

Assessment of Alternative Measures as a viable solution for justice for children in Bangladesh: Effectiveness, Limitations and Ways forward

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Abstract

High population density with a developing agro-economy and weak sociopolitical structure of Bangladesh often forces a number of the children to get involved in criminal activities. The system for redressing the issues for children in conflict with law is still at infancy and lacks functionality, which often complexes the problem. With a low minimum age of criminal responsibility, weak legislations and judicial support, scarcity of correctional institutions and probation system, the structure for justice for children in Bangladesh is crippling towards the standards set out in the CRC. The glimmer of hope however, is the new Children's Act of 2013 with some special provisions for alternative measures which enables a speedy and effective social reintegration process for the children. On a pilot basis, the measures have been implemented in the field, and the success has begun to surface. This study looks upon the limitations of justice for children in Bangladesh and assesses the viability of the alternative measures as a solution. Through a mixed method approach, the information collected from 20 UNDAF districts of Bangladesh with a diverse socio-economic and cultural variety is corroborated with existing research to provide a clear understanding on the effectiveness and relevance of the alternative measures in the Children's Act of Bangladesh, and a number of recommendations have been made to ensure sustainability.

Key words: Justice for Children, CRC, Bangladesh, Children's Act, Alternative Measures, Probation

1 INTRODUCTION

Bangladesh is one of the most populous countries in the world with a percentage of around 36% of children.¹ High population density with a developing agro-economy and weak sociopolitical structure often forces some of the children to get involved in criminal activities.² The problem gets worse when the visible lack of proper justice administration system for children comes into play.

As per the provisions of UN Convention on Rights of the Children (CRC), “whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”³ Since majority of child offenders commit only minor offences, the CRC explains that, a range of measures involving removal from criminal/juvenile justice processing and referral to non-custodial and alternative social services should be a well-established practice that can and should be used in most cases.⁴

The UN Guidelines for the Prevention of Juvenile Delinquency confirms that community-based services and programs should be developed in a juvenile justice system.⁵ In order to facilitate the rehabilitation of the children in conflict with law and for social reintegration, Bangladesh started to apply non-custodial interventions dealing with the children in conflict with the law and a meaningful partial transfer of power to communities, in compliance with the CRC and other international agreed standards like the Riyadh Rules⁶ or the Beijing Rules.⁷

To facilitate the problems of children and incorporate some alternative measures of the international standards for justice for children like diversion or family conferencing, a new law has been introduced in 2013.⁸ The Law provides for the diversion for children in conflict with the law, mandates the appointment

¹ UNICEF Statistics on Bangladesh (2016); <<https://data.unicef.org/country/bgd>> accessed 5 October 2016

² Juvenile Delinquency in Bangladesh, Identify the causes; Md. Tajul Islam, Law Journal of Bangladesh, Vol 2, Jan-June 2015; <<http://www.lawjournalbd.com/2015/02/juvenile-delinquency-in-bangladesh-identifying-the-causes-with-reference-to-some-case-studies>> accessed 9 October 2016

³ Article 40 (3b) of UN CRC

⁴ Towards a Child-rights based Juvenile Justice System, Khandakar Farzana Rahman, Law and Our Rights (The Daily Star); <<http://www.thedailystar.net/towards-a-child-rights-based-juvenile-justice-13905>> accessed 15 October 2016

⁵ UN Guidelines for the Prevention of Juvenile Delinquency 1990; Principle 6

⁶ The UN Guidelines for the Prevention of Juvenile Delinquency, GA Resolution 45/112 of 14 December, 1990

⁷ The UN Standard Minimum Rules for the Administration of Juvenile Justice, General Assembly (GA) Resolution 40/33 of 29 November, 1985

⁸ The Children’s Act 2013 of Bangladesh

of child-friendly police officers in every police station of the country, emphasizes on community based child protection committees (CBCPC) and refurbished the activities of the probation officers under the ministry of social welfare.⁹

Although the 2013 legislation of Bangladesh introduces some of the provisions which seem very promising, but the ground reality is still indifferent and lacks functionality and resources. The rampant use of ‘vigilant justice’ has claimed a number of lives of children where they were tortured to death because of some petty offences; some of these cases were regarded as sensational and stirred a widespread criticism across the country.¹⁰

One of the major setbacks of the existing system is that both the child victims of crime, witnesses and alleged child offenders are directed into the same system of child protection services. In the name of safe custody, many children (especially the females) are being deprived of their liberty.

Child Population (under 18 years)	56.66 million ¹¹
Minimum age of Criminal Responsibility	9 years ¹²
Age when children can be tried and punish as adults	16 years
Number of children inside regular prisons	145 ¹³
Number of correctional centers for children (KUK) ¹⁴	3 (2 for boys and one for girls)

Key statistics for Justice Administration for Children in Bangladesh: At a glance ¹⁵

In its’ concluding observations for Bangladesh, the Committee for Rights of the Child reiterated its previous recommendation that the State party bring the system of juvenile justice fully in line with the Convention and with other relevant standards (i.e. the Beijing Rules,¹⁶ the Riyadh Guidelines,¹⁷ the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules,¹⁸ the Vienna Guidelines for

⁹ Children Act 2013: A Brief Commentary; Justice Imman Ali, Supreme Court of Bangladesh. <http://www.supremecourt.gov.bd/resources/contents/Children_Act_2013-Brief_Commentary_v4.pdf> accessed 11 October 2016

¹⁰ Bangladesh Boy Killing: Six sentenced to death; BBC, 8 November 2015. <<http://www.bbc.com/news/world-asia-34761620>> accessed 15 October 2016

¹¹ State of the World’s Children; UNICEF 2016 <www.unicef.org/sowc> accessed 8 October 2016

¹² The Age of Criminal responsibility in Bangladesh is 9 (Section 81 of the Penal Code)

¹³ The State vs. the Secretary of Home Affairs; Suo-Moto Rule 15 of 2010 (HCD)

¹⁴ KUK refers to Kishor Unnayan Kendra (Juvenile Development Centers)

¹⁵ Stats based on ‘Justice for Children in Bangladesh’ by UNICEF

¹⁶ The UN Standard Minimum Rules for the Administration of Juvenile Justice, General Assembly (GA) Resolution 40/33 of 29 November, 1985

¹⁷ The UN Guidelines for the Prevention of Juvenile Delinquency, GA Resolution 45/112 of 14 December, 1990

¹⁸ The Rules for the Protection of Juveniles Deprived of their Liberty, GA Resolution 45/113 of 14 December, 1990

Action on Children in the Criminal Justice System¹⁹) as well as the committee's General Comment No. 10 (2007) on the rights of the child in juvenile justice.²⁰ In this regard, the Committee recommended a series of actions which includes reconsidering the age of criminal responsibility, as well as adequate resource allocation and capacity building for the justice for children structure.²¹

2 GENERAL PROBLEMS ON CHILD PROTECTION IN BANGLADESH

2.1 Obsolete Legal provisions

Domestic legislations of Bangladesh state different ages for criminal responsibility, marriage, and age of majority, thus creating confusion and inconsistency in the administration of juvenile justice.²² Despite the fact that the age of criminal responsibility is very low, prior to the implementation of the new Children's Act, there were no clear and visible legal or judicial initiatives that provide for diversion of cases to informal system of correction and rehabilitation, or any other alternative measure for children.²³

2.2 General public perception on justice for children

A generally negative attitude of the public towards the children in conflict with the law exposes children to varying degrees of violence. In most of the cases, street children are usually considered as criminals, and suspected accordingly. Although corporal punishment had been made illegal by the Supreme Court,²⁴ these children are commonly subjected to beatings, verbal abuse and other degrading treatments before and as they are brought to justice.²⁵ A recent survey revealed the information regarding killing of about

¹⁹ Recommended by Economic and Social Council Resolution 1997/30 of 21 July, 1997

²⁰ Notification by the UN OCHCR made on 8 October, 2015;

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16587&LangID=E>> accessed 21 October 2016

²¹ UN CRC Concluding Observations for Bangladesh, para 81; Session 70 of CRC, 2 October 2015

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=828&Lang=en> accessed 13 October 2016

²² The age of criminal responsibility in Bangladesh is 9 (Section 82 of the Penal Code 1860); the age of maturity is 18 (the Children's Act 2013); and the age of getting married is 21 (for boys, Child Marriage Restraint Act 1929)

²³ Juvenile Justice System in Bangladesh: A Critical Appraisal; M Bulbul Ahmed & Camelia Khan; ASA University Review, Vol 14 (2010)

²⁴ *BLAST and ASK vs. Bangladesh and others*; Writ Petition No. 5684 of 2010 (HCD)

²⁵ Bangladesh Boy Killing: Six sentenced to death; BBC, 8 November 2015. <<http://www.bbc.com/news/world-asia-34761620>> accessed 23 October 2016

900 children in four years,²⁶ and a worrisome culture of impunity to these murderers implicates the weakness of the system.²⁷

2.3 Structural competence and human resources

An overwhelming lack of competence required for the proper administration of justice for children is visible at many levels, especially in the grassroots. The main agencies mandated with rehabilitation of children in conflict with the law – the Ministry of Social Welfare and the Ministry of Women and Children has only minimal engagement with the issue of justice for children, as it also requires the involvement of Home Ministry and Law Ministry. A multi-sectoral approach mandated by the Children’s Act (Collaboration of the community, social workers, police and the judges) is been tested as a pilot but widespread operation is required to reap the maximum benefits.²⁸ A major drawback was the vacancy in almost 40% posts of the Social Service Department across the country, which revealed a horrifying picture where one single staff or officer had to undertake 2-3 extra duties and failed to deliver either of them properly.²⁹ Although Supreme Court has instructed the Govt. to increase the numbers of shelters, safe house for children but the progress is slow, and resources are limited.³⁰

2.4 Lack of after care and follow up programs

Once the children in conflict with the law are released from the Correctional center or diversion programs, there is no initiative that provides children and parents with follow up supportive programs to ensure that the children do not commit more offences. Some of the NGOs are trying to provide such support in some of the areas, but most of these programs are in its pilot level; often proved as inadequate.

3 ALTERNATIVE MEASURES FOR SOCIAL REINTEGRATION

Trial within the regular criminal justice system tends to stigmatized children as ‘criminals’, often leaving them socially marginalized. Without proper reintegration, the peer pressure or even the family

²⁶ 968 children killed in 43 months; Daily Prohom Alo (English); 8 August 2015 <<http://en.prothom-alo.com/bangladesh/news/74595/968-children-killed-in-41-months>> accessed 25 October 2016

²⁷ Bangladesh: Culture of impunity to blame for rise in child murders; The Asia Times; 21 March, 2016 <<http://www.atimes.com/article/bangladesh-culture-of-impunity-to-blame-for-rise-in-child-murders/>> accessed 24 October 2016

²⁸ Justice for Children Factsheet; UNICEF in Bangladesh; September 2013 <https://www.unicef.org/bangladesh/Justice_for_children-web.pdf> accessed 26 October 2016

²⁹ It was revealed in the Evaluation Study of UNICEF country program conducted in 20 UNDAF districts of Bangladesh; author was part of the team

³⁰ State v. Secretary, Ministry of Law, Justice & Parliamentary Affairs and others, 29 BLD 656

environment can be burdensome for the child, and can leave an indelible adverse impression on their mind for the rest of their lives. In many of the cases, children are acquitted after trial, but in our socio-economic context, even going through the trial itself can do the damage by ruining their self esteem and social reputation for good.

In resonance with the Article 40.3(b) of UNCRC, the Beijing Rule provides that juvenile offenders shall be dealt with, wherever possible, without resorting to formal trial.³¹ It enjoins that the Police, Prosecution or other agencies shall be empowered to dispose cases without formal hearings. Many countries around the world have taken resort to a number of alternative measures to ensure the proper justice for children.

3.1 Successful examples around the world

In conformity with the provisions of CRC to ensure the best interest for children in judicial process, New Zealand had pioneered the innovative solution for child offender and the victim – the family Group Conferencing (FGC) program.³² It works with an official coordinator who convenes a meeting of the child offender and his parents with the victim and any other person whose presence is deemed beneficial. Throughout a simple but effective discussion, the family can decide what course of action would be best suited for the child to redress the harm.³³ Often described as the lynch-pin of the youth justice system in New Zealand, about 75-80% of cases involving child offenders are dealt with by the police and criminal trial is avoided.³⁴

Scotland implemented a special system of hearing before a Children’s Panel, comprising three trained persons from the community who decide on the best course of action for the child.³⁵ In Malaysia, the ‘Court for Children’ comprises of one Magistrate and two other persons, of whom one must be a woman; it also practices diversion as an alternative measure.³⁶ In India the ‘Juvenile Justice Board’ shall comprise a Magistrate, who must have knowledge or training in child psychology or child welfare, and two social

³¹ The UN Standard Minimum Rules for the Administration of Juvenile Justice, General Assembly (GA) Resolution 40/33 of 29 November, 1985

³² Youth Justice (Family Group Conference); Ministry of Social Development, the Govt. of New Zealand <<http://www.cyf.govt.nz/youth-justice/family-group-conferences.html>> accessed 30 October 2016

³³ The Family Group Conference 14-Year Journey: Celebrating the Successes, Learning the Lessons, Embracing the Challenges; Pakura, Shannon, New Zealand: Child, Youth and Family Services (2004) <<http://restorativejustice.org/rj-library/the-family-group-conference-14-year-journey-celebrating-the-successes-learning-the-lessons-embracing-the-challenges/5066/>> accessed 29 October 2016

³⁴ Youth Justice Process in New Zealand - Family Group Conferencing; Youth Court of New Zealand <http://www.unafei.or.jp/english/pdf/RS_No75/No75_10VE_O'Driscoll.pdf> accessed 24 October 2016

³⁵ Children’s Hearing System of Scotland; <<http://www.chscotland.gov.uk/the-childrens-hearings-system/>> accessed 31 October 2016

³⁶ Diversion under Malaysian Juvenile Justice System: A Case too little too late? Mustaffa, A. Asian Criminology (2016) 11: 135; <<http://link.springer.com/article/10.1007/s11417-015-9228-8>> accessed 1 November 2016

workers of whom at least one must be a woman, and the social workers must have been actively involved in health, education, or welfare activities pertaining to children for at least seven years.³⁷

3.2 Introduction of Alternative Measures in Bangladesh: Diversion

In Bangladesh the new Children Act of 2013 has introduced, among other beneficial concepts enjoined by international instruments, the Child Affairs Desk and the Child Affairs Police Officer (CAPO) in every police station as well as the concept and mechanism of diversion.³⁸ To serve the purpose and ensure the best interest for children, the CAPO, with the assistance of the Probation Officer, has been given wide powers to effect diversion from the police station where the child is produced upon arrest. However, the act will be fully functional when the enabling Rules are passed by Parliament, and it has been 3 years till today but the rules haven't been finalized yet.

4 DIVERSION: HOW IT WORKS

4.1 What is Diversion?

Diversion is a process of referring the children related cases away from formal criminal justice proceedings towards community support to facilitate a smooth social reintegration by avoiding the negative effects of being implicated in such proceedings.³⁹ Diversionary measures can come into play at any stage – at the time of the arrest or immediately before the court hearing; in most of the cases it comes as a generally applicable procedure mandated by the law, but sometimes the police, prosecutor, court or similar body can make their own decisions. It often involves a restorative justice component.⁴⁰

Restorative justice is an approach that recognizes how crime affects the victim, the community and the offender. Primarily focusing on repairing of the damage caused by the offence, it helps to make reparation to the community and to the victim, and to return the offender to a productive place in the community.⁴¹

³⁷ Justice for Children in Bangladesh: Diversion; Hon'ble Justice M Imman Ali, Judge of the Appellate Division of Bangladesh; <<https://justiceimmanali.wordpress.com/2016/05/14/justice-for-children-in-bangladesh-diversion>> accessed 2 November 2016

³⁸ Children Act 2013: A Brief Commentary; Hon'ble Justice M Imaan Ali, Judge of the Appellate Division of Bangladesh; <http://www.supremecourt.gov.bd/resources/contents/Children_Act_2013-Brief_Commentary_v4.pdf> accessed 5 November 2016

³⁹ Diversion and Social Control: Alternative Measures of Crime Control; Reiss Jr., Albert J, Diversion in Informal Social Control, Albrecht and Mayerhofer ed. (1995)

⁴⁰ Juvenile Justice: A Social, Historical and Legal Perspective; Elrod, Preston and Ryder, Scott R; Jones and Bartlett Publishers (2011)

⁴¹ Understanding Restorative Justice: How Empathy closes the gap created by crime; Wallis, Pete; Policy Press (University of Bristol) (2014)

For justice to be truly restorative, all the stakeholders within the community, the victim and the offender must take active roles.

4.2 Development of Diversion program in Bangladesh

For a long time, Governments in the South Asian region had no nation-wide programs to divert children away from the formal court system, either at the time of the arrest or during the early stages of the court process.⁴² However, with the new Children's Act, Bangladesh has started to implement some of the components of diversion as an alternative measure for justice for children.⁴³

A diversion project for boys has been piloted at the Jessore Child Development Centre since June 2009. Initially the project started to work to divert children who come into contact with the law by referring them to alternative services or reintegrating them with their families, where appropriate.⁴⁴ For this purpose, a full mechanism including a case management team (consisting of members from the Department of Social Services, the police, the Bar Council, local government, the juvenile court and NGOs) were established. This team reviewed the cases of certain children who are already in detention at the centre and referred them to appropriate services such as legal aid. This program has been replicated in the other two Child Development Centers of the country, as well as in local levels (selected police station in Jessore and Khulna district). They now extended the coverage to the children in conflict with the law to administer proper justice for children.

4.2.1 Principal of Diversion as an Alternative Measure

The alternate measures (i.e. diversion) are taken for a limited time and must not be repressive, harmful or risky for the child. The process does not impede the education or school-going for the child.⁴⁵ It includes the necessary matters of restorative justice in order to reestablish relationship, especially with the victim, by ensuring that the child understands the impact of his or her action and behavior on others.⁴⁶

4.2.2 Initiation of the Diversion program

⁴² Improving the Protection of Children in Conflict with the Law in South Asia: A Regional Parliamentary Guide for Juvenile Justice – UNICEF and the Inter-Parliamentary Union (2007)

⁴³ Children Act 2013: A Brief Commentary; Justice Imman Ali, Supreme Court of Bangladesh <http://www.supremecourt.gov.bd/resources/contents/Children_Act_2013-Brief_Commentary_v4.pdf> accessed 4 November 2016

⁴⁴ Justice for Children in Bangladesh; UNICEF <[https://www.unicef.org/bangladesh/Juvenile_Justice\(2\).pdf](https://www.unicef.org/bangladesh/Juvenile_Justice(2).pdf)> accessed 7 November 2016

⁴⁵ Rule 39 of the Children's Rule 2015 (Draft)

⁴⁶ Rule 43 of the Children's Rule 2015 (Draft)

The Child Affairs Police Officer or the Children's Court takes alternate measures for the children in conflict with the law, if the specific charge against the child is proved and the child confessed about committing the offence independently and at own will.⁴⁷ For this purpose, the child has to agree in writing about taking alternative measures.⁴⁸

4.2.3 Factors to be considered while implementing Diversion

Alternative measures are taken by considering the nature of the offence and opinion of the Complainant; age, behavior, attitude, physical-mental condition and history; circumstances of the place where the offence occurred; educational qualifications and cultural, religious and linguistic background of the child;⁴⁹ necessity of the measures in comparison with the gravity of the behavior of the child and the offence; and of course, for the freedom and best interest of the children.⁵⁰

4.2.4 Field Implementation of the Diversion program

The Probation Officer informs the parents, guardians of the child for whom alternate measures are chosen about the measures in plain language and procedures so that they can understand the conditions (measures, duration and consequence of violation).⁵¹ While taking the alternate measures under the Children's Act,⁵² the Police Officer or the Children's Court shall send the dispute to settle in alternate measures in presence of the Probation Officer and the parents, guardians of the child for whom alternate measures are chosen.⁵³

Generally, a diversion process includes a number of conditions for the children including a scheduled time for returning home, certain academic and extra-curricular tasks along with strong prohibition to get involved with bad company and most importantly, staying far away from the offence. The family, the community and the social workers are entrusted with the responsibility to ensure that the child abides by the conditions to the words.

Upon fulfillment of all the conditions of the alternate measures including the Family Conferences, the Child Affairs Police Officer, Probation Officer or the Children's Court closes the matter up and no further

⁴⁷ Section 48(2) of the Children's Act 2013

⁴⁸ Rule 40 of the Children's Rule 2015 (Draft)

⁴⁹ Section 48(1) of the Children's Act 2013

⁵⁰ Rule 41 of the Children's Rule 2015 (Draft)

⁵¹ Rule 44 of the Children's Rule 2015 (Draft)

⁵² Section 47(2)(b) and Section 48(1) of the Children's Act 2013

⁵³ Rule 45 of the Children's Rule 2015 (Draft)

action can be taken against the child under the Law. Furthermore, no information about any offence against the child is recorded.⁵⁴

However, if the Probation Officer has the reason to believe that the conditions of the alternate measures have been violated, then the Probation Officer shall inform the Child Affairs Police Officer or the Children's Court as the case may be about the violation in writing.⁵⁵

4.2.5 Consequence of violation of the conditions

Upon receiving verified report or an application about the violation of the conditions of the Alternative Measure by the child, the Police/Court can either pass a similar order with different conditions, or send a written notice to the child to appear before the Court or Police Station, or issue an arrest warrant.⁵⁶ In grave cases, the case record may be sent to the Public Prosecutor for initiating trial process, which can end up in an order to send the child to a certified institute or any appropriate measure under the law.

4.2.6 Family Conference as an Alternative Measure

The Family Conference is conducted to attain recovery of the loss of the victim child or person and to resist the recurrence of the offence by the child.⁵⁷ Upon discussion and consent from the parties, an agreement is drafted in the process which has to be reasonable, self-motivated and consistent with the provisions of alternate measures of rule 40.⁵⁸ A thorough follow-up process is also undertaken to ensure that the agreement is being abide by the parties.⁵⁹

If the participants of the family conference fail to reach at any decision consensually, the conference is called off and the Probation Officer returns the matter to the Children's Court or to the Child Affairs Police Officer for taking another form of diversion.⁶⁰

The participants of the family conference includes the child; the parents, guardians of the child or the custodian in absence of both of the parents, or the authority or members from extended family (as the case may be); the victim child, or the person, or the persons who will be the most important part of the process

⁵⁴ Rule 46 of the Children's Rule 2015 (Draft)

⁵⁵ Section 48(6), 49(4) and 59(1) of the Children's Act 2013

⁵⁶ Section 51 of the Children's Act 2013

⁵⁷ Rule 53 of the Children's Rule 2015 (Draft)

⁵⁸ Rule 57 of the Children's Rule 2015 (Draft)

⁵⁹ Rule 58 of the Children's Rule 2015 (Draft)

⁶⁰ Section 49(5) of the Children's Act 2013

and not more than two well wishers from both the parties who are well known to the respective party separately.⁶¹

The proceedings of the family conference are considered confidential and any statement made by any person participating in the said conference cannot be used subsequently as evidence in legal proceedings in any court.⁶²

5 ANALYSIS OF THE ALTERNATIVE MEASURES: SUCCESS OR FAILURE?

5.1 INDICATORS OF SUCCESS

5.1.1 System of implementation

The Children's Act mandates for a multi-sectoral approach for child protection especially for the administration of justice for children. As per the provisions of the law, every district court of the country has now a Children's Court and the Additional District Judge of the respective district works as the *ex officio* judge of the Children's Court. Every police station of the country is now required to have a child affairs police desk and a child affairs police officer. They work in collaboration with the Probation officers from their respective district, and with the Upazila Social Services Officer (USSO) to ensure the diversion of the children is possible scenarios. Besides, community based child protection committees (CBCPC) mandated by the law have been established at ward/ union level in the program areas⁶³ to measure effectiveness, which will be scaled up around the country.

5.1.2 Direct impact on children

The alternative measure of diversion addresses the protection needs and rights of children directly in different ways, some of which are as follows:

⁶¹ Rule 50 of the Children's Rule 2015 (Draft)

⁶² Section 49(6) of the Children's Act 2013

⁶³ 20 UNDAF districts of Bangladesh

- a) Children are protected from being treated in traditional methods such as harsh physical punishments and deprivation of basic needs, which are believed to be effective measures of preventing children from growing up to be criminals.⁶⁴
- b) Although there are no proper quantified data available on the condition of children after being discharged from the diversion program, the staff report that majority of the children show marked improvement in their behavior and this reduces the chance of children having to go to the correctional centers (KUK) in the future.
- c) The diversion model prevents the discontinuation of education; rather the program encourages children to excel in their education since it is considered as one of the measuring factors of success by families and also in the reintegration plan.
- d) Children who are sent to the diversion and were not enrolled in schools are given literacy classes to prepare them for enrolment in formal schools, after which they are enrolled in formal schools by the Program. Especially the communities that have CBCPC also have a Children's Club which are governed and managed by the children; the beneficiaries of diversion get better results by enrolling into the special training modules like life skills training.
- e) Diversion facilitates reintegration of children in conflict with the law by preventing removal of children from their locality. In the diversion program the child is not taken away from the place of residence and therefore the chance of stigmatization is minimal.

5.1.3 Increased commitment of duty bearers

To ensure the sustainability of the Community Based Correction Program, the structures within the offices of the relevant duty bearers such as the city or upazila administration, Social Services Department, Ministry of Women and Children and the Ministry of Education etc. are increasingly involved. Efforts to involve the duty bearers are also extended to the grass roots levels through the works of CBCPC and children clubs.

In Bangladesh, generally the police officers take the responsibility of investigating offences committed by children, which includes discussions with children, finding the root causes of the problems, interviewing parents, etc. The trainings police received on children's rights don't seem to be adequate, and they lack the sophisticated legal and social work skills that enable them to properly represent the best interests of

⁶⁴ Diversion and Social Control: Alternative Measures of Crime Control; Reiss Jr., Albert J, Diversion in Informal Social Control, Albrecht and Mayerhofer ed. (1995)

children. However, to supplement the police, in some districts we have found the active roles played by the DD-DSS and USSO⁶⁵ to conduct their own investigation which often resulted into a better decision.⁶⁶

The arrangement where community play active role in advising children in conflict with the law in the CBCPC has been proved to be a very useful practice and effective for the children.

5.2 FAILURES/ CHALLENGES

5.2.1 Involvement of duty bearers and scarcity of resources

The coordination and involvement of duty bearers at various levels is a challenge to the project, especially at the central level where the decisions are made. Although the engagements of the different stakeholders are already stated in the rules, it needs to see the light of the day. It will help to strengthen the cooperation between different stakeholders in all levels, and their ownership of the program will increase to a great extent.

The lack of resources and mismanagement of manpower is the biggest hurdle at this moment. Lack of human resources in the Social Services Department revealed a horrifying picture where one single staff or officer had to undertake 2-3 extra duties and failed to deliver either of them properly.⁶⁷ At the same time, a senior judge overburdened with regular job responsibility is been assigned with the charge of Children's Court, which makes the responsibility of the judges even tougher. No separate court rooms have been allocated for the Children's court. Also in the police station, separate lockup facilities for children have not been place in many police stations, which makes the stay of the children in custody very difficult as they need to share the cell with arrested adults.

5.2.2 Practical skills on child protection among the stakeholders

At this moment, police officials, social workers and the other stakeholders including the judges are provided with short courses about children's rights and child protection; sometimes a presentation and brief discussion of the Children's Act. There is a strong demand of raising the knowledge and capacity in terms of practical skills of working with children's rights, alternative methods of treatment of children, and programs for rehabilitation and reintegration among the police, social workers, community members

⁶⁵ DD-DSS is the Deputy Director of the Social Services Department, who is the chief of the district office of social services dept; USSO – Upazila Social Services Officer, who is the chief of the upazila office of social services dept

⁶⁶ In an interview with the DD-DSS of Jamalpur district, we found how the DSS can play and active role in investigation as they found a boy completely innocent and victim of a false case through their own initiative and research, although police had already charged him in a criminal case before the court.

⁶⁷ It was revealed in the Evaluation Study of UNICEF country program conducted in 20 UNDAF districts of Bangladesh; author was part of the team

and to some extent, the judiciary. Besides, outreach programs about alternative methods that promote the psychological and social recovery and reintegration of children in conflict with the law is not in place.

5.2.3 Follow up

There is no systematically designed system of follow up to assess the situation of children who have been discharged after completing the diversion or any other means of alternative measures. This has not been possible due to shortage of staff (social workers) in the social services department. Sometimes (rare cases) the social worker keep in touch with a few children that have completed the program, especially those who were incarcerated in the correctional centers (KUK). The lack of this important component of the process continues to pose an obstacle in determining the success of the measures in quantifiable terms.

6 WAYS FORWARD

In line with the concluding observation made by the UN CRC, a reinforcement of manpower among the crucial stakeholders, especially the social services department is urgent.⁶⁸ For lack of resources, local authorities may tap into the CSR funds for child development activities.⁶⁹ Although it hasn't been experimented or applied in many countries, a small scale piloting program can be initiated with potentials of national level scale up.⁷⁰

Although the Children's Act has provided a précised structure of the Children's Court, proper implementation of the justice for children need to be ensured by appointing a separate judge exclusively for the court, and allocating a special child-friendly court room with conformity of the CRC and the

⁶⁸ UN CRC Concluding Observations for Bangladesh, para 81; Session 70 of CRC, 2 October 2015 <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=828&Lang=en> accessed 9 November 2016

⁶⁹ Protecting the Rights of Children Should be integral to every Corporate Social Responsibility Strategy; Stewart, Mellissa. Published by Foley Hoag LLP (2015) <<http://www.csrandthelaw.com/2015/01/12/protecting-the-rights-of-children-should-be-integral-to-every-corporate-social-responsibility-strategy>> accessed 10 November 2016

⁷⁰ Children's Right not a top priority in CSR; Smedley, Tim; The Guardian 22 March, 2013; <<https://www.theguardian.com/sustainable-business/child-rights-csr-unicef-research>> accessed 5 November 2016

Children's Act.⁷¹ Such new courts need to be adequately staffed by trained judges support staff, especially probation and social welfare officers.

An integrated system for data collection needs to be established in the national level with grass root accessibility, which will provide accurate and updated disaggregated data on children on diversion, serving prison terms and those on remand awaiting trial, as well as on the reasons for their detention. With a little training and introducing a system like the birth registration,⁷² the social workers of the social services department can easily collect all the necessary information the need.

Finally, the draft Children Rules, 2015 need to be finalized and promulgated as early as possible, since without the rules the proper operation of diversion cannot be initiated throughout the country. At this moment the diversion program is implemented by the UNICEF though a number of local NGOs in some divisions of Bangladesh as a pilot basis; successful replication and national scaling up of the program needs the implementation of the Rules. Besides, the minimum age of criminal responsibility should be raised to an internationally acceptable standard.

If we can change and improve our attitudes towards the children in need of protection, including those who have developed deviant behavior, then there are great prospects ahead for all the children of our country. By motivating the community, strengthening the local structures including the CBCPC and with the help of the government in setting up the necessary infrastructure for community-based alternatives measures to ensure the justice and best interest for children, one believes that the children of this country can have a great future.

⁷¹ The establishment of children's court in Bangladesh: From principle to practice; Ferdousi, Nahid; Oxford University Commonwealth Law Journal, Vol 15 (2015) Issue 2, pp 197-221

⁷² Registering Millions: Celebrating the success and potential of Bangladesh's civil registration and vital statistics system; World Health Organization Case Study (2014) <http://apps.searo.who.int/PDS_DOCS/B5114.pdf> accessed 6 November 2016