

INTERVENTION, TREATMENT AND SUPPORT TAILORED TO OFFENDERS' INDIVIDUAL NEEDS IN KENYA

Lilian Akinyi Otieno *

The United Nations posits that no crime prevention strategy is complete without effective measures to address the problem of recidivism. For that reason, effective social integration or reintegration programmes are essential means of preventing reoffending and increasing public safety, two very important social policy objectives in all countries. Reoffending is defined as a person's continued criminal behaviour after receiving some sanctions or undergoing intervention for a previous crime. Reoffending is one of the serious problems faced by developing countries all over the world. Social inclusion refers to provisions of qualities (requirements) and opportunities of life in the mainstream (normal) life.

I. EFFECTIVE ASSESSMENT OF OFFENDERS IN COMMUNITY-BASED TREATMENT

According to Probation and Aftercare Service Kenya, assessment of offenders is the process where a probation officer evaluates a person to inform decision-making. It involves taking into account myriad factors that surround a person and weighing them to determine their risks or needs. Probation officers carry out assessment when preparing Bail Information Reports, Probation Officer's Reports, Community Service Orders Report, Power of Mercy Pre-release Reports, Victim Impact Assessment Reports and Environmental Adjustments Reports. They also conduct assessment to guide in supervision, rehabilitation and resettlement processes. Probation officers evaluate accused persons, offenders and ex-offenders.

Effective assessment of offenders is fundamental to achieving prevention of reoffending and fostering social inclusion. It is a prerequisite to community-based treatment of offenders with a view to preventing reoffending, promoting social acceptance and incorporation of offenders under supervision in social engagements with support for perceiving a sense of value and importance among community members. It helps in identification of the offender's individual risks and needs and the social environment presenting their risks and protective factors for their social reintegration. Assessment should be conducted carefully with regard to male, female, youth and juvenile offenders. Consequently, appropriate tools should be designed and applied to the relevant offender. Risk factors are those characteristics that increase the likelihood that a person will engage in offending behaviour. On the contrary, protective factors are those that decrease the likelihood of engaging in offending behaviour.

* Senior Probation Officer, Field Services, Probation and Aftercare Service, Kenya.

A. Current Situation and Practical Challenges in Community-based Treatment of Offenders in Kenya

1. Current Situation

Information gathering done by probation officers for pre-sentence, resentencing and pre-release reports for courts, penal institutions and the Power of Mercy Committee is to guide decision-making and the suitability of the offender to be considered for community-based treatment and supervision. These reports are compiled from interviewing the offender and victims (primary and secondary victims), and a detailed social inquiry involving the offender's family, community members and significant others is conducted. Also, penal institution authorities for adults in prisons and juveniles in Borstal Institutions are interviewed to establish the inmate's conduct, skills acquired for reintegration and level of risk reduction based on the custodial rehabilitation programmes administered. For juveniles and youth offenders, the risk and needs assessment tool utilized was disseminated during the Swedish Prison and Probation training conducted in the year 2016. It is administered separately, and information gathering is done with the content of the tool in mind since it informs the probation officer's report in which the intervention strategies must be indicated. For male and female adult offenders, a different tool is used and filled upon placement of an offender on a non-custodial sentence using the information in the report to determine the level of risk and needs for supervision purposes and designing the offender's Individual Treatment Plan (ITP) and Individual Supervision Plan (ISP). Nevertheless, assessment is noted sometimes to be challenged since, during quality assurance caseload inspection, some ITPs do not adequately address the criminogenic needs of the offender. Also, the notes recorded during appointment sessions at times do not significantly reflect the implementation of the ITP, thus posing a concern over the knowledge, skills and attitudes of probation officers in conducting effective assessment. Nevertheless, in practice, some probation officers diligently journey with the offenders and do commendable work which might not be comprehensively and systematically recorded as concerns intervention, treatment and support to each offender as per the risks and needs. This is attributed to the many functions probation officers undertake, as stated above, about generation of advisory reports for dispensation of justice and decision-making by courts and penal institutions in addition to supervision of probation orders, Community Service Orders (CSO), aftercare supervisees, effecting victim support and welfare programmes, conducting family conferencing, offenders' home visits, CSO work centre visits, initiating projects and monitoring progress, reporting offenders' progress in review of case conferences and case committees, review of ITPs and ISPs, monthly and quarterly returns submission and many more. In reality despite the challenges of offender assessment tool utilization, probation officers do much in administering treatment programmes to offenders based on strengths, weaknesses, opportunities and threats (SWOT) analysis they conduct from the initial face-to-face interview with the offender, community and home visit social inquiry and upon placement of the offender on a non-custodial supervised sentence, probation or community service orders and aftercare supervision for rehabilitation, resettlement and reintegration.

While working with the offenders based on risk and needs orientation, intervention, treatment and support tailored to prevent reoffending include but are not limited to the following: offering counselling and guidance (a basic counselling course is mandatory for probation officers in this regard) though not all have been trained due to limited funds. Helping juvenile offenders get back to school for formal education, vocational training of interest like hair dressing and beauty, tailoring and dressmaking, mechanics, welding,

carpentry, masonry, cooking among others through regular training or encouraging the offenders to seek apprenticeships based on whichever is convenient. The Probation and Aftercare Department has hostels for temporary accommodation of offenders and offers some of such skills empowerment. They are Nakuru Girls and Siaya Female Probation Hostel, Shanzu and Kimumu Junior for young juveniles and the Nairobi Probation Hostel for the youths. As field stations, we utilize the hostels by sending clients there for formal education and skills empowerment as the hostile home environment gets harmonized. Day care centres are as well in place to address needs for skills acquisition by the offenders. In the month of June 2019, the AthiRiver Station obtained information on Kenya Youth Employment Opportunities (KYEOP), a programme funded by the World Bank to empower the youths aged between eighteen to twenty-nine years with skill and support for entrepreneurship. Application was online and on very short notice. Nine youth offenders were supported at the office by a probation officer to access the Internet using office resources and applied for the course. Probation open day is an event we hold at least once in a year and provide free atmosphere for our clients on community-based treatment including willing victims and relatives to interact and share experience on their rehabilitation, resettlement and reintegration process. As a measure for youth empowerment with ideas, during the open day held on 29 May 2019 AthiRiver Sub County Youth Officer was invited and he sensitized the youth on the available support programmes for the youth in his department including the latest one (KYEOP). In one case, an offender who lacked basic literacy and wished to know how to read was assisted and referred to the AthiRiver Adult Education Department for help. One of our case committee members, Bishop Doctor Nicholas Muli, accepted a male offender who had been involved in bhang smoking in his church. He identified the offender's ability to play the keyboard; hence, he allowed him to play the church keyboard as he continued helping him reform and stop reoffending. The bishop informed the probation office about the offender's progress. After some time, he reformed, shaped up and announced his wedding after meeting a woman he fell in love with. He completed his probation sentence as a success story of preventing reoffending and fostering social inclusion. These are some examples of the ways of fostering social inclusion; enabling offenders to participate in social or group activities to feel accepted, valued and important as any other person in the community, thereby preventing reoffending.

A challenging case involved a female offender, aged thirty-four years, who was a repeat offender and was tagged as a notorious dealer in illicit liquor. She was proud and defied authority. She could not comply with non-custodial orders due to her lust for quick money. She had been arrested twice, and she paid a fine in 2016. In 2018, she was arrested again for a similar offence and was placed on CSO. She repeated the offence, and due to community outcry against her conduct, the CSO was revoked and she was imprisoned. After five months, she was considered for a pre-release report due to a prison decongestion exercise. Her family members were involved in the family conference with her in prison, and she promised to change her behaviour and venture into the hotel business after release, which her father was ready to support, instead of illicit liquor. The court placed her on three months for the period that had remained. She served a CSO for five days and reoffended again. She was arrested with illicit liquor and arraigned in court with a fresh charge. Consideration made based on the Bangkok Rules¹ could not save her this time as the community was tired of her and had no more interest in her case. Due to

¹ United Nation Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules).

her pride and disrespect, she was left to face the law, the community withdrew from participating in her issues leading to incarceration for one year without the option of paying a fine. In the course of time, her son dropped out from class eight as a candidate and disappeared from home. Her alcoholic husband could not maintain the home. It was a lesson that community participation and social inclusion in prevention of reoffending depends on the character of the offender.

2. Practical Challenges

Practical challenges are immense, starting from the point of recruitment. Probation officers are drawn from the faculty of social sciences with diverse backgrounds. The induction course that provides a platform for building a uniform base for probation work is usually done within a short period of one week (five days) for newly employed probation officers. This is barely sufficient for them to understand and apply comprehensively all aspects of rehabilitation. Hence, there is great reliance on on-the-job training after posting to various stations. This requires that the experienced officer training them should be adequately knowledgeable and skilled and have a positive perspective on sharing knowledge and skill. Inadequate funding by the Government for trainings is a hindrance to properly equipping the officers with the needed knowledge and skills.

The Probation and Aftercare Service has not developed a standardized psychosocial offender assessment tool for use by all probation officers. The process is still underway, and in the recent past, some stations, especially within Nairobi capital city and its environs, have benefited from the Swedish Prison and Probation Service training on offender assessment and classification tool, but the same has not been rolled out. Hence, a majority of probation officers countrywide are still handling offenders on the basis of the previously introduced tool which has gaps, hence trial and error in offender assessment. Few probation officers had been trained on a different tool for assessment of juvenile and youth offenders aged twenty-five years and below. The few shared the skills and trained their fellows within the selected pilot stations on the tool and are applying the same, like the AthiRiver Station. Many probation officers are not aware about the existence of such a tool. The emerging issue of juvenile and youth radicalization is a serious concern in Kenya that requires careful assessment and relevant treatment of those entrapped in the criminal justice system. As concerns the assessment of women offenders, there is no separate assessment tool in place relevant to their unique issues, but the one used for adult male offenders is applied for women. Therefore, a gap exists in matching the criminogenic needs with the right interventions and treatment. Hence sometimes like the medical analogy our situation is like a wrong diagnosis, wrong prescription leading to failed treatment.

Relapse and reoffending by Alcohol and Drug Abuse (ADA) offenders are serious problems all over the country. For referral, there is only one Government facility for institutionalized treatment of such offenders at a subsidized cost, that is, Mathari Mental Hospital Drug Rehabilitation Unit, but a majority of the offenders cannot afford treatment there due to poverty. The Probation and Aftercare Department lacks its own facilities for non-custodial offenders. Another challenge is the lack of skills in handling psychiatric offenders released under Presidential Pardon and referred for supervision by probation officers. This special category requires adequate psychosocial assessment knowledge and skills.

Commercial sex workers on community-based treatment present challenges since most of them do not want their nature of work to be disclosed to their family members for fear of shame and rejection. In the recent cases handled at AthiRiver Station, some of them are married and pleaded with the probation officer to keep secret and not even disclose to their husbands that they are a serving probation sentence; one refused to carry her probation order home so that her husband would not see it, but she promised to comply with attending appointments with her supervising officer.

During information gathering through social inquiry and conducting the initial assessment, the finding of risk and needs level and the identified intervention strategies are given in the report. However, probation officers encounter a number of challenges. These include the following: false information given by some offenders, the offender's relatives hiding vital information, at times community members decline to give information fearing that they may be called upon as a witness in court since they do not understand the difference between a probation officer and a prosecutor. Also, some fear that the offender may know that they gave negative information about him, and he may harm them when released. Corruption is a serious problem that influences some probation officers to deal dishonestly by submitting either favourable or unfavourable reports for the offender's release back to the community. Limited resources, inadequate funding and transport challenges for conducting home visits and community social inquiry coupled with vast distance from the probation office to some of the homes and, in some instances, the court gives a short period for submission of the report leading to shoddy desk work reports generated through phone calls. Due to bitterness, some victims refuse to be interviewed, yet some may have relationships with the offender, a factor that contributes in the treatment plan. In some areas due to lack of awareness about community-based correctional services, community members recognize imprisonment as the genuine punishment; hence, they display resistance to non-custodial sentences for community-based treatment, thinking that it is just a way of setting criminals free, especially when the offence is habitual or serious in nature. Community hostility and insecurity caused by some high-risk cases have led to probation officers being attacked and injured in the course of social inquiry. All these are impacting negatively on the initial assessment of the concerned offenders, thus resulting in less effective offender individual treatment plans that do not meticulously address the risk and criminogenic needs of the offender. A poor-quality report may result in inappropriate decision-making and a superficial treatment plan for community-based treatment that does not address the underlying risk and needs factors; hence, there is little chance of preventing reoffending. As described earlier, probation officers are few and must handle a very big caseload

Offender assessment is vital. Research from the American Heart Association shows that a risk-and-protective-factors approach is consistent with a public health model of disease and prevention and gave an example that children of parents who have heart disease are more likely to develop it themselves; however, exercise can buffer the correlation between family history and heart disease as well as decrease the likelihood of heart disease without considering the family history. Also, researchers illustrate the importance of assessment as not only limited to making judgment on reoffending but also useful for guiding treatment. They explain that, from the assessment of multiple domains of criminal conduct, dynamic (criminogenic) and static risk factors, offender assessment can guide the intensity of treatment. Therefore, the risk principle tells us who to treat and helps in matching the level of service to the level of risk such that it is the higher risk offender rather than the lower risk offender who receives most of the treatment services.

Then the need principle tells us what to treat (criminogenic needs). Further, they state that offender assessment can guide on how we provide treatment, that is the responsivity principle (tells us how to treat) based on the individual's learning ability, which is dependent upon a number of personal, cognitive and emotional factors. Hence, it is important to use cognitive-behavioural interventions with attention to the personal needs of the offender.

Advancement in research has led to the development of the Fourth Generation Risk Assessment: The integration of case management with risk/needs assessment. The assessment is explained as quoted below:

Fourth generation instruments emphasize the link between assessment and case management. This means more than adhering to the risk principle and targeting criminogenic needs. It acknowledges the role of personal strengths in building a prosocial orientation, the assessment of special responsivity factor to maximize the benefits from treatment and the structured monitoring of the case from the beginning of supervision to the end. Fourth-generation instruments include the COMPAS, used in parts of the United States and the most researched fourth generation instrument, the Level of Service/Case management Inventory (LS/CMI: Because of the wealth of research and the instrument's well-developed theoretical base, the LS/CMI is used to illustrate the features of the fourth-generation assessment.²

3. Identified Underlying Problem

In view of the current situation in Kenya as explained earlier, probation officers – save probably the few who have been trained through Swedish Prison and Probation Service – are not tuned to effective utilization of the offender assessment tool to recount its benefits on prevention of reoffending and fostering social inclusion for offender rehabilitation. Probation officers are few in number, yet they do a lot of work due to lack of specialization. Limited funds for training is another problem. Reaching out to the villages far from the station is a problem due to transport problems.

4. Possible Solutions to the Underlying Problem

The Probation and Aftercare Service Department needs to train all probation officers on fourth generation offender risk and needs assessment for utilization for better results in offender treatment and prevention of reoffending. Conducting benchmarking and exchange programmes with other countries which prosper in reducing reoffending for sharing experiences and good practice is motivating and eye opening as regards offender assessment and the goal of preventing recidivism. Enhancing resources and funding for prevention of reoffending is necessary. To keep constant supervision of offenders in far places has been eased through recruitment of volunteer probation officers in AthiRiver in the month of September 2019. The recruitment process involved holding open public meetings in the villages and sensitizing people about probation and the CSO non-custodial option for community-based treatment of offenders and social inclusion for reintegration and resettlement. More efforts are needed to strengthen and work with community-based structures for effective offender rehabilitation and compliance with court orders, for example, faith-based organizations, community-based organizations,

² Bonta J. & Andrew D.A: *The Psychology of Criminal Conduct* (New York, 2017: Routledge).

non-governmental organizations, “Ten household managers (*Nyumba kumi*)” for keeping watch over one’s neighbours, social welfare groups, merry-go-rounds, among others.

When a strong social support network is present and the offender is able to fit in well, then with proper assessment, addressing offenders’ criminogenic needs would be easy and there would be no labelling or discrimination. Issues such as drug and alcohol abuse, family and marital problems, poverty, unemployment, enrolling in school, living in a crime prone area, peer influence, among others would be addressed with social support and translate into to prevention of reoffending.

Reference

<http://www.probation.go.ke/2015-11-07-10-14-45/2015-12-01-12-56-44.html> Copyright
© 2019 Probation and Aftercare Service.