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THE EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS ON CHILDREN IN CONFLICT WITH THE LAW.

A REPORT FOR HAQ CENTRE FOR CHILD RIGHTS.

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THE TEAM

HAQ Centre for Child Rights (HAQ) is a Non-Governmental Organisation in India that is focused on recognising, promoting and protecting the rights of all children. By undertaking research and being involved with public education and advocacy, HAQ seeks to ensure that the rights of children are being protected from discrimination – including those children who come in conflict with the law.¹

This Research Project involved a Student Team from Macquarie University, an Australian University located in Sydney, working remotely with HAQ to undertake research on the use of psychological assessments for young offenders.

The Project was supervised by Bharti Ali, Co-Founder and Executive Director of HAQ, and Rebekah Stevens, PACE Supervisor at Macquarie University. The Student Team from Macquarie University included:

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¹ 'About Us', *HAQ Centre for Child Rights* (Web Page) < <https://www.haqcrc.org/about-us/> >.

PROJECT OBJECTIVE

Juvenile Justice is a global concept that has been heavily influenced by International Law. Several countries across the globe have ratified International Treaties and Standards like the United Nations' *Convention on the Rights of the Child* ('CROC'), the United Nations Standard Minimum Rules for Administration of Juvenile Justice ('Beijing Rules') and the United Nations Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines') that accept having legislation that prioritises rehabilitation and a child-welfare system. However, at the same time, when children commit serious crimes and law enforcement is required to protect society, there are occasions where that juvenile must be treated as an adult. Nations try to grapple with this dilemma through psychological assessments, which allows one to gather information about an individual's behaviours and characteristics, as well as mitigatory factors that have influenced who they are as individuals. This allows the Court to determine a juvenile's capacity.

The aim of this Report is to gather information with regard to the law and practice in a range of jurisdictions to improve the general understanding of how psychological assessments currently function and are applied to children in conflict with the law. This Report will closely focus on the juvenile justice systems of seven countries. The below mentioned countries have been selected for this Research Project because they represent a wide range of justice systems. The age of criminal responsibility varies across these countries,

which influences their outlook on children in conflict with the law. While some have a plethora of psychological assessments that serve different purposes, some have mere diversion programs. The Featured Countries are:

- United States of America
- Canada
- United Kingdom
- Australia
- China
- South Africa
- Philippines

The Report will also contextualise several International Law concepts as well as theories in relation to juvenile crime that may have direct correlation with why psychological assessments are prevalent in some areas and not others.

Limitations and Challenges:

Constructing this Report was met with a few challenges. Firstly, there were limitations on the research in relation to psychological assessments with the most Articles being written before 2010. Secondly, there is a lack of consistency of information in some countries due to each State having their own justice system within the country. Due to this it is difficult to identify overarching standards that are applied. Finally, some countries don't publicise as much information about their justice systems and their legislation targeted at juveniles is not as developed as other countries.

PSYCHOLOGICAL ASSESSMENTS

As discussed below, International Law provides several protections for children in conflict with the law, because of the delineation between the mental capacity of a child and an adult. There is a great focus on the welfare of the child with the prioritisation of rehabilitation and a push towards justice.

However, as society has developed quite exponentially over time there has been a rise in the number of juveniles committing crimes that are commonly termed "adult like." Consequently, countries have accounted for this in their legislative process by addressing issues where serious juvenile offenders are tried in the adult system of criminal law.

When trying a juvenile as an adult the court accepts the child bears the mental capacity of an adult and therefore has criminal responsibility of an adult. In this instance, that child is viewed as undeserving of rehabilitation. This is in direct conflict with the International standard that children cannot have the same moral and legal culpability as an adult. Importantly, several studies show that children who enter the adult system, due to the severity of their crime, in most instances remain in a cycle of crime as they are subjected to exponentially harsher conditions than the juvenile system.

One method that is increasingly being looked upon as a method to combat this is through the implementation of psychological assessments.

THE ROLE OF PSYCHOLOGICAL ASSESSMENTS

Psychological assessments, while not implemented universally, have come to play a key role in the juvenile justice system. Psychological assessments are used to assist in the decision-making process of juvenile cases. Decisions are made during arrest, detention, laying charges and the adjudicative and post adjudicative process². How these decisions are made are dependent on various factors.

Generally, psychological assessments exist for three reasons. Firstly, to categorise juveniles when they first enter the system. Secondly, to determine their mental capacity to be tried as an adult and finally to assist in determining the appropriate sentence and punishment for the juvenile offender.³

It is important to note that psychological assessments in the juvenile criminal justice system, also known as forensic assessments, are separate to clinical assessments. In a clinical setting, clinicians are required to be supportive and empathetic, whereas forensic evaluators are required to be neutral and objective.⁴ In a clinical setting the patients voluntarily seek assistance. In contrast, forensic assessments are usually ordered by the court so examinees don't have the freedom to refuse participation.⁵

² Robert Hoge, 'An Expanded Role for Psychological Assessments in Juvenile Justice Systems' (1999) 26(2) *Criminal Justice and Behaviour* 251 ('An Expanded Role for Psychological Assessments').

³ Ibid.

⁴ Omnia El-Shenawy, 'Traditional Psychological Tests Usage in Forensic Assessment' (2017) 3(1) *HSA Journal of Forensic, Legal & Investigative Sciences* 20.

⁵ Stuart Greenberg and Daniel Shuman, 'Irreconcilable Conflict Between Therapeutic and Forensic Roles' (1997) 28(1) *American Psychological Association* 50.

TYPES OF PSYCHOLOGICAL ASSESSMENTS

The assessment surrounding the initial triaging of juveniles into the juvenile system is focused around two factors; firstly, whether there is a risk of reoffending and secondly, the mental health conditions of the child. The process can also be divided into screening and assessments, with screening being a quick assessment that deals with immediate concerns while the assessments are individualised and are required for long term intervention.⁶ Over the years countries have developed different types of psychological assessments that aim to obtain a wider variety of information.

Risk Assessments:

Risk assessments are most commonly used and have a greater variety of developed assessments that are utilised. Risk assessments exist to 'determine the likelihood that an offender will offend or reoffend'.⁷ Juvenile risk assessments are used for a variety of decisions including sentencing, transfer to adult court, parole/probation, eligibility for diversion programs, etc.⁸ The information in these assessments inform the juvenile justice system about the risk of recidivism, treatment needs of the child and to an extent, the maturity of the child. Due to the fact that the juvenile justice system has a general objective of rehabilitation, reports from risk assessments usually provide treatment needs, discussion of protective factors and a caveat that risk must be re-evaluated regularly.⁹ A variety of risk assessments from different countries will be examined below.

⁶ Gina Vincent, 'Screening and Assessment in Juvenile Justice Systems: Identifying Mental Health Needs and Risk of Reoffending' (2012) *Washington, DC: Technical Assistance Partnership for Child and Family Mental Health* 1.

⁷ Laura Grossi, Alexandra Brereton and Robert Prentky, 'Forensic Assessment of Juveniles' (2016) *The Safer Society Handbook of Assessment and Treatment of Adolescents who have Sexually Offended* 1, 27 ('Forensic Assessment').

⁸ Ibid.

⁹ Ibid.

Mental Assessments:

Mental assessments are used for screening a child's mental health in the juvenile justice system. When considering whether a child is at risk of reoffending, mental assessments provide information with regard to the child's mental state. This assists in understanding their risk of aggression, suicide and a potential psychiatric diagnosis.¹⁰

Drug Assessments:

Several countries, as discussed below are implementing drug assessments and programs because they realise that there is a correlation between drug dependency and recidivism for juvenile offenders. It is suggested that if screening tools for drugs are used early enough, young people can be diverted out of the justice system.¹¹

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

The effectiveness of these assessments really depend on the jurisdiction that they are applied in. However, it appears that there are a greater number of risk assessments than mental and drug assessments when applying them to juvenile offenders because usually the greater concern is whether they will reoffend. Additionally, mental and drug assessments are usually recommended as a result of a risk assessment or are partially included in the risk assessment.

It is important to note that there is a gap in the literature surrounding the effectiveness of these assessments and information about what assessments have greater success rates today. While

¹⁰ Kristin Hendrix, et al, 'Psychological and Neuropsychological Assessment in the Juvenile Justice System: Recommendations for Protocols' (2012) 25(3) *Criminal Justice Studies* 239, 240.

¹¹ Laurie Chassin, 'Juvenile Justice and Substance Use' (2008) 18(2) *The Future of Children* 165.

there are limits to the usefulness of these tests, it is clear that they obtain valid information for the court.¹² This paper will aim to provide some background on how they are applied in different jurisdictions, which may provide some insight into their effectiveness.

¹² 'An Expanded Role of Psychological Assessments' (n 2) 261.

INTERNATIONAL STANDARDS

THE CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations' *Convention on the Rights of the Child* ('CROC') is the International human rights Treaty that governs the welfare of children.¹³ The Convention has attained 140 signatories and 20 ratifications since it was adopted by the General Assembly in 1989 and came into force on the 2nd of September 1990.¹⁴ CROC is the prime document that stipulates how governments should make laws to protect children as they are classified as vulnerable members of society.¹⁵ CROC focuses on ensuring that all decisions are made within the best interests of the child under Article Three.¹⁶ The best interests of the child is the primary consideration to be adopted by Courts, governments, law makers, social welfare institutions and authorities. The Convention sets out key articles that explore how children should be dealt with and overall guidelines for treating children that come into conflict with the law.¹⁷

The countries within this report that have ratified CROC include Australia, Canada, United Kingdom, Philippines, South Africa and China.¹⁸ On the other hand, the United States has only signed the treaty but has not ratified it into legislation.

¹³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 5 (entered into force 2 September 1990) ('CROC').

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid art 3.

¹⁷ Ibid.

¹⁸ Ibid.

Article One – Definition of a Child:

In particular, Article One outlines the universal and internationally recognised definition of a child.¹⁹

Article One states that a child constitutes, 'every human being below the age of eighteen years unless under the law applicable to the child'.²⁰

Article Thirty-Seven – Sentencing/Imprisonment:

Article Thirty-Seven refers to the treatment of a juvenile offender. *CROC* emphasises that no child should be subject to torture or inhumane treatment.²¹ Every child should not be deprived of liberty and should be treated with respect. Access to alternate forms of punishment are suggested to ensure the appropriate assistance is provided to the child.

Article Forty – Minimum Age of Criminal Responsibility:

A highly contentious component of *CROC* is the age of criminal responsibility as all countries present different ages.²² In particular, in 2019 the United Nations Committee on the Rights of the Child recommended that 14 years be the minimum age for criminal responsibility.²³ Particularly, several of the countries contained in this report have minimum ages of responsibility that are below the internationally suggested age. These include Australia, Canada, China, South Africa and the United Kingdom. It is emphasised by scholar Daly, that there is a strong link between age of criminal responsibility addressed in *CROC* and full capacity of a juvenile to participate in psychological assessments.²⁴

¹⁹ Ibid art 1.

²⁰ Ibid.

²¹ Ibid art 37.

²² Ibid art 40.

²³ United Nations Human Rights Committee, *General Comment 46, Special Representative on Violence Against Children* (March 2019).

²⁴ *CROC*(n 13) art 40; Aoife Daly, 'Assessing Children's Capacity' (2020) 28(3) *The International Journal of Child Rights* 479-499.

ACCESS TO JUSTICE

The core objective of Judicial Systems globally is to both prevent and rectify behaviours and actions that go against social standard and laws and/or pose a threat to individuals or the community at large. Overtime Judicial Systems across the world have come to establish and develop their own approaches to punishment based on favouring the rights, needs and interest of one or numerous parties involved in judicial proceedings. Currently there are three general approaches to punishment that vary greatly in their application and functionality, these being the Justice Model, Welfare Model and the Hybrid Model. The particular approach employed by a country has consequential implications upon various factors such as public safety, recidivism rates, rehabilitation, overall crime rates, discrimination etc.²⁵

In relation to juvenile offenders, due to their vulnerability and immaturity they are susceptible to falling between the cracks and being subjected to unjust forms of punishment. Hence, it is imperative to find an understanding of each approach to punishment in order to critically analyse both the deficiencies and prosperities of individual Judicial Systems' approach to juvenile justice.

JUSTICE MODEL

The Justice-Based Approach to juvenile offenders is centralised upon the concept that offenders must incur a punishment appropriate to the severity of the crime committed, regardless of any

²⁵ Etienne Benson, 'Rehabilitate or Punish?' (2003) 34 *American Psychology Association* 7, 46.

personal objective circumstances in relation to the offender.²⁶ At the heart of this model is the concept of retribution for victims and society as a whole through the fair administration of judicial proceedings. This Model ensures offenders are removed completely from society to prevent and protect society from future criminal actions and behaviours. The Justice Model goes on to further diminish and undermine the use of rehabilitative mechanisms as these processes inhibit the absolute punitive application of the justice system. The Justice Model was specifically developed in the mid 1970's by liberal lawyers eager to restore the 'due process' at the heart of the justice system.²⁷

The Key Components of the Justice Model are:

- Proportionality and Punishment of Crime
- Determine Sentencing Options
- An Official End to Judicial and Administrative Discretion
- An End to Disparity in Sentencing Proceedings
- Protection of One's Rights through the Due Process of the Criminal Justice System (the Truth and Consequences will Prevail).

WELFARE MODEL

Article 40 of the *Convention on the Rights of the Child* conveys that States are required to treat every child who is in conflict with the law 'in a manner consistent with the promotion of the child's

²⁶ Barbara Hudson, *The Justice Model. In: Justice through Punishment.* (Web Page, 1987) Palgrave <https://doi.org/10.1007/978-1-349-18914-4_2>.

²⁷ Barbara Hudson, 'The Justice Model' (Palgrave, 2009) *Justice through Punishment* 37.

sense of dignity and worth.'²⁸ By doing so, States are intended to 'take into account...the desirability of promoting the child's reintegration.'²⁹ Therefore, the Welfare-Based Approach to Juvenile Justice holds a greater focus upon the 'needs' of the juvenile offender, rather than the 'deed,' which means that the individual themselves, should be considered more important than the criminal offence.³⁰ This Model involves the Courts providing greater consideration towards the external factors that might have influenced the young individual's criminal conduct (eg. their home and family life, their economic status, their education, etc.).³¹ Unlike the Justice-Based Model, this Approach is focused upon diverting young individuals away from the formal criminal justice process and detention. By adopting a Welfare-Based Approach, Courts are more inclined to address the potential treatment plans that could be beneficial for the young individual. These treatment plans are formulated with the primary goal being that the young individual will be effectively rehabilitated back into society.³²

HYBRID MODEL

As the name would allude, the Hybrid-Based Approach to juvenile offenders employs aspects from both the Justice and Welfare Based Approaches to judicial proceedings. The Hybrid-Based Approach was coined in the wake of both the Justice and Welfare Based Approaches as a 'happy medium'. The approach aims to balance out and eliminate the shortcomings of both the Justice

²⁸ CROC (n 13) art 40.

²⁹ Ibid.

³⁰ Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 5th ed, 2013) 109.

³¹ Ibid.

³² Ibid.

and Welfare Models by implementing the advantages of each.³³ The perception is that whilst there is a need to divert and prevent young offenders from falling into a life of crime, there is also a coexisting requirement to uphold the safety of the public and society at large.³⁴ Whilst it is proven that punitive methods of detention are ineffective and in the long run come to perpetuate rates of recidivism, there is also a need to achieve 'justice' for the victims of crime and protect the community. It is critical to uphold these ideals against the need to ensure that laws and programs that concern juveniles are in their best interests and value rehabilitative outcomes. Ultimately the Hybrid Method works to establish an effective balance between both punitive and preventive based measures to ensure the best interest of all parties are upheld equally.

³³ Noetic Solutions Pty Limited, *Report for the Minister for Juvenile Justice*. (Web Page, 2010) <<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Effective%20Practice%20Review%20FINAL.pdf>>.

³⁴ Ibid.

COUNTRY ANALYSIS

The following section will examine the Juvenile Justice Systems of different Countries with specific reference to their utilisation of Psychological Assessments and their Effectiveness.

The Countries are:

- United States of America
- Canada
- United Kingdom
- Australia
- China
- South Africa
- Philippines

Each Country Analysis will address:

- Overview of the Juvenile Justice System
- The Legislation and Process for Juvenile Offenders
- The Use of Psychological Assessments
- The Effectiveness of Psychological Assessments

UNITED STATES OF AMERICA

STRUCTURAL ANALYSIS OF THE USA'S JUSTICE SYSTEM

The structural nature of the United States of America's ('USA') legal system renders it one of the most complex and intricate legal systems in the world. The USA's Constitution delegates specific exclusive powers to the Federal government and judiciaries, whilst reserving powers for the State governments and judiciaries.³⁵ With 50 individual State judicial systems that operate independently of one another, there is a great level of diversity and differentiation when it comes to judicial approaches, laws and mechanisms relied upon within each State.³⁶ Unlike the majority of Western Justice systems, the USA justice system is structured as a dual court system, which is comprised of an intricate network of State, Federal and Specialised judicial level Courts and systems (such as military Courts).³⁷ Put simplistically, both Federal and Specialised judicial systems have the jurisdiction to hear cases that are national in their scope (eg. interstate crimes, electoral fraud, copyright infringements, etc), whilst State level judicial systems have the jurisdiction to hear cases that have taken place (either partially or fully) in a specific State (eg. theft, stalking, driving under the influence (DUI's), etc).³⁸ However this distinction is not absolute as there are case by case exceptions and complications that can blur the distinction between State and Federal judiciaries,

³⁵ Federal Judicial Centre, *U.S. Legal System: A Short Description*. (Web Page, 14 August 2014)

<<https://www.fjc.gov/sites/default/files/2015/US-Legal-System-A-Short-Description-2014-08-04.pdf>>.

³⁶ John Henegan, Brian Kimball and Caroline Smith, 'Legal Systems in the United States: Overview' (2021) 13 *Thomson Reuters Practical Law* 2, 36.

³⁷ Sandesh Dhakal, 'Psychological Evaluation in Juvenile Justice System' (2016) 26 *Criminal Law Subject Committee and Central Child Welfare Board* 3, 376.

³⁸ Volodymyr Melnykov and Xuwen Zhu, 'Studying Crime Trends in the USA Over the Years' (2019) 13 *Springer Berlin Heidelberg* 1, 325.

as such many complexities arise. Whilst both State and Federal governments work together to achieve the greater good for United States' society as a whole, the sovereign powers that vest in each State means that there can be broad differences and contrast between States laws, regulations and processes.

Notably whilst Federal judiciaries are seemingly 'superior' in that they obtain the jurisdiction and scope to hear cases that are either beyond or have surpassed State level courts, they are still relatively limited in their application and jurisdiction. Despite the Federal government and judiciaries being granted exclusive special powers under the US Constitution, over 90% of both civil and criminal cases are heard under the State judiciaries.³⁹ This being because the Constitution specifies that all powers that are not explicitly delegated to the Federal government and judiciaries, vest within each State. As there are only 27 powers delegated to the Federal government under the Constitution, it is clear that the majority of powers are left to the responsibility of each sovereign State to inaugurate their own laws, regulations, policies and processes. Consequently, each State for the most part has the jurisdiction to implement and develop their own individualised judicial systems and processes, so long as they don't interfere with Constitutional provisions. In turn, laws, policies, regulations and judicial processes can vary greatly between States.

³⁹ *Federal Judicial Centre*, 'U.S. Legal System: A Short Description,' (Web Page, 14 August 2014) <<https://www.fjc.gov/sites/default/files/2015/US-Legal-System-A-Short-Description-2014-08-04.pdf>>.

OVERVIEW OF JUVENILE JUSTICE IN THE USA

The USA's early approach adopted and closely followed the English Common Law approach to juvenile justice over the past 200 years. Initially as there was no distinction between juvenile and adult offenders, children 6 and below were deemed incapable of committing a crime as they lacked the capacity to understand the ramifications of their actions.⁴⁰ Further for children aged 7 - 14 the principle of rebuttable presumption exists where if criminal intent can be proven a juvenile can be legally deemed as capable of committing a crime and by age 15 children were classed as adults.⁴¹ The early 1900's brought about transformative change and scientific knowledge surrounding the core human developmental stages, in particular childhood and adolescence. This brought transformative changes to laws addressing the level of culpability and cognitive capacity of juvenile offenders. Thus, the USA favoured a more rehabilitate based approach to juvenile delinquent activities and behaviours. In 1899 the State of Illinois founded the first Juvenile Court to process and reprimand juvenile offenders under the age of 16 with the objective of rehabilitating juveniles and diverting them from a life of criminal behaviour.⁴²

What followed saw each individual State in the USA compose and implement their own variation of Juvenile Courts to process delinquent children. Today the laws in the USA establishing age for criminal culpability and the legal definition of a child vary greatly between States, 36 States do not specify a minimum age in their legal definition of a child, eleven establish the age of 10, three States specify the age of 7, one State specifies the age of 8 and another State specifies the age of

⁴⁰ Laurence Steinberg, 'Adolescent Development and Juvenile Justice' (2009) 5 *Annual Review of Clinical Psychology* 1, 485.

⁴¹ Ibid.

⁴² Larry Seigal, Joseph Senna and Paul Hahn, 'Juvenile Delinquency: Theory, Practice and Law' (1981) 32 *Juvenile and Family Court Journal* 4, 69.

7.⁴³ In addition all States have maximum age thresholds in place under their juvenile jurisdictions and once a child outgrows the threshold in a specific State they are to be tried as an adult. 46 States have set the maximum age for the application of juvenile jurisdiction to be 17 years old, three States have set the maximum age to be 16 years and Vermont is the first US State to have set the maximum age at 18, in accordance with the International *Convention on the Rights of the Child*.⁴⁴ However in all States across the USA these thresholds are not absolute, meaning that based upon the individual circumstances of the defendant and nature/seriousness of the Crime committed the courts may 'transfer' the juvenile to be tried and prosecuted as an adult regardless of their age.⁴⁵ Although the juvenile justice system in the USA is a separate justice system designed specifically to combat the unique branch of juvenile criminal behaviour with the core objective of achieving rehabilitation, Courts have grappled with the simultaneous need to protect victims and society, whilst achieving 'justice' for the crimes committed.⁴⁶ In turn most States in the USA have introduced measures and processes to balance these two objectives through making informed determinations concerning juvenile competency and capacity on a case by case basis.

USE OF PSYCHOLOGICAL ASSESSMENTS

The USA has employed psychological assessments within their justice systems since the early 1900's. They play an imperative role in making assessments and determinations as to an offender's mental capacity, state of mind, any predisposed cognitive factors and any potential ongoing risk

⁴³ Francis Reddington, 'Age and Criminal Responsibility' (2003) 3 *Journal of the Institute of Justice and International Studies* 105, 105.

⁴⁴ *American Psychological Association*, 'APA Statement on Reforming the Juvenile Justice System to Improve Children's Lives and Public Safety,' (Web Page, 26 April 2010) <<https://www.apa.org/news/press/statements/juvenile-justice>>.

⁴⁵ *National Conference of State Legislators*, 'Juvenile Justice Bills Tracking Database,' (Web Page, February 2 2021) <<https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-justice.aspx>>.

⁴⁶ Sandesh Dhakal (n 37) 376.

they may pose to the community/victims.⁴⁷ For juvenile offenders, psychological assessments are particularly crucial for making evaluations throughout all states of the trial, sentencing and rehabilitative process. Psychological assessments may even be utilised to predict and prevent future criminal behaviours and activities through diversion and/or intervention methods such as providing mental health treatment, education and job opportunities and family counselling.⁴⁸

As the USA has 51 separate juvenile justice systems with differing laws, processes and standards this case study will take a holistic approach of the US as a whole. The American Psychological Association (APA) regulates and provides guidelines for all registered Psychologists in the USA, including Forensic psychologists.⁴⁹ There are two primary ways in which forensic psychologists are permitted to assist the courts in juvenile delinquency cases, these are:

1. Providing treatments and intervention mechanisms to juveniles and their family units to aid the rehabilitation of the child and reduce the risk of reoffending.⁵⁰
2. Assist judges and attorneys by providing accurate forensic evaluations outline a juvenile's behavioural, emotional and cognitive functioning.⁵¹

In regards to treatment and intervention mechanisms available to juveniles through the forensic assessments, the APA favours clinical based instruments and treatments as these alternatives are specifically designed to function as a therapeutic remedy.⁵² These mechanisms almost always

⁴⁷ 'APA Statement on Reforming the Juvenile Justice System to Improve Children's Lives and Public Safety' (n 44).

⁴⁸ Joan McCord, Cathay Spatz Widom and Nancy Crowell, 'Juvenile Crime, Juvenile Justice' (National Academy Press, 2001) ch 5, 159 <<https://www.nap.edu/read/9747/chapter/7>>.

⁴⁹ Anne Kazak, 'American Psychologist' (2019) 9 *American Psychological Association* 4, 3.

⁵⁰ Robert Hoge (n 2) 255.

⁵¹ Ibid.

⁵² Wayne Liddell and Pam Clark, 'Quality Practice for Working with Youth in Confinement' (2010) 1 National Institute of Corrections 2, ch 10.

provide diversionary programs and rehabilitative options for juveniles and their family units to partake in as either a preventative option, alternative sentencing option or re-entry into society option.⁵³ Some of these alternatives include:

- Crisis Intervention/Family Counselling
- Substance Use Education and Counselling
- Job Skills Training/Educational Services
- Cognitive Behavioural Interventions
- Life Skills and Independent Living Programs
- Balanced and Restorative Community Justice (BARJ)
- Recreational Programs⁵⁴

In regards to assisting the courts with psycho-legal questions, the use of psychological assessments in a legal context must address any clinical factors and issues that are relevant to the course of legal proceedings. The APA has implemented specialised Forensic Psychologist Practice Guidelines that must be adhered to when conducting juvenile forensic evaluations. These guidelines outline three key issues which must be addressed, these are as follows:

1. Determine the psychological maturity and developmental status of a juvenile offender. This involves an assessment of the social, psychical, emotional, cognitive and any predisposed characteristics of the child/adolescent.⁵⁵

⁵³ Steve Gies, 'Aftercare Services' (2003) 15 *Juvenile Justice Bulletin* 156.

⁵⁴ Ibid.

⁵⁵ Lauren Baldwin, 'Who Decides to Try a Juvenile as an Adult?' (Web Page, 13 April 2019) <<https://www.criminaldefenselawyer.com/resources/criminal-defense/juvenile/who-decides-try-a-juvenile-adult>>.

2. Determine the risk of the juvenile reoffending and any future risk they may pose to the victims/community as a whole.⁵⁶
3. Assess the extent of the juveniles antisocial/criminal behaviour and characteristics though making psychological determinations of a juveniles interpersonal and empathetic capacity alongside the nature of their social deviance.⁵⁷

However, to make such assessments, Forensic psychologists employ a range of methods and assessment processes which vary between States and vary based on the objective circumstances of each individual case. It is widely acknowledged by the APA that Forensic Assessment Instruments (FAIs) are the preferred mechanism to be employed when making psychological assessments in a legal context as they are specifically designed to address legal issues, however they simultaneously address relevant clinical questions to the offender in question.⁵⁸ Despite this, Members of the American Psychology-Law Society Division of the American Psychological Association have determined through their research that the most routinely consulted assessments fell under the branch of traditional clinical instruments. Clinical instruments refer to psychological assessment and testing mechanisms that have been developed in a therapeutic context as a means of treating and diagnosing individuals. The two most common clinical instruments used in juvenile forensic assessments were found to be the MMPI-2 test and the Wechsler intelligence scales. However, it is important to note that it has also been reported by the APA that FAI psychological assessments of juvenile offenders, such as the Personality Assessment

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Omnia El-Shenawy (n 4) 20.

Inventory (PAI), the Parenting Stress Index (PSI), the Child Behaviour Checklist (CBCL) and the Personality Inventory for Children (PIC), are becoming more frequently consulted.⁵⁹

Aside from providing treatment options and intervention based mechanisms to juvenile offenders, forensic psychological assessments are also tasked with assisting judges and attorneys with important information in regards to a juvenile's behavioural, emotional and cognitive functioning. This information is fundamentally provided to enable the Courts to address and answer psycho-legal questions. Typically, there are four main psycho-legal questions to be addressed throughout juvenile legal proceedings, these are as follows:

1. Transfer Evaluations: Transfer evaluations are based on the notion that whilst most juvenile offenders are likely to be rehabilitated, there is a small percentage whose criminal actions are not entirely attributed to delinquent behaviour and have a high risk of reoffending and pose an ongoing threat to the community. Thus, forensic assessments are needed to provide professional psychological insight into the potential future risk posed by the juvenile in question, their maturity and mental capacity and their ability to respond to treatment and be rehabilitated.⁶⁰
2. Competence Evaluations: There are two types of competence evaluations: 'Competency to waive the right against Self-Incrimination' and 'Competency to Stand Trial.' In the case of *People v. Lara*, it is required that the Courts consider the "totality of the circumstances" when attempting to waive self-incrimination.⁶¹ This means that forensic psychologists must

⁵⁹ Robert Archer, et al, 'A Survey of Psychological Test Use Patterns Among Forensic Psychologists' (2006) 87 *Journal of Personality Assessment* 1, 84.

⁶⁰ Randy Borum and Randy Otto, 'Evaluation of Youth in the Juvenile Justice System' (2004) 6 *Mental Health Law & Policy Faculty Publications* 4, 817.

⁶¹ *People v. Lara* 67 Cal.2d 365 (1967).

consider all factors such as IQ, level of education, emotional and behavioural, environmental, mental clarity, prior experiences and who was present. When assessing a juvenile's competency to stand trial, psychological assessments must distinguish deficiencies in a juvenile's competence abilities and that this is directly related to a mental disorder and/or mental retardation.⁶²

3. Sanity Evaluations

4. Dispositional Evaluations: These evaluations relate to the acknowledgment that many of the children who come in contact with the justice system have been subjected to, or become involved, with illicit substance use, assault, neglect, etc. As dispositional assessments are subjective in nature there is no definitive methodology, however factors such as emotional, behavioural and IQ may be relevant.⁶³

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

As seen through the above analysis of the use of psychological assessments in the USA, there is a dire need to ensure that forensic assessments used in juvenile legal proceedings are not only relevant to the subjective circumstances of each case, but are also fit to answer psycho-legal questions. It is imperative that judges strive to question and challenge the admissibility of psychological assessment tools used in court, however often they struggle to do this which results in limited scrutiny and evaluation of the validity of these assessments and their findings in court.⁶⁴

⁶² *Dusky v. United States*, 362 U.S. 402 (1960).

⁶³ Randy Borum and Randy Otto (n 60) 817.

⁶⁴ Tess Neal, et al 'Psychological Assessment in Legal Contexts: Are Courts Keeping "Junk Science" Out of the Courtroom?' (2019) 20 *Association for Psychological Science* 135, 135.

Given the wide range of psychological assessments available for use by forensic psychologists, there is a dire need to ensure that assessments are not used beyond their intended scope or purpose. For example, APA outlines that as psychological assessments were initially developed in a clinical therapeutic context with the objective of diagnosing and offering treatments to individuals with mental illnesses and cognitive disorders, complications arise when attempting to apply them in a legal context as forensic mechanisms.

Currently the majority of the psychological assessments used by forensic psychologists are designed to function in a clinical setting. When applying these assessments to legal contexts to answer psycho-legal questions, the findings and results they produce are warped as they were not designed to function in a legal setting. To rectify this issue, Courts need to have the capacity and resources to make informed determinations as to the relativity of a particular assessment. However, presently both judges and attorneys lack substantial guidance, education or knowledge concerning context and the contents of most psychological assessments and the Courts rely solely on the expertise of forensic psychologists to apply the most appropriate assessment.⁶⁵

The same applies for psychologists, they are not legally trained and do not have the resources to make informed determinations as to which assessments are most appropriate for a particular legal question. The integration of FAIs by the APA are seen as a positive move in the right direction as these are specialised assessment tools specifically designed to function in a legal setting and address psycho-legal questions. However, there are still longstanding clinical and non-standardised psychological assessments that are regularly used in forensic assessments and have

⁶⁵ Randy Borum and Randy Otto (n 60) 817.

not been validated and designed through specialised rigid processes involving critical peer reviews and empirical investigations.⁶⁶ Until it is mandatory for forensic psychological assessments to undergo these processes and obtain scientific approval before their use in legal proceedings, the effectiveness and appropriateness of forensic psychological assessments cannot be definitive.

Comparatively, despite the apparent inconsistencies and shortcomings of the current scope of forensic psychological assessments for juvenile offenders, they have played a crucial role (alongside their potential to play) throughout all stages of the justice process. 87% of juveniles who come into contact with the justice system suffer some form of mental illness or cognitive disorder.⁶⁷ The USA juvenile justice systems recognise that the average juvenile already lacks the mental capacity and competency that adults do, thus in the case of juveniles who are also impacted by additional factors that inhibit their competency, there is a need to employ safeguards such as psychological assessments to uphold the best interests of the child. Psychological assessments which are designed to operate in a legal context are deemed essential throughout all stages of juvenile legal proceedings as they provide the Courts with explanations to psycho-legal questions that would have otherwise been undetermined.

⁶⁶ Ibid.

⁶⁷ Joan McCord, Cathy Spatz Widom and Nancy Crowell (n 48).

CANADA

OVERVIEW OF JUVENILE JUSTICE IN CANADA

Canada adopts the Hybrid Model of justice through taking punitive and welfare approaches to their juvenile justice system. Their assessments and legislative provisions are targeted towards rehabilitation and reintegration; however, they emphasise the importance of protecting the community and make it their paramount concern.⁶⁸ There is a National Criminal Code which all Provinces comply with. This allows for uniformity and consistency. Canadian legislation states that children between the age of 12-17 can be tried as adults, depending on the circumstances of the case. In accordance with the *Youth Criminal Justice Act 2003* ('*YCJA*'), juveniles over the age of 14 can be sentenced in a Criminal Court if they commit a presumptive offence, or an offence that would receive a two year or longer sentence by an adult.⁶⁹ Each province has discretion in applying this provision but it must be between the ages of 14-16.⁷⁰ The age of criminal responsibility is 12.⁷¹

JUVENILE JUSTICE PROCESS IN CANADA

The *YCJA* is the central federal law that governs Canada's youth justice system. The *YCJA* recognises that children must be held responsible for the criminal act that they have committed

⁶⁸ Andrew Spice et al, 'Psychological Assessment for Adult Sentencing of Juvenile Offenders: An Evaluation of the RSTI and the SAVRY' (2010) 9(2) *International Journal of Forensic Mental Health* 124,125.

⁶⁹ *Youth Criminal Justice Act*, SCR 2003 s 62 ('*YCJA Act*').

⁷⁰ *Ibid* s 61.

⁷¹ *Criminal Code*, RSC 1985, c. C-46, s13.

but not to the same extent as adults. Section 38(1) of the *YCJA* outlines that the Act aims to 'hold a young person accountable for an offence through the imposition of sanctions that have meaningful consequences for the young person and that promote...rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public'. This makes clear that they aim to protect the needs of both the individual and society.

Canada's aim to protect the individual can also be seen in Section 42 (7)(b) which balances harsher punishments on violent young people through an 'intensive rehabilitative custody' which aims to treat violent offenders who suffer from mental illness, psychological disorders or emotional disturbance with support. This program provides unique supervision that is not afforded to adults.

Additional provisions, such as, a required pre-sentence report which encourages the use of psychological assessments⁷² and the ability for children in conflict with the law to serve the first part of their sentence while they are considered a child, in juvenile detention and then be transferred after the age of 20,⁷³ highlights the aims of Canada's justice system to balance the right of individuals with the needs to protect the community.

USE OF PSYCHOLOGICAL ASSESSMENTS

As mentioned above, Canada does use psychological assessments in their youth justice system. They use screening tools at various stages of the trial process and post-sentencing.

⁷² Ibid s 40.

⁷³ Ibid s 76(2)(a).

The following outline the variety of tools utilised by Canada:

Assessments for Risk of Offending /Re-Offending	
Behavioural and Emotional Screening System (BASC-2 BESS)	A family tool to screen children and adolescents with behavioural and emotional problems. ⁷⁴
School Social Behaviour Scales (SSBS)	Used to achieve several objectives, including used in school to identify students with at-risk behaviours. ⁷⁵
Substance Abuse Subtle Screening Inventory - Adolescent (SASSI-A2)	Used to identify young people at risk of substance abuse and substance dependence. ⁷⁶
Problem Oriented Screening Instrument for Teenagers (POSIT)	<p>Designed to identify at-risk youth with potential problems in one or more of 10 areas of psychological functioning and who require thorough assessment.</p> <p>10 Areas Include:</p> <ul style="list-style-type: none"> ▪ Substance Use/Abuse ▪ Physical Health ▪ Mental Health ▪ Family Relations ▪ Peer Relations ▪ Educational Status ▪ Vocational Status ▪ Social Skills ▪ Leisure/Recreation ▪ Aggressive Behaviour/Delinquency⁷⁷

⁷⁴ Julie Savignac, *Tools to Identify and Assess the Risk of Offending Among Youth* (National Crime Prevention Centre, 2010) 76 ('*Tools for Offending Youth*').

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

<p>Detection of Alcohol and Drug Problems in Adolescents (DEP-ADO)</p>	<p>Screening checklist used to detect drug and alcohol problems among adolescents.</p> <p>Areas Measured:</p> <ul style="list-style-type: none"> ▪ Alcohol and Cannabis ▪ Other Drugs ▪ Consequences⁷⁸
<p>Youth Level of Service/Case Management Inventory - Screening Version (YLS/CMI-SV)</p>	<p>Designed to identify youth at risk and conduct a preliminary assessment to identify the level and nature of interventions required.</p> <p>Areas Addressed:</p> <ul style="list-style-type: none"> ▪ History of Conduct Disorder ▪ Current Schools or Employment Problems ▪ Some Criminal Friends ▪ Alcohol/Drug Problems ▪ Leisure/Recreation ▪ Personality/Behaviour ▪ Family Circumstances/Parenting ▪ Attitudes/Orientation⁷⁹
<p>Beck Youth Inventories - Second Edition (BYU-II)</p>	<p>Designed to evaluate social and emotional impairment in children and adolescents.⁸⁰</p>
<p>Behaviour Assessment System for Children, Second Edition (BASC-2)</p>	<p>Used to assess a range of emotional and behaviour problems in young people and to help practitioners and professionals develop appropriate intervention plans.</p> <p>Areas Assessed:</p> <ul style="list-style-type: none"> ▪ Externalised Behaviour Problems ▪ Internalised Behaviour Problems ▪ Problems At School ▪ Adaptive Skills⁸¹

⁷⁸ Ibid 77.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

<p>Achenbach System of Empirically Based Assessment (ASEBA)</p>	<p>Used to assess a broad spectrum of emotional, social and behavioural problems in children and adolescents.⁸²</p>
<p>Early Assessment Risk List for Boys (EARL-20B) & Early Assessment Risk List for Girls (EARL-21G)</p>	<p>These assessment tools are designed for use with young children at risk for future antisocial behaviour. These tools are used to individually target each of the primary risk factors that could lead a child to engage in future aggressive, violent or antisocial behaviour.⁸³</p>
<p>Risk Factor Profile Instrument (RFPI)</p>	<p>RFPI is an assessment tool based on a literature review of the risk factors associated with early onset of chronic and violent youth delinquency. The main objective is to identify child offenders who are at high risk of escalating into more serious offending and continuing on a path to chronic violent delinquency.⁸⁴</p>
<p>Structured Assessment of Violence Risk in Youth (SAVRY)</p>	<p>SAVRY is a structured assessment tool used to measure a young person's risk for future violence, aggression or any other form of behaviour considered to be serious.</p> <p>The risk factors assessed fall into three categories:</p> <ol style="list-style-type: none"> 1. Historical Factors 2. Social and Contextual factors 3. Individual/Clinical factors⁸⁵
<p>Youth Level of Service/Case Management Inventory (YLS/CMI) – Risks/Needs Assessment</p>	<p>This tool was designed to assist practitioners in assessing the risks and needs of young offenders so they can subsequently develop tailored intervention plans.</p> <p>This assessment is used by professionals to assess the likelihood of recidivism and the need for</p>

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid 78.

⁸⁵ Ibid 79.

	correctional programs. It uses a 42 item survey to determine the level of risk and need factors. ⁸⁶
Social Skills Improvement System (SSIS)	Designed to identify youth who are at-risk of developing social and behavioural problems. SSIS is an evaluation tool designed to address the need for an evidence-based, screening, assessment and intervention system to help youths develop, improve and maintain important social skills. ⁸⁷
Youth Assessment and Screening Instrument (YASI)	Designed to analyse and assess risk, needs and protective factors in youth populations. It assists in the development of tailored case plans and helps to ensure the availability of services and resources. ⁸⁸

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

Canada applies multiple psychological assessments when assessing children in conflict with the law, which some of these assessments have been adopted by other Countries. For example, the Youth Offender Level of Service Inventory (YO-LSI) is used to identify risk was developed by Canada and is now used internationally.⁸⁹ Similarly, SAVRY has been found to have a strong predictive validity, and has consistent follow up periods for young people that they have predicted as violent.⁹⁰

⁸⁶ Robert Hoge and Donald Andrews, 'The Youth Level of Service/Case Management Inventory Manual and Scoring Key' (2002) *Multi-Health Systems Canada*.

⁸⁷ *Tools for Offending Youth* (n 74) 78.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid* 62.

A unique component of Canada's psychological assessment tools is that they also implement preventative tools that are instituted in schools to screen young people at risk. This directly addresses the systemic reasons for children in conflict with the law and is what allows for relatively low rates of juvenile offenders.

While there is a plethora of tools available in Canada, the application of them is on a discretionary basis. There is no singularised tool that is applied across all Canadian provinces which makes it difficult to determine their efficacy as there is no consistent data on what tools function best.⁹¹ It is important to note that there has been a steady decrease in youth crime in Canada. One may assume that the variety of psychological assessments would be a contributor to this, though without any empirical evidence, a connection between the decrease to the impacts of psychological assessments cannot be made conclusively.

⁹¹ Government of Canada, 'Youth Risk/Need Assessment: An Overview of Issues and Practices', Appendix Three: Provincial Profiles (Web Page, 7 January 2015) <https://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/rr03_yj4-rr03_jj4/a3.html>.

UNITED KINGDOM

OVERVIEW OF JUVENILE JUSTICE IN THE UK

The United Kingdom (UK) with its rich history of what we know today as the system of common law, and a strong emphasis on a uniting legislative tradition across its member countries, provides us with an example of how diversified regions could correspond amongst one another and achieve parity in legal matters pertaining to children.⁹² Many of the research articles on the subject of forensic psychiatry and children's mental wellbeing state that the UK is still somewhat fragmented. This is perhaps its most obvious downside, and a country such as India, with a population many times the size of the UK, should take notice of such jurisdictional debilitations experienced by a smaller nation-state with a relatively well-established approach towards children in the criminal justice system.⁹³

JUVENILE JUSTICE LEGISLATION IN THE UK

Two Statutes were passed which allowed for significant reforms to be undertaken in the field of juvenile mental health assessments: the *Crime and Disorder Act (1998)* and the *Youth Justice and Criminal Evidence Act (1999)*.⁹⁴ The latest 'Standards for Children in the Youth Justice System'

⁹² John Muncie, 'Comparative Youth Justice in the Devolved United Kingdom' (2011) 51(1) *The British Journal of Criminology* 40.

⁹³ Nick Hindley, Cesar Lengua and Oliver White, 'Forensic Mental Health Services for Children and Adolescents: Rationale and Development (2018) 23(1) *BJPsych Advances* 36, see Conclusions.

⁹⁴ *Crime and Disorder Act 1998* (UK) ('UKPGA'); *Criminal Evidence Act 1999* (UK) ('YJCEA'); Erika K Penner, Ronald Roesch and Jodi L Viljoen, 'Young Offenders in Custody: An international Comparison of Mental Health Services' (2011) *International Journal of Forensic Mental Health* 215, 226.

Report of 2019 has changed very little over the decade, mirroring the same principles laid out by a Revision Commission in 2010 which stated 'all children and young people entering the youth justice system benefit from a structured needs assessment to identify risk and protective factors associated with offending behaviour to inform effective intervention'.⁹⁵

The statutory principle in relation to children in the justice system is provided in the *Crime and Disorder Act (1998)* under Section 37(1) which states plainly, 'it shall be the principle of the youth justice system to prevent offending by children and young persons'.⁹⁶ More pertinent attention to mental health and preliminary assessment of offending children could be accounted for by Section 65 of the *Crime and Disorder Act 1998*.⁹⁷

Raymond Arthur from The Open University gives a concrete layout of the steps taken when a child is initially detained: 'The police officer is required to refer the young person to the local youth offending team for 'assessment.' The youth offending team has qualified psychologists, councillors and other professionals which determine an efficient and thorough preliminary assessment of the child, as well as draft up a rehabilitation program'.⁹⁸

Other Statutes in the UK protecting, defining and accommodating for the rights of children include the *Children Act of 1989*, *Children Act 2004*, *Education Act 2011*, the *Mental Health Act 1983* and the *Mental Capacity Act 2005*.⁹⁹

⁹⁵ Erika K Penner, Ronald Roesch and Jodi L Viljoen (n 94) 221; Ministry of Justice, *Youth Justice Statistics 2019/20: England and Wales* (2021) 6.

⁹⁶ *UKPGA* (n 94) s 37(1).

⁹⁷ *Ibid* s 65.

⁹⁸ Raymond Arthur, 'Young Offenders: Children in Need of Protection' (2004) 23(3-4) *Law and Policy* 309, 315.

⁹⁹ Nick Hindley, Cesar Lengua and Oliver White (n 93) 36, see Box 1.

USE OF PSYCHOLOGICAL ASSESSMENTS

Theoretically, the approach to criminal punishment for children in the UK is usually associated with 'justice' rather than 'welfare'. This 'justice' approach organically evolved in a system where deterrence against crime was seen as the best approach against recidivism. Children in the UK could legally be detained from the age of ten. It may seem that the approach of the criminal justice system in the UK towards children is harsh, however the reality is much different. Children who are detained are initially investigated by forensic psychiatrists, or similar specialists and then assessed if they suffer from any mental disorders.¹⁰⁰

Young offenders with exceptional issues can be handled by a specialised team of forensic psychiatrists, at government subsidised facilities.¹⁰¹ Young and her colleagues state that the psychiatric facilities dedicated to looking after children in the UK are well equipped to deal with the most difficult of young offender subjects. The same claims, however, cannot be made of all countries, as Young exclaims the effectiveness of treatment is as much dependent upon the facility and environment, as it is on the methodology.¹⁰²

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

The effectiveness of these legislative acts can be seen in both the data, which shows a sharp decrease in reoffending as well as an overall decrease in juvenile crime since the 1990s. This trend

¹⁰⁰ Harvey Gordon and Per Lindqvist, 'Forensic Psychiatry in Europe' (2007) 31(11) *Psychiatric Bulletin* 421.

¹⁰¹ Susan Young, Ben Greer and Richard Church, 'Juvenile Delinquency, Welfare, Justice and Therapeutic Interventions: A Global Perspective' (2017) 41(1) *BJPsych Bulletin* 21, 24.

¹⁰² *Ibid.*

of a decrease in both offending and reoffending has continued until the beginning of the COVID-19 pandemic in March 2020, as reported by the Youth Justice statistics for England and Wales.¹⁰³

There is a career and an incentivised professional approach to Forensic Psychiatry in the UK, the principles of forensic child and adolescent mental health services are quite broad, but there is an overarching theme of professionalism and expertise threshold which must be adhered to.¹⁰⁴

¹⁰³ Ministry of Justice, *Youth Justice Statistics 2019/20* (n 95) 2.

¹⁰⁴ Nick Hindley, Cesar Lengua and Oliver White (n 93).

AUSTRALIA

OVERVIEW OF JUVENILE JUSTICE IN AUSTRALIA

Since Australia is a Federal Law System, Criminal Proceedings for Children are governed separately under State and Territory Legislation. For example, in New South Wales, the two main Acts that address children who are in conflict with the law are the *Children (Criminal Proceedings) Act 1987* ('CCPA') and the *Young Offenders Act 1997* ('YOA').¹⁰⁵ Since each State and Territory are responsible for administering their own juvenile justice system, often there are substantial discrepancies with the legislation and how it is practice, which makes it difficult to assess Australia's efforts from a national perspective.¹⁰⁶ However, theoretically, Australia has sought to have taken the 'hybrid approach' to their juvenile justice system by incorporating elements from both the justice and welfare models. Despite possessing a low 'minimum age of criminal responsibility,' Australia has aimed to divert young individuals away from the criminal justice system through introducing 'restorative justice' mechanisms into their legislation.¹⁰⁷ An example is Youth Conferencing which involves the young offender, the victim, facilitators, police and other supporters coming together to address the harm caused by the offender's conduct and how that

¹⁰⁵ See also Australian Capital Territory: *Children and Young People Act 2008* (ACT), *Crimes (Restorative Justice) Act 2004* (ACT); Northern Territory: *Youth Justice Act 2005* (NT); Queensland: *Youth Justice Act 1992* (Qld), *Children's Court Act 1992* (Qld); South Australia: *Young Offenders Act 1993* (SA), *Youth Court Act 1993* (SA); Tasmania: *Youth Justice Act 1997* (Tas); Victoria: *Children Youth and Families Act 2005* (Vic) and Western Australia: *Children's Court of Western Australia Act 1998* (WA), *Young Offenders Act 1994* (WA).

¹⁰⁶ Wendy O'Brien and Kate Fitz-Gibbon, 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform' (2017) 17(2) *Youth Justice* 134, 135.

¹⁰⁷ Australian Institute of Health and Welfare, *Youth Justice in Australia 2018-19* (AIHW Report, 2020) 43-4.

harm can be repaired. Youth Conferencing encourages the young offender to take responsibility for their actions.¹⁰⁸

Age of Criminal Responsibility:

In 2016, when an Indigenous Australian child, aged eleven, became Australia's youngest known individual to be charged for murder, Amnesty International advocated for the Australian Government to re-evaluate the Nation's 'age of criminal responsibility.'¹⁰⁹ However, by electing to disregard international criticism and the United Nation's Committee on the Rights of the Child's recommendation of 'twelve' being the minimum age, Australia's 'age of criminal responsibility' has continued to be 'ten years old.'¹¹⁰ In response, Australia has sought to justify their low minimum age with the *doli incapax* principle. Established in Common Law, the *doli incapax* principle presumes that because a child between the 'age of ten and fourteen' has not yet formed the maturity required to understand their conduct as 'seriously wrong,' they are incapable of committing a crime.¹¹¹ For this presumption to be rebutted, the Prosecution must prove beyond reasonable doubt that the child was not just being 'mischievous' but possessed the capacity to know the seriousness of their wrongdoing. However, in practice in Victoria, the onus of proof has invertedly shifted to the Defence who therefore bears the burden and costs to prove the child's incapacity through obtaining psychological assessments.¹¹² Placing this responsibility upon the Defence is problematic as the Defence is not legally obligated to order a psychological assessment and is

¹⁰⁸ Jacqueline Joudo Larsen, *Restorative Justice in the Australian Criminal Justice System* (AIC Reports No 127, 2014) 6.

¹⁰⁹ O'Brien and Fitz-Gibbon 'The Minimum Age of Criminal Responsibility' (n 106) 134.

¹¹⁰ Ibid 137; *Children (Criminal Proceedings Act) 1987* (NSW) s 5 ('CCPA').

¹¹¹ *C v DPP* [1995] 2 All Er 43, 48; *R v Gorrie* [1919] 83 JP 136, 260.

¹¹² Wendy O'Brien and Kate Fitz-Gibbon, 'A Child's Capacity to Commit Crime: Examining the Operation of *Doli Incapax* in Victoria (Australia)' (2019) 8(1) *International Journal for Crime, Justice and Social Democracy* 18, 19-22.

only undertaken at their discretion. Limitations are also present with resourcing qualified and available child psychologists that can produce quality reports.¹¹³

Whilst Australia adopted the *doli incapax* principle as a legal safeguard to ensure that young children could be diverted away from the criminal justice system, in practice, Australia has effectively created a system of two ages of criminal responsibility. By having 'two ages,' greater inconsistencies can arise as this system grants the Court with greater discretionary power so that the child's maturity can be assessed.¹¹⁴ Therefore, in situations where the *doli incapax* principle is not raised, that child is effectively being denied of this safeguard that should be granted to them by virtue of their age.¹¹⁵

JUVENILE JUSTICE PROCESS IN AUSTRALIA

With reference to the New South Wales' *CCPA*, Section 3 defines a 'child' as an individual who is under the age of eighteen years old. Also, under Section 3, a 'serious children's indictable offence,' is defined as matters, such as 'homicide' or 'an offence punishable by imprisonment for life or for 25 years.'¹¹⁶ The Children's Court possesses jurisdiction over most offences committed by young individuals, except for 'serious children's indictable offence' which are handed over to be dealt with in an Adult's Court. The *CCPA* also outlines that young offenders who have been sentenced to imprisonment for committing a 'serious children's indictable offence' must be transferred to an Adult's Prison once they reach the age of eighteen years unless the Court is satisfied otherwise.¹¹⁷

¹¹³ O'Brien and Fitz-Gibbon 'The Minimum Age of Criminal Responsibility' (n 106) 140-1.

¹¹⁴ Ibid 141.

¹¹⁵ O'Brien and Fitz-Gibbon 'A Child's Capacity to Commit Crime' (n 112) 23.

¹¹⁶ *CCPA* (n 110) s 3.

¹¹⁷ Ibid s 17, 19.

Under the *CCPA*, when determining an appropriate sentence for a young offender in any given jurisdiction, the Court is required to uphold the principles provided for in Section 6. This Section includes principles such as, a child should not receive a greater penalty than an adult who has committed a similar offence and that it is desirable that a child is supported with their 'reintegration' within the community.¹¹⁸ When sentencing a young offender, Section 33 of the *CCPA* provides the Court with a list of orders that can be made, which include a dismissal, a good behaviour bond, a fine, attendance at a Youth Justice Conference, probation, a referral to perform community service work or detention.¹¹⁹

USE AND EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

In Australia, the Court is entitled to order for a 'psychological pre-sentence report' to be conducted only after the child has either pleaded or been found guilty of an offence. When preparing a psychological report, the evaluator is required to include both an evaluation of the young individual and their own opinion and recommendations on what they have found.¹²⁰ Forensic Mental Health Assessments ('*FMHA*') are intended to assist the Court in determining an appropriate sentence for the young individual as the reports often provide guidance on the level of culpability, the likelihood of reoffending, whether the individual would be receptive of treatment and what treatment options could be available.¹²¹ To guarantee that the report can be considered useful for the Court, psychologists are required to undertake scientific methodology that is aligned to professional

¹¹⁸ Ibid s 6.

¹¹⁹ Ibid s 33.

¹²⁰ Debra Bycroft, Greg E. Dear and Deirdre Drake, 'Psychological Pre-Sentence Evaluations for Sentencing Young Offenders in Australia' (2020) 55(5) *Australian Psychologist* 455, 455.

¹²¹ Ibid 456.

practice standards.¹²² However, currently in Australia, there is no compulsory or standardised psychological assessment that should be undertaken for children who are in conflict with the law.¹²³ Whilst, under Section 151 of the Queensland's *Youth Justice Act 1992* (QLD), there is reference to a 'pre-sentence report,' the legislation only extends to convey that the Court can order a report that 'contains specified information, assessments and reports relating to the child or the child's family or other matters.'¹²⁴ The lack of effective psychological assessments in Australia can be attributed to the unavailability of qualified psychologists that are specifically trained in 'forensic psychology.'¹²⁵

In Australia, the 'Australian Adaptation of the Youth Level of Service/Case Management Inventory,' which is referred to as the 'YLS-CMI-AA' was introduced as a standardised risk/needs assessment for juvenile offenders. Through providing 'subscale scores,' the YLS-CMI-AA evaluates the 'criminogenic' needs, the likelihood of re-offending and what type of intervention/treatment might be required for young offenders.¹²⁶ While the YLS-CMI-AA can be effective, studies in Australia found that the assessment was ineffective in predicting recidivism rates for Indigenous Australian offenders.¹²⁷

¹²² Debra Bycroft, Greg E. Dear and Deirdre Drake, 'Psychological Reports for Sentencing Juveniles in Australian Courts' (2019) 26(3) *Psychiatry, Psychology and Law* 355, 356.

¹²³ *Ibid* 356.

¹²⁴ Chris Cunneen, Rob White and Kelly Richards (n 30) 269.

¹²⁵ Bycroft, Dear and Drake, 'Psychological Reports for Sentencing Juveniles in Australian Courts' (n 122) 360.

¹²⁶ Paul Nelson, *Predictive Validity of Risk/Needs Assessment for Young Offenders under Community Supervision* (Crime and Justice Bulletin No 205, June 2017) 2.

¹²⁷ *Ibid* 11.

CHINA

OVERVIEW OF JUVENILE JUSTICE IN CHINA

Juvenile Justice Law in China stems from the principles of International Law which has been ratified into the National Law of China and multiple pieces of legislation. Juvenile justice in China is encapsulated in Article 17 of the *Criminal Law of the People's Republic of China, Chinese Criminal Law 1997 ('CCL')*,¹²⁸ whereby it states that criminal responsibility is aged 16.¹²⁹ However, a person of 14 years of age but below 16 shall be criminally responsible for specific offences such as rape, robbery and intentional homicide.¹³⁰ The recent amendments to criminal responsibility allow children as young as 12 to 14 years of age to also be held liable for specific criminal offences including intentional homicide.¹³¹ The amendment was adopted to prevent serious criminal offences and enforce rehabilitation. However, the age of criminal responsibility in China has generated contention as the minimum age has recently been lowered. Many argue that the age of criminal responsibility in China, enables children to be susceptible to the criminal law system at an early age which may be detrimental to the development of the juvenile offender.

Overall, psychology in forensic evaluations and the legal system in China, has made rapid progress under China's economic and educational focus. Psychology in China has been prominent since the

¹²⁸ *Criminal Law of the People's Republic of China, Chinese Criminal Law 1997 ('CCL')* art 17.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

Twentieth Century and has been implemented in usage for forensic evaluations in juveniles.¹³² In particular, the Chinese Psychology Society (CPS) governs the implementation of psychological assessments and ensures that they are of a quality standard in China. Specifically, the CPS has published the 'Management Regulations for Psychological tests and Ethical Rules for Psychological Test Practitioners' to regulate psychological testing and ensure standardised testing to produce effective outcomes in juveniles and vulnerable offenders.¹³³

Therefore, it is clear that China has adopted a strict system for psychological assessments in forensic evaluations which is regulated heavily. Moreover, China has a strong focus on rehabilitation of juveniles and their reintegration into society. However, the age of criminal responsibility in China poses risks for juveniles.

JUVENILE JUSTICE PROCESS IN CHINA

After a juvenile has been convicted of committing an offence under the Chinese criminal law, the main focuses are the importance of rehabilitation. The 'non-institutionalisation model' refers to resolving legal issues without formal trials being the first resort.¹³⁴ The non-institutionalisation model is embedded in Article 19 and 23 of the *Beijing Rules* and *CROC*.¹³⁵ This model ensures juveniles are rehabilitated to an extent that does not involve them being placed in an institution that could hinder the child's progression or cause recidivism. Non-institutionalisation looks at

¹³² Wendeng Yang and Hashing Ye, 'Theoretical Psychology in China: Past, Present and Future' (2014) 24(1) *Journal of Theory and Psychology* 813-829.

¹³³ Gan Yiquan, 'Revision of the Chinese Code of Ethical Use of Psychological Tests and its Implementation Status' (2012) 22(1) *Ethics and Behaviour* 1.

¹³⁴ Ko Ling Chan et al, 'Associating Child Sexual Abuse with Child Victimization in China' (2013) 162(5) *The Journal of Paediatrics* 1028-1034.

¹³⁵ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('*The Beijing Rules*'), adopted by General Assembly Resolution 40/33 (29 November 1985); *CROC* (n 13).

alternative methods for juveniles to reintegrate into society. The process involves assessing the juvenile's circumstances including psychological assessments to consider the best option for the juvenile.¹³⁶ The Human Rights Brief No. 2 explored that non-institutionalisation method is the most effective for juveniles and has been found to have the least adverse effects on individuals.¹³⁷

Additionally, the Chinese government has set up various rehabilitation centres for young offenders. However, from a traditional Chinese perspective in the origins of China; rehabilitation was through hard labour to influence the change in cultural, spiritual and behavioural beliefs of the juvenile.¹³⁸ This is still evident in modern China today, although China is on the rapid increase to adopt western forms of juvenile justice through restorative justice and implement psychological testing to address the mental state of the juvenile.¹³⁹ These concepts are still being formulated and integrated into the law in China yet are rapidly increasing due to the demand and involvement in psychological development.

USE OF PSYCHOLOGICAL ASSESSMENTS

China has adopted multiple psychological assessments for usage in forensic evaluations due to the rise of psychology in China. The key psychological assessments used on juveniles in the criminal system are analysed below. The psychological assessments demonstrate key findings, validity and results that can be implemented into an effective forensic evaluations framework.

¹³⁶ Ko Ling Chan et al (n 134).

¹³⁷ Australian Human Rights Commission, *Sentencing Juvenile Offenders* (Human Rights Brief No. 2 1999).

¹³⁸ Lening Zhang, 'Juvenile Delinquency and Justice in Contemporary China: a Critical Review of the Literature Over 15 Years' (2008) 50 *Crime, Law and Social Change* 149 - 160.

¹³⁹ Wendeng Yang and Hashing Ye (n 132).

Moreover, the use of psychological assessments in forensic evaluations in juveniles is demonstrated in sexual abuse cases whereby China has developed a questionnaire for victims. The process for assessment is undertaken through the Juveniles Victimization Questionnaire ('JVQ').¹⁴⁰ The questionnaire is particularly, used for victims of sexual assault and abuse. The JVQ is implemented by psychologists in China as academics have stated the results showed 'adequate test reliability and good internal consistency'.¹⁴¹ The comprehensive assessment tool for child victims of crime highlights the psychological outcomes of victims which is implemented in forensic evaluation for sexual assault. The JVQ determines the detrimental impacts upon the victim to assess their mental state.¹⁴²

Another form of psychological assessments adopted in China is the prediction of reoffending using structured assessment of violence risks in juveniles.¹⁴³ This assessment is implemented to predict violent reoffending in Chinese males.¹⁴⁴ The assessment analyses the risks the individuals pose to society and the probability of violent recidivism. The psychological results are useful in informing officials on the progress and development of the individual. The assessment is also designed to recommend various violent management approaches based on individual results.¹⁴⁵

Competency to stand trial is a key psychological test implemented in China for juveniles. In the Chinese legal system assessing for competency to stand trial involves using instruments to

¹⁴⁰ Ko Ling Chan et al (n 134).

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Jiansong Zhou et al, 'Predicting Reoffending using the Structure Assessment of Violence Risk in Youth (SAVRY): A Five Year Follow Up Study of Male Juvenile Offenders in Hunan Province, China' (2017) *PLoS One* 2 - 11.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

determine any mental disorders that may hinder the juvenile's competency to stand trial.¹⁴⁶ Standing trial can be a tedious and detrimental process for juveniles that are not mentally capable of undergoing the process therefore, competency to stand trial assessments are essential to achieving a fair and just legal system. The specific instrument used in China is known as the, 'Competency to stand trial determining instrument'.¹⁴⁷ Zhang analysed the process and found that the instrument is deemed to be 'feasible' and for usage on juveniles.¹⁴⁸

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

The overall rise in use of psychology in China has significantly impacted upon the wide usage of assessments in forensic evaluations. The wide range of forensic tools adopted by China in the non-institutionalisation model demonstrate the effectiveness of psychological assessments in juveniles.¹⁴⁹ Ensuring that juveniles are not given punishment that is detrimental to their wellbeing is a system that is worth adopting.

¹⁴⁶ Qin Ting Zhang, Wei Zhang and Ke-Jun Huo, 'The Creation of an Instrument to Determine Competency to Stand Trial' (2004) 20(3) *National Library of Medicine* 150, 154.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ko Ling Chan et al (n 134).

SOUTH AFRICA

OVERVIEW OF JUVENILE JUSTICE IN SOUTH AFRICA

South Africa has recently transitioned from having a justice model with juvenile crime being included in adult legislation to now a push towards a hybrid model with new legislation that gives priority to a child's wellbeing. The recent implementation of the *Child Justice Act No. 75 2008* (CJA) marks South Africa's first comprehensive legislation aimed at addressing children in conflict with the law. Prior to this legislation, children were being convicted under the *Criminal Procedure Act 1977* which dealt primarily with adults. The implementation of CJA will seek to ensure that child justice matters are managed in a rights-based manner and focus on a rehabilitative approach.

The CJA places great significance on the assessment of children after they are accused of committing an offence in order to ensure that their individual needs and circumstances are taken into account.¹⁵⁰

Age of Criminal Responsibility:

As mentioned, it is only recently through the CJA that the age of criminal responsibility has been raised from 7 to 10 years.¹⁵¹ This issue is still at the forefront of discussion in South Africa because the International Standard as discussed above is 14 and many countries have theirs at the age of

¹⁵⁰ The Department of Justice and Constitutional Development, *The Child Justice Act, 2008* <https://www.youthpolicy.org/library/wp-content/uploads/library/2008_Child_Justice_Act_2008_Information_Booklet_Eng.pdf>.

¹⁵¹ *Child Justice Act 2008* s 7(1) ('CJA').

12.¹⁵² The fact that this issue is still of major concern and has only recently been changed highlights the fact that the juvenile justice system is pre-occupied by basic human rights issues, let alone the need for psychological assessments.

DIVERSION PROGRAMS IN SOUTH AFRICA

The CJA creates an informal inquisitorial, pre-trial procedure, known as a 'preliminary inquiry'. The preliminary inquiry is held within 48 hours of the child's arrest, before their first court appearance.¹⁵³ This is attended by the child, their parents or guardian and a legal representative.¹⁵⁴ The purpose of this preliminary inquiry is to consider the probation officer's assessment report to determine the capacity of the child. They must consider whether the matter can be diverted. Diversion involves keeping the child out of the criminal justice system by having them complete a diversion program.¹⁵⁵

Diversion programs are acting as a new sentencing option that magistrates have the discretion to use when dealing with children in conflict with the law.¹⁵⁶ The objective of these programs is to keep children outside of the criminal justice system, to meet the needs of the child, to reduce the potential of reoffending and to encourage accountability.¹⁵⁷ These programs are conducted by

¹⁵² Anthony Pillay, 'Deliberating the Minimum Age of Criminal Responsibility' (2015) 45(2) *South African Journal of Psychology* 143.

¹⁵³ Department of Justice and Constitutional Development: Republic of South Africa, 'Child Justice', *Criminal Law* (Web Page)

<<https://www.justice.gov.za/vg/childjustice.html#:~:text=WHAT%20IS%20A%20PRELIMINARY%20INQUIRY,before%20the%20first%20court%20appearance>> ('*Child Justice in South Africa*').

¹⁵⁴ CJA (n 151) s [43]-[50].

¹⁵⁵ Kwena Madinginye, 'How Minors are Charged, Tried and Sentenced in the South African Legal System', *LK Associate* (Web page) <<https://www.lindsaykeller.com/how-minors-are-charged-tried-and-sentenced-in-the-south-african-legal-system/>> ('*South African Legal System*').

¹⁵⁶ CJA (n 151) s [51]-[62].

¹⁵⁷ *Child Justice in South Africa* (n 153).

non-government and non-profit organisations who monitor and teach the children. These organisations must be accredited by the Department of Social Development.¹⁵⁸

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

It is evident that South Africa is yet to have an effective model for psychological assessments and forensic evaluations as implemented by other countries. While the trajectory is positive in the sense that they assess the child initially and provide alternative programs, there are not enough standardised assessments for the overall wellbeing of the child. Additionally, if one of the South African objectives is to ensure that the child avoids the court system there should be a focus on preventative risk assessments, similar to those discussed above. There is a gap in literature with regard to the effectiveness of the new legislation on juvenile offenders and so it is unclear if the diversion programs are effective and if there needs to be an introduction of more extensive psychological assessments.

¹⁵⁸ South African Legal System (n 155).

PHILIPPINES

OVERVIEW OF JUVENILE JUSTICE IN THE PHILIPPINES

The central piece of legislation that governs juveniles under the law in the Philippines is the *Juvenile Justice and Welfare Act 2006 ('JJW')*.¹⁵⁹ Under the *JJW*, a 'child' refers to a person under the age of eighteen years old.¹⁶⁰ Under Section 6 of the *JJW*,¹⁶¹ the minimum age of criminal responsibility is children at 15 years of age or under at the time of the offence will be exempt from criminal responsibility.¹⁶² The Act identifies that although the child will not be subject to criminal responsibility, they will be required to be subject to an intervention program pursuant to Section 20 of *JJW*.¹⁶³

In this instance, it is evident that the *JJW* has an imminent focus on rehabilitation and integration of juveniles into society which is incorporated throughout the Act and scope.¹⁶⁴ Under the *JJW*, 'child in conflict with the law' refers to a child who is allegedly accused of having committed an offence under the laws of the Philippines.¹⁶⁵ The definition then continues to state that the *JJW* covers 'different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration'.¹⁶⁶

¹⁵⁹ *Juvenile Justice and Welfare Act 2006 ('JJW')*.

¹⁶⁰ *Ibid* s 4.

¹⁶¹ *Ibid* s 6.

¹⁶² *Ibid*.

¹⁶³ *Ibid* s 20.

¹⁶⁴ *Ibid* s 1.

¹⁶⁵ *Ibid* s 4(e).

¹⁶⁶ *Ibid* s 1.

JUVENILE JUSTICE PROCESS IN THE PHILIPPINES

According to the *JJW*,¹⁶⁷ there is no set process for juveniles after being convicted of a crime in regards to psychological assessments. This poses barriers and ineffectiveness to address the psychological needs of juveniles. The *JJW* makes limited reference to psychological assessments in forensic evaluations.¹⁶⁸ However, Section 64 makes an implication to psychological assessments as it states that after a crime has been committed the child shall be immediately referred to a social and development officer.¹⁶⁹ During this process, the juvenile will undergo a series of assessments including a psychological assessment for forensic evaluation to determine the child's mental state and overall circumstances in order to make decisions in the best interest of the child.

However, the vague nature of the *JJW* has no specific reference to the particular psychological assessments undertaken by juveniles which poses risks.¹⁷⁰ It is exemplified by literature that the availability of psychological care in the Philippines is 'fitted poorly' as stated by Spruit, Wissink and Stams.¹⁷¹ Further, the World Health Organisation (WHO) conducted a report on the status of psychology in the Philippines.¹⁷² Whereby results also exaggerated the poor nature of mental health care in forensics.¹⁷³ The Philippines have no significant mental health Law. Studies have shown that the poor involvement of primary health care in mental health facilities is due to the

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid s 64.

¹⁷⁰ Ibid.

¹⁷¹ Anouk Spruit, Inge Wissink and Gert Stams, 'The Care of Filipino Juvenile Offenders in Residential Facilities Evaluated Using the Risk-Need-Responsivity Model' (2016) 47 *International Journal of Law and Psychiatry* 181-188.

¹⁷² World Health Organisation (WHO) *Mental Health System in the Philippines* (Report 2006) 6.

¹⁷³ Ibid.

limited number of registered psychiatrists in the Philippines.¹⁷⁴ It is clear that a correlation between registered individuals to conduct psychological assessments and the usage of psychological assessments for juveniles exaggerates the inadequacies due to limited resources.

USE OF PSYCHOLOGICAL ASSESSMENTS

Simply, the Philippines does not have set psychological assessments for forensic evaluations in juveniles, however, the preventative measures do provide minimal psychological assessment. In particular, the Philippines Juveniles Justice and Welfare Council (*JJWC*) coordinates the implementation of the juvenile intervention programs and activities to achieve the objectives of the *JJW*.¹⁷⁵ The intervention programs consist of a series of activities which are designed to address issues that caused the child to commit the offence. The activities and structure of the *JJWC* is encapsulated in Section 8 of the *JJW* which examines the structures that administer the juvenile system in the Philippines.¹⁷⁶ Section 8 of the *JJW*,¹⁷⁷ displays the focus of the *JJWC* is to address the underlying issues that caused the child to commit the crime and provide measures that prevent this behaviour in the future.¹⁷⁸ Treatment includes individualised treatment programs and psychological assessments to enhance the well-being of the juvenile and to ensure they are fit to stand trial. This demonstrates that the Philippines does value the psychological assessments of juveniles, however, the limited knowledge, usage of assessments and number of psychiatrists impacts the effectiveness and application of psychological assessments in forensic evaluations.

¹⁷⁴ Ibid.

¹⁷⁵ *JJW* (n 159).

¹⁷⁶ Ibid s 8.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

Additionally, the Philippines has adopted the Moral Competence Test.¹⁷⁹ The test is used as a tool to assess oral judgment and competency. The results are then incorporated into forensic evaluations to assess the current mental state of the individual for competency purposes.¹⁸⁰ However, the validity and usage of this assessment is unknown as it is not embedded in any law in the Philippines. Thus, highlighting the limited usage and regulation of psychological testing in the Philippines.

EFFECTIVENESS OF PSYCHOLOGICAL ASSESSMENTS

It is evident that the Philippines does not display an effective model for psychological assessments in forensic evaluations to be adopted by India. The model lacks standardised assessments to ensure that juveniles are not disadvantaged in the process. It is clear that the Philippines aims to promote preventative and rehabilitative measures to examine the psychological wellbeing of juveniles, however, this is limited due to resource constraints.

¹⁷⁹ Melissa Mariano, 'Moral Competence and Conduct Disorder Among Filipino Children in Conflict with the Law' (2019) 39(3) *Neuropsychopharmacology Reports* 194-202.

¹⁸⁰ Ibid.

OBSERVATIONS

COUNTRIES WITH PSYCHOLOGICAL ASSESSMENTS

This Report has strategically analysed and critiqued a wide variety of domestic judicial systems from differing historical, theological and cultural backgrounds to distinguish the benefits and detriments of the use of psychological assessments in the context of juvenile offenders. The following will group these comprehensive findings categorially into 'effective' and 'ineffective' measures and summarise their similarities.

EFFECTIVE PSYCHOLOGICAL ASSESSMENTS

The key overarching finding from all countries that have currently adopted psychological assessments within legal proceedings involving juvenile offenders is that psychological assessments were developed to only function in a clinical and therapeutic environment.

Thus, when attempting to apply these mechanisms to legal processes, their effectiveness and adaptability is sometimes limited, diminishing the overall objective and purpose of the assessment in the first place. In addition, more generally, it is widely recognised that there is an abundance of different psychological assessments that have been developed over the last contrary. As a result, numerous tests have been developed that fall short of the 'standardised test' marker. This is what certifies that a particular psychological test is developed and approved to ensure all its elements and factors are unbiased and procedural.

However, numerous jurisdictions have recognised the downfalls with many 'traditional' assessments' measures and are taking precaution and active action to develop psychological mechanisms that are specifically designed to function in a legal setting and answer psycho-legal questions.

Firstly, China has recently implemented a range of newly formulated Forensic Assessment Instruments (FAI's) such as their Questionnaire (JVQ), determination of competency to stand trial and the prediction of reoffending. These newly enacted models were a reactive advancement in relation to China's rise of psychology in the judicial sector, highlighting the importance of cohesion and adaptability of laws and mechanism in relation to forensic psychological assessments.

Secondly, the United States has a wide variety of both effective and ineffective assessments in use across its 51 judicial systems. However, collectively the use of Forensic Assessment Instruments (FAI's) alongside officially Standardised Assessments have proven to be the most effective and efficient in answering psycho-legal questions and providing accurate outcomes for juvenile offenders. However, there is still a great way to go, particularly in ensuring that both legal practitioners and forensic psychologists have a cohesive comprehension of suitable assessments given the objective circumstances and applicability to each case.

Similarly, Canada has worked to develop and utilise forensically specialised assessment tools and mechanisms, many of which have been internationally adopted. The successful implementation of RAIs can be attributed to not only their development of legally relevant assessment tools, but further to the intricate preventative and follow-up programs and assessments simultaneously

introduced to check in and provide ongoing support to vulnerable juveniles. However, like the USA, Canada has struggled to implement a cohesive testing guide and relies upon judicial discretion. With no substantive education and integration between both legal and psychological practitioners, Canada struggles to identify and legally challenge the admissibility of particular assessments in legal settings.

Finally, since the wake of the 1990's, the UK has implemented a plethora of legislative changes to guarantee that all juvenile offenders are entitled to preliminary assessments at the time of arrest, structured needs assessments to identify potential risks alongside protective issues associated with delinquent behaviour to intervene and prevent this behaviour. The incentivised approach to developing and implementing forensically designed measures in the UK has attributed to its success and decline in juvenile crime over the past 20 years.

INEFFECTIVE PSYCHOLOGICAL ASSESSMENTS

As reiterated throughout this report it is globally recognised that psychological assessments that were developed to function in clinical and therapeutic settings are problematic and inconsistent when applied in a legal setting.

As recognised in some USA States, the application of non-standardised clinical psychological assessments limit and inhibit the courts from functioning in a way that upholds the best interests of both the offender and the victim and community at large. The disparity between legal and psychological professionals gives rise to circumstances that undermine the functionality and effectiveness of the judicial process. Thus, as suggested by the American Psychology Association,

judicial systems should only consider and apply Forensic Psychological Assessments that have been officially standardised.

In addition, whilst Australia has made psychological assessments accessible within judicial processes, they are not a standard requirement for proceedings involving juvenile offenders. The lack of compulsory or standardised psychological assessments can be attributed to gaps between legal and psychological professionals along with the lack of qualified forensic psychological practitioners.

Ultimately, it is evident that countries who favour and implement psychological assessments that were formulated to function in clinical and therapeutic settings inhibit the process and functioning of the judicial system and consequently obstruct just outcomes for all parties involved. It is imperative that judicial systems not only implement measures and guidelines to regulate the use and application of forensic psychological assessments, but further aim to implement assessments that are specifically designed to function in a forensic context.

COUNTRIES LACKING PSYCHOLOGICAL ASSESSMENTS

After thorough analysis and observation of the various models of psychological assessments in forensic evaluations, it is clear that some assessments demonstrate ineffective models. A key influence that has been a prevalent issue in countries that have limited usage of psychological assessments is limited resources. The lack of psychologists available to develop psychological testing and to assess juveniles, significantly impedes upon the usage of psychological assessments. Further, countries that do not have psychological assessments embedded in

legislation and psychological and psychiatry associations have shown to have ineffective and poor usage of assessments in juveniles. This is evident in both South Africa's and Philippine's Legal Systems. The limited number of psychologists in the Philippines demonstrates the consequences of resource constraints.¹⁸¹ Additionally, South Africa's lack of standardised models and preventative measures embedded in legislation and the juvenile system pose risks for juveniles.¹⁸² Whereas, countries such as the United States and China have extensive psychological resources, which has resulted in an effective and standardised system for psychological assessments in juveniles. Ultimately, this report has highlighted the key impacts of ineffective psychological assessment models which include lack of resources and limited legislation.

¹⁸¹ World Health Organisation (n 172)

¹⁸² Anthony Pillay (n 152).

CONCLUSION

It can be gathered from the evidence that psychological assessment standards throughout various countries can be promoted through international legal agreements. These agreements promote a level of accountability to uphold certain psychological assessment thresholds amongst its signatories. These international standards, however, are not necessarily upheld by member states in their respective state legislatures. Legislation passed through a state's respective parliament is the most concrete way in which a standard of psychological assessments on children in conflict with the law could be created. Once passed, a statute and its principles would need to be upheld in various courts, ultimately aiming to create a complimentary and cohesive interaction between the judiciary and forensic psychology.

Notwithstanding the faults and lack of standardisation, the United States actively promotes the use of forensic psychology in relation to child offenders in its justice system. There is a clear acknowledgement that children who enter the system of criminal justice should receive fair treatment and be adequately assessed. Such a dominant sentiment towards the forensic psychological assessment of young offenders is optimistic. The efforts of the Philippines to create a standardised psychological testing assessment for young offenders still has room to develop, and it's future success will be determined by adequate handling of the national budget and perhaps an active contribution of aid from non-state organisations.

English majority Commonwealth states, Australia and the United Kingdom, both have a functioning system of Forensic Mental Health Assessments, which are intended to assist courts in determining judgements in relation to young offenders. The Commonwealth country of Canada has developed a potentially effective technique of screening children with potential mental illnesses at schools. Although this state-wide methodology is inherently preventative in nature, there is a potential likelihood it has aided in contributing to the decreasing number of young offenders over the years. China, which is a country comparable in population, size and economic growth to India has benefited it's citizens through an adoption of 'Competency to stand trial determining instruments'. This child offender mental competency procedure is similar to South Africa's 'preliminary inquiry', which promotes diversions of offending youth away from criminal justice into facilities of rehabilitation.

Quite evident is the fact that some federalised or non-unitary States have clearly had difficulty in aligning their psychological assessments across jurisdictional lines. Nation-State-wide uniformity young offender psychological assessments would be a monumental shift in creating a systematic collection of data on the subject. This empirical evidence could later be used to identify and assist certain regions of a country which may be seeing increased rates of young offenders. A uniform mental forensic nationwide assessment scheme would first and foremost benefit those children who would by some unfortunate circumstances find themselves in the criminal justice system.

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