

The Evolving Probation Practice In Kenya: Past, Present and Prospect

By **Clement Okech**,
Probation Service, Kenya

Purpose statements

- **Vision:** A Just Secure Crime-free Society
- **Mission:** To promote and enhance the administration of justice, community safety and public protection through provision of social inquiry reports, supervision and rehabilitation of non-custodial offenders, victim support and social crime prevention
- **Motto:** Offenders Can Change!

Contextualizing Probation

- Since there is no universally agreed probation code of practice Probation in Kenya is practiced in accordance to what *Hamai (1995)* describes as its essentials:
 - ✓ Backed by legal mandate
 - ✓ Entailing supervision and therapy
 - ✓ Based in the community and
 - ✓ Operating as a distinct discipline within criminal justice system

Contextualizing Probation

- Probation in Kenya largely still retains the adage values 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.*

Where We Are Coming from: The Past

- The development of Probation Service in Kenya is closely linked to its historical past.
- The current practice of probation in Kenya, heavily borrows from the English system.
- Thus probation history in Kenya cannot be divorced from the British legacy in Africa.

The Past

- Kenya borrowed much of its laws from the British, as such most of the legislation in Britain were and still are applicable to Kenya.
- The organizational set up differ as robation in Kenya has continued to be centrally managed with no local authority involvement, a significant departure from the English system.

The Past Cont'd

- Probation practice in Kenya resulted from a colonial government commission of 1939 which observed that overcrowding did indeed exist in prisons and consequently recommended the use of non-custodial options.
- The commission specifically recommended the establishment of Probation as a measure because it was more humane and would address prison congestion.

The Past Cont'd

- The first Probation ordinance was passed in December 1943 but its implementation was delayed until 1946.
- The Service was initially placed within the Prisons department with the Commissioner of Prisons being appointed the 'Chief Probation Officer'.
- The Service was gazetted to operate in urban towns before gradually moving to the rest of the country and is now operating in 121 court stations countrywide.

The Past Cont'd

- There were no trained probation officers in Kenya in this early face and therefore the colonial administration imported 5 British Probation Officers who worked with 9 African assistants.
- The Service was gazetted to operate in the urban towns before gradually moving to the rest of the country

The Past Cont'd

- The government instituted several measures that guided the recruitment, training and deployment of Probation Officers
- Until 1989, probation officers gained two year training with strong social work orientation and was more of probation practice as a profession
- The first major crop of University graduates joined the service at the beginning of 1980. Currently all entrants to the service are university social sciences graduates.

The Past Cont'd

- With support from the British government, the Kenyan Government in later years started elaborate social work training for probation officers
- To date, Kenya still practices generic social work
- During these early phases there was significantly no difference in probation practice compared to the English system.
-

The present

- Largely, the service has not had significant transformation due to:-
 1. Few avenues to exchange ideas and practice with the developed democracies,
 2. Similarly, Kenya would not gain much from other African countries as it probably enjoys a much superior practice edge in the region if not in Africa.

Present organization structure

- The service is headed by a Director of Probation Service assisted by two deputies and several senior probation officers, all public servants within the national government.
- County and sub-county jurisdictions are headed by Assistant directors and Chief probation officers respectively. There are 650 probation officers about 500 auxiliary staff.

Service Objectives

1. Generation of information for administration of criminal justice.
2. Supervision and rehabilitation of offenders placed under community sanctions
3. Reintegration and resettlement of ex-convicts in the community
4. Participation in victim support and crime prevention initiatives

Functions

- **Facilitation in the administration of criminal law** by assisting courts and penal authorities make more informed decisions on sentencing, protection of victims and on bail and penal release license assessments
- **Interventions in the lives of offenders placed on various statutory orders** with the aim of reducing re-offending and effecting behaviour change

Functions

- **Enforcement of various court orders** particular to each individual, offence and sentence
- **Promotion of harmony** and peaceful co-existence between the offender and the victim/ community through reconciliation and participation in crime prevention initiatives

Functions

- **Provision of temporary accommodation** in the **probation hostels** to needy and serving offenders whose home conditions are not conducive for immediate return.
- **Reduction of penal population** by facilitating **prison decongestion** programmes
- **Resettlement and Reintegration of ex-offenders and Psychiatric offenders** into the community.

Alternative measures

- Probation orders (Since 1946)
- Community Service Orders (Since 1999)
- Supervision of youthful offenders from Borstal Schools
- Supervision of ex-psychiatric inmates/aftercare
- Judicial Sentence review
- Presidential prerogative of mercy

Alternative measures cont'd

- Conditional release
- Fines
- Compensation
- Suspended sentence
- Sex offenders on post penal supervision*

**Probation orders and community service orders
epitomizes the embodiment of supervised non-custodial sanctions in Kenya**

Probation Orders

- Can only be administered by the court
- Between 6 months and 3 years duration
- Entails supervision and therapy
- Probation orders as a single order and cannot be combined by other penal orders
- Can be accompanied by compensation orders
- The order administered fully by Probation Service

PROBATION ORDERS

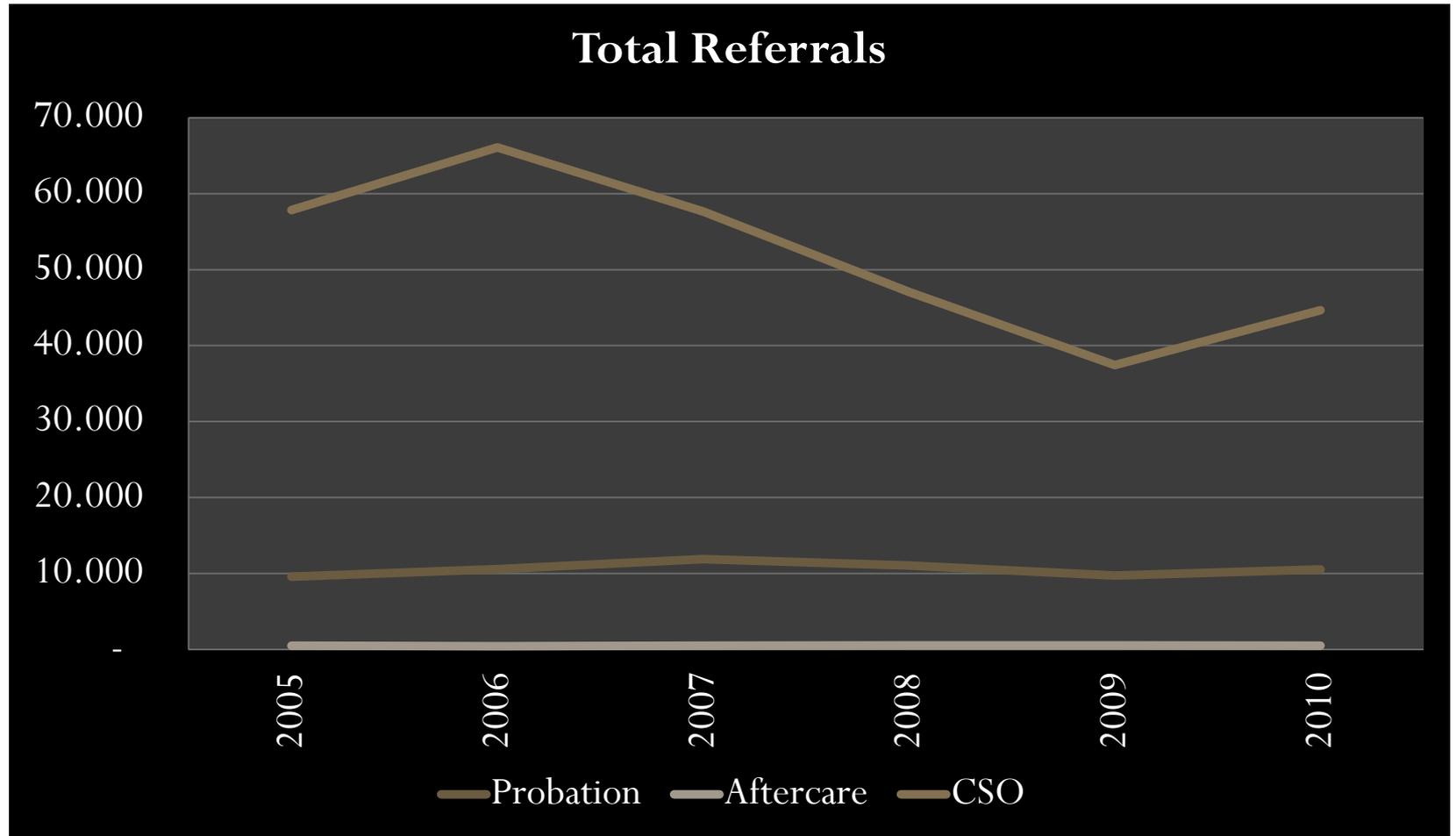
Pre-sentence reports

- Major pre-occupation of probation officers
- Reports generated through social enquiries
- Referral still a court's discretion
- Legal protection of probationers from discrimination resulting from conviction
- Currently piloting on automated data management system

Probation Hostels

- Hostels are a place of temporary residence for **low risk probationers**.
- There are four Hostels with a total capacity of 200 residents and only one for females.
- The hostels are still operated as open institutions with limited restrictions and house less dangerous offenders.
- The majority of the residents are youthful **probationers**

Referral Trends



Probation placements

| YEAR | PROBATION | CSO | AFTERCARE | TOTAL |
|-------|---------------|----------------|---------------|----------------|
| 2005 | 9,589 | 57,830 | 502 | 67,921 |
| 2006 | 10,578 | 66,088 | 434 | 77,100 |
| 2007 | 11,891 | 57,674 | 480 | 70,045 |
| 2008 | 11,062 | 47,069 | 538 | 58,669 |
| 2009 | 9,716 | 37,443 | 513 | 47,672 |
| 2010 | 10,516 | 44,635 | 506 | 55,657 |
| Total | 63,352 | 310,739 | 2,9733 | 377,064 |

Community Service Orders

- Introduced by an Act of parliament in 1998.
- Offender performs unpaid public work for the benefit of the community
- Supervision duration not more 3 years.
- Any person convicted of an offence punishable by imprisonment of up to three years with or without an option of a fine may be considered for community service orders.
- CSO a shared responsibility between Judiciary and Probation in practice and management

CSO WORK

- The Service increasingly engaging the offenders in demanding work in constructions, excavations, brick making, afforestation, environment conservation and garbage collection
- We also have CSO flagship projects which provide offender with opportunities for skills transfer

Community Service Orders

Challenges

1. Abscondism
2. Recidivism
3. Supervision of short-term offenders
4. Inadequate resources, -personnel & finances

After-Care Support

- Aftercare may be defined as the whole range of services which may be provided to all categories of offenders to resettle back into the community upon release from various penal institutions
- Institutionalization is more harmful to the offenders and expose non-serious offenders to more criminal culture.

After-Care Support cont-d

- **Categories Of Aftercare Supervisees**
- Youthful offenders-Ex-Borstal inmates
- Ex-Long term prisoners
- Special Category Psychiatric criminals
- Ex-probationers from Hotels

Aftercare model

- Supervision on license for ex-borstal and psychiatric offenders
- Voluntary participation for ex-prisoners
- Responding to needs expressed by the offender
- Support with practical problems
- Brokerage and placements

Challenges to Offender Reintegration

Complex offender '*needs*' that point to criminality including:

- Housing/accommodation
- Substance misuse/Healthcare problems
- Family issues/acceptance/dysfunctional
- Unemployment
- Lack of education

Challenges to offender integration

- Lack of proper offender re-entry programmes
- weak of community trust and acceptance
- Lack of halfway homes
- Lack of proper rehabilitation programmes targeting attitudes, motivation and thinking
- Lack of proper assessment of the needs and risks
- Weak legislative framework

New Engagements

- Volunteer Probation Officers programme
- Bail information and supervision system
- Probation Rehabilitation and resource centres (aka Probation Day-Care Centres)
- Victim support programme
- Prison sentence Review (decongestion programme)
- Supervision of sex offenders

Beyond the Present

- Probation in Kenya has continued to remain vibrant due to the democratic space that the country has had since independence. A probation system cannot flourish in a dictatorial regime.
- Kenya has sustained the practice almost in its original form perhaps due to less exchange with the industrial west

Beyond the Present cont;d

- We however still need to move with the developed world just like in the past.
- England can still export new developments in the practice. This can be evidence based approaches that research has documented.
- We need investors in case management system that can facilitate effective supervision

Beyond the Present cont'd

- With expanded mandate Probation Service in Kenya needs investment in electronic systems to augment offender supervision
- Although we still believe generic probation has a place in probation practice, we need to venture in approaches that will make other criminal justice players tom appreciate the role of probation

Conclusion

- Our systems have come a long way but have not been able to keep abreast due to limited resource base
- Most of our offenders need aftercare support to help them break the crime cycle
- We still need to invest heavily in modern supervision approaches and technology
- The international Community and especially Europe, need to invest in Africa through research and export of new products

End

- Thank you