

OVERVIEW OF THE COMMUNITY CORRECTIONS SYSTEM IN KENYA

I. INTRODUCTION TO COMMUNITY CORRECTIONS IN KENYA

Kenya has a population of about 40 million and a prison population of over 54,000 which may be construed that the justice system is skewed to favour custodial punishment. Measures to address this scenario include various community corrections sentences.

The practice of 'probation' as a sentencing and or correctional disposition is a response to classical and medieval management of crime and deviance which put more emphasis on punitive sanctions as opposed to rehabilitative and reformative measures. It is also responsive to human right acclaim to the methods best suited to the management of errant population. The main attributes of community corrections methods are the humane features, rehabilitative attributes and penal decongestion outcomes. Probation has continued to be core in the criminal justice system in Kenya for over six decades.

THE CONCEPT AND PRACTICE OF PROBATION

If the supervision of a sentence of a convicted offender and granting of freedom for a period of time under special conditions set by the court was to suffice, then much of the current practice that the service provides would fall out of this definition. Arguably, there is no universally accepted definition that would suffice, as the practice is subject to respective statutes of different states and there is no universally agreed code of practice. Nevertheless, and in a majority of jurisdictions, probation practice entails elements of:

- legal mandate,
- supervision and therapy,
- Judicial function (or judicial supervision)
- is practiced in the community where the offender is helped to re-adjust and lastly
- It is a distinct discipline within the criminal justice system (Hamai 1995).

The above definition speak to the traditional practice which is more vertical and leave out the current practices which include the engagement with victims, ex-offenders, those on community punishment orders and the various responses to crime typologies (e.g. Gender Based Violence, psychiatric cases etc). Nevertheless, this understanding places us at the foot of the emergence of probation in Kenya as it was largely typified within those fundamentals.

The United Nations as early as 1951 described probation as consisting of

“The conditional suspension of punishment while the offender is placed under supervision and is given individual guidance or treatment”

As Harries (1995) pointed out, providing similar services without sanctions would not be probation but social work. It must involve some element of coercion for it to qualify as probation. Probation practice in Kenya is still inclined to the welfare orientation with the coercive feature, which is supposed to be the mainstay, overridden.

HISTORICAL DEVELOPMENT

As was with the English system then, the probation gained favour with the recognition that there was need to establish a system to work with the courts and rehabilitate offenders in the community with some professionalism. With this realization, a commission was established (The Patterson Commission of 1939) to look into the issue of overcrowding in prisons. The Patterson commission observed that overcrowding did indeed exist in prisons and consequently recommended the use of non-custodial options. Probation sanction which is the epitome of all supervised sanctions was established in Kenya through an ordinance in 1943 although its implementation came in 1946. The Commissioner of Prisons was appointed then the Chief Probation Officer given that the programme was domiciled in prison and that there were no trained probation officers in Kenya then.

Later organizational positioning saw the department aligned to the judiciary in 1952 before moving to the Ministry of Community development enabling the Service to superintend over Approved schools, Remand homes and accord Aftercare supervision to ex-borstal inmates. This development saw the principal probation officer also become the Chief Inspector of Approved Schools. There were several amendments to the probation ordinances before finally the first government of independent Kenya establishing the current Probation of Offenders Act Cap 64.

There were no trained probation officers in Kenya in this early face and therefore the colonial administration imported 5 British Probation Officers who worked with 9 African assistants.

The colonial government instituted several policy measures that guided the recruitment, training and deployment of assistant probation officers. The training with significant British government support continued till the end of 1980's. The probation officers' training with strong social work orientation ran for two years and was more of professional/technical

training than currently which is more of induction. The first major crop of University graduates joined the service at the beginning of 1980 but still with sociology and public administration background. Currently all entrants to the service are university social science graduates

The department in the early phase was mandated to supervise non custodial orders, under take aftercare supervision (mainly for ex-borstal inmates) on behalf of prisons and superintend over juvenile welfare and institutions, the latter function now under the Children's Service.

LEGAL BASIS for COMMUNITY CORRECTIONS

Operational mandates

The constitution and various statutes have empowered the Department, among other criminal justice agencies, to participate in the implementation of criminal law and correctional services. Specifically, the department derives its mandate from the Constitution of Kenya 2010 and the following statutes:

- The Probation of Offenders Act, Cap 64 Laws of Kenya
- The Community Services Orders Act No. 10 of 1998 Laws of Kenya
- Prisons Act CAP 90Laws of Kenya
- Children Act of 2001Laws of Kenya
- The Borstal Institutions Act CAP 92Laws of Kenya
- The Sexual Offences Act No. 6 of 2006Laws of Kenya
- The Power of Mercy Act of 2011Laws of Kenya
- The Criminal Procedure Code CAP 75
- The Penal Code CAP 63 Laws of Kenya
- And any other relevant Acts as such as the Mental Health Act CAP 248

ORGANIZATION AND PERSONNEL

Probation service is a Government agency involved in the administration of criminal justice specifically charged with the responsibility of implementing supervised non-custodial correctional services within the community. For purposes of planning and budgeting, under the Medium Term Expenditure Framework (MTEF) the Department falls under the Governance Justice Law and Order Sector (GLOS).

The four main **Departmental objectives** are:

- a. To generate information for dispensation of justice.
- b. To supervise court sanctions and rehabilitate offenders.
- c. To reintegrate and resettle offenders

- d. To promote, encourage and participate in the protection of victims' rights and welfare

The **main functions** of the Department are:

- Facilitation in the administration of criminal law through generation of social reports to inform decision making on bail, sentencing and penal release.
- Supervision of offenders on probation orders, community service orders and other penal release licenses
- Reintegration, resettlement and reintegration of offenders in the community.
- Provision of services for the protection and promotion of rights and welfare of victims
- Participation in social crime prevention

The above objectives and functions are seen in the light of the underlying and shared responsibility of all criminal justice agencies which is public protection and community safety. The Department operates 120 stations serving all courts country wide and has been supervising over 30,000 offenders at any given time for the last couple of years.

Vision Statement

A just, safe, crime-free society

Mission Statement

To Promote and enhance the administration of justice, community safety and public protection through provision of social inquiry reports, supervision and reintegration of non-custodial offenders, victim support and social crime prevention.

Strategic Aims

- To ensure offenders comply and successfully complete their sentences and avoid further offending
- To ensure that they repay the community for the harm or damage they have caused
- To provide the offenders with the opportunity to change and redirect their lives more purposefully and contribute towards social economic development
- To work towards reconciliation between the victims, the community and the offenders
- To promote safer communities, build public confidence in the non-custodial sentences
- To provide excellent leadership to the staff, ensure that they are motivated, developed and supported to effectively discharge their duties and towards this end work closely with Kenya National Association of Probation officers
- To provide high quality and effective services which give the public value for money

PROBATION SERVICE STAFF ESTABLISHMENT

DESIGNATION	No.
1. DIRECTOR	1
2. DEPUTY DIRECTOR	2
3. SENIOR ASST DIRECTOR	4
4. ASST DIRECTOR	12
PRINCIPAL PROBATION OFFICER	21
5. CHIEF PROBATION OFFICER	123
6. SENIOR PROBATION OFFICER	223
7. PROBATION OFFICER I	218
8. PROBATION OFFICER II	41
TOTAL	645
9. RECORDS MGT OFFICER	1
10. ACCOUNTANTS	2
11. HOUSE KEEPERS	7
12. SECRETARIES	52
13. ARTISANS	5
14. STORE KEEPER I/II SRN	2
15. PROCUREMENT OFFICER	3
16. CLERICAL OFFICERS	157

17. DRIVERS	44
18. SECURITY WARDEN	25
19. COOKS	11
20. SUPPORT STAFF	74
TOTAL	383
GRAND TOTAL	1028

MAIN TASKS

In Kenya the probation department has the legal mandate to carry out the following tasks;

1.To conduct social inquiries and provide reports to courts and other penal review boards which include; pre-sentence report for assessing offender suitability for a specific sentence disposal and also carries appropriate remedial actions necessary to forestall re-offending; A pre-Realise report where the probation officer has to provide the holding authority with information regarding the home conditions of the inmate and this involves gathering basic offender information, interviewing the offender at his/her home, place of work, victims of the offence, community members and any relevant institution, Assessing aggravating circumstances, compiling the report and submitting it to courts and other penal institutions and currently the probation officers are involved in generation of pre-bail reports for purposes of bond terms.

2. Supervision of non-custodial court orders under relevant Act which involves discussing the order with the offender, drawing individual treatment plan providing regular progress reports and this brings on board the services of the volunteer probation officers in turn protecting the community.

3. Rehabilitation and Re-integration of offenders: in this case the probation officer carries out offender needs assessment to enable the development of a plan that attends to the specific needs of the offender achieved through guidance and counselling and also may refer to other rehabilitation agencies and also the officer is required to provide regular progress reports on post release offender like the Ex-Borstal, Ex-prisoners and special category criminals and their final settlement back to the community.

4. Providing temporary accommodations and empowerment for needy deserving offenders which include paying school fees for those schools going, placing them in boys and girls hostels where some pursue formal schooling while others undertake vocational training and providing them with tools i.e. tailoring, barber, hair dresser, computer skills hence cautioning the young offenders from hostile home conditions.

5. Crime Prevention in this case probation officers engage the community including parents, teacher's students in addressing the factors that drive individuals towards offending in which case the probation officers have to come up with specific social models of crime reduction

within their area of jurisdiction addressing issues revolving on drugs and substance misuse and support for awareness on gender based violence and its reduction.

ALTERNATIVE SANCTIONS AND COMMUNITY SUPERVISION

1. Types of Community Measures, Orders, Dispositions, in Kenya

Type (Category)	Description/eligible offenders	Sentencing authority	Supervision/ Treatment period
Probation orders	Any juvenile and adult offender who has been found guilty for any offence other than capital offences	criminal courts- children's Court, magistrates and High Court	Supervision and counselling. Can involve placement in a probation Hostel
Community service orders- largely for Adult offenders	Any offenders convicted of an offence punishable by imprisonment up to 3 years	criminal courts- magistrates and High Court	working in the community projects under supervision for between one day and three years (converted into hours of work)
Suspended sentence	may be granted to any offender for up to 2 years for an offence of misdemeanour	Any court of criminal jurisdiction	no supervision
Conditional discharge	may be granted to any offender for an offence of misdemeanour with conditions not to commit any offence failure to which fresh sentencing may be preferred	Any court of criminal jurisdiction	No supervision by any authority

The Probation Service in Kenya handles juvenile offenders who fall into conflict with the law and in a majority of the cases provide advisory reports to the courts to determine the best disposal option depending on the needs of the child, nature and circumstances of the offence and home conditions subject their suitability, the juvenile offenders may be placed on probation, committed to a rehabilitation school (those aged between 12-15) or Borstal institution (those aged between 15 and 17years) for three years but may be subject to earlier release, sent to probation hostels(for period not exceeding one year where they are enrolled

in formal learning. Youthful offenders who are first offenders aged between 17 and 21 years may be committed to a Youth Correctional Centre for period of four months. All these institutions train the youthful offenders in vocational skills like welding, horticulture carpentry, masonry and other relevant technical and social skills. Offenders committed to Borstal institutions who are discharged before the three years are over are mandatorily subject to supervision for the remainder of the period on licence (for reintegration purposes and aftercare) for the remainder of the period and may be re-called for breach.

2. Conditions of Probation

In Kenya the probation order requires an offender to be placed under the supervision of a probation officer in lieu of imprisonment. The supervision is can be between six months (6) and three (3) years as may be pronounced by the court. The order may also include compensation orders. The court retains the residual powers to sent4ecen the offender a fresh in case of breach of order.

The following are the provisions of the probation orders which the offender is ordered to obey:

- Be of good behaviour during the period of probation.
- Report to the Probation Officer once a month or more frequently if required
- Not associate with anyone with whom the offender is forbidden to associate with
- Subject to visits from the Probation Officer, at your home or place of residence.
- Be honest and truthful to the Probation Officer with regard residence, conduct or employment.
- Report to the Probation Officer any change of your employment or residence.
- Abstain from over-indulgence in intoxicating liquor.
- Endeavour to obtain and remain in regular employment and
- Follow any directions or advice given by the Probation Officer
- The offender may also be directed to reside at a given place including a probation hostel
- There may be additional condition ordered by the Court
- The offender may also be order to enter into a recognizance with or without a surety of a specified amount

3. Probation Supervision

The intake process of a probationer begins when one is adjudged guilty by a court of law and a court order is handed to the offender after the submission of the probation officers report (pre-sentence offence) spelling out the period to be served by the offender which is signed and sealed by the magistrate, It follows that the provisions of the order are read and explained to the offender of which the offender signs signifying he /she understands. To check compliance the probation officer may make visits at the home of the offender, school,

project area, make phone calls, mails, arrange for meetings and regular appointments depending on the risk levels of the offender. Breach action on non compliance is enforced via caution, warning, variation or(revocation of the order which may prefer alternative sentence)

During the supervision, the probation officer may arrange for the offender to undergo certain training or undertake services provided by social agencies in the community. The probation officer provides brokerage services with government agencies for the benefit of the offender including schooling, employment and other services meant to increase their employability.

The probation officer is also mandated to prepare a supervision and rehabilitation plan meant to tackle problem areas and whose objective is to forestall reoffending and effect behaviour change. Largely, counselling is the key programme used during supervision and this is provided by probation officers and where desirable by other professional counsellors working in the voluntary sector.

4. Assessment, Classification, and Level of Supervision of Probationers

The aim of the offender assessment is to formulate the probationer's problems in terms of needs and risks which guide the development and implementation of the individual treatment plan which also determines the levels of supervision. The Kenyan system has not adopted the accredited assessment tools but use the Strength, Weakness, Opportunity Threats (SWOT) approach to identify the areas of needs and the areas of strength where support is emphasised. In doing this, the department is guided by professional judgement and social diagnosis of the presenting and underlying problems to be addressed. Social inquiries and intrinsic interviews conducted by the probation officers are the mainstay of identifying social capital and other available resources for empowerment of the offender.

Towards embracing risk need responsively principles the department is in the process of developing a local assessment tool which will be a domesticated version of Evidence Based international assessment scales. The assessment instrument is under pilot study evaluation. Treatment programmes like anger management, domestic violence prevention and other cognitive behavioural programme are yet to fully take root. Much of what probation officer deliver are generic social work characterised by problem solving, social skills training and counselling techniques.

Probation Hostels

In Kenya currently there are no designated halfway houses. However there are 4 probation hostels with one for girls. These are temporally houses for probationers only and who cannot return to the community immediately or who may need intensive supervision and training. Programmes in the facilities include, vocational training, counselling, formal

education and social skills training. The hostels admit offenders placed on probation as a condition of the probation order. The hostels which are designated as national institutions, are for children, women, Youth and Adults and are situated in different parts of the country.

The department has also established Probation community Rehabilitation and Resource Centre also Known as Probation Day Care centres. These are non-residential crime prevention and offender rehabilitation facilities which are used by youths who are at risk of offending and offenders under supervision but which may require training in any of the courses offered there. There are two such institutions fully established and which provide training social and technical skills training, counselling, computer applications, hair dressing, and a community library. We currently have one volunteer technical expert from Japan sent by JICA helping in the training.

Specific Measures and Programmes of Community Corrections

Probation Orders

Probation orders its mandate from Probation of Offender's Act Cap 64 Laws of Kenya. Probation orders provide the embodiment of the department's supervision and rehabilitation programme. The programme involves placement of an offender under the supervision of a probation officer for compliance with the conditions of the order to ensure the offender lives a law abiding life and does not revert back to crime.

Community Service Orders

The Community Service Orders (CSO) is implemented under the CSO Act No. 10 of 1998 of the Laws of Kenya. An offender under this programme performs unpaid public work within a community and for the benefit of that community for the period determined by the court.

Aftercare and Reintegration

This programme is designed for the supervision of offenders who are released from various penal institutions either on license or upon completion of their sentence for reintegration and resettlement. It currently operates under Borstal Institutions Act, The Prisons Act and The Criminal Procedure Code and the Power of Mercy Act. These legislations provide for the aftercare and reintegration of ex-Borstal inmates, ex-long term prisoners and special category offenders and offenders released by the exercise of the presidential power of mercy.

In addition to the above the Department has other services emanating from expanded functions. These are:

1. **Victim Services.** This programme encompasses activities that aim at providing protection and welfare services including victim notification, counselling, legal services, and facilitation of reparation and compensation. The enactment of Victim of offences Act to give probation legal mandate is under way. Currently probation officer write victim impact statements and undertake victim offender reconciliation where admissible.
2. **Bail Information and supervision.** This involves the provision of pre-bail reports (social inquiry reports) aimed at assisting the court making informed decision on bail. This is in line with the Constitutional right to bond or bail for the accused person as pronounced under articles 49(1) (h) and 49(2) of the Constitution of Kenya 2010. Besides making presentence reports, this is a major preoccupation of probation officers. A draft legislative Bill to give effect to this programme has been developed.

II. PARTICIPATION OF THE COMMUNITY

Volunteer Probation Officers

1. Introduction

The concept of volunteerism in probation service is understood as defined by the UN standard minimum Rules for non-custodial measures (TOKYO RULES) which define a VPO as 'any person appointed by the government to assist a probation officer in the rehabilitation of offenders'. Volunteers are meant to assist probation officers towards changing the lives of offenders (through supervision) and help reduce crime in their local areas of operation. The concept was borrowed from Japan as a community participation effort in crime prevention and offender management

2. Status

The programme is established in 30 of the Counties 47 countries. It is coordinated from the National Officer but each probation station has its field coordinator who is the station officer in charge. There are currently about 295 volunteer probation officer comprising of 235

(80%) are males and 60 (20%) are females. Out of this number, 212 are active while 83 are inactive

In Kenya, the volunteer probation officers are not paid however a few had been facilitated by provision of communication gadgets like of mobile phones, bicycles, and stationary some of which also act as incentives for the job. One of the greatest challenges which do not conform to international standards is that there is no budgetary provision for reimbursement of actual costs incurred by the VPOs while carrying out their duties. This has greatly hampered the programme leading to hire turnover.

Other challenges the experience include lack of resources, training and motivation.

3. MAIN TASKS, DUTIES, AND ROLES

The PVO programme has been practiced since 2005 when it started on pilot basis in a few counties. The volunteers provide auxiliary services to probation officers especially with regard to verifying information about the offenders coming from their communities, supervising offenders on probation orders and community service orders and those on Aftercare supervision upon exit from correctional facilities especially for the youth. Specifically the VPOs carry out the following

- Helping the probation officers verify some of the information on the accused person due for sentencing
- Providing close contact and Supervising of offenders on probation orders and community services orders
- Helping with the reintegration of youthful offenders exiting from correctional facilities
- Maintaining records of work by them and work done by offenders on community punishment orders
- Liaising with local agencies and linking the offenders to community resources
- Helping in crime prevention by identifying at risk children and youth and taking remedial action in collaboration with other agencies and the administration

Generally the VPO keep daily watch on offenders placed in various community service work centres within their respective jurisdiction and sign the work record sheet at the same time reporting non-compliance forth with. They also direct probationers and other supervisees on where to access help be it medical for those suffering illness, Food Aid, Micro-Finance loans, Vocational training like enrolling in village polytechnics. They too undertake group activities like sports with the clients hence sensitizing them on the consequences of breaking the law and issues of HIV and substance abuse. The VPOs are responsible to the probation officers to whom they report directly

4. Appointment, Recruitment

The VPOs are recruited from among community members who meet certain criteria set by the department of Probation and Aftercare service. They are appointed by the National Director of Probation upon an induction training or orientation by the department. Although there is no specific and clear law governing VPO programme, their appointment is in accordance to the Probation of Offenders Act and the Community Service Orders Act

The appointment and recruitment of the V.P.O in Kenya is basically guided on the principal of avoiding job seekers and approval of the Director of probation and aftercare services because it entirely has no monetary reward and therefore those to qualify are seen as retired civil servants, Religious leaders, social workers, community leaders whose willing to find time, provide free service, be role models of strong moral standing and integrity and at least above 30 years from both genders.

5. Capacity building (training)

VPOs are provided with initiative induction training before formally being recruited onto the work. The training is conducted by probation officers and the subject areas include, concept of VPO and volunteerism, criminal justice process, supervision, interviewing record management, aftercare among others. Due to lack of resources to hold workshop training, they may be induction on the job by respective probation officers.

6. Organization of volunteer probation officers (national and regional levels)

The director of probation and Aftercare service has the overall responsibility for the programme. However, there is an assistant director at the Headquarters who is responsible for the national coordination of the probation. At the county level the county probation directors provide oversight but the day to day work with the VPOs is carried out by the District probation officers in charge of the station. The VPOs also report to respective probation officers who are responsible for the supervision of a particular client. The VPO are yet to form an association

7. Other Characteristics

Much of probation work is court and community based and thus the work in court is carried out in collaboration with the other criminal justice agencies and Non Governmental organizations. The Judiciary, prisons service, police, ministry of health (in Psychiatric cases) the directorate of Public prosecution and the Children's department are the key agencies working with the department. Some of the organizations which the department networks with at the national level include;

- National Agency Campaign Against Drug Abuse (Nacada),
- Legal Resource Foundation (Human Rights and Rule of Law)
- Amani counseling centre,

It is worth noting that all government and agencies at the national and county levels work with the department in one way or the other. Similarly there are many other small voluntary organizations at the grassroots level work with the department at the community level.

III. REFERENCE

1. Hamai, K., Viler. Harris, R., Hough and Zvekic, U., (1995) (eds), Probation around the World: a Comprehensive Study, Routeledge
2. Community service orders Act no. 10 of 1998 laws of Kenya
3. Probation of offenders Act Cap 64 laws of Kenya
4. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990
5. www.probation.go.ke

IV. STATISTICS

PROBATION AND COMMUNITY SERVICE ORDERS PLACEMENTS

Year	PROBATION ORDERS	COMMUNIY SERVICE ORDERS	TOTAL
2005	8,191	55,517	63,708
2006	8,724	60,927	69,651
2007	9,205	53,785	62,990
2008	8,800	47,606	56,406
2009	7,409	35,433	42,842
2010	8,770	43,045	51,815
2011	12,369	40,226	52,595
2012	9,169	41,124	50,293
TOTAL	72,637	377,663	450,300