

UNIVERSITY OF NAIROBI

DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK

**EFFECTIVENESS OF PROBATION AND COMMUNITY SERVICE ORDER
SENTENCING ON OFFENDERS: A CASE STUDY OF NAIROBI COUNTY**

BY

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DECLARATION

I hereby declare that this Research Project paper is my original work and has not been submitted to any other college or university for credit.

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ABSTRACT

The global prison population is increasing and causing enormous financial burdens on governments (UNODC, 2006). There are currently 108 prison facilities in Kenya with over 54, 000 offenders incarcerated (Kenya Prisons Service, 2019). Kenya's prisons were built for 14,000 inmates. Overcrowding has become a major issue with prisons holding close to four times their capacity. The United Nations Resolution A/RES/45/110 encouraged global courts to focus their sentencing options towards non-custodial punishment following failure of the prison system due to overcrowding and high costs of operation. The current study aimed at establishing the effectiveness of probation order and community service order sentencing on offenders in the country. The study sought to establish the strategies used to implement probation and community order sentencing, the role of supervision, and the rate of recidivism of offenders placed on probation and community service order sentence. The research design used was a cross-sectional survey employing secondary sources and primary sources to collate the data gathered on the prison grounds. Interviews and open-ended questionnaire used to collect data from offenders on probation and community service order sentence between 2016 and 2017 were appended. The study resulted in an understanding of the strategies used to implement non-custodial sentencing and community service order in Nairobi County. Factors such as gravity of the offence, criminal history of offender, juvenile cases, character of offender, and protection of the communities from the offender were noted. The rate of recidivism was found to have lowered in 2017 compared to 2016 due to effective supervision, supportive relationships with probation officers, and intense counseling of offenders. The recommendation of the study was an increase of probation officers by the department to reduce burnout. Education and awareness on role of community service and probation to public to dispel negative attitudes towards the program are also important. The indication was that the government should build functional halfway houses to absorb offenders that are waiting to be reconciled with their communities.

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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Crime rates across the globe have seen an increase as evidenced by the growth in prison populations and sentences passed over the last 40 years (Jacobson et al., 2017). Kenya's reported crime rate had grown by 13.2 percent between the years 2017 and 2018, with a total number of 77,992 crimes reported in 2017 and 88,268 in 2018 (Economic Survey, 2019). Nairobi County recorded the highest rate of crime in the country (Economic Survey 2019). This is partly because of significant increase in the number of prisoners that were being sentenced using Case Law between the late 20th century to 2004 when it was updated (Kenya Law, 2013). These were guided by a series of principles that had been set out in Case Law when the judiciary first established general sentencing guidelines (Nyathira, 2018). On the other hand, probation services in Kenya were founded during the colonial period in 1941 and promulgated in 1943 with their main focus being supervision of women and children that had been placed on probation for committing minor offenses in the Nairobi region (Ministry of Interior and Coordination of National Government, n.d.) after a sudden increase in resistance to colonial rule by groups and communities (Ministry of Interior and Coordination of National Government, n.d.).

The penal code then carried strict sentencing for crimes which included imprisonment, detention, death, fines, community service, forfeiture, and reinstatement of payments (Nyathira, 2018). For murder and treason, the penal code prescribes the death sentence. However, this type of sentencing has not been executed for over thirty years within Kenya (Nyathira, 2018). At times, where there is a development in criminal law, legislators prefer to enact separate laws rather than update the penal code (Nyathira, 2018). In 1941, a committee was appointed by the colonial government to consider the introduction of a probation system in order to contain the large numbers of prison population and deal with petty offenders. It was not until December 20, 1943 that probation treatment of offenders was introduced (Awuondo, 1978). This alternative of non-custodial sentencing became a significant change in the criminal justice system.

The criminal justice system makes competent decisions concerning sentencing that are based on the universally applied Tokyo Rules (1990). Once an offender commits an offence and is arraigned in court, punishment can either take the form of custodial or non-custodial sentencing. The main purpose of non-custodial measures is to look for effective alternatives to imprisonment for offenders and allow for adjustment of penal sanctions by authorities according to the needs of the individual offender, which is often proportionate to the offence committed. Although it has its advantages in individualizing sentencing, thus allowing the offender to remain at liberty, continue working, studying, and carry on with family life, it falls short in that if the offender is not well supervised, the role of the sentencing may not be achieved.

The United Nations Standards Minimum Rules for Custodial Sentencing (United Nations, 1990) guides the judicial process so that the globally applied sentencing rules are fined in accordance with the prosecution laws of Japan (Tokyo Rule, 1990). The Fines Bill (2009) calculates and adjusts levels of fines to offenders and methods through which to collect fines. Non-custodial order can be those that require probation or community service. Victims are compensated through a compensation order given by the court. In addition, the offender has to maintain order, peace and be of good behavior during their sentencing period. The two parties sign a commitment to observe specified conditions for a specified timeline. The main arguments in favor of non-custodial sentence is that it is cheaper than prisons, more effective in re-integrating offenders into the community, and ultimately more successful because it can help lower crime rates permanently.

1.2 Problem Statement

Reported crime incidences have continued to rise and become complex with time. In Kenya, crime cases recorded in 2014 went up to approximately 69,376 in total. In 2015, the cases were approximately 72,490, while in the year 2016 a total of 76,986 reported cases were recorded (National Police, 2018). Furthermore, crime incidents increased by 1,448 cases in the first four months of 2018, resulting in 21,263 cases as compared to 19,815 cases that were registered in 2017 in the first quarter of the year.

Imprisonment, also known as custodial sentencing, involves cases of violent

offenders. Prisons are expected to provide incapacitation, rehabilitation of offenders and deterrence of crime. Therefore, the main challenge in achieving the aim of custodial sentence is making the prisons processes and systems effective and efficient (Ndung'u, 2014). Overcrowding, high costs, and recidivism of convicts are pervasive issues in the criminal justice system of Kenya. Overcrowding has shown to have negative effects on housing and the general maintenance costs (Birech, 2020). It also overwhelms the professional personnel and physical facilities. Furthermore, it escalates the cost of taking care of the prisoners, and the Kenyan economy cannot sustain it (Musyoka, 2013).

Research has shown that longer prison sentences have a negative impact; the social bonds become weak. These include interpersonal, familial, work-place, and economic relationships (Birech, 2020). Weakened social bonds are likely to increase an offender's propensity to commit new crime after release. It also makes adjustment to society more problematic since it is not easy to obtain employment, and offenders become alienated from their families and the community (Birech, 2020). Gideon (2007) asserts that low quality relationships between the offender and the family lead to conflicts, which ultimately result in their reoffending behaviours. This leads to cases of recidivisms (Gideon, 2007) as evidenced by the recorded high rates of recidivism, also called backsliding. Research by the Bureau of Justice Statistics have found high rates of recidivism among released prisoners (Alper et al., 2018). One study tracked 404,638 prisoners in 30 states in the U.S. after their release in prison in 2005. The study found that within three years, about two thirds (67.7%) of released prisoners were rearrested. It also found out that within five years of release, about three quarters (76.6%) of released prisoners were rearrested. Of those prisoners who were re-arrested, more than half (56%) were rearrested by end of first year (Durose, et al., 2014).

There has also been a major concern in the country over former prisoners committing the same crimes again or escalating to worse degrees of crime. It appears that the custodial sentences being imposed by the courts have failed to take into account the impact that they have on the achievement of the objectives of sentencing by the prisons. This is because there is over utilization of this type of penal sanction and this has contributed to overcrowding in the prisons. This has led to high rates of recidivism.

Studies have shown that the rate of recidivism in the United States was estimated to

be 76.6% while in Kenya 50% (Nagin, 2009). Recidivism is often higher (70%) for inmates and convicted parolees who are linked to crimes that are related to drugs and property (Birech, 2020). Recidivism is linked to poor rehabilitation in the sense that offenders who re-enter society face a variety of problems.

Prison sentences serve to harden the criminal. Moreover, there have been challenges in meeting the rehabilitation of prisoners as prisons are claimed to be in a bad state where congestion contributes to poor sanitation, inadequate facilities, and supervisory staff (Muhoro, 2013). Therefore, the aspect of overcrowding in prisons can result in limited access to prison rehabilitation services by prisoners, with examples such as counseling and training. Once imprisoned, the inmate's life takes a different turn. They lose their identity, health, and motivation to perform their ordinary duties in life, especially with regards to family roles. Once their detention period is over, the inmates find it difficult to adjust back to the community (Baldry, 2006).

All the above factors have resulted in management difficulty faced by the prisons in implementing effective treatment programs and thereby undermining the effectiveness of the criminal justice system (Kenya Judicial Sentencing Task Force, 2017).

Society's focus is now directed towards combating crime through non-custodial sentence (Griffiths et al., 1989). The courts, magistrates, and judges have held different principles and made hard choices between sentencing options of committing convicts to incarceration and disposing matters through non-custodial sentence.

This research seeks to explore the effectiveness of probation order and community service order sentencing as an alternative to incarceration. The establishment of non-custodial sentencing is to address prison congestion, reduce reoffending, and effect behavior change through rehabilitating offenders in the hope of reducing if not eliminating the crime problem.

1.3 Objectives of the study

1.3.1 Overall objective of the study

To evaluate the effectiveness of probation order and community service order sentence on offenders in the county from 2016 and 2017.

1.3.2 Specific objectives

- i) To examine strategies used to implement probation order and community service order sentence.
- ii) The role of supervision on offenders placed on probation order and community service order sentence.
- iii) To determine rate of recidivism on offenders placed on probation order and community order sentence.

1.3.3 Key research questions

- i) What are the strategies used to implement probation order and community service order sentencing?
- ii) What is the role of supervision on offenders placed on probation order and community service order sentence?
- iii) What is the rate of recidivism on offenders placed on probation order and community order sentence?

1.4 Significance of the study

Non-custodial sentencing paves way for the offender to reintegrate back to the community after rehabilitation. Offenders who are placed on non-custodial sentencing are usually first-time offenders and have committed petty offences. As they go through non-custodial sentencing, the probation officer takes them through skill acquisition, counseling. During this period of placement, the offender has an opportunity to engage with the community and criminal justice system making it easier for the offender to adjust back to the society. The offender also has the opportunity and the freedom to continue working, be with family, and continue life in freedom with the condition that they do not commit further crime and finish their sentence as stipulated in their sentencing order. Community service, which is a type of non-custodial sentencing where the offender performs unpaid work in a community. This promotes stronger links between communities and the criminal justice system.

1.4.1 Basic assumption of the study

The study assumes that data on non-custodial sentencing and findings will be provided by the criminal justice system.

1.4.2 Justification of the study

While custodial sentencing involves cases of violent offenders, it does not contribute prevention of crime or to the social reintegration of offenders. Non-custodial sentencing focuses on rehabilitation of offenders to deter them from recidivism while allowing the offenders to have the freedom to continue with normal life such as work and spend time with family.

1.5 Scope and limitation of the study

The research will be conducted in Nairobi County focusing on the effectiveness of non-custodial sentencing examining the strategies used to effect the sentencing and compare its effects in order to determine the rate of recidivism. The limitations of the study include lack of experimental designs in the evaluations of correctional program. Custodial sanctions differ in duration and type. The study will yield results between type of offenders and the types of sanctions imposed.

1.6 Definitions of terms and concept

Non-custodial measures are any decisions made by the criminal justice system. They consider most appropriate sanctions that does not involve imprisonment. This decision can be made at any stage of the administration of criminal justice (Tokyo Rule). There are various types of non-custodial sentence utilized worldwide that courts may give to offenders.

Competent authority is a member of the criminal justice system such as the jury, probation officer who is able to make decisions concerning sentencing of an offender.

Offender means a person who is guilty of a crime.

Probation service order is a form of binding over of offenders, subject to conditions of supervision by a Probation officer as stipulated in cap 64 laws of Kenya.

Community service order

A statutory provision that in appropriate cases, offenders are required to engage in

unpaid community work to a person aged above 16 years.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

The classical criminology theory states that people's exercise of free will and exerting punishment is best in curtailing crime (Calhoun, 2002). The doctrine of free will suggests that people have the ability to choose right from wrong. The issue of mens rea presented before a court of law is based on this classical view of crime. Psychological Criminology, on the other hand, focuses more on the psychological wiring of an individual, taking note of an individual's personality and its link to crime causation. Psychologists observe that the environment and the formation of their early years predispose some individuals more into crime. Evidence from Durkheim (1938) suggests that crime is seen as something that society drives, and that criminals are mere victims of a disorderly society full of injustices, and people commit crime when their social bonds to society are weakened.

Ivan Nye (1958) purported that individuals are able to commit crime spontaneously without prior experience or training. The benefits and costs are weighed. If the benefits outweigh the costs, then the crime is committed. On the other hand, if the costs outweigh the benefits, then there will be desistance from crime (Cornish & Clarke, 2017). If the offender absconds duty, they ought to be issued with a warrant of arrest and arraigned in court for the second time, after which they could receive stiffer penalties depending on the reason for absconding. In Kenya, the community service sentence may be as short as one day doing community service, or anywhere in between one day and a maximum of three years, during which the offender must serve for a maximum of two hours a day (Community Service Orders Act, 1998).

Travis Hirschi (1969) asserts that in order to connect to society, people seek to fulfill their bonds through attachment which can be described as how an individual connects to others. A good example is when an individual highly regards the opinion of those he or she is attached to be it friends, family, or romantic partners. Individual also seek a commitment. This consists of the investments we make in society. For example, a student who attends school, plays soccer, and volunteers at a children's home is less

likely to commit crime than a student who absconds school and has no commitment. The drive is involvement. If an individual is involved in various activities that are legitimate, the chances of participating in criminal activities is minimal. For example, an individual who engages in charity services and playing soccer will have less family crisis. Belief is the final type of social bond. This is what constitutes the common values in a society. Individuals who conform to these values have a belief in them thus following the norms. On the contrary those who do not have a belief in the norms of society will rebel.

If an offender is engaged crime during the period of non-custodial sentencing, the nature of sentencing can be revoked and stiffer punishment such as custodial sentencing may be given. The types of non-custodial sanctions involving probation service supervision are probation orders, community service orders and suspended sentence.

In a community service order, the offender works without pay at a workstation that the community service officer indicates, and the court approves. The minimum age of an offender to be placed on community service order is 16 years in order to consent to the order (Community Service Orders Act, 1998).

On the other hand, a probation order requires an offender to be at least ten years of age to consent to the order. The duration of this type of sentences is a minimum of six months and can last as long as a maximum of three years. During this period, the offender will undergo counseling, if he or she suffers from substance drug rehabilitation center becomes a referral center. If the offender does not consent to the order, he or she may be given a different sentence such as community service order or a combination order (Probation of Offenders Act, 1998).

2.2 Sentencing

Any individual who commits a crime is subjected under Criminal Law to punishment to act as a method of deterrence. Punishment can take the form of custodial or non-custodial sentencing. Custody, according Stewart (2006) is a state of confinement and has long been the accepted norm when punishing criminals. Imprisonment is a form of custodial sentencing. The aim of prison is to provide protection of offender from the community for the duration of the sentence. This does not constitute protection

from crime. Non-custodial sentence according to the Tokyo Rules (1990) is also referred as community-based correction includes fines, probation orders, community service orders, and attendance centers.

Sentencing is the procedure where a magistrate or judge imposes a punishment after a trial to an accused person who has been convicted of a crime (Jackson, 2005). There are various penal sanctions for specific offences in Section 24 of the Penal Code used in Kenya. According to the Constitution of Kenya (2010), there are different types of penal sanctions. For example, fines, death penalty, custodial sentencing, probation orders, community service orders, probation orders and much more.

The sentencing policy guidelines determine whether an offender is considered for non-custodial sentencing also known as custodial order. The guidelines aid in the sentencing process as guided by the Constitution (Constitution of Kenya, 2010). The courts use the guidelines to consider sentencing in an objective and impartial way. The aim is providing uniformity in sentencing, consistency, and transparency. This helps on the administration of justice and trust in the criminal justice system. Therefore, the aims of sentences are to keep the offender in a confinement such as prison, act as a form of deterrence, reduce the rate of crime, prevent recidivism, rehabilitate the offender and protection of members in the community. This also includes reparation which is a form of repayment.

It has been argued that, prisoners who enter the prison system learn more criminal behavior than they actually have when they begin their sentences. A research conducted by an economist by the name Professor Michael Mueller-Smith, at University of Michigan measured how much incapacitation reduced crime. At the Harris County in Texas, he perused through the court records from 1980 to 2009.

Depending on the judge who were randomly assigned, he noted that offenders with similar nature of crime were charged differently. With further investigations, he noted that every year in custodial sentence increased the chances of the inmate reoffending by 5.6% a quarter. Thus, the more time spent in prison, offenders imprisoned for petty crime ended up committing more serious offenses. This made them into what is known as career criminals. Within a span of five years of release more than 75% of prisoners committed crime again thus getting arrested again increasing rate of recidivism.

Prisons are expensive and overcrowded. According to statistics (2010), the capacity of Kenyan prisons is about 22,000 inmates but currently the prisons facilities are choked to the tune of over 53,000 inmates. The challenge of overcrowding has negative effects on the prison inmates by restrictions and limitations. It creates scarcity of resources decreasing the resources available for each and every facility. As a result, there is competition among inmates for limited resources increasing violence, aggression, and frustration. The lack of work makes prisoners idle. The effects of crowded prison are vulnerability of stress, fear, and tensions among inmates. Thus, making it difficult to cope making inmates depressed and aggressive. This adversely affects physical and mental health of inmates. Therefore, overcrowded prisons make the inmates develop negative viewpoints that result in more violent crimes when they come out of prison.

Non-custodial sanctions can be grouped into two, ones that require no probation services and others requiring probation services. Those requiring no probation services include fines which is the common penalty. Apart from Indonesia, fines are the most used alternatives in all other countries where an offender has to pay a sum of money. Failure to do so could result in custodial sentence.

2.3 Sentencing factors

The criminal justice system has to seek for other stiffer sentences that will prevent the offender from committing another crime due to increasing rate of recidivism. First time offenders are usually considered for non-custodial sentencing instead of imprisonment (Kenya Judicial Sentencing, 2011). This is because their sentences are short and the rehabilitative is not met if they are imprisoned. The disadvantages of short sentences are that they are disruptive and contribute increased rate of recidivism. Therefore, the magistrate or judge looks at various factors on imposing a custodial or a non-custodial sentence. These factors should be taken into consideration:

Gravity of the offence

This is the seriousness of a breach of law committed by the offender. If criminal justice system considers the aggravating circumstances are severe and would do harm to the victim and the community non- custodial sentencing would not be taken into consideration. However, a custodial sentence should be avoided for first time

offenders.

Criminal history of the offender

Those considered for non-custodial sentencing are first time offenders. On the other hand, repeat offenders are considered for custodial sentences unless the nature of their offence is evident and applicable for them to serve non-custodial sentencing. Therefore, before sentencing, the court looks whether or not the offender has been previously convicted.

Children in conflict with the law

Children in conflict with the law are known as juveniles. According to the Children's Act (2001), juveniles are considered for non-custodial orders if the offense is petty and if the court also looks at other factors which prevents them from imprisonment. What is important is taking into consideration what is best for the juvenile. Thus, custodial orders should be last option taken into consideration.

Character of the offender

If an offender is remorseful, non-custodial sentence is considered in receptive to rehabilitative measures.

Protection of the community

If an offender threatens the security of a community or even possess a threat, only custodial sentence is considered. For example, an offender who has committed numerous sexual offences or even murder can endanger the community and confinement is considered. This information is contained on the probation officer's report that is presented in court.

Offender's responsibility to third parties

During plea, if an offender mitigates and has dependents such as children and a spouse who solely depend on him or her, the court can consider noncustodial sentencing. Information concerning dependents should be proved, For example if the offender is the works at a firm and the only legal parent who pays fees for his or her children, evidence on letter of appointment of workplace, fees paid for the child or children is presented in court. This also depends on other factors such as the seriousness of the offence committed.

2.4 Non- Custodial sentencing

Penalties or orders that a court can make that do not involve imprisonment are known as non-custodial sentences. Other examples of non-custodial sentences are fines, conditional discharge, probation orders and community service orders.

Probation is a word from Latin which means to prove or to test. According to (Abadinsky, 2003) offenders can be released from probation. This is a reformative method in the alternative of imprisonment. In such a case, with or without condition, the offender is released on probation and allowed to go back to the community and live a normal life. The court may decide to postpone the final sentence of the offender for a specified period of time. The advantage is that the offender has an opportunity to adjust in the community and correct his behaviour. This is supervised by a probation officer who records progress of the offender as he or she adjust back to society.

For youths who offend the variety of non-custodial order sentences include attendance center, community responsibility, reparation, and youth conference. For majority of courts, fines are the most common form of punishment. This an amount of money ordered by the court that should be paid back to the victim. According to the Community Service Act (1998), an offender is punished by performing unpaid work for a specified amount of time as stated in the community service order given by the courts. The minimum age of the offender should be sixteen years. The order must be of minimum of 40 hours, not exceed 240 hours and completed within twelve months.

The objective of non-custodial measures is to look for other methods of sentencing instead of imprisonment. The courts guided by the Penal Code find suitable sanctions. What is considers is the type of offence committed by the offender and the type of sentencing the court gives. The two should be proportionate. For example, id a first-time offender committed a petty crime committed, the punishment would not be severe. The courts may allow non-custodial sentencing such as give a probation order.

The advantages of this is that the offender to has the freedom to continue living life in the community. Tokyo rules on non-custodial sentence affirm that courts or sentencing authorities may dispose cases in any of the following ways-verbal sanctions, admonitions, reprimands and house arrest and any other non-institutional treatment. Placement of offenders on non-custodial sentencing depends on various factors. First

it depends on whether the offence is punishable with a maximum limit of three years. In the case of community service order, if an offence is not severe, minimal punishment is given which may last one day. If the gravity of offence is severe, an offender can be placed on one year or even a maximum of three years community service.

According to the Community Service Order Act (1998), the community service officer have to identify suitable work placements for the offender. They consider factors such as the skills of the offender. For example, if the offender is skilled in masonry, he or she can be placed at a construction site to conduct his service to the community. Furthermore, the community service officer must supervise the offenders work so that he does not abscond. If the offender absconds or, he be issued with a warrant of arrest and arraigned in court. As a result, the offender could receive a fine, or any other sentence. It is the role of the community service officer to identify a variety of work placement for offenders placed on community service order so that it prevents them cluttering at one workplace while other work centers may need their unpaid services.

The Probation of Offenders Act (1981) permits courts the option of placing offenders on probation. This is a form of non-custodial sentence. A probation order requires an offender with a minimum age 10 and above. Before sentencing, the court explains the terms of the order to the offender. The offender has to consent to the order and consequently be supervised by a probation officer in the community. The duration of the sentence can be of a minimum period of six month while the maximum duration an offender is placed is three years. The offender has to adhere to the regulations of the order. If the offender commits an offence during the probation term, the court can give stiffer sentencing sanctions.

When making a decision on whether to place an offender on probation, section four of the Probation of Offenders Act guides the courts before sentencing to consider factors such as nature of crime committed, whether the offender is remorseful, for the offence committed, the home condition of the offender and any other conditions that involve the life of the offender (Claus, 1998).

In a case where the offender committed an offence under the influence of alcohol and has major problems with drug use, the court when placing the offender on probation sentence will add additional requirement such as the offender getting help from a drug

rehabilitation center.

The above information is contained on pre-sentence report that the probation officer writes and has a detailed information of the offenders needs for purpose of rehabilitation. Once it is presented in court, the offender must agree to comply to the terms and conditions offered before the court approves the order. The probation order period can be as short as six month and last a maximum of three years.

A binding over is when the court can make a good behavior bond. The offender enters an agreement with the court to comply with the terms and regulations stated of being if good behavior for a stated period of time. During this time, the offender can go through rehabilitation, counseling to deal with issues that prompted him or her to engage in crime. If the offender agrees and complies with the bond, there is no further penalty at the end of the period. If non-custodial sentence is breached, the court may refer the offender to custodial sentencing.

The court may order an Apprehended Violence Order (AVO) to an offender. This prohibits the offender form certain behaviors. For example, an offender who drove while drunk may have his license revoked and not allowed to drive for a certain period of time. In this order, the offender reports to the attendance center for a period between 12 and 24 hours over a number of months indicated on the order. If the order is breached the offender is issued with a warrant of arrest and charged with an offence.

2.5 Non-custodial trial stages

Once an offender is arrested by the police, within 24 hours he or she must be arraigned in court. Once in court the offender makes a plea which is guilty of not guilty. During plea, mitigation can be made. During pre-trial stages, the facts or evidence are taken into consideration. The offender's needs and interests have to be weighed against society's interests during this stage. The interests of the victim are also taken into consideration. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the United Nations General Assembly (1985) is a guideline to protect the victim and allow him or her to participate in the trial proceeding, According to this principle, "the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by allowing the views and concerns of victims to be presented and considered at appropriate stages of

the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system”.

The third stage is the trial stage where testimonies of the plaintiff and the defendant are presented in court. In the last stage of post-trial, the magistrate or judge makes a ruling on the sentence given to the offender. The goal of sentencing is protection of society from the offender, crime prevention, the promotion of respect for the law as well as the rights of victim.

During the post-sentencing stage, according to the Tokyo Rules (1990) non-custodial measures should note that “the competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.” The aim is to reduce incarceration time and reduce the risk of offenders becoming institutionalized. This makes it easier for the offender to reintegrate back to society upon release.

2.6 Theoretical Framework

2.6.1 Introduction

Various theories have been developed over time that explain why individuals commit crime and why sentencing has traditionally been applied to rectify criminal behavior. Punishment is often exerted to ensure deterrence. To administer justice, it is important that the state complements these efforts by providing peaceful environments to its people. Theorists like Robert K. Merton (1920-2003), Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832) have argued on different grounds for the need to either exerts harsh punishment or less strict punishment depending on the goal of punishment. The current section explores three distinct theories and connections between the development of dysfunctions or deviant behavior, and the negative consequences of either form (harsh or less strict) of punishment and the impacts of each form of punishment.

2.6.2 Social Strain Theory

These theories were proposed and developed by Robert K. Merton (1938) and Travis Hirschi (1969). Merton (1938) was an American sociologist. He asserted that social strain is the friction and pain experienced by an individual as he or she looks for ways to satisfy individual needs and societal goals. Agnew (1992) stated that the failure to

achieve a goal, the removal of positive impulses, and the existence of harmful impulses are the reasons for deviance producing strain. There are two general categories of strain that contribute to crime. The first is when others prevent one from achieving personal goals, and the second is when others take things one values or present an individual with negative stimuli. Pressure derived from social factors, such as lack of income or lack of quality education, drives individuals to commit crime (Merton, 1938). Individuals may engage in crime to reduce or escape from the strain they are experiencing. For example, they may engage in violence to end harassment from others, they may steal to reduce financial problems. There are discrepancies between culturally defined goals and the institutionalized means available to achieve these goals. In this theory, deviance is based on two factors which are a person's motivations or her adherence to cultural goals and a person's belief in how to attain his goals.

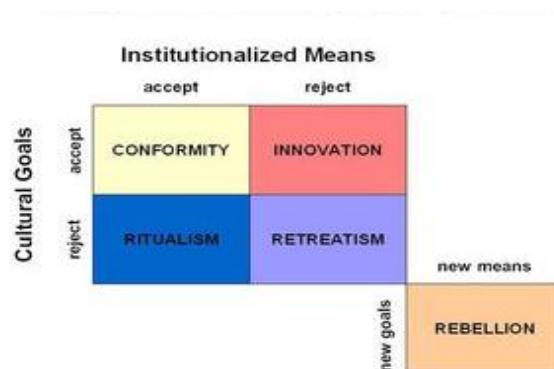


Figure 1: Robert K. Merton's Deviance Typology

Conformity is the acceptance of the cultural goals and means of attaining those goals. Innovation is the acceptance of the goals of a culture, but the rejection of the traditional or legitimate means of attaining those goals. Ritualism involves the rejection of cultural goals, but the routinized acceptance of the means for achieving the goals. Retreatism involves the rejection of both the cultural goals and the traditional means of achieving those goals. Rebellion is when the individual rejects both the cultural goals and traditional means of achieving them, but actively attempts to replace both elements of the society with different goals and means.

Agnew et al (1992) stated that the failure to personal goals like acquisition of money, status, or respect, and for autonomy for adolescents could lead to deviance. For many

people, money is necessary to buy many of the things we need, including the necessities of life and luxury items. Some people perceive the legal channels as ways to hinder them from easily accessing money. Such people experience strain, and they may attempt to get money through illegal ways such as stealing, selling drugs, and prostitution. They commit crime because they want money but cannot easily get it any other way. Regarding status and respect, people want to be positively regarded by others and they want to be treated respectfully by others while being treated fairly. For example, many males, especially those who are young, lower-class, and members of minority groups, experience difficulties in achieving their goals and are less treated as men. They may adopt a tough demeanor, respond to even minor shows of disrespect with violence, and occasionally assault and rob others to establish a tough reputation. Adolescents are often encouraged to be autonomous, but they are frequently denied autonomy by adults. The denial of autonomy may lead to delinquency for several reasons: delinquency may be a means of asserting autonomy by sexual intercourse or disorderly behavior, achieving autonomy by stealing money to gain financial independence from parents, or venting frustration against those who deny autonomy.

Upon failing to achieve one's goals, strain may result when people take something one values or present one with noxious or negative stimuli. Lack of income, quality education, a job, social bond, lack of opportunities, lack of work, and discrimination create social strain. In the context of punishment and correctional measures exerted upon criminals, non-custodial sentences such as probation orders and community service orders. Non-custodial sentences are less likely to result in strain and often provide the offender with a drive to rectify their actions and behavior within society. The negative causations of crime include the socioeconomic conditions, social interactions, strain, an individual's behavioral characteristics, stressful situations, criminality, and propensity to commit crime as a result of interactions of the individual with the negative impulses of society as explained by Merton's Social Strain theory. Negative outcomes of these interactions, conditions, and events increase the likelihood of committing crime. Imposing a harsher treatment on the offender might exacerbate the condition and have negative outcomes. In particular, punishment in the form of confinement in prisons or custodial sentencing has been linked to criminal victimization, physical punishment, negative relations with parents, negative relations with professional acquaintances, negative educational experiences, negative relations

with peers, neighborhood problems, and a wide range of stressful life events such as divorce or separation even after the sentence has been completed. It fails to promote self-motivation and a desire to change behavior as evidenced by the thousands of criminals that have been reincarcerated after release with continued acts of crime resembling the initial cause of imprisonment.

2.6.3 Deterrent theory

In deterrence theory, people obey the law because they fear getting caught and being punished. In this theory, punishment will deter people from committing crime and reduce the probability and level of offending in society. There are two basic types of deterrence which are general and specific. General deterrence is designed to prevent crime in the general population. The state punishment of offenders is to deter the general population from committing crime. Examples include the application of the death penalty and the use of corporal punishment. Specific deterrence is used to deter only the individual offender from committing that crime in the future. Although some researchers in the field of correctional measures argue that punishing offenders severely will make them unwilling to reoffend in the future, it is the belief of other researchers that deterrence theory leads to high recidivism rates, thus proving that it is not an effective form of rehabilitation of criminals.

The deterrence theory of punishment can be traced to the works of Thomas Hobbes, Cesare Beccaria, and Jeremy Bentham. Hobbes (1972) stated that people generally pursue their self-interests, such as material gain, personal safety, and social reputation, thus making enemies without caring if they harm others in the process. The result is often conflict and resistance from societal norms leading to deviance. He argued that the punishment for crime must be greater than the benefit that comes from committing the crime. Deterrence is the reason individuals are punished for violating the social contract, and it serves to maintain the agreement between the state and the people in the form of a workable social contract.

Beccaria (1963) stated that humans are rational beings with free will to govern their own decisions. If people are rationally self-interested, they will not commit crimes if the costs of committing crimes prevail over the benefits of engaging in undesirable acts. Excessive severity punishment will not reduce crime, in other words, it will only increase crime. He further stated that swift and certain punishment are the best means of preventing and controlling crime. Prison should be more humane, and the law should

not distinguish between the rich and the poor. Judges should determine guilt and the application of the law, rather than the spirit of the law. Legislators should pass laws that define crime, and they must provide specific punishments for each crime. To have a deterrent value, punishment must be proportionate to the crime committed.

Finally, Beccaria (1963), argued that the seriousness of crimes should be based on the extent of harm done to society. As an advocate of the pleasure-pain principle or hedonistic calculus, Beccaria maintained that pleasure and pain are the motives of rational people and that to prevent crime, the pain of punishment must outweigh the pleasure received from committing crime. Punishment, more than what is essential to deter people from violating the law, is unjustified (Bentham, 1948).

According to deterrence theory, people are most likely to be dissuaded from committing a crime if the punishment is swift, certain, and severe. The more severe a punishment, it is thought, the more likely that a rationally calculating human being will desist from criminal acts. To prevent crime, therefore, criminal law must emphasize penalties to encourage citizens to obey the law. Punishment that is too severe is unjust, and punishment that is not severe enough will not deter criminals from committing crimes. Certainty of punishment simply means making sure that punishment takes place whenever a criminal act is committed. Moreover, their punishment must be swift to deter crime (Bentham, 1948). The closer the application of punishment is to the commission of the offense, the greater the likelihood that offenders will realize that crime does not pay. In short, deterrence theorists believe that if punishment is severe, certain, and swift, a rational person will measure the gains and losses before engaging in crime and will be deterred from violating the law if the loss is greater than the gain.

2.6.4 Reformatory Theory

This is also called rehabilitative sentencing. Crime is seen as a kind of disease. Therefore, treatment should be effective in order to recover. The way an individual is brought up plays a major role in conformity to the norms of society (Rai, 2012). If an individual is brought up in a life of crime, it becomes easy for them to engage in criminal activities (Wu, 2008). Lack of moral values increase the chances of an individual to commit crime (Sutherland. 1974). Other factors that have an effect on whether or not an individual commits crime are negative peer pressure, mental disorders, personality defects, social pressure, and psychological disorders. Probation

officers as well as other professionals engaged in the rehabilitation of the offender play a major role in treatment of the offender. This enables the offender to reintegrate back to their community and become a good citizen.

The purpose of punishment is to reform the offender as a person, so that he may become a normal law-abiding member of the community once again. The focus is on the criminal and not on the crime. It ensures that the guilty person does not engage in criminal conduct in future. In the deterrence theory, this result is sought to be achieved by the modality of fear of punishment. Thus, individuals who are inclined towards criminal conduct are expected to refrain due to the fear of the punishment which is likely to be imposed on them as a consequence of their crime. This theory treats the offending individual as a person who requires help to change his inclination towards criminal conduct. Thus, this theory considers the propensity to commit crimes as an affliction which can be treated. Thus, the focus is on imposing such punishment which would bring about attitudinal and behavioural changes in the concerned individual. This is achieved through the educational components inherent in the punitive measures. In reformative theory, the only form of permissible punishment is imprisonment or probation. Rehabilitative punishments reflect same consequentialist philosophy which serves as the foundation of both deterrence and preventive theory (Robinson & Crow, 2009).

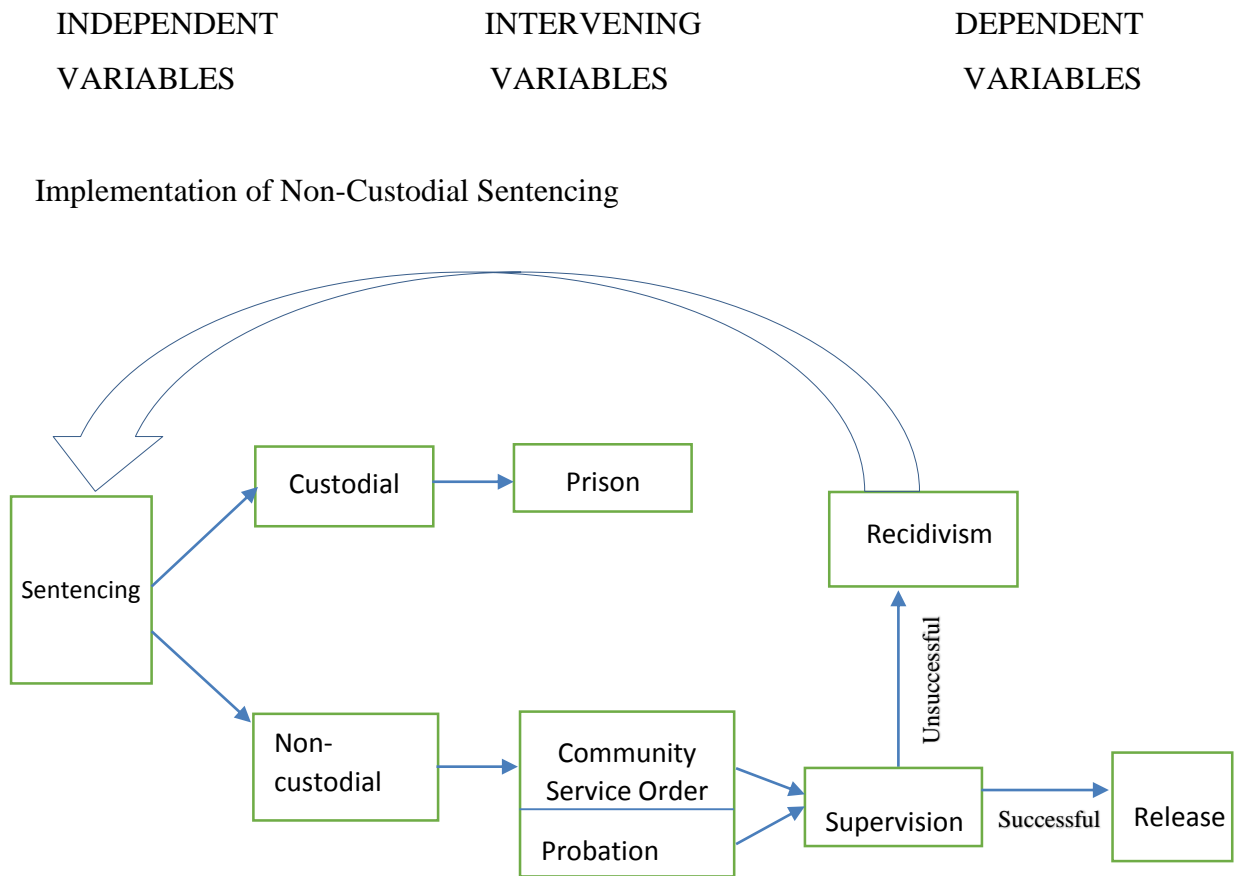
Provision for vocational or technical training of the offender during the period of imprisonment is essential to the idea of reform and rehabilitation. Educational opportunities and appropriate psychological counselling, facility to maintain links with the family and the community during the period of imprisonment are also considered as essential aspects of a rehabilitative approach towards punishment. This to bring about a change in the personality and character of the offender. The idea behind any punishment which is imposed under the rehabilitative theory of punishment is to ensure that the concerned individual resumes his position as a regular member of the society (Robinson & Crow, 2009).

2.7 Conceptual Framework - Effectiveness of non-custodial sentencing

Non-custodial sentencing is an alternative of imprisonment. Once a crime is committed legal process follows. This begins from reporting to police for arrests. During mitigation, the court decides the sentencing of the offender. 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. Furthermore, the court has a role referring all possible cases of persons who have been convicted for various offences to non-custodial sentence as it strives to uphold justice and social order in the community of people or society.

Figure 2.1: Conceptual model



There are various factors that affect the successful implementation of non-custodial sentence, especially probation and community service orders made by the courts in administration of justice.

The criminal justice system makes competent decisions concerning sentencing. Factors that influence sentencing are the character of the offender, gravity of the offence, protection of the community, children in conflict with the law, offender’s responsibility to a third party and criminal history of the offender.

Offenders placed on custodial sentencing are incarcerated. Those placed on non-custodial sentencing are either placed on community service order or probation order sentence where they are supervised.

Supervision is an essential component of community-based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to reintegrate the offender into the law-abiding lifestyle. Lax supervision

and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990)

Supervision by probation officers is important in realization of sentencing objectives. Poor supervision leads to abscondism and recidivism of the offender. The number of contacts between the offender and the officer are key in reforming, re-integrating the offender. The community plays a major role in having offenders effect change. Community attitude, home environment is deterministic of offender's potential to change. Chandler. C. et el (2008), describes how thoughts influence feelings and consequently affecting behaviour of individuals. Community support and participation is vital in achieving sentencing objectives through behaviour change mechanisms embedded in the community.

2.8 Summary

Non-custodial measures substitute for imprisonment are cheaper alternatives to prison. The offender is still under supervision but has the freedom to engage in daily activities such as work. This makes it easier for the offender to reintegrate back to the community after serving their sentence. During the time they serve non-custodial sentence, the offender undergoes rehabilitation, therapy or specialized treatment while serving his or her sentence.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter gives an overview of methodological approaches selected for this study. It includes a description of the type of research conducted in the current study, the data collection methods applied, the data analysis methods, sampling methods, research instruments, ethical considerations, and all tools and materials applied in the study. The rationale for choosing these methods is explained last with the site description and site selection and procedures required for data analysis.

3.2 Research design

A research design according to Kirumbi (2018) is a procedure used in collecting and analyzing measures of the variables specified in the research problem. The research methodology used in the study was mixed methods approach. It applied both qualitative data and quantitative data from criminal records and primary data collected through interviews to collect their findings in the records used. The secondary data sources used also included data from the Kenya National Bureau of Statistics from 2016 and 2017. The assumption taken into consideration in the study was that attrition had been accounted for in the compilation of records of prisoners. The study applied data from 217 participants to represent the 54,000 prisoners currently held in Kenyan prisons. The methodology applied in the study took a systematic approach because it was geared towards providing a summative appraisal of results from different studies previously conducted on prison populations in the country. This design was observational and was of an ecological nature because it focused on populations in prisons. The prisons had been selected on a random basis. The findings within subjected to scientific analysis through the SPSS program.

3.3 Site Description

Makadara Consistency is an electoral constituency in Nairobi County, where there has been the highest increase of crime countrywide (Annual Crime report, 2018). Nairobi County recorded the highest number of cases reported to police. Regional crime

figures for the Years 2016/2017 in Nairobi indicated that there were 4,954 crimes reported in 2016 as compared to 7,434 crime reported in 2017. In 2016/2017 financial year the total case backlog stood at 315,378 cases in courts. Out of these, 52,332 cases had been in the court system for over 10 years since they were filed, the same ratio as the previous year. A fifth or 66,214 cases remained unresolved for between five and 10 years, a third or 113,766 suits were undetermined for two to five years and a quarter or 83,046 cases had languished in the justice system for one to two years (Otieno, 2018). Thousands of cases choke courts despite cleanup drive (www.nation.co.ke)

Makadara is located within the precincts of Nairobi city and therefore is both a residential and business region for Nairobi residents and businesspeople. According to the Kenya National Bureau Statistics, 76,986 crimes were reported in 2016. This recorded 1,000 more crimes since 2016, raising the number to 77,992 in 2017. During this period, 7,434 of all reported crimes were in Nairobi, much higher than the 4,954 cases reported in 2016. In 1899, Nairobi was founded by the British colonial authorities. It is the second largest city in East of Africa. The city was discovered as a result of a rail depot on the Uganda Railway (Monsma, 1989). By 2011, the population was 3.36 million. Its growth is at a rate of over 4% annually. This is attributed to high birth rates and increase in migrants from the county side to the city due to many pull factors such as employment and easier access to services. It is estimated that the city will continue to increase in population, reaching 5 million in 2025.

3.4 Unit of Observation

These are points from which data was gathered. The unit of observation was offenders placed on non-custodial sentencing, probation officers' reports, as well as data from the courts, police officers and prison officers in Makadara prison. The data collected from interviewing 217 members was also considered to be representative of the entire prison population of the country because the ratios picked were in direct proportion to the recorded numbers of remanded prisoners and sentenced prisoners within the country. Some of the factors assumed were that inmates had sentences that were proportional to the seriousness of the crime for which they were imprisoned. Some of the remanded prisoners, however, were assumed to have longer detainments owing to the lack of substantiating evidence against them and pending court trials, as well as other factors leading to imprisonment and holding which are determined by numerous

other externalizing factors like the availability of their witness testimonies and evidential depositions.

3.5 Unit of Analysis

The unit of analysis was the effectiveness of non-custodial sentencing on Probation and after care services.

3.6 Study Population/Target population

A study population is a group of people or study subjects that have similar characteristics in one or more ways, and which form the subject of a particular study (Polit & Beck, 2006; Burns & Grove, 2005). The target population was offenders of both juvenile and adults from the year 2016 to 2017 in the Makadara constituency.

3.7 Sampling

Sampling refers to the plan which the researcher applies and decides on how the samples of elements are selected from the target population. Probability sampling was used on the strata in this study. Makadara Constituency has four wards each having different sub-locations. The four wards: Maringo/Hamza; Viwandani ward; Harambee ward and Makongeni wards were all included in this study. With a margin of error of 5% and confidence level or 95%, a sample size of 217 is determined using the formula:

$$ss = \frac{Z^2 \times (p) * (1 - p)}{C^2}$$

Where:

Z = Z value (e.g. 1.96 for 95% confidence level)

p = the (estimated) proportion of the population which has the attribute in question
C = confidence interval, expressed as decimal

3.8 Methods and tools for data collection

The study used both quantitative and qualitative methods of data collection.

Questionnaires, Interview guides and record review were tools used for data collection.

3.8.1 Collection of Quantitative Data

Survey questions were developed to target gender, age as well as types of crime committed and the type of non-custodial sentences. Primary data was collected through direct communication between the researcher and the study subjects where the researcher was able to profile demographics, socio-cultural-economics, attitude and opinion, experiences, and psychological lifestyles of those placed in non-custodial sentence.

3.8.2 Questionnaire

Questionnaire was the main data collection instrument for collection of primary data. A structured questionnaire with both open ended and close ended questions was used for ease of interpretation and also gathering a wide range of data. The researcher designed questionnaires to examine strategies used to effect non-custodial sentencing on offenders.

3.8.3 Document Review

This method was used to collect data from records found in registers, central case ledgers, probationer's files, supervision reports, and reporting schedules to access information on the offenders placed on sentencing. These documents were well detailed as they entailed the offender's history, family background and nature of crime. The court file and probation officers file contained information of whether the offender was a first-time offender or has a habitual offender to determine rate of recidivism. Probationer's files allowed the probation officers to document data about a probationer without mixing them up with that of another. It also entailed detailed reports concerning change of behavior.

3.9 Validity

The researcher examined the extent to which the instruments addressed the intentions and objectives of the study in terms of content, construct which was both internal and external to the research environment. The researcher keenly designed the questionnaire tool to capture only relevant information. The tool was further

forwarded to the supervisor for validation for quality control to ensure only relevant and accurate data is collected and accord generalization of findings later in other regions. Through consultations with selected peers in probation service, the instruments were reviewed and found suitable for the investigation with the key variables agreed upon as designed in the study.

3.10 Reliability

This is a measure of the degree to which research instrument yields consistent results after several trials, Thereafter, the results can be generalized. The tool was guarded against collection of irrelevant data and sharpened to lessen possible errors that may be associated with the tool through internal consistence test and measures. Test re-test was done before the instrument was rolled out and any ambiguities are ironed out. The researcher pre- tested and re-tested the tool in Nairobi area, the outskirts of Nairobi sharing similar characteristics with the research area. The instrument of data collection was validated, and a pre-test and re-test conducted before administration of the interview guide to the targeted population to eliminate any ambiguities. Content validity was also ensured by the researcher's careful design of the questionnaire to solicit relevant information, and key respondents carefully identified for the subject of study.

3.11 Ethical Considerations

Formal introduction was done by way of presenting the letter of introduction. The research assistants were sensitized so that they could follow ethics. The researcher adhered to the necessary government regulations that required authority to conduct research from public institutions. Confidentiality was an important aspect in the research. Respondents were protected by keeping the information they gave confidential by not revealing their names but by the use of anonymity. Furthermore, their consent was sought before revealing any information. The respondents were briefed beforehand about the intention of the research study and information that was collected strictly for learning purposes. The researcher acknowledged the assistance received from various individuals such as respondents, professionals, as a matter of courtesy. The researcher allowed participants to willingly volunteer to participate in the study as described in the sampling procedure. Work used by other researchers was

acknowledged and neutrality maintained.

3.12 Data Analysis

The methods of data analysis after conducting the literature review and static data would take on a descriptive or data extraction perspective, which is not based on explicit scientific methods. It has no clear-cut steps in its design, and it is an analysis of findings and results. Other previous researchers in the field have taken on empirical data and provided quantitative and qualitative data from observations and interviews that would not be possible for the current study.

The quantitative data collected was entered into MS-Excel then cleaned (checked for completeness). The data was then exported to SPSS Version 23. The qualitative data collected was entered in Atlas.ti for analysis. By employing the qualitative research design and data analysis, the researcher was able to attain convergence between the data produced from diverse sources as a check on the validity of discussions and conclusions. The tasks involved coding, sorting, cleaning the data collected, organizing the data systematically, and generating descriptive statistics. The descriptive statistics was presented in frequency tables, bar charts and percentages. Paired t- test was used to compare the effect of non-custodial sentencing on probation and after-care services. P-values less than 0.05 was considered significant. Interpretations of the findings was based on the objectives of the study and the conclusions drawn and appropriate recommendations made.

CHAPTER FOUR

DATA ANALYSIS AND PRESENTATION

4.0 Introduction

This chapter presents information on demographic characteristics of respondents and the evaluation of the effectiveness of probation order and community service order on offenders in Makadara County from 2016 and 2017.

4.1 Probation order and community service order sentence on offenders in Makadara County

In Kenya, there are two types of trial courts that are empowered to pass criminal sentences. These are the High Court and the Magistrates Court, in accordance with the Criminal Procedure Code. The High Court has original jurisdiction to hear all criminal matters (Constitution of Kenya, 2010). On the other hand, the Magistrates Court can preside over all criminal cases except those involving murder, treason, and complex or white-collar crimes, which fall under the jurisdiction of the High Court (Muthoga & Bowman, 2010). In addition to this, the High Court also hears appeals from the Magistrates Courts. These courts then have the mandate to pass sentences in accordance with the Criminal Procedure Code after all witnesses have been heard and the accused has been convicted (found guilty) (Criminal Procedure Code, 2012). The prescribed punishments are set out under each crime and are provided for in the Kenya Penal Code.

The Kenya National Bureau of Statistics reported that in 2016 the prison population was 50,900 while in 2017 prison population was 82,433. There are about 10,644 convicted women prisoners in Kenya and 71,789 male prisoners in 2017. This makes a total prison population 208,168. With prison capacity in Kenya holding 26,837, there is overcrowding in prisons.

4.2 Response Rate

The researcher recorded a response rate of 100 percent for all categories of respondents. The researcher was able to gather complete questionnaires, which indicate a 90.6 percent response rate, which are adequate for research. This was

attributed to the researcher’s use of professional skills in administering the instruments and communicating effectively, thus able to gather complete questionnaires in order to evaluate effectiveness of non-custodial sentence on Probation and Aftercare Services.

4.3 Social and Demographic Characteristics of respondents

4.3.1 Age range of offenders on probation sentence

The height of desistance from offending is between 20 and 29 years. This however differs from my findings whereby in 2016, majority of offenders (55 percent) were between 24- 34 years of age, in 2017 there was a drop to (42.1 percent) of offenders in the same age range. There was an increase in teenage offenders from 9 percent to 11.8 percent, offenders in the range of 19-23 years increases from 42percent to 49 percent as those above 35 years recorded an increase from 21.5 percent to 26.1 percent from 2016 and 2017 respectively.

As seen from the table below, most respondents in the category of offenders were in the age range of 24- 34 during both 2016 and 2017.

Table 4.1: Age range of offenders on probation sentence

Age	2016		2017	
	Frequency	Percentage	Frequency	Percentage
10-18	26	9	29	11.8
19-23	42	14.5	49	20
24-34	159	55	103	42.1
35+	62	21.5	64	26.1
Total	289	100	245	100

From the table above, crime rate increased with age with majority of offenders (69.5%) being youths in 2016 while in 2017 youth offenders was 62.1%. There was a decrease after youth with those 35 years and above.

Table 4. 2: Age range of offenders on Community Service Order

Age	2016		2017	
	Frequency	Percentage	Frequency	Percentage
10-18	1	3.4	0	0
19-23	1	3.4	88	49.7
24-34	19	65.5	86	48.6
35+	8	27.6	3	1.7
Total	29	100	177	100

In 2016, 65.5 percent of offenders placed on community service order were between 24-34 years. Those above 35 years constituted 27.6 percent. Those between 10-23 years of age constituted 6.8 percent. For Makadara sub-County, crosslinking factors such as poverty and education level, marital status and gender, and labor force and activity status of the household head can influence development of internalizing factors depending on the impact they have on the participants in their daily activities and in access to resources.

The number of youth offenders increased from 69 percent in 2016, to 98.3 percent in 2017 coinciding with the restricted entry into tertiary education institutions (Bii & Kimuge, 2016). This increase could also be linked to poverty level increases and household strains following a lack of youth commitment and idling as risk factors within this social setting. Another argument in favor of commitment is that family commitment discourages individuals from getting involved in illegal activities (Gitao, 2016).

4.3.2 Gender of offenders placed on non-custodial sentence

Braithwaite (1989) stated crime is “committed disproportionately by males.” This assumption has had an effect on criminological school of thoughts as well as the criminal justice policies. The sex role theory focuses on the physical, genetic and socialization roles of men and women. Masculinity is more open to criminality due to dominance nature.

The table below shows the gender of offenders placed on probation sentence in 2016 and 2017. Males recorded 80.3 percent in 2016 while females placed on probation sentence constituted 19.7 percent. There were more males than female offenders for

both years.

Table 4.3: Gender of offenders on probation sentence 2016

Offender	Frequency	%
Male	232	80.3
Female	57	19.7
Total	289	100

In 2017, 80 percent of offenders placed on probation sentence were male while 20 percent were females. Morris (1987) stated women are treated more leniently in terms during arrest and convictions compared to men within the Criminal Justice System. Reason being women are primary care givers to their children.

Table 4.4: Gender of offenders on probation sentence 2017

Offender	Frequency	%
Male	196	80
Female	49	20
Total	245	100

Community Service Order Act (1998) stipulates that the sentence comprises unpaid work to the public within a community. This can be one day of community to a maximum of three years. Most one-day community service orders are for offenders arrested and arraigned in court for drunk and disorder offence. Male offenders were more than females. Economist Grogger (1998) stated that high crime rates among young men are due to competitive job opportunities. So those without jobs or with little pay look for other alternatives. When the means of reaching the expected goal is denied or prevented, some men engage in crime. The tables below show the gender of offenders placed on community service order sentence in 2016 and 2017.

Table 4.5: Gender of offenders placed on community service order sentence in

2016

Offender	Frequency	%
Male	22	75.9
Female	7	24.1
Total	29	100

Offenders placed on community service order in 2016 were mostly males recording 75.9 percent while females comprised 24.1 percent. In 2017, there was an increase of males placed on community service order recording 96 percent while females recorded 4 percent. This was higher for males compared to 2016 while a decrease for females compared to 2016. The drastic increase in males were as a result of delinquent behavior among the youths. With strikes in public universities, many youths were idle engaging in reckless behavior such as drinking and petty offences.

Table 4. 6: Gender of offenders placed on community service order sentence in 2017

Offender	Frequency	%
Male	170	96
Female	7	4
Total	177	100

4.4 Education level of offenders placed on non-custodial sentencing

Education levels of offenders placed on non-custodial sentencing indicated that 47.4 percent of offenders placed on probation sentencing had attained primary level of education, while 33.7 percent offenders had secondary qualification and 18.9 percent had attained tertiary education.

Table 4.7: Education level of offenders placed on probation sentence

Level of Education	Frequency	%
Primary	253	47.4
Secondary	180	33.7
Tertiary	101	18.9
Total	534	100

For offenders placed on Community service sentencing as shown on table 45 below, 45.15 percent had attained primary level of education, 36.40 percent had secondary qualification, while 18.45 percent had attained tertiary education. Lochner and Moretti (2004) noted that a one-year increase in average education levels in a state reduces rate of crime by more than 11 percent. A large majority of the respondents lacked education and skills for competitive jobs to earn legitimate living in Nairobi County. An increase in the number of untrained and unskilled individuals recorded in 2016 was noted after a cancellation of satellite campuses of tertiary level education institutions across the nation, which led to a sudden growth in the population of uneducated and unskilled citizens within Nairobi County. The report by KIHBS (2016) indicated that poverty rates were highest in households where the individual had no form of education or higher learning at a tertiary level institution. It constituted 14.4 percent of all households with the poverty gap at 19.3 percent below the poverty line.

Table 4.8: Level of education of offenders placed on community service order

Level of Education	Frequency	Percent
Primary	93	45.15
Secondary	75	36.40
Tertiary	38	18.45
Total	206	100

The findings 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 make a living in the harsh and competitive economic environment in the metropolitan/cosmopolitan city. Education equips individuals with skills need in employment. So once an individual is employed or earns legitimately it discourages participation in crime.

At the same time, this group was negatively impacted by a nationwide standoff between faculty members at institutions offering tertiary education and government administrators responsible for reviewing reimbursements. The lecturers' strike commenced on January 19th lasting 54 days.

The second strike on July 3rd lasting 2 weeks, and the third commenced on November 1st lasting 38 days. This negatively affected the youth attending public universities by promoting idling as a risk factor, thus leading to their engagement in crime.

4.5 Non-custodial Offenders Residences in Makadara

The findings show offenders residence in Makadara Sub County in Nairobi County. Makadara constitutes Maringo, Viwandani, Harambee and Makongeni Wards. The majority of offenders in Makadara constituency were from Maringo ward (32.8%) while the least came from Makongeni ward (11.1%). The Kenya Bureau of Statistics (2013) recorded Maringo/ Hamza ward with the highest population of 52,293 people living, which may be the cause of the highest record of offenders placed on non-custodial sentencing. This ward comprises Ofafa Maringo, Hamza, Bahati/Kimathi Sub-Locations of Nairobi County. Viwandani ward comprises Viwandani Sub-Locations of Nairobi County. Harambee comprises Harambee and Lumumba-Jericho Sub- Locations of Nairobi County, Makongeni comprises Mbotela, Makongeni and Kaloleni Sub- Locations of Nairobi County.

Table 4.9: Non-Custodial Offenders Residences

Ward	Frequency	%
Maringo	243	32.8
Viwandani	220	29.7
Harambee	195	26.4
Makongeni	82	11.1
Total	740	100

Crime and poverty rates have been reported to have a direct correlation. A report of labor force and activity status in two distinct groups within the same age bracket (10-35+ years) indicated that there are significant differences between 10-24 years and 25-35+ years categories (KIHBS, 2017). The labor force within the population consisting of individuals between the ages of 10 to 24 years totaled 15,100,000. Of

these, only 5,445,000 were active while 9,645,600 remained inactive. The labor force within the population consisting of individuals between the ages of 25 to 34 years totaled 6,728,000. Of these, only 6,165,000 were active while 563,000 were inactive.

4.6 Type of offence committed by offenders placed on non-custodial sentence

The findings show the types of offences committed by males and females in 2016 and 2017. Stealing was the highest recorded type of offence committed by males in 2016, this was 19.4 percent. This was followed by possession of narcotic drugs, which constituted 16.4 percent.

Table 4.10: Types of offences committed by males in 2016

Type of offences committed	Frequency	%
Stealing	45	19.4
Creating disturbance	7	3.0
Possession of Narcotic drugs	38	16.4
Malicious damage	10	4.3
Gambling in public	4	1.7
Forgery	3	1.3
Possession of Counterfeit goods	2	0.9
Failing to register	1	0.4
Betting in Unlicensed premises	3	1.3
Assault causing actual bodily harm	13	5.6
House breaking	13	5.6
Trespassing upon private land	7	3.0
Illegal possession of farm produce	1	0.4
Grievous harm	2	0.9
Preparation to commit felony	10	4.3
Personating public officer	15	6.5
Touting of passengers	5	2.2
Entering restricted area	1	0.4
Neglect to prevent felony	2	0.9
Possession of bhang	29	12.5
Trafficking narcotics	9	3.9

Possession of alcoholic drinks	10	4.3
Defilement	1	0.4
Abduction	1	0.4
Total	232	100.0

Stealing was highest recorded offence for males in 2016. For females, possession of alcoholic drinks was highest recorded crime constituting 35.1 percent. Possession of narcotic drugs constituted 17.5 percent, while child neglect was 15.8 percent and stealing 12.3 percent. Selling of illicit brew was common for females as a way to have an income and cater for their children’s needs. As a result, their children were neglected at home while mothers were selling alcoholic drinks without a license. This coincides with the findings from Durose, et al., 2014), which stated that that within five years of release, about three quarters (76.6%) of released prisoners were rearrested as a result of possession of narcotic drugs, recidivism, and involvement in petty crimes, as evidenced in the indicated by 17.5 percent score of offenders engaging in of narcotic drugs, and 15.8 percent of child neglect , and 12.3 percent stealing.

Table 4.11: Type of offences by females in 2016

Type of offences committed	Frequency	Percent
Stealing	7	12.3
Possession of Narcotic drugs	10	17.5
Assault causing actual bodily harm	4	7.0
Possession of alcoholic drinks	20	35.1
Cruelty to child	3	5.3
Neglect of child	9	15.8
Infringing child rights to parental care	2	3.5
Subjecting child to cruel punishment	1	1.8
Attempting suicide	1	1.8
Total	57	100.0

In 2017, possession of narcotic drugs 19.9 percent was highest recorded offence by males, followed by malicious damage (18.4 %) and stealing (17.9%). The International Drugs Policy Consortium (2017) indicates that narcotic drugs main transit point is

Mombasa. These drugs are then transported to other parts of the country. Narcotic drug trafficking throughout the Indian Ocean was rampant. This was a way to make money. NACADA (2017) reported that heroin consumption in Kenya is on the increase. Trafficking has been a source of income to those committing the offence.

Table 4.12: Types of offences committed by males in 2017

Type of offences committed	Frequency	%
Stealing	35	17.9
Creating disturbance	3	1.5
Possession of Narcotic drugs	39	19.9
Malicious damage	36	18.4
Gambling in public	1	0.5
Assault causing actual bodily harm	26	13.3
House breaking	1	0.5
Grievous harm	10	5.1
Preparation to commit felony	13	6.6
Personating public officer	2	1.0
Touting of passengers	2	1.0
Neglect to prevent felony	2	1.0
Possession of bhang	9	4.6
Trafficking narcotics	12	6.1
Possession of alcoholic drinks	1	0.5
Obtaining by false pretense	2	1.0
Theft of motor vehicle	1	0.5
Defilement	1	0.5
Total	196	100.0

Table 4.13: Type of offences by females in 2017

Type of offences committed	Frequency	Percent
Stealing	7	14.3

Creating disturbance	4	8.2
Possession of Narcotic drugs	5	10.2
Assault causing actual bodily harm	11	22.4
Preparation to commit felony	1	2.0
Possession of alcoholic drinks	15	30.6
Cruelty to child	3	6.1
Infringing child rights to parental care	2	4.1
Attempting suicide	1	2.0
Total	49	100.0

According to the Alcoholic Drinks Act (2010), it is an offence to sell alcoholic drinks without a license. For females, the highest recorded offence in 2016 and 2017 was possession of alcoholic drinks which was 35.1 percent. Females were arrested for possessing alcoholic drinks such as illicit brews which they sold to earn a livelihood. The number of females placed reduced in 2017 as compared to 2016.

4.7 Sentencing Duration

When administering sentencing the criminal justice professionals consider the nature of offence committed, plea of the offender, the circumstances in which the offence occurred, if the offender has been previously convicted and demographic factors of the offender. Further considerations of rehabilitation and treatment plans are examined as well as the impact of the offence on the victim and any other relevant information about the offender such as health status. Placement duration for probation orders varies from a minimum of 6 months to a maximum of 3 years. In 2016, most male offenders were placed on 18 months' probation sentence constituting 44.8 percent. Majority of females in 2016 were placed on 18-month probation constituting 57.9 percent. There were two juveniles placed on 30-36 months' probation sentence.

Table 4. 14: Sentence duration for offenders placed on probation in 2016

Duration Months	Males		Females		Total	
	Frequency	%	Frequency	%	Frequency	%

6	41	17.7	8	14	49	17
12	5	2.2	2	3.5	7	2.4
18	104	44.8	33	57.9	137	47.4
24	24	10.3	3	5.3	27	9.3
30	34	14.7	5	8.8	39	13.5
36	24	10.3	6	10.5	30	10.4
Total	232	100	57	100	289	100

In 2017 48.5 percent of males were placed on 12 months' probation sentence while majority of females (61.2%) were placed on 18 months' probation. There were still more males than females placed on probation. However, offenders placed on probation sentence was lower in 2017 than in 2016. The Sentencing Guidelines used in Kenya (1998) is a booklet with the principles of law that guide courts in the type of sentencing given to offenders. The probation of Offenders Act (1998) makes a guideline on placing offenders in probation sentence. It considers a wide range of factors such as age, health, mental condition, home environment of the offender, nature, and circumstances to which the offence was committed. This information is typically contained in a pre-sentence report and will allow to make decisions on duration of sentencing.

Table 4.15: Sentence duration for offenders placed on probation in 2017

Duration Months	Males		Females		Total	
	Frequency	%	Frequency	%	Frequency	%
6	16	8.1	9	8.3	25	10.2
8	1	0.5	0	0	1	0.4
9	20	10.2	0	0	20	8.1
12	95	48.5	0	0	95	38.8
15	8	4.1	0	0	8	3.3
18	13	6.6	30	61.2	43	17.6
24	24	12.2	2	4.1	26	10.6
30	0	0	3	6.1	3	1.2
36	19	9.7	5	10.2	24	9.8
Total	196	100	49	100	245	100

Community Service Order (CSO) is a non-custodial sentence made under Section 3 of the Community Service Orders Act No. 10 of 1998 (Laws of Kenya) Community service order sentencing duration varies from 1 day to 3 years of community service where the offender performs unpaid work in the duration given. The minimum age is 16 years. Those placed on CSO in Makadara performed unpaid work at the following sites:

1. Kiambiu chief's office
2. Korogocho chief's office
3. Ole Kasasi chief's office
4. Dandora health center
5. Baba Dogo health center
6. Shauri Moyo Police Station
7. Lions Health center
8. Njiru Deputy County Commissioner's office
9. Mungarias chief's office
10. Non Kopir Chief's Office
11. Chief Magistrate county Makadara
12. Huruma Chief's office

One-day-CSO was the recorded have the highest number for CSO sentencing duration for both genders. In 2016, there was 36.4 percent of males placed on one day CSO while females recorded 57.1 percent for 1-day CSO. This was a result of drunk and disorderly behavior.

Table 4.16: Sentence duration for offenders placed on community service in 2016

Duration Months	Males		Females		Total	
	Frequency	%	Frequency	%	Frequency	%
1 day	8	36.4	4	57.1	12	41.4
6 months	3	13.6	0	42.9	6	20.7
12 months	6	27.3	3	0	6	20.7
18 months	2	9.1	0	0	2	6.9
24 months	2	9.1	0	0	2	6.9
36 months	1	4.5	0	0	1	3.4
Total	22	100	7	100	29	100

In 2017, more males (28.8%) were placed on one day community service order for drunk and disorderly conduct. Females recorded a 57.1 percent on 12 months' community service order while the rest were placed on 1-day community service.

Table 4.17: Sentence duration for offenders placed on community service in 2017

Duration day/ Months	Males		Females		Total	
	Frequency	%	Frequency	%	Frequency	%
1 day	49	28.8	3	42.9	52	29.4
3 months	3	1.8	0	0	3	1.7
6 months	26	15.3	0	0	26	14.7
12 months	42	24.7	4	57.1	46	26
18 months	14	8.2	0	0	14	7.9
24 months	23	13.5	0	0	23	13
36 months	13	7.7	0	0	13	7.3
Total	170	100	7	100	177	100

Where the court commits an offender to serve a community service order for one month and above, the community service officer must have a work placement for the offender and arrange or supervision. Case committee meetings are held to address challenges as well as progress made by the offender and determine the effectiveness of the orders.

4.8 Juvenile offenders

There were a total of twenty-six juveniles placed on probation in 2016 which constituted nine percent of the total offenders placed on probation and twenty-nine juveniles which was 11.8 percent of the total offenders placed on 2017. Comparing male and female juveniles, there was a record of 92.3 percent of male placed in 2016 and 89.7 percent in 2017. Females were fewer than males for both years.

Table 4.18: Juvenile offenders compared to adult placed on probation sentencing

	2016		2017	
	Frequency	%	Frequency	%
Adults	263	91.0	216	88.2
Juvenile	26	9.0	29	11.8
Total	289	100	245	100

Juveniles from ten to fifteen years of age are placed in rehabilitation schools. There are 10 rehabilitation schools in the country holding a capacity of 150 children per school. Two are for girls and nine are for boys. The schools are Kirigiti for girls, Dagoretti Girls, Kisumu, Kericho, Thika, Kakamega, Wamumu, Kabete, Gitathuru, Likoni, and Othaya rehabilitation centers. Borstal institutions cater for children aged sixteen to seventeen years. There are three borstal institutions namely Shikusa Borstal Institution in Kakamega, Shimo la Tewa in Mombasa, Kamiti Youth Corrective Training Centre in Kiambu. There are eleven Children Remand Home. These are Kisumu, Muranga, Kiambu, Kakamega, Kericho, Eldoret, Likoni, Nyeri, Nakuru, Malindi and Nairobi. If the home environment is not conducive for their immediate return after juveniles have completed their sentence, they are taken to a Probation Hostel.

Table 4.19: Gender of juveniles placed on probation sentence

Gender	2016		2017		Total	
	Frequency	%	Frequency	%	Frequency	%
Male	24	92.3	26	89.7	50	90.9
Female	2	7.7	3	10.3	5	9.1
Total	26	100	29	0	55	100

Only one juvenile offender was placed on Community service order in the year 2016 while 2017 there was no juvenile placed on CSO.

4.9 Analysis of the Data

4.9.1 Role and Impact of Supervision

In Kenya, the Department of Probation and Aftercare Services derives its mandates from legal statutes passed by parliament and other by laws reviewed from time to time. It implements Cap 64 probation of offenders Act, Community service orders act, No 10 1998, Cap 90 the prisons act, Cap 92 the borstal institutions Act, The Children's Act no.8 2001, Mental Health Act Cap 248 of the laws of Kenya, provisions made in the constitution and directions made by respective courts of various jurisdiction in Kenya hence the department undertakes.

To conduct social enquiry and provide social reports to courts and other penal review entails supervision of non-custodial court orders under relevant acts and ensures compliance to the orders and provides community safety, rehabilitation and reintegration of offenders, strengthening the implementation of CSO programme through placement and ensuring community work is performed and crime prevention help identify factors that put the individual at risk of offending or re-offending and undertake research on criminal trends (Probation service strategic plan 2008-2012).

Supervision is critical in realization of sentencing objectives. Poor supervision leads to reconviction and abscondism. The quality and number of contacts between the offender and the officer are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The officers provide control requirement, treatment needs and administrative categorization

of offenders on risk levels-low, medium and high. (Community Service Order Act, 1998).

Counseling of offenders is very crucial as it tends to correct certain thinking errors, which can protect an individual from engaging in further crimes. Probation officers uses group counseling to strengthen the offender’s intellectual abilities including, self-direction and motivation control, social data handling, future introduction, moral duty and struggle determination (Harms,2013). Aben (2011) asserts that the community plays key role in helping offenders to change. Community attitude, home environment is deterministic of offender’s potential to change. Chandler, Fletcher and Volkow (2008), agree that community support and participation is vital in achieving sentencing objectives through behavior change mechanisms embedded in the community. Enabling an offender to maintain their jobs without being stigmatized and at the same time maintaining ties with their families and the community at large deters offenders from engaging in criminal activities because they know that as much as they have to show the probation officers that they can live according to the law of the land, they have a very big responsibility of proofing to the community that they have really change and that they deserve to be given a second chance and respect in that community.

4.9.2 Rate of recidivism of offenders placed on probation order and community service order sentencing

A repeat offender is a person who has already been convicted for a crime more than once. There were 29 repeat offenders in 2016, which dropped to 15 repeat offenders in 2017. More repeat offenders were recorded in 2016 (65.9%) as compared to 2017 which recorded 34.1 percent.

Table 4. 20: Repeat offender by year

Year	Number of repeat offenders	Percent
2016	29.	65.9
2017	15	34.1
Total	44	100.0

There were more probation-repeat-offenders compared to community service order offenders. In 2016, there were more repeat offenders placed on probation order (82.3%) than that of CSO. These repeat offenders were usually first-time offenders who did not successfully complete their non-custodial sentencing order thus absconding reporting to probation officers for counseling or empowerment. The drop in the number of repeat offenders in 2017 signifies that Social rehabilitation was effective. The risk and needs assessment were done effectively addressed, thus reducing recidivism as offenders got to know the underlying problem of their criminal behavior and probation officer following up on offender's treatment program.

According to Andrew and Bonta (2002), there exists three basic principles to be taken into account when offering assessment and treatment services for offender population i.e. risk, need, and responsivity. The risk-need-responsivity (RNR) model is a psychological test that assesses and provides treatment of an offender. It looks into the risks and needs of the offender and offers a theoretical model for interpreting offender's treatment. The Risk Principle, according to the Public Safety Canada (2007), this aids in rehabilitation of the offender. The model has three assumptions (Polaschek, 2012). The first assumption assumes that criminal relapse is reduced by intervening to help offenders and this helps the community. The second assumption is that interdisciplinary services aid in changing and predicting factors in criminal offenders. Third, is the assumption that the state is responsible for correctional rehabilitation although offenders have rights to assistance with all aspects of functioning and correctional programs are not mandated to address non-criminogenic needs.

The probation officer focuses on correctional treatment of the offender should, therefore, be on criminogenic needs such as drug abuse and employment problems. When these needs are tackled and treatment goals are effective, it reduces recidivism. (Bonta 1997). Offenders have several needs deserving of treatment, but not all are associated with criminal behavior. `

Probation officers also used interventions based on cognitive – behavioral therapy (CBT). This is where the offender learns about their reason behind criminal behavior and learns new ways to better their lives without committing crime through counselling and rehabilitation. (Andrews 2001).

Table 4. 21: Repeat offenders by type of custodial sentencing in 2016

Type	Number of repeat offenders	Percent
CSO	5	17.2
Probation	24	82.3
Total	29	100.0

In 2017, there was a record of 86.7 percent of repeat offenders placed on probation order. There was a decrease in non-custodial repeat offenders in 2017 compared to 2016. This could have been caused by desistance. According to Griffiths (2007), a number of factors are associated with desistance from crime. For example, an individual who has a full-time job in a company and has skills will shun crime. Probation officers also used cognitive-behavioral therapy by teaching offenders to analyze their thoughts, risks, before engaging in crime. Interventions such as life skills, anger management are taught. This type of intervention can have a significant impact on reducing recidivism.

Table 4.22: Repeat offenders by type of custodial sentencing in 2017

Type	Number of repeat offenders	Percent
CSO	2	13.3
Probation	13	86.7
Total	15	100.0

There were more male repeat offenders in both years as compared to females. In 2016, there were 24 males (82.8%) and 5 females (17.2%) who were repeat offenders. In 2017, there were 12 (80%) males and 3(20%) females who were repeat offenders. Lipsey and Derzon (1998) point to differences in the way boys and girls are socialized. For example, boys are socialized to take more risks seeking ventures while girls avoid towards dealing with risk-avoidance ventures. Baumeister (1998) asserts that self-control plays a major role in delinquent behavior. Buss (2003) stated that males tend to be more aggressive due to competition for resources.

Community service orders allow the offender to pay for their wrongdoing by offering services to the community without pay. This raises a sense of responsibility to the offender. Proper supervision from the community service officer allows offender to

follow the order and objectives of sentencing met.

The Penal Code describes a juvenile as an individual who commits an offence that is against the laws of Kenya above 8 years and below 18 years of age. They are placed on probation hostels, Children's remand home, Borstal institutions and rehabilitation schools. Juvenile offenders placed on probation orders were more in 2017 than 2016.

Children Act no 8. (2001) times is a guideline dealing with juveniles. The children officers report as well as the probation officers' reports contains information about the juvenile that is presented in court. The jury then looks at the sentencing sanctions.

Probation Hostels for boys are Kimumu, Shanzu Boys and Nairobi Boys. There is only probation hostel for girls in Kenya which is Nakuru Girls. These hostels provide temporary accommodation to juvenile offenders.

They are like halfway housing. Here, the offender is placed under close supervision by the probation officer as he or she attends formal education, vocational training as well as have basic needs such as food and clothing catered for. During the offenders stay at the Hostel, Probation Officers adjust the home environment for eventual release. Upon release from the hostel, further follow up and supervision is provided by a probation officer as the child offender continues to serve their sentence in the community. Comparing male and female juveniles, there was a record of 92.3 percent of male placed in 2016 and 89.7 percent in 2017. Females were fewer than males for both years.

Table 4.23: Non-custodial repeat offenders by gender 2016 and 2017

	2016	Percentage	2017	Percentage
Male	24	82.8	12	80
Female	5	17.2	3	20
Total	29	100	15	100

Studies on gender differences in recidivism rates have consistently found that female offenders are much less likely to reoffend than their male. Research by Andrews &

Bonta (2010) identified eight major risk and need factors contributing to this school of thought. They include anti-social behavior history, antisocial personality pattern, criminal attitude, anti-social behaviour, family or marital status, school/work, leisure/recreational and substance abuse. Studies have shown that unstable employment record and low level of personal, educational, vocational, and financial achievement are among the predictors of continued criminal conduct. According to Benda (2005), men are more likely to re-offend because of criminal peer associations such as drug abuse, carrying illegal weapons, and aggressive feelings. For men, job satisfaction and education lengthen time in the community whereas the number of children and relationships are more important in the community for women.

In regard to rate of recidivism, there were fewer repeat offenders in 2017 than in 2016, which was 34.1 % as compared to 2016 which was 65.9%. Therefore, aftercare services were effective, and offenders acquired skills and knowledge through counseling and other methods of empowerment. The reduction of recidivism was due to probation officers conducting risk/needs assessment of offenders placed on non-custodial sentencing. This is a psychological instrument used consisting of questionnaires analyzing criminogenic factors. It entailed information contributed to their breaking of the law. Examples of criminogenic needs are offender having an antisocial peer group, having a drug and alcohol dependency, a lack of self-control and an antisocial belief system. The other reason for reduced recidivism was positive social support systems offenders received.

4.9.3 Strategies used to implement Probation Order and Community Service Order in Kenya

Alternatives to imprisonment such as noncustodial sentencing have been used in Kenya due to overcrowding in prisons. The criminal justice system determines the sentencing options guided by the Penal Code. The strategies used to effect non-custodial sentencing include gravity of the offence, criminal history of the offender, children in conflict with the law, character of the offender and protection of the community, which is written by the probation officers and presented in the courts. The magistrates then make a final decision on the sentencing which can be custodial or non-custodial sentencing. Non-custodial sentencing is an alternative to incarceration. An offender can be placed on community service order or probation order. Community service order

involves undertaking public work that is for the benefit of the community where there is no form of payment for a period of a one day to a maximum three years (Community Service Order Act, 1998). This type of order is limited to a case whereby the offence is not punishable with imprisonment exceeding three years, and if it exceeds the three years, the court determines that a lesser sentence would be appropriate. Once such orders are issued by the court it is the duty of community service officers to identify relevant work and oversee the outcome and the progress made by the offenders. The effect that such orders have on offenders is that they are supposed to instill a sense of responsibility to them and they make contribution to the community they have wronged. Hence this form of sentence is retributive and serves the objective of deterrence.

Probation order sentence is a non-custodial sentence that can be regarded by the court whereby the offenders are placed under the supervision of a probation officer for a period specified by the court. The offender may be required to enter into a bond agreement with the court with or without sureties in a sum that the court deems fit. In the event that the offender commits an offence during the period of probation, they shall be liable to be sentenced for the original offence. However, before such an order is made by the court there are factors that the court must regard these include youth, character, antecedents, home surroundings, health and mental status of the offender in addition to the nature of the offence and any mitigating circumstances in which the offence was committed. The court must also be of the opinion that the offender is willing to comply with the order. Such an order subsists for a period of not less than six months and not exceeding three years (Probation Order Act, 2012). Such a sentence will enable the reformation and rehabilitation of an offender as they are closely supervised and expected to avoid reoffending.

4.9.4 Correlation between Access to Family and Society and Criminality, and the Impacts of Sentencing

Travis Hirschi (1969) states that there is a decrease in criminality over time. Attachment, commitment, involvement, and belief are the four crucial components in one's relationship with society. In my findings, there were few offenders aged 18 years and below. Majority of them attended school. The extent of attachment with family or peers that one has influences their level of delinquency. For example, if an individual has a strong attachment to family members who have strong values, it becomes hard for

the individual to commit crime if they are highly regarded. On the other hand, if an individual is attached to negative peer groups, the risk of engagement in criminal activities is elevated.

Life experiences and events occurring over the life of an individual influences whether they engage in delinquent behavior, or not. When an individual reaches adolescence, the peer group dominates. On the other hand, in adulthood, marriage and career are critical.

An individual who is committed to hold the norms of society and not break the law will not engage in criminal activities. On the other hand, if an individual is not committed in upholding the values of society chances of violating the norms are high. In regard to involvement, an individual who is involved in activities such as work, or college, raising a family leading a busy life is less likely to commit crime that one who is idle and has no commitment in life. Lastly, the individual's belief that societal values and norms are important, the chances of violating the norms are minimal or engaging in criminal behavior.

4.9.5 Correlation between Age Range and Criminality

The age of the participants is a social demographic characteristic of interest in this study. The correlation between age and crime has been recognized and studied since the early 1920s as a focus of criminology (Cornelius, Lynch, and Gore, 2017). Steffensmeier et al (1989) identified the age-crime curve which indicates a link between age and crime. According to Farrington (2003), crime increases in early adolescence with peak offending age is between 8 and 14. Risk of offending peaks at the age of 15 and 19 years.

Sampson et al (2001) stated a variety of factors that prevent crime. For example, one who is employed and has strong values is more likely to shun crime. Loeber and LeBlanc (1998) state that desistance does not occur "merely as a function of individuals' chronological age". The reason behind this is desistance can take place at any time during the life span. Also, it may be that desistance at the same age is different for those with early versus late onset of criminal offending (Tremblay 1994). In most cases, desistance happens during and after adolescence. Based on the evidence, desistance is normative for most offenders. For offenders placed on Community Service Order, the table below indicates the different categories in age of offenders in the year 2016 and

2017.

Brown (2006) argues that the motivating factors that lead to criminal behavior may be different for female offenders. Common risk factors for female and male offenders, according to de Vogel and de Vries Robbé (2013), include poverty, childhood abuse, peer influence, relationship instability, intimate partner violence, etc. Male gender socialization prods men to be more aggressive, thus they are more likely to act violently when facing their problems. On the other hand, female gender socialization encourages women to be less confrontational, thus they are more likely to be non-violent in the course of resolving their problems (Abbott and Wallace, 1990). Russell (1983) suggests that traditional gender roles of socialization are often expressed through domination and control along with power differentials and structural inequalities like patriarchal society values, gender, age, etc. This could explain the propensity of male gender offenders than their female counterparts, thus causing their numbers to be significantly higher than the female perpetrators.

KIHBS (2016) published a basic report on the well-being of people in Kenya, gender is seen as a determining factor since the society is patriarchal. Nationwide, two thirds of households have a male as head of the household. This means the male head has the responsibility of finding daily bread for the family. Households headed by females are likely to experience more poverty than those headed by men (KIHBS, 2016), but have less confrontation or violence. Female headed households constitute about 32.4 percent of all households as found in the KIHBS (2016) survey.

KIHBS (2015-2016) published a basic report on well-being in Kenya. In the report, the following factors were identified as influencers of the well-being of individuals. The difference between statistical data collected by KIHBS in 2016 and 2017 could be a result of poverty headcount increases in the Metropolitan city of 2Nairobi. The food poverty level indicated that over 717,000 (16.1%) of the 4,463,000 residents of Nairobi County live in adverse conditions, thereby rendering them vulnerable to some mental health issues, depression, disease, and starvation. Comparing both years, we see a coinciding significant increase of offenders placed on community service order in the year 2017 with a majority being youthful offenders below 24 years.

Anderson (2014) stated education reduces crime. School and college keep young people busy and off the streets. Education can change individuals' preferences and the choices

made in life. Lochner (2004) considered that education uplifts an individual by providing opportunities such as legitimate work. This reduces participation in crime. Education equips individuals with skills (Becker and Mulligan 1997). This minimizes crime, making individuals place greater weight on any expected future punishment associated with their criminal activities.

CHAPTER FIVE
SUMMARY OF KEY FINDINGS, CONCLUSION AND
RECOMMENDATIONS

5.1 Summary of Findings

The study investigated the effectiveness of non-custodial sentencing on probation and aftercare services. The three main objectives were to examine strategies used to carry out sanctions involving non-custodial, to compare the effect of non-custodial sentencing on probation and aftercare services, and lastly to determine the rate of recidivism of non-custodial sentencing.

According to the Tokyo Rules (1990), an offender “shall be applied to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of the administration of criminal justice”. Decisions made by a competent authority such as a member of the judiciary, prosecutor, police officer, and probation officer are authorized by law to impose alternatives of punishment. Factors such as the seriousness of offence, offender’s personality, the background of the offender, protection of society, the purpose of sentencing, the rights of victims, and the avoidance of unnecessary use of imprisonment.

During post-sentencing stage, authorities have a wide range of non-custodial measures such as community service order and probation sentence. The Probation of Offenders Act (1998) guides the courts to making a decision on sentencing sanctions.

Factors such as age, character, antecedent, home surroundings, health or mental state, type of offence committed, and other factors crucial for sentencing (Claus, 1998). Probation term lasts between six months to a maximum period is three years. According to the Community Service Act in Kenya, an offender has to work without pay at a work placement provided by the community service order for a number of hours as stated in the order. The minimum age should be sixteen years. The order must be of a minimum of 40 hours and not exceed 240 hours and completed within one year. From the findings, offenders placed on non-custodial sentencing were mostly male youths between the age of 24 to 34 years. The findings also 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 make a living in the harsh and

competitive economic environment in the city.

In non-custodial sentence, supervision and treatment by probation officers was aimed for rehabilitation of the offender. The Risk Need Assessment (RNA) Tool is an instrument used by the probation officers to indicate the levels of risk and needs that the offender has. Thereafter able to have a proper plan of treatment to address risk level the underlying issues, rehabilitate and prevent recidivism. Supervision and treatment were reviewed and adjusted as necessary.

Factors that affect recidivism were lack of skills needed for employment, previous records of crime, interpersonal conflicts and negative peer influence. There was a decrease of repeat offenders in 2017 as compared to 2016 meaning that non-custodial sentencing plays an important role in creating a positive impact on offender as they change.

5.2 Conclusion

With the prison system facing major challenges such as overcrowding and run-down facilities, and increased rate of recidivism. This results in affecting the inmate psychologically and physical. This makes it difficult to reintegrate back to the society.

Therefore, alternatives of sentencing other than imprisonment is considered. Therefore, non-custodial sentence becomes effective.

Non-custodial sentencing allows an offender to have freedom. To help offenders successfully reintegrate into society rehabilitation is important to address underlying issues through counseling which proved to be very effective on probationers as that was an eye-opener that allowed them to weigh different options in life other than engaging in crime. Offenders were able to come up with solutions in order to avoid engaging in crime and opt for other alternative ways of generating income.

5.3 Recommendations

Based on the study findings, funding of the probation department is recommended so that more probation officers can be employed to avoid overworking from 20-40

officers to a good number of 10-15 probationers per supervisor and to enable the department to effectively and efficiently provide rehabilitation services through probation of offenders. The other recommendation is education and awareness on the role of the community service orders and probation to the public in order to dispel negative attitudes towards the program. This will enhance the successful implementation of the program involving all stakeholders. The government should build functional halfway houses that will absorb ex-prisoners as they try to reconcile with community to avoid recidivism, which is a result of rejection from the society.

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APPENDICES

APPENDIX 1: QUESTIONNAIRE FOR OFFENDERS PLACED ON NON CUSTODIAL SENTENCE

RESEARCH: Effectiveness of non-custodial sentence on Probation and Aftercare Services a study of Nairobi County, Makadara Constituency.

My name is Chacha Mutisya. I am a student of Criminology and Social Order at Nairobi University, conducting a research on effectiveness of non-custodial sentence on Probation and Aftercare Services. A case study of Nairobi County, Makadara Constituency. This is in partial fulfillment for the requirements of the degree of Masters of Arts in Sociology (Criminology and Social Order) in the University of Nairobi.

The objectives of this study will be to examine strategies used to effect non-custodial sentencing, to compare the effect of non-custodial sentencing on probation and after care services and to determine rate of recidivism of non-custodial sentencing.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work. For any query/clarification please contact me on mobile No..... E-mail.....

The study intends to interview judicial officers, police officers, probation officers and offenders.

1. Which area of residence in Nairobi County do you come from?

2. Respondents gender? Male Female

3. How old are you?

- (i) 10 – 18
- (ii) 18 – 23
- (iii) 24 -34
- (iv) 25 and above

4. What is your highest level of education?

(i) Nursery

(ii) Primary

(iii) Secondary

(iv) Tertiary education

5. (a) Is this your first time to be arrested?

Yes No

6. If yes, what was the circumstances of the offence?

7. (a) If it is not your first time, how many times have you been arrested?

(i) Once

(ii) Twice

(iii) Thrice

(iv) more than four times

(b) When was it?

(c) What were the circumstances of the offence?

8. What were the crime(s) involved in passing of the probation sentence?

9. What type of non-custodial sentence where you placed?

10. What is the duration of the non-custodial sentence?

11. How would you evaluate the state of non-custodial sentence?

a) Excellent

b) Good

c) Bad

APPENDIX 2: KEY INFORMANT GUIDE – JUDICIAL OFFICERS

RESEARCH: Effectiveness of non-custodial sentence on Probation and Aftercare Services a study of Nairobi County, Makadara Constituency.

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The objectives of this study will be to examine strategies used to effect non-custodial sentencing, to compare the effect of non-custodial sentencing on probation and after care services and to determine rate of recidivism of non-custodial sentencing.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on 0724722763. The study intends to interview judicial officers, police officers, probation officers and offenders placed on non-custodial sentencing.

1. Which court do you represent?

2. What strategies are used in order to place an offender in non-custodial sentence?

3. What issues do you consider when passing non-custodial sentences?

4. How do you determine the type of non-custodial sentence placed on offender?

12. . What are the legal frameworks on dealing with repeat offenders or recidivism?

APPENDIX 3 : KEY INFORMANT GUIDE-POLICE OFFICERS

RESEARCH: Effectiveness of non-custodial sentence on Probation and Aftercare Services a study of Nairobi County, Makadara Constituency.

My name is Chacha Mutisya. I am a student of Criminology and Social Order at Nairobi University, conducting a research on effectiveness of non-custodial sentence on Probation and Aftercare Services. A case study of Nairobi County, Makadara Constituency. This is in partial fulfillment for the requirements of the degree of Masters of Arts in Sociology (Criminology and Social Order) in the University of Nairobi.

The objectives of this study will be to examine strategies used to effect non-custodial sentencing, to compare the effect of non-custodial sentencing on probation and after care services and to determine rate of recidivism of non-custodial sentencing.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on 0724722763. The study intends to interview judicial officers, police officers, probation officers and offenders placed on non-custodial sentencing.

1. Which police station in Nairobi County do you represent?

2. What is was the reason of arrest of the offender?

Offenders gender?

a) Male

b) Female

3 a) How old is the offender?

(i) 10 – 18

(ii) 18– 23

(iii) 24 -34

(v) 35 and above

4. What were the circumstances of the offence?

5. Which location does the offender come from?

6. Which sub location does the offender come from?

APPENDIX 4: KEY INFORMANT GUIDE-PROBATION OFFICERS

RESEARCH: Effectiveness of non-custodial sentence on Probation and Aftercare Services a study of Nairobi County, Makadara Constituency.

My name is Chacha Mutisya. I am a student of Criminology and Social Order at Nairobi University, conducting a research on effectiveness of non-custodial sentence on Probation and Aftercare Services. A case study of Nairobi County, Makadara Constituency. This is in partial fulfillment for the requirements of the degree of Masters of Arts in Sociology (Criminology and Social Order) in the University of Nairobi.

The objectives of this study will be to examine strategies used to effect non-custodial sentencing, to compare the effect of non-custodial sentencing on probation and after care services and to determine rate of recidivism of non-custodial sentencing.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on 0724722763. The study intends to interview judicial officers, police officers, probation officers and offenders placed on non-custodial sentencing.

1. Which Probation Station in Nairobi County do you represent?

2. What are the types of non-custodial sentences are utilized?

3 What are the strategies used in rehabilitation of offenders?

4. What is the impact of those placed in non-custodial sentencing?

5. What is the effect of non-custodial sentencing on probation and after care services?

6. What is the community attitude of offenders placed on non-custodial sentences?

7. Are there any policy/legal framework that expressly deals with the welfare of Offenders placed on non-custodial sentencing?

Are there repeat offenders?

a) Yes

b) No

If yes how many in the year 2016? -----

If yes how many in the year 2017-----

8. What factors lead to recidivism?

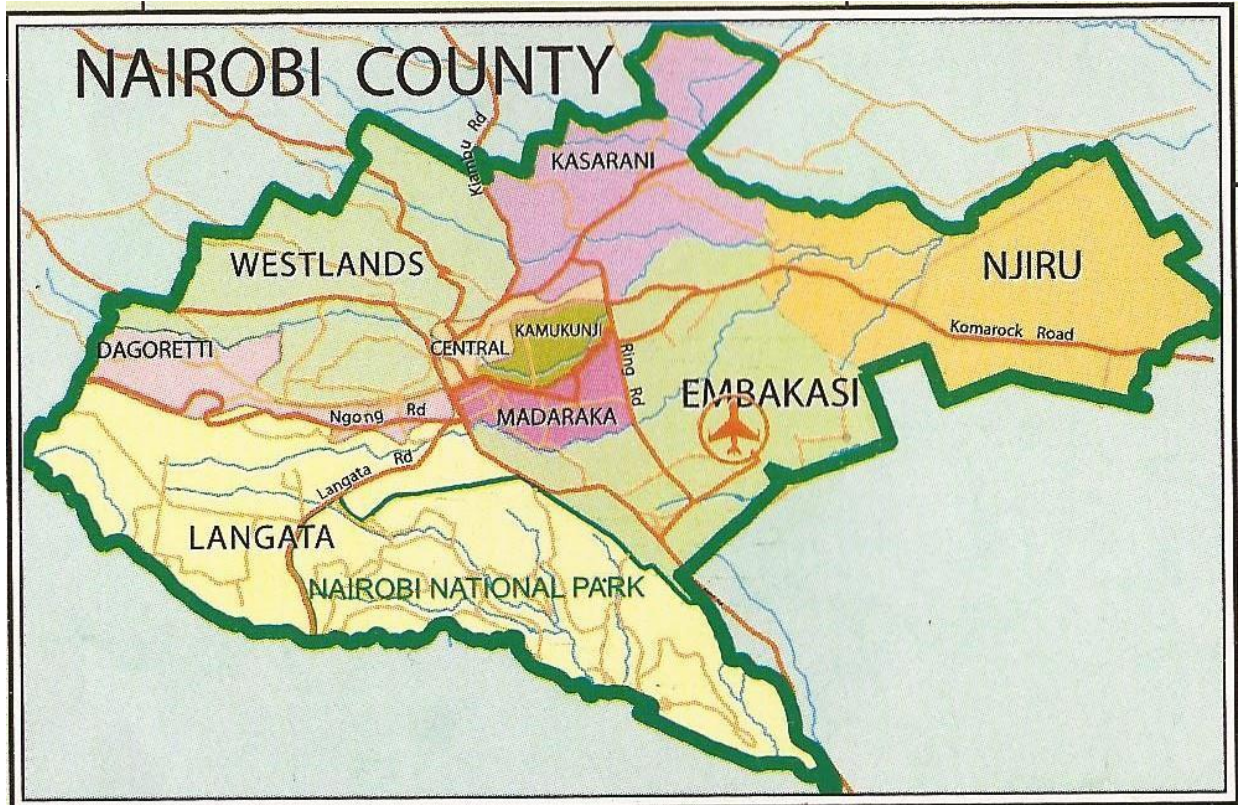
What programme(s) do you have for aftercare of offenders placed on non-custodial sentencing?

9. What policy and legal gaps would you highlight as hampering effectiveness of non-custodial sentencing of probation and aftercare services in our criminal justice system?

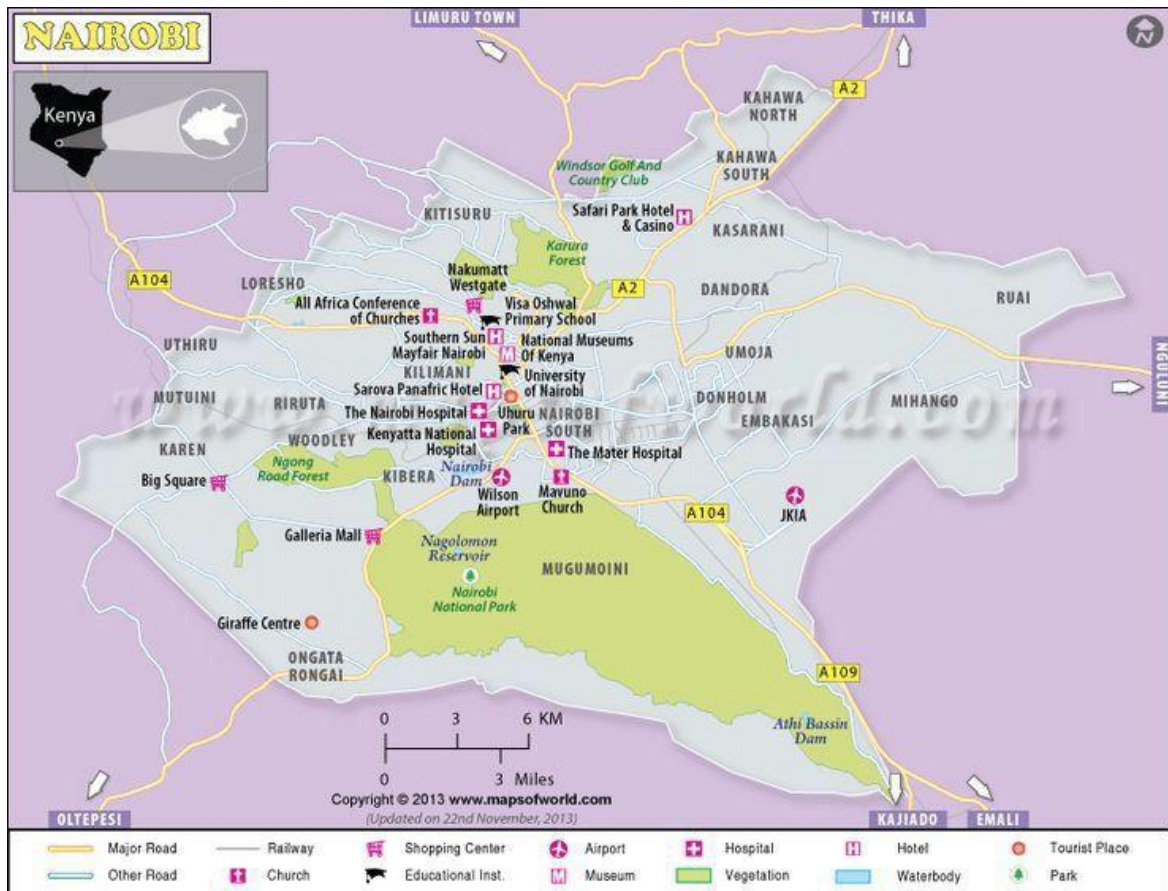
10. What policy/legal policy recommendations would you suggest that if implemented will enhance non-custodial sentencing of probation and aftercare services in our criminal justice system?

APPENDIX 5 : MAPS

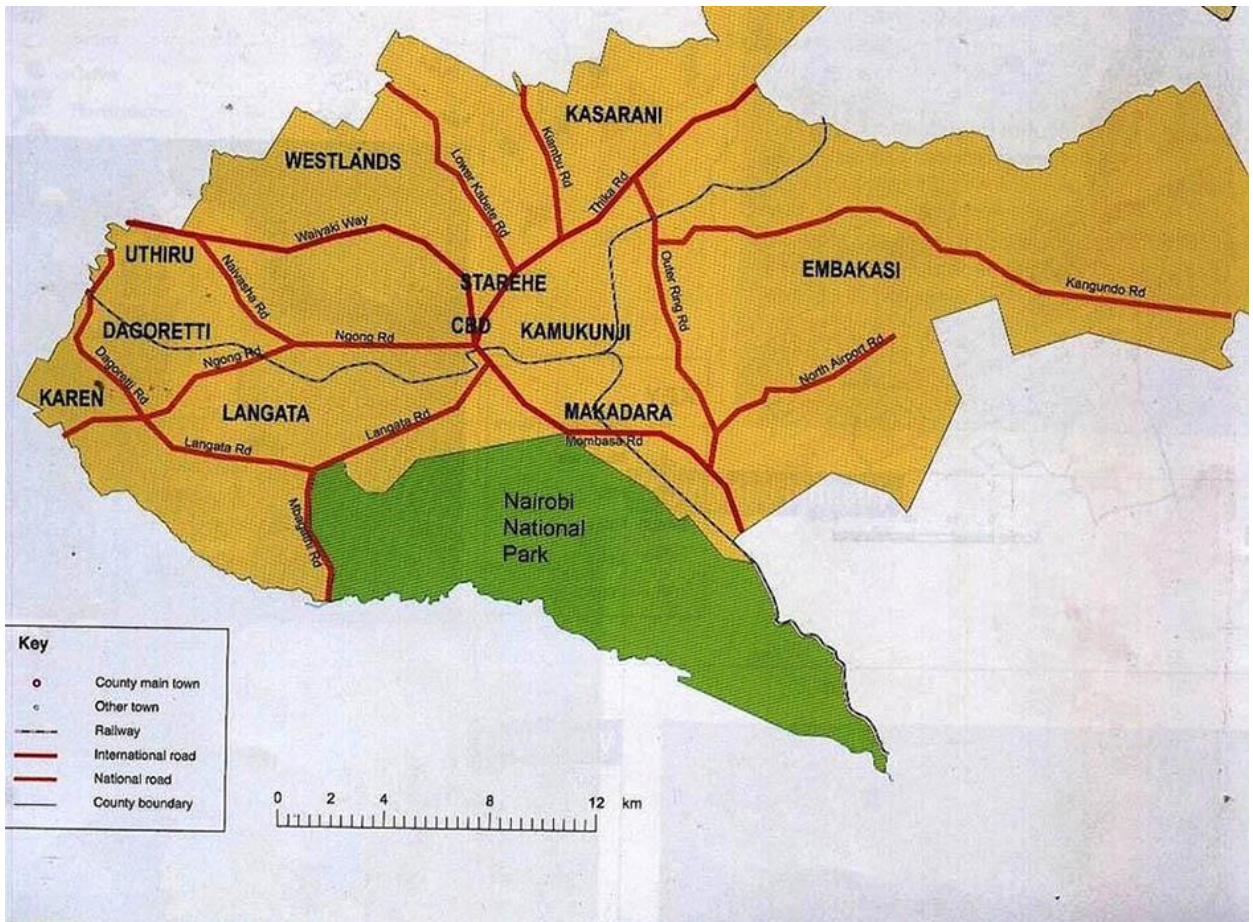
Map 1: Nairobi County



Map 2: Nairobi County



Map 3: Nairobi County



Map 4: Kenya

