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The Assessment of Juvenile Offenders: learning lessons for Saudi Arabia from a contextual comparison with Scotland.

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ABSTRACT

The diversity in systems and procedures for treating juvenile offenders who commit similar offences under similar circumstances around the world raises a number of questions. These questions concern the organisational and procedural structures, the value orientation, and the historical, political and legal factors, that determine the works and outcome of a juvenile justice system. While both claiming to uphold a “welfare” approach, with the best interests of the child at their core, Saudi Arabia and Scotland apply dissimilar procedures when dealing with juvenile offenders. Employing comparative study techniques, this research aims to unravel the similarities and differences between the juvenile justice systems in both countries, discover strengths and weaknesses, and learn from the experience of both systems as to how to ultimately strengthen and make more effective a juvenile justice system.

The research question posed is: How does the Saudi juvenile justice system assess young offenders once the juvenile offender is referred to the system, and how does this affect the decisions regarding the response, compared with the Scottish system? This issue was examined and addressed by implementing a qualitative approach which focuses on the meanings and interpretations given to the practice and purpose of assessment. It applies empirical study techniques in the form of in-depth semi-structured interviews with social workers, judges and children’s panel members. The research findings explored the considerations taken into account by juvenile judges and the children’s hearing panel when making a decision regarding juveniles who commit offences, and also illustrated how the social worker’s report influences the decision made, and its relative importance in each country. It also illustrated the assessment methods applied, to display the strengths and weaknesses in practice in both countries.

TABLE OF CONTENTS

Concise Table of Contents

Acknowledgements.....	I
Abstract.....	II
Table of Contents.....	III
Chapter 1: Introduction: Evolving a Research Question	1
Chapter 2: Juvenile Justice System Philosophy	11
Chapter 3: Children’s Hearing System in Scotland	41
Chapter 4: Saudi Juvenile Justice System	57
Chapter 5: Assessment of Young Offenders	77
Chapter 6: Research Methodology.....	108
Chapter 7: Research Findings	135
Chapter 8: Analysis of Findings	213
Chapter 9: Conclusion	246

Comprehensive Table of Contents

ACKNOWLEDGEMENTS.....	i
ABSTRACT.....	ii
TABLE OF CONTENTS.....	iii
Chapter 1 Introduction: Evolving a Research Question.....	1
1.1 Setting the Scene.....	1
1.2 Taking a Comparative Research Approach.....	3
1.3 The Research Question: Objectives and Limits	5
1.4 The Layout of the Thesis	8
Chapter 2 Juvenile Justice System Philosophy	11
2.1 Introduction.....	11
2.2 Development and justifications of Juvenile Offenders Legislation	12
2.3 Definition and Goals	13
2.4 Philosophy and Models.....	16
2.4.1 Welfare approach	17
2.4.2 The developmental needs of children	18

2.4.2 Punitive approach.....	21
2.4.3 Balanced Approach.....	23
2.4.4 Models of Juvenile justice.....	27
2.5 United Nations Instruments and International Standards.....	29
2.6 Analysis of Saudi system and its Practice with International Baseline Standards.....	31
Chapter 3 Children’s Hearings System in Scotland.....	41
3.1 Introduction.....	41
3.2 The Historical Roots	42
3.3 The Starting Point of Establishing the CHS.....	44
3.4 The Philosophy and Innovations of the Kilbrandon Committee.....	45
3.5 Implementing the Recommendations of Kilbrandon Committee and how it Works in Modern Times	48
3.6 Reform and Changes in the Children’s Hearing System	52
Conclusion	56
Chapter 4 Saudi Juvenile Justice System.....	57
4.1 Introduction.....	57
4.2 Islamic Sharia sources and principles	58
4.3 Criminal Punishment in Islamic Sharia	59
4.4 Young people and criminal responsibility in Islamic Sharia	62
4.5 Juvenile justice system in Saudi Arabia: Historical development	63
4.6 Juvenile Institutions	67
4.7 Summary and Points Arising	70
Conclusion	71
Chapter 5 Assessment of Young Offenders.....	77
5.1 Introduction.....	77
5.2 Assessment in General.....	79
5.2.1 Assessment Definition	79
5.2.2 Assessment Stages	82
5.2.3 Assessment Models.....	84
5.3 Assessment in youth justice	86
5.3.1 Introduction.....	86
5.3.2 Risk Definitions: Meaning of its components.....	88
5.3.3 Risk Factors and Process: Risk, Needs and Responsibility.....	91
5.3.4 Risk and Needs Assessment.....	94
5.3.6 Assessment Generations:	98
5.3.7 Risk Assessment Tools:	100

5.4 Social Inquiry Reports (SIRs).....	101
5.5 Decision Making and Assessment	103
Conclusions.....	107
Chapter 6 Research Methodology.....	108
6.1 Introduction.....	108
6.2 The Comparative Approach in this study	108
6.3 Studies providing comparisons of juvenile justice systems	110
6.4 Methodology Definition and Description	115
6.5 Trustworthiness.....	117
6.6 The Research Sample.....	119
6.7 Data Collection Tool.....	122
6.8 Overview of Data Collection Stage	126
6.9 Data Analysis Tool and Analysis Approach.....	130
6.10 Process of analysis: combination of tool and approach	132
Chapter 7 Research Findings	135
7.2 Assessment of Young Offender by Social Workers and Includem Workers.....	137
7.2.1 Theme 1: The impact of social workers’ reports on the decisions of juvenile Judges and the CHP.....	137
7.2.2 Theme 2: Assessment - meaning in the context of juveniles who commit offences.....	147
7.2.3 Theme 3: Assessment of juveniles who have committed offences	152
7.3: Juvenile Judges in Saudi Arabia and Children’s Panels in Scotland:	174
7.3.1 Theme 1: The criteria that are taken into account by Judges and CHP when making a decision regarding juvenile offenders	174
7.3.2 Theme 2: The influence of social worker Reports on the decision of Judges and CHP	188
7.3.3 Theme 3: The methods used by Judges and CHP during the hearing.....	198
7.3.4 Theme 4: Attitude to contemporary issues in youth justice	202
Chapter 8 Analysis of the Findings.....	213
8.1 Introduction.....	213
8.2 Judges/Panel Decision	213
8.3 The influence of social worker’s report on the decision of Judges and CHP	233
8.4 Assessment of a Young person who commits an offence.....	237
Chapter 9 Conclusion.....	246
9.1 Summary of the Main Issues.....	246
9.2 Reconsideration of the Research Question and Objectives.....	247
9.3 Making an Original Contribution to Knowledge	258
9.4 Research Limitations	262

9.5 Questions for Further Research.....	264
BIBLIOGRAPHY.....	266
Appendix 1.....	284
Appendix 2.....	302
Appendix 3.....	310
Appendix 4.....	321
Appendix 5.....	322
Appendix 6.....	324
Appendix 7.....	326
Appendix 8.....	328

Chapter 1 Introduction: Evolving a Research Question

1.1 Setting the Scene

The issue of “juvenile delinquency” – broadly understood as lawbreaking by young people, usually in their teenage years, though the age limits of the category can be both higher and lower - is usually considered one of the more complicated problems that face countries around the world. Every society seeks to deal with this problem in a particular way in order, usually, to change juvenile offenders to become productive members and acquire responsibility towards their society. Philosophically, this may entail the punishment, welfare or treatment, or mere management, of individuals, or combinations of all three – and within these categories of response, a range of different methods may be employed, some residential, some in the community where the young offender remains under the supervision of relevant authorities. The importance of dealing well with juvenile offenders cannot be overestimated, for two reasons: the first is that there is a persistent problem of juvenile delinquency (although in any given country it may rise or fall for demographic as well as penal reasons), and the second is the fact that half of the current world population is under the age of 15, which poses greater challenges in some countries than others (Winterdyk 2002).

Although throughout the 20th century, countries have sometimes learned from each other and developed common responses, each society has its own orientation and philosophy regarding the system that is used for the handling of juveniles who commit an offence. Although juvenile offenders around the world tend to commit similar offences under similar circumstances, the response to a juvenile offence varies significantly. Even in the countries that seemingly embrace and share seemingly common approaches to dealing with young offenders, they vary in their way of translating and applying the principles (Winterdyk 2002; Jehle et al. 2008). This variations can occur at three levels: the judicial procedures, the penal sanctions and the actual methods of intervention for treating delinquent behaviours. These differences can be explained by social-cultural factors which have, historically, shaped the perception of youth-in-society and shaped and differentiated the penal system of each country. However, throughout the 20th century countries have sometimes learned from each other and developed common responses.

Scotland and Saudi Arabia both have special legislation and procedures for juvenile offenders that differ from those that are implemented for adult offenders. They have some apparent similarities, and some striking differences, not least that one is rooted in a secular-democratic legal system, while the other is rooted in religious authority (Islamic Sharia law). This does not mean that around certain themes and issues there cannot be points of comparison. For instance, the age of criminal responsibility in Saudi Arabia starts from the age of 12, rising to adulthood at 18 (Al-Omari 2002; Alhnaki 2006; Zureikat

2005). This is specified as the age range for “juveniles”; their legislation differs from that of adults. However, in some cases the age range for male juveniles in Saudi Arabia might be extended to 20 years according to a judge, while in the case of serious crimes such as murder, the juvenile will be treated as an adult at the age of 16 (Al-Omari 2002; Alhnaki 2006; Zureikat 2005). Moreover, due to the nature of gender and family relations in Saudi Arabia, the Saudi system tends to deal with female cases differently from those of male juveniles, treating young women offenders as juvenile until they reach the age of 30, dealing with them in the juvenile rather than the adult court, and referring them to houses of correction rather than prison. On the other hand, Scotland has the lowest age of criminal responsibility in Europe which starts from 8 years (Johnstone 2010), and imposes adult status on young offenders at 16. Males and females are treated in the same way in this respect, reflecting western European views on gender equality. Sixteen is the age at which juveniles are automatically referred to the adult courts in Scotland unless they are, at the time, already on a supervision requirement. 12-year olds can be tried in the Sheriff court in some circumstances, if they have committed a serious offence. Regarding procedures, in Scotland juvenile offenders are referred to the Children’s Hearing System (CHS) while in Saudi Arabia juvenile offenders are referred to surveillance centres\ houses of correction (*Dar Al-Mlahzah*) and brought before a juvenile judge in the same institution.

The CHS is viewed as a fundamental agency for dealing with children and young people, including young victims and offenders (Johnstone 2010). It is based on a set of tenets and principles, which stem from the work of the Kilbrandon Committee in the 1960s, which developed a clear orientation towards the welfare of children, concentrating on their needs rather than their deeds. All children are dealt with by the same process and procedures in the CHS which takes account of their needs, environments and circumstances, and formally eschews punishment, even for offenders (Burman et al. 2006; McAra 2006). The processes of the CHS are carried out without involving the courts except in certain conditions. The development of the CHS with regard to both its principles and implementation is linked to historical factors which can be traced back to the Children Acts 1908 and 1928 and the Children and Young Persons (Scotland) Act 1932. The CHS has features that are different from the courts’, derived from the goals that the CHS was established for in the 1960s. Compared to the court, the CHS is a non-criminal committee whereby the juvenile offender with his (or her) family appears before a panel of lay people, not legal professionals, drawn from the local community, who have received some training in the needs of children who exhibit problem behaviour (Whyte 2003). Three members of the children’s panel sit in each individual hearing (at least one male and one female member). In this thesis, this group and its individual members are referred to as “CHP”. The panel is not responsible for determining the legal fact of innocence or guilt and its main task is to seek ways to solve problems extra-judicially, according to what is deemed best for the child’s welfare (Whyte 2000b).

In both Scotland and Saudi Arabia, social workers assess young offenders and then send a report, called a Social Enquiry Report (SER), or Social Work Report, to the judge and Children's Hearing Panel (CHP) to assist in their decision-making process. Therefore, in both countries, social workers, the CHS panel in Scotland, and juvenile judges in Saudi, are the main players in terms of assessment, whereby social workers conduct an assessment and the CHS panel or juvenile judge uses their report to assist their decision. However, social workers and assessment in Saudi Arabia are based in residential care (houses of correction). They are employed to work in houses of correction and their work is limited during their working hours to their offices in these houses of correction. Therefore, assessment of a juvenile who commits an offence is conducted in the house of correction during his/her stay, which means that no assessment process or interventions nor correction programs are conducted outside the house of correction. On the other hand, Scottish social workers are employed to work for local councils and to work with young people who commit offences from the beginning, when the children's reporter refers the case to the area team in the council area that the young person comes from, and requests a report including assessment and this process takes different steps and procedures which are explained in chapters 3 and 8. Scottish workers can meet juveniles, for example, in their homes or at school. Home supervision is the most common disposal which reflects aspects related to the principles of the Children Hearing system.

The process of assessment raises two interesting points; first, in terms of the exchange between the social worker and the decision makers, namely, the judges in Saudi Arabia and the CHP in Scotland, where each group has different backgrounds and perspectives, and carries out different tasks. The second point relates to the wider context, and the way that assessments are conducted and used to make decisions regarding how to treat juvenile offenders, and how these reflect the nature of the system of each country, in terms of the principles and values that each adopts or prioritises. For instance, in Scotland, the assessment of young offenders relies more on an actuarial method (although it did not always), which focuses on risks and needs; while in Saudi Arabia, according to the research findings, the assessment relies on a clinical method, and on a dynamic diagnosis of the young person's character and capacities.

1.2 Taking a Comparative Research Approach

The previous discussion demonstrates the need for a study that describes and examines issues regarding the assessment of juvenile offenders in relation to system procedures and juvenile judges' decisions within the Saudi system via a method that enables the system to be understood, or at least to understand the practitioners' opinions of the processes and procedures of the Saudi system. One of the approaches used to enhance the understanding of a given system is 'comparative criminal justice'. This method is used by some researchers to gain a better realisation and understanding of their own country's system, in terms of values, principles or practices (Nelken, 2009). For example, the studies 'English criminal

justice: is it better than ours?’ and ‘Comparative criminal justice as a guide to American law reform: how the French do it, how can we find out, and why should we care?’ use this method to pursue the previous objectives (Nelken, 2009). According to Nelken:

“The task of comparative criminal justice, most scholars would agree, is to compare and contrast our ways of responding to crime with those practised elsewhere. It also often involves, even if it does not necessarily have to do so, borrowing from, or at least trying to learn from, what is done in other places”. (2009: 1)

The research presented here uses a study of juvenile justice policy and practice in Scotland to illuminate practice in Saudi Arabia, specifically in respect of assessment. Studying and tracking the process, procedures and the approaches of one country, without looking at the process and procedures in another country that has applied a different method and approach to dealing with juvenile offenders, may lead a researcher to be unable to effectively observe the process and procedures in his own country’s system or lead his research in a direction that prevents him from identifying significant information crucial to improving the system of his home country. This is particularly true in Saudi Arabia, where there is very little public knowledge of how the juvenile justice system operates, and no academic or research culture which routinely investigates its processes and outcomes. This is a big difference with Scotland. It would never be possible to compare Scotland and Saudi Arabia juvenile justice in equal detail because there is much more information available in Scotland. Scottish juvenile justice is mostly used here, in the manner Nelken suggests, to identify ways of framing a study in Saudi Arabia. The empirical research on Saudi juvenile justice presented in this thesis, based on a very small sample of interviews with judges and social workers in one city, was the first of its kind, and as such represents an original contribution to knowledge. No researcher has previously been granted the necessary access to undertake such work. The researcher claims that this comparative approach, and qualitative methods generally, constitute the best mechanism for examining the relevant aspect of the Saudi system. (The research methodology will be discussed in detail in chapter 6.)

In a juvenile justice context, Elrod and Ryder (2011) define comparative work as *“the examination of juvenile justice history and practice in one country or culture by comparing it to the history and practice of juvenile justice in another country or culture”* (2011: 3). Although the main focus of this thesis is on the practice of assessment, the policy context in which practice occurs will be addressed in both countries. Using both Saudi and European sources, this thesis will present a history of juvenile justice policy in Saudi Arabia, to complement the history provided for Scotland, but as with data on practice, there is less material available. It has not been usual in Saudi Arabia to publicly debate policy or for independent researchers to gather evidence about how interventions work. Furthermore, indigenous Saudi literature on juvenile justice does not encompass the “critical criminological” tradition that is commonplace in western Europe and the USA. For both these reasons comparative studies of European

and Middle Eastern criminal justice are rare. It is possible for academics, politicians and news media to be publicly critical of the CHS in Scotland, if they wish to be. There is no equivalent of such open public debate in Saudi Arabia, and when changes in policy or practice occur, these are accomplished by more discreet, secretive means.

There is a small western tradition of writing about Saudi Arabian criminal justice (including juvenile justice) which is very critical of policy and practice there, despite the lack of information about how its system operates (for example Human Rights Watch 2008; Gilani 2006). These tend to find fault with the Saudi system based on the obvious ways in which it departs from internationally agreed principles of good practice. These are not typical of the routine operation of the system. Sometimes the information on how the system operates is mistaken. Specifically, Gilani describes the procedures of the juvenile justice system in Saudi Arabia as one that *“places all persons under the age of 18 eligible for criminal prosecution in same manner as adults (i.e., without special procedures) and they are subjected to the same penalties as adults”* (2006: 145). There are in fact “special procedures” in Sharia Law (and its practical application) for juveniles, as the judges in the research undertaken for this thesis indicate.

Furthermore, Human Rights Watch says that *“Regulations governing girls in conflict with the law do not set any minimum age of criminal responsibility”* (2008: 2). Despite this criticism, as well as further criticism in relation to other aspects of the Saudi juvenile system contained within these reports and articles, they fail to explain or clarify the main elements of the Saudi system; such as procedures and processes after a juvenile is referred to the system, which are mainly based on the assessment of young offenders and the judge’s decision. These notable omissions may lead to an unclear and unrounded picture of certain parts of the Saudi system, and overemphasise its failings, whether of principle or practice. This thesis, with its limited focus on assessment-in-context, is not written from a “human rights perspective” and it is not an ethical critique of the Saudi juvenile justice system. While acknowledging the existence of international, United Nations statements on good practice in juvenile justice it seeks specifically to understand assessment practice in Saudi Arabia from the perspective of the practitioners themselves. It uses western social work and criminological concepts and models in an analytical way to understand Saudi practice, but it does not judge such practice from a western perspective.

1.3 The Research Question: Objectives and Limits

Over and above providing an account of policy development in juvenile justice in the two countries, the empirical questions to be answered in the context of this study focus on comparing the processes of the Saudi and Scottish juvenile justice systems in terms of the influences on and relationship between the assessment of the juvenile offender and judicial decisions. The primary empirical question in general is: How does the Saudi juvenile justice system assess young offenders once the juvenile offender is

referred to the system, and how does this affect the decision on disposal of the case, compared with the Scottish system? A related question which the thesis also seeks to answer is, how social workers' assessment reports influence the decision of juvenile judges in Saudi Arabia and children's panel members (CHP) in Scotland? What philosophies and values shape the way assessment is done and the decision is taken in both countries as two main aspects of their juvenile justice systems? These questions are examined using semi-structured interviews, a basic qualitative research method which is discussed more fully in the methodology chapter, which has the advantage of providing a flexible way of gathering data and information regarding procedures and processes, which is needed to provide a clear picture of the system as it operates in one Saudi Arabian city. Interviews were conducted in the following sites: Saudi Juvenile Judges and Saudi social workers associated with Houses of correction were interviewed in Riyadh, Saudi Arabia, while in Scotland CHP members and social workers employed by Glasgow City Council and North Ayrshire Council were all interviewed in Glasgow. In addition, social workers from Includem (as part of the voluntary or independent sector) were interviewed about their assessment practices also in Glasgow city. These points – for example, the places where interviews were conducted and information about Includem - will be presented in more detail in chapter six.

Due to this, it is important to clarify a point related to “assessment “as a main concept in the research question. Assessment as a concept in the juvenile justice context can be used in general to denote the totality of processes and procedures that are applied to assess young offenders by any juvenile justice system. On the other hand, it might be meant as the process that precedes the judge's decision or it might be meant as the process that is being practised by the social worker in producing his/her social background report. For the avoidance of doubt, in this thesis, the research question is focusing on social workers' reports as assessment in relation to the decision of juvenile judges, which will be a cornerstone and a main source to build a picture and a clear vision regarding the case of the Saudi system.

The research question is formulated to meet the following objectives:

- 1- Provide a description of the system procedures and the assessment processes for young offenders in Saudi Arabia and an understanding of how these are implemented, compared with the Scottish system.
- 2- Cognisance of how juvenile judges in Saudi Arabia understand and use social workers' reports when making decisions, compared with children's panels in Scotland.
- 3- Cognisance of how juvenile judges in Saudi Arabia make decisions regarding juvenile offender cases, compared with children's panels in Scotland.
- 4- In relation to the above points, explore the main principles that inform and shape the Saudi system, and determine how far its practice can be categorised according to western criminological juvenile justice principles.

In accordance with the above objectives that emanated from the research question, the thesis will begin with a chapter on Juvenile Justice System Philosophy. The next two chapters will relate to the Scottish and the Saudi juvenile justice systems respectively followed by a chapter on assessment of young offenders. The influence of these chapters on the design of this research and the research objectives is discussed in detail in a special section after chapter four.

In terms of the comparison between the Scottish and the Saudi system, learning from the experience of others regarding the treatment method of juvenile offenders is one of the main benefits that can be obtained from this type of study (Ryder & Elrod 2011; Pakes 2004; Nelken 2010). There are no preconceptions in the thesis that Scotland and Saudi Arabia will learn from each other as a result of this comparative study, although it was in part the interest of the Saudi judges in the assessment methods used in Scotland that led them to give permission for an empirical study of their own decision-making. Although some lessons will be drawn from the Scottish experience of assessment, questions of “policy transfer” or “practice transfer”, as discussed by Newburn and Jones (2009) are largely outside the scope of these thesis. Comparing Scotland and Saudi Arabia regarding assessment practice and how it influences the judges and children’s panel members as the main functionaries in their juvenile justice systems may or may not lead to exchanges of experience, ideas and techniques in assessment, but at least it will better illuminate the distinctive and contrasting features of each system, and perhaps identify their respective strengths and weaknesses in relation to the particular problems they set out to solve.

There are in any case, as Muncie and Goldson (2006) have indicated, “globalising trends” in youth justice, not least the emergence of formally internationally-binding protocols (eg the Beijing rules), as well as much greater opportunities via the internet or international conferences for mutual cross-cultural learning. Whilst pointing out that policy and practice developments in any juvenile justice system remain distinctively local, increasingly, individual countries have to at least take more notice of developments at the regional and international levels. This would be true of both Scotland and Saudi Arabia.

It is important to be clear what the limits of this research are, even in comparative terms. Nelken (2002) points out that there are a number of distinct theoretical approaches in comparative criminal justice, and indeed in the social sciences and law more generally. He identifies these three:

- 1- to test and validate explanatory theories of crime or social control (which we may, at some risk of over-simplification, call the approach of “behavioural science” or “positivist criminology”);*

- 2- *to show how the meaning of crime and criminal justice is embedded within changing, local and international, historical, and cultural contexts (an approach which we will call “interpretivist”);*
- 3- *to classify and learn from the rules, ideals, and practice of criminal justice in other jurisdictions (which we can call the approach followed by “legal comparativists” and “policy researchers”)(Nelken 2002:185)*

In this thesis, while there are some elements of category number one, (in terms of the structural, historical and cultural comparisons of the two systems), it will not specifically test a theory of how each system has developed. Most of this research focuses on category number two, specifically in respect of assessment processes, although the conclusions drawn will reflect a commitment throughout to category number three in order to determine what each country might learn from the other in respect of juvenile justice. However, although this research is examining the assessment process and the influence of social work reports on the decisions of children’s panels in Scotland and juvenile judges in Saudi Arabia, it also discusses the origins, principles, process and procedures of the juvenile justice systems in Scotland and Saudi Arabia respectively by reviewing the relevant available literature. The former cannot be studied in isolation without considering the impact of the juvenile system principles in both countries on those processes. Moreover, logically studying this issue without giving background for each system in terms of their origins, principles, institutional structures and procedures may lead to a failure to understand the concepts that will emerge in the empirical study of the two countries.

1.4 The Layout of the Thesis

The thesis is divided into nine chapters, including this introduction, which create a logical, unfolding structure for the comparative analysis which I wish to undertake and the empirical data I wish to present. This introduction sets the scene for undertaking comparative research and poses the specific research question. The second chapter is the first of four which are concerned with the context, both policy and theoretical, in which the empirical study will be set. It explores certain key concepts, doctrines and philosophies in juvenile justice, including some of the principles used in international instruments promulgated by the UN. It further identifies models of operational intervention as they are applied by juvenile justice systems around the world, and paves the way for the third and fourth chapters, which discuss the juvenile justice systems in the two specific countries respectively.

The third chapter explores the Children’s Hearings System in Scotland, by presenting an overview of how its modern form came into being, tracing its history and its underlying philosophy, as well as identifying the enactment of changes to the system and how the CHS works in practice today. It uses both primary and secondary sources, and existing empirical research, to set the policy context in which practice occurs.

Chapter four explores the juvenile justice system in Saudi Arabia, using a more limited range of resources to reflect the overall paucity of source material previously discussed. It clarifies the principles of Islamic Sharia towards juveniles who commit offences, and also discusses how the juvenile justice system in Saudi Arabia developed. Further, it examines the practical operation of the Saudi system, as far as this can be known in the absence of a research culture, and indicates how, according to available literature, Islamic principles are translated on the ground in relation to juveniles who commit offences.

Another key consideration of this research is the process of assessment of young people who commit offences, and this is the focus of chapter five. The chapter provides the reader with essential background about the assessment process in general then moves on to discuss the assessment process in the juvenile justice field. This chapter also discusses the influence of each method on the assessment practice adopted and the dilemmas that face each method. The chapter concludes by presenting an overview of Social Inquiry Reports and the elements contained therein.

The sixth chapter introduces the research methodology by explaining and identifying the comparative approach and methodology employed in this research to achieve its objectives. It includes definitions and descriptions of the methodology, research sampling, procedures of data collection and analysis; NVivo 8 was chosen as an appropriate tool for data analysis. The research implements a qualitative methodology due to its exploratory nature, fulfilled through an inductive approach that focuses on investigating the core study objectives.

The seventh chapter reports the findings of the face-to-face interviews conducted with four groups, two in each country. In Saudi Arabia, the first group were judges at the juvenile court and the second group were social workers in a surveillance centre\ house of correction (Dar Al-Mlahzah). The first group in Scotland were children's panel members and the second group were social workers. This second group was divided between two settings - state social workers employed by Glasgow City Council and North Ayrshire Council and the voluntary organisation Includem. It reports the findings that evolve from the seven general themes identified according to the responses of the interviewees. Under each theme the interviewees' responses were reported and grouped according to their sources. These themes are:

Social Workers and Includem Staff:

Theme 1: The impact of social work reports on the decisions made by juvenile Judges and the CHP.

Theme 2: The meaning of assessment in the context of juveniles who commit offences.

Theme 3: Assessment of juveniles who commit offences.

Juvenile Judges in Saudi Arabia and Children's Panels in Scotland:

Theme 1: The considerations taken into account by Judges and children's panel member (CHP) when making decisions regarding juveniles who commit offences.

Theme 2: The influence of social workers' reports on the decisions made by Judges and CHP.

Theme 3: The methods used by Judges and the CHP during the hearing.

Theme 4: Attitudes towards contemporary issues in youth justice.

Chapter eight discusses the findings reported in chapter seven. The analysis of each theme facilitates discussion of the findings in light of the research question and its objectives. The discussion will be established based on the interviewees' ideas, by connecting their dialogues to themes and applying tactics suggested by Kvale (Kvale 1996), which range from descriptive to explanatory and from concrete to conceptual and abstract.

The ninth, concluding chapter summarises the main issues and the contribution to knowledge made by this research in relation to its objectives then identifies some lessons which Saudi Arabian youth justice might learn from Scottish assessment practices. After that, it closes with the research limitations and questions for further research.

Chapter 2 Juvenile Justice System Philosophy

2.1 Introduction

One of the main aims for youth justice systems in every society around the world is to reduce youth offending. In order to reach this objective, each society has its own approach, principles and techniques that shape the practice through the youth justice system. Tonry and Doob describe it *“Like parents trying to figure out how to raise their children, countries have in recent years, wrestled with the question of how to respond to youths who break the law”* (cited in Whyte, 2009: 1)

In 2002, Winterdyk identified two possible reasons for the then increasing concern regarding the modes of dealing with young offenders: firstly, the growing number of juvenile offences around the world, and secondly, the increasing population of young people within the age category of under 15 years (Winterdyk 2002). Whatever the reasons, debate about methods of juvenile justice that are implemented by systems around the world is rich and diverse. . For instance, corporal punishment is still imposed in some countries such as Singapore and Bolivia, as well as Saudi Arabia, and some countries such as Norway and Sweden do not have separate legislation for juvenile offenders (Winterdyk 2002).

The method of treating juveniles who break the law, whether predominantly punishment or rehabilitation, or a combination of the two, is considered as a reflection of a society’s culture and principles (Junger-Tas 2002). In order to place the Scottish and Saudi systems in some kind of context therefore, this chapter is set to provide an overview of principles, philosophies and models of juvenile justice systems through an examination of the development of some of these concepts and principles alongside relevant international instruments. It sets out the main concepts that are used to examine the thesis’s research findings and places main hubs to read and categorize the system practice as a unit. Structurally, this chapter is placed prior to chapters on the Scottish and the Saudi systems and before that on the assessment of young offenders in order to begin with major concepts in juvenile justice and then move to more specific elements within the context of each country's system. after that, the assessment chapter comes prior to research methodology as a micro unit compared to chapters that proceeds it, in order to reach selected points that will be examined in this research.

2.2 Development and justifications of Juvenile Offenders Legislation

The springboard for establishing special legislation regarding the juvenile who commits an offence started when the age of criminal responsibility was specified. In Islamic sharia, Islamic law enacted legislation 1400 years ago that specifying that there was no criminal responsibility on children or minors (Oudah 2005). Also, the criminal jurisdiction in western society, which was affected by Roman law up to the 18th century, distinguished between children and adults in relation to criminal responsibility (Jehle et al. 2008). Applying this principle in a special form, states began by establishing the first juvenile courts in Australia in 1895 then in the USA in 1899 and in England and Canada in 1908 (Muncie & Goldson 2006).

The distinction between a minor and an adult regarding criminal responsibility is based on a set of considerations. These considerations can be seen as factors which entail establishing a special system to treat the juveniles who have violated the law that differs from the adult offenders' system in both procedures and intervention measures.

These considerations (Finley 2007; Hirschi & Gottfredson 1993; Ryder & Elrod 2011) can be summarized as follows:

- The offences that are committed by juveniles are mostly less serious compared to the offences that are committed by adults.
- The comprehension level of the juvenile is less than the adult in terms of understanding the consequences of the offence. The self-control of the juvenile is also low which makes the circumstances surrounding him affect his acts and reactions significantly.
- The juvenile is considered as a person undergoing the process of socialization which makes him more malleable by rehabilitation and professional intervention.
- The juvenile as a member of his family is considered to be in a phase of dependence receiving care and attention which requires to be taken into account in dealing with him when he breaks the law.

In addition to the above, research (United Nations 2003; Connor 1997) has shown that juvenile offenders have a set of characteristics which can be regarded as relatively stable. These characteristics also support the trend to establish special systems using professional measures with focused scope which are designed to deal with juvenile offenders. Those characteristics can be summarized in the following points:

- The offences that are committed by juvenile offenders tend to be primarily associated with property crime. Moreover, the loss resulting from this type of offence is of less financial value and less serious in terms of the level of destruction on average compared with adult crimes.
- Most juvenile offenders commit their offences with peers which is seen as one of the main encouragements.
- Juvenile offences tend to be unplanned which might be categorized under opportunistic or episodic offences.
- Juveniles often commit their offences in the area that they reside in or nearby.
- Initial offending for Juveniles mostly occurs in the age range 15 to 18 and most juvenile offenders are male, although offences committed by females are starting to increase.
- Regarding recidivism, in spite of the increase in the rate of offences that are committed by juveniles, research shows that most of those who commit a first offence are not apprehended again as a juvenile.

The Researcher will apply these characteristics to the Saudi system in the findings chapter as they are considered to be standards that will shed light on some aspects that need to be highlighted in the Saudi system to meet the research objectives.

In short, the previous points indicate that the position of the juvenile offender differs from that of the adult in many aspects. This is also recognised in international law. According to the United Nations Convention on the Rights of the Child, Article 40.1 for example, *“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”* (UNCRC 1989)

2.3 Definition and Goals

The previous section relates to a point relevant to understanding juvenile justice systems. To understand a juvenile justice system and how it is applied, it is important to define some terms and clarify its objectives and functions before discussing the philosophies and ideology that underpins its practice.

“Juvenile justice system” is defined as a network of agencies and institutions which are considered as government responses to deal with shortcomings of society associated with the juvenile by rehabilitation or controlling methods (Klein & White 1976; Parsloe 1978; Ryder & Elrod 2011). Through the previous definition it is clear that juvenile justice systems work through a set of institutions to achieve their objectives in a society. According to Shoemaker (2009), the modern system of juvenile

justice is based on three main sub-systems to accomplish its operations: (a) the police (b) the courts, and (c) correctional institutions. The union between these institutions as main units in juvenile justice systems is due to the historical development of policies and programs that deal with juvenile offenders and have developed through the joint work between them (Roberts 2004).

The objectives of Juvenile justice systems are based on two main pillars: (1) the Juvenile offender and (2) society. The first pillar (juvenile offender) is considered as the main input to the system while the second pillar (society) is considered as the main hub to which the juvenile justice system has to contribute. The stability of society is seen as a main function of all that society's systems. Therefore, the objectives that a juvenile justice system seeks to achieve can be summarized in the two following points (Bilchik 1998):

- 1- Restructuring the personality of the juvenile offender by rehabilitation in order to make him a productive member having responsibility to the society.
- 2- Protecting the society by reducing juvenile offences.

Bilchik (1998) located fundamental means that should be applied in order to make a Juvenile justice system work effectively: 1. comprehensive assessment when a juvenile is referred to the system in order to put in place appropriate interventions and sanctions. 2. The ability to provide a range of treatment services as intervention. 3. In cases where a juvenile fails to respond to initial interventions and reoffends, the ability to increase the intensity of treatment services and the level of sanctions. These elements will be used by the researcher as one of a number of lenses through which to examine the findings, and as areas that data and sources will be gathered around, especially in relation to the Saudi system. In the researcher's view, using these elements in this regard can provide the mount and the concentration of the efforts made by the juvenile system in any country given.

“Juvenile” as a term indicates a minor who falls within an age range that is specified by the country’s law (Ryder & Elrod 2011; Hirschi & Gottfredson 1993). Juvenile is a concept that is sometimes used to indicate other concepts such as “child”, “adolescent” and “youth”. However, these concepts are more specified by the law (Hirschi & Gottfredson 1993). Therefore, it can be said that using “Juvenile” as a term in any system can be seen as an indicator of difference in perception towards young people compared to adults. The question that arises is, what is the term that is used is in the Saudi system and the meanings related to it, compared to Scotland and western literature. This point will be handled in the findings chapter.

“Juvenile” as a term is measured by the age and the range that relates to it. Therefore, “juvenile” varies from country to country which leads to a difference in determining the specific age for criminal responsibility between countries around the world. For instance, the age of criminal responsibility in Saudi Arabia starts from the age of 12 and rises to 18 for males, 30 for females (Al-Omari 2002; Alhnaki

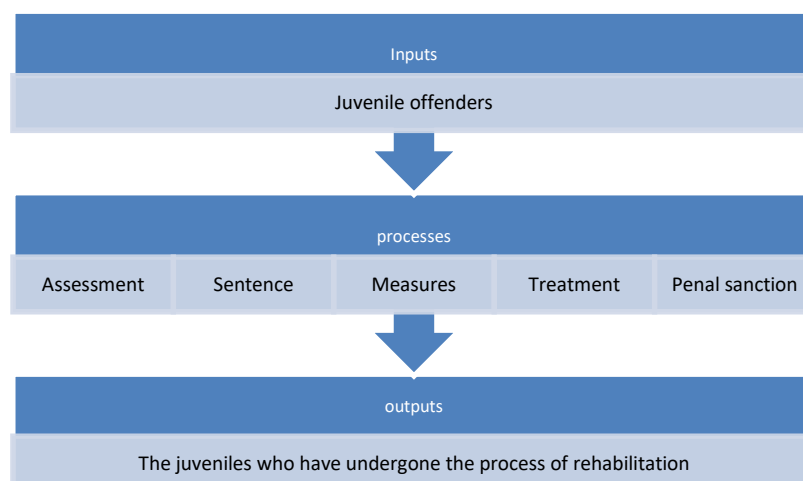
2006; Zureikat 2005). This is specified as the age range for juveniles who have legislation that differs from that for adults. Moreover, in some cases the age range for “juvenile” in Saudi Arabia might be extended to 20 years according to a judge, while in the case of serious crimes such as murder, the criminal responsibility is dropped to the age of 16 (Al-Omari 2002; Alhnaki 2006; Zureikat 2005). On other hand, Scotland, controversially has the lowest age of criminal responsibility in Europe which starts from 8 years, and there have repeatedly been calls to raise it to 10, or 12 (Johnstone 2010).

Juveniles’ behaviours that are seen as delinquency, are specified by juvenile codes and can be categorized under one of the following types (Ryder & Elrod 2011; Shoemaker 2009; Parsloe 1978):

- a. Type of behaviour which is considered criminal if committed by adult, such as burglary, drug dealing and fraud & forgery.
- b. Type of behaviour which is proscribed for juveniles only, such as running away from home or drinking alcohol.

In the light of this classification, Shoemaker (2009), points out that the delinquency of a juvenile does not only mean committing criminal behaviours, but also involves other behaviours which are not criminal. These behaviours usually are classified as “status offences” which links to the condition of the person’s age (Shoemaker 2009; Hartjen 2008). Hartjen (2008) reasoned with regard to status offences that committing this type of behaviour put the wellbeing of the juvenile at risk and motivated the juvenile to commit criminal behaviours.

In summary, relying on the points that have been discussed, the juvenile justice system can be seen as a system which has three elements: inputs, processes and outputs or outcomes. Inputs are juvenile offenders, processes are the measures and treatment that are used by subsystems (police, the courts and correctional institutions) while the outputs are the juveniles who have undergone the process (of rehabilitation).



However, there are circumstances and factors that can prevent juveniles who commit offences from entering the system or can partially redirect them away from formal processing. These can be put down to the principles adopted by the juvenile system or can be related to cultural factors, both of which are highlighted in the research findings.

2.4 Philosophy and Models

The pattern on which the juvenile justice system is managed relies on the type of philosophy and approaches that are adopted by the given society to deal with juvenile offenders. These philosophies and approaches shape the policy of that society towards juvenile offenders. Bruce (1900) points out that the adopted policy fulfils a fundamental function in managing and guiding plans and operation as well as decisions regarding the application of treatment type for juvenile offenders (Britton & NACRO, Juvenile Crime Section Staff, 1988). Disparities and differences in the adopted philosophies and approaches lead to a diversity of models in dealing with the juvenile offenders. As with any system in a society that deals with and treats any type of social problem, there is a philosophy that underpins that system's operation. This philosophy is considered as guidance which shapes the patterns of the system's treatment of matters which can then be translated into models. Parsloe (1978) clarifies how philosophy has a significant influence on any system by describing the philosophy as the ideas that are held by people and have an influence on their behaviour and reaction towards any situation. Philosophy is defined as a combination of theories and ideas that shape people's understanding regarding a particular issue while the model is considered as a representative pattern of philosophy as practised on the ground (Cambridge University 2008).

Accordingly and in context of this research, through presenting the Saudi system in chapter four and through the findings, the researcher is monitoring the concepts and meanings of practices, which will reveal the philosophy that influences the Saudi system or the principles that the Saudi System is mainly based on. This meets one of the main research objectives.

Approaches to philosophy with juvenile offenders vary widely around the world and some countries do not have a clear philosophy that influences the system that deals with young people who break the law (Winterdyk 2002; Hartjen 2008). Hartjen (2008), categorise these under the umbrella of countries that do not have an identifiable system specially to treat juvenile offenders. In terms of the patterns of countries which do operate juvenile justice systems, these can be divided into three categories (Hartjen 2008):

- Countries that do not have a system specifically devoted to treating juvenile offenders: In these countries there is no distinction between young people who break the law and an adult who commits an offence. In other words, juvenile and adult are subject to the same provisions,

procedures and penal sanction, in spite of the system dealing slightly differently with young people.

- Countries that have special provisions for juvenile offenders, but do not have a separate judicial system: in these countries there are special provisions within the general judicial system for juvenile offenders which can be seen as separate judicial processing from adults. However, the judges who deal with adults who commit offence cases are the same judges who deal with juvenile offender cases. Moreover, although the penal sanction, tends to be the same for adults and juveniles, for juvenile offenders the severity of the penal sanction mostly tends to be lessened.
- Countries which have a separate judicial system and special methods to deal with juvenile offenders: these countries have a special system and a separate judicial process for juvenile offenders. They deal with juveniles in separate procedures from adults, although the juvenile system might be under the umbrella of the authority that covers the adult system. Moreover, the judges and workers in the juvenile system are specialized to deal with juvenile offender cases and differ from those who work with adults.

In western criminological juvenile justice, the philosophy that is relied on to direct the treatment patterns of juvenile offenders can be divided into three fundamental views or approaches: (a) welfare approach, (b) punitive approach, and (c) balanced approach (Hemmens et al. 1997; Hirschi & Gottfredson 1993; Johnstone 2010; Liu et al. 1998; Parsloe 1978). In other words, the ideas and actions that are implemented through any given juvenile justice system are considered to belong mainly to one or more of these philosophies. Arguably, the juvenile justice system in any country around the world can be read or evaluated according to indicators of these philosophies.

2.4.1 Welfare approach

The welfare approach relies on psychological assumptions regarding the juvenile's emotional and intellectual development, and thinks in terms of "causes" behind committing an offence. The treatment of a young person who is convicted of a crime is shaped according to these assumptions, and the moral obligation to improve their emotional and intellectual development. This approach takes the view that the social problems that are caused by a society's members in fact reflect the failure of that society's members to develop their full potential and this failure is considered a loss to society which requires the rehabilitation of those members in order to be productive (Parsloe 1978).

The welfare approach adopts the *doli incapax* principle which is one of the common law principles that presumes that children under a designated age do not have the mental faculties to form *mens rea*

(criminal intent) and therefore they are not criminally liable even if they have done something which would otherwise constitute an offence (Hemmens et al. 1997; Hartjen 2008). The welfare approach presumes that juveniles differ from adults in two aspects: emotional maturity and level of cognitive ability. According to these two characteristics, the juvenile who breaks the society's laws needs special treatment and protection instead of punishment (Hemmens et al. 1997; Parsloe 1978). In other words, the priority that must be taken into account regarding the method of dealing is the interest and wellbeing of young people rather than the punishment of their acts.

In terms of causes of juvenile offending, the welfare approach views the factors behind delinquent behaviours mainly by reference to the environment surrounding the juvenile which can result from poverty, ignorance and parental neglect (Hemmens et al. 1997). As David May describes it: *“delinquent behaviour per se not the real problem. It possesses significance only as a pointer to the need for intervention. It is the presenting symptom that draws attention to the more intractable disease. Sometimes it is a response to unsatisfactory family or social circumstances”* (cited in Parsloe, 1978: 13).

In short, the welfare approach rests on the view that the best method to treat the juvenile who breaks the society's laws is based on the interests of that young person, and evidence of what his or her emotional and intellectual needs are. By definition, the “immature” young offender should be treated by different methods and procedures than those used with adults (Liu et al. 1998).

2.4.2 The developmental needs of children

One of the main issues that are taken into account by advocates of the welfare approach is the developmental needs of children. Assessment of, and intervention with, a juvenile — whether it is a child in need of care and protection or a case of conflict with the law — requires that the developmental stage of children is taken into account. This will affect their needs and guide understanding of what sort of interventions they will respond to. Juveniles go through distinct periods of development and experiences vary across aspects such as cognitive and behavioural changes. These aspects are considered important areas in childhood development that must be understood and taken into account to make effective assessments that suit juveniles who exhibit character traits that are specific to their particular developmental stage. Performing an assessment without taking the developmental needs of the young person into account often results in a negative outcome (Brandon et al. 2011). Therefore, in order to meet the needs of the juvenile it is essential for those who work with them in any field to understand those needs and the juvenile's developmental stages.

“Development” as a term is used to describe “*all the physical and psychological changes a human being undergoes in a lifetime, from the moment of conception until death*” (Bukatko & Daehler, 2004, p. 3) Each developmental stage is typified by certain characteristics and certain needs that must be considered and met, as failure to do so might lead to problems (Santrock 2011; Bukatko & Daehler 2004). The development of needs are often divided in to four main domains, each one of which can influence the other domains during the growth and development of a person (Bukatko & Daehler, 2004; Santrock, 2011):

The first category is Physiological needs, such as food and drink to develop the whole body. The second domain is Intellectual needs, for example, the need to develop cognitive skills. During this phase, children are exposed to new concepts and ideas. They are allowed to experiment with these until they grasp them and need to be challenged intellectually on a daily basis. The third category of needs is the social ones. Children need to have healthy social relationships with their peers and they need to learn to deal with situations involving other people. To satisfy these needs, children learn to share and take turns, how to negotiate and resolve disputes. The fourth group is Emotional needs. Children need to learn how to deal with their feelings and emotions. For instance, this can involve children learning problem solving and resolving conflicts in appropriate ways.

The operation of these domains can best be understood through consideration of the theoretical approaches created by Erik Erikson, Jean Piaget and Lawrence Kohlberg. Each theory has a main theme and principles that explain certain aspects associated with children’s needs and development. These theories are, in brief, summarized below:

Erik Erikson’s Theory (Bukatko & Daehler 2004; Santrock 2011; Slee & Shute 2003): Erik Erikson places the emphasis on the emotional and psychological development of children. He identified eight stages that each individual passes through during a lifetime. Each stage contains a crisis or a demand and has a positive or negative outcome. The crisis at each stage requires to be resolved for a person to develop socially and emotionally to have a healthy personality and a productive lifestyle. Failure to resolve the conflict will create further struggles and issues at this or at later stages. When a crisis or conflict is resolved, it causes a positive outcome by providing the person with sufficient strengths to deal with the conflicts in the later developmental stages. Therefore, the emotional needs of the child must be satisfied in order for him or her to gain aptitudes and skills that will result in the successful negotiation of a psychological conflict. Erikson explains that children need to develop a sense of identity, as well as to develop abilities and beliefs about themselves which allow them to become productive, satisfied members of society. According to this theory, the outcome of each stage is determined by the individual’s environment, which could be defined as the care-giving strategies or experiences to which a child or young person is exposed.

Piaget's Theory (Bukatko & Daehler, 2004; Santrock, 2011; Slee & Shute, 2003): Piaget's theory is a cognitive one that emphasises conscious thoughts and focuses on cognitive development and also how children think about moral issues. In terms of cognitive development, according to Piaget, children construct and create their understanding of the world through their active interactions with it, in four stages of cognitive development. As children pass through these separate developmental stages, their thinking changed qualitatively. These stages consist of two processes, organization and adaption. The defining characteristics of the first one is primarily organizing the child's experiences through, for example, linking one idea to another or structuring ideas according to their importance. The latter category is centred on adapting and adjusting ideas to meet new environmental demands.

The four stages of cognitive development, according to Piaget's Theory are: *First: Sensorimotor Stage: Birth to 2 Years.* At this stage, children gain knowledge of the world, they develop their cognitive understandings by coordinating sensory experiences, through touching, sucking, chewing, shaking, and manipulating objects. *Second: Preoperational Stage: 2 to 7 Years.* Within this stage, children develop their language ability and learn how to use mental representations, defining the world through words, images and drawings. However, this process is one-dimensional and oriented around the child's self. *Concrete Operational Stage: 7 to 12 Years.* At this stage, children develop their ability to think in a more logical and rational way as long as reasoning can be applied to specific or concrete examples. However, children will still have difficulty understanding questions of an abstract or hypothetical nature. *Formal Operational Stage: 12 Years to Adulthood.* Children's thinking at this stage can be described as both abstract and logical and they can deal with much more complex intellectual issues.

Kohlberg's Theory (Santrock 2011; Bukatko & Daehler 2004): Kohlberg's theory addresses the issue of moral development, which, according to Kohlberg, is influenced by a range of factors. He suggests that moral development passes through six phases or stages which proceed in a universal order. Further, he argues that regression to modes of thinking in previous stage is rare. Kohlberg based his theory upon research conducted with groups of children of different ages, who were placed in situations where they faced moral dilemmas. The main conflict is between obeying the law and breaking the law to help a person who needs it. An example of such a dilemma is "*Should a man steal an overpriced drug that he cannot obtain legally in order to save his wife?*" (Bukatko & Daehler, 2004, p. 447). Accordingly, children's responses to this conflict relate to how they reason and make decisions influenced by moral thinking. They were classified into three general levels; the preconvention level, the conventional level and the post-conventional level, which were, in turn, each divided into two. These will all be discussed in the following section.

- The Preconvention Level, that is the lowest level of reasoning, includes the first two stages the first one is defined as a punishment and obedience orientated stage, where children's actions and their obedience to the rules is primarily a mechanism to avoid punishment. The second

stage is characterised by individualism and exchange. Children's actions are often tied to the desire for rewards and serving their own individual needs. Reciprocity can be part of this stage of moral development if it serves the individual's interests.

- The Conventional Level, that is the intermediate level, and it includes the third and fourth stages. The third stage is defined by Interpersonal Relationships. In this stage, the child is tied to social expectations and roles and is largely focused on avoiding the disapproval of others as a basis for moral judgments and actions. The child will often seek to be thought of as a "good boy or girl". The fourth stage is referred to as Social Systems Morality and, at this stage, the moral judgments of children are based on an understanding of law, social order and, therefore, any type of act that breaks up, is contrary to common rules or harms others is understood as wrong.

- The Final Level is the Post-conventional Level - that is the highest level, which includes the fifth stage, Social Contract and Individual Rights, and the sixth stage, Universal Principles. At the fifth stage, which centres on the social contract and individual rights, the individual becomes aware of the importance of laws and rules to maintain social order however, sometimes these might conflict with moral values. The final stage is defined by an understanding of Universal Principles, where a person has developed his own set of moral guidelines where moral thoughts are tied to universal ethical principles. In the case of a person in a situation where his conscience is in conflict with law, he will obey his conscience even if that entails breaking the law as he has become aware of the necessity of occasionally deviating from the rules.

In conclusion, knowledge of a child's development and his (or her) needs is crucial for any practitioners who deal with children and juveniles, and should inform the way they undertake assessment. An appreciation of "moral development" seems particularly important to understanding the legal concept of "criminal responsibility", but it cannot be separated from intellectual and emotional aspects of development. It is crucial to use assessment in a way that makes use of developmental knowledge to make the intervention effective. Conversely, any action taken towards children at any stage of their development without considering their needs will probably have negative consequences for both child and society.

2.4.2 Punitive approach

Punishment is one of the main concepts commonly applied in the context of treating those who break the law. In general the term can be used to describe a method used by a national legal system to treat offenders. Thus, each society's legal system uses different forms of punishment to a certain degree and

these function as an expression that reflects condemnation for the offence committed (Hallevy, 2012). Duff (2008) (as cited in Holmgren, 2012) defined punishment in a legal context as “*involve[ing] the imposition of something that is intended to be burdensome or painful, on a supposed offender for a supposed crime, by a person or body who claims the authority to do so*” (Holmgren, 2012, p.210).

According to Hudson (1996) punishing offenders, through any criminal justice system, can be linked to the following objectives and justifications:

- In terms of the offender, he is punished because he deserves it and using punishment as a deterrent can prevent him from committing further offences. Moreover, punishment can be considered as the primary means to make the offender compensate for the harm he has caused.
- In terms of the victim, punishment can be considered a method for letting the victim know and feel that the society denounces the crime and his/her consequent suffering, which was caused by the offender.
- In terms of society, punishment can be considered as method for discouraging others from committing the same crime and ensuring that members of society feel that laws are enforced. Moreover, punishment in this context can be used as means to protect society from its dangerous or dishonest members.

In view of the reasons listed above, it must be noted that different criminal justice systems that impose punishment often try to balance these aspects. However, with some offenders one of these aspects of the reasons for punishment will be dominant (Hudson, 1996).

These reasons reflect, directly or indirectly, the philosophies on which the purpose and justification of the punishment is based. In brief, they can be read through several theories and approaches. Further, they can be categorised and divided according to the goal of the punishment. First, theories that focus on the prevention of future crime as a goal for the punishment can be categorised under the heading of deterrence. This approach has two primary goals: (1) Deterrence at an individual level, deterring the person who has committed an offence from reoffending (2) Deterrence at social level through dissuading potential offenders from committing offences through their knowledge of the punishment for a specific offence (Hudson, 1996). The proponents of punishment as deterrence perceive this approach as a course of action that can reduce crime primarily without taking into account the punishment that “ought” to be imposed on offenders. (Hudson, 1996).

Secondly, theories that focus on the past offence committed can be categorised as retributive theories. (Hudson, 1996; Ferrara, 1982). According to this approach, punishment is considered a way of giving offenders what they deserve. Moreover, it considers the offence committed as a crime against society; it is not only the individual victim that has been wronged, but it is a debt that must be paid to all of society (Ferrara, 1982; Hallevy, 2012; Hudson, 1996). These theories seek, from offenders, retribution, which should be appropriate to the nature of the crime committed (Hudson, 1996; Ferrara, 1982).

According to Hudson (1996), the retributivist approach involves the notion of punishment as a way to distribute moral blame to the offender and argues that future conduct is not a concern for the determination of the punishment.

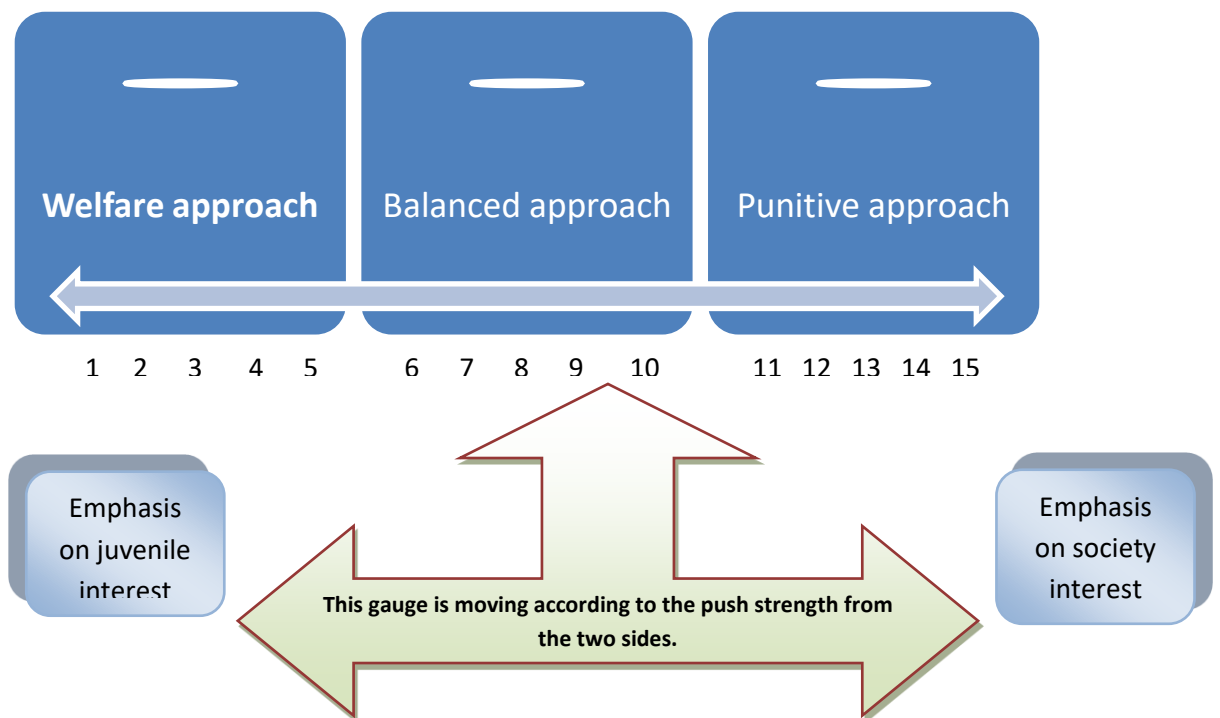
2.4.3 Balanced Approach

The balanced approach was introduced as result of criticism of the philosophies of welfare and punitivism and it sought to recognise both their strengths and their weaknesses. (Hemmens et al. 1997). In the result, it contributes to the focus on new ideas and emphasises different values which is one of the advantages of researching and criticising the pre-existing practice. The balanced approach is named in some literature as balanced and restorative justice or the cycle of juvenile justice (Bazemore 1992; Bazemore & Umbreit 2004; Hemmens et al. 1997). It combines the idea, associated with the welfare approach, of helping an offender become more mature and responsible with the moral censure associated with punishment. Although people who promote restorative justice usually say that they are opposed to punishment, the balanced approach can include the idea of “communicative punishment” (Duff 2001: 2002).

The restorative justice, or balanced, approach to juvenile justice rests on three fundamental, interrelated principles which are defined by Bazemore (1992: 64) as follows:

- **Competency:** *refers to the requirement that offenders make amends for the harm resulting from their crimes by repaying or restoring losses to victims and the community.*
- **Competency Development:** *requires that youths who enter the juvenile justice system should exit the system more capable of being productive and responsible in the community.*
- **Community protection:** *this objective explicitly acknowledges and endorses a long time public expectation that juvenile justice must place equal emphasis on ensuring public safety at the lowest possible cost using the least restrictive level of supervision possible to protect the community.*

These three principles are considered as three main sides to form the triangle to create balance and without one of them the balance's wheel will not move (Hemmens et al. 1997). This approach assumes that the process in the juvenile justice system, through these principles, will satisfy the basic needs of the victim, the community and the juveniles which will not be realized by the treatment or the punishment method (Hemmens et al. 1997; Bazemore 1992; Bazemore & Umbreit 2004).



“In spite of the desire of most European countries to embrace a welfare model, an attitude of "moral panic" has prompted more punitive reactions than rehabilitative approaches’ (Winterdyk, 2002: xx).

Adopting a certain philosophy or replacing it with a different philosophy is subject to a range of factors that are associated with society's perceptions towards juvenile delinquency and juvenile justice. Under a sub-title “the collapse of welfare protectionism” Muncie and Goldson (2006), point out that the pre-existing emphasis on the principles of welfare to deal with young offenders had begun to unravel by the 1980s. One of the reasons behind this refers to the notion that interventions of juvenile justice system which are based on welfare principles often create more harm than good (Muncie & Goldson 2006). Hemmens, Fritsch and Caeti (1997), clarify one mechanism by which the view taken by a given society shifts by saying that when a system relies on punishment as its main strand, the high rate of juvenile crime is referred to the lack of severe sanctions. When rehabilitation is the main strand to the system, the high rate of juvenile crime is referred to the lack of serious sanctions.

In the midst of debate between advocates of each approach and during the past two decades, a new theory called “communicative punishment” has been developed to emphasize an appropriate response to the crime committed which can be achieved through communicative practice focusing on censure and moral condemnation (Wringe 2012; Duff 2001). This will be considered at some length here because it will be used at a later point in the thesis to interpret empirical data from sentencers in Saudi Arabia.

Communicative punishment is considered as one form of retributivism as it focuses on the offence as a past event. It also considers other dimensions to make the offender realise and understand his wrongdoing, which can lead to the offender refraining from committing future offences (Wringe 2012).

According to Duff (2001), this notion directs the application of punishment to be achieved by “*communicat[ing] to offenders the censure they deserve for their crimes and should aim through that communicative process to persuade them to repent those crimes, to try to reform themselves, and thus to reconcile themselves with those whom they wronged*” (Duff, 2001, p.xvii).

Weijers (2002) indicates in this regard “*The communicative argument ascribes a distinctive purpose to punishment: that purpose is future-oriented, but is formulated in terms of reparation—moral reparation—rather than of effective crime-prevention. The purpose of punishment, on this view, is to make good the wrong done, not only in a material sense but above all in a moral sense*” (Weijers, 2002, p.143). In this instance, the communication process is focusing on the offender’s rational understanding, which requires them to be an active participant in the process through receiving and responding to communication (Duff, 2001).

The main messages that should be delivered through communicative punishment should cause the offender to condemn his past actions, and make the offender accept the demands of the law, rather than obeying them due to the threat of further punishment (Duff 2001; Wringe 2012) Likewise, Duff indicates that punishment can involve harsh treatment to communicate societal disapproval of offences and incite those who have committed crimes to remorse or regret and the degree of censure or condemnation as a harsh treatment is adapted in the communicated message, to the level or degree that the crime deserves (Duff 2002; Duff 2001). As a form of punishment in this regard, censure might be communicated in a formal conviction of guilt or through harsh treatment such as jail sentences, fines or community service (Duff 2001; Wringe 2012). Moreover, censure can be communicated through the restorative process where the victim and offender meet each other where the meeting is moderated by an organizer and contains discussion about the harm that has been caused and how to repair that damage” (Duff 2001; Duff 2002). Recent studies in communicative functions demonstrate that the kind of feedback from offenders after punishment positively influences the victim’s satisfaction with the outcome. The results also indicate that the victim’s satisfaction levels were high when the feedback from offenders included two elements (1) acknowledgment of the intent of the victim to punish and (2) an indication of a positive moral change in the offender’s attitude toward offence (Funk et al. 2014).

In the context of juvenile offending, the communicative approach has been viewed from different angles in terms how it can be applied to juvenile offenders to gain the most effective results. Theories diverge on whether the role of moral communication should be applied through restoration or through punishment.

Walgrave (2002) rejects totally punishment to be used as a communicative method since it includes the intentional infliction of pain, which means that it does not serve the aims that it should be seek for juvenile offenders. He locates three central characteristics to identify any method as punishment in this regard:

“Three elements are crucial: the hard treatment inflicted; the intention that the punished person should suffer; and the link between the infliction of pain and the wrong previously committed. If one of these elements is lacking, there is no punishment” (Walgrave, 2002, p.93)

According to Walgrave, an appropriate expression of disapproval through a communicative approach is required to make the juvenile offender realise that his behaviour was unacceptable and socially damaging. He claims that good communication can be achieved within most restorative settings and that juvenile courts should impose restorative programs in cases where juvenile offenders refuse to join and participate in these programs. Walgrave emphasizes that *“the communication must offer the victim reassurance of his rights to protection and support by the community; society as a whole must receive confirmation of the norm and of the authorities’ determination to enforce the norm and to protect citizens from victimisation”* (Walgrave, 2002, p.98)

Conversely, Duff (2002) a communicative theorist, argues:

I have argued that in our responses to crime we should seek restoration and reconciliation, but that this does not mean that we should pursue such aims instead of punishment: rather, when what makes reconciliation and restoration necessary is the commission of crime, it is through punishment, as a mode of penance, that those goods are achieved. The same is true, I think, when we are dealing with the crimes committed by juveniles (Duff, 2002, p.131).

Duff (2002) emphasizes that the communication of the censure is a central factor of punishment as it aims to make the juvenile offender realise the consequences of the crime that he has committed. He considers restoration, reparation and reconciliation as the main elements that provide communicative punishment a proper meaning as a response to the juvenile offender and adult offenders. Further he argues that we should not seek these out of punishment. However, Duff indicates that this does not mean that juvenile offenders should be subjected to the same punishments as those that are imposed on adults *“and the thought that, rather than simply trying to ‘make them suffer’ (whether as retribution or as a deterrent”* (Duff, 2002, p.131). Accordingly, the response to all offences, whether they were committed by juvenile or adult offenders, and whether in the form of restoration or reconciliation *“should be punitive, and retributive, in that it seeks to impose on or to induce in the offender the suffering (of remorse, of necessarily burdensome moral reparation) he deserves”* (Weijers & Duff, 2002, p.9). Therefore, this can be seen as a backward-looking dimension in terms of which the censure should be an appropriate response to the offence that was committed in the past. Thus, the question that Duff raises is *how* we should punish juveniles, not *whether* we should punish them. The outcome of

this process can be achieved through focusing on the moral masses that make juvenile offenders recognise the consequences of their actions and instil the need to restore their relationship with society, which can take the form of ‘restorative justice’ programmes.

According to Duff, punishment of juvenile offenders should be viewed as education or re-education, which in turn, can lead to the rehabilitation of juvenile offenders. This is not a welfare model, however even though it may still aim at improving the young offender. The means of bringing about improvement are different. Communicative punishment is a particularly useful perspective or understanding juvenile justice.

2.4.4 Models of Juvenile justice

After presenting the main philosophies and approaches that shape and influence juvenile justice systems, this section comes to describe models of juvenile justice. “Model” in the juvenile justice system context means a pattern of operation and intervention that is applied in a specific society to deal with juvenile offenders. A model could be based on a specific philosophy or based on multiple philosophies, but also includes organisational or operational factors, making it more focussed and structured than a philosophy. According to Hartjen (2008), models clarify how juvenile offenders are treated in different societies and can also clarify how this treatment differs from that which is used with adult offenders. The diversity of models that are used around the world reflects variations in philosophy, purposes and practices regarding juvenile offenders.

Winterdyk (2002), indicates that there are different juvenile justice models that can be used to distinguish between the methods of juvenile handling (ie the process) and to describe the nature of the intervention that is used. These models are based on research which sets indicators and criteria to clarify how different societies around the world view juvenile delinquency and how they translate their view into practice to treat juvenile offenders (Winterdyk 2002; Hartjen 2008).

These models of juvenile justice systems are summarized by Hoge (1992), as follows:

- **Welfare Model:** A Juvenile justice system which accords to this model deals in general with juvenile offenders without emphasising the legal process. However, it is applied within the formal justice system. In this model, interventions are based on a rehabilitation orientation and they aim to change deviant behaviour by focusing on two elements: (a) boosting the juvenile's behavioural and emotional competences (b) treating environmental deficits surrounding the juvenile. According to this model, the state is responsible for the well-being of the young people. Last but not least, penal sanctions are not applied by juvenile justice systems which

adopt the welfare model except in special cases. Australia and New Zealand are seen as countries that implement this model (Winterdyk 2002; Hartjen 2008).

- **Corporatism Model:** This model concentrates on intervention that relies on the integration of services from various institutions whether they are judicial institutions or welfare institutions. The Corporatism model shares principles with the welfare model in focusing on developing the juvenile's behavioural and emotional competences and treating environmental deficits. Hoge (1992), indicates that it can be difficult to identify the juvenile justice systems which implement pure forms of a Corporatist Model. However, Scotland and the Canadian province of Quebec are seen as states that approach this model.
- **Justice Model:** This model concentrates on treating the offence by appropriate legal responses rather than treating the juvenile's needs. The juvenile justice system that adopts this model seeks to protect the juvenile's civil rights by prescribing legal procedures that are implemented through the system and ensuring that any penal sanction is proportionate to the juvenile's offence. Hoge (1992) indicates that there is variance between the juvenile justice systems that implement this model due to the variances in legal processing procedures and the procedures of sanctioning. Italy, The Netherlands and Russia are seen as countries that implement this model (Winterdyk 2002; Hartjen 2008).
- **Modified Justice Model:** This model is based on principles that have been taken from the welfare model and the justice model. The juvenile justice system, which adopts this model, relies in its operations and intervention on rehabilitation of juvenile offenders and provides the necessary resources that lead them to be productive in society and able to take responsibility. This process is carried out through a legal system that is associated with legal rights and judicial processing. Canada is seen as a country that implements this model (Winterdyk 2002; Hartjen 2008).
- **Crime control Model:** The main goal of this model is protecting society from crimes and deviant behaviours which are seen as wilful offences. The process in juvenile justice systems that reflect this model is carried out through formal legal processing procedures and minor cases might be dealt with through diversion procedures. The treatment, according to this model, is imposing criminal sanctions as a method for society protection. The United States and Hungary are seen as countries that implement this model (Winterdyk 2002; Hartjen 2008).

As will be discussed further subsequently, these models are one of the main axes used in the thesis to read and examine the Saudi system in the findings chapter. This material has been used to analyse and

categorize practices and procedures to build a picture of the Saudi system according to the concepts in these sections.

2.5 United Nations Instruments and International Standards

Having presented concepts and philosophies related to juvenile offending and juvenile justice systems, this section briefly highlights relevant international treaties in this regard. As developments occur at the international and local levels regarding the method of treating young people who come into conflict with the law according to their offences, a number of laws and guidelines become relevant for setting standards in terms of how young people should be treated in cases of conflict with the law. According to Articles 37 and 40 of the Convention on the Rights of the Child (1989) *Children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, takes into account their age and aims at their reintegration into society (UNICEF 2010)*. This development has been subject to a progressive evolution of thought and action under the sponsorship of the United Nations.

Apart from the UNCRC itself, there are other international instruments that constitute a comprehensive framework of standards for treating different issues such as care, protection and treatment of young people when they are referred to the system. The most prominent of these instruments are: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (adopted by the General Assembly resolution 40/33 of 29 November 1985), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") (adopted and proclaimed by the General Assembly resolution 45/112 of 14 December 1990) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules") (adopted by General Assembly resolution 45/113 of 14 December 1990). These instruments include issues that could be addressed briefly as follows: (See Appendix 1, 2 and 3 for the full text of these instruments)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice "The Beijing Rules"

This was the first international legal instrument providing guidelines on the method of treating juveniles in cases of conflict with law. The minimum conditions to treat juveniles were presented through these rules and were internationally accepted. The law outlined desired principles and practices, focused on protecting juveniles' rights and respecting their needs through establishing a specialised and separate progressive justice system for juveniles. According to The Beijing Rules the aim of the juvenile justice system is linked to two aspects; first enhancing the juvenile's well-being, and secondly confirming that the measures to treat juveniles who commit offences take into account both the offender and the offence circumstances (UNITED NATIONS 2010; Hamilton 2011; Nikhil & Wong 2006).

United Nations Guidelines for the Prevention of Juvenile Delinquency "The Riyadh Guidelines"

The Riyadh Guidelines set standards for the prevention of juvenile delinquency, which target promoting welfare and the well-being of young people not only in their conflicts with law but also in the pre-conflict stage. For instance one of its fundamental principles is that states should “*avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others*”. The Riyadh Guidelines provide preventive and protective intervention modalities that include measures for juveniles who are at risk, such as those who are abused, neglected or abandoned; their protection should be prioritised. The guidelines in this instrument focus on a proactive approach to prevention and social reintegration and multi-disciplinary measures are suggested, to be applied through social agencies: the family, the community, the educational system, the media and through voluntary organisations (UNITED NATIONS 2010; Hamilton 2011; Nikhil & Wong 2006).

United Nations Rules for the Protection of Juveniles Deprived of their Liberty “The Havana Rules”

These rules set out standards that are applicable when a juvenile is held in any form of detention and in any type of facility where detention is based on judicial order, or an order of an administrative or public authority. They confirm that juveniles deprived of their liberty have the right to be in an environment that provides facilities and services that meet the needs of dignity, welfare and health; they should receive accommodation, and a physical environment offering leisure activities, medical care and education, etc. Moreover, this instrument states that juveniles in detention should be treated separately from adults, classifying them according to the variables of gender, age, personal characteristics and type of offence and emphasising protection from harmful influences (UNITED NATIONS 2010; Hamilton 2011; Nikhil & Wong 2006).

These three instruments can be seen as forming a foundation to deal with juveniles found guilty of committing offences, referred to as the three ribs. The first rib (The Beijing Rules) sets out guidance for establishing a progressive juvenile justice system in cases of conflict with the law. The second rib (The Riyadh Guidelines) provides guidance regarding the policies for preventing and protecting juveniles from the factors that lead to offending. The third rib (The Havana Rules) sets out standards regarding methods for treating children and young people who have been deprived of their liberty, by upholding their fundamental rights and providing applicable measures to preserve their dignity and welfare (UNITED NATIONS 2010; Hamilton 2011; Nikhil & Wong 2006). Establishing these instruments at the international and local levels was considered as a move towards welfare, rehabilitation and reintegration, as well as towards protecting young people from the harshness of the differentiation process and the adult punitive context (James 2013)

Some aspects of the Saudi system will be considered through the lens of these international instruments in the next section followed by brief considerations on the United Kingdom in general.

2.5.1 Analysis of Saudi system and its Practice with International Baseline Standards

This section will draw on the testimony presented in this research to evaluate aspects of the Saudi system such as assessment of Saudi Arabia's treatment of children in conflict with the law according to the United Nations Convention on the Rights of the Child (UNCRC). Since the Saudi system is the main focus of this research, comparing its system procedures and its practices against the requirements of the UNCRC will highlight the areas of strength and of weaknesses in the Saudi system. This may, in turn, engender improvements that will benefit children that have cause to interact with the justice system. One of the most important points that should be considered at the beginning of this section is that the researcher did not have permission to apply the standards above to the findings that emerged from the interviews with the judges and social workers. The formal permission letter and the proposal that were sent from King Saud University to the Justice Ministry and the Ministry of Social Affairs seeking access to interview judges and social workers did not mention that these international children's rights standards would be applied to the data taken from the interviews. Accordingly, applying those standards without prior permission could place King Saud University in a critical situation especially given that this issue is considered sensitive by the Saudi government. Therefore, the researcher's application of the UNCRC must be considered in this light and to avoid this concern the researcher relied on some reports which touch main findings in this research.

Firstly, the UNCRC regime is made up of the Committee on the Rights of the Child (hereafter the Committee), which is the body of independent experts that monitors implementation of the UNCRC by its states parties. All states parties are obliged to submit regular reports to the Committee on how the rights are being implemented in their area. The Committee examines each report and addresses its concerns and recommendations to the state party in the form of "concluding observations". The latest of such with respect to Saudi Arabia was performed in 2006 and, together with other reports such as Human Rights Watch's can provide insight towards achieving the aim of this section. However, it must be said that Saudi decision makers within the juvenile justice system disagree with what was said in the Human Rights Watch report. Moreover, it is also necessary to highlight the danger that mentioning certain aspects of the content of the Human Rights Watch report in this section may be seen by the Saudi decision makers as indicating that the researcher agrees with this even if this is not the case. The political situation in Saudi Arabia is such that the researcher may be placed in a critical situation and could lead him to be questioned. The researcher will do his best to handle this issue of analysis and he is fully responsible for what will be mentioned in this section.

The discussion below is mainly structure around the following four axes: (1) definition of the child, (2) appropriate treatment and punishment, (3) non-discrimination, (4) access to legal and other appropriate assistance. By end of this section will highlight briefly some issues in this regard on the United Kingdom (UK) case in general.

Definition of the child

The scope of the definition of the child is key to determining whether or not international children's rights standards as enshrined in the UNCRC will be applicable to a person, and whether or not such a person, having been alleged to have come into conflict with the law, will be subjected to the juvenile justice system. Under Article 1 of the UNCRC, 'a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. To ensure full compliance with the diverse rules on juvenile justice, the Committee has strongly urged all states to review upwards the age of majority if it is set below 18 by their laws, in order to increase the level of protection for everyone aged under 18 'with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.'¹ Hence, the procedures for juvenile justice provided under the UNCRC apply to everyone under 18 years of age at the time of the alleged offence, regardless of the individual's age at the time of trial or sentencing.²

On this point, the Committee noted the information provided to it by Saudi Arabia to the effect that 'the age of majority is 18 in the State party'; while this is seemingly in accordance with international standards, the Committee expressed concerns at the further information given to the effect that 'a judge has the discretionary power to decide that a child has reached majority at an earlier age'³ and go on to try him or her as an adult and even impose the death penalty on the child contrary to Article 40 of the UNCRC. This being contrary to international standards, the Committee recommended that Saudi 'take the necessary legislative and other measures to unequivocally set the age of majority at 18 with no exception for specific cases, including within the juvenile justice system.'⁴

Also, as Saudi law neither provides that those under 18 years at the time they committed a crime should be dealt with solely in the juvenile justice system, nor requires judges to base their determinations on children's age at the time of the offence; judges use their wide discretion to impose a sentence based on the individual child's physical characteristics at the time of trial, sentencing, or execution of sentence.⁵ In other words, the judges do not even utilize widely regarded elements like 'emotional, mental and intellectual maturity' – stipulated in Rule 4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice⁶ – in determining adult competencies, but most inadequately rely on elements of physical maturity in determining that a child has attained majority. According to a 2002 Saudi Council of Senior Scholars decree, majority is attained when any one of four conditions are met: (1) attaining

¹ UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, para 38.

² Human Rights Watch, *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System* (Vol 20, No 4, March 2008) p.13.

³ 'Concluding Observations: Saudi Arabia' (note 3 above) para 25.

⁴ 'Concluding Observations: Saudi Arabia' (note 3 above) para 26.

⁵ Human Rights Watch (note 5 above) p. 13.

⁶ Adopted by the UN General Assembly Resolution 40/33 of 29 November 1985.

15 years of age; (2) occurrence of wet dreams (*al-ihtilam*); (3) appearance of pubic hair; or, in the case of girls, (4) upon menstruation.⁷ And the enduring nature of this practice which is contrary to international standard has been captured thus:

members of the National Commission for Childhood and of the Council of Ministers' committee drafting Saudi Arabia's child law told Human Rights Watch that the new law will define a child as anyone under age 18 but that this provision would not prevent judges from issuing death sentences for crimes committed while under age 18. Instead, it will only require that execution be postponed until the child turned 18.⁸

Appropriate treatment & punishment

Reflecting internationally accepted standards on how children should be treated or punished when they come into conflict with the law, Article 37(a) of the UNCRC provides that, 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age'. Expounding on this, the UN Rules for the Protection of Juveniles Deprived of their Liberty⁹ states that:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.¹⁰

Under Article 37(b) of the UNCRC, states parties are also obliged to ensure that 'the arrest, detention or imprisonment of a child be used only as a measure of last resort and for the shortest appropriate period of time.' The UNCRC in Article 40(4) also calls on states to make available alternatives to institutional care – such as guidance and supervision orders, community service, counselling, probation, foster care, education and vocational training – for children who are accused of or recognized as having committed criminal offences 'to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence,'. The UNCRC specifies in Article 3(1) that in all actions concerning children the best interests of the child shall be a primary consideration.

⁷ Council of Senior Scholars Decree 209 of January 23, 2002 (9/11/1422), regarding specifying an age of majority (*bulugh*).

⁸ Human Rights Watch (note 5 above) p. 14.

⁹ Adopted by the UN General Assembly Resolution 45/113 of 14 December 1990.

¹⁰ 'Concluding Observations: Saudi Arabia' (note 3 above) para 67.

In efforts to comply with the above international standards, Saudi Arabia has put in place some relevant measures, which, though commendable, do not go far enough. For instance, the general rule in Saudi is that capital punishment cannot be passed on a person who commits a crime before reaching the age of majority (in general 18 years). Noting this, the Committee nevertheless highlighted, as a severe breach of the fundamental rights of the child in Article 37, that judges still have the discretionary power which they actually exercise in criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18.¹¹ In support, Human Rights Watch has listed at least 12 cases involving individuals sentenced to death for crimes committed while under age 18.¹²

In addition, as it relates to Saudi Arabia, the Committee while acknowledging ‘articles 2 and 13 of the Code of Criminal Procedure promulgated in Royal Decree No. M/39 of 15 October 2001 which prohibit[s] torture or degrading treatment’, noted with dismay that corporal punishment, including flogging, was still a lawful penal sanction against children, contrary to international standards.¹³ Hence, it called on Saudi to ‘[a]mend the Detention and Imprisonment Regulations... and the Juvenile Justice and Social Surveillance Centre Regulations to prohibit flogging or any other form of corporal punishment for persons under 18 deprived of their liberty.’¹⁴

Furthermore, in violation of international standards, there is empirical evidence that other unacceptable forms of punishment like solitary confinement and denial of family visits are being meted out to juvenile offenders or those accused of crimes.¹⁵ For instance, ‘[a] Ministry of Social Affairs supervisor acknowledged that staff at the Riyadh Girls’ and Young Women’s Welfare Institution use solitary confinement to punish disciplinary infractions’.¹⁶ Enabling and supporting such practices is Articles 1 and 20 of the Imprisonment and Detention Law,¹⁷ together with other laws like Ministry of Labour and Social Affairs Decree 1354 of 1975 (1395)¹⁸ and Ministry of Labour and Social Affairs Decree 2083 of 1976 (1396)¹⁹ which provide details for executing corporal punishment on juveniles.²⁰

In view of the above situation, the Committee has called on Saudi Arabia to bring its laws and practices relating to the treatment and punishment of juveniles accused or found to have infringed penal laws,

¹¹ ‘Concluding Observations: Saudi Arabia’ (note 3 above) para 32.

¹² Human Rights Watch (note 5 above) pp. 28-32.

¹³ ‘Concluding Observations: Saudi Arabia’ (note 3 above) para 42-45.

¹⁴ ‘Concluding Observations: Saudi Arabia’ (note 3 above) para 75(c).

¹⁵ Human Rights Watch (note 5 above) pp. 47-51.

¹⁶ Human Rights Watch (note 5 above) pp. 48.

¹⁷ Imprisonment and Detention Law 1978, Umm al-Qura, no. 2729 of June 17, 1978 (11/7/1398).

¹⁸ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), Article 7.

¹⁹ Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), Article 9.

²⁰ Human Rights Watch (note 5 above) p. 47.

into conformity with international standards that are better positioned to ensuring the best interest of children passing through the juvenile justice system.

Non-Discrimination

Children who have reason to interact with the juvenile justice system have the internationally recognized right not to be discriminated against. The international standard of the principle of non-discrimination is clearly set out in Article 2 of the UNCRC thus:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

On this issue, the Committee noted that the mere statement of the general principle of non-discrimination in Saudi Arabia's domestic law is not a sufficient response to the requirements of the Convention; it highlighted that *de jure* and *de facto* discrimination against girls and foreign children are still widespread in Saudi and needed to be addressed.²¹

As it relates to the girl child, the Committee expressed concerns about the traditional attitudes towards children in Saudi, 'in particular towards girls', in limiting their right to express their views and to have them taken into account (under Article 12 of the UNCRC) in matters affecting them, especially within 'courts and administrative bodies'.²² Specifically, Saudi Arabia's system of legal guardianship is a barrier to the female child's access to justice in the criminal legal system. Under the government's interpretation of Sharia, girls of all ages, unlike their male counterparts, lack legal competency and must be under male guardianship – generally that of a male relation.²³ These guardians have tremendous power in influencing the outcome of the girl child's interactions with the criminal justice system: for example, Human Rights Watch interviewed females who participated in cases where the judge only allowed them to give testimony through a male representative.²⁴

Also, based on Saudi government rules, foreign girls under investigation, facing trial, or whom a judge has ordered detained, are held in adult detention facilities operated by the Ministry of Interior where

²¹ 'Concluding Observations: Saudi Arabia' (note 3 above) paras 27 and 28.

²² 'Concluding Observations: Saudi Arabia' (note 3 above) paras 36 and 37.

²³ The Saudi government's guardianship policies are derived from a verse in the Quran that several scholars argue should be reinterpreted. Sura 4 verse 34 of the Quran states that: 'Men are the protectors and maintainers of women, because God has given the one more [strength] than the other, and because they support them from their means.' A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Maryland: Amana Corp., 1983) p. 190. See Human Rights Watch (note 5 above) p. 20.

²⁴ Human Rights Watch (note 5 above) p. 21.

conditions are relatively poor; this is unlike their foreign male counterparts in the same situations who are accepted by Social Observation Homes meant for juveniles.²⁵ Indeed, detention with unrelated adults puts children at risk of violence and diverse forms of exploitation from adult detainees. It is for such reasons that Article 37(c) of the UNCRC mandates that ‘*every child* [not some] deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so’ (emphasis added). Yet, Saudi remains in breach of this provision, especially from a gender discriminatory perspective.

Access to legal and other appropriate assistance

Representing international children’s rights standards on access to legal and other appropriate assistance, Article 37(d) of the UNCRC guarantees every child deprived of his or her liberty ‘the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.’ In addition, every child accused of infringing the penal law, according to Article 40(2)(b)(ii) and (iii), also has the right to ‘legal or other appropriate assistance in the preparation and presentation of his or her defence,’ and any trials should take place ‘in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child ... his or her parents or legal guardians.’ Stressing the importance of this right, the Committee, in one of its General Comments on children’s rights in juvenile justice, noted that ‘it should be free of charge,’ and should ‘as much as possible’ include ‘adequate trained legal assistance, such as expert lawyers or paralegal professionals.’²⁶

How does Saudi law and practice compare with these standards? To start with, Saudi Arabian law generally specifies that interrogations and trials of children should take place inside Social Observation Homes and girls’ and young women’s welfare institutions.²⁷ In its November 2004 report to the Committee, Saudi Arabia stated that, ‘the law allows the child to have his or her own defence lawyer.’ This aligns with Articles 4 and 64 of the Saudi Law of Criminal Procedure that states that persons under investigation or on trial have ‘the right to seek the assistance of a lawyer or a representative.’ In addition, the first part of Article 70 of the Law of Criminal Procedure provides that ‘[t]he Investigator shall not, during the investigation, separate the accused from his accompanying representative or attorney’.

While these provisions provide a measure of safety and assistance for children being processed through a juvenile justice system to enable them to access a fair trial, they (and the related state practice) still

²⁵ Council of Ministers Instruction 17052/r of November 20, 2000 (24/8/1421).

²⁶ UN Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, para. 23(f).

²⁷ Ministry of Labour and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), Articles 3-5; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), Articles 5-7.

fall short of the internationally acceptable standards. First, they do not provide for free legal assistance for juveniles who cannot afford it – this could leave children of the poor ‘judicially exposed’ and liable to convictions and sanctions for crimes they may not have committed. In response to a question about this lack of free legal assistance for the poor, the Head of the Saudi Supreme Judicial Council Shaikh Salih al-Luhaidan, out of tune with international standards, replied thus: ‘If the case involves an injury, a murder, a theft, then it does not require an attorney—it requires witnesses, evidence, and the individual to defend himself.’²⁸

Generally, contrary to international standards, there is also still the possibility under the current Saudi law and practice for an accused child not to get access to ‘prompt’ legal and other assistance to enable him or her to prepare and present a defence. For instance, in view of Article 34 of the Criminal Procedure Law which provides for quick interrogation of suspects without more, the head of the Bureau for Investigation and Public Prosecution, Shaikh Muhammad Al Abdullah, explained to Human Rights Watch that, ‘the law does not say that we have to wait for a lawyer to show up before we start an interrogation.’²⁹ A child left without assistance at this stage, could be misled, coerced or frightened into making statements unduly harmful to his or her interest at the trial stage. In fact, a Ministry of Social Affairs supervisor has noted that lawyers do not routinely attend interrogations or the sessions where judges visit the facility to adjudicate cases.³⁰ Such a system where the judge is regularly the adjudicator and prosecutor, and the children are frequently left without assistance at the interrogation and trial stages, certainly falls short of international standards and is indeed ultimately harmful to the interest of the child.

On the other hand, even when a child, in line with international standards, has a lawyer’s or guardian’s assistance, that person’s relevance or the extent of assistance that person can render is not clear in relation to an ongoing interrogation. According to Article 70 of the Law on Criminal Procedure, ‘the representative or attorney shall not intervene in the investigation except with the permission of the investigator. In all cases, the representative or attorney may deliver to the investigator a written memorandum of his comments, and the investigator shall attach that memorandum to the file of the case.’ It is also not clear what weight judges give to such a memorandum considering that, as noted earlier, ‘the head of Saudi Arabia’s highest judicial body, which also reviews all death sentences, has stated that he does not believe that a lawyer is necessary in murder cases’.³¹

In addition, when investigators question children, regulations oblige the Director of Social Observation Homes and relevant welfare institutes or his/her delegate to attend ‘so that the interrogation takes place

²⁸ Human Rights Watch (note 5 above) p. 54.

²⁹ Human Rights Watch (note 5 above) p. 54.

³⁰ Human Rights Watch (note 5 above) p. 55.

³¹ Human Rights Watch (note 5 above) p. 58.

in an atmosphere that makes the [child] feel reassured and psychologically relaxed.³² The regulations neither specifically require the Director to provide the child with legal assistance, nor does it require the presence of a guardian during the questioning or trial of the child. Although the children's guardians are notified, empirical research suggest that because the homes and institutes where the children are kept and tried are usually far from their homes, their guardians are usually unable to attend.³³ Moreover, empirical evidence also revealed that staff members assigned to participate in the interrogations of the children usually sat in a separate room where they could only watch and not hear the proceedings or even talk to the children being interrogated.³⁴

From the above, it is quite clear that Saudi Arabian law (and practice) does not guarantee children accused of crimes free legal assistance, and children can be questioned and tried in the absence of a lawyer or guardian, contrary to international standards and the need to ensure such children are protected and justly treated within the juvenile justice system. Hence, Saudi must do more to turn the tide.

Awareness of, & training on, international standards

Many of the shortcomings in Saudi's juvenile justice system can be avoided, and the system better positioned for overall and continuous improvement, if stakeholders in the field of child's rights are adequately trained and informed on internationally acceptable child's rights standards. Thus, Article 42 of the UNCRC requires that 'States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.' In this regard, the Committee has 'noted with appreciation' the efforts of the Saudi National Commission for Childhood to comply with this provision through several programmes.³⁵ Specifically, however, the Committee pointed out with concern the fact that professional stakeholders in the juvenile justice system, such as judges, lawyers and law enforcement officials, religious clerics and social workers, have not been provided with sufficient information and systematic training in international children's rights standards.³⁶ Little wonder that Saudi's law and practice with respect to juvenile justice is wanting in a number of aspects.

To be sure, commenting on juvenile court judges in Saudi, Ali bin Hassan al-`Ajamia, a Director of the Riyadh Social Welfare Home once revealed that, '[a] good judge should have some social training, but some judges don't distinguish between children and adults, or don't know the recent developments in

³² Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), Article 4; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), Article 6.

³³ Human Rights Watch (note 5 above) pp. 54 and 55.

³⁴ Human Rights Watch (note 5 above) p. 55.

³⁵ 'Concluding Observations: Saudi Arabia' (note 3 above) paras 19 and 20.

³⁶ 'Concluding Observations: Saudi Arabia' (note 3 above) paras 19 and 20.

the field'.³⁷ In view of this situation, Saudi Arabia needs to do more to reasonably comply with its Article 42 obligations in the context of its unique legal system, especially as this lack of adequate and targeted training for juvenile justice professionals about relevant international standards does hamper the ability of the Saudi state to ensure that children alleged to be in conflict with the law are treated fairly or get justice, in the manner envisaged by international standards, within the current system.

In summary, while Saudi Arabia has definitely put in place some laws and practices which aimed at ensuring that juvenile offenders are fairly and justly treated within the justice system, these fall short of international baseline standards and require improvements. Thus, it is appropriate to end on the following slightly reassuring note contained in the Committee's 2006 concluding observations on Saudi Arabia:

9. The Committee welcomes the project of the Saudi National Commission for Childhood to prepare a comprehensive manual of all domestic legal instruments related to children with a view to amending its laws to be fully compatible with the provisions of the Convention.

10. The Committee recommends that the States party continue its efforts to undertake a comprehensive review of its domestic laws on children, including the Basic Law, with a view to introducing all necessary amendments to its laws in order to ensure that they conform fully to the principles and provisions of the Convention.

2.5.2 The UNCRC Report on the United Kingdom³⁸

The 2007/2008 UNCRC Report³⁹ on the United Kingdom is born out of the consideration by the Convention's Committee of the third and fourth periodic reports submitted by the UK under article 44 of the Convention. The report contains remarks by the Committee on the strides made by the UK in conforming its laws, policies and practices with the broad provisions of the UNCRC. Therein, the Committee also revealed shortcomings by the UK with respect to meeting their obligations under the UNCRC as it affects the child, and made recommendations on how best to address the deficiencies and better cater to the wellbeing of the children in the UK. Of immediate importance, however, is the fact that the report touched on areas (in)directly relevant to the juvenile justice system in the UK.

Particularly, paragraphs 77 – 80 of the report fall under the heading, 'Administration of Criminal Justice'. Here, the Committee expressed concerns that: the age of criminal responsibility was too low (8 years in Scotland and 10 years in other parts of the UK); there are still cases of children tried in adult courts; detention is frequently in use and not being applied as a measure of last resort; children in custody

³⁷ Human Rights Watch (note 5 above) p. 13.

³⁸ UN Committee on the Rights of the Child 2008

³⁹ The Committee has also now published its 2016 report (Concluding Observations on the fifth periodic report of the UK)

continue to lack the right to education; there is still the practice in some UK Overseas Territories of holding some children in conflict with the law in the same detention facilities where adult offenders are imprisoned, etc.

To address these fundamental issues, the Committee, among other things, recommended that the UK: raise the minimum age of criminal responsibility (in accordance with the Committee's general comment No. 10 on "Children's rights in juvenile justice"); establish a statutory principle that detention be used only a measure of last resort for children in conflict with the law and for the shortest period possible; develop a range of alternative measures to detention for errant children; ensure that child offenders are always dealt with within the juvenile justice system and never tried as adults in normal courts; make sure that relevant child offenders are not detained with adults, unless in their best interests; provide for the statutory right to education for all children in detention; and adopt appropriate measures to protect the interests of child victims and witnesses of crime at all stages of the criminal justice process.

Furthermore, the Committee (in paras 26 and 27) expressed a reservation that the principle of the best interests of the child was not reflected in legislative and policy matters especially as it concerns juvenile justice, and called for this gap to be filled. The Committee also noted recent efforts by the UK to increase awareness of the principles of the UNCRC; it however found that this knowledge is still lacking among professionals working with children in various capacities and needs to be further improved (paras 20 and 21). And more generally, the Committee remained concerned that the principles of the UNCRC are not duly taken into account in all UK legal instruments and that it was yet to incorporate the Convention into domestic law; on this it called for broad action on the part of the UK (paras 10 and 11).

Conclusion

Juvenile justice systems are legal systems structured for the purpose of dealing with juveniles who commit offences. Their main objectives are not to rehabilitate the juvenile offender or maintain the security of society, despite these being the objectives of the adult system. The juvenile system exists separately and applies unique processes that are linked to several logical considerations, such as the comprehension level of juveniles compared to adults, the nature of the offences that are committed by juveniles and the dependence of juveniles on their families.

However, despite agreement between most countries around the world, about the need to deal with young people who commit offences differently from adults there is a diversity in the methods applied internationally. The philosophy and principles adopted by each country, in addition to the way these are translated on the ground, are key reasons for this. Welfare approaches, punitive approaches and balanced approaches are seen as the main axes for reading each system's philosophy. However, some factors make some societies move or shift from one approach to another. As was discussed above, diversity and difference in the manner of translating the philosophy, even in the case of societies that nominally adopt the same one, leads some researchers to categorise juvenile systems in models such as: Welfare Model, Corporatism Model, Modified Justice Model, Justice Model and Crime control Model.

Chapter 3 Children's Hearings System in Scotland

3.1 Introduction

Scotland has its own legal system distinct from England and Wales and within this is a distinct system for dealing with young people who have been harmed within the family or are at risk of harming others (Waterhouse & McGhee 2002). Scotland is considered one of the countries in the world that has a unique, strongly welfare-oriented approach for dealing with the legal problems posed by children and young people. Known today as the Children's Hearings System (CHS), it was implemented in 1971 and it is seen as a distinctive approach because of its underpinning philosophy and process which integrates measures to deal with children, whether they are offenders or have been offended against, within the same system, in contrast to most juvenile justice systems in western countries which use formal courts to deal with young offenders (Waterhouse 2007).

The CHS as a subsystem of the youth justice system in Scotland is viewed as a fundamental agency for dealing with children and young people, including young victims and offenders (Johnstone 2010). It is based on a set of tenets and principles which stem from the work of the Kilbrandon Committee in the 1960s, which developed a clear orientation towards the welfare of children, concentrating on their needs rather than their deeds. All children are dealt with by the same process and procedures in the CHS which takes account of their needs, environments and circumstances, and formally eschews punishment, even for offenders (Burman et al. 2006; McAra 2006). The processes of the CHS are carried out without involving the courts except in certain conditions. The development of the CHS with regard to both its principles and implementation is linked to historical factors which can be traced back to the Children Acts 1908 and 1928 and the Children and Young Persons (Scotland) Act 1932.

The CHS is backed up by children and family social workers who work for local authorities and serve particular Children's Panels. It is these social workers who do initial assessments on young people who have broken the law and write social enquiry reports to assist the Panel to arrive at a decision – a disposal – about the young person before them. These statutory social workers also undertake some of the interventions with young people once they are placed under their supervision. Scotland also has a significant number of voluntary organisations which are contracted by local authorities to supervise young offenders. One of these, Includem, will be studied later in this thesis because of the way its social workers are also involved in the continuous assessment of young offenders, as part of ongoing interventions.

The population of Scotland is around 5 million and 19% of this population is made up of young people under the age of 15 years (Burman et al. 2006). With increasing numbers of children in Scotland, the

CHS has faced some challenges. As a result of these challenges and of some internal and external factors, some changes have been made in the CHS.

This chapter presents an overview of how the modern Children's Hearing System came into being, tracing its history and looks at its underlying philosophy, as well as later changes to the system and how the CHS works in practice today.

3.2 The Historical Roots

The basic philosophy of the CHS reflects concerns regarding the implementation of a juvenile justice system which existed in the period prior to the establishment of the CHS (McAra 2006). In other words, the idea of the CHS emerged as the result of a crisis regarding the method of dealing with young people in the legal field, which illustrates how policies in the youth justice field tend to be made as a reaction to problems, rather than proactively. Whyte (2000) indicates that there is a strong relationship between the developments and changes in legislation and systems regarding youth crime and changes in social policy in a society which has a climate of political pressure to find a new effective method for dealing with the current problems of young people.

The origins of the tenets on which the CHS is based can be traced back to a series of reviews and developments of the legal system in the UK for juveniles which took place in 1908 and 1928 (Tisdall & Children in Scotland 1997; Stanley 2001; Scottish Executive 2003; Hothersall 2008). Before this, Mary Carpenter is considered one of the first people to have called for a standard welfare approach to treating young people who had committed an offence during the 19th century when young offenders were treated in the same way as adult offenders. For example, in 1833, nine-year-old Nicholas White faced the death penalty for the theft of items priced two pence (Stanley 2001). Mary Carpenter's views regarding the welfare approach can be seen clearly through her arguments put to a House of Commons committee: *"I have great objection to calling them (children) even semi-criminal because the word has a moral meaning. I consider the condition as that of extreme neglect" ... "we should not sever the family ties of all these young persons, or place the hand of the policeman on so many thousands of the rising generation."*(Stanley, 2001: 93)

The Children Act of 1908 stated that children and youngsters from the age of 7 to 16 years needed to be treated separately and differently from adults (Stanley 2001; Hothersall 2008; Scottish Executive 2003). The 1908 Act established juvenile courts in England and Scotland, and although legally tasked to attend to the law-breaking child's welfare, they retained some punitive measures as disposals. This legislation forbade the jailing of young people under 14 years, while those aged 15 and 16 were sent to prison in cases of an "unruliness certificate" (Stanley 2001). This legislation was the beginning of the development of a distinct approach for dealing with children and young people who had committed

offences, as well as young victims. In other words, it was a springboard for practising “juvenile justice” through the child’s welfare.

In 1928 the Morton Committee was set up to review the juvenile legal system and, as result of the review, a new piece of legislation was recommended to establish special juvenile courts that must be presided over by a Justice of the Peace with special knowledge and experience of children’s problems (Hothersall 2008). This meant that the justice panel who dealt with juvenile cases should take into account that some young people needed care and protection. A Justice of the Peace, in simple terms, is an elected citizen who hears the cases of offences such as theft and assault but is not legally qualified (http://www.jpScotland.org.uk/jabs/CCC_FirstPage.jsp, 2011). Stanley (2001) indicates, “*Perhaps the most important section of the Children and Young Persons Act 1933, which is still with us, is section 44 which states that: “courts should have regard to the welfare of juveniles, whether they are delinquents or in need of care. Every court, in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, should have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings.”* (Stanley 2001:94) According to Hothersall (2008) one of the reasons behind the new legislation was to alleviate children’s feelings of dread and panic that might be caused by the environment of adult courts, and their procedures.

This legislation also covered intervention measures in both cases, whether for a young person involved in offending, or for those in need of care and protection up to the age of 17, such as with fines and custodial measures (Stanley 2001). Following the recommendations, the minimum age of criminal responsibility was raised from 7 to 8 years in the Children and Young Persons (Scotland) Act of 1932 (Stanley 2001; Scottish Executive 2003). By establishing the new system, the Morton Committee focused on integrating the processes of the courts with the welfare and treatment of the children (Tisdall & Children in Scotland 1997). Therefore, specialized juvenile courts were established in Scotland to deal with young offenders from age 8 to 21, which were then eliminated on the recommendation of the Kilbrandon committee (Piacentini 2006).

Thus, it can be seen that in the period prior to the implementation of the Children’s Hearing System there were some changes made to legislation relating to the legal treatment of children. In brief, the fundamental steps viewed as contributing factors to the shaping of the next phase are as follows:

- A call for the implementation of a standard welfare approach by Mary Carpenter in the 19th century.
- Children and young people were dealt with separately from adults (The Children Act, 1908).

- Abolition of the imprisonment of young offenders under the age of 14 years (The Children Act, 1908).
- Special courts for children and young people were established (The Children and Young Person Act, 1932).
- Juvenile courts required to be presided over by a judge with knowledge and experience of children's issues (the Children and Young Persons-(Scotland) - Act, 1932).
- The age of criminal responsibility was raised from 7 to 8 years (the Children and Young Persons-(Scotland)-Act, 1932).
- Regard should be given to welfare principles, whether the cases are delinquents or in need of care (The Children and Young Person Act, 1933)

These views and this legislation might be seen as phases of development in the philosophy of the juvenile justice system which contributed to building the idea and philosophy of the CHS.

In 1946 a welfare view became widespread regarding underprivileged children and young offenders as the outcome of their family and the circumstances surrounding them; then, two years later in 1948, corporal punishment was abolished, as well as the imprisonment of young people under the age of 17 years (Arthur 2010)

3.3 The Starting Point of Establishing the CHS

During the 1950s, the rates of juveniles who offended increased significantly and this came to be considered as a social problem that should be dealt with in an effective manner (Scottish Executive 2003). Doubts began to be expressed about the effectiveness of the juvenile court, and some believed it was not punitive enough, while others opined that its commitment to welfare was still inadequate (Arthur 2010). As a reaction to this problem, the Ingleby Committee was set up for England and Wales, and the Kilbrandon Committee was set up for Scotland. The two committees were appointed to review the legal provisions for dealing with juvenile delinquents and juveniles in need of care and protection (Hothersall 2008).

The main outcomes of the Ingleby Committee were an increase in the age of criminal responsibility from 8 to 10 years, and the decision to keep the juvenile court dealing with juvenile legal problems, although they adopted the view that assumes that young offenders and young victims are the output of family failure (Arthur 2010). Meanwhile, the Kilbrandon Committee recommended a new system to replace the juvenile court, which was named the Children's Hearings System, and the retention of the age of criminal responsibility as 8 years (Whyte 2000b).

It can be argued that this was a crucial point in the separation of child law legislation between Scotland on the one hand, and England and Wales on the other hand. The distinguishing feature of the Scottish

legislation was that the system was developed to concentrate on the needs of children within any given situation (McGhee & Waterhouse 1998).

Whyte (2000) gave an explanation regarding why the Kilbrandon Committee recommended the new system in Scotland instead of a juvenile court, whereas the Ingleby Committee recommended the retention of the juvenile court: the Scottish system at that time lacked the court structure that existed in England, and which allowed work in juvenile courts to proceed in a more orderly way. Although a few specialized courts dealing with young people under 16 did exist in Scotland, the procedures were unclear to the juvenile offender and his or her family (Whyte, 2000). This situation, combined with other factors, was most likely what prompted Scotland to adopt a different system than the one in England and Wales. Thus, the response in Scotland was to replace the existing court system with a new system, rather than reforming the juvenile courts to work more effectively.

3.4 The Philosophy and Innovations of the Kilbrandon Committee

The Kilbrandon Committee was set up in 1961 and was chaired by a senior judge, Lord Kilbrandon. Members of the committee consisted of four Justices of the Peace, four lawyers, a chief constable, a headmaster, a psychiatrist and a probation officer (Scottish Executive 2003; Whyte 2000b). As Whyte (2000) points out, Kilbrandon as chairman gave the committee extra power through his status and experience. The official remit of the committee was *“to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles, and to report* (Batchelor, S and Burman, 2010: 14)

The committee was formed as a reaction to increasing juvenile delinquency and placed the courts' typical methods of dealing with children and young people's problems at its cornerstone (Juetten 2009; McAra 2006). Specifically, the committee found that children were dealt with inconsistently in the different types of courts, and this did not work effectively (Whyte 2000a; Whyte 2000b; Scottish Executive 2003). There were three main issues addressed by the committee: (a) “children in trouble” (b) how the Juvenile Court system was used to treat children and young people involved in offending or in need of care and protection (c) an alternative system.

The first issue, “children in trouble”, involved considering all the reasons for referring children and young people to court, regardless of whether they had committed an offence or had been harmed by their family. Moreover, the committee also considered the cases of children and young people who were out of parental control, lacking parental care or persistently committing truancy (Kilbrandon, Scottish Education Department 1995). The committee deemed that all the grounds for referring children and young people to the courts reflected one underlying similarity, which was a failure in the normal

upbringing process (McDiarmid 2005; McGhee & Waterhouse 1998; Norrie 2005). Thus, the committee viewed child delinquency as resulting from a common factor, that is, personal or environmental difficulties (Batchelor, S and Burman 2010) The committee's philosophy in this regard was that *"the true distinguishing factor, common to all children concerned, is their need for special measures of education and training, the normal up-bringing process having, for whatever reason, fallen short"* (Children in Scotland, 1997 p. 11)

The committee placed young victims and young offenders in the same category, and regarded them as having experienced a similar process of negative socialization. According to Tahourdin (1982), the Kilbrandon Committee focused on the causes of crime when dealing with young offenders, and this led them to produce distinct recommendations.

Arguably, the committee's view of children in trouble relied on the assumption that a child's surrounding environment, such as their family, school or home, has the most powerful influence on their behaviour. Recent research findings tend to support the view that parental supervision, schooling, and lifestyle play a fundamental role in determining a child's behaviour, and that environmental factors can have a crucial influence in protecting children and young people from delinquency (Shader, 2000; Whyte, 2000a). Therefore, the committee concluded that intervention methods would not work effectively if they focused only on young people's actions, especially when they were still in the process of learning and developing.

The previous point leads to the second issue, "how the Juvenile Court system was used to treat children in trouble", which questioned the appropriateness of the court approach when treating children and young people in trouble. According to the Kilbrandon Committee, the existence of this common link between children and young people, whichever category of problem they are placed under, necessitates special intervention that fits the nature of the environmental situation underlying the children's problems (Whyte 2004; Batchelor, S and Burman 2010; McAra 2006). Therefore, because special yet similar treatment was required for both juvenile offenders and children in need of care and protection, it was not advantageous to deal with the legal problems of children through different courts and different processes (Whyte 2000b; B. Whyte 2003; Scottish Executive 2003; Batchelor, S and Burman 2010). The courts were seen as unsuitable places for dealing with problems of this nature, and unable to take into account the best interests of a child because the primary elements for any type of treatment involving education and training required consideration of the family context and ongoing needs of the child (Kilbrandon, Scottish Education Department 1995). Whyte (2000a) clarifies that the court's functions were based on two quite different fundamental roles: the judgment regarding legal facts, and making decisions regarding sentence which do not serve the best interests of the child. Therefore, the committee concluded that avoiding court as much as possible would help children and young people,

and protect them from the rigours of the criminal justice system: this objective was one of the main reasons for changing the policy in 1932 (Whyte 2000b; Hothersall 2008).

The committee's third task was to examine the possibility of a new system within a new legal setting and adopting intervention measures to sit alongside social education (Marshall 2007). The new treatment agency or juvenile panel which it ultimately recommended was to deal with children in trouble by using a new approach, instead of courts, that involved the participation of children, their parents and the community in the decision-making process (Burman et al. 2006; Scottish Executive 2003). This educational approach concentrated on the major influences in the lives of children and young people, their parents, who were also required to be involved in the process of treating the children (Hothersall 2008) Arguably, this educational approach was used as an attempt to repair the process of the children's upbringings and to put them back on track.

Therefore, the effectiveness of the new system relied on the participation of three elements in the process, involving the child, their family and the community to invest in and take advantage of the natural influences within a child's life. This was seen as the most effective way to resolve legal problems involving children, and could result in either compulsory supervision or education in lieu of punishment (Batchelor, S and Burman 2010; Scottish Executive 2003).

However, this does not mean that punishment was excluded under the concept of social education, but rather it was a subject of debate about if and how to implement punishment within the system. Bill Whyte has noted that *"Many proponents of the Scottish system suggest that there is no place for punishment within it. This is to misunderstand the paradigm of social education..... The Kilbrandon Report, however, is clear that punishment might be good treatment...but could only be so (and, therefore, rarely would be so) if imposed for the purpose of helping and effecting positive change in the young person, not as a retributive end in itself"* (Whyte, 2000: 174).

Regarding the age of criminal responsibility, the Kilbrandon Committee decided that this should remain unchanged at 8 years, based on the assumption that children and young people would be referred to court in few cases with special conditions, otherwise the majority of children cases would be treated by the new system - the CHS (Whyte 2000a). Therefore, according to the recommendations of the Kilbrandon Committee, children and young people could only be dealt with by courts in cases when the offence was serious. The grounds for referral of children and young people to the new system (the CHS) were established by the Kilbrandon Committee under four fundamental categories (Hothersall, 2008):

- a) Referral in relation to an offence committed by children or young people.

- b) Referral in relation to children and young people who lacked care and protection.
- c) Referral in relation to truancy.
- d) Referral in relation to children and young people who are out of their parents' control.

3.5 Implementing the Recommendations of Kilbrandon Committee and how it Works in Modern Times

Although the Kilbrandon Committee's proposals regarding new methods for treating children and young people in trouble were criticized as too soft, the White Paper 'Social Work and the Community' adopted the recommendations with the expectation that the process of implementing and organizing work related to the new procedures would fall under the remit of a new Department for Social Work, rather than the Department of Social Education (Batchelor, S and Burman 2010). The recommendations of the Kilbrandon Committee were implemented on 15 April, 1971 under the Social Work (Scotland) Act of 1968, with the introduction of the Children's Hearing System (Scottish Executive, 2003). However, because the Kilbrandon Committee did not clarify how the social education approach should be implemented in practical terms, the White Paper described the relevant methods that would be used to reach that purpose. It specified the possible decisions of the hearing's panel as: discharge, supervision at home or a residential order (Scottish Executive 2003). In the following table the main elements of the CHS will be clarified and also how it works in modern times:

Elements	Details
Main features of CHS	<ul style="list-style-type: none"> - Although the Children's Hearing is part of the Scottish Justice System, it is not like a court in aiming to investigate the facts regarding innocence or guilt, and no punitive sanctions are imposed on children and young people, such as imprisonment, fines or community sentences (Waterhouse & McGhee, 2002; Whyte, 2000b). - The Children's Hearing is a tribunal relying on dialogical rather than accusatory evidence for dealing with young persons and their parents (Waterhouse et al. 2004). It aims to reach decisions by focusing on the needs of young persons and this is implemented through educational methods (Burman et al. 2006; McGhee & Waterhouse 1998) - The hearing is engaged once the legal facts have been understood and accepted by the young person, therefore the hearing's function is to focus on seeking solutions by common agreement and to avoid coercion as much as possible (Waterhouse & McGhee, 2002; Whyte, 2000a).

<p style="text-align: center;">Grounds of Referral</p>	<p>Sources of referring children and young people</p>	<ul style="list-style-type: none"> - A local authority must refer a child to the reporter if they receive information which suggests that compulsory measures of supervision may be necessary if this is substantiated by enquiries into the case. This may be because the child is being neglected or harmed in some way or that the child's actions require to be considered. Reasons could include a child who is stealing, truanting, running away or abusing alcohol or drugs. Although the duty refers to the local authority, in practice most referrals come from social work, in particular, and the education services to a lesser extent. Other departments, such as housing, might also refer but are more likely to do so through social work. - Similarly, if police officers have reasonable cause to believe that compulsory measures of supervision may be required in respect of a child, they have a duty to pass that information on to the reporter. - Anyone can refer a child to the reporter. There is no limitation on who may do so - it may be a medical practitioner, health visitor, neighbour, youth club leader, friend, nursery or children's centre, or even the child or parents themselves. <p>(Scottish Executive, 2003 P. 37)</p>
<p>Grounds for referral are the conditions that should be approved to make a decision regarding whether a child or young person needs compulsory measures of supervision. One of following conditions is enough to justify compulsory measures of supervision:</p> <ul style="list-style-type: none"> - (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care, - (b) a schedule 1 offence has been committed in respect of the child, - (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence, - (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed, - (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that— <ul style="list-style-type: none"> - (i) the child will be abused or harmed, or - (ii) the child's health, safety or development will be seriously adversely affected, - (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse, - (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9), 		

	<ul style="list-style-type: none"> - (h) the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child, - (i) a permanence order is in force in respect of the child and special measures are needed to support the child, - (j) the child has committed an offence, - (k) the child has misused alcohol, - (l) the child has misused a drug (whether or not a controlled drug), - (m) the child’s conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person, - (n) the child is beyond the control of a relevant person, - (o) the child has failed without reasonable excuse to attend regularly at school, - (p) the child— <ul style="list-style-type: none"> - (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a marriage or civil partnership, or - (ii) is, or is likely to become, a member of the same household as such a child. <p>Children’s Hearings (Scotland) Act 2011 section 67</p>
The Reporter	<p>The reporter is the first person that children and young people are referred to. The reporter’s main task at this stage is to make a decision regarding whether the case requires compulsory measures of supervision or not (Waterhouse & McGhee 2002; Juetten 2009). The reporter’s decision relies on his/her investigation of two elements: firstly, whether there is sufficient evidence to support the grounds of referral; secondly, whether compulsory measures of supervision are needed to deal with the child or young person’s needs or behaviour (Waterhouse et al. 2004; McGhee & Waterhouse 2002). The reporter’s decision will be one of the following (Tahourdin 1982; McGhee & Waterhouse 2002):</p> <ol style="list-style-type: none"> 1- No action is required. 2- Decision to refer the case to the local authority for advice and guidance and for a social worker to take part in this task. 3- Decision to refer the case to the Children’s Hearing due to the consideration that the child or young person needs compulsory measures of supervision.
Panel Members	<p>The hearing’s panel are members drawn from a wide range of backgrounds in the local community who can generally relate to children and family life, and have the ability to think logically (Reid & Gillan 2007; Burman et al. 2006). Children’s panel members are trained before becoming involved in the hearings process (Scottish Executive 2003).</p>
The Hearing	<p>Where the grounds for referral are either accepted by the child and his/her relevant persons or established in court, the hearing is engaged to determine the appropriate disposal. In all cases, the</p>

	<p>panel for a panel for the hearing will consist of three mixed (male and female) members, one of whom is appointed chairman (Waterhouse & McGhee 2002). The panel has responsibility for discussing the case with the child and his or her parents to reach a decision regarding compulsory measures and whether supervision is required for the child (McGhee & Waterhouse 2002). A number of people will be in attendance at the hearing including: the reporter, a social worker, anyone who has a duty to attend the hearing, such as a guardian, a legal representative and/or the child’s teacher (Hothersall 2008). The members of the hearing panel are the decision makers, and the reporter is considered a legal adviser regarding the procedures and is responsible for recording the decisions that are made, while the social worker should give the assessment and social background report regarding the child and young person who has been referred to the hearing (Waterhouse & McGhee 2002; Batchelor, S and Burman 2010). In short, the hearing is managed using “dialogical rather than accusatory methods, and seeking solutions by consent rather than compulsion, wherever possible” (Waterhouse, McGhee, & Loucks, 2004 p:167)</p>
Decision	<ul style="list-style-type: none"> - Decisions made should have a welfare orientation and during the hearing there is no place for establishing the facts about whether the child is a victim or an offender (McGhee & Waterhouse, 2002). - The main aim of decisions made by the hearing is to determine whether compulsory measures of supervision are required to treat the case, and if not, the case is discharged (Waterhouse & McGhee, 2002). - Punitive sanctions, such as fines, are not to be implemented (Whyte, 2000). - The criteria the panel rely on to make their decision can be summarised in the following points: (A) cooperation level of parents and children. (B) The current situation; if the case is under a supervision order or not. (C) Balancing the series of intervention to treat children and young people who are referred due to offending or a case of truancy (Waterhouse & McGhee, 2002).
Intervention	<ul style="list-style-type: none"> - Intervention by compulsory measures of supervision usually treats children and young persons’ needs within a family context, and should always serve the best interests of the child or young person (McGhee & Waterhouse, 2002; Whyte, 2000b). - The need for compulsory measures of supervision is determined according to the acuteness of the child or young person’s problem (Scottish Executive 2003). - Supervision orders might be placed on a child or young person at home, they might incorporate a condition of residence placing the child in foster care or residential care or the panel might authorise secure accommodation (McGhee & Waterhouse 2002; Hothersall 2008).
Multi points	<ul style="list-style-type: none"> - In cases of care and protection grounds referrals, the CHS receives children and young people from birth to 15 years, while the offence grounds referrals cover 8 to 16 years. Most children

	<p>and young people who are referred to the hearing are under 16 years and, in some conditions, those up to 17 and a half years can be referred (Waterhouse et al. 2004).</p> <ul style="list-style-type: none"> - Children and young people are referred to a court in one of the following cases: (A) when the child or young person has committed a serious offence, such as murder. (B) When the facts regarding the referral grounds are in dispute. (C) For appeals (Waterhouse & McGhee 2002). - Regarding seeing the CHS as an informal process, Johnstone (2010) describes this view as misleading because, for example, the decisions of the hearing panel are obligatory and must be carried out. There are also formal rules and procedures related to the CHS process. - The role of victims: victims take no part in the hearings process but they have some, albeit very limited, rights within the system as a whole. (See Appendix 4)
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3.6 Reform and Changes in the Children’s Hearing System

It was a matter of national pride for Scotland to implement the CHS to deal with juveniles who had committed offences and children in need of protection, however, in 1995 some changes occurred. After two decades of implementing the CHS, some issues were raised in Scottish society which indicated a need for the system to be reviewed and some aspects of it changed (Whyte, 2003; Whyte, 2007). Before discussing these changes and the challenges that faced the CHS, it is appropriate to examine some views regarding the implementation of the CHS in its early years. There were some concerns expressed regarding issues in the CHS, and these can be summarised from (McAra 2006) in the following points:

- Concern over the decisions made by the panel and whether these would be influenced by social workers, as well as by the panel’s social class. Panel members were largely from wealthy backgrounds, and the concern was that in making their decisions they might not consider the reality of the children’s lives and the circumstances surrounding them.
- This concern might have emerged because the panels did not have the relevant experience to deal with the types of cases that were referred to the hearing. However, panel members are given training for their role in the CHS, though a lack of specialized knowledge and experience might have caused this concern.
- Concern that to regard the committing of an offence by a young person as a sign of need, without taking into account any other concerns, could create the notion that the offence was insignificant or a simple mistake. This notion was seen as a factor leading to net-widening. This assumption was supported by official criminal justice statistics which indicated that, since the CHS had been established, there had been an increase of 34% in the number of children and young people who came to the attention of official agencies because they had committed an offence.

The previous points were not seen as serious problems which deserved major changes to the CHS, whether in its underpinning philosophy or its process. The stability of the CHS which had lasted 25 years was shaken as result of some circumstances and variables which imposed some changes (Burman et al., 2006; McAra, 2006; McDiarmid, 2005; Whyte, 2003), such as the decisions that the hearing panel no longer had to consider only the best interests of the child when the child posed a risk to the public. Other changes included the re-establishing of a youth court, parenting orders, and community reparation (Burman et al., 2006; McAra, 2006; Whyte, 2003; 2007). Community reparation orders were replaced by community payback orders and they can only be imposed by courts not CHS though they can be imposed on those under 18. (Criminal Justice and Licensing-Scotland- Act 2010, s14)

The significant factors and circumstances which led to the changes in the CHS and juvenile justice can be categorised as follows:

- 1- Outsider factors: (A) the shift from a welfare philosophy towards a punitive approach in many western countries. (B) UN Convention on the Rights of the Child and the European Convention on Human Rights.
- 2- Internal factors: (A) Social changes. (B) Political context. (C) Ineffective practices and limited resources.

Outsider factors

1- Shifting from a welfare philosophy towards a punitive approach in some western countries

The effect of globalization means that any society in the world will be influenced by events and changes that occur outside its boundaries, and Scotland is no exception. In many western countries, such as England, the United States, Canada and northern Europe, the methods for treating children and young people who commit an offence have changed to become what is viewed as a punitive approach (Waterhouse 2007; McDiarmid 2005). Exchanging experiences and views between policy makers and decisions makers from different societies to deal with special problems will inevitably affect policy, for example regarding juvenile justice.

2- UN Conventions on the Rights of the Child and the European Convention on Human Rights

In spite of the similarity between the CHS and UNCRC attitudes towards children, the UNCRC expressed the concern that children could be tried in adult courts. It also expressed strong concerns in terms of the low age of criminal responsibility in Scotland (McGhee & Waterhouse 1998)

Regarding the European Convention on Human Rights, some articles led to changes in the CHS in 1995. In accordance with article 6 and the right to a fair trial, the case of the mother of a child who was

subjected to compulsory supervision by the CHS was considered a breach of this article and the European Court of Human Rights reasoned that the CHS's order deprived the child's mother of her right to take part in the decision-making process. (At that time parents did not have the right to see the papers which the panel received before making its decision) (Scottish Executive 2003). Also, this case was regarded as an example of how children's parents could be discouraged from seeking advice about appealing against the panel's decisions which led to parents being given the right, in 1996, to receive copies of the papers that were sent to the panel (Scottish Executive 2003). Moreover, article 6 led to children being given the right, in 2001, to have legal aid or representation at any stage of their hearing (Hothersall 2008).

Internal factors

1- Social changes

Social change had influenced family life and led to an increase in single parents, domestic violence, and drug abuse (McGhee & Waterhouse 1998; Batchelor, S and Burman 2010). Furthermore, the types of problems that were referred to the CHS revealed that incidents of child abuse and child sexual abuse had increased rapidly (Batchelor, S and Burman 2010; Scottish Executive 2003). Moreover, in the late 1990s, reports revealed that offenders aged between 15-17 years often reoffended within a short time, causing the system to be viewed as a failure for this age group (Bill Whyte 2003). Scotland's first minister went so far as to say that the CHS was outdated and unable to deal with young offenders aged 15 to 17 (Whyte 2007), and the increase in anti-social behaviour and persistent offenders created a moral panic which was expressed in the media and published reports (McAra 2006).

2- Political context

McAra (2006) points out that shifting to a more controlled method of dealing with offenders and crimes in Scotland was part of a political agenda to build support following the establishment of the Scottish Parliament. The political view laid emphasis on the concern that the CHS was ineffective in dealing with young offenders (Croall 2006; Piacentini 2006; McAra 2006). Although a research study confirmed that the CHS was not as effective with young offenders as with children referred on care and protection grounds (Hill et al. 2007). White (2007) comments on this point that; *"failing to deal effectively with this age group is not the same as being unable to deal with them effectively and it could be argued that practice and service failings have created a self-fulfilling situation"* p.161.

3- Ineffective practices and limited resources

Reviewing the youth justice system in Scotland showed that there was a resources shortage in the Children's Hearings System which is seen as one of the main factors which led to change (Ennis, 2007; Whyte, 2007). On other hand, the practice quality of panel members was criticised in terms of the training and the knowledge and experience that they have to deal with cases (Laura, 2004; Whyte, 2007).

Arguably, it can be said that there is a correlational relationship between the volume of resources available and the degree of effectiveness of a practice; however, it is not a causal relationship where one causes the other.

Regarding the ineffectiveness of the CHS, Kuenssberg (2007) points out that to obtain clear answers regarding the effective practices of the CHS, evidence should be used to clarify goals. She adds that some obstacles exist which can be summarized as follows:

- Lack of data and paucity of research despite the fact that the CHS was established in 1971.
- The participation of other institutions in the process of assessment and intervention.
- Obscure aims: the CHS aims to treat the behaviour of young people and the circumstances surrounding them also. Moreover, they deal with a variety of cases including young offenders, victims and truants, all with a variety of problems. This diversity of problems makes it difficult to measure the system's effectiveness. Kuenssberg (2007) added: *[There has been] a shift in the balance of the system to an ever increasing percentage of children being referred on care and protection rather than offence grounds. In these circumstances, assessment of the effectiveness of the system becomes more difficult: though it may be possible to evaluate the intervention in terms of reduction of risk to the child, is it fair to attribute success or failure when this will depend on its ability to change the behaviour of the adults over whom the system has no direct control? P: 183*

The discussion above summarises the factors that led to changes occurring in the CHS and youth justice policy in Scotland, such as the shifting from concern about the needs of young offenders to a concentration on the nature of their offence (Whyte, 2003). However, the fundamental philosophy of the CHS that stemmed from the Kilbrandon Committee has not changed (Kuenssberg 2007). Simply put, the change was two-sided: (1) supporting the rights of children who are referred to the CHS (2) altering the method of intervention for young offenders (Piacentini 2006). Important changes in this respect included: introducing a fast track for the Children's Hearing, establishing a youth court, anti-social behaviours orders, parenting orders and community reparation (restorative) (Whyte, 2003). All are regarded as changes which follow a political agenda, rather than the results of research with evidence to justify them (Piacentini 2006)

Whyte (2003) indicates that it is too early to judge whether these new changes will work effectively, although they are seen as a major challenge to Scotland's unique method of treating young offenders. However, according to Johnstone (2010), the close attention paid to the CHS might reflect a welfare approach that tends to focus on hyperbole rather than reality. Juetten (2009) adds in this regard *"The fact that we 'do' youth justice primarily through our unique, largely welfare-based children's hearings*

system, however, should not be cause to believe that we do not have our own 'dirty secrets' in that area. P.180"

Finally, it is important to point out that presenting the Scottish system in this way, through the evolution of the system in relation to the development of its principles, will have an influence on the way of presenting the next chapter on the Saudi juvenile justice system. Relevant aspects will be highlighted throughout it.

Conclusion

In short, the development of the CHS with regard to both its principles and implementation is linked to historical factors which can be traced back to the Acts of 1908, 1928 and 1932. As a result of an increase in juvenile delinquency, along with increasingly negative attitudes towards the process of dealing with the legal problems of children in juvenile courts, the Kilbrandon Committee was established. The Kilbrandon Committee gave significant emphasis to children's needs rather than deeds, and made this a central philosophy of the new system. This philosophy of dealing with the legal problems of children required two orders: firstly, avoiding the more punitive and incarcerative aspects of other jurisdictions; And secondly, concentrating on an educational approach as a treatment method for children. The new system was established to deal with children who need care or protection, as well as dealing with children alleged to have committed offences. The committee found that the cause of both these sets of problems was the same, in that they had experienced failures in their upbringing. Therefore, both groups should be treated by one agency rather than by different courts. In 1971, the Children's Hearings System was established and implemented under the Social Work (Scotland) Act 1968. As a direct result of the recommendations of the Kilbrandon Committee, juvenile courts were replaced with a special panel that is essentially serviced by lay people, comprising persons who have knowledge and experience in dealing with children's problems. Referrals to the CHS are made to a reporter who makes the decision to refer the child or young person to a hearing. The panel has the responsibility to discuss the case with the child and his or her parents to reach a decision regarding compulsory measures and whether supervision is required for the child. In general, the CHS expresses the welfare principle through special processes and intervention with children in trouble, and it is implemented according to the child's individual needs. Since 1995 there have been some changes in the CHS due to new circumstances and challenges faced by Scottish society. Although the changes did not affect the core principles on which the CHS was established, they were seen as a move towards a more punitive philosophy.

Chapter 4 Saudi Juvenile Justice System

4.1 Introduction

The Kingdom of Saudi Arabia has a different legislative system compared to the regimes in other countries that rely on the common law tradition such as in England and Wales or the civil law tradition such as in Germany and France (Peters 2005). The legislative regime in Saudi Arabia differs from those in other countries, due to the fact that it is based on Islamic Sharia which is sourced from the Holy Quran and the Sunnah of Prophet Mohammed. Sunnah means deeds, sayings and approvals of the Prophet Mohammed (Hallaq 2005; Bureau Of Experts at Council of Ministers 2010). However, Islamic Sharia grants the governor and decision-makers the right to legislate laws for some aspects in society; these laws should fit the interests of society in light of the circumstances and variables that regulate the functioning of institutions. Thus, laws are made under the condition that they do not contradict the principles of Islamic Sharia (Oudah 2005; Wiechman et al. 1997).

Article 1 in the Basic Law of the Saudi Government clarifies that “*The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God’s blessings and peace be upon him (PBUH). Its language shall be Arabic and its capital shall be the city of Riyadh* (Bureau Of Experts at Council of Ministers 2010). Therefore, the Saudi government obtains its regimes and laws from Islamic Sharia, and where no religious provision is given the governor and decision-makers are granted the option to legislate laws and regulations, as long as they do not contradict the principles of Sharia. As Denis (2002) and Peters (2005) highlighted, the legal systems and approaches in Saudi Arabia can be considered within the remit of civil law, which tends to be written down, codified and framed as general abstract principles governing judicial applications. This differs from the English common law system, which centres on the court and judge, obtained by applying a pragmatic approach (Cruz 1999).

According to the axis clarified above, the laws and regulations regarding juvenile offenders as well as the juvenile justice system in Saudi Arabia are constructed relying on two sources; (A) Islamic Sharia. (B) The governor and decision-makers or judges are responsible when Islamic Sharia does not provide laws for a specific situation. This chapter clarifies the principal view of Islamic Sharia towards crimes in general, then moves on to discuss the juvenile justice system in Saudi Arabia.

As indicated in the previous chapter, aspects of this chapter are illuminated by the Scottish system. Also, shifts and changes in the Saudi system are linked to underlying general concepts in juvenile justice systems., This is considered as one of the advantages of comparison between the two systems which was discussed in chapter one.

4.2 Islamic Sharia sources and principles

Islamic Sharia has principles and rules for children and young people relating to their need for care and protection (Ali 2007; Abed Al-Jabri 2009; Alsalifaih 1986; Rehman 2007), which fall outside the scope of this chapter, which is concerned with young people who commit offences. Before discussing the principles of Islamic Sharia, some terms commonly used should be defined in order to make this section clearer. The terms are: *Sharia, Quran, Sunnah and Fuqaha*.

Sharia: *the commandments and prohibitions mentioned in the QurAn and Sunnah are not arbitrary or lacking a logical basis; rather, they are judgments based on rationality and wisdom. The Legislator has not specified in an explicit text the rationale or wisdom behind most of the rulings (Abed al-Jabri, 2009: 81). [Sharia?] has also been defined as the path to follow God's Law (according to Muslims). Shar'iah Law is holistic or eclectic in its approach to guide the individual in most daily matters....Shar'iah Law controls, rules and regulates all public and private behaviour. It has regulations for personal hygiene, diet, sexual conduct, and elements of child rearing (Wiechman et al. 1997: 2).*

The Quran, *according to Muslim belief, represents the accumulation of the verses revealed by God to Prophet Muhammad. According to the Islamic faith, every word of the Holy Quran is divine and cannot be challenged. Neither Prophet Muhammad nor any other human being had any influence over the divine book, save for its structuring and the names of the surahs (chapters) (Rehman, 2007: 3).*

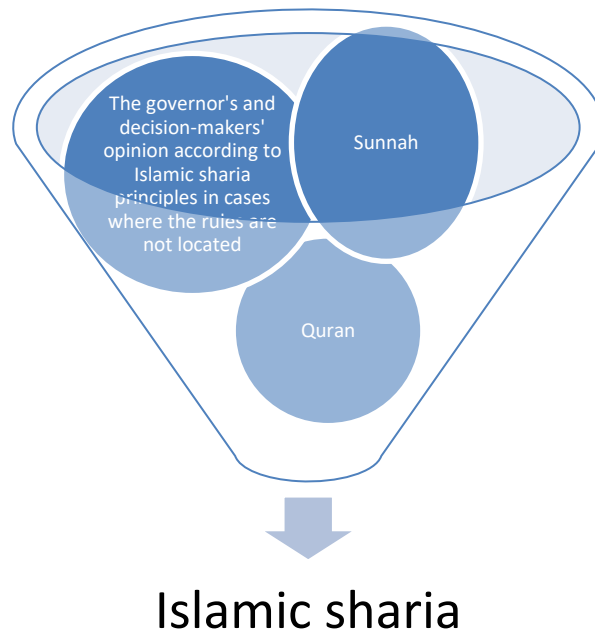
The Sunna *is a composite of the teachings of the Prophet and his works. The Sunna contains stories and anecdotes, called Hadith, to illustrate a concept. The Qur'an may not have all the information about behaviour and human interaction in detail; the Sunna gives more detailed information than the Qur'an (Wiechman et al. 1997: 3).*

It should be considered that the rulings mentioned in the Quran and Sunnah do not cover all incidents and their circumstances in contemporary life in a specific way (Abed Al-Jabri 2009). Therefore, the governor and decision-makers are granted the right by the Holy Quran to establish rational laws to deal with contemporary events and developments, and those laws must not contrast with the principles of Islamic Sharia (Abed Al-Jabri 2009; Oudah 2005).

Fuqaha is a name given to Muslim jurists or scholars of Quran and Sunnah teachings, which are usually supported by the governor and decision-makers when establishing the laws (Abed Al-Jabri 2009).

Simply put Islamic Sharia or Islamic law based on the Quran and Sunnah provides rulings or general principles to organise one's personal life and to organise society. The rules govern marriage law, finance law and punishment of offences when committed by adults. However, there are situations or events for

which the Quran and Sunnah do not provide specific rules, such as young people who commit offences; thus, the governor and decision-makers have the right to establish laws to legislate for this situation and the circumstances surrounding it in light of Islamic Sharia principles.



The principles of Islamic Sharia are based on protecting five components - the five indispensables in Islam. The five indispensables are Religion, Life (human life), Intellect, Offspring and Property. Mohammed Salam (1976) - cited by (Wiechman et al. 1997) - points out that Islam has two approaches to the protection of these five elements: (i) constructing and raising the awareness of people by moral education, focusing on religious consciousness in the human soul; and (ii) implementing punishment as a deterrent, according to the conceptions on which the Islamic criminal system was constructed determined by the governor and decision-maker with reference to contemporary events.

4.3 Criminal Punishment in Islamic Sharia

Due to the fact that the subject of this chapter is associated with offences, it is logical to present criminal punishment in Islamic Sharia and discuss the conditions of its implementation briefly before discussing juvenile justice in Saudi Arabia. According to Oudah (2005) the theory of Islamic Sharia, in terms of punishment relies on the following objectives:

- 1- The protection of society from crimes and aggressions;
- 2- Administration of justice at an individual level to create a peaceful society;
- 3- Preventing repeated committal of offences by warning other members of society.

Although the theory of punishment in Islamic Sharia concentrates on the prevention of crime as well as the personality of the offender, in the case of serious crimes Islamic Sharia emphasises the importance of society's interests, even if the situation requires eradication or exclusion of the offender from society. Awabdeh (2005) clarifies the link between justice and punishment in Islamic Sharia by saying "*justice cannot be achieved without the threat of punishment and its actual implementation. If an offender is left unpunished, it will harm the interests of society and break the divine will. Furthermore, it is an effective deterrent since it helps to prevent further acts of crime in that sense, as people will know the severe consequences of any criminal action. This threat is usually sufficient to deter them from committing an act of crime and therefore it represents once more the will of God (Awabdeh 2005: 23)*"

According to Islamic Sharia crimes can be divided according to the level of criminal damage, the nature of crime (crimes against individuals, crimes against groups and crimes against society) or the offender's intention (deliberate offence or unwitting) (Oudah 2005). Presenting, in detail, crimes according to the level of criminal harm is most appropriate to this part. Crimes can be subdivided into three categories, in terms of their level: (i) Hadd Crimes; (ii) Tazir Crimes; and (iii) Qesas Crimes (Wiechman et al. 1997; Oudah 2005; Peters 2005; Awabdeh 2005).

Hadd Crimes: these indicate to the most serious offences, and demand the imposition of specific penalties; i.e. the death penalty for deliberate murder, the amputation of a limb for theft, and eighty lashes for falsely accusing a married woman of adultery. Under this category the crimes are described as offences against God or against public justice. Moreover, the punishment defined under Hadd cannot be changed, increased or decreased and the role of the judge is to check certain conditions are fulfilled to exclude those offences that do not qualify (Wiechman et al. 1997; Oudah 2005; Awabdeh 2005; Peters 2005).

Tazir Crimes: these indicate the least serious offences, for which the Quran does not specify particular punishments. These also include Hadd crimes that do not meet all the conditions for application of prescribed penalties, such as young people's offences (Wiechman et al. 1997; Oudah 2005; Peters 2005; Awabdeh 2005; Soliman 1986). The punishments in this category are carried out at the discretion of the judge who is free to introduce new punishment models. Mohammed Salam (1976) points out; "*Tazir punishments vary according to the circumstances. They change from time to time and from place to place. They vary according to the gravity of the crime and the extent of the criminal disposition of the criminal himself*" (cited in Wiechman et al. 1997: 4)

Qesas Crimes (Retaliation): Simply put, Qesas means that the victim has the right to demand retribution and retaliation against the offender who committed an offence against him such as a grave wounding or maiming (Wiechman et al. 1997; Oudah 2005; Peters 2005; Awabdeh 2005). Punishments under this category can require that "Diya" (restitution) is paid to the victim or to the victim's family if the case is murder; the victim's family may choose monetary compensation rather than requiring the

implementation of the death penalty against the murderer (Wiechman et al. 1997; Oudah 2005; Peters 2005; Awabdeh 2005). However, a victim's family also has the right to forgive the murderer without seeking Diya (Wiechman et al. 1997; Oudah 2005; Peters 2005) (which happens in Saudi Arabia in many cases).

Implementation of punishments in Islamic Sharia requires a set of general conditions be met for all crimes and specific conditions given (Oudah 2005; Peters 2005). For instance, general conditions such as recognition suggest there is no punishment for an offence that is committed by a minor or an insane person (Peters 2005). Moreover, there are specific conditions to classify each crime; for example, in cases of theft 11 strict conditions and general conditions must be present in full for any case to lead to the amputation of a limb (Oudah 2005). For instance, one of the conditions is surreptitiously taking away, and Peters (2005) clarifies this condition by this example *if someone steals goods from a market stall in broad daylight, the fixed penalty for theft cannot be imposed, because the goods were not stolen surreptitiously* (Peters 2005: 56)

In terms of general conditions, fuqaha points out that there are four pillars for the application of legal punishment: (i) Volition and (ii) Ability, which means the offender had the power to commit the offence; (iii) Comprehension, which means the offender is legally a major and recognises that the act was an offence; and (iv) Deliberate intent, which means the offender committed an offence with intent not by mistake (Oudah 2005; Peters 2005)

Finally, the application of Islamic Sharia in Saudi Arabia can be described as a unique system in the Islamic world due to the application of Islamic Sharia in full (Peters 2005). The application of criminal law in Islamic Sharia in the Saudi Arabian context can be summarised by specific characteristics, which are as follows:

- 1- The system in Saudi Arabia allows the judge to set Tazir punishments, without relying on written codes (Wiechman et al. 1997).
- 2- The Saudi Government does not interfere with the fundamental substance of Islamic Sharia (Peters 2005).
- 3- The Quran, the Sunnah and the consensus of the early generations of jurists are a method that Saudi Judges rely on in order to find the most authentic opinion (Peters 2005).
- 4- Regarding the age of criminal responsibility, the ministry of justice in Saudi Arabia adopts the opinion that it is specified at 18 for general offences, but in the case of *Hadd* and *Qesas* Crimes the age decreases to 16 (Al-Omari 2002; Alhnaki 2006; The Saudi Cabinet 1975).

4.4 Young people and criminal responsibility in Islamic Sharia

Relying on the explanations cited above, criminal liability in Islamic Sharia is based on two fundamental elements: comprehension and volition (Alsalfaih 1986; Soliman 1986). Therefore, the criminal liability of young people differs according to their age. On the basis of disproportion in the comprehension and volition due to age, Islamic Sharia subdivides criminal responsibility into three phases: (i) Phase of a complete lack of comprehension; (ii) Phase of a partial lack of comprehension; and (iii) Phase of full comprehension (Alsalfaih 1986; Soliman 1986; Oudah 2005).

Phase of a complete lack of comprehension: This is from birth to 7 years of age. In this stage a child is considered to not comprehend their actions (Soliman 1986). Therefore, there is no criminal liability and no punishment whatever offences the child commits, whether the crime is by Hadd, Qesas or Tazir (Peters 2005; Oudah 2005). For instance he will not face the death penalty if he commits murder. However, exemption from criminal liability does not exempt him from civil liability. Therefore, he is responsible for his own money (financial responsibility) and must indemnify any damage that he causes to any other person, whether by paying money to that or by applying the best of his ability (Peters 2005).

Phase of low comprehension: This is characterised by weak comprehension, and runs from 7 to maturity (Alsalfaih 1986). Some fuqaha specify maturity as being reached by 15 years, some by 18 years, whereas others contend it is achieved at 19 years (Oudah 2005). In this phase there is no criminal liability and no punishment whatever crime the juvenile commits. He will not face the death penalty if he commits murder and there is no amputation of a limb in the case of theft (Oudah 2005; Peters 2005). On the other hand, this position does not preclude a punitive punishment and financial responsibility, both of which are dependent on the judge's view (Soliman 1986).

Phase of full comprehension: This is maturity; the person is completely responsible for his offences and will be punished by Hadd or Qesas punishments if he has committed one of these offences (Soliman 1986; Oudah 2005). The age of maturity is located by fuqaha as occurring at either 15 or 18 years of age (Oudah 2005).

The Quran and Sunah specify criminal responsibility as attained at puberty by several indicators without giving a specific age; thus, society must decide according to circumstances and variables (Peters 2005; Oudah 2005). Consequently, fuqaha defines the phases of awareness based on age (Peters 2005). This categorisation clarifies the legal situation, and means the judge can understand what conditions were met (Oudah 2005).

It is clear that there is no criminal responsibility for young people in Islamic Sharia, so punishments are purely intended as discipline. Moreover, Islamic Sharia does not specify types of disciplinary

punishments for young people as this is the responsibility of the judge. Oudah (2005) points out that leaving the identification of disciplinary punishments to the judge makes it possible to choose a suitable treatment according to temporal and spatial variables. In this respect, disciplinary punishment for young people is based on the belief that after puberty a youngster is no longer responsible for acts committed before; therefore, this can help him to start a new life (Alsalfaih 1986; Soliman 1986). Islamic Sharia specified that there was no criminal responsibility for young people, even 1400 years ago while western society started to think about it after Jacquerie (Oudah 2005). Therefore, there were no prisons for young people during the period of the Islamic Empire (Alhnaki 2006).

Accordingly, young people are treated in a different way compared to adults in offence cases. This is clearly seen through not imposing Qesas or Hadd on young offenders and adopting a lenient method compared to that applied to adults. These principles, and this orientation, are adopted in a special legal system in Saudi Arabia which has gone through an evolution. This is presented in the next section.

4.5 Juvenile justice system in Saudi Arabia: Historical development

After presenting the principles and concepts which are, in general, essential pillars of the criminal justice system in Saudi Arabia, this section comes to illustrate the stages of development in the juvenile justice system as procedures and practice. Compared to Scotland, development and evolution in the Saudi juvenile system were related to the application of procedures rather than to the development of principles as will be discussed in following points. In this chapter, the researcher attempts to link and classify some shifts and practices in the Saudi system in accordance with the concepts that were presented in chapter two and it was inspired by the way of presenting the development and evolution in the Scottish system.

Since the Kingdom of Saudi Arabia was established in 1932, juvenile care (for juveniles who commit offences or would-be delinquents) has evolved and changed to match the historical context. Care began in 1943 with the establishment of a special section within one of the prisons; the “Juvenile Correctional School” in Mecca (Alhnaki 2006). After this time the first special institution for juveniles in Riyadh, the capital of Saudi Arabia was opened in 1954 and was named the “Institute of Juvenile Correction” (Ministry of Social Affairs 2010). The institute of Juvenile Correction dealt with juveniles who committed offences, juveniles who were beyond the control of their parents and juveniles who were at risk of becoming delinquent due to the dysfunction within their families. According to historical documents, the Institute of Juvenile Correction received 15 juveniles in the year that it was opened (Al-Omari 2002).

Arguably, the developments associated with juvenile care in Saudi Arabia during the period 1943 to 1954 were weak and lacked insight, as they housed together in one institute juvenile offenders with juveniles who were beyond the control of their parents, and those who were at risk of becoming

delinquent. This had a potential for negative consequences, since the institute of juvenile correction was considered residential care for the third category of juvenile, but considered as foster care for the first and second sort. However, at this time the Kingdom of Saudi Arabia was in its infancy. According to Albaz (2000) as cited by Alhnaki (2006) delay in the emergence of institutions in Saudi Arabia reflected the simplicity of Saudi society; as it had formerly experienced only a largely Bedouin way of life, it was yet to encounter the social problems associated with urbanisation. Thus, until the 1960s serious problems did not commonly demand the establishment of institutes to intervene in juvenile problems.

In 1958 the institute of juvenile correction was joined by the general presidency of orphanages, and two years later the orphanages and the institute of juvenile correction were merged under the ministry of labour and social affairs, which was established in 1960. Subsequently, the institute of juvenile correction's name was changed to the Social Reform Institution (Ministry of Social Affairs 2010). In 1964 the ministry of labour and social affairs issued regulations for the Social Reform Institution and assigned its objectives as follows (Alhnaki 2006):

The Social Reform Institution aims to look after juveniles via correction and rehabilitation. The 'juveniles' were referred to the Social Reform Institution according to the following conditions:

1. Young people who have committed an offence;
2. Young people who are beyond the control of their parents;
3. Young people who are homeless; and
4. Young people who are at risk of being delinquent (would-be delinquents) due a dysfunctional family, or because they are abused by their parents.

In the previous phase, during the period 1958 to 1964, the trend in juvenile care development in Saudi Arabia took two different directions; (i) an orientation towards young offenders, and (ii) specialised work. Moving the institute of juvenile correction within the general presidency of orphanages and changing its name to be The Social Reform Institution, after which it came under the ministry of labour and social affairs, might be seen as moving towards a welfare orientation in practice. Moreover, categorising juveniles, whether offenders, those beyond parental control, or youngsters in need of care, under one umbrella embraced a view that supposes that young people, regardless of whether they commit offences, have a common link and should be treated similarly.

In 1972 the ministry of labour and social affairs divided its work with young people into two institutes: (i) surveillance centres\houses of correction (*Dar Al-Mlahzah*); and (ii) social reform institutions (Ministry of Social Affairs 2010). Young people who commit offences are referred to surveillance centres\ houses of correction while social reform institutions receive young people who are at risk of becoming delinquent (Alhnaki 2006). Moreover, in the same year a special institution for females was

established to receive young female offenders (Ministry of Social Affairs 2010). The first surveillance centre\ house of correction was established in Riyadh city in 1979 (Zureikat 2005), after which more centres were established in other cities in Saudi Arabia; in 2005 the number of supervision houses was 14 centres across different cities (Alhnaki 2006).

Although work with juveniles was divided into 2 institutes, to allow intensive and concentrated work on juveniles who have common problems and needs, the name that was given to the institute for juvenile offenders - surveillance centres\ house of correction (*Dar Al-Mlahzah*) - gives the impression that juvenile offenders would be treated with rigour in the new institute. Alhanaky refers to the fact that when surveillance centres\ houses of correction began to receive juvenile offenders in 1972 there were no regulations governing the work inside the surveillance centres, which made them seem similar to detention centres. Arguably, the development of of the approach to juveniles who commit offences in Saudi Arabia in 1972 involved establishing institutions, rather than developing treatment methods. However, these early developments might be seen as a necessary step preceding the advancement of professional work.

In 1975 the Saudi Cabinet issued rules and regulations for surveillance centres\ houses of correction specifying the following (The Saudi Cabinet 1975):

Article 1:

Surveillance centres aim to look after juveniles who are aged not less than 7 years old and not more than 18 years old who fall into one of the following categories:

- Juveniles who are under investigation and trial.
- Juveniles who a judge decided should stay in a surveillance centre.

Article 2:

Surveillance centres provide shelter, food and clothing for juveniles who are referred to them. They also put in place the health and technical conditions necessary to achieve their objectives.

Article 3:

During a juvenile's stay in a surveillance centre, they receive education and training and the types and levels of such programs are determined by the minister of labour and social affairs.

Article 4:

- a. Correctional programs involve social aspects, health care aspects, educational aspects and religious guidance, as well as a case study that is carried out by qualified specialists in each field and instructions specifying the duties of each specialist.
- b. Surveillance centres study the causes of juvenile delinquency and find appropriate treatments in the light of practice.

Article 5:

The minister of labour and social affairs issues instructions that specify necessary procedures to accept juvenile offenders and then to ensure that their stay comes to an end.

Article 6:

- a. There is cooperation between the Ministry of the Interior and the Ministry of Labour and Social Affairs to recruit a number of security personnel whose duties are confined to guarding the entrances to the Surveillance centre and accompanying juvenile offenders during their travels outside the Surveillance centre; they are not allowed to enter the Surveillance centre, exiting only through an official gate.
- b. In no circumstances is it allowed that the security men wear the uniforms outside that they wear when doing their duties in the Surveillance centre.

Article 7:

A juvenile's stay in a Surveillance centre ends according to following conditions:

- a. When the investigation or trial has proved his innocence;
- b. When the juvenile reaches the age of 20; or
- c. In case of amelioration, the juvenile offender and the minister of Labour and the judge agree to end their stay in the Surveillance centre.

Article 8:

The Designation of a director for each Surveillance centre to be responsible for aspects of work and of care in the house of supervision ; he will be assisted by an administrative and technical body.

Article 9:

The selection of monitors and workers in Surveillance centres is performed in accordance with conditions to be agreed between the Ministry of Labour and Social Affairs and the Civil Services.

Article 10:

- a. In all circumstances, the juvenile offender is to be referred to a Surveillance centre immediately, then the competent authority interrogates him inside that Surveillance centre in the presence of specialists.
- b. The trial of a juvenile offender and the implementation of the judge's ruling are performed in a Surveillance centre by agreement and cooperation between the Ministry of Labour and Social Affairs and the competent authorities.

Article 11:

Supply a monthly perquisite for employees in Surveillance centres as determined by the Minister of Labour and Social Affairs which should not exceed 25% of the employee's salary.

Article 12:

The Minister of Labour and Social Affairs issues instructions for implementing those regulations.

From the Saudi Cabinet's issuance of rules and regulations in 1975 for organising work with juvenile offenders, there were no further modifications until 2008, when the Saudi Cabinet issued a decision to raise the age at which juvenile offenders are routinely referred to Surveillance centres, to 12. From then on juveniles under 12 years have only been referred to surveillance centre in cases where they have committed a serious offence such as murder (Bureau Of Experts at Council of Ministers 2010).

4.6 Juvenile Institutions

With regard to the placement of juveniles who commit an offence or who are at risk - placing juvenile offenders in a special institution is a method used to deal with such juveniles in Saudi Arabia. Al-Omari (2002) refers to the fact that although there is agreement between Saudi experts in the social field regarding the multiple therapies that should be used with juvenile offenders, residential institutions are the only places that can be used to conduct this treatment. The reason behind this notion might be related to developments in the techniques and methods used by social institutions when dealing with social problems that are considered weak compared with their position in developed countries.

The institutions that receive juveniles in trouble are dichotomised into two institutions, according to the functions that are used, and the type of juvenile problem. The institutions in which juveniles are placed are as follows (Al-Omari 2002; Alhnaki 2006; Ministry of Social Affairs 2010):

1- Social Reform Institution

They were established in 1954 to receive juveniles who commit an offence or who are at risk of becoming delinquent. They were originally known as juvenile correctional schools, but the name was later modified to the Social Reform Institution after the establishment of the Ministry of Labour and

Social Affairs. There are now 4 Social Reform Institutions: in Riyadh city, Dammam city, Qassim city and Ta'if city. Social reform institutions are confined to receiving juveniles aged between 7 and 12 years, although this can be increased to 14 through a social worker's recommendation. Juveniles are referred to Social reform institution according to the following conditions:

- a. Young people who are beyond the control of their parents;
- b. Young people who are at risk of becoming delinquent (would-be delinquents) due to a dysfunctional family or because they are abused by their parents; and
- c. Young people who are homeless.

2- Surveillance centres\ houses of correction

According to Al-Omari (2002) the reason behind establishing special surveillance centres for juvenile offenders, instead of housing them with other juvenile problem categories, was the increasing number of juveniles committing offences and requiring treatment. Consequently, the first surveillance centre was established in 1979 in Riyadh city. Surveillance centres are specialised to receive juveniles who commit offences or who reoffend. The main functions of surveillance centres are as follows:

- a. Looking after juvenile offenders who are aged not less than 7 years and not more than 18 years who are under investigation and trial, or in cases where the judge has decided that the juvenile should stay in a probation home.
- b. Assessing the juvenile offender's case and clarifying the factors that have led to delinquency.
- c. Designing and applying correctional programs for referred juveniles.
- d. Surveillance centres involve a special section for investigation by the authorities, and these investigations require the presence of a social worker with the young offender. Also, the investigation should be carried out in an ambience in which tranquillity and psychological comfort predominate.
- e. The trial of the juvenile is carried out in the surveillance centre and a special report associated with the juvenile's case is given to judge detailing the social circumstances that might have contributed to the juvenile's delinquency as well as a treatment plan.
- f. The surveillance centre conducts a study of the causes of juvenile delinquency and the finding of appropriate treatments in the light of practice.

The latest statistics regarding the cases referred to houses of correction are as follow (The Ministry of Social Affairs, 2013):

<i>Year</i>	<i>Gender</i>	<i>The total number of Juvenile offenders referred to a house of supervision in Saudi Cities</i>
2010- 2011	Male	11676
	Female	1222
2011-2012	Male	11876
	Female	1521

Moreover figures collected show that:

- 1- Surveillance centres\ houses of correction in Riyadh city receive the largest number of Juveniles committing offences: Males (3072 cases 26%) females (988 cases 65%)
- 2- Most of the male juveniles who are referred to houses of correction fall into the age category 12 - 14 years old, while the minority fall into the age category between 15 - 18 years old. On the other hand, most females who were referred fall into the age category 21-25 years old while the minority fall into the age category of less than 15 years old.
- 3- The majority of male juveniles were referred to a house of correction because of committing a theft, while the minority of them were referred because of traffic violations or knife assault offences. On the other hand, the majority of female juveniles were referred because of committing sexual offences, while the minority of them were referred because of a theft offence.

Point number two indicates that, in 2011-2012, the peak age of male juveniles who were referred to houses of correction was 12-14 years and it drops off from 15-18 . Although this statistic only presents the cases of juvenile offenders in Saudi Arabia, during a specific period, linking this statistic to the age-crime curve, “which is usually generated by plotting the total number of arrests of individuals in any jurisdiction by the ages of those arrested” (Weaver, McNeill, 2007 p2) can yield some interesting results. It shows that the majority of males in Saudi Arabia begin offending and peak in the early teenage years and that rates of offending lowers from the ages group 15-18 years old.

It is interesting to note that this situation is contrary to what some research indicates in terms of the Age-Crime Curve as it appears in western countries. Scottish research on this suggests

that the age-crime curve tends to peak in the mid to late teenage years (McVie, 2005; McNeill, 2007). Research conducted on juvenile offenders in houses of correction in Saudi Arabia (Alhnaki 2006; Al-Omari 2002) indicated that the high rate of juvenile offenders in the early teenage period can be explained and linked to several factors = most notably that it is the beginning of a stage at which the juvenile begins to go out with their friends for long periods of times. Research found that friends had a strong influence on juveniles who commit offences in this age bracket. On other hand, the reduction in crime rates in the age bracket 15 to 18 can be linked to social and cultural factors; for example, in this age bracket families in Saudi Arabia start to give their sons some tasks and responsibilities within the family (Alseif 2010). However, giving a clear picture of the age-crime curve in Saudi Arabia requires statistics and data from official sources that cover all ages, which is currently not available.

4.7 Summary and Points Arising

According to what has been presented in the previous section, it can be said that the rules and regulations that are issued and applied in the Saudi system might reflect reliance on mixed models of juvenile justice. The language and terms used, and the rules and regulations, tend to be an expression of social rehabilitation, deterrence, education and society's protection. However, the combination of principles establishing different approaches within the juvenile justice system might prove difficult to implement, due to the broader concepts involved for each one, as well as the contradictions in their principles in terms of the efficiency of methods to reduce crimes and treat young offenders. Alder (1985 cited in Whyte, 2009) points out *"it is perhaps misguided to try to attempt to squeeze the facts of childhood into a unified theory of justice. Any system dealing with young people who offend needs to be sufficiently flexible to accommodate conflicting theories to achieve justice for children, instead of denying the conflicts of childhood to achieve a coherent philosophy. (Whyte, 2009: 2)*

Moreover, the development of the justice system in Saudi Arabia concentrates on organising work with young offenders through institutions, rather than establishing principles underpinning the treatment of juveniles. The reason behind this focus might be attributable to Saudi Arabia's adoption of Islamic Sharia, which established fundamental principles in this regard 1434 years ago. The modern developments in Saudi Arabia can be divided into 4 phases, each with a distinguishing feature, as follows:

- The initial Development: This took place in 1948 through the establishment of a special section for juvenile offenders in prisons, which was named "Juvenile Correctional School". After this a special Institution was established in 1954 named the "Institute of juvenile correction," to receive juvenile offenders instead of the "Juvenile Correctional School".

- The implementation of Welfare principles: This phase began in 1958 when the institute of juvenile correction was joined to the general presidency of orphanages and changed its name to the Social Reform Institution, where it came under the umbrella of the labour and social affairs ministry. Those changes placed juveniles, whether they were offenders, outside of their parents' control or in need of care, in the same position, treating them in one institution which concentrated on welfare principles.
- Approach choosing: This phase started in 1972 when the ministry of labour and social affairs established the special institutions named surveillance centres\ houses of correction (*Dar Al-Mlahzah*) to receive, for treatment, those juveniles who committed offences and The Saudi Cabinet issued rules and regulations in 1975. Rehabilitation and reform programs were to be provided based on aspects such as religious instruction, social reorientation, education and training. Since then, there has been no change in the rules and regulations, except for raising the age at which juvenile offenders are referred to surveillance centres\ houses of correction from 7 to 12 years old.

Finally, it is necessary to point out that this chapter gave an orientation in, and outline of, the Saudi juvenile system. Certain aspects of process and procedures in relation to assessment and to the decisions of the juvenile judge were not covered due to unavailability of sources. These gaps were filled through the empirical study.

Conclusion

The juvenile justice system in Saudi Arabia had undergone development in its practice and procedures, rather than in the principles underpinning the system. The principles of Islamic Sharia that underpin the Saudi system confirm that young people bear no criminal responsibility, which makes them exempt from the penalties prescribed in Islamic Sharia, whether Hadd sanctions or Qesas\retribution. In this context, juveniles who commit offences are treated under guidelines covering Tazir offences, which require the state and judges to locate and determine the type of sanction imposed and any method of treatment. Based on this the juvenile system in Saudi Arabia has developed in three aspects: 1) organisation of the work and procedures within the system; 2) establishing Institutes to treat juveniles who commit offences; and 3) quality of work within the institutions and rehabilitation programs. The developments within the Saudi system as stages proceeded from a lack of specialised knowledge, and involved establishing the regulations and rules that organised the work in this regard and the measures used with young people who commit offences. Juvenile courts and houses of correction are the main pillars of the system. The principal interventions and measures related to male offenders under 18 years of age and females under 30 years of age, who are placed in surveillance centres, to receive rehabilitation programs based on religious instruction, social reorientation, education and training.

Having described the systems of juvenile justice in Scotland and Saudi Arabia, the next section sheds light on how the main ideas and the content of the previous chapters have had an influence on the design of the empirical research project. That explanation will be followed by a chapter focussing more specifically on the practice of assessment. Assessment practice in the juvenile justice system context expresses the values and ideologies of the systems within which it is used.

4.8 Implications of the ideas and content considered of Chapters 2-4 for the design of the empirical study.

Although links and clarifications have been added into each chapter to highlight the relationships between them, it is also important to highlight directly their influence on the design of this research. According to what has been presented in the previous four chapters, the main axes can be summarized according to their relationship to the study design and method that has been applied, and according to the way in which the application of the analysis and discussion led to achieving the research objectives. Those chapters and what is discussed in the following chapter (chapter five) are considered as the preamble to the empirical study in this research which provided the concepts to be used to examine the Saudi System in comparison to the Scottish System.

First of all, it should be noted that this research mainly targets the Saudi system, and it is intended for decision makers in the Juvenile Justice System, and for practitioners and researchers in the academic field. The first chapter presented the research problem, the research questions and the thesis's objectives. In this chapter the researcher highlighted the gap related to not having, from the beginning when juvenile offenders are referred to the juvenile justice system or assessment process, written procedures for juveniles in the Saudi system. Moreover, due to an overall dearth of research, there were no studies or concepts available through which to examine the Saudi case which could clarify the trend or the shape of the Saudi system. Due to this gap and to meet the research objectives, the researcher used the Comparative Approach, using the juvenile justice system in Scotland as the comparator, and the Qualitative Method as a suitable approach and method to study the case of the Saudi System. Justifications and discussion in this regard are presented in detail in chapter six (as well as being discussed briefly in chapter one).

,The research objectives specified in chapter one became the cornerstones of the thesis and these therefore had an influence on subsequent chapters in two particular respects: (1) in relation to the subject matter and content of each chapter; and (2) in relation to the way in which research findings were handled.

Clearly, on the first point (subject matter and concepts), the research objectives were applied to locate the areas around which to gather literature which then led to creation of a conceptual framework. In particular, chapter 2 (Juvenile Justice System Philosophy) and chapter 5 (Assessment of Young

Offenders) set out concepts, approaches, methods and models which are used to examine the research findings while chapters 3 and 4 provide an introduction to each country's system so that the findings can be understood in the context of each system. Moreover, as indicated in the Saudi system chapter, the presentation of its contents had been influenced by the examination of the literature on the Scottish system. Thus, particular philosophical approaches are used to describe the historical development of the Saudi juvenile system and an attempt was made to collect literature through the (limited) available sources to correspond with the sections and contents in the Scottish system chapter as much as possible. Nonetheless, as indicated in chapter one, the researcher makes these claims regarding the use of comparison through studying and tracking the processes, procedures and the approaches of one country, with the caveat that, without also looking at the processes and procedures in the other country (that has applied different methods and approaches to deal with juvenile offenders), the researcher may be led to be unable to effectively observe those processes and procedures (in his own country system) or his research may be led in a direction that shields him from identifying significant information crucial to improving the system of his home country. The researcher seeks throughout to guard against this,

On the second point arising from the research objectives - handling the research findings - the thesis identifies two axes (1) towards research methods; and (2) towards presenting and analysing the research findings. On the first axis (research methods): according to the research objectives, a qualitative method is considered the most appropriate and efficient method for this research. This is because, as Creswell (2007) and Woods (2006) indicate, this method predominantly focuses on natural settings, emphasising process, meanings, perspectives and understanding which are required to handle the Saudi system case to answer the research questions. Moreover, using this method, data is gathered by focusing on a much smaller sample, compared with a quantitative method. Therefore, it can be said there are several features of the qualitative method which make it the most appropriate and efficient method for this research; first, it will reveal what juvenile justice system procedures are used as well as how the the assessment of young offenders is applied, and how it influences the decision of judges and CHPs. It will also identify the other more influential variables and how they are explained and interpreted by participants in each country. Second, the research was drawn on semi-structured interviews with 24 practitioners; for Saudi Arabia this was made up of four juvenile judges and five social workers; for Scotland, five CHPs, five state social workers and five Includem workers, as they represent the voluntary or independent sector. The details of the qualitative method used in this research are discussed in Chapter 5. In brief, by using semi-structured interviews, the researcher is was able to collect rich data regarding the procedures and processes involved in assessments and in judges' decisions in Saudi Arabia, which highlighted many aspects of the system that needed to be identified and discussed in an inductive way.

Application of insights from this second axis also indicated the importance of adding Includem workers into the research sample. This was one of the consequences of the discussion in previous chapters, specifically from chapter 3. This group was added in order to establish how the joint institutional

approach works in Scotland in terms of assessment. In Scotland there are two trends in the assessment of young offenders: first, an assessment to produce a report that will be sent to the judge and CHP; second, an assessment for an intervention to deal with the offender's case. With regard to the assessment of young offenders in Saudi Arabia, the decision as to whether to produce a report for the judge, or to recommend an intervention, is limited to the social worker within the house of correction. On the other hand, in Scotland, the assessment to produce a report for a CHP is the task of the state social worker, and an institute in the private sector can conduct the assessment to determine how best to manage the intervention. Although the research questions examine assessment in regard to social worker reports that inform decisions, an examination of the Scottish approach in terms of its joint institutional work, compared with the Saudi approach, which is limited to one institution, will facilitate a better understanding of each country's approach.

Finally, under this axis (axis towards research methods), the interview questions were one of the aspects that were built according to the previous chapters and the next chapter. All interview questions were gathered and designed according to the central research question and its objectives. The Interview questions for judges and Children's Panel members were divided into three sections addressing concepts presented in chapter two such as the age of criminal responsibility, restorative justice and international conventions in order to reveal any consideration of these aspects in a particular way in terms of their influence on the process of making a decision including on the role of the social worker report in this process. The second interview schedule (for social workers) was built by drawing together different concepts and indicators which are to be presented and discussed in chapter five. Thus, the interviews gave the researcher the opportunity to examine these issues with those with whom they interact. Moreover, there are issues raised in the Saudi system chapter that are taken into account in the questions to be asked of the Saudi participants in terms of the meaning of these issues in the view of these respondents and how some of these matters are implemented. These include discipline and deterrence and treating young female offenders as juveniles until they reach the age of 30.

The second axis (towards presenting and analysing the research findings) is handled in chapters 7 and 8 according to two aspects: (1) how the research data is organized and presented; and (2) how the research data can be examined to answer the central research question and to achieve the research objectives. Therefore, the researcher set a framework according to a range of considerations which can be clarified and explained as follows:

- Due to the considerations related to the Saudi system case which led to building the central research question and the research objectives, the researcher applied and focussed on three processes through the qualitative method adopted in the research: 1. Process of exploring key issues related to the Saudi system case, 2. Process of making sense of those aspects in terms of their meaning, 3. Process of analysis of the data obtained.

- The main focus of the exploration process is the Saudi system case and this aspect of the research is centred on three main aspects which are reflected in the research questions and objectives: (1) system procedures and assessment process, (2) Social Workers' Reports and (3) Making (particularly Sentencing) Decisions.
- The second process - of making sense of those three points identified above in terms of their meaning - is then applied to understanding this meaning and related concepts to the point of view of Saudi participants on key, culturally specific issues, such as female treatment and discipline and deterrence etc.
- The third process examines those three aspects identified above through the concepts that presented in the research literature discussed primarily in chapter two and chapter four. After this process, as a final step, the researcher attempted to categorise practice in the Saudi system and to examine to what extent it is widely divergent from concepts in western criminology as it relates to juveniles. As indicated in chapter one, the comparison with Scotland played the main role in terms of guiding the research and also as to what is presented in the methodology chapter. Throughout, the researcher applied a "focussed comparison" approach.

According to the above points, chapter Seven was placed to be an operations area for the first two processes which means chapter seven tends slightly to be descriptive. The first two processes are used in chapter 7 to explore the procedures and process and to build their meaning in their context as an insider view. However, there are aspects of examining issues to give more clarification or which will constitute a point that it is referred to in chapter eight for more discussion. On the other hand, chapter eight was placed to be an operations area for the third process for examining the main issues with more in depth discussion .

Using this qualitative method, and through those processes which have been applied in the two chapters, the researcher considered the first two processes as constituting a complex puzzle regarding the Saudi system case where many pieces are put together to build or create a picture, while the third process comes to locate the parameters and content based on the concepts that presented in the research literature.

The influence of the previous chapters can be linked to the content of chapters seven and eight, and the main aspects can be summarized as follows. Firstly, seven themes were drawn from the research findings. These were based on the three main issues of arising from the research question and the research objectives: (1) Decision-Making (Sentencing and Disposal), (2) Social Workers' Reports and (3) Assessment process. Therefore, chapter 7 is structured according to the seven general themes, while

chapter 8 is structured according to the three main issues arising from the research question and the research objectives. The thesis moves from a wide view in chapter 7 to a narrower scope, focusing on the main issues of the research question, in chapter 8. Moreover, the research objectives required that the data derived from the semi-structured interviews would have a descriptive character in relation to those themes since the Saudi system case needs to be explored before proceeding to analysis. As indicated in chapter one the Saudi system case is the main focus and the main aim here is to get a better understanding of the Saudi approach. Therefore, the first stage is presenting the findings before moving to examine these findings through the lens of the concepts that were presented in chapters 2 and 5. Accordingly chapter 7 presents the Scottish system case and the Saudi system case separately, examining and discussing the key aspects and linking these, as appropriate, to other relevant chapters. By contrast, chapter 8 offers a deeper and more focused analysis and discussion of the findings, related to the main issues of the central research question.

Secondly, the concepts in chapter 2 are used broadly to examine the findings in chapter 7, while the concepts in chapter 5 are used to examine key aspects in chapter 8. Some issues clearly cross over. Thus, the discussion in chapter 7 is also influenced by the various philosophical approaches to juvenile justice, while chapter 8 is illuminated by issues arising from the earlier discussion on the Assessment of Young Offenders. Finally, at the end of chapter 8, an attempt is made to link together the findings in both chapters and to present these coherently.

In conclusion, by considering the previous points described above, the researcher, in the present study, will have made a comparison between juvenile justice systems primarily for the purpose of understanding the practice in Saudi Arabia by identifying and measuring concepts through a comparison with Scotland. The comparison looks at: first, the process and procedures of each system; second, the assessment of young offenders; and, finally, the decisions of children's panels and juvenile judges in the cases of young persons who have committed offences. Following the previous approach, it is hoped to provide better understanding of the Saudi system case and to open the doors to improve aspects of the Saudi juvenile justice system with respect to young people's interests.

Chapter 5 Assessment of Young Offenders

5.1 Introduction

Social work practice is carried out through a set of stages which can be constrained or monopolised by the following processes: assessment, intervention, review, ending and evaluation (Wilson et al. 2008). The assessment process is the fulcrum in achieving success and efficacy for the rest of the processes which follow it. McDonald (1999), as cited by Parker (2008), described it as the cornerstone for effective social work practice. Through the assessment process the practitioner is able to understand the problematic situation and its causative factors; as well as identifying the consequences which resulted from the permanence of the problematic situation.

The assessment process involves a series of steps and stages and the method of implementation may differ from field to field. These variations in assessment implementation are due to the objective of the assessment process in each field, and its focal point which is reflected in the approach and steps of the assessment process. For instance, the assessment process in the youth justice field is different from that in the community care field. In youth justice assessment there is greater emphasis on the risk and needs factors to identify the probability of recidivism; whilst the assessment for children in need and their family focuses on the risk which is strongly associated with surrounding circumstances and the level of risk in cases where intervention has been late. According to Cournoyer (1996); *“social workers who practice from an ecological perspective conduct assessments that are considerably different from those who adopt a task-centered approach”* (Cournoyer 1996: 215).

Moreover, some of the terms that involve the assessment process have different meanings in each field although they are similar words such as needs. In community services, needs can reflect the level of need for services in the community or the demand of individuals regarding what they need (Axford 2008). In the youth justice field however the needs concept means the criminogenic needs which reflect the changeable risk factors behind committing an offence by a young offender (Fitzgibbon 2007). Thus, the frameworks and tools in the assessment process may be significantly different in each field of social work.

On the other hand, one of the factors that influences assessment in terms of its form, content and its process regardless of the field which it is practised in, is whether social work is considered as art or as science. Parker and Bradley (2003) stated:

“If assessment is an art it cannot be limited by definitions, structured questionnaires, and checklists or even fully described, rather it would rely on the wisdom and skill of the assessor as refined through experience. This may leave people open to the whims of individual social workers and their particular views and beliefs. It would not provide a systematic approach or one service users could expect to

receive regardless of practitioner, team or region. If, on the other hand, it is a science, then assessments should be open to precise measurement and be practiced effectively by following steps outlined in a technical manual of social work”(Parker & Bradley 2003: 4). This point touches significantly on the research findings regarding assessment practice in both countries, in different aspects, which are presented and discussed in chapters 7 and 8.

Last and not least, this chapter comes to set the main concepts that will be used to examine the practice of assessment in both countries. It also puts in place the fourth cornerstone (related to assessment of young offenders) of the framework for answering the research question; whereas chapter two presents the philosophy of juvenile justice system, and chapters three and four present the juvenile justice systems in Saudi Arabia and Scotland. The first part of this chapter discusses the assessment process in general, the definition, stages and models; whilst the second part discusses the assessment process in the juvenile justice field. Giving a section to discuss assessment in general is due to the need to cover the aspects related to practice which may not be covered if this chapter only deals with assessment within juvenile justice systems. Moreover, it can be important for the Saudi reader and researcher in the academic field to read these concepts to help them to have a clear understanding of the way in which assessment practices are interconnected. Also, this chapter contains a brief presentation of some of the concepts related to the development of children which have an indirect relation to assessment and to the decision in the case.

5.2 Assessment in General

5.2.1 Assessment Definition

Throughout the social work literature related to assessment, several definitions have been offered which clarify the meaning of assessment in the social work practice and assessment contexts. Since there is no unanimous specific definition for assessment, the variety of definitions can be viewed as efforts to accommodate the expansion of the assessment concept and the variety of its stages (Milner & O'Byrne 2009). For instance:

Coulshed and Orme (2006), as cited by Milner & O'Byrne (2009), have defined assessment as a continuing process where service users have to be understood within the context of their own particular environments. With reliance on the Coulshed and Orm definition, assessment is a continuing process to enable the service user to gain a better understanding of the circumstances surrounding them. Thus, the plan of intervention might be changed as result of reassessment during the period of intervention.

Conversely, Parker and Bradley (2003) have defined assessment as a process involving the gathering of information related to the service user and combining it for analysis which will lead to identification of needs (cited in Wilson et al. 2008, p.271).

The last definition concentrates on the sifting and analysis of gathered information from the service user relating to the problematic situation in order to recognize the factors behind it. The first definition concentrates on assessment as a continuing process used in any stage of intervention to understand the circumstances before and after assessing the case which will make intervention more effective. However, though assessment is effective as an on-going process, Watson & West (2006) indicated assessment as a one-off event is commonly practised amongst the workers due to on-going assessment requiring huge effort such as good skills of evaluations, criticism, understanding new variables in the life of service users and knowing the type and amount of interventional influence.

In the above mentioned sense, it can be said that considering assessment as a continuing process or as a static one-off event depends on the purpose of using assessment, which can affect both the process of assessment and the main focuses of the exercise. In this regard and in the juvenile justice system context, assessment is used to produce a report for a court or hearing which can be understood as a static one-off event. This type is mainly focused on gathering certain types of information, which will only be used to make a decision by either the social worker or judge dealing with the juvenile offender's case. Therefore, the types of assessment that are examined in this context can be categorised as static one-off events according to the characters of each one. However, the findings in this research show that this type of assessment can be used as source to produce another assessment to put forward a future plan for intervention. Moreover, the relationship between the social worker and the juvenile offender (as the main aspect in assessment as a continuing process) can be the main element by which to get important

and influential information rather than to be an influential factor in the success of the intervention. The previous point can be clarified by linking it to one of the research findings; it shows that Saudi judges and social workers consider the relationship with the juvenile as one of the main elements to gain influential information while in the Scottish system the second aspect regarding assessment can be used as a source to produce another assessment within a continuing process. In the Scottish system, some young offenders are referred to Includem. In these cases the young offenders are firstly assessed by Includem, to find out whether their case fits the Includem criteria and will be handled and considered by them or if it will be rejected and returned to the state social worker. Further, state social workers assess the young offender to write a report for CHP. On the other hand, assessment, when used to plan an intervention or to specify a particular type of intervention, follows different processes when done by Includem as opposed to by state social workers. For instance, once Includem accepts a case, Includem conducts a new assessment for intervention. Then their assessment begins, which may last for a period of six to eight weeks as they move through an intervention plan. During the first period spent dealing with the juvenile, Includem focuses on building a relationship and establishing trust with the young person, which is considered the main factor for a successful intervention. Therefore, it can be said that assessment can be seen as a static one-off event when it is used to take decisions and in the process will give high priority to gathering information and focusing on specific information. On the other hand, assessment can also be seen as a continuing process. This is primarily when it is used for intervention in the mid- or long-term. In these cases it is the relationship with the client that becomes one of the main elements as it is a way to gather information. Finally the findings in chapters 7 and 8 will show how this type of assessment is used in practice and to what extent it can be differentiated from assessment as a continuing process in both countries.

From the other point of view, in terms of assessment definition, Taylor & Devine (1993) defined assessment in relation to 3 sections according to:

(a) The agency perspective;

(b) The client view

(c) The function of assessment.

- The agency perspective: assessment is a facilitative tool to make decisions for service users.
- The client view: assessment is a discussion with a helper relating to the circumstances which surround them to determine the factors which may be implicated in the causation of their problematic situation.
- The function of assessment: assessment is a vehicle to put forward a future plan for intervention and to specify a type of intervention.

Taylor & Devine's definition through its first section sheds light on the influence of the agency perspective on the assessment process and how it is used which can be seen in aspects of this concept and its effect on assessment practice in the juvenile justice system. It is used mainly as a facilitative tool to make decisions regarding juvenile offenders in some aspects. Therefore, the findings in this research explore how this type of assessment is used in Saudi Arabia and Scotland according to each country's perspective.

Finally Watson & West (2006) and Fitzgibbon (2007) interpret the variety of views regarding assessment due to changes in its objectives and functions. These commentators state that current practice reflects the shift from "needs to risk" from "traditional case work" to "risk assessment". As a result of these changes, assessment became significantly focused on "one aspect of risk" "Negative rather than Positive" with a further focus on the prediction of risk rather than building the relationship between service users and the practitioner (Fitzgibbon 2007; Watson & West 2006) . In social welfare system, risk can be related to: (a) Risk from specific people towards the service user. For instance, a risk from parents towards their child through the act of abuse. (b) Risk from a service user towards specific groups of people, such as young offenders. (c) Personal risk from a service user. For instance, through the act of suicide (Parsloe 1999)

By the end of this section, it can be said that the wide variety of definitions presented previously reflects that each author concentrates on a primary point or emphasis associated with specific stages. This situation, which forms a practitioner's view, may create a kind of dispersion for practitioners although, on the other hand this can be seen as beneficial to enhance knowledge in the academic field. Therefore, to avoid having confusion because of the variety of definitions, the researcher suggests that the definitions that focus on the practice, such as Parker and Bradley's, are more proper. . Social work as a profession needs its concepts to be defined through its practice rather than to be defined according to a philosophical view. The researcher believes that practitioners need simplified concepts which will affect their practices positively. By the researcher's definition; assessment is a fundamental process which a practitioner cannot overlook when moving toward intervention without having previously acquired a thorough understanding of the problematic situation, by identifying the causative factors which are associated with the service user's personality and the circumstances surrounding them. This requires relevant data collection, analysis and then construction of an intervention plan. Finally, before moving to the next section, in the researcher's view, focusing on processes and procedures as definitions will not contradict the trend of assessment as an art or science or considering assessment as continuing or static. The trend or method will shape the process or procedures but will not exclude the main pillars of process and procedures.

5.2.2 Assessment Stages

The assessment process involves a set of stages which aim to identify the personal and environmental factors that contribute to the problematic situation. In this process efficient intervention relies on how the assessment is facilitated throughout its different stages. Consequently, O'Connor (2006) described assessment and intervention as two sides of a coin. The stages of assessment can be clarified conceptually as separate stages in spite of the gradation between them in practical terms (Watson & West 2006). The stages of assessment can be summarised as follows:

Preparing for the case:

During this stage, the social worker begins to build their own views regarding the case of a service user and his/her problematic situation by reviewing the agency case file which includes the reasons for the referral, before the commencement of a meeting (Watson & West 2006). As a result the information which will be needed and the sources that can provide such information will be located (O'Connor et al. 2006). The first stage in the assessment process will therefore be to locate the amount of information that is needed and the scope and limits of the task (Watson & West 2006; Whyte 2009a).

Gathering information: At this stage the social worker collects data associated with the problematic situation linked to the service user's personality and the environment surrounding them. The information is gathered from a variety of sources such as family, friends, neighbours and community agencies (Watson & West 2006). During the information gathering stage a relationship (partnership) begins to develop between the practitioner and the service user which can effectively play a fundamental role in obtaining correct and important information; as well as facilitating service users to become more positive towards future intervention.

Analysis and sifting of gathered information: This stage involves the analysis and interpretation of the collected data according to relevant knowledge such as theories and research findings and their own approach (Whyte 2009a; Watson & West 2006; Parker 2008).

Establishing a plan for intervention: the final stage in the assessment process is the drawing up of the intervention plan which will target the main factors that contribute to the creation of the problematic situation (Whyte 2009a; Watson & West 2006; Parker 2008).

Through the different assessment stages there are certain implementations such as a checklist, formal tools and a framework which may be used to reach a specific purpose according to the field whether child protection, community services or youth justice. A brief clarification will thus be provided.

- **Checklist:** a list of elements (queries or variables) associated with specific areas relating to the service user's personality and their personal environment is used for diagnosis or evaluation. The practitioner does not need an advanced degree for using them although they may require some additional training with regards to their administration and scoring (Hoge 1992). Examples of this type are: 'The Child Behaviour Checklist (Lowe 1998; Hoge 1992) and 'The Functional Behaviour Assessment Checklist (McIntosh et al. 2008).

- **Frameworks:** *"provide guidance as to the domains or concepts within which an assessment should be considered (Scannapieco and Hegar, 1996; Witter, 2004). These may relate primarily to the individual who is being assessed (Mailick, 1988) or may go beyond the domain of service users to consider also the type of organizational unit which is providing services to users and carers and the resources of the service delivery system (human, technological, information and financial) (Maher and Illback, 1981) and, as such, may aim to reshape services (Horwath and Morrison, 2000)"* (Crisp, M. R. Anderson, Orme, & Green Lister, 2006: 1062) Examples of this type include Asset in the youth justice field and the framework for assessment of children in need and their families.

- **Formal tools or instruments:** These measures are used to evaluate a given case by clarifying its associated risk, needs or both for setting an effective intervention plan. The practitioner requires specialised training for the administration of these tools prior to their use (Hoge 1992) such as The Youth Level of Service/Case Management Inventory (YLS/CMI) and The Offender Assessment System (OASys).

By the end of this section, the researcher has argued that every one of these implementations is a part of the assessment process which can be used for a specific function in coordination with, and a complementary relationship to, other implementation functions to achieve the goal, which the assessment was applied for. In other words, no one of these implementations alone can be considered as assessment because they are part of a set of stages and interconnected processes. For instance, formal tools or instruments are not prescriptive. They will not tell the social workers specifically the type of intervention or action which should be taken to handle juvenile offender cases. It is not the function of these tools or instruments to tell the social worker that, once a case reaches a certain score the young person needs to be placed in a specific facility. Rather, it is just gives indications regarding the level of risk or other significant factors to enhance thinking in order to take proper decisions.

5.2.3 Assessment Models

The assessment process is influenced by a series of factors which allow it to be applied differently between institutions. Those factors may be related to the policy of the institution, the field of practice or the pattern adopted by the social worker. There are three models/approaches which have been identified as circles which can show that the assessment application is different in each organisation and between different practitioners. The models are as follows (Wilson et al. 2008; Milner & O'Byrne 2009; Watson & West 2006):

- **The Question Model:** In accordance with this model, the practitioner gathers information by asking the service user a set of questions. The practitioner is considered an expert who can empower the identification of the nature of the problem of the service user problem through interpretation of gathered data. According to Milner and O'Byrne (2009), this model is a process to make data fit the approach or theory which the practitioner has adapted; likely to be psychodynamic or cognitive behavioural in nature. It is the reliance on the abilities of the practitioner's involvement that restricts the assessment process (Watson & West 2006).
- **The Procedural Model:** This is used to realise where service users fit into the criteria set by organisations for receiving services. This model is implemented through checklists or the completion of guidelines (Watson & West 2006; Milner & O'Byrne 2009). This model is usually used in community care organisations to locate the type of services that best fit service users (Watson & West 2006). The assumption that is relied upon by the Procedural Model is that a person who is suffering from any problem is considered to be a personal expert with regards to their own problems (Watson & West, 2006).
- **The Exchange Model:** This is based on empowering service users to identify fundamental elements underpinning encountered problems. Wilson (2008) suggested that the role of the practitioner in this model was to track service users, rather than to lead them, by motivating them to talk about their personal circumstances and difficulties, identify sources and how to address the variables that contributed to their problems. This model is seen as an appropriate process for some intervention methods such as those which are task-centred and solution-focused (Milner & O'Byrne 2009).
- **The Ecological Model:** This is used to serve important functions which are (A) clarification of the risk and strength of service users' problems; and (B) Clarification of the type of intervention that is expected (Wilson et al. 2008). Wilson (2008) added that this model underpinned the considerations related to the service users' lives in a broad social context and this therefore had to be the main element in the process of assessment.

In terms of how theory influences the assessment, the literature indicates that the theoretical base of assessment is considered to be one of the main elements to help understand the assessment process which place it at the same level of influence as personal beliefs and values. Howe (1992) as cited by (Parker & Bradley 2010) indicated that the theoretical approaches which are commonly adopted by social workers could be categorized as follow:

- From a problem solving perspective: This assumes that there has been history of wrong-doings in the life of the individual which have been linked to the present and therefore a ‘cognitive behavioral’ or ‘psychoanalytical’ perspective would be required to resolve underlying issues.
- A political model: This would assume that social problems have resulted from two main factors (1) social inequalities; and (2) the governance of the political system.
- A perspective regarding the construction of personal experiences and how such experiences could affect the individual’s understanding of aspects of life and of their actions.

Although there may be a clear view regarding the factors that can influence and manage assessment practice, whether from a top-down or bottom-up perspective; there are some concerns from both sides. Watson & West (2006) stated that the managerial systems, through an agency context and bureaucratic procedures, placed social work practice in danger of categorization under a general heading which may lead to the appointment of unqualified staff to carry out assessments. Conversely, it can be said that social workers, in their practice, may not make enough effort to support and activate that practice as a profession. For instance, research in the child protection field found that there were defects on the part of social workers in recognizing risk factors and implementing assessment in a systematic way (Baldwin & Walker 2009). In addition, research has shown “*that there is a poor record in social work of high-quality assessment and purposeful planned intervention*” (Baldwin & Walker, 2009: 212)

In the end of this section, it should be clarified that social work practice and assessment implementation differs from country to country in that the society, culture and the roles of the state have significant influence in this regard (O’Connor et al. 2006).

The above points described models and perspectives that influence the framework of assessment related to its process and stages. For instance the questioning and procedural models seem to fit with the actuarial approach which is discussed in the following section. These two models make assessment tend to be seen as gathering information without considering the importance of the relationship between the social worker and the client. The question raised by the researcher is to what extent the intervention by the social worker can become effective without a good relationship. Moreover, how can deep and important information be gained by social workers without a good relationship? The researcher claims that any model focusing on gathering information without considering the relationship as the main element in this regard will have a negative impact on the effectiveness of intervention. On the other hand, it will place social work as a profession and social worker practice in a weak position Watson &

West (2006) indicated that practice that is influenced by managerial approach placed social work practice in danger of categorization under a general heading which may lead to the appointment of unqualified staff to carry out assessments. Conversely, it can be said social workers, in their practice, may not make enough effort to support and activate the practice as a profession. For instance, research has shown *“that there is a poor record in social work of high-quality assessment and purposeful planned intervention”* (Baldwin & Walker, 2009: 212). The findings and discussion chapters will highlight aspects of these models which are being practised in each system to support the researcher’s claim.

5.3 Assessment in youth justice

5.3.1 Introduction

In recent years youth justice systems in western countries have developed and adopted a list of approaches and tools to help in understanding the main factors behind delinquent behaviours (Shader 2000). This effort, related to assessing delinquent factors in the youth justice field, reflects: a. the concerns associated with increasing rates of delinquency and recidivism among juveniles indicated by statistics and relevant studies; and b. government policy towards young offenders. (Rivers & Anwyl 2000; Kelly 2005). For example, in England and Wales the rate of recidivism is rising. Figures show that 72.3 per cent of under-18s reoffended within 12 months of being released from custody (The Ministry of Justice, July 2013). Also, in the United States, recidivism of juvenile offenders is a huge problem according to the U.S. department of justice report on juvenile offenders and victims (2006 National Report).

The development in these approaches and tools within youth justice reflects a move towards what is known as actuarial justice (Colombo & Neary 1998; Zinger 2004). Actuarial justice refers to a model of assessing the probability of future events by statistical methods (Colombo & Neary 1998). Actuarial Justice is described *“as the ascendant strategy of ‘risk based’ criminal justice (Feeley and Simon, 1992, 1994). In this form, risk based justice is predictive and statistical, and is systematically and managerially arranged in terms of internal or system-focused criteria of efficiency (such as speed of throughput rather than reduction in recidivism rates). It also incorporates forms of knowledge and practice that reduce the interventions of justice to merely incapacitating techniques that displace punitive, reintegrative, correctional or deterrent strategies.”* (O'Malley, 2002: 207)

This movement towards actuarial justice is seen as a move away from welfare and justice concerns towards the concerns of managerialism and public protection (Case 2007a; Kempf-Leonard & Peterson 2000; Hannah-Moffat 2010; Colombo & Neary 1998; Silver & Miller 2002). Factors which may be considered behind this shift in youth justice can be summarized as follows:

- Limited resources: which lead to the adoption of an actuarial method to classify young offenders according to their level of risk (high, middle and low) and subsequently specify the level of intervention (O'Malley 2002).
- The Actuarial method is seen as a reliable method for decision making related to the cases of young offenders (Young 2006; Zinger 2004)
- The limitation of a traditional method (clinic – traditional case work) to work effectively regarding positive and negative prediction (Kim et al. 2008).

However, from the researcher's point of view, the adoption of actuarial justice can be seen as part of a development regarding the concepts and processes for handling juvenile offender issues but it is difficult to consider it as the best and most effective method to handle juveniles offenders. As with any method or approach, it has weak points as it has strong points which place it under evaluation and examination related to its effects and extent. At a micro level, the ability to manage, classify and measure, if it is used in a proper way, is not enough to guarantee success. There are concerns related to the philosophy and principle on which any aspect of practice is based as these play an important role in processing juvenile offender issues. Therefore, research show that the impact, on re-offending rates, of intervention based on actuarial principles and its tools, has been negligible (Smith, 2006). Some of the criticism that faced the actuarial method has already been presented in the risk assessment methods section and decision making and assessment sections of this thesis.

With regard to the content of the actuarial method, the development of which is seen as a more effective assessment process, this is one of the means which the youth justice system has concentrated on to deal with the problem of recidivism amongst young offenders. However, practitioners in the youth justice field have more traditionally relied on clinical intuition (Young 2006). According to Hoge (1992) it is *"unfortunate that in so many juvenile justice systems there are either no assessment procedures at all or, if they exist, they are based on very unsystematic clinical procedures"* (Hoge 1992: 53).

Hoge (1992) clarified that the lack of appropriate or effective assessment was one of the variables which may have contributed towards increasing rates of recidivism. His research showed that effective correctional programs relied on structures and standardized assessment programs (Hoge 1992). Arguably, there is a negative relationship between the rates of recidivism amongst young offenders and the level of assessment implementation. In other words, the rates of recidivism increases when assessment is used ineffectively.

The importance of activating the assessment process in the juvenile justice field is evident through its contributory role to reach the goals of the juvenile justice system which fundamentally concentrates on reducing the rates of crime and recidivism (Edward, Mulvey, Anne-Marie, & Iselin, 2008). Thus, the

utilization of risk assessment rose from just 33% of juvenile justice systems to more than 68% (Schwalbe 2008; Schwalbe 2007).

Developing and activating the assessment process involves developing its approach and tools as well as adding some terms which indicate the main variables (such as risk, need and responsibility) which the assessment process should rely on to constitute efficient correctional programs (Hoge 1992). Since the end of the 20th century the majority of the research relating to these kinds of variables has been facilitated within western society (Barry 2007). Arguably, development of the assessment process could be confined in a circle named risk assessment.

In juvenile justice systems, risk assessment (instead of assessment in isolation) has become the common term for a number of reasons:

- 1- Risk has encompassed the primary factors (such as risk, needs and responsibility) which the assessment process relies upon fundamentally to constitute effective correctional programs.
- 2- The realization that the goals of the Juvenile justice system are strongly associated with locating those factors in order to constitute strategies and plans.

5.3.2 Risk Definitions: Meaning of its components

After discussing assessment in general previously, this part of the thesis comes to place assessment in the juvenile justice context through the concepts and principles that are used in this field. It deals with elements of risk assessment through definition of terms and factors associated with risk. Risk as a concept is complex and multi-faced which means it encompasses a variety of meanings. In general risk, without linkage to other concepts, contains in its meaning the potential to incorporate positive and negative events (Whyte 2009a). Reliance on risk varies in meaning and therefore assessment related to the concept of risk has been divided into two models: the risk-taking model and the risk minimization model.

The first model is based on the view that risk contains positive aspects. Assessment, according to this model, concentrates on the positives, such as mental wellbeing and abilities; whereas assessment according to the risk minimization model, while it does take into consideration positive aspects, tends to concentrate on areas such as danger and control (Barry 2007). Therefore, risk can be defined by integrating the two models. For instance, risk is defined by Alberg et al in Titterton 2005 as “*the possibility of beneficial and harmful outcomes and the likelihood of their occurrence in a stated timescale.*” (Whittington 2007: 22)

In recent years, the terms associated with risk have been used in ways associated with dangers or negativity in the social work profession and youth justice field (Whyte 2009a; Barry 2007). It is the

researcher's belief that the reason behind this may be related to the nature of the problems which the social work profession and youth justice system are dealing with. Those problems are negative outcomes and are strongly associated with negative or erroneous processes in a person's life as a contributory factor. Beck (1992) as cited by Case (2007) stated "*we live in a 'risk society'; one in which the possibility of positive, 'good' risks (taking a risk to achieve a positive outcome), is overwhelmed by risk perceived 'almost exclusively (as) a threat, hazard, harm or danger'*" (p 91). However, positive risk-taking is still used in practice in some aspects such as decisions to provide offenders with the chance to stay within the community to change their behaviour (Farrow et al. 2007)

Risk as a term is widely used in western society (Barry 2007; Whyte 2009a) and the majority of the research has also been conducted in relation to western society so, Hogo (1999) questioned to what extent risk could be generalized across different cultures. It is associated, as a concept in the 21st century, with negative meanings in the UK (Whyte 2009a). In this context the question is raised of how the Saudi Judges and social workers understand risk (though "risk" is not used as a term). This point will be discussed in the findings and discussion chapters. Although this concept is not used, there are still verbatim quotations from the Saudi samples which indicate that interviewees are alluding to the meanings of risk and the concepts related to it.

The Risk Management Authority in Scotland has defined risk as the "*nature, likelihood, frequency, duration, seriousness and imminence of an offence*" (Barry, 2007, p.5)

Both Warner (1992) and Kemshall (1996) defined risk as "*the probability that an adverse event or harmful behaviour will occur during a stated period of time* (cited in Whyte, 2009, p.73).

According to the definitions cited above, risk is used to indicate:

- a. The probability of delinquency.
- b. The probability of recidivism.
- c. The level of danger (harms).

According to Farrow et al, (2007) risk associated with offenders can refer to reoffending or harm whether towards the individual himself or other people. In addition, it may be related to other risks unrelated to the previous category; but to specific areas such as staff who work in prisons, whereby it is mapped to security issues involving the risk of escape.

Farrow et al, (2007) indicated that in criminal justice the concept of risk was usually linked to three areas:

(A) 'Probability' which indicated that the risk of harm and recidivism could be predicted.

(B) 'What works' whereby the emphasis was related to the intensive services associated to the level of risk.

(C) 'Public protection' which emphasized the risk from offenders towards others and the risk of recidivism.

Whyte (2009) points out that risk in the context of children and young people who committed offences was usually linked to the notion of dangerousness and, in this practice field, risk was related to recidivism and harm. Limiting the elements in the conception of risk to these ones may be reflected in the main goals of the youth justice system in any society which is to reduce crime and recidivism for the promotion of public safety (Edward et al. 2008; Olver et al. 2009).

5.3.3 Risk Factors and Process: Risk, Needs and Responsivity

An attempt to understand the causes of delinquency in order to enhance intervention has made the juvenile justice system adopt an approach from the public health field (Moore 1995). This approach is used in the medical arena to target patient risk factors and to reduce and prevent the probability of dangers in the future (Shader 2000). For example, a doctor would usually gather specific information about a patient who may have experienced a heart attack. Such information associated with their medical and family history, diet, weight and their level of sport practice would form the basis for the treatment plan to reduce the probability of future heart attacks (Shader 2000).

In the criminal justice field researchers have identified and located the risk factors on the basis of the results of research into offenders and the circumstances surrounding them. For instance, a meta-analysis of twenty two different studies associated with juvenile offenders found a total of twenty three features which played a significant role in the prediction of recidivism linked to individual, social and community factors (Miller & Lin 2007a).

Risk factors have also been defined as the characteristics of a youth's personality such as age; or the characteristics of the circumstances surrounding them such as family and peer association which has made the cycle of risk more likely for the individual and thus made it more likely for them to commit an offence or reoffend (Hoge 1992; Whyte 2009a)

According to Hoge (1992), from risk factors the need factors are located which are identified as idiosyncrasies which may be changed through a correctional program to reduce the probability of recidivism. For instance, historical variables and peer association variables are both considered as risk factor variables. However historical variables cannot be targeted by correctional programs for change; whilst peer association can be targeted, and if changed can play a fundamental role in reducing the probability of re-offending (Hoge 1992).

Kelly, Macy, & Mears (2005) point out, viewing needs (criminogenic needs) through risk factors can lead to the identification of dynamic factors that should be treated rather than static factors which are used to estimate the probability and classification of cases in groups.

To clarify the previous points, viewing risk factors as a concept contains two variables:

(A) Static variables such as age and history.

(B) Changeable variables such as beliefs and dysfunctional parenting which can be described as need factors (dynamic).

Static variables are used to assess the case just in terms of the dangers and the probability of re-offending; whereas changeable variables (dynamic need factors) are used as targets for intervention programs to reduce recidivism.

Moreover, in recent years researchers in the juvenile justice system have introduced responsivity factors as concepts to indicate certain variables which can play a significant role in reducing rates of re-offending (Hoge 1992). Responsivity factors are associated with personal characteristics or circumstances surrounding the juvenile which are not directly linked to their offence activity but which should be taken into account in correctional programs plans. Examples include motivation to change, a cooperative parent and reading ability (Hoge 1992). These factors differ from dynamic factors by considering it as certain that these variables or factors can contribute in reducing rates of re-offending which therefore requires a focused effort on handling them as a priority within the dynamic factors.

The significance of identifying risk factors emerged from research in Northern Ireland which showed that the failure in children's cases referred largely to the lack of awareness regarding risk factors at the two levels of management and practice (Whittington 2007).

Conversely, Annison as cited by Case (2007) stated that the context, at the cultural, political and macro levels, should be taken into account within risk assessment. For instance, as Corrado, Cohen, Glackman, & Odgers (2003) indicated, there were certain issues identified by the research which could influence youths not to reoffend. These related to fairness, procedural rights and deterrence.

Categorizing the variables in the life of young offenders as specific and named factors relates to the fact that young people who entered the juvenile justice system had multiple problems resulting from complicated factors (Rivers & Anwyl 2000). This situation thus requires organization and clarification of the means and the targets which will empower the practitioner in the youth justice field to implement efficient assessment and lead to effective practice through a correctional program. Research has shown that correctional programs can work effectively in reducing recidivism by targeting specific needs (Borum 2003).

Locating risk factors in juvenile offender cases can mean locating the most influential variables in juvenile delinquency. Therefore, correctional programs as an intervention require to target those factors which will concentrate treatment on the main areas which will lead to a reduction in the probability of recidivism. However, the identification of risk factors in juvenile offender cases, although they may be indicators of the probability of offending or re-offending do not provide certainty (Shader 2000). Risk factors thus point to future expectation, or a view of the potential likelihood of offending or re-offending; but not to a definite result.

The risk factors in the field of juvenile justice practice have been summarized thus:

- In general, risk means the probability of recidivism after rehabilitation or a correctional program; and relates to unchangeable variables.
- Need: the changeable variables associated with the characteristics of young offenders and the characteristics of circumstances surrounding them which are viewed as factors contributing to the committing of offences. Those variables can be the main areas for intervention to reduce the probability of re-offending.
- Responsivity: means the unaligned variables in young offenders' personalities and circumstances which can be invested or employed by correctional programs to reduce the probability of re-offending.

Research on risk factors has divided their impact into two categories: proximal factors and distal factors. Proximal risk factors are those which have a direct influence such as anti-social attitudes. Distal risk factors have an indirect influence such as family and financial problems (Hoge 1992). Moreover, research on risk factors has introduced protective factors, such as excellent performance in school, as variables which may serve an important function in moderating the influence of risk factors (Shader 2000).

Categorizing these factors under the three concepts of risk, needs and responsivity may have a positive effect on young offender rehabilitation in relation to filtering information and guiding practice. However, there are no indicators regarding the level or the nature of the relationship between the juvenile and the social worker. As the researcher indicates in the previous section, a good relationship between social worker and juvenile offender is a main gateway for effectiveness in assessment and intervention. Although responsivity factors are introduced as factors which guide how the treatment should be provided, the relationship between social worker and juvenile offender is not fleshed out as one the main such factors that can lead to the success of assessment and intervention. This situation may reflect the approach of workers in this regard where the one who does the assessment does not necessarily initiate the process of intervention. This may have a negative impact on the overall process of assessment and intervention. When a juvenile offender is dealt with by different social workers attached to his case, this may make him resist the process of assessment and intervention.

5.3.4 Risk and Needs Assessment

In order to gauge the probability of recidivism amongst young offenders, assessment processes rely on gathered information related to specific areas around offenders, associated with risk (static factors) and need (changeable factors). Regarding needs, criminogenic needs are categorized under the need principles and integrating risk and needs to assess young offenders is considered a recent idea (Merrington 2004).

There is an argument that needs factors should be removed from risk tools and needs assessment should therefore involve specialized tools due to the fact that the needs factors may negatively affect the accuracy of risk tools (Barid, 2009 - as cited by Vincent, Chapman, & Cook, 2010) . Therefore, Vincent, Chapman, & Cook (2010) have suggested that the main target of risk assessment should focus on prediction or classification.

However, without needs assessment, the effectiveness of the intervention plan would be lacking and the matching of a suitable service to needs and risk would be missed (Kelly et al. 2005). William R. Kelly et al.,(2005) point out *“Whether viewed as risks or as needs, the basic idea behind focusing on dynamic factors is that they not only may be related to subsequent offending but, because they are changeable, may be more effective targets for interventions. P: 470”*

The process of assessment in this regard is carried out through interviews, observation, reviewing of case files or measures put in place by institutions (Whyte 2009a; Hoge 1992). Risk assessment implementation was started, in the 1920s, by Burgess who attempted to predict offending by applying a risk assessment instrument (Kelly 2005; Miller & Lin 2007a; Schwalbe 2008). The risk assessment instrument is one of the tools which will be explained during the assessment process.

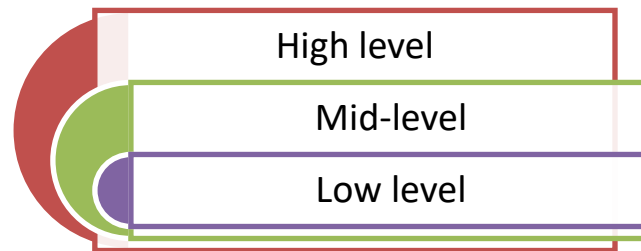
The importance of risk assessment is significant because it locates the areas where intervention has to be intensive as well as locating the level of supervision and security that the youth justice system imposes on young offenders (Hoge, 1992; W. R. Kelly, 2005; Young, 2006).

The outcome of risk assessment in youth justice clarifies the type and level of services required for each young offender. For instance, some cases require high or medial intensity of treatment and supervision; whilst others do not require this and provision of an intense level of service may be a contributory factor for reoffending.

Criminological and assessment researchers have clarified the common characteristics of young offenders at risk and their high level needs and how they are to be assessed and handled (Young, 2006).

- Criminogenic needs are categorized under the need principles.

- Integration of risk and needs to assess young offenders has been considered a recent idea (what works in probation- assessment tools in probation).
- Risk in youth justice is related to: 1- risk of offending; 2 - risk of harm (including serious harm) (book youth justice in practice). Hoge (1992) stated that research showed that young offenders at low risk may increase their risk through the imposition of high intensity correctional programs.



- Intensive treatment and supervision.
- Non-intensive treatment and supervision.
- Treatment and supervision are not required.

The process of risk and needs assessment has been broadly defined as a contemporary trend to guide practice with young offenders in the youth justice field. Risk assessment is defined as follows:

- Risk assessment is a process which entails locating the characteristics of juveniles and their personal circumstances which have played a significant role in repeating deviant behavior (Onifade et al. 2008).
- According to Borum (1999) as cited by (Rogers, 2000, p.595) “*Risk assessment refers to probabilistic estimates of continuous variables for example: violence based on both person based and situational variables.*”
- Hope and Sparks (2000) defined risk assessment as a “*process which can only identify the probability of harm, assess the impact of it on key individuals and pose intervention strategy which may diminish the risk or reduce the harm*” (Barry, 2007, p.1).

The definitions cited above show the cycle of risk assessment and the points that have to be achieved however they also show certain interferences related to risk management. According to Goldson (2008) risk management is “*the reduction of the likelihood that a risky offence, behaviour or event will occur and or the reduction of the impact or harm occasioned by the offence, behaviour or event*”

p.310." It has also been defined as a "*process devised by an organization to minimize negative outcomes which can arise in the delivery of welfare or justice services* (Whyte, 2009, p.74). To put it simply, risk management is a devised strategy which works to reduce risk.

To distinguish between risk assessment and risk management, risk assessment can be viewed as a process to constitute a clear view surrounding the risk factors in juvenile offender cases; whilst risk management is associated, to a greater level, with actions to deal with it through institutional strategy, planning, procedures and organization of the work and workers. Risk assessment may therefore be described as a small wheel that moves the big wheel of risk management. Titterton (2005) as cited by Barry (2007) viewed the risk framework as that which was based on two interlocked pillars: risk assessment and risk management.

The way that risk and needs assessments are applied is subject to risk assessment methods. Each method has features to differentiate it such as level of accuracy and of deep understanding. There are three methods of risk assessment : clinical, actuarial and structured clinical judgment (Barry 2007; Whyte 2009a).

The clinical method is based on the ability of the practitioner to locate the personal and environmental factors that contribute to deviant behavior. This is carried out through interview and observation during communication between the practitioner and the juvenile (Edward et al. 2008; Philip H. Witt, Sean P. Hiscox 2007; Onifade et al. 2008).

This method supports the obtaining of deep information in terms of the offender's case (Kim et al. 2008). The judgment or the outcomes associated with this method are the result of the interaction between the knowledge and experience of the practitioner; the information relating to the assessment of a specific case which s/he has gathered may have differed from that collected by other practitioners.

The actuarial method (Barry 2007; Whyte 2009a; Miller & Lin 2007a) is based on mathematical calculation which can provide a result by locating the level of dangers and the probability of re-offending according to input data. This data is associated with risk factors (static and changeable) which have been concluded through a large amount of research. The process of assessment is fulfilled via statistical analysis processing which transfers the input (the characteristics of young offenders and the environment surrounding them) to numerical outcomes clarifying the level of dangers which may be caused by young offenders and their probability of recidivism (Miller & Lin 2007a)

Structural clinical judgment blends clinical and actuarial methods to assess the associated case risk (Barry 2007).

Research has shown that when the clinical method has been compared to the actuarial method the actuarial method has outperformed it even in relation to difficult and complicated cases (Miller & Lin

2007a). The reason for this may be related to the fact that actuarial methods are grounded and are backed by numerous pieces of research designed using static indicators as measures; whilst the clinical method relies on practitioner judgment which may differ as a result of practitioner knowledge and experience.

Thus, the use of actuarial risk-need tools has increased in different fields such as social welfare, community services and criminal justice. Research attests to the fact that the clinical method is less accurate compared to the actuarial method in terms of classification (Hannah-Moffat, 2010; J. Miller & Lin, 2007) and some found the clinical method completely unreliable with regard to the prediction of dangerousness (Clark et al. 1993).

However, in spite of the strong position associated with the actuarial method, its tools are limited and each one of its measures only fits a single specific problem. The method also requires special training for use (Hoge 1992). Moreover, it has to be taken into account that the local validity, which the research has demonstrated, is related to the fact that the validity of any actuarial risk assessment tool can vary according to the society and the historical moment in time (J. Miller & Lin, 2007; Zinger, 2004). Miller and Lin (2007 p.553) stated that "*actuarial methods are not a golden bullet for anticipating who will and who will not re-offend, all having substantial margins of error in this regard*".

Moreover, just as the clinical method has been criticized in terms of prediction, classification and level of accuracy, so the actuarial method has also been criticized with regard to its negative influence on professional practice. This criticism can be summarized from (Fitzgibbon 2007) as follows:

1- The actuarial method is more accurate with respect to risk prediction because it classifies offenders into groups. This means it cannot be accurate with regard to the prediction of the risk of an individual.

2- It essentially relies on the collection of data without taking into account the importance of trust building particularly between young offenders and practitioners which can play a fundamental role in intervention and the changing of behaviour.

3- "*In short, actuarial indicators of risk cannot reveal much about how an individual will get out of crime. The idea is that if clients have been accurately assessed then the risk assessment techniques will help to get them onto the appropriate programs that will deal most effectively with their particular sets of criminogenic needs and stop or reduce their offending. But if it is the case that no inference can be made from the actuarially established characteristics of the client regarding their actual behaviour, then the whole notion of criminogenic needs is in danger of spuriousness. The actuarial fallacy is a fatal flaw at the heart of transformative risk management strategies*" (Fitzgibbon 2007:91)

Whyte (2009) suggested that the integration of the two - clinical and actuarial - methods would encourage more effective practice. He also indicated that although the use of technology in risk

assessment had developed significantly over the past two decades, the youth justice field was quite likely to rely on intuition within case assessment.

According to what has been discussed in this section, the researcher reached the following conclusion:

Risk assessment, according to the literature that has been presented in the juvenile justice field, concentrates on the risk of reoffending and the seriousness of offences that can be imposed on the people surrounding the young offender. Therefore, the literature usually tends to place the young offender in the context of risk rather than placing him in relation to his needs. In the researcher's view, the risk of reoffending and the risk of harming himself or other people are identified mainly due to the need to protect society from such cases rather than through a main focus on the offender's circumstances. On the other hand, in the researcher's view, risk and its related concepts tend to support the actuarial approach that aims to categorize cases and exercise control as risk management through suitable tools and methods. Therefore, the researcher sees the actuarial approach as a basic principle but, as a method directed towards guiding practice, it does not address the main needs of juvenile offenders. It is, rather, a method of managing risk in society.

The researcher tends to the view that the clinical method is more suitable for treating young offenders when its weaknesses are strengthened by using other suitable tools. Handling and dealing with juvenile cases according to the view of risk management, leads to overlooking important aspects that may have a positive influence in the treatment of juvenile cases. For instance, developing a good relationship with a young offender to gain important, detailed information about his behaviour will have a great influence on intervention, and this cannot be achieved through using the actuarial method. The research findings will clarify this view through the approach that is followed by the social workers and Includem staff in Scotland, although that the Scottish system is based on welfare principles.

5.3.6 Assessment Generations:

Some systems have however moved slowly towards the adoption of modern actuarial tools (Young, 2006). This has resulted from those working in the youth justice field possessing a negative view towards actuarial instruments as they can limit their discretion and increase effort. In the criminal justice field, actuarial instruments are usually used for (Zinger 2004):

- (a) Pre-sentence reports by probation officers;
- (b) Judges during sentence decision making;
- (d) Correctional institutions e.g. for treatment programs or conditional release.

The development of the assessment process within youth justice has been served through a set of historical phases named generations (Whyte 2009a; Schwalbe 2007; Schwalbe 2008; Young 2006). The

progression of assessment has concentrated on its tools for gauging various variables such as risk factors rather than other aspects (Young 2006; Whyte 2009a; Miller & Lin 2007a). The attempt of Burgess in the 1920s was a springboard to improve assessment tools which advanced them considerably (J. Miller & Lin, 2007).

As noted, the shift from the clinical method to the actuarial method has been brought about through stages named generations of which there are four. (Schwalbe 2008; Whyte 2009a) They are divided up according to the era that applied to the specific assessment pattern. They can be summarized as follows:

First Generation: Assessment was based on the clinical method whereby the practitioner's ability was related to their professional knowledge and skills which were fundamental to constituting the judgment regarding the offender's case (Whyte 2009a; Young 2006). It was implemented without the aid of structured assessment devices (Schwalbe 2008; Miller & Lin 2007a). Miller and Lin (2007) stated that the main problem with this was its reliance on wide ranging empirical evaluation which made it less accurate than empirically relying on tools.

Second Generation: Assessment progressed to become more standardized by relying on the actuarial method to arrive at a more objective judgment. The tools of assessment fundamentally relied on static indicators (risk factors); such as a prior offence records and age (Miller & Lin 2007a; Whyte 2009a; Young 2006). Whyte (2008) suggested that although such an assessment was statistically strong, it did not support the intervention plan and was ineffective in making service referrals to deal with problems and identified issues.

Third Generation: Assessment progressed to ameliorate the deficits of the second generation model. It relied on static and dynamic risk and need factors which were brought together through a comprehensive framework that could govern the implementation process and enhance the unification of various decisions (Miller & Lin 2007a; Whyte 2009a; Young 2006). Moreover, the outcomes of this assessment pattern provided agencies with conclusive information about types and levels of services that were required for cases, as well as locating unmet needs (Whyte 2009a; Young 2006).

Fourth Generation: Assessment tools became more accurate through reliance on a set of instruments that were specialized for specific needs in different areas such as education, the family, peer relationships and substance abuse (Whyte 2009a; Young 2006).

Aspects of these four generations of assessment are used as lenses through which to consider some aspects of practice in Saudi Arabia and Scotland which are presented and discussed in chapters 7 and 8.

5.3.7 Risk Assessment Tools:

Criminal justice social work is considered as a house in which the majority of risk assessment tools are classified under actuarial rather than clinical methods (Barry 2007). The implementation of actuarial risk assessment tools in the juvenile justice field has become widespread (Miller & Lin 2007a). Systematic practice of actuarial assessment within criminal justice began in the 1970s (Miller & Lin 2007a); and the use of tools to predict delinquent behavior began in the 1950s as devised in the social prediction table by Guleck and Cluek and the Cambridge study in delinquent development (Baker 2008). Miller and Lin, (2007) stated that since research began to determine and prove that characteristics of offenders were correlated with subsequent behaviour; actuarial risk assessment has been established and developed in relation to criminal justice populations.

The risk assessment tools that are used with juvenile offenders vary according to the area that they are designed to deal with and according to its process. For instance, 'CASII' is a checklist used to enhance the systematic view of risk factors; whilst the youth level of service\case management inventory (LSI-R) consists of risk and need measures designed to assess the probability of re-offending as well as locating targets for intervention.

Before presenting some assessment tools as examples which are used with young offenders, it should be clarified that these tools do not constitute the assessment process but are rather used within stages and processes in that overall process of assessment. For instance, these tools do not identify the type of action required to treat young offenders as intervention nor do they prescribe legal decisions in the juvenile justice system. Their function is to provide a particular type of information, additionally grounded in research, to enhance thinking about the quality of the intervention or the process of decision-making in the juvenile court.

Giving examples of assessment tools which are used with young offenders will serve the purpose of giving an orientation to decision and policy makers in Saudi Arabia, as well as those who work in the academic field regarding the nature of some tools that are used with young offenders (taking into account that this research will be translated into Arabic in the form provided by the researcher for a project to reform and improve the Saudi system).

Asset: This is the standard assessment framework implemented across England, Wales and Scotland. 'Asset' has been increasingly used by youth justice teams (Baker 2004). In April 2000 the Youth Justice Board (YB) introduced 'Asset' as a risk and needs assessment tool for young offenders aged between 10 and 17 (Baker 2008). It is used to identify main risk factors associated with offenders' circumstances and their characteristics, as well as identifying the protective factors that may play an important role in decreasing the probability of recidivism (Baker 2008; Whyte 2009a). It was designed based on the reliability of research findings related to risk and protective factors for juvenile delinquency as well as

the experience of practitioners working with young offenders (Baker 2004). In spite of a high margin of error statistically associated with individual cases (Whyte 2009a), Whyte (2009) clarified that “*All standardized tools have strengths and disadvantages. Most standardized tools will produce on average 25% ‘false positives’ (finding risk when there is none) and 25% ‘false negatives’ (finding no risk when there is). While statistically ‘strong’, if you are one of the 25 out of 100, this is a large margin of error*”p.84

Levels of Services Inventory - Revised (LSI-R) This is an actuarial measure used in more than 200 countries (Andrews & Bonta, 2008) to identify young offenders who are in need of intensive supervision or treatment due to their high level of risk. It is grounded according to the recidivism literature, experiences of professionals related to probation offices and a broad social learning perspective on offending (Merrigton 2004). In brief, the (LSI-R) yields recidivism prediction and locates of young offenders who require intensive treatment.

CASII: This is implemented with children or juveniles with underlying mental health needs, to determine the most suitable levels of care. Its function relies on linking the mental health needs of juveniles with required services. It is also used to address: psychiatric disorders, substance use disorders and developmental disorders (Hanson et al. 2001).

J-SOAP-II: This is a check list implemented with people who are aged between 12 and 18 who are arrested or referred to be dealt by the youth justice system due to sexual offences. It was invented to enhance the systematic review of risk factors associated with sexual offending (Warner 2003; Waite et al. 2005).

5.4 Social Inquiry Reports (SIRs)

Social Inquiry Reports are considered to play a fundamental role in the sentencing process. SIRs are produced as documents throughout the assessment process, to clarify the nature and factors leading to offending behaviour, the risk of recidivism and the type of intervention that is necessary to deal with the case and reduce the risk of reoffending. According to (Tata et al. 2008) “*Social enquiry reports are intended to assist sentencing. They provide information about offenders and their circumstances of general relevance to the courts. On the basis of a risk and needs assessment, they also advise the courts on the suitability of offenders for those community based disposals.*”(Tata et al. 2008: 837)

SIRs have various names, such as pre-sentence reports, social reports, social background report, predisposition reports and personal investigation reports (Hannah-Moffat & Maurutto, 2010; Wandall, 2010). SIRs are normally prepared by qualified persons which, in the juvenile context in Saudi Arabia and in Scotland, means that they are prepared and written by social workers. They contain several types of data providing detailed information relating to many areas such as social and family background and

social circumstances. They focus primarily on specific social history and aspects related to negative factors surrounding the young offender that may push him to commit an offence. In most cases, SIRs conclude with recommendations to the judge regarding the type of sentencing or intervention required and measures suited to treating the case. In this context, it should be clarified that, with young offenders in Scotland, it is called a social background report where a social worker provides it for the panel members and attends the Hearing to discuss it. Moreover its function, with other reports, is not to assist sentencing but to help the hearing panel to decide on the measures of supervision which are in the best interests of the young offender. In Saudi Arabia it is called a social report and its function is to assist sentencing. The difference between the two systems in terms of using a social background report or a social report, due to the principles and procedures that each system adopted (which have been addressed chapters 3 and 4) will be discussed in Chapters 7 and 8 regarding particularly their influence, taking into account their content, areas and main focus.

Whatever SIRs are called in any system, and although the influential nature of SIRs reports and their type on decision or sentencing is variable, it is, in general, regarded as significant. The importance of SIRs relies on the assumption that as much information should be provided to the court regarding the offender's case as possible; this will significantly affect the choice of the most suitable decision, which will then lead to a reduction in the probability of reoffending (MOTT 1977). For instance, in the systems which adopt a Judicial court approach to handling juvenile cases, SIRs are seen as providing some aspects related to fairness in the process. Research has shown that a perception of fairness is one of the issues that can influence the future decisions of offenders about reoffending (Corrado et al. 2003). Moreover, research in some jurisdictions has found there can be a high level of concordance between the recommendations in social reports and the court's actual decisions (Beyens & Scheirs 2010). Such high levels might mean that judges or panels are influenced by the good professional expertise of the social worker, or it might mean that social workers only recommend what they think judges will accept. Judges will only accept recommendations in SIRs if they are satisfied by the high standard of the assessment, but the process of writing a report is not separate from the bigger picture of the authority relationship between judges and social workers. (Beyens & Scheirs 2010). Some of these aspects were raised by participants in this research and will be discussed in chapter seven and eight.

5.5 Decision Making and Assessment

Making an assessment, and an accompanying recommendation, is a form of decision-making. So is passing a sentence or making a disposal. Whether the decision involves a specific intervention or even a transfer from juvenile to adult court, it can be studied at macro (government), meso (organisation) and micro (practice) levels of social analysis. Meso-level analysis involves the study of decision-making about policy and principles on the way in which the organisation works and creates its culture, while micro-level analysis is linked to the individual practitioners (social worker or sentencer, or the interaction between them) who make decisions in particular cases. Literature on this subject from inside and outside criminology has highlighted specific influences on decision-making, and explored the issue of “discretion” in the decision-making process – how structured the decision is by rules and values or how free practitioners are to act autonomously.

When considering policy and praxis within a legal system, the types of approaches and the principles that are adopted by the juvenile system has significant influence on the decision making process within it. As previously noted and discussed (in this Chapter 5), actuarialism is one of the approaches that has emerged in recent years, and its practice has become a feature of contemporary youth justice (Case 2007b) Within this context, actuarialism can be defined as *“an approach to crime control and management which dispenses with concerns about the meaning or motives behind offending and replaces these with an emphasis on ‘technologies’ of ‘risk minimisation’ and the elimination of potential threats to social order”* (Smith, 2006, p.93). In terms of its paradigm and application Case (2007) indicates *“The jewel in the actuarialist crown is the ‘risk factor prevention paradigm’, a pragmatic crime prevention model that uses risk assessment and survey to identify factors in the key domains of a young person’s life (family, school, community, psycho-emotional) that statistically increase the likelihood of (official or self-reported) offending (‘risk’ factors) or decrease its likelihood (‘protective’ factors)”* (Case, 2007, p.92)

Its influence on the systems that adopt this approach can be seen through the focus on the prediction of future risk and reduction of reoffending, which guide and direct intervention (Smith 2006; Case 2007b). Accordingly, reform and rehabilitation of the young offender as objectives within youth justice become subject to aspects of measurement and classification of risk to reduce the threat of harm (Smith, 2006). Therefore, the practice and decision making at any stage within the juvenile justice system is guided by risk-focused crime prevention, which focuses on the evidence of risk, reoffending and protection of the public rather than being orientated primarily around needs, treatment and what is required in forms of rehabilitation (Smith 2006; Case 2007b).

However, the actuarialism approach has faced criticism of different aspects of its approach. According to Smith (2006) the actuarialism approach can achieve its “symbolic ideological ends” through giving

a sense of reliability and certainty in terms of handling of juvenile offenders but these senses arising from the actuarialist approach are, in fact, illusory due to the limitations of its practice. Smith added that this can be recognised through the risk indicators, which are based on subjective and contested judgements. Moreover, the tools that are used also have further limitations. For instance, Asset, which is used to estimate the likelihood of reoffending, is found to be accurate only seventy per cent of the time. In this regard Smith states:

At best, apparently authoritative decision-making is likely to be based on unreliable information and subjective judgements. But, is the cost of applying the technologies of assessment and classification by an ‘army of experts’ in youth crime (Foucault, 1979) nonetheless justifiable? Is routine error just an unfortunate by-product of scientific logic? Knowing the limitations of science (Giddens, 1990), do we consider it acceptable to ‘get it wrong’ sometimes in order to manage and control risk? (Smith 2006, p.102)

Finally, the impact of intervention based on actuarial principles and its tools has been negligible on re-offending rates (Smith, 2006)

One of the important approaches that influences decision making on a meso-level is diversion. Although diversion can be considered an aspect at Micro-level, that is on the level of who makes decisions regarding the prosecution of offenders when the case is deemed not serious enough to go to court, it can also be an approach that is adopted by some systems. For instance, Northamptonshire (Juvenile Liaison Bureaus) is a region that has attracted attention for its policy to not prosecute young offenders but rather to divert them (Davis et al. 1989; Kemp & Gelsthorpe 2003). However, it should be taken into account that, in the Northamptonshire region, the approach was influenced by the youth justice reforms of the Crime and Disorder Act 1998 which affect the decision making on whether to prosecute young people or not (Kemp & Gelsthorpe 2003)

Diversion can be defined in this context as “*an attempt to divert, or channel out, youthful offenders from the juvenile justice system*” (Bynum and Thompson, 1996, p. 430 cited Bilchik, 1999, p.1) This means that Diversion is a response to the offence committed by the juvenile, based on a view that handling juveniles who committed minor offences outside the formal system will lead to better long-term results, than for them to be handled through courts which may inadvertently stigmatize the young offenders (Bilchik 1999). However, diversion can also, through certain programs, be used to reduce the workload of juvenile courts and overcrowded detention facilities, to enable these organisations, in turn, to focus on offenders who commit serious offence (Bilchik 1999; Davis et al. 1989).

At the micro-level of those who make decisions, discretion is one variable that can influence the outcome of a case. Discretion according to Gelsthorpe and Padfield (2003) “*refers to the freedom, power, authority, decision or leeway of an official, organisation or individual to decide, discern or determine to make a judgment, choice or decision, about alternative courses of action or inaction*” (Gelsthorpe & Padfield 2003, p.9) While discretion is guided by the policy and principles’ of a country’s

legal system, the discretion can be exercised in varying degrees at every stage. For example, a decision can be made to refer the case to a special program or to deal with the case in an informal process rather than a formal one, or lastly, to give a caution rather than to place the young person in a detention centre (Gelsthorpe & Padfield 2003; Kemp & Gelsthorpe 2003).

According to Gelsthorpe and Padfield (2003) the exercise of discretion can involve two main variables: discrimination and disparity, which may both lead to negative outcomes. Discrimination can denote a positive meaning, through showing good judgment, but in the criminal justice context it is usually used to indicate handling of a case with prejudice, based on for example gender, race or religion so that there is a disparity in the varying sentences that are given to offenders who have committed similar offences in similar circumstances. It is more closely connected with sentencing outcomes, by focusing on their differences, rather than the process. It can also be indicative, in a wider context, of the different treatments of offenders and victims, who have similar backgrounds. Therefore, discretion needs to be limited to some extent to avoid the disadvantages and negative impact of too much breadth. On the other hand, Gelsthorpe and Padfield indicate that, despite the need for a balance in the exercise of discretion, it must be taken into account that unfettered powers of discretion can be used and applied in positive ways, for example, through *the discretion to exercise mercy or 'clemency,'* which should not be overlooked in any decision taken to emphasise the need for balance between uniformity and the individualisation of treatment. Gelsthorpe and Padfield state in this regard:

'Discretion' then is a force for ill when it leads to unjustifiable decisions (negative discrimination) and inconsistency (disparity), but it can be a good thing in that it provides a mechanism to show mercy which, even if defying precise definition, many would recognise as being necessary to the conception and delivery of justice. It allows for justice to become 'humane'. Evaluations of discretion thus involve a careful assessment of the balance achieved between these things, for one person's mercy may be another's negative discrimination. In simple words, ... disparity concerns the consistency with which criteria are applied to cases, and unlawful discrimination commonly refers to the use of illegitimate criteria (Gelsthorpe & Padfield 2003, p.6)

Also, at the micro-level, variables can be related to the offender. The literature shows that variables such as gender, the seriousness of the offence and race have an impact on decision-making. A decision taken as a response to a juvenile's offence is not made in isolation and it is based on various factors, some of which are related to the offender and the crime or offence. In this regard, the degree and complexity of information available to the one who will take a decision can influence the way in which the case will be handled. Research on decision making indicated:

the more complex the range of information presented to an individual, the more likely will judgements be made according to the most simple and obvious variables. This has been found time and time again.....what counts are crude variables of offence seriousness, past record and social status. (Cohen, 1985, p.189)

A study conducted in the Jurisdictions of four counties, Black Hawk, Johnson, Linn and Scott in Iowa in the USA, examined the factors that influence juvenile justice decision making and established that the gravity of the offence together with other legal variables were considered the most influential factor within the decision making process. The study also found that this has a significant effect on the extent that minorities are over-represented in these jurisdictions (Leiber, 2006). The conclusion that can be reached by this study is contradicted by another. The second study was conducted in three counties in Texas, in the USA, to examine the claim that minority youth offenders are handled differently and their over-representation within the juvenile justice system is attributable to racism and discrimination within this system. The study's findings suggest that minorities are over-represented in the juvenile justice system, which is attributable to their larger involvement in criminal activity and not due to any type of differential handling or response by the courts (Tracy, 2002).

There have been various different studies concerning the influence of gender when it comes to sentencing. A study conducted in Texas in the USA established that offenders who victimised females received longer sentences compared to offenders who victimised males (Curry et al. 2004). When it comes to the gender of offenders, a number of studies have set out that females receive a more severe sentence than males. This has been explained in the following terms: *“These findings have typically been explained from a traditional sex-role perspective that suggests juvenile justice officials treat females more harshly than males in an attempt to enforce stereotypical notions of proper female behaviour and to protect the sexuality of young women”* (Leiber & Mack, 2003 p:38)

Furthermore, one of the variables at the micro-level which was examined by one of studies within the sentencing context is a personal mitigation. Personal mitigation refers to aspects associated with the person rather than the offence that s/he committed. Personal mitigation can take various forms: it can be the circumstances surrounding the juvenile at the time of the offence, such as financial pressures, psychiatric problems, intellectual limitations, immaturity or the way that offender responds and looks to his offence, such as remorse, acts of reparation and addressing the problems that led to the crime (Jacobson & Hough 2007). A study conducted in the United Kingdom in five Crown Court centres located in London, in the South East, Yorkshire and the Humber and West Midlands regions, examined the role of personal mitigation in sentencing. It found that personal mitigation plays an important role in the sentencing decision, and can often ensure that the young person receives a more lenient sentence, such as community penalty instead of imprisonment. It also found that personal mitigation has significant influence in terms of reducing the length of, and postponing, the custodial sentence (Jacobson & Hough 2007).

Conclusions

Assessment as a process involves a series of steps and stages and each field assessment proceeds uniquely. Although there are common features shaping practice in social work, the nature of each particular field (eg criminal justice) shapes particular aspects of assessment, whether in the concepts and their implications, or the adoption of specific models and theories. This diversity in assessment implementation is due to the policy objectives of each field, as extracted from the assessment process, and due to its focal point, which leads to the adoption of different approaches and tools. In the youth justice field, assessment emphasises factors of risk and need underlying the commission of an offence and the probability of recidivism. Approaches to, and tools of, assessment have developed in western countries in this regard, to increase the effectiveness of practice and interventions, and to address the increasing rates of delinquency and recidivism among juveniles. This development has resulted in a practical division in assessment according to the tools that are used; methods of practice are the main focus, and the categorisation of practices can either be clinical or actuarial in their method. However although this development was seen by one group as increasing the effectiveness of practice, it was seen by others consulted at the macro level as a movement towards actuarial justice, which is a move away from welfare and justice concerns towards the concerns of managerialism and public protection.

Having described the juvenile justice system in both countries and the assessment of young offenders, in the next chapter the research methodology will be presented. It was used to explore the following research question: How do different juvenile justice systems assess young offenders and how does this assessment affect the decision regarding the response and intervention in relation to the juvenile delinquent's behaviour? In other words, how do social work reports influence the decision of children's panels in Scotland and juvenile judges in Saudi Arabia?

In short, this chapter has discussed the meaning and practice of assessment in the literature, in order that it may be later compared with the empirical findings presented in Chapters 7 and 8. The shifting interpretation of assessment in the literature, towards a greater focus on risk, clinical and actuarial methods, will be tested against the Saudi and Scottish juvenile justice systems, in order to determine the extent to which they fit this claim. Similarly, the different interpretations of assessment in literature- be it as a one-off event or a continuous process will be compared to the experience of Saudi and Scottish social workers. This chapter will provide a theoretical framework by which to evaluate the meaning and process of assessment in the chosen countries. Next chapter, chapter 6 lays out the methodological steps for this analysis and method of handling the findings with addressing key concerns of validity and process.

Chapter 6 Research Methodology

6.1 Introduction

This chapter explains and identifies the comparative approach and methodology that was employed in this research to achieve its objectives. It includes definitions and descriptions of the methodology which highlight its trustworthiness, the research sampling methods, the procedures for collecting data and the analysis process. As mentioned in chapter one, the research focuses on three issues : first, it investigates how social work reports influence the decision of children’s panels in Scotland and juvenile judges in Saudi Arabia; second, it explores how the assessment process is implemented with young offenders in Scotland and Saudi Arabia; finally, it explores the distinctive and contrasting elements of the two previous issues. This research assumes comparing the two systems at least leads to realising where the trend of practice direction is heading in the researcher’s country and at a high limit may lead to exchanges of experience, ideas and techniques between the countries.

6.2 The Comparative Approach in this study

Comparative study aims to build knowledge and understanding by “comparison” (Pennings et al. 2006). This sounds simple but it is not. Such studies focus on studying a diversity of characteristics and variables in number of cases by finding either differences and similarities, or both, in a comprehensive manner (Landman 2008). According to Pakes (2009) comparative methodology criminal justice is underdeveloped, so some of the methods in this field are borrowed from methodology in comparative politics or social policy and have been considered valid to achieve the aims of comparative criminal justice. In short, there are a range of methods that can be used to do “comparisons” of criminal justice systems, eg case studies (single-country studies as comparison), focused comparisons (comparing a few countries) or “truth tables” (comparing many countries) (Landman 2008; Pakes 2004; Pennings et al. 2006). The approach that was used in this study is focused comparison.

“Focused comparison” is particularly useful for developing understanding of two or three countries (Landman 2008; Pennings et al. 2006; Pakes 2004). The cases or jurisdictions examined in this approach seek understanding in both breadth and depth but less so than in case studies, which are usually more detailed (Pakes 2004).

Selection of the cases in the “focussed comparison” approach is carried out by one of the two techniques: (1) identifying the most-similar features of two or more countries, or (2) identifying the most-different features of two or more countries. This can then frame the choice of countries selected for comparison countries, the kind of questions asked and the kinds of explanations sought (Landman

2008; Pennings et al. 2006; Pakes 2004). The “most-similar” and “most-different” design approaches have been contrasted by Hague as follows:

“A most similar design takes similar countries for comparison on assumption that the more similar the units being compared, the more possible it should be to isolate the factors responsible for the differences between them. By contrast, the most different design seeks to the robustness of a relationship by demonstrating its validity in a range of contrasting settings” (cited in Pakes, 2004: 17).

In terms of the definition above, the “most similar” design tends to involve neighbouring countries or countries whose people speak same language, while the “most-different” design lends itself to culturally more divergent countries (Pakes 2004). There is an element of “pre- judgement” in deciding initially which countries best fit which design – detailed work at a later stage, as the research progresses, may in fact reveal greater differences or greater similarities, or both, than at first appeared, but the choice of one or other design remains a good starting point.

For what the researcher thinks are obvious reasons, Scotland and Saudi Arabia are chosen according to the “most-different” design. They are countries with vastly different cultures and histories, different languages, different conceptions of family life and the place of youth-in-society, different conceptions of law and legal institutions, different views of the problem that juvenile crime poses for their respective countries, contrasting approaches to publicising the workings of their legal system and contrasting approaches to research. Moreover, there are two further practical points:

- 1- The researcher is from Saudi Arabia and his research project was carried out in Scotland.
- 2- The researcher is funded by King Saud University in Riyadh city to carry out a research project in the UK in order to derive benefit from it for the development of policies, systems and legislation in Saudi Arabia.

All these are considered as reasons that require using a comparative study to achieve research objectives. Dammer and Fairchild as cited by (Ryder & Elrod, 2011) indicate that there are three practical reasons that stand behind studying the criminal justice system in other countries: (1) learning from other society’s experience, (2) Widening knowledge and understanding regarding variant cultures and methods to deal with problems, (3) Developing approaches to deal with emerging transnational crime problems that increasingly face countries around the world. Only the former two are relevant to this thesis, and some indication of how to undertake such a study was assisted by looking at existing empirical examples of comparative juvenile justice.

6.3 Studies providing comparisons of juvenile justice systems

Several studies have been undertaken to apply comparisons between the juvenile justice systems of different countries by focusing on issues regarding their philosophy, procedures or implementation.

From these studies:

- 1- Juvenile justice and due process rights of children in India and the United States.
- 2- Dealing with juvenile offenders in the criminal justice system in 11 European countries.
- 3- Juvenile justice legislation in Canada and Taiwan.
- 4- Reading and writing youth justice in Italy and (England and) Wales.

These studies are presented briefly in this section on 3 axes: (A) the main question and the fundamental object; (B) the method that used; and (C) the main result of study. The studies can be summarised as follow:

Juvenile Justice and Due Process Rights of Children in India and the United States (Kethineni 2005)

This study examined past and current juvenile court systems in India and the United States. The historical development of, and changes within, the two systems were compared in order to find an answer to the following question: how has juvenile court practice and procedure in these two systems been affected by changes in philosophy and terminology in the context of the due process rights of children? In other words, the study considers how historical development and social factors have influenced and shaped the current juvenile systems in India and the United States.

The method followed in this study in order to provide an answer to this question was comprised of three steps:

- 1- Clarifying and explaining how the juvenile justice systems in both countries developed and changed since their inception.
- 2- Exploring the differences between the two countries regarding the procedural rights of juveniles.
- 3- Finally, examining how the juvenile court systems in both countries have been changed by legislative reforms.

The study showed that major changes had occurred in the philosophy and procedures of the juvenile justice systems in both countries throughout their history; the final conclusion drawn indicated that, for the most part, both systems failed to achieve the rehabilitative agendas set out in their respective legislation.

Dealing with Juvenile Offenders in the Criminal Justice System in 11 European countries (Jehle et al. 2008)

This study compared 11 European countries in order to identify common trends by looking at points of similarity and difference between them. The comparison focused mainly on the age of criminal responsibility, system procedures and responses to dealing with young offenders as well as the sanctions imposed upon them.

This research can be considered as a theoretical study, since it compared what was written regarding the systems and procedures in 11 European countries.

According to this study, the models for treating young offenders throughout these systems can be categorised into the following three types:

- 1- ***Diversio***n: according to this model the juvenile justice system mainly works through social agencies and family court. The operations do not include criminal prosecution or criminal proceedings. However, juvenile offenders who commit serious offences such as murder or rape are not subject to the process of this model but are referred to face criminal prosecution and criminal proceedings.
- 2- ***Milder Sentence***: The juvenile offenders in light of this model are subject to the procedures that are applied to adults who offend. The process is managed through a criminal prosecution and criminal courts, but the sentences for the juvenile offenders are in a milder form. Moreover, alternative measures commonly are applied among the countries who adopted this model.
- 3- ***Special criminal treatment***: According to this model, the criminal prosecution and criminal proceedings include the process of dealing with juvenile offenders as procedures within criminal justice system. This process is carried out separately from adult offenders' procedures which means that the juvenile offenders have special procedures, special courts and different penal sanctions mostly of an educative nature.

The conclusion revealed by this study is that there is a common trend within the systems of the 11 countries to prevent young offenders from being dealt with in criminal courts and sentenced using criminal sanctions. This trend relates to minor offences only, not more serious crimes. Moreover, although the models vary from country to country, the procedures for dealing with young offenders mostly take a special path, with sanctions bearing an educational nature.

Juvenile Justice Legislation in Canada and Taiwan (Liu et al. 1998)

This study conducted a comparison of juvenile justice systems in order to understand the changes that had occurred within them. The juvenile justice system in Taiwan was compared to its Canadian

equivalent so that the variables and factors that had contributed to changes within the former could be better understood.

The analysis provided by this study relied upon three models of juvenile justice system in order to explain the type of change and level of development. These models are welfare, justice and crime control.

The method used in this study was as follows:

- 1- presenting the historical development of both systems;
- 2- clarifying the changes made in their respective juvenile justice legislation;
- 3- analysing, by comparison, the changes within two systems based on the three models.

One of the main findings of this study was that both systems had been affected by urbanisation, industrialisation and growth in education. On the other hand, the analysis provided by this study helped to understand why the Taiwanese system had not implemented a welfare approach but favoured a crime control approach. The perception, which was popular at that time, was that the welfare approach in the West had failed, leading to an increase in juvenile delinquency; this was clearly shown by changes in the juvenile justice in Canada, which had shifted away from welfare to the justice model.

Reading and writing youth justice in Italy and (England and) Wales (Field & Nelken 2010)

This study relied upon empirical data to compare youth justice in Italy and Wales by using semi-structured interviews and case-file analysis. The general aim of this study was to identify and explain the influence of cultural differences on youth justice practices in Italy and Wales.

The key questions that were addressed by this study are:

- 1- *What extent does the construction and use of social reports in the youth justice systems in the two jurisdictions conform to projected 'new' transnational trends in neo-liberal penal discourses?*
- 2- *In so far as differences in the influence of these discourses can be identified, how are they to be explained and interpreted?* (Field & Nelken, 2010: 287)

The first question relates to the influence of new penological strategies - risk management - while the second question is related to interpretative explanations of the factors behind that influence.

The main findings reached in this study can be summarised as follow:

- In relation to Italy:
 - 1- The study showed that the influence of 'new penological' risk-based penal strategies was extremely low, as revealed by re-analysing the interviews and case-files.

- 2- Social reports focused on the orientation of welfare related to young people committing offences and avoided attaching labels that may affect their life negatively in the future.
 - 3- Italian magistrates did not see the commitment to the welfare as a challenge to their position to represent and defend legal values. The reason for this related to the fundamental goal of youth justice in Italy, set out in the 1988 Juvenile Justice Code, which focuses on psychological and social rehabilitation and ensures that the penal process does not affect negatively either the psychological and social development of young people who commit offences.
- In relation to Wales:
- 1- In contrast with Italy, penological strategies were found to have a strong influence on penal practice in England and Wales.
 - 2- Pre-sentence reports used standardised assessment to measure the main indicators of risk-need.
 - 3- Most magistrates expressed a high degree of trust and confidence regarding the work of Youth Offending Teams (hereinafter YOTs), who relied upon these penological strategies. On the other hand, those who worked within, and had experience of, both old and new systems were in a position to contrast the two situations.

Conclusion

Review of the previous studies presented above shows that they adopted different approaches in terms of comparison methods by concentrating on one of the following issues:

- 1- Comparison of historical development.
- 2- Comparison of philosophy and ideology.
- 3- Comparison of process and procedures.
- 4- Comparison of workers' views in youth justice systems regarding practices.

On the other hand, the comparisons of juvenile justice in these studies were conducted for varying purposes, which is reflected in their general procedure. The first study (Juvenile Justice and Due Process Rights of Children in India and the United States) sought to measure concepts relating to the rights of children by considering the procedures and applications in the juvenile justice system of its two countries. The second study (Dealing with Juvenile Offenders in the Criminal Justice System in 11 European countries) aimed to identify common trends and features in a number of juvenile justice systems. The third study (Juvenile Justice Legislation in Canada and Taiwan) was a comparison of juvenile systems in order to understand the juvenile system in just one of the countries considered. The last study (Reading and writing youth justice in Italy and (England and) Wales) measured concepts

related to management and risk, then moving on to measure how these concepts were interpreted by workers within the juvenile justice systems in these countries.

The researcher in this present study has used a comparison of juvenile justice systems primarily for the purpose of understanding the practice in Saudi Arabia by identifying and measuring concepts through a comparison with Scotland, looking at: (A) the process and procedures of each system; (B) assessment of young offenders; and (C) the decision of children panels and juvenile judges in the cases of juveniles who committed offences.

6.4 Methodology Definition and Description

Quantitative and qualitative methods are major approaches to research methodology in the social sciences which used in research studies to achieve their objectives. Although each method has its own strengths and weaknesses, the reason for choosing one over the other depends upon which is the most suitable to answer the research questions and to achieve its objectives (Kovarsky 1994; Stake 2010). Accordingly, the research question and the phenomenon under investigation are considered main elements for determining which methodology is to be used (Creswell 2007). This section provides definitions and descriptions of quantitative and qualitative methods; the reason for choosing qualitative over quantitative in this study and which qualitative approach was used.

Quantitative research is defined as research used to study phenomena based on numerical data, which is gathered and analysed using a mathematical approach (Creswell 1994). This definition clearly identifies two fundamental characteristics of quantitative research: (A) the collection of numerical data and (B) the analysis of the numerical data gathered. Moreover, quantitative research, through its process, seeks to test and examine variables through cause and effect relationships, based on theory from existing knowledge which forms a hypothesis (Creswell 1994). This process, *“supported by the positivist or scientific paradigm, leads us to regard the world as made up of observable, measurable facts”* through its assumption that *“social facts have an objective reality”* and that *“variables can...be identified and relationships measured”*(Glesne & Peshkin, 1992: 6,7)

Therefore, this method cannot be used to answer the core question of this research and does not fulfil its main objectives. This research does not test a theory by forming hypotheses to identify cause and effect relations. Moreover, it does not tend to the *“use of standardised measures so that the varying perspectives and experiences of people can be fitted into a limited number of predetermined response categories to which numbers are assigned”* (Patton, 2002: 14), Research question mainly based on revealing how assessment of young offender in relation to the decision of judge and CHP

One of the key factors that make it difficult to place hypotheses is the lack of research in Saudi Arabia which can enables the researcher to develop hypotheses to be tested. Additionally, according to research question Saudi case in terms of assessment process and judge decision process required to be revealed and realised before. The researcher hopes that the results of this researche give a ground for future research to examine the practice in Saudi Arabia by posing and testing.

Conversely, qualitative methods, simply put, are used to understand social phenomena in their natural context by emphasising the meanings, experiences and views of people (Berg, 2001; Devers & Frankel, 2000; Marshall & Rossman, 1998). McNicol (2004) and Williams (2007) indicate that qualitative information comes by narrative form through descriptions and interpretations rather than in a numerical

form. The process of qualitative research “attempts to get an in-depth opinion from participants. As it is attitudes, behaviours and experiences which are important, fewer people take part in the research, but the contact with these people tends to last a lot longer” (Dawson, 2009: 19) Therefore, it results in a different type of knowledge to that achieved by quantitative research as it develops theory inductively, leading to hypotheses in the form of assertions, themes or patterns or grounded theory (Hopeful 1997).

In terms of its paradigm, It is grounded in an interpretivist/constructivist paradigm on which view *‘meanings are constructed by human beings as they engage with the world they are interpreting’* (Crotty 1998: 43) and the role of the researcher is *‘to understand the multiple social constructions of meaning and knowledge’* (Robson 2002: 27). Creswell argues that the goal of research using a constructivist worldview is to *‘rely as much as possible on the participant’s views of the situation.’* (Creswell 2007: 20, 21). Therefore, this research took a constructivist view of knowledge as ground for qualitative process to handle research question. Through interview as interaction in issues of research question with juvenile judges, children’s panels and social workers in both countries the meanings are developed in terms of assessment process and taking\making a decision in relation to assessment report. Through this process the researcher encourages participants to talk using their own voice and words which provides a detailed understanding of their view of the world. In relation to this study, this methodology, allowed the researcher to understand their personal experiences regarding the assessment process, the social worker report and decision-making in respect of juveniles who commit offences., This was necessary to understand the constructed reality of the participant juvenile Judges, CHP and social workers who are involved in these processes and the context of the social world in which these views occur.

There are different approaches to qualitative research. Each has a main focus and a different process to explore, explain and understand the phenomena studied (Creswell 2007). Ethnography, phenomenology and grounded theory are common such approaches. The Ethnographic approach is sometimes called the naturalistic approach and it is primarily used in anthropological research (Creswell 2007; Aldiabat & Navenec 2011). It focuses on the observation of details of everyday life in the real world as these naturally reveal themselves. (Creswell 2007; Aldiabat & Navenec 2011). Its process is conducted by describing a culture or society by the essential data collection methods of participant observation and in-depth interview (Creswell 2007, Aldiabat & Navenec 2011). The grounded theory approach is based on a process aiming at generating theory from data (Walker & Myrick 2006; Aldiabat & Navenec 2011). Grounded theorists argue that with the aim to construct abstract theoretical explanations from social process, a systematic qualitative analysis could generate theory from qualitative data (Walker & Myrick 2006). The most common means of data collection in this approach are observation and interview. The phenomenology approach focuses more on people’s subjective experiences and interpretations of the world and doesn’t aim to generate theories or models through

examination of the phenomenon (Creswell 2007). The main interesting aspect in this approach is related to how people make sense of the phenomena that they experience as worldview (Patton 2002; Creswell 2007). In depth interviews are the most common tools of data collection (Patton 2002; Creswell 2007).

Although this research, through the comparison between the two countries' juvenile systems, touched on aspects of culture and developed aspects of theories that offer explanations in terms of a Saudi system which lacks detail about the process and procedures regarding assessment and taking a decision regarding the juvenile who commits an offence, this research adopted a phenomenological approach. This research did not aim to generate theory from collected data nor to take culture as main variable to be observed and describe. A phenomenological qualitative approach was chosen to provide a comprehensive and in depth description and understanding of the phenomena (Creswell 2007), specifically the process of taking\making a decision in relation to the social worker report and the assessment process. The main focus of this approach through its process is gaining the individual depth of knowing that each participant holds. Lester (1999) characterizes the phenomenological approach in two way; (1) giving rich description and meaning and (2) freeing the researcher from hypotheses so that his focus point is searching for a deeper understanding regarding the phenomena.

Accordingly, to address the question and objectives of this research, a qualitative method applied through a phenomenological approach was implemented due to the exploratory nature of the study which required an inductive process using in-depth interviews with children's panels in Scotland and juvenile judges in Saudi Arabia regarding their decisions and with social workers in both countries regarding the assessment of young people who commit offences. Research which adopts qualitative methods achieve greater levels of depth and detail (Patton 2002) and "*create[s] and give[s] meaning to [participants'] social experience and lived realities*" (Wang 2008: 257). Therefore, implementing this method aided the attempt of this research to investigate deeply why and how young offenders are assessed and decisions are made by children's panels in Scotland and judges in Saudi Arabia. In addition, it allowed exploration of the meaning of concepts relating to the systems' procedures and practices from the perspectives of children panels and social workers in Scotland and juvenile judges and social workers in Saudi Arabia.

6.5 Trustworthiness

In qualitative research, the examination of trustworthiness is crucial in order to ensure reliability and validity (Patton 2002). Although each of the terms "reliability" and "validity" has a different process in quantitative research, in qualitative research they are not consider and viewed separately (Golafshani 2003). Therefore, "*Reliability and validity are conceptualized as trustworthiness, rigor and quality in qualitative paradigm*" (Golafshani 2003: 604) The ability and effort of the researcher are a main part

in establishing the credibility of qualitative research (Golafshani 2003; Merriam, 1998; Cohen et al., 2000). In this study, the process and outcomes were scrutinized for accuracy and truthfulness.

For establishing trustworthiness regarding the study sample, this research seeks to understand the constructed realities as interpreted by selected juvenile judges and social workers in SA and CHP, social workers and Includem staff in Scotland. All of them are dealing with juveniles who commit offences in relation to taking a decision, social worker report, assessment process in each country. Their inputs and interpretations are central to provide trustworthy, valid and practical results from the Saudi and Scottish system. It derived from their field experience regarding the three issues which constitute the core of the research question. Therefore, credibility in this regard is assured through the selection of participants who work and have experience with those issues in each country's system. The dependency on these inputs and interpretations reflects the main fact- that the validity of qualitative research depends on the reality in different sets of mental constructions and this clarifies the reason behind the dependency on human subjects' interpretations (Merriam, 1998), who are "*the primary instruments of data collection and analysis in qualitative research, [and that their] interpretations of reality are accessed directly through their [...] interviews*" (Merriam, 1998: 203).

In terms of the researcher's role as a human instrument, this confers a significant advantage in allowing him/her to place the phenomena in their context and in driving situations that are examined to expand current knowledge (Lincoln & Guba, 1985). Therefore, through the process, the researcher develops as a research instrument expanding his/her capability to deal with the studied phenomena. The researcher studied qualitative research methods in Saudi Arabia and Scotland and conducted this study from inception to completion. The researcher, before conducting this study, participated in a qualitative research project applied to the adult system in Saudi Arabia. In addition, the researcher has experience of working with juveniles in need in Saudi Arabia. In Scotland, the researcher attended children's hearings in Edinburgh and Glasgow, visited 'Includem' a number of times and visited Polmont Young Offenders Institution during the first year of his research before collecting data.

The second side of trustworthiness is related to consistency and replicability for minimizing errors and biases in research findings. The dynamic nature of all aspects of human behaviour is considered one of problematic points in the social sciences in terms of Reliability (Merriam, 1998; Cohen et al., 2000). In this study, the aim in this regard was not to isolate the laws of human behaviour to achieve reliability and it was not conducted in order to find the ultimate truth about the processes of assessment and decision-making in relation to social worker reports regarding juveniles who commit offences in the two countries. Instead, this study examined, through the use of semi-structured interviews, the opinions, beliefs and experiences of judges, CHPs and social workers who are involved in these processes then it analysed and interpreted these in order to gain a deeper understanding. The researcher also sought to

enhance the reliability of the study by examining corroborating academic literature and other research evidences from each country. Moreover, the researcher involved a peer researcher's examiner to remark the process regarding collected data, quotations as codes which were taken from the interviews, the themes and its contains and findings discussion. Credibility in this regard can be established through using the peer researcher for peer debriefing where the researcher "exposes [him]self to a disinterested peer" to make explicit what might be "*implicit within the inquirer's mind*" (Lincoln & Guba, 1985: 308). This process gives an opportunity to discuss thoughts and emotions that might be distorting one's view (Lincoln & Guba, 1985). Two peers from Scotland and one from Saudi Arabia agreed to function as peer debriefers. The researcher's first and second supervisors were peer debriefers from Scotland. The first supervisor had experience in CHS as former CHP and the second supervisor had experience in youth justice. The peer debriefer from Saudi Arabia is a professional who worked in the juvenile system and had experience as a qualitative researcher. Moreover, the researcher used a recognized translation services agency and a Saudi specialist with high qualifications in the English language to check the translation of the interview questions and the quotations of the Saudi sample that were used in the analysis. The Saudi specialist was also used to confirm research interpretations in English as he is an assistant professor of English at the College of Languages and Translation at King Saud University.

Another active ingredient in the process of trustworthiness is triangulation which is used to enhance validity and reliability or evaluation of the research findings. It is defined as "*a validity procedure where researchers search for convergence among multiple and different sources of information to form themes or categories in a study*" (Creswell & Miller, 2000: 126). It includes incorporating "*multiple methods to confirm the emerging findings*" (Merriam, 1998: 204). Therefore, this research used multiple methods such as interviews, tape recordings, investigator triangulation as peer debriefing and a collection of literature in research's issue from juvenile field in each country.

6.6 The Research Sample

Although large scale qualitative studies can be undertaken, data can also be gathered in-depth on a small, selective sample (or samples) of a given population group. Some literature refers to this as a non-probability sample, as it does not involve random selection of respondents. A non-probability sample is selected according to the characteristics of the targeted population and so reflects particular features.

The sample used in this study can be categorised as "purposive sampling", a strategy whereby respondents are selected on the basis of their position within certain organisations or involvement in certain (for this study, judicial or social work) processes in order to tap their knowledge and experience of specific groups (Berg, 2001; Devers & Frankel, 2000; Jupp, 2006).

The criterion for selecting the first set of participants was that they worked in the relevant juvenile system as CHP or juvenile court Judge – as an individual who takes decisions regarding juveniles who commit offences. The second set were chosen as social workers who write reports for CHP and juvenile Judges in both countries and assess juvenile offenders for intervention. Initially, therefore, the research sample in this study involved four groups, two for each country. In Saudi Arabia, the first group were judges of the juvenile court and the second group were social workers in a juvenile supervision home. They are employed as social workers by the (Saudi) state and they only deal with juvenile once s/he has been referred to the system. Both groups – judges and social workers - were based in Riyadh city. In Scotland the first group was children’s panel members in Glasgow city and the second group was social workers. The second group was divided between two settings: (1) state social workers employed by Glasgow City Council and North Ayrshire Council (2) social workers employed by the voluntary organisation, Includem. (Includem is a registered charity established in June 2000 to provide intensive support services to the most vulnerable young people. It currently provides these services across 18 local authorities in Scotland.). Research with the state social workers focused on both assessment for panels and assessment for interventions, whilst the latter (Includem staff) looked at assessment for interventions only. The reason for including Includem workers in the research sample relates to its immediate involvement with young offenders, who are referred to them by social workers in Scotland and they follow a different approach. Also including Includem workers in Scotland sample is for reflecting the approach and method that are used in Scotland which proceed Institutional joint work between the state sector and the private sector. This study examined how the work between the two sectors is managed regarding assessing young offenders and how each sector assess young offenders.

The sample size in this study is 24 participants, decreased from 25 as the number originally aimed at after one initially consenting Saudi judge refused to participate. According to Ritchie, Lewis, & Am (2003), *“qualitative samples for a single study involving individual interviews only often lie under 50. If they become much larger than 50 they start to become difficult to manage in terms of the quality of data collection and analysis that can be achieved..It is also important to ensure that samples are not too small (Ritchie, Lewis & Am 2003: 84;85)* The number in each group was determined according to permission from the Saudi Justice Ministry to interview juvenile judges and from the (Saudi) Ministry of Social Affairs who gave similar permission to interview social workers. These rigid and non-negotiable permissions, allowed the researcher to interview five juvenile judges and five social workers on any day during work hours. Five participants were also selected for each Scottish group in order to provide equal numbers. The first group in each country was examined regarding how they make their decisions and the use of social work reports in reaching final decision, while the second group in each country were interviewed regarding assessment practices.

All Saudi participants (judges and social workers) were male. In fact, only men are permitted to become judges and, since participation on the part of the social workers was voluntary, the five men who volunteered were accepted. The juvenile judges had long judicial experience, with some practising in juvenile justice in different cities before coming to Riyadh. In addition, all the juvenile judges interviewed were considered to hold high positions within the judiciary and some have framework determining changes to the current work in juvenile courts. The social worker participants were employed by juvenile supervision homes and all had long experience and at least one of them had experience of not less than five years working with young offenders.. With each house of correction each social worker's duties were related to preparing and writing reports for juvenile judges and assessing the juvenile for intervention programs.

From Scotland, there were three male and two female children's panel members and three male and two female State Social workers. All of the social workers' tasks were related to assessing juveniles and preparing and writing reports for children's panels. Two of them were team managers. Three male and two female Includem staff were interviewed. The children's panel participants had experience as members and chairs; most had experience of more than eight years as a children's panel member. The Includem worker participants had experience as project workers and team managers, while some had social work backgrounds and had previously been social workers in the local authority.

The Research Sample Summary Table:

Country	Participants	Number
Saudi Arabia	Juvenile judges	4
	Social workers	5
Scotland	CHS panel member	5
	Social workers	5
	Includem Staff	5
Total		24

The small size of the sample was determined largely by the numbers of people available for interview in Saudi Arabia; researcher was in a sense lucky to get even this and the comparison he had in mind would have been unbalanced if researcher had used a much larger sample in Scotland. There was, in a sense, potential to have a larger sample in Scotland (and if, as originally envisaged, my empirical study

had been of Scotland only researcher would have pursued this) but even in Scotland it proved difficult to generate a large sample of panel members and social workers willing to be interviewed (for reasons researcher explained in the methodology chapter, but which boiled down to reluctance on the part of busy and pressured social workers to devote time and energy to a researcher whose work, almost by definition, would not be of immediate or eventual benefit to them). Moreover, regarding unavailability and unwillingness of some judges and social workers to participate in both countries Morse (2000) and Sobal (2001) indicated that the nature and sensitivity of the phenomena that is studied may led to dictate the size sample of research. In our case, this study carried with it inherent limitations due to the fact that it examined and explored, in some of its parts, sensitive data related how juvenile offenders cases are treated in Juvenile system in both countries. Therefore, investigating any issue in this regard may established a fear or sensitivity to reveal data to anyone which can reveal some failures in the practice by workers. The process of collecting data and the procedures of getting the sample and interviewing them are presented in section 6.7: overview of the data collection stage.

6.7 Data Collection Tool

Information gathering using qualitative methods is carried out by: (1) observation of participants and non-participants; (2) interviews, which can be structured, semi-structured or unstructured; (3) documentation; (4) archival records; (5) physical artefacts (Marshall & Rossman 1998; Yin 2009)

Yin (2009) made a comparison between these tools in terms of their strengths and weaknesses as summarised in the table below:

<i>Sources of evidence</i>	<i>Strengths</i>	<i>Weaknesses</i>
<i>Documentation</i>	<ul style="list-style-type: none"> • <i>stable-can be reviewed repeatedly</i> • <i>unobtrusive-not created as result of the case study</i> • <i>Exact- contains exact names, references and details of an event</i> • <i>Broad coverage-long span of time, many events and many settings</i> 	<ul style="list-style-type: none"> • <i>Retrievability-can be difficult to find</i> • <i>Biased selectivity, if collection is incomplete</i> • <i>Reporting bias of author</i> • <i>Access- may be deliberately withheld</i>
<i>Archival records</i>	<ul style="list-style-type: none"> • <i>(same as those for documentation)</i> • <i>Precise and usually quantitative</i> 	<ul style="list-style-type: none"> • <i>(same as for documentation)</i> • <i>Accessibility due to privacy reasons</i>
<i>Interviews</i>	<ul style="list-style-type: none"> • <i>Targeted-focuses directly on case study topics</i> • <i>Insightful-provides perceived causal</i> 	<ul style="list-style-type: none"> • <i>Bias due to poorly articulated questions</i> • <i>Response bias</i> • <i>Inaccuracies due to poor recall</i>

	<i>inferences and explanations</i>	<ul style="list-style-type: none"> • <i>Reflexivity-interviewee gives what interviewer wants to hear</i>
<i>Direct observations</i>	<ul style="list-style-type: none"> • <i>Reality-covers events in real time</i> • <i>Contextual-covers context of 'case'</i> 	<ul style="list-style-type: none"> • <i>Time-consuming</i> • <i>Selectivity-broad coverage difficult without a team of observers</i> • <i>Reflexivity-event may proceed differently because it is being observed</i> • <i>Cost-hours needed by human observers</i>
<i>Participant-observation</i>	<ul style="list-style-type: none"> • <i>(same as above for direct observations)</i> • <i>Insightful into interpersonal behaviour and motives</i> 	<ul style="list-style-type: none"> • <i>Same as for above direct observations)</i> • <i>Bias due to participant-observer's manipulation of events</i>
<i>Physical artefacts</i>	<ul style="list-style-type: none"> • <i>Insightful into cultural features</i> • <i>Insightful into technical operations</i> 	<ul style="list-style-type: none"> • <i>Selectivity</i> • <i>Availability</i>

Table 1: Six sources of Evidence: strengths and weaknesses. Adopted from Yin (2009), p.102

The table above shows that any data collection tool has its own strengths and weaknesses.

In this study, observation was initially considered as one of the tools that could be used in this study regarding the process of hearings in Scotland and juvenile trials in Saudi Arabia. One of the major strengths of observation is its directness and it helps in getting a 'real-life' view (Robson 2002). Observing CHP during the hearing and juvenile judges during the trial can give more explanation and details regarding their decisions, how they use social worker reports in practice and the juveniles' reaction. Also, consultation of archival records of social worker reports in both countries was considered as a possible method which could be used for deeper analysis and might produce many aspects to be highlighted and discussed. In the end, both observation and examination of archival records were excluded due to these factors: both methods require strict procedures for obtaining approval and access and this can take a long time while the researcher had only a limited time to finish his study. The approval to use archival records of social worker reports in Saudi Arabia is usually given for project and research funded by the Justice Ministry and the Ministry of Social Affairs. Obtaining approval for observations would have required the agreement of the juvenile, CHP and the judges which would have added an extra difficulty especially in relation to the juvenile and his family. For example, the researcher attended children's hearings a number of times in the first year of his research before collecting data and he obtained consent only to attend cases of care and protection grounds. The parents of juveniles who were referred on offence grounds refused to let the researcher in although the panel chair tried to convince them.

Therefore, to answer the research question, the tools were chosen according to their appropriateness to the specific study and the ease of their application. Thus, semi structured interviews were chosen as the appropriate tool for gathering information on the issues specified in the research questions from the selected sample in their natural settings in Scotland and Saudi Arabia and the ease with which they could be applied.

Stake (2010) indicated that interviews in qualitative research are used: (A) to search for information and interpretation that is held by a person or group of people and (B) to explore issues that cannot be observed. Semi structured interviews are a type of interview used in qualitative research *“Located somewhere between the extremes of completely standardized and completely unstandardized interviewing structures is the semi standardized interview. This type of interview involves the implementation of a number of predetermined questions and/or special topics. These questions are typically asked of each interviewee in a systematic and consistent order, but the interviewers are allowed freedom to digress; that is, the interviewers are permitted (in fact expected) to probe far beyond the answers to their prepared and standardized questions.”* (Berg, 2001;70)

In this research, the interview technique is used as a tool because its function serves the exploratory nature of this study in three aspects:

- a. It seeks in-depth information regarding (A) how the juvenile court judges in Saudi Arabia and children’s panels in Scotland understand and use social worker reports; (B) how the assessment process for young offenders is implemented in Scotland and Saudi Arabia. This can be achieved by focusing on a small sample of representatives rather than on a large proportion of the population.
- b. It avoids any possibility of the participants misunderstanding the questions that will be asked, as the interviewer is able to repeat and explain questions to the interviewees.
- c. It assists in the process of gathering information by opening new doors for further investigation on ideas and issues that were not included in the interview questions.

Accordingly, the researcher did not use any other tool for gathering data as the interview tool could be used to obtain confidential information from the interviewees and to explore it in depth in order to generate descriptive data.

The interview questions in this study were developed as two separate interview schedules for use with participants. The first schedule was for CHP and Juvenile Judges, and the second schedule for social workers and Includem staff. The questions relating to the social work report in the second schedule were not put to Includem staff and they were only asked questions related to the assessment process. The two schedules were first developed in the English language then were translated into Arabic by the

researcher and checked by a recognized translation services agency and by a specialist from Saudi Arabia with high qualifications in the English language and Arabic language is his first language. The basic questions were the same for the two countries with some scope for extra questions depending on the answers, some of which needed more explanation. The use of the same questions for the countries aimed to keep “identical questions” for comparison. Extra questions were used with the aim of examining and discussing in more details different dimensions of a concept or different indicators related to the main issues of research question. The interview schedules in English and Arabic are found in Appendices 1-5. The sample size in this study is 24 participants (decreased from 25 after one Saudi judge refused to participate.)

Each interview schedule had its emphasis on different issues and processes depending on which participant group was being interviewed. The two interview schedules were used to focus on the main issues regarding making decisions, social worker reports and assessment processes. The interview schedule of Judges and CHP had a set of questions investigating their views regarding the process of making a decision in respect of the juvenile who commits an offence and the role of the social worker report in this process. It also dealt with some contemporary issues in youth justice (which are discussed in chapter two) which can be influenced by the previous process, in order to gain more explanation and understanding in this regard. The second interview schedule (of social workers) had a set of questions investigating their views regarding their reports prepared for Juvenile judges and CHP and their role in the process of making a decision. It also, dealt with their views regarding the assessment process by attaching different concepts and indicators (which are discussed in chapter five) which they applied - whether for the report or for intervention. The aim of the interviews was to explore how juvenile judges, CHPs and social workers in both countries, in their positions, construct their realities, perceptions, explanations, beliefs and world view on the previous issues. Thus, the interviews gave the researcher the opportunity to examine these issues with those with whom they interact.

The two interview schedules started with general questions which aim to engage the participant and establish affinity. Although the Judges and CHPs interview schedule was divided into three parts and the interview schedule of social workers was divided into two parts, as mentioned in the previous paragraph, the questions were not always asked in a particular order. This was so that the line of questions could be directed by the participant’s answers as much as possible so that the participant’s ideas would be sequential. Each interview schedule was divided according to the main issues of the research question (decision-making, social worker report and assessment process).

A pilot study was conducted for the two interview schedules (and the process these would follow) with two participants in each country. In Scotland these were a former CHP and a former social worker while in Saudi Arabia they were a juvenile judge and a social worker who works in a juvenile house of correction. The judge and social worker participated again as part of research sample. The pilot proved

useful in preparing the researcher for possible participant responses. Moreover, it gave the researcher the opportunity to practice pacing the questions and managing interview time. It also showed the researcher how far the questions were clear and touched the main issues in both countries. One of helpful outcomes of this process was to reveal that restorative justice as a term is not common and not used by judges. It also gave an indication that “diagnosis” as a term can be used more commonly instead of “assessment” by some judges and social workers. Therefore, the question related to restorative justice was removed and replaced by a question asking the judges about the role of victims in the process. It also led to the use of “diagnosis” as an alternative term to “assessment” in the Saudi sample in case the participant used one of them in preference to the other. The pilot study in Scotland with the former CHP produced supplementary questions targeting direct points related to the method of treating juveniles and the social worker’s role during the hearing. These questions were written as notes to be asked of CHPs.

6.8 Overview of Data Collection Stage

Ethics approval for the study was obtained through the Law School Ethics Committee at the University of Strathclyde on 05 July 2011. Where a study raises complex ethical issues, (for example, drug testing on participants or deliberate deception of research subjects or interviewing of young children) the matter must be referred to the (whole) University ethics committee. Where the ethical issues are more straightforward, it will be decided at School level. Since this project interviewed professional people, having obtained from them informed consent, with a guarantee of their anonymity, it needed only School level approval. The process of collecting data for this study began in October 2011 and was completed by the end of September 2012. In Scotland, data collection started in October 2011 and continued until late September 2012, while the trip undertaken for data collection in Saudi Arabia started in late December 2011 and was finished by the end of March 2012.

Interviewing juvenile judges and social workers in a juvenile house of correction in Saudi Arabia required the researcher to undertake formal procedures; official correspondence was also required from King Saud University to the Ministry of Justice and the Ministry of Social Affairs. This process lasted for one month, after which time the researcher was able to begin collecting data. After obtaining approval, the researcher met with the head of juvenile judges and the manager of a juvenile supervision home in order to provide them with a brief introduction about the research and its objectives. The head of juvenile judges was to be involved in the research, ensuring that the door is open for any future research that can have the effect of improving and developing work in this field. Both the head of juvenile judges and the manager of the juvenile supervision home requested that the researcher provide them with a copy of this research upon completion. After those initial meetings, formal letters were sent from the head of juvenile judges and the manager of the juvenile supervision home to judges and social workers seeking volunteers who were interested in participating in the study. After that the researcher was informed and given the contact numbers of participants who agree to be interviewed. No response

was received from any female social worker, although the researcher made efforts in this regard by contacting different people informally who have a working relationship with the female house of correction. One of the main factors behind not receiving responses from female social workers was that they had participated in several research projects in the same period that the researcher was in Saudi Arabia to collect data so it may have been that their motivation to take part in this research was weak as the participation is voluntary.

The researcher contacted participants - judges and social workers - by cell phone and arrangements were made for an interview for each one. The researcher was flexible with dates and locations of interviews leaving it up to the participant to choose when and where. The interviews with 3 juvenile judges were conducted in their own house; one judge's interview was conducted in the Mosque after performance of the evening prayer as he was a prayer leader in that Mosque. The fifth judge refused to participate although the appointment was made for the interview to be in his house according to his request. He gave the researcher his apologies for no clear reason other than that the researcher might use audio recording. The sensitivity of some judges regarding audio recording was one of the obstacles that faced the researcher. The reason behind this sensitivity relates to two factors: (1) most researchers in Saudi Arabia use handwritten notes rather than audio recording and (2) there have been some problems with journalists using audio recording against judges. This sensitivity was dealt with by the researcher by asking the judges to read the questions before the interview and by explaining to them the main objectives of the research. However, the judges who were interviewed accepted the use of audio recording and the interviews were conducted in their own houses and one of them in the Mosque. The interviews that were conducted in Judges' houses resulted in a relaxed and friendly environment where the participants felt comfortable to discuss the issues related to the interview questions. The reason behind inviting the researcher to their houses might be related to their strong belief in the project since the research aimed to develop the work in the juvenile system and to consider the critical views that they have. The judges wanted to be part of this research specially [because?] they are in a high position.

With regard to the Saudi social workers, the interviews were conducted with three of them at their workplace and with the other two in an open plan settings in an outdoor café after work hours. No concern arose regarding using audio recording (compared to some of the judges) and this may be because there was no negative experience which social workers had faced in the past in this regard. The researcher made an effort to replace the fifth judge who refused to participate, but the period available to conduct field work in Saudi (three months) expired before a suitable replacement could be found.

In Scotland, on the other hand, interviews were conducted with children's panels and Includem workers after ethical approval was obtained and without any further formal process. The researcher's first and

second supervisor played a key role. Firstly, the researcher's supervisors sent email to CHS Management Team, Social Work Services Glasgow City Council and Includem containing details of the study. After that the researcher received emails identifying participants in CHS and Includem who were interested in participating in the study. The researcher contacted participants by email and arrangements were made for an interview.

Interviewing social workers employed by Glasgow City Council required obtaining another ethical approval. In spite of the ethics approval received from the University of Strathclyde, the researcher was also asked to complete Glasgow City Council's own Ethics Application Form. This process lasted for two months before the first interview could be conducted. The researcher encountered specific challenges and obstacles in the process of data collection for this research, especially with regard to Glasgow City Council. The following points summarise what was required by the Council:

- It asked that a section of interview questions regarding intervention be removed. The justification for this was these questions did not serve the core research question and that their inclusion would mean that the interviews would last more than one hour. Although the interview questions in this study were tested in a pilot study, the researcher removed the section and questions related to how assessment affected intervention in practice.
- It requested removal, revision and reordering of some questions to make it easier for the social workers to respond. The researcher complied after discussion with a supervisor.
- It asked that Includem workers be removed from the research sample. The justification for this was that Includem workers do not write social work reports for children's panels. The researcher clarified that the questions would focus on assessment and intervention, while the questions relating to the report to children's panels would be removed.
- It asked that the research sample be increased to eight for each group. The researcher clarified that the decision to use five participants in each group was determined based on the permission obtained from Justice Ministry and Ministry of Social Affairs in Saudi Arabia to interview five juvenile judges and five social workers. Accordingly, five participants were selected for each group to be equal in number in both countries.

Although the Council asked the researcher to increase the research sample and certain changes were made in accordance with their comments, it offered only two social workers as being available to be interviewed. After that, a Team Manager in North Ayrshire Council was contacted by the researcher's supervisor regarding the possibility of finding three other social workers to take part as in this study. After that the researcher received email from the team manager with email addresses of three social workers who were interested in participating in the study. The researcher contacted these participants by email and arrangements were made for an interview. The interviews with children's panel members,

social workers (two of them from Glasgow Council and three of them from North-Ayrshire Council) and Includem staff were conducted at the participants' workplaces.

With the permission of 24 participants in both countries, the face-to-face interviews were tape-recorded and each took, on average, between 45 minutes to one hour. At the end of each interview notes were written regarding interesting comments made in the interview. A short time after finishing each interview, the researcher wrote notes which reflected insights into what had been discussed. Most of the interviewed judges and social workers in Saudi Arabia and the children's panel members in Scotland agreed to being contacted again in the event that more detail was required or that clarification was needed.

All tapes were transcribed verbatim to a paper format for analysis. Nine of the interviews were in Arabic; the parts of these that were coded and used in analysis were translated into English by the researcher and checked by a recognized translation services agency and by a specialist from Saudi Arabia with advanced qualifications in the English language while also speaking Arabic. The researcher used this method for translating to English the verbatim transcripts that were coded and the interview questions for the Saudi sample to get over hurdles which occur when different languages are used as data. The main aim for using a specialist from Saudi Arabia with advanced qualifications in the English language speaking Arabic and a recognized translation services agency was to ensure both accurate translation of words used and conceptual equivalence or to come as close to comparability as possible after the researcher's translation (Birbili 2000; Temple 1997). The hurdle that occurs is due to the culture differences as concepts may be different from one culture to another (Weinfurt & Moghaddam, 2001) and expressions in any culture may contain an emotional connotation that is not covered in another culture (Birbili 2000). In addition, common everyday language terms (slang terms) may not have the same meaning when being translated to another language. Therefore, the researcher, in this regard, took it that '*the task of cross-cultural researchers in translating instruments into another language is to achieve equivalence in meaning rather than in literal form*' (Lim and Firkola, 2000: 143). When faced by a term or a phrase that does not have the same meaning when translated to another language, the researcher tried to obtain a term that meets the definition of the concept rather than to attempt to have lexical equivalence (Birbili 2000; Temple, 1997). There are major factors that affect the quality of the translation which are related to the translator's knowledge of the culture and the competence of the translator (Birbili 2000). The researcher in this study belongs to the Saudi culture, the recognized translation services agency is in Saudi Arabia and the specialist person who has advanced qualifications in the English language belongs to the Saudi culture. The verbatim transcripts of Judges and social workers in Saudi Arabia that were coded then translated were slightly intervened to be revised by the researcher and the English language specialist in for grammatical purposes to translate the correct views expressed by Saudi participants.

6.9 Data Analysis Tool and Analysis Approach

Qualitative data analysis is a complex process which requires clear steps for handling the data on the part of the researcher. In this regard, there are two approaches: (1) the computer programmes approach (the use of qualitative data analysis software in qualitative research) and (2) the manual cut and paste approach (Kvale 1996)

In this study, NVivo 8 was chosen as the appropriate tool for data analysis. NVivo is qualitative data analysis software produced to help researchers to handle data through various processes, such as managing, shaping and understanding (Richards 1999) Nvivo is designed for qualitative researches that require analysis of small or large volumes of data in depth (QSR international 2012). Gill Ereaut indicated that: *"Computers are useful for administrative functions and at arranging and sorting data. What computers can't do is think like a qualitative researcher. But the fact that computers don't think is not a limitation at all; in fact, it leaves the researcher doing what they most want to do - the thinking."*(QSR international 2012)

The main processes in which NVivo can assist the researcher are summarised in the following points (Bazeley 2007):

- Process of managing data and organising it.
- Process of managing ideas.
- Process of querying data to search words, concepts or contexts.
- Process of graphically modelling as result of the ideas and concepts that built from the data.
- Process of reporting from the data.

In order to use NVivo 8 in this study, the researcher attended two workshops. Each workshop was divided into two days lasting six hours. The training allowed the researcher to maximise his use of NVivo to benefit his study, from the processes of data analysis to the use of NVivo for literature review. As a result, the researcher was himself able to give two workshops in the Arabic language in how to use NVivo for literature review in the University of Glasgow and Glasgow Caledonian University.

Nvivo 8 software also works with audio and visual material, which can be used as data or to assist the researcher in deeper analysis and more flexible handling (QSR international 2012). In other words, audio and video material as data can be imported and then handled through play, analysing and transcribing. In this study, the researcher used this feature to listen and re-listen to the recorded interviews that were to be transcribed in order to provide word-for-word accounts, to ponder certain answers and to check for accuracy.

As has been indicated above, NVivo 8, as computer software, does not do the job of a qualitative researcher but it is a tool that may be used according to the approach adopted by the researcher. In this regard, Spencer, Ritchie, & O'Connor (2003) pointed out that *“there are no clearly agreed rules or procedures for analysing qualitative data. Approaches to analysis vary in terms of basic epistemological assumptions about the nature of qualitative enquiry and the status of researchers' accounts”* (Spencer et al. 2003: 200)

Regarding the approach to analysis in this study, the researcher adopted “Ad Hoc Meaning Generation” as a guide for using NVivo 8 to handle and analyse data. This approach is used as a technique that can be implemented to deal with qualitative data gathered by interview. This approach is employed through:

(1) Noting patterns or themes, (2) seeing plausibility, (3) clustering of “what goes with what”, (4) making metaphors to achieve more integration among diverse pieces of data, (5) counting the number of agreements or disagreements, (6) making contrasts/comparisons to sharpen the understanding of interviewees' responds, (7) partitioning variables to differentiate between responses, (8) subsuming particulars under the general to seeing responses and their relationships more abstractly, (9) factoring to establish an analogue to a familiar quantitative technique, (10) noting relations between variables, (11) finding intervening variables, (12) building logical chain of evidence to systematically assemble a coherent understandable data, and (13) making conceptual/theoretical coherence. (Kvale 1996: 204)

Handling data by implementing Kvale's approach requires, as the first step, reading the interview transcripts as often as possible to ensure that the researcher is familiar with the data before then moving on to attempt to identify key concepts and the relationships between them. Kvale (1996) clarified this process by using the following steps: *Read the interviews and get an overall impression, then go back to specific passages, perhaps make some quantifications like counting statements indicating different attitudes to a phenomenon, make deeper interpretations of specific statements, cast parts of the interview into a narrative, work out metaphors to capture the material, attempt a visualization of the findings in flow diagrams, and so on* (Kvale 1996: 204)

In this study, Kvale's approach was chosen due to fundamental factors which leave the researcher free to select a variety of techniques to identify: (A) the relationships between the data collected for this research; (B) common themes from direct participants' responses to interview questions; and (C) differences in responses of the participants in each theme and noting variables that will be discussed in the research findings chapter. Kvale (1996) indicated that, since no structure restricts the freedom of analysis, the meaning generation technique assists the researcher in discovering the real and deeper meaning of the data.

6.10 Process of analysis: combination of tool and approach

The process of analysis in this study took five main stages. At the first stage, the researcher imported the interview transcripts and audio recordings into NVivo 8 and placed them in internal sources. In this stage, the interview transcripts of juvenile judges and social workers in Saudi Arabia were in Arabic and the difficulty that faced the researcher in using the Arabic language was that Nvivo 8 changed the font style and size and made space between the lines. The researcher sorted this out after they were imported by going through every single transcript and correct it. The interviews were divided into two folders: the first folder contained the interviews of children’s panel members in Scotland and juvenile judges in Saudi Arabia, while the second contained social worker interviews in both countries as well as the Includem workers. The interviewees were divided and categorised into the two folders due to the main issues that they dealt with. Moreover, this division was used as the classification to facilitate the process of dealing with the imported documents.

Once the interview transcripts and audio recordings were imported into NVivo 8, the researcher started the second stage by reading and re-reading the interview transcripts several times and also listening and re-listening to some parts in order to become more familiar with the data and for drawing the main themes based on three main issues (1) Making Decisions\Sentencing Decisions, (2) Social Workers’ Reports and (3) Assessment process. These issues are the main parts of the research question which needed to be covered in each interview by its questions. Therefore, from direct quotations of the interviewees around the three main issues the main themes started to be drawn. According to the “Ad Hoc Meaning Generation” approach which was adopted, reporting findings evolved around a number of themes that were generated from connecting the dialogues of the interviewees’ direct quotations on the main issues. Through reading and re-reading all the transcripts and coding the verbatim quotations to the main issues by applying the 13 techniques of “Ad Hoc Meaning Generation” as outlined in the previous section led to drawing out the themes that were placed as the main themes. This process of drawing out the themes resulted after creating 22 nodes: 877 codes in total.

The themes that were drawn after this process were as follows:

Juvenile Judges in Saudi Arabia and Children’s Panel Members in Scotland:

Theme 1: The considerations taken into account by Judges and CHP when making decisions regarding juveniles who commit offences.

Theme 2: The influence of social workers’ reports on the decisions made by Judges and CHP.

Theme 3: The methods used by Judges and the CHP during the hearing.

Theme 4: Attitudes towards contemporary issues in youth justice.

Social Workers and Includem Workers:

Theme 1: The impact of social work reports on decisions made by juvenile Judges and the CHP.

Theme 2: The meaning of assessment in the context of juveniles who commit offences.

Theme 3: Assessment of juveniles who commit offence.

Nodes in NVivo 8 are containers for codes that are linked. Data (codes) is gathered together by coding at a node. Bazeley (2007) defined the node in NVivo as a collection of references about a specific theme, idea or topic that the researcher is interested in. NVivo 8 provides two types of nodes: (A) free nodes and (B) tree nodes. Free nodes are a non-hierarchical collection of nodes, while tree nodes are organised into hierarchies, as in a family generation model with parent and child nodes (reference). Throughout this process, the researcher identified the key concepts and the relationships between them, while also establishing common themes from direct quotations that involved similar and intervening answers from interviewees.

After locating those themes, the researcher began the third stage by starting again reading and re-reading all the transcripts applying the 13 techniques of approach and coding the data to tree nodes (main themes) and free nodes (new subthemes that may emerged). This process was made by assigning pieces of texts (coding) to specific themes (nodes) throughout all the transcripts to feed the themes from the dialogues of the interviewees. It was based on identification of a relationship with one of the following in the data: (1) as the matter of enquiry (2) as evidence (3) as explanation (4) as illustration (5) to deepen understanding (6) to give participants a voice (Corden & Sainsbury 2006) (7) narrative style to give more understanding and explain how participants interpreted some points regarding the main issues ((Bruner, 1987, Flick, 2005) These were used in more than one position for describing the theme and when presenting the research findings as well. This stage ended, when the process of coding brought the researcher to a point of saturation where nothing else can be coded to the themes nor can any new subtheme emerge from the data.

The second stage and third stage in the analysis process took around five months in the effort to be done with all the transcripts which contained 124653 words over 415 pages which nearly equates to one week for each interview transcript. The fourth stage was the translation into English, by the researcher, of the Arabic parts of these that were coded and used in this process. As stated previously, these translations were checked by a recognized translation services agency and by a specialist from Saudi Arabia with advanced qualifications in the English language who also spoke Arabic. The fifth and final stage was an interpretation of the data which was completed as a discussion and reported.

The research findings, and the analysis that will be presented and discussed in the next chapters, were developed from direct quotations from the participants and, further, presented and interpretively analysed in connection with the issues discussed in chapter two, three, four and five. The analysis attempts to provide a deeper interpretation of the findings in order to explore and understand the discussed issues related to the main issues in this study: (A) the decisions of children's panels in Scotland and of juvenile judges in Saudi Arabia regarding young offenders; and (B) social worker reports and the assessment process as viewed and practised in the two countries.

Presenting research findings for qualitative research requires the application of various approaches and special processes. Therefore, in qualitative research presenting research findings takes one of two approaches; the first approach integrates the findings and discussion in one chapter while the second approach divides the findings and discussion into separate chapters (Burnard 2004). In this study the researcher divided the interpretation of the findings into two chapters; the first of these reports the key findings without a discussion, by the selection of appropriate verbatim quotes organised into themes and categories, and the second chapter offers a discussion of the findings (Burnard 2004). This approach was selected to allow the researcher to present the findings in a clear and focused way.

Chapter 7 Research Findings

7.1 Introduction

Presenting qualitative research findings requires the application of various approaches. In this work the researcher divided the interpretation of the findings into two chapters; the first chapter (chapter 7) reports the key findings, by the selection of appropriate verbatim quotes organised into themes and categories, and the second chapter (chapter 8) offers an analysis and discussion of the findings, with reference to the literature overviewed in earlier chapters. This approach was selected to allow the researcher to present the findings in a clear and focused way.

Therefore, this chapter reports and presents the research findings from the data collected by conducting interviews with juvenile justice practitioners in Saudi Arabia and Scotland. These findings are grouped into seven major themes divided into two subsections to illustrate the insights of the different interviewees. The first section contains 3 themes relating to assessment of young offenders and presented under three headings: (1) Social workers in Saudi Arabia (2) Social workers in Scotland (3) Includem workers. Themes are as follows:

Theme 1: The impact of social work reports on decisions made by juvenile Judges and the CHP.

Theme 2: The meaning of assessment in the context of juveniles who commit offences.

Theme 3: The process of assessment of juveniles who commit offence.

The second section contains 4 themes relating to making decisions\sentencing decisions and presented under two headings: (1) Juvenile Judges in Saudi Arabia (2) Children's Panels in Scotland. Themes are as follows:

Theme 1: The considerations taken into account by Judges and CHP when making decisions regarding juveniles who commit offences.

Theme 2: The influence of social worker's reports on the decisions made by Judges and CHP.

Theme 3: The methods used by Judges and the CHP during the hearing.

Theme 4: Attitudes towards contemporary issues in youth justice.

This section will be followed by a third section which will be analysis of Saudi system and its practice with international baseline standards as critical approach for handling some aspects in Saudi system.

As has been indicated in the previous chapter, these themes are identified according to how the responses of the interviewees meet the research objectives, as reflected in their responses to the interview questions. Accordingly, Social Workers' Reports, Assessment processes and Making Decisions\Sentencing Decisions were the main axes of the responses. The resulting themes were drawn out by creating 22 codes out of 877 codes.

In terms of organising the verbatim quotations for each theme, this was carried out based on identification of a relationship with one of the following in the data: (1) as the matter of enquiry (2) as evidence (3) as explanation (4) as illustration (5) to deepen understanding (6) to give participants a voice (Corden & Sainsbury 2006). These were used in more than one position when presenting the research findings.

Finally, it is important to distinguish between the opinions and statements of the different interviewees, therefore, to indicate each interviewee's verbatim quotations a name has been constructed through combining the job title and a number. (Saudi) Juvenile Judges were given the acronym Judge and a number, i.e. Judge.1 or Judge.2 etc. The Children's Panel were given the initials CHP and a number. Social workers in Saudi Arabia were given the initials SWS and those in Scotland were given SWC, also with a number. Finally, the Includem staff were given the initials INCS plus a number.

7.2 Assessment of Young Offender by Social Workers and Includem Workers

7.2.1 Theme 1: The impact of social workers' reports on the decisions of juvenile Judges and the CHP.

This theme explores the factors that lead to the social work report having an influence on the decision of Judges and CHP from the viewpoint of social workers in both countries. Opinions on the role of the social worker report are compared and contrasted between social workers and judges/ CHP members in Saudi Arabia and Scotland respectively. The majority of interviewees responded and gave supporting, empirical examples on this theme. One of the key findings here is that social workers in Saudi Arabia do not have any role in the first stage of referring the juvenile to a house of correction, or recommending whether it is better for the juvenile to be free until the trial/hearing or not. By contrast, in Scotland, the findings show that social workers' view of themselves as professionals give the social work report a strong influence.

7.2.1.1 Social workers in Saudi Arabia

While in Saudi Arabia the social worker's report was usually described as an important influential factor by the social workers themselves, its influence on the judge is less clear. In particular, social workers in Saudi Arabia emphasize the importance of the context they provide to the case. They also note the importance of physical presence in both producing an influential report and aiding the juvenile.

Influence of Reports

SWS.3 on the influence of social worker reports states:

According to my experience in working with young offenders, the judge does not deal with any case without referring to the social worker's report. During the period of making a decision on the offender's case, the social worker has enough time to spend with the young offender, so we take notes on his activities and how he deals with his peers and we also get to know more information about the offender's status in his family. Therefore, the social worker's report has a major importance on the judge as they may have a role in the final decision on the case.

Here the social worker argues that the judges' reference to the social worker report obviously makes it important. He takes for granted that, because of the time and importance he places on the report, as a key aspect of his profession, it is necessarily a 'major influence' on the judge.

However, despite the importance of the above-mentioned influence of the social worker report, social workers also raised an issue that Juvenile Judges make decisions regarding juvenile cases at two junctures. The first occurs immediately when a juvenile is referred to a house of correction after committing an offence, and the Judge has to decide whether to free the offender or ask him to stay in the house of correction until the investigation is completed. The second juncture is when the information and investigation is completed and the juvenile comes to juvenile court for the trial. Social workers in

Saudi Arabia have pointed out that they do not play enough of a role in the first decision, where they could make a meaningful contribution. SWS.1 and stated in this regard:

Sometimes it is not only the Judge that decides whether the young offender must stay in the house of correction or not. As social workers we have a right to make an initial decision on the young offender's case when we find that it is not suitable for him to remain in the house of correction because it may cause some negative side effects - so we let him leave. On the other hand we may decide to keep the young offender in the house of correction if it will be harmful to himself and society if we allow him to leave.

Here, the social worker may play a role in whether the juvenile offender remains in the house of correction or not, but only in exceptional circumstances. The majority of the weight of this decision seems to remain with the judge. As SWS.3 notes, referring to instances:

such as when the case is small but the offender may be considered as a threat to society. For example a drug dealer or someone with antisocial behavioural tendencies who has been caught up in a fight; then it is recommended that we keep him away from his environment and place him in a house of correction. Some families also ask us to allow their son to stay at the house of correction as they think it may be better for him. In some cases, it is better to avoid mixing with other young offenders because that may influence his future behaviour. When it is a first offence for a young offender I advise that he does not stay at the house of correction. I think that first time offenders do not deserve to be treated in this way.

Because this happens early in the process, the social worker here can offer recommendations, which are primarily based on juvenile's environment. This can be considered as diversion through transferring the young offender and preventing him from being held in the institution. This decision may be influenced by several factors, mainly concerned with the safety of, and prevention of offending by, the young offender, which will be presented in the second section (on the judges' views).

Importance of Context

A key value-added aspect of the social worker's report here is 'the offender's status in his family'. This family context was also brought up by other interviewees, and may be a key point on which the social work report can have an influence on juvenile judges in Saudi Arabia. SWS.1 notes:

Before making any judgement, the judge looks into the social worker's report, for example when there was a case of a 19 year old offender who committed very serious offence with a gang. He is from unknown parents and that had bad psychological side effects on him. He is emotionally destroyed and has a bad impression of society. All these factors may lead him to commit offences again and again. So when a judge reads the social worker's report of his case, the judge considered the circumstances that the young offender went through. So, two members of the gang were sentenced to 12 years and 11 years but that guy was only sentenced to 10 months due to his circumstances. (SWS.1)

If the family context provided by the social worker can indeed cause such a large reduction in sentencing for a juvenile as SWS.1 outlines in this case, it may be the key influence as SWS.3 noted above

In addition, while the social worker's report addresses the young person's situation within detention centres, SWS.2 indicated that the social worker's report does not contain any suggestions regarding intervention outside of the house of correction:

From my experience 90% to 95% of young delinquency cases are caused by environmental factors more than individual factors. The social worker's report does not cover the environmental factors. It diagnoses and describes the environmental factors but it does not correct them. For example if the cause of the delinquency was the home, we do not have the ability to change it. The case needs more planning. With some families advice is beneficial.

This reflects a weakness of the Saudi system. Although there is some research (like the Al Omari research) that has pointed out that there are environmental factors in Saudi society, that can lead juveniles to commit offences, the social worker's report does not suggest ways to deal with this.

Accordingly, the social worker's report is used by the judge really only when the juvenile comes to juvenile court for trial and sentencing. The factors that lead to the social worker's report having a strong impact on the Judge's decision are disputed by the social workers. These factors include the history that the social worker can provide, as well as the professional nature of the report and the writing style. SWS.3 emphasized the importance of context and environment that the social worker's report provides.

When we have a case of juvenile delinquency and the reason behind that, we need to look for the real reason behind every case. When the Judge looks at the case and finds out that the environment of the offender is good and he had a good education, a good family environment and a stable financial status, then there must be a hidden reason that has caused the offender to offend.(SWS.3)

This matches the earlier example given of the importance of family background in judges' decision-making processes. The implication of this statement is that the content of the report matters more than the style. In addition to providing important context, the content of the social worker's report may present new options for treatment and sentencing. SWS.2 stated that focusing on the factors behind the offences might allow Judges to identify more options when considering a case:

We need to examine the case from every single perspective - we cannot ignore any aspect of the case. We try to cover all the aspects of the young offender's case and try to correct them. Of course the report does not indicate what must be done or what is a suitable decision for the case, but it shows the level of the offender's ability to become a good member of society.

Physical Presence of the Social Worker

On the other hand, a poorly done report will lead to a reduction in influence. As SWS.3 stated, writing a report before creating a good relationship can make the social worker's report less influential.

Sometimes the social worker stays at his office and then calls the offender and asks him questions and then he writes his notes on the report. That way is not effective and it is not how a social worker's report should be done. The social worker must work with the offenders, observe their behaviours and then write the report according to their findings.

Interestingly, a key part of this relationship is physical presence. The social worker doesn't do his duty if he 'stays at his office', but must engage directly with the offenders in order to 'observe their behaviours'. As a social worker, SWS.3 has a clear view of the way that the practice should be done. This quote particularly emphasizes the social worker- client relationship as key to the information gathering process. Without this relationship, the report will not have the content necessary to be influential on the judge's decision

The importance of this relationship and the physical presence of the social worker is reflected by the stress placed by many SWS on attending the trial with the juveniles. The respondents confirmed that although social workers currently attend in some circumstances, they see it as very important to attend for all cases. This can help certain types of offenders with communication. As SWS.3 implied above, SWS.2 emphasizes that the social worker's presence is important regardless of the help which he may or may not be able to provide the offender:

I think that the social worker can attend the trial only if he came across something regarding the young offender or his family that was not reported in his report, or which it is hard to discuss in the social report. I believe that the social worker's attendance is better, whether it will be beneficial for the offender or not.(SWS.2)

This quote highlights both the importance of a social worker attending a trial, and the restrictions that it is subject to. Again, like SWS.3, SWS.2 notes the importance of the physical presence of the social worker- perhaps as a means to build a relationship with the offender, although it is not clear here. Contrary to this view, several social workers emphasized that social workers should attend the trial as advocates. As SWS.4 notes, the social worker's presence can be especially helpful where the judge lacks experience:

The social worker who writes the report spends all his time with young offenders observing their behaviours and their activities during their stay at the house of correction. With those offenders who have certain disabilities or mental problems the attendance of the social worker at the trial is necessary. I once attended with a young offender who had experienced a kind of hallucination, so I discussed his case with the Judge and I discussed his problem because some Judges do not have enough background about all mental problems. Sometimes a young offender cannot express what he wants to say because of fear of the situation; that is why the social worker may help in clarifying his ideas.(SWS.4)

This example, although specific, shows an alternate conception of the role of the social worker as someone strongly involved with the case for practical and legal reasons, beyond building a relationship with the offender. This view is echoed by SWS.5, who calls up a situation where the juvenile in question needs advice on legal proceedings.

First of all when the young offender's parents are not attending, and when the sentence is greater than what he thought it would be... it is the role of the social worker to try to explain to the offender that they may make an appeal to reduce the duration of the sentence, and to try to

explain that if his behaviours are straight during his stay in the house of correction that may lead the judge to reconsider his decision and may reduce the duration of his sentence. So the social worker tries to make the decision of the judge easy on the offender and he tries to let him accept his situation. The judge pays much attention to the behaviours of the young offenders during their stay in the house of correction; depending on their behaviours the judge may reconsider the decisions of their cases and they may be freed from the house of correction. That only happens when the behaviours of the young offender have considerably changed, so the social worker will then send a report to the under-secretary who will then transfer the case to the minister of justice who will then look at the case again and make a new decision. Some of the cases had a 4-year sentence and that was reduced to a year. (SWS.5)

While the act of being there for the juvenile at a difficult time may lead to an increase in the relationship, SWS.4 and SWS.5 both emphasize the legal and functional nature of the social worker's duties during the trial. Nothing is said of the client- social worker relationship, although it may have been taken for granted by the interviewees.

Regarding the presence of the social worker in the court, judges have their own point of view and it is discussed in the judges' results section. They clarify that the social worker's presence in the court is linked to benefitting the young offender and his case. However, the idea of 'benefit' remains hazy.

Contrary to this emphasis on context as the key to influence with the judge, SWS.1 particularly emphasized the importance of the professional nature of the social worker's report over the content.

There is important information in a social report like the history of the case. The history of the case must be written by a professional social worker, because it must highlight the current case linked to the past and include recommendations. The words must be chosen properly to describe the offender's real situation so the Judge will have a clear idea of the case.(SWS.1)

This clearly indicates a special role for the social worker's report that could not just be filled by a case history. The ability to clearly 'describe the offender's real situation'- to use the appropriate discipline-specific words - allows the social worker's report to have an influence on the judge. These ideas will be further elaborated on in the findings discussion chapter.

Reducing the influence of the social worker's report

Nevertheless, even in cases where the report is well written, with insightful content and professional prose, the final decision rests with the judge. As SWS.4 notes, in some cases the Judge can be instrumental in reducing the influence of the social worker's report:

When the social worker writes his notes about the offenders in the social report and indicates their progress the Judges may not take that into account because of a personal perspective.

Because they have their own perceptions of the case, and of the role of the social worker report, it is impossible to determine entirely the effect of this report when only examining the views of social workers. While social workers in Saudi Arabia highlight the strength of the content as a key determinant in the judge's decision, there are some cases where the judge's decision does not rely mainly on the report. Other factors, including the judge's own point of view may affect the outcome. As Klair

highlighted, personal factors that affect the judge's decision while highlighting discretion may have a negative affect when it is being widely used. This will be discussed in the next chapter.

Interestingly, although social workers acknowledge that in the end it is the judge's opinion, and not their own that matters, they do not seem resentful of this fact. The social worker's view may also be clouded by his or her own personal perspective, as explained by SWS.5:

The social worker's point of view has two negative side-effects and I don't think it has any positive effects in this case. First of all, the Judge may make a decision according to the recommendations made by the social worker, secondly, the social worker may write down something incorrect about the young offender. The social worker may write something that the Judge agrees with, but it is still a point of views and must not be considered as factual evidence. So the Judge must not depend on recommendations alone. And in some cases the social worker may clash with the young offender so that may affect his point of view, and there are some acts that are considered as normal in daily life but the social worker may not consider as normal in the house of correction; so this may again affect the social worker's recommendations and lead to presentation of false information. The social worker may recommend that the young offender should not leave the house of correction, but this may be because of incidents that happened between the social worker and the young offender and should not be considered as relevant facts.

The above statement was supported by SWS.4, who expanded from a personal bias to highlight the interpretive nature of much social work. SWS.4 reasoned that because social workers do not use precise measures that are present in their reports it is important to be aware of the risks of inaccuracy.

From my perspective, I think that there are no specific scales as to whether we are referring to abnormal psychological behaviours or just sudden problems. The social worker should be prepared to recognise evidence that the young offender's acts might be out of his control. The judge considers the intelligence ratio of the young offender before making a judgement. Sometimes the young offender might be seduced by other offenders because of his age so these rates give the social worker a clear idea about the offender's situation. Sometimes the intelligence ratio might be negative in the way that the social worker may not give a true examination and a true marking in order to get the young offender released by one means or another. There is a test which is considered as the best suitable for the Saudi environment and we may make some adjustments in the system in the future.

This quote can be compared to the previous literature presented on the clinical approach. Because social workers work directly with individuals with 'no specific scales' it seems unlikely that they are influenced heavily by actuarial methods. As was noted previously and will be discussed further in chapter 8, using this method, the probability of error is very high.

These citations provide insight into how the content and form (as influenced by the social worker's role with the offender) of the social worker's report can influence the judges in a few different ways. This discussion has taken place from the perspective of social workers. To gain a clear vision of the interplay in this regard between the legal agents within the Saudi Arabian system, it is important to consider them in comparison to the Scottish legal system.

7.2.1.2 Social workers in Scotland

Professionalism as a Source of Authority

Social workers in Scotland believe that their reports have a large impact on shaping and guiding decisions at a Children's Hearing. They see this impact deriving primarily from a respect for their professional knowledge and experience among decision makers. Factors relating to influence can be gathered by the social worker, who is seen as pivotal in providing special and unique work in this regard:

I think within the field of the children's hearing system, the reporters and the Panel members, and often the families, do give us a degree of respect, because they know we are qualified. And because of that, our recommendations carry a certain degree of weight..... You know, if it's a social worker making a suggestion or a recommendation, that may carry more weight than a teacher, for example, because the teacher is qualified to assess the educational capabilities and needs of a child, whereas they are maybe not trained and equipped to assess the holistic needs of the child.(SWC.2)

Statements like these are, of course, difficult to assess at face value, since they ask the social worker to make inferences about other people's perceptions of them. However, the emphasis on respect and qualification of social workers stands out. This is slightly different to the discussion in Saudi Arabia, where SWSs are a part of a larger juvenile justice framework with other equally 'qualified' actors. SWC.4 points out that because Scotland relies not on professional juvenile judges, but on part time CHPs, the professional recommendation of social workers carries more weight.

I think [the role of social workers is] vital. Obviously, Panel members have basic training. But they are people... Like a man on the street, they do a different job. They can have particular views – one way or another without understanding different prejudices. To help them make the best decisions for children..... it's about helping them understand the reasons why that is – not to make excuses, but to say, "So, this is why the circumstances are as they are. But this is what we're suggesting has to happen to help that young person." So, you're giving them not only an understanding of why or what potentially has caused the family situation, but you're also giving them the "So, this is what we're proposing we can do about it," because you're giving them a care plan, as well.(SWC.4)

While this general acceptance is positive, it does not tell us what aspects of the report are the most influential to the CHP. In terms of these factors that cause social workers' reports to have a strong or weak influence, the respondents pointed out that whether the report is evidence-based, its risk assessment element and the understanding of the scope of risk and needs can all change the way it is received. Particularly, many respondents emphasized the importance of systematic risk assessment, although each defined this process slightly differently. As SWC put it:

I think the fact that we are using identified, accredited risk assessment tools, which are backed up with evidence, in order to support our claims for supervision or for them to be placed within residential or within secure. I think that the tools that we now have at our disposal - they add weight to our recommendations. Rather than just being my personal, clinical judgement, I now have actuarial tools which can back up my point of view.(SWC.2)

This is immediately in juxtaposition with the Saudi cases, where relationships and the clinical approach were more prominent. They reflect the actuarial approach to risk assessment outlined in Chapter 5. The tools the social workers use add to their feeling of professionalism and credibility. SWC.3 similarly emphasizes risk assessment, although their emphasis is more on risk factors than actuarial methods:

The bit that makes that report perhaps quite unique is the risk assessment part. It's where we're identifying "These are the things in a young person's life that make it more likely that they will be involved in future offending, unless we tackle and address these areas.(SWC.3)

SWC.3's description of 'the things in a young person's life that make it more likely that they will be involved in future offending' could be a definition of risk factors. However, SWC.3 does not specify the means of assessing these risk factors- either through tools such as checklists or other actuarial methods, or through a more clinical one-on-one relationship. In a different approach SWC.5 follows a risk and needs model of assessment:

When it's in relation to an offence, it's looking at risk and need. Those are the main areas of focus, in terms of "What are the needs of this young person?" And then, "How does that link to the risks that are potentially about for them," and then, "How do we manage those in terms of that, or what kind of support can we put in to meet the needs that would then lower the risks?"(SWC.5)

The presence of wide disparities in the way that assessment of juveniles is categorized by practitioners in Scotland indicates a lack of consensus on the theoretical underpinnings of risk assessment. These differences have significant consequences when they are reflected in a report presented to the CHP. SWC.3 indicated that not giving the risk factors appropriate weight may make CHPs more likely to take punitive actions against juvenile offenders:

We have to understand what the risk factors might be in that young person's life that impact upon their risk of future offending. And when we miss that, I think that leads to a weak report and Panel members will likely be more punitive. They may want to say, "We're going to take control. We're going to do X, Y and Z to try to take control."

This idea- that risk factors in a young person's life are important in CHPs' decision-making is reminiscent of the influence of environmental and family context on Saudi juvenile judges' decisions. However, the SWS interviewees emphasized specific methods of risk assessment much less. This is not to imply that in Scotland practitioners are only focused on risk assessment. To the contrary, SWC.1 emphasizes the importance of having not only assessment, but also solutions in each report:

A good social worker would present the facts, and a good social worker would present solutions, or should present solutions. As a team leader, I would be expecting my team in a hearing report to have all the material facts and also solutions, recommended solutions.(SWC.1)

While the Children's Panel does not have to accept its recommendation, they normally do. Social Workers highlight that in some (very rare) cases the recommendation is refused by the CHP due to the level of risk, or because of the type of offence that was committed by the juvenile:

I have only ever had them disagree with me twice. I had another occasion, just last week. I worked with a young boy who had committed a sexual offence over two years ago. He worked with us, he completed all the work we asked him to do, he hasn't reoffended, he is doing really well at school, doing really well at home. His mum and dad are positive role models. We still don't understand why he did this. But he completed all the work that we had asked him to do, and I said that we should terminate the supervision requirement, because there was no need for us to be involved any longer. The Children's Panel disagreed with me, and I think it is because they are frightened of making the decision to take him off it, and he goes and does something like that again, especially because of the nature of the offence. You know, if it was a boy who became involved in a fight, then two years later, you would say, "Of course, you don't need to be on supervision." But I think it was because it was a sexual offence, and that automatically makes the decision-makers, the Panel members, frightened of making a decision that could come back and haunt them. They think. They fear. But in my opinion, I think it was doing the boy more harm to be on supervision, because every time I see him, he is reminded of what he did. He is reminded that three people don't trust him enough to not be on supervision.(SWC.2)

This example shows how the CHP can be influenced by 'the nature of the offence' to go against the wishes of the social worker. This echoes juvenile justice principles of protecting society from an offender, as the panel is 'frightened of making a decision [trusting the juvenile] that could come back and haunt them' by him or her reoffending and creating new damage to society.

Lack of Professionalism Reduces Authority

The influence of the social work report on the CHP is weakened where it fails to live up to high professional standards. The most obvious way this could happen would be a producing a report of poor quality, as noted by SWC.3:

I think the quality of the report is very important. But unfortunately, sometimes when I see other reports that are done by other people the quality of the report is not very good. So you would question the knowledge of that person writing the report, if they are missing out large areas, or they are not able to write in a coherent manner. (SWC.3)

Importantly, SWC.3 here gives no standard by which the quality of a report should be judged, except perhaps for the fact that it is written in 'a coherent manner'. Two other interviewees present possible alternative views. SWC.2 presents the idea that a quality report rests of a basis of facts:

It would be less influential if it was a poor report, if it's poorly written, if you didn't have material facts

The connection here between poor quality and lack of 'material facts' is interesting, particularly because of the elusiveness of the latter in social work. Rather than focusing on 'facts' SWC.5 highlights the key role of analysis:

I think [a bad report is] when there is no analysis; it's just completely descriptive and there's no major thought put into – Yeah, and it's just a list, kind of, of information that isn't making much sense because it's not been analysed and isn't giving them any useful information.(SWC.5)

While it seems quite obvious that any report deemed 'good quality' should have both facts and analysis, interviewees reported that often social workers' reports are found lacking. SWC.3 presents one hypothesis as to why this might occur, and the result that has an influence with the CHP:

I mean, in our experience, if social workers are under lots of pressure and there is an old historical report on the computer system, what has happened in the past is that the social worker will take the old report and just change it slightly, just slightly. And I think, if you have Children's Panel members who have read previous historical reports and see that this is just like the other reports, I think it loses credibility very quickly. It loses it very quickly. For people who have perhaps been in a job for a long time, people can become complacent, they can become cynical, they can become "It's just a job". They can lose the reason for why they came into the job about working. But that can happen in any job.

While it is indeed possible that overworked or jaded social workers are responsible for poor quality reports, it is unlikely that this overwork is the only culprit. SWC.4 and SWC.3 raise another issue that can lead to a social worker's report being less influential on the CHP: the reputation of the social worker. While the reputation of the social worker can help a case, it can also hurt it. As SWC.3 pointed out, a social worker can lose credibility if they appeal overmuch to emotions:

I think if, in any way, we are seen to be minimising the effect of a young person's offending behaviour, I think we can lose credibility that way also. So, if we are saying, "He's just a poor soul; he's had a difficult life; don't worry about his offending," then we lose credibility.

Like much of the other Scottish interview material, this statement conflates credibility with professionalism (and avoidance of pathos). The social worker's ability to maintain a professional demeanour and arguments is tied to his credibility in both a single case and those that follow. As SWC.4 notes, any loss of credibility can carry forward in relation to the social worker's reputation with the CHP.

When you've worked in an area for a very long time, Panel members... I know most of the Panel members and they know me. You get that they trust you. Sometimes, Panel members don't trust social workers, because they think that you're writing that report like that and minimising stuff because you don't want to pay for them to go into care, which I don't understand. Some that have been there for a very long time start to try to read between the lines and say... So, you have to have a good reputation, as well, in terms of being a social worker. That shouldn't really come into it, but it does.

The professional credentials of a social worker relative to the CHP seem like a clear determinant of the influence of the social worker report over any decision in relation to an offender.

The different approaches of the Saudi Arabian and Scottish legal systems, concerning the evaluation of the young person by social workers (either through actuarial or clinical methods) and the subsequent influence this has on sentencing and possible punitive consequences will be discussed in depth in the next chapter. However, we first need to consider how social workers evaluate and assess the social context of the young person, in both Saudi Arabia and Scotland.

7.2.2 Theme 2: Assessment - meaning in the context of juveniles who commit offences.

This theme explore the meaning of assessment from the point of view of social workers and Includem staff. The responses were varied and generally answered the question directly. Saudi Arabian social workers use the term 'diagnosis' instead of 'assessment' and use the term 'treatment' instead of 'intervention', for reasons discussed in depth in the discussion chapter.

7.2.2.1 Social workers in Saudi Arabia

Social workers in Saudi Arabia like juvenile judges used the term 'diagnosis' instead of 'assessment'. The respondents see this term in the context of practice, as a process through which to understand the juvenile's case. SWS.2 and SWS.3 find an understanding of the case by interpreting the interactive factors that contribute to juvenile delinquency. According to SWS.2:

The social worker analyses young offenders' cases to discover the reasons behind the crime and the environmental factors that have led the offender to offend.

SWS.3 notes that the role of diagnosis is to summarize:

The diagnosis summarises the problem and the causes of the problem to make the information surrounding the case clearer to the Judge.

In this sense diagnosis is a finite process of communication in the legal system, and is not continual in the way that much of the theory on risk assessment emphasizes. In addition, the communication in question is to make 'the case clearer' for the judge, rather than to provide recommendations for treatment. This makes the risk assessment process both one-off, and independent from treatment and sentencing.

The way that this diagnosis takes place depends on the social worker. While some emphasize the need to analyse the delinquent behaviour from a juvenile perspective, others emphasize a separation and a comparison of juvenile behaviour over time. SWS.1 takes the former opinion:

The diagnosis involves understanding the case the way it is; it is not an excuse for why the offender committed the crime, it is simply a tool for understanding the offender's case and his way of thinking.(SWS.1)

The characterization of the diagnosis process as a 'tool for understanding' is far different then SWS.3's view of diagnosis as a product of the use of tools. The former characterization opens the door for a more continual view of risk assessment- since a tool can be used again and again. Nevertheless, whether the nature of diagnosis for Saudi Social workers is continual or one-off is unclear in this statement. In contrast, and similar to SWS.1, SWS.5 views diagnosis as a one-off process:

When I diagnose a case I must be able to define who the offender is, what his behaviour was like before, during and after entering the house of correction and what we expect his behaviour will be in the future.

The temporal nature of diagnosis is quite clear in the way SWS.5 specifies ‘when I diagnose a case’ as a singular time. The content of diagnosis is also slightly different between SWS.1 and SWS.5. While SWS.1 emphasizes empathy and understanding as the key aspect of diagnosis, SWS.5 takes a more distant approach of temporal comparison (“before, during and after”).

To put these quotes and the legal practices that they describe into perspective, they can be considered alongside the views obtained from Scottish social workers. The next section will consider statements made by both public and private social workers in Scotland.

7.2.2.2 Social workers in Scotland

Assessment as Understanding

Social workers in Scotland see assessment as a continuous process providing a picture of the juvenile’s behaviour to clarify those factors that led the juvenile to commit an offence. Key to this practice is a deep sense of understanding of the offender and the environmental context. As SWC.1 notes:

The idea of an assessment is getting an overall picture. The fundamental purpose, for me, is to gain an overall picture of this young person, their lifestyle, their views, and perhaps why they did what they did.(SWC.1)

This emphasis on understanding echoes the stance of SWS.1 above, which emphasized assessment as a means/ process of understanding. This process deals not only with recent events, but looks for an ‘overall picture’, including motivations and issues in the past. The temporal nature of assessment (either as a continuous process or a one-off event) is unclear. SWC.2 particularly placed an emphasis on understanding the past as the key aspect of assessment:

Assessment of an offence is one that breaks it down into the antecedents, the behaviours and the consequences. So we're looking at what happened before the offence. We are getting a picture of, "These are the things that happened before this offence taking place. (SWC.2)

The ‘antecedents’ here may or may not be related to risk factors, or unmet needs. In either case, the assessment process here is not clearly continuous or one-off, but, like the previous quote, this one emphasizes the importance of understanding. Because understanding is a complex and more intensive process, its repetition among these social workers suggests a more holistic interpretation of assessment than that held by the Saudi Social workers (as diagnosis). SWC.3 also brought up the importance of understanding:

It's about looking into a young person's life and trying to understand what makes them what they are just nowit's about trying to use a systematic method of understanding what makes a young person what they are and behave in the way that they behave

The adjective ‘systematic’ here is interesting because it recalls comments introduced earlier on the importance of professionalism to the Scottish social workers. It carries connotations of scientific method

and authority, and sets itself apart from mere understanding (as the Scottish workers might characterize a clinical approach). Similar to SWC.1, SWC.3 emphasizes the role of empathy in assessment. As SWC.4 also puts it:

I think the assessment is about knowing everything about [the offender] – their views on things and their views on what would help, as well. (SWC.4)

Here SWC.4 breaks slightly from his or her colleagues by emphasizing not only the role of the past, but the shadow of the future in assessment. Assessment is, after all, a stage in a longer judicial process. Concomitantly, assessment and ‘knowing everything about’ a juvenile offender’ necessarily cannot be a one-off process. This is particularly clear when you compare it to the use of diagnosis in a Saudi case. The use of definite articles ‘*the* diagnosis’ implies a temporally finite process, while the Scottish reference to ‘assessment’ more generally implies a continuous process.

Quality of Assessment

A good way of determining how social workers view the content of assessment is to determine what they consider a good assessment. In the Scottish case, the quality of assessment relies on assessing risks and needs, as a key step to understanding the past and considering the future. As described by SWC.3:

I would say so that we can try to build on the strengths, address the risks and the needs. So, that ultimately is the purpose of assessment. SWC.3

This notion of assessment builds on the quote from SWC.4 above, which draws out the role of both the present and the past in assessment. It places assessment in the decision-making context, with the aim of achieving the best possible outcome. In order to do this, assessment must be mindful of the future in order to ‘build on the strengths’ of the juvenile. Similarly, SWC.2 notes that:

Good assessment of the offence will touch on the risk of it happening again, but also what needs to be done to make sure that it doesn't happen again. Because I think a good assessment of a situation like that will automatically feed into an action plan, an intervention that will prevent this sort of thing from happening again (SWC.2)

This statement is echoed by one for SWC.5:

The main goal, for me, for assessing a young person is to support them in the future to desist from offending behaviour. SWC.5

In both statements, social workers emphasize the role of future concerns and growth in assessment. This is in contrast to the Saudi system, where social workers seem to view diagnosis as a deliverable for a judge, and the ensuing judicial proceedings as fundamentally separate from them in some way. This may be in part due to differing judicial structures, and will be discussed further in Chapter 8.

The interviewed social workers saw assessment as a continuous process of understanding, with the goal of using the past to inform future outcomes. These findings represent the practices of social workers employed by local councils, but the concerns raised are often similar to those of social workers employed by the private company Includem.

7.2.2.3 Includem workers in Scotland

Workers at Includem, a charity which often contracts with the Scottish government to provide social worker services, take a similar view to state social workers on assessment. However, Includem workers look at assessment as a process made up of gathering information, building a relationship/engagement, and drafting an intervention plan. This staged process is in many ways more concrete and focused than the more general ideas of ‘understanding’ highlighted by the Scottish state social workers. Particularly, the emphasis on the relationship between social worker and client is much more pronounced in the testimony of Includem workers than in other interviewed populations.

Relationships as Part of Assessment

For Includem workers, the key first aspect of assessment is the gathering of information. As INCS.2 puts it:

[Assessment is] about gathering information. It's just about gathering as much information as possible. It's about understanding the young people and keeping a relationship, being honest with them. We have a kind of baseline to start with, and then we have to then gain that information ourselves, and then we can supplement the information by our engagement, by our relationship, and by the things that we pick up when we are out there talking to the young person, the family and carers. (INCS.2)

Here, several key themes emerge. Gathering information, as the key aspect of assessment, is linked to understanding and the social worker-client relationship. Gathering information is seen as a prerequisite to understanding, which can be supplemented by the relationship between the social worker and the offender. The role of the social worker-client relationship in gathering information is clear here. This aspect in particular is emphasized by many Includem workers. In the words of INCS.3:

Assessment, it's about every day. It's about every interaction.

And each of these interactions- whether they be with the young person or a related caregiver - feeds into the assessment process. As INCS.4 notes:

...the more often you see the young people the more information we gather, every contact we do we gather information whether it be what the young person is presenting about their personality or maybe some worker he is delighted to be around.

This emphasis on the relationship between social workers and clients as a means of information gathering was perceived to be a widely held belief at Includem. As INCS.1 points out:

We have always believed that the relationship that we make with the young person is really what we will say kind of unlocks the potential for change in a young person. For us, the relationship is the most important thing you can have. You really need to... There needs to be a relationship there to influence change.

The use of plural pronouns in this quote emphasizes the perception by INCS.1 that these are widely held beliefs at Includem. Indeed, almost every social worker interviewed echoed this in some way.

Although assessment was widely viewed to be a gathering of information by Includem staff, one social worker emphasized that gathering information is not the whole of the assessment process.

Assessment is about gathering information but the purpose of gathering information is not to say nobody is doing anything, it is to inform you as a worker and you determine as a worker what is the best care plan for that young person what is the best course of action for that young person what areas should you be focusing on so you can best focus your resources. (INCS.4)

The emphasis here on the role of assessment in formulating ‘the best care plan’ echoes the Scottish social workers’ concern for future recommendation as a key part of the assessment process. Temporally, Scottish social workers (both state and Includem) tend to emphasize both the past and the future, while Saudi social workers focused more heavily on understanding the past. Additionally, none of the above quotations refers to assessment as a one off process, but instead emphasizes the continual ‘gathering’ of information. This also tracks with the Scottish social worker’s’ treatment of assessment as a continuous process, rather than a discrete event, and stands in contrast to the more definitive idea of ‘the diagnosis’ put forward by the Saudi social workers.

In content, the emphasis of the assessment process differs between countries. Although there are similarities, the different emphasis by Includem social workers and Scottish state social workers on relationships and understanding respectively show that even within a common cultural context, different institutional cultures can affect the delivery of social services. In contrast the Saudi social workers’ respective emphasis falls on the environment and the family. While in relation to each of these issues there are discrepancies within the group, since each social worker holds his or her own personal philosophy, it is possible to distil these broader patterns. These and other comparisons will be made in more depth in Chapter 8.

7.2.3 Theme 3: Assessment of juveniles who have committed offences

This theme focuses on exploring the content of the assessment process that is conducted by social workers and Includem staff. It includes tools, theories, approaches, difficulties in assessment and the relationship between intervention and assessment in both countries. The theme evolved from the answers of interviewees on questions related to the first theme - the impact of social work reports on decisions made by juvenile Judges and the CHP. The majority of interviewees responded to questions on the meaning of assessment by providing empirical examples of the content of assessment. There also emerged some criticism from Includem staff on state social workers' practice. To consider these trends in greater detail it is important to study statements from social workers within each country separately; in chapter 8 the data will be discussed in relation to each other.

7.2.3.1 Social workers in Saudi Arabia

Social workers in Saudi Arabia confirmed that the assessment\diagnosis process follows two trends. The first trend is a general assessment\diagnosis applied directly when the juvenile is referred to a house of correction. The second trend is a special assessment\diagnosis of each juvenile, before the trial, as an individual case.

General Assessment/ Diagnosis: Building Trust

The general assessment\diagnosis process was summarised by SWS.2's statement:

The social worker's task starts when the young offender is referred to the house of correction. The social worker starts by writing initial information about the young offender: his age, his family status, his education, and the classification of his offence. Then we classify the cases according to age: each age group has a special area in the house of correction. We also consider physical differences in the classification and we also classify offenders according to how many times they have been the house of correction. The offenders with single offences are placed in a special area so we make sure they do not mix with experienced offenders. The programmes that they work through are the same, but we make a classification to protect them; some young offenders may reoffend so we focus on them with special programmes to reduce the probability of reoffending.

After the first stage, which is described as a general assessment\diagnosis, juveniles are put in suitable groups and then assessment\diagnosis of the individual factors that caused them to commit the offence is discussed. This assessment\diagnosis is a second stage, in which the social workers start to build on the relationship with the juvenile before discussing their case or taking on more details. At the beginning of a relationship, the social workers aim to build trust. As noted by SWS.1:

There must be a friendly connection between the young offender and the social worker, in order to insure that the young offender will feel free to answer all the questions for the report. The most important thing that we usually concentrate on is explaining to the offender that everyone makes mistakes. This will have a positive effect on the young offender. The social worker needs to work hard to gain the offender's trust, and to insure that the offender will talk freely.

Part of gaining a juvenile's trust lies with taking a more holistic approach, rather than interrogating them directly about the circumstances surrounding the offence. SWS.5 noted the importance of the social worker not being seen as a trained investigator:

The social worker needs to support the offender with advice and guidance. We usually prefer to move away from where the offence itself took place and draw our attention to different aspects of the offender's life; such as providing advice on parental care and explaining how offenders should treat their parents. We try to move discussion away from the offence because we do not want to seem like investigators as we are aiming to gain the offender's trust. Sometimes the social worker may represent a role that is missing in the young offender's life.(SWS.5)

One key way that social workers build trust is through participating in programs and activities with the juvenile. This allows the offender to become more comfortable with the social worker, and also allows the social worker a chance to observe the offender's interactions with others. As SWS.1 notes:

When the social worker spends his time with the offenders during their daily activities they become close to each other. Young offenders like to play and involve themselves in different activities, I believe that when a social worker listens to an offender's conversations he will be able to evaluate their behaviour. When I observe the way an offender deals with his friends I will be able to find out more about their personalities and this may reveal some useful aspects related to his case. It is best if the young offender does not feel that he is being observed when he is with his friends.

There are dual advantages emphasized here: the chance to build trust with the offender, and the chance to observe the offender interacting with others. The goal behind the latter *in situ* observation rests on the notion of observing how the offender interacts with others when unguarded - when the offender 'does not feel that he is being observed'. This can, as SWS.1 notes, come from 'the way the offender deals with his friends', or it can, as SWS.2 notes, come from a more complete understanding of the environmental conditions faced by the juvenile.

I may observe the offender's behaviours and ask him questions and then find direct answers to my questions without getting deep into the mind of the offender; therefore, it is really important for social workers to mix with offenders and share in different activities and programmes with them and to be close to them...I believe that if you want to diagnose problems to find solutions you need to live in the real environment to discover what is behind the walls. A social worker needs to work in the young offender's environment in order to provide a complete and true report. I really recommend that and I think that there is not enough motivation for social workers to give their best in the field.(SWS.2)

SWS.2 takes a similar stance to SWS.1, emphasizing that only in the field will observation allow social workers to see 'what is behind the walls'. He goes a step further, however, in observing not just interpersonal interaction but the whole environment of the juvenile. This environmental emphasis is echoed by SWS.3, who actually lives with the offenders he works with:

I personally do not have a special office. I mix with the offenders and live with them and I observe them throughout their different activities during the day. I also get in contact with the Student Advisers in school every day. All these activities contribute to the production of a

truthful social report. It is not only about answering questions, but really requires time and effort. (SWS.3)

Though this type of engagement is beneficial to SWS.3, often the cause of the problem may lie outside the direct context of the juvenile house of correction. Often the problem extends beyond that of the individual to his or her family. As SWS.5 noted, if the problem with a juvenile was related to his family, he invited the juvenile's family for a consultation interview:

If I discover that the young offender's problem is a family related problem, or the family encourages the offender in his offending behaviour I concentrate on the family and I try to set specific programmes to correct their behaviours. So we arrange with the family to come and we discuss the problem and try to find solutions together. (SWS.5)

This conception of environment includes factors outside the house of correction which may be influencing the offender. However, there are limits to the feasibility of social workers being able to engage with and fix many of the myriad environmental issues which may be leading to a juvenile's offence. For this reason, while understanding the environment and group dynamics is important, it cannot substitute for individual engagement with the offenders. As SWS.3 points out:

We engage in different sessions with the young offenders - we chat with them individually without asking any questions related to their cases. This helps to reveal the offender's views about life, which may lead us to discover the real reasons behind their offence. It is not all about observing them. Sometimes we help them to do their homework to find out more about their characters. I really recommend individual sessions because they really benefit the social worker in formulating a clear impression of the young offender.

Even though SWS.3's emphasis is on individual meetings rather than group observation, his emphasis on engaging with offenders on issues not directly related to their offence (like homework), echoes the general premise behind the group-dynamics approaches taken by SWS.1 and SWS.2. While there is a slight disagreement between social workers over the means to best build trust and a clear picture of a juvenile offender, once trust has been established to a point where the social workers feel it is suitable, an interview is conducted.

Even at this point, an interview rarely consists of a social worker asking a series of pre-written questions of a juvenile. As SWS.2 notes:

I discover the young offender's behaviours according to their reactions on different occasions and according to their responses with me. One of the best ways to discover offenders' views is to give them multiple options and, according to their choices, you discover their views and attitudes towards different aspects of life.(SWS.2)

This process not only engages the offender on issues related to the offending behaviour, but also addresses their views on various problems in their life. The hope is that, as they come to a better understanding of themselves, they will correct their behaviour. SWS 5 explains this process in detail:

We give the young offender around 48 questions; the answers are enough to reveal his real personality. We used to discuss the problem and then find out about the reasons behind the problem and the possible solutions. We integrate the offenders' opinions in different cases and this may lead them to evaluate themselves and correct their own behaviours. (SWS.5)

Rather than asking the juvenile directly about their offence, social workers attempt to get them engaged in the process of assessment and correction. This can include building connections between offenders or encouraging them to contribute to the house of correction programs. SWS.5 gave examples of this process:

Sometimes we use activities to encourage the offenders to interact in the house of correction; for example each offender will be given one page and asked to ask and answer questions so that they can learn about each other. Every day we ask a new question again, this is a good way to make connections between the offenders. I have a good example of an offender who finished his sentence and was very successful in his life. One of the most effective activities for him was the group activities. He said to me that sometimes he heard something for the first time during these activities and that was a positive way to build up his personality.(SWS.5)

Close engagement of the social worker with the young person both personally and as a group is one of the methods by which social workers are able to perform their duties. However, there are also other approaches that guide Saudi Arabian social workers in their practice, which will be discussed in the next section.

Lack of Theoretical Training

There is no specific theory or approach to guide the social workers' method in Saudi Arabia. SWS.2 mentioned that he used role theory and behaviour theory to assess juvenile cases, while relying also his own personal experience.

I am talking about two cases or two different people - a real example to me and what is really effective is behaviour theory and Role theory.

While SWS.2 relied on theory as a means to frame his practice, other respondents focused more on their own experience. Particularly SWS.3 drew on his experience of living in the house of correction to make concrete suggestions.

I believe that we need to give the offenders different activities so they will be busy and not have time to start fights inside the house of correction. If I do not use their abilities positively they will certainly use their abilities in their own way. I believe that every single activity with the young offenders has positive effects and they are considered as ways of treatment.

Living with the juvenile offenders gives SWS.3 a confidence to predict that they will 'certainly 'use their abilities in their own way'. He does not rely on theory for this judgment, but rather on experience. The lack of emphasis on theory may be in part due to the training of social workers. SWS.1, when talking of the education process for social workers notes:

We learned about different theories in a boring way - they were not explained well to us and I didn't believe that they would be effective. However, now I have started to apply them I really believe that they are effective. (SWS.1)

The lack of theoretical training means that social workers rely primarily on observation, experience and questioning as tools for assessment and as treatment methods. One social worker stated that in certain circumstances he used psychological measures. When asked a question about tools, SWS.5 criticised the practice in the house of correction:

I think that we did not have a clear idea about what to do and how to design a certain treatment programme for a certain case, I think that I was lucky that I experienced different occasions with the offenders and I ended up with positive results. The problem in the social work field is that every new social worker starts work from scratch.

The reliance on experience as a primary means for social work training means that the learning curve is steep. Lack of training is clearly a problem in this regard, as noted by SWS.4's statement:

We really need special programmes and special training for all social workers in order to achieve good results when dealing with young offenders.

The lack of training affects Saudi Arabian social work practices. Especially because social workers are often embedded in the environment or close observers of group dynamics at houses of correction, they constantly interact with offenders. The expressions of frustration by Saudi social workers over lack of training show the problems with relying solely on experience as a means of training. In contrast to assessment practices, intervention or treatment follow standard procedures.

Limited Early Intervention

Regarding intervention, it is commonly seen as occurring only after assessment and sentencing are complete. In reality limited intervention takes place during the assessment process. The treatment (intervention) that is used by social workers with juveniles who have committed offences is based on two methods: consultation in individual interview and group work programs. The first stage in this is guidance of the young offender, where the social worker offers advice. In the words of SWS.2:

Guidance & direction and advice is the first that we do in such cases, and we also make different guidance sessions with the young offenders to educate them and give them advice for their future.

This idea of advice rests on the perception of the juvenile as misled, or suffering as a result of his environmental circumstances. It directly contradicts ideas of punitive justice, instead implying that the offender can be rehabilitated if they understand the problems posed by their behaviour (reflective of the welfare approach).

These behaviours are more likely to be corrected and be normal and we usually use advice and give guidance to correct young offender's behaviours. (SWS.2)

Along with early advice from the social worker, houses of correction have a variety of programs aimed at intervention, which the offender participates in from the very beginning of their stay there. SWS.3 describes how he uses these programs to help juvenile offenders:

We do several activities at the house of correction. Sometimes I ask the young offender to summarise a lecture by himself - I choose specific lectures to give them messages and solutions to their problems. We try to keep them busy during their stay at the house of correction so that they are discouraged from spending time on negative things or negative thoughts.

These quotations have provided a clear image of the procedures and practices used by Saudi Arabian social workers who are working primarily with young people. From engagement in groups and individually in the houses of correction, to reaching out to families where possible, social workers in Saudi Arabia attempt to gain a full picture of the offenders in their charge. They are hamstrung by weaknesses in the training regime, which forces many Saudi social workers to use experience as their primary guide, making it very difficult for new social workers to proceed effectively. This process and the challenges to it will now be placed in juxtaposition with the process of assessment in Scotland. The Scottish process of assessment generally follows a set pattern depending on the offender, which is something that will be discussed in the next section.

7.2.3.2 Social workers and Includem workers in Scotland

This section will provide an explanation of the process of assessment of juvenile offenders in Scotland. This will include an explanation of the steps of referral and creating the social worker's report, the building of a relationship between the social worker and the offender, the use of tools to determine intervention, and the possibility of errors associated with social work.

Early Demarcation: Offenders sorted into 'tracks'

Assessment of young offenders in Scotland follows one of three tracks, as designated by the social worker. The first track is the normal young person on a social worker's order. The second is a young person with some difficulties, and the third is a young person who is extremely difficult. The first step involves categorising juveniles who have committed offences according to one of these tracks, and relies primarily on the use of assessment tools. SWC.5 summarised the first step:

The young person has gone to the children's reporter, the reporter will then write to the area team that the young person comes from and request a report, which will include a risk assessment of re-offending, a YLS/CMI, as we call it

This assessment of the risk of re-offending is what is used to classify juveniles into one of these three tracks as a normal, moderate or difficult case. This early assessment relies primarily on discussions with people in the young person's life. As SWC.1 put it:

You would have to do the assessment first to get a picture of the YLS. So, it's interviewing, discussion, communication with other people who are involved in the young person's life....It's come from the reporter. An offence has come in - "We wish a report on this young person." A social worker will get it. It will be opened up for them to go. They would first of all write to the family, arrange a meeting with the family and the young person. And from that, they may want to do two or three visits over the duration of the report to get all the information.

These interviews with people in the young person's life may be supplemented by institutional knowledge. SWC.2, as an example, stated some procedures that are followed when an initial report of an offence is received:

If the child is known to us in the past, or if he is my case or a new case coming to me, before I met the child, I would attempt to read as much of the background reports as I could. I would attempt to speak to his teacher, or attempt to speak with a former worker, somebody who used to work with them. But when I meet the boy, I would attempt to use what we call the Exchange Model, so that views him as an expert in his own life.

Once the initial YLS report has been completed, continuing with juvenile cases depends on the reporter engaging in a discussion after he has received the report from the social worker. In this regard SWC.2 stated:

[The social workers] then complete the report and send the report back to the children's reporter, who then makes a decision about whether there is no further action, a referral to local authorities, or to take it to a Children's Hearing.

These three courses of action are reflective of the amount of risk that the juvenile is deemed to pose (based on the three categories above).

Relationships as the Basis of Assessment

Through the assessment process, the relationship with the juvenile is a variable that determines whether the social worker can make a good assessment. Therefore, one of the key stages in assessment in Scotland is the building of a relationship between the social worker and the client. As SWC.1 points out, a better relationship can lead to more candour:

I think if you can get into a relationship, you would get a better assessment, a more honest assessment.(SWC.1)

This candour can lead to a more effective referral and treatment process. In the end, the goal is to improve results, and SWC.3 suggests that a good social worker- client relationship can be a key aspect of effective care:

And to take them to the Children's Hearing system and the Children's Panel itself won't bring change, but through the quality of the relationship, through good assessment, through signposting them to other specialist services, perhaps, or even universal services, I think we could increase the likelihood of change.(SWC.3)

How then, do social workers in Scotland build these relationships if they don't have the immersive experience of living with the juvenile offenders, as is possible in Saudi Arabia? SWC.4 points out that you have to build from the basics:

Usually, we know them, and I think it's important to get to know them first. For any young person, to build a relationship with them, that's what we do best.(SWC.4)

Once a social worker has a basic understanding of the juvenile in question, they can use their experience and skills to forge a deeper bond. As SWC.2 notes, this can be something as simple as a well placed joke.

On occasion, if I have built up a relatively good relationship, humour often breaks down any barriers. So, appropriate humour, obviously.

The main determinant to a good relationship with a juvenile, however, is time. SWC.3 confirmed that having a good relationship with the juvenile is the main goal throughout the assessment process, but not always achievable 100 percent of the time:

And I think that other people look at teams like my team maybe with a little bit of envy, because we are able to spend a bit more time with young people. We are able to focus a bit more on that young person. We are able to develop that relationship a bit more with that young person...I would say nine times out of ten, we would get young people engaging, but there's still ten per cent that we don't get engagement.

It is the ability to be physically present in spending time with the juvenile which allows for a deeper relationship to form, and, according to the Scottish social workers interviewed, in turn leads to a better outcome. However, the Scottish social workers interviewed also emphasized the use of a variety of different tools and approaches in assessment beyond just forming a relationship. These will be the focus of the next section.

Assessment Tools and Process

Social workers in Scotland use a variety of assessment tools, many of which lead directly to the process of intervention. These can be categorised as actuarial assessment tools such as the Level of Service Case Management Inventory, and the Revised Level of Service Inventory. These tools are used to meet two main objectives: the first is to lend weight to recommendations in the social work report, and the second objective is to facilitate successful intervention:

We are using identified, accredited risk assessment tools, which are backed up with evidence, in order to support our claims for supervision or for them to be placed within residential or within secure. I think that the tools that we now have at our disposal - they add weight to our recommendations. Rather than just being my personal, clinical judgement, I now have actuarial tools which can back up my point of view.(SWC.2)

The social workers in Scotland perceive the use of actuarial tools as lending credibility and support to their recommendations. This is similar to the discussion under Theme 1 of the way that social workers in Scotland perceive their professionalism- and actuarial methods- as key to their influence on CHP. From this quote, it also seems that social workers view the use of actuarial methods as bolstering their own credibility, regardless of the perception of the CHP.

These assessment tools also function to design a successful intervention. Because many of the problems faced by social workers are very complex, assessment tools can help focus the energy and strategies of the social worker. As SWC.5 notes:

[Assessment tools] highlight the key areas that require targeting, so to speak. I keep going back to this risk assessment. But if it's alcohol and drugs, if they were scoring high in relation to alcohol and drugs, if they had been involved in the offence, or they had been under the influence during the offence, there seems to be a bit of a pattern, the parents are telling you he's coming home drunk so many nights a week, then that would be something that would be a focus.

Importantly, these tools do not just highlight the areas of weakness, but also areas of strength. This allows social workers to make informed decisions about intervention in a structured way. SWC.2 casts this in a risks and needs framework:

We need to identify the protective and strength factors and compare them to the risks and needs. So, if the protective factors outweigh the risks and needs, in most cases you would say, "You either need a lower level of intervention, or no intervention at all, because things are getting dealt with as they are and in your opinion in the balance of probability, they are more likely not to get in trouble again. (SWC.2)

In addition to identifying risks and strengths, the outcome from the assessment tools can be used to determine what type of intervention is best suited for a case. SWC.1 shows how this can help focus social workers' efforts when dealing with highly different cases.

The tools' outcomes would design the work. Whatever the outcome, the tool would design the work. It would determine what type of intervention strategy you need for that young person. These tools are used to determine "Do they need an individual programme? Would they be capable of working in a group setting with other young people?" Because you've got different environments.

Intervention in Scotland varies depending on the level of risk that the child is deemed to pose by the CHP, with reference to the social worker's report. Actuarial assessment tools feed into this and tell the social worker and CHP where the child should be placed. As SWC.2 explained:

The interventions at the very top end - we're talking about secure. So, we're locking a child up for three months at a time. Down from that, we have ISMS, but with the option of a tag as well, so they have to be within their house. Now, they could be in a children's unit as well. Down from that, we have just got ISMS itself. Down from that, we have got a supervision order with condition of residence at a children's unit ... the nature of the offence and the volume of offences that the child has committed is very important, in terms of that. So, that gives me an idea of what sort of interventions are required.

When choosing between different types of intervention, the primary tools social workers use are actuarial in approach. These actuarial tools tell the social workers where the greatest risk is, and how to move forward with intervention. SWC.3 notes that:

[Assessment] underpins what we do with young people, so again the tools that I've defined or discussed – they all lead us to a point of looking at the intervention. The YLS, for example, has

nine domains within it where you score a young person regarding their risk in particular areas and you then tackle the highest-scoring domains, which then would inform your intervention.

Other tools that are commonly used include psychometric testing, the benefits of which were noted by SWC.1:

The psychometric testing used by programmes would give us a test of [the offender's] feelings, what types of programmes should they be involved in. At the end of the programme, when the programme is completed, it would give us an indication as to consequential thinking - how they think, how they performed in the programme, how they completed the programme, what their thoughts are after the programme. However, you could successfully complete a programme and still go on to offend.

Although SWC.1 speaks favourably of the use of actuarial tools, he or she notes their fallibility. Despite the widespread emphasis in the Scottish social worker program on professionalism and credibility, many of the respondents spoken openly about the inexact nature of their work. SWC.4 explained:

And I think we don't get it right all the time. You do what you think is best and you try. It's not even about getting it right. It's about some families struggle to change, and in some families, there's been long-standing issues that you can take them along and you can try different things. You can try different ways of supporting them. But sometimes, so much damage has been done, that it's so pessimistic. I don't like to say that. Sometimes, you see third generations of social work families, and it's terrible. "My Mum was in care, my Mum was in care, my Mum was in care." It's just history repeating itself. It's really sad. It doesn't even get better.

This acknowledgement of factors outside of his or her control creates a slight tension with the reliance on 'material facts' and 'credible' actuarial research tools. SWC.4 here admits that no matter the tools applied or the interventions that they recommend, there are some cases where the social worker cannot make a strong impact on the life of the client for exogenous reasons. Concomittantly from this comes the idea that social workers should not necessarily always intervene. SWC.2 notes the difficulty of this decision:

I think we need to be brave enough as social workers to say, sometimes, "We're going to do nothing," and let them know "You were a silly little boy, but don't do it again." You need to sometimes walk away and let them work out these things for themselves.

The brave path taken by social workers in this situation is making a judgement call- relying not on pre-calibrated tools but on intuition or knowledge of external factors. This type of call can only be backed up by theory and experience.

Theory in Assessment

The risk of social workers' over reliance on actuarial assessment tools is negligence in relation to the role of theory or experience in determining intervention strategies. When asked how theory affects their work, respondents had varied responses. SWC.1 explained this:

Well, it depends what the problem is. There is lots of theory ... So, your theories will be underpinned by what your report gives out. And your theories are how you would attack ... Obviously, the maximum theory... - Minimum intervention - underpins everything.

There is a sense in this response of a gap between theory and practice. SWC.1 indicated that your theory would be underpinned by the report, rather than the opposite- the report being underpinned by theory. Indeed, SWC.4 admitted to using little theory in his or her work:

I don't know. In this particular work, it tends to be more kind of crisis intervention. It's when things are pretty bad that we're kind of... But, you know, you do things for so long and it's been a long time since I've thought about the theories. You internalise it, I think, and you do what you do. I don't know. What's useful, is that you get training – you get trained constantly in different kinds of ideas and approaches. You don't really take it back to the kind of groundwork theory that we did.

While there is little outright use of theory, SWC.4 admits to the usefulness of the training he or she receives as part of their job. One respondent, in contrast, did come up with a specific theory when asked what he or she used in applying risk assessment.

The Getting it Right for Every Child Approach

In some cases social workers used existing approaches, which themselves were based on theory. This gave them a practical framework for their work without direct reliance on less applicable theories. SWC.3 identified methods for practical work based on a theoretical foundation:

Yes. We are driven very much by the old GIRFEC agenda. Do you know that? Getting It Right For Every Child. We'll be looking at all the aspects – a holistic view of a young person's life: that they should be healthy, nurtured and confident individuals. All that sort of thing. All that's there, and that underpins what we do...we use very much a pro-social modelling approach with young people, which is very much about positive reinforcement, the use of authority appropriately. There is a large body of research round about the time that the National Standards for Youth Justice came in – the What Works agenda, which very many people like Bill Whyte would have been involved with. So, we would draw upon a lot of that – our understanding of things like family work, our understanding of the effect that substance misuse can have on it, the understanding of a kind of multi-modular approach to addressing the needs of a young person. (SWC.3)

According to the Scottish Government, 2014, Getting it Right for Every Child 'GIRFEC' is an approach adopted within the Scottish system to encourage earlier intervention by professionals and to avoid crisis situations with children and young people. It is based on an orientation that argues that to get positive outcomes when dealing with children and young people in trouble many aspects must be considered. Firstly, joint and coordinated actions by all agencies and services are needed, aimed at children and young people. These organisations should work together using integrated methods. Secondly, early intervention is also necessary, meaning that rather than dealing with these issues when the situation has already reached a crisis point, signs of difficulties, needs and risks should be evaluated early.

Based on this previous orientation, a 'whole system' approach is put in place and applied to identify and to intervene, at the earliest opportunity, when a young person is in trouble. One of the main goals of the 'whole system' approach is preventing young people entering the criminal justice system as much as possible, except in cases of necessity. Protecting young people who commit low level offences from formal prosecution often results in decreased offending.

It provides a mechanism to take early action to deal with situations where children and young people are in trouble. When young people come to the attention of the police, agencies such as social work, health, education and voluntary organisations, with whom the police work and share information concerning the young person, make a unified decision on the best response concerning the needs and risks related to the young person. Therefore, the 'whole system' approach contains procedures related to making plans and assessing young people who commit offences. The process of decision making ensures that the young person receives the right service at the right time.

Moreover, this approach also includes methods for dealing with young re-offenders who commit serious offences. Examples of this include community alternatives to secure care and custody as well as actions to encourage behavioural change in those who are placed in secure care or custody facilities. Lastly, measures are also taken to help those who are placed in secure units and custody to reintegrate back into the community.

The quotes above illustrate the different methods of assessment are carried out by social workers in Scotland. Like in Saudi Arabia, relationships with youth are considered key to success, yet difficult to build, particularly because juveniles are not confined to houses of correction. In many cases assessment relies on actuarial tools, which are used to decide which type of intervention the juvenile receives, and the level of risk they present. However, the social workers in Scotland also explain that there are certain difficulties and problems that surround certain aspects of their work and limit their ability to carry out their duties.

The processes, methods of intervention and difficulties faced by Scottish state social workers are specific for the agency. However, to better understand the challenges faced and methods used by Scottish social workers, these same aspects of social work will be compared to the approaches used and concerns raised by social workers within the private sector. The next section will, therefore, consider data obtained from interviews with Includem workers in order to gain a deeper understanding of the Scottish system.

7.2.3.3 Includem

This section will elaborate on the process of assessment as it occurs at Includem, a Scottish charity supplying some social work services. This information will be useful in comparison, to gain a deeper understanding of the Scottish social work system, which often relies on contractors. The section will present the procedure used by Includem for assessing an offender, following referral from the state. As a first step in any case, Includem receives a referral from the social work department.

Related but Independent Assessments

Although the referral comes with an assessment from the state social worker and the main purpose of referring the case is for intervention, Includem also assesses the juvenile. INCS.4 clarified how this process works:

Obviously Includem like any agency we can't rely on somebody else's information purely so when any young person comes to us we need to assess them in their own right. That is part of the work that we do and then obviously very often it should be like what social services say are the issues. ... We have to assess them in their own right and then from there we can try and formulate jointly between social work services (who ultimately pay for their service) and Includem who work with the young people to set ... the best course ... The two assessments must be meeting at the middle.

With the benefit of the previous social work report Includem can compare the results of its own assessment and make a more holistic decision about the juvenile. However, the information that Includem receives from the state social workers is not always of a high quality. INCS.1 explained:

Sometimes, their information is out-of-date. Some of their evidence can be anecdotal.... Sometimes, it can be based on reports that they have read, rather than actually going out there and they have found out firsthand what is the young person and the parents you know, what is really going on within that young person's life and within their circle....Quite often, in my experience, alongside that comes a social background report, which goes into their history. In my experience, when you read that, I have found it to often be very, very negative. You read it, and then see when you meet the young person? It's like two completely different things. The young person does not match what is written about them.

These problems with the state social work report undermine the trust that Includem workers have in it, and push them to do their own assessments. Sometimes even basic information is omitted from the state referral, as noted by INCS.4:

Young people, when they are referred to Includem, the first level of assessment is gathering basic information so we have what we call a referral meeting, that never used to happen, social work staff promised to send information and it didn't happen. (INCS.4)

Once the juvenile has been referred to them, Includem staff typically begin their assessment over a period of six to eight weeks as they move through a care plan.

During this period, their work with the juveniles is influenced by their social worker's assessment. INCS.3 and INCS.1 explain this process:

We start to chart where a young person is at the time of referral. So, that is our kind of initial assessment. ... The first module of that is all about assessing the young people's needs and deeds...So within that first six weeks, our assessment period then leads us to our first support planning meeting, which is Includem, the young person and their family and, if they are about, the social work department. And we will say, "This is our plan for the next 6 to 8 weeks for that young person." And we will have specified what areas of work we want to tackle, when we are going to do it. So, it is quite specific. Maybe eight weeks after that, we will have a follow-up support planning meeting. We'll say what we have achieved, what we have done, and our next targets for the next eight weeks. So, you're out.

The assessment of the Includem worker is then reconciled with the existing social work report from the state social worker. As INCS.3 explains:

We will follow [the state social worker's assessment] for the first few weeks, the first six to eight weeks, until we make an assessment of our own, which will either say we need to change it slightly, or we need to go back and speak to the social worker again and say "Your assessment isn't quite what we see."

In cases where there is contradiction between the state social worker's assessment and the findings of Includem staff this is handled in a meeting. As INCS.4 put it:

Occasionally you get one that is totally off the radar, you get somebody's assessment that is just completely not making sense. (INCS.4)

However, the state social workers are the ones with the final say in assessment. INCS.3 explained that Includem's primary job is not assessment, so they are relegated to suggesting changes to the assessment:

In some cases, there is a really bad assessment [from the state]. And we would recognise that fairly quickly, probably within eight weeks, and we would try to influence that assessment. But all we can do is influence. We can't come up with a new assessment saying, "Your assessment is wrong. Here's another assessment." We just try and say, "Have you thought about that being wrong? Have you thought about, maybe, that being wrong?" and try to get the social worker to change their assessment. Our views almost are not required. We do our job and work. Other than that, that's fine. "Do your work, then go. Don't try and assess." That's the kind of attitude I think social work have with us.

Since the task assigned to Includem by the state is intervention, their input on assessment is not always accepted.

Building Trust with the Client: Relationships and Time

In addition to making their own assessment, during the first period spent dealing with the juveniles, Includem workers focus on building a relationship and establishing trust between the social worker and the juvenile, which is seen as the main element of their work. "The first and foremost thing [Includem social workers] do is build the relationship with the young person and build trust" (INCS.1). Part of this process is empathy, and respect by the social worker for the juvenile. As INCS.5 notes:

I try to build a relationship with them first and I try not to judge them based on whatever it is they are doing or have done or what is going on in their life. (INCS.5)

Interacting with juveniles one on one can help overcome hostility from those jaded by exposure to the system. According to INCS.2:

The kids, no matter what offence and how serious the offence is and how resistant they are to what are termed like official or formal agencies linked to social work and police, they tend to be a bit more relaxed with ourselves. And you tend to find, no matter what is written in the referral forms and the feedback that you get from other agencies in the reports, on a one-to-one basis the majority of the times - not all the times - but more so than not, the young people will engage with you. They'll have discussions with you. They'll have their own points of view.

Once offenders are offering their own points of view it is possible to engage with them from a stance of empathy. This is achieved by using basic techniques of social work, which make the young person feel respected and heard. INCS.2 outlines how empathy can be used to build a connection like this:

Going towards empathising with them, but using skills like good listening skills and stuff like that - that's really important. Respecting their point of view and also, being able to challenge them. (INCS.2)

This relationship between a juvenile offender and the social worker is seen as a core part of Includem's work. INCS.4 goes so far as to say:

My job is to build relationships with young people and then use the relationship to influence their behaviour in a positive way, and challenge any like offending behaviour. Promoting social inclusion, that is the simplest way to look at what we do. (INCS.4)

The Includem staff views the charity as having a unique contribution to a juvenile's case. The added value of the charity, in their opinion, is the personal connections of the staff and the client. As INCS.2 argued:

I think the way that we work on the relationships stuff and the one-to-one gives us a better handle and a better opportunity than other people. And my feeling of it is that the more structured, formal approach doesn't really create rewards at the start. ...In the informal kind of approach, the relationships side, the one-to-one, the persistence, the "stickability" as we term it. Continually to go back. Not accepting "No" as an answer. I think that kind of forms in that. And it's how young people react or respond to that. A lot of the young people we work with have worked with multiple agencies for years.

Includem Contrasted with the State Social Workers

The 'formal approach' that INCS.2 juxtaposes against the 'informal approach' refers here to the more structured actuarial-based approach used by Scottish state social workers, which the respondent specifically believes to be less effective than 'the relationships side' which is emphasized at Includem. This belief is widely held among Includem workers. Particularly, many of the workers emphasize the more time-intensive process that Includem workers take with each case. As INCS.3 explains:

Until you work as intensively with someone, until you see someone five and six hours a week, you don't get an idea of them, of their circumstances, of their personality. Until you get to know them, it's really difficult to work with them. Prior to that, being a social worker, you wouldn't see young people or children as often as that, so you wouldn't really get to know them. You would be guessing, speculating, basing what you're doing on the theory, something abstract. (INCS.3)

The perception from the Includem worker that state social workers must be basing what they do 'on the theory' or 'something abstract' directly contradicts state social worker's general ambivalence towards theory.

This failure to engage in a time intensive manner with juvenile offenders was cited by many at Includem as the key failure of the state social work system. Because of the high volume of work that state social workers in Scotland are expected to get through, they do not have the time to pursue a relationship based strategy. INCS.4 cites this as the main difference between the work Includem does and that done by the state:

What the work is and the difference in Includem from the social workers is that we have a lot more time - we do really intensive work with young people. The social workers do not have that time. It is not because they don't want it but they don't have it, it is increasingly more paperwork driven and you understand there has got to be those differences and that those staff don't have that time.

As the workloads of state social workers have increased, this difference becomes more and more distinct. INCS.1 similarly does not blame state social workers, but notes the inherent restrictions of the job today:

Now, I think where Includem have got... I think we do the work the social workers used to do. In my experience, the social workers do not have the time to actually go out and meet the young person, meet the family, spend time with them, get a really good understanding of maybe why certain behaviours are taking place. That's not the social workers' fault. I'm sure they would love to be able to do that. But they don't have time to do that. That's kind of no longer their job. Their job is to kind of case manage.

When you break down the time available where social workers are in contact with young people it becomes even more clear:

.... most of those young people only see their social worker once per month. Out of that once per month, the social worker will be lucky if they spend an hour- one hour- with that young person and in talking to the staff and unit as well so, if you said they've met them once a month for one hour, that would be 12 hours a year but if you take away staff holidays, if you take away sickness or training days say that it brings it down to 9 days a year. So nine visits a year, so nine hours, half that in two, because half of that time goes to the staff in the unit chatting with them: 4 and a half hours. 4 and a half hours a year - that's the average - so if you think about it in your terms, you break it down. Includem - we spend 8 hours one week with a young person... so how can they build that relationship with that young person and their families and their carers? How could they get those people to trust them and open up? How can they do any focus work, really in depth focus work, and how can they fully assess things on an on-going basis

While this estimate would no doubt be disputed by state social workers, the assertion by this Includem social worker that they spend more time with the juvenile in one week than the state social worker does with them in a year is alarming. This has significant repercussions for both the assessment and intervention process. INCS. 1 continued to note that the structural position of social workers can actually be an impediment to their access to the families.

The thing is, quite often, because the social workers have got the statutory power and the statutory responsibility, quite often they find doors shut to them. Whereas 99 times out of 100, we find that doors are open to us.

The reason for this openness is, according to the respondent, because Includem does not face the same stigma faced by state social workers. You know, people who are not involved in social work, if they have a social worker come to their house and they have a report, it's that "Oh, I've got a social worker. I don't want anyone to know," because it's not seen as a good thing (INCS.1)

If this is true, it means that often, not only do state social workers not have the time for the kind of intensive engagement that Includem workers pursue, they might not be able to even if they had the time. Nevertheless, the more intense variety of engagement popular at Includem does have a cost for the social worker, and reduces the number of cases they can handle.

While almost all of the respondents were vocal about the importance of this time intensive engagement, it does place unique burdens upon Includem social workers. When based upon personal relationships, the process of assessment and intervention is intensive work with no specific hours or limits. As INCS.1 explains:

We will see them four times a week. That can be targeted. See if that young person is an offender and going out on a Friday night stealing? We will target these hotspots and these times, so we work 24/7. We don't work 9 to 5. I've been out with young people at 10 o'clock at night to divert them away from, you know, criminal activities.

Although this may seem trying for the social worker, Includem workers generally spoke positively about the time commitments of their jobs, which they saw as key to their effectiveness. INCS.2 acknowledged the extended hours of his or her work, but saw them as essential to the assessment process.

We target different times, so we target times that are difficult for a young person, evenings and weekends. So, we spend time with them then....I think the way that we work on the relationships stuff and the one-to-one gives us a better handle and a better opportunity than other people. (INCS.2)

These meetings with the Includem social worker mix assessment and intervention, with the relationship as the centre of both. In the above quote more time with the offender gives the social worker both a 'better handle' (a better assessment) and a 'better opportunity' (to intervene). INCS.4 gives an example of some of the activities that may take place in these meetings:

We usually collect them from their house or from school because, sometimes we can bring them here because each contact is usually is an hour and a half. Some weeks would be to make some of the better life exercises but all their contacts could be an activity where you go to the pool, sometimes once a month ...maybe go to the cinema or we started with another colleague a music group so you try to know what they're interested in and the more you can understand them the better you will be able to get to know them and have contacts appropriate with what they like. (INCS.4)

These meetings are not, however, solely relegated to building a relationship with the juvenile. INCS.3 pointed out that through this activity and contact with the juvenile a semi-formal assessment is being carried out:

So, we'll make a semi-formal assessment of the care plan every eight to 12 weeks. And if there is something needing changed in that, we will change it based on how we feel it is working. An assessment of how this care plan is working - an assessment of how this young person is responding to it and an assessment of how the family are responding to it.

The procedures used by Includem staff differ from state social workers in that they have more time to spend with the young people with whom they are working. Nevertheless, similarly to other social workers in Scotland, people working for Includem still use a set of tools and approaches to aid them in their practice, which will be discussed in the following section.

Theoretical Tools

Includem staff respondents specified that their theories and approaches varied according to variables such as age and situation. In general Includem works with juveniles who commit a range of offences, and their techniques draw on a range of theories, with a particular focus on cognitive behavioural therapies. The framework usually used to approach a case is an internal one, called 'A Better Life'. INCS.2 explains the program briefly:

... within [A Better Life], that's an assessment tool in itself, which is an internal one that we can then present. There are loads of theories linked in there. There are loads that are interesting, that are looking at the issues of offending behaviour, looking at I suppose all different kinds of areas.

This response indicates that while the tools may be influenced by theory, the respondent was not deeply familiar with the underlying theory behind the 'Better Life' framework, instead merely taking it on its own merits. That said, INCS.1, who helped design the assessment tools used at Includem, was able to speak more cogently about their basis:

A lot of what we do is based loosely on cognitive behavioural therapy. I was involved in developing the tools that we use. So, what we're trying to do is get young people to think about thoughts, feelings and behaviours. INCS.1

When asked about the theoretical basis for their work, INCS.3 noted how multiple theories interact to increase the understanding of the social workers.

I suppose, attachment theory – not just attachment theory, but attachment theory certainly helps you understand it – the kinds of theories around family relationships, like the psychodynamic theories, ecological systems theory, the systems where you have different parts of the family and their relationship to each other. That's a bit of assessment as well, and that helps you understand where the strengths lie, and where their difficulties are. It directs intervention. Again, it tells you where you should be targeting in what you're doing.

This idea, or a theory driving an inquiry, is very different than any espoused by either Saudi or Scottish state social workers. It is not even present in the testimony of many of the other Includem workers, as it contains a self-awareness of theoretical implications during the process of analysis. As an interesting counterexample, INCS.4, when asked about the use of a theory in his or her work pointed out that while it is possible to point out in retrospect how a theory applies to a case, this awareness is not always present in the analysis:

For another young kid you've got different theories - Maslow's hierarchy of need for example. When I was talking with that young girl, for example, for most basic needs like food, water and that kind of thing, when people are looking at it they will not look at it in terms of theory but I am looking at it in terms of theory as well. For the most basic needs you can't move up in the hierarchy until you've meet all those needs so different workers use different things but workers have a base level where they should understand different theories and where they are coming from.

Apart from the theoretical knowledge included in the tools, respondents did not seem overly concerned over a theoretical basis for their work. While INCS.3 acknowledged the importance of theory, he or she also noted that a theory alone is not enough. The emphasis should remain on the social worker-client relationship.

When you see someone four or five times a week, if you see them for five or six hours a week, you can make a proper assessment of them. Certainly, you need the theory behind that. You need to know some knowledge; you need to know some theory about behaviourism, psychological theory, attachment theory, some theory about criminology or recidivism, related to behaviours, to motivations. But "assessment" can mean anything. It's a really difficult term to pin down, depending on who you're talking to.

INCS.5 echoed this sentiment, stressing that the juvenile should be the core of any assessment, regardless of the theory used:

The main theory is that the client is the most important person and it should be client led as much as possible. The process should be driven by them as much as you can even though obviously there are certain things by law that we have to do but as much as possible to have them leading the process.

Beyond the theories applied by employees at Includem, which are often similar to the ideas utilised by state social workers, there is also one tool that is special to the staff and practice of Includem.

The Better Life Tool

Includem staff rely mainly on the Better Life tool, which was developed by the organisation with the help of cognitive behavioural theories. It is used for assessing juveniles when they are referred to Includem and also for evaluating their progress during intervention. In addition, the Youth Level Inventory tool is used to reduce the likelihood of reoffending.

INCS.2, INCS.5 and INCS.1 explain the main functions of Better Life and the outcomes when using this tool. The first aspect of Better Life is about assessment. As INCS.1 explains, “The first module... is all about assessing the young people's needs and deeds, and from that, that's how we kind of base our intervention going forwards”. As part of the early part of this programme, the juveniles go through a series of exercises called ‘This is My Life’, which, as INCS.5 explains, are “designed to get them to talk about their past and to look at their life choices and out of those conversations to try and find ... what are the main issues that will decide the intervention”. This is important because “you need to find out about what is driving them to their behaviour.” The real strength of this tool, however, is its ability to expand upon and contradict ideas that the social worker already has. As INCS.2 noted:

The assessment tool that we use, that I mentioned earlier, A Better Life, that's a tool that we developed. ... I think that's come a long way. Because what it does - I'm not saying all the time - but it not just supplements the information that we were given previously, it sometimes complements the information that we have got and identifies a correct route. It can also contradict the information we have had previously.

The other tool that is sometimes used by Includem, the Youth Level Inventory, was less well regarded by staff, INCS.3 expresses his point of view:

Unfortunately, we use YLSMI. We do use that, still. Maybe not everyone uses it. But we do still use it and rely on it on the prediction of the risk of offending and stuff like that, which is not really that useful, I don't think. But we do it.

The Youth Level Inventory and the Better Life programme are the primary tools of assessment used by Includem workers. Importantly, the Better Life programme, by far the better received of the two, maintains a focus on creating a relationship with the young person, rather than just being a formulaic assessment tool.

From this discussion of the importance of relationships in assessment, it is useful to turn to how these relationships play out in the intervention process, and the ways in which they are connected. Intervention by Includem workers is often occurring at the same time as assessment, and is based on building a one-to-one relationship over a specific period, targeting definite areas as established with the

juveniles. This is also a part of the Better Life framework, drawing upon the social worker-client relationship.

Better Life, which is like a series of exercises designed to help them explore - is it emotions that they have problems with, is it boredom - there is all these different modules which you try and tailor to the young person's individual needs. (INCS.4)

INCS.1 made a very similar point.

And we will have specified what areas of work we want to tackle, when we are going to do it. So, it is quite specific. Maybe eight weeks after that, we will have a follow-up support planning meeting. We'll say what we have achieved, what we have done, and our next targets for the next eight weeks. So, you're out. (INCS.1)

The adaptive nature of intervention is key for social workers at Includem. As INCS.1 emphasizes:

Each package of intervention is very much tailored for that young person. Although we have a toolkit that we use, it's completely adaptable. As I say, the toolkit is for the staff member, and it is up to them to be creative in the way that they use it with that young person.

Although these methods and practices seem to be largely successful, Includem staff nevertheless face other difficulties in intervention.

Intervention: Advantages of Includem over State social workers

Dealing with juveniles who have committed offences through Includem is a unique and effective method. This claim was justified in light of criticisms regarding social workers' practices, which are hampered by limited time which they can devote to each case:

We get in there, we meet the families. Although we are all aiming for the same goals, we have quite a different relationship, because we can be in folks' houses seven days a week. We build up a very different relationship. So, even although the assessment is done... I mean, it takes as long as it takes. Ideally, we would try to do it in a four- to six-week period. A social worker could maybe do an assessment from reading reports. (INCS.1)

INCS.4 and INCS.1 emphasised the weaknesses of social workers, citing two factors

"What is the view of social work within society? They have a view of "Is it a necessary evil?" ...Other families live within the social work world, because they aren't capable. I suppose the essence of social work... Social work is about supporting people who can't live themselves. Really, it's a necessary evil. If people were able to function the way that everyone would want to function, you wouldn't need social work. But you need social work to protect children and to protect vulnerable adults.(INCS.)1

It is clear that the Includem workers view the most important part of their work, both in assessment and intervention to be the relationship between the social worker and the juvenile. They spend significantly more time with the juvenile than Scottish state social workers, and their use of tools is significantly

more adaptive and based on cognitive psychology, rather than actuarial methods. While many Includem social workers did seem to have at least a slight knowledge of how theory impacted their work, in a practical sense they did not rely on theoretical concerns but those based on frameworks like the Better Life program, which can serve as cognitive shortcuts with theoretical implications.

The quotes above illustrate the differences in tools, theories and approaches used in the two legal systems in Saudi Arabia and Scotland, as well as within different aspects of the Scottish system. They have also highlighted the diverse attitudes towards intervention and the difficulties faced by all the different organisations. These are issues that will be discussed further within the next chapter however, first attention must be focused on the practices of Juvenile Judges in Saudi Arabia and Children's Panels in Scotland.

7.3: Juvenile Judges in Saudi Arabia and Children's Panels in Scotland:

7.3.1 Theme 1: The criteria that are taken into account by Judges and CHP when making a decision regarding juvenile offenders

This theme mainly focuses on exploring the considerations that judges and the Children's Panels take into account while making a decision. As part of this it will investigate the advantages of three individuals sitting together to make a decision, as opposed to one person sitting alone deciding about each case. The responses were varied and the majority of the interviewees gave responses that included supporting empirical examples. One of the findings that emerge under this theme is that gender (of the juvenile) (female) had a strong moderating influence on the decision by Juvenile Judges in Saudi Arabia, but did not have a strong influence on CHPs. In addition this section examines the conditions that Juvenile Judges in Saudi Arabia take into account when applying the sentence of lashes or flogging.

7.3.1.1 Juvenile Judges in Saudi Arabia

This section will provide an overview of how juvenile judges in Saudi Arabia make sentencing decisions in juvenile cases. Certain factors were seen by Saudi Arabian judges as influential in shaping their decisions. These factors can be grouped as those associated with juveniles (age, gender and juvenile perspective), those associated with the offence that was committed, or those associated with the circumstances surrounding the juvenile and offence. This section will begin with a discussion of the environmental factors which affect the case (including the juvenile's age and family status), the influence of gender on the sentencing process, the influence of inputs to the system such as testimony by the offender, the social work report and the influence of structural factors such as how many judges are working on the case.

Influence of Environmental Factors

These factors provide a context by reference to which a Judge can make more informed decisions. Judge 1 stressed that there are cases where similar offences have been committed but the circumstance surrounding them lead to different decisions in sentencing;

I believe that every case has its own specific surrounding conditions. In general, we might receive two similar cases, but for each case we need a specific treatment. Before I make a final judgment with young offenders' cases I consider the progress of the case, a diagnosis of the case, and if the young offender has been involved in other cases in the past or not, and I also consider how the young offender responds and how he feels about his offence - does he regret what he did or not? And of course there is a big difference between one who has one case only and one who has more than one case and who often commits offences. There is a different approach in dealing with the young offender who regrets what he did. And with repeated offences I go back and view previous punishments before I make a decision on a case.

Judge 1's statement shows that he sees his sentencing decision as determining a treatment which disciplines the juvenile who committed the offence and also acts as a deterrent. He also stated that re-

offending and juvenile regret of the act are additional variables affecting the decision made. Moreover, the Judge also noted that past decisions would be examined in cases of reoffending.

Several of these factors were also summarized by Judge 2:

First of all, I consider the age of the young offender because of course there is a difference between a 12 year-old and a 17 year-old offender; second, the reasons behind committing the offence; third, the social status of the young offender; and the last point is the psychological status of the young offender as he/she might have divorced parents, or he/she might be a foundling child or have unknown parents. All these factors might lead the young offender to commit offences.

This statement lists age, rationale, social background, and psychological state as factors which the judge takes into account in sentencing. Interestingly, Judge 2 defines psychological status primarily in terms of social situations. When asked what kind of factors influenced his decision Judge 3 echoed these statements:

When making a judgement on young offenders' cases we must consider the age of the offender - dealing with 18 year old offenders, and with 12 year old offenders is different and in the event when we found that the young offender had repeated cases...we also consider the type of offence, for example if the robbery was a small amount of money or if it was a car. We also bear in mind if the young offender is a member of a gang, in which case we need to deal with the whole gang together and punish each member according to his role in the case. When we face an arrogant young offender who does not regret his crime we make a hard decision on his penalty. (TaaZeer) is mainly to lead the offender to a safe place where he will not commit crimes again, (Taazeer) as discipline and deterrence is not a form of revenge; it is considered as a lesson that this is a society where committing crimes is not an easy choice.

Like Judge 2, Judge 3 included age as a key factor to consider in sentencing. However he also included the type of offence, whether it was performed as part of a group, and the attitude of the offender. Moreover, Judge 3 clarified that the purpose of discipline and deterrence in any sentencing decision taken regarding juveniles who have committed offences, is not revenge or retaliation. He also pointed out that the juvenile's family status may be one of the main motivations to delinquency:

The factors of the young offenders' motives to commit crimes differ from one person to another - like lacking supervision at home or having had a poor education. Usually what drives young people to commit offences is the lack of supervision at home, like young orphans or those who lived with separated parents. On the other hand, we see that one who is raised by his parents and who is well educated is less likely to commit crimes, and if he commits crimes despite being raised in a good environment we search for other factors that drove him to do so.

Influence of Gender on Decisions

These quotations indicate the importance of certain social causes for criminal or antisocial behaviour. All of the Saudi Arabian judges interviewed indicated that the age of any juvenile accused has an influence on the decision making process. This is also true of gender; as female juvenile offenders are

in a different position to males. Typically, female juvenile offenders receive shorter sentences and are more likely to get a special deal than male juveniles.

Judge 2 clarifies this point in context:

in Saudi Arabia the Judge does differentiate and take more care in female cases, because we protect females' security and reputation in society - and if a case is not treated well this may have a bad effect on her family. For instance in the case of females who are under 30, they are kept away from general cases in prison and put in houses of correction. They are prevented from mixing with other offenders who have bigger cases, because that may affect her and her way of thinking. When the system was first introduced it was designed to protect females who are 20 years or below but then this was changed to cover all females under 30 years old, because we found that there was a greater chance of harm when we allowed them to mix with experienced offenders in prison.

The above statement shows that the Judges and the system tend to deal with female cases differently from those of male juveniles. More surprising is the reasons that Judge 2 gives for this: in order to 'protect females' security and reputation in society', and in order to avoid having 'a bad effect on her family'. These two goals are related yet distinct in their emphasis, the first being for the protection of the individual, and the second of her family group. Both however, have an emphasis on societal expectation. Interestingly, this same societal standard does not apply to men. Females are treated as juvenile offenders until the age of 30 (while the age of majority is 18 for men), and receive lighter sentences in a house of correction if sentenced.

Judge 3 attributes the reasons behind this to cultural factors, which lead to special treatment of the female juvenile:

It is surely different because we have a conservative society so when females in our society commit offences and pay a penalty, that may affect her and her family's reputation. Placing such offenders in a female correction house is a strict way in which we try to secure the female and her reputation; keeping her away from the public so that will not ruin her reputation and future – usually female cases are not transferred to the juvenile court Judges. The percentage of cases who are haven't been transferred is 96% according to official statistics.

Again, this testimony emphasizes the danger to both the female offender and 'her family's reputation', and the necessity of keeping her away from 'the public'. This shows the strong community expectation that colours females' experience of juvenile justice in Saudi Arabia. Judge 4 agrees with the other respondents, but also emphasizes the influence of religion on this issue:

We treat females in a house of correction as our religion has advised us to do, so we do not spread news of her case, as if we do so we will affect her and her family negatively. This may cause people to avoid her in society and that may prompt her to continue in a criminal way.

Similar to the above statements, this emphasizes the role of family and social pressure in the decision not to punish female offenders in the same way as male offenders. From the statements above it is apparent that judges believe that special handling of female cases is necessary to protect them and their families from negative effects on their reputation. While gender, age and the social circumstances of the young person's engagement in criminal activity influences the sentencing in diverse ways, there are

also other factors that affect decisions made by Juvenile Judges. Having considered the impact of these contextual factors, it is now possible to turn to a discussion of how the social worker reports affect sentencing decisions..

Influence of the Young Person's Attitude on Sentencing

The Judges have also stated that the reports they have received, and the views of the juveniles themselves have an influence on their decisions. This influence can lead to either sentence commutation or stringency. Judges who were interviewed clarified that:

The report is an important part of the process of making a judgement on young offenders' cases... It is not only paper work. It has a major role in diagnosing the young offender's behaviour, and in many cases I have reconsidered my judgements after reading the reports. Sometimes the young offender's environment is perfect so it is not that which causes him/her to commit crime. In these cases we need to search for the real reasons that have led him to offend and then decide on a suitable treatment for him. In some cases I request more information after reading the report - for example I may request to observe the young offender over a two week period to observe his daily activities and how he responds and reacts with his friends. (Judge.2)

This is interesting because the judge not only actively engages with the social worker report. If unsatisfied he indicates a desire to observe the young person himself. These remarks also demonstrate the social emphasis of delinquency in Saudi Arabia. The Judge wants to observe the offender to see 'how he responds and reacts with his friends'. Similarly, his first urge is to find a reason in the environment to serve as a cause for the crime.

As part of inputs into the sentencing process, the Judge may consider the offender's testimony. As Judge 3 notes:

Before making a final judgement, the Judge questions the offender and listens to his defence; thereby clarifying the implications of the case and providing a clearer basis for judgement. (Judge.3)

Sometimes the judgement changes when the offender says something different to what he previously stated during the process of the report and observation, and sometimes the offender may confess things not previously disclosed. (Judge.4)

The result of this process: combining environmental factors such as the juvenile's age and gender, the social worker's report, and the young person's own testimony allows the Judge to come to a sentence. The most common sentences passed by Juvenile Judges according to their responses to the interview questions are: placing juveniles in houses of correction\supervised facilities for a period of time, conditional discharge, lashes\flogging or a mixture.

Because it takes a few days to complete investigations, a juvenile Judge is required to set release terms until attendance at court on a scheduled date; or to place the juvenile in a house of correction until the

date of the trial, following completion of any investigation. Judges have explained the considerations that inform these decisions:

...it is the role of the social worker to search his case from A to Z and then he transfers the case to the judge, who will then decide whether to keep the offender in the house of correction or to give him a conditional release or not. If not, he will be then kept in the house of correction, then the judge will see his case and consider if he has previous records like knife fights or racism fights, so it will be dangerous to release him as he may repeat his offences again, in this case being in the house of correction is better for the sake of the young offender and society as well. (Judge.3)

In this decision, Judge 3 seems to take the public's safety into account more than the reputation of offenders or their families. This is directly opposite to the discussion of female offenders above. The language used here, when talking about offenders generally is directly male (note use of the pronoun he), and the resulting concerns (of knife fights) differ markedly from those voiced over female offenders who are seen as needing to be protected. Judge 1 explained the conditions related to discharge which are found to be appropriate for juvenile cases:

When I get through a case that is not considered as serious I may decide that the young offender may get jailed or whipped with a conditional discharge if he reoffends. For example I may say the young offender will go free and if he reoffends he will have the sentence. In this case the young offender will feel that he is more responsible about his acts. I found that this can give positive effects with some young offenders who are charged with cases like fights and I think that it is really effective.

Corporal Punishment of Juveniles in Saudi Arabia

Regarding lashes or flogging, Juvenile Judges see this sentence as an effective alternative to placing juveniles in houses of correction in some cases. This draws directly on the idea of punishment as a deterrent. Moreover, proponents hold that there are some objectives that can be best achieved by using this method. For example, Judge 2 stated:

It is a message that must be delivered and it is not about just hitting the offender - sometimes you advise your own son or you punish him by not giving him what he wants - and that is what is done with young offenders. Whipping has a psychological and a social effect. ...We don't really like to whip young offenders unless they have committed a serious offence. Or if they have done a similar offence; for example if a young offender hits a man with a stick we whip him in order to correct his behaviour and to insure that he will not repeat what he did. We apply justice and we do not whip for no reason; we also have different criteria and limitations on whipping - not just any part of the body can be whipped, it is just the hands. Whipping must not be hard, even with adult offenders.

This statement, with its emphasis on reoffending and the 'psychological' and 'social' effects of whipping clearly echoes the idea of punishment as a deterrent. However, it goes further to imply that punishment repays a kind of moral debt that the offender owes to society- it is the application of 'justice'. Part of this justice is physical, but perhaps a greater component is psychological. It is, as Judge 2 says 'a message that must be delivered'. Social workers made similar points in their interviews, pointing out the importance of the public nature of the punishment:

Whipping is done in the house of correction in front of the other offenders, because that is one of the principles of whipping - that it is in front of other people. Whipping does not hurt physically as much as it hurts psychologically. (SWS.2)

Judges stress that lashes/flogging achieve the goals of punishment without necessitating a trip to the house of correction.

... sometimes with young offenders, it is better for him to be whipped and not mix with offenders who may have more serious cases and so may have a negative effect on him. (Judge.3)

Judge 4 agrees with this almost word for word, particularly in cases with young offenders:

In some cases when the young offender is very young it is better to keep him away from the house of correction, because that may cause a negative effect on him and his family and even for the worker at the house of correction; so whipping will be more suitable in his case. And in some cases when they are reoffending it is better to keep them in the house of correction. (Judge.4)

Again in the cases of more vulnerable populations punishment is seen as a form of protection. While a western perspective would criticize the use of corporal punishment, especially on young children, these Saudi judges argue that the use of whipping actually saves young offenders from corruption at the houses of correction. A social worker familiar with cases in which flogging was applied made a similar point:

In some cases the offender's stay at the house of correction may increase their delinquency, so the Judge might decide that it is better that he gets released after whipping, which is an alternative to a stay in a house of correction. (SWS.5)

While this seems to have the offender's best interests at heart, it has more to do with implementing the law than anything else. Even at the request of young offenders the judge must follow through with the sentence regardless. As Judge 1 notes:

Actually some young offenders do not prefer (whipping) they sometimes ask that they stay longer at the house of correction instead of being whipped. It is about psychological attitude and how readily the offender accepts the sentence. For some offenders, even if they are whipped, they do not care; while others may be affected with advice or blame only. Some offenders care about their appearance in front of others, so they do not want to be whipped - but if the Judgement is related to a particular reason we do not have a choice and we must apply the sentence.

There seems to be some cognitive dissonance among Judges over the use of flogging for young offenders. While all admit that they would prefer not to, they justify its use in the same breath. Judge 2 also explained some considerations associated with the punishment by lashes or flogging:

We try to avoid whipping the young offender and it is also considered as an alternative to the house of correction, and in fighting cases we try to let the offender try whipping in order to let them try a punishment similar to their offence. Sometimes the whipping itself may be a strong factor in stopping the young offender from re offending, sometimes they may feel it is easy to

spend 20 days in a house of correction but that 10 lashes may affect them.. And in cases where they committed a serious offence and they must get whipped we never go over 10 lashes.

This statement, like those above juxtaposes an avoidance of corporal punishment with explanations for why it is effective. Contrary to previous quotes which have emphasized the dangers posed by extended time spent at houses of correction, Judge 2 notes that lashes are necessary because juveniles at a house of correction ‘may feel it is easy’.

While each Judge offers his own explanation in defence of flogging, these explanations are directly contradictory in the case of the houses of correction. Judge 3’s statement that “whipping may have a stronger effect than spending days in a house of correction” echoes the punitive aspect of whipping (as worse than houses of correction), while his comments cited earlier focus on whipping as a way to avoid houses of correction (as a corrupting influence).

As these quotations have shown, Saudi Arabian judges often make decisions about sentencing based on a number of individual external circumstances, which may change depending on the situation of the young person. The role of whipping/flogging, which has been explored here at length is complicated, with contradictory explanations offered for the benefits of whipping, particularly where young offenders are concerned. Apart from these internal factors of the case, the sentencing decision can also be affected by structural aspects of the case. Of particular interest is the number of judges included in the decision-making process.

A Single Judge for Juveniles

Saudi Arabian Judges view the procedure whereby three sit together to make a decision as not suitable when dealing with juvenile cases. This is because it was felt that the process might have a negative effect on the juvenile:

As Judge 1 states:

It has a negative effect as the young offender may not say everything about his case. The young offender will feel safe and the Judge is able to deal with the offender in a friendly manner [if interacting one on one]. I tried this and it was effective and it can have a positive effect on the procedures. (Judge.1)

The primary motivation to avoiding the use of multiple judges is that it is thought it will intimidate the young offender. This shows an emphasis on the comfort of the offender and their welfare that is separate from adult procedures. In contrast, Judge 2 emphasizes the importance of speed as the primary reason for limiting juvenile cases to one judge.

I believe that [having three judges sit together] does not work with young offenders’ cases, because this is a practice used with serious adult crimes. In young offenders’ cases we need to

act very fast, a single Judge is responsible for the case and this helps to speed the process of the case.

While Judge 2 emphasizes speed, this emphasis is not explained. However, his emphasis on three judges not being necessary because they are for ‘serious adult crimes’ implies that juvenile crimes are inherently less ‘serious’. This idea is elaborated on by Judge 3:

I think that a single Judge is enough. Because usually young offenders' cases are easy and not complicated and they just need a qualified Judge in juvenile issues to deal with the case and make a final judgement. However, in murder cases more than one Judge will determine the process of the case and decide a suitable punishment. (Judge.3)

Comparing this with the previous testimony by Judge 2, it is clear that Judge 3 associates the presence of three judges with ‘serious crimes’, but includes serious juvenile crimes (such as murder) in this number. Interestingly his justification for only having one judge at juvenile cases has nothing to do with the juvenile involved (as with Judge 1) or the speed (as with Judge 2), but instead focuses on the ease of the case. This seems to contradict the great amount of time, effort and money placed on juvenile justice.

Although Judge 3 perceives juvenile justice as easy other judges noted the need for specific training for juvenile judges. Particularly because there is only one Judge presiding in a juvenile trial, it is seen as particularly important that they be specially trained to deal with these cases. Judge 2 notes that:

We need to reassess novice Judges to prepare them to deal with young offenders' cases to be more effective to deal with juvenile issues.

From the statements above it is apparent that the Judges see juvenile cases as not complicated enough to require three Judges, as this practice is normally reserved for serious offences such as murder committed by an adult.

To understand the processes and practices of judges working within the Saudi Arabian legal system, it is necessary to compare it to the equivalent organisations in Scotland and therefore, the Children's Panel will be the focus of the following section.

7.3.1.2 Children's Panels in Scotland

The Children's Panels make a decision regarding a juvenile who commits an offence according to two considerations. The first consideration relates to the principle that the children's hearing system is based on, the second consideration relates to several variables, which can affect the decision of CHP.

A Principled Approach to Sentencing

Regarding the first consideration, any decision is taken by CHP based on what they perceive as the best interests of the juvenile. CHP.2 explains their approach simply:

The overwhelming principle that governs the decision is "What can you do that will improve this child's life?" So, "What is best for the child?"(CHP.2)

In practice, achieving this principle requires an operationalized understanding of what is 'best' for the child. CHP.3 explains the process of using interviews to create a communal sense of what the goals of 'best' mean for everyone involved in the juvenile's life:

I will ask questions of the relative parties, whether it be that young person himself or herself, whether it be their social worker, whether it be their parents, ... Anyone that's working closely. So, I will have questions to ask each of these people as to what is best for this young person. And I will reach my decision on the basis of what I have understood and what has then come to me on the day to make that decision.

In operation, the best interests of the juvenile are harder to define. CHP.1 introduces this as the ability of a juvenile to operate in society:

the best interests of this child to make this young person turn their life around and make them a normal member of society.(CHP.1)

This description defines the best interests of the child in terms of that child's eventual contribution to society, which is distinct from what might be best for the child independent of societal concerns. However, when the interest of society conflicts with the best interests of the child these slightly separate concerns create tension.

Our decision should be one that is in the best interests of the child. Where offending is involved, we must also take into account the effects of the offending behaviour on the community. (CHP2)

In this situation, the interest of society can triumph, at least in the short term. CHP4 noted that:

You are allowed in some narrow circumstances to do something that is against the interests of the child if that is necessary to protect other people, for example, but that is a secondary consideration, and it qualifies the primary principle, which is the welfare of the child. That's the principle that governs the outcome

Recommendations that might be made which run contrary to the immediate best interests of the child often involve the security of others. As CHP1 noted:

Depending on the severity, what we can do is, if it's a young child that is putting themselves in danger or other members of the community, we can recommend security, and that would be some form of secure unit.

The above statements show that protecting people or the community is considered a priority where it is necessary. In other words, protecting people or the community can be seen as a positive principle that is enforceable.

Tied to this main principle (the best interests of the child) is the idea of minimum intervention. This means that a decision for intervention will be taken only if there is a clear need to intervene in the juvenile's life. CHP 5 explains this point:

The main thing in the Children's Panel system is it's about minimum intervention – so not having to intervene in a young person's life unless you really have to, so only putting them on a supervision order if it is really needed. But also, you've got to think about – if they're on a supervision order – how it will make a difference to the young person offending.

In making the recommendation of intervention, particularly because of this principle of minimum intervention, there are several considerations that the CHP take into account. The first step in this is determining the situation of the juvenile in order to determine whether social work services will be able to help. CHP.2 explains this process:

If we're talking about offences, firstly, I need to be convinced that, if we're going to make a supervision requirement, that there are supports in place that the social worker will provide or someone else may provide...So, you need to look at the supports that are available that are going to try and stop that young person from not only repeating the offending.

If the CHP is convinced that there are enough supports available to provide the juvenile's minimum requirements, they need to determine whether the intervention will be useful to them in the long term. As CHP.4 stated:

Then comes the judgement thing, which is "What can social work offer this family or this child? What options do they have to help improve things?" And that's something, again, which you need to know...what's available, what help can be provided

Once the decision to intervene has been made, the CHP does not refer directly to intervention services, but instead works through the social worker to help the juvenile obtain the care and management decided upon. This process is explained by CHP.5.

We can't directly refer to services. We're guided by the social work and what services they are recommending for the young person. So we can't say, "Oh, put X in this service or use Includem." We can't really do that. We can say if they've gone to secure care, but in terms of services in the community, it's always guided by the social work and the services they know, they use and they recommend. (CHP.5)

As part of the emphasis on the best interest of the juvenile, even those juveniles who are considered to need intervention are not punished *per se*. Even if the CHP recommends the placement of the juvenile in a secure unit (functionally jail), it will not necessarily happen. As CHP.1 notes:

Not many go to secure units, because once we've made a decision to allow it, the Head of Social Work, the Head of the Children's Unit and a committee of about three decide, "Should this child go to security or is there an intensive monitoring package that we could put in here and use?"(CHP.1)

The statements above indicate that the decision made by the CHP to intervene depends on both the juvenile's home environment and on ideas of what is best for the child and how that is achieved. However, there remain consistent difficulties in implementing the policies chosen by the CHP. According to CHP.2 one of the biggest barriers is expertise:

One thing I think that's difficult for Panel members – because we are not trained professionals; sorry, we are trained, but we are not legal professionals – is to keep up-to-date with all the different sorts of resources, all the different organisations that can help. And very often, you read reports, or I read reports, and I see that a young person is getting this support or that support, but I don't know what it is. And sometimes, you ask the social worker, and they're not very clear either

The frustration of CHP.2 over the limited training of their position and the complex treatment options shows through in this statement. It also shows a lack of faith in the expertise of social workers.

Perhaps more important as an obstacle, CHP.4 raises an issue regarding the fact that cases involving the children's hearing system do not cause juveniles who have committed offences to change their behaviours:

Now, it might be – and I've had experience of this quite often – particularly with the older child of maybe 14 or 15 that they have been getting into trouble for years, and they are still getting into trouble, it might be that you just conclude "The hearing system is doing nothing for this child, is not being able to change this child's behaviour..." And I can remember at least one occasion in which my decision (though the other Panel members disagreed with it), but my decision was to actually discharge the case, to send the child away from the hearing system completely, so that the next time the child committed a criminal offence, he would go to a criminal court. And I thought "We've done nothing. We can't do anything. Perhaps criminalising the child, the fear of the criminal court, might have more effect." We didn't decide that, because the other two Panel members disagreed with me on that point. But it seems to me that we have to do whatever we can to change behaviour. And sometimes we can't. If the hearing system can't, perhaps another system can.

The above quotations indicate the process, and obstacles in the way, of the practices of Children's Panels. The differences and similarities between the Scottish methods of dealing with and considering young offenders will be compared to the Saudi Arabian system within the next chapter. However, it is also important to consider the additional variables that are taken into consideration when the children's

hearing takes its decision on disposal of the young person's case. These variables include age and gender and will be considered in the next section.

External Influences on the Sentencing Process

External variables such as gender and age also affect the decision by the CHP in certain types of offences, in particular serious ones; but there is no specific trend that is always followed.

Regarding the affect towards the offence:

I'd imagine younger people, though, are more likely to be doing silly things, like graffiti and maybe not as violent crimes. You know, they're more just doing silly things and they don't really understand that it's wrong yet. Maybe stealing a packet of sweets or something.(CHP.5)

Girls are worse than boys, and that's the first one. They genuinely are.... I've seen a situation where two groups of boys are getting at each other, and it kind of goes away and then they walk away. And then the girls appear with some form of weapons and say, "Here, use that, use that, use that." And then the boys, to look good in front of the girls ... Well, girls do fight, but in the main, girls are very, very bad at making situations worse. Instead of calming them down, they make them worse.(CHP.1)

Boys tend to get more involved with things like, well, I say breach of the peace, almost as equally as girls, because girls, particularly when they've been drinking get picked up for breach of the peace. Girls may be picked up for things like petty offences, like shoplifting or maybe attacking a policeman, if they have been apprehended because they are drunk. Boys are more likely, particularly in the past, to be involved with things like stealing cars or going in cars which have been stolen by somebody else – joyriding. They are more likely to be involved in things like assaults and vandalism.(CHP2)

With that category, there are differences, but I personally am not convinced that they are terribly important. I think if you look at the statistics, you will see there are very, very many more boys who commit offences, who are brought to hearings, than girls. And I suppose, the types of offences that they commit are often different.(CHP4)

For comparison with the Saudi case practitioners were asked about how gender influenced their decision making process. As CHP.1 noted:

it's a young person who has offended, and whatever they've done, then I don't care whether it's male or female, or whether they're gay. It matters not. They are a young person who has offended, and I want the best package in there to help them not reoffend.

Although CHP.2 noted that male and female juvenile tend to engage in different types of crimes, they are not treated differently.

The issues that tend to be around girls are around them possibly being exploited with groups of other people, so it's bigger groups of people. But I would say that the issues - you don't treat them differently. You certainly don't treat them differently at a hearing.

These statements are, of course, the perceptions of CHP members, and do not necessarily reflect the reality on the ground. It may be that young women receive systematically different disposals than young men in this setting, but this has not been demonstrated (although it could be an area of future research).

At the very least, it is clear that, as far as this research shows, female are not deliberately treated differently than males.

Apart from external variables like age and gender, there are also other issues that influence the disposal decisions made in relation to juvenile persons. Primary among these is the reports that the CHP receives about the juvenile. In Scotland these include not only the social work report but a whole range of other reports on different aspects of the case. Reports build up information on the different angles of the case. As CHP.1 explains:

We can get all sorts of reports. If they go to school, or if they don't go to school, we normally get a school report. We can get a report from the nursery. We can get one if they've been to an educational psychologist – sometimes you get that report. There is a person called a safeguarder that the Panel can appoint.

Many of these reports serve the function of informing the CHPs on a variety of environmental or contextual factors in the life of the juvenile. This allows them to build up a more comprehensive picture of the offender. The idea of the offender they form from reports is supplemented and challenged by in-person hearings. CHP.2 attributes this mainly to the discussion that occurs in hearings:

Changes usually happen where you have built up a picture of the young person from reports and then when they walk in and / or during discussion matters are brought out that change your view and understanding of the situation. (CHP.2)

This gives the juveniles a chance to have their own voice heard in the hearing. The panellists interviewed seemed open about changing their views in response to the testimony given by the offender, even if it went against the recommendations of the social worker. As CHP.3 explains:

It is what I hear during the hearing that helps me to decide whether I agree with the social worker's recommendations and whether I feel they are realistic and achievable. It is very common for my views to change in the course of a hearing so it is vital to come to the hearing with an open mind. (CHP.3)

The panelist's use of the opportunity to meet the juvenile as a chance to evaluate the social worker's report demonstrates the importance of the hearing. This is only reinforced by the willingness of the respondent to change their views in response to testimony. Compared to the Saudi Arabian system, much less weight is placed on the social worker's report in this hearing system. While this is positive for those juveniles who express themselves well, there are often cases where the juvenile cannot express his view clearly. In these cases, CHP.1 points out that a social worker who has a good relationship with them is the key in this regard:

The main thing in the Children's Panel system is, obviously, the views of the young person. But they are sometimes quite reluctant to speak, or they are nervous, or they might only tell you little bit of information. It's like I was saying earlier – you're hoping the social worker has got really a relationship with the young person and they have built a trust – so the young person

basically trusts the social worker and confides in them, tell them what they really think, what they do want to happen.

Therefore the relationship between the social worker and the juvenile can, according to the respondent, be useful beyond the report in helping the young person communicate at the hearing.

Three Judges for Juveniles

Children's Panels are composed of three decision-makers sitting together to reach a decision. This is distinct from the Saudi system of having one judge for juvenile cases. The CHP sees three sitting together to make a decision as a positive element enhancing the decision-making process with different perspectives. As CHP.2 stated:

Because we are not lawyers, because we're not legally trained, then it's not like a judge sitting in a court. So, it's important that we use probably the most powerful thing that we have, which is three people who are probably from quite different backgrounds, who are largely of different ages, have different experiences. (CHP.2)

The diversity of experiences among panel members is seen by the respondent as a strength. Interestingly, he or she draws out differences in age as a key variable, allowing the CHP to make a more nuanced judgement on the young person's case, because they are closer to them in age. In addition to a diversity of experiences, CHP.1 points out the advantage that three people can work together to develop a more comprehensive view of the case:

It might be that you have noticed something that I have not seen, and this one over here has noticed something that you have not seen, and I might have missed all of it. You know? So, having three people who can maybe bring in a perspective, because if you're focused, and you have got these two or three things in your mind, you might miss things...

In contrast, CHP.4 argues that one person guiding the decision process does not serve one of the principles that the children's hearing system was established for:

One decision-maker is very dangerous, because that one decision-maker might have a peculiar view about a particular thing, or a view that is not representative of Scottish society.

More than just less helpful, the respondent refers to having a single judge as 'dangerous'. This is strong language, and diametrically opposed to that used by Saudi Arabian judges, who expressed a perception that juvenile offenders would feel more safe with one judge than three. The idea behind the three panellists is to reflect 'Scottish society', with its plurality of experiences. However, because there are different people with decision-making power, there are times when clashes occur. As CHP.2 notes:

... in maybe 10%, maybe less, of cases, one person will not make the same decision as the other two. But a very difficult thing, which I find happens to me sometimes, is that you may have two much less experienced Panel members, and with the way the decision goes, if I am chairing and I've got one person and one person, I will usually ask the person who has got more experience first for their decision, then I will ask the person on the other side for their decision.

They may agree, and their decision may be different from what mine would be, but I've been out-voted. So, it's happened occasionally.

Because each of the panellist's decision is weighted equally, more experienced judges cannot always implement what they think is the best solution. The respondent emphasized the rarity of these cases, but also noted that they are 'very difficult' on a personal level.

The above citations illustrate some of the central aspects of the decision making process within the Saudi Arabian and the Scottish legal systems. The following sections will elucidate the overall legal procedures, through close consideration of one element of it, namely the influence of the social worker's report on the decisions made by Juvenile Judges and the CHP.

7.3.2 Theme 2: The influence of social worker Reports on the decision of Judges and CHP

This theme explores the factors that make the social work report have an influence on the decisions of Judges and CHPs. It also explores the meaning of assessment according to their views. The majority of interviewees responded and gave supporting empirical examples on this theme. Some of their responses overlapped with other responses from the previous theme as both themes in reality focused on the decisions of juvenile judges and CHPs. The responses of Saudi Juvenile judges to a question related to the meaning of assessment were short and they use the term 'diagnosis' instead of the term 'assessment' for reasons that will be discussed in detail in the discussion chapter. One of the findings under the theme shows that the level of relationship between the social worker and the juvenile is considered by CHP as a factor that makes the social work report less or more influential, while Saudi Arabian judges focused on the professional means of presenting the information in social workers' reports.

7.3.2.1 Juvenile Judges in Saudi Arabia

While some factors cause social workers' reports to be less influential, or even ignored by Judges, they are generally considered an important document.

Saudi Judges View of Diagnosis and the Social Work Report

In terms of assessment, Saudi Arabian judges view diagnosis\assessment in terms of the context of juveniles who commit offences and the reasons leading to the offence. Diagnosis:

...is about the situation of the young offender who has committed the offence. What caused him to commit the offence, and what made it an easy choice to him to offend, and if lack of supervision at home was the cause of his offence or not. (Judge.3) “

The focus here is on cause, with an implication that the cause will be environmental. The importance of the family status of the juvenile is given as an example. The causal emphasis is almost medical in tone, and becomes explicitly so in the words of Judge.1:

Diagnosis of a case is the same as diagnosing medical cases in a hospital. And this is what the social worker must do; he must understand the case and study the different aspects of the offender's life in order to get a clear idea about the causes that have led the young offender to commit the offence. (Judge.1)

The medical analogy simplifies the social worker's task to an empirical one of testing and measuring. The Judge's perspective of social work as a scientific process tugs against the struggles that some of the Saudi Arabian social workers expressed in building relationships with juveniles and drawing conclusions with limited training. The above statements show that Judges see the social worker's report as a process of discovery that should ideally be comprehensive enough to guide suitable treatment by a juvenile Judge:

I believe that social reports give the Judge a key to see a whole picture of a case and then make a final decision as to the best punishment which will have a positive effect on the offender's life, and to insure that he will not get involved in any offence in the future. (Judge.1)

Importance of the Social Work Report for Saudi Arabian Judges

Saudi Judges consider the social worker's report as a primary element guiding them to a suitable decision regarding the cases of juveniles who commit offences. As one judge indicated "the social worker's report is important in the judicial field, especially with young offenders" (Judge.1). This is because the social work report:

is surely beneficial as it gives the Judge the history of the young offender and that will also help in making a decision about his case. If he needs a harsh punishment or whether it is his first crime or not, will help the Judge to determine what is the best for the young offender. (Judge.3)

This response indicates that the primary uses for the social work report are 1. Providing context and 2. Determining punishment, both of which are intertwined with each other.

Judges 2 echoed this emphasis on punishment:

Diagnoses in the social worker's report give you a clear idea about the person who is waiting for your judgement - there are different criteria in the report which will determine the level of punishment. I usually refer to the diagnosis to see what caused the offender to commit his crime. The young offender is not a bad person but there are reasons that lead him to offend. Moreover, I consider the social worker's point of view about the offender, which sometimes helps me to decide a suitable judgement.

This also includes context (what caused the offender to commit his crime) and an emphasis on determining 'the level of punishment. The 'different criteria' mentioned here reflect the way that Saudi justice works, with offences which meet certain standards receiving set punishments (see earlier chapter on the Saudi Justice system for further information). Apart from just punishment, the social worker's report is also seen to have a role in prevention. As Judge.1 notes:

the social worker's report and diagnosing the status of the offender opens up wide areas for the Judge to consider and may help him in keeping the offender from situations that cause problems.

This again relates to the context of the crime, with reference to the 'status of the offender', but differs slightly from the other Judge's testimony in its influence on prevention. The social work report can therefore inform the judge of 'situations that cause problems' so he can avoid these in his judgement.

Unprofessionalism Leads to a Reduction in Influence

Despite these potential influences of the social worker's report, the Saudi Arabian Judges also mentioned some aspects that make the social workers' reports have less influence. According to Judge.1:

the social workers' reports can be superficial. For example, it may not include in depth information about the young offender's social situation, the reasons that have led him to commit his offence or whether it is his family's financial status which may have been the cause of his offence. 90% of the reports may not be perfect; it depends on how did the social worker write it and in what situations did he make his notes about the young offender.

The missing information the respondent is most concerned about is the social situation of the juvenile- his family status. This echoes concerns over social pressure and reputation examined in Theme 1 of this chapter, and emphasises the role of societal expectation in Saudi culture. It is not only missing information that calls into question the social worker's report in the eyes of the Judges, but also the inclusion of extraneous details. As Judge 4 indicated:

The Judge does not need information that is not related to the young offender. Some of the reports have superficial and unnecessary information. What we really need is real information about the young offender, including if he has been involved in previous cases or not, and then we can consider if this case was just a mistake.

Although the judge does not indicate what information he deems superficial and unnecessary, he does list the information he sees as vital: the criminal record. Interestingly, he does not mention family status, a theme which has reappeared throughout much of the testimony from Saudi Arabian judges. He does, however, share his colleagues' frustration with the state of social work reports. In the judges' view, part of these problems stem from poor training of the social workers. As Judge.1 noted:

Sometimes you feel that the social worker is not really qualified to make a good report about the offender's case, they need more training programmes in order to progress.

This leads to the Judge scrutinizing, not only the evidence in the report but the social worker themselves. As result of these factors, Judge 3 stated that he uses a method for assessing the reports:

I care about the recommendations that are made by the social workers. I also care about who the social worker is that dealt with the case, because sometimes I realise that some social workers do not always make good recommendations about young offenders' cases - they may recommend that he must be released, while the offender deserves to stay at the house of correction for the sake of society and himself while I trust some social workers, when they have analysed the case and looked at the offender's history and recommended based on that. So in some complex cases I select social workers who I know will provide a useful and detailed report about the young offender.

Therefore, while the social work report is seen as important, it has drawn criticism from Saudi Judges, who suggested more professionalism that would make the social worker's report more valuable. Criticisms touched on aspects related to who is writing the report, the contents of the report and the process involved. Most fundamental to the formation of a good social worker's report in the eyes of the judge is that a minimum amount of time has been spent with the juvenile.

The social worker's reports must be realistic and must be based on several sessions with the young offender. The social report can only be considered realistic when it covers the main aspects of the young offender in several sessions. For this a trustworthy and honest social worker who works hard to probe the mind of the young offender is required to uncover the real causes of the offence (Judge.2)

The key determinant for a report being realistic, according to the respondent is that 'it covers the main aspects of the young offender in several sessions'. While these main aspects are not elaborated on, the emphasis on time commitment is clear. Beyond this, Judge 1 suggests special training in specific fields for social workers:

The person who writes the social report must have undertaken training courses in psychology and counselling in order to provide valid output when dealing with offenders' cases.

Short of additional training Judge.4 suggested adding two sections to the report to focus on motivation for the offence and opinions regarding what sanctions are suitable for each case:

Adding a section focused on the causes of the crime and which must pay attention to the real reasons behind the crime; it might occur because the offender's peers or friends need money or so on; and then also what prevented him from acquiring money from a legitimate source - so we question his parents about that. Asking the young offender about his opinion as to a suitable punishment for his case. Even if the offender chooses an alternative punishment, like keeping him confined to his parents' house for two months or another form of (tazeer) punishment.

In the judges' view this will focus the social worker's report and allow the judge to make more use of the relevant information.

More radically, Judge.1 mentioned that the whole system could be reformed:

I think a new system could be designed for young offenders' cases; where a committee with a social worker and a psychological specialist and a student Adviser in school worked together to diagnosis the young offender and analyse his case.

This proposed model- which draws on a committee of community members- is similar to the CHP process in Scotland. It also fulfills the specialized training requirement that Judge.1 suggested above.

The process of assessment and the influence of social workers vary within the Saudi Arabian system. However, to gain a deeper understanding of the interaction of social workers and judges, as well as the influence of the social worker's report, it is important to compare these circumstances with the Scottish system.

7.3.2.2 Children's Panels in Scotland

Importance of the Social Work Report

The social worker's report was seen by the CHP as a primary element in the children's hearing system; a decision cannot be made without one. In this regard CHP.2 testifies:

It's vital, because without that report, even if it's a child who you've seen at a hearing before, you don't know... You know, because of the numbers of children you're dealing with, you can't remember. And also, you don't know what's happened since the child came to the last hearing. So you need to be, again, reminded of all the family history. So you need all that.

Particularly the reports are essential for providing context- 'the family history'. As CHP.5 explains:

You don't know the family as a Panel member. You don't know the young person. A young person might not sit and tell you all their issues and things, but you're hoping that the social worker has found them out, and that'll be in the report. Because without that, you can't make a decision, because you don't know what's going on.

Both of these responses emphasize the role of the social worker report in providing information on the family status of the juvenile. CHP.5 goes further to credit the social worker with having likely discovered things that the 'young person might not sit and tell you', which will be relevant to the decision. Although, as noted above, the CHP receives a large number of reports, the social work report is seen as particularly important because it is more comprehensive and interpretive. As CHP.4 explains:

What you get from the reporter is a bland statement of facts – "This child has done this act" – and you learn nothing about the child, apart from what the child has done. And you need to know that, but it's very limited. Whereas the social background report, is what it says – it's a social background report. So, it gives you the background. It lets you know the nature of the child's family. It lets you know who their parents are, what sort of siblings there are, what sort of environment the child is living in.

The respondent notes that the social worker report allows you to learn something about the child that their actions do not- that it is interpretive in that regard. Similar to the above responses, CHP.4 emphasizes the child's family as a key concern of the social worker's report. CHP.4 notes that the information the social worker report gives on the family is key to its influence on sentencing:

I think what makes it more influential is the fact that they know, they tend to know the family. They have much more personal contact with the family...the social worker is the person who has gone to the house where the family live, usually, and they have inside information. That makes what they have to say, what recommendations they make, quite significant.

The family, more than the school or social life of the juvenile is seen as the key environmental factor in the behaviour of the juvenile. Particularly if the relationship between the family and the social worker is good, the CHP is more likely to value the social worker report. As CHP.1 explains:

If it appears that the social worker has got some sort of rapport with the family and the child and there isn't conflict – that they are working with them and talking to them and there is some relationship. I think it's important, because the social work report is going to be better if they've got a good relationship and the family and the child being honest with them. So, that's going to influence us. And you can clearly see that.

Weak Relationships Undermine Influence

Conversely, if there are some problems with the relationship between the family, the juvenile and the social worker the report will be less convincing, according to the CHP.

If the young person isn't engaging with the social work or doesn't like them, then you wouldn't really have much of their voice throughout the report. And I think that's the main thing to have. That's the main things, really.(CHP5)

In the view of the CHP, failure to connect with the juvenile undermines the validity of the social work report. Similarly, CHP members raised questions of the harm when social workers don't engage with the family:

... the social work want less contact with parents, the birth parents. And sometimes, it does come across as it would be more convenient for the social work than it is for the best interests of the young person (CHP.5).

It is clear from this testimony that the relationship between social workers and the juvenile and their family is perceived by CHP as a key determinant of the influence of the report. However, social workers cannot always force close relationships with every juvenile and their family. Apart from personal dynamics, one of the reasons that these difficulties developed may be the bureaucracy of the social work department. One of the stated reasons for the lack of impact of the social worker report is frustration with the rigid policies of the social work department. CHP.4 expounded:

There are some situations in which it is clear that the social work department, as a whole, has a policy and they intend for this family to fit into that policy. And sometimes, the justifications for whatever recommendation they make boil down to "This is how we deal with this sort of family." That makes such a recommendation, such a report, less influential, because the children's hearing has to look at each family individually, and not start off with any presumption that you will do with this family what you do with every other family in that circumstance ... There is usually not a good relationship. It's a difficult relationship, and that's not the best way to get to understand what the child thinks.

The main problem with this policy, in the eyes of the CHP, is that it sacrifices the original advantage of the social worker report- the deeper understanding of a juvenile and their family circumstances. Because, in these situations, where the CHP does not perceive that the social worker has a good relationship with the juvenile, his or her report is worth less. This of course emphasizes the value of reports based on good relationships, in line with the above testimony.

In addition, the reputation of the social work department may hamper the social worker's efforts to develop good relationships with juveniles and their families. As CHP.3 described:

A lot of young people will not engage with the social work, because it's the social work department.. Because historically, young people see social work as being interfering and getting involved in their lives for the wrong reasons. They don't see them as getting involved in their lives to help them out of what would be a crisis.

The possibility for hostility inherent in social work, in the eyes of the CHP, forms a barrier to meaningful engagement between social workers and juveniles. Therefore, the social workers' relationship to the family is highly valued by the CHP, yet also highly challenging.

Social Work Report has Limited Influence on Sentencing

Despite these advantages, respondents saw the social worker's report as being primarily informational, and not having a strong effect on the disposal decision. This varies greatly from the perception held by Scottish social workers in Section 1 that their reports had a strong impact on the outcome of the CHP. CHP.3 wrote the report off as primarily background knowledge:

It doesn't have a strong influence. It can be very informative, if it's providing you with up-to-date information. It can be very informative. But it's not just the social work report that you use as the basis of making your decision. It's a collection of reports from different people who are with or are working with that young person.(CHP.3)

CHP.4 similarly acknowledged the importance of the information contained within the social worker's report, but claimed that it did not have a strong influence on decision making.

You cannot do without it. You need it in every single case. Where I, personally, find the social background report, less helpful – there is always a bit making a recommendation for the future. And, you know, it's interesting to know what the social worker recommends, but I never personally found it hugely... I never felt it had the weight that would sway my decision one way or another. And I don't think it should. It's for the Panel member, not the social worker, to make the decision.(CHP4)

Both of these statements acknowledge the importance of the information contained within the social work report, but do not see it as central to decision-making. This may be due in part to the fact that panel members do not perceive their own decisions as being particularly influenced by any one report, regardless of whether they are or not. There is also a sense, in CHP.4's statement, of positional politics- as the panel member defends their own role in making disposal decisions relative to the social worker. If this is the case, then the CHPs would have a cognitive incentive to emphasize the independence of their own decision making process relative to that of the state social workers.

In the event that the CHP does not find the social worker report to be adequate, even as family history information, there are procedures in place for them to request a revision of the report. CHP.2 and CHP1 state conditions and procedures to follow when the social worker's report is not satisfactory: As CHP.1 notes:

But it will force us to say, "No", because there is another report that we can ask for if we feel that the social work report is inadequate, or if we feel there is a bit of conflict between the parents, the young person and the social work.

CHP.3 indicated that another report from another agent will take the place of the social work report in some situations:

If a social worker came to a hearing with the report, but that young person was working closely with another agency, that's where it takes less importance, because the social work report is not the most important thing that you want to know. You want to know from the agency that's working with that young person, which may well be somebody in the school.

In this situation, the advantage that the social work report was perceived to have originally – of greater contact with, and understanding of, the juvenile and their circumstances - belongs to another agency. The report from that other agency therefore gains weight and the social work report is seen as secondary. CHP.1 gives an example:

I would say, in some cases, the important bit for Panel members is probably the education report, because the teachers see the children much more than the social workers do.

As in other testimony, the main requirement for importance of a report is the connection between the child and the person writing it (whether it is the teacher or the social worker). Other than this, the main variable that may influence the impact of the social worker's report is its quality. CHP.5 notes some of the problems that present themselves in some social workers' reports:

I think sometimes, if you can tell that the information might not be as accurate – you know, if it's obvious they've just copied and pasted it, or sometimes you get something from a previous year, maybe, and there's actually no up-to-date information since the last year. Or the siblings – sometimes they just copy and paste the information for every brother and sister into the same report.

This statement echoes those made by Includem workers, that overtaxed social workers may just copy old or un-updated data into a new report in an attempt to cut corners. The fact that both CHP members and Includem workers reported the same phenomenon makes it likely to be accurate. The inadequate supply of social workers in the state system further hampers the effectiveness of the social work report when the social workers who come to the hearing are not the ones who wrote the report. CHP.4 explains this, what he or she calls a 'very common problem':

As the social workers who come to the hearing are very often not the social workers who have been dealing with the case, very often not the social workers who have drawn up the report, for good and bad reason, because somebody is on holiday, because somebody has left... So when you ask these questions, they don't know. And that is a very common problem. (CHP.4)

This is a problem not just because of the inability of the panel to ask questions, but because it undermines the perception of a close connection between the social worker and the juvenile and family, which many CHPs have noted is key to the report's relevance. Both sloppy reporting and absences from hearings, even if in a minority of cases, undermine overall faith in the social work system and the social work reports. Even where the material presented is accurate, where the report is badly written its impact will suffer. In the words of CHP.2:

And if experienced Panel members have difficulty understanding the report because it's badly written, then what about the young person who may not have ever been to a hearing before and the parents? You know, the families that we deal with are not necessarily the best educated; some of them may be illiterate. It's not just experienced Panel members who are reading these. It's the children and their families as well.

While it seems obvious that a badly written report will have less impact, it is important to note the reasons that CHP.2 takes issue with poor quality reports- not that they are hard for panel members to read, but that they are hard for families to read. In this instance, as the above testimony shows, the importance of the social worker's report depends on its connection to the families involved.

The CHP's right to request a revision of the work of the social worker extends to intervention. CHP.2 describes a situation where a social worker presents a plan for intervention that is deemed unsatisfactory:

If you're not satisfied with the plan, what we may do sometimes is say, "Well, that doesn't look strong enough to us." So we can ask for them... We can set a date for an early review. You're probably aware that if you make a supervision requirement, it's valid for up to a year. It has to be looked at within a year. But we can decide to have another hearing sooner, because maybe we're not very happy with what supports are being offered, so maybe we want to bring them back to see what's happening.

Compared to the Saudi Arabian system, the influence of the social worker's report depends primarily on the relationship between the social worker, the juvenile and the family. This is in part because of the different connotations of the term 'assessment' in the Scottish CHP context.

Assessment as a Process

The CHP defined assessment as a process that involves steps to identify variables related to the juvenile, his family and the offence committed. This assessment then leads to the proposal of possible means of intervention. In general terms, assessment is viewed as risk assessment. CHP.2 notes:

Assessment. I would see it as taking a situation, and looking at – in terms of offending – what is causing the offending, and then also how frequently it's happening and things like that, the triggers for it, but then also, how at risk that young person is of offending again or continuing to offend and assessing how that young person can be helped.

This view of assessment as risk assessment focuses primarily on the offence committed, and the risk of recidivism, with no mention of context or environmental factors. While the respondent does mention causes, it is not clear the nature of these causes. This is in sharp contrast to the testimony from two other CHP members, which emphasize assessment as a process of engaging with the family. As CHP.1 describes it:

An assessment, to me, should give me a picture of the child, the child's parents, any siblings, what sort of housing we're looking at. Whether there are any problems in the community is very common in our area, and most other areas as well.

This respondent's focus, contrary to that above, is not on the offence but on the context, particularly the community context. CHP.3 agrees, and adds the role of assessment in looking forward:

as an assessment, what I'm hoping is that they have gone and have looked at and had discussions with this child and family to see what they think is the best way, or the best things that they can put in place, to move the child forward.

The social work practices and different procedures that are illuminated by the above quotes describe aspects of the Saudi Arabian and Scottish legal systems before a hearing where the young person's case is to be heard and a disposal (or, in Saudi Arabia, a sentence) possibly imposed. The next section will consider the different practices in each country, during the hearing.

7.3.3 Theme 3: The methods used by Judges and CHP during the hearing

This theme explores the techniques and approaches that are used by Juvenile Judges and CHP during the trial or hearing. The majority of interviewees responded and gave supporting empirical examples under this theme. One of the findings that emerges under this theme is that Juvenile Judges in Saudi Arabia focus at the beginning of the trial on removing the juvenile's panic and fear, while CHP focus on the discussion to let the juvenile and his family understand the situation and the decision that will be made.

7.3.3.1 Juvenile Judges in Saudi Arabia

Saudi Arabian judges follow established procedures during the hearing/trial, focusing on two aspects; firstly the juvenile's feelings and fears, and secondly the circumstances surrounding the offence that was committed.

Judge1, for example, views the role of juvenile Judges primarily as one of sentencing:

When the case reaches the Judge, it is necessary to make a decision as to treatment and not to investigate the case in depth from the beginning.

In order to do this, the Judges indicated that they place emphasis on making the juvenile feel more comfortable with them.

Concern for the Juvenile's Feelings

Saudi Arabian judges' first consideration during a hearing is relaxing the offender and reducing their fear. If the juvenile cries the case will be postponed. Judge.2 described this:

Sometimes when the young offender cries we postpone the trial, and some may burst into tears so we decide to deal with the case again on another day.

If the offender does not cry the judge follows specific procedures to remove the juvenile's fears and any factors that might adversely affect the juvenile during the hearing:

I sometimes give the young offender a piece of chocolate to help him relax and feel free to talk; when I feel that the young offender fears me, I may let his father attend or any other member of his family to make it easier for him to respond. (Judge.2)

Judge 3 does the same:

Sometimes we make it easy for the young offender by letting him bring his father or his brother with him so he will feel safe and say everything on his mind. (Judge.3)

Here the family of the juvenile is used as a source of comfort by the Judge. The assumption is that the juvenile will speak more freely in front of their family. Judge.1 takes a similar tactic:

I try to make it easy for the offender by saying I am going to treat you as a father treats his son. I just want you to tell me what led you to commit this crime, are there specific reasons behind your offence, or are there any financial problems? How do your parents treat you, and what is

your relationship like with your brothers and sisters? If he is at school I may contact his supervisor and ask about his educational status and his relationship with his peers and friends at school. (Judge.1)

The reason that the judges want the juvenile to relax is so that they speak more freely and truthfully, leading to a more accurate verdict. However, this ignores the possibility that the juvenile will feel pressure from their family to act in a certain way, perhaps leading to less accurate testimony. Judge.2 gave an example of this:

Sometimes it is better for the young offender to stay on his own because his father may interfere and give answers instead of the young offender, and sometimes the young offender may fear giving truthful answers in front of his father, so in general if we feel that the attendance of the young offenders' family members will influence his answers we don't let them in. (Judge.2)

In some circumstances the social worker may be allowed to attend as well. Judge.4 notes that while this is acceptable sometimes, it is generally not preferable:

If the offender is too young and he starts crying, we ask the social worker to attend with him, but in general I believe that the attendance of the social worker may interfere with the judgement just as the investigator's attendance would - that is why I don't prefer that they attend. (Judge.4)

On the possibility of social workers attending the trial Judge.3 agreed with this testimony:

From my perspective, I think it is not important unless the young offender cannot speak freely or answer the questions. So we may ask the social worker to clarify some questions but we usually do not need to bring the social worker. (Judge.3)

Consideration of the Circumstances

The second aspect of the trial is the discussion of the circumstances surrounding the offence with the offender. This involves explaining his or her wrongs and how they can be addressed. As Judge.1 explained:

When the young offender attends you must deal with him as if he is your son, so you ask questions and explain his mistake and how it may cause him more complicated problems and how he may end up being a prisoner. We also clarify his positive role in society and how he should develop himself and his education in order to be a good responsible member of society. When making a final judgement I explain to him the reasons behind the final decision in his case and the things that need to be done. This is partly because some offenders may not accept the judgement unless it is clear to them; they have a month to plead against the decision - that is one of their rights. (Judge.1)

This perception of justice is clearly one centred on discourse. Again, the family metaphor is used to denote an honesty and frankness between judge and juvenile, as well as a sense of tutelage. This discussion process is not one way, but involves the judge listening to the juvenile offender and determining their own feelings on their actions. These conversations inform sentencing. As Judge.4 notes:

We discuss the case with the young offender and see if he regrets what he has done or not, and we also ask him about his point of view as to a suitable solution in his case. This affects whether the decision of lashes/flogging will be beneficial or if keeping him in a house of correction will be better. Some may regret what they have done so we must move gradually with any decisions. (Judge.4)

The juvenile's own feelings as to the crime are important to the respondent, and help determine what punishment will be most effective. Talking and discussion with juveniles in addition to an investigation of the charge sheet, the police report and the circumstances of the case, help the judge to reach a reasonable decision as to their level of responsibility. Where the juvenile confesses this is clear. These discussions can, in the view of Judge.4 lead to confessions:

Sometimes there is no clear evidence against the young offender but, after questioning, all the missing parts come together and he confesses, and sometimes we need to reconsider the case and revise the investigation, and then decide if the young offender is guilty or not.

If the juvenile then does not confess, the trial moves on to a presentation of evidence. As Judge.2 describes it:

When the young offender denies his offence I directly stop the trial and request the attendance of witnesses to a future trial. We pay more attention with young offenders to make it easy for them to discuss the case with us. And sometimes I ask the young offender again and again to make sure that he has not been forced to give specific fake answers during the investigation.(Judge.2)

The original trial takes place as a discussion between juvenile and judge, and it is only if the juvenile does not confess that witnesses and evidence are brought. However, the emphasis remains on confession, with Judge.2 noting that the offender may have 'been forced to give specific fake answers', although he does not clarify who or what could have forced this.

Once a decision has been made for sentencing, the focus of the trial continues to be on communication and the juvenile's understanding. As Judge.3 notes:

It is better that the young offender understands why we made a specific judgement on his case, and there is a difference between him being convinced and accepting the judgement and knowing the reasons behind the specific judgement in his case. After the judgement he is allowed to (plead) against the decision so then the case would be transferred to the court of appeal. (Judge.3)

From these quotations, it is clear that the young person's well-being and understanding of the case and the consequences are both central to the process of the hearing. Similarly, within the Scottish system attention and time is also dedicated to ensuring that the young person understands the process, something which will be discussed within the next section.

7.3.3.2 Children's Panels in Scotland

The CHP mainly focus on discussion during the hearing, which includes asking questions and explaining decisions to the juvenile to help them to understand why any decision has been made. This reflects the emphasis on understanding among social workers in Scotland.

Discussion is seen by the CHP as essential, both to the process of hearing and sentencing because it fosters understanding. As CHP.4 notes discussion is important because it fosters understanding, which is part of the children's hearing's character and essential to reach its goals:

I think part of the nature of a hearing is so that you discuss things so that everybody understands as much as possible what has happened and why this has happened. And as a quid pro quo of that, once the decision is made, I think it's really, really important that you explain to the child the nature of the decision and why we have thought it necessary to make that decision. That's why the discussion is the central feature of the children's hearing, because you can't just do it by paper, because you can't help but have an image in your mind when you read something. You build up an image. Don't get me wrong, sometimes it's accurate. Sometimes it's fine. But quite a lot of the times, you realise the picture is false, and then you make your judgement on the basis of the picture that is coming to you from the hearing itself.

The discussion as part of the hearing, in the opinion of the CHP, should include both the juvenile and the family. This will help them to understand the social worker's report, which they may not have understood before the hearing. As one respondent points out, this is particularly important in discussing recommendations

I think sometimes families do come and, even if they have brought the reports with them, they have not necessarily read them or if they have read them, they have not necessarily understood them. So I think it is important to ask the social worker, just to make particular bits clear, but particularly about what the recommendation is and what supports are going to be available if we decide to go with the recommendation. (CHP.2)

Respondents emphasized that in order for this discussion to be fruitful, it has to be honest. Rather than focusing on paperwork, CHP.1 noted:

I would much rather go to the child – you know, depending on the age, obviously – and say to the child, "Look, that's the report we've got from the social work. Is there anything that you are unhappy about? Or where do you think your life has been in the last year or so? What's happened in the last year?" Where you maybe need to go to the social work is if it's a continued hearing in the report, is that month, or whatever it is, old and it's been a mixed up family. There's a lot of movement. Then you may want to say to the social worker, "I've got your report. What's your take on what's happened in the last two weeks?"

This level of frankness is, of course, limited by the juvenile's age. CHP.3 noted some of the ways he or she attempts to reach out to juvenile of varying ages and engage them in discussion.

If it's a very young person, you would be explaining it, and do they understand it? You wouldn't be saying, "Do you understand?" because they would go ... So, you would say in such a way, if it was somebody very young, "What did I just say, there?" And you would get their kind of language. If it's somebody older, an older young person, I would check that they understood from each person making the decision, than not just the collective decisions.

The effort to tailor the discussion to the level of understanding of the juvenile demonstrates a commitment to their participation in the process. This is demonstrated even more clearly by CHP.4, who advocates for the importance of discussion, even as he or she questions its effectiveness.

And I think it is really important that this is fully explained to the child. Whether it does any good, I don't know. And sometimes, I think it doesn't do any good. But nevertheless, I think it is really important for the system that we make that effort, because sometimes, it will do good ... And in some cases, they haven't the least idea what you're talking about ... The hearing system will not change very many people's views of right and wrong. So, perhaps, we should not be trying that. So when I'm explaining to the child the outcome, it's really to get them to understand the consequences. "If you carry on with this life of criminality, bad things are going to happen to you" I have no problem with that. But a lot of Panel members didn't like this. I had no problem if the child was, say, 15, and it had a string of offence-based grounds.

The respondent's assertion that the reason for discussion is that it is important to the system, in addition to being potentially helpful to the child shows how deeply this is engrained as a system-wide principle. That discussion and explanation are valued for their own sake, rather than their effectiveness on outcomes is particularly telling in this regard. This is true both in the hearing and in the sentencing process. As CHP.5 describes the process of sentencing:

But in terms of explaining it to the young person, I always try to put it quite simply. I keep them in mind when I'm saying my decision and the reasons for it. But also, for some things, they try to encourage you to get into your reason like, "It's for your care or your protection, guidance or treatment." Whatever the four principles are of the Panel. It's good to maybe use one of those words.

The quotations above have provided insight into different aspects of the Saudi Arabian and Scottish legal system as it pertains to young people. To situate these findings within a larger social and political context, it is important to consider the different attitudes to issues within youth justice.

7.3.4 Theme 4: Attitude to contemporary issues in youth justice

This theme focuses on exploring the views of Juvenile Judges and CHP regarding contemporary issues in youth justice involving, for example, the age of the criminal responsibility, restorative justice, media, and the potential of learning from other systems. The majority of interviewees responded and gave supporting empirical examples. In general the findings under this theme show that Juvenile Judges have positive attitude towards the current age of criminal responsibility in Saudi Arabia and towards restorative justice, media and learning from other systems. However, in Scotland CHPs have negative attitude towards all the points except learning from other systems, which was seen by CHP as positive. This section will compare attitudes on the age of criminal responsibility in the Saudi Arabian and Scottish systems.

Criminal Responsibility

In dealing with juvenile justice, one of the key issues is in the definition of a juvenile, and a specification of which people the processes discussed in this thesis (such as CHPs or houses of correction) apply to. This is tied to the issue of legal responsibility for a crime, which can either be included or excluded from juvenile justice systems.

In Scotland, a juvenile older than age 8 but younger than 16-18 is subject to the CHPs, but also criminally responsible for their actions. This is distinctly different from Saudi Arabia, where juveniles are not criminally responsible for their actions before 16 or 18 (for Hadd and Tazir crimes respectively), but can be punished or subject to intervention from the juvenile justice system. Therefore in Scotland, the age of minimum criminal responsibility and the age that divides the juvenile and adult court systems are different, while in Saudi Arabia they are the same.

Saudi Judges see the current age of criminal responsibility as suitable, and are loath to suggest changing it. According to the Judges' view, criminal legal responsibility begins in general after puberty (according to discretions which are specified in Saudi Arabia) after a specific age. They confirm that a juvenile is treated as such until he is 18 in the case of Tazir crimes, and 16 in the case of Hadd crimes. Their acceptance of the minimum age of criminal responsibility was related to their acceptance of the moral and legal authority of the justice system more generally. In the words of Judge.2:

I believe that the system is suitable because it is based on Sharia. An adult offender is both mature and old and must be responsible about his acts - only those who are disabled are subject to their own regulations - and we consider decisions in their cases according to their disabilities upon receipt of medical proof from a hospital. In young offenders' cases there are some limitations in the system - a murder by a 10 year old offender cannot be passed over easily only because of his young age due to the severity of the crime.

In this case, the judge's faith in the underlying principles of the system translates into an acceptance of the age which divides the adult and juvenile justice systems (ie the minimum age of legal culpability). Judge 1 took a very similar stance:

The system in Saudi Arabia is based on a decision of senior scholars; they determine the age of criminal responsibility at age 16 when the person is treated as an adult if the person who commits a crime deserves a Hadd punishment while in Tazeer crimes the person will be treated as a juvenile until the age of 18.

Here the faith in 'senior scholars' (likely of Islamic law) gives the judge faith in the age of criminal responsibility. This general trust in the system means that specific aspects of it are not questioned, but accepted at face value as being decided by other, more senior, officials.

Conversely, within the Scottish system the CHPs generally consider the current minimum age of criminal responsibility too low and argue that it should be increased. The current age of criminal

responsibility is 8 in Scotland. CHP.2 called this “completely out of key with the rest of Europe.” According to respondents’ viewpoints, the main factor behind not changing the current age of criminal responsibility in Scotland is linked to the children’s hearing system.

CHP.1 agreed, saying:

I think [the age of criminal responsibility] has to be a lot higher, because it just seems very, very low to me. You can’t even vote or get married or anything, but you can be responsible for a crime when you’re eight

The reasons for the current age of criminal responsibility and the reluctance to change it were attributed by the CHPs to two factors: (1) Politicians (2) the children’s hearing system. CHP.1 pointed out that because the CHP deals with children’s crimes, reforming the age of criminal responsibility is not seen as essential in Scotland:

because we have got a hearing system that deals with children from the minute they are born up until they are 16, unless they are already involved in the system – then we hold them until they are nearly 18, then the politicians don't need to make that decision, because we are dealing with things on a welfare basis from a very young age. And very, very few children are prosecuted in Scotland.

CHP members are also much more likely to criticize their own system than Saudi judges. As they note, just because the CHP system deals with juveniles on a welfare basis does not mean that criminal responsibility does not harm the child. As CHP.2 pointed out:

...the children's hearing system deals ...with needs, not deeds. So, it doesn't really matter. But it does matter, because if an eight-year-old commits an offence and they accept that, that could become a conviction that stays with them. Whereas most of western Europe has anything between 14 and 18. What they have done now is, instead of changing the age of criminal responsibility, what they have introduced is this age of prosecution. A child under the age of 12 cannot be prosecuted. Now, they cannot be prosecuted in the Sheriff Court, but they can still come to a Sheriff hearing, at the children's hearing, at the age of eight, nine, ten, 11. And if they say, "Yes, I did that," then they are have a conviction. And I just don't think that's right, so I'm not happy with that.

The separation by Scotland into age of criminal responsibility (8) and age of prosecution (12) is distinct from the Saudi case, or indeed many countries in Europe, which place both from 14 to 18. The CHPs see 12 years old as a suitable age for accepting responsibility, where other key legal distinctions are made. As CHP.1 justified:

We have 12 as an age when a young person can make a will, they can instruct a lawyer, they can open a bank account in their own name. There are a number of legal responsibilities they can take on. I think that is an appropriate age also to have the age of criminal responsibility. A young person also at the age of 12, if they want to have a look at their medical records without their parents knowing – from the age of 12 onwards, they can do that. If a girl wants to go and see a doctor and get contraceptive advice, from the age of 12, the doctor does not have to involve the parents. So I think, because of these other things which happen at 12, because there's the Age of Legal Capacity Act in Scotland, which all these things start at 12, I feel that that would be an appropriate age for it to be the age of criminal responsibility.

This is currently the age of prosecution in Scotland, while eight is the age of criminal responsibility. The widespread criticism of this policy among CHPs is distinct from the widespread acceptance of the age of criminal responsibility among Juvenile Judges in Saudi Arabia. There are also other areas where the attitudes within the different systems differ, for example, restorative justice, which will be considered next.

Restorative Justice

Although the phrase 'Restorative Justice' is not used in Saudi Arabia, there are aspects of restorative justice that are applied as the victim's right. For example the victim has the choice to attend the hearing or not. Judge.1 for example stated that:

Yes it is possible when the case is related to private right. If the offender for example hit a person, the victim has the right to attend. So we give the victim notice to attend the trial if he wants

Judges confirmed that applying this process leads to advantages for the victim's interest, which are along the lines of restorative justice practices. as Judge.1 stated, and for the juvenile who commits the offence. Regarding the victim's interest Judge 1, 2 and 4 stated that:

In some cases when the victim is affected I allow the victim to attend the trial; in relation to dignity it is recommended that the victim attends because attendance will have a positive effect on him.

The recognition of a positive effect of the victim attending the trial is the crux of restorative justice. Although he may not use the term, the Saudi judge is still applying aspects of restorative justice. In addition to the benefit for the victim's psyche, their attending the trial may help the process of the case, particularly if they have more evidence to provide. Judge 2 and 4 follow this logic. According to Judge 2:

The attendance of the victim may have a positive effect not only for the victim himself but sometimes to the case, as he may state some information that hasn't been discussed during the investigative process so the victim's attendance may have a positive effect on the process of the case.

Similarly, Judge.4 notes:

The victim has a role in bringing the evidence that supports his case, the young offender may not like it but this is the law and it is the victim's right and it is also beneficial for the investigator and the Judge.

Here the victim's attendance is seen more as a 'right' and less as something that is inherently beneficial to him. Judge.4's acknowledgement of the discomfort for young offenders is interesting, but he does not explain why this occurs, or how exposing them to their victims may have an effect on them. Although the efficacy of the case is an important benefit of the victim being involved in the judicial process, it is not directly related to restorative justice. Later though, judges did mention the benefit of restorative justice, not just for the process of the case, but for the victim themselves. As Juge.1 noted:

Of course, it has a positive effect when the victim feels that he has received justice. There was a case of dignity where the victim was waiting for the offender with a gun and when he was asked why, he said he knew that may no one else would get him justice. Therefore in some cases the attendance of the victim protects the juvenile from some people who think like that. Sometimes the victim may forgive the offender and then the case is closed.

This example, although extreme, does indicate that the judge recognizes the benefits of the catharsis that victims can receive from attending the trial. Comparatively, the CHPs in Scotland reject the use of 'Restorative Justice' as a process. They justify this with regard to the nature of the children's hearing system.

CHP.1, 2 and 3 for example argued:

...In the current system, as it is designed, there is no role for the victim at all. None whatsoever. And that is logical with the principles that we have in the system, which is, "It's a welfare-based approach for an individual child for whom the proper upbringing has broken down in some way." In other words, we're kind of seeing the child as the victim himself. On that basis, there is no role for this other victim. That's entirely logical.

Because the CHP sees the child as the victim there is no attempt to include the person wronged in the hearing. The focus of the CHP is so directly on child welfare that there is very little room for other considerations. CHP.3 acknowledged that involving the victim in the process might be possible, but would not be helpful:

I can understand how it could work. But I don't know it would aid my view in reaching a decision, because I reach my decision on the basis of what that young person needs. And it may be that you would express to that young person how the victim would feel. You might actually ask the young person, "If this happened to somebody in your family ...?" But I don't know that it would help me in reaching a decision.

The emphasis here again is on the needs of the young child and the decision-making process of the CHP, rather than on any catharsis or social healing for the victim. In addition, CHP.2 called into question the feasibility of restorative justice in the current CHP framework:

I think if you then introduce victims into that, that would require different sorts of skills from Panel members, which, I don't think we're not trained enough to give it. It's not appropriate in the children's hearing system as it is at the moment. We just simply don't have the skills to deal with that.

Because CHPs are not professionals but merely community members with some training, the issues they deal with are understandably narrow. To include the victim in the process would mean a significant expansion of their mandate and necessitate new training. As this does not exist under the current system, it seems unclear that there is any place for the victim in the justice process. Despite this pessimism,

several of the CHPs noted that restorative justice does have a potential for aiding in the juvenile justice process. As CHP.3 explained:

I think that could be a way of the young person getting over what they have done. If they have apologised, and that apology has been accepted, and the victim knows that the person is getting the right treatment ... Because it shouldn't be seen as, "Oh, you have to be punished." So, I think the victim and the young person have to understand what the treatment is likely to be, whether the treatment is about their circumstances, or the treatment is about, "You are a bad young person. And they have to be punished for this, because they have actually broken the law."

Even in acknowledging some of the benefits of including the victim, CHP.3's focus is on the wellbeing of the juvenile offender, and how this process may help them. The idea of catharsis or social healing of the wronged party is not present, despite an oblique reference to the fact that the victim should know what the punishment is.

In general there is limited desire to include restorative justice practices in the CHP system. One respondent suggested that the concerns of the victim be dealt with through the police:

I think if that's done, then it's got to be done outwith the hearing system; and perhaps that can be done – as I say – with restorative justice. But I think, in general, if the police through their procedures can deal with it and want to deal with these things that way, that's fine.

There is a distinct sense from this and the above statements that the concerns of the victim are not the purview of the CHP system. Even when CHPs acknowledged that victims might have some role in the process, it was primarily as a way to increase outcomes for the juvenile. Because of the strong focus on the welfare of the juvenile offender, restorative justice is not favoured by members of the Children's Hearing Panels in Scotland.

Another important aspect that must be considered and compared to gain a deeper understanding of the two different legal systems is the relationship and attitudes towards the media. This must therefore be considered in depth within the next section.

Relations with the media

In terms of media, Saudi Judges have a positive attitude towards the media. This attitude is linked to the fact that the media can play an important role in Saudi society encouraging awareness of Juvenile issues.

This positive opinion of the media exists where the media is informing citizens of their rights. Judge.2 went so far as to say that the media was essential to creating a more aware society:

I strongly recommend that we raise personal and social awareness through the media. This will surely be beneficial and we will then have a well-educated society who will know their limitations and rights with regards to all aspects of their lives.

Similarly, Judge.1 viewed the media primarily as a means of spreading citizen's awareness of their rights:

I agree with this and I think that the community has the right to know the regulations and their rights in life. For example a large number of divorced females do not know their rights.

He continued:

In general, there must be more awareness about punishments and laws in the media and social programs in order to correct opinions about different cases and to educate people about their rights. Because sometimes you find people involved in cases and they really do not know that this may lead them to receive severe punishments; they think it is easy to get involved and that they will easily evade justice.

While the media is seen as being a way to spread knowledge about rights, Saudi judges also put clear limitations on its involvement in juvenile cases. Judge 1 drew a clear line at the disclosure of the juvenile's identity:

Yes I recommend [engagement with the media] but just when the name of the offender is anonymous; if this will in any way reveal the offender's identity I won't accept it at all.

Judge.2 similarly thought that the engagement with the media should be limited:

I don't think it is really important but it is just as salt is added to food, a little makes it better. But I believe that there must be some occasional awareness about different situations. All members of society must be united to educate young people and protect them from becoming involved in crimes.

Therefore, although the media's engagement with juvenile justice cases in Saudi Arabia is generally seen by judges as a positive thing, but not one without boundaries, the identity of the juvenile must be protected.

On the other hand, in Scotland, the media and press have restricted rights to come to hearings, and can only publish without names. The media was seen by the CHP as an element that could have a negative influence on juvenile issues in the Children's Hearing system. This type of attitude was related to principles of the children's hearing system and cases of juvenile interest.

Because of the welfare influence of the Children's Hearing system, CHPs did not feel that the media had any place in the hearings. In the words of CHP.5:

The whole Children's Panel system is there to protect the young person and to give them, to put them, at the centre of the priorities. So putting them or their case in the media, I think would just be a negative thing

Because the emphasis of the CHP system is on the welfare of the child- they are 'there to protect the young person'- and the media does not serve this purpose, the respondent sees media as a bad influence.

Although it is not entirely clear in this testimony why this is, CHP.1 and 4 demonstrate the harm that media exposure can cause to families and the child. As CHP.4 noted:

The system is one of confidentiality for the child, and I think that is hugely important, because publicising what has happened is in itself a punishment to the child. And I think that would be wrong.

The desire to avoid punishment of the child is a direct result of the welfare approach of the Scottish juvenile justice system. In addition to the effects of media attention on the juvenile, it may also cause undue strain on the families involved. In the words of CHP.1:

because of the fact that there is a lot of welfare basis in it, and you would be exposing a lot of the family life unnecessarily and putting these families under excessive pressure from the media.

Again it is the welfare policies of the CHP system which are the key reason for reducing media coverage of these cases. The emphasis of this and the above statement is on the negative effect that media coverage can have on the juvenile and his or her family. However, the extent to which media coverage can be in the public interest as a form of mass education is still unclear (as Saudi Arabian judges note above). In response to this, CHP.2 dismisses claims that the media coverage of juvenile justice claims is part of a program to educate the public about offences and rights:

It might be of interest to the public, but it's not in the public interest.

This perception runs directly counter to that held by the Saudi Arabian judges, who worried less about the welfare of the juvenile and saw media coverage as a way of increasing public knowledge. One of the key concerns in this regard is the extent to which the media provides fair coverage. CHP.3 noted:

There are some very serious offences, where the media will be involved. But I don't think they should be....And there have been no names mentioned, but it just causes... And I really don't think anybody should be tried by media.

The respondent's rejection of media coverage, even in serious offences, and even anonymously, rests on the idea of the judgement (or trial) inherent in the media's retelling and popularization of the story. This shows a desire to protect the juvenile offender, even in cases of extreme violation.

This desire to protect the juvenile does not, however, completely preclude media coverage. As CHP.2 pointed out, there may be a way to report generally about a situation and still protect the juvenile:

So, I'm not against the broad report that a young person has committed a particular offence if it's serious, maybe somebody died or whatever, but I would be against going into any detail.

In the view of CHP.2, by reporting broadly what occurred, the social responsibility is fulfilled (particularly if someone was injured). However, the sharing of details compromises the juvenile's welfare, which is at the heart of the CHP system.

The above quotations demonstrate the different perceptions of the two legal systems on a variety of issues. Therefore, it is important to acknowledge how the two judicial frameworks, through mutual engagement and understanding, can aid progression and development of the legal practices.

Learning from other systems

Saudi Arabian judges support the idea of learning from other systems. The Saudi Arabian judges interviewed identified some aspects of other systems in particular that are being considered to develop the Saudi system.

As Judge.1 notes:

I think that this must be implemented across the whole judicial system. I have come across a major number of intentional regulations. Moreover, I am impressed with the English judicial system; I have a translated copy of the English Judicial system. It is strict and straightforward.

For the respondent, the attraction of the English judicial system is that it is 'strict and straightforward', but this system is fundamentally different to that based on Islamic law that is practised in Saudi Arabia. Closer to home, Judge 2 pointed to other systems Saudi Arabia might want to emulate:

There is the Malaysian system and systems of the Arabic gulf and we are looking forward to making practices from these systems.

Although these systems are more related to that of Saudi Arabia, few places have as strict an interpretation of Islamic law as is present in Saudi. However, the aspects that Saudi Arabian Judges are looking primarily to adapt are in those areas where Islamic law does not have an explicit provision. Judge.1 gives an example:

Yes there are a number of good international regulations such as systems related to the house of correction but I did not come across that until now.

Similarly, Judge.2 points to areas not explicitly spoken about in Islamic law as areas for improvement:

From the perspective of care and education – as yet we have no fixed or designed programme which may be beneficial to us. We may consider redesigning the system to fit modern life.

The emphasis on the need to update the system to modernity is particularly interesting given the ancient base of the current legal system of Saudi Arabia. The areas that Judge.2 cites specifically- care and education- as well as the area Judge.1 cites- houses of correction- are all areas of interpretation, not based directly on religious ideology. Therefore Judges may perceive these areas as more open to reform than other areas (like the punishment structure).

The CHP also think that learning from other systems can help to improve the system in Scotland. There are specific systems that have been identified as interesting regarding the methods that are used.

In the most general sense CHP.4 pointed out the benefits of looking at other systems in order to better understand the one you work in:

We can always learn from another legal system. So, of course, you learn about how they do things in England and Australia, wherever, and that helps you understand your own system, which is good.....I have to say, however, that in looking at juvenile justice systems in other countries, I've not really come across any rule or practice that has made me think, "I wish we could bring that into the Scottish system."

The respondent's emphasis on introspection, combined with limited suggestions of reform, suggests a general approval of the CHP system. This CHP, and others widely regard the Children's Panel as a positive and progressive one. For this reason it is difficult to change. In the words of CHP.5:

I think it depends what the learning is and in other countries, what's worked and what hasn't. But I think it would be very hard to change people's views now, because the children's hearing system has been here for so long.

Other respondents, however, did point out specific policies or outcomes in other countries that they could find enviable, and hope to emulate in Scotland. These ideas for reform were primarily focused on how the CHP system could be improved to better help the juvenile's welfare. CHP.2 brought up the example of Finland:

I think, yes. Because when you hear figures like the number of young people who are held in secure accommodation ... The number locked up in Finland, I think, is about ten. And despite the approach that we have in Scotland, there are a lot more than that, young people in Scotland. I'm not too sure what the population of Finland is. I think it's about eight million, which is more than Scotland. And they've got so few young people locked up. Why?

The reason that this CHP wants to learn from the Finnish system is again tied into welfare concerns for the juvenile- the desire to reduce the imprisonment rate of juveniles in Scotland. On a slightly different note CHP.1 suggested the addition of policies to improve the family situation of juveniles. In his or her words:

And there's another one called Triple P – which is the Positive Parenting Programme. Now, that comes from Australia. And this is to help parents do all of the things that parents normally do, which a lot of parents aren't doing. And that may be one of the reasons why young persons are involved in offending, because they don't have proper parenting.

Finally, CHP.2 offered another suggestion, based on his or her own experiences:

I visited New Zealand for the first time, and I attended their equivalent system. And in their equivalent system, the victim has a role. So the victim comes and sits and talks to the child and the family about the consequences. And I thought, "I like that. I like the victim explaining the consequences to him or her." And I thought, "It's a shame our system has nothing."

The New Zealand example shows how restorative justice practices can play a role in a system similar to the CHP. The suggestion that Scotland emulate these practices is directly contrary to much of the testimony by CHP members that restorative justice- and the victim- have no place in the CHP system.

These quotes highlight different attitudes towards aspects of the legal systems in Saudi Arabia and in Scotland. Through interviews with social workers, Juvenile Judges and those working within the Children's Hearing Panels a clear image of the different judicial practices and attitudes has been presented.

Chapter 8 Analysis of the Findings

8.1 Introduction

This chapter discusses the findings reported in chapter seven, with reference to the research objectives. The findings are also analysed in relation to relevant literature, as presented in the previous chapters. There are three main axes that can be established as pivotal to the research findings: (1) Judges/Panel Decisions; (2) Social worker's Report; and (3) Assessment of the young person who committed offences. The research findings will be discussed according to these three axes to generate answers to the research question.

At the outset of the discussion in this chapter, the focus is on examining how Judges and Panels make their decisions regarding the cases of Juveniles who commit offences. After that the analysis focuses on evaluating specific issues related to the influence of social workers' reports. Subsequently, the discussion moves on to explore the assessment process for young persons who commit offences in both countries. The analysis examines the procedural steps followed to assess juveniles who commit offences in both countries. The analysis of findings is presented as a comparison between the Scottish and Saudi systems and relevant international legislation, as outlined by the last theme in Chapter 7.

8.2 Judges/Panel Decision

A decision or Judgment of the Juvenile Judges in Saudi Arabia and the Children's Panel in Scotland regarding the cases of juveniles who have committed offences is the result of a variety of considerations. Gaining an appropriate understanding of this form of decision-making requires an understanding of the factors under consideration (Hough et al. 2003) . The difference in terms of the priority placed on different factors outlines the difference between the two countries and the workers who deal with juvenile cases. Giving a priority to a factor can be seen as indicative of the principles espoused by each system. As Smith (2005) indicated, the aspects of the juvenile justice system in each country are in a state of conflict between contending principles. The influence of the social worker's report cannot be understood without first establishing the factors which shape the decision of judges and CHPs. These factors can be the result of overriding judicial principles in the system, or the result of personal variation between judges. As Baker (2009) indicated , *“at each step in this process, there is room for factors such as personal bias or court culture to affect decisions and any attempts to influence sentencing practice need to take this into account”*(P:48)

In the initial stages, the research has shown that Juvenile judges in Saudi Arabia look at considerations linked to age, gender and type of offence as the key background variables to sentencing decisions. While the official age of criminal responsibility as an adult in Saudi

Arabia is 18, judges retain the ability to try younger offenders for more severe (Hadith) crimes. As noted at the end of Chapter 7, Saudi practices to determine the age of maturity rest primarily with physical characteristics from the onset of puberty. Gender also has a clear effect, with female offenders being treated as juveniles up until age 30, and often receiving lighter sentences (if they are sentenced at all). While the type of offence necessarily has an impact in all justice systems, the Saudi system places a particular emphasis on a crime containing specific characteristics for its classification.

Apart from these environmental variables, the sentencing decision in Saudi Arabia is itself based upon (1) the circumstances that may push a juvenile to commit an offence; (2) whether he/she is a reoffender; and (3) if the juvenile behaves arrogantly or with remorse. Discipline and deterrence are considered as key principles when sentencing juveniles as part of education in the Saudi context, in addition to offering protection to society and insuring against revenge or retaliation. The emphasis by Saudi judges on punishment as a means of reform echoes the idea of communicative punishment. These reflect a justice model of juvenile justice, and a balanced punitive approach, as outlined in Chapter 2.

On the other hand, the Children's Panel in Scotland take a primarily welfare model of juvenile justice on the principle which underlies the Children's Hearings system. The best interests of the child are at the centre of all stages of the decision process. According to the CHP, this principle can be linked to some aspects that may clarify its application on the ground. The first consideration is the desire to avoid intervention in the juvenile's life; something, which was indicated clearly by CHP.5: *'it's about minimum intervention – so not having to intervene in a young person's life unless you really have to'*. When intervention occurs, the second consideration is the type and availability of programs provided as interventions. In general these are as non-invasive as possible. However, if there is a risk from the juvenile if he were to re-enter society then the priority can shift to protecting the society by authorising the use of secure accommodation

On examining the processes of decision-making on both sides, it is apparent that Juvenile judges in Saudi Arabia have wider considerations than the CHPs in Scotland, including both the well-being of the juvenile and society. Moreover, Saudi Juvenile judges often feel the need to implement discipline and deterrence as a matter of principle, because of the way Islamic Sharia law is interpreted. This does not entirely fall under a punitive approach- it can involve education or treatment to help the juvenile not to reoffend. This welfare element in the Saudi system makes it best characterized as a balanced approach (if one tilted towards the punitive end of the spectrum) (see section 2.4.3). However, Saudi judges have always affirmed that a

sentence can be made either in the interests of the juvenile or – unlike Scotland - the protection of society, or both together. For example, in some cases a sentence of lashes is given to ‘help’ the child by allowing them to avoid the risk of contamination in the house of correction, while in others the same sentence is given as an appropriate deterrent in its own right. The first of these justifications represents one based on the well-being of the juvenile, while the second represents the well-being of society. Neither of these fit with international standards of good practice in juvenile justice, but may reflect the Judge’s experience in Saudi Arabia. There is no Saudi Arabian research which shows what the psychological effects of lashings are. It appears that the Saudi system lacks alternative measures with which to treat juveniles, and it would be worth developing some of these.

The external factors which influence Saudi judges’ sentencing decisions can be regarded as ‘Personal mitigation’ which refers to aspects associated to the person rather than the offence that s/he committed and it plays a main role for reducing the severity of the sentence passed (as shown in England and Wales by Jacobson & Hough 2007). Personal mitigation can take various forms, among them the circumstances surrounding the juvenile at the time of committing the offence such as financial pressures, psychiatric problems, intellectual limitations, immaturity or the way that offender responds and looks to his offence such as remorse, acts of reparation, addressing the problems that led to the crime (Jacobson & Hough 2007). The link between judges’ considerations and personal mitigation led to a claim that in Saudi the focus is on the juvenile and not on punishment commensurate with the harm which resulted because of his offence, but even when judges take personal mitigation into account they are still limited in the sentencing responses they can make to a juvenile offender, based on the characteristics of the crime.

In Scotland, the CHPs also take into account a variety of environmental factors, but only primarily to determine the best interests of the child. While the best interests of the child has long been its main guiding principle, the addition of recent qualifications to this allows the best interests principle to be accorded less importance if there is a direct risk to society. Where the relevant criteria are met, the CHPs may authorise putting the juvenile into a secure establishment. The principle of public protection which emerges from the CHPs’ statements reflects a shift in the underlying ethos of the system since 1995, which has led to the possibility of the principle of public protection being prioritised above the best interests of the juvenile in cases where the juvenile poses a risk to others (McAra 2006). This seems to be a sensible development, a recognition of the limitations of a welfare model, and a move back towards a balanced approach. Where the child presents a risk to society, children’s hearings can deem his/her best interests to be only primary but not paramount in the decision-making process.

Moreover, Children's hearings can only authorise the use of secure accommodation – they can't order it – and this decision (to authorise secure accommodation) is not necessarily linked to public safety.

Wider considerations for Saudi juvenile judges can result from personal differences of the Judge. In Saudi the judges' responsibilities involve determining the responsibility for a crime and delivering a sentence. In some situations two individuals committing the same offence may receive different sentences, due to different environmental factors (see example of SWS.2). On the other hand the CHPs' primary goal is to find a suitable intervention if required. Moreover, the conclusion that can be drawn from the CHPs' statements in this regard is that intervening in a juvenile's life unnecessarily is against the best interests of the child. On the other hand, Saudi juvenile judges' use of discipline and deterrence in juvenile justice may stem from their experience. Saudi juvenile judges originally work in adult courts; each judge is in turn offered the opportunity to work in Juvenile court for 4-monthly periods, and the responsibility cycles through all 44 judges in general court. This process may influence Saudi judges to use terms originally from the adult justice system, such as 'discipline' and 'deterrent' in reference to juveniles. This claim is supported by the use, in a juvenile context, of the Tazir term (as explained in Chapter Four), which is used widely in the adult system,. A number of studies have pointed to the powerful impact of court cultures on sentences (Baker 2009). This means that the Saudi judges' experience in the adult courts may lead to harsher sentences for juveniles, and can explain the suggestion from judges and social workers of the need for specialised judges who have been trained in juvenile issues. This highlights the fact that Juvenile judges in Saudi Arabia are influenced by their work with adult cases.

In addition, working with young people for such short periods makes it harder to gain an in-depth experience of dealing with them, in terms of sentencing and intervention. In the Saudi system, although a juvenile judge works for a short period of time in juvenile court, his role is considered essential in determining the types of sentencing measures to be used or avoided with juvenile. While the social worker report, the circumstances surrounding the committed offence and other variables can influence the judge's decision to a certain level, the judge's experience with juvenile offenders (or lack thereof) can be one of the main influential factors that should be considered.

For instance, some juvenile judges in Saudi Arabia found that, as a sentence, lashes/flogging often does not work with juveniles, while others emphasized that, with some cases, it can be used to avoid the risk posed by placing the juvenile in a house of correction. The UNCRC report in 2006 made sharp criticisms of the use of corporal punishment on juveniles in Saudi Arabia. The ensuing justifications of this practice by Saudi Judges (presented in Chapter 7) present a

fundamental conflict- on the one hand claiming that whipping is necessary as a means of getting through to juveniles who may view the houses of correction as an easy way out, while often in the same statement alleging that whipping is actually the easy way out, used to save juveniles from unspecified 'risks' of the houses of correction. The confused and conflicting justifications presented by Saudi judges on this issue reflect a lack of system-wide justification. The judges' faith in Islamic sharia prevents them from questioning basic principles of the system which, to the UNCRC and external observers, seem to clearly violate human rights. The response to the western criticism of this practice by the Saudi judges- that the whipping is not forceful- misses the fundamental principle of the UNCRC, which is to protect children from harm at the hands of the judicial system. The force of the whipping is not the point of contention, but rather the use of corporal punishment on juveniles.

It may be that the Saudi judges' experience in adult courts- where practices such as the severing of limbs or even death are allowed in the cases of Hadith crimes in Saudi Arabia have led to a court culture that views corporal punishment as communicative and instructive. This is just one example, which clarifies that choosing a punishment or intervention for juvenile offenders requires experience of working and dealing with juveniles to determine which measures will be most effective. Therefore, developing a judicial system that is more effective in Saudi Arabia requires several corrections or modifications. One of these changes is to enable juvenile judges to be specialised in working with young people or to enable judges to work specifically with delinquents for a longer period of time to gain greater experience. In turn, this may enable them to find shortcomings in approaches to judicial decisions and the judicial system.

In terms of sentencing process, in contrast to Saudi juvenile Judges, the CHPs' options for intervention are focussed, in the first instance, on those provided in the social worker's report (although they do not have to agree with them and the decision is not limited to what is in the social work report). Unlike the judges in the Saudi system, CHPs do not have previous judicial backgrounds, but are recruited from community members. This makes the tribunal culture very different, and results in the CHPs being far more likely to hold to the welfare-based training they receive, rather than using punitive measures, which, in principle, form no part of the Scottish system. It does not help CHPs when a lack of clarity in the report complicates some aspects of their understanding: *'Very often, you read reports, or I read reports, and I see that a young person is getting this support or that support, but I don't know what it is. And sometimes, you ask the social worker, and they're not very clear either'*. (CHP.2). This type of influence can be interpreted as a reflection of managerialism in terms of which a range of services is provided by multiple local agencies according to strategic intervention plans targeting varying aspects for the offender (McAra 2006).

One of the striking findings emerging from the Saudi data is the strong impact of female gender on juvenile judges' decisions, which reflects the position of women, and their relationship to their families, in Saudi culture. Saudi Arabia treats as juveniles women above the age of 18 who would be considered adults in western societies, including Scotland. This is reflected by two approaches: a greater attempt to resolve and deal with female cases informally, and the referral of females up to the age of 30 who commit offences to a juvenile house of correction. This gender differentiation is based on cultural factors, which affect the perceived interests of female offenders, and seeks to minimise the shame that women who break the law might bring on their families. The emphasis in female cases is on the shame that women may pose to their families, rather than on the welfare (or even communicative punishment) of women in their own right. The guardianship system of Saudi Arabia, which places every woman under the legal authority of a male (usually a close male relative), also inhibits the woman's ability to advocate in her own defence. The classification of women as juveniles until the age of 30 (where by comparison men are treated as adults as early as 15 or 16 in severe crimes) reflects a fundamentally different place for women in Saudi society. The social controls inherent in the juvenile justice system act particularly strongly on women in Saudi Arabia. This runs contrary to most international legislation on juvenile justice including the UNCRC.

This is in contrast to Scotland, where CHPs apply the same age of maturity and legal responsibility for both men and women. They do not deal with young women over the age of 16 except in special circumstances, and never once they legally become adults at age 18. This reflects a structural commitment to gender equality in western society, including Scotland, which is absent in Saudi Arabia. Female gender does not significantly influence their disposal decisions, although girls may be perceived to have different needs to boys, and leniency might be thought more appropriate for them. The different age-differentiation levels of treatment in the two systems can be attributed to history and culture, in particular the role and expectations of females in relation to their families, and as citizens. Furthermore, although in Scotland the age of 16 is the age at which most children are automatically referred to the courts instead of the children's hearings system, there is no difference in the way in which children are prosecuted between the ages of 12 and 16. Moreover, those who are already on supervision requirements aged 16 and 17 can still be referred to the CHS.

There have been various different studies concerning the influence of gender when it comes to sentencing. A study conducted in Texas in the USA established that offenders who victimised females received longer sentences compared to the offenders who victimised males (Curry et al. 2004). When it comes to the gender of offenders, a number of studies have set out that females receive a more severe sentence than males. This has been explained in the following

terms: “*These findings have typically been explained from a traditional sex-role perspective that suggests juvenile justice officials treat females more harshly than males in an attempt to enforce stereotypical notions of proper female behaviour and to protect the sexuality of young women*” (Leiber & Mack, 2003 p:38). The fact that many of the female juvenile offenders in Saudi Arabia are guilty of some form of social or sexual violation supports this idea that punishment is linked to social control.

On the other hand, there are studies showing that female offenders receive more lenient sentences and this has been explained in terms of male sentencers viewing females as needing to be protected (Leiber & Mack 2003). The point, supported by previous research findings, is that a sentence in Saudi Arabia is influenced directly by gender, often in the name of protecting the female, and her family’s reputation. In Saudi Arabia, females are treated in starkly different ways compared to male offenders. At the first stage: she is treated in an informal way to resolve the problem in order to protect her from referral to a juvenile home and juvenile court. The second stage, when a female is referred to court, usually they receive a more lenient sentence compared to a male. The third stage is the house of correction, which receives female offenders up to the age of 30. From 2011 to 2012 the number of females who were referred to a house of correction in Saudi cities was 1312 (The Ministry of Social Affairs 1432-33\ 2011-12) in comparison with the population of females in Saudi Arabia (aged 0 to 30 years old) - around seven million.

The different treatment of Saudi females under the juvenile justice system is an example of the social control in Saudi Arabia. As indicated by Wardak (2005), the low social crime rate in Saudi Arabia is related to social factors which are divided into: informal, semi-informal and formal social control. Informal and semi-informal control in this regard refers to the extra-legal cultural and social reinforcement of existing gender roles and the position of women in Saudi society, which plays a significant role before a reference of the case to the formal judicial system. These include influence from the family, the Mosque community, the Ulama (which in Arabic means Scholar of Islamic theology and law), and the idea of the Motawwain (which in Arabic means a person who volunteers or obeys. It is based on the general ideas of ALAMR Bel-Ma’roof Wal-Nahy An Al-Monkar: ordering what is right and forbidding what is wrong). Judge.1 in his testimony specifically confirms the influence of Motawwain. According to official statistics 96% of female cases which are referred to the centre of ALAMR Bel-Ma’roof Wal-Nahy An Al-Monkar are resolved and not referred to the court, which helps explain one of the factors behind the big gap between the number of females who were referred to a house of correction (1,312) and the number of males (10,497) in 2011-2012 (The Ministry of Social Affairs 1432-33 \ 2011-12). Wadak (2005) points out the influence of Motawwain in Saudi society that: *the effect of Motawwa’in the semi-formal religious police, in maintaining social*

order may not be easily self-evident to Western readers, but it nevertheless enforces religious values and morality at least at specific places and times. (p: 10).

Juveniles' views and the methods used by Judges and CHP during the hearing

The juvenile voice, while present in both the Scottish and the Saudi juvenile justice systems, serves different functions in each. In Saudi Arabia juvenile judges listen to the views and voices of juveniles to get an impression of their perspective on the offence with which they are being charged, and the circumstances surrounding this, which is categorised as a defence. This process, according to the judges, requires effort, as it is necessary to prepare the juvenile to relax him at the beginning of the trial by making an analogy to family. Using reassuring words and being gentle; for example *'I try to make it easy for the offender by saying I am going to treat you as a father treats his son. I just want you to tell me what led you to commit this crime'*. (Judge1) and *'I sometimes give the young offender a piece of chocolate to help him relax and feel free to talk'*. (Judge2). In some situations, the trial is postponed due to the juvenile's feelings and fears, which may affect the juvenile negatively during the trial. In contrast, in Scotland the CHPs listen to the views and voices of juveniles relative to what has been written in the reports they receive from social workers and others. The hearing also involves the juvenile's parents or relevant persons, social worker, teacher or other representatives. This situation encourages the CHPs to use modes to engage the juvenile in discussion during the hearing; saying *'I would much rather go to the child – you know, depending on the age, obviously – and say to the child, "Look, that's the report we've got from the social work. Is there anything that you are unhappy about?'* (CHP1) and *'in terms of explaining it to the young person, I always try to put it quite simply. I keep them in mind when I'm saying my decision and the reasons for it'*. (CHP5). This view involves the juvenile as an active participant in the hearing process, rather than the subject of it.

The differing impact of the juvenile's view and voice on influencing the decision relates to one of the main variables that influence the context from two sides: the main goal and function of juvenile courts in Saudi Arabia and the Children's Panel in Scotland. For example, Children's Hearings are not based on finding and determining guilt, whereas the Saudi juvenile court is responsible for overseeing a decision as to guilt. This is just one of the elements that requires using different methods and procedures in each country. For example compared to the children's hearing process, in the juvenile court the trial is conducted in the presence of the Juvenile Judge, a trial report writer and the victim, if he wants to attend. The parents of the juvenile can attend if there is no negative influence on the juvenile, as they would be expected to reassure the juvenile and facilitate his responding to the judge. Social workers in Saudi Arabia do not attend trials with juveniles and they only ask to attend in special cases, although the trial is conducted

in the house of correction. These practices in treating the juvenile in Saudi reflect some aspects of both punitive and welfare approaches.

The juvenile justice system in Saudi Arabia has been the product of some misperceptions. For instance, Gilani (2006) describes the procedures of the juvenile justice system in Saudi Arabia as that it: *“places all persons under the age of 18 eligible for criminal prosecution in the same manner as adults (i.e., without special procedures) and they are subjected to the same penalties as adults”* (p.145). Lack of literature and research on the Saudi juvenile justice system (particularly in English) may be one of the causes of such misconceptions. To the researcher’s knowledge, this current research may well be the first in English and Arabic to discuss procedures and describe the steps taken by judges and the methods of assessment by social workers in the Saudi juvenile justice system. Taking into account all procedures in referring the juvenile to a house of correction, the Saudi juvenile system can best be categorised as a place with special provision for juvenile offenders, but without a separate judicial system. According to Hartjen (2008) in such countries there are special provisions within the general judicial system for juvenile offenders and these can be seen as separate judicial processes from those for adults, although the judges who deal with adult offenders are the same as those who deal with juvenile offenders. Nevertheless, the penal sanction (although it tends to be same for adults and juveniles) tends to be reduced in severity for juveniles (Hartjen, 2008).

When taking into account the procedures surrounding the referral of a juvenile to a house of correction, the Saudi Arabian juvenile detention system is one where special provision is made for juvenile offenders, but without a separate judicial system. According to Hartjen (2008) certain countries administer special provisions within the general judicial system for juvenile offenders. These can be seen as separate judicial processes from those for adults. Further, the judges who deal with adult offenders are the same as those who handle juvenile offenders. Moreover, the penal sanctions (although often the same for adults and juveniles) tends to be less in severe for young people (Hartjen, 2008). The Saudi Arabian system fits clearly within this category because juvenile judges who originally worked with adult offenders are appointed. Even though the process and procedures concerning juvenile offenders are different from adult ones, both young people and adults are considered within the same judicial system. In essence, under the judicial system and with the same judges who deal with adult offenders, juveniles who commit offences receive special provisions in two ways: (1) the process and procedures differ and (2) the sentence, while similar to that which is used to punish adult offenders, is lessened in severity, as is the case with lashes.

Comparing the Saudi Arabian system to Scotland can yield insight into the differences between them. Scotland has Children's Panels, which are considered a special system (part of the legal

and welfare systems) to deal with young people whether they are offenders or have been offended against within the same system. Those working within Children's Panels are specially trained to deal with young people within this process, although they are not judges and the training is about understanding young people as much as it is about formal procedures. The measures that are taken as intervention in the Scottish system generally aim to meet the needs of young people rather than punishing their actions, which places the Children's Hearings. This reflects beliefs about the hierarchy of needs presented in chapter 2, which states that only when a juvenile's basic needs are met can they become productive members of society. In comparison, the Saudi system makes special provisions for juvenile delinquents within the same judicial system. In Scotland the whole judicial system for juveniles is unique.

The findings regarding the juvenile's views and the process of the hearing and trial in each country, can be interpreted and linked to other issues such as a process of three sitting together to make a decision (in Scotland), as opposed one sitting alone (in Saudi) to deal with a case. The responses of Judges and CHPs in this regard raise interesting points in both jurisdictions although they are contradictory.

The different configurations of courts and tribunals for juveniles in Scotland and Saudi Arabia show a different perception of the role and fallibility of judges. Juvenile judges in Saudi Arabia view the process of three sitting together to make a decision as not suitable to deal with juvenile cases because it may cause a negative effect on the juvenile regarding his feelings and responses during the trial. They view juvenile cases as uncomplicated and unlikely to be too difficult for a single judge. The Saudi system only requires more than one judge to sit to take a decision in serious offences such as murder cases. The judges interviewed added, priority is placed on making available special resources for the judge's preparation in juvenile issues. The judge's ability to come to a fair ruling on juvenile cases is not questioned. This stands out particularly clearly in comparison with the Scottish practice of having three panellists at all CHPs. The CHP respondents viewed the process of one judge sitting alone to deal with a case and make a decision as not suitable primarily because of their different ideas about the judges themselves. Only having one person make the decision regarding the fate of the juvenile does not serve one of the children's hearing system principles regarding the presence of a representative cross-section of Scottish society. Moreover, one person is dangerous in terms of their possibly peculiar views and decisions. The second aspect is that one person's view is not as authoritative as that from three people; especially as the CHPs are not legally trained. The perceived fallibility of CHPs (by CHPs themselves) stands in stark contrast to the perceived impartiality and professionalism of Saudi Judges. This may be due to the fact that the latter are professionals, or different social expectations.

In the previous context, interesting points were raised in the statements from both sides: although the Juvenile court in Saudi Arabia is intended primarily for making a decision in terms of discovering if the juvenile is responsible, the judges show concern for the juvenile's feelings. In comparison the CHPs in Scotland focused on the quality of the decision, although the Children's Hearings system is based on the best interests of the child. The view of juvenile judges in Saudi Arabia can be interpreted as a reflection of which side needs to be strengthened more, and the judge's concern, as it appeared in their statements: *'When the case reaches the Judge, it is necessary to make a decision as to treatment and not to investigate'*. (Judge 1). Meanwhile the view of the CHPs in Scotland can be interpreted as a reflection of one of the main functions necessary to reach an appropriate decision. The CHPs' statements, which focused on the discussion during the hearing, including asking questions and explaining decisions to the juveniles to help them to understand any decision that has been made: *'I think it's really, really important that you explain to the child the nature of the decision and why we have thought it necessary to make that decision. That's why the discussion is the central feature of the children's hearing'*. (CHP.4). In the CHP's view the juvenile is a participant in the process of justice, rather than the object of it, as in Saudi Arabia. This difference stems from fundamentally different views of the goal of the juvenile justice system: to improve outcomes for the juvenile (Scotland) or to protect society and prevent future crimes (Saudi).

Contemporary Issues in Youth Justice

Contemporary issues in youth justice such as the age of criminal responsibility, views on restorative justice, views on the media, and opinions on learning from other systems are analysed in this section, based on the testimony of Chapter 7. As stated previously, juvenile judges have a positive attitude regarding the current age of criminal responsibility in Saudi Arabia, whereas the CHPs were critical of the age of criminal responsibility in Scotland. Both juvenile judges and the CHPs consider the age of 12 as suitable for a minimum age of criminal responsibility. There are some aspects of similarity between the two countries in this regard, as can be seen at the age of 16. For instance in Saudi Arabia a juvenile is treated as such until he reach 18 years old unless he commits Hadd crimes, in which case the age of responsibility drops to the age of 16, whereas in Scotland although the Juvenile can be referred to the Children's hearing system from age 8 a child cannot be prosecuted until 12 and at the age of 16 a person can be subject to the adult system of prosecution, although until the age of 18 they can be referred into the Children hearing system. From the previous comparison, it is apparent that from the age of 16 juveniles can be treated as adults in both countries, depending on certain conditions. Although change was made in Scotland in this regard, the CHPs criticised it: *'What they have done now is, instead of changing the age of criminal responsibility, what they have*

introduced is this age of prosecution. A child under the age of 12 cannot be prosecuted. Now, they cannot be prosecuted in the Sheriff Court, but they can still come to a Sheriff hearing, at the children's hearing, at the age of eight, nine, ten, 11. And if they say, "Yes, I did that," then they have a conviction. And I just don't think that's right, so I'm not happy with that' (CHP1).

The reason for the differing views in Scotland and Saudi Arabia on their respective criminal age of responsibility has to do with the way judges in each country approach their own legal system. Because the Saudi legal system derives directly from the Qur'an and Hadith, it is a religious doctrine (see Chapter 4 for more on this). This means that the Saudi judges take the whole system as given, without critical reflection, particularly on those areas specified under law, lest it be seen as blasphemy. The use of physical markers of maturity such as menstruation or pubic hair stems from a literal interpretation of religious texts. For this reason, there is little critical reflection by Saudi judges on the age of criminal responsibility. While the testimony in Chapter 7 shows that they approve of it- it goes further to show that they do not question it. In contrast, the Scottish system, based on a western legal positivism built up over generations of civil law contains a tradition of critical reflection and revision of law - which opens the door for CHPs to criticize existing law.

Restorative justice lays emphasis on two sides: (1) community involvement and problem solving through negotiation; (2) victim empowerment and the development of the offender's skills as a means of protecting the community. Accordingly, making a juvenile feel more responsible for his/her actions through victim involvement is not the main goal in this process. Raising awareness regarding the concept of restorative justice and its implementation amongst judges may lead to it being used as a framework targeting the points where it has been shown to work. This claim is made on the assumption that the victim has only a minimal role in the trial process, therefore changing this role and adding processes to establish restorative justice will increase the influence on the outcomes indicated by judges. Rodriguez (2007) states that: *"Restorative justice, which includes the rehabilitation of offenders, is more consistent with the philosophy of the juvenile court than with the retributive philosophy that guides the criminal justice processing of adult offenders. In fact, researchers have argued that restorative justice provides an appropriate alternative to existing mechanisms found within the juvenile court"* (p: 356).

Restorative justice, is not directly applied by either the Scottish or Saudi systems, but its ethos can be seen in the role (including, on occasion, the presence) of the victim in the Saudi case. It is almost non-existent in the Scottish case. From the Saudi side the process is applied in such a way that the victim has the right to attend the trial, and the judge finds this works positively in

two ways. First, it can result in a lesser sentence or no sentence for juvenile offences when the victim forgives him, and can later conclude with the juvenile apologising to the victim. The second advantage relates to protecting juveniles from people who are still influenced by a desire for revenge. However, although the victim has the right to attend the trial, according to the judges' statements, the purpose of this is more related to aiding the process of sentencing than including community involvement or treatment methods for delinquent behaviour.

By contrast, in Scotland the CHPs reject the notion of implementing restorative justice through the hearings process, but note that this can be conducted by other institutions, such as the police, if victims would benefit from this process. The justification of the CHPs in this regard related mainly to the nature of the children's hearings system, which is based solely on the child's best interests and seeing the child as a victim or having unmet needs. With this perception of the child, exposing them to the victim does not help the goals of the system. Finally, it needs to be clarified that children's hearings do not use Restorative Justice as a possible disposal because it has to be voluntary on the part of all participants, and if a child only attended restorative justice because the CHS ordered it as part of the intervention process, it would not work.

In terms of the media, the CHPs in Scotland were more reticent and sensitive about this topic than the Juvenile judges in Saudi Arabia. This difference stemmed primarily from the CHPs' focus on protecting the juvenile, as compared to Saudi judges' focus on protecting both the juvenile and society. Juvenile judges in Saudi Arabia support the media raising society's awareness of the process and procedures involved in juvenile convictions, although with the names of the juveniles protected. On the other hand, in Scotland, in spite of the fact that the media and press have restricted rights regarding hearings, the CHPs takes an oppositional attitude towards media intervention in juvenile cases. The negative attitude towards the media held by CHPs is a result of their priority for the interests of the juvenile and their family over broader societal knowledge of crimes, which they don't see as in the public interest.

The Judges' attitude compared to CHPs towards the media is also a reflection of the media role played in each country in the context of juvenile issues. Juvenile judges' statements may reflect that the effect of the media in Saudi Arabia is relatively weak, and that is why Saudi judges focus on the need for the media, without paying much attention to the problems that may affect the juvenile caused by the media. By contrast, the media was seen by CHPs as an element that can negatively affect children and their families, with regard to confidentiality. The CHPs were reticent and sensitive about the major role that the media play in Scotland, expressing wariness of problems that may occur because of media intervention.

Learning from other systems is considered by both juvenile judges in Saudi Arabia and CHPs to be a positive method to improve the system in both countries. The Saudi Judges look to improve the houses of correction that provide care and education, whereas the CHPs in Scotland want to build more understanding of their own system, although a member of the CHP stated *‘and that helps you understand your own system, which is good.....I have to say, however, that in looking at juvenile justice systems in other countries, I’ve not really come across any rule or practice that has made me think, “I wish we could bring that into the Scottish system”’*. Where CHPs have voiced a desire to change the system it is primarily as a means of increasing the welfare of juveniles. From the previous comparison, it can be seen that Saudi juvenile Judges, as compared to the CHPs in Scotland, were more accepting of change and adjustment within the system; rather than just using this to further understanding. This position for Saudi judges can be interpreted as a reflection of the level of reform and system development which can be described as weak. This interpretation can be reached by reviewing the development of the Juvenile justice system in Saudi Arabia in Chapter 3 and comparing it to the Scottish system in chapter 2.

Type of Interventions and Sentence

The most common sentences passed by juvenile judges in Saudi Arabia, according to their statements are: placing juveniles in houses of correction, conditional discharge, lashes/flogging, or a mixture of these. In Scotland the CHPs’ decisions on intervention take one of the following types: a supervision requirement (the juvenile will continue to live at home but will be under the supervision of a social worker), a supervision order with condition of residence at a children's unit, or authorising the placement of juveniles in secure accommodation or using the Intensive Support and Monitoring Service (ISMS) with the option of a tag. The measures used in both countries have two aspects that shape the interventions: (1) Education and (2) Restriction of liberty. However, one of the interesting findings that emerged from the Saudi Judges’ answers is that lashes/flogging are sometimes applied to juveniles as punishment. This sentence does not correlate to the measures applied in Scotland, and is a major concern of the UNCRC Committee in its 2006 report. Saudi judges use contradictory language to justify this process, either as a safer alternative to the houses of correction (which are seen as too hard), or necessary to impact on those juveniles who will not be affected by the houses of correction (which are seen as too soft). This topic is dealt with more extensively above. Flogging is not preferred by juvenile judges unless the case meets specific conditions that make flogging more suitable than other measures. They find it an effective alternative to placing juveniles in houses of correction in cases where it is desirable to avoid juveniles coming into contact with the other residents at a house of correction. However, according to the Judges, this measure is not applied if the juvenile Judges feel that it would not have an impact on the juvenile such as young people

who do not care. Social workers as well judges confirm that whipping does not hurt physically but that it hurts psychologically, as shame emerges when it is applied in front of other juveniles in a house of correction.

Corporal punishment as a sentence for juveniles who commit offences is applied in forty-two countries, including Malaysia, The United Arab Emirates and Sudan (Vincent & E 2012) In Saudi Arabia, the report (Vincent & E 2012) points to other sentences that are applied to juvenile offenders other than corporal punishment (i.e. stoning and amputation). There was no evidence in the report to indicate that stoning and amputation applied to any juvenile case. Therefore this can be seen as an exaggeration. Although stoning and amputation as a Hadd punishment only applies to an adult, it has strict conditions and can only be carried out for specific crimes (see the example in Chapter Three Page: 55 related to implementation of punishments in Islamic Sharia). Stoning has not been applied in any single adult case since Saudi Arabia was established. There is therefore no reason to suppose this has ever been applied in a juvenile context.

Lashes as a sentence in the juvenile context is considered as Tazir punishment. This means that it is not specified under Sharia law, but instead falls under the discretion of judges. Under a Tazir offence, Sharia gives the state and the judges the option to choose what is the best way to treat the case (including its severity), according to the interests of the individual and of society. However, where those interests clash, it is the responsibility of the judge to choose and balance between them. Previous discussion raised the question of the lack of alternative measures to lashes available if there is a degree of risk when placing some offenders in a house of correction. This may represent a weak point in the Saudi Juvenile System, due to the fact that Saudi judges have not established an alternative to corporal punishment, and also that the houses of correction remain an unsafe environment for some juveniles.

Comparing Saudi Arabia to Scotland, it is clear that the Scottish system has more options when it comes to the treatment of juveniles. They have more flexibility, due partly to the role and position of social workers. In addition, the aim of the CHP is to improve the welfare of the child, with the welfare of society being only secondary. This removes a key tension present in Saudi juvenile justice. In Saudi Arabia the role of social workers with juveniles is mostly confined to a house of correction, while in Scotland social workers have various roles and are supported by other agencies. Moreover, social work in Saudi Arabia has been established for less than fifty years, having only fairly recently been included as a subject in universities. This raises the point of whether Saudi Arabia might eliminate or reduce the use of lashes as more trained social workers emerge and/or alternative sanctions become available.

By the end of this subsection, some aspects of the practices in the Saudi system will have been examined through the lens of western literature, presented in Chapters 2 through 5. This section will examine the Saudi Approach to juvenile justice, and how the process of assessment and sentencing measures up to international criteria and literature in the field.

As was mentioned briefly above, Saudi Arabia fits largely within the scope of a justice approach to juvenile justice. The juvenile's acts are judged in accordance with the law. Therefore, any offence committed by a juvenile requires proof through the judicial process, which is considered grounds for punishment in cases where the juvenile's guilt is proven. The focus is on the offence, while the treatment is a secondary focus, implemented through house of correction programs. In other words, the process can be seen as concentrating on treating the offence with appropriate legal responses, rather than on treating the juvenile's needs. The limited role of the social workers in the Saudi context, and the strong emphasis on the judge also point towards a justice approach. In addition, aspects of a crime control approach to juvenile justice can be observed within the Saudi system through the possibility of transferring young offenders who commit serious offences to the high court, where severe sentencing can be undertaken if certain conditions are fulfilled.

One key exception to the broad justice outlines of the Saudi approach is the informal means by which many cases are addressed before reaching courts. Moreover, judges can detain the juvenile to be held in a correctional institution until the day of the trial if there is a risk from him/her. The juvenile's family and relatives often make informal efforts to reach out to the juvenile and affect their behaviour. They play a major role in securing diversion from the formal process, which reflects a cultural aspect to the judicial process; this is based on the view that diversion will lead to better long-term results, than for juveniles to be handled through the courts (a process which may inadvertently stigmatise young offenders) (Bilchik, 1999). According to Alseif (2010), as the Saudi family is expected to control its members' behaviours, it also plays a significant role in resolving problems with individuals; moreover, in some cases there may be some interference from the tribe to solve problems, as an attempt to strengthen the ties between the members of that tribe by helping each other. These cultural and social controls therefore act as both a deterrent and a first response to many potential juvenile offences.

However, a key difference can be clearly seen in the Saudi system in terms of females who commit an offence. The practice of diversion (not taking a case to court) is used more with females than males, for cultural reasons, as explained previously. This is one of the main factors informing the huge discrepancy between the numbers of females referred to a house of correction compared to males. In the adult system, and according to one of the adult judges

interviewed, diversion of females in some cases leads to injustice in the case of an offence committed by a male and a female together (where diversion is only used with the female participant). For instance, one of the judges objected to a procedure taken by the Investigation and Prosecution Authority, which referred a young male to investigation and covered the female's case as a matter of honour to allow diversion. The judge emphasised that this case was incompatible with justice, and asserted that the female offender must also be referred to court. Alternatively, both offenders' cases could have been reserved, the judge decided to release the male offender on bail and appended a letter to the Investigation and Prosecution Authority explaining that referring the male offender to court without doing the same for the female case was contrary to justice. This lack of equity was given as the reason for reserving both cases (Okaz newspaper 2015).

The use of diversion in different ways within the Saudi system requires the following points to be highlighted. The age of criminal responsibility in Saudi Arabia is 12 for both men and women, meaning that houses of correction begin to receive both populations at the age of twelve, although there are separate facilities for each (Alhnaki 2006; Zureikat 2005). Except for serious offences such as murder, no detention centre or house of correction receives anyone under the age of 12 years old. However, while males are referred, or transferred, to prison after reaching eighteen, female offenders are only referred to or transferred to prison after reaching the age of thirty. Moreover, female detention centres have started to apply a new approach by raising the age at which they start accepting cases to fifteen (The Ministry of Social Affairs, 2013). There are four female houses of correction in the four cities in Saudi Arabia. The researcher contacted the female detention centre in Riyadh city regarding the age of females referred to the centre. The centre confirmed that, according to the system, the house of correction cannot receive any female who is younger than 12. Exceptions can be made in special cases that require a young women to stay in a house of correction, such as for the investigation of serious offences. In terms of raising the age to 15, they confirmed, and clarified, that, in cases involving female aged 12 to 14 years, most problems are solved as soon as possible to avoid a stay in a detention centre. The total number of cases of young females below the age of 15 mentioned by these centres was four cases in 2011-2012 (The Ministry of Social Affairs, 2013). In terms of demands for 'blood money' or the execution of the offender, these are conditions that only apply to adult offenders, not juvenile ones. As has been explained in the chapter on the Saudi Arabian legal system, Islamic law protects young people from being treated as adults in terms of Qesas Crimes and Hadd Crimes. However, as mentioned previously in Chapter four, in the case of serious crimes such as murder, the juvenile will be treated as an adult starting from the age of 16 (for males) and the case will be referred to the high court.

Juvenile judges take into account several considerations before making a decision, meaning that sentences can be read and examined according to two concepts. These are the idea of discretion and the principles of communication, both of which affect the sentencing decision greatly. Discretion refers to the authority given to juvenile judges to choose the type of sanction imposed, based on whether they feel that deterrence or moral education takes precedence. This determination is influenced by age, gender and type of offence, as noted previously. The individual juveniles are examined from the following perspectives: (1) the circumstances that may push them to commit an offence; (2) whether the offender is a reoffender; and (3) if the juvenile behaves arrogantly or with remorse. The outcomes of the process lead the juvenile judge to decide upon an appropriate action; whether (1) placing the juvenile offender in a house of correction to receive a special program for a period of time as an education and rehabilitation measure, (2) conditional discharge, (3) lashes/flogging, or (4) a mixture of those sentences.

From the previous points, it is evident that many aspects of the sentencing decision are at the discretion of the judge. This can be seen as a principal disadvantage; Saudi judges have broad discretion to make decisions and pass sentences according to their own interpretation of Sharia law. This can lead to disparity, as discretion results in varied sentences for similar offences in similar circumstances (Gelsthorpe & Padfield 2003). One of the Saudi social workers confirmed the negative repercussions of this system, indicating that some judges do not take into account other points of views and only rely on their own views. Moreover, this can lead to discrimination in terms of handling a case, based on factors such as gender (Gelsthorpe & Padfield 2003). In the Saudi system, females are favoured through the use of diversion or by receiving more lenient sentences than males. On the other hand, the statements of judges indicate that discretion is used as positive discrimination in many cases. For instance, using diversion and lenient sentences with female offenders is seen by the judge as protecting the woman and her family's reputation, but it is also a means of social control. In addition, lashes/flogging as a sentence can be avoided in cases where deterrence is not thought applicable, and to avoid risk from placing the juvenile in a house of correction.

From the researcher's perspective, discretion can be dangerous when coupled with the absence of specialised judges overseeing juvenile issues. As was discussed previously, Saudi juvenile judges originally work in adult courts and only work four months of the year in a juvenile court, which can result in mishandling of juvenile cases. In addition, since there is only one judge per case, as compared with three on the Scottish CHP system, there is a danger (pointed out by Scottish CHP respondents) of individual biases affecting the process.

Communicative punishment, the other main determinant of sentencing decisions in Saudi juvenile courts, is directly reflective of a juvenile justice system which places its emphasis on deterrence and societal interest, rather than directly on the welfare of the juvenile. Communicative punishment is a way that juvenile judges view the punishment of juveniles by focusing on the moral education of the juvenile. Communicative punishment emphasises an appropriate response to the offence committed through communicative practice, focusing on censure and moral condemnation (Wringe 2012; Duff 2001). Aspects of this can be seen in Saudi judges' statements on punishment. Even when they use terms stressing discipline and deterrence, they place them in the context of making the juvenile offender realise and understand his wrongdoing to stop him repeating the offence. This can explain the juvenile judges' focus on the juvenile's attitude during the trial- i.e. if he or she behaves arrogantly or with remorse. Moreover, placing juvenile offenders in houses of correction to receive special programs for a period of time as a form of moral education is considered by judges to be punishment. This is consistent with Duff (2002) who views punishment of juvenile offenders as taking the form of education or re-education, which in turn can lead to the rehabilitation of juvenile offenders to repair their relationships with society. This shows concern for both the juvenile's welfare, and the welfare of society, but the emphasis is on the latter, which defines the juvenile's welfare as their ability to contribute.

In general, the Saudi system applies punishment to juvenile offenders relatively consistently. Duff (2002) emphasises that restoration, reparation and reconciliation are the main elements of communicative punishment and punishment should be given proper meaning as a response to the juvenile offender or adult offender. This does not mean the application of adult sanctions to juvenile offenders, but rather that punishments should be clearly defined and consistent (as is the case in Saudi Arabia). This view opposes that of Walgrave (2002), who considers the role of moral communication as ideally applied to ensure restoration. In practice, in the Saudi system, aspects of restoration can be linked to the victims' right to attend the trial; which according to judges has a positive impact leading to a lesser sentence or no sentence for juvenile offences. If the victim forgives the offender, the case can conclude with the juvenile apologising to the victim.

The judge's justification for the use of corporal punishment in Saudi Arabia also reflects the idea of communicative punishment. According to judges' and social workers' statements whipping is not intended to hurt physically but to embarrass and elicit shame from the juvenile when applied on him in front other juveniles in the house of correction. According to judges, it is not applied if the judges feel that the offender would not be affected psychologically. It is the communication of wrongdoing, more than the pain that the whipping might cause which is the point of this behaviour. While judges also consider flogging as a deterrent, there is no evidence

of research carried out in the Saudi system that shows to what extent this sentence works and influences other juvenile offenders, and testimony reflects that it is not the physical pain that is the point of the punishment. In general, however the empirical evidence from research in the western world indicates that corporal punishment has a deterrent effect (Ten, 1987).

8.3 The influence of social worker's report on the decision of Judges and CHP

The previous sections went over the considerations that are taken into account in making a sentencing decision regarding the juvenile who committed an offence, the main variables which influence this decision, and how the hearing or trial is conducted, as well how the findings in each of these areas relates to the literature presented in earlier chapters. These aspects form a background for a discussion of the influence of the social worker's report on the decisions made by Saudi Judges and the Scottish CHP. In this section, the findings from the interviews with Juvenile judges and CHPs are discussed alongside the findings arising from the interviews with social workers in both countries to get a better picture of how these reports influence sentencing decisions. Overall, the Saudi system places a greater emphasis on the social worker reports than the Scottish system, partly because the latter has so many other inputs. Factors such as the perceived juvenile-social worker relationship and the overall quality of the report can affect its influence.

The main goal of the Saudi and Scottish juvenile justice systems will have a clear effect on sentencing and disposal decisions, and on the influence of the social worker report. In their final decision Saudi judges consider aspects of risk and need, and are predisposed to support those social work reports which contain these factors. They address need through taking into account the factors and circumstances that may push juveniles to commit an offence, and consider the characteristics of young offenders and their circumstances (Merrigton 2004). Risk factors are addressed by taking into account whether the juvenile is a reoffender, which indicates the risk of recidivism in the future (Farrow et al. 2007). In Scotland, on the other hand, the main principle (i.e. the best interests of the child) and the services provided to address offending can be seen as balancing the amount of risk and the harm associated with intervention in a child's life. In the case of intervention, treatment can also depend on the availability of resources. This claim is confirmed by the CHPs' statements. Based on these points, the social worker's report can be considered as a source of information only, or as an influential addition to this role. The social work report is upgraded to be an influential factor when it forms positive attitudes towards a specific outcome in any degree. This leads to the conclusion that, through the means of their report, the role of the social worker is similar to that of the lawyer when it comes to convincing judges or CHPs. The considerations and opinions of judges and CHPs regarding the social worker's report are of key importance to increasing the effect of the report.

Firstly, the findings identified the important concerns in the social worker report in the Juvenile judges' and CHPs' views, which revealed some interesting points, specifically in terms of the CHPs in Scotland. From the Saudi side, the social worker report was considered as a primary element guiding suitable decision making, and social workers confirmed that Judges cannot

deal with cases without a social worker report. This is backed up by the testimony of the judges, which demonstrated that they looked at social workers as professionals who provide a unique and professional contribution. In contrast, while in Scotland, although the CHPs and social workers expressed that social work is important, the CHPs' statements show less of an emphasis on the social worker's report. The social worker's report was seen as an element building an orientation about the juvenile case, rather than the key determinant influencing a specific decision. This is backed up by other literature, which has found that, in this setting, although the social worker's report is considered as one information source in understanding the case, its influence is related to the CHPs' attitudes towards the specific recommended course of action (Baker 2009; Parker et al. 1989). Interestingly, this clashes with Scottish social workers' perceptions of themselves as influential professionals who are key to the CHP process. It also raises questions as to how the CHPs' statements can be understood if most CHPs' decisions are not based on the social worker's recommendations, while at the same time these decisions rely on the social worker's ability and effort with the case. The influence of the social worker in the Scottish system is not, therefore, relegated to whether or not their recommendations are taken up, but also includes the effort they put into assessing and building a relationship with the juvenile. This can be interpreted as the influence of the recommendations of a social worker's report on the decision of the CHPs, although the majority of the CHPs' conclusions will not be drawn directly from the realm of social work. It is possible that CHPs consider themselves as a team who have an independent viewpoint regarding the case, rather than seeing themselves as under the influence of the social worker's point of view. The potential for distortion in this testimony as a result of possible political conflict is clear, but cannot be fully investigated in the scope of this thesis. This claim can be investigated in further research through comparing the number of times social workers' recommendations were accepted and refused to the statements and beliefs of the relative positions of the CHPs and the Scottish social workers.

On top of this basic sense of the importance of the role of social workers, there are factors that increase or decrease the influence of the social worker report in both Saudi Arabia and Scotland, which can be understood as reliability factors. The findings from Juvenile judges, CHPs and social workers in both countries are influenced by two main variables: (1) the level of the relationship between the social worker and the juvenile and (2) the way that the report is written, its format and content. Each group in each country looks at these variables in different ways, which might lead them to put a different amount of weight on the social worker's report.

The literature on justice systems points to its own subset of factors which influence sentencing decisions (Baker 2009; Solanki & Utting 2009; Parker et al. 1989). These include the content of recommendations. In one study, sentencers deciding between community penalties and

custody for young people pointed to the fact that SERs had less influence, due partly to the fact that YOT practitioners are reluctant to propose custody as an option (Solanki & Utting 2009).

A further study relating to the ways in which courts in England and Wales deal with young offenders demonstrates a number of findings regarding social enquiry reports and their influence on sentencers (Parker et al. 1989). SERs were seen as the most influential factor in all courts and the influence on sentences through the recommendations took the form of [greater resort to] alternatives to custody and non-custodial outcomes. The influence of the social worker's report on the sentencers can be either to order a specific intervention as a result of the recommendations or to decrease the severity of sentence. This claim can be seen more clearly on the Saudi side as, in Saudi, there are several means of reducing or increasing the severity of the sentence. These include a period of detention in a house of correction (for avoiding certain sentences such as lashing), or avoiding placing juveniles in the house of correction altogether. In Scotland, on the other hand, there is likely to be more pressure on the CHPs to accept some, or all, of the recommendations in the social worker's report.

On the Saudi side, judges confirm that poor content in the social worker's report can lead to a reduction in the influence of the report. This was specifically linked to content which does not cover the information they are looking for (and may include extraneous information). This can lead to the conclusion that writing a social worker's report without taking into consideration the facts that influence Judges and CHPs when it comes to juvenile offenders will result in the report having less influence. It also demonstrates that social workers and judges may have different opinions on what is important or interesting in a social work report.

In shedding more light on the research findings regarding the factors highlighted in SERs and their influence, Saudi juvenile judges focus on aspects related to the way the report is written and its contents. The aspects that judges emphasised as essential in an influential report can be summarised as: in-depth information on the factors that have led the juvenile to commit his offence, whether the report is realistic and based on several sessions with the young offender, and whether the report includes good recommendations for dealing with the juvenile. Weaknesses in any of these aspects might lead to criticism of the social worker's report; the judges commented that some social workers' reports were superficial and that some social workers were not really qualified to write these reports. Social workers in Saudi Arabia also confirm that a good relationship with the juvenile is important if they are to meet the criteria as stated by Judges. They indicated that lack of measurement tools was one of the main factors that causes weaknesses in the reports along with poor training which relies mainly on experiential learning. Regarding the lack of measurement tools, the juvenile judges and social

workers were interested to hear about needs and risk assessment tools. They asked the researcher about this during their interviews about assessment of juveniles in Scotland.

On the other hand, CHPs in Scotland placed great emphasis on the importance of the relationship between the social worker and the juvenile, and gave the level of relationship between the social worker and the juvenile as the most significant factor that would make the report have influence on the decision. Therefore they commented that a report by another agency that has worked closely with the juvenile will take the place of the social worker's report if those criteria are missing. This demonstrates that it is the relationship with the juvenile which is seen as the goal of the report, rather than the social worker's specific training. The second factor which affects the influence of the social worker report, the nature of the written report, was also brought up by CHPs. Respondents indicated the common aspects that cause social work reports to have less influence include being badly written, not containing up-to-date information and containing information which has been cut and pasted. Social workers gave priority to their methods such as evidence-based practice and assessment of risk and need. They confirmed that poorly written and cut and pasted work cause reports to have less influence on CHPs.

The Saudi social workers pointed out that the social work report is focusing on giving background information and the circumstances surrounding the juvenile, including the family situation, and education status of the juvenile, and highlighting any significant problems affecting juvenile behaviours. In their view, these reports should not include any matter relating to the realities associated with the offence as facts.

A social worker's report is not intended to write evidence of or deny the juvenile's responsibility in committing the offence. (SWS.3)

We usually prefer to move away from where the offence itself took place...We try to move discussion away from the offence because we do not want to seem like investigators as we are aiming to gain the offender's trust. (SWS.5)

The social worker needs to work hard to gain the offender's trust, and to insure that the offender will talk freely (SWS.1)

According to social worker statements, they seek through the report to give juvenile judges a clear picture related to the juvenile's character and social circumstances which can help the judge to choose an appropriate sentence and avoid any measure which may not be in the best

interests of the juvenile offender. They did not indicate a dissatisfaction with their own reports (although this is not surprising) but did admit to a dissatisfaction with their training.

By the end of this subsection, it can be said that the influence of the social worker report on the Saudi judges and Scottish CHPs differs, with the Saudi judge placing more weight on the report (which is one of only a few sources of information).

The following points summarise the main factors that make a social worker's report more influential in both countries:

- On the Saudi side, juvenile judges focus on the facts and quality of information in the social worker's report. These reflect the function of the report at trial as serving to either reduce or to increase the sentence, or for avoiding certain sentences.
- On the Scottish side, CHPs focus on the relationship between social workers and juveniles, in order to gain important information related to the juvenile's life. This can influence their decision by encouraging the CHPs to accept some, or all, of the recommendations in the social worker's report.

The social worker's report has an influence on the decisions made by the Judges and CHPs in both countries, although in different directions, according to the function and goals of the institution dealing with the juvenile. This presents several hypotheses that can be examined by quantitative studies in the future:

In Saudi Arabia: There is a correlation/positive relationship between the facts and the quality of information in the social worker's report and its influence on a juvenile judge's decisions.

In Scotland: There is a correlation/positive relationship between the level of the relationship between the social worker and the juvenile and the influence of the social worker's report on the CHP's decision.

8.4 Assessment of a Young person who commits an offence

Assessment was defined by each group in both countries in slightly different ways. In Saudi Arabia, Juvenile judges and social workers used "diagnosis" as a term instead of "assessment", and also use the term "treatment" instead of "intervention" as can be seen clearly in their statements in this regard. The connotations of this medical language give a clear perspective of juvenile justice as a medical problem- a sickness to be fixed or cured (perhaps through

communicative punishment). Although the term 'assessment' is not in common use among social workers in Saudi Arabia, one study revealed that 52.5% of social workers stated there was a difference between the concept of assessment and that of diagnosis (Al-najm 2007). This difference was not forthcoming in the research, but would be worth more investigation in future research projects. This confirms research suggesting that social workers are not familiar with the concept of assessment, as they fail to follow developments in social work practice.

In addition, juvenile judges in Saudi Arabia viewed assessment in a different manner from that seen by social workers. Assessment is viewed by juvenile judges as a process of displaying the factors that lead juveniles to commit offences.

“.....Study the different aspects of the offender's life in order to get a clear idea about the causes that have led the young offender to commit the offence”

“It is about the situation of the young offender who has committed the offence. What caused him to commit the offence, and what made it an easy choice to him to offend, and if lack of supervision at home was the cause of his offence or not”

On the other hand, social workers in Saudi Arabia view assessment as a process of understanding juvenile cases which includes understanding the interactive factors that contribute to juvenile delinquency and delinquent behaviour from a juvenile perspective as part of that understanding. This view of assessment (or diagnosis) is continuous, while the judge's view is fixed in the production of a product (or sentence).

“The diagnosis involves understanding the case the way it is; it is not an excuse for why the offender committed the crime, it is simply a tool for understanding the offender's case and his way of thinking”

“The social worker analyses young offenders' cases to discover the reasons behind the crime and the environmental factors that have led the offender to offend”

One of the conclusions that can be derived from the above is that judges focus on establishing the influence of all the relevant factors associated with the case, whereas social workers focus on understanding them. Judges aim to identify factors as a basis for their decision making, while social workers (because they are dealing directly with the juvenile and providing the interventions) aim for a more deeply interactive process of assessment. The process focussed on by Saudi judges and social workers indicates an analysis and sifting of information stage in the assessment, which involves analysis and interpretation of all relevant information gathered

regarding the juvenile case, and is common in the literature (Parker 2008; Whyte 2009a). However this stage is considered a weakness in social workers by Saudi judges, and this causes the lesser influence of the social worker's report.

From the Scottish side, the CHP focus for assessments was on aspects of the juvenile's environment, e.g. his family and the way that can be changed or improved, while the social workers' focus was on aspects of the juvenile's life, risk and needs. Also, Includem workers focused on aspects of gathering information, relationship/ engagement and reaching an intervention plan, which they felt was often missing from state social worker's reports. The conclusion to be drawn here relates to the definition of assessment in each group, which in both countries reflects those aspects each group aims to achieve. Based on this claim, the question that must be asked is whether or not fulfilling the aspects that Judges and CHPs are looking for in an assessment will increase the influence of the social work report. The point that should be taken into account is that the social worker's report is considered as a one-off assessment which (compared to on-going processes) due to the time limit does not require huge effort (such as skills of evaluation, criticism, understanding new variables in the life of juvenile), alongside an understanding of the type and amount of interventional influences (Watson & West 2006). This may in some way explain a number of the shortcomings seen by judges and CHPs.

In terms of assessment process and procedures in each country, when a juvenile commits an offence they are referred to either a house of correction (in Saudi Arabia) or a Children's hearing (in Scotland). In Saudi Arabia a juvenile is referred to a house of correction when he commits an offence, then the juvenile Judge decides whether or not to free the offender from the house of correction or to retain him until the trial date. When staying in a house of correction, assessment/diagnosis is conducted in two ways. The first is a general assessment/diagnosis applied directly when the juvenile is referred to the house of correction, which aims to place a juvenile in a suitable group according to criteria such as age, the offence and whether he is a reoffender. The second is a special assessment/diagnosis, which targets individual juveniles. This process involves tasks such as observing and interviewing juveniles along with data gathering and social worker participation in all aspects of life at the house of correction. The relationship with the juveniles is considered a main factor in the assessment process, which prompts the social worker to start building a bond before discussing the Juvenile's case or taking on more details. The relationship at the beginning aims to build trust and dispel doubts that the juvenile may have about the social worker collaborating with the investigators. Through the general programs in the house of correction the social worker targets the juvenile by participating in activities and engaging in short conversations and jokes. At this stage the social worker conducts observations of how the juvenile reacts and deals with others.

The first interview is the first step in a series that are conducted when the social worker feels it is a suitable time, i.e. when trust and understanding have developed sufficiently.

On the other hand, in Scotland those dealing with juveniles who commit offences start working with them when the children's reporter refers the case to the area team that the young person comes from and requests a report including a risk assessment. After that report has been sent back, a decision as to whether further action is needed is made. If action is to be taken, then either a (voluntary) referral is made to the local authority or the case is remitted to the CHPs. Assessment of the young offender follows three possible avenues: the first is for a normal young person on a social worker's order; the second is for a young person with some difficulties, and the third is for a young person who is extremely difficult. Categorising juveniles who have committed offences in this way involves the use of assessment tools, such as interviewing, discussing and communicating with juveniles and people who are involved in the young person's life.

When comparing the previous process between the two countries, we can see clear similarities and differences. The decision of the judges in Saudi Arabia as to whether the individual should be granted freedom, or stay at a house of correction is similar to the decision of the children's reporter in Scotland as to whether there is to be no further action, a (voluntary) referral to local authorities or referral to a children's hearing. In each country there is a second route for treating a juvenile, which allows him not to continue with the process (ie to leave the system). This is used only in cases meeting certain conditions; for instance in Saudi Arabia this is when the offence is not serious or there is a risk in placing the juvenile in the house of correction. A second similarity is that as a result of this process, in both systems a one-off assessment is applied to the cases continuing in the process, focusing on areas related to the offence and circumstances surrounding the juvenile rather than targeting the information that can be used for intervention.

On the other hand, the differences between the two countries in this regard can be considered in terms of the role of the social worker and in the main focus of the first steps of assessment. In Scotland, the reporter requests a report from the social worker to make a decision about whether there is no further action required, or to refer the case to the Children's Hearings, while in Saudi Arabia the social worker does not have a role in determining whether the juvenile needs to stay in a house of correction or not, although some judges in some cases ask for the social worker's viewpoint. This reflects the different view of the juvenile in each system. In Saudi the juvenile's detention (or otherwise) is seen as a criminal or justice issue, while in Scotland the concern is over the juvenile's welfare- which leads to a consultation with a social

worker before detention. Secondly, assessment tools such as the YLS/CMI are used as a first step to assessment in Scotland, while in Saudi Arabia building trust and the relationship with the juvenile take priority in this regard. In addition, the context of this assessment is different between the two countries. In Saudi Arabia the social worker deals with the juvenile in a house of correction, aiming to correct the juvenile's behaviour for a period of time. This means the social worker has time and is involved in constant interaction in one place, allowing them to build trust and a relationship with the juvenile. On the other hand, in Scotland the social worker's task from the beginning of the process is to gather information and use tools such as YLS for the report to send to the reporter. Moreover, frequency of contact and the aim of the contact with the juvenile is variable, with obvious influence on the relationship formed. In contrast, Includem focuses on building a relationship and establishing trust with the juvenile, and criticises state social workers for failing (through no fault of their own) to do this. The conclusion which can be drawn from the statements of Includem staff, and social workers in both countries, is that there is a correlation between the level of the relationship with the juvenile and the depth of the information collected. While the tools and emphasis of social workers differed, both judges and CHPs cited the juvenile- social worker relationship as a key determinant of the influence of the social worker report.

In a more formal sense, the theoretical bases for assessment in Saudi Arabia and Scotland are fundamentally different. Regarding assessment tools, theories and approaches, social workers' statements in Saudi Arabia show that that assessment tools are not used and theories and approaches are not commonly used, although some of them mention role theory and behaviour theory. Their responses in this regard give a sign that their diagnosis/assessment tends to be subjective, inconsistent, unstructured, and tangentially related to the problem under consideration. This claim can be confirmed by social workers themselves, as, for example, when they mentioned their reliance on personal experience, and in their criticism of the current system of diagnosis/assessment in houses of correction. Moreover, these inconsistencies can be applied to interpret the statements of Saudi juvenile judges regarding the variable quality of information in the social worker's report. Conversely, in Scotland the assessment is more structured and based on various tools such as the Level Service Case Management Inventory and the Revised Level Service Inventory. State social workers and Includem staff in Scotland follow specific steps, which are set by the institution that they work for. While individual workers may not think daily about theories, the tools they use have a firm theoretical base. Although assessing juveniles in Saudi Arabia is not based essentially on theories, there are some aspects of similarities (with Saudi) in the techniques and applications that are practised by Includem staff. The first aspect is considering the relationship with the juvenile as a cornerstone in assessment. Secondly, both Includem and Saudi social workers place emphasis,

particularly early on, in participating in programs and activities with the juveniles. Thirdly, social workers in both settings consider that the trust that is built with the juvenile is a main element to gain information, and therefore is the key to the success of the intervention to change the behaviour. Last and not least, both Includem and Saudi social workers consider that the juvenile should be the main theory by focusing on techniques such as question notebooks in Saudi Arabia and A Better Life in Includem.

In terms of the intervention that follows assessment, social workers' statements in this regard have shown how the approaches and the assessment tools determine the trend and shape the intervention in both countries. In Saudi Arabia where a medical model is adopted, the intervention (treatment) is based on two methods: consultation in individual interview and group work programs, and if the problem is related to the Juvenile's family, the social worker will invite the juvenile's family to attend a consultation interview. By contrast, in Scotland, the assessment tools such as YLS locate the areas – risk and needs- that require an intervention. In Includem, where the juvenile cases are referred for intensive work, the intervention is based on building a one-to-one relationship over a specific period of time, targeting definite areas by using YLS from the beginning. Methods of intervention in Includem are designed as packages using a toolkit –like A Better Life- as a guide for Includem Staff, however, each package of intervention is very much tailored for that young person.

The research raised a question about the effectiveness of risk-assessment tools if they were used in Saudi Arabia, Firstly, it is important to mention that social work practice and assessment implementation differ between countries, depending on society, culture and the role of the state, and the social work profession is very young in Saudi Arabia (O'Connor et al. 2006). In Saudi Arabia, risk and risk assessment tools are not well known, nor are they commonly used. For example, tools such as Levels of Services Inventory - Revised (LSI-R) have not been utilised until recently. According to Barry (2007) and Whyte (2009a) 'risk' as a concept is only used widely in Western society, therefore, the majority of the research in this area has been conducted in relation to Europe and North America. Moreover, in Saudi Arabia, the actuarial method and the managerialist approach —which can be considered as the theoretical background for risk tools — do not exist in research nor in examining the phenomenon of juvenile offenders. This can explain why social workers in Saudi Arabia only rarely use risk-related terms. It can also explain certain aspects of social work practices whereby the ability, professional knowledge and skills of social workers are fundamental to constituting a judgment regarding the offender's case without using risk tools. Therefore, applying risk assessment tools to the Saudi Arabian juvenile system might not currently work, as neither the employees nor the decision makers within the Saudi Arabian juvenile system are prepared for it. Two changes

may herald the introduction of risk assessment tools to be used in Saudi Arabia. Firstly, modifying the curriculum for social work students, adding subjects related to risk assessment to university courses on social work, and conducting research into these concepts in Saudi Arabian society. Secondly, reliable research needs to be conducted to make risk assessment tools appropriate to Saudi Arabian society.

The findings that emerge regarding tools, theories, approaches and intervention in both countries can be understood through a number of theoretical lenses. Assessment practice in Saudi Arabia can be seen as still in its first generation stage; it is based on the clinical method, whereby the practitioner's ability and his professional knowledge and skills are fundamental to constituting a judgment regarding the offender's case (Ballucci 2008; Whyte 2009a; Edward et al. 2008). These are carried out through interviews and observation during communication between the social worker and the juvenile, which is implemented without the aid of structured assessment devices (Edward et al. 2008; Philip H. Witt, Sean P. Hiscox 2007; Onifade et al. 2008). Social workers in Saudi focus on means of understanding the case, which can be categorised under the 'Exchange Model'. This is based on empowering the case worker to identify fundamental elements underpinning the problems encountered. The role of the social worker thus tends to be to track service users, rather than to lead them, by motivating them to talk about their personal circumstances and difficulties, identify sources and how to address the variables that contributed to their problems (Watson & West 2006). In Scotland, on the other hand, social workers state that their practice can reflect new changes in the objectives and functions of assessment, which can be seen as a shift from needs to risk, and from traditional case work to risk assessment using the actuarial method. According to Fitzgibbon (2007) and Watson & West (2006), this type of assessment became significantly focused on 'one aspect of risk' and 'Negative rather than Positive' and also on the prediction of risk rather than building the relationship between service users and practitioners. The research findings confirm this claim regarding the practice of social workers in Scotland.

The 'Includem' method is one influenced by the Ecological Model and case work approach, outlined in Chapter 5 in which the main element in the process of assessment concerns the juveniles' lives. The priority is therefore to gain deep information for assessment and effective intervention, with an emphasis on clarifying the risk and strengths of the case problems (Watson & West 2006). Criticism of state social worker practice by 'Includem' staff regarding assessments can be seen as confirmation of Watson & West (2006), who indicate that the managerial approach (due to agency and bureaucratic procedures) places social work practice in danger of being categorised in the manner of general practice, which may lead to the appointment of unqualified staff to carry out assessments. However, looking to the assessment

practice in Scotland in a wider context, juveniles who commit offences in Scotland proceed through a multi-agency approach, of which 'Includem' is only one. Therefore, the assessment practice in Scotland should be considered as a collaboration of practice in all agencies brought together as a single team to address the issue of juvenile delinquency. This ensures that the shortcomings in the work of one agency are complemented by the strengths of another.

The following points summarise the comparison between the situation in Saudi Arabia and in Scotland:

- In Saudi Arabia, assessment of a juvenile who commits an offence is conducted in the house of correction during his stay. This means that no process is conducted outside the house of correction, although interviews may be done with family members in some circumstances. Assessment and intervention approaches are not based on clear theory or evidence. Social workers in Saudi Arabia rely on the relationship between themselves and the juveniles in order to carry out the assessment. This is despite the fact that the relationship does not identify the factors of risk or need to be targeted for intervention and intensive work. It can, however, be beneficial in obtaining deep information and to ensure the juvenile accepts the intervention.
- In Scotland assessment is structured around evidence and risk assessment tools. The assessment (as well as the intervention) can be conducted by different agencies specialising in dealing with juvenile issues. The majority of cases are treated without the need to place juveniles in a secure unit. However, comparing the processes used by social workers with the one used by 'Includem' staff, reveals that the social worker can often be seen as a risk assessor, rather than as the primary person working to change deviant behaviour (which falls to the Includem staff). It also reveals that (due to the fact that the juvenile may see him as an opponent) the role of the social worker in children's hearings may have a negative bearing on the juvenile accepting the intervention.
- Assessment as meaning and process in Saudi Arabia is influenced by a medical-model approach which made Judges and social workers use diagnosis and treatment rather than assessment and intervention. The process of analysis is a main task for both judges and social workers, which involves interpretation of all relevant information gathered regarding the juvenile's case, but is still considered to be a weak point. From the Scottish side, the CHPs were focusing on aspects of the juvenile's environment, e.g. his family and the way that can be changed or improved; while the social workers' focus was on aspects of the juvenile's life, risk and needs.

- The role of Social workers in Saudi Arabia is limited in comparison with social workers in Scotland. In Saudi Arabia, the role of social workers with juveniles is mostly confined to a house of correction, while in Scotland social workers have various roles and are supported by other agencies. The Scottish system, which adopts the welfare approach, gives the social worker a wider role in many aspects. Meanwhile, the Saudi system, which tends toward adopting a justice approach to social work, sees it as having a more limited role.

- In terms of assessment method, the practice in Saudi Arabia takes the case work approach. This means they focus on building a strong relationship with the juvenile, and building trust and dispelling doubts that the juvenile may have about the social worker collaborating with the investigators. Moreover, Assessment practice in Saudi can be seen to be based on the clinical method, whereby the practitioner's ability and his professional knowledge and skills are fundamental to constituting a judgment regarding the offender's case. By comparison, in Scotland assessment is based on a risk and needs approach and on adopting the actuarial method, using tools such as the YLS/CMLA

- Finally, the comparison reveals that social workers in Saudi Arabia may have a stronger position regarding the relationship and the engagement with the juvenile. On the other hand, there is a weakness among Saudi social workers in sifting information and using it logically for effective intervention, due to missing the assessment tools and approaches to guide practice with juvenile offenders. In Scotland, the comparison reveals that there is not as much effort given to engagement with the juvenile during assessment as there is for information gathering, but that the institutions and tools allow for more systematic recommendations for intervention to be made.

Chapter 9 Conclusion

This chapter presents the thesis's conclusions in five sections, which are seen as the main axes of what the researcher wants to focus on and explore in this final chapter. (The findings were reported in chapter seven, by reference to the research objectives.) These axes have been sequentially arranged as follows: (A) Summary of the Main Issues. (B) Reconsideration of the Research Question and Objectives. (C) Making an Original Contribution to Knowledge. (D) Research Limitations. (E) Questions for Further Research.

9.1 Summary of the Main Issues

The handling of juvenile offenders proceeds through specific processes in both Scotland and Saudi Arabia, depending on the different philosophies of juvenile justice they ascribe to. A number of questions arise concerning this diversity of views in dealing with juvenile offenders who have committed similar offences under similar circumstances. For several reasons, this thesis has attempted mainly to examine the Saudi case by comparison with the Scottish system identifying differences in perspective through an analysis of the types of processes and procedures and how they are conducted, along with the philosophies behind them and the factors that shape them. There are a wide variety of influential variables not easily separated in these cases, which makes the study of differences through comparison a valuable means of enriching understanding of juvenile justice systems world-wide.

The comparison revealed that Saudi Arabia and Scotland have adopted very different approaches and procedures to deal with the issue of juvenile offenders. In both systems, assessment (however it is defined) of the juvenile plays a key role in the juvenile justice system from the initial referral to the system up until the stage of release. In each country, assessment of juvenile offenders is conducted with a different approach and focuses on different areas.

This dissertation has been an exercise in comparative criminology and social work, focussed specifically on the practice of assessment in youth justice in Scotland and Saudi Arabia - more specifically on the state social workers employed by Glasgow City Council, North Ayrshire Council and in Riyadh. It has not been a full study of youth justice systems in both countries, but has instead focused on assessment as a useful topic by reference to which to determine differences in underlying decision-making philosophies and practices between both countries. In particular, studying assessment illuminates the broad values that underpin these juvenile justice systems – whether these are welfare-based approaches (which can be seen in Scotland) or more control and punishment-based approaches (aspects related to which can be seen in Saudi Arabia).

The broader literature on youth justice systems presented in Chapter 2 serves to underline and frame this debate, providing points of comparison and a theoretical basis to the empirical evidence presented in Chapters 7 and 8. Assessment focuses attention on the relationship between “sentencers” and the professional social workers who advise them, bringing in aspects of positional politics, which can be seen in how various positions comment on the performance of the other members in the system. This is particularly evident in the discussion by Includem workers of the job done by Scottish state social workers who perform similar tasks.

In addition, by looking both at the level of knowledge that practitioners have about theory, and at the way, practitioners put these theories into practice, it is possible to determine the extent to which the literature on judicial systems is having an effect on practitioners. While in both Saudi Arabia and Scotland direct reference to theory was minimal, social workers in Scotland (both state and Includem) relied on a series of tools in their practice, which were themselves based on theory. Saudi social workers, by contrast, admitted to having little formalized training and noted that they relied primarily on experience in their work, making problems for new social workers. Finally, future research should consider examining the relationship between policy frameworks and practice on the ground - do practitioners follow policy to the letter, do they modify it – if so, how and why – if not, why not? The following section summarises the findings in light of the research question and objectives.

9.2 Reconsideration of the Research Question and Objectives

The findings presented, and their implications, confirm the researcher’s assumption that comparing Saudi Arabia with Scotland in terms of the assessment of juvenile offenders and how this influences the decisions of judges and children’s panels can identify the shape of Saudi system and its respective strengths and weaknesses. At the same time, this comparison serves to illuminate the distinctive and contrasting features of each system, particularly when it comes to Saudi Arabia. This research used empirical methods to develop a description of the processes and procedures that apply to juvenile offenders in Saudi Arabia, where a juvenile is referred to a house of correction until the final decision regarding their case is made. Further, it attempted to draw conclusions about what these practices indicate about underlying judicial assumptions in the Saudi justice context - be they about gender, corporal punishment, or the role of family. This can be considered an innovative research topic because no published study has so far examined these processes and procedures, much less delved into the social fabric of the Saudi juvenile justice system. The findings of this study are far from comprehensive, but are best understood as a starting point for further research along these lines for the Saudi system.

The researcher's primary interest when developing the research question and objectives was the meaning and impact of assessment and the social workers' reports to the individuals giving the sentence: that is to say, do decision makers in juvenile cases make use of social workers' advice and recommendations when arriving at sentencing decisions? The findings indicate clear differences in this regard between the two countries, which have been tentatively explained through the impact of internal factors (those having to do with the content and quality of the social worker report) and external factors (including variables such as the offender's age, gender and circumstances). The key input into the social worker's report (and therefore the key to its influence) is in the ways in which social workers assess young people to determine which interventions to pursue. Interventions were not the focus of this study but, through testimony from Includem, a volunteer organisation in Scotland, the researcher studied the ways in which ongoing or intermittent assessment after attending a children's hearing remained part of the intervention. This represents a fundamentally different understanding of intervention as a continual process, rather than a discrete step, with workers continually reflecting on the progress made with a juvenile, and constantly deepening their original assessment as new developments occur in the life of the individual.

In other words, this research investigated the practice of assessment in each country, and how it was coloured by different structural and social landscapes. This allowed for an examination of the types of relationships between the assessment process and disposal decisions in Scotland and Saudi Arabia. This issue was examined through an empirical study involving in-depth interviews with social workers, judges, panel members, and Includem staff to discover whether the differences in views on assessment, and the goals of juvenile justice between Scotland and Saudi Arabia, produce different or similar practices.

The first research objective was to compare the procedures and assessment processes for young offenders in the Saudi Arabian and Scottish systems. In Scotland, the process begins by referring the case of a young person who has committed an offence to a 'reporter'. The process in the Saudi system, on the other hand, begins by referring the offender to a house of correction. This is followed by a decision on the part of a juvenile judge either to liberate the offender or that they must remain there until the trial. This decision may be based on a number of considerations, such as the risks involved with the offender's release versus the disadvantage to them of continued residence in the house of correction. In the Scottish system, the reporter decides whether the child or young person is likely to need a compulsory supervision order, based on whether or not there are legal grounds for this. If so, the young person will be referred to a children's hearing... At this stage in the Saudi system, the social worker does not have any

role, and the decision is left entirely to the judge's discretion based on preliminary information about the case.

There are two stages to the assessment process in the Saudi system. The first involves a general assessment undertaken immediately when the juvenile is referred to a house of correction, which aims to place the juvenile in a suitable group. The second is a special assessment, which targets the individual and determines suitable interventions. These assessments focus on creating a strong, positive relationship with the juvenile, building trust and dispelling any doubts they may have about the social worker collaborating with the investigators. In the first stage in the Scottish system, the reporter speaks directly with the juvenile and their family in order to gather information about the offender and his or her circumstances. In addition, the children's reporter refers the case to the appropriate local authority area social work team, and requests a report and risk assessment.

Regarding assessment tools, theories, and approaches, the findings on the Saudi system show that assessment tools are not used, and there is little or no explicit or implicit use of theories. Instead social workers in Saudi Arabia rely primarily on experience in their dealings with juveniles (a fact noted as a weakness by both social workers and judges). Moreover, the role of social workers in the Saudi system is limited compared to their role in Scotland, and is primarily to generate a social worker report to inform sentencing. Additionally, in Saudi Arabia, the role of social workers is mostly confined to houses of correction, while in Scotland, social workers have a variety of roles, can engage with the juvenile in a wide range of settings, and are supported by other agencies. Regarding the assessment process, the research findings demonstrate that Saudi Arabian workers engage more with juveniles during assessments, but often fail in sifting information and using it logically for effective intervention. In Scotland, on the other hand, the opposite is true, with social workers' assessments placing emphasis on information-gathering and using assessment tools. They were criticized for this by Includem workers, who did not feel that they were adequately engaging with the juvenile. However, respondents in both countries emphasized the importance of building a relationship with the juvenile.

The second and third research objectives concerned the use of social workers' reports and how juvenile judges and CHPs make decisions regarding juvenile offender cases. In the Saudi system, judges take the information contained in these reports into consideration when making decisions about reducing or increasing the sentence or avoiding certain rulings altogether. Therefore, juvenile judges focus on the quality of information in the social worker's report, which means these reports influence the judge's decision about whether to advocate deterrence,

education, or a combination of both. In the Scottish system, CHPs focus on the relationship between social workers and juveniles in order to gain important information related to the juvenile's life. This can influence decisions in that CHPs are encouraged to accept some or all of the recommendations in the social worker's report.

In both countries, two key elements of social workers' reports have been shown to influence judges' decisions: (1) the level of the relationship demonstrated between the social worker and the juvenile; and (2) the way in which the report is written, in terms of both format and content. In Saudi Arabia, the content of the social worker's report (which involves facts and high-quality information) are the main factors.

In terms of making a decision, juvenile judges in Saudi Arabia consider factors such as age, gender, and type of offence, and the circumstances that may have pushed the juvenile to commit the offence, whether or not they are a repeat offender, and the juvenile's behaviour—for example, whether it demonstrates arrogance or remorse. The sentence can be one of the following: (1) placing the juvenile in a house of correction as a measure of education and rehabilitation in which they participate in special programmes for a period of time, (2) conditional discharge, (3) lashes/flogging, or (4) a mixture of these. In other words, the judge's decision will involve a focus on deterrence, reform of the offender through education, or a combination of the two.

In Scotland, the CHP's decisions about intervention can involve (1) a compulsory supervision order, (2) a compulsory supervision order with condition of residence at a children's unit, in foster care, kinship care or any other place deemed suitable, (3) authorising the placement of juveniles in secure accommodation, and (4) utilising the Intensive Support and Monitoring Service with the option of an electronic tag. In the Saudi system, the circumstances surrounding juvenile offenders have two roles: (1) they may influence the judge to increase or decrease the sentence, and (2) they help to locate the principle or approach that underlies the judge's decision, whether deterrence, education, or both. In this regard, due to cultural factors, gender as a variable is often seen to impact juvenile judges' decisions to issue sentences that are more lenient to females compared to males.

In Scotland, the considerations of CHPs are generally dominated by the principles of a welfare approach advocating 'the best interests of the child'. However, if it is believed the juvenile's release would constitute a risk to the rest of society, this principle will shift so that "best interests" is the primary rather than the paramount consideration. Where the relevant conditions are met, the offender could be authorised for placement into a secure unit. In the Saudi system, sentences involving intervention can focus on education, deterrence, or a combination of both.

Priority may be given to one aspect at the expense of the other based on the judge's discretion, and any aspect believed to have a potentially negative effect on the individual offender or which is considered unsuitable to their case will be avoided. Moreover, because the victim has the right to attend the trial, a lesser sentence or no sentence can result in cases where the victim publicly forgives the offender. In Scotland, the type of intervention suggested in the social worker's report is evaluated based on its perceived effectiveness in meeting the best interests of the juvenile and society.

The final objective related to categorising aspects of Saudi practices. Procedures in the Saudi system can be linked to aspects of its justice approach to juvenile justice. The first aspect that needs to be determined in the Saudi juvenile justice system is the juvenile's disposition, and whether or not they can be expected to act in accordance with the law. The judicial process requires proof of the juvenile's guilt if the offence is to be considered grounds for punishment. The focus is on the offence, while treatment through correction programmes is of secondary importance. In other words, the process seems to concentrate on treating the offence through appropriate legal responses rather than treating the juvenile's individual needs, which clearly fits with descriptions of a justice approach to juvenile infractions.

In terms of procedures, both countries may divert juvenile offenders away from formal proceedings toward more informal measures, such as warnings. Such diversion may be used to protect young people from the consequences of formal procedures if such formal intervention is seen as unnecessary in any given case. In the Saudi case it can also be used (in the case of female offenders) to save the family's honour. On the other hand, if certain conditions are fulfilled, aspects of a crime control approach may also come into play, including the possibility of transferring certain juvenile offenders who have committed serious offences to higher adult courts and subjecting them to more severe sentencing. This practice, and the potential for juveniles to be treated with particularly harsh penalties, up to and including death, has been the focus of wide criticism by international observers. However there is little to no evidence that these most severe punishments are ever applied to juveniles, even if it is legally possible. In contrast, systems like Scotland, which adopt a welfare approach, allow social work to play a wider role in many respects. In systems, which adopt a more justice-oriented approach, on the other hand, such as the Saudi system, social work has only a limited role (primarily in aiding sentencing).

Assessments in Saudi Arabia are influenced by a medical-model approach, which is clear from the use of the terms of 'diagnosis' and 'treatment', rather than 'assessment' and 'intervention'. Moreover, assessment in the Saudi system is based on a clinical method whereby the

practitioner's ability and his professional knowledge and skills are fundamental to constituting a judgment regarding the offender's case, something that judges and social workers see as weak points in the system. In Scotland, on the other hand, assessment is based on risk and needs, and an actuarial method. This focuses on the use of tools such as the YLS/CMIA.

The following sections will present a brief reflection on lessons Scotland's youth justice system might learn from the Saudi Arabian approach, and on the potential for a mutual dialogue between the two countries on this subject. It will begin by giving a statement concerning the original contribution to knowledge made by this dissertation.

At the end of this section and after summarizing the findings in the context of the research's objectives, it is important to link the findings with recent theorizing about youth justice. Further, it is important to demonstrate how the thesis is related to other research and literature on decision-making, assessment and report.

Recent Theorizing in Youth Justice

The content of this research makes it directly applicable to recent theorizing on juvenile system policies and procedures. This synopsis highlights the most prominent linkages to some of the most prominent theoretical concepts.

The differences and implications of models of youth justice stand out clearly in this research. These models determine which pattern of operation and intervention is used with young offenders in a specific juvenile system. Overall, the Saudi juvenile system fits largely within the scope of a justice-based approach. This approach is based on the principle that the response to an offence should be in some degree equated with the gravity of the offence, in accordance with the law (Winterdyk 2002; Hartjen 2008). In addition proceedings against offenders must be formal and judges have the main role in this regard (Hoge 1992; Winterdyk 2002; Hartjen 2008). Particularly because the Saudi system has not previously been the subject of in-depth, analytical, interview-based work, this is an important finding for future research.

In addition, in Saudi Arabia the juvenile's acts are judged primarily in accordance with the law, as an adult's would be. Therefore, any offence committed by a juvenile requires a case and proof be presented through the judicial process, which is considered grounds for punishment in cases where the juvenile's guilt is proven. The focus is on the offence, while the treatment is a secondary focus, implemented through the house of correction programs. In other words, the process can be seen as concentrating on treating the offence with appropriate legal responses, rather than on treating the juvenile's needs. The limited role of the social workers in the Saudi context, and the strong emphasis on the judge also point towards a justice approach. In addition,

aspects of a crime control approach to juvenile justice can be observed within the Saudi system through the possibility of transferring young offenders who commit serious offences to the high court, where severe sentencing can be undertaken if certain conditions are fulfilled.

On the other hand, the Scottish system fits largely within the scope of a welfare approach. This approach is characterized by a focus on the 'needs' rather than the 'deeds' of children and young people. Juvenile crime is seen primarily as a sign of an underlying disorder caused by surrounding circumstances such as family breakdown or community disruption (Hemmens et al. 1997; Winterdyk 2002; Hartjen 2008). The most telling sign of this is the way that children and young people who are in need of care and protection go through the same system as those who commit offences (Hemmens et al. 1997; Winterdyk 2002; Hartjen 2008). This orientation underlies the core principle of the children's hearings system as every step is focused on the child's well being.

Both systems also have some elements which relate to recent scholarship on restorative justice. This concept has a dual emphasis. First, it highlights negotiation as means for problem solving through community involvement, and second it recommends victim empowerment and making the juvenile feel more responsible for his/her actions (Bazemore 1992). In Saudi, the victim has the right to attend the trial. Judges noted that this works positively in two ways: First, it can result in a lesser sentence or no sentence for juvenile offences when the victim forgives him, and can later conclude with the juvenile apologising to the victim. In addition this approach can help to protect juveniles from people who are still influenced by a revenge culture. However, to the researcher's knowledge, there is as yet no research in Saudi Arabia to measure the level of victim participants in juvenile court, or its effects. In Scotland, restorative justice is seen positively, but the victim and the child are still kept separate. As one author notes,

"restorative justice processes are a valuable resource for children's reporters and hearings insofar as they can meet a range of needs of children who offend: for example, the need (a) to have access to educative experiences that will enable them to reduce their offending and develop as mature and responsible citizens; and the need (b) to be given the opportunity to restore their moral status and reputation in the eyes of their family, the person harmed, their peers, and the wider community by voluntarily addressing the practical and/or symbolic (i.e. moral and relational) harm they have done" (Scottish Executive 2005 p 1)

In this system, the victim is not directly involved in the hearing process, something that has drawn criticism from some research (Hallett et al. 1998). However, they can be involved in other processes in the system.

Finally, the concept of diversion in juvenile justice touches on several points in the research findings. Diversion simply is any type of action taken to allow a juvenile who commits an offence to be directed away from the juvenile justice system or some of its formal procedures (Bynum and Thompson, 1996). Although the Saudi system generally adopts a justice approach other findings revealed that some actions within the system definitely qualify as diversion. For instance, social workers in some circumstances can prevent a juvenile who committed an offence from being held in the house of correction. Particularly in the case of female offenders, diversion is often seen when judges take informal action to save the family's honour. Similarly, in Scotland, diversion occurs when a child is not referred to the children's hearing system, upon the decision of a reporter or social worker. For instance, there was a sharp increase in the number of 'no action' decisions, from 50 per cent in 1989 to 66 per cent of referrals in 1999/2000 (Waterhouse 2006).

The policy questions of diversion, restorative justice, and the approach taken to juvenile justice are all pressing issues at the forefront of juvenile justice. The case studies presented in this research from Saudi Arabia and Scotland both touch on these issues, and as such present an opportunity for policy makers in Saudi Arabia to gain a better understanding of the implications of their choices compared to Scotland.

Links to Literature of Decision Making

While this thesis identifies important policy implications, as noted above, it also sits at an important theoretical crossroads on the decision-making literature. The research and literature on decision-making, and assessment and reporting in social work remains disjointed. This research revealed a range of variables, including gender and institutional form, which relate to the claims of other contemporary research findings. In this synopsis, the researcher will present the most prominent findings in this regard, and place them in context of current literature.

The distinction between assessment and diagnosis in the Saudi juvenile justice system is particularly important for assessment literature. This research revealed that juvenile judges and social workers used "diagnosis" as a term instead of "assessment", and also used the term "treatment" instead of "intervention". This reflects a medical-model approach applied to social work practice, where these terms are more common (Al-najm 2007). Moreover, although the term 'assessment' is not in common use among social workers in Saudi Arabia, one study revealed that 52.5% of social workers stated there was a difference between the concept of assessment and that of diagnosis (Al-najm 2007). This confirms research suggesting that social workers in Saudi Arabia are not familiar with the concept of assessment, as they fail to follow developments in social work practice. In practice, assessment in Saudi Arabia is still at the first generation stage (Schwalbe 2008; Whyte 2009a). It is based primarily on the clinical method,

whereby the practitioner's ability and his professional knowledge and skills are fundamental to constituting a judgment regarding the offender's case (Ballucci 2008; Whyte 2009a; Edward et al. 2008). The findings also revealed that social workers in Saudi Arabia rely on the relationship between themselves and the juveniles in order to carry out the assessment, despite the fact that the relationship does not identify the factors of risk or need to be targeted for intervention and intensive work. It can, however, be beneficial in obtaining deep information and increasing juvenile acceptance of the intervention. This in turn feeds into the Saudi justice-based approach, where the information gathered serves a legal purpose in terms of the judge's decision (Winterdyk 2002; Hartjen 2008)

Rather than a source of information, the social workers' approach can reflect new changes in the objectives and functions of assessment in Scotland. These new objectives can be seen as a partial shift from needs to risk based practice. According to McAra (2006), this shift resulted from, and reflects, a shift in the underlying ethos of the Scottish system since 1995, which has led to the possibility of the principle of public protection being prioritised above the best interests of the juvenile in cases where the juvenile poses a risk to others. The research confirms this finding. Also, this change can be seen as a shift from traditional case work to risk assessment using the actuarial method. This has obvious relevance to the significant body of scholarship engaged in debate over the relative value of these methods. According to Fitzgibbon (2007) and Watson & West (2006), this type of assessment became significantly focused on 'one aspect of risk' and is 'Negative rather than Positive'. In addition they note that the actuarial method emphasizes the prediction of risk rather than building the relationship between service users and the practitioner. Perhaps due to this trend, the findings of this research suggest that in Scotland there is not as much effort given to engagement with the juvenile during assessment as there is during information gathering. This is partially due to the limited time and resources of state social workers. One organization, Audit Scotland (2002), found that half of all children on a supervision requirement were seen less than once a month by their state social worker. Despite this, the social worker's report is considered a corner stone of decisions in the children's hearings system. The report's influence is decisive from the beginning, when the reporter requests a report from the social worker to make a decision about whether there is any further action required. The strong influence of the social work report echoes other research which finds that CHP members generally come to a decision in line with the social worker's recommendation. One study found that in "84 per cent of observed hearings, the decision matched the recommendations of the social worker and decisions were unanimous in 89 per cent of hearings (Hill et al. 2017). It also revealed "In almost two-thirds of hearings, the final decision was the only option discussed"

This research also highlighted the effect of different variables on decision-making in each case. In the Saudi case, influential variables included the age and gender of the juvenile, the type of offence, the circumstances that may push him or her to commit an offence, whether he or she is a reoffender; and his or her behaviour during the trial. Many of these considerations are examples of what the literature calls 'personal mitigation', which refers to the effect of variables associated with the person rather than the offence that s/he committed on reducing the severity of sentencing (Jacobson & Hough 2007). Personal mitigation can take various forms, including the circumstances such as financial pressures, psychiatric problems, intellectual limitations, or immaturity, as well as the way that the offender views his or her offence, such as remorse, acts of reparation, and addressing the problems that led to the crime (Jacobson & Hough 2007). The strong relationship between Saudi judges' considerations and the personal mitigation literature suggests that in Saudi the focus is on the juvenile, and not on punishment commensurate with the harm that resulted because of his offence. Additionally, it is clear that gender has a strong impact on judges' decision making. Judges treated female offenders differently than male offenders, attempting to resolve the cases informally rather than prosecute them. In addition, when convicted, female offenders are referred to a juvenile house of correction until the age of 30, while male offenders are referred to the adult court system after 16-18. These policies, although no doubt influenced by Saudi culture, reflect research done around the world on the influence of gender in sentencing. A study in the US noted that offenders who victimized females received longer sentences than those who did the same to males (Curry et al. 2004). Conversely, other studies have found that female offenders often receive a greater sentence than males. The interpretation of these findings suggests that "*juvenile justice officials treat females more harshly than males in an attempt to enforce stereotypical notions of proper female behaviour and to protect the sexuality of young women*" (Leiber & Mack, 2003 p:38).

In contrast to the Saudi emphasis on personal characteristics of the juvenile, in Scotland the decision of CHPs is primarily influenced by environmental factors. Other research has made similar observations. As Martin, Fox, and Murray (1981) note, sentencing decisions generally seek to balance the seriousness of the offence against the circumstances at home and school. As this research reveals, the motivation behind this is the CHPs' primary goal to find a suitable intervention. According to the interviewees, their pursuit of this leads to a principle of minimal intervention and strong circumstantial awareness. However, this approach may not be the most effective. Other research on the CHP program in Scotland found that the system was more effective with regard to children referred for care than those referred for juvenile offences or school absences (Hallett et al. 1998).

When making decisions around intervention the CHPs are focussed on those provided in the social worker's report, even though they do not have to agree with them. This finding is

consistent with other research findings which revealed that in the majority of cases (84%) the decision of the hearing accorded with the social worker's recommendation (Hallett et al. 1998). The current research illustrates some of the reasons behind this. Since CHPs lack a judicial background when a social work report lacks clarity it can complicate their understanding: *'Very often, you read reports, or I read reports, and I see that a young person is getting this support or that support, but I don't know what it is. And sometimes, you ask the social worker, and they're not very clear either'*. (CHP.2).

The confusion over complex intervention procedures reflects other research highlighting the need for more diverse expertise within the Scottish Children's Hearings system (Hill et al. 2017). As other authors have pointed out, because of the lack of legal expertise parents, are often unable to obtain counsel, and as such do not understand their rights in the Children's Hearing System (Lockyer and Stone 1998).

Despite the problems of lack of legal counsel, the current research revealed that the CHPs focus on discussion to let the juvenile and his family understand the situation and the decision that will be made. This helps to explain related findings, which have shown in the past that most juvenile offenders involved in CHPs considered the process fair and bent on trying to help them (Hallett et al. 1998; Waterhouse et al. 2000). Just as this research focused on the importance of parents, it also explains other research findings of the rarity of adverse reactions from parents (Hallett et al. 1998; Waterhouse et al. 2000). This allows for the parents to become more directly involved in the intervention process. In some hearings, the intervention recommended by CHPs required and received the co-operation of families. Similarly, where parents did not comply with a requirement, the CHP often terminated it according to other research findings (Hallett et al. 1998). From this, it is clear that families play an important role in the CHP system. The CHPs' emphasis on dialogue explored in this thesis represents an underlying factor that helps to explain the close and positive cooperation between the panels and the juvenile and parents.

The final CHP decision on intervention can take one of the following types: a supervision requirement (where the juvenile will continue to live at home but will be under the supervision of a social worker), a supervision order with condition of residence at a children's unit, or the placement of juveniles in secure accommodation or using the Intensive Support and Monitoring Service (ISMS), with the option of a tag. As other research has noted, the decisions made by CHPs overwhelmingly favour a non-residential supervision order (63 percent) (Hallett et al. 1998). Although the decision process requires three CHP members, they are often in agreement, with 89 percent of hearings ending in consensus.

9.3 Making an Original Contribution to Knowledge

It was not originally the researcher's intention to do a comparative study of assessment in *both* Scotland and Saudi Arabia. The researcher originally intended to study Scotland with a view to a) learning how to study assessment in one particular system with a view to b) identifying aspects of Scottish research and Scottish practice that might be of benefit to the Saudi Arabian youth justice system. The researcher aimed in the long run, to be able to look at his own youth justice system in Saudi Arabia "through Scottish eyes" and see it in a new and unfamiliar way - after first studying Scottish practices in detail. Upon engagement with this topic the researcher discovered that there was a rich academic and policy literature surrounding the Scottish juvenile justice system to draw on, produced by the government, university researchers and practitioners themselves. No similar work exists in Saudi Arabia. The researcher had no expectation of being able to interview judges in the juvenile court in Saudi Arabia, because no one had ever interviewed them before. The first person accounts from judges and social workers in Saudi Arabia are the greatest contribution of this research. The comparative study of juvenile justice assessment in the two countries provides context and structures for analysis of this information, which otherwise would not be in an appropriate context. There were only ever going to be five judges in my sample (one of whom dropped out) and this conditioned my understanding of the sample size of the sample of panel members the researcher should look for in Scotland. By doing detailed analyses of in-depth interviews with them, and with the social workers who assess young offenders and write reports for the sentencers to use, the researcher hoped to develop a thorough understanding of assessment practice itself (useful to judges and social workers in my country) and, because assessment illuminates wider aspects of youth justice systems, to make an intellectual contribution to comparative criminology and social work.

The researcher had always understood that a PhD should make an original contribution to knowledge. No one from researcher's country had studied any aspect of youth justice in Scotland before, and anything I learned about it would be an original contribution to knowledge in Saudi Arabia. The researcher recognized that a small empirical study with a low number of respondents would not in itself be a sufficient contribution to research, so he always planned to set his study of assessment within a criminological framework which showed how changing philosophies of youth justice affect changing practices of assessment, and to address the question of "policy transfer" - how Saudi Arabian youth justice could learn from Scottish youth justice. The combination of theory, policy and practice-focused research is an original contribution to knowledge, particularly in the field of social work. While assessment was the main focus of my dissertation, additional detail on current developments in Scottish juvenile justice, against the background of relevant criminological theory allowed me to draw this theme out and place it in context.

This focus shifted upon gaining permission to study assessment practice in Riyadh. These interviews are a clear original contribution to knowledge, in both social work and criminological terms. No one prior to this researcher has been in a position to empirically study any aspect of the Saudi youth justice system before - judges have simply not consented to it. Although there is a rich literature on youth justice around the world, and a number of important comparative studies (looking at two or more countries) Saudi Arabia has never before been included. This is particularly significant since it is often the target of sharp criticisms in UNCRC reports. This research takes a very small step towards rectifying this omission, presenting judges' views on both the core elements of juvenile justice, and a variety of contemporary issues in juvenile justice. This should be considered primarily "exploratory research", to be built upon by more comprehensive studies and ones in other areas of Saudi Arabian youth and criminal justice. The possibility for future empirical research with judges and social workers in Saudi Arabia underlines the importance of chapter 4, detailing current developments in the Saudi Arabian juvenile justice system (which affect assessment). This, along with the policy chapter on Scotland, provides a backcloth against which my empirical data from Saudi Arabia might be properly understood. In summary, the contributions are twofold:

1. An empirical study of social work assessment practice and judicial decision-making in juvenile justice in Saudi Arabia.
2. An empirical and policy comparison of Scottish and Saudi Arabian juvenile justice, focused on the theory and practice of assessment, informed by criminological reflection on changing philosophies of youth justice (which affect assessment).

There is a third area of knowledge which can also be considered original in Saudi Arabian terms, and that is the lessons which Saudi Arabian youth justice might learn from the practice of assessment (and juvenile justice more generally) in Scotland. It is to this that the researcher will turn in the next section - focussing on *what* might be learned, and *how* it might be learned, drawing on his own observations of the two youth justice systems, and also, in part, on existing literature on such "policy transfers" (Jones & Newburn 2005).

Lessons from Scotland for Saudi Arabia:

Scottish statistics from 2010-2011 show that reoffending rates for young people below the age of 21 have decreased to 34.1 per cent, in comparison to 60 percent in Saudi Arabia in 2003, the latest year available (ArabNews, 2013). This statistic alone indicates that Saudi Arabia may have significant room to learn from the Scottish juvenile justice system. Particularly in the light

of consistent UN criticism of the Saudi juvenile justice system, it is clear that there is room for improvement. Via comparison with Scotland, this research has attempted to draw out the most prominent factors that contribute to this disparity in terms of four key 'reevaluations' that Saudi Arabia should make regarding the key principles of its juvenile justice system.

The comparison of Saudi juvenile justice practices with those of Scotland showed many aspects that can be used to improve the Saudi system. These can be seen both in comparison and in the reflection of judges and social workers within the Saudi system. However, outside of the direct results of this research it is clear that a key weakness in the Saudi juvenile justice system is lack of research on it, of which, as noted above, this thesis is one piece of a great minority. Before meaningful reforms can be undertaken the system needs to adopt a much more reflective approach to determine what aspects need to be replaced and what can be preserved. This can also strengthen the system to face criticisms, which have previously been dismissed by decision-makers as subjective criticisms. This conclusion, although not directly from the interview results, is hinted at by judges in the Saudi system, who gave contradictory explanations for the use of commonly criticized practices such as the use of corporal punishment on juveniles, or the classification of a woman as a juvenile until the age of 30. The paucity of research on the Saudi juvenile justice system also means that international criticisms are not placed in the context of local opinions and practices, something this research has sought to do.

The results of the research presented in chapters 7 and 8 indicate that many of the reforms that Saudi Arabia should consider in its juvenile justice system go right to the heart of its philosophy. By critically evaluating the justice-based approach that their own justice system takes in dealing with juveniles in light of the more welfare based approach taken in Scotland, it may be possible for Saudi judges to adopt new practices. In their testimony about learning from other judicial systems they indicated a willingness to do this, but it is unclear how much they would be willing to shift fundamental assumptions about the role of punishment in juvenile crimes. Specific lessons that can be learned from the Scottish juvenile justice system include a reevaluation of the meaning of 4 key concepts in the Saudi system:

- (1) Punishment- both as deterrence and a means of communication
- (2) The role of the social worker- both in terms of the training they receive and their role in the process
- (3) The role of judges- both in terms of their training and place as social gatekeepers
- (4) The relationship between the Juvenile, the Community, and the Justice System

This section will examine each of these in detail, demonstrating how they proceed from the research findings presented in chapters 7 and 8. Most fundamental in the differences between the Saudi and Scottish systems is that the Scottish system, with a welfare approach to juvenile justice, includes almost no room for punishment of the juvenile, who is themselves seen as the victim. The Saudi judges, by contrast, viewed punishment as an integral part of the process of juvenile justice, which they saw as both key in communicating with the juvenile, and deterring them from future wrongdoing. There was a concern that punishments must be sufficiently harsh, or the juvenile would reoffend. Comparing these practices to the Scottish system, where the emphasis is on increasing the juvenile's understanding of their actions, may present the Saudi judges with alternative pathways to treat juvenile offenders. This would also bring them more into line with the UNCRC, which has criticized Saudi repeatedly for its stringent punishment of juveniles.

The second aspect of the Saudi juvenile justice system that should be reevaluated in light of the Scottish system is the role of the social worker. Currently, the social worker has only a limited role in the Saudi system, primarily of gathering information from the juvenile to inform the sentencing process. The Saudi judges, learning from the success of the Scottish system, where social workers play a much more involved role at all stages of the process, may be convinced to incorporate Social worker involvement at trials and in interventions. This could include allowing social workers to be engaged in the community with families and other aspects of a young person's life, as is the practice in Scotland. In order to do this, and to better do their existing jobs the research is clear about the need for better training of Saudi social workers, who often rely on experience as their main guide. While not a substitute for theory, the use of actuarial tools of assessment (which are used widely in Scotland) may help to standardize the social workers' reports, addressing the existing criticisms from Saudi Judges of irrelevance and poor quality. Finally, the social workers in Saudi Arabia, drawing on the Scottish experience, and particularly that of organizations like Includem, can learn to use their relationship with the juvenile, which can be a positive influence in its own right, and not just for information gathering purposes (their current emphasis).

The third aspect of the Saudi system that deserves reevaluation is that of the role of the judges. The use of one judge who has little or no specific experience with juveniles exacerbates the justice-based approach to juvenile justice already present in the Saudi system. In light of the Scottish experience the Saudis may want to consider a separate category of judges specifically for juvenile cases, so that practices developed for adult offenders are not applied to juveniles. In addition, they may consider expanding the panel of judges, both in number and background so that one person's opinion alone does not hold sway. The incorporation of community

members may allow the Saudi system to fulfill its perceived role as a safeguard for the community, while also helping the juvenile.

The final aspect of the Saudi justice system that can be informed through comparison with the Scottish system is the role of the juvenile, the community, and the justice system. The Saudi system implicitly takes each of these as opposed, and necessarily pits the interests of society against the interest of the juvenile (with statements by judges and social workers emphasizing the need to remove the juvenile from society into houses of correction in many cases). The comparative solution in Scotland- to engage the community in a process of social healing with the juvenile could present an alternative path for Saudi Arabia. A change in this fundamental perception is necessary if many of the above listed reforms are to take place.

The problem with reforming the Saudi system is that many of the areas in which it could learn from the Scottish system are ones of core principle. It is unlikely that the Saudi juvenile justice system will undergo such fundamental reforms, particularly given the current absence of introspection or critical scholarship on justice or juvenile justice in the Kingdom. Therefore, while all of these reforms are potential lessons drawn from the research, perhaps the most important conclusion is the most basic: there is a need for more critical analysis of the Saudi system by the Saudis themselves, in order to determine how western philosophies can be incorporated into Saudi cultural and legal frameworks. This research has attempted to start this process by creating a picture of the juvenile justice system in Saudi Arabia as it stands today, using the Scottish system as a reference. What is more clear than anything else is the gulf between these two countries at the most fundamental level of the purpose of youth justice. External critiques of Saudi practices, such as those generated by the UNCRC are useful as external benchmarks, but do not hold internal validity within Saudi Arabia.

9.4 Research Limitations

No dissertation is perfect, and this is no exception. The two main limitations of my dissertation are: a. the small sample size of respondents in both countries and b. the limited literature (compared to Scotland and the UK more generally) on criminal justice and youth justice in Saudi Arabia, which makes point-for-point comparisons difficult. I will deal with each in turn:

As was mentioned in chapter 6, the small size of the sample was determined largely by the numbers of people available for interview in Saudi Arabia. The researcher was fortunate to get even this sample size, since Saudi judges rarely grant interviews. The comparison with Scotland would have been unbalanced if the researcher had used a significantly larger sample size in

Scotland, where interviews were more available. However, even in Scotland it proved difficult to generate a large sample of panel members and social workers willing to be interviewed (for reasons explained in the methodology chapter, primarily of the limited time of panel members).

The samples in the two countries (with a small exception in Scotland, in order to increase social work respondents) were drawn from two specific cities, Glasgow\ North Ayrshire and Riyadh. The researcher has purposefully made no attempt to portray them as “comparable” cities in any dimension, since they differ in many important ways. However, they are both urban centres, and key judicial seats, making them relevant for comparison. The differences that divide these two cities necessarily influence their juvenile justice systems through culture and income. The qualitative methods pursued here capture some of this variation, but a larger sample from different areas within each country is necessary to determine how these factors influence results. It is important for this thesis that each country’s sample was clustered in one place, rather than scattered across the whole nation (which might have increased the diversity of the views they expressed).

Regarding the literature, the researcher has tried to offset the relative absence of academic, policy and legal literature on Saudi Arabian youth justice by making maximum use of what is available in the English language (eg Wardak 2005). This has been supplemented by using (and translating) literature which is only available in Arabic, some of which was given to researcher by his Saudi respondents - and is now being used in a ‘western’ PhD for the first time. It is in the very nature of the research that this literature is incomplete, because there is no tradition of criminological research or open public debate among scholars and practitioners in Saudi Arabia. Nevertheless this thesis, for all its incompleteness provides a base to build upon.

A further limitation of research relates to core limitation of interview based findings. The researcher has studied the practice of assessment in terms of what decision-makers and social workers *said* they understood and did, not what they may have actually done in reality. There is always a potential for discrepancy between what respondents say they do (their own self-understanding and presentation of self to the interviewer), and what they actually do in real situations. Although the researcher did visit and sit in on some children’s hearings, his study was not primarily observational or ethnographic. Nor did he study actual cases and actual reports, and ask decision-makers retrospectively why they made particular decisions about particular young offenders, as Parker, Sumner and Jarvis (1988) did in their well-known study of sentencers’ decision-making. However, this interview-based study best enabled the researcher to identify the themes, issues and values that informed his respondents’ understanding of what assessment entailed, which was his primary object of enquiry. While it

may be impossible from this to say with certainty the depth to which each respondent believed what he or she said, it was still possible to draw out common values and themes in responses.

Fortunately, there were a number of factors that assisted the researcher in overcoming the difficulties involved in this research. Primary among these, the researcher is a qualified Saudi social worker equipped with the ability and experience to convince social workers and judges in high positions in the Justice Ministry, who have considerable experience in the juvenile field, to take part in this research as participants. Moreover, as a member of this culture and environment, the researcher was provided with essential insights, which enabled him to formulate questions that led to greater efficiency in the interviews. In terms of Scotland, the researcher attended children's hearings in Edinburgh and Glasgow and visited 'Includem' a number of times from the first year of his research, and before collecting data in order to better understand their institutional culture. This assisted the researcher in being able to encourage respondents in Scotland to discuss aspects of the juvenile justice process that can be seen through an outsider's eye, in a way that created a conversational atmosphere that helped to establish trust.

9.5 Questions for Further Research

The current study is a small-n attempt to outline key principles of the Saudi Arabian juvenile justice system in comparison to that of Scotland. It can be best thought of as 'exploratory research', opening up new avenues for investigation. As has been noted above, new investigation into the Saudi system, particularly that by Saudis themselves is key to making any reform. One possible avenue for further research would be an empirical investigation of the factors influencing decisions of Saudi judges during sentencing (potentially based on the qualitative work outlined in this thesis). The current research raises questions about the limitations and difficulties of creating a relationship in the short periods of time required to produce a report, and more could be done on how shrinking budgets and increasing demand has led to the shift towards actuarial methods of justice, and the effect this has on juveniles.. The same point could be made in relation to the CHS in Scotland, but relative to Saudi Arabia there is an abundance of research in this area.

Qualitative data presented in this thesis on Saudi Arabia indicates the existence of deficiencies in the use of assessment tools and a lack of alternative sanctions to corporal punishment and detention in an institution. The current research raises the question of what alternative community-based sanctions can be used with juveniles, which, in current Saudi culture, would need to incorporate aspects of both treatment and deterrence. This research also raises the

question of whether risk-assessment tools will work in the culture of the Saudi Arabian juvenile justice system.

Finally, more could be done on the underlying philosophy of Saudi Arabia relative to the Riyadh guidelines. These guidelines (outlined in Chapter 7) emphasize the presence of formal structures for the prevention of juvenile delinquency and the role of the community in the justice process. In Saudi Arabia, the community may still play a role in the justice system, but it is primarily an informal role as an external social pressure and the importance of 'honour'. The sole formal institution in this context in Saudi Arabia is the school. However, just because the majority of these efforts are informal, there is a distinct possibility that semi-formal social institutions such as mosques and relatives (or the tribe) can be strongly influential in preventing juvenile delinquency in Saudi Arabia. However, this is beyond the scope of this research, and should be considered an avenue for future investigation.

BIBLIOGRAPHY

- Abed Al-Jabri, M., 2009. *Democracy, human rights and law in Islamic thought*, London : I. B. Tauris in association with the Centre for Arab Unity Studies.
- Aldiabat, K. & Navenec, C., 2011. Clarification of the Blurred Boundaries between Grounded Theory and Ethnography: Differences and Similarities. *Turkish Online Journal of ...*, 2(July), pp.1–13.
- Alhnaki, A.S., 2006. *The social status of juvenile reoffending's family 1st ed.*, Riyadh: - Naif Arab University for Security Sciences Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled: الواقع الاجتماعي لأسر الأحداث العائدين إلى الانحراف. علي الحناكي.
- Ali, S.S., 2007. *A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law: Law Reform and Children's Rights in Muslim Jurisdictions*. In UNICEF, ed. *Protecting the world's children : impact of the Convention on the Rights of the Child in diverse legal systems*. Cambridge ; New York : Cambridge University Press : UNICEF, pp. 142–208.
- Al-Omari, S.M., 2002. *Recidivism in the light of social factors 1st ed.*, Riyadh: Naif Arab University for Security Sciences Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled: العود للانحراف في ضوء العوامل الاجتماعية. صالح العمري.
- Alseif, M. 2010. *A preface to a study of the Saudi Society 3ed ed.*, Riyadh: - Dar Al-Khareji Press, Kingdom of Saudi Arabia. Arabic Reference Titled: المدخل لدراسة المجتمع السعودي
- Alsalfaih, H., 1986. *Human Rights in Islam and delinquency prevention*. In 1, ed. *Addressing juvenile delinquency in Islamic sharia*. Riyadh: دار النشر بالمركز العربي للدراسات الأمنية والتدريب Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled: حقوق الإنسان في الإسلام والوقاية من الانحراف، حمد الصليفيج
- Arthur, R., 2010. *Young offenders and the law : how the law responds to youth offending 1st ed.*, Milton Park, Abingdon, Oxon ; New York, N.Y.
- Aspers, P., 2009. *Empirical Phenomenology : A Qualitative Research Approach*. *Indo-Pacific Journal of Phenomenology*, 9(October), pp.1–12.
- Audit Scotland (2002) *Dealing with Offending by Young People*. Edinburgh: Audit Scotland, at www.audit-scotland.gov.uk.
- Awabdeh, M. Al, 2005. *History and prospect of Islamic Criminal Law with respect to the Human Rights*. Humboldt-Univ., Diss--Berlin. Available at: <http://edoc.hu-berlin.de/dissertationen/al-awabdeh-mohamed-2005-07-07/PDF/Al-Awabdeh.pdf>.
- Axford, N., 2008. *Conducting Needs Assessments in Children's Services*. *British Journal of Social Work*, 40(1), pp.4–25. Available at: <http://bjsw.oxfordjournals.org/cgi/doi/10.1093/bjsw/bcn103> [Accessed July 2, 2011].
- Baker, K., 2004. *Is Asset really an asset? Assessment of young offenders in practice*. In R. Burnett & C. Roberts, eds. *What Works in Probation and Youth Justice : Developing Evidence Based Practice*. Cullompton, Devon: Willan, pp. 70–87.

- Baker, K., 2008. Risk, Uncertainty and Public Protection: Assessment of Young People Who Offend. *British Journal of Social Work*, pp.1463–1480.
- Baker, K., 2009. Sentencing young people. In M. Blyth et al., eds. *Children and young people in custody : managing the risk*. Bristol, UK ; Portland OR : Policy Pr, pp. 45–54.
- Baldwin, N. & Walker, L., 2009. Assessment. In R. Adams, L. Dominelli, & M. Payne, eds. *Social work : themes, issues and critical debates*. Basingstoke [England] ; New York : Palgrave Macmillan, pp. 209–228.
- Ballucci, D., 2008. Risk in Action: the Practical Effects of the Youth Management Assessment. *Social & Legal Studies*, 17(2), pp.175–197. Available at: <http://sls.sagepub.com/cgi/doi/10.1177/0964663908089610>.
- Barry, M., 2007. *Effective Approaches to Risk Assessment in Social Work: An International Literature Review*. Scottish Executive.
- Batchelor, S and Burman, M.. (, 2010. The Children’s Hearing System. In J. Burman & J. Michèle, eds. *Youth Justice*. Edinburgh: Dunedin Academic, pp. 14–26.
- Bazeley, P., 2007. *Qualitative data analysis with NVivo 2nd ed.*, Los Angeles ;;London: SAGE. Available at: http://www.worldcat.org/title/qualitative-data-analysis-with-nvivo/oclc/72150444&referer=brief_results [Accessed September 15, 2012].
- Bazemore, G., 1992. On Mission Statements and Reform in Juvenile Justice: The Case of the Balances Approach. *FEDERAL PROBATION*, 56(3), pp.64–70.
- Bazemore, G. & Umbreit, M., 2004. Balanced and Restorative Justice Prospects for Juvenile Justice in the 21st Century. In A. R. Roberts, ed. *Juvenile justice sourcebook : past, present, and future*. Oxford ; New York : Oxford University Press, pp. 467–509.
- Berg, B.L., 2001. *Qualitative research methods for the social sciences 4th ed.*, Boston, Ma : Allyn and Bacon.
- Beyens, K. & Scheirs, V., 2010. Encounters of a different kind: Social enquiry and sentencing in Belgium. *Punishment & Society*, 12(3), pp.309–328. Available at: <http://pun.sagepub.com/cgi/doi/10.1177/1462474510369445> [Accessed July 2, 2011].
- Bilchik, S., 1998. A juvenile justice system for the 21st century. *Crime & Delinquency*, 44, no. 1, pp.89–101. Available at: <http://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=169276> [Accessed December 8, 2010].
- Bilchik, S., 1999. *Detention Diversion Advocacy: An Evaluation*, US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Birbili, M. (2000). *Translating from one language to another*. Social Research Update, Available at <http://sru.soc.surrey.ac.uk/SRU31.html> [Accessed April 24, 2014]
- Borum, R., 2003. Managing At-Risk Juvenile Offenders in the Community: Putting Evidence-Based Principles Into Practice. *Journal of Contemporary Criminal Justice*, 19(1), pp.114–137. Available at: <http://ccj.sagepub.com/cgi/doi/10.1177/1043986202239745>.

- Brandon, M., Sidebotham, P. & Ellis, C., 2011. Child and family practitioners' understanding of child development: lessons learnt from a small sample of serious case reviews (Research Report DFE-RR110), Available at: http://dera.ioe.ac.uk/3598/1/3598_DFE-RR110.pdf [Accessed November 28, 2014].
- Bukatko, D. & Daehler, M.W., 2004. Child Development: A Thematic Approach Fifth Edit., Houghton Mifflin Company Boston New York.
- Bureau Of Experts at Council of Ministers, 2010. Basic Laws. Available at: <http://www.boe.gov.sa/boe/index.html>.
- Burman, M. et al., 2006. The End of an Era? – Youth Justice in Scotland. In J. JUNGER-TAS & S. H. DECKER, eds. International handbook of juvenile justice. Dordrecht : Springer, pp. 439–471.
- Cambridge University, 2008. Cambridge advanced learner's dictionary, Cambridge, UK ; New York : Cambridge University Press.
- Case, S., 2007a. Questioning the 'Evidence' of Risk that Underpins Evidence-led Youth Justice Interventions. *Youth Justice*, 7(2), pp.91–105. Available at: <http://yjj.sagepub.com/cgi/doi/10.1177/1473225407078771> [Accessed July 2, 2011].
- Case, S., 2007b. Questioning the 'Evidence' of Risk that Underpins Evidence-led Youth Justice Interventions. *Youth Justice*, 7(2), pp.91–105. Available at: <http://yjj.sagepub.com/cgi/doi/10.1177/1473225407078771> [Accessed November 27, 2014].
- Clark, D.A., Fisher, M.J. & Mcdougallj, C., 1993. A NEW METHODOLOGY FOR ASSESSING THE LEVEL OF RISK IN INCARCERATED OFFENDERS. , 33(3), pp.436–448.
- Cohen, S., 1985. Visions of social control: Crime, punishment and classification, Cambridge: Polity Press.
- Cohen, L., Manion, L. and Morrison, K. (2000) Research methods in education (5th Eds.). RoutledgeFalmer: London, UK.
- Colombo, a. & Neary, M., 1998. "Square Roots and Algebra": Understanding Perceptions of Combined Risk/Needs Assessment Measures. *Probation Journal*, 45(4), pp.213–219. Available at: <http://prb.sagepub.com/cgi/doi/10.1177/026455059804500404> [Accessed July 2, 2011].
- Connor, I.O., 1997. Models of juvenile justice. In Australian Institute of Criminology, ed. Juvenile crime and juvenile justice : towards 2000 and beyond conference. Australian Mineral Foundation, Adelaide, p. 11. Available at: http://www.aic.gov.au/events/aic_upcoming_events/1997/juvenile.aspx [Accessed December 8, 2010].
- Corrado, R.R. et al., 2003. Serious and Violent Young Offenders' Decisions to Recidivate: An Assessment of Five Sentencing Models. *Crime & Delinquency*, 49(2), pp.179–200. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128702251043> [Accessed July 2, 2011].

- Cournoyer, B., 1996. *The social work skills workbook 2nd ed.*, Belmont: Wadsworth Publishing Company.
- Creswell, J., 1994. *Research design : qualitative & quantitative approaches*, Thousand Oaks Calif.: Sage Publications. Available at: http://www.worldcat.org/title/research-design-qualitative-quantitative-approaches/oclc/29956192&referer=brief_results [Accessed September 18, 2012].
- Creswell, J.W. 2007, *Qualitative Inquiry and Research Design: Choosing among Five Approaches*, Sage, Thousand Oaks, CA.
- Creswell, J. W. & Miller, D. L. (2000). Determining validity in qualitative inquiry. *Theory into Practice*, 39(3), 124-131
- Crisp, B.R. et al., 2006. Assessment Frameworks: A Critical Reflection. *British Journal of Social Work*, 37(6), pp.1059–1077. Available at: <http://bjsw.oxfordjournals.org/cgi/doi/10.1093/bjsw/bcl053> [Accessed June 8, 2011].
- Croall, H., 2006. Criminal justice in post-devolutionary Scotland. *Critical Social Policy*, 26(3), pp.587–607. Available at: <http://csp.sagepub.com/cgi/doi/10.1177/0261018306065610> [Accessed May 4, 2011].
- Crotty, M. 1998, *The Foundations of Social Research: Meaning and Perspective in the Research Process*, Allen & Unwin, Sydney, NSW, Australia.
- Cruz, P. De, 1999. *Comparative law in a changing world 2nd ed.*, London : Cavendish Pub.
- Curry, T.R., Lee, G. & Rodriguez, S.F., 2004. Does Victim Gender Increase Sentence Severity? Further Explorations of Gender Dynamics and Sentencing Outcomes. *Crime & Delinquency*, 50(3), pp.319–343. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128703256265> [Accessed September 1, 2013].
- Davis, G., Boucherat, J. & Watson, D., 1989. Pre-court decision-making in juvenile justice. *British Journal of Criminology*, 29, pp.219–235. Available at: <http://bjc.oxfordjournals.org/content/29/3/219.short> [Accessed November 27, 2014].
- DEVERS, K.J. & Frankel, R., 2000. Qualitative Research: A Consumer's Guide. *Education for Health*, 13(1), pp.113–123. Available at: <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:Qualitative+Research:+A+Consumer'+s+Guide#4> [Accessed December 11, 2010].
- Devers, K.J. & Frankel, R.M., 2000. Study design in qualitative research--2: Sampling and data collection strategies. *Education for health (Abingdon, England)*, 13(2), pp.263–71. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/14742088>.
- Duff, A., 2002. Punishing the Young. In I. Weijers & A. Duff, eds. *Punishing Juveniles: Principle and critique*. Hart Publishing Oxford, pp. 115–134.
- Duff, A., 2001. *Punishment, communication, and community*, Oxford University Press.

- Edward et al., 2008. Improving Professional Judgments of Risk and Amenability in Juvenile Justice. *The Future of Children*, 18, pp.35–57.
- Ennis, J., 2007. Developments in Child Protection. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 123–138.
- Farrow, K., Kelly, G. & Wilkinson, B., 2007. *Offenders in focus : risk, responsivity and diversity*, Bristol, UK : Policy,.
- Ferrara, P., 1982. Retribution and Restitution| A Synthesis. *Journal of Libertarian Studies*. An Interdisciplinary Review New York, NY 6, no., pp.105–136. Available at: <http://cat.inist.fr/?aModele=afficheN&cpsid=12290288> [Accessed November 13, 2014].
- Field, S. & Nelken, D., 2010. Reading and writing youth justice in Italy and (England and) Wales. *Punishment & Society*, 12(3), pp.287–308. Available at: <http://pun.sagepub.com/cgi/doi/10.1177/1462474510369444> [Accessed August 21, 2012].
- Finley, L.L., 2007. *Encyclopedia of juvenile violence 1st ed.*, Westport, Conn. : Greenwood Press.
- Fitzgibbon, D.W.M., 2007. Risk analysis and the new practitioner: Myth or reality? *Punishment & Society*, 9(1), pp.87–97. Available at: <http://pun.sagepub.com/cgi/doi/10.1177/1462474507070554> [Accessed July 2, 2011].
- Flick, U. 2005, *An Introduction to Qualitative Research*, 2nd edn, Sage, London.
- Funk, F., McGeer, V. & Gollwitzer, M., 2014. Get the Message: Punishment Is Satisfying If the Transgressor Responds to Its Communicative Intent. *Personality & social psychology bulletin*, 40(8), pp.986–997. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/24789809> [Accessed October 28, 2014].
- Gelsthorpe, L. & Padfield, N., 2003. Introduction. In L. Gelsthorpe & N. Padfield, eds. *Exercising Discretion: Decisionmaking in the Criminal Justice System and Beyond*. Willan Publishing, Culmcott House, pp. 1–28.
- Gilani, S.N., 2006. Juvenile justice in Saudi Arabia. In P. C. Friday & X. Ren, eds. *Delinquency and juvenile justice systems in the non-Western world*. Monsey, N.Y. : Criminal Justice Press, pp. 145–162.
- Glesne, C. & Peshkin, A., 1992. *Becoming qualitative researchers: An introduction*, White Plains, N.Y. : Longman. Available at: <http://www.lavoisier.fr/notice/frJWOS2SAAKAWO3O.html>.
- Golafshani, N., 2003. Understanding Reliability and Validity in Qualitative Research. , 8(4), pp.597–606.
- Goldson, B., 2008. *Dictionary of youth justice 1st ed.*, Cullompton: Portland, Or. : Willan.

- Hallaq, W.B., 2005. *The origins and evolution of Islamic law* 1st ed., Cambridge, UK ; New York : Cambridge University Press.
- Hallevey, G. (2012). *The right to be punished: modern doctrinal sentencing*. Springer.
- Hallett, C., Murray, C., Jamieson, J., & Veitch, W. (1998). *The evaluation of children's hearings in Scotland: volume 1; deciding in children's interests*. Edinburgh: Scottish Office.
- Hamilton, C., 2011. *Guidance for legislative reform on juvenile justice*, Child Protection Section UNICEF. Available at: <http://www.unrol.org/doc.aspx?d=3104>.
- Hannah-Moffat, K., 2010. Actuarial sentencing: An “unsettled” proposition. In *Symposium on Crime and Justice: The Past and Future of Empirical Sentencing Research*, Albany, New York. pp. 1–48. Available at: http://www.albany.edu/scj/documents/Hannah-Moffat_RiskAssessment.pdf [Accessed July 3, 2011].
- Hannah-Moffat, K. & Maurutto, P., 2010. Re-contextualizing pre-sentence reports: Risk and race. *Punishment & Society*, 12(3), pp.262–286. Available at: <http://pun.sagepub.com/cgi/doi/10.1177/1462474510369442> [Accessed June 8, 2011].
- Hanson, G. et al., 2001. CASII Child and Adolescent Service Intensity Instrument. *Adolescent Psychiatry*, (June), pp.1–11. Available at: http://www.aacap.org/cs/root/member_information/practice_information/casii.
- Hartjen, C.A., 2008. *Youth, crime, and justice : a global inquiry*, New Brunswick, N.J. : Rutgers University Press.
- Hemmens, C., Fritsch, E. & Caeti, T.J., 1997. Juvenile justice code purpose clauses: The power of words. *Criminal Justice Policy Review*, 8(2-3), pp.221–246. Available at: <http://cjp.sagepub.com/content/8/2-3/221.abstract> [Accessed December 8, 2010].
- Hill, M. et al., 2007. More Haste, Less Speed? An Evaluation of Fast Track Policies to Tackle Persistent Youth Offending in Scotland. *Youth Justice*, 7(2), pp.121–137. Available at: <http://yjj.sagepub.com/cgi/doi/10.1177/1473225407078775> [Accessed May 12, 2011].
- Hill, M., Welch, V., & Gadda, A. (2017). Contested views of expertise in children’s care and permanence proceedings. *Journal of Social Welfare and Family Law*, 39(1), 42-66.
- Hirschi, T. & Gottfredson, M., 1993. Rethinking the Juvenile Justice System. *Crime & Delinquency*, 39, no. 2, pp.262–271.
- Hoge, R.D., 1992. ADVANCES IN THE ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS. *Child Welfare*, pp.81–96. Available at: www.unafei.or.jp/english/pdf/PDF_rms/no75/no.75-2.pdf.
- Holmgren, M. R. (2012). *Forgiveness and Retribution: Responding to Wrongdoing*. Cambridge University Press
- Hothersall, S., 2008. *Social work with children, young people, and their families in Scotland* Second., Exeter: Learning Matters.

- Hough, M., Jacobson, J. & Millie, A., 2003. The decision to imprison: Sentencing and the prison population, London: Prison Reform Trust. Available at: <http://repository.edgehill.ac.uk/4340/> [Accessed September 19, 2013].
- Hudson, B. 1996. *Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory*. Buckingham, England: Open University Press.
- Human Rights Watch March. (2008). *Adults Before Their Time Children in Saudi Arabia's Criminal Justice System* (p. Volume 20, No. 4(E)).
- Jacobson, J. & Hough, M., 2007. Mitigation: the role of personal factors in sentencing. Available at: <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:MITIGATION+:+the+role+of+personal+factors+in+sentencing#0> [Accessed November 29, 2014].
- James, G., 2013. Assessment of the Administration and Practice of Juvenile Justice System in Abuja, Nigeria. *Mediterranean Journal of Social Sciences*, 4(January), pp.331–338. Available at: http://www.mcser.org/images/stories/mjss.january.2013/godswill_james-assessment.pdf [Accessed October 24, 2013].
- Jehle, J.M., Lewis, C. & Sobota, P., 2008. Dealing with juvenile offenders in the criminal justice system. *European Journal on Criminal Policy and Research*, 14(2), pp.237–247. Available at: <http://www.springerlink.com/index/4H71J012H584555W.pdf> [Accessed December 8, 2010].
- Johnstone, J., 2010. Youth crime and justice: Law and Pocess. In J. Johnstone & M. Burman, eds. *Youth justice*. Edinburgh, Scotland : Dunedin Academic, pp. 1–13.
- Jones, T. & Newburn, T., 2005. *Policy transfer and criminal justice*, Maidenhead : Open University Press.
- Juetten, N., 2009. Enough of “tough”: Youth Justice in Scotland. *Public Policy Research*, 16(3), pp.180–185. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1744-540X.2009.00578.x/abstract> [Accessed May 4, 2011].
- Junger-Tas, J., 2002. *The Juvenile Justice System: Past and Present Trends in Western Society*. In I. Weijers & A. DUFF, eds. *Punishing juveniles : principle and critique*. Oxford ; Portland, Oregon : Hart.
- Jupp, V. ed., 2006. *The Sage Dictionary of Social Research Methods 1st ed.*, London ; Thousand Oaks, Calif. : SAGE Publications.
- Kelly, W.R., 2005. Juvenile Referrals in Texas: An Assessment of Criminogenic Needs and the Gap Between Needs and Services. *The Prison Journal*, 85(4), pp.467–489. Available at: <http://tpj.sagepub.com/cgi/doi/10.1177/0032885505281530>.
- Kelly, W.R., Macy, T.S. & Mears, D.P., 2005. Juvenile Referrals in Texas: An Assessment of Criminogenic Needs and the Gap Between Needs and Services. *The Prison Journal*, 85(4), pp.467–489. Available at: <http://tpj.sagepub.com/cgi/doi/10.1177/0032885505281530> [Accessed July 2, 2011].

- Kemp, V. & Gelsthorpe, L., 2003. Youth justice: discretion in pre-court decision-making. In L. Gelsthorpe & N. Padfield, eds. *Exercising Discretion: Decisionmaking in the Criminal Justice System and Beyond*. Willan Publishing, Culmcott House, pp. 29–49.
- Kempf-Leonard, K. & Peterson, E.S.L., 2000. Expanding Realms of the New Penology: The Advent of Actuarial Justice for Juveniles. *Punishment & Society*, 2(1), pp.66–97. Available at: <http://pun.sagepub.com/cgi/doi/10.1177/14624740022227863> [Accessed July 2, 2011].
- Kethineni, S., 2005. Juvenile Justice and Due Process Rights of Children in India and the United States. *International Criminal Justice Review*, 15(2), pp.131–146. Available at: <http://icj.sagepub.com/cgi/doi/10.1177/1057567705283955> [Accessed September 15, 2012].
- Kilbrandon, Charles James Dalrymple Shaw, Baron, 1906, Great Britain. Scottish Education Department, G.B.S.O.H. and H.D.& G.B., 1995. *The Kilbrandon report: children and young persons Scotland*, Edinburgh : HMSO.
- Kim, D.-Y., Joo, H.-J. & McCarty, W.P., 2008. Risk Assessment and Classification of Day Reporting Center Clients: An Actuarial Approach. *Criminal Justice and Behavior*, 35(6), pp.792–812. Available at: <http://cjb.sagepub.com/cgi/doi/10.1177/0093854808315067> [Accessed July 2, 2011].
- Klein, M.W. & White, M.F., 1976. Delinquency Prevention: The State of the Art. In M. W. Klein, ed. *The Juvenile justice system*. Beverly Hills, Calif. : Sage Publications, pp. 5–26.
- Kovarsky, D., 1994. Distinguishing Quantitative and Qualitative Research Methods in Communication Sciences and Disorders. *National Student Speech Language Hearing Association*, 21, pp.59–64. Available at: <http://www.nsslha.org/uploadedfiles/nsslha/publications/cicsd/1994distinguishingquana ndqualresearch.pdf> [Accessed September 18, 2012].
- Kuenssberg, S., 2007. Assessing How Well Systems Work: The Example of Scottish Children’s Hearings. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 177–192.
- Kvale, S., 1996. *Interviews : an introduction to qualitative research interviewing*, Thousand Oaks Calif.: Sage Publications. Available at: http://www.worldcat.org/title/interviews-an-introduction-to-qualitative-research-interviewing/oclc/34152552&referer=brief_results [Accessed September 15, 2012].
- Landman, T., 2008. *Issues and methods in comparative politics : an introduction 3rd ed.*, Milton Park, Abingdon, Oxon ; New York : Routledge.
- Laura, P., 2004. Children’s hearings in Scotland: 40 years after Kilbrandon. *social care online*, 27(4), pp.7–9. Available at: www.scie-socialcareonline.org.uk/profile.asp?guid=b6bd31da-c92f-4726-a8b6-e88f0f5fb824.
- Leiber, M.J., 2006. *An Examination of the Factors that Influence Juvenile Justice Decision Making in The Jurisdictions*.

- Leiber, M.J. & Mack, K.Y., 2003. The Individual And Joint Effects Of Race, Gender, And Family Status On Juvenile Justice Decision-Making. *Journal of Research in Crime and Delinquency*, 40(1), pp.34–70. Available at: <http://jrc.sagepub.com/cgi/doi/10.1177/0022427802239253> [Accessed August 22, 2013].
- Lester, S. (1999). *An introduction to phenomenological research*. Stan Lester Developments, 1-4.
- Lincoln, Y.S., & Guba, E. G. (1985). *Naturalistic inquiry*. Beverly Hills, CA: Sage
- Lim, L., and Firkola, P. (2000). Methodological issues in cross-cultural management research: Problems, solutions, and proposals. *Asia Pacific Journal of Management*, 17, 133-154.
- Liu, S., Menzies, K. & Hinch, R., 1998. Juvenile Justice Legislation in Canada and Taiwan. *International Criminal Justice Review*, 8(1), pp.61–73.
- Lockyer, A. and Stone, F. (eds) (1998) *Juvenile Justice in Scotland*, Edinburgh: T & T Clark
- Lowe, L. a., 1998. Using the Child Behavior Checklist in Assessing Conduct Disorder: Issues of Reliability and Validity. *Research on Social Work Practice*, 8(3), pp.286–301. Available at: <http://rsw.sagepub.com/cgi/doi/10.1177/104973159800800303> [Accessed June 19, 2011].
- Marshall, C. & Rossman, G.B., 1998. *Designing Qualitative Research 3rd ed.*, Thousand Oaks, CA: Sage.
- Marshall, K., 2007. Human Rights and Children’s Rights in the Scottish Children’s Hearing System. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 266– 283.
- Martin, F., Fox, S. and Murray, K. (1981) *Children Out of Court*, Edinburgh: Scottish Academic press
- McAra, L., 2006. Welfare in crisis - Key Developments in Scottish Youth Justice. In J. Muncie & B. Goldson, eds. *Comparative Youth Justice*. London: Thousand Oaks, Calif, pp. 127–145.
- McDiarmid, C., 2005. Welfare, Offending and the Scottish Children’s Hearings System. *Journal of Social Welfare and Family Law*, 27(1), pp.31–42. Available at: <http://www.informaworld.com/openurl?genre=article&doi=10.1080/09649060500085867&magic=crossref||D404A21C5BB053405B1A640AFFD44AE3> [Accessed May 4, 2011].
- McGhee, J. & Waterhouse, L., 2002. Family support and the Scottish children ’ s hearings system. *Child & Family Social Work*, 7(4), pp.273–283.
- McGhee, J. & Waterhouse, L., 1998. Justice and welfare: Has the Children (Scotland) Act 1995 shifted the balance? *Journal of Social Welfare and Family Law*, 20(1), pp.49–63. Available at: <http://www.informaworld.com/openurl?genre=article&doi=10.1080/096490698084102>

30&magic=crossref||D404A21C5BB053405B1A640AFFD44AE3 [Accessed May 4, 2011].

- McIntosh, K. et al., 2008. Technical Adequacy of the Functional Assessment Checklist: Teachers and Staff (FACTS) FBA Interview Measure. *Journal of Positive Behavior Interventions*, 10(1), pp.33–45. Available at: <http://pbi.sagepub.com/cgi/doi/10.1177/1098300707311619> [Accessed July 2, 2011].
- McVie, S. (2005). Patterns of deviance underlying the age-crime curve: The long term evidence. *British Society of Criminology e-journal*, 7, 1-15.
- Merrington, S., 2004. Assessment tools in probation: their development and potential. In R. Burnett & C. Roberts, eds. *What works in probation and youth justice : developing evidence-based practice*. Cullompton: Willan, pp. 46–69.
- Merrington, S., 2004. Assessment tools in probation: their development and potential'. In R. Burnett & C. Roberts, eds. *What works in probation and youth justice : developing evidence-based practice*. Cullompton, Devon, UK ; Portland, Or. : Willan Pub, pp. 46–69.
- Merriam, S. (1998) *Qualitative research and case study application in education*. Jossey-Bass: San Francisco, CA, USA:.
- Miller, J. & Lin, J., 2007a. Applying a Generic Juvenile Risk Assessment Instrument to a Local Context: Some Practical and Theoretical Lessons. *Crime & Delinquency*, 53(4), pp.552–580. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128706293689>.
- Miller, J. & Lin, J., 2007b. Applying a Generic Juvenile Risk Assessment Instrument to a Local Context: Some Practical and Theoretical Lessons. *Crime & Delinquency*, 53(4), pp.552–580. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128706293689> [Accessed July 2, 2011].
- Milner, J. & O'Byrne, P., 2009. *Assessment in social work Third., Basingstoke [England]: : Palgrave Macmillan, ©2009.*
- Ministry of Social Affairs, 2010. juvenile care. Available at: <http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=12>.
- Moore, M., 1995. Public health and criminal justice approaches to prevention. In M. Tonry & D. P. Farrington, eds. *Building a Safer Society: Strategic Approaches to Crime Prevention*. Chicago: University of Chicago Press, pp. 237–262.
- Morse, J.M., 2000. Determining Sample Size. *Qualitative Health Research*, 10(1), pp.3–5.
- MOTT, J., 1977. Decision making and social inquiry reports in one juvenile court. *British Journal of Social Work*, 7(4), pp.421–432. Available at: <http://bjsw.oxfordjournals.org/content/7/4/421.short> [Accessed July 2, 2011].
- Muncie, J. & Goldson, B., 2006. States of Transition: Convergence and Diversity in International Youth Justice. In J. Muncie & B. Goldson, eds. *Comparative youth justice : critical issues*. London ; Thousand Oaks (Calif.) : Sage Publications, pp. 196–218.

- Nelken, D., 2010. *Comparative criminal justice : making sense of difference*, London ; Thousand Oaks, Calif. : SAGE.
- Nelken, D., 2002. Comparing criminal justice. In M. Maguire, R. Morgan, & R. Reiner, eds. *The Oxford handbook of criminology*. Oxford, UK: Oxford University Press, pp. 175–202.
- Newburn, T., 2008. Introduction: understanding policing. In T. Newburn, ed. *Handbook of policing*. Cullompton, Devon, UK ; Portland, Or. : Willan Pub, pp. 1–12.
- Newburn and Jones T (2009) *Policy Transfer and Criminal Justice*. London; Palgrave.
- Nikhil, R. & Wong, M., 2006. *Juvenile Justice: Modern concepts of Working with Children in Conflict with the Law*, Save the Children UK, London. Available at: <http://resourcecentre.savethechildren.se/library/juvenile-justice-modern-concepts-working-children-conflict-law>.
- Norrie, K.M., 2005. *Children’s hearings in Scotland*, Edinburgh : Thomson/W. Green.
- O’Connor, I. et al., 2006. *Social Work and Social Care Practice*, London: SAGE.
- Okaz newspaper, March 2015
<<http://www.okaz.com.sa/new/Issues/20150302/Con20150302756241.htm> >.
- O’Malley, P., 2002. Globalizing risk?: Distinguishing styles of ‘neo-liberal’ criminal justice in Australia and the USA. *Criminology and Criminal Justice*, 2(2), pp.205–222. Available at: <http://crj.sagepub.com/cgi/doi/10.1177/17488958020020020501> [Accessed July 2, 2011].
- Olver, M.E., Stockdale, K.C. & Wormith, J.S., 2009. Risk Assessment With Young Offenders: A Meta-Analysis of Three Assessment Measures. *Criminal Justice and Behavior*, 36(4), pp.329–353. Available at: <http://cjb.sagepub.com/cgi/doi/10.1177/0093854809331457>.
- Onifade, E. et al., 2008. Risk assessment: Identifying patterns of risk in young offenders with the Youth Level of Service/Case Management Inventory. *Journal of Criminal Justice*, 36(2), pp.165–173. Available at: <http://linkinghub.elsevier.com/retrieve/pii/S0047235208000202>.
- Oudah, A.Q., 2005. *Islamic Criminal Legislation Compared with positive law 15th ed.*, مؤسسة الرسالة للنشر والطباعة والنشر والتوزيع Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled : كتاب التشريع الجنائي الإسلامي .عبدالقادر عوده
- Pakes, F.J., 2004. *Comparative criminal justice*, Cullompton : Willan.
- Parker, H.J., Sumner, M. & Jarvis, G., 1989. *Unmasking the Magistrates: Custody-or-not Decision in Sentencing Young Offenders*, Milton Keynes ; Philadelphia : Open University Press.

- Parker, J., 2008. Assessment, Intervention and Review. In M. Davies, ed. *The Blackwell companion to social work*. Malden: Blackwell, pp. 94–100.
- Parker, J. & Bradley, G., 2003. *Social work practice : assessment, planning, intervention and review*, Exeter: Learning Matters,.
- Parker, J. & Bradley, G., 2010. *Social work practice : assessment, planning, intervention and review 3rd ed.*, Exeter : Learning Matters.
- Parsloe, P., 1999. Introduction. In P. Parsloe, ed. *Risk assessment in social care and social work*. London, Jessica Kingsley Publishers., pp. 7–15.
- Parsloe, P., 1978. *Juvenile justice in Britain and the United States : the balance of needs and rights 1st ed.*, London ; Boston : Routledge & K. Paul.
- Patton, M.Q., 2002. *Qualitative Research & Evaluation Methods 3ed ed.*, Thousand Oaks, Calif. : Sage Publications.
- Pennings, P., Keman, H. & Kleinnijenhuis, J., 2006. *Doing research in political science : an introduction to comparative methods and statistics 2nd ed.*, London ; Thousand Oaks ; New Delhi : Sage.
- Peters, R., 2005. *Crime and punishment in Islamic law : theory and practice from the sixteenth to the twenty-first century 1st ed.*, Cambridge: Cambridge : Cambridge University.
- Philip H. Witt, Sean P. Hiscox, S.J.H., 2007. Juvenile risk assessment scale (JRAS): A predictive validity study. *Journal of Psychiatry & Law*, pp.503–515.
- Piacentini, L., 2006. The Politicization of Youth Crime in Scotland and the Rise of the “Burberry Court.” *Youth Justice*, 6(1), pp.43–59. Available at: <http://yjj.sagepub.com/cgi/doi/10.1177/1473225406063451> [Accessed May 4, 2011].
- Pratt, J., 1985. Juvenile Justice, Social Work and Social Control. The Need for Positive Thinking. *British Journal of Social Work*, 15(1), pp.1–24. Available at: <http://bjsw.oxfordjournals.org/content/15/1/1.short> [Accessed July 2, 2011].
- QSR international, 2012. What is Qualitative Research? Available at: <http://www.qsrinternational.com/what-is-qualitative-research.aspx> [Accessed September 15, 2012].
- Robson, C. 2002, *Real World Research: A Resource for Social Scientists and Practitioner-Researchers*, 2nd edn, Blackwell, Oxford, UK.
- Rehman, J., 2007. The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq. *International Journal of Law, Policy and the Family*, 21(1), pp.108–127. Available at: <http://lawfam.oxfordjournals.org/cgi/doi/10.1093/lawfam/eb1023> [Accessed June 29, 2010].

- Reid, B. & Gillan, I., 2007. The Place of Lay Participation in Decision-making. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 215–231.
- Richards, L., 1999. *Using NVivo in qualitative research*, London : Sage Publications,. Available at: http://www.worldcat.org/title/using-nvivo-in-qualitative-research/oclc/464303634&referer=brief_results [Accessed September 15, 2012].
- Ritchie, J., Lewis, J. & Am, G. El, 2003. Designing and Selecting Samples. In J. Ritchie & J. Lewis, eds. *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. London: SAGE, p. 336. Available at: <http://books.google.com/books?id=e6EO83ZKGYoC&pgis=1> [Accessed September 15, 2012].
- Ritchie, J., 2003. The Applications of Qualitative Methods to Social Research. In J. Ritchie & J. Lewis, eds. *Qualitative research practice : a guide for social science students and researchers*. London ; Thousand Oaks, Calif. : Sage Publications.
- Rivers, J.E. & Anwyl, R.S., 2000. Juvenile Assessment Centers: Strengths, Weaknesses, and Potential. *The Prison Journal*, 80(1), pp.96–113. Available at: <http://tpj.sagepub.com/cgi/doi/10.1177/0032885500080001006>.
- Roberts, A.R., 2004. An Overview of Juvenile Justice and Juvenile Delinquency: Cases, Definitions, Trends, and Intervention Strategies. In *Juvenile justice sourcebook : past, present, and future*. Oxford ; New York : Oxford University Press.
- Robson, C. 2002, *Real World Research: A Resource for Social Scientists and Practitioner-Researchers*, 2nd edn, Blackwell, Oxford, UK.
- Rodriguez, N., 2007. Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism. *Crime & Delinquency*, 53(3), pp.355–379. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/001128705285983> [Accessed September 14, 2013].
- Rogers, R., 2000. The uncritical acceptance of risk assessment in forensic practice. *Law and human behavior*, 24(5), pp.595–605. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/11026213>.
- Ryder, R.S. & Elrod, P., 2011. *Juvenile Justice: A Social, Historical and Legal Perspective* 3rd ed., Sudbury, Mass. : Jones and Bartlett Publishers.
- Santrock, J., 2011. *Child Development: An Introduction*, McGraw-Hill: New York,.
- SCHUTT, R. K. (2012). *Investigating the social world: the process and practice of research*. Thousand Oaks, Calif, Sage Publications.
- Schwalbe, C.S., 2008. A Meta-Analysis of Juvenile Justice Risk Assessment Instruments: Predictive Validity by Gender. *Criminal Justice and Behavior*, 35(11), pp.1367–1381. Available at: <http://cjb.sagepub.com/cgi/doi/10.1177/0093854808324377>.

- Schwalbe, C.S., 2007. Risk assessment for juvenile justice: a meta-analysis. *Law and human behavior*, 31(5), pp.449–62. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/17211688>.
- Scottish Executive, 2003. *The Children’s Hearing System 2nd ed.*, Edinburgh: Stationery Office.
- Scottish Executive, 2005. *Restorative Justice services in children hearing system 1st ed.*, Edinburgh: Stationery Office.
- Shader, M., 2000. Risk Factors for Delinquency : An Overview What Is a Risk Factor ? *Criminology*, pp.1–11. Available at: www.ncjrs.gov/pdffiles1/ojjdp/frd030127.pdf
http://www.ncjrs.gov/html/ojjdp/jjjournal_2003_2/index.html.
- Shoemaker, D.J., 2009. *Juvenile delinquency*, Lanham, Md. : Rowman & Littlefield Publishers.
- Silver, E. & Miller, L.L., 2002. A Cautionary Note on the Use of Actuarial Risk Assessment Tools for Social Control. *Crime & Delinquency*, 48(1), pp.138–161. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128702048001006> [Accessed July 2, 2011].
- Slee, P. & Shute, R., 2003. *Child Development: Thinking About Theories*, Arnold: London.
- Smith, D.J., 2005. The effectiveness of the juvenile justice system. *Criminology and Criminal Justice*, 5(2), pp.181–195. Available at: <http://crj.sagepub.com/cgi/doi/10.1177/1466802505053497> [Accessed September 14, 2013].
- Smith, R., 2006. Actuarialism and Early Intervention in Contemporary Youth Justice. In B. Goldson & J. Muncie, eds. *Youth Crime and Justice*. Pine Forge Press, pp. 92–109.
- Sobal, J., 2001. Sample extensiveness in qualitative nutrition education research. *Journal of Nutrition Education*, 33(4), pp.184–192.
- Solanki, A. & Utting, D., 2009. Fine Art or Science? Sentencers Deciding Between Community Penalties and Custody for Young People, Available at: <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:Fine+art+or+science+?+Sentencers+deciding+between+community+penalties+and+custody+for+young+people#0> [Accessed September 14, 2013].
- Soliman, A.G.M., 1986. Juvenile conception in Islam. In *Addressing juvenile delinquency in Islamic sharia*. Riyadh: دار النشر بالمركز العربي للدراسات الأمنية والتدريب Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled : مفهوم الحدث في الإسلام، عبد الغني محمد سليمان، pp. 149–160.
- Spencer, L., Ritchie, J. & O’Connor, W., 2003. *Analysis: Practices, Principles and Processes*. In J. Ritchie & J. Lewis, eds. *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. London: SAGE.

- Stake, R., 2010. *Qualitative Research: Studying How Things Work*, New York: Guilford Press. Available at: http://www.worldcat.org/title/qualitative-research-studying-how-things-work/oclc/437300478&referer=brief_results [Accessed September 15, 2012].
- Stanley, C., 2001. Will New Youth Justice Work? *Probation Journal*, 48(2), pp.93–101. Available at: <http://prb.sagepub.com/cgi/doi/10.1177/026455050104800204> [Accessed May 4, 2011].
- Tahourdin, B., 1982. Juvenile Justice in England and Scotland. *International Journal of Offender Therapy and Comparative Criminology*, 26(1), pp.32–35. Available at: <http://ijo.sagepub.com/cgi/doi/10.1177/0306624X8202600105> [Accessed May 4, 2011].
- Tata, C. et al., 2008. Assisting and Advising The Sentencing Decision Process: The Pursuit of “Quality” in Pre-Sentence Reports. *British Journal of Criminology*, 48(6), pp.835–855. Available at: <http://bjc.oxfordjournals.org/cgi/doi/10.1093/bjc/azn055> [Accessed July 2, 2011].
- Taylor, B.J. & Devine, T., 1993. *Assessing needs and planning care in social work*, Aldershot, Hants, England ; Brookfield, Vt., USA : Arena.
- Temple, B. (1997). Watch your tongue: Issues in translation and cross-cultural research. *Sociology*, 31, 607-618.
- Ten, C. L. 1987. *Crime, Guilt, and Punishment: A Philosophical Introduction*. Oxford, England: Clarendon Press.
- Tonry, M. 1994. Clarendon Press.
- The Ministry of Social Affairs 1432-33 (2011-12), 2013. *The Annual Statistical Yearbook* ١, ed., .Arabic Reference Titled الكتاب الاحصائي السنوي.
- The Saudi Cabinet, 1975. *Rules and regulations for Probation homes* 1st ed., Riyadh: مطابع الحكومة الأمنية.
- The Scottish Government. (2014). What is GIRFEC? Retrieved November 03, 2014, from <http://www.gov.scot/Topics/People/Young-People/gettingitright/background>
- Tisdall, E.K.M. & Children in Scotland, 1997. *The Children (Scotland) Act 1995 : developing policy and law for Scotland’s children*, Edinburgh : Stationery Office.
- Tracy, P.E., 2002. *Decision making and juvenile justice: An analysis of bias in case processing*, Greenwood Publishing Group.
- Travers, M., 2008. Understanding Comparison in Criminal Justice Research : An Interpretive Perspective. *International Criminal Justice Review*, 18(4), p.389.
- UNCRC, 1989. *Convention on the Rights of the Child*. Available at: <http://www2.ohchr.org/english/law/crc.htm>.

- UNITED NATIONS, 2010. Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes, United Nations Office at Vienna. Available at:
http://www.unicef.org/ceecis/IPJJ_Criteria_Design_Evaluation_JJ_Program.pdf.
- United Nations, 2003. the global situation of young people: Chapter Seven: Juvenile Delinquency, Available at: <http://www.un.org/esa/socdev/nyin/wyr03.htm>.
- Vincent, G.M., Chapman, J. & Cook, N.E., 2010. Risk-Needs Assessment in Juvenile Justice: Predictive Validity of the SAVRY, Racial Differences, and the Contribution of Needs Factors. *Criminal Justice and Behavior*, 38(1), pp.42–62. Available at:
<http://cjb.sagepub.com/cgi/doi/10.1177/0093854810386000> [Accessed July 2, 2011].
- Vincent, M. & E, F., 2012. Juvenile sentencing schemes. In *Human Right Advocates*, pp. 415–422.
- Waite, D. et al., 2005. Juvenile Sex Offender Re-Arrest Rates for Sexual, Violent Nonsexual and Property Crimes: A 10-Year Follow-Up. *Sexual Abuse: A Journal of Research and Treatment*, pp.313–331.
- Walgrave, L., 2002. Not Punishing Children, but Committing them to Restore. In I. Weijers & A. Duff, eds. *Punishing Juveniles: Principle and critique*. Hart Publishing, Oxford, pp. 93–114.
- Walker, D. & Myrick, F., 2006. Grounded theory: an exploration of process and procedure. *Qualitative health research*, 16(4), pp.547–59. Available at:
<http://www.ncbi.nlm.nih.gov/pubmed/16513996> [Accessed March 20, 2014].
- Wandall, R.H., 2010. Resisting risk assessment? Pre-sentence reports and individualized sentencing in Denmark. *Punishment & Society*, 12(3), pp.329–347. Available at:
<http://pun.sagepub.com/cgi/doi/10.1177/1462474510369446> [Accessed July 2, 2011].
- Wardak, A., 2005. Crime and Social Control in Saudi Arabia. In J. W. E. Sheptycki & A. Wardak, eds. *Transnational and comparative criminology*. London ; Portland, Or. : GlassHouse, pp. 91–116.
- Warner, J., 2003. An Initial Assessment of the Extent to Which Risk Factors, Frequently Identified in Research, Are Taken into Account When Assessing Risk in Child Protection Cases. *Journal of Social Work*, 3(3), pp.339–363. Available at:
<http://jsw.sagepub.com/cgi/doi/10.1177/146801730333005>.
- Wang, Y-W. (2008). Qualitative research. In P. P. Heppner, B. E. Wampold, & D. M. Kivlighan, Jr. (Eds.), *Research design in counseling* (p. 256-295). Belmont, CA: Thompson Brooks/Cole.
- Waterhouse, L., 2007. The Scottish Children’s Hearings System: Thinking about Effectiveness. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 193–211.
- Waterhouse, L. et al (2000) *The evaluation of children's hearings in Scotland*. Edinburgh: Scottish Executive.

- Waterhouse, L. (2006). *The Scottish Children's Hearings System: Thinking about Effectiveness*. Youth Justice and Child Protection, 193.
- Waterhouse, L. & McGhee, J., 2002. Children's hearings in Scotland: compulsion and disadvantage. *Journal of Social Welfare and Family Law*, 24(3), pp.279–296. Available at:
<http://www.informaworld.com/openurl?genre=article&doi=10.1080/09649060210161285&magic=crossref||D404A21C5BB053405B1A640AFFD44AE3> [Accessed May 4, 2011].
- Waterhouse, L., McGhee, J. & Loucks, N., 2004. Disentangling Offenders and Non-Offenders in the Scottish Children's Hearings: A Clear Divide? *The Howard Journal of Criminal Justice*, 43(2), pp.164–179.
- Watson, D. & West, J., 2006. *Social work process and practice: approaches, knowledge and skills*, New York: Palgrave Macmillan.
- Weaver, B., McNeill, F., (2007). *Giving up crime: Directions for policy*. University of Strathclyde.
- Weijers, I., 2002. The Moral Dialogue: a Pedagogical Perspective on Juvenile Justice. In I. Weijers & A. Duff, eds. *Punishing Juveniles: Principle and critique*. Hart Publishing Oxford, pp. 135–154.
- Weijers, I. & Duff, A., 2002. Introduction: Themes in Juvenile Justice. In I. Weijers & A. Duff, eds. *Punishing juveniles: Principle and critique*. Hart Publishing Oxford, pp. 1–19.
- Weinfurt, K. P., and Moghaddam, F. M. (2001). Culture and social distance: A case study of methodological cautions. *The Journal of Social Psychology*, 141, 101-110.
- Whittington, C., 2007. *Assessment in social work: A guide for learning and teaching*, London]: Social Care Institute for Excellence, 2007.
- Whyte, B., 2000a. Between Two Stools: Youth Justice in Scotland. *Probation Journal*, 47(2), pp.119–125. Available at:
<http://prb.sagepub.com/cgi/doi/10.1177/026455050004700205> [Accessed May 4, 2011].
- Whyte, B., 2007. Change, Evidence, Challenges: Youth Justice Developments in Scotland. In M. Hill, A. Lockyer, & F. Stone, eds. *Youth Justice and Child Protection*. London and Philadelphia: Jessica Kingsley Publishers, pp. 158–174.
- Whyte, B., 2004. Responding to Youth Crime in Scotland. *British Journal of Social Work*, 34(3), pp.395–411. Available at:
<http://bjsw.oupjournals.org/cgi/doi/10.1093/bjsw/bch044> [Accessed May 4, 2011].
- Whyte, B., 2003. Young and Persistent: Recent Developments in Youth Justice Policy and Practice in Scotland. *Youth Justice*, 3(2), pp.74–85.

- Whyte, B., 2003. Young and Persistent: Recent Developments in Youth Justice Policy and Practice in Scotland. *Youth Justice*, 3(2), pp.74–85. Available at: <http://yjj.sagepub.com/cgi/doi/10.1177/147322540300300202> [Accessed May 4, 2011].
- Whyte, B., 2009a. *Youth justice in practice : making a difference*, Bristol: The Policy Press.
- Whyte, B., 2009b. *Youth justice in practice : making a difference* 1st ed., Bristol : Policy Press.
- Whyte, B., 2000b. Youth Justice in Scotland. In J. Pickford, ed. *Youth Justice: Theory and Practice*. London: Cavendish Pub, pp. 169–188.
- Wiechman, D., Kendall, J. & Azarian, M., 1997. Islamic Law; Myths and Realities. *The Canadian Society of Muslims*, 51(4), pp.1–7. Available at: muslim-canada.org/myths.pdf.
- Wilson, K. et al., 2008. *Social work : an introduction to contemporary practice*, Harlow, England: Pearson/Longman.
- Winterdyk, J., 2002. Introduction. In J. A. Winterdyk, ed. *Juvenile Justice Systems: International Perspectives*. Toronto, Ont. : Canadian Scholars' Press.
- Woods, P., 2006. *Qualitative Research*. Faculty of Education, University of Plymouth. Available at: <http://www.edu.plymouth.ac.uk/resined/qualitative%20methods%202/qualrshm.htm> [Accessed May 15, 2014].
- Wringe, B., 2012. Collective Agents and Communicative Theories of Punishment. *Journal of Social Philosophy*, 43(4), pp.436–456. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/josp.12002/full> [Accessed November 13, 2014].
- Yin, R. K. (2009) *Case Study Research: design and methods*, Applied Social Research Methods series, volume 5, 4th ed. London, Sage
- Young, D., 2006. Best Implementation Practices: Disseminating New Assessment Technologies in a Juvenile Justice Agency. *Crime & Delinquency*, 52(1), pp.135–158. Available at: <http://cad.sagepub.com/cgi/doi/10.1177/0011128705281752> [Accessed June 2, 2011].
- Zinger, I., 2004. Actuarial risk assessment and human rights: A commentary. *Canadian Journal of Criminology and Criminal Justice/La Revue canadienne de criminologie et de justice pénale*, 46(5), pp.607–620. Available at: <http://utpjournals.metapress.com/index/k53422g625570941.pdf> [Accessed July 2, 2011].
- Zureikat, M., 2005. The causes of juvenile delinquency in Riyadh city, *Social Sciences*, أكاديمية نايف العربية للعلوم الأمنية - Naif Arab University for Security Sciences. - Naif Arab University for Security Sciences Riyadh, Kingdom of Saudi Arabia. Arabic Reference Titled : أسباب جنوح الأحداث في مدينة الرياض مراد زريقات

Appendix 1

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the need of society;

To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4 . Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they

do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7 . Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights,

the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

Part two

INVESTIGATION AND PROSECUTION

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in

accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12 . Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13 . Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule. Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia , should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors

should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just desert;

(b) Assistance versus repression and punishment;

(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be

incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications. Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24 . Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

Part five

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the wellbeing of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives

and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements. This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Part six

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

Appendix 2

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.
5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:
 - (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;
 - (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
 - (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
 - (d) Safeguarding the well-being, development, rights and interests of all young persons;
 - (e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;
 - (f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

- (a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- (c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;
- (f) Community involvement through a wide range of services and programmes;
- (g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- (h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- (i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.

Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

- (a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;
- (b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;
- (c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
- (d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
- (e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;
- (f) Provision of information and guidance regarding vocational training, employment opportunities and career development;
- (g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;
- (h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

Appendix 3

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly resolution 45/113 of 14 December 1990

I. Fundamental perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.
8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.
9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.
10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and application of the rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and selfrespect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. The management of juvenile facilities

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making

complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request.

Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special

diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent

inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of

the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding

any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile

detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

Appendix 4
Victims in the Children's Hearings System

53 Provision by Principal Reporter of information to victims

(1) Where the Principal Reporter has received information about a case in which it appears that an offence has been committed by a child, the Principal Reporter may provide any information about the case as is mentioned in subsection (2) to any person mentioned in subsection (3) if (and only if)—

(a) the information is requested by the person; and

(b) the Principal Reporter is satisfied that—

(i) the provision of the information would not be detrimental to the best interests of the child concerned in, or any other child connected (in any way) with, the case; and

(ii) it is appropriate in the circumstances of the case to provide the information.

(2) The information is information as to—

(a) what action the Principal Reporter has taken in the case; and

(b) any disposal of the case,

in so far as the information relates to the offence.

(3) The persons are—

(a) any person against whom the offence appears to have been committed or, where that person is a child, any relevant person; and

(b) any other person or class of persons, subject to such conditions, as may be prescribed.

(4) In this section—

"*child*" means a person who has not attained the age of eighteen years;

[...] ¹ "*relevant person*" [has the meaning given by section 200 of the Children's Hearings (Scotland) Act 2011 (asp 1).] ²

Appendix 5

Interview Schedule for a Children's Panel in Scotland and Juvenile Court Judge in Saudi Arabia

I am undertaking postgraduate research on the nature, importance and consequences of assessment in youth justice in Scotland and Saudi Arabia, and would be most grateful if you would answer the following questions.

My questions are in three blocks:

*Making Sentencing Decisions
Contemporary Issues in Youth Justice.
International Aspects of Youth Justice*

but I would just like to begin with a general introductory question:

Could you please tell me how you became a juvenile court judge and describe your role in this court?

Making Sentencing Decisions

In the context of sentencing young offenders, what do you understand the term “assessment” to mean?

What principles and precedents guide your decision on how to sentence a young offender?
(Probe the issue of welfare and punishment a little further, if it does not come up in the judges initial answer)

Are the issues different for boys and girls? Please explain.

Are the issues different for older and younger juveniles? Please explain.

How important is the report of the social worker in helping you to decide how to sentence?

How, in general terms, would you describe the contents of a social work report? From your point of view as a judge, do they cover the right issues?

Do you receive any other kind of report before sentence?

Do you feel obliged to explain your decision to sentence in a particular way to the offender and his/ her family?

Do you think that the victim of a crime committed by a juvenile should express their views to the court before sentence?

Should the offender ever have to apologise to the victim, or make amends in any way?

Do you think that the sentence – and the reasons behind it - should be published in the media? Why/why not?

Contemporary Issues in Youth Justice.

What do you understand by the term “age of criminal responsibility”. Is it set right in Saudi Arabia, or does it need to change?

Does your court have a full and effective range of services for dealing with young offenders once they have been sentenced?

Are you able to follow the progress of an offender once they have been sentenced – do you get periodic reports on them?

Is there anything you would like to see that would improve these services?

What training do you receive as a juvenile court judge - when and how often – of what does it consist?

What do you think are the respective advantages of a judge sitting alone to make a decision, as opposed Three sentencers sitting together to deal with a case?

International Aspects of Youth Justice

Do you keep abreast of developments in international juvenile court law?

Does international law relating to juvenile offenders constrain your practice as a sentencer in any way?

Have you attended national or international conferences on youth justice?

Do you think that it would be good in principle for Saudi Arabia to learn from other jurisdictions about legal and social responses to young offenders?

- a) any jurisdiction
- b) only Islamic jurisdictions

Last Question

Are there any other issues about the operation of the juvenile court in Saudi Arabia, particularly in respect of the way sentencing decisions are made, that you think I should know about, that has not already been covered in our questions and answers?

Thank you.

Appendix 6

Interview Schedule for a Social Work Practitioner

I am undertaking a postgraduate research on the nature, importance and consequences of assessment in youth justice in Scotland and Saudi Arabia, and would be most grateful if you would answer the following questions.

My questions are in two blocks:

Social Worker's Report

Assessment Methods

but I would just like to begin with general introductory questions:

- Could you please tell me how you became a Social Worker in this field and describe your role in this institution?
- How long have you been working with young people who commit offences?

Social Worker's Report to Children's Panel

- To what extent do you think that a social worker's report plays an important role regarding shaping a decision of Children's Panel?
- In your point of view, how social worker's report has a strong influence on shaping a decision of Children's Panel?
- What are the factors that make social worker's report more or less influential on a decision of Children's Panel?
- Could you please describe the content of the social worker's report?
- What type of information do you consider it important to focus on in social worker's report to the panel? Why?
- What issues relating to the child or family do you think need oral explanation in front of Children's Panel regarding social worker's report?
- In terms of the content of the social worker's report, is there anything that should be emphasised or omitted? Why?
- What is your method or techniques for understanding a young people's view regarding his/her offence and feelings before writing the report?

Assessment Methods for Social Work Interventions

- According to your viewpoint, how do you define assessment of young people who commit offences? What is its purpose?
- Could you please tell me what are the procedures that you follow for youth justice assessment?
- What types of knowledge (theories and approaches) do you use for assessing young people and how do you use them? A single one-off event? An intermittent process?
- What types of assessment tools are used? How do you use them in making your decision?
- Are the issues different for boys and girls?
- Are the issues different for older and younger juveniles?
- What is the technique or approach that you use to understand and sift the information in the assessment, to draw conclusions from the information you have gathered?
- What are the obstacles and difficulties in young offenders' assessment? And what are the reasons behind them?
- What training have you received in assessment since you have started working with young people who commit offences?
- How do you use assessment in guiding your own decision-making about which interventions to use with a particular young offender?

Last Question

Are there any other issues about Assessment or the operation of the juvenile System in Scotland\ Saudi Arabia, particularly in respect of the way assessing young people who commit offences that you think I should know about, or that has not already been covered in our questions and answers?

Thank you.

Appendix 7

أسئلة مقابلة قضاة الأحداث في المملكة العربية السعودية

القاضي بمحكمة الأحداث

سعادة الشيخ/

السلام عليكم ورحمة الله وبركاته

أفيدكم أنني أقوم ببحث للحصول على درجة الدكتوراه من جامعة ستراثكلاید ببريطانيا بعنوان (نظام العدالة الجنائية للأحداث مرتكبي الجرح في المملكة العربية السعودية ومقاطعة اسكتلندا في المملكة المتحدة- دراسة مقارنة بين البلدين لكيفية إصدار الأحكام القضائية من قبل القضاة وعملية تطبيق التشخيص من قبل الأخصائيين الإجتماعيين) ونظراً لما تملكونه من خبره في جانب محاكمة الأحداث فإني أتقدم لكم بطلب إجراء مقابلة معكم وطرح عليكم مجموعة من الأسئلة مع العلم أن كل ماستدلونه من معلومات سيكون محل سرية ولن يشار إلى إسمكم في البحث والتحليل للمعلومات فكل ذلك لن يستخدم إلا لأغراض البحث العلمي.

الأسئلة ستكون مقسمة تحت أربعة عناصر:

مقدمة

إصدار الحكم.

التقرير الاجتماعي

قضايا حديثة في نظام العدالة الجنائية للأحداث

مقدمة

كيف صرت قاضياً للأحداث وما هو الأدوار التي تقوم بها كقاضي مع هذه الفئة ماهي الإجراءات المتبعة لمحاكمة الحدث مرتكب الجرح منذ أن يقبض عليه إلى ان يتم إصدار الحكم عليه

إصدار الحكم

ما هو فهمك وتصورك لكلمة التشخيص والتي تعمل لحالة الحدث والتي بناء عليها يتم كتابة التقرير الاجتماعي من قبل الأخصائي

ماهي المبادئ والمعايير التي تستند عليها في رؤيتك وقراءتك لقضية الحدث والتي بناء عليها يتم إصدار الحكم

هل ماسبق يختلف في حال كان الحدث ذكر أو انثى – صغير أو كبير

ما هو أسلوبك وطريقتك الشخصية في قراءة حالة الحدث قبل إجراء المحاكمة وإصدار الحكم

إلى أي مدى تتغير نظرتك للقضية قبل المحاكمة وبعد مناقشة قضية الحدث أثناء المحاكمة

ماهي المعايير الرئيسية التي تستند عليها في إصدار حكم الجلد أو بقاءه في دار الأحداث

تقرير الأخصائي الاجتماعي

من وجهة نظرك إلى أي مدى تمثل أهمية التقرير الاجتماعي الذي يقوم به الأخصائي الاجتماعي له في مساعدتك في إصدار الحكم المناسب للحدث

بشكل عام ماهو محتوى التقرير الاجتماعي الذي يصلك من الأخصائي الاجتماعي وهل هو من وجهة نظرك يغطي جميع النقاط والمواضيع المهمة لحالة الحدث من رؤية وخبرتك الشخصية ماهي العوامل او الموصفات التي تجعل التقرير الاجتماعي أكثر أو أقل أهمية من ناحية الأثر الايجابي في إصدار الحكم المناسب

ماهي المعلومات والجوانب التي ترى أنها يجب أن يركز عليها في تقرير الأخصائي الاجتماعي

ماهي المواضيع والظروف التي ترى أهمية وجود الأخصائي الإجتماعي أثناء المحاكمة للشرح والتوضيح لك فيما يتعلق بالحدث قبل اصدار الحكم

هل هناك تقارير أخرى غير تقرير الأخصائي الاجتماعي يصلك قبل اصدار الحكم

هل ترى ضرورة شرح الحكم الصادر للحدث بطريقة معينة ومبررات ذلك

قضايا حديثة في نظام العدالة الجنائية للأحداث

من وجهة نظرك هل تعتقد أن إعطاء المجال للضحية التي تعرضت للجنحة من قبل الحدث للتعبير عن وجهة نظره قبل اصدار الحكم سيكون له أثر ايجابي أو سلبي

هل ترى ضرورة أن يتم اصدر اكتب او برامج إعلامية تعرض الأحكام الصادر بحق الأحداث والمبررات المستنده عليها

ماهي وجهة نظرك في العمر المحدد للمسئولية الجنائية وماهي محدداته وهل ترى انه في الوضع المناسب في المملكة العربية السعودية

هل متاح لك كقاضي أحداث الإمكانات التي تمكنك من اصدار احكام متنوعه متعدد للأحداث هل متاح لك متابعة حال الحدث والتطور سواء ايجابا او سلبا بعد إصدار الحكم عليه وهل تحصل على تقرير بذلك

هل هناك اي خدمات او اجراءات ترى ضرورة وجودها وتوفرها لزيادة الفاعلية في نظام الأحداث هل سبق أن حضرت دورات او محاضرات فيما يتعلق بالأحداث او قضاء الأحداث وهل هي باستمرار

مارأيك الشخصي في طريقة أن ينظر في قضية الحدث ثلاث أشخاص بدلاً من شخص واحد للوصول لحكم أكثر مناسبة \ ايجابا وسلبا\ لماذا

هل انت مطلع ومتابع للتطورات في أنظمة رعاية و عدالة الأحداث عالميا \ وهل سبق لك حضور مؤتمرات في ذلك

هل ترى أن الأنظمة المشرعة عالميا كحقوق الانسان او غيرها فيما يتعلق بشأن الأحداث له تأثير على عملك وممارستك في العمل مع الأحداث

هل تعتقد أنه من المفيد للنظام في السعودية الإستفادة من تجارب أنظمة أخرى للتعامل مع قضايا الأحداث \ أنظمة محدهه او الأنظمة الإسلامية

ختاماً: هل هناك اي إضافة تود ذكرها لم أتناولها في أسئلتي السابقة

Appendix 8

أسئلة مقابلة الأخصائيين الإجتماعيين في المملكة العربية السعودية

السلام عليكم ورحمة الله وبركاته

أفيدكم أنني أقوم ببحث للحصول على درجة الدكتوراه من جامعة ستراتكلاند ببريطانيا بعنوان (نظام العدالة الجنائية للأحداث مرتكبي الجرح في المملكة العربية السعودية ومقاطعة اسكتلندا في المملكة المتحدة- دراسة مقارنة بين البلدين لكيفية إصدار الأحكام القضائية من قبل القضاة وعملية تطبيق التشخيص من قبل الأخصائيين الإجتماعيين)

ونظراً لما تملكونه من خبره في جانب العمل مع الأحداث فإني أتقدم لكم بطلب الإجابة على مجموعة من الأسئلة كمقابلة مع العلم أن كل ما استدلوته من معلومات سيكون محل سرية ولن يشار إلى إسمكم في البحث أو التحليل للمعلومات فكل ذلك لن يستخدم إلا لأغراض البحث العلمي.

الأسئلة ستكون مقسمة تحت ثلاثة عناصر:

مقدمة

تقرير الأخصائي الاجتماعي

عملية التشخيص

مقدمة

- كيف أصبحت أخصائي اجتماعي في دار الأحداث وماهي الأدوار المكلف بها في المؤسسة

- كم الفترة الزمنية التي قضيتها في العمل وماهو تخصصك الأكاديمي

التقرير الاجتماعي

١- من وجهة نظرك إلى أي مدى تمثل أهمية التقرير الاجتماعي الذي يقوم به الأخصائي الاجتماعي والذي يرفع للقاضي لمساعدته في إصدار الحكم المناسب للحدث مرتكب الجرح

٢- بشكل عام ماهو محتوى التقرير الاجتماعي الذي يرفع للقاضي وهل هو من وجهة نظرك يغطي جميع النقاط والمواضيع المهمة للحالة

٣- من رؤية وخبرتك الشخصية ماهي العوامل او المواصفات التي تجعل التقرير الاجتماعي أكثر أو أقل أهمية من ناحية الأثر الإيجابي في إصدار الحكم المناسب من قبل قاضي الأحداث

٤- ماهي المعلومات والجوانب التي ترى أنه يجب أن يركز عليها في تقرير الأخصائي الاجتماعي

٥- ماهي المواضيع والظروف التي ترى أهمية وجود الأخصائي الاجتماعي أثناء المحاكمة امام القاضي مع الحدث قبل اصدار الحكم

٦- من وجهة نظرك الشخصية هل هناك بعض الجوانب التي يجب إضافتها للتقرير الاجتماعي غير موجوده حالياً

٧- ماهي المنهجية والأساليب التي تستخدمها لفهم رؤية الحدث ووجهة نظره تجاه سلوكه المنحرف قبل كتابة التقرير

عملية التشخيص

- ١- ماهو فهمك وتصورك لكلمة التشخيص والتي تعمل لحالة الحدث والتي بناء عليها يتم كتابة التقرير الاجتماعي من قبل الأخصائي
 - ٢- ماهي الخطوات والإجراءات التي تتبعها في دار الأحداث في عملية تشخيص الحالة
 - ٣- ماهي النظريات والنماذج التي تستعين بها في عملية تشخيص الحالة وكيف تستخدمها
 - ٤- ماهي الأدوات التي تستخدمها في عملية التشخيص وكيف يتم ذلك هل ماسبق يختلف من الصغير للكبير . كيف
 - ٥- ماهي التقنيات والأساليب التي تستخدمها لفهم وتحليل المعلومات التي تم جمعها لبناء التصور النهائي عن الحالة
 - ٦- ماهي العقبات والصعوبات التي تواجهك في عملية التشخيص الحالة وماهي الأسباب من وجهة نظرك
 - ٧- هل هناك دورات تدريبية في عملية التشخيص سبق وان حضرتها منذ ان بدأت العمل في الدار
 - ٨- كيف تستخدم عملية التشخيص لوضع خطة التدخل العلاجية
 - ٩- ماهي خلاصة التجربة التي وصلت لها من خلال الفترة التي قضيتها بالعمل في المؤسسة
- السؤال الأخير:** هل هناك جانب ترغب إضافته لم تناوله في أسئلتي السابقة وترغب في ذكرها