

Reforming Probation: The Changing Perspectives of The Probation Service In Kenya

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Outline

- Context
- Phase One: Common Features of Probation in the colonial age and the post-independence period.
- Phase Two: The growth and expansion of probation system
- Phase Three. Into the future
- Concluding thoughts

Contextualizing Probation Practice

- Probation in Kenya is practiced in accordance to what Hamai et al. (1995), describes as its essentials:
 1. Backed by **legal mandate**
 2. Entailing **supervision and therapy**
 3. Based in the **community** and
 4. Operating as a **distinct discipline** within criminal justice system and

In conformity with the **UN SMRs** for Non-custodial Measures

Probation principles and values

- Probation in Kenya largely still retains the adage rubrics of *'advice, assist and befriend'*.
- It is still largely seen in the eyes of Garland (1997) as *"the paradigm of welfare approach...which emphasizes rehabilitation, reintegration and individualized casework and that it is a social approach to a social problem"*.

- **CORE VALUES**

1. Integrity
2. Fairness
3. Confidentiality
4. Reliability
5. Professionalism
6. Respect for human dignity

Probation legacy

- The practice of supervised non-custodial sanctions in Kenya is an exotic penal policy.
- Probation legacy was replicated across all British Colonies
- Many countries were under the British rule in Africa but very few continued with probation system, Why?
- Civil law vs common law features of justice delivery, was it the problem?
- Is there **need** for reintroduction of probation system?
- Africa's penal population-over incarceration at both pre-trial and post-sentencing

Phase One: Common Features of Probation in the Colonial Age.

- Not much to write about 'probation' in AFRICA? but plenty to write specifically on community service and others noncustodial measures.
- Sustenance of probation by independent African states was curtailed probably owing to issues of governance save for work with children.
- Kenya could be the only countries in Africa that still has full-fledged probation system distinct of Prison Service.
- Kenya is a common law (commonwealth) jurisdiction practicing the adversarial system of justice delivery.

Phase One: Common Features of Probation in the Colonial Age Cont'd

- Probation system = established in Kenya over 7 decades ago
- Probation ordinance came into being in 1943 but practice started in 1946
- As was with the English system then, probation in Kenya evolved within the penal welfare paradigm and was not conceived as a sentence on the whole but a simple 'supervision order'
- The aim was to ease prison overcrowding, humanize penal policy in the British colonies and addresses the offending behaviour.

Human Resource: Then and Now

- The colonial government instituted policy measures that guided the recruitment, training and deployment of assistant probation officers.
- The training with significant British government support continued till the end of 1980's. The probation officers' training with strong social work orientation ran for two years and was more of professional/technical training.
- The first major crop of University graduates joined the service at the beginning of 1980.
- Currently all entrants to the service are university social science graduates

Phase Two: Into the 1990s, The Growth and Expansion of Probation System in Kenya

- The middle and current phase of probation service starts from 1990 which marked the turning point of the Service.
- Stoppage of 'professional' training which for about two decades had been the hallmark of induction to probation work.
- Introduction of National Standards in 1994.
- Introduction of Community service order Act No.10. of 1998 which widened the sentencing latitude of the magistrates
- From Principal Probation officers to Director, and introduction of Career Guidelines or scheme of service for POs.
- Human Right Questions due to penal congestion

The key functions of the department of Probation and Aftercare Service

- 1. Facilitation in the administration of criminal law in sentencing, bail administration and release license assessments and protection of victims
- 2. Interventions in the lives of mandated clients placed on various statutory orders (probation orders, community service orders, compulsory supervision of those classified as dangerous sexual offenders)
- 3. Enforcement of various court orders particular to each individual, offence and sentence
- 4. Promotion of Restorative justice, reconciliation and crime prevention initiatives
- 5. Reduction of penal population through sentence review prison decongestion programmes
- 6. Resettlement and Reintegration of ex-offenders and Psychiatric offenders.

Challenges Into the Millennium: The Supply Side

- Reduced probation **personnel-267 by 2004**
- **Funding challenges-competing** with other social service needs
- Prison overcrowding
- **Overemphasis on compliance** with court orders or release conditions and Equation of rehabilitation to observance of court orders during supervision
- Unclear or undefined matrix of **what constitute rehabilitation** and treatment measures and techniques
- Unavailability of offence specific rehabilitation manuals

Supply side

- Diminished number of well-trained officers in professional supervision and casework due to retirement and natural attrition
- Inadequate structured tutelage and coaching on treatment and rehabilitation
- Inability for some probation officers to discern clearly, through structured assessment, the criminogenic needs and the risk of reoffending hence ending up pursuing non-risk factors during supervision and rehabilitation
- Overreliance of one form of intervention, the one-on-one model- and limited multidisciplinary approaches
- Limited offender empowerment equipment and support beyond the statutory engagement period

Demand side of challenges

- Complexities and compounded nature of offending behaviour among clients –the chaotic lives of clients
- Lack of cooperation by offenders, family and significant others and difficulties in controlling ‘the rehabilitation environment’
- The abundance and proliferation of illicit alcohol and drugs (cannabis and hard drugs) deepen the problem
- Increased unemployment among the youth and offending population, and the challenge with accessing jobs after conviction

Probation work structure

- Court work
- Probation orders = rehabilitative supervision
- Community service orders programme=payback
- Aftercare services=Empowerment, reintegration and resettlement
- Victim support services=victim assistance and protection
- Bail information services=improved bail decision-making
- Crime prevention=common responsibility

Confronting the challenges:

- **1. Community Probation Volunteers Programme –from 2005**

- Significantly borrowed from Japan and developed with support from JICA and UNAFEI

- Complimentary or competing roles?

- 5,300** CPVs have been recruited up from **312 in 2016.**

- Community currently directly involved in the recruitment

- Modular training on criminal justice, volunteerism and practice skills

- **2. Development of operational guidelines**

- Social inquiries and report writing, Prerelease reports, Environmental Assessment Reports, RJ, Rehabilitation, Reintegration, Empowerment ...

- SWOT Method

CCPO Project: The Sector wide Approach to juvenile Justice

- Child justice actors=
 - Probation,
 - Judiciary, Police,
 - Child welfare,
 - Prison Service,
 - Prosecution
- Supported by JICA and UNAFEI
- Joint Modular training

Probation and sector-wide formations

- 1. The **GJLOS Impetus** and the advancement of probation agenda (2004-09)
- **2. The Constitution of Kenya 2010 and the NCAJ Impetus:**
 - ❑ a high level **policy making, implementation, and oversight and coordinating body.**
 - ❑ Membership constitutes high level **state and non-state actors** from the justice sector
 - ❑ NCAJ Technical Committee
 - ❑ Court user committees
 - ❑ Sector coordination and policy guidance

3. The PLEAD PROJECT

Probation and Pretrial work:

Bail and Bond Policy Guidelines

- Policy Development
- Implementation
- Trainings

Diversion and Plea bargaining

- Only with direction from the court: Loyalty or good practice?

Crime prevention and outreach programmes

Probation and the Corvid 19 Pandemic

- COVID-19 pandemic affected the level of service delivery, it reduced the level of contacts between clients on supervision
- Affected probation role in providing services to courts and penal release organs for expeditious administration of justice.
- **BUT** the department was able to innovate
- 1. Supported the release about **11,000 persons** through high court sentence release and had them offloaded to probation and community service
- 2. Introduced remote supervision bide use of technology
- 3. Interviewing clients in custody and community was][IT enabled
- 4. Court business and presentation of presentence reports remotely done

Crime Complexities and addressing knowledge deficit

- **Recruitment of Additional Probation staff (1000)**

- Over 2000 officers currently serving

- **UNODC and the EU PLEAD Project**

- Acquisition of operational tools, Computers, Vehicles

- Bail supervision framework, Supervision Guidelines,

- Consolidating knowledge,**

- Development of Training manuals

- Blended Inductions manual (e-learning + face to face)

- Enhanced Training manual

- PCVE Training manual

Prevention and Countering Violent Extremism

- **Sector wide approach**

- Probation Service member of the coordinating body –NCTC

- **With UNODC support=**

- Developed PCVE Training manual for POs

- Developed Assessment Tool=PK-RAVET

- Revised SOPs

- Intensive Supervision guidelines

Contributions from Development Partners

- ❑ Penal Reform International (PRI)=CSO, Gender Mainstreaming in Probation work, ExTRA Project
- ❑ UNAFEI and JICA=CCPO, CPV capacity building Project
- ❑ EU/UNODC=PLEAD Project: Bail and Bond Supervision Policy Framework, Bail Supervision Guidelines,
- ❑ Swedish Prison and Probation Service (SPPS)-Evidence based Practice, RNR Assessment, CHIPP, Capacity Building
- ❑ RWI=Human Rights Audit, Assessment and Classification
- Individually contracted consultants

Current Probation Establishment

- Probation and Aftercare Service currently exist as an independent criminal justice agency.
- The department operates within the executive arm of government with mandate of supporting Judicial functions in relation to bail, sentencing and penal release decision-making.
- Its mandates stride both judicial and correctional functions
- Aftercare was an add-on about 30 years ago although probation officers had nevertheless supported post-penal supervision of offenders even before independence.
- Additional activities have been incorporated with no clear legal framework

Probation and Aftercare Service, 2024

- Currently Headed by a Secretary with several Deputies
- Operating in 140 stations country-wide
- Staff establishment over 2000 POs
- Workload (between January and March 2024):
- **TOTAL No. on Supervision 52,057**

Referrals= 17,714

- Presentence reports=9,822
- Bail Reports =3,829
- RJ reports 52
- Diversion reports= 22
- Plea bargaining reports=52
- Victim impact statement reports=739
- Prerelease report incl. psychiatric reports=176

Probation Institutions

- **PROBATION HOSTELS -6**
- Mombasa =15 years below years
- Eldoret=Kumumu Boys Senior =16 years and above
- Eldoret, Kimumu Boys Junior- 15and below
- Nairobi Boys=Above 16 years
- Nakuru Girls=18 years and below
- Siaya Female Hostel,=Serious and emerging crime, Adults with complex/Special needs
- Probation community resource and Training Centre in Mombasa and Webuye
- Probation Training Institute*

Phase Three : Probation Into the future

- Prison population is still in the rise
- Increase on persons on noncustodial measures a concern for net-widening?.
- Increase in transnational organized crime
- Collegial and coordinated approaches
- Established/re-establishments of probation systems in emerging democracies
- Leveraging on technologies and support from countries with well established probation systems

Phase Three : what we need Into the future

- Knowledge based approaches and assessment (to increase consistency of implementation and decision-making)
- Multi-modelled in approach (provide an array of services and interventions and address a variety of issues)
- Client focused/centred with practitioners who understand and accept the particular approach in use
- Well resourced programmes that also target at-risk youth and having them in pro-social groups
- Trained and supported staff that employ IT where desirable
- Effective monitoring and evaluation methodologies

Concluding thoughts

1. Africa still enjoys abundant social capital with its organic family and community set-ups still functional.
2. Very few African Countries have fully-fledged noncustodial formations. Much fewer are independent of Prison System
3. Probation in Kenya has continued to grow due to continuity and the democratic space that the country has had since independence.
4. Kenya can be used as the platform to expand probation systems in Africa. But we need to know what already exist, how various legal systems employ noncustodial measures and what laws support these.
5. Probation as the epitome of community corrections has the potential of transforming justice delivery and achieving the twin objectives of rehabilitation and public protection.
6. Africa needs the support of development partners to expand the scope of supervised sanctions in the community

- **ASANTE SANA
THANK YOU**