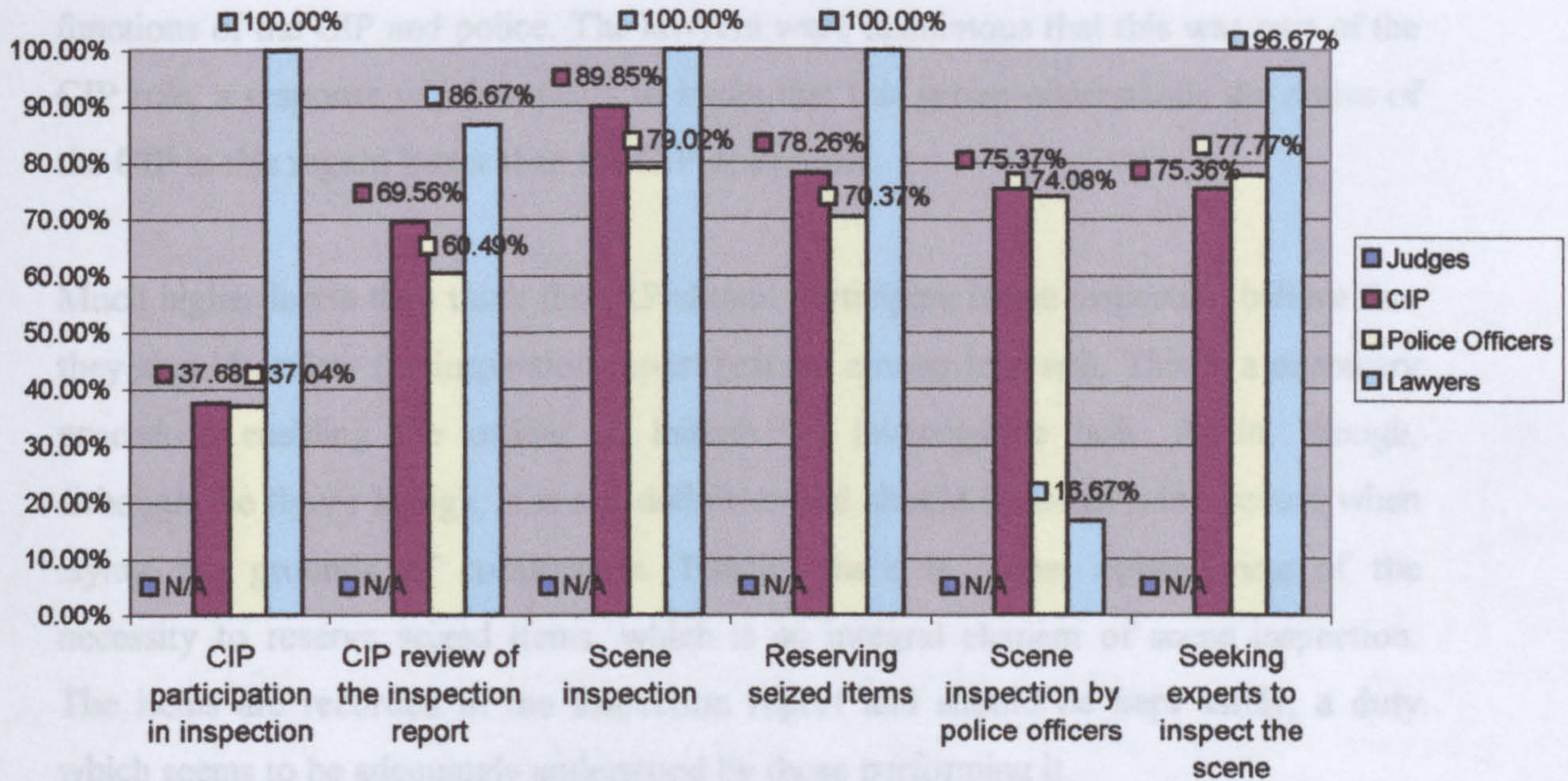


Chart 4 shows the percentage of those in the sample groups answering 'always' or 'frequently' when asked about the necessity of certain procedures in the process of inspection. It also indicates who they feel should participate in that process. Unsurprisingly, the procedure which is considered most important is inspection of the scene of the crime. The task is an important police function during which they may seek the assistance of experts in various fields (chemistry, fingerprinting, engineering, explosives, etc.). More than three quarters of both the police and CIP thought these experts should be involved, with the police seeing the necessity slightly more than the CIP, a statistic which can be attributed to their appreciation of the benefit they obtain in the carrying out of their task. The lawyers agreed at even higher levels here, a trend which was consistent across five of the six discrete items. The exception regarded the participation of the police in inspection of the scene, where there was very little support among the lawyers.

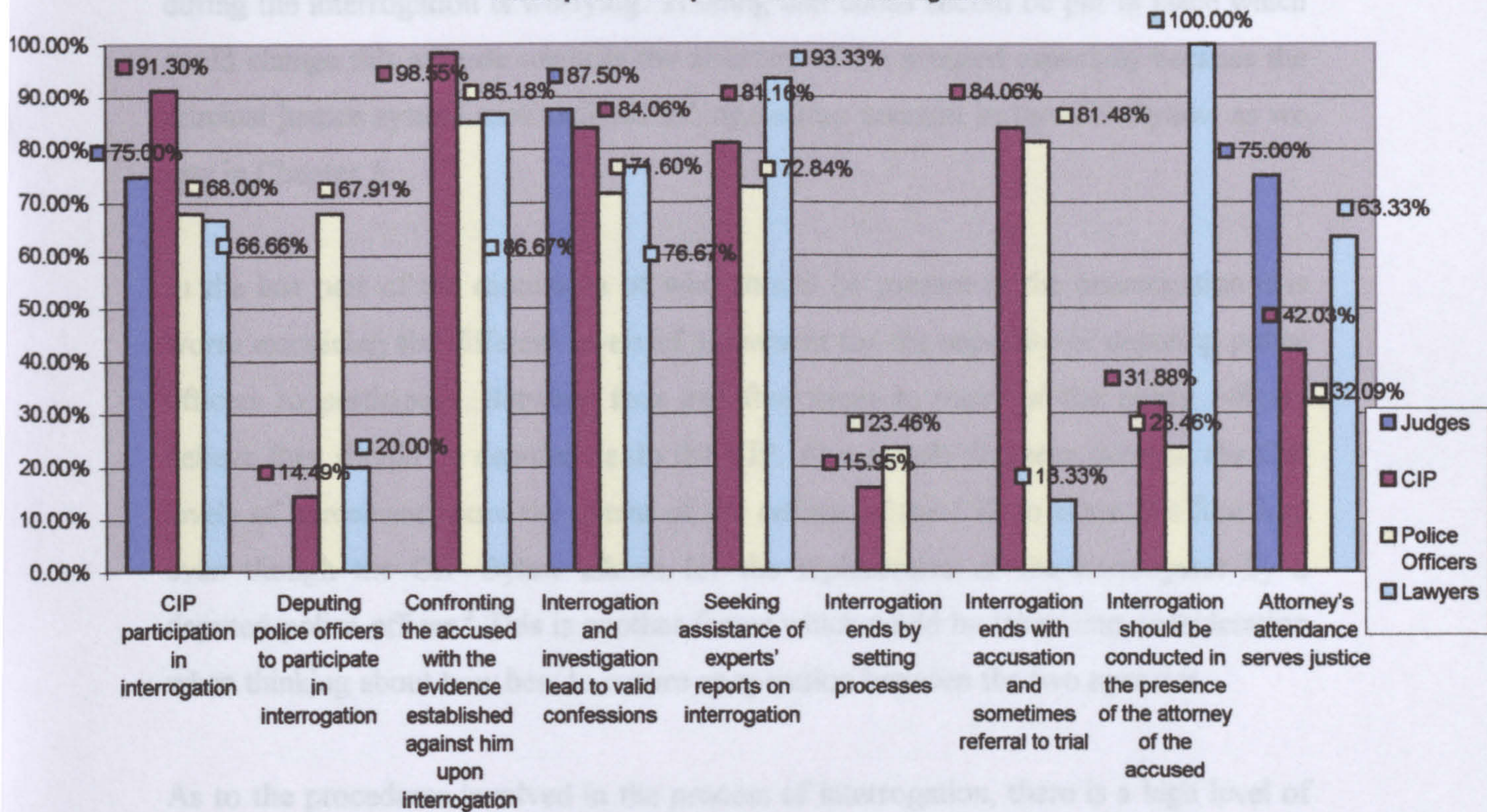
In contrast, exactly half the number of the CIP and police think that the CIP member needs to participate in the inspection procedure as think the scene should be inspected by police officers. Although the CIP have jurisdiction over this area, fewer than four in ten of each group thought that they need exercise this right. This result should

undoubtedly be considered significant in discussing cooperation between the agencies and could influence ideas about control of the overlap between the duties and functions of the CIP and police. The lawyers were unanimous that this was part of the CIP role, a response which appears to imply that this group understands the duties of the CIP in this regard better than the CIP does itself.

Much higher levels than think the CIP should participate in the inspection believe that they should review the inspection report (except among lawyers). This is a necessary procedure enabling the officer to initiate his investigative task. Again, though, although the figure is high, it is not definitive and should be taken into account when laying the grounds of cooperation. Finally, there is higher appreciation of the necessity to reserve seized items, which is an integral element of scene inspection. The items are recorded in the inspection report and should be kept safely, a duty which seems to be adequately understood by those performing it.

Although it is currently stipulated that the process of inspection is conducted by the police officer and the investigator, it may be necessary to establish more grounds and controls and to explain to whom the inspection is assigned.

Chart 5
Participation and procedures in Interrogation



Moving from inspection to interrogation, the fifth chart indicates sample groups' levels of agreement on the 'who' and 'how' of the process. Three quarters of the judges believed that the CIP member should interrogate the accused and the same number believed that the presence of an attorney serves the cause of justice. While CIP participation has high levels of agreement from the police, CIP and lawyers as well, the numbers of the CIP and police convinced of the necessity of an attorney's attendance is considerably less than half of those figures, with around 22 to 23% of each agreeing that the interrogation should be conducted in the presence of the attorney. Obviously, the lawyers are unanimous in agreeing that they should be present during the interrogation.

The number of police who think the CIP should conduct the interrogation is more than twenty percent lower than the number of CIP members who agree with the statement and this could be connected to the fact that it had previously been the police's duty, but the more interesting figure is that concerning the attorney, as we have seen earlier in the thesis. Considering that the CIP member can prevent an attorney's presence,

such a low level of agreement with the assertion that an attorney should be present during the interrogation is worrying. Training and codes should be put in place which could change this attitude towards the attorney of the accused especially because the criminal justice system took defendants' rights into account in the CIP Bylaw, as we saw in Chapter 2.

In the last part of the discussion of who should be present in the interrogation it is worth examining the different levels of agreement for the necessity of deputing police officers to participate. Between four and five times as many of the police officers believe they should be deputed as do the CIP. At a measly fourteen percent, the CIP levels of agreement show the extent of the refusal of the CIP to share this function, even though the CIP Bylaw allows for the replacement of the investigator by a deputed police officer.² This is another factor which could be taken into consideration when thinking about how best to ensure cooperation between the two agencies.

As to the procedures involved in the process of interrogation, there is a high level of agreement for confronting the accused with the evidence. It is necessary to have established specific practices on how exactly to do this according to the significance of the evidence, both separately and collectively. There is a high level of consent too for the importance of using expert reports on interrogation, which is part of good practice.

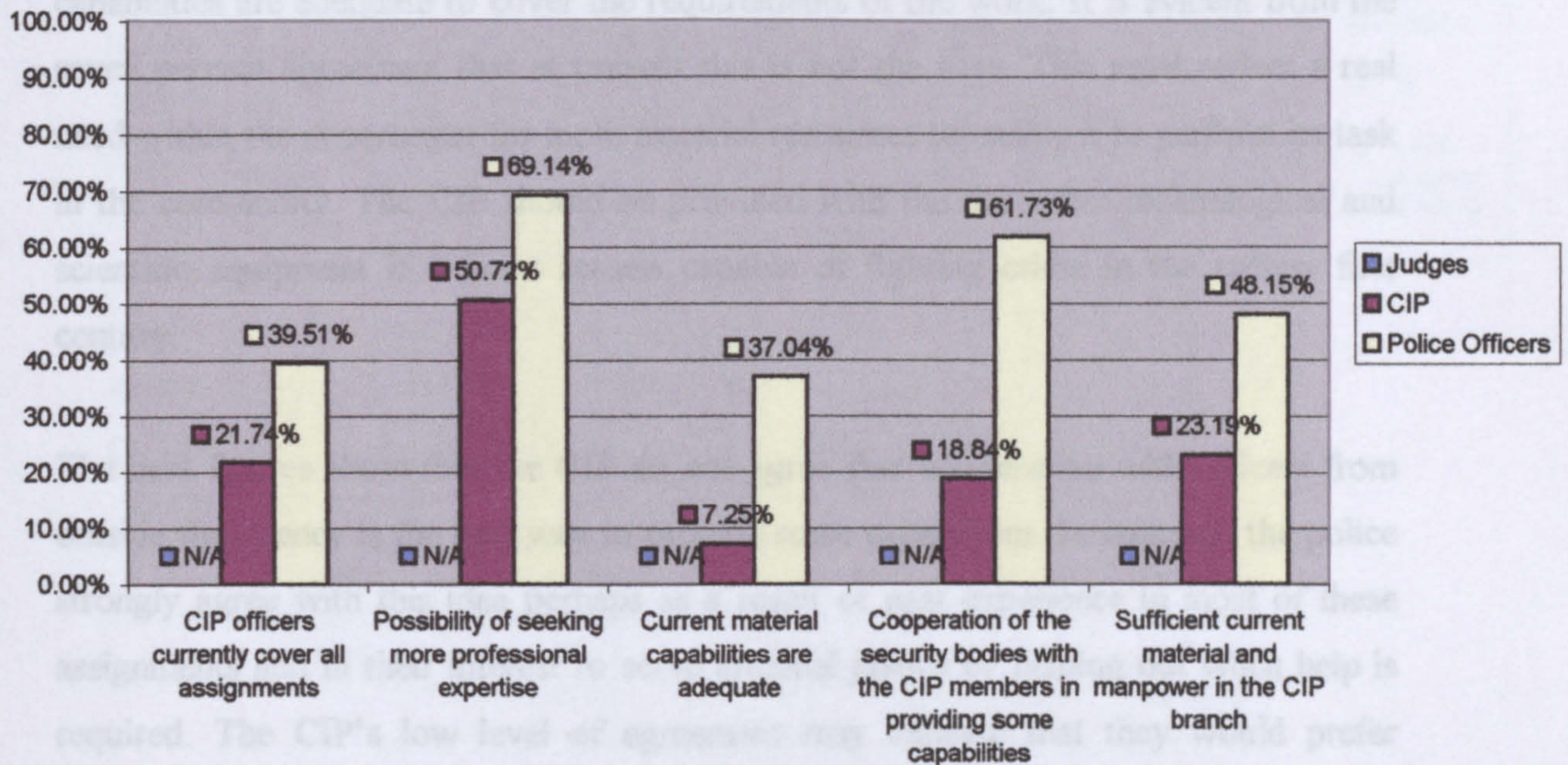
The question of how interrogation should end is the next we examine, and we can see immediately that there is an expectation among both CIP and police that the answer is accusation and sometimes referral to trial whereas lawyers do not seem to have a fixed opinion on how interrogation should end. Less than a quarter of the police, and almost ten percent fewer of the CIP agree that interrogation ends by setting processes and releasing the accused. It is unclear whether these figures represent a belief that the inspection report and arrest would inevitably have lead to the right person or if they represent a determination to convict someone. The investigative body is responsible for interrogation and should be interested in convicting the guilty and clearing and protecting the innocent. It is not the function of this research to judge the attitudes of

² *Articles 12/1/B and 12/2/C*

the officers in Saudi Arabia, but these figures, especially combined with the levels of agreement toward the necessity of the presence of the attorney that we saw above, should be the spur for more detailed research into the attitudes of the CIP, and to a lesser extent the police, towards the process of investigation.

When asked if they believed interrogation and investigation lead to valid confessions, levels of agreement were highest among the judges, with seven out of eight expressing confidence in the interrogators. The CIP agreed at only a slightly lower level and the lawyers and police supported the assertion at a level of more than seven in ten. This is related to a successful method of interrogation and confrontation with the evidence. The fact that there are some CIP members who are not in complete agreement here does indicate a need to foster the CIP with sufficient experience in the field of interrogation and investigation, especially with regard to advanced scientific methods.

Chart 6
Current CIP material and manpower capabilities



The sixth chart depicts the levels of two sample groups' unqualified agreement on the current material and manpower capabilities of the CIP branch in Jeddah. It is worth examining each item in turn. First, only approximately one in five CIP members agree that there are sufficient manpower resources to cover the duties within their jurisdiction, whereas the majority have indicated that the current capabilities are average and cannot manage all the functions of the department. This indicates that it is necessary to provide more highly-qualified officers for the CIP in order that they can better carry out their duties. This obviously necessitates an increase in the CIP's budget.

The next item on the chart only reinforces the need for more highly qualified personnel. In this case, it is more professional expertise that the CIP and police think are required. Fifty percent of the CIP members and seventy percent of the police, who are the agency dealing with the scene of inspection, agree with the possibility of seeking more experts and entrusting them with temporary assignments. Therefore, the

CIP should be provided with the means to improve and the opportunity to more effectively perform its duties.

The next question asked for agreement with the assertion that current material capabilities are adequate to cover the requirements of the work. It is evident from the seven percent agreement that at present this is not the case. This must reflect a real need within the department for more material resources to enable it to perform its task in the community. The CIP should be provided with the necessary technological and scientific equipment if it is to remain capable of fighting crime in the twenty first century.

The next figures show that the CIP do not agree that cooperation with officers from outside the agency is the best way to provide some capabilities. In contrast, the police strongly agree with this idea perhaps as a result of past experience in most of these assignments and in their interest to serve criminal justice by helping out when help is required. The CIP's low level of agreement may indicate that they would prefer academically qualified personnel to perform the duties entrusted to the CIP, and for each of these people to be provided with the necessary training and material resources.

Finally, we see that in response to the question of whether there are currently sufficient manpower and material resources in the CIP branch, around half as many CIP members agree as police officers, at 47% for the latter. This indicates that the CIP are far less satisfied with the resources they have than the police believe they should be, a fact which may be attributed to the CIP's first hand knowledge of the requirements of their responsibilities.

The overall picture to be taken from Chart 6 is that the CIP believes it requires more capabilities and resources at this time.

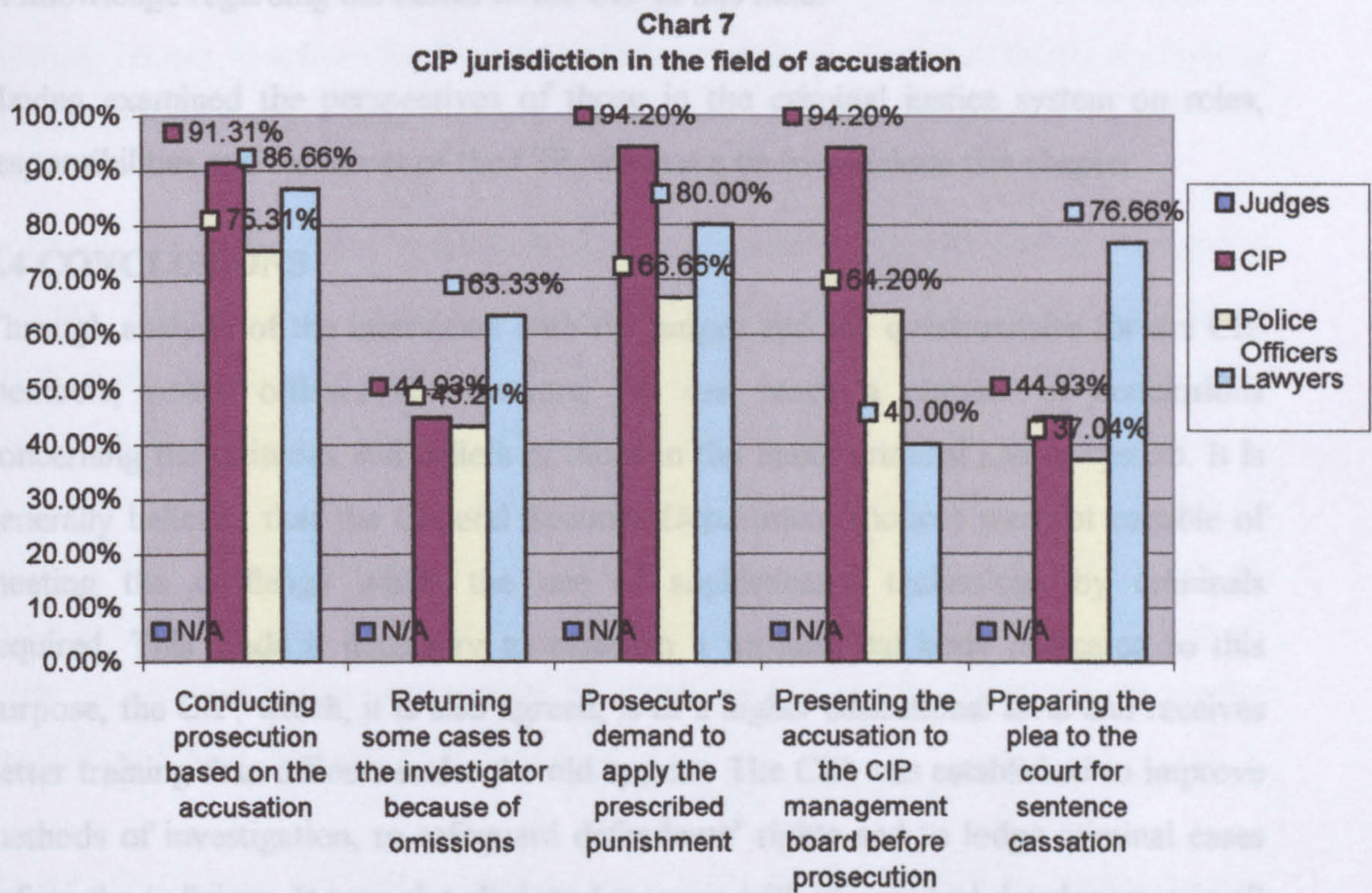


Chart 7 concerns levels of agreement with what lies within the CIP's jurisdiction in the field of accusation. We can see that there is strong across-the-board agreement from the CIP, lawyers and police that it is for the CIP to conduct the prosecution based on the accusations that have been made. Equally, there is strong support for the assertion that it is within the CIP's remit to demand the application of the prescribed punishment.

Lower levels, however, agree that it is for the CIP to return cases to the investigators when there are omissions, with less than half of the police and CIP agreeing. Lawyers' levels are higher here, as with the idea that it is for the CIP to prepare the pleas to the court for sentence cassation, with the police and CIP again scoring below fifty percent agreement. Judges were not questioned in this area.

The biggest differentials occur on the question of whether the CIP should present the accusation to the CIP management board before prosecution, where the CIP agree at almost ninety-five percent but the lawyers only consent at a level of forty percent.

Differing responses in this section can probably mostly be put down to varying levels of knowledge regarding the duties of the CIP in this field.

Having examined the perspectives of those in the criminal justice system on roles, responsibilities and resources of the CIP, we move on to conclude this chapter.

6.4 CONCLUSIONS

Through analysis of the interviews with the judges and the questionnaire for the CIP members, police officers and lawyers, we can reach a number of conclusions concerning the attitudes and beliefs of those in the Saudi criminal justice system. It is generally believed that the General Security Department (police) was not capable of meeting the challenge which the use of sophisticated technology by criminals required. This made it necessary to establish a professional body dedicated to this purpose, the CIP, which, it is also agreed, is of a higher educational level and receives better training than officers under the old system. The CIP was established to improve methods of investigation, to safeguard defendants' rights and to lodge criminal cases before the judiciary. It was also designed to cope with the gradual development in all fields in general and in criminal justice in particular as a result of the development of crime. What is clear is that there was evident and close cooperation between the investigators of the General Security Department and the CIP while working together in the police stations and anti-drug departments during the transition.

The relationship between the CIP and the police is the foundation of the post 1994 Saudi criminal justice and the perspectives we have examined have not pointed out any problems with it. Nevertheless, there seems to be different levels of agreement on most questions and differing ideas on inspection procedures could theoretically have the potential to cause friction between the two agencies. It may be necessary to establish more grounds and controls in this area.

Similarly, the CIP code and criminal procedures act have stipulated an attorney be available to the accused during investigation especially since the investigator has no right to separate the accused and the attorney on interrogation. Among the advantages of the CIP, then, is the safeguarding of defendants' rights since an attorney's attendance during interrogation and trial serves justice and is considered a guarantee

to the defendant that was not available in the former system. However, as we have clearly seen here, some negative attitudes towards the presence of a defendant's attorney remain. It is hard to express anything other than disquiet at that in the light of human rights accusations made against the Saudi prosecution system.

In terms of other procedures within the CIP, the members feel that they are achieving a better performance in terms of both quantity and quality. After the investigation of drug cases had been assigned to the CIP, they became more accurate and more quickly executed. This change is generally attributed to the police officers being able to concentrate in full on their main duties. This has in turn meant the CIP play an efficient role in processing criminal cases in cooperation with them. Elsewhere in procedural terms, there had been some deviations under the former system in respect to the orders of stoppage and custody detention, something that has not occurred since the CIP took over the investigation of drug cases.

As regards training, the CIP themselves seem to be relatively satisfied, whilst there is a view amongst the judges that better or more practical training could be put in place. The data has revealed a belief that the current human resources and material capabilities of the CIP branch in Jeddah are insufficient to enable the CIP to perform its duties in the field of criminal investigation as efficiently as would otherwise be possible and that they need continuous support to cover all duties entrusted to them.

CHAPTER SEVEN

Conclusions and Recommendations

7.1 INTRODUCTION

Before the establishment of the Commission for Investigation and Prosecution, the Saudi criminal justice system was beginning to fail Saudi society. The police, who controlled the investigative and prosecutorial elements of the system at the time as well as the normal police functions, were not fully accountable and the system faced international criticism for its perceived failures to adequately defend the human rights of defendants. In addition to this, advances in technology meant that the police were not able to deal adequately with the increasing complexity of international crime. The CIP was designed to be the answer to those problems.

It was established to investigate and prosecute all criminal cases, to be responsible for any appeal, the supervision of the execution of penal sentences, and the inspection and control of jails. This thesis, designed to provide a clear picture of the Saudi criminal justice system for those unfamiliar with it, examined the establishment of the CIP and its impact on the criminal procedures in the Saudi Arabian Criminal Justice system. It tackled the main roles of the CIP and considered its branch and courts in Jeddah for practical insights into the agency.

In summary, we could say that there were several interlocking elements of this thesis. An important part of the whole was the examination of Islamic Law, including the concepts of crime and prosecution. To many, the differences between Islamic Law and Western Common Law seem so great as to make a comparison between the Saudi and English criminal justice systems a rather unusual task to undertake. What followed the look at Islamic Law was a description of the organisation of the CIP and an analysis of its role and its relationships with other agencies. This is the bulk of the thesis and precedes a comparison between criminal case procedures in drug offences before and after the establishment of the CIP.

Throughout the thesis there has been an attempt to underline the significance of the developments either with reference to the pre-1994 system, or by comparing or contrasting it with the English system. The main aim, however, has been to

investigate the qualitative difference that the CIP has made - an analysis of the effectiveness and fairness of the new agency - and to assess to what extent it could improve. The conclusions and recommendations that form this chapter are to some extent, then, a measure of whether this thesis has achieved its goal.

7.2 CONCLUSIONS

The majority of this section will provide a summary of the conclusions reached in each of the chapters. In doing so, it necessarily omits some of the lesser points made in those conclusions in order to avoid extensive repetition and to focus on some of the main points that have been made in the body of this thesis. The conclusions are presented as they were arrived at, beginning with chapter one.

The first chapter examined the background both to Islamic Law and the contemporary Saudi system of prosecution. Through a look at Islamic Jurisprudence and the differing methodologies, it illustrated the flexibility and breadth of Islamic Law. The chapter also outlined differences between Islamic Law and English Common Law or European Civil Law traditions, not least of which was that there is no separation of religion and state. Muslims are bound to the teachings of the Quran.

We saw that Islamic Law recognizes three main categories of crime and provides punishment in order to protect the five indispensables of Islam. The 1994 changes in the Saudi system were obviously created with this in mind, and the chapter clearly demonstrated that Saudi criminal procedure is based on Shari'a, as laid out in the Quran, the Sunna and various other jurisprudential sources. The chapter showed that the area of punishments in Islamic Law, being so different to contemporary western systems', inevitably leads to differences in the role of the prosecutor in Saudi Arabia and England, for example. As well as indicating some sources of and principles for criminal procedures in Islamic Law the chapter also illustrated how Muslims prosecuted suspects in medieval times and outlined which bodies had authority to carry out prosecutions before the emergence of the public prosecution system and ultimately the CIP. It also demonstrated how Qissas judgements remain a part of the modern Saudi system and outlined the role the CIP member plays, while illustrating a connection between the application of Islamic Criminal Law and the operation of the CIP in practice.

The second chapter discussed the nature of criminal justice and investigated the origins of public prosecution. We saw that France is in many ways the origin of modern prosecution systems and that the French system can be utilised as a framework over which to describe other public prosecution systems. Amongst the theoretical models that were discussed, we could see how the modern “mixed system” has come to dominate and we can conclude that the model of prosecution in Saudi Arabia is comparable to others around the world. We saw that within the criminal justice system, the role of the prosecutor does not differ so greatly. One significant difference between England and Saudi Arabia is the supervisory role the CIP plays in sentence execution. Such roles, however, exist in modified form as the responsibility of some other element of the system in other countries. The general criminal justice framework is not so different and the investigative and prosecutorial roles of the CIP are very similar to those in any other model which could be deemed “mixed system”.

Additionally, the second chapter touched upon the subject of human rights and my research showed that under the CIP system, suspects and prisoners were afforded more guarantees by the presence of their lawyer at the interrogation and trial stages than they had under the previous system. Ultimately, though, the King has responsibility for the protection of human rights. Our examination indicates that while there is scope for improvement, the CIP seems fairer than the previous system.

The second chapter also analysed some of the arguments concerning the concentration of powers of investigation and prosecution in one authority. Although there were specific arguments justifying the CIP having both these powers in Saudi Arabia, the weight of more general arguments is against vesting them in one body.

The third chapter dealt with the organisation and establishment of the CIP and the roles and some of the responsibilities of its members. It described the organisational structure of the CIP and outlined how the President of the headquarters in Riyadh answers to the Minister of the Interior and receives funding for each department from same. Within the city structures, there is one department concerned with investigation and one with supervision (of sentences and places of detention). Flexibility has been built into the CIP Bylaws so as to sanction extension of the structures should it be necessary, but more than that it is budgetary issues which need addressing. Inadequate

material and manpower resources have been made available in the opinion of the CIP members.

The chapter showed that the general origin of the CIP is based on Almasaleh Alomorsalah which is one of the sources of Islamic Law. The public benefit in a way that does not conflict with the provisions of Islamic law. This enables the higher authority to issue any proper enactment in view of the teachings of Islamic law. We saw that the foundation of the CIP was required in the public interest in order to create an agency concerned with the fields of investigation and public prosecution. In addition, the establishment of the CIP allowed police officers to fulfil crime prevention duties as well as criminal identification and investigation. It is believed by those involved in the system that it was designed in order to establish new guarantees for the accused in the criminal justice system.

The chapter then outlined the requirements for joining the CIP, which contrasted with their counterparts under the General Security Department, which was less specialized. This further illustrated the determination to confront the increase in crimes of a more sophisticated nature than previously. My research indicates that these higher academic requirements are perceived to be an important factor in the performance of the CIP in Jeddah. However, there is room for improvement. Both the inspection of detention centres as well as the supervision of sentence enforcement require a background in security and administrative tasks. Therefore, it is necessary to provide more training, which on the whole is of a very high standard.

We also looked at other elements of the CIP member's role and responsibilities. They have to comply with jurisdictions of place and crime type, which conforms to many prosecution systems around the world. We saw an outline of the guarantees that the CIP member has in their position and examined the relevant sections of the CIP Code in relationship to the situations under which the independence of the CIP member is affected. The prevention of any interference in their work contrasts with the fact that many officers under the previous system felt pressured by influential people when dealing with certain cases. The chapter then outlined how a member is to be dealt with in the case of a dereliction of duty or perhaps something more serious. In terms of accountability too, I think the CIP is comparable to its counterparts around the globe.

Finally, we looked at the factors thought to be affecting the performance of the CIP. There was no clear agreement over the most significant factor, but police, CIP and

lawyers seemed to agree that education, qualifications and knowledge of the rules and instructions were important. They both disagreed with the notion that CIP delegation of investigation to police officers was affecting the CIP. Nevertheless, the point can be made, again, that it's felt that an increase in resources is likely to cause a reciprocal rise in performance.

The fourth chapter tackled the relations that tie the new agency to the institutions of justice especially those with which it has direct contact such as the police, emirates (principality), courts, jails & custody (detention) homes. It outlined the relationship between the CIP and other criminal justice organizations through a procedural approach, indicating the relevant codes defining those relations. One significant factor of the relationship with the police was the fact that the CIP has taken control of the investigative side of what was a police function. With the exception of cases of *flagrante delicto* a police officer can now only be involved in investigation if delegated by a CIP member, acquiring the capacity of investigator and undertaking its duties within the limits of this delegation. This is undoubtedly to permit the CIP members the benefit of the experience of the police officers, although the research has shown that they do not really use this power of delegation, despite having ultimate jurisdiction of any experts or police officers called in, perhaps because there is some professional rivalry between the two agencies with speed seen as the most important factor affecting the relationship between the police and the CIP.

In its relationship with the emirate, the CIP does not have such authority, but has more than the old General Security Department did. It does not require the regional governor's permission to search houses nor to dispose of an investigation, but the governor does retain the right to supervise any criminal investigation. Much of the CIP's role with regard to the judiciary was examined in chapter two, but the fourth chapter showed that the essential role undertaken by the public prosecutor is to present the case to the judge in its entirety. Additionally, it is the public prosecutor's responsibility to make a special plea, which lists the penal statutory and Shari'a provisions that may be applied by the judge to the defendant, although the judge is not obliged to apply these provisions. The CIP also has the power to demand cassation of verdicts. Finally, the fourth chapter handled the role undertaken by the CIP in respect of supervising the jails (including paying attention to any complaints from prisoners)

and sentence execution. The CIP is the authority with responsibility for prisoners' paper formalities.

Overall, this chapter illustrated the roles and relationships that shape the CIP. We saw that although there are important differences that have been dealt with above, there are broad procedural similarities between the two systems, pre and post 1994. The CIP has clearly made the transition well and has established itself as a successful intermediary between police and judiciary with a more carefully defined role than its predecessor had within the Saudi criminal justice system.

The fifth chapter, by using the example of drugs crime, concentrated on the specifics of procedure, detailing the different operational levels, how mechanisms work and have evolved in Saudi Arabia since 1994. In the CIP Code, there has been a deliberate attempt to address problems that existed with the previous system. Separating the powers investigating from those prosecuting has meant effective, progressive changes in areas such as evidence and its disposal, primary investigation, stopping suspects, interrogation, custodial detention, disposing of the investigation and to a lesser extent search. It would be fair to say that it has become a similar agency to the CPS in this regard, although the chapter showed to what extent the CIP has more power both than its predecessor and the English CPS.

Despite this, with regard to interrogation, there is reason to seek further progress and improvement in the future. This is because while the establishment of the CIP offered the right to an attorney where the previous system had none, research among both the CIP and the police indicates that there is still significant disagreement with the idea that the attorney necessarily be present. The judges believe that the interrogators require more experience.

In the sixth chapter we drew a number of conclusions concerning the attitudes and beliefs of those in the Saudi criminal justice system by analysing the interviews with the judges and prisoners and the questionnaire of the CIP members, police officers and lawyers. The General Security Department (police) was not seen as capable of meeting the challenge which the use of sophisticated technology by criminals required, necessitating the establishment of the CIP, which is of a higher educational level and receives better training than officers under the old system. It is felt that the

CIP was created in order to improve methods of investigation as well as to safeguard defendants' rights and to lodge general lawsuits before the judiciary. It was also supposed to be able to cope with developments in criminal justice as a result of the increasing sophistication of crime. We saw also that there was close cooperation between the investigators of the General Security Department and the CIP while they were working together during the transition period between agencies.

We saw in this chapter as well as in chapter four that the relationship between the CIP and the police is the foundation of the post 1994 Saudi criminal justice system. Although no specific problems have been identified, there seems to be different levels of agreement on most questions and different views on inspection procedures might cause friction between the two agencies.

The CIP members believe they are performing better in every way than the previous system. After the investigation of drug cases had been assigned to the CIP, they became more accurate and more quickly executed, which can be attributed to the police officers being able to concentrate in full on their main duties. This has in turn meant the CIP play a more efficient role in processing lawsuits in cooperation with them. Elsewhere in procedural terms, there have been improvements in regard to the orders of stoppage and custody detention.

The CIP themselves seem to be satisfied with their training although some of the judges believe better or more practical training could be established. We also saw that there is a belief that the current human resources and material capabilities of the CIP branch in Jeddah are insufficient to enable the CIP to perform its duties in the field of criminal investigation as efficiently as would otherwise be possible.

In conclusion, I think this thesis has demonstrated that the establishment of the CIP was in the right time: not dissimilar to the solution the UK had resorted to in 1985 with the CPS. There were a number of problems with the pre-1994 Saudi system that were addressed. The police under the old system were not as accountable as the CIP are now, and the General Security Department faced criticism from abroad. Additionally, advances in technology meant that the police were not sufficiently well-prepared, trained, educated or equipped to deal with the increasing complexity of crime. The system needed change and we have seen that these changes and this modernisation have taken place with full respect for Islamic Law. Many of the

concerns have been addressed: the CIP is a significantly more efficient and fairer agency than its predecessor and it has helped in the modernisation of the Saudi criminal justice system. There are, however, areas where improvement could be made and others where it must be made in order to bring the system into line with the requirements of the twenty-first century. Some recommendations follow.

7.3 RECOMMENDATIONS

Having presented the conclusions of this research, we shall progress now to recommendations which can be made in light of what has gone before. We shall start with what may be the most important recommendations, those concerning resources, and move on to procedural ones.

It is absolutely vital for the CIP to have access to and knowledge of the latest available international technical practices in the field of investigation so as to enable it to undertake its duties to the highest possible degree. It is clearly not felt to be the case at the present and so the Ministry of the Interior should increase the CIP budget in order that it can better carry out its duties in the achievement of justice, security and stability. The extra money should not only be for material resources, though. The investigation of criminal cases needs a scientifically and technically able team so as to enable the CIP to undertake its duties at an appropriate level. Therefore, it is necessary to increase the number of trained and qualified personnel.

The main recommendation is that the number of members of the CIP itself needs to grow, but, especially in the short term, it is necessary to increase support to the CIP with experienced and professionally-qualified experts entrusted with temporary assignments. Additionally, the CIP should be more actively seeking outside support by making use of some investigators from the General Security Department through transferring them to the CIP for specific periods and delegating them authority. This would require the preparation of special programs for cooperation between the General Security Department and the CIP.

As well as in delegation, it may be necessary to establish more grounds and controls in other areas of the relationship between the CIP and the police. The CIP's duties

begin with the completion of the police officers' tasks, but there is an element of overlap within the two bodies, where some duties are jointly performed. The answer is for a more systematic approach to the relationship in order to assure that cooperation is perceived as an important element of the CIP's performance, which it undoubtedly is. I recommend that special programs are developed so as to foster cooperation between the General Security Department officers in charge of evidential reasoning and the CIP members as the party in charge of investigation. Such programs would be more useful than meetings as they could be studied and reviewed by other groups who may join both agencies in the future. The programs could consist of forums for discussing and solving problems that occur when dealing with criminal cases, taking into account their own jurisdictions and their limits. In addition, an examination and review of the new codes, like the criminal procedures code and CIP code by both sides is vital and could lead them to focus on their jurisdiction in order to solve problems occurring with regard to defendants and their case files. Such a combined program would be a solution to the delays occurring between police stations and CIP branches and vice versa regarding bringing defendants to CIP branches, court, and prison. They should have programs concerned with how to speed up administrative work between them using networking technology within the kingdom like that used in banking. This new connection could also solve delays with defendants' records. Programs should continuously be updated in order to improve and cope with changes faced on a daily basis. These programs could reflect the assumed mutual meeting points, limits and jurisdictions of each party. In addition, there should be periodic meetings in each department of the General Security Department between the CIP members and the police officers where views and expertise are exchanged to examine the image, limits and jurisdiction of each party. There should be an emphasis on mutual cooperation in service of the public interest.

The final recommendations are procedural. The first is that the CIP should prepare forms to be completed by police officers in every type of detention centre, who would include all the prisoner's details so that the CIP could access all the information about the case conveniently. As well as producing this form, it is necessary for the CIP to specify the method in which the daily statements are forwarded to the CIP branch in Jeddah. The second procedural recommendation concerns the role undertaken by the attorney. It is necessary to clarify the fact that for defendant, the community and their

service to criminal justice, the attorney has an important role during both inspection and interrogation. CIP members and police officers must be trained and educated to work with these attorneys in accordance with the letter of the law and in the spirit of twenty-first century regard for defendants' rights.

It is also necessary to clarify the role undertaken by the lawyers for the community and its service to criminal justice, by educating society through the media, schools, universities and other civil society institutions. A lack of knowledge about the importance of lawyers' role affects the reputation of the criminal justice system, and therefore, justice itself.

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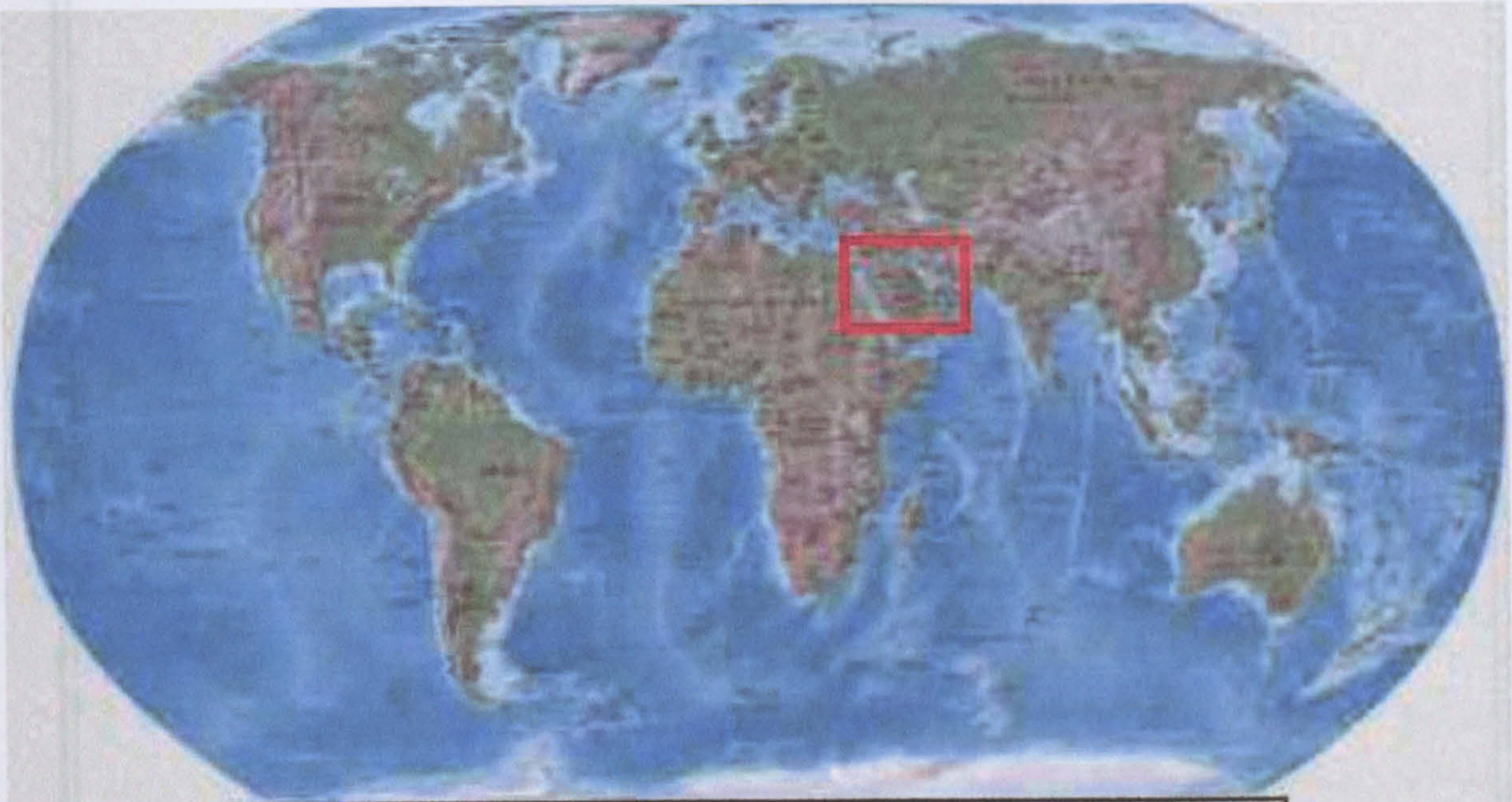
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Appendix A

Map of Saudi Arabia



Appendix B

RESEARCH FINDINGS

INTRODUCTION

This appendix describes the field study conducted on judges, members of the Commission for Investigation and Public Prosecution (CIP), police officers, lawyers and prisoners. The first part comprises interviews with judges working in Jeddah and their responses. The questions are generally about their opinions as to the effectiveness of the CIP and the nature of the changes to the public prosecution since its establishment in 1994.

The second and third parts take the form of responses to a questionnaire developed by the researcher and distributed to a sample of the research community. Their responses are shown in tables. This study, focusing on the main duties assigned to the research sample, was launched in view of the fundamental changes in the framework of the CIP's function side by side with the duties undertaken by the police officers. The researcher has applied a descriptive study method to this research then applied a community survey, which is a new approach.

The fourth part is made up of interviews with prisoners in Briman prison in Jeddah. A total of 12 prisoners were interviewed as a tool for facilitating data in order to compare criminal procedures now and under the General Security Department System.

The research findings are thus based on interviews and questionnaires and the responses give a clear idea of the feelings towards the changes of 1994 of those most directly involved in the Saudi criminal justice system. It illuminates differences in perception amongst the different agencies affected by the establishment of the CIP towards the changes, which can sometimes be taken as a comment on the relations between the three institutions: judiciary, CIP and the police.

STUDY COMMUNITY AND SAMPLE – JUDGES’ INTERVIEWS

The first part of the study community comprises eight judges among the twelve working in Jeddah courts who agreed to participate (the remaining four refused to do so). Table A1 shows a description of the study sample in view of variables.

Table A1 - Statement of study samples

Sl. (#)	Study Variables		Total	Percentage
1	Nationality	Saudi	8	100%
2	Tenure of employment in Judicial Field	Less than 6 years	1	12.5%
		From 6-10 years	4	50%
		10 years and above	3	37.5%
	Total		8	100%
3	Tenure of employment with the police	Less than 6 years	1	12.5%
		From 6-10 years	2	25%
		10 years and above	5	62.5%
	Total		8	100%
4	Tenure of employment with CIP	Less than 1 years	1	12.5%
		From 1-3 years	2	25%
		3 years and above	5	62.5%
	Total		8	100%

The table shows that all sample individuals are Saudis. Their employment period in the judicial field seems high, reaching (50%) of the total experience tenure of the sample individuals. The tenure of their employment with the police reached (62%) and the same with CIP, i.e. (62%).

DATA COLLECTION AND STATISTICS HANDLING METHODS – JUDGES’ INTERVIEWS

Interviews were conducted as a tool for facilitating data in order to compare drugs crime procedures now and under the General Security Department System.

The interviews included:

- Investigative data and general comparison through specific questions.

- Questions which cover investigation procedures
- Questions which cover pre-investigation procedures in both systems.
- Questions that cover prosecution procedures in both systems.
- Questions about the defendant's rights in both systems.

The researcher adopted frequencies and percentages to describe the sample of the study and to determine the replies and responses of the eight judges covered by the interviews. Most tables give answers according to their frequency in descending order.

DATA ANALYSIS – JUDGES' INTERVIEWS

Question 1: In your opinion, why was the CIP established?

Table J1

Sl. #	Statements	Frequency	Percentage
1	Due to the poor educational level of the employees in the previous prosecution.	6	75%
2	To avail professional and experienced cadres	5	62.5%
3	To protect the defendants' rights	4	50%

Question 2: Do you think that the General Security System is capable of handling the public prosecution and investigation lawsuits at the present time? Why or why not?

Table J2

Sl. #	Statements	Frequency	Percentage
1	No	8	100%
2	Crime began to develop and criminals resort to complicated ways to commit it.	6	75%

Question 3: *What have been the advantages of the establishment of the CIP?*

Table J3

Sl. #	Statements	Frequency	Percentage
1	To protect the defendant's lawful rights	6	75%
2	Independence of Public Prosecution	6	75%
3	To expedite processing the correspondence	4	50%
4	To avail standard and accredited authority	4	50%
5	To be more organizational	4	50%
6	To add several advantages	3	37.5%
7	To avail specialty in investigation	3	37.5%

Question 4: *Do you think that the pre-qualification of the CIP members is different from those of the General Security Department? Why or why not?*

Table J4

Sl. #	Pre-qualifying CIP member	Frequency	Percentage
1	Yes	7	87.5%
2	As each CIP member has specific duties	5	62.5%

Question 5: *To what extent have the educational background and training courses undertaken by the CIP members affected their job performance?*

Table J5

Sl. #	Statements	Frequency	Percentage
1	Training courses have significantly affected the performance of the CIP members	5	62.5%
2	Improving job performance from time to time	3	37.5%

Question 6: Do you think that apprenticeship in CIP practice to its duties has positive impacts on the CIP strength and officers? Why or why not?

Table J6

Sl. #	Statements	Frequency	Percentage
1	Yes	8	100%
2	Secured sufficient time for CIP member to acquire experience under the former system	8	100%
3	This CIP is considered in its first stages	5	62.5%
4	Improve job performance	6	75%

Question 7: Having assigned the investigation of drugs crimes to the CIP, how do you find the differences in the procedures of seizure, transfer for investigation, inspection and search in respect to application of the rules and regulations in this regard?

Table J7

Sl. #	Statement	Frequency	Percentage
1	A significant difference exists in the actual procedures	6	75%
2	More accurate and concentrated	4	50%

Question 8: Do you think that the CIP has contributed in securing time for the police officers to undertake their functional duties?

Table J8

Sl. #	Statements	Frequency	Percentage
1	Yes	8	100%
2	Sufficient time has been availed to the police officers to carry out their essential duties	8	100%

Question 9: *Have you found a delay in the investigation procedures for drug crime lawsuits before or after the establishment of the CIP?*

If so, whom do you think is responsible for delaying such cases? Why?

Table J9

Sl. #	Statements	Frequency	Percentage
1	No	2	25%
2	Yes	6	75%
3	Because investigation was assigned solely to the police officer, which did not enable them to process correspondence on time	3	37.5%

Question 10: Do you think that the method of interrogation results in a valid plea by

Question 10: *How do you find the relation between the CIP members and the police officers through the evidence reports included in the drug crime files?*

Table J10

Sl. #	Statements	Frequency	Percentage
1	The relation is a cooperative one with no contradiction	6	75%
2	Differences frequently occur	2	25%

Question 11: How do you find the conclusions reached by the CIP members when reviewing the lawsuit files from the moment at which the defendant is arrested until the respective file is forwarded to your office?

Table J11

Sl. #	Statements	Frequency	Percentage
1	No difference was found under both systems, the lawsuits are processed in order as far as possible	2	25%
2	Present formalities are faster	6	75%

Question 12: How do you find interrogation conducted by the CIP members in drug lawsuits compared to that conducted by the anti-drug officers?

Table J12

Sl. #	Statements	Frequency	Percentage
1	No significant difference	1	12.5%
2	Interrogation formalities may not be better one than the former ones and need more experience	6	75%

Question 13: Do you think that the method of interrogation results in a valid plea by the defendant in the lawsuits processed by CIP? Why?

Table J13

Sl. #	Statements	Frequency	Percentage
1	Yes	7	87.5%
2	Interrogation method depends on the investigator's talent, intelligence and experience that they are of significance to investigation	7	87.5%

Question 14: How do you find the conclusions reached by the CIP members when interrogating the defendants in drug lawsuits compared to the interrogation conducted by the former Anti-Drug Department's investigators?

Table J14

Sl. #	Statements	Frequency	Percentage
1	Results are good	5	62.5%
2	Results are similar	3	37.5%

Question 15: Do you think that attorney's attendance during interrogation within the CIP system serves justice and helps to reach the truth?

Table J15

Sl. #	Statements	Frequency	Percentage
1	Yes, it serves and helps justice	6	75%
2	No, I do not think it helps justice	2	25%

Question 15: How do you find the effect on the defendants of the public prosecutor's appearance in the session in his civilian clothing, compared to the military uniform of the former public prosecutor?

Question 16: Through your previous perusal of drug lawsuits, have you found any deviations concerning the order of stoppage or custody detention executed by the Anti-Drug Department in Jeddah?

Table J16

Sl. #	Statements	Frequency	Percentage
1	No.	7	87.5%
2	Yes	1	12.5%

Question 16: How do you find the difference between the present rules and regulations of the Public Prosecution in the drug lawsuits, compared to those of the

Question 17: How do you find the public prosecutor's attendance to the session and his role in refuting the defendant's pleas?

Table J17

Sl. #	Statements	Frequency	Percentage
1	Good role	6	75%
2	More effective and orientated	2	25%

Question 18: Comparing the present Public Prosecutor with the former one, who is more efficient in obtaining witnesses and other evidence?

Table J18

Sl. #	Statements	Frequency	Percentage
1	Present public prosecutor is more efficient	8	100%

Question 19: How do you find the effect on the defendants of the public prosecutor's appearance in the session in his civilian clothing, compared to the military uniform of the former public prosecutor?

Table J19

Sl. #	Statements	Frequency	Percentage
1	Clothing has no effect	3	37.5%
2	Clothing has a positive effect on the defendant in the session	4	50%
3	Clothing is not suitable for the session	1	12.5%

Question 20: How do you find the difference between the present rules and regulations of the Public Prosecution in the drug lawsuits, compared to those of the Public Prosecution of the Anti-Drug Department in Jeddah? Which of them is concentrating more on the demonstration of the lawsuit?

Table J20

Sl. #	Statements	Frequency	Percentage
1	Present Public Prosecution is more concentrated	5	62.5%
2	Not much difference exists	3	37.5%

Question 21: Do you think the CIP needed to be established to confront crime diversification, complexity and the need to comply with international rules and legislation?

Table J21

Sl. #	Statements	Frequency	Percentage
1	The present time is suitable for introducing the CIP	7	87.5%
2	Due to specialization, it was proper to establish the CIP	1	12.5%

Question 22: To what extent has the CIP contributed in availing securities to the defendant?

Table J22

Sl. #	Statements	Frequency	Percentage
1	Significantly contributed in protecting the defendant's rights	7	87.5%
2	Securities exist before and after introducing the CIP system	1	12.5%

Question 23: Do you think that the CIP plays a decisive role in dealing with drug crimes in a short time in respect to public prosecution and investigation? Why?

Table J23

Sl. #	Statements	Frequency	Percentage
1	Yes	8	100%
2	Availability of full time officers	4	50%
3	Expediting the investigation and processing the lawsuit	3	37.5%

Question 24: Do you think supervision of jails, custody detention stations, conducting inspection tours to the jails, temporary stoppage stations and hearing the prisoners' complaints are an achievement for criminal justice accomplished by the CIP?

Table J24

Sl. #	Statement	Frequency	Percentage
1	Yes	7	87.5%

STUDY TYPE AND APPLIED METHOD – CIP, POLICE OFFICERS AND LAWYERS' QUESTIONNAIRE

The researcher's queries may be summarized as follows:

- 1- Reasons for the formation of the CIP as viewed by the General Security Investigators and CIP members.
- 2- Jurisdiction and participation in the new roles undertaken by the CIP in the criminal justice system as viewed by CIP and police officers.
- 3- To what extent the CIP is capable in terms of adequacy, experience, scientific competency and efficiency to undertake its functions as viewed by CIP and police officers.

The study is concerned with the jurisdictions and activities of the CIP and its various duties in the following areas

1. Investigating crimes.
2. Disposing of the investigation report through lodging the lawsuit or keeping it as provided by the regulations.
3. Prosecuting before the judicial authorities according to the organizational bylaw.
4. Appealing.
5. Supervising the execution of sentences.
6. Inspecting and controlling the jails, detention homes and any other places at which the sentences are executed; hearing the complaints of prisoners and the detained, verifying the legitimacy of their imprisonment or detention, taking the necessary procedures to release them if appropriate, and ensuring the application of the stipulated rules.
7. Any other jurisdictions assigned to the CIP according to the rules and regulations stipulated by this law, Council of Ministers' Decisions or High Orders.

The study examines to what extent the proper work conditions – material and human – are available to the CIP to enable them to undertake their assignments.

RESEARCH COMMUNITY – CIP AND POLICE OFFICERS' QUESTIONNAIRE

The research community is classified into two groups:

A) First Group

The field part of this study focuses on investigating to what extent the CIP members are able to undertake their assignments. The fields of investigation and public prosecution had originally been undertaken by the police.

B) Second Group

The research community also includes some investigators and assistants of the General Security Department whose functions were transferred to CIP.

RESEARCH SAMPLE – CIP AND POLICE OFFICERS' QUESTIONNAIRE

A random sample was chosen from both groups as follows:

The total number of the chosen sample from the first group was 69 individuals, which is half CIP manpower.

Table A2

Description	No. of employees	No. of sample individuals	Percentage
Investigation	84	32	38%
Prosecution	26	22	85%
Supervision and Control	28	15	54%
Total	138	69	50%

The total from the second group (officers and assistants of Public Security Department) was 81, a rate of 50.31% of those working in that field.

Table A3

Description		No. of employees	No. of sample individuals	Percentage
Police station (A)	Officer	11	6	54.55%
	Officer Asst.	8	3	37.50%
	Total	19	9	47.37%
Police station (B)	Officer	19	15	78.95%
	Officer Asst.	10	3	30.00%
	Total	29	18	62.07%
Police station (C)	Officer	11	5	45.45%
	Officer Asst.	8	4	50.00%
	Total	19	9	47.37%
Drugs Unit	Officer	35	15	42.86%
	Officer Asst.	20	7	35.00%
	Total	55	22	40.00%
Prison (A)	Officer	10	4	40.00%
	Officer Asst.	8	7	87.50%
	Total	18	11	61.11%
Prison (B)	Officer	11	2	18.18%
	Officer Asst.	10	7	70.00%
	Total	21	9	42.86%
Total	Officer	97	47	48.45%
	Officer Asst.	64	34	53.13%
	Total	161	81	50.31%

Both samples were chosen randomly from the research community. The research sample numbered 150 people, including 69 of the CIP members from the three CIP classes (investigators, prosecutors, controllers/supervisors), and 81 of the General Security Department (investigators and assistants).

Over 250 questionnaires were distributed. 158 of them were received back by the researcher, giving a relatively high response rate of 63%. The questionnaires were checked to ensure their validity for analysis and 8 forms were disregarded as their answers to the basic questions were incomplete and also some questions in the analytic tables were disregarded. Thus, the number of analysed research samples reached 150, constituting (60%) of the total number of the distributed forms.

The total sample (at (50.31%) of the total community) comprehensively covers the opinion group and gives the required accuracy that will result in accurate conclusions as sought by this research.

DATA GATHERING TOOLS – CIP AND POLICE OFFICERS' QUESTIONNAIRE

The researcher applied the questionnaire as detailed, relying mainly on the questionnaire as a tool to gather the required data from the research sample individuals. This form is classified into three main parts:

A) First Part Contains personal and job particulars on the research sample individuals such as job, specialty, educational level and work experience.

B) Second Part Covers a set of the questions that the sample individuals have to answer, representing the basic research data, which are the main functions of the CIP (investigation and interrogation; prosecution; appeal for sentence cassation; supervision of sentence execution; supervision of jails and stoppage points).

C) Third Part Covers group of questions to make use of opinions on timing of bringing the CIP to the field of criminal justice (reasons for forming the CIP and capabilities of the present CIP).

The questionnaire was designed by applying the pentagonal scale of multi-levels by placing a tick against the answer that matches the respondent's point of view.

Testing the Questionnaire

It is necessary to ensure the credibility and stability of the questionnaire before distributing it to the research sample individuals.

A) Testing the credibility of the questionnaire

The researcher developed the questionnaire in its first form and it was proposed to a panel of experts to receive their points of view in respect of the following:

- 1- To what extent the questionnaire covers the elements and changes that must be satisfied or covered.
- 2- To what extent the proposed questions are accurate and clear.
- 3- To what extent the question of the targeted community questions are suitable.

- 4- To what extent the questions are arranged and compatible to the research theme.
- 5- Topics or questions seen by them to be added to or deleted from the questionnaire.

B) Testing the stability of the questionnaire

The researcher tested the stability of the questionnaire at two levels

- 1- The level of each discrete item.
- 2- The level of the questionnaire items as a whole.

The researcher applied the method of application (before and after) with a two week interval where he distributed the questionnaire forms to twenty samples of the total individuals of the research communities as indicated earlier then he matched the answers of the first application and the answers of the second application at the same group, and reached the following conclusion:

- Average stability for the individual items was 89%.
- Overall stability for the total questionnaire was 94%.

In view of the obtained conclusions based on testing its stability, the questionnaire did not require any changes. It was distributed to all the research sample individuals.

C) Interview

The researcher partially relied upon the interview as a tool in data gathering and accessing information from its sources. The interview was made with the sample individuals through handing over the questionnaire form, explaining the study objectives and fielding the relative queries. These interviews produced positive results.

Research fields and limits – CIP members and police officers' questionnaire

The research fields cover the location, time and people limits as presented below:

- A) **Location:** The research was limited to the officers of the CIP and the investigators and assistants of the General Security Department in Jeddah.

- B) Time:** The researcher designed the questionnaire form and gathered the data from the research samples. The data was analysed between 01/11/2002 and 15/02/2003.
- C) Workforce:** The research was limited to the study of two classes:
- A.** The CIP members. The number of the chosen samples reached 69 distributed over the main positions in the CIP.
 - B.** The General Security Department's officers. The number of the chosen samples reached 81, distributed over the arrest and investigation positions.

Data Analysis Method – CIP members and Police Officers Questionnaire

The researcher used a computer in data processing to obtain maximum accuracy.

Difficulties Encountered – CIP members and Police Officers Questionnaire

The researcher encountered difficulty in meeting some officers of the CIP due to the nature of their jobs - especially those in charge of supervision and control - and also some prosecutors, as they are frequently required in court or are inspecting jails and stoppage points.

- A)** The researcher encountered difficulty meeting some officers working in the General Security Department due to the nature of their jobs, especially those working on a shift basis, which obliged the researcher to visit the police station during different shift periods.
- B)** Some employees hesitated to fill in the questionnaire form for fear of giving incorrect information that may affect their position, a fear which was alleviated by the researcher through convincing them of the main objectives of this research and that their input would only be exploited for research objectives.
- C)** Due to the workload and being new to CIP, some employees did not fill in the questionnaire, which necessitated much time and effort in

contacting the individuals in hope of a response. The same also applied in some divisions of the General Security Department.

DATA ANALYSIS AND INTERPRETATION – CIP AND POLICE OFFICERS' QUESTIONNAIRE

Table A4

Job distribution for research sample individuals

Field and Position	Frequency	Special %	Overall %
CIP			
Investigator	32	46%	21%
Prosecutor	22	32%	15%
Control & supervision	15	22%	10%
Total	69	100%	46%
General Security (Police officers)			
Officers	47	58%	31%
Officers Assistant	34	42%	23%
Total	81	100%	54%
Grand Total	150	-	100%

The data in the table shows that 46% of the total research sample is from the CIP while the police officers constituted 54% of the total sample.

Table A5

Distribution of the research sample individuals by academic qualification

Educational Level	CIP		Police Officers	
	Frequency	%	Frequency	%
Intermediate Certificate	0	0.00%	19	23.46%
High school certificate	0	0.00%	13	16.05%
Graduate	17	24.64%	44	54.32%
Post graduate	52	75.36%	5	6.17%
Total	69	100.00%	81	100.00%
Average	3.75		2.43	
Standard deviation	0.43		0.92	

(Note : Intermediate Certificate=1, High school certificate=2, Graduate=3, Post graduate=4)

The above table shows that the individuals possessing degree and post degree certificates reach over 78% of the total sample and reaches 100% for those employed by the CIP, a fact which enables it to undertake its functions and duties at an

appropriate level. Further, this class exceeds 60% of the sample individuals of the police officers.

The availability of personnel possessing degree and post degree certificates confirms the significance of this factor as a reason for establishing the CIP and it also justifies the role entrusted to it in the field of investigation, public prosecution, inspection and control over the jails, detention points, supervising execution of the sentences and cassation. In addition, it confirms the significance of the educational level in the CIP in support of its manpower and scientific capabilities.

Table A6

Distribution of research sample individuals by job speciality

Specialty	CIP		Police Officers	
	Frequency	%	Frequency	%
Shari'a Sciences	39	56.52%	4	4.94%
Law sciences	27	39.13%	1	1.23%
Security Sciences	1	1.45%	61	75.31%
Administrative Sciences	2	2.90%	2	2.47%
Other Sciences	0	0.00%	13	16.05%
Total	69	100.00%	81	100.00%
Average	1.51		3.23	
Standard deviation	0.68		0.91	

(Note: Shari'a Sciences =1, Law sciences =2, Security Sciences =3, Administrative Sciences =4, Other Sciences=5)

The above table shows the diversity of specialties among the sample distribution, while this distribution is limited among the CIP to the Shari'a sciences and Law sciences only. This distribution supports the capabilities of the CIP to undertake its role and implement its tasks within the scope of the criminal justice system. Further, the availability of this professional level is considered among the reasons that led to the establishment of the CIP. To support the CIP capability, some security and administrative specialties should be made available in addition to some other professional specialties provided that such elements have sufficient experience so as to enable the CIP to undertake all duties and functions assigned to it.

The task of inspecting jails and detention points requires specialists with a background in security and administrative tasks as well as the supervision of the execution of sentences.

Table A7

Distribution of the research sample individuals as to experience

No. Of Experience Years	CIP		Police Officers	
	Frequency	%	Frequency	%
less than a year	0	0.00%	1	1.23%
from 1 to 2 years	10	14.49%	1	1.23%
From 3 to 4 years	42	60.87%	15	18.52%
From 5 to 9 years	10	14.49%	19	23.46%
10 years and above	7	10.14%	45	55.56%
Total	69	100.00%	81	100.00%
Average	3.20		4.31	
Standard deviation	0.81		0.90	

(Note: less than a year =1, from 1 to 2 years =2, From 3 to 4 years =3, From 5 to 9 years =4, 10 years and above =5)

The table shows the level of experience in the CIP, with over 85% of the total number in service for over 3 years. The modal figure is 60% for those who possess 3 to 4 years' experience and they will acquire experience in addition to their possession of degrees that enable them to undertake their assignments.

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	13	18.84%	20	24.69%
Agree	41	59.42%	35	43.21%
Agree To Some Extent	12	17.39%	23	28.39%
Disagree	2	2.90%	1	1.23%
Totally Disagree	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.51		3.70	
Standard deviation	0.73		0.78	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

RESPONSES TO THE QUESTIONNAIRE

Table 1

Distribution of the research sample as to reasons for establishing the CIP

A. Development of criminal justice bodies

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	17	24.64%	25	30.86%
Agree	39	56.52%	31	38.27%
Agree To Some Extent	10	14.49%	21	25.93%
Disagree	2	2.90%	2	2.47%
Totally Disagree	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.0		3.93	
Standard deviation	0.80		0.95	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 2

Distribution of the research sample as to reasons for establishing the CIP

B. Spread of education in Saudi Arabia

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	13	18.84%	26	32.10%
Agree	41	59.42%	29	35.80%
Agree To Some Extent	12	17.39%	22	27.16%
Disagree	2	2.90%	2	2.47%
Totally Disagree	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.91		3.93	
Standard deviation	0.78		0.88	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 3

Distribution of the research sample as to reasons for establishing the CIP

C. Giving scope to the police officers to undertake their tasks

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	51	73.91%	23	28.40%
Agree	13	18.84%	29	35.80%
Agree To Some Extent	5	7.25%	22	27.16%
Disagree	0	0.00%	5	6.17%
Totally Disagree	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.67		3.81	
Standard deviation	0.61		1.0	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 4

Distribution of the research sample as to reasons for establishing the CIP

D. Shortening the time in deciding the investigation and prosecution cases

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	37	53.62%	17	20.99%
Agree	22	31.88%	29	35.80%
Agree To Some Extent	8	11.59%	31	38.27%
Disagree	1	1.45%	3	3.70%
Totally Disagree	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.35		3.72	
Standard deviation	0.85		0.88	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 5

Distribution of the research sample as to reasons for establishing the CIP

E. Availing guarantees to the accused within the justice bodies

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	46	66.67%	19	23.46%
Agree	18	26.09%	36	44.44%
Agree To Some Extent	3	4.35%	21	25.93%
Disagree	1	1.45%	4	4.94%
Totally Disagree	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.55		3.84	
Standard deviation	0.78		0.89	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 6

Distribution of the research sample as to reasons for establishing the CIP

F. Confronting the increasing complexity of crime

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	38	55.07%	18	22.22%
Agree	19	27.54%	26	32.10%
Agree To Some Extent	9	13.04%	27	33.33%
Disagree	2	2.90%	4	4.94%
Totally Disagree	1	1.45%	6	7.41%
Total	69	100.00%	81	100.00%
Average	4.32		3.57	
Standard deviation	0.92		1.12	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 7

Distribution of the research sample as to reasons for establishing the CIP

G. Overall reasons for the establishment of the CIP

Degree of agreement	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	35	50.72%	21	25.93%
Agree	23	33.33%	30	37.04%
Agree To Some Extent	9	13.04%	23	28.40%
Disagree	1	1.45%	4	4.94%
Totally Disagree	1	1.45%	3	3.70%
Total	69	100.00%	81	100.00%
Average	4.30		3.77	
Standard deviation	0.86		1.02	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 8

Comparison in the degree of consent of research sample individuals as to reasons for the establishment of the CIP

H. Average reasons for the establishment of the CIP

Reasons for the establishment of the CIP	CIP		Police Officers	
	Frequency	%	Frequency	%
A (Table 5)	56	15.82%	56	18.18%
B (Table 6)	54	15.25%	55	17.86%
C (Table 7)	64	18.08%	52	16.88%
D (Table 8)	59	16.67%	46	14.94%
E (Table 9)	64	18.08%	55	17.86%
F (Table 10)	57	16.10%	44	14.29%
Total	354	100.00%	308	100.00%

Table 9

Distribution of the research sample individuals as to their opinion on the capability of the security department to undertake the investigation and prosecution cases at present

Degree of agreement	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	3	4.35%	21	25.93%
Agree	2	2.90%	19	23.46%
Agree To Some Extent	34	49.28%	31	38.27%
Disagree	21	30.43%	5	6.17%
Totally Disagree	9	13.04%	5	6.17%
Total	69	100.00%	81	100.00%
Average	2.55		3.57	
Standard deviation	0.92		1.13	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 10

Distribution of the research sample individuals as to their familiarity with the latest practices in the investigative field

Degree of familiarity	CIP		Police Officers	
	Frequency	%	Frequency	%
Very High	6	8.70%	3	3.70%
High	41	59.42%	20	24.69%
Average	18	26.09%	41	50.62%
Poor	4	5.80%	14	17.28%
Very Poor	0	0.00%	3	3.70%
Total	69	100.00%	81	100.00%
Average	3.71		3.07	
Standard deviation	0.71		0.85	

(Note: Very Poor =1, Poor =2, Average =3, High =4, Very High =5)

Table 11

Distribution of the research sample as to opinion on whether there was a large difference in the qualifications of the CIP members and police officers

Degree of agreement	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	35	50.72%	17	20.99%
Agree	29	42.03%	23	28.40%
Agree To Some Extent	5	7.25%	27	33.33%
Disagree	0	0.00%	9	11.11%
Totally Disagree	0	0.00%	5	6.17%
Total	69	100.00%	81	100.00%
Average	4.43		3.47	
Standard deviation	0.63		1.13	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 12

Distribution of the research sample as to whether the establishment of the CIP was timely

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	52	75.36%	27	33.33%
Agree	10	14.49%	20	24.69%
Agree To Some Extent	5	7.25%	21	25.93%
Disagree	2	2.90%	9	11.11%
Totally Disagree	0	0.00%	4	4.94%
Total	69	100.00%	81	100.00%
Average	4.62		3.70	
Standard deviation	0.75		1.19	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 13

Distribution of the Research Sample as to opinion on how much police officers benefited from the establishment of the CIP

Degree of achieved benefit	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	40	57.97%	21	25.93%
High	18	26.09%	22	27.16%
Average	7	10.14%	27	33.33%
Poor	2	2.90%	8	9.88%
Very Poor	2	2.90%	2	2.47%
Not specified	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.33		3.65	
Standard deviation	0.98		1.06	

(Note: Very Poor =1, Poor =2, Average =3, High =4, Very High =5)

Table 14

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

A. Familiarity with the rules and instructions pertaining to CIP jurisdiction

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	38	55.07%	26	32.10%
High	27	39.13%	20	24.69%
Average	2	2.90%	32	39.51%
Poor	1	1.45%	2	2.47%
Nil	1	1.45%	0	0.00%
Not specified	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.45		3.87	
Standard deviation	0.76		0.91	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 15

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

B. Required academic qualification and training courses

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	25	36.23%	29	35.80%
High	35	50.72%	30	37.04%
Average	5	7.25%	18	22.22%
Poor	2	2.90%	1	1.23%
Nil	1	1.45%	2	2.47%
Not specified	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.19		4.04	
Standard deviation	0.82		0.93	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 16

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

C. Academic background on the different investigative practices

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	25	36.23%	17	20.99%
High	36	52.17%	22	27.16%
Average	6	8.70%	31	38.27%
Poor	1	1.45%	7	8.64%
Nil	1	1.45%	3	3.70%
Not specified	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.20		3.54	
Standard deviation	0.78		1.04	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 17

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

D. Cooperation of the CIP with police officers

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	34	49.28%	20	24.69%
High	17	24.63%	22	27.16%
Average	16	23.19%	30	37.04%
Poor	0	0.00%	4	4.94%
Nil	1	1.45%	3	3.70%
Not specified	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.22		3.66	
Standard deviation	0.91		1.04	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 18

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

E. CIP delegation of investigation to police officers

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	12	17.39%	14	17.28%
High	19	27.54%	20	24.69%
Average	22	31.88%	31	38.27%
Poor	7	10.14%	11	13.58%
Nil	9	13.04%	3	3.70%
Not specified	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.26		3.39	
Standard deviation	1.24		1.06	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 19

Distribution of the research sample individuals as to what extent the performance level of the CIP is affected by:

F. The gradual assumption of duties by the CIP

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	38	55.07%	19	23.46%
High	18	26.09%	33	40.74%
Average	11	15.94%	25	30.86%
Poor	1	1.45%	3	3.70%
Nil	0	0.00%	1	1.23%
Not specified	1	1.45%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.37		3.81	
Standard deviation	0.81		0.88	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 20

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

G. Police officer's practising the duty of crime prevention

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	37	53.62%	32	39.51%
High	21	30.43%	22	27.16%
Average	7	10.14%	21	25.93%
Poor	2	2.90%	4	4.94%
Nil	1	1.45%	2	2.47%
Not specified	1	1.45%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.34		3.96	
Standard deviation	0.89		1.04	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 21

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

H. Other factors that affect the performance level of the CIP

Degree of effect on performance level	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	32	46.38%	21	25.93%
High	25	36.23%	23	28.40%
Average	8	11.59%	29	35.80%
Poor	2	2.90%	4	4.94%
Nil	1	1.45%	3	3.70%
Not specified	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.25		3.69	
Standard deviation	0.89		1.04	

(Note: Nil =1, Poor =2, Average =3, High =4, Very High =5)

Table 22

Comparison of the opinions of the research sample individuals for some factors that affect the performance level of the CIP

Factors that affect the performance level of the CIP members	CIP		Police Officers	
	Frequency	%	Frequency	%
Factor A (Table 18)	65	20.00%	46	16.91%
Factor B (Table 19)	60	18.46%	59	21.69%
Factor C (Table 20)	61	18.77%	39	14.34%
Factor D (Table 21)	52	16.00%	42	15.44%
Factor E (Table 22)	31	9.54%	34	12.50%
Factor F (Table 23)	56	17.23%	52	19.12%
Total	325	100.00%	272	100.00%

Table 23

Distribution of the research sample individuals as to their view on to what extent the relations between the CIP and the police are affected by:

A. The importance of speed in reporting to the CIP when arresting any suspect

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	27	39.13%	27	33.33%
Agree	26	37.68%	21	25.93%
Agree To Some Extent	12	17.39%	25	30.86%
Disagree	1	1.45%	3	3.70%
Totally Disagree	2	2.90%	3	3.70%
Not specified	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.10		3.84	
Standard deviation	0.95		1.07	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 24

Distribution of the research sample individuals as to their view on to what extent the relations between the CIP and the police are affected by:

B. Police officers executing arrest orders issued by the CIP

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	15	21.74%	16	19.75%
Agree	19	27.54%	25	30.86%
Agree To Some Extent	23	33.33%	21	25.93%
Disagree	5	7.25%	13	16.05%
Totally Disagree	7	10.14%	5	6.17%
Not specified	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.43		3.43	
Standard deviation	1.21		1.17	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 25

Distribution of the research sample individuals as to their view on to what extent the relations between the CIP and the police are affected by:
C. Police officers responding to the investigator's demand to complete short information

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	12	17.39%	21	25.93%
Agree	16	23.19%	23	28.40%
Agree To Some Extent	31	44.93%	27	33.33%
Disagree	8	11.59%	7	8.64%
Totally Disagree	2	2.90%	2	2.47%
Not specified	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.41		3.68	
Standard deviation	1.00		1.04	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 26

Distribution of the research sample individuals as to their view on to what extent the relations between the CIP and the police are affected by:
D. CIP members practising some control of police officers

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	10	14.49%	17	20.99%
Agree	17	24.64%	21	25.93%
Agree To Some Extent	28	40.58%	29	35.80%
Disagree	7	10.14%	7	8.64%
Totally Disagree	7	10.14%	5	6.17%
Not specified	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.23		3.48	
Standard deviation	1.14		1.12	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 27

Distribution of the research sample individuals as to their view on to what extent the relations between the CIP and the police are affected by:

E. Average of the factors affecting relations between the CIP members and the police officers

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	10	14.49%	8	9.88%
Agree	14	20.29%	18	22.22%
Agree To Some Extent	19	27.54%	29	35.80%
Disagree	8	11.59%	13	16.05%
Totally Disagree	17	24.64%	10	12.35%
Not specified	1	1.45%	3	3.70%
Total	69	100.00%	81	100.00%
Average	2.88		3.01	
Standard deviation	1.39		1.16	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 28

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

A. Participation of CIP member in inspection is vital

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	12	17.39%	21	25.93%
Frequently	14	20.29%	9	11.11%
Sometimes	32	46.38%	30	37.04%
Rarely	5	7.25%	11	13.58%
Never	5	7.25%	9	11.11%
No answer	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.34		3.28	
Standard deviation	1.09		1.30	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 29

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

B. CIP review of the inspection report

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	21	30.43%	22	27.16%
Frequently	27	39.13%	27	33.33%
Sometimes	13	18.84%	19	23.46%
Rarely	5	7.25%	7	8.64%
Never	3	4.35%	5	6.17%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.84		3.68	
Standard deviation	1.08		1.16	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 30

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

C. Scene inspection

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	49	71.01%	45	55.56%
Frequently	13	18.84%	19	23.46%
Sometimes	5	7.25%	12	14.81%
Rarely	1	1.45%	2	2.47%
Never	1	1.45%	1	1.23%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.57		4.33	
Standard deviation	0.81		0.92	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 31

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

D. Reserving seized items

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	39	56.52%	36	44.44%
Frequently	15	21.74%	21	25.93%
Sometimes	9	13.04%	11	13.58%
Rarely	2	2.90%	5	6.17%
Never	4	5.80%	6	7.41%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.20		3.96	
Standard deviation	1.15		1.24	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 32

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

E. Scene inspection by police officers

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	33	47.83%	43	53.09%
Frequently	19	27.54%	17	20.99%
Sometimes	9	13.04%	13	16.05%
Rarely	5	7.25%	4	4.94%
Never	3	4.35%	2	2.47%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.07		4.20	
Standard deviation	1.14		1.05	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 33

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

F. Seeking experts to inspect the scene

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	39	56.52%	47	58.02%
Frequently	13	18.84%	16	19.75%
Sometimes	14	20.29%	15	18.52%
Rarely	2	2.90%	1	1.23%
Never	1	1.45%	1	1.23%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.26		4.34	
Standard deviation	0.98		0.91	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 34

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

G. Average of factors for how to inspect the scene

Degree of Participation	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	34	49.28%	38	46.91%
Frequently	17	24.64%	20	24.69%
Sometimes	12	17.39%	17	20.99%
Rarely	3	4.35%	2	2.47%
Never	3	4.35%	3	3.70%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.10		4.10	
Standard deviation	1.11		1.06	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 35

Distribution of the research sample individuals as to their views on how to interrogate the accused

A. Interrogation by the CIP member

Degree of Consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	55	79.71%	24	29.63%
Agree	8	11.59%	31	38.27%
Agree To Some Extent	4	5.80%	21	25.93%
Disagree	1	1.45%	2	2.47%
Totally Disagree	1	1.45%	2	2.47%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.67		3.91	
Standard deviation	0.78		0.94	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 36

Distribution of the research sample individuals as to their views on how to interrogate the accused

B. Deputing police officers to participate in interrogation

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	3	4.35%	23	28.40%
Agree	7	10.14%	32	39.51%
Agree To Some Extent	29	42.03%	20	24.69%
Disagree	19	27.54%	1	1.23%
Totally Disagree	11	15.94%	4	4.94%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	2.59		3.86	
Standard deviation	1.02		1.02	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 37

Distribution of the research sample individuals as to their views on how to interrogate the accused

C. Confronting the accused with the evidence established against him upon interrogation

Degree of Consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	59	85.51%	51	62.96%
Agree	9	13.04%	18	22.22%
Agree To Some Extent	1	1.45%	9	11.11%
Disagree	0	0.00%	2	2.47%
Totally Disagree	0	0.00%	0	0.00%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.84		4.48	
Standard deviation	0.41		0.80	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 38

Distribution of the research sample individuals as to their views on how to interrogate the accused

D. Interrogation leads to valid confessions

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	27	39.13%	40	49.38%
Agree	31	44.93%	18	22.22%
Agree To Some Extent	9	13.04%	19	23.46%
Disagree	1	1.45%	2	2.47%
Totally Disagree	1	1.45%	1	1.23%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.19		4.18	
Standard deviation	0.83		0.96	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 39

Distribution of the research sample individuals as to their views on how to interrogate the accused

E. Seeking assistance of experts' reports on interrogation

Degree of Consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	31	44.93%	35	43.21%
Agree	25	36.23%	24	29.63%
Agree To Some Extent	10	14.49%	16	19.75%
Disagree	2	2.90%	3	3.70%
Totally Disagree	1	1.45%	2	2.47%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.20		4.09	
Standard deviation	0.90		1.01	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 40

Distribution of the research sample individuals as to their views on how to interrogate the accused

F. Interrogation ends by setting processes

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	5	7.25%	9	11.11%
Agree	6	8.70%	10	12.35%
Agree To Some Extent	14	20.29%	22	27.16%
Disagree	26	37.68%	15	18.52%
Totally Disagree	18	26.09%	25	30.86%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	2.33		2.54	
Standard deviation	1.17		1.34	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 41

Distribution of the research sample individuals as to their views on how to interrogate the accused

G. Interrogation ends with accusation and sometimes referral to trial

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	20	28.99%	38	46.91%
Agree	38	55.07%	28	34.57%
Agree To Some Extent	8	11.59%	11	13.58%
Disagree	2	2.90%	3	3.70%
Totally Disagree	1	1.45%	0	0.00%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.07		4.26	
Standard deviation	0.81		0.84	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 42

Distribution of the research sample individuals as to their views on how to interrogate the accused

H. Interrogation should be conducted in the presence of the attorney of the accused

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	7	10.14%	9	11.11%
Agree	15	21.74%	10	12.35%
Agree To Some Extent	9	13.04%	13	16.05%
Disagree	8	11.59%	11	13.58%
Totally Disagree	30	43.48%	37	45.68%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	2.43		2.29	
Standard deviation	1.48		1.44	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree=5)

Table 43

Distribution of the research sample individuals as to their views on how to interrogate the accused

I. Attorney's attendance in the interrogation serves justice and assists in reaching the truth

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	17	24.64%	14	17.28%
Agree	12	17.39%	12	14.81%
Agree To Some Extent	32	46.38%	11	13.58%
Disagree	7	10.14%	14	17.28%
Totally Disagree	1	1.45%	30	37.04%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	3.54		2.58	
Standard deviation	1.02		1.53	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 44

Distribution of the research sample individuals as to their views on how to interrogate the accused

J. Average factors on how to interrogate the accused

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Very high	25	36.23%	26	32.10%
High	17	24.64%	19	23.46%
Average	14	20.29%	17	20.99%
Poor	7	10.14%	7	8.64%
Very Poor	6	8.70%	11	13.58%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.70		3.53	
Standard deviation	1.30		1.39	

(Note: Very Poor =1, Poor =2, Average =3, High =4, Very High =5)

Table 45

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

A. Conducting prosecution based on the accusation issued by the investigator on the case he has investigated

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	34	49.28%	32	39.51%
Frequently	29	42.03%	29	35.80%
Sometimes	5	7.25%	16	19.75%
Rarely	1	1.45%	3	3.70%
Nil	0	0.00%	1	1.23%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.39		4.09	
Standard deviation	0.69		0.92	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 46

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

B. Returning some cases to the investigator to complete short items

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	17	24.64%	20	24.69%
Frequently	14	20.29%	15	18.52%
Sometimes	28	40.58%	34	41.98%
Rarely	9	13.04%	11	13.58%
Never	0	0.00%	0	0.00%
No answer	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	3.57		3.55	
Standard deviation	1.01		1.02	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 47

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

C. Prosecutor's demand for the prescribed punishment

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	52	75.36%	38	46.91%
Frequently	13	18.84%	16	19.75%
Sometimes	2	2.90%	19	23.46%
Rarely	1	1.45%	4	4.94%
Never	1	1.45%	3	3.70%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.65		4.03	
Standard deviation	0.74		1.12	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 48

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

D. Presenting the accusation to the CIP management board before prosecution

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	64	92.75%	32	39.51%
Frequently	1	1.45%	20	24.69%
Sometimes	2	2.90%	18	22.22%
Rarely	1	1.45%	7	8.64%
Never	0	0.00%	2	2.47%
No answer	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.88		3.92	
Standard deviation	0.50		1.11	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 49

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution
E. Preparation of plea by the prosecutor to the court for the sentence cassation

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	12	17.39%	20	24.69%
Frequently	19	27.54%	10	12.35%
Sometimes	28	40.58%	26	32.10%
Rarely	6	8.70%	14	17.28%
Never	3	4.35%	11	13.58%
No answer	1	1.45%	0	0.00%
Total	69	100.00%	81	100.00%
Average	3.46		3.17	
Standard deviation	1.03		1.35	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 50

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

F. Average of factors of the CIP jurisdiction on prosecution

Jurisdiction Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	40	57.97%	36	44.44%
Frequently	15	21.74%	19	23.46%
Sometimes	11	15.94%	20	24.69%
Rarely	2	2.90%	4	4.94%
Never	1	1.45%	2	2.47%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.32		4.02	
Standard deviation	0.95		1.06	

(Note: Never =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 51

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

A. Furnishing the CIP members with daily statements covering the names of those kept in custody at the police stations

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	58	84.06%	54	66.67%
Frequently	8	11.59%	14	17.28%
Sometimes	1	1.45%	6	7.41%
Rarely	1	1.45%	4	4.94%
Nil	1	1.45%	3	3.70%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.75		4.38	
Standard deviation	0.69		1.07	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 52

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

B. Ensuring the application of the bylaw of the rules of stoppage, arrest, temporary detention and custody stoppage

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	61	88.41%	42	51.85%
Frequently	5	7.25%	20	24.69%
Sometimes	1	1.45%	16	19.75%
Rarely	2	2.90%	2	2.47%
Nil	0	0.00%	0	0.00%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.81		4.27	
Standard deviation	0.60		0.87	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 53

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

C. Conducting inspection tours of jails

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	39	56.52%	33	40.74%
Frequently	25	36.23%	21	25.93%
Sometimes	4	5.80%	18	22.22%
Rarely	1	1.45%	6	7.41%
Nil	0	0.00%	2	2.47%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.48		3.96	
Standard deviation	0.68		1.08	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 54

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

D. Ensuring application of the regulations and instructions of the jailed

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	41	59.42%	38	46.91%
Frequently	22	31.88%	22	27.16%
Sometimes	5	7.25%	13	16.05%
Rarely	1	1.45%	5	6.17%
Nil	0	0.00%	2	2.47%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.49		4.11	
Standard deviation	0.70		1.06	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 55

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

E. Reviewing the jail records

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	27	39.13%	24	29.63%
Frequently	30	43.48%	28	34.57%
Sometimes	10	14.49%	16	19.75%
Rarely	1	1.45%	9	11.11%
Nil	1	1.45%	3	3.70%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.17		3.76	
Standard deviation	0.84		1.12	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 56

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes

F. Hearing the complaints of the jailed or those kept under custody and discussing the complaints with those in charge of the jail

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	19	27.54%	31	38.27%
Frequently	41	59.42%	23	28.40%
Sometimes	7	10.14%	19	23.46%
Rarely	1	1.45%	7	8.64%
Nil	1	1.45%	1	1.23%
No answer	0	0.00%	0	0.00%
Total	69	100.00%	81	100.00%
Average	4.10		3.94	
Standard deviation	0.75		1.04	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 57

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
G. Following the procedures for releasing those who have completed their sentence period

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	30	43.48%	33	40.74%
Frequently	26	37.68%	21	25.93%
Sometimes	9	13.04%	16	19.75%
Rarely	3	4.35%	6	7.41%
Nil	1	1.45%	4	4.94%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.17		3.91	
Standard deviation	0.92		1.17	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 58

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
H. Average factors of CIP supervision over jails and custody homes

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	37	53.62%	31	38.27%
Frequently	24	34.78%	23	28.40%
Sometimes	6	8.70%	16	19.75%
Rarely	2	2.90%	6	7.41%
Nil	0	0.00%	4	4.94%
No answer	0	0.00%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.39		3.89	
Standard deviation	0.77		1.16	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 59

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

A. CIP member attending the execution

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	41	59.42%	22	27.16%
Frequently	22	31.88%	18	22.22%
Sometimes	4	5.80%	22	27.16%
Rarely	1	1.45%	10	12.35%
Nil	0	0.00%	8	9.88%
No answer	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.51		3.45	
Standard deviation	0.68		1.29	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 60

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

B. Ensuring completion of the sentence classes and issuance of high orders in the cases of execution, amputation and stoning

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	55	79.71%	33	40.74%
Frequently	11	15.94%	23	28.40%
Sometimes	1	1.45%	16	19.75%
Rarely	1	1.45%	5	6.17%
Nil	0	0.00%	3	3.70%
No answer	1	1.45%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.76		3.97	
Standard deviation	0.55		1.10	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 61

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

C. Ensuring contact with the family of the defendant on application of the retaliation punishment

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	49	71.01%	38	46.91%
Frequently	13	18.84%	13	16.05%
Sometimes	4	5.80%	19	23.46%
Rarely	0	0.00%	6	7.41%
Nil	1	1.45%	4	4.94%
No answer	2	2.90%	1	1.23%
Total	69	100.00%	81	100.00%
Average	4.63		3.94	
Standard deviation	0.74		1.22	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 62

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

D. Inspecting the tool of execution

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	39	56.52%	40	49.38%
Frequently	20	28.99%	17	20.99%
Sometimes	3	4.35%	19	23.46%
Rarely	3	4.35%	2	2.47%
Nil	3	4.35%	0	0.00%
No answer	1	1.45%	3	3.70%
Total	69	100.00%	81	100.00%
Average	4.31		4.22	
Standard deviation	1.05		0.91	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 63

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

E. Ensuring the availability of the notary public clerks to note down the testimony of the person sentenced to execution or stoning before application

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	51	73.91%	46	56.79%
Frequently	10	14.49%	16	19.75%
Sometimes	6	8.70%	11	13.58%
Rarely	1	1.45%	3	3.70%
Nil	0	0.00%	3	3.70%
No answer	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.63		4.25	
Standard deviation	0.71		1.08	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 64

Distribution of the research sample individuals as to views on the CIP supervision of sentence execution

F. Average factors of CIP supervision on execution of the sentences enforcement

Supervision Degree	CIP		Police Officers	
	Frequency	%	Frequency	%
Always	47	68.12%	37	45.68%
Frequently	16	23.19%	18	22.22%
Sometimes	4	5.80%	19	23.46%
Rarely	1	1.45%	3	3.70%
Nil	0	0.00%	2	2.47%
No answer	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	4.60		4.08	
Standard deviation	0.67		1.05	

(Note: Nil =1, Rarely =2, Sometimes =3, Frequently =4, Always =5)

Table 65

Distribution of the research sample individuals as to views on the CIP current material and manpower capabilities in the CIP branch

A. CIP members currently cover all assignments

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	4	5.80%	13	16.05%
Agree	11	15.94%	19	23.46%
Agree To Some Extent	42	60.87%	28	34.57%
Disagree	10	14.49%	8	9.88%
Totally Disagree	2	2.90%	11	13.58%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.07		3.19	
Standard deviation	0.81		1.24	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 66

Distribution of the research sample individuals as to views on the CIP current material and manpower capabilities in the CIP branch

B. Possibility of seeking more professional expertise

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	14	20.29%	28	34.57%
Agree	21	30.43%	28	34.57%
Agree To Some Extent	27	39.13%	17	20.99%
Disagree	3	4.35%	6	7.41%
Totally Disagree	4	5.80%	0	0.00%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	3.55		3.99	
Standard deviation	1.05		0.94	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 67

Distribution of the research sample individuals as to views on the CIP
current material and manpower capabilities in the CIP branch

C. Current material capabilities are adequate

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	2	2.90%	13	16.05%
Agree	3	4.35%	17	20.99%
Agree To Some Extent	27	39.13%	27	33.33%
Disagree	25	36.23%	13	16.05%
Totally Disagree	11	15.94%	9	11.11%
No answer	1	1.45%	2	2.47%
Total	69	100.00%	81	100.00%
Average	2.41		3.15	
Standard deviation	0.92		1.22	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 68

Distribution of the research sample individuals as to views on the CIP
current material and manpower capabilities in the CIP branch

**D. Cooperation of the security bodies with the CIP members in
providing some capabilities**

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	4	5.80%	28	34.57%
Agree	9	13.04%	22	27.16%
Agree To Some Extent	28	40.58%	19	23.46%
Disagree	17	24.64%	8	9.88%
Totally Disagree	11	15.94%	2	2.47%
No answer	0	0.00%	2	2.47%
Total	69	100.00%	81	100.00%
Average	2.68		3.84	
Standard deviation	1.08		1.10	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

Table 69

Distribution of the research sample individuals as to their views on the current material and manpower capabilities in the CIP branch
E. Sufficient current material and manpower in the CIP branch

Degree of consent	CIP		Police Officers	
	Frequency	%	Frequency	%
Totally Agree	6	8.70%	19	23.46%
Agree	10	14.49%	20	24.69%
Agree To Some Extent	34	49.28%	23	28.40%
Disagree	12	17.39%	9	11.11%
Totally Disagree	7	10.14%	6	7.41%
No answer	0	0.00%	4	4.94%
Total	69	100.00%	81	100.00%
Average	2.94		3.48	
Standard deviation	1.04		1.21	

(Note: Totally Disagree =1, Disagree =2, Agree To Some Extent =3, Agree =4, Totally Agree =5)

RESEARCH SAMPLE – LAWYERS QUESTIONNAIRE

Before the establishment of the CIP, lawyers were not allowed to deal with criminal cases, but had to deal with civil and commercial cases. This was changed with the establishment of the CIP and their opinions on the formation and performance of the CIP is therefore of relevance to this research.

Over 48 questionnaires were distributed to lawyers. 34 of them were returned to the researcher, giving a relatively high response rate of 71%. The questionnaires were checked to ensure their validity for analysis and 4 forms were disregarded as their answers were incomplete. Thus, the number of analysed research samples was 30, constituting (62%) of the total number of the distributed forms. Tables L1 to L3 provide a breakdown of the sample by academic qualification, job specialty and experience. Some of the individuals had more than 10 years experience even before the establishment of the CIP.

DATA GATHERING TOOLS

The researcher applied the questionnaire as detailed, relying mainly on the questionnaire as a tool to gather the required data from the research sample individuals. This form is classified into two main parts:

- A) **First Part** Contains personal and job particulars on the research sample individuals such as educational level and work experience.
- B) **Second Part** Covers a set of questions that the sample individuals answer, representing the basic research data, which are the main functions of the CIP (investigation and interrogation; prosecution; appeal for sentence cassation; supervision of sentence execution; supervision of jails and stoppage points) and their functions within the Criminal Justice System.

Table L1

Distribution of the research sample individuals by academic qualification

Educational Level	Frequency	%
Graduate	30	100.00%
Post graduate	0	0.00%
Total	30	100.00%

Table L2
Distribution of research sample individuals by job specialty

Specialty	Frequency	%
Shari'a Sciences	5	16.67%
Security Sciences	4	13.33%
Law sciences	21	70.00%
Other Sciences	0	0.00%
Total	30	100.00%

Table L3
Distribution of the research sample individuals as to experience

No. Of Experience Years	Frequency	%
less than a year	3	10.00%
from 1 to 2 years	4	13.33%
From 3 to 4 years	12	40.00%
From 5 to 9 years	7	23.33%
10 years and above	4	13.33%
Total	30	100.00%

Table L4
Distribution of the research sample as to reasons for establishing the CIP
A. Development of criminal justice bodies

Degree of consent	Frequency	%
Totally Agree	18	60.00%
Agree	7	23.33%
Agree To Some Extent	5	16.67%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L5

Distribution of the research sample as to reasons for establishing the CIP
B. Spread of education in Saudi Arabia

Degree of consent	Frequency	%
Totally Agree	15	50.00%
Agree	9	30.00%
Agree To Some Extent	6	20.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L6

Distribution of the research sample as to reasons for establishing the CIP
C. Giving scope to the police officers to undertake their tasks

Degree of consent	Frequency	%
Totally Agree	15	50.00%
Agree	3	10.00%
Agree To Some Extent	12	40.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L7

Distribution of the research sample as to reasons for establishing the CIP
D. Shortening the time in deciding the investigation and prosecution cases

Degree of consent	Frequency	%
Totally Agree	12	40.00%
Agree	16	53.33%
Agree To Some Extent	2	6.67%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L8

Distribution of the research sample as to reasons for establishing the CIP

E. Availing guarantees to the accused within the justice bodies

Degree of consent	Frequency	%
Totally Agree	13	43.33%
Agree	6	20.00%
Agree To Some Extent	1	3.33%
Disagree	10	33.33%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L9

Distribution of the research sample as to reasons for establishing the CIP

F. Confronting the increasing complexity of crime

Degree of consent	Frequency	%
Totally Agree	7	23.33%
Agree	5	16.67%
Agree To Some Extent	6	20.00%
Disagree	12	40.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L10

Distribution of the research sample individuals as to CIP member's familiarity with the latest practices in the investigative field

Degree of familiarity	Frequency	%
Very High	13	43.33%
High	0	0.00%
Average	12	40.00%
Poor	5	16.67%
Very Poor	0	0.00%
Total	30	100.00%

Table L11

Distribution of the research sample as to opinion on whether there was a large difference in the qualifications of the CIP members and police officers

Degree of consent	Frequency	%
Totally Agree	12	40.00%
Agree	18	60.00%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L12

Distribution of the research sample as to whether the establishment of the CIP was timely

Degree of consent	Frequency	%
Totally Agree	7	23.33%
Agree	19	63.33%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	4	13.33%
Total	30	100.00%

Table L13

Distribution of the research sample as to whether the CIP has put the new codes (the Law of Criminal Procedure, the Law of Procedure before Shari'a Courts, and the Code of Law Practice) into practice.

Degree of consent	Frequency	%
Totally Agree	4	13.33%
Agree	26	86.67%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L14

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

A. Familiarity with the rules and instructions pertaining to CIP jurisdiction

Degree of effect on performance level	Frequency	%
Very high	19	63.33%
High	0	0.00%
Average	11	36.67%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L15

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

B. Required academic qualification and training courses

Degree of effect on performance level	Frequency	%
Very high	12	40.00%
High	5	16.67%
Average	13	43.33%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L16

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

C. Academic background on the different investigative practices

Degree of effect on performance level	Frequency	%
Very high	1	3.33%
High	11	36.67%
Average	18	60.00%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L17

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

D. Cooperation of the CIP with police officers

Degree of effect on performance level	Frequency	%
Very high	5	16.67%
High	13	43.33%
Average	5	16.67%
Poor	7	23.33%
Nil	0	0.00%
Total	30	100.00%

Table L18

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

E. CIP delegation of investigation to police officers

Degree of effect on performance level	Frequency	%
Very high	4	13.33%
High	26	86.67%
Average	0	0.00%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L19

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

F. The gradual assumption of duties by the CIP

Degree of effect on performance level	Frequency	%
Very high	23	76.67%
High	4	13.33%
Average	3	10.00%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L20

Distribution of the research sample as to what extent the performance level of the CIP is affected by:

G. Police officer's practising the duty of crime prevention

Degree of effect on performance level	Frequency	%
Very high	5	16.67%
High	4	13.33%
Average	21	70.00%
Poor	0	0.00%
Nil	0	0.00%
Total	30	100.00%

Table L21

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

A. Participation of CIP member in inspection is vital

Degree of consent	Frequency	%
Always	30	100.00%
Frequently	0	0.00%
Sometimes	0	0.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L22

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection

B. CIP review of the inspection report

Degree of consent	Frequency	%
Always	21	70.00%
Frequently	5	16.67%
Sometimes	4	13.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L23

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection
C. Scene inspection

Degree of consent	Frequency	%
Always	30	100.00%
Frequently	0	0.00%
Sometimes	0	0.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L24

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection
C. Reserving seized items

Degree of consent	Frequency	%
Always	27	90.00%
Frequently	3	10.00%
Sometimes	0	0.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L25

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection
D. Scene inspection by police officers

Degree of consent	Frequency	%
Always	5	16.67%
Frequently	0	0.00%
Sometimes	0	0.00%
Rarely	14	46.67%
Never	11	36.67%
Total	30	100.00%

Table L26

Distribution of the research sample individuals as to their views on the degree of participation and influence in inspection
E. Seeking experts to inspect the scene

Degree of consent	Frequency	%
Always	4	13.33%
Frequently	25	83.33%
Sometimes	1	3.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L27

Distribution of the research sample individuals as to their views on how to interrogate the accused
A. Interrogation by the CIP member

Degree of consent	Frequency	%
Totally Agree	7	23.33%
Agree	13	43.33%
Agree To Some Extent	4	13.33%
Disagree	6	20.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L28

Distribution of the research sample individuals as to their views on how to interrogate the accused
B. Deputing police officers to participate in interrogation

Degree of consent	Frequency	%
Totally Agree	0	0.00%
Agree	6	20.00%
Agree To Some Extent	11	36.67%
Disagree	13	43.33%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L29

Distribution of the research sample individuals as to their views on how to interrogate the accused

C. Confronting the accused with the evidence established against him upon interrogation

Degree of consent	Frequency	%
Totally Agree	24	80.00%
Agree	2	6.67%
Agree To Some Extent	4	13.33%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L30

Distribution of the research sample individuals as to their views on how to interrogate the accused

D. Interrogation leads to valid confessions

Degree of consent	Frequency	%
Totally Agree	12	40.00%
Agree	11	36.67%
Agree To Some Extent	7	23.33%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L31

Distribution of the research sample individuals as to their views on how to interrogate the accused

E. Seeking assistance of experts' reports on interrogation

Degree of consent	Frequency	%
Totally Agree	22	73.33%
Agree	6	20.00%
Agree To Some Extent	2	6.67%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L32

Distribution of the research sample individuals as to their views on how to interrogate the accused

F. Interrogation ends by setting processes

Degree of consent	Frequency	%
Totally Agree	0	0.00%
Agree	0	0.00%
Agree To Some Extent	18	60.00%
Disagree	12	40.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L33

Distribution of the research sample individuals as to their views on how to interrogate the accused

G. Interrogation ends with accusation and sometimes referral to trial

Degree of consent	Frequency	%
Totally Agree	0	0.00%
Agree	4	13.33%
Agree To Some Extent	21	70.00%
Disagree	5	16.67%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L34

Distribution of the research sample individuals as to their views on how to interrogate the accused

H. Interrogation should be conducted in the presence of the attorney of the accused

Degree of consent	Frequency	%
Totally Agree	24	80.00%
Agree	6	20.00%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L35

Distribution of the research sample individuals as to their views on how to interrogate the accused

I. Attorney's attendance in the interrogation serves justice and assists in reaching the truth

Degree of consent	Frequency	%
Totally Agree	19	63.33%
Agree	0	0.00%
Agree To Some Extent	5	16.67%
Disagree	6	20.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L36

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

A. Conducting prosecution based on the accusation issued by the investigator on the case he has investigated

Jurisdiction Degree	Frequency	%
Totally Agree	7	23.33%
Agree	19	63.33%
Agree To Some Extent	4	13.33%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L37

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

B. Returning some cases to the investigator to complete short items

Jurisdiction Degree	Frequency	%
Totally Agree	0	0.00%
Agree	19	63.33%
Agree To Some Extent	11	36.67%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L38

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

C. Prosecutor's demand for the prescribed punishment

Jurisdiction Degree	Frequency	%
Totally Agree	13	43.33%
Agree	11	36.67%
Agree To Some Extent	6	20.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L39

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

D. Presenting the accusation to the CIP management board before prosecution

Jurisdiction Degree	Frequency	%
Totally Agree	10	33.33%
Agree	2	6.67%
Agree To Some Extent	18	60.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L40

Distribution of the research sample individuals as to their views on the jurisdiction of the CIP in the field of prosecution

E. Preparation of plea by the prosecutor to the court for the sentence cassation

Jurisdiction Degree	Frequency	%
Totally Agree	10	33.33%
Agree	13	43.33%
Agree To Some Extent	0	0.00%
Disagree	7	23.33%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L41

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
A. Furnishing the CIP members with daily statements covering the names of those kept in custody at the police stations

Supervision Degree	Frequency	%
Always	11	36.67%
Frequently	12	40.00%
Sometimes	7	23.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L42

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
B. Ensuring the application of the bylaw of the rules of stoppage, arrest, temporary detention and custody stoppage

Supervision Degree	Frequency	%
Always	11	36.67%
Frequently	18	60.00%
Sometimes	1	3.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L43

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
C. Conducting inspection tours of jails

Supervision Degree	Frequency	%
Always	30	100.00%
Frequently	0	0.00%
Sometimes	0	0.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L44

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
D. Ensuring application of the regulations and instructions of the jailed

Supervision Degree	Frequency	%
Always	30	100.00%
Frequently	0	0.00%
Sometimes	0	0.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L45

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
E. Reviewing the jail records

Supervision Degree	Frequency	%
Always	22	73.33%
Frequently	7	23.33%
Sometimes	1	3.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L46

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes
F. Hearing the complaints of the jailed or those kept under custody and discussing the complaints with those in charge of the jail

Supervision Degree	Frequency	%
Always	16	53.33%
Frequently	11	36.67%
Sometimes	3	10.00%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L47

Distribution of the research sample individuals as to views on the CIP assuming its jurisdiction in the field of supervising jails and custody homes G. Following the procedures for releasing those who have completed their sentence period

Supervision Degree	Frequency	%
Always	12	40.00%
Frequently	11	36.67%
Sometimes	7	23.33%
Rarely	0	0.00%
Never	0	0.00%
Total	30	100.00%

Table L48

Distribution of the research sample individuals as to views on the judicial and securities parties in Saudi not yet having realized the importance of the lawyer's role in the criminal process

Degree of consent	Frequency	%
Totally Agree	12	40.00%
Agree	18	60.00%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L49

Distribution of the research sample individuals as to views on the role of the lawyer and his importance in the Saudi criminal system still not being clear in Saudi society

Degree of consent	Frequency	%
Totally Agree	17	56.67%
Agree	9	30.00%
Agree To Some Extent	4	13.33%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L50

Distribution of the research sample individuals as to views on whether lawyer sometimes faces pressure from the judicial power while performing his job in the trial

Degree of consent	Frequency	%
Totally Agree	3	10.00%
Agree	12	40.00%
Agree To Some Extent	15	50.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L51

Distribution of the research sample individuals as to views on whether the CIP members believe the lawyer's role during the interrogation is marginal

Degree of consent	Frequency	%
Totally Agree	9	30.00%
Agree	4	13.33%
Agree To Some Extent	11	36.67%
Disagree	6	20.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L52

Distribution of the research sample individuals as to views on whether, after issuing the criminal procedure code, lawyer believes that his rights are given and his duties are specified according to the law

Degree of consent	Frequency	%
Totally Agree	0	0.00%
Agree	5	16.67%
Agree To Some Extent	18	60.00%
Disagree	7	23.33%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L53

Distribution of the research sample individuals as to views on whether the lawyer's role is less effective in criminal cases compared to in civil cases

Degree of consent	Frequency	%
Totally Agree	3	10.00%
Agree	20	66.67%
Agree To Some Extent	7	23.33%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L54

Distribution of the research sample individuals as to whether the unification of investigation and prosecution authorities leads to a speedy performance and insures law application in the right way by divisions that enforce legal procedures

Degree of consent	Frequency	%
Totally Agree	0	0.00%
Agree	0	0.00%
Agree To Some Extent	19	63.33%
Disagree	1	3.33%
Totally Disagree	10	33.33%
Total	30	100.00%

Table L55

Distribution of the research sample individuals as to views on whether combining investigation and prosecution authorities makes public prosecution an adversary and interrogator at the same time which conflicts with the concept of justice

Degree of consent	Frequency	%
Totally Agree	6	20.00%
Agree	18	60.00%
Agree To Some Extent	6	20.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

Table L56

Distribution of the research sample individuals as to whether a separation between the two authorities of investigation and prosecution leads to providing maximum guarantees of personal liberty and leads to a fair distribution of responsibility

Degree of consent	Frequency	%
Totally Agree	10	33.33%
Agree	20	66.67%
Agree To Some Extent	0	0.00%
Disagree	0	0.00%
Totally Disagree	0	0.00%
Total	30	100.00%

RESEARCH SAMPLE - PRISONERS' INTERVIEWS

Twelve interviews were conducted with prisoners in Briman prison in Jeddah in order to compare criminal procedures now and under the General Security Department System. As tables P1 and P2 show, a total of seven of the twelve were convicted of drug-related crimes. Five of the prisoners were convicted under the police system whereas seven prisoners were convicted under the CIP system.

Interviews with the prisoners were designed to examine the criminal procedures under both systems and therefore demonstrate whether there are obvious changes in the new system. The answers reflect the reality of how both systems work in practice and supplement the procedural perspective in the examination of the impact of the CIP on the Saudi criminal justice system.

Table P1

Distribution of the sample of convicted prisoners with police by crime and punishments

Crime	Frequency	%	Imprisonment punishments
Drugs	3	60.00%	14-19 years
Rape	1	20.00%	16 years
Robbery	1	20.00%	15 years
Total	5	100.00%	

Table P2
Distribution of the sample of convicted prisoners with CIP by crime and punishments

Crime	Frequency	%	Imprisonment punishments
Drugs	4	57.14%	6-11 years
Manslaughter	2	28.57%	4-6 years
Robbery	1	14.29%	8 years
Total	7	100.00%	

Table P3
Distribution of the research sample as to treatment by police during arrest

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Gone voluntarily to police station	0	0.00%	-1.75	1	20.00%	-0.25
Good	1	14.29%	-0.75	0	0.00%	-1.25
Acceptable	5	71.43%	3.25	1	20.00%	-0.25
Bad	1	14.29%	-0.75	3	60.00%	1.75
Total	7	100.00%	0	5	100.00%	0

Table P4
Distribution as to treatment by investigator during interrogation

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Asking questions with good behaviour	4	57.14%	1.67	0	0.00%	-1.67
Asking questions with threat and rude language/behaviour	2	28.57%	-0.33	2	40.00%	0.33
Asking questions with torture	1	14.29%	-1.33	3	60.00%	1.33
Total	7	100.00%	0	5	100.00%	0

Table P5
Distribution of the research sample as to how prisoners were convicted

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Voluntary confession	5	71.43%	2.67	1	20.00%	-0.67
Through proven and circumstantial evidence	1	14.29%	-1.33	1	20.00%	-0.67
Through pressure and torture	1	14.29%	-1.33	3	60.00%	1.33
Total	7	100.00%	0	5	100.00%	0

Table P6
Distribution of the research sample by complaints made against the investigator regarding threat and torture

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Complaints to head of investigation department	0	0.00%	-1.75	1	20.00%	-0.25
Complaints to judge during trail	2	28.57%	0.25	3	60.00%	1.75
No complaints as it won't makes deference	1	14.29%	-0.75	1	20.00%	-0.25
No need to make complaints	4	57.14%	2.25	0	0.00%	-1.25
Total	7	100.00%	0	5	100.00%	0

Table P7
Distribution as to attendance of lawyer in the interrogation

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Lawyer was present in the interrogation	6	85.71%	3.67	0	0.00%	-1.67
Not allowed to seek lawyer assistance by the Law	0	0.00%	-2.33	5	100.00%	3.33
They didn't let him in for unknown reason	1	14.29%	-1.33	0	0.00%	-1.67
Total	7	100.00%	0	5	100.00%	0

Table P8
Distribution of the research sample as to attendance of lawyer at the trial

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Lawyer was present in the trial	7	100.00%	4.67	0	0.00%	-1.67
Not allowed to seek lawyer assistance by the Law	0	0.00%	-2.33	5	100.00%	3.33
They didn't let him in for unknown reason	0	0.00%	-2.33	0	0.00%	-1.67
Total	7	100.00%	0	5	100.00%	0

Table P9

Distribution of the research sample as to whether or not they were informed by the CIP prosecutors of the possibility of seeking a lawyer

informed	Prisoner with CIP		Prisoner with Police	
	Frequency	%	Frequency	%
Yes	7	100.00%	0	0.00%
No	0	0.00%	5	100%
Total	7	100.00%	5	0.00%

Table P10

Distribution of the research sample as to existence of jail inspection while serving the sentence during police time

answer	Prisoner with Police		
	Frequency	%	Standard deviation
No one visited us	2	40.00%	0.33
Officers visited us and ask about our situation	0	0.00%	-1.67
Don't know	3	60.00%	1.33
Total	5	100.00%	0

Table P11

Distribution of the research sample as jail inspection while serving the sentence during CIP time

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
No one visited us	0	0.00%	-2.33	0	0.00%	-1.67
CIP members visited us and asked about our situation	7	100.00%	4.67	5	100.00%	3.33
Don't know	0	0.00%	-2.33	0	0.00%	-1.67
Total	7	100.00%	0	5	100.00%	0

Table P12
Distribution of the research sample as to place and period of detention

answer	Prisoner with CIP			Prisoner with Police		
	Frequency	%	Standard deviation	Frequency	%	Standard deviation
Taken to jail within a week since detained	1	14.29%	-1.33	1	20.00%	-0.67
Detained in detention house within more than 2 weeks	0	0.00%	-2.33	4	80.00%	2.33
Taken to jail within 72 hours from arresting	6	85.71%	3.67	0	0.00%	-1.67
Total	7	100.00%	0	5	100.00%	0

Appendix C

Glossary of Islamic Terms

Arabic Term	Explanation
Adil	Justice, equilibrium.
Ahaadith	(singular: hadeeth). The verbalized form of a tradition of the Prophet, peace be on him, constitutive of his Sunnah. A hadeeth narrative is divided into two parts: the isnaad (chain of transmission) and the matn (content of the narrative).
Ahl al Hadith	Literally, people of hadeeth. Refers to scholars who rely on authenticated sayings of the Prophet and who are wary of using independent reasoning (ra'ee) in making juristic judgments. Used in contradistinction to ahl al ra'ee (qv. under ra'i).
'Aamm	The 'general' as opposed to the 'particular' (al khaass). Terms used by jurists in the complex matter of extracting laws from statements composed as codal propositions. Islamic scholarship called 'general' (al 'aamm) the term which comprehends a plurality, and distinguished two varieties of it - generality in the term itself and generality in the meanings to which the term may refer.
Asl	(plural: usool). Root, origin, source; principle.
Diyah	Blood money, paid by the guilty as a compensation for killing, wounding, etc. (pl. Diyaat).
Fiqh	Literally, understanding. The legal science founded mainly on rules and principles developed by human reasoning (ijtihad) and the body of knowledge so derived. Fiqh may therefore vary from one jurist or school of thought to another. The term "fiqh" is sometimes used synonymously with Sharee'ah (qv.). However, while fiqh is to a large extent the product of human endeavor, the Sharee'ah is closely related to divine revelation and knowledge which is only obtained from the Qur'an and the Sunnah.
Hadith	see ahaadeeth above.
Hadith Da'eef	Weak hadeeth. One of the three main categories of hadeeth in contradistinction to saheeh (authentic) and hasan (good) hadeeth. A hadeeth is weak owing to a weakness that exists in its chain of narrators or in its textual content. There are several varieties of weak hadeeth.
Hadith Mursal	A hadeeth which a person from the second generation of Muslims (Taabi'oon) has directly attributed to the Prophet without mentioning the last link, namely the Companion, who might have narrated it from the Prophet. More generally, a hadeeth with part of its isnaad missing.
Hudud	(singular: hadd). Literally, limits; the specific punishments assigned by the Qur'an and the Sunnah for particular crimes - intoxication, theft, rebellion, adultery and fornication, false accusation of adultery, and apostasy. These crimes involve transgressing the limits of acceptable behavior.
Ijma'	Consensus of opinion. Usually defined as the unanimous agreement of the mujtahidoon of any period following the demise of the Prophet Muhammad on any matter. As such, it is described as collective ijtihad.

Arabic Term	Explanation
Ijtihad	Literally, striving and self-exertion; independent reasoning; analytical thought. Ijtihad may involve the interpretation of the source materials, inference of rules from them, or giving a legal verdict or decision on any issue on which there is no specific guidance in the Qur'an and the Sunnah.
Imam	(plural: a'immah). Leader. May refer to the leader of congregational salaah, to a leading and reputable scholar, or to the head of the Muslim state.
Isnaad	Chain of narrators of a hadith.
Istihsan	Juristic preference - the abandonment of one legal ruling for another which is considered better or more appropriate to a given circumstance.
Istinbaat	Inference. Deducing a somewhat hidden meaning from a given text. The process of extracting laws.
Istishaab	Presumption of continuity, or presuming continuation of the status quo ante. For example, istishaab requires that once a contract of sale, or of marriage, is concluded it is presumed to remain in force until there is a change established by evidence.
Khabar al Waahid	A solitary hadith reported by a single person from the Prophet. Also called hadith Aahaad. Khabar means news or report.
Khaleefah	(plural: khulafaa'). Steward, vicegerent; successor. Man is referred to as the khaleefah or steward of God on earth. The word khaleefah was used after the death of the noble Prophet Muhammad to refer to his successor, Aboo Bakr, as head of the Muslim community. Later it came to be accepted as the designation for the head of the Muslim state. Anglicized as caliph.
Khaass	The particular as opposed to the general ('aamm).
Khilaafa	Stewardship, vicegerency; successorship. Office of the head of the Muslim state. Also the designation of the political system of the Muslim state after the noble Prophet.
Madhab	(plural: madhaahib). Literally, way of going. School of thought.
Maslahah	(plural: masaalih). Considerations of public interest. It is generally held that the principal objective of the Shari`a and all its commandments is to realize the genuine maslahah or benefit of the people.
al Masaalih al Mursalah	(plural: al masaalih al mursalah). A consideration which is proper and harmonious with the objectives of the Lawgiver; it secures a benefit or prevents a harm, but the Sharee`ah provides no indication as to its validity or otherwise. For example, the Companions decided to issue currency, to establish prisons, and to impose a tax on agricultural lands despite the fact that no textual authority could be found for these measures.
Mecca or Makka	In the West region of Saudi Arabia. The birthplace c.A.D. 570 of Muhammad the Prophet, it is the holiest city of Islam, and the goal of the annual Muslim hajj.

Arabic Term	Explanation
Medina	Arabic <i>Medinat an-Nabi</i> [city of the Prophet] or <i>Madinat Rasul Allah</i> , in the West region of Saudi Arabia. It is situated c.110 mi (180 km) inland from the Red Sea in a well-watered oasis where fruit, dates, vegetables, and grain are raised. Before the flight (Hegira) of Muhammad from Mecca to the city in 622, Medina was called Yathrib.
Naskh:	Abrogation of certain parts of the Qur'anic revelation by others. The principle is mentioned in the Qur'an: "None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar" (2: 106).
Nass	(plural: nusoos). Text. A clear textual ruling or injunction from the Qur'an and the Sunnah.
Qiyas	Analogical deduction or reasoning. Recourse to analogy is only warranted if the solution of a new case cannot be found in the Qur'an and the Sunnah. Analogy then consists in extending a principle (asl) derived from the Qur'an and the Sunnah to the new case. Analogical deduction cannot operate independently of the nusoos.
Ra'i:	Opinion, reason. Ahl al Ra'i - scholars who employ independent reasoning to the solution of new problems, in contradistinction to scholars who confine themselves mainly to hadeeth (qv. Ahl al hadeeth).
Sadd al Dharaa'I	Literally, blocking the means. Implies blocking the means to an expected end or an evil which is likely to materialize if the means towards it is not obstructed. For example, illicit privacy between members of the opposite sex is blocked or made unlawful because [of the prohibition of adultery - ed. (missing text)].
Sunna	Literally, a clear path or beaten track. Refers to whatever the Prophet said, did, agreed to, or condemned. The Sunnah is a source of the Sharee'ah and a legal proof next to the Qur'an. As a source of the Sharee'ah, the Sunnah may corroborate a ruling which originates in the Qur'an. Secondly, the Sunnah may consist of an explanation or clarification of the Qur'an. Thirdly, the Sunnah may also consist of rulings on which the Qur'an is silent.
Ummah	(plural: umam). Community, nation. Specifically, the community of believers or the universal Muslim community.
Usool:	(singular, asl). Principles, origins. Usool al fiqh - principles of Islamic jurisprudence, philosophy of law; the methodology of deriving laws from the sources of Islam and of establishing their juristic and constitutional validity.
Zakat:	The compulsory 'purifying' tax on wealth which is one of the five 'pillars' of Islam. The word zakaah is derived from the word meaning purification, growth, and sweetening.

Appendix D

CIP AND POLICE OFFICERS QUESTIONNAIRE

First Part:**The Job:**

- CIP Investigator CIP Prosecutor CIP Control & supervision
 General Security officer General Security officer Assistant

Educational level (Academic Qualification):

- Intermediate Certificate High school certificate Graduate
 Post graduate

Job Specialty:

- Shari'a Sciences Law sciences Security Sciences
 Administrative Sciences Other Sciences

Work Experience years:

- Less than a year From 1 to 2 years From 3 to 4 years
 From 5 to 9 years 10 years and above

Second Part:

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
Performance level of the CIP's member is affected by						
1	Familiarity with the rules and instructions pertaining to CIP's Jurisdiction					
2	Required academic qualification and training courses					
3	Academic background on the different investigative practices					
4	Cooperation of the CIP's members with the police officers					
5	CIP's member's delegation of investigation to the police officers					
6	Gradual practice of CIP to its jurisdictions					
7	Police officer's practicing the duty of crime prevention					
Relations between the CIP and the Police are affected by:						
8	Fastness in reporting the CIP when arresting any suspect					
9	Police officer's execution to arrest order issued by the CIP's					
10	Police officer's response to the investigator's demand to complete short information					
11	CIP's member practice to some sort of control on the police					
Participation and influence in inspection						
12	Participation of CIP member in inspection is vital					
13	CIP's Review To The Inspection Report					
14	Scene Inspection Is Necessary To Reveal The Truth					
15	Reservation Of The Seized Items					
16	Scene Inspection By The Police Officers					
17	Seeking experts to inspect the scene					
Interrogate the accused						
18	The CIP member must interrogation the accused					
19	Deputing police officers to participate in interrogation					

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
20	Confronting the accused with the evidence established against him upon interrogation					
21	Interrogation leads to valid confessions					
22	Seeking assistance of experts' reports on interrogation					
23	Interrogation ends by setting processes					
24	Interrogation ends with accusation and sometimes referral to trial					
25	Interrogation should be conducted in the presence of the attorney of the accused					
26	Attorney's attendance in the interrogation serves justice and assists in reaching the truth					
CIP in the field of prosecution						
27	Conducting prosecution based on the accusation issued by the investigator on the case he has investigated					
28	Returning some cases to the investigator to complete short items					
29	Prosecutor's demand for the prescribed punishment					
30	Presenting the accusation to the CIP management board before prosecution					
31	Preparation of plea by the prosecutor to the court for the sentence cassation					
CIP in the field of supervising jails and custody homes						
32	Furnishing the CIP members with daily statements covering the names of those kept in custody at the police stations					
33	Ensuring the application of the bylaw of the rules of stoppage, arrest, temporary detention and custody stoppage					
34	Conducting inspection tours of jails					
35	Ensuring application of the regulations and instructions of the jailed					
36	Reviewing the jail records					
37	Hearing the complaints of the jailed or those kept under custody and discussing the complaints with those in charge of the jail					
38	Following the procedures for releasing those who have completed their sentence period					

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
CIP supervision of sentence execution						
39	CIP member attending the execution					
40	Ensuring completion of the sentence classes and issuance of high orders in the cases of execution, amputation and stoning					
41	Ensuring contact with the family of the defendant on application of the retaliation punishment					
42	Inspecting the tool of execution					
43	Ensuring the availability of the notary public clerks to note down the testimony of the person sentenced to execution or stoning before application					

Third part :

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
Contributive Reasons Of Incorporating The CIP						
1	Development Of The Criminal Justice Bodies					
2	Spread Of Education In Saudi Arabia					
3	Giving Scope To The Police Officers To Undertake Their Tasks					
4	Shortening The Time In Deciding The Investigation And Prosecution Cases					
5	Availing warranty to the accused within the justice bodies					
6	To Confront The Crime Development And Complexity					
CIP current material and manpower capabilities in the CIP branch						
7	The Capability Of The Security Department To Undertake The Investigation And Prosecution Cases At Present					
8	The Familiarity Degree With The Latest Practices In The Investigative Field					
9	There is Different Qualification Of The CIP's Members From The Police Officers					
10	The Timing of CIP Formation Is Proper					
11	There is Achieved Benefits To Police Officers after forming the CIP					
12	CIP members currently cover all assignments					
13	Possibility of seeking more professional expertise					
14	Current material capabilities are adequate					
15	Cooperation of the security bodies with the CIP members in providing some capabilities					
16	Sufficient current material and manpower in the CIP branch					

LAWYERS' QUESTIONNAIRE

First Part:**Educational level (Academic Qualification):**

- Graduate
- Post graduate

Job Specialty:

- Shari'a Sciences
- Security Sciences
- Law sciences
- Other Sciences

Work Experience years:

- Less than a year
- From 1 to 2 years
- From 3 to 4 years
- From 5 to 9 years
- 10 years and above

Second Part:

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
Contributive reasons of incorporating the CIP						
1	Development of the criminal justice bodies					
2	Spread of education in Saudi Arabia					
3	Giving scope to the police officers to undertake their tasks					
4	Shortening the time in deciding the investigation and prosecution cases					
5	Availing warranty to the accused within the justice bodies					
6	To confront the crime development and complexity					
Performance level of the CIP's member is affected by						
7	CIP member's Familiarity Degree With The Latest Practices In The Investigative Field					
8	There is Different Qualification Of The CIP's members from the police officers					
9	The timing of CIP formation is proper					
10	The CIP has put the new codes (the Law of Criminal Procedure, the Law of Procedure before Shari'a Courts, and the Code of Law Practice) into practice					
11	Familiarity With The Rules And Instructions Pertaining To CIP's Jurisdiction					
12	Required Academic Qualification And Training Courses					
13	Academic Background On The Different Investigative Practices					
14	Cooperation Of The CIP's Members With The Police Officers					
15	CIP's Member's Delegation of Investigation to the Police Officers					
16	The gradual assumption of duties by the CIP					
17	Police Officer's Practicing The Duty Of Crime Prevention					
Participation and influence in inspection						
18	Participation of CIP member in inspection is vital					
19	CIP's Review To The Inspection Report					

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
20	Scene Inspection Is Necessary To Reveal The Truth					
21	Reservation Of The Seized Items					
22	Scene Inspection By The Police Officers					
23	Seeking experts to inspect the scene					
Interrogate the accused						
24	The CIP member must interrogation the accused					
25	Deputing police officers to participate in interrogation					
26	Confronting the accused with the evidence established against him upon interrogation					
27	Interrogation leads to valid confessions					
28	Seeking assistance of experts' reports on interrogation					
29	Interrogation ends by setting processes					
30	Interrogation ends with accusation and sometimes referral to trial					
31	Interrogation should be conducted in the presence of the attorney of the accused					
32	Attorney's attendance in the interrogation serves justice and assists in reaching the truth					
CIP in the field of prosecution						
33	Conducting prosecution based on the accusation issued by the investigator on the case he has investigated					
34	Returning some cases to the investigator to complete short items					
35	Prosecutor's demand for the prescribed punishment					
36	Presenting the accusation to the CIP management board before prosecution					
37	Preparation of plea by the prosecutor to the court for the sentence cassation					
CIP in the field of supervising jails and custody homes						
38	Furnishing the CIP members with daily statements covering the names of those kept in custody at the police stations					
39	Ensuring the application of the bylaw of the rules of stoppage, arrest, temporary detention and custody stoppage					
40	Conducting inspection tours of jails					
41	Ensuring application of the regulations and instructions of the jailed					
42	Reviewing the jail records					

Sequence#	The Sentence	Totally Agree	Agree	Agree To Some Extent	Disagree	Totally Disagree
43	Hearing the complaints of the jailed or those kept under custody and discussing the complaints with those in charge of the jail					
44	Following the procedures for releasing those who have completed their sentence period					
lawyer's role in the criminal process						
45	The judicial and securities parties in Saudi not yet having realized the importance of the lawyer's role in the criminal process					
46	The lawyer and his importance in the Saudi criminal system still not being clear in Saudi society					
47	Lawyer sometimes faces pressure from the judicial power while performing his job in the trial					
48	The CIP members believe the lawyer's role during the interrogation is marginal					
49	After issuing the criminal procedure code, lawyer believes that his rights are given and his duties are specified according to the law					
50	The lawyer's role is less effective in criminal cases compared to in civil cases					
Investigation and prosecution authorities						
51	The unification of investigation and prosecution authorities leads to a speedy performance and insures law application in the right way by divisions that enforce legal procedures					
52	Combining investigation and prosecution authorities makes public prosecution an adversary and interrogator at the same time which conflicts with the concept of justice					
53	Separation between the two authorities of investigation and prosecution leads to providing maximum guarantees of personal liberty and leads to a fair distribution of responsibility					

