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Victims of Crime As They Interact With Probation Service: A

Perspective of Criminal Justice Practitioners

Mrs. Mary Wanjiku Mbau, HSC, Secretary PACS

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June 2023

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FEATURED ARTICLE

VICTIMS OF CRIME AS THEY INTERACT WITH PROBATION SERVICE: A PERSPECTIVE OF CRIMINAL JUSTICE PRACTITIONERS

By Mary Wanjiku Mbau, HSC¹

Abstract

Crime will always be with society. Criminal justice Practitioners have over the years concentrated on the plight of the offender as opposed to that of the victim. This study therefore seeks to discuss a forgotten victim perspective in the criminal justice practice specifically seeking to understand the concept of victim(s) as it applies to criminal justice practice, their rights and concerns as they interact with Probation Service. Three theories are considered in this study: victim precipitation, environmental and conflict theory. Literature review points out that victims of crime are at the periphery, existing policy and legal frame work have gaps in addressing victims' rights and concerns. Primary finding which applied mixed research design using qualitative and quantitative methods of data collection confirmed the study findings were as contained in literature review.

Key Words: *Victims of crime, Probation services, victimology, criminal justice system, victim rights and concerns*

1. INTRODUCTION

Crime is inevitable in any social setting, what matters are systems in place to prevent it. The presence of probation service as an alternative sentence in Africa is not well documented, however from England 1878, it spread to all its English speaking colonies

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in the world, in 1906 in South Africa², 1940s Tanzania³ (Probation ordinance-1947) and Kenya⁴ (Patterson commission, 1939⁵, Probation ordinance -1943) respectively.

The Constitution⁶ of Kenya promulgated on 27th August, 2010 has recognized the need for the provision and protection of the rights of victims of offences contained under Article 50 (9), where parliament has enacted the victim Protection Act.

To maximize the constitutional provisions, Probation⁷ and Community Service⁸ orders in this regard spell sanctions to supervisees. Violations of these restrictions could result in arrest and punishment. The service as a non-custodial practice spares first offender from the demoralizing influences of imprisonment and save him/her from recidivism⁹

In the dispensation of its obligations and as victims interact with probation services they are expected to benefit generally in the reparation as opposed to retribution. Supervision of this category of offenders is specific to the order but also addresses certain salient rehabilitation issues identified by the Probation Officer¹⁰.

² Institute of security studies-website <https://issafrica.org/chapter-5-probation-services> accessed 7/10/2019

³ https://www.academia.edu/6644739/Probation_and_Parole_in_Tanzania accessed 7/10/2019

⁴ Probation and after care website <http://www.probation.go.ke/about-us/background.html> accessed 7/10/2019

⁵ https://www.unafei.or.jp/english/activities/pdf/other/Overview_of_CommunityCorrections_Kenya_E.pdf accessed 7/10/2019

⁶ Government Printer, (2010), The Constitution of Kenya 2010, Nairobi.

⁷ Government Printers, (1964), Probation of Offenders Act, Nairobi.

⁸ Government of Kenya, (1998), Community Service Orders Act No 8, 1998, Nairobi.

⁹ Vanstone and Maurice, (2011), The International Origin and Initial Development of Probation. An Early Example of Policy Transfer. The British Journal of Criminology:48.6(2008):735-755

¹⁰ Government Printers, (1964), Probation of Offenders Act, Nairobi.

The plight of the victim and clear understanding has been misconceived in the practice despite of being highlighted in various local and international instruments, charters, policies and legislative enactments to which this paper lends itself to.

2. LITERATURE REVIEW: THE CONCEPT OF VICTIMOLOGY

Victimology¹¹ in its most simple form is the study of the victim or victims of a particular offence. It is defined as "the thorough study and analysis of victim characteristics". The UN resolution¹² A/RES/40/34 defined a victim of crime encompassing those of abuse of power as persons who individually or collectively suffer harm, including physical, mental injury, emotional, economic loss, and impairment of fundamental rights nationally or international through criminal actions. Truth Justice and Reconciliation Act¹³, No.6 of 2008, laws of Kenya, defines a victim as any person or group of persons who with occasion or human rights violation, has suffered any individual or collective damage by acts or commission that violate the rights established in the constitution, international law of human rights, international humanitarian law and international law, and that is considered a crime in a Kenyan legislation.

Andrew Karmen¹⁴, perceives victimology as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities. It is instructive to note that victimologists first and foremost investigate the victims' plight: the impact of the injuries and losses inflicted by offenders on the people they target.

The principal objective of victimologists is to study the personality of the victim in the victim-offender interaction in the mechanism of becoming a victim (victimization)¹⁵.

Legislative and Policy issues, Gaps and Concerns.

¹¹ Turvey B.E. (1999), *Criminal Profiling, An introduction to Behavioral Evidence Analysis* .Academic Press, London.

¹² United Nations, (1985), *United Nations Declaration of Basic Principles of Victims of Crime and Abuse of Power*, 96th Plenary Meeting, Held on 29th November, 1985, Italy.

¹³ Government Printers, (2008), *Truth and Justice Reconciliation Act, No 6, 2008*, Nairobi.

¹⁴ Karmen A, (2010),*Crime Victims: An Introduction to Victimology*

¹⁵ Kostic M,(2010),*Victimology: A contemporary Theoretical Approach to Crime and Its Victim, Law and Politics*, Vol 8,2010,pages 65-78.

This study was to establish the policy gaps that have occasioned lack of comprehensive legal framework on victims' rights and protection. In the process it evaluated various pieces of legislation that are existant, identified gaps and further made policy recommendations.

a. Probation of Offenders Act (Cap 64 laws of Kenya).¹⁶

It is the principal statute that grants mandate to the department of Probation and Aftercare Service. The only provision in this Act that provides for an aspect that relates to victims is Section 6 which provides for payment of cost for injuries or compensation for loss. However, this section does not sufficiently address victim's rights and needs. Moreover, there are no structures and Regulations to anchor the compensation enforcement mechanism.

b. Criminal Procedure Code (Cap 75 laws of Kenya).¹⁷

The Act provides for the procedure to be applied in criminal proceedings both at the High Court and Subordinate Courts. Sections- 177(a) provides for the court to return stolen property held as exhibit to the owner, 175 provides for the compensation of the victim, Section 176 provides for reconciliation between victims and offender, 329A provides for victim impact statements. The Criminal Procedure Code is a procedural law that does not make provision for rights and especially rights that relate to victims and their support. Moreover, the Courts jurisdiction to call for victim impacts statements is discretionary and rarely used by the Courts.

c. Penal code (Cap 63 laws of Kenya).¹⁸

It is a substantive legislation on criminal rights and obligations. It creates most of the offences in criminal law. Sections- 29 (1) provides that when any person is convicted of an offence under any of the following sections, namely, 118 and 119, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connection with the commission of the offence or, if the property cannot be forfeited or cannot be found, of such sum as the court

¹⁶ Government Printers,(1964),Probation of Offenders Act, Nairobi.

¹⁷ Government Printers, (1975), Criminal Procedure Code, Nairobi.

¹⁸ Government Printers,(1963),The Penal Code, Nairobi.

shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Attorney-General may direct.

Section 30.(1) Where a person is convicted of any offence mentioned in Chapter XXXI and the offence arose out of, or was committed in the course of, any trade or business, whether carried on by such person or not, the court by which the conviction is recorded may, in addition to any other penalty which it may impose, make an order, having effect for such period as the court may think fit, prohibiting such person from carrying on, or being concerned or employed, directly or indirectly, in carrying on, any such trade or business or any branch of any such trade or business of the same or similar character.

Section 31 provides that any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence, and the compensation may be either in addition to or in substitution for any other punishment. However, notwithstanding the above provisions, this Statute does not provide substantive victims rights and support. The Act leans more towards providing for accused persons and not victims of crime.

d. The Sexual Offences Act (No. 3 of 2006 Laws of Kenya).¹⁹

An Act of Parliament that makes provision for sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes.

Section 33 provides for the evidence of surrounding circumstances in criminal proceedings and impact of a sexual offence on a complainant, 35(2) provides for the Court at any time in criminal proceedings to make an order for the treatment of a victim of a sexual offence, 39 (7) & (8) provides that where there are review proceedings in the supervision of dangerous sexual offenders the victim including the next of kin of a deceased victim have a right to make representation. The Act still does not create any substantive victims rights and support.

¹⁹ Government Printers, (2006), The Sexual Offences Act, No, 3, 2006, Nairobi.

e. National Cohesion and Integration Act (No. 12 of 2008 Laws of Kenya).²⁰

The provisions of the Act that relate to Victimology are: Section 4 in defining victimization, as an act injurious to the well being and esteem of the person “Section 49” provides mechanisms for conciliation between victims and the other party without resorting to civil proceedings. However the Act nevertheless does not have provisions that provide for victims rights and support. Indeed, the Act leans more towards reconciliation and integration of communities.

f. Witness Protection Act (No. 16 of 2006 Laws of Kenya).²¹

An Act of Parliament which provides for the protection of witnesses in criminal cases and other proceedings to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes.

Section 3 (1) (c) defines witness as “a person who has made a statement to:

The commissioner of police or a member of the police force or a law enforcement agency in relation to an offence against a law of Kenya. Section 3 (1) (e) defines witness protection as “a person who for any other reason may require protection or other assistance under this Act”. The programs for protection in this Act include:-

- Establishment of new identity
- Arrangement for accommodation
- Relocation
- Provision of transport for the property of the witness
- Provision of reasonable financial assistance
- Provision of witness services like counseling and vocational training services

Any other thing that the Attorney General considers necessary for the safety and welfare of the witness. Further, Section 35A of the amendments undertaken in 2011 has established a victim’s Protection Fund which is meant to take care of persons who become victim in the process of conducting the witness protection program.

This Act does not create victims’ rights and support. It remotely covers the victim as far as they are witnesses in court proceedings.

²⁰ Government Printers, (2008), National Cohesion and Integration Act, No.12, of 2008, Nairobi.

²¹ Government Printers,(2006),Witness Protection Act,No.16,2006,Nairobi.

g. Truth Justice and Reconciliation Act (No. 6 of 2008 Laws of Kenya).²²

An Act of Parliament to provide for the establishment of powers and functions of the Truth, Justice and Reconciliation Commission, and for connected purposes. The Act defines a victim as any person or group of persons who with occasion or human rights violation, has suffered any individual or collective damage by acts or commission that violate the rights established in the constitution, international law of human rights, international humanitarian law and international law, and that is considered a crime in a Kenyan legislation. Section 5 (e) mandates the commission to determine ways and means of re-dress for victims of gross human rights violation.

Despite the fact that these statutes have provisions for victims of offence, they have not been adequately implemented. This Act is more geared towards the reconciliation of communities due to past injustices allegedly committed to them. Consequently, the Act does not have a regime of victim's rights and support mechanisms.

h. The Counter Trafficking in Persons Act (no 8 of 2010 laws of Kenya).²³

An Act of Parliament that declares Kenya's obligation under the United Nations Convention against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes. The act establishes a national assistance trust fund for victims of trafficking in persons in section 22. The purpose of this fund is to assist victims of trafficking in persons. The Board of Trustees are responsible for the administration of the fund.

Notwithstanding the above provisions, the Act does not make provision for elaborate procedures for victims to access their rights and protection.

i. Evidence Act, (Cap 80, and Laws of Kenya).²⁴

The act establishes the procedure for productions of evidence in Court. Section 12 provides that in suits in which damages are claimed, any fact which will enable the

²² Government Printers, (2008), Truth Justice and Reconciliation Act, No.6, 2008, Nairobi.

²³ Government Printers, (2010), The Counter Trafficking in Persons Act, No. 8, 2010, Nairobi.

²⁴ Government Printers, (1980), Evidence Act, Nairobi.

court to determine the amount of damages which ought to be awarded is relevant. However, the entire Act treats victims of offences as witnesses and does not make specific protections, rights and welfare arrangements for them.

j. Victim Protection Act, (No. 17 of 2014).²⁵

It is the main statute that lends its plight to the needs of the victim. Section 19(4) proposes the enactment of the Victim Protection Board, and the development of the victims rights charter. The act has the following objects-Recognize and give effect to the rights of the victims of crime; Protect the dignity of victims; Promote co-operation between government departments and other organizations; Provide for victim protection trust and board; Provide for operationalization of the victims' charter.

3. STATEMENT OF THE PROBLEM.

Victims of crime have been 'forgotten people' in the criminal justice system. It was not until 2008, sixty five years after the introduction of probation services in Kenya that a bill was proposed to address the plight and concerns of Victims which culminated to enactment of the Victims Protection Act 2014. The department's strategic plan of 2008-2012 acknowledged that victims were placed at the periphery of its practice. This points out a lacuna in social justice and practice.

Victims have no formally recognized role in the trial of their offender, and no mechanism to voice their concerns regarding the crime and its impact on them. This study, therefore seeks to establish the knowledge and rights of criminal justice practitioners in regard to victims of crime in the administration of social justice.

4. OBJECTIVES OF THE STUDY AND RESEARCH QUESTIONS.

The general purpose of the study was to investigate the interaction of Victims of crime with probation services in Nairobi County in Kenya.

Specific Objectives.

- To establish principal criminal justice stakeholders understanding of the concept of Victimization and its application in practice and society.

²⁵ Government Printers,(2014),Victim Protection Act, Nairobi

- To seek the views of the criminal justice system players on the status of victim's rights and their concerns on probation sentences.

Research Questions.

- The study undertook to specifically answer the following questions
- Do stakeholders in criminal justice system understand the victimization?
- Do victims have concerns as relates to probation services?

5. JUSTIFICATION OF THE STUDY

The criminal justice system entails the court, law enforcement institutions, rehabilitation, correctional or penal institutions, the offender and the victim of crime.

The study findings will significantly contribute to effective discharge of justice to both victims and offenders.

Probation practice will be able to establish customized victim support programs in rehabilitation and treatment process of the offender and resource allocation.

The study will contribute to knowledge in practice of victims of crime among the police, prosecution, judiciary, probation service, prison and the community.

Nairobi County was chosen on the basis of it being the most populous city in East Africa and offers wide social characteristics.

6. THEORETICAL AND CONCEPTUAL FRAMEWORK

Victimization is a complex phenomenon, which results from a multitude of broad social and micro-situational influences. The study considered various theories that could have implications and explanation to the plight of the victim of crime: victim precipitation theory, lifestyle-exposure theory, deviant place/environmental theory, routine activity theory and conflict theory.

The victim precipitation/culpability theory: Siegel (2006) views Victimology from the standpoint that the victims themselves may actually initiate, either passively or

actively, the criminal act that ultimately leads to injury or death. It implies that the victim has something to do with his/her own victimization.

During passive precipitation the victim unconsciously exhibits behaviors or characteristics that instigate or encourage the attack. He lists job promotions, job status, successes, love interests, and the like as examples of these unconscious behaviors and characteristics. Additionally, political activists, minority groups, those of different sexual orientations, and other individuals pursuing alternate lifestyles may also find themselves as targets of violence due to the inadvertent threat they pose to certain individuals of power. Essentially, the victim precipitation theory focuses on the idea that the passive precipitation of violence is a result of a power struggle.

Victimization occurs under this theory through the threatening or provocative actions of the victim. This research observes that the victim precipitation theory has its own limitations. The theory is only limited to cases where victims come into contact with the perpetrators directly. It fails to explain the issue of precipitation in cases where people become victims of crime through offences committed against them in their absence like theft and burglary. The theory further fails to provide tools for measuring the extent to which a victim may precipitate his own victimization. However, this theory is useful to inform the study in content that victims of crime precipitate their own victimization which is an important component in designing crime prevention intervention which probation service seeks to achieve through offender rehabilitation and re integration.

a. The Deviant Place/Environmental Theory.

Siegel, (2006) states that greater exposure to dangerous places makes one more likely to become the victim of a crime. Unlike the victim precipitation theory, the victims do not influence the crime by actively or passively encouraging it, but rather are victimized as a result of being in "bad" areas. In order to lower the chance that one will become the victim of a crime, the individual should avoid the "bad" areas of town in which crime rates are high..

William, (1990) a sociologists discusses the social and economic inequality that minorities find themselves in. The deviant place theory suggests that taking safety

precautions in these areas may be of little use since it is the neighborhood and not the lifestyle choices that affect victimization.

This perspective too, has its shortcomings in explaining victimization. Nonetheless, the theory is relevant to inform the study in content that victimization is a function of the environment.

b. Conflict Theory

Brownmiller and Russel (1975) explains victimization as a result of power differentials between victims and offenders. This perspective is normally in situations where there are obvious power differences between the offender and the victim especially in sexual assault, child abuse and domestic violence. The outstanding feature of this theory is that the offender's victimization of another is an expression of domination and control. Such expressions of domination and control are presumed to stem from broad structural inequalities based on age and gender and corresponding patriarchal societal values emphasizing dominant males and subordinate females.

Whereas the theory views victimization as a result of class struggle and power differentials, it fails to explain situations where there are power differentials without any victimization. It also has the shortcoming of explaining whether victimization will stop if power differentials are eliminated in the society. The study has however; chosen this theory to verify the assumption that victimization may be as a result of power differentials between victims and offenders in the broader society. Probation services are inclined to reconciliation, rehabilitation, resettlement and re- integration of offenders with their possible victims and the society at large. The theory is useful in addressing the criminogenic forces behind offending and re- offending in realization of social order and harmony.

7. CONCEPTUAL FRAMEWORK-VICTIM INTERACTION WITH PROBATION SERVICES

The court plays a pivotal role in referring all possible cases of persons who have been convicted for various offences to Probation sentence as it strives to uphold justice and social order in the community of people or society. For any Victim of Crime there are legal processes that one goes through which start from reporting to police for arrests,

the court process for determination of one's guilt to offence by listening to all parties' complainant and accused persons then for delivery of punishment which may be custodial or non-custodial.

Figure 1 Conceptual Framework-Victim Interaction With Probation Services



Probation sentence when administered with full involvement of the victim and the offender by all the stakeholders, impacts positively on the rehabilitation and welfare of both the offender and the victim. The conceptualization is that there is need at all times for Victims of crime to be involved in the passing of any sentence. Such has not been previously practiced leaving them (victims) at the periphery and unfairly violating their unique rights and needs.

8. METHODOLOGY

a. Period of Study

The study was conducted between May 30th 2014 to November 2015 in Nairobi. Research Design. This study applied descriptive survey with mixed methods approach that is qualitative and quantitative methods to gather requisite information from key informants and sample victims and offender respondents. Quantitative techniques were used to collect data from offenders on Probation Sentences, key practioners in criminal justice and victims of crime who are the primary respondents while qualitative approach was used in extracting information from Key informants, and sample respondents.

b. Study Population/Target population

The study population were: victims of crime and their offenders who were serving a probation sentence.

c. Sampling

The researcher used purposive and convenient sampling technique to determine accessible population for the study. Cluster sampling was used to determine the geographical location of the study area. The administrative regions of stations were clustered according to the court's jurisdiction namely Kibera, Milimani and Makadara with the probation stations aligned to the same, to facilitate convenience in the process of identifying the offenders and victims. From each cluster, respondents were sampled in respect of the three probation stations, Kibera Probation stations whose jurisdiction includes Kibera, Otiende, Langata, Dagorethi, Kilimani, and Karen. Milimani Probation Station serves the central business district and Westlands. Makadara Probation station has jurisdiction in the areas of Kasarani, Embakasi, Kamukunji, Mathare and Githurai. To get the sample of respondents from each category, a proportion was determined from the sample frame which was further selected from the reporting schedules of offenders/probationers of conveniently selected probation officers. The Victims were sampled through the assistance of probation officers and their offenders' whereby ten per cent (10%) of the study population was selected. Kenya Institute of Management proposes that for descriptive studies, 10% of the accessible population is adequate and representative enough for the sample. Offender recording schedules were used to provide information on the contacts of the victims and arrange for meeting both for offenders and their victims.

Table 1 Sample Size Determination

Offenders Sample Size determination				Victims of crime sample size determination			
Station	Target Pop.	Proportion	Actual sample	Station	Target Pop.	Proportion	Actual sample
Milimani	270	10%	27	Milimani	210	10%	21
Kibra	450	10%	45	Kibra	120	10%	12

Makadar a	510	10%	51	Makadar a	420	10%	42
Total	1230	10%	123	Total	750	10%	75

Source; Probation and after care station registers Nairobi County.2014

d. Key Informants

Key informants were purposively sampled from the agencies in the criminal justice system. The judiciary through the office of the registrar assisted in the identification of courts, magistrates and judges who participated in this study. The office of the inspector general of police assisted in the identification of police stations and officers who participated in the study. Prison participants were identified through the office of the Commissioner General. The probation department staff directory assisted identification of officers who participated in the study within Nairobi County. Key informants were also put into clusters and studied according to- stations, courts and their professional contributions- judicial Officers, prison officers, Police officers and probation officers, stations covered were -Milimanai court and probation office, Kibra Court and probation Office, Makadara court and probation office, Nairobi probation hostel, probation headquarters office, Jogoo Road police station, KICC police station, Central Police station, International Life House police station, Langata Women Prison and Nairobi remand prison.

e. Methods of Data Collection.

The researcher used both qualitative and quantitative data collection methods namely- survey, key informants and document review.

i. Collection of Quantitative Data

A survey method was used to collect data from primary respondents who were offenders and victims. Questionnaires were administered face to face with the respondents on demographics, socio-cultural-economics, attitude and opinion, experiences, and their lifestyles. Key informant guide was used to collect data from probation Officers, Judicial Officers, Police Officers, and Prison officers within Nairobi County.

ii. Collection of Qualitative Data

Key informants guide was used to collect data from criminal justice stakeholders through face to face interviews. A total number of 34 respondents were interviewed as follows-Judicial officers-seven, prison officers-ten, police officers-nine, and eight probation officers. Their information was vital in providing contemporary understanding on policy and legislative issues in the area of study.

f. Document Review

This method was used to collect data from records held in probation stations as follows- referral registers, central case ledgers, probationer's files, supervision reports, and reporting schedules, in orders to access offenders and their victims. Documents were specific and a confidential source of information tailored to each respondents. This justified the researcher to use the method as the documents were not available anywhere else.

g. Tools of Quantitative Data Collection.

The researcher used tools and instruments that are majorly/commonly used in social science research-questionnaires, observation and interview guide.

Questionnaire. The researcher designed respondent specific questionnaires that were administered to victims and offenders which were closed open ended and declarative. The set of questionnaires administered were-Offender and Victims referred as Appendix 1 and Appendix 2and KI guide for practioners.

h. Tools of Qualitative Data Collection.

A Key informant guide was prepared to gather data from Probation Officers, Judicial Officers, Police Officers and Prison Officers in Nairobi County who were deemed to be critical in the study and were privileged to provide professional information as it relates to their interaction with victims and offenders of crime in criminal justice system. The data was used to enhance the information obtained from the primary respondents.

i. Check list

A list of requisite records was prepared and presented to the stations managers requesting them to avail and confirm for the purpose of this study on agreed dates. That was the only way the researcher accessed basic and relevant information to the

study. The strategy also was cost and time saving and focused on only relevant data from the stations.

j. Ethical Considerations

The researcher adhered to the necessary government regulations that require authority to conduct research from public institutions. Respondents were protected by keeping the information they gave confidential and their consent was sought before revealing any information. The study was constructed and conducted in the manner that was mindful of the distress the subject matter could cause to participants, while research assistants were sensitized on ethical concerns allowing voluntary participation of respondents.

k. Data Analysis

The process of data analysis used MS word processor, excel and the SPSS software. The tasks involved, sorting, coding cleaning the data collected, organizing the data systematically, and generating descriptive statistics. Additionally, data from the researcher's key informant interviews were analyzed through the appropriate themes of the study.

The study findings were presented in frequency tables, bar charts and percentages, and written "voices". Interpretations of the findings were based on the objectives of the study and the conclusions.

9. DATA PRESENTATION, ANALYSIS AND INTERPRETATION.

a. Response Rate.

The response rate was 100% for all categories of respondents which is above 60% threshold provided for in a qualitative and quantitative survey (KIM, 2009).

Demographic Characteristics of Respondents.

The general characteristics of respondents indicated their age, gender, education level and place of residences.

b. Age Range of Offenders and Victims of crime.

Most respondents' offender respondents were in the age range of 18 years and above constituting 90 % (adults), while victims were in the age range of 13-15 years constituting 96% of victim (juveniles) respondents. It therefore implies that most

offenders were adults while victims were mainly children. This finding is in tandem with the conflict theory propounded by Brownmiller and Russell (1975), explaining victimization as a result of power differentials between victims and offenders, exhibiting expression of domination and control, especially in sexual assault, child abuse, and domestic violence.

The most frequent offenses as established were assault, creating a disturbance, kidnapping, and child neglect and issuing of bad cheques .Table 4.1 below shows the age of the offenders and victims for various offences.

Table 2 Age of offenders and victims of crime.

Age Range.(Yrs.)	No. of Offenders	% of offenders	No of Victims	% of Victims
<13	0	0%	0	0%
14-15 years	6	4.9%	72	96.0%
16-17 years	6	4.9%	3	4.0%
18 >	111	90.2%	0	0%
Totals	123	100%	75	100%

c. Gender of Offenders and Victims.

Table 4.2 below shows that out of the total number of offenders sampled, 68.4 % were male while male victims constituted 54.2% of the study. Only 31.6% of female offenders all above age 18 years participated in the study against 45.8% of female victims. Non response was higher for the category of offenders at 7% compared to Victims who did not respond to disclose their gender at 4%.The study therefore established that there were few female offenders as opposed to the victims and that there were many male offenders as opposed to male victims. The findings confirm the conflict theory propounded by Brownmiller and Russel (1975) who expressed that the offender’s victimization by another was an expression of domination and control.

This explains the vulnerability of females as victims and males (offenders) as perpetrators of crime and the men who were victims’ majority were juveniles who also belong to the vulnerable class (Brownmiller and Russel 1975).

d. Education Level of Offenders and victims of crime.

Table 3 Gender of offenders and victims of crime

Gender Description		Offender		Victims	
		Frequency	Percentage	Frequency	Percentage
Gender	Male	85	69.1%	39	52%
	Female	38	30.9%	36	48%
	Total	123	100%	75	100%

The gender and education levels of offenders and victims of crime indicate that 49% of offenders had attained primary level of education, while 40% of victims had primary qualification. Only 34% of offenders had secondary qualification as opposed to victims sampled 40% had attained secondary education. The Researcher established that 17% of offenders were holders of tertiary qualification, while victims with tertiary qualification were 20% of sampled respondents.

The findings therefore indicated that most crimes were committed with persons with low level of education (Ryan,1971) or failing school systems, due to lack of critical skills to ache a living in the harsh and competitive economic environment in the Metropolitan/cosmopolitan city.

Victims similarly with low level of education portrayed ignorance hence became easy targets as expressed by environmental theory and victim culpability theory where victim’s exhibit little risk and self-management skills as reflected in Table 4 below.

Table 4 Education of offenders and victims of crime

Level of Education		Offenders (Freq)	Offenders Percentage %	Victims (Freq)	Victims (Percentage) %
Education	Primary	60	49%	30	40%

	Secondary	42	34%	30	40%
	Tertiary	21	17%	15	20%
	Total	123	100%	75	100%

e. Offenders and Victims Residences.

The distribution and spread of offenders and victims was based on the sample frame which was drawn from the department of Probation and after care records in the identified probation and court areas. A total of one hundred and twenty three offenders(N=123) were spread as follows-Dagorethi - thirty three, Langata twelve, Makadara thirty, Starehe fifteen Kibra- ten, Milimani- nineteen. The twenty five victims originated as follows-Kibra –ten.Makadara -five and Milimani- Ten.

Table 5 Residences of Victims and Offenders.

Offender Residential places			Victims Residences		
Residence Region	No. of Respondents	Percentage of Respondents	Residence Regions.	No of Responses	% of respondents
Dagoretti	33	26.8%	Dagorethi	9	12%
Langata	12	9.8%	Langata	3	4%
Makadara	30	24.4%	Makadara	24	32%
Kamukunji	0	00%	Kamukunji	9	12%
Starehe	15	12.2%	Starehe	0	00%
West lands	9	7.3%%	West lands	12	16%
Kasarani	6	4.9%	Kasarani	12	16%
Embakasi	15	12.2%	Embakasi	6	8%)
Central	3	2.4%	Central- CBD	0	00%
Totals	123	100%	Total	75	100%

The study established that most of the offenders and victims came from the urban informal residences of Dagorethi, Makadara, starehe, Embakasi and Langata while victims were from Makadara, Westlands, Kasarani, Kamukunji and Dagorethi (Table

4.4 above) or set up. The victims were from more informal geographical concentration of Nairobi where as some of the victims were from peri -urban informal settlement of the city. Siegel (2006) advanced the deviant place theory or the environmental theory whose concern was the possibility of victimization by the fact that victims frequented “bad area” or crime hot spots. Slums harbour all types of characters and act as hide out for criminals and possible victims. Early criminologist (Ryan, 1971) propounded that offenders themselves could be possible victims of grinding poverty, dysfunctional families, failing school system, run down housing, unemployment and job shortages, discriminated, brutalized by the police and suffering from other social problems. Dagorethi region had the highest number of registered offenders of crime followed by Makadara, then Starehe and Embakasi by law courts, and the number of police stations as well. Kamumukunji region did not record any offender which could be possible that the resident offender committed their vices in other places away from Kamukunji or changed frequently their residences after the crime. The CBD had the least number of offenders which the researcher associated with having very few residential premises.

Kamukunji region did not record any offender which could be possible that the resident offender committed their vices in other places away from Kamukunji or changed frequently their residences after the crime. Informal settlements in Nairobi County are characterized by high level of unemployment, competition and grinding poverty. Lack of skills attracts huge crowds of residents who are mostly living below one dollar per day.

Makadara had the highest number of victims, followed by West lands and Kasarani. This trend could be associated with the corresponding number of offenders and police stations The CBD had no victim while Langata and Embakasi had the least number of victims reported. This finding corresponded with the regions with the highest and the least number of offenders. This finding confirms the environmental theory and Ryans findings of crime and victims (Ryan, 1971).

10. RESULTS

a. Officers understanding of Victimology.

The views of key stakeholders were sought in determining their understanding of Victimology and what it entailed. Responses were received from judicial officers, prison officers, police officers and probation officers.

Victimology was generally understood differently by all stakeholders with most of them indicating that it referred to the study of the impact of crime on a victim or the complainant.

In very general terms victimology was defined by criminologists as the scientific knowledge of the victims or a study of interaction between the offender and the victim (Karmen, 2010 and Turvey, 1999).

Judges and Magistrates definition.

One Judge defined victimology as *'a study of the impact of crime on a victim or the complainant'*.

I do not understand that concept, though I know the term victim and victim rights as provided by the Kenya constitution of. 2010'

In view of the above, the professional component of the definition captured by the Victimologists was not well understood by the judicial officers.

Police officers definition.

One senior police officer of long experience defined Victimology in the context of punishment-*'Any form of punishment an offender is subjected to having been taken through the court to determine whether the offender has to be punished.* 'Another officer conceived Victimology in terms of institutional relationship where he stated that Victimology was- *the study of victimization, relationship between the offender, victim, the court, and the police in the criminal justice system.*

Prison officer's definition.

'The study of victims including relationships between victims and offenders, the interactions between victims and criminal justice system i.e. police, prisons, court and correctional institutions'.

Management of victims and their involvement in the inmates' management'. These definitions lack key elements as described by criminologists above.

A Study of what victims go through from physical, emotional to social as a result of actions' of others who cause harm or crime

The above definition accurately compare with the definition provided by Karmen,2010, however it further lack key elements contained in the professional definition as spelt in Victims Protection Act 2014

Probation officers definition.

The study of the role the victim plays in the process of crime commission or in crime and criminology.

The study of the effect or harm people suffers as a result of offences committed against them.

The definition is in-exhaustive compared to the definition contained in the Victim protection Act, 2014.The United Nations(UN) General Assembly, Resolution A/RES/40/34 defined victims including those of abuse of power as persons who individually or collectively suffer harm, including physical, mental injury, emotional, economic loss, impairment of fundamental rights nationally or international through criminal actions.

b. Victims Concerns on Probation Sentences.

Summary of Victims Concerns on Probation Sentences

Undeserving people placed on probation sentence	16%
Exclusive probation sentence	12%
Limited victim involvement in sentencing	12%
Lack of funding to victims programs	8%
Ineffective service delivery by probation office	8%
Lack of feedback from criminal justice players	4%
Gravity of sentences	4%
Support towards victim empowerment	36%

11. DISCUSSION OF RESULTS

Officers Uunderstanding of Victimology.

The professional definition of the term Victimology constitute the elements of, harm to an individual person or group of people, loss suffered occasioned by criminal activity, a and a consequential relationship between the offender(perpetrator) and the victim(

the subject) which goes beyond the accused persons and encompasses other members of society.

Therefore the term was conceived differently against the definition and meaning attached to by the Victim Protection Act 2014 and to some practioners, out of context and lacking knowledge of the meaning of the term.

Victims Concerns on Probation Sentences.

The study established that there were gaps and lack of policies and legal framework in the entrenchment of victims' needs and concerns in the criminal justice system. Most statutes cited in the Kenyan context have inadequacies in fitting victims' rights and needs. Mendleleson expressed fear in 1940 about how victims were ignored, disrespected, and abused within the criminal justice process. Similarly these were the finding of the study that most Kenyan victims concerns were at the periphery.

12. CONCLUSIONS

Victimology was not exhaustively understood by the key players in criminal justice system .The definition was applied to mean witnesses instead of victims. Though legislation was in place, the provisions of relevant clauses were not enforced, therefore they largely rendered criminal justice system to be in-effective in entrenching victims tights. Victims had pertinent concerns which could inform priority and strategic issues for planning and development of relevant policies for criminal justice administration in respect of Probation sentences.

13. RECOMMENDATIONS

That criminal justice players i.e. Police, Judiciary, Prisons and Probation departments should undertake capacity building, awareness and sensitization programmes and dissemination of information that would promote practioners understanding on victims and Victimology. That before any victim support programmes are initiated, victims' concerns should be prioritized first.

14. RECOMMENDATION FOR FURTHER STUDY

The researcher proposes a study to be undertaken on the new approach known as victim Victimology as applicable in Kenya.

Further enquiry to be conducted to establish whether repeat victims of crime frequent hot spots to attract victimization.

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THEME: PROBATION PRACTICE AND EMERGING ISSUES

KEEPING UP WITH CHANGING TRENDS DURING THE PANDEMIC

By Epereje Judith

1. INTRODUCTION

The emergence of the novel coronavirus disease widely known as COVID-19 in 2019 came as a shock to Kenya as a nation. It hit government institutions so hard and resulted in divergent reactions as they strived to mitigate the health, socio-economic, and work-related risks that were imposed by the disease. As the number of infections rose in most countries in early 2020, the World Health Organization declared a public health emergency of international concern on January 20, 2020. On March 20, 2020, WHO declared COVID -19 a global pandemic. A pandemic is usually prolonged without clear demarcation on its end date (Baldwin et al.,2020). In public institutions, the pandemic posed challenges to work methods and their expected contribution to the socio-economic well-being of the citizens.

Probation and Aftercare Services is one of the key departments in the Ministry of Interior and Coordination of National Government whose functions include the generation of social inquiry reports to courts and other institutions to assist in the dispensation of justice, supervision, and rehabilitation of offenders on community sanctions, reintegration and resettlement of offenders, participating in crime prevention, promoting and protection of victim's rights and welfare and aftercare. Being a crucial part of the criminal justice system, PACS helps Judicial Institutions achieve some of their key objectives. Judicial Institutions serve as an important driver of the socio-economic well-being and welfare maximization of citizens. To the wider economy, a Judicial Institution is required to protect and enhance the contractual arrangements needed for competitive market operations and to reinforce the fundamental rights and freedoms of citizens. Therefore, the occurrence of any phenomena with the potential to adversely affect the work of a Judicial Institution

would be detrimental to the application of the rule of law and thus the core mandate of the institution. PACS relies heavily on Judicial Institutions for the work we do. With Judicial Institutions being hit hard by the pandemic, PACS was affected. With the number of cases being resolved in courts dropping from 469,359 cases in the financial year 2018/2019 to 289,728 cases in 2019/2020 when COVID-19 was first reported in Kenya (Judiciary of Kenya, 2020©), the referrals to PACS were immensely affected.

2. COVID-19 DISEASE

The coronavirus disease originated in Wuhan, Hubei Province of China. It is caused by the novel coronavirus a severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (WHO,2020). The clinical spectrum of the disease varies from asymptomatic to clinical conditions that at the extreme, may be characterized by severe respiratory failure or multiple organ dysfunction syndromes (Lupia et al., 2020). The disease has an incubation period of 2 to 14 days and spreads between persons through contact of small droplets expelled from the nose or mouth of an infected person through coughing, sneezing, or speaking (WHO, 2020). The most common symptoms of the disease are fever, dry cough, fatigue, shortness of breath sore throat, headache, aches, nasal congestion, and loss of taste and smell. To diagnose the disease, performing real-time fluorescence to detect the positive nucleic acid of SARS-CoV-2 in sputum, throat swabs and secretions of the lower respiratory tract samples were being carried out (Lupia et al., 2020).

By the end of December 2020, there were 83,793,960 confirmed global infections of COVID-19 disease, 1,824,915 deaths and 59,320,807 recoveries (Worldometer, 2020). In Africa, there were 2,773,166 infections, 65,566 deaths and 2,309,250 recoveries (Worldometer, 2020). In Kenya, a total of 96,458 infections had been confirmed, resulting in 1,670 deaths and 78,737 recoveries. Further, the country had undertaken a total of 1,046,667 tests translating to 19,255 tests per million persons.

3. EFFECTS OF COVID-19 ON PROBATION PRACTICE IN KENYA

When COVID-19 hit Kenya, the president made public some restrictions and came up with a framework (Executive Order No.2 of 2020) that were to help the nation combat the pandemic. One of those rules was working from home. PACS then came up with clear guidelines on how this would work. These included reducing the number of

officers reporting to work daily. A duty roaster was created where a selected number of officers ranging from two to four would report to work per week or per selected number of days and alternate with other officers. This was because the department could not implement a total working from home program, since courts did not fully close and thus PACS could not afford to not continue dispensing their services to Judicial Institutions.

The number of probationers reporting to probation stations across the country was reduced and supervision was greatly reduced to phone calls as compared to face-to-face meetings. With face-to-face interactions being restricted and new laws enacted to ensure that a social distance of at least 1.5m was being maintained, interviewing of accused persons by probation officers was shifted to virtual meeting applications like Zoom, Microsoft Teams, Skype for Business and Google Meet. PACS adhered to the guidelines given to have PPEs like masks, gloves, thermometers for measuring temperatures and handwashing stations at all entry points to probation stations across the country, sanitizers in each office, and at the receptions.

The Judiciary set up a COVID-19 Court at Moi6SX International Sports Centre Kasarani- Gymnasium to help handle the high number of cases resulting from COVID-19 related violations. Citizens who did not adhere to the interim guidelines on the management of COVID-19 would be arrested and charged at the COVID-19 Court. This was only for Nairobi Region. PACS came up with guidelines on how the probation officers would alternate in working at the COVID-19 Court. With the high number of arrests made with charges ranging from failure to wear a facemask, failure to maintain a physical distance of at least 1.5 meters, and curfew violations; there was a need for the Judiciary to come up with a means to close these cases without crowding prisons who had restricted access to their facilities.

The Courts then applied a lot of non-custodial sanctions mostly, community service orders and fining on these offenders. This meant that PACS would have to handle a high number of offenders ranging from 100 to over 500 on a daily basis. PACS experienced the highest number of community service order placements in many years with Moi International Sports Centre Kasarani and other government agencies that were still open except Schools and hospitals which had restricted access; being

the biggest beneficiaries. Beautification of Kasarani Stadium, Planting of Trees at Ngomongo Police Post, clearing of the bushy fields at Kasarani Stadium and other manual jobs at offices of local administrations, were part of activities done during the COVID-19 period, by offenders on Community Service Orders.

The high number of referrals for Community Service Orders compensated for the otherwise low number of referrals for offenders to be considered for Probation Orders that were being experienced at that time.

4. WHAT WORKED WELL?

A group of probation officers expressed confidence that the clients who were previously compliant with office-based appointments were still compliant with telephone supervision appointments. They agreed that features such as a well-established rapport, clear supervision/treatment plans, and recent progress in addressing risks of re-offending, all contributed positively to the transfer of supervision from office to telephone.

Some probation officers described how probationers felt reassured and pleased that their probation officer was still able to check-in, in the middle of a pandemic. They report feeling an increased sense of connection to their work. Community Service Orders were successful because they were shorter periods ranging from one day to three months of community service. Colleagues noted that women were most likely than men to talk openly on the phone, share their experiences and acknowledge the support from the contact. It was generally reported that most probationers valued the opportunity to talk about what was happening to them and the stress they were encountering during the pandemic.

It has to be accepted that there are major limitations in what can be achieved, but if anything, it has been a reminder that maintaining the client relationship and providing support, clear communication and information sharing, counseling skills, motivating, and advocating on their behalf remains a crucial part of our job and this can still be achieved (with some limitations) over the phone. The requirement to engage via telephone has enhanced our telephone interview skills. Probation officers reflected

that this has helped to overcome concerns about missing all those visual and non-verbal cues that before the pandemic were used in our job to establish rapport.

5. THE CHALLENGES

Similar to staff working from home, clients had family issues and responsibilities that they were handling. Some did not have the personal space to pick up phone calls, and with other people present in the home it was difficult for privacy and confidentiality to be maintained. Beginning a new supervision relationship without having a face-to-face meeting with probationers, especially for those placed on Community sanctions during the COVID-19 pandemic was a challenge for most probation officers and probationers. Probation officers reflected on the impact of COVID -19 on the management of specific categories of clients, in particular those convicted of domestic violence and sexual offenses. Probation officers recognize that vigilance to the home environments and a recognition of how Covid-19 restrictions may result in isolation and lack of access to contact with services that support victims and families at risk of harm. This has underpinned their engagement with clients, other services, and where appropriate, victims.

Some probationers had no phones which made supervising them a big challenge. This led to eventual absconding to report to the probation stations when things eventually went back to a bit of normalcy. Social inquiries were limited to phone interviews, making the verification of clients' information a challenge. Home visits and follows ups became a thing of the past.

6. LESSONS LEARNT

Probation officers identified that a key lesson from the COVID-19 pandemic experience was the reminder of the importance of remaining focused on the very basics of probation work, building on the 'relationship with clients, and adopting a 'flexible approach'. When there was less focus on such demands as assessment reports and the creation of individual treatment plans, you are left, in the words of a probation officer "with the relationship you had started, trying to maintain it and develop it". This is no way to suggest that these aspects of the job are not vital and critical to probation work and the effective management of offenders in the community. The shift

in emphasis seemed to allow for more reflective practice and more person-centered engagement with clients.

Covid-19 was with us for a long time and is still with us. Society as a whole need to implement new ways of being. Working creatively and collaboratively, PACS adapted to the challenges presented. New operational arrangements were developed to support work practices. Appropriate measures were put in place to protect the well-being of staff and the general public and the health of probationers and probation officers. Officers across the country were committed to the development of new and innovative work practices, maintaining and building the momentum that the crisis demanded from us. While the crisis was neither anticipated nor welcome, it has undoubtedly released new energy, reframed productivity and somewhat counterintuitively remote working has reinforced and highlighted the strength and unity of purpose across Probation Services.

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THE VITAL ROLE COMMUNICATION PLAYS IN BOLSTERING SOLUTIONS TOWARDS TACKLING MULTIFACETED CHALLENGES IN COMMUNITY BASED CORRECTIONS

By Edwin Kigen

Studies on the role of communication in the society tends to come to one conclusion, that communication is central to their social, psychological and emotional well-being. In the context of offenders serving supervised community-based measures and victims of offending behaviour, it is also believed that communication contributes towards reduced recidivism and increases the capacity of offenders to successfully reintegrate into their families and communities.

Communication is of importance in the transformative environment in the context of offending and an aspect that is transversal to most public service is the growing need of re-engineering government processes. This the process of digitalization/ technology, where the demand for online public services is increasing, while at the same time being able to support the offender's supervision and resettlement.

The justification of these ideas comes from several authors and goes back to Hirschi's *Theory of Social Control* (1969). Hirschi highlights that the social bonds between individuals and society are the main factor for the deterrence of deviant behaviour, hence contributing to the prevention of recidivism. Clark (2001) and Rocque, Bierie, and MacKenzie (2010) explore this theory even further, by asserting that the strengthening of social ties not only prevents those in conflict with the law from establishing a criminal identity, but also provides the essential conditions for avoiding recidivism.

With an ever-challenging correctional sector, it is paramount to provide integrated innovation- offender centered approaches. Multimedia communications solutions not only help to ensure a change of behaviour and thus safer society but also provide valuable support for the rehabilitation of clients.

Despite the proven effectiveness of offender communication by way of either face-to-face visitation or virtual engagements, offender characteristics and socio-economic challenges among clientele raises questions on the thought concerning the need for communication or how to improve communication strategies. In addition, integrated multimedia systems also enable better decision-making and interventions in the offender supervision context. Data generated from technology in offender management can be analyzed to indicate patterns of behaviour on an offender. The intelligence resulting from data analytics constitutes valuable information to enhance the quality of offender supervision and reform services and helps to inform actions for policy development.

The complexity of the challenges involving communication in community corrections is increasing, embracing the use of technology in communication is envisaged as an aid to overcoming those challenges but also enable more informed and efficient management practices, therefore contributing to building safer communities.

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PLEA BARGAINING AND PROBATION PRACTISE

By Agnes Ayuma

Abstract

This article focuses on the process of plea bargaining as an emerging trend in the probation practise, away from the historical practise of probation and Aftercare services as provided for in the Probation of Offenders Act CAP 64 and the Community Service act CAP 93. It seeks to underscore the concept of plea bargaining and how it has gained prominence in the criminal justice system around the globe and particularly in Kenya. Types of plea bargaining and their benefits to various actors in the criminal justice system is also explained. The legal instruments on which the practice anchors are also interrogated. It gives an in-depth critique of the plea bargaining process generally and also examines the practices of the process in PACS by looking into the role played by probation officers in plea bargain negotiation.

The article also looks into how plea bargaining negotiations can incorporate restorative justice principles to obtain a win-win outcome for defendants, victims, and the community at large, services, and gives recommendations.

1. INTRODUCTION AND BACKGROUND INFORMATION

A plea bargain is a negotiated agreement between a criminal accused and a prosecutor where the accused agrees to voluntarily plead “guilty” to a criminal offence in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence or recommend a specific sentence.

Plea bargaining, in law, the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for a more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges. Supporters of plea bargaining claim that it speeds court proceedings and guarantees a conviction, whereas opponents believe that it prevents justice from being served (Meyer, 2020).

2. TYPES OF PLEA BARGAINING

There are three main types of plea bargains. Each type involves sentence reductions, but those reductions are achieved in very different ways. In charge bargaining, the

defendant agrees to plead guilty to reduced charges (e.g., aggravated assault rather than attempted murder).

According to Meyer 2020, sentence bargaining involves assurances of lighter or alternative sentences in return for a defendant's pleading guilty. One of the most visible forms of sentence bargaining occurs when defendants plead guilty to murder in order to avoid the death penalty. Sentence bargains also occur in less-serious cases, such as pleading guilty to a charge in exchange for a sentence of "time served," which generally means that the defendant will be immediately released. The third type of plea negotiation is count bargaining, in which defendants who face multiple charges may be allowed to plead guilty to fewer counts. The charges need not be identical: the prosecutor may drop any charge or charges in exchange for a guilty plea on the remaining charges. Because count bargaining applies only to defendants who face multiple charges, it is the least common form of bargaining.

3. HISTORY OF PLEA BARGAINING

In some jurisdictions around the world, plea bargaining was considered inappropriate until the late 1960s. Some of the earliest plea bargains took place in the colonial era during the 1692 Salem witch trials, when accused witches were told that they would live if they confessed but would be executed if they did not. Pleading guilty saved many accused witches from execution. Later the Salem witch trials were used to illustrate one of the strongest arguments against plea bargaining: that the practice sometimes induces innocent defendants to plead guilty.

There have been other historical examples of what could be labeled plea bargains, including the confession made by St. Joan of Arc in 1431 to avoid being burned at the stake. Modern plea bargains differ from their historical antecedents in that they are used much more routinely and in that modern bargains appear to have developed out of a desire to efficiently dispose of cases rather than to elicit confessions to make the original prosecutions appear valid.

Plea bargains were rare in early American history where defendants who offered to plead guilty, were instead persuaded to go to trial. As early as 1832, however, plea bargains were becoming common in Boston, when public ordinance violators could expect less-severe sentences if they pleaded guilty. By 1850 the practice had spread

to felony courts, and it became routine for defendants to plead guilty in exchange for the dismissal of some charges or other agreements arranged with the prosecutor. The first systematic use of plea negotiation in Boston bargains were typically for victimless offenses, so the prosecutor did not have to consider victims' concerns.

By the 1960s plea bargains were still treated as unethical at best and illegal at worst and defendants who accepted plea bargains were told not to acknowledge the negotiations in court, because doing so would cast doubt on whether their pleas were voluntary.

Plea bargaining was not widely used in Kenya until 2019 when the Office of the Director of Public Prosecution (ODPP) published Plea bargaining guidelines and commenced national sensitization campaign aimed at improving understanding and usage of plea bargaining, through training of prosecutors and other actors in the criminal justice system, media and the general public.

4. BENEFITS OF PLEA BARGAINING

Plea bargaining is the primary apparatus through which judges, prosecutors, and defense attorneys cooperate and work together toward their individual and collective goals. The primary benefit of plea bargaining for both the prosecution and the defense is that there is no risk of complete loss at trial. In cases in which evidence for or against a defendant is questionable, bargains may represent a feasible way for the attorneys to minimize their potential losses by settling on a mutually acceptable outcome. Plea bargaining can also be a way for the courts to preserve scarce resources for the cases that need them most. Prosecutors benefit from plea bargains because the deals allow them to improve their conviction rates. Some prosecutors also use plea bargains as a way to encourage defendants to testify against co - accused or other accused criminals. Plea bargains allow prosecutors to avoid trials, which are time-consuming, labour-intensive, and costly but do not guarantee convictions. Through the rational use of plea bargaining, prosecutors can ensure some penalty for offenders who otherwise might be acquitted on technicalities. Thus prosecutors can bargain routine cases or those characterized by weak evidence or other difficulties, saving their time and resources for cases that demand more attention.

Plea bargaining allows defense attorneys to increase their efficiency and profits, because they can invest less time on plea-bargained cases. Disposing of cases efficiently is important for both public and private attorneys. Public defenders are sometimes responsible for handling huge caseloads, and private attorneys can make more money by bargaining than by going to trial.

Judges also benefit from plea bargaining. The practice allows judges to preside over efficient trials, to minimize the risk of rulings being overturned on appeal, and to avoid the necessity of making rulings during trial. Most important to some judges, however, is that plea bargains remove the burden of determining guilt, and the practice allows them to share the responsibility for sentencing with the attorneys who fashioned the bargain. Although plea bargains must be approved by judges before whom they are brought, judges rarely refuse approval unless they feel that the defendant is legally innocent or has been coerced into pleading guilty or unless the bargain calls for a penalty that the judge believes is excessively harsh or lenient.

Defendants, of course, also benefit from plea bargains, because they can limit the severity of the sanctions they face. Some defendants plead guilty to avoid the stigma of trial, because trials are open to the public and may be reported in the media. Guilty defendants sometimes use the threat of trial to persuade prosecutors to reduce the severity of penalties they face, while others may accept bargains that seem beneficial to them, especially if they have been detained before trial and if accepting the bargain would mean getting out of jail.

Sometimes victims too may prefer plea bargains to trials and avoid testifying in court, which may be frightening or upsetting while appreciating the certainty of not worrying about the emotional trauma of dealing with the acquittal of someone they feel is guilty.

5. THE GENESIS OF PLEA BARGAINING IN KENYA

Though not previously widely utilized, plea bargaining has been part of the criminal justice system in Kenya for a long time. During their trial processes, most defendants remain in remand custody due to inability to meet their bond terms and for other

technicalities. Plea bargaining has therefore been regarded as a creative provision in the law that can decongest prisons and save defendants from staying unduly long in remand.

Plea bargaining is guided by section 137A-O of the criminal procedure code and the criminal procedure (plea bargaining) Rules 2018. Plea bargaining anchors on the belief that not every case should be prosecuted to finality through trial. The process has been viewed as having many advantages. In 2019, the Office of the Director of Public Prosecution (ODPP) published Plea bargaining guidelines and commenced national sensitization campaign aimed at improving understanding and usage of plea bargaining, through training of prosecutors and other actors in the criminal justice system, media and the general public.

6. A GENERAL CRITIQUE ON PLEA BARGAINING

Plea bargaining has been criticism by those whose perception is that it allows offenders to escape appropriate punishment for the crimes they have committed, while others feel that it penalizes those that wish to exercise their constitution right to trial. Others feel that innocent defendants plead guilty to offenses that they never committed because they are bewildered by the justice system and have no better option.

Victims on their part feel that any sentence reduction for the offender is against their quest for justice. Charge bargaining leading to convicting the offender with a lesser offence than the one actually committed, changes not only the sentence but also the public perception of the victim and their experience e.g downgrading the offence of rape to indecent assault, not only means significant reduction in the length of the sentence, but the court is perceived as stating that the victim has not suffered rape as claimed happened. Therefore this means the downgrading of the suffering of the victim and their desire for vindication.

In plea bargaining and entering into a plea of guilty, the offender can be rewarded upto a third in sentence reduction because the defendant contributes to the smooth and efficient administration of justice through saving time and and money. This efficiency based justification for sentence reduction has several flaws, one being that the defendant gets his desired plea bargaining inevitably, producing the ridiculous

result that as crime grows worse sentencing becomes more lenient. Secondly the traditional aim of sentencing related to the offence committed; deterrence, is lost by the reward system. In most cases the remorseful of the offender in respect to the offence committed is lost which may reduce the probability of placement on non-custodial sentence where a pre-sentence report is prepared.

The original function of the trial which is to distinguish guilty and innocence through procedural means is replaced by the goal to find administratively convenient sentence. Therefore plea bargaining offers a version of the case on what the parties have agreed on, its no longer about the evidence but the interest of the actors in the case. This lingering feeling that justice was not served.

Proponents of plea bargaining claim that it protects the innocent. Factual and procedural innocent defendants, who's chances for acquittal were high, had the case gone through full trial enter into a plea of guilty through the process(Regina Raux 2012)

7. ROLE OF PROBATION OFFICERS IN PLEA BARGAINING

Historically, the probation and Aftercare Service practice's focus was on the probation of offender's and community service orders anchored on the Probation of offenders' Act CAP 64 and the Community service Act CAP 93, respectively. Both of these are community-based rehabilitation that promote among other factors, the participation of the community in the rehabilitation of offenders, while acknowledging that they are products of the community.

For a long time, probation officers have played the role of court investigators, by conducting social inquiries and furnishing courts with information that aid in sentencing.

In the recent past however, several practices have emerged outside of the mentioned mandates, where the department's participation is required. One among the emerging trends is plea bargaining, which is an ODPP initiated process that aims at assisting the accused person to enter into an agreement or plead guilty in exchange for some concession by the prosecution. It is achieved by narrowing down the issues in a case with the view of reaching a just outcome, within the shortest time possible, including

reaching an agreement about acceptable plea(s) of guilty and recommendation on sentencing. For the process to take off charges must be registered.

The generation of reports by probation officers is in line with plea bargaining fulfills section 137(b) of The Criminal Procedure Amendment Act No 11 of 2008: CAP 64 section 4; ODPP Plea bargaining policy section 4(iv)

'Personal circumstances of the accused person such as reports on medical conditions, mental status. Age and vulnerability, including probation officer's report, children officer's report and other relevant reports where appropriate', while Section 4(vi) states that consideration should be accorded to 'Any mitigating and aggravating circumstances including previous records victim impact statements, compensation, restitution...' (The ODPP plea bargaining policy guidelines).

These two sections which speak on the actual process of conducting of the plea bargaining negotiations, give the probation officers an active role in the entire process. The question remains that ***'at what time of the process should the probation officer come on board?'*** As is the practice, courts order for a probation officer's report after the plea-bargaining process is successful. In other instances, the court may order for the report well before the conclusion of the process, but the officer is only allowed to 'unleash' the report if and when the plea bargain process is successful. Where the process fails, even if the officer had already generated the report as ordered by courts s/he cannot file the report. Even where the process is successful and the report is accepted by court, the information contained therein aids the court in sentencing and not in the process of plea bargaining. Given such circumstances it is obvious that probation is ***not*** part of the plea bargaining process in practice, in the Kenyan context, contrary to the provisions of the Plea bargaining guidelines.

All cases that go through plea bargaining process also end up as a referrals for a pre-sentence reports in the manner explained above. Thus, non-custodial sentences through probation is one of the lenient sentencing options and concessions defendants hope to benefit from through plea bargaining. Section 4 (iv) and (vi) of the plea Bargaining Policy Guidelines, provide Probation & Aftercare Service department with an avenue for active participation in the plea bargaining procedure. *So why has the probation department not taken up its position in the plea bargaining process?*

A legal mandate on the generation of ***plea bargaining reports*** as opposed to the normal pre-sentence reports will provide a platform for the department to negotiate for its interests and ascend to its rightful position in the plea bargaining process. A probation officer's plea bargaining report should in fact come and the onset of all plea bargaining processes and *should provide information to inform the process*. This will save probation officers from being toyed around with on whether or not to file their reports depending on the success status of the process.

In most cases, the probation officers, when seeking victim impact statements after a successful plea bargaining process come into contact with victims who do not understand the concept of plea bargaining and to worsen the situation, were never notified when the accused person in their matter entered into plea agreement. Section 2 (vii) of the same policy on the general principles on plea negotiations states that '*Reasonable effort is made to communicate with the victim, the victim's family, victim's representative or any other person whether natural or artificial likely to be affected by the terms and the status of the Plea Agreement*'. Given that plea agreements are meant to save courts time and money, the time frame between the crime commission and the arrival of the probation officer seeking a victim impact statement is pretty short and especially in capital offences like murder and manslaughter the victim's family is practically still in mourning. The plea agreement scenario is therefore met with skepticism, disbelief and anger which directed at the probation officer. The assumption is that, contrary to the provisions of section 2 (vi) of the document, *reasonable effort was never made to inform the victims of the plea bargaining process*, given that they are accessible to probation. This poses danger to the probation officers conducting inquiries. In some cases, the victim's family become vengeful and take matters into their own hands as they feel that justice was never served. This will definitely affect the probation officer when considering whether or not to recommend such an offender for a non-custodial sentence.

On supervision and formulation of an individual treatment plan, one would wonder whether it is any different when dealing with an offender who has gone through plea negotiation and that who has not. There is fear that plea agreements may not always represent the true facts of the case. When a matter that has gone through trial is

referred to probation for a presentence report, the officer has court documents, proceedings, rulings and the judgement in respect of the case at their disposal for perusal. This gives the officer an insight into the character of the person they are dealing with by the time s/he goes out to the field to conduct a social inquiry. On the contrary, in matters resulting from plea agreements here is fear that at the time of placement the probation officer may in fact not fully know the offender coming under supervision and the resultant individual treatment plan may not full address the actual risk factors that predisposed this offender to commit the offence.

Where there was charge agreement and an offender who was charged with several counts but only pleaded guilty to one or a few. There will be a challenge in rehabilitation as the officer will face the dilemma of whether to address the offences on which the offender is convicted or all those he was charged with especially in a scenario where he actually committed all the offences as originally charged. Also, in a case where a case was downgraded; for example an original charge of rape that is reduced to indecent assault through plea agreement; which to the two should the treatment plan address.

8. PLEA BARGAINING AND RESTORATIVE JUSTICE

Restorative justice refers to “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime. Restorative Justice Provides opportunities for victims, offenders, and communities affected by a crime to communicate (directly or indirectly) about the causes, circumstances, and impact of that crime, and to address their related needs. There is the understanding that crime is a violation of people and relationships and is based on principles of respect, compassion and inclusivity. Thus restorative justice encourages meaningful engagement and accountability and provides an opportunity for healing, reparation and reintegration. Restorative justice therefore contributes to a criminal justice system that is accessible, compassionate and fair, and promotes the safety and well-being of all.

Critics of plea agreements argue that the process does not encourage defendants to take responsibility for their atrocities. They also feel that the process is a dilution of justice expected from the criminal justice system.

Therefore incorporating principles of restorative justice with plea negotiations, where despite entering a negotiated plea through the process, offenders are required to compensate/repair harm caused by their commissions or omissions. It de-emphasizes retributive sanctions but instead places greater weight on correcting imbalances and restoring broken relationships. It encourages face to face contact between the victim, offender and members of the community where the offender is urged to take responsibility for their actions while the victims get an opportunity to express the impact of the crime on them both materially and psychologically. This will include financial assistance, meeting medical bills for injuries caused and catering for psychosocial support for victims, returning money or property stolen and public apologies. Creation of truth commissions where victims relate their stories to sympathetic audiences. This reparatory mechanisms advance the goals that the criminal justice system can not achieve through trials. Having the criminal justice feel their pain and loss while the offender awns up to the criminal activities they committed and the adverse effect it had on victims will predispose the victims towards forgiving contrary to how it is in the plea bargaining process as currently conducted.

9. RECOMMENDATIONS

A legal mandate on probation practise in Plea Bargaining be obtained

Probation officers to play key role in Plea Bargaining process

Probation officers' plea bargaining report to sort at the onset of the plea negotiations

Probation Plea bargaining guidelines on report writing to be formulated

Probation officer be trained in plea bargaining report writing

Principles of restorative justice be incorporated in plea negotiations

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THEME: INSTITUTIONALIZED REHABILITATION

Institutional Based Rehabilitation

By Ezra Odondi

Abstract:

This paper examines justification for institutional based rehabilitation in probation practice in Kenya, against a very strong legal and policy framework supporting both the prevention of separation and family strengthening, not forgetting probation placement is community-based treatment. Hostels shelter needy and deserving probationers who cannot immediately resettle back home due to problems at individual, family or community level. They are temporary “home away from home” referral residential places of safety, for probationers whose home environment are not conducive for their immediate re-entry and reintegration. Hostels are unique institutions given that offenders found suitable to be rehabilitated in hostels have pre-existing vulnerabilities. Institutionalization is used where absolutely necessary and as a last resort.

1. WHY INSTITUTIONAL BASED REHABILITATION IN PROBATION PRACTICE IN KENYA?

Introduction

Probation placement is community based rehabilitation practice, committed to promoting effective actions aimed at fostering harmony between the probationer, victim and the community. These endeavors administered within the community contribute to community safety, crime reduction and penal decongestion. The above are seen in the light of public protection which is the underlying and shared responsibility of all criminal justice agencies. Probation residential institutions in Kenya are run by the Department of Probation and After Care Service currently under the State Department of Correctional Services within the Ministry of Interior and Coordination of National Government for the purpose of sheltering needy probationers, who cannot immediately resettle back home due to problems at

individual, family, or community level. The hostels are established through an act of Parliament, under section 5 (2) Probation of Offenders Act Cap 64 laws of Kenya.

2. RESIDENTIAL REHABILITATION

Background

Probation hostels are **temporary** “home away from home” referral residential places of safety, for deserving probationers whose home environment are not conducive for their immediate reentry and reintegration. The Probation hostels are unique institutions given that offenders found suitable to be rehabilitated in hostels have pre-existing vulnerabilities. They were established around 1953 when the first gazette notice that specified various institutions as premise for use by probationers was published and subsequently put into effect. This was followed by similar notices in 1954, 1958 and 1961 which saw the establishment of hostels in Nairobi, Mombasa, Nakuru and Eldoret. Initially the hostels served as centers of refuge for the displaced and criminalized youth during and after the state of emergency. Currently the department operates five hostels namely:

- Shanzu boys hostel (Mombasa) for juveniles below 17 years old.
- Nairobi probation hostel for males of 18 years and above.
- Kimumu junior and senior probation hostel (Eldoret) for males under 17 years and over 17 years and above.
- Nakuru probation girls hostel for females
- Siaya female hostel

Core Objectives

- To supervise court orders, penal sanctions and rehabilitate offenders and ex-offenders.
- To reintegrate and resettle offenders
- Under the above core objectives, the institution endeavors to:
 - To provide basic needs i.e. food, clothing, shelter and security.
 - To offer psychosocial support, counseling and guidance aimed at restoring self esteem, hope, dignity and confidence.
 - To empower the probationers through the provision of education and life skills and thus dissuade against criminal tendencies

- To build their capacity to ensure seamless resettlement and reintegration into the community and forestall re-offending.
- To ensure good medical treatment.
- To ensure probationers receive spiritual nurture.
- To provide recreational facilities.
- To partner with other players (state and non state actors) in the rehabilitation of probationers.
- To liaise with other players (state and non state actors) in the provision of after care services.
- To sensitize the community on the roles of the hostels.
- To involve the hostel management committee in the management of the institution and sourcing for the institution's external support

3. CRITERIA FOR ADMISSION

Probation hostels are unique institutions given that offender found suitable to be rehabilitated in hostels have pre-existing vulnerabilities.

The following are the main considerations for hostel admission:

- One who has threatened to take his/her life (attempted suicide).
- The home environment is not conducive for immediate return and rehabilitation.
- Needs intensive/specialized counseling that cannot effectively be achieved by the field station.
- Comes from a crime prevalent area and needs to be separated while undergoing rehabilitation to avoid re-offending.
- Comes from dysfunctional families where parental guidance is inadequate.
- Must have committed a criminal offence and subsequently placed on probation.
- Requires controlled environment to help surmount drugs and substance related difficulties.
- Lack fixed aboard.

Procedures

- All offenders are admitted through a court order.
- Probation officers confirm vacancies in writing.

- Probationers are escorted to the hostel by supervising officers accompanied by all relevant supervision documents.
- Probationers undergo medical examination to ascertain their mental and physical health before admission.
- Probationers should be willing to stay and adhere to all hostels rules and regulations.
- Hostel residency is for a period not exceeding 12 months.

4. PROGRAMS OFFERED

Programs are tailored to meet individual needs of the probationers. The hostels are thus classified on the basis of gender and age. On admission a follow up assessment is done on the specific needs of each probationer in terms of treatment programs. For all school attending probationers the list of action is formal education, while those with no formal education may undergo adult literacy classes. Vocational training is provided to the rest who cannot fit in the other programs. All probationers undertake counseling and referrals to professional agencies may be done where necessary. The institution maximizes the strength and potential of its probationer, not only for himself but also for his families and the community. The maximum period for residential hostel admission is one year as per the court order.

5. CONCLUSION

Probation placement being a community based practice, institutionalization is used where it's absolutely necessary and as a last resort. Institutional based rehabilitation is acknowledged as an opportunity when self care, family support arrangement and community options are not enough. It plays a significant role towards reestablishing the life of probationer back to the society. It provides a safe environment for improvement. The purpose of rehabilitating offenders in controlled environment is reflected in the proscribed admission numbers which must be confirmed prior to committal. Upon completion of the sentence period the offenders are physically escorted home and proper handing over is facilitated between the field office and the family members.

6. RECOMMENDATION

Hostels have more potential of providing even more services to the courts, penal institutions, field offices, community and the offenders under supervision.

Strengthening offender compliance and increase successfully completion levels of community sentences and avoid further offending. Providing the offender with the opportunity to change and redirect their lives more purposefully and contribute towards social economic development. Working towards reconciliation between the victims, the community and the offender. Promoting safer communities and building public confidence in probationary measures.

Table 1: Probation Hostels

Hostel	Criteria	Capacity	Location
Shanzu (Mombasa)	Boys 8-16	54	North Coast off Malindi Next to Shanzu teacher's college
Nairobi	Males 17 & above	30	Nairobi – Makadara off Jogoo road
Nakuru	Females 10-21	50	Nakuru-along Karabak road opposite showground
Kimumu junior (Eldoret)	Boys 8-16	40	Kimumu area next to Elodert University
Kimumu senior (Eldoret)	Males 17 & above	40	Kimumu area next to Eldoret University
Siaya	Females 16 to adulthood mothers & pregnant women	60	Next to Siaya County headquarters

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INSTITUTIONAL REHABILITATION THROUGH PROBATION COMMUNITY RESOURCE AND TRAINING CENTRES

By Emily Njeri

1. INTRODUCTION

The Probation and Aftercare Service has two Probation Community Resource and Training Centers (PCRTC) located in Webuye and Likoni. In line with the department's responsibility on crime prevention, the two centres offer fundamental skills to the public in their environs.

The services rendered include skills empowerment through trainings, guidance and counseling, rehabilitation of offenders placed on non-custodial sentence, library services, community mobilization toward crime prevention and paralegal advice.

Its programs and activities are targeted at ex-offenders and the Youth at Risk with the objective of reducing recidivism and predisposal to criminal behavior. The programs are meant to empower the targeted population with skills and the provision of Information, Education and Communication (IEC) materials and psychosocial support to make them self-reliant and be able to deal with their social issues positively.

Both Webuye and Likoni PCRTCs were founded in the year 2010 as community focused institution established by PACS under the social crime prevention strategy. The Webuye PCRTC is found within Webuye Township, adjacent to Webuye Law Courts, Bungoma County. The Likoni PCRTC is located within Mombasa County, Likoni Sub-County, Likoni Location, Bofu Sub-location and Migombani Village, 200m off Kwale Ferry Road.

2. DEVELOPMENTAL MILESTONES ACHIEVED BY PACS THROUGH PCRC

Since their inception, the Institution has made considerable progress especially in the area of training however more needs to be done to exploit the full potential of the facility and thus achieve the broader objective of social crime prevention. Specific milestone realized by PACS through PCRTC include empowerment of the youth including probation clients in the community with skills, enhanced crime prevention

initiatives in the community, access to free training opportunities by probation clients, provision of psychosocial support to the probation clients, and contribution in generation of Government revenue through A.I.A.

3. PROGRAMMES OFFERED

Training in the following technical courses is offered at the centre; hairdressing and beauty therapy, tailoring and dressmaking, integrated computer training (packages), basic catering, panel beating and spray painting. All the programs and activities run on government funding.

4. KEY AREAS OF ENGAGEMENT WITH RELEVANT STATE AND NON-STATE ACTORS AND DEVELOPMENT PARTNERS IN THE PCRC

The key areas of engagement with relevant state and non-state actors and development partners in the PCRTC.

No	Partner	Area of engagement
1.	DCC	Chair- management Committee
2.	PCEA church webuye	Member- management committee
3.	AOET- Kenya	Member- management committee -sponsor students
4.	Youth Office	Member- management committee
5.	Treasury-Bungoma East	Member- management committee
6.	CDF Office	Sponsor students
7.	ICDL Africa	Provide ICT training curriculum
8.	JICA	Printing of ICT course materials

5. RECOMMENDATIONS AND WAY FORWARD

The following lessons can be drawn for the future:

There is need to explore employment of instructors on permanent basis

The training in computer need to be standardized in both PCRTC's

Enhance funding towards the improvement of the training programs

All training programs to have external/ national certification

Rebrand the image to avoid stigma

6. CONCLUSION

PCRTCs are an important tool in community crime prevention if utilised as intended. In spite of the many challenges facing the implementation of the programmes, they still remain a valuable tool in decriminalizing and de-radicalising the populations around the facilities.

THEME: EFFECTIVE REHABILITATION AND REINTEGRATION

An Analysis Of Effectiveness And Challenges Of Rehabilitation And Reintegration In Probation And Aftercare Service

By Oumah Jude

1. INTRODUCTION

Rehabilitation is defined as the action of restoring someone to health or normal life through training and therapy after imprisonment, addiction, or illness. It's the action of restoring someone to former priviledges or reputation after a period of disfavor. It can also be defined as the action of restoring something that has been damaged to its former condition.

According to WHO, rehabilitation is defined as asset of interventions designed to optimize functioning and reduce disability in individuals with health conditions in interaction with their environment.

In correctional services, rehabilitation involves assisting an offender who has committed a crime to correct their behavior and live harmoniously with members of the community

According to the PACS strategic plan 2018-2022, **rehabilitation as** a term refers to all actions and processes intended to assist the correction of offenders serving community based sentences. It involves the adoption of productive, law abiding lifestyles within thecommunity and provision of opportunities to address their offending behavior and actively encourage them to access evidence based intervention programmes such as education, vocational training, substance abuse prevention, living skills, family violence prevention among others.

Reintegration on the other hand refers to the process aimed at disengaging offenders from the institution and reuniting them with their families and communities through interventions, programmes and services designed to help them resettle into their families and communities.

Revised Probation of offenders act CAP 64 has singled out this aspect in sub section 8 which states that; ***“A presentence report shall include a recommendation as to the suitable period of supervision, rehabilitation programmes and any other necessary measure to reduce the risk of re-offending.”***

Rehabilitation is generally aimed at the following:

- Treat offending behavior
- Improve offenders capacity for a responsible lifestyle and healthy relationships
- Reduce reoffending
- Protect the individual offender, protect the victim and protect the community.
- Rehabilitation of offenders requires the probation officers assess the risk and needs of offenders in order to prepare appropriate intervention plans.
- Evaluation, monitoring and reporting of an offender’s progress is continuously done throughout the supervision period. Where an offender requires additional adjustment programmes, referrals may be made by the probation officers for specialized interventions.

There are two broad forms of rehabilitation namely:

-Institutional rehabilitation

-Rehabilitation schools

-Probation hostels

-Day care centres

-Community rehabilitations

-professional counseling (anger management, drug and substance abuse, clinical psychology, PTSD

-Empowerment programs (School fees payment,skills transfers, business incubation programs, etc)

2. RECOMMENDATION

There is need for continuous capacity building amongst officers to better equip them with the necessary professional skills.

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Standard operating procedures (SOP)

PACS guidelines 2019

Implementation of Tokyo Rules in Probation Work. A perspective of preservation of Human Rights in the Probation Service as a Profession

By Lilian Njebwe

Abstract

The objective of this article is to highlight on the implementation of the Tokyo Rules within the Probation work and also how Human Rights should be adhered to in the daily practice. This is one of the key rules that is critical in the Probation Practice and for the Probation work to be professional. This is because the rules apply worldwide and it shows uniformity in probation practice. The Tokyo rules have been adopted within the United Nation countries. These rules were developed by the General Assembly resolution 45/110 in December 1990. The Tokyo Rules provide basic ways of dealing with offenders in all spheres of the criminal Justice System. When the probation officers adhere to its implementation, then the use of Non-custodial measures will be heightened. It will also most importantly show ways of dealing with the rights of offenders, victims and community within the probation work.

Key Words: *Probation, United Nations Standards Minimum Rules for Non-custodial Measures (Tokyo Rules), Human Rights, Offender, Victim, Community*

1. INTRODUCTION

Probation is a sanction that has been ordered by the court. In Kenya, probation dates back in the 1941 where a committee was appointed by the colonial government to consider introduction of Probation System in the process of criminal justice. This was to deal with the congestion in the prison and detention camps.

In 1942 a recommendation was made through a report accepting the use of probation system in Kenya and it was to start in the Nairobi region. It was later in 1946 that probation work began. The probation work has undergone various phases and was influenced by developments during the colonial and post-colonial period in Kenya.

It begun with the supervision of women and children who had been placed on probation for committing minor offences in the Nairobi Region. With time the function of the service increased as extensive use of non-custodial measures were encouraged.

Probation work in Kenya derives its mandate from the following statutes;

- Probation of offender Act cap 64

- CSO Act No 10 of 1998
- POM Act No 21 of 2011
- Prisons Act cap 90
- The Borstal Institution Act Cap 92
- Children's Act No 8 of 2001
- The Sexual Offences Act No.3 of 2006
- Prevention of terrorism Act No. 30 of 2012 Laws of Kenya
- Victim Protection Act No.17 of 2014 Laws of Kenya
- The Criminal Procedure Code Cap 75 Laws of Kenya
- The Penal Code Cap 63 Laws of Kenya

There are also various government policies related to Probation work, General rules of International Laws, Treaties and Conventions. The Key rules that the Probation work in Kenya is implementing is the Tokyo Rules, Bangkok Rules, Beijing rules, Nelson Mandela Rules.

Here we shall keenly look at the Tokyo Rules and how its impact has been in the implementation of Human Rights within the community Corrections. According to Ugonna Ezekwem on Exploring Non-Custodial Sentencing in Magistrates Courts' he established that experts have tried to develop other useful measures to help achieve a better result both for the community and the offender. One such measure is the Tokyo rules. Its main aim is to find effective alternative to imprisonment. The Tokyo rules refer to the United Nations Standard Minimum Rules for Non-custodial Measures. The general principles that guide in the use of Tokyo Rules are:

2. GENERAL PRINCIPLES OF HUMAN RIGHTS AND COMMUNITY CORRECTIONS

a. Imprisonment as a Last Resort

From the pre-trial to the sentencing stage, all options should be explored to make imprisonment as the last option. There are various measures that the judicial authorities need to consider before making imprisonment an option. The authorities may explore;

- Probation and Judicial Supervision

- Community Service order
- Verbal Sanctions such as Admonition, Reprimand and Warning
- Conditional Discharge
- Status Penalties
- Economic Sanctions and Monetary Penalties such as fines
- Confiscation or an Expropriation order
- Restitution to the victim or a Compensation order
- Suspended or a deferred sentence
- Referral to an Attendance centre
- House Arrest
- Any other mode of Non-institutional treatment
- Some combination of measures listed above

The Tokyo Rule No. 5 states that 'Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for protection of society' This means that before proceeding to any trial at the court the actors should try as much as possible to find available options of discharge other than imprisonment.

Rule No 6 on Avoidance of Pre- Trial Detention it states that 'this should be the last resort in criminal proceedings. 6.2 states that Pre-trial detention should be employed at an early stage as possible.

b. Respect and Dignity without Discrimination

This means that anyone brought before the Criminal Justice System should be treated equally without looking at his Cultural Background, Sex, Political Affiliation, Race, Color, Age, National or social origin, property, birth or any other status. There should be humane treatment of all offenders and their dignity preserved whatsoever.

No. 6.2 refers to 5.1 and states that pre-trial dispositions should be administered humanely and with respect for the inherent dignity of human beings. Tokyo rule 3.9 also emphasizes on the same.

c. Minimum Intervention and Proportionality

When writing any inquiry reports to the courts the agencies should look at the risk factors that led to that offender committing the offence, the circumstances of the offence which should show the push factors leading to committal of the offence (why and not How). The interventions formed should be minimum and proportionate to the needs of the offender. The main reason why the risk and Needs Assessment should be done when formulating the treatment plan or the intervention strategy for offender's supervision.

d. Informed Consent

At whatever stage of intervening for the offender, first the informed consent should be integral. This is the basis of any successful intervention that will lead to high chances of reform for the offender.

e. Individualization

The most suitable type of supervision and treatment should be determined for each individual case and can be adjusted and reviewed periodically. Women have specific needs that are unique for them hence gender responsive and trauma informed treatment should be applied for women offenders.

f. Community Involvement

The community forms an integral part in the criminal patterns of offenders. They are also key actors in the criminal justice system since this is where the offender comes from and will determine if the offender will reform or not.

Tokyo rule 17.1 appreciates community participation in improving the ties between the offender undergoing non-custodial measures, the family and the community.

Tokyo Rule 18.2 considers the use of conferences, seminars, symposia and other activities to be organized regularly to create awareness of the need for public participation.

The community also has a right to information. This can be relayed in form of mass media to gauge the attitudes of the public in any form of non-custodial measures employed. This is clearly stated in Tokyo rule no. 18.3

In Tokyo Rule 19.1 and 19.2 The use of volunteer for example Volunteer Probation Officers who are properly trained of their role in the community. They volunteers are members of the community who interact regularly with the other member of society. The VPOs help to offer support and counseling service and they are easy to reach out. This make the members of the society have trust of their own and are able to get solutions from within themselves.

g. Community Safety

Probation officers should endeavor to enhance community Safety by having a balance between the right of individuals, offenders, rights of victims and the concerns of the society. Tokyo Rule 17.2 states that public participation gives an opportunity for the community to contribute to the protection of their society. In any sentencing dispositions as stated in Tokyo rule 8.1 the judicial authority should put into consideration the rehabilitative needs of the offender, the protection of the society and the interest of the victim and who should be consulted where appropriate.

h. Duty of Care

This is an obligation of a probation officer to offer proper welfare services to the clients, to be able to know the well-being or should be concerned on the well-being of clients and also show good practice in their work. This is embedded in the Probation and Aftercare Department of Kenya's Core Values which are Integrity, Fairness, Confidentiality Reliability and Dependability. It is the responsibility of Probation officers to offer these to their clients for them to be appreciated as part of the society.

i. Protection of Vulnerable Groups

These can also be categorized as special needs offenders. These include women since they do have needs that are specific to them including care giving needs. The terminally ill as continuing with the non-custodial measure may be detrimental to their health, Foreigners as they may have issues to be detained within the country, it will be

best to deport them, Refugees and Asylum Seekers, the elderly, children, Disabled, single parents and people with different sexual orientation.

k. Open and accountable

Probation officers should be open in their procedures for the offenders, victims/Complainants, community and the society at large to understand their work. The code of conduct should be clearly structured, Service delivery charter should also be open to the public. Case conferences and case committees should be organized regularly for accountability purposes.

3. RIGHTS OF OFFENDERS IN RELATION TO THE IMPLEMENTATION OF NON-CUSTODIAL MEASURES

a. Right to make a complaint

Tokyo rule 3.6 'The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of Non-custodial Measures'. It is the right of the offender to be heard in any process of the criminal process.

b. Right not to be involved in any medical or psychological experimentation

No offender should be taken through experimentation that involves medical or psychological procedures when undergoing non-custodial sentences.

c. Rights of the offender should not be restricted further

Tokyo 3.10 in the implementation of non-custodial measures the rights of the offender should not be restricted further than it was originally directed

d. Right to Privacy

Tokyo rule 3.11 the offender's right to privacy should be respected including that of his family.

e. Right to confidentiality

Tokyo rule 3.12 the offenders personal records should be kept confidential and should have very limited access to duly authorized persons.

f. Right to correct information

Tokyo rule 12.3 the offender has the right to receive explanation of the condition governing the non-custodial measure and the offender's obligation and rights.

g. Right to appeal

Upon Modification or revocation of the non-custodial measure the offender had the right to appeal to a judicial or other competent independent authority.

4. AIMS OF SENTENCING

According to Wiley Publishing, 2010, the reason for sentencing include:

- Keeping offenders away from society
- Deterrence\Reform and rehabilitate offenders
- Protection of the public
- Retribution- Punishment for doing wrong
- Reparation- compensation
- Denunciation- Reflecting society's abhorrence of the crime

5. WHAT ARE THE BENEFITS OF THE TOKYO RULES

Nations are not bound by these standards. The standard norms and practices represent a collective vision of how to structure a criminal justice system. They provide a framework from the system to foster in-depth assessment that may lead to necessary reforms. It also aims in the reduction if imprisonment.

6. CONCLUSION

The Tokyo Rules since its inception has been key in the reforms of the Criminal Justice System. Most countries have implemented these rules and have a great positive impact on its implementation. As stakeholders in the judicial process embracing these rules in the day to day work will have a positive change and both the offender, victim and the society at large will appreciate the efforts that Probation officers make as change agents and advisors of Human rights within the Judicial system.

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The Role Of Alcohol Abuse In Intimate Partner Violence Research Conducted

by Lydiah Wanjiru Kariuki

Abstract

The aim of this study was to explore the nature and extent of the role of alcohol use in intimate partner violence (IPV) in Kibera, Kenya. The study is premised on the high prevalence of IPV and alcohol use in Kenya, especially among informal settlement dwellers. A qualitative approach was utilized in this study whereby 32 victims of IPV were interviewed. The results of the study revealed that a majority of the perpetrators abused alcohol and were violent when intoxicated. Recommendations were made for the victims of IPV, the community of Kibera.

1. INTRODUCTION

Intimate Partner Violence (IPV) is one of the most predominant human right violations in the world. It includes physical, sexual, psychological, and economical abuse as well as threat of violence, coercion, and deprivation of freedom (UNICEF,2020). IPV statistics indicate that women bear the brunt of the violence in abusive relationships. According to the World Health Organization (2014: 2), 35% of women worldwide have experienced some form of violence by an intimate partner. The prevalence of IPV is particularly present in low and middle-income countries such as Kenya, where underprivileged women are thus likely to be assaulted by their male partners.

A national study conducted in Kenya by the Kenya National Bureau of Statistics (KNBS) (2015) revealed that 38% of women experienced physical violence perpetrated by their husband or partner while 23% experienced violence in the previous 12 months. Regarding sexual violence, 14% of women surveyed experienced sexual violence, during their lifetime, while 10 % experienced sexual violence in the 12 months prior to the survey (KNBS, 2015: 59). Moreover, according to the study, the most common perpetrators of violence against women in Kenya are current or former partners (KNBS, 2015: 60)

The high prevalence of IPV in Kenya is cause for concern, and requires a multipronged preventative approach. Many of the policies and legislations focus on the legal and social consequences that the perpetrators should face as well as victim support (WHO,

2018: 24). However, there is need to understand the context in which IPV occurs so that the root causes and risk factors are addressed. Alcohol use has been touted as one of the risk factors for IPV (Wilson, Graham, Laslett & Taft, 2020: 2). Even though many studies have been conducted on IPV, these studies have been rooted in countries whose social context may be different from the Kenyan context.

Kibera informal settlement is the largest slum in Kenya, and arguably one of the largest in Africa. The residents of the Kibera informal settlement typically face a myriad of socio-economic challenges such as illiteracy and poverty. Women and girls in the slum are especially disadvantaged because of the traditional African challenges of patriarchy, inequality, lack of access to resources and abuse. These social ills are usually perpetuated under the guise of cultural norms (Obwada, 2014: 41). The unique social, economic and cultural issues, faced by the residents of the informal settlement, increase the prevalence of IPV . Alcohol use is also high in informal settlements in Kenya with 66.3% of the residents in Kibera being at risk of alcohol dependency. This is partly due to the proliferation of illicit alcohol and drugs in Kibera (Okaru, Abuga & Kibwage, 2017: 8). It is against this backdrop that this research was conducted to explore the influence of alcohol abuse on IPV committed in Kibera, Kenya. This was done with a purpose of developing contextualized interventions to assist in the mitigation of the problem in the community.

IPV is not only a human rights issue, but also a health and social problem. The consequences of IPV are dire. Physically, victims suffer abdominal injuries, fractures, scalds and disability. Psychologically, the victims are prone to alcohol and drug abuse, posttraumatic stress disorder (PTSD), anxiety and depression. Their sexual and reproductive health is also adversely affected with accidental pregnancies, HIV infection and pregnancy complications. Some victims may also develop chronic disease such as strokes, kidney problems and even cardiovascular disorders (WHO, 2018: 8).

Although countries are investing in efforts to deal with IPV, the efforts are not enough to match the burden. Promoting gender equality, victim identification, support services and reducing harmful use of alcohol have been identified as some of the strategies that can be used in prevention of IPV (WHO, 2014: 8). Boden et al (2012: 138) found

that alcohol use disorder accounted for 4.6 to 9.3% of violent offending and IPV in New Zealand. Men are likely to be aggressive to their partner sexually or physically abusive when heavily intoxicated.

Although many people who use alcohol are not violent, studies show that alcohol use is prevalent among most perpetrators of IPV. It is, therefore, important to note that it is not the use of alcohol that is a problem, but the abuse or misuse of the substance that has been identified as a problem. As a result, the focus on of this study is to explore the association between the abuse of alcohol and IPV incidents.

The argument that alcohol abuse is associated with IPV is supported by studies in the west (Eckhardt, et al.,2015). Greene, et al. (2017) conducted a study in Sub-Saharan Africa, and found a prevalence of IPV of between 11 to 60%. The study was conducted across 14 countries in sub-Saharan Africa, and found that alcohol use was associated with higher odds of reporting IPV. Women, who came from a lower social economic status. and lived with partners, who abused alcohol were likely to experience IPV (Greene et al, 2017: 15). It is thus the aim of this study, to explore if the abuse of alcohol can be identified as one of the risk factors for IPV incidents committed in the Kibera informal settlement in Kenya.

The objective of the study was to find out the influence of alcohol abuse on Intimate Partner Violence (IPV) committed in Kibera, Kenya.

2. METHODOLOGY

The study used a qualitative approach as the method of inquiry. In qualitative research, the researcher studies a relatively small number of participants with an aim of collecting thorough and rich information that describes personal experiences and perceptions. A qualitative approach provided the phenomenological perspective of participants based on their experiences of alcohol use and IPV.

The target population of this study are all the victims of IPV in Kibera, Kenya. Purposive sampling was used to select key informants such as chiefs and community leaders, who provided information about IPV, and referred the researcher to the victims. The researcher then used snowball sampling, whereby key informants

referred the researcher to the specific subsets of people, who are the victims of IPV within the community.

The unit of analysis made up of 32 women who resided in Kibera during the time they experienced IPV. Although, the study did not set out to be gender-biased, no men, who experienced IPV victimization, could be located to take part in the study. A semi-structured interview schedule was used to collect data from the participants. The interviews were conducted privately with each participant because of the personal and sensitive nature of the topic under investigation. Thematic analysis was used to analyze the collected data. Thematic analysis involves identifying themes and patterns of meaning that emerge from the information collected from interviews. Ethical standards were upheld.

3. RESULTS OF THE STUDY

Analysis of the collected data revealed that alcohol abuse was associated with IPV. The following themes emerged concerning the association between alcohol abuse and IPV as experienced by the research participants.

a. Alcohol abuse and IPV

Some participants said that their partners drunk alcohol daily, and subsequently, abused them almost daily. Some of the verbatim responses highlighting this are denoted below:

“He does casual jobs in construction sites; he gets paid at the end of the day and drinks most of the money that he is paid. When he comes home, he always comes home drunk and demands food. Whenever I ask him why he is drunk and yet there is no food, he would retort back that it is his money that he drinks”.

“He would drink every day and pass out the moment he gets home. One day he came home drunk and forced himself on me, I was pregnant, and his foul smell made me vomit. Sometimes he would just pass out on top of me” .

Frequent or daily drinking is an indicator of an alcohol disorder or addiction to alcohol. This frequent use of alcohol can intensify the occurrence of violence in an intimate relationship because it impairs the user’s judgement.

According to Parrott and Eckhardt (2018: 14) a person who is intoxicated, often shows signs of aggression, hostility, and irritability. The use of alcohol can, therefore, be a trigger for violence. This, however, does not happen in isolation. The violence is a combination of normalised violence against women in society, power and alcohol perpetuate the already entrenched aggressive attitudes towards women.

The behaviour of the participants' partners was also analysed to determine how they behaved when they were under the influence of alcohol. Some participants reported that their partners were mostly violent when under the influence but not when sober. Highlights of their responses are recorded below:

“He drinks every day and is very abusive when he is drunk. He also makes a lot of noise when he is drunk and assaults me whenever he is drunk”.

“He is an “angel” when he is sober, but I don’t know what happens to him when he drinks. He becomes violent and insults me whenever he is drunk. He then apologises the following day and promises that he will not beat me again”.

“He was drinking every day after some time he stopped only to start again after losing his job. When sober he was peaceful and caring but when drunk he was aggressive and violent. He would throw objects at me whenever I asked for money. He was stressed after losing his job”.

“When he is sober, he is peaceful but when he is drunk, he becomes aggressive and violent. He uses all his money for drinking at the expense of the family”.

“He beats me most of the times when he is drunk. He drinks every weekend from Friday to Sunday. During the weekdays when he does not have money, he is calm. He is easily provoked when he is drunk. He does not want to be asked any question when he is drunk. He can even kill me when he is drunk”.

The above responses reveal that alcohol abuse contributes to violence in intimate relationships and it is especially likely to occur when the perpetrator is intoxicated.

4. CONCLUSION

The results of the study showed that twenty-seven participants reported that their partners were intoxicated during their abuse. This finding indicates that alcohol abuse is one of the risk factors for IPV. It is however important to point out that IPV still occurs even when perpetrators are sober. Alcohol abuse however, exacerbates the likelihood of IPV occurring.

5. RECOMMENDATIONS

To decrease and/or prevent IPV and alcohol abuse, the following recommendations are made. The local community and other stakeholders can partner with victims of IPV through the following initiatives:

- Hosting community workshops aimed at breaking down patriarchal and harmful cultural belief systems.
- Widespread marketing campaigns against IPV and alcohol abuse.
- Development of safe community forums (inclusive of men and women) to assist victims of IPV.
- Empowerment and awareness campaigns for young boys and girls explicitly detailing the harmful effects of alcohol abuse and IPV.

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THEME PROFESSIONAL PROBATION PRACTICE

ASSESSMENT AND CLASSIFICATION OF OFFENDERS IN PROBATION AND AFTERCARE SERVICES; SUCCESSES, LESSONS AND PROSPECTS FOR THE FUTURE; A TWO YEARS CASE STUDY OF NAIROBI COUNTY.

By John N Ngugi

ABSTRACT

Assessment and classification of offenders under supervision is an integral part of probation practice. In 2015, Probation and Aftercare Services (PACS) in partnership with Kenya Prisons Services (KPS), Raoul Wallenberg Institute (RWI), Swedish Prisons and Probation Services (SPPS) embarked on Assessment and Classification Project (ACP) covering Nairobi County. The project aimed to build the capacity of PACS and KPS to carry out assessment and classification of offenders for purposes of enhancing rehabilitation and reintegration. The following uses data for two years in Nairobi County as a case study to document successes, lessons and discusses prospects for its future. During the pilot period that ran between 2015-2019, the trained officers made monthly returns for the assessments done and held regular evaluation meetings. The monthly returns for 2017 and 2018 have been analyzed and lessons from the regular evaluation meetings considered in this report.

1. INTRODUCTION

Probation and Aftercare Services has always pursued initiatives aimed at building its capacity to perform its core duties. Key among them has been pursuit of interlinkages and collaboration through bilateral agreements, working agreements with multinational agencies or research institutions. In 2015, following a situational analysis²⁶ done in 2009 that depicted gaps in PACS capacity in effective rehabilitation; such initiative was formed.

PACS, KPS, RWI, SPPS under the support of Swedish International Cooperation Agency (SIDA), collaborated to build capacity of both PACS and KPS to carry out the

²⁶ (Obondi*, 2010)

assessment and classification of offenders. The initiative spearheaded by RWI was carried out in a project titled “strengthening human rights capacity in Kenya correctional services” and was implemented between 2015-2019. Its objective was to “create sustainable capacity within KPS and PACS to meet relevant international human rights standards, in particular the UN Standard Minimum Rules for the Treatment of Prisoners, the Rules for the Treatment of Women Prisoners and the Rules for Protection of Juveniles Deprived of their Liberty”²⁷

The author of this paper was among the first probation officers trained in the project’s pilot phase. After training in 2016, the author implemented the skills and was identified for further training as a Trainer of Trainers (TOT) in Risk Needs and Responsivity (RNR). Part of the duties as a trainer has been to work with the officers in process of assessment, analyze the results of assessments and make presentations on the findings whenever called upon.

This presentation collates the analyzed data and the numerous presentations done in various forums between 2017-2018 to piece together successes, lessons to determine the future prospects of assessment and classification practice. The two years chosen

2. PROBLEM STATEMENT

The search for a working model in offender management has been a global challenge for a long time prompting the United Nations to intervene by issuing guidelines and rules²⁸ for management of offenders both in custody and in community corrections. Scholars and academicians too have grappled with question of effective rehabilitation for a long time in search of a model that works. In the process, some scholars have argued for harsh treatment of offenders by use of deterrent punishment while others have argued for retribution approaches²⁹. There is a growing debate about whether deterrence and retribution measures work and whether there should a shift to incapacitation, reformation and restoration³⁰ approaches.

²⁷ (Raoul Wallenberg Institute, 2022)

²⁸ (United Nations, 1990)

²⁹ (Hollin, 2002)

³⁰ (course-<https://study.com/academy/lesson/types-goals-of-contemporary-criminal-sentencing>, 2022)

To determine which mode of punishment work in offender rehabilitation; there has been another debate that hinges on the causality of crime or criminal behavior. Scholars interested in this debate have argued that effective rehabilitation for criminal behavior should be linked to the real causes of criminal behavior. Different approaches³¹ have been used to explain criminal behavior. Over the years, scholars have linked causes of criminal behavior to biological factors, environmental factors or psychological factors among others.

The prevailing explanation to criminal behavior has been linked to psychology of criminal conduct by James Bonta and Don Andrews³². These Canadian scholars have proposed a theory that argues that there are eight criminogenic factors that explain offending behavior. These eight factors were identified after a meta-analysis of studies on criminal behavior. In the fifth edition of *Psychology of Criminal conduct*³³ a distinction had been made between big four and central eight criminogenic factors but was later revised to central eight in the sixth edition. Based on the general personality and cognitive social learning theory³⁴, the scholars have argued that there are seven dynamic and one static criminogenic factors that combine to explain why persons commit offences. By understanding these eight criminogenic factors, it is possible to predict reoffending. To achieve that, they use the risk, needs and responsivity principles (RNR).

PACS situational analysis of 2009³⁵ confirmed the existential challenges in explaining offending behavior among offenders. In the survey that involved four hundred (400) officers that were in the service at the time, there were as many as twelve (12) factors identified³⁶ by officers. However, some of the factors have not been proven through rigorous research and their efficacy still remains a subject of further research.

³¹ (Ngugi, 2009)

³² (Bonta, 2017)

³³ Ibid

³⁴ ibid

³⁵ (Obondi*, 2010)

³⁶ Ibid

To conform to evidence-based practice, PACS embraced the training of officers on RNR proven to predict reoffending. The RNR model answers three questions; who is at risk of reoffending (Risk principle), What factors explain possible reoffending (need principle) and that can be targeted with interventions and how should interventions be delivered (responsivity principle). It argues offenders who are likely to reoffend are assessed as high risk and have multiple dynamic needs that can be targeted. On its part, the responsivity principle argues that there are two ways interventions can be delivered- through the general responsivity or specific responsivity. Specific responsivity tailors the general interventions to the learning capabilities of each offender while the general responsivity deals with programs and learning environment created for addressing reoffending³⁷.

RNR training was delivered to PACS Nairobi county on pilot basis from 2015-2019 where officers were capacitated to identify high, medium or low risk offenders in reoffending. The project aimed to contribute to the realization the human rights of offenders as stipulated in international instruments such as the Tokyo Rules and Bangkok rules³⁸. It also aimed to enable officers effectively rehabilitate offenders through evidence based interventions.

3. OBJECTIVE OF THE CASE STUDY

The goal of this case study is to present key successes and lessons for professional practice. Hopefully, the lessons and successes will be replicated in the country and referenced by other jurisdictions. The case study contributes to evidence building in rehabilitation and identification of professional gaps.

4. CASE STUDY METHODOLOGY

The case study used qualitative descriptive methodology. This type of study considers an “instance from a class or examination of a class in action”.³⁹ In this case, the class was the ACP Project officers in Nairobi county. The study described how the officers

³⁷ (Bonta, 2017)

³⁸ (Raoul Wallenberg Institute, 2022)

³⁹ (Dr.Sinha, 2017)

performed assessment within the project and there was no attempt to draw detailed inferences from how the officers assessed cases.

Data presented by probation officers in Nairobi were analyzed to discover the lessons and successes of assessment and classification. During the period; the periodic reviews meetings held discussed key successes and lessons from actual assessments. The contents of these review meetings have been referenced in this case study.

The case study covers the period between 2016-2019. The year 2015 was used for preparation of tools and materials used for training. The first twenty officers from Nairobi pilot area was done in March 2016 for a period of four weeks. Three weeks were theory while one week was practical week. The trainings were jointly carried out with KPS but this presentation focuses on PACS.

5. DATA PRESENTATION AND FINDINGS

a. Officers trainead

Nairobi county comprises of Makadara, Milimani, Kibera, Jomo Kenyatta and Ngong Probation offices. During the pilot project implementation Makadara, Milimani, Kiambu and Kibera probation offices were targetted. A total of 41 officers had been trained by the end of 2019 from Nairobi county.

b. Number of cases assessed

The number of cases assessed was tracked on monthly basis per station and per officer. This was however was interrupted in 2019 with the onset of COVID19 with its peak being in 2020. By the time the tracking halted the following were the assessed cases:

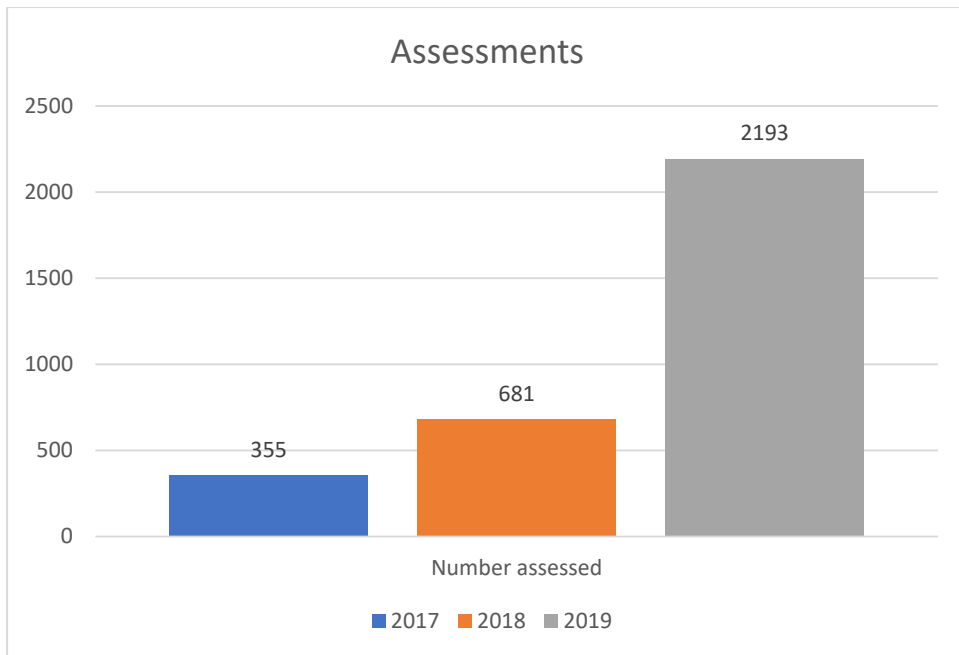
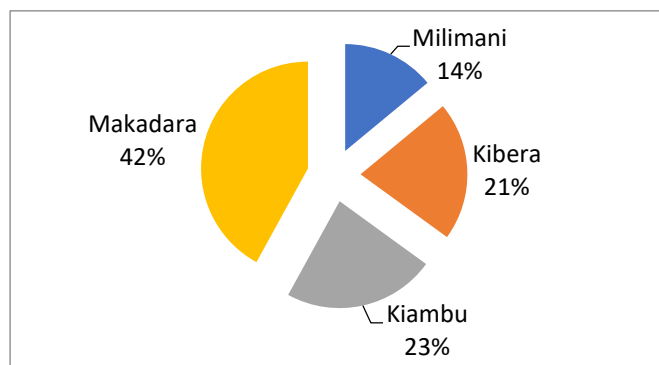


Figure 1 Source- Nairobi ACP Status Report presented at Sawela Lodge Naivasha 3-5th November 2020

The increment was influenced by the number of officers trained per station.

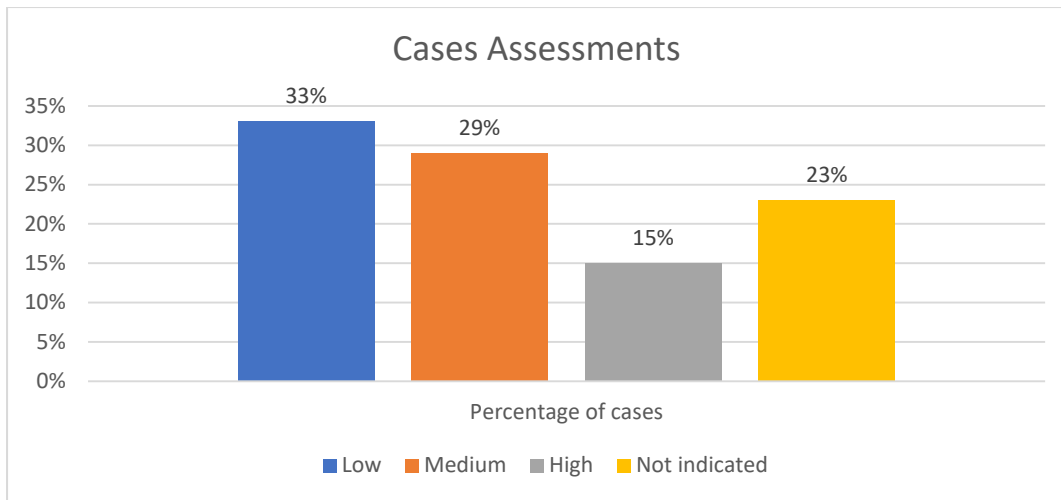
Distribution of the cases assessed cases per station:

The caseload was distributed among the four stations as follows:



c. Risk Assessment

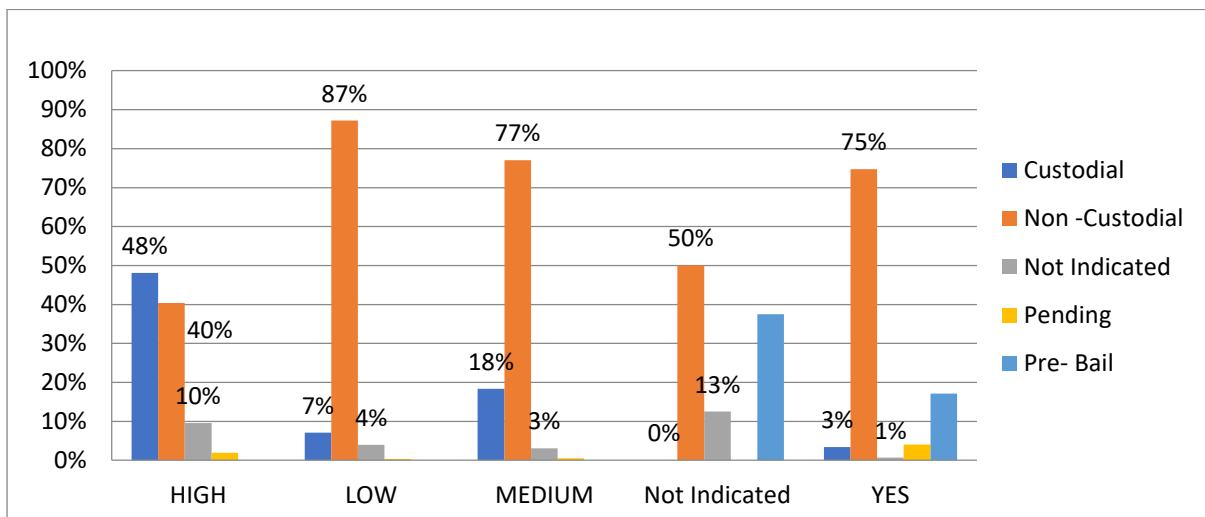
Officers were required to assess the offenders using an assessment tool called Tool A that had the eight criminogenic factors. From the assessments; the following were the results:



The cases appearing not indicated refers to operations challenges where officers had not indicated if the cases were high, medium or low risk in reoffending by the time the analysis was done.

d. Risk Assessment and Recommendations to court.

The main purpose for trainings was to officers assess clients according to the risk levels and make recommendations to courts based on the assessments. It was also expected that the courts could make decisions based on the assessments.



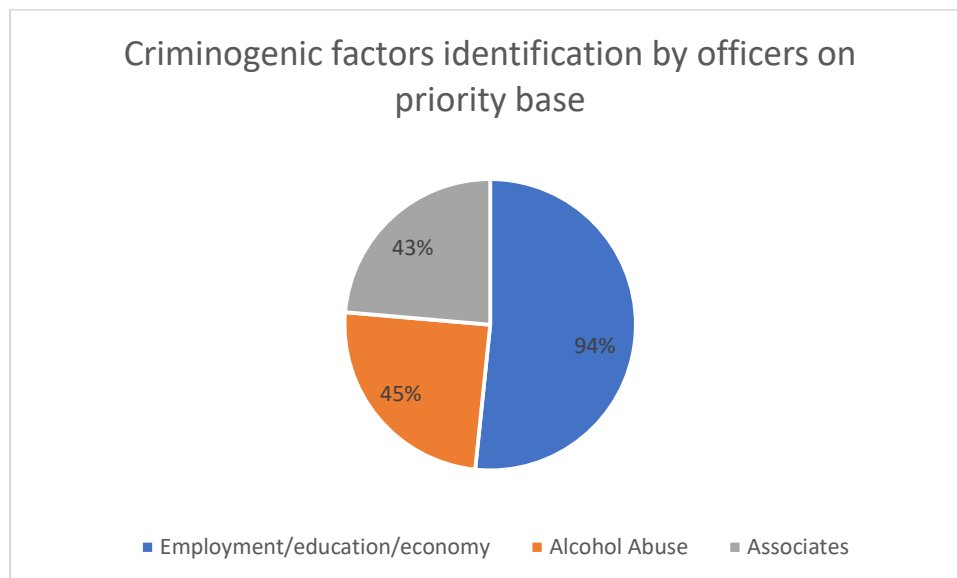
For those assessed as **high risk**, officers recommended 40% to be put on non-custodial, 87% of those who assessed **low risk** were recommended for non-custodial, while 77% of the **medium risk** were recommended to be put on non-custodial.

Of those who assessed as **high risk, 48% were** recommended for custodial sentence, those who assessed as low risk, 7% were recommended for custodial, 18% medium were recommended custodial.

For the ones who were not indicated the level of risk, 50% were recommended for non-custodial.

e. Criminogenic factors prioritized and Proposed interventions

In RNR training, criminogenic factors identified mirror the criminogenic needs. Officers had to identify three most important criminogenic factors in order of priority to inform interventions. The first three factors are presented below with implication that interventions in rehabilitation were guided by the identified factors since criminogenic factors mirror the criminogenic needs. In this case, the prioritized interventions need to address the employment and education levels amongst clients, then management of alcohol and substance abuse and finally working with the offenders to address their peers.



6. DISCUSSION AND RECOMMENDATIONS

Project design successes

The data presented above points to some important successes. The assessments presented point to the evidence that ACP's objective of developing assessment tools was achieved. The evidence presented shows that tools were also utilized to give the results documented above. These tools were used to assess about 2193 cases.

The project aimed at enabling officers identify criminogenic needs. James Bonta and Don Andrews⁴⁰ isolated the central eight criminogenic factors which are criminal history (the only static criminogenic factor) and seven dynamic factors namely *antisocial personality pattern, procriminal attitudes, associates, family relations, alcohol and substance abuse, education/employment and economy, and recreational/free time*. From assessed cases, the officers in the pilot area were able to assess using the identified tools and managed to map out the three most prevalent criminogenic factors in Nairobi as employment/education and economy as the leading, followed by alcohol/substance abuse and finally associates. This identification is important because it has presents opportunities in designing programmatic interventions. From the findings presented, it is possible to determine what would be the focus of any the programs that be conceived.

A key success linked to identification of the criminogenic factors is ability of officers to focus on the individual clients with more clarity while targeting the criminogenic needs. The factors identified are mirrored to the needs of the clients. The officers are having an understanding for that employment/education and economy as a criminogenic factor gives rise to needs to focus on enhancing abilities of the offenders to gain skills that can enhance their economic status. Thus, skills training has been a criminogenic need that officers have to pursue. Unlike in the past where the officers took it upon themselves to provide the skills, after the training in RNR the officers have come to know that at times the major hindrance is not lack of skills but more to do with attitudes of the offenders towards skills acquisition. By targeting that; the officers increase their chances to boost the economic status of probationers and hence address recidivism. Understanding the risk of reoffending levels of the clients enabled officers to make evidence-based recommendations to the courts and matched the level of service to the probationers' risk level. Unlike in the past where officers allocated equal amount of time to probationers, after RNR training in the ACP project covering Nairobi county; officers have distinguished between probationers who require closer supervision and those that required little time. Overall, this improved offender supervision during the period under consideration.

⁴⁰ Psychology of criminal conduct

7. PACS CAPACITY BUILDING SUCCESS

At the time the baseline survey was done in 2009⁴¹, PACS was searching for tool of standardization on assessment and classification. At the time of the survey, the discovery of upto twelve factors with some of them having weak identification scores showed a gap in standardization of assessment tools. The fact that ACP project used one set of tools to assess 2193 clients showed a success in standardization of assessment tools; a fact that PACS has been pursuing for a while.

PACS has also been advocating for evidence-based rehabilitation and probation work. It was possible to evidently show the criminogenic factors and needs identified in each of the over two thousand cases. The net effect of evidence-based work is to enhance professionalism in probation practice. It was possible to make a presentation in court with recommendation based on a impartial tool. With the information gathered and used in assessment; any other officer using the same information and same training was able to arrive at close or similar recommendation. The challenge of subjectivity was minimized and objectivity enhanced.

A key milestone from the ACP project is that there was available data that was easily analyzed. Data availability has been a key focus for PACS with policies in place on how data is to be collected and transmitted. Due to the follow up of trained officers; there was need to constantly analyze data to determine what it presented. The ACP data availability and analysis were a key success of the project.

8. LESSONS

ACP project presented lessons for the future. The design of the project was unique. It was a project that was executed PACS under bilateral agreement between the Kenya and Sweden. The project was implemented in the two correctional institutions PACS and KPS. It also had a coordinating committee at the highest policy making level of the two correctional institutions and a project management technical committee (PMT) that comprised of the policy execution officers. The PMT was in charge of the day to day running of the project and reported to the coordinating committee. This unique design proved that a complex project could be achieved under multiple partnership

⁴¹ (Obondi*, 2010)

model. Its success should be reviewed constantly to understand how the dynamics prompted the success of the project.

There was another lesson in the project delivery design. The ACP project comprised of three sets of training in one. There was a training in RNR, a training in Motivational Interviewing (MI) and a training on Change Interventions for Probation Practice (CHIPP) an intervention delivery training. The officers were not only trained on assessment and classification but were trained on other facilitative skills needed to make their work effective and impactful. There is need to learn from this model to determine what combination of capacity training programs can be pursued to maximize impact.

They trained officers provide opportunity to learn what motivated them to consistently assess their clients over a consistent period of two years. More than following the requirements; there is need to determine what other factors explains the consistency that has been a key pursuit of PACS.

9. FINAL OBSERVATION

Overall, the findings presents dividends to the form of partnerships between PACS and other agencies in building the capacity of officers to carry out assessments and classification. According to James Bonta and Don Andrews⁴² the importance of knowledge in the use of RNR principles cannot be overemphasized. They have dedicated a full chapter to discuss its implementation among agencies. They argue that agencies wishing to reap much dividends from RNR training should spend considerable amount of resources in training officers with the right attitudes towards evidence based rehabilitation.

10. INTO THE FUTURE..

The case study for the period under review has presented positive lessons that can be sustained. The future should be consolidated through the following:

Roll out the program: The Assessment and Classification Pilot (ACP) project was implemented in Nairobi County. The design of the implementation should be rolled out

⁴² (Bonta, 2017)

into the entire country as a matter of priority. It presents more gains in achieving a safer society since it uses evidence-based approaches. There should be a concrete follow up process in place for sustainability. The roll is currently underway through the SPPS. However, more needs to be done to reach out to all officers while safeguarding the quality of training and monitoring of the intended results.

Policies and guidelines – Assessment and classification is now in the legal statutes under the revised Probation Act under the 2018 miscellaneous amendment⁴³. Beyond the provisions in the law, there should be policies to safeguard the training model and the adoption of the training curriculum as a policy requirement. This would safeguard the quality of delivery and the enhance the compliance to the training.

Consider investment in technology- The assessment tools are manual based. From the ACP experiences and the challenges brought about by pandemic such as COVID19 that limited the use of paperwork; the RNR tools should be automated to cut costs and motivate officers to constantly assess their clients.

11. CONCLUSION

This case study was based on one county and only forty-one (41) officers in Nairobi where Assessment and Classification Pilot (ACP) project was implemented. Nairobi county has more officers than the number involved in the ACP. This number of officers were able to assess and from their work, key lessons and successes have been documented in this case study. Their commitment to implement skills learned from the ACP project has become valuable. The case study can be replicated in other settings to continue building evidence.

The case study is not exhaustive. It presents possible areas for future research. Hopefully, the case study will be used to structure future inquiries and research.

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⁴³ (Government of Kenya, 2018)

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