



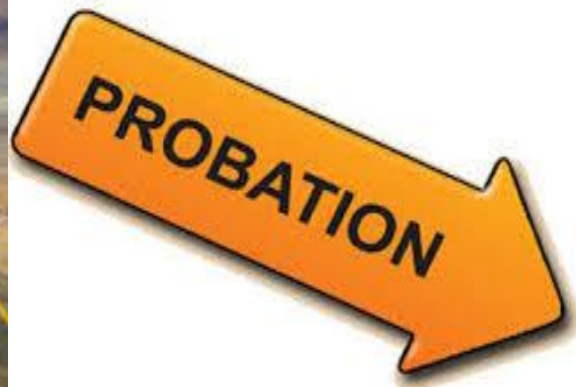
NATIONAL CRIME RESEARCH CENTRE

Fighting Crime through Research



**A STUDY ON THE DELIVERY OF COMMUNITY-BASED
SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

SUMMARY OF FINDINGS AND RECOMMENDATIONS



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FOREWORD

The provision of public safety is one of the leading functions of public service and successful performance in this role requires a strategic approach that demands concerted efforts by all the stakeholder institutions with an aspect of security functions in their mandates. The National Crime Research Centre (NCRC) has the overriding objective and role of carrying out research into the causes of crime and its prevention and to disseminate such research findings to relevant government agencies tasked with the responsibilities of administration of criminal justice. This is with a view that such information passed over to them will be of great assistance in their policy formulation and planning. Understanding and managing crime in terms of specific crime prevention approaches becomes a practical way of appreciating and tackling it.

Worldwide, penologists have appreciated the critical role of non-custodial approaches of rehabilitation and supervision of petty offenders in crime prevention and management as a better alternative to imprisonment of such offenders. The latter approach has been considered expensive to governments in a number of ways including: the economic costs of maintaining prisoners; prison congestion; hardening of petty offenders to become hardcore offenders and recidivists; and contributing to the breakdown of families and the delinquency of the dependent minors.

The study on Probation Orders was given impetus by the continued use of costly prison sentences on petty offenders despite the existence of the option of probation sentences which have to a large extent been proven to be beneficial in the socio-economic development of the country. In the light of its potential to contribute meaningfully toward the effective administration of criminal justice in the country, the study focused on the: extent of utilization of Probation Orders in Kenya; factors influencing the utilization of Probation Orders by the courts in Kenya; factors affecting the levels of compliance with Probation Orders by offenders; factors shaping public attitudes toward Probation Orders; challenges facing the delivery of Probation Orders in Kenya; and the interventions towards strengthening Probation Orders sentence in Kenya.

This publication brings to fore milestone findings and pertinent issues which if properly utilized and rightly adopted offer good advisory framework in policy formulations and programmatic actions essential for strengthening the utilization of Probation Orders sentence in the administration of criminal justice and crime prevention in the country. I therefore call upon all players in the Governance, Justice, Law and Order Sector and the other agencies represented in the National Council on the Administration of Justice to support the Probation Orders sentence in order to realize its full potential. Finally, I wish to thank all state and non-state agencies and individuals that supported the study, NCRC Governing Council members and management who guided the finalization of this report.



P. KIHARA KARIUKI
ATTORNEY GENERAL/CHAIRMAN
GOVERNING COUNCIL
NATIONAL CRIME RESEARCH CENTRE

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GERARD E. WANDERA
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SUMMARY OF FINDINGS AND RECOMMENDATIONS

1.0 Introduction

The study on Probation Orders was given impetus by the continued use of costly prison sentences on petty offenders despite the existence of the option of probation sentences which have to a large extent been proven to be beneficial in the socio-economic development of the country. In the light of its potential to contribute meaningfully toward the effective administration of criminal justice in the country, the study focused on the: extent of utilization of Probation Orders in Kenya; factors influencing the utilization of Probation Orders by the courts in Kenya; factors affecting the levels of compliance with Probation Orders by offenders; factors shaping public attitudes toward Probation Orders; challenges facing the delivery of Probation Orders in Kenya; and the interventions towards strengthening Probation Orders sentence in Kenya.

The study was framed in the context of retributive, deterrence and reformative theories of crime and their relevance in the non-custodial management of offenders especially with regard to treatment and rehabilitation.

The study employed the descriptive cross-sectional survey design as the most appropriate methodology for generating relevant information on the effective delivery of Probation Orders. Primary and secondary sources were utilized to obtain data. Both probability and non-probability sampling techniques were used in the selection of all respondents for the study. Being a national study, a total of twenty four (24) counties out of the forty seven (47) counties in Kenya were selected randomly for purposes of overall generalizability. These 24 counties were Nairobi, Kiambu, Nyeri, Nyandarua, Machakos, Makueni, Tharaka Nithi, Meru, Isiolo, Taita Taveta, Kilifi, Mombasa, Kajiado, Nakuru, Baringo, Bomet, Kisii, Nyamira, Homa Bay, Kisumu, Siaya, Kakamega, Bungoma and Vihiga. Thirty-seven (37) specific Sub-County Probation Stations (which also had a similar number of Law Court stations) were selected purposively for the study from these 24 sampled counties. The main aim for purposive selection of these specific sites from the sampled counties was in considerations of only those areas that had experienced sizable cases of non-custodial regimes.

The total number of sample respondents was 1,311 comprising of 44 Magistrates, 137 Probation Officers, 561 probationers (offenders), 68 victims and 501 members of the public drawn from the local community surrounding the sampled Probation stations. The Key Informants for the study included Judges, County Directors of Probation and Aftercare Service, Police Commanders, Prison Commanders, Prosecutors and National Government Administrative Officers in the Ministry of Interior and Coordination of National Government. Focus Group Discussions were also conducted with participants drawn from victims, probationers (offenders), Probation Case Committee members, members of the public/community, Probation Officers (that is, Sub-county/District Probation Officers and County Director of Probation Service).

The study utilized an interview schedule with both open and closed ended questions administered by way of face-to-face interviews to the members of the public, probationers (offenders) and victims to collect both quantitative and qualitative data from them on their general knowledge, perceptions, opinions and experiences about the delivery of Probation Orders in Kenya. Self-administered questionnaires with both closed ended and open ended questions were also used to collect data from the Magistrates and Probation Officers. Key Informant Guides and Focus Group Discussion Guides were used to collect data from Key Informants and participants of Focus Group Discussions respectively.

Qualitative and quantitative methods of data analysis were utilized. Quantitative data was coded and analyzed using Statistical Package for Social Sciences (SPSS) and Microsoft Office excel and the information was presented in frequency and percentage tables and figures. Qualitative data was analyzed by way of interpretation of responses obtained from key informants and participants of Focus Group Discussions. All information from the analyzed data was presented thematically based on the specific objectives of the study.

1.1 Summary of Major Findings

1.1.1 Extent of utilization of Probation Orders

All Magistrates and Probation Officers who were interviewed confirmed that Law Courts were utilizing Probation Orders sentences in their areas of jurisdiction, an assertion supported by actual secondary data which showed that an average of 12,886 probationers per year were serving Probation Orders sentence within the five year period between 2014 and 2018.

Probation Orders were found to be utilized majorly on petty offenders, a finding highlighted by majority of the Magistrates (97.7%), Probation Officers (89.1%), members of the public (95.6%), probationers (96.6%) and victims (76.5%). The perceived most common crimes/offences (reported by at least a third of sample respondents in any of the sample categories) for which offenders were placed on Probation Orders sentence were: assault causing actual bodily harm (reported by 80.2% of the Probation Officers, 65.7% of the victims, 56.1% of the Magistrates, 46.0% of the members the of public and 44.1% of the probationers); general stealing (reported by 77.0% of the Probation Officers, 52.2% of the victims, 49.1% of the probationers, 48.8% of the Magistrates and 46.0% of the members the of public); possession of illicit brew/drugs (reported by 63.5% of the Probation Officers) ; creating disturbance (reported by 54.6% of the Probation Officers and 39.0% of the Magistrates); being drunk and disorderly (reported by 39.0% of the members the of public); and malicious damage to property (reported by 37.3% of the Probation Officers). The actual types of crimes/offences for which offenders were convicted of and placed on Probation Orders sentence were mainly general stealing (23.9%), assault causing actual bodily harm (17.3%), possession of illicit /illegal brew and drugs (15.7%), malicious damage to property (8.6%), creating disturbance (8.2%) and being drunk and disorderly (6.8%).

According to the findings of the study, majority (88.6%) of the Magistrates, Probation Officers (93.4%), probationers (67.6%), members of the public (56.1%) and victims (50.0%) perceived that Probation Orders were adequately utilized. All Probation Officers and majority of the Magistrates (95.5%), probationers (94.8%), members of the public (89.2%) and victims (85.3%) argued that the sentences were beneficial, with the benefits having been realized to a large extent (as reported by majority of the probationers (97.2%), victims (96.2%), Probation Officers (93.5%), members of the public (92.7%) and Magistrates (85.6%)), especially in terms of assisting in maintaining family ties (99.0%), preventing hardening of petty offenders (98.1%), decongesting prisons (97.3%), enabling offenders to continue with their economic activities (96.6%), rehabilitation of offenders (93.5%), imparting skills to offenders (93.1%), saving public institutions' of money/funds (92.3%), reconciliation and reintegration of offenders, victims and the community (88.2%), crime deterrence (79.3%), reducing stigmatization of offenders (67.3%), providing an alternative to imprisonment and fines for offenders who can't afford (59.3%), and empowerment in the form of guidance and counseling, acquisition and transfer of skills, financial support and/or provision of working tools and equipment, and vocational training. Despite these benefits, between 2014 and 2018, the number of Probation Orders sentences utilized on petty offences remained below 18.0% of the combined number of all the petty offences dealt with through Probation sentences of between 6 months and 3 years and short prison sentences of below 2 years (that is, 11.9% in 2014, 15.2% in 2015, 14.0% in 2016, 17.1% in 2017 and 15.4% in 2018, with an average utilization of 14.7%). This may therefore be interpreted to imply that Probation Orders sentences are not adequately utilized in the rehabilitation of petty offenders in Kenya.

1.1.2 Factors influencing the utilization of Probation Orders

The main factors reported by at least 1 out of 10 respondents in each of the five categories of sample respondents as contributing to the adequate utilization of the Probation Orders sentence by Law Courts were: the petty nature of crimes and/or type of offenders; committed, efficient and competent Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons. Further, over 50.0% of all sample respondents agreed that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option; and that satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option. The few sample respondents who argued that Probation Orders were not adequately utilized mainly cited the serious nature of most offences committed in the localities and poor supervision of probationers. Over 50.0% of all sample respondents also agreed that: hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders; and that security challenges posed by some offenders discourage the use of Probation Orders sentences on them.

1.1.3 Factors that affect the levels of compliance with Probation Orders by probationers

The findings of the study showed that a majority of Magistrates (90.9%) and Probation Officers (95.6%) were satisfied with the level of probationers' compliance with the Probation Orders. The main reasons given to validate the high satisfaction rating were: low levels of absconding (reported by 82.9% of the Magistrates and 85.7% of the Probation Officers); strict supervision by Probation Officers (reported by 11.4% of the Magistrates and 11.8% of the Probation Officers); and reformation and rehabilitation of probationers (reported by 10.1% of the Probation Officers).

Similarly, majority of the members of the public (75.2%), probationers (88.9%) and victims (79.4%) said probationers complied with the Orders and the main reasons given included: fear of imprisonment among the probationers (reported by 55.0% of the probationers, 42.6% of the victims and 41.4% of the members of the public); low levels of absconding (reported by 49.6% of the members of the public, 44.4% of the victims and 33.3% of the probationers); strict supervision by Probation Officers (reported by 13.0% of the victims); and benefits associated with Probation Orders (reported by 11.1% of the victims and 10.0% of the probationers).

The rate of successful completion of Probation Orders sentences as a measure of compliance was estimated at 50-74% by most (45.5%) of the Magistrates and 75% and above by majority (65.7%) of the Probation Officers. The key factors influencing compliance with Probation Orders sentence (as indicated by the highest percentage reported by either of the categories of sample respondents) were found to include: fear of incarceration/imprisonment for breach of Probation Orders (reported by 63.7% of the probationers); the level of supervision of probationers by Probation Officers (reported by 44.2% of the Probation Officers); community support of Probation Orders (reported by 31.8% of the Probation Officers); a clear understanding and attitude of the probationer towards the sentence (reported by 23.3% of the Probation Officers); the benefits the probationer gets from the Probation Orders sentence (reported by 19.4% of the Probation Officers); and use of local administration and community in the supervision of probationers (reported by 19.4% of the Probation Officers).

Other important direct and indirect factors influencing compliance with Probation Orders that were reported by more than 50.0% of respondents in most of the categories of sample respondents were: probationers' negative opinion about the sentence; offenders corrupting Sentencing Officers to get Probation Orders sentences; offenders corrupting Probation Officers to get Probation Orders sentences; direct placement of offenders by courts to Probation Orders supervision; tribalism, nepotism and favouritism within the sentencing agencies; tribalism, nepotism and favouritism within the offender rehabilitation and supervising agencies; lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision; lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision; lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision;

lack of support to employed probationers from their employers; and economically unstable probationers who are likely to abscond their sentences to look for livelihoods.

1.1.4 Factors shaping public attitudes towards Probation Orders

The findings from most of the Magistrates (47.7%) and majority of the Probation Officers (83.9%), probationers (72.4%), members of the public (60.3%) and victims (55.9%) showed that the public attitude towards the Probation Orders sentence was favourable.

The leading factors (as indicated by the highest percentage in either of the five categories of sample respondents) contributing to favourable public attitude towards Probation Orders included: community sensitization on the Probation Orders sentence (reported by 61.3% of the Probation Officers); offender rehabilitation aspect of the Probation Orders sentence (reported by 37.1% of the victims); promotion of family unity and/or ties (reported by 27.4% of the Probation Officers); the fact that an offender does not suffer imprisonment (reported by 23.5% of the Magistrates); enablement of the offender to continue with other socio-economic activities (reported by 20.2% of the probationers); enhanced reconciliation between offenders and victims (reported by 15.1% of the Probation Officers); and the fact that Probation Orders sentence is a lenient punishment (reported by 12.2% of the members of the public). The single most important action needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence was undertaking of public awareness and sensitization on Probation Orders (reported by 94.6% of the Magistrates, 96.1% of the Probation Officers, 81.2% of the members of the public, 77.4% of the victims and 77.5% of the probationers).

1.1.5 Effectiveness of Probation Orders in the rehabilitation of offenders

Probation Orders sentences were perceived by majority of the Magistrates (86.4%), Probation Officers (94.9%), probationers (89.7%), members of the public (77.0%) and victims (76.5%) to be generally effective in the rehabilitation of offenders. All the specific aspects of Probation Orders were also perceived to be generally effective, with the highest to the least effective specific aspects of Probation Orders (based on the average percentage rating of effectiveness) being: enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence (97.4%); decongestion of prisons of non-serious and first offenders (93.6%); avoiding contamination of non-serious and first offenders by hardened criminals (91.9%); rehabilitation of non-serious offenders within the community (90.8%); saving tax payers money (86.9%); prevention of juvenile delinquency of the dependent minors (85.2%); promotion of reconciliation between the offender and the victim of crime (81.8%); individual offender paying back (reparation) for the injury done to the community (73.7%); acquisition of survival skills (64.3%); and linking of offenders to potential employers (55.6%).

1.1.6 Challenges facing the effective delivery of Probation Orders and possible solutions

The major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of

prominence based on the highest percentage reported by sample respondents from either of these three categories) were: lack of knowledge and training on Probation Orders sentence (reported by 27.7% of the victims); limited resources for the Probation Department (reported by 25.7% of the members of the public); lack of support and/or negative attitude by relevant stakeholders (reported by 23.4% of the victims); non-compliance and reoffending by some probationers (reported by 21.5% of the members of the public); difficulty among probationers in accessing Probation Offices (reported by 19.4% of the probationers); corruption among some stakeholders (reported by 17.8% of the members of the public); poor supervision of probationers (reported by 14.9% of the victims); unfavourable life conditions among Probationers (reported by 10.8% of the probationers); and failure to compensate victims for injury and/or loss caused by the offender (reported by 10.6% of the victims).

The main general possible solutions to the challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: conducting public awareness and sensitization on Probation Orders (reported by 35.0% of the members of the public); provision of adequate resources to Probation Department (reported by 27.4% of the members of the public); establishment of effective rehabilitation programmes for petty offenders (reported by 22.7% of the victims); strict and close supervision of offenders (reported by 15.4% of the members of the public); encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence (reported by 14.8% of the members of the public); ensuring convenient reporting venues for Probationers (reported by 13.4% of the probationers); enhancing empowerment of offenders (reported by 11.7% of the probationers); encouraging effective collaboration among stakeholders (reported by 11.4% of the victims); and providing flexible reporting hours for employed Probationers (reported by 9.7% of the probationers).

With regard to how the challenges facing specific key stakeholders could be addressed towards the effective delivery of Probation Orders sentence in Kenya, the main suggestions given by at least 1 out of 10 Magistrates and/or Probation Officers in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: continuous training and/or awareness creation and/or sensitization of the various stakeholders on Probation Orders sentences (reported by 100.0% of the Magistrates); provision of adequate resources to the stakeholders (reported by 76.0% of the Probation Officers); encouraging reconciliation, restorative justice and compensation where possible (reported by 39.3% of the Probation Officers); ensuring compliance by probationers through guidance and counseling (reported by 29.5% of the Probation Officers); empowering the probationers to start tangible income generating activities/projects (reported by 28.6% of the Probation Officers); encouraging data sharing among stakeholders (reported by 22.7% of the Magistrates); enhancing collaboration with other stakeholders (reported by 22.2% of the Magistrates); involving victims in decision making during the sentencing process (reported by 19.6% of the Probation Officers); close monitoring of probationers (reported by 17.4% of

the Magistrates); providing guidance and counseling to victims (reported by 16.7% of the Magistrates); putting in place proper rehabilitation programmes at the prison facility (reported by 14.5% of the Probation Officers); encouraging attitude change among Police Officers towards Probation Orders (reported by 13.6% of the Magistrates); encouraging positive attitude towards probationers (reported by 10.5% of the Probation Officers); and enhancing execution of warrants of arrest against absconders of Probation Orders (reported by 10.1% of the Probation Officers).

1.1.7 Interventions for strengthening Probation Orders sentence

The proposed general key interventions for strengthening Probation Orders in Kenya which were reported by at least 1 out of 10 of the sample respondents drawn from members of the public, probationers and victims in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: training and sensitization of stakeholders on Probation Orders (reported by 48.5% of the members of the public); establishment of effective rehabilitation and empowerment programmes for probationers (reported by 25.1% of the probationers); provision of adequate resources to Probation Department (reported by 18.3% of the members of the public); strict and close supervision of probationers (reported by 14.0% of the members of the public); encouraging reconciliation, restorative justice and compensation where possible (reported by 13.5% of the victims); proper coordination among relevant stakeholders (reported by 12.8% of the members of the public); and elimination of corruption in the Probation Orders sentence (reported by 9.6% of the victims).

According to the findings, the stakeholder-specific driven interventions for strengthening the Probation Orders sentence which were suggested by at least a third of the Magistrates and/or Probation Officers had to do with: training, sensitization and awareness creation of different stakeholders on Probation Orders; allocation of adequate resources for Probation Orders activities; and guidance and counseling of offenders. Specifically: the Judiciary was to undertake training and sensitization of judicial officers on effective utilization of Probation Orders sentences (reported by 60.6% of the Magistrates and 41.7% of the Probation Officers); the Probation and Aftercare Service Department was to enhance training of Probation Officers on Probation Orders (reported by 64.0% of the Magistrates) and allocate adequate resources for Probation Orders activities (reported by 60.0% of the Probation Officers); the National Police Service was to undertake training and sensitization of Police Officers on Probation Orders sentence (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Office of the Director of Public Prosecutions was to undertake training and sensitization of Prosecutors on Probation Orders (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Kenya Prisons Service was to train Prison Officers on Probation Orders sentence (reported by 78.9% of the Magistrates and 47.1% of the Probation Officers); the community was to create public awareness in the community on Probation Orders sentence (reported by 92.3% of the Magistrates and 79.8% of the Probation Officers); the direct victims of crime were to participate in awareness creation on Probation Orders (reported by 64.0% of the Magistrates and 40.6% of the

Probation Officers) and embrace restorative justice and compensation (reported by 42.5% of the Probation Officers); while the probationers were to undertake sensitization of other offenders about the Probation Orders sentence (reported by 47.1% of the Magistrates and 38.0% of the Probation Officers) and participate in guidance and counseling (reported by 35.3% of the Magistrates).

1.2 Policy Recommendations

This study recommends:

1. That the Judiciary heightens its role in the effective management of the **national crime burden (of about Kshs. 3.15 billion a year** (that is, Kshs. 175 spent per day in maintaining one prisoner) with respect to funds spent on the estimated 50,000 daily prison inmate population) by way of undertaking full implementation of section 7 and 9 of the Sentencing Policy Guidelines which, among others, prioritize the utilization of non-custodial sentences as a first option of sentencing for petty offenders (especially whose prison sentences would have been three (3) years and below), and focus on the main aim of the Probation Orders sentence of facilitating the reformation and rehabilitation of the offender.

The findings of this study showed that Probation Orders sentences for petty offences were under-utilized (by Law Courts) in favour of short term prison sentences of three (3) years and below, with probation sentences accounting for an average of 18.0% of the combined number of all the petty offences dealt with through probation and prison sentences between 2014 and 2018.

2. That the Probation and Aftercare Service Department puts in place offender treatment, rehabilitation and supervision measures that are demographic-specific (especially gender-specific) and targeted at the criminogenic needs of the different offence-categories of the probationers.

The findings of the study showed that male and female offenders serving probation sentences had committed different types of offences probably because of their different socio-cultural, psychological and economic predispositions and/or situations. Hence the effective delivery of Probation Orders needs to consider these variables.

3. In partnership with the Information and Communication Technology Authority (ICTA), the Judiciary, Probation and Aftercare Service Department and the Kenya Prisons Service establish an inter-linked Offender Record Management System (especially an online real-time portal) dedicated for uploading, sharing and monitoring of prison and non-custodial sentence placements data and statistics and connected across the country's law courts, probation offices and prisons with a view to facilitating the monitoring of sentencing patterns and trends and curtailing the unconscious over-utilization of prison sentences on petty offences.

The perception held by majority of the Magistrates, Probation Officers, probationers, members of the public and victims that Probation Orders were adequately utilized may have been unconsciously misinformed. This was possibly due to inadequate or lack of sharing of information on actual Probation Orders placement statistics across the key players.

4. That the Probation and Aftercare Service Department designs a programme for securing the trust and confidence of the Judiciary on the effective functioning of the Probation Orders sentence especially by deliberately and regularly sharing with the Judiciary reports of evidence-based milestones realized through the sentence as a compelling reason for Sentencing Officers' continued and enhanced utilization of the sentence.

Majority of the Probation Officers opined that some sentencing officers had a generally negative attitude towards the Probation Orders sentence and therefore did not utilize the Order. Findings from at least 1 out of 10 Magistrates, Probation Officers, members of the public, probationers and victims sample respondents showed that adequate utilization of the Probation Orders sentence by Law Courts was influenced by factors such as: commitment, efficiency and competence of Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons. Further, over 50.0% of all these sample respondents were in agreement that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders had encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community had motivated and/or encouraged sentencing officers to continue utilizing Probation Orders; and that satisfaction with the rehabilitation of the probationers by the Probation Department had motivated and/or encouraged sentencing officers to continue utilizing the Probation Orders sentencing option. Some of the major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims were non-compliance and reoffending by some probationers and poor supervision of probationers. Establishment of effective rehabilitation programmes for petty offenders strict and close supervision of offenders were some of the most popular suggested solutions to the challenges affecting the delivery of Probation Orders. Hence Probation Officers need to ensure that these positive factors are deliberately enhanced and the challenges addressed and evidence of the same is availed to Sentencing Officers in a regular and timely manner.

5. That Court Users' Committees (CUCs) and Probation Case Committees in respective jurisdictions spearhead multi-agency and multi-faceted approaches targeted on improvement of the aspects of key stakeholder (including community) support and participation in probationers' management, rehabilitation, supervision and psychological empowerment as key facilitators of offenders' compliance with the Probation Orders and their rehabilitation and reformation in general.

Some of the key factors influencing compliance with Probation Orders sentence were found to include: the level of supervision of probationers by Probation Officers; community support of Probation Orders; a clear understanding and attitude of the probationer towards the sentence; the benefits the probationer gets from the Probation Orders sentence; use of local administration and community in the supervision of probationers; lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision; lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision; lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision; Some of the major challenges facing the effective delivery of Probation Orders were difficulty among probationers in accessing Probation Offices and unfavourable life conditions among Probationers. Some of the main general possible solutions to the challenges were: ensuring convenient reporting venues for Probationers; enhancing empowerment of offenders; encouraging effective collaboration among stakeholders; and providing flexible reporting hours for employed Probationers.

6. Addressing youth criminality through expansion of the Youth Empowerment Programme to include a distinct component of youthful ex-offenders' economic empowerment with a special focus on an Ex-offenders' Revolving Fund, Employment and Entrepreneurship (especially skill, business start-up capital and tool boxes) Development Programme.

Most offenders serving Probation Orders sentence were found to be youths with low educational background (that is, primary school level of education) and with no reliable formal employment. Lack of support to employed probationers from their employers and economic instability of probationers were also found to be among the key factors influencing compliance with Probation Orders sentence. Therefore, ensuring the probationers' economic stability will require prioritized empowerment in the areas of entrepreneurship training and business start-ups, vocational training, support in formal education and linkage with potential employers in order to enable them become self-reliant during and after the completion of their sentences and be able to face the socio-economic challenges of day-to-day life both as individuals, family and community members.

7. A deliberate review of the existing policy, legislative and administrative frameworks on issuance of Police Clearance Certificate (popularly known as Certificate of Good Conduct) to facilitate the issuance of the certificates to rehabilitated and reformed ex-offenders which will in turn facilitate the ex-offenders in securing formal employment and/or addressing their 'lifetime criminal label' and stigma.

Findings of the study indicated that most probationers completed their sentences successfully and were rehabilitated. Issuing Police Clearance Certificates to

rehabilitated and reformed ex-offenders would therefore assist them while seeking formal employment and/or economic opportunities necessary for their reintegration and resettlement.

8. That the National Police Service prioritizes and/or commits to ensuring compliance with Probation Orders by undertaking timely execution of warrants of arrest for those probationers who breach the provisions of the Orders especially by absconding the sentence and/or committing further offences.

At least 2 out of 10 members of the public, probationers and victims of crime observed that non-compliance and reoffending by some probationers was one of the challenges facing the effective delivery of Probation Orders. According to Probation Officers, it was also one of the main reasons for the inadequate utilization of Probation Orders by some Law Courts. Enhancing execution of warrants of arrest against absconders of Probation Orders was proposed majorly by Probation Officers as one of the solutions to the challenge of non-compliance.

9. That the Judiciary gives punitive yet guaranteed non-custodial graduated fines (that is, fines paid over some time) to those who abscond the Probation Orders sentence aimed at guarding against prison overcrowding by petty offenders and reducing the confidence of probationers to deliberately abscond their sentences.

The findings of the study showed that absconding/ non-compliance and re-offending of probationers were some of the factors contributing to unfavourable public attitude towards Probation Orders sentence in Kenya. Close and strict supervision of probationers and enforcing compliance with the Orders were proposed as actions needed to achieve enhanced positive public attitude towards the sentence. Punitive yet guaranteed non-custodial graduated fines¹ issued by Law Courts to probationers who abscond the sentence may be explored so as to guard against prison congestion by these petty offence probationers. The payment of these fines can be enforced and/or supervised by Sentencing Officers (that is, Judges and Magistrates) and Probation Officers.

10. That the Probation and Aftercare Service Department strengthens its Probation Training Institute, and partners with other relevant local and foreign training institutions, to implement a continuous Probation Officers' skill and knowledge-base improvement programme which emphasizes on offender rehabilitation-related aspects (such as guidance and counselling) necessary for assisting the offenders overcome criminal behaviour tendencies and other socio-psychological and economic problems

¹ A guaranteed non-custodial graduated fine is used to imply a fine imposed to an offender which is guaranteed by a relative, guardian or significant other and which can be paid over some time and does not have the option of a custodial sentence in case of defaulted payment so as to guard against the fine contributing to prison congestion which the Probation Orders sentence was trying to address.

responsible for the criminogenic needs of the offenders (that is, the risk factors responsible for offending).

The study showed that the offences committed by most probationers who were interviewed were general stealing, assault causing actual bodily harm, possession of illicit /illegal brew and drugs, malicious damage to property, creating disturbance and being drunk and disorderly. These offences are related to economic and/or livelihood difficulties and mental disturbances. Hence Probation Officers need to be adequately equipped with skills and knowledge necessary for the effective sentencing and rehabilitation of such offenders.

11. That all training institutes and/or colleges managed and/or run by specific agencies in the administration of criminal justice need to strengthen their staff training curriculum to include current aspects and/or dynamics of non-custodial sentences in general and Probation Orders sentence in particular.

The study found that some practitioners in the administration of criminal justice did not fully appreciate the place of Probation Orders sentence in the management of crime in the country. For instance, majority of the Probation Officers argued that some sentencing officers were not fully conversant with the provisions and the circumstances under which a Probation Orders sentence could be issued by a court and therefore did not utilize the Order. Towards strengthening the sentence, one of the overriding recommendations was that respective agencies sensitize their staff on the probation sentence. Hence training institutes and/or colleges such as the Judiciary Training Institute (JTI), Probation Training Institute, Prosecution Training Institute, Police Training Colleges and Prisons Staff Training College (PSTC) need to address the probation sentence and service information, skill and knowledge gap among their staff.

12. That the National Council on the Administration of Justice (NCAJ) and respective Court Users' Committees (CUCs), spearheaded by the Judiciary and the Probation and Aftercare Service Department, sustain and/or enhance positive public attitude towards the Probation Orders sentence through an imaginative and effective media strategy and by undertaking continuous public sensitizations and national and county-based outreach programmes and/or activities (for instance Service Weeks, offender rehabilitation clinics and Corporate Social Responsibility activities) that also showcase the benefits of the sentence to the family, community and crime and offender management in the country in general.

The findings of the study from most of the Magistrates and majority of the Probation Officers, probationers, members of the public and victims showed that the public attitude towards the Probation Orders sentence was favourable and that the leading factors contributing to this favourable public attitude included: community sensitization on the Probation Orders sentence; offender rehabilitation aspect of the

Probation Orders sentence; promotion of family unity and/or ties; enablement of the offender to continue with other socio-economic activities; and enhanced reconciliation between offenders and victims. However, there were other key aspects that affected public attitude negatively and hence underutilization of Probation Orders in some jurisdictions. For instance, majority of the Magistrates, Probation Officers, members of the public and victims and most of the probationers held the view that unwillingness of some offenders to adhere to the provisions of a Probation Orders sentence discouraged the utilization of Probation Orders. The major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 of either the members of the public, probationers and victims included lack of knowledge and training on Probation Orders sentence and lack of support and/or negative attitude by relevant stakeholders. The leading general possible solutions to the challenges facing the effective delivery of Probation Orders which was reported by at least 1 out of 10 of either of the members of the public, probationers and victims was conducting public awareness and sensitization on Probation Orders. The single most important action needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence was also reported to be the undertaking of public awareness and sensitization on Probation Orders.

13. That the Judiciary institutes a programme for supervision, monitoring and evaluation of Probation Orders towards enhancing effectiveness of the sentence.

Most probationers argued that Law Courts never conducted monitoring and evaluation of the Probation Orders sentence. Majority of the Magistrates confirmed that they rarely or never conducted monitoring and evaluation of the sentence.

14. That the National Treasury, in partnership with development partners and county governments, enhance the financial, infrastructural and human resourcing of the Judiciary and Probation and Aftercare Service Department towards enhancing and strengthening the effective delivery of the Probation Orders sentence.

Limited resources for the Probation and Aftercare Service Department was one of the main challenges cited as facing the effective delivery of Probation Orders sentence and hence the reason why provision of adequate resources to the Department was reported as one of the major possible solutions to the challenges facing the sentence and also a key intervention for strengthening the Orders.

15. Strengthening the functions of Corruption Prevention Committees in the Judiciary and Probation and Aftercare Service Department to deal with any forms of corruption in the whole process of Probation Orders sentencing and rehabilitation.

At least 1 out of 10 members of the public cited corruption as one of the factors contributing to inadequate utilization of Probation Orders. Most Probation Officers and members of the public also opined that some sentencing officers used Probation

Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives. Further, most sample respondents in all the categories agreed that offenders who corrupt Sentencing Officers and/or Probation Officers to get Probation Orders sentences are likely to breach the order. Corruption among some stakeholders was cited as one of the major challenges affecting the sentence and that encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence was a key possible solution. The elimination of corruption in the Probation Orders sentence was cited as one of the key interventions for strengthening Probation Orders.

16. The prioritization and introduction of a Probation Officers' Outreach and/or Liaison Programme where Probation Officers are deployed (either on full or part-time basis) in national and county government Ministries, Departments and Agencies (MDAs) dealing with youth (including schools) for purposes of offering mainstreamed anti-criminal behaviour guidance and counselling aimed at securing youth dividend outcomes in general and addressing youth criminality in the country in particular.

Youth form the majority of Kenya's population and are therefore a significant catchment for criminal activities. For instance, findings of the study showed that majority of the probationers (and who had committed the various crimes and/or offences) were youth aged between 18 and 33 years while others were aged below 18 years thus implying a school-going segment of the probationers. The youth are also the majority inmates in Kenyan prisons and facilities such as borstal institutions. Hence deploying Probation Officers in the youth institutions to offer anti-criminal behaviour guidance and counselling alongside the other youth empowerment programmes has the potential to reduce youth criminality significantly.

17. That non-custodial offender rehabilitation forms a deliberate standing agenda among all heads of institutions in the administration of criminal justice as a significant contributor in the realization of Vision 2030, the 2018-2022 Medium Term Plan III (MTP III) and the Big Four Agenda especially with respect to crime prevention and management in particular and economic and socio-psychological development of the Kenyan society in general.

Findings of the study indicated that some officials in the criminal justice system had a negative attitude towards the Probation Orders sentence despite the sentence having important benefits such as: rehabilitation of petty offenders within the community; prevention of hardening of petty and first offenders by the hardened ones; enabling the offender to maintain familial ties while at the same time serving the sentence which helps in guarding against the delinquency of dependant minors; promoting reconciliation between the offender, the actual victim of the offence and the community at large for harmonious existence; acquisition of useful survival and/or life skills and linking offenders to potential employers which improves the socio-economic status of community members. Through the Probation Orders sentence, offenders are

empowered in aspects such as: guidance and counseling; acquisition and transfer of skills; financial support and/or provision of working tools and equipment and vocational training.

18. The policy, legal and administrative institutionalization of a parole system (which is not currently practiced in Kenya) and a regular scheduled (preferably quarterly) decongestion programme (especially utilizing Probation Orders) aimed at offloading prisons of all petty offenders and other reformed offenders as a viable crime management and administration of criminal justice strategy.

The study established that Law courts mainly preferred prison sentences to non-custodial sentences in the treatment of petty offenders at the expense of the limited capacity of Kenyan prisons. This had occasioned prison overcrowding with its attendant negative consequences such as unwarranted public expenditure and hardening of petty offenders by the hardened ones.

19. The Probation and Aftercare Service Department undertakes enhanced community engagement and participation in non-custodial offender management through a revamped 'Volunteer Probation Officers' Programme' especially enlisting the services of relevant and high integrity serving and/or retired professionals (including religious leaders).

The findings of the study established that the community had an important role in the successful rehabilitation of offenders within the community but their role had not been tapped to the full. It was further established that the Probation and Aftercare Service Department faced challenges of staff shortage and work overload which hampered effective supervision, monitoring and follow-up of probationers. Therefore, a well-managed 'Volunteer Probation Officers' Programme' especially enlisting the services of relevant and high integrity serving and/or retired professionals (including religious leaders) drawn from the local community could positively and effectively facilitate the Probation Orders sentence.



ADULT PROBATION SERVICES

IMPACTING LIVES

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