

# **EFFECTIVE RESETTLEMENT OF OFFENDERS BY STRENGTHENING ‘COMMUNITY REINTEGRATION FACTORS’: KENYA’S EXPERIENCE**

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## **I. BACKGROUND**

Kenya recognizes the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) of 1990. These rules hold that all prisoners be treated with respect due to their inherent dignity and value as human beings and advocate for the viability of non-custodial sentences as an alternative to incarceration.

This measure is informed by the global wisdom that petty and youthful offenders should be placed on community programmes that provide relatively more effective rehabilitation while utilizing available resources within the community.

The country’s blueprint, Vision 2030, identifies the rule of law and crime prevention as flagship initiatives that support overall state-building, societal development and social order.

They can be achieved through effective offender reintegration and resettlement programmes that not only address the offenders’ criminogenic needs but also emphasize community reintegration factors that uphold public safety and harmony by reducing recidivism.

Community rehabilitation and reintegration of offenders is offered by the Department of Probation and Aftercare Service.

This is an area where the Department has a comparative advantage backed by existing legal mandates and supportive organizational structure as a distinct discipline within the criminal justice system.

The main statutes from which the Department draws its operational mandates include:

- The Probation of Offenders Act (Cap 64) Laws of Kenya
- The Community Service Order Act (No. 10 of 1998) Laws of Kenya

Others statutes from which the Department draws its mandate include:

- The Prisons Act (Cap 90) Laws of Kenya
- The Borstal Institutions (Act Cap 92)
- The Mental Health Act (Cap 248)
- The Children’s Act of 2001
- The Penal Code (Cap 63)
- The Criminal Procedure Code (Cap 75)

Embedded within the motto that offenders can change, the Department’s operations are guided by the following objectives: generation of information to courts and other penal institutions for the dispensation of criminal justice; supervision and rehabilitation of offenders on community sentences; reintegration and resettlement of offenders on statutory penal licenses; and promotion of crime prevention activities.

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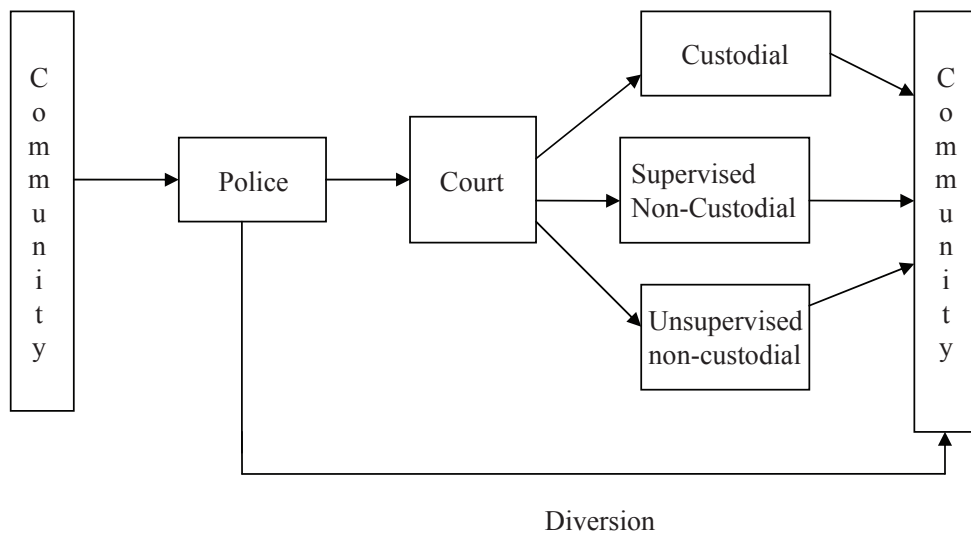
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## II. THE CRIMINAL JUSTICE SYSTEM IN KENYA

The criminal justice system in Kenya in this context is examined basically in regards to the flow of the criminal procedure and the role of each of the partners in regard to effective resettlement of offenders by strengthening community reintegration factors.

The main partners in the criminal justice system include:

- The Community
- The Police
- The Judiciary/Courts
- The Probation and Aftercare Service
- The Prison Service
- The Children's Service



As illustrated above, it is generally accepted that the criminal justice process starts and ultimately ends within the community, regardless of the particular pathway taken in between.

The transition of the offender from one stage of the criminal justice system to the other is dependent upon several factors that include the nature and type of offence, the offender and the linkages and partnership of the partners.

### A. Treatment of Offenders at all Stages of Criminal Justice Proceedings

Offender treatment in its ideal sense remains a major challenge within the system as each of the partners have varied approaches guided and defined by their legal mandates and organizational mission, objectives and culture.

Offender treatment as part of rehabilitation can only be understood in the context of each organization's operations. (This is discussed later in this paper within the context of the Probation and Aftercare Service.)

These interventions range from vocational training within the institutions, facilitation of informal and formal education, psychological interventions and empowerment with tools after successful completion of the government trade test.

#### 1. Community

The role of the community in the criminal justice system is fundamental because crime is both an individual and social problem.

This is the entry to the criminal justice system. Citizens or the community make the decision to report

a crime or offence to the relevant authorities. Ultimately the offender (after due process) returns to the community and requires social support to be effectively reintegrated and resettled.

The community comprises the offender's immediate family, general citizens, non-governmental organizations (NGOs), and faith-based and community-based organizations (CBOs) that offer specific services towards offender treatment.

In particular, there are few non-governmental and faith based organizations whose area of operation includes offering community reintegration for ex-offenders within established halfway houses.

Others are specific or tailored to rehabilitation of juveniles/youthful offenders.

## 2. Police

The police are the gate keepers of the criminal justice system. They investigate cases reported to them, arrest, may caution an offender (as provided in their standing orders), accord diversion or prosecute as may be appropriate.

It is worth noting that not all cases may be investigated as per the police's discretion and prosecution occurs where there is reasonable suspicion and evidence.

Community policing is a new strategy that relies on public confidence, citizen empowerment and co-operation to prevent crime and make residents secure.

This programme is based on partnership between the police and the community with the understanding that communities are aware of their surroundings and are able to identify social deviants and suspicious activities in their midst.

## 3. Diversion

This is a relatively new concept; an NGO initiative mainly targeting children and aiming to divert children away from the rigours of the criminal justice system.

It was initially piloted within four police stations and involves the creation of a child protection unit (CPU) within the police station. This is a separate structure that handles matters relating to children and with the assistance of a core team comprising of child protection officers from government departments (police officers, children's officers and probation officers) and like-minded NGOs/CBOs, gives appropriate guided attention and treatment.

The children are classified within 24 hours and only those who are in conflict with the law go through the criminal justice system while the rest are reintegrated and resettled back into the community.

This is guided by the spirit of the Children's Act of 2001, the Children's Regulation of 2002 and the Criminal Law (Amendments) Act 2003.

The best interest of the child is upheld at all levels.

## 4. Court/Judiciary

The judiciary is the third arm of the government and its main roles include interpretation of laws in line with the Kenyan Constitution and administration of justice through the courts. In reference to reintegration and resettlement of offenders, the courts adjudicate within their discretion and may grant bail or not depending on the merits of each case.

The sentencing disposition may be but is not always guided by a pre-sentence report. However it is worth noting that where and when sought, a comprehensive pre-sentence report generates information regarding an offender's background, including personal history, circumstances of the offence, his or her attitude towards the offence, as well as the community's attitude towards the offender and the offence committed. This not only facilitates the disposition of the case but lays the foundation for effective community reintegration and resettlement as appropriate.

The sentencing dispositions available to the courts include: institutional incarceration or imprisonment, probation, community services orders, fines, conditional discharge, unconditional discharge and suspended or deferred sentences.

5. Prison

The prisons offer institutional rehabilitation and punishment as prescribed by the courts.

In the prisons, offenders are classified according to the nature of offence, period of sentence and placements available.

A variety of vocational and rehabilitation programmes are offered while in prison, however there are no clear linkages or legal framework for post penal supervision.

Parole, though stipulated in the Prisons Act (Cap 90), is yet to be operationalized and hence aftercare services (reintegration and resettlement of ex-offenders) are offered to only to ex-borstal (youthful offenders) inmates and psychiatric offenders. These categories of offenders released on license and social support are supervised by Probation and Aftercare Service Department.

6. Probation and Aftercare Service

Probation and Aftercare Service is the sole government administrator of community-based sentences administered through three programmes, namely: Probation Orders, Community Service Orders and Aftercare.

The Department mandate covers both adult and juvenile offenders with the latter constituting about a quarter of the offending population.

The Department has continued to play its role in the criminal justice administration in various thematic areas touching on generation of information for the dispensation of justice, supervision, rehabilitation, reintegration and resettlement of offenders and in crime prevention initiatives.

The Department recognizes that offender supervision and reintegration is both a government and community concern.

Currently the community is involved within the various review committees: the Probation Case Committees and the Community Service Order Case Committees. Review committees are statutory mechanisms that are mandated to review casework within a given jurisdiction and accord appropriate advice. These meetings are held biannually and the committee is made up of relevant government departments and representatives of the local community.

Community participation also occurs in the implementation of the community service order programme. The major elements of the community service order are reflected in the consolidation of punishment, reparation, restitution and reintegration. The offender and the community both draw benefits from the community service order by allowing offenders an opportunity for repentance and restitution, producing budget savings, fostering good work ethics and self esteem and helping offenders return to the community as law abiding citizens.

Section 3(2) of the Community Service Order (CSO) Act provides that public work shall include but not be limited to construction or maintenance of public roads or roads of access, afforestation works, environment conservation, projects for water conservation, management or distribution and supply, maintenance work in public schools, hospitals and other public social service amenities, the nature or type of public work shall in any particular case be determined by the court in consultation with the Community Service Orders Committee.

The Department also operates probation hostels, which are places of temporary safety for offenders serving probation orders and whose homes and environment are not conducive for effective rehabilitation, reintegration and resettlement.

Hostels offer individual and group therapy alongside formal education and other forms of vocational training. It is worth noting that the youthful probationers/offenders pursuing formal education are integrated in the nearby schools within the community.

The Volunteer Probation Officer programme is another community involvement initiative by the Department. A volunteer probation officer is a person appointed by the government to assist the probation officer in the supervision and rehabilitation of offenders. The volunteer probation officer lives within the same area as the offender, has relatively more frequent contact with him or her and thus able to offer closer supervision.

### **B. Gaps in the Criminal Justice System**

The flow of the criminal justice system illustrated above do not necessarily follow the pathways indicated, especially as regards community reintegration and resettlement of offenders.

This is due to the following factors:

- Punitive community attitudes resulting in stigmatization of offenders;
- The community has a negative perspective towards crime and offenders and generally prefers custodial forms of punishment. As result, offenders are viewed with much suspicion and are stigmatized and often denied the social support which provides the framework for effective rehabilitation, reintegration and resettlement;
- Practitioners lack appropriate skills;
- Effective rehabilitation and resettlement of offenders requires relevant skills, especially in the delivery of treatment programmes. Most of the service providers, that is, police officers, prison officers and probation officers, lack the capacity to offer appropriate and effective supervision and rehabilitation;
- Pre-sentence reports are not mandatory for all cases;
- It is at the discretion of the presiding magistrate or judge to order a pre-sentence report; a comprehensive pre-sentence report provides information on the background of the offender, his or her personal history, and the circumstances of the offence, his or her attitude and the attitude of the community, all of which are important elements in determining appropriate sentence;
- Lack of adequate linkages amongst the partners in the criminal justice system;
- Each agency tends to work independently or within its legal mandate and role and the nature of partnership remains undefined with no legal backing;
- Lack of structures for co-operation with non-state actors;
- There are no laid down clear structures for collaboration and co-operation with private or public partners;
- Lack of a common database: this hampers the flow of information regarding offenders as they are processed through the criminal justice system and hinders effective rehabilitation and reintegration;
- Lack of a sentencing policy that would give guidelines and define roles;
- Lack of adequate community support structures and capacity to offer effective reintegration and resettlement;
- Lack of awareness of existing community structures and services provided;
- Though there are a few non-governmental organizations that offer social support to ex-offenders, their activities are not publicized;
- Social and cultural values surrounding certain offences;
- Culture does influence the development of beliefs and attitudes and the diversity of culture brings with it different norms and values;
- Some of these values may be in conflict with written laws that govern the country. Though the laws of the country supersede, there is often conflict within the offender or the community concerned over the sentence and effective rehabilitation is hampered.

### **C. The Rehabilitation Treatment and Reintegration of Offenders in Probation and Aftercare Service**

The Department has over the years implemented various modes of rehabilitation and reintegration of offenders serving non-custodial sentences and receiving aftercare. However, the provision of such programmes has not been governed by a clear set of policies and guidelines, thus there has been no uniformity in delivery and offender management.

In conformity with international standards, the Department has embarked on the development of systematic evidence-based rehabilitation treatment programmes backed with empirical facts from a tested theoretical framework.

Literature reviews provided the frontiers for a situational analysis by forming the basis of reliable information on what should be done and enabled the identification and recognition of what works and how it works.

A situational analysis was undertaken from April to May 2009 to ascertain the existing situation and identify gaps in offender management. An open structured questionnaire was sent to all 400 probation officers of whom 349 responded.

A focus group discussion was held in five of the 112 districts in the country; this included the probation hostels and day care centres.

The guiding questions revolved around: identification of criminogenic factors that explain offending amongst offenders on supervision; the current interventions the probation officers use in rehabilitation, supervision, reintegration and resettlement of offenders; the challenges encountered and suggested recommendations to improve offender management.

The general personality and social-psychological perspective of criminal behaviour which has received significant global empirical support in the last two decades was tested. This is because this theoretical model emphasizes both static and dynamic risk factors that form the bridge between offender assessment and treatment.

The guiding questions revolved around: identification of criminogenic factors that explain offending amongst offenders on supervision; the interventions employed by the probation officer in the supervision and rehabilitation process; the challenges encountered in the process; and recommendations to address the challenges.

### **D. Emerging Issues/Findings of the Situational Analysis**

The general interpretation of the findings was:

- The broad perspective of General Personality and Social Psychology is relevant and applies across probation practice and is predominantly the most appropriate approach. The 39% of probation officers who use counselling as an intervention borrow widely from a mixture of cognitive and behavioral approaches;
- Attitude and capacity of staff is important in determining the success and effective rehabilitation and reintegration of offenders. During the focus group discussions 4% of the officers pointed out that there was resistance to change and accommodating the new approaches may be slowed;
- The cognitive behaviour approach emerged as a generally accepted intervention as attested by 32% of the officers;
- A multi-modal approach is applicable in particular circumstances.

This recognizes cultural diversity that impacts on general societal norms and may affect offender rehabilitation and reintegration.

The particular findings from the situational analysis on criminogenic factors arranged in the hierarchy of score were:

1. Dysfunctional family (30%)

2. Retrogressive culture (serendipity)<sup>1</sup> (18%)
3. Drug and substance abuse (16%)
4. Poverty (serendipity)<sup>2</sup> (11%)
5. Low level of education (7%)
6. Peer influence (5%)
7. Lack of employment (3%)
8. Anti-social attitudes (3%)
9. Social surroundings (3%)
10. Medical/health related issues (serendipity)<sup>3</sup> (2%)
11. Harsh climatic situations (2%)

The findings on the current interventions used by the Probation Officers in hierarchy of score are:

1. Of the respondents, 135 (39%) use counselling (incorporation of behavioural approaches and other humanist and cognitive theories). Most probation officers either have a university degree in social work and other related social sciences accompanied with a diploma in psychological counselling;
2. Of the respondents, 65 (19%) refer cases to other government agencies and mostly community-based organizations as appropriate. This is mostly for drug and substance abusers;
3. Of the respondents, 58 (17%) empower offenders with tools and social skills. This targets mainly youthful offenders on release from borstal institutions where they will have undertaken vocational training. This is intended to provide the basis of self employment and other related income-generating activities;
4. Of the respondents, 30 (9%) use alternative dispute resolution. This involves using available community structures often governed by acceptable socio-cultural norms that bind a given community;
5. Of the respondents, 25 (7%) use publicity to sensitize the community to the benefits of non-custodial alternatives. The officers use available public forums to sensitize the community to non-custodial alternative sentences;
6. Of the respondents, 24 (6.8%) focus on supervision of the order and offer no therapy. This is undertaken as stipulated in the court order and accepted by the offender.

The findings on challenges the probation officers encounter in rehabilitation of offenders include:

1. Lack of appropriate skills, knowledge and relevant professional training in offender treatment (32%). Probation officers have varied undergraduate academic backgrounds which lack uniformity and equivalence with training in theories of criminal behaviour and the prediction and treatment of criminal behaviour;
2. Lack of adequate resources (22%);
3. Negative/punitive community attitude (4%). This hampers the establishment of effective social support structures;
4. Recidivism (6%);
5. Attitude of staff towards changes in approach to offender management (4%);
6. Unstable families which affect character formation, development and support for effective reintegration and resettlement (17%);
7. Offender resistance/denial;
8. Lack of adequate publicity on the benefits of non-custodial sentences (2%);
9. Lack of border exit control among communities living along the country's boundaries (1%);
10. Insufficient rehabilitation and resettlement centres in the community (2%);
11. Lack of offender fixed abode and accommodation (2%);
12. Unresolved human/wildlife conflict especially amongst communities living around the game reserves (2%);
13. Language barriers (2%);

<sup>1</sup> This attribute is a discovery by accident not design, but is however desirable. The variable was found by chance or coincidence as it was not part of the variables stated in the hypotheses.

<sup>2</sup> Id.

<sup>3</sup> Id.

14. Corruption (2%);
15. Bureaucracy (1%);
16. Lack of adequate linkages amongst partners (1%).

### **III. CONCLUSION**

A multi-agency approach strategy has been put in place. However, for special needs offenders, it is intended to build the capacity and capability of criminal justice agencies to offer effective offender management through creating a through-care or seamless system that will enhance effective treatment and resettlement. This is at the initial stage and is expected to create a basis upon which a policy may be developed.

- The government could establish a statutory and regulatory system that articulates the role of each partner and levels of co-operation within and without the criminal justice system. This will ensure the integrity of programmes delivered to offenders throughout the criminal justice system.
- Success in rehabilitating, reintegrating and resettlement of offenders largely depends on the co-operation of the community. The community is expected to continue providing reliable information on both suspicious criminal/anti-social tendencies within the community and supervision of those serving non-custodial sentences.
- Community policing should be strengthened alongside the existing volunteer probation officers' intervention. This will provide the necessary social support for rehabilitation, reintegration and resettlement.
- Continued community sensitization to the dual benefit of reintegration and resettlement of offenders is paramount.