

## IMPLEMENTATION OF THE DIVERSION PROGRAM IN JUVENILE JUSTICE ADMINISTRATION IN DAR ES SALAAM, TANZANIA: BENEFITS AND CHALLENGES

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### Abstract

*Juvenile justice administration is a cause for concern in Tanzania. Diversion is one of the appropriate approaches to enhance it. This article assesses the effectiveness of the diversion program in Dar es Salaam. It seeks to spell out the benefits of the program and its challenges. The study used qualitative approach and data were collected through in-depth interview, and Focus Group Discussion. Convenience and snowball sampling techniques were used to get participants for the study. The obtained data were analyzed through Interpretive Phenomenological Analysis (IPA) with the aid of the ATLAS.ti 9 software. Findings indicate that the program was highly pertinent due to its effectiveness in rehabilitation since it was cost-effective with no stigma and retribution from community members. The study observed some challenges including absence of aftercare services and concerns over the program's long-term financing for the national roll out; juveniles being held in adult prisons; inadequate funding; over-dependence on donor funding; inadequate staff; poor motivation for employees; reliance on secondary prevention and poor leadership skills in the rehabilitation centers. The study concludes that the program was beneficial because of its effectiveness and humaneness. It recommends that the community should be sensitized on the program. Further to that, there is a need for embarking on indigenous practice and capacity building to social welfare officers and law enforcers to enable them to work effectively.*

### BACKGROUND

Diversion is a systematic procedure/program of removing a juvenile matter from the formal criminal court procedures to community rehabilitation (Steyn, 2010). Effective diversion programs enhance juvenile offenders' rehabilitation and social integration into communities and make them grow as responsible citizens (ibid). Campbell and Retzlaff (2000) point out that diversion programs encompass a wide range of components and general interventions—from recreation, advocacy, and resource brokerage to vocational or educational training and group or individual counseling. This paper assesses the effectiveness of the diversion program in the juvenile justice administration in Dar es Salaam Region, Tanzania. In particular, it examines the benefits and challenges associated with the diversion program on juvenile justice administration in Dar es Salaam Region.

The diversion program was established in Tanzania in 2012 as a result of several challenges that faced the juvenile justice system. Mashamba (2013) indicates that the Commission for Human Rights and Good Governance Report (2011) revealed 1400 children in adult prisons and detention facilities. Omesa (2014) further asserts that before the program, there were few

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alternatives to custodial sentences and that juvenile cases prosecuted were subject to lengthy delays, while juveniles and their families could not travel long distances to the nearest courts so that they could hear their cases. Furthermore, stigma and community pressure often dissuaded families from lodging cases, and the communities preferred to handle the cases outside the judicial system (ibid).

Subsequently, an in-depth study on challenges that faced the juvenile justice administration was carried out by the Ministry of Constitution and Legal Affairs and UNICEF in 2012. The study found lack of formal diversion programs, where some police stations were using informal diversion measures such as family mediation or restitution that allowed children to be referred to out of the formal justice system (MoHSW, 2012). It also found that there were no effective preventive services for children at risk of offending; lack of alternative community-based sentencing options for child offenders; and an overdue remanding of juveniles (ibid). In the same year, that is 2012, the diversion pilot program was initiated in Temeke, Dar es Salaam region, and later in Kigamboni Municipality, then Mbeya region in 2015 (MoHSW, 2016).

Through this program, juvenile offenders could be referred to diversionary measures by the police as an alternative to pre-trial detention or non-custodial sentence by the courts and probation as part of probation orders (MoHSW, 2012). Children at high risk of offending could be referred to diversion by social welfare officers at the Local Government Authority (MoHSW, 2013). The Department of Social Welfare headquarters has had an overall responsibility of supervising the program implementation (ibid). The program was designed for 10 to 17-year-old boys and girls to rehabilitate, help, and make them stay out of trouble (MoHSW, 2012). The model allows a juvenile to attend an individually tailored program of interventions developed in response to assessment of their needs for four to six months (ibid). Thus, in this paper, the analysis is made on two major themes namely the benefits and challenges of the program as well as their implication for the implementation of the program.

## **LITERATURE REVIEW**

### **Global Overview**

Globally, a wide range of readings including the United Nations Conventions and related instruments which posed various arguments on matters related to juvenile justice administration were reviewed. According to MoHSW (2012), the Convention of the Rights of the Child, 1989, and specifically Articles 37, 39, and 40 were most pertinent to this study as they set out the fundamental rights. Mashamba (2013) noted the Vienna Guidelines for Action on Children in the Criminal Justice System (ECOSOC Resolution (1997/30) as an important instrument (ibid).

The second body of literature was teen courts in the United States established in 1899 as an alternative to the criminal justice system (Cauffman and Steinberg, 2012). It was based on the arguments and premises that youths' characters are not yet fully formed; therefore, rehabilitation was more appropriate than retribution (ibid). Teen courts, also called youth courts, were increasingly common interventions used to divert the youth with minor offenses (ibid). They were essentially home-grown interventions with deep roots in their communities (Kendall, 2004). By 2008, teen courts received more than 100,000 referrals yearly (Schneider, 2008).

Other arguments in the literature were anchored on the benefit of diversion. McGrath (2008) noted that a juvenile's appearance before the criminal court would be harmful and that diversion programs can benefit offenders. According to Hodges (2011), there was a widespread need to divert troubled youths from more profound penetration into ineffective traditional justice services. Juvenile diversion programs were predicated on the belief that they were better for the long-term development of youth (Loeb, Waung & Sheeran, 2005).

### **In African Countries**

The Convention on the Rights of the Child, 1989, and the African Charter for Rights and Welfare of the Child of 1990 provided the juvenile justice administration framework in Africa. Most of the available literature explained the situation in South Africa, where different types of programs were implemented for youth offenders (Roestenburg & Oliphant, 2012). These programs included diversion and correctional services to juvenile offenders (ibid). In the diversion program, juveniles were not placed in a correctional facility but under the supervision of a community-based agency, in most cases, non-governmental organizations (ibid). Diversion was held at the preliminary inquiry at the pre-trial stage to determine, among other things, how best to deal with individual cases addressing the social roots of offending, as enshrined in the "Riyadh Guidelines" (Mashamba, 2013). Berg (2012) raises the question of linking the juvenile diversion approach to the indigenous way of solving juvenile problems. He argues that in African countries, the similarities between indigenous justice and restorative justice were often accentuated. Before the European concept of law, the communities in Africa were capable of handling justice, and both the offender and the victim were included in the process (ibid).

In this regard, there has been an argument on the indigenization of knowledge and practice. The extended family dominated traditional African society, which strengthened love and care, and indigenous problem-solving models have been existing from time immemorial (Mabeyo & Mvungi, 2019). Twikirize & Spitzer (2019) argue that self-determination principles were evident, in traditional African societies, in terms of community and family obligation rather than individualism and autonomy. Ling (2004) argues that Western social work is not the only mechanism for solving problems, and that indigenous knowledge is continually becoming a popular way of solving problems in many parts of the world. Mabeyo and Mvungi (2019) depict the issue of *ubuntu* referring to humaneness, a pervasive spirit of hospitality, harmony, compassion, caring, and responsiveness to other people's ailments as manifested in traditional African communities before the advent of colonialism. Adult persons were also socialized to care for the young ones, and children were considered as an asset where everyone in the community was responsible for correcting a deviant child (ibid). Today, the social fabric network that held people together has been ruptured (ibid). Saigha is another indigenous model where clans meet for family meetings and to address social challenges; arguably, issues of juvenile deviance and clan leaders may institute punishments to deviants (Twikirize & Spitzer, 2019).

### **Studies in Tanzania**

The juvenile justice administration in Tanzania is governed by various legal instruments- global, regional, and local. The Convention on the Rights of the Child (1989), the African Charter for Rights and Welfare of the Child (1990), and other international as well as regional instruments are given effect by the Law of the Child Act, R.E. (2019), which provides for juvenile justice administration, including setting up institutions such as Juvenile Court and Approved School in Chapters 1X and X (MoHSW, 2012). The Law of the Child Act., R.E. 2019 does not per se talk about diversion as stipulated by the Convention on the Rights of the Child and other international instruments; instead, it emphasizes on the principle of the best interest of the child in Section 4 (i)) and the issue of placing a juvenile in care of the social welfare officer, a fit person or institution in Section 104 (i). The Law was passed with the prime goal of managing all juvenile matters and to harmonize all legal frameworks (MoHSW, 2012). The law also constitutes some critical provisions that require fairgrounds in handling juvenile justice issues (Law of the Child Act, R.E. 2019). Before the law, juvenile cases were handled like adult criminal cases (Maganga, 2005). Section 8 of the rules of the Law takes on the spirit of diversion by asserting that the juvenile court procedures should be informal and friendly to the child and not adversarial (MoHSW, 2012).

Furthermore, a large body of literature in Tanzania discusses the weakness inherent in the juvenile justice system. Kadilu (2017) argues that the Law of the Child Act, R.E. (2019) initially came into force in 2010 but minimal steps had been taken to operationalize its provisions relating to the rights of detained juvenile delinquents. Bakta (2016), in the light of the principles recommended by the international child rights conventions, argues that the Tanzania child justice system was not as child-friendly as expected. According to the Tanzania Child Right Forum (2013), juveniles were likely to be subjected to lack of protection of dignity, privacy, and other interests participating in judicial proceedings. The law does not contain a clear list of diversion measures nor abolish corporal punishment to juveniles (Kadilu, 2017). Maganga (2005) had it that the Tanzanian government had failed to fully comply with the obligations advanced by the Convention on the Rights of the Child regarding proper juvenile justice administration. Indeed, the URT, CRP (2019) noted the diversion program as a reactive approach in the area of juvenile justice hence dissuading the component of being per se proactive (prevention) in nature.

The Criminal Procedure Act, R.E., 2019 has been functioning as an instrument for handling all criminal proceedings in the country, limiting juveniles under 16 years of age. The law provides that police officers are responsible for informing parents/guardians and probation officers following delinquent juvenile arrests. A juvenile should be alienated from the criminal adults, and the court should handle the case within 48 hours. Mahende (2015) indicates that other alternative measures, such as diversion, had little consideration by the police force, noting that there were allegations of abuse in such detention facilities. UNICEF (2011) estimates that over 1400 children were held in adult prisons, 75% awaiting trial. This is contrary to Section 119 (1) of the Law of the Child Act, which stipulates that no child shall be sentenced to imprisonment, or associated with adult offenders (Section 102).

Manyama (2018) asked "Where is Developmental Social Work in Tanzania?" Arguably, this question is generally applied to all areas of social work practice, including the diversion approach. Specifically, he noted *harambee* in Kenya, *ubuntu* in Southern Africa, and *Ujamaa* in Tanzania as effective practice models of solving peoples' problems, especially those of children who fall in conflict with the law. This spirit was echoed by Mabeyo and Mvungi (2019) indicating *Msaragambo* in Kilimanjaro region in Tanzania as a valuable mechanism for solving peoples' problems, including those of children. They further considered *Msaragambo* as a self-help scheme that has been used to help people towards mutual assistance, especially in difficult times (ibid). Spitzer (2014) argues that the ideology of *mutual support* was still applied in Kilimanjaro region in performing community work and helping those in need, and through the *Msaragambo* practice, the whole community was responsible for upbringing and reprimanding the violators of justice (ibid).

### **Theoretical Framework**

The systems theory perfectly explains the benefits and challenges of the diversion program. The contemporary ideas of what makes up the systems theory have grown in diverse areas, exemplified by the work of biologist Ludwig von Bertalanffy. Systems theory is a dominant tradition within social work (Hutchinson & Oltedal, 2014). It has influenced and spawned theories and researches since the 1960s much more in the 1980s based on relationship 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 (ibid). The systems theory focuses on the relations between the parts rather than reducing an entity, such as the human body into its parts or elements. It focuses on the arrangement of and relations between the parts and how they work together; how the parts are organized and how they interact with each other to determine the properties of that system (Chikere & Nwoka, 2015).

It further contends that every entity has multiple parts, whether a group, an organization, or a community. These entities can be best understood as systems with interconnecting components (Bronfenbrenner, 2005). A system is delineated by its spatial and temporal boundaries, surrounded, and influenced by its environment (Robbins, 2012). Changing one part of the system usually affects others and the whole system. This idea is further reiterated by Mandin (2007) who argues that a slight change in a part of the system could have wide-ranging and unexpected consequences. In contrast, one of the fundamental ideas of systems theory is that 'the whole is greater than the sum of its parts' (ibid).

Dupuis (2010) observed that in the systems framework, elements within it are interconnected, e.g., what affects one member of the family will ultimately affect every other member of the family, and the system interacts with its environment (ibid). In turn, the environment affects the system, after which every system must be distinguishable from its background (ibid). This means the system is more than just a collection of individuals, and as such, a system needs to be viewed in its entirety (Robbins, 2012). However, Payne (2014) asserts that the theory can be extremely complex, providing a limited practice guidance and making it difficult for the workforce to employ effectively. The theory has been also criticized for generalization.

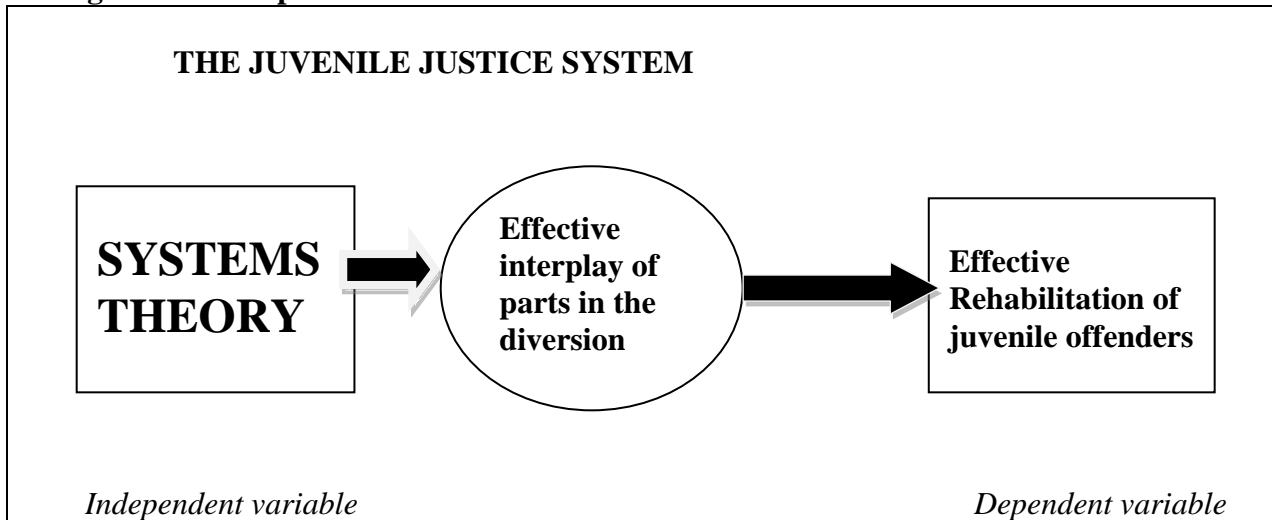
Despite its criticism, this theory is relevant to this study because it facilitates the understanding that the juvenile justice administration and the diversion program do not operate in a vacuum but through the interconnectedness and interplay of sub-systems. The systems theory is essential and also informs this study as it draws the actors'/social workers' attention to jointly help intervene at multiple stages in an individual's life and generally the human behavior in the social environment. Another relevance of the theory is its broad spectrum. Hepworth, Rooney, Rooney, Gottfried, & Larsen (2013) point out that the significance of the systems model is its broad scope. Hence, researchers and practitioners can have a broad picture of systems and the environment in which research or practice is done (Hepworth, et al., 2013). The systems theory can also inform practice, providing insight into the effects and influences of systems on and with children and families (Tilbury, 2013).

Overall, the 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). Munro (2010) argues that adopting the systems approach will help to understand how the system supports social workers and other professionals to work together as a team. In this regard, the rehabilitation of offenders mirrors and it is informed by the systems theory in that the interconnection of the family, school, NGO, religious organization, and local government have to work together as a system because the failure of one part, e.g., a family can render the entire system ineffective.

### **Conceptual Framework**

Adom, Hussein, and Agyen (2018) and Patrick, (2015) posited that a conceptual framework is a structured form of a body of ideas and theories. Patrick (2015) noted that the purpose of a conceptual framework is to help the researcher to remain focused on the identified variables. It is thus the causal relationship of variables in a study. This explains how main concepts or variables will be studied and narrated. The conceptual framework for this study was design using the systems theory. Through the systems theory, change happens due to various interactions in the environment. The system thinking influences the interplay of parts in the diversion program (independent variables) which in turn causes effective rehabilitation to juvenile offenders (dependent variable). In this regard, both the independent and dependent variables of this study were derived from systems thinking.

**Figure 1: Conceptual Framework**



Source: Field Data, (2024)

**Existing Research Gap**

Most of the reviewed literature in this study had much focus on developed nations and the US diversion. Little has been done in other parts of Africa. The literature originating from developed countries fails to clearly articulate the nature of the problems and how to address them in juvenile justice administration in the Tanzanian context due to economic, social, and cultural variations. The few studies that have focused on Tanzania highlight the nature, benefits, and causative factors for the diversion program. There is also a dearth of scholarly literature on how the traditional and cultural systems can be effectively utilized in the diversion program to enhance the JJA program in Dar es Salaam, and Tanzania at large. This is of paramount importance as the idea of indigenous knowledge and culture stems from the major international and regional conventions such as the CRC and ACRWC, to which Tanzania is a party. This study, in part, fills this research gap by assessing the benefits and challenges associated with the juvenile justice administration program with the aim of creating effective juvenile justice services.

**METHODOLOGY**

This article adopted a qualitative approach. Qualitative research is a form of social inquiry that focuses on the way people interpret and make sense of their experiences in the world in which they live (Bushesha, 2020). Qualitative studies require the use of Focus Group Discussions and individual interviews to stimulate understanding, views, and ideas from study participants, however, they differ on how they are organized (Guest, Namey, Taylor, Eley, & McKenna (2017)). Qualitative approach was used to get in-depth information from participants as well as capture their subjective meanings about the diversion program. Furthermore, the approach was used to understand social phenomena in natural (rather than experimental) settings (Bushesha, 2020).

This study was conducted in three municipalities in Dar es Salaam namely, Temeke, Ilala, and Kigamboni. It was informed by 52 participants, where 16 (31%) were adults while 36 (69%) were juveniles from Kigamboni Community Centre (KCC) and Dar es Salaam Remand Home. Each of the two institutions had 18 juvenile participants, whose ideas were obtained through Focus Group Discussion (FGD). A group of six participants was organized per session. In-depth interviews were also administered to sixteen (16) adult participants including two (2) social welfare officers working at the Remand home, two (2) social welfare officers at the juvenile court, two (2) officials of the Kigamboni Community Centre, two (2) juveniles' parents, two (2) magistrates at the juvenile court, three (3) municipal social welfare officers (Ilala, Kigamboni, and Temeke

Municipals) and two (3) police officers for Ilala, Kigamboni and Temeke districts.

This study also employed non-probability sampling techniques (convenience and snowball) to select participants. Non-probability sampling techniques sometimes known as judgmental sampling is an intentional choice of a participant in a study based on his/her qualities (Mussa, 2019). It is a non-random technique that does not call for basic theories or a set number of participants (ibid). Through non-probability sampling techniques, the researcher is expected to know what he/she is supposed to know and who is ready to provide the required information according to his or her knowledge and experience (ibid). According to Kothari (2012), convenience sampling technique entails interviewing a participant who happens to be at a research site during the actual time of the study. Snowballing entails interviewing a participant who can then introduce the researcher to another participant until there is no new information that can be added to the information already provided (ibid). In this regard, the researcher used the two techniques, and the principle of saturation was observed, in which participants' ideas were added until there were no more new information.

Furthermore, in-depth interviews were utilized in this study to gather information. This study conducted detailed interviews with individual respondents to explore their perspectives and ideas as well as probing further on the given information. Through this, open-ended questions were asked based on the interview guide to enable respondents to generate more information to enrich the study and get their subjective meanings. This covered government officials, parents of the juveniles who were in facilities, and officials of civil society organizations.

Focus Group Discussion (FGD) was also used as a method of data collection. This method was used for participants who had similar characteristics especially children who were or had been in conflict with the law at the Dar es Salaam Remand Home, Kisutu Juvenile Court, and NGO (KCC). The juveniles were gender sensitively picked making groups of 6 participants who were then jointly investigated on the benefits and challenges related to the program. This method was useful because it was cost-effective for such groups to undergo in-depth interviews individually and it gave confidence for juveniles who could find it difficult to speak out if they were singly interviewed.

The Interpretive Phenomenological Analysis (IPA) was used for data analysis. It entails assessing how individuals make sense of their living experiences. In this case, the collected (raw) qualitative information obtained through in-depth interviews and Focus Group Discussions from informants (recorded on a tape recorder) was transcribed, coded, and organized through content analysis to facilitate analysis of verbal information and get an interpretation of their meaning. The idea behind using of content analysis was to reduce the total content of qualitative information to a series of themes and categories to derive actual meanings. Data were read thoroughly and exhaustively by the researcher to get a better understanding of what they implied with regard to the research problem, research objectives, and themes. The meanings derived were contextualized, interpreted, and presented according to their respective themes. The process was guided by the ATLAS.ti 9 software which was regarded as more appropriate in this study. ATLAS. Ti. 9 was a good choice, even though other software programs such as Nvivo had an intuitive and attractive user interface (Bhandary et al., 2023) and is a popular choice for researchers who are new to qualitative analysis software owing to its user-friendly workspace and intuitive features (Bhandary, Shenoy, Sandeep, Shetty, Shetty, & Adithya (2023). In this vein, (Bhandary *et al.*, 2023; Hart and Achterman, 2017) argue that ATLAS. ti 9 is the most useful program because it supports a variety of data types and is renowned for its proficiency in handling multimedia data, which makes it a superb option for researchers who work with audio and video content.

Due to the study's sensitivity, ethical consideration was observed and adhered to accordingly. The principles of voluntary participation, do not harm, seeking consent, assent, and confidentiality were strictly observed for inclusion and exclusion in the study. This study essentially entailed working with juveniles, a group that required a high-level sense of ethical consciousness. In conducting this study, the researcher understood the juveniles especially the inmates at the Dar es Salaam Remand Home. The juvenile court was a protected category thus the researcher had to use all possible means to ensure that they were not harmed.

With due regard, the researcher observed research ethics before going to the field. Permission was sought for clearance to carry out the research. In this regard permission was sought from the Open University of Tanzania, Department of Social Welfare (headquarters in Dodoma), the Judiciary (Registrar of the High Court) and the Office of the Inspector General of Police (IGP) in Dodoma. In addition, the following ethical standards set for social science research were observed.

### **Informed consent**

Before providing any information, participants had to read and understand clearly about the study. This enabled them to choose whether to continue or withdraw from the study. Each of the 52 respondents read and willingly signed the consent forms that were provided for this purpose. Participants were clearly informed about the nature, purpose, procedure and effects of the research before requesting them to participate on voluntary basis. Only those who agreed to participate in the research were incorporated.

### **Protection from Harm/Risk**

This was quite essential as juveniles are vulnerable, thus it was important for them to be protected from any harm or risk during the study. Adults were also assured of protection from harm or any risk in the course of this study by ensuring that questions did not touch their inner feelings or expose them to any peril. They were also accorded opportunity to air their opinions or withdraw from the study at any time they thought they were not well protected from harm or risk.

### **Privacy and Confidentiality**

In this study, respondents' privacy was highly observed. All names or information of the respondents were treated as confidential and were only used for this study. Before the actual data collection started, respondents were assured of confidentiality and that the information they gave would be treated with the highest level of confidentiality and that it would only be used for academic purposes. This meant their information could not be shared with other people outside the research circles.

## **FINDINGS**

### **Benefits of the Diversion Program**

The study noted that the diversion program was highly useful in the rehabilitation process and preventing recidivism among juvenile offenders who were placed in the rehabilitation program. To accentuate this, it was observed in one center, Kigamboni Community Centre, that there were 407 juvenile rehabilitees from 2012 to 2017 who got counselling technical skills and recovered while only six juveniles relapsed. This shows that the diversion program can be very effective if given room to operate. This can be justified by a response from one of the interviewed officials of Kigamboni Community Centre who had the following to say: *"From 2012-2017, 407 juvenile rehabilitees got technical skills and recovered in this center; only six of them relapsed"*.

It was also noted from the field that the diversion program was cost-effective compared to the traditional legal process, which is often accompanied with high cost, stigma, and retribution. The issue of cost comes in because the traditional juvenile justice system takes a long time for case determination, paying witnesses and sometimes advocates. Chances of going back to school can



even be jeopardized if placed in Remand Homes. In the same vein, the juvenile court magistrate had the following: *“The diversion program is cost effective as the traditional court procedure takes a long time for cases to get fully determined and can require witnesses and advocates, which can be expensive for juveniles’ parents. The program also assists in doing justice to juvenile offenders instead of subjecting them to normal adversarial courts, as it connects a child with social welfare officers skilled in child behaviors, and due to that, children normally change their behavior completely”*.

Usually, qualitative studies allow participants to express their feelings and air subjective meanings. In this regard, participants in Temeke and Kigamboni, where the program was piloted, seemed to be more informed about the program as they were able to describe the program; how it started and how well it was organized, unlike their counterparts in Ilala, where the program was not piloted. One social welfare officer participant from Temeke pointed out how well the program was organized, hence its benefit to the rehabilitation of juvenile offenders:

*“In Temeke, it is done legally and through court orders. All children can be enrolled in the diversion program, which accompanies behavior modification, instead of other punishments such as imprisonment. In the past, they had no alternative program for separating and protecting children from adult offenders. This program started in Temeke Municipality as a pilot area where we had two Centres: Kigamboni Community Centre (K.C.C.) and Youth Community Rehabilitation Centre (YCRC) together with VOSA Mbagala and Makangalawe as well as Salvation Army which used to make the oversight of the program before Temeke Municipality was split into two Municipals. So it was well organized”*.

In agreement with the response above, another social welfare officer from Dar es Salaam Remand Home noted that knowledge and ownership about the program were high in areas where the program was piloted. The officer said: *“I have been a facilitator of the diversion program training in scaled-up areas. Diversion as a program is still alive as the NGOs established by the project still exist. This shows ownership of the program. Knowledge and ownership of the program in piloted areas are high compared to other areas such as Ilala in Dar es Salaam where it was not piloted”*.

Cementing on the observations above, a resident court magistrate in Kisutu Juvenile Court pointed out that it was an outstanding program in the rehabilitation of offenders, except that it was not well known among community members and juvenile justice stakeholders. Thus, he had the following to say: *“The program is not well known except in the areas where it has been operational....Had I not been working in the piloted area, perhaps I would not have been informed about it as well. Otherwise, it is an outstanding program for addressing juvenile offenders’ challenges”*.

Juveniles’ parents could not hesitate to echo their overwhelming feelings about the program. To them, the program observed child rights and did not treat the juvenile as criminals. More importantly, they raised the question of education that could be forfeited if juveniles were exposed to the traditional juvenile justice system. They revealed the following: *“The diversion program retains the basic right to children; it doesn't treat them as criminals. This program could reduce the number of juveniles held in custody while forfeiting their right to education”*.

Another juvenile’s parent noted the importance of the non-residential policy of the program which enabled various actors of the juvenile issues to contribute fully to the wellness of the juvenile. He thus added: *“The diversion program 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”*.

Cherishing the inception of the program as well as the manner in which it has benefitted their children, in terms of transformation, the juveniles' parents noted that their children were at a perilous stage, yet they were reformed due to concerted efforts of the actors. They were quoted as saying: *My child was languishing, "I had lost hope completely, and it was hard for me to believe that my child would go back to school....but this was possible through the program. I thank the government so much and wish for the program to reach other children in the country"*.

Another parent pointed out a factor of non responsibility that makes some parents fail to take stern parenting measures in parenting their children thinking that children belong to the government, so it was its duty to care and reform them. This parent said the following: *"Initially, I had thought that the child was supposed to be handed over to a remand home, since they belong to the government, where he would be taught a lesson so that he can become a good citizen when he grows"*.

An official at Kigamboni Community Centre had the following to say: *"They are able to understand their wrongs and the actual cause of the problem, and then both parents and their children regret doing them, which makes them go to the root of their problems. This has contributed so much in understanding the problem hence amicably getting a tailor-made lasting solution"*.

The social welfare officer from the remand home revealed that: *"The program is 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 programs are beneficial to juveniles as they underscore specific needs of the juveniles."*

The Kisutu juvenile court magistrate pointed out that: *"The conventional 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, which can make the juvenile to lose education opportunities once he is placed into a remand home. It can also exacerbate the juvenile into further offending. This is not the case with the diversion program that takes a win-win approach. The tailored intervention can immediately facilitate schooling"*.

Generally, juveniles at both Dar es Salaam Remand Home and Kigamboni Community centre agreed that the program was beneficial and important and that the only challenge was that they got to know about the program after falling in conflict with the law.

It was also noted that through the program, parents and children were able to understand their wrongs and the actual cause of the problem then regretting due to counseling sessions which contributed to the rehabilitation process, hence a true determination of changing their behavior. This avails a high degree of acceptance of the juvenile offenders back to the community after rehabilitation. In an evaluation done in 2013, the program was found to be highly beneficial and relevant in the Tanzanian context so it was scaled up to Mbeya region in 2015 (MoHSW, 2019). A cost-effectiveness analysis of the program in Mbeya and Dar es Salaam regions in 2016 revealed that the expansion of the program to other regions would help to address the root cause of offending, promote rehabilitation services and ensure economic and security benefits to Tanzania through the reduction of delinquency and government cost on rehabilitation (MoHSW, 2019).

The issue of the use of indigenous knowledge, culture and practice was noted, whereby the spirit of diversion was echoed in the reviewed literatures. The matter was portrayed by Mabeyo, Mvungi 2019; Twikirize, Spitzer, 2019; Manyama, 2018 and Spitzer (2014); the Convention on

the Rights of the Child (1989) and the African Charter for Rights and Welfare of the Child (1990). Through these literatures, it was observed that the traditional values were very useful in effectively addressing and taking on board culturally specific issues related to matters of children in conflict with the law because foreign practices can prove inappropriate in addressing problems at hand.

### **Challenges Facing the Diversion Program**

Data collected from the field indicated that one of the critical challenges facing the diversion program was the shortage of fund. The informants interviewed pointed out that there was over-dependence on funding obtained from the development partner (UNICEF) and that there was poor motivation on the part of employees as the development partner did not cover other administrative costs and the entire financial capacity building for the organizations. About this, one participant from Temeke had this to say:

*“UNICEF employed one Social Welfare Officer for each of these Non Governmental Organizations, and in 2015, it pulled out. As a result, they failed to operate effectively because they did not possess their area by then. The owner wanted Temeke Municipal Council to support him 100 percent. At one moment, the City Council offered Tsh. 1,000,000 to support the duties of the centre in Temeke. The Municipal was unable to do so, thus they failed to run effectively due to shortage of funds and house rent”.*

These responses came from municipalities where the diversion program was piloted. They knew that UNICEF contributed and was the primary source of financing in the piloted areas. However, law enforcers in Ilala, who thought that diversion was a government program, argued that the government provided funds for the program. They didn't mention the role of UNICEF in running the program. The juveniles in rehabilitation centers who were involved in focus group discussions did not know the source of finance either. To them, the source of finance for the program and indeed the rehabilitation center in which they were living, was not a concern and could be seen as too high for them. It was also noted that an attempt to know finance-related issues was like being "quarrelsome and notorious."

The juveniles' opinions captured in the field through Focus Group discussions revealed other challenges as follows: police officers still used much force during the arrest of juveniles; some would demand bribe to set them free. Also, those who came from the non-pilot area, i.e., Ilala, were not aware of the existence of such kind of program. Juveniles' parents and social welfare officers in Kigamboni also mentioned the issue of concealing cases as follows: *“There is also the challenge of concealing some sexual abuse cases that were perpetrated by close relatives such as uncles or aunts; thus, they could collude with law enforcers to pervert justice and end up settling such cases in their homes”.*

Juveniles' parents and social welfare officers in Kigamboni further pointed out 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”.*

Juveniles at both Kigamboni Community centre and Dar es Salaam Remand Home indicated that still there were challenges regarding reinstating the children to school once they are in conflict with the law, and that the means to help them back into educational programs remained in the hands of institutions and parents or care takers. The challenge they mentioned was mainly being held in custody until their cases were determined, which made them give up on their education

and future life dreams.

Shortage of workforce was also mentioned as UNICEF employed only one social welfare officer in each Non-Governmental Organization (rehabilitation centre), which was insufficient for many juvenile service users. The police officers at Chang'ombe Police station also 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"*.

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

Policemen also noted working hours as a challenge as police officers work long hours compared to social welfare officers, where the latter would not be around when needed. The issue was explained as follows: *"Policemen work 24 hours, which is not the case with Social Welfare officers who are not at the office, especially on weekends or during odd hours, this causes difficulties in offering services to juveniles adequately"*.

Accommodation and equipment challenges were also noted in the study. One of the police participants had this to say: *Office and equipment are among the major challenges. "In Kibaha, we didn't have our own office to work with juveniles, so I fought until we were given a container furnished with office materials and fixtures. I solicited private support out of my own individual initiatives"*.

The challenge of rooms for office accommodation was also noted by participants. One of the police officers said: *"There is also the challenge of rooms for accommodating children and officers. What we normally do is keep the Juveniles in the women's room. The women are then accommodated at the reception because they are generally few"*.

It appears that the creativity and innovation of the officials, as was the case with Kibaha, can make a difference in the government sector service provision. So, it should be encouraged even in "uniformed" sectors. In the same vein, if well mobilized, the private sector can play a huge role in improving conditions in rehabilitation centers and law enforcement setups by offering equipment or services in the form of Public Private Partnership.

Another challenge was management and inadequate leadership skills in the rehabilitation centres (in handling the juveniles). This was well portrayed by one of the social welfare participants in Temeke who had the following to say: *"Management was a challenge as funds were inadequate for infrastructure-space, sports activities, and leisure facilities. The centers were still young in terms of organizational management and there were also issues of miscommunication"*.

This can be translated as the leader not sharing information with the rest of the team regarding the running of the organization, which means the organizations were not empowered enough before the commencement of the program. It was also noted in the field that after the project life span elapsed, the Kigamboni Community Centre continued to operate but not as it was during the project life as viable economic and organizational sustainability of the rehabilitation centers were

not incorporated enough into the municipal council's agenda.

This is also accentuated by Kadilu, 2017; Mashamba, 2013 and Kirsten (2012) who argued that there were no nationwide consolidated and disaggregated statistical data regarding the problem. Mashamba (2013) raised the issue of an untrained workforce and that the Law of the Child Act had placed enormous roles, power, and obligations in the hands of Social welfare Officers, police officers, and magistrates, who were not specifically trained in this field and were small in number. Mambosho (2020) argued that the situation was escalated by limited knowledge; few alternatives available were not rehabilitative, and children arrested or detained were vulnerable to violence and abuse from law enforcement officials and colleagues (ibid). The problem was also noted by Omesa (2014) who stated that there was limited specialism within the justice system, with children's cases being handled by the same police, prosecutors, and magistrates that deal with adult cases, using only limited additional safeguards in place that recognizes the vulnerabilities of juveniles. Furthermore, juveniles were still held in adult prisons, contrary to the Law of the Child Act.

The information obtained in the field confirms the findings of the 2013 evaluation on the diversion program in Dar es Salaam which noted a myriad of bottlenecks such as no aftercare and referral bodies taking time to trust the program, reduced number of juveniles being diverted, and inadequate Children's Homes willing to accept juveniles in Temeke (MoHSW, 2013). Indeed, the information obtained indicated concerns over long-term financing of the diversion program to facilitate a national roll-out (ibid) program.

Both the benefits and challenges of this study emanate from the systems theory as the diversion program (as a system) is made of different parts in terms of manpower, juveniles, finance and policies whose interplay can render the program effective or vice versa.

## **DISCUSSION OF THE FINDINGS**

As demonstrated in this study, two themes, namely the benefits and challenges of the diversion program are evident. On the benefit side, both the field data and the literature reviewed indicate that the diversion program was highly useful in the rehabilitation and prevention of recidivism among juvenile offenders. Another usefulness of the diversion program was its cost-effectiveness compared to the traditional legal process, which is often accompanied with high cost. Normally the traditional juvenile justice system takes a long time for case determination, paying witnesses and sometimes advocates and if placed in Remand Homes, it can even jeopardize juveniles' chances of going back to school. Knowledge-wise, participants in Temeke and Kigamboni, where the program was piloted, seemed to be more informed about the program as they were able to describe the program in terms of how it started and how well it was organized, unlike their counterparts in Ilala, where the program was not piloted. This shows that the implementation of the program had imparted sustained knowledge among the actors. This formed a key factor in future juvenile justice program implementation and sustainability.

One of the challenges noted in the field was that the program was not well known even among key actors. This factor impinged referral and access to services by the service users. Another serious challenge was the financial limbo and over-dependence on development partners which could jeopardize the effective implementation and the overall rate of scale-up of the program. The challenge was coupled with shortage of manpower as noted by Mashamba (2013). Another key challenge was scarcity of native literature as most of the reviewed literatures in this study focus very much on developed nations including the US diversion. Few studies were done in other parts of Africa such as Ghana, Nigeria and South Africa. The literatures which originate from developed countries fail to clearly articulate how to address the problem of juvenile justice

administration in the Tanzanian context due to economic, social and cultural variations. A few of them that focused on Tanzania mostly revolved around the nature, benefit and causative factors to the diversion program, thus creating a gap in knowledge and practice. Thus, there is a dearth of scholarly literature concerning how traditional and cultural systems can be effectively utilized in the diversion program to enhance the JJA in Dar es Salaam and Tanzania in general. This is of paramount importance because the idea of indigenous knowledge and culture originates from the major international and regional conventions such as the CRC and ACRWC which were ratified by Tanzania. Indeed, the diversion program is reactive, focusing more on secondary and tertiary prevention, which means it bears services offered after the occurrence of the scourge. This leaves behind a gap on the primary prevention, which can be more ideal and cost-effective for developing countries like Tanzania. The situation calls for a comprehensive investigation in the areas highlighted in order to facilitate effective juvenile justice services.

As noted above, this study was informed by systems thinking. This means the diversion program was seen as a whole where both the benefits and challenges of the study were analyzed from the systems thinking considering that the diversion program as a system is made of different parts in terms of manpower, juveniles, finance and policies whose interplay can render the program effective or not.

## **CONCLUSION**

This qualitative study was conducted in Temeke, Kigamboni and Ilala Municipalities in Dar es Salaam region. Participants were recruited through convenient and snowball sampling techniques and data were collected through in-depth interview and Focus Group Discussion. The collected data were analyzed through Interpretive Phenomenological Analysis (IPA) with the aid of the ATLAS T.i 9 software. The study was guided by the systems theory which explains well the diversion program as a system which is made up of different parts; manpower, juveniles, finance and policies whose interplay can render the program effective or not. From such a lens, it was possible to unearth the benefits and challenges of the program.

The study has delineated the benefits and challenges facing the diversion program. It has unveiled the benefits of the program including its cost effectiveness; effectiveness in rehabilitation of juveniles in conflict with the law; humaneness; being community based; absence of stigma; increased awareness and raised sense of vigilance among actors. The study has further observed the challenges of the program including limited funding and donor dependence which can jeopardize national roll out; limited manpower; limited knowledge among stakeholders, placing more emphasis on reactive measures rather than being proactive (primary prevention) and a significant number of juveniles is still in prisons or juvenile retention facilities. This calls for enhancement and scaling up the diversion program countrywide and taking concerted efforts to address the challenges highlighted for efficacy in the juvenile justice administration in Tanzania.

## **RECOMMENDATIONS**

### **To government actors**

First, the government needs to scale up the diversion program to cover the whole country. Second, social workers should be employed in schools as they are crucial for identifying juvenile delinquent behaviors and supporting children at the onset. The school, in particular, is a vital entry point, as it is where most children spend their daytime. Hence, if early identification and intervention measures are taken, such initiatives will benefit juveniles immensely and prevent them from falling into conflict with the law. Third, Municipal councils and the central government should set aside a specific fund based on Public Private Partnership and assign a specific budget to meet the necessities for the diversion program and juvenile justice system at large. Fourth, children should be categorized into two age groups on criminal liability, e.g., 10

years-14 and 15 - 18 years. This means intervention measures meant for children should be based on age categories. Fifth, the government should set aside adequate resources and work equipment such as television sets, play materials, and buildings to facilitate work and effectively address juvenile matters. Sixth, there is a dire need for every Gender and Children Desk to have a social worker who can help in settling matters of juveniles, which aligns with the demand of the Diversion Guidelines of 2018. Such social welfare officers will ensure that children's rights are not infringed and that they are given appropriate services. This has to go hand in hand with training police officers and those on the gender and children desks so that they offer services effectively.

### **To Stakeholders**

First, the community should be sensitized through mass media, meetings, training, and other cultural fora on the diversion program. Second, there is a need to break away from the shackles of colonial and neo-colonial ideologies and practices by embarking on indigenous practice models in the diversion program. This entails using traditional methods of conflict management for settling juvenile cases by conducting intensive training of juvenile justice to community elders through the existing child protection system (framework) at all community levels. This should be done after training so that such practices resonate with international and regional standards. Third, capacity building on the policy framework of the diversion program and the use of traditional methods should be done to all Social Welfare Officers and law enforcers, as well as juvenile justice actors in general to enable them to provide services adequately. This should be done continuously as new law enforcement agents enter and others exit. Fourth, the general actors should collaborate with the government to scale up the diversion program. Children's rehabilitation facilities that can be used to divert children who have cases in court and assist in re-integrating them into the community should be identified in every district in the country. Fifth, appropriate education, through behavior change communication (B.C.C.), should be given to caretakers/parents on how to care for children and take responsibility for children and their families.

Sixth, all stakeholders including social workers, teachers, and law enforcers, need to be informed about the new Guideline on Diversion (2018) and how to use it effectively to prevent juvenile delinquency and enhance juvenile justice in the country. This is of paramount importance as the document bears all guidelines regarding preventing and rehabilitating juvenile offenders in the country. Seven, research should be intensified in the area of juvenile justice. This entails identifying good practices for handling juvenile cases including viable traditional and indigenous methods that community leaders can utilize to settle juvenile justice cases to avoid the bottlenecks experienced in the conventional adversarial system. Eighth, social workers are supposed to have a good grounding on policies, laws, and regulations, which make them fit well in the juvenile justice system, especially in the adversarial court system.

### **LIMITATIONS**

First, gathering information from juvenile offenders is critical due to the criminalization of the subject matter and stigma associated with their acts. In this sense, juveniles were most likely not open to the researcher about their condition and actual feelings regarding the scourge until probing and triangulation were done to get in-depth information. Second, the diversion practice is relatively new in Tanzania, hence inadequacy of information and data from the government, social agencies, and respondents, as well as those who offer services to juveniles. Third, the sample population for this study was purposively selected from two piloted municipal areas and Ilala district, thus the information obtained cannot necessarily be a representative of the entire population in Dar es Salaam region.

## AREAS FOR FURTHER STUDIES

Most of the reviewed literatures in this study focused on the US diversion systems and, to a small extent, other parts of Africa such as the South African juvenile justice system. In contrast, a few of them focused on Tanzania. Indeed, most of the literatures in Tanzania highlighted the diversion program's nature, benefits, and causative factors. The existing gap is that, currently, there is inadequate literature or scholarly information concerning how the traditional and cultural systems can be effectively utilized in the current diversion programs as envisaged by international standards such as the UNCRC and the ACRWC.

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