

Examining the Benefits and Challenges of the Diversion Programme as a Mechanism to Enhancing Juvenile Justice Administration in Dar es Salaam, Tanzania

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Abstract

This study is informed by goal number four, target one of the Sustainable Development Goals (SDGs), on the increase of accessible, equitable, and quality primary and secondary education by 2030. The intended outcome of this goal cannot be achieved in Tanzania when juveniles who fall in conflict with the law are left out of the mainstream of education. The study utilized a cross-sectional design, which embraces the qualitative approach. Its data were obtained through purposeful sampling techniques (convenient and snowballing sampling), in which twenty-eight respondents participated. The data collection techniques used were in-depth interviews and focus group discussions. The ATLAS.ti 9 software was employed during qualitative data analysis. The main findings reveal that the diversion programme effectively addresses juveniles' educational needs and mitigates associated stigma and retribution. Furthermore, it helps in amicably solving the juveniles' problem due to assessment of individual juveniles, generating suitable tailor-made interventions. Challenges obtained were that police officers still used much force during the arrest, and some would demand bribes; the traditional system was lengthy and cumbersome; there was a shortage of workforce and buildings; limited financial resources and equipment; and some juveniles and actors did not know the programme. The article concludes that the diversion programme is vital to achieving education for all as envisaged by the SDGs. It further recommends capacity building to all social actors on the importance of diversion, mobilization of resources, and researchers should be encouraged to conduct studies in JJA, in particular indigenous models and practice of the diversion programme.

Keywords: *Child Protection, Education, Sustainable Development Goals, programme, juvenile in conflict with the law*

INTRODUCTION

Diversion programme is a systematic procedure of removing a juvenile matter from the formal criminal court procedures to community rehabilitation (Steyn, 2010). This concerns that juveniles' harmful activities are only socially undesirable behaviors, not necessarily crimes (Robb, 2012). Bright et al. (2014) pointed out that diversion programmes use informal means to serve low-level or first-time offenders in the community. Loeb, Waung & Sheeran (2015) argued that juvenile diversion programmes provide an alternative response to the traditional justice system. When diversion programmes are implemented accordingly, juveniles in conflict with the law can still access education programmes, ultimately contributing to the realization of SDG which envisages in goal number four (target one) that by 2030, all boys and girls will be enrolled in quality education programmes.

It is worth noting that education is essential for human development. In this vein, soon after the independence of Tanzania in 1961, Mwalimu Nyerere, the first President, declared education as one of the three national priorities (Nyerere, 1968). The declaration found further expression through the Arusha Declaration of 1967— a blueprint for a particular brand of African socialism, *ujamaa* (Mbise et al., 2021). The Sustainable Development Goals (SDGs) continue human development and social capital, which can be achieved through increasing accessibility to quality and equitable education for all. Additionally, of the seventeen SDGs, quality education is a stand-alone goal, goal number four, and it is reflected upon even in some other goals. Tracing the history of diversion programmes, Cauffmanand and Steinberg (2012) highlighted that the same programme was established in 1899 as an alternative to the criminal justice system in the United States of America. It was based on the premise that youths' characters are not yet fully formed; thus, youth courts became increasingly common interventions used to divert youth with minor offenses (Cauffmanand & Steinberg, 2012).

In Africa, the Convention on the Rights of the Child (CRC) of 1989 and the African Charter for Rights and Welfare of the Child (ACRWC) of 1990 provide the juvenile justice administration (JJA) framework. In South Africa, through the diversion programme, juveniles were placed under the supervision of a community-based agency (Roestenburg & Oliphant, 2012). Mashamba (2013) noted the issue of including juvenile justice in the South African 1996 constitution. Additionally, Berg (2012)

raised the question of linking the juvenile diversion approach to the indigenous way of solving adolescent problems. He argued that in African countries, indigenous and restorative justice similarities were often accentuated before European law concepts were introduced (Berg, 2012).

In Tanzania, indigenous knowledge and practice in dealing with juveniles in conflict with the law was paramount. Twikirize and Spitzer (2019) argued that in traditional African societies, self-determination principles were evident in community and family obligation rather than individualism. Also, adult persons were responsible for caring for the young ones, and children were considered an asset, where everyone in the community was responsible for correcting a deviant child (Mabeyo & Mvungi, 2019). *Saigha* has been a model whereby clans meet to address social challenges and family meetings; arguably, issues of juvenile deviance and clan leaders can institute punishments to deviants (Twikirize & Spitzer, 2019). Spitzer (2014) argued that the ideology of *ujamaa* was still applied in Kilimanjaro through the *Msaragambo* practice, whereby the whole community was responsible for upbringings and reprimands.

The JJA in Tanzania is administered by various legal instruments- global, regional, and local. The CRC (1989), the ACRWC (1990), and other international as well as regional tools are given effect by the LCA, R.E. (2019), which in Chapters IX and X provide for JJA, including setting up institutions such as Juvenile Court and Approved School (MoHSW, 2012). The establishment of the diversion programme was a result of numerous challenges. Mashamba (2013) revealed 1400 children who were held in adult prisons and detention facilities. On the same note, Omesa (2014) identified no alternatives to custodial sentences; juvenile cases being subject to lengthy delays, stigma, and community pressure often dissuaded families from lodging cases and preferred to handle them outside the judicial system. The diversion programme could be used to reduce juvenile delinquency and channel away the juveniles from the judicial system and institutions such as remand homes. Such juveniles could be connected to rehabilitation centres, which facilitate their transit in the educational system.

In 2012, the diversion pilot programme was initiated in Temeke, Dar es Salaam region, and later in Kigamboni Municipality, then in Mbeya region in 2015 (MoHSW, 2012). Through this programme, juveniles could be referred to diversionary measures by the police, court, or social

welfare officers (MoHSW, 2013). The Department for Social Welfare headquarters supervises the programme's implementation, and diversion could be made at any stage of the case process (MoHSW, 2013). It was designed for 10–17-year-old boys and girls on individually tailored intervention programmes developed in response to an assessment of their needs (MoHSW, 2012).

Despite the existence of the programme, an evaluation that was one year later by the Ministry of Health and Social Welfare (in 2013) revealed that the programme was relevant and useful to the country (MoHSW, 2013). However, it was noted that there was still a gap of failure of juveniles to access education due to being enticed to a lengthy procedure of case handling (in the traditional court system) and sending such juveniles to remand homes which escalated the problem (MoHSW, 2013). This owed to the fact that once juveniles were in the legal (court) procedure or placed in remand homes they could no longer attend school until their cases were determined which again could be long overdue for re-entry in school. The result called for a need of scaling up the service to the entire country in order to address the scourge amicably through which each juvenile intervention is made basing on tailor made needs (MoHW, 2013).

Theoretical Framework

The systems theory explains the importance of the diversion programme about access to education opportunities by juveniles. System theory is a dominant tradition within social work, particularly on issues related to child protection (Hutchinson & Oltedal, 2014). It has influenced and spawned theory and research since the 1960s much more in the 1980s based on relationships and interdependence among components as they interact (Lai & Lin, 2017). Systems have commonly identified properties, such as hierarchical ordering, coupling, permeability, holism, emergence, and homeostasis (Lai & Lin, 2017). It focuses on the arrangement of and connections between the components and how they work together as a whole; how the pieces are organized and how they interact with each other determines the properties of that system (Chikere and Nwoka, 2015).

It further delineated its spatial and temporal boundaries, surrounded and influenced by its environment (Robbins, 2012). Dupuis (2010) observed that in a systems framework, elements within it have interconnected

effects on one family member and ultimately have an equal and opposite outcome to the rest. A system is more than just a collection of individuals, and as such, a system needs to be viewed in its entirety (Robbins, 2012).

This theory is relevant to this study because it facilitates the understanding that the diversion programme and the entire juvenile justice system do not operate effectively in a vacuum but in the interconnectedness and interplay of sub-systems. It is essential as it draws the actor/child protection stakeholders' attention to help intervene at multiple stages in an individual's life. Another relevance of the theory is its broad spectrum. Hepworth et al. (2010) point out that a significant advantage of the systems model is its broad scope; hence, a researcher can have a comprehensive picture of systems and the environment in which research is done. Also, system theory can inform practice, providing insight into the effects and influences of techniques on and with children and families (Tilbury, 2013). Indeed, Munro (2010) argued that adopting a systems approach will help to understand how the system supports social workers and other professionals to work together. Overall, systems theory is supported by research evidence and policy drivers and is increasingly employed as it can be beneficial in working with juveniles and families (Tilbury, 2013). On critics, the author believes that the generic theory is inadequate to explain individual juvenile tenets and address needs, especially of sensitive service users such as juveniles. Payne (2014) discussed the complexity of the theory, providing limited practice guidance and making it difficult to employ effectively.

METHODOLOGY

Twenty-eight (28) participants informed the cross-sectional, qualitative research; among them, juveniles were twelve (12) social welfare officers working at Remand homes (4), social welfare officers at the juvenile court (2), two (2) officials of the Kigamboni Community Centre, two (2) juveniles' parents, two (2) teachers, two (2) magistrates, and two (2) police officers. Out of these twenty-eight participants in all, juveniles were subjected to focus group discussion (FGD), where a group of six was organized at the Remand Home and another at Kigamboni Community Centre (KCC), and the remaining number, sixteen participants were covered by in-depth interview.

Purposeful sampling (convenience and snowball) was used to select this study's twenty-eight participants. The principle of saturation was

observed, as Kothari (2012) highlighted. Due to the study's sensitivity, ethical consideration was observed and adhered to accordingly. The principles of voluntary participation, do not harm, seeking consent, permission, and confidentiality were strictly observed. As Kothari (2012) pointed out, the principle of inclusion and exclusion was also followed for stakeholders involved in the diversion programme to determine the twelve juveniles and their parents. The information collected from the FGD and key informants was analyzed with ATLAS.ti 9 software, where the typical themes were identified and presented accordingly.

FINDINGS

The results or findings of this study are presented in two major themes, namely, the benefits and challenges of the diversion programme in facilitating access to education. More details of each theme are presented accordingly.

Benefits of the Diversion Programme

The first theme of the study findings was informed by the benefits of the diversion programme, where participants revealed the following as analyzed by Atlas.ti 9 software. The following voices of law enforcers (for anonymity referred to as L) were captured to support the various understanding of the benefits of the programme as follows:

The diversion programme assisted in doing justice to juvenile offenders instead of subjecting them to the normal adversarial courts, as it connected a child with SWO's skilled in child behaviors, and due to that normally children change their behavior completely.

One KCC official (referred to as M) and a primary school teacher (employed in the organization for child literate education) revealed:

For Temeke and Kigamboni, it is done legally and through court orders. All children can be enrolled in the diversion programme, which accompanies behavior modification, instead of other punishments such as imprisonment and which enables exploring education opportunities. In the past, they had no alternative programme for separating and protecting children from adult offenders. This programme started in Temeke Municipality as a pilot area where we have had two Centres: Kigamboni Community Centre (KCC) and Youth Community Rehabilitation Centre (YCRC), then to Kigamboni Municipality. So, it was well organized and beneficial to children and the community.

In agreement with the presentation above, another social welfare officer from Dar es Salaam remand home (referred to as N) noted:

I have facilitated the diversion programme training in scaled-up areas. Diversion as a programme is still alive as the NGOs initiated by the project still exist. This shows ownership of the programme. Knowledge and ownership of the programme in piloted areas is higher than others such as Ilala in Dar es Salaam where it was not piloted.

Cementing the observations above, a resident court magistrate in Kisutu Juvenile Court (referred to as O) pointed out:

The programme is not well known, except in the areas where it has been operational. Even if I had not been working in the piloted area, perhaps I could not have been informed as I am. Otherwise, it is an outstanding programme.

Juveniles' parents (referred to as O) could not hesitate to echo their overwhelming feelings about the programme as they revealed the following:

The diversion programme retains the basic right to children; it doesn't treat children as criminals. This programme could reduce the number of juveniles held in custody while forfeiting their right to education.

Another juvenile's parent (referred to as P) added:

The diversion programme provides a platform where parents and their children can meet to share the means to support the juvenile. The juvenile can still seek support and advice from their parents, teachers, and interested community members who are willing.

The juvenile parents, (referred to as P) while cherishing the inception of the programme as well as the benefits based on the way it has transformed their children, noted:

My child was languishing; I had lost hope completely, and I could not imagine that my child would be back to school. Through this programme, this was possible. I greatly thank the government and wish this programme would reach other children.

The parent (referred to as P) added:

Initially, I had decided that since children belong to the government, then the child was supposed to be handed over to a remand home where he would be taught a lesson so that when he grows, he can become a good citizen.

A teacher at KCC (referred to as Q) posited:

They were able to understand their wrongs and the actual cause of the problem, then regretting both parents and their children, which made them go to the root of their problems. This contributed so much in understanding the problem, hence amicably getting a lasting solution.

The social welfare officer from the remand home (referred to as R) noted:

The programme was based on an assessment of individual needs, and intervention coined through diversionary measures could be tailor-made to meet individual child educational needs. Individual assessment and tailor-made programmes are beneficial to juveniles as they underscore specific needs of the juveniles.

The juvenile court magistrate (referred to as O) pointed:

The traditional court process is normally "adversarial" based on the win-lose concept. The one who loses can remain with psychological wounds and sometimes resort to retribution. The process is cumbersome and lengthy and can subject the juvenile to losing education opportunities once he is placed in a remand home. It can also exacerbate the juvenile into further offending. This is not the case with the diversion programme that takes a win-win approach, and the tailored intervention can immediately facilitate schooling.

The teacher from KCC (referred to as Q) noted:

In this center (KCC), 407 juvenile rehabilitees in 2012-17 got technical skills; only six juveniles relapsed. This shows that if well organized, the diversion programme can be very effective in JJA.

The FGD with juveniles pointing to the benefit of the diversion programmes revealed mixed feelings. Some of the juveniles from the piloted districts had a relatively more affluent knowledge of the programme and were able to mention the issue of awareness of their rights, while in contrast, others in piloted areas indicated that it was a surprise to them and they had not heard any information regarding the programme. Thus, voices from juveniles at KCC heralded some information on the programme. At the same time, those at the remand home indicated that, initially, they did not understand the programme until they were at the remand home when they were already in conflict with the law.

Challenges Facing the Diversion Programme

There is a myriad of challenges facing the diversion programme in enabling juveniles to access education. Despite education being an essential aspect of child development, in the traditional juvenile justice

system, once a child conflicts with the law, it becomes difficult to continue education. Even though the LCA, PART X (S. 121) gives room for further continuing with education once a child is sentenced to approved school (for one to three years), usually, this takes place at a later stage of the post-trial process when the chances for re-entry in school are already diminished and slim, hence most likely losing the child's education opportunity.

Juvenile's ideas captured in the field through the FGD described the challenges as follows:

Despite the existence of the diversion programme, police officers still used much force during the arrest of juveniles; some would demand bribes to set them free, which contributed to the programme being effective. Also, those who came from the non-pilot area, i.e., Ilala, did not know there was such a programme.

In agreement, the juveniles' parents and social welfare officers (referred to as O&N) stated the following challenges,

In the traditional juvenile justice system, once a child conflicts with the law, it becomes difficult to continue with education due to instances of reporting to police stations or courts, despite the stigma that lingers in school and the community. The situation is even worse once the child is placed in remand custody where he is not allowed to go out except for medical purposes under escort.

The police officers (referred to as L) pointed out the issue of shortage of office equipment:

We have a shortage of play material in gender desk offices and a television set required to make juveniles feel at home and pave the way for juveniles to open up, especially during interviews.

Juveniles at KCC and Dar es Salaam remand home indicated that although they had known the programme, there were still challenges regarding channels of going back to school and that the means to help them remained in the hands of initiatives of mainstreaming them into educational programmes. The challenge they mentioned was mainly being held in custody, which made them give up on their education and future dreams.

DISCUSSION

Two themes guide the discussion of the findings; details for each are provided below accordingly.

Benefits of the Diversion Programme

As indicated in the literature reviewed, and much more in evaluations that were done in 2012 and 2013, as well as findings from key informants, were all in agreement that the programme was beneficial, humane, and with no stigma and retribution from community members. They observed that the traditional court process usually was "adversarial" based on the win-lose concept (MoHSW, 2012; MoHSW, 2013). The one who lost could remain with psychological wounds and, in some instances, could resort to retribution. Their argument was also that the regular legal process was cumbersome and lengthy and to the extent of subjecting the juvenile to being denied justice or losing education. Indeed, they noted that placing juveniles into remand homes. At the same time, the pending case in court could cause stigma and paint a juvenile as a "criminal," lose the child's opportunity to education, and complicate aftercare services or socially reintegrate the juvenile back into the community.

Also, they noted that the programme was based on an assessment of individual needs, and intervention through diversionary measures could be tailored to meet individual children's educational needs. Individual assessment and tailor-made programmes were noted to be beneficial to juveniles as they could underscore the specific needs of the juveniles. It was noted, for example, for an individual juvenile, it entailed identifying particular needs such as schooling, which school or level of education, the willingness of the juvenile, the accessibility, costs associated, ability to pay, and resources available. Such initiatives were most likely to be sustainable and prosperous for the wellness of the juvenile were based on their self-determination. This information resonates and ties nicely with the literature-reviewed evaluation studies conducted in 2012 and 2013 on the programme's efficacy and that it was relevant to the context of Tanzania (MoHSW, 2012; MoHSW, 2013).

The findings also echo the empirical literature reviewed, especially Bright et al. (2014) who pointed out that diversion programmes use informal means to serve low-level or first-time offenders in the community hence useful for rehabilitation and avoiding sending them into prisons. Loeb, Waung & Sheeran (2015) argued that juvenile diversion programmes

provide an alternative response to the traditional justice system is also pertinent as the later is can eschew juveniles' access to education due to its lengthy and cumbersome procedures especially when children are incarcerated in remand facilities.

Indeed, the benefits of the programme are well tied to the systems theory which informs this study. The theory not only explains the interplay of parts in the systems but echoes on the usefulness diversion programme that largely dwells on its broad scope and the interconnectedness of sub systems in the environment (Hepworth et al., 2010). This is important especially in the rehabilitation of juvenile offenders and their re-transit to education as it calls for various actors such as teachers, social welfare officers, local government leaders, and neighbourhoods to mention a few. To this end Hepworth et al. (2010) pointed out that a significant advantage of the systems model is its broad scope; hence, a researcher can have a comprehensive picture of systems and the environment in which research is done, hence beneficial to the programme.

Challenges Facing the Diversion Programme

There were challenges to the programme highlighted by participants. The challenge that featured most was a shortage of workforce, as UNICEF, which supported the programme, employed only one social welfare officer for each NGO participating in the programme, which could not suffice for many juveniles who were in conflict with the law and sought services. This information resonates the argument of Mashamba (2013) who argued that the Law of the Child Act had pressed an enormous role on Social welfare officers who were of shortage in number and that in some instances that lacked specialty. The evaluation that was done by the MoHSW in 2012 noted an acute shortage of social welfare workers as attributed to several factors, including the decentralization by devolution policy which in the context of the local government reform programme, requires each local authority to take up the responsibility of overseeing the provision of social welfare services of which the LGAs is employing social welfare workers (URT, MoHSW, 2012). According to the DSW capacity assessment report, in September 2008, through circular no CHA.215/355/01/87, the Principal Secretary, PMO-RALG informed all Directors in District Councils, Municipal Councils and City Councils to start employing at least 4 Social Welfare Officers to work in each of the three units in the Social Welfare Department structure, namely the

Family, Child Welfare and Early Childhood Development; Juvenile Justice and Disability and Aging, effective 2009/10 financial year.

Responses also came from municipalities where the diversion programme was piloted and indicated that funding was not adequate to run the business of the programme. They knew that UNICEF contributed and was the primary source of financing in the piloted areas. However, law enforcers in Ilala, who thought diversion was a government programme, efficiently argued that the government provided finances for the programme. They did not mention the contribution of UNICEF in running the programme. There were also concerns over funds to run the existing areas and long-term financing of the programme after UNICEF pulled out and scaled up, which could affect its effectiveness.

According to the assessment that was done by the MoHSW (2012) with social welfare staff across the board as well as different client groups suggest that service provision in social welfare offices has significantly deteriorated due to lack of enough funding. Responses to the question on budgetary allocation show that 86% of the respondents were working under severe budgetary constraints. Others participants mentioned variously that they were not involved in budget preparation, used their own money to follow up cases, experienced delay in disbursement and that when they prepared budgets the social welfare activities end up not being allocated any funding (URT, 2012).

This information regarding failure to understand the programme well and the malpractice of the police force echo the systems theory that informs this study, as regards the interconnection of parts in a way that if one part does not function well, it renders the entire system ineffective. In this vein, the malpractice of the police, as well as the failure of other actors in the non-pilot areas to understand well the diversion programme, posed a challenge to the programme's effectiveness and inability to facilitate re-entry into education programmes by the juveniles.

Of all the police stations visited, the Kigamboni Gender and Children Desk was the only facility that was a separate building and in good condition. However, the officer-in-charge observed that play material and a television set were required to make juveniles feel at home and pave the way for juveniles to open up, especially during interviews. A common feature in police stations was congestion of staff in a small room or a

front desk, and juveniles were held in the same building as adults, only that the buildings were partitioned. On one occasion, some juveniles were interrogated by police officers outside the buildings (under a tree), which could cause stigma and labelling to juveniles by community members. Information obtained from the police was that, in some instances, juveniles were kept near the front desk of the police to separate the juveniles from adult offenders.

Furthermore, indigenous knowledge and practice is a pivotal tenet of the Convention for the Rights of the Child (CRC) (MoHSW, 2012). Ironically, it does not feature well in the programme. Berg (2012) raised the very question of linking the juvenile diversion approach to the indigenous way of solving adolescent problems. He argued that in African countries, indigenous and restorative justice similarities were often accentuated before European law concepts were introduced (Berg, 2012). Twikirize and Spitzer (2019) argued that in traditional African societies, self-determination principles were evident in community and family obligation rather than individualism. Also, adult persons were responsible for caring for the young ones, and children were considered an asset, where everyone in the community was responsible for correcting a deviant child (Mabeyo & Mvungi, 2019).

CONCLUSION AND RECOMMENDATIONS

Education is an essential factor in fostering societal development. The diversion programme is vital to achieving education for all as envisaged by the SDGs, as it addresses the individual needs of juveniles in conflict with the law. The programme's efficacy is based on the fact that it withdraws the juvenile from the judicial system that impinges upon education and allows the child to undergo rehabilitation while continuing with education. As indicated in this article, the benefits of the diversion programme outweigh those of the setbacks, as it cherishes the child's best interest and creates accessibility to quality and equitable education for juveniles. Furthermore, it is humane, without stigma or retribution, and responds to the juvenile's specific needs, hence individually tailored schooling interventions. This calls for enhancing and scaling the programme countrywide and employing concerted efforts for efficacy in the JJA in Tanzania and the education system.

This study recommends that capacity building should be carried out to all social welfare officers, teachers at primary and secondary schools,

policymakers and law enforcers, and juvenile justice actors in general on the importance of diversion programmes to enable them to access reentry in the education system. This should be done as new juvenile actors enter and others exit. Moreover, the government of Tanzania and other actors should mobilize resources to meet equipment buildings and enhance education opportunities at the grassroots to contain juvenile delinquency from the onset.

Tanzania still lacks research on the understudy topic; hence, researchers and academicians should be encouraged to conduct studies in this area education and juvenile delinquency/ juvenile justice administration. It is awake among researchers, which will contribute mainly to coming up with amicable solutions and enable imparting knowledge of the programme and sensitizing the community members about it.

There is a need to break from the shackles of colonial and neo-colonial ideologies and practices by embarking on research in indigenous models and the practice of the diversion programme in JJA. This entails using traditional methods of conflict management for settling juvenile cases by embarking on intensive training of juvenile justice community elders through the existing child protection system (framework) at all community levels. This should be done after training so that such practice should resonate with international and regional standards and facilitate juveniles who have fallen into conflict with the law get re-entry into the education system.

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