

PROBATION SERVICE IN KENYA

BY

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DEDICATION

I wish to dedicate this Dissertation to my Father,
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encouragement they have given me through out my life in school
and for all those ~~elimingly~~ ^{seemingly} small things they have always done
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I N T R O D U C T I O N

This thesis will discuss the probation service in Kenya. There are four chapters.

Chapter One will attempt to define the term "probation", its origin and disadvantages over the other forms of punishment.

In the second chapter the main concern will be an examination (or rather a lay out of) the structure and functioning of the Probation Department. This will include presentence reports, supervision of offenders and completions.

The third chapter will discuss some of the problems facing the Probation Department.

Chapter four will be the conclusion and recommendations.

CHAPTER ONEWHAT IS PROBATION?

Probation is derived from a Latin Verb "Probo" which means to prove. A person is probated by helping him to get into the right surroundings where he will have a chance to prove himself.¹ The Catholic Church has used the term to connote a test period undergone by candidates seeking membership in religious orders. In the protestant denomination ministerial candidates may be on probation pending ordination.²

Probation is a method of the criminal justice system in which a delinquent or criminal found guilty of a crime is released by the court without being committed to an institution or prison, subject to conditions imposed by the court and to the supervision of a probation service.³ It is a treatment program designed to facilitate the social readjustment of offenders. This is done through counselling by the Probation Officer. Although a person on probation is "on the street" he or she is legally in the custody of the court. This means that his status as a free person is restricted by the authority of the Judge or Magistrate and the Probation Department.⁴ For one to maintain his status as a probationer, one must report regularly to the Probation Officer and obey the conditions of probation given out when sentence is set. If the probationer violates these conditions the court may revoke probation and send him to Prison, or in case of Juveniles the court may make an order for the juvenile to be given strokes and probation continues or he may be send to an institution like Borstal Hostels.

Under the probation of Offenders Act,⁵ a person who is charged with an offence and is found guilty can be placed under probation if the court thinks that having regard to youth, character, antecedents home surroundings; health or mental conditions of the offender or to the nature

of the offence or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation. The probation order shall have effect for such period of not less than 6 months and not more than three years.⁶

ORIGIN OF PROBATION

Probation is said to have originated in the United States of America. In 1941, a ^{specialist} ~~specialist~~ at a Boston Court by the name of John Augustus begged the Court not to send an offender to jail for failure to pay a fine. The offender had been accused of being a drunkard. The Court agreed to his request and fixed a date for the offender to reappear. In the meantime John helped him to find work and persuaded him to keep the pledge, by the time the probation was over the offender was rehabilitated. John Augustus thus became not only the first Probation Officer in the world but also the father of Probation.

The ~~first~~ ^{just} probation was of an informal type because it wasn't backed by statute. After this case of the Drunkard the Courts felt that they were justified in suspending sentence and as a result many more people were placed under his care and he acted as a surety for 1152 males and 794 females and given less formal aid to others. In 1878, probation was regulated by statute for the first time when Massachusetts enacted a law authorizing the mayor of Boston to appoint a paid Probation Officer as a member of the police force, with jurisdiction in Boston's Criminal Courts. Thus the Officer appointed became an agent of the Court. The drafters of the statute clearly viewed probation as a treatment when they inserted the provision "such persons as may reasonably be expected to be reformed without punishment" be selected for probation.⁸ Probation was available to juveniles and adults, males and females regardless of the particular offence.

In 1880, authority to appoint Probation Officers was extended to all cities and towns in Massachusetts. This was permissive only and few jurisdictions took advantage of the bill. In 1890, Massachusetts provided for state wide probation. Probation spread to other states, from the United States of America the system was adopted in Australia and Newzealand in 1886, and in England in 1907.

INTRODUCTION OF THE PROBATION SERVICE IN KENYA

The British introduced the Probation system in Kenya in 1943. This was done through the probation of offenders ordinance of 1943⁹. The ordinance states that the Court may place an offender under probation after finding him guilty of the offence charged, if having regard to youth, character, home surroundings, health, or to any extenuating circumstances ~~under which the offence~~ under which the offence was committed it is expedient to release the offender on Probation.¹⁰

Due to World War II the probation of offenders ordinance was not effective ~~unit~~ ^{until} 1946, when the first group of offenders were released on probation. However the service was limited to Nairobi ~~Area~~. By a series of subsidiary legislation in subsequent years rules were made which enabled the service to expand. Through these by laws the service moved from Nairobi and spread to other provinces except the North Eastern Province. Probation expanded more rapidly during the emergency days in 1952 - 1960. This was the ~~pr~~iod when many Officers were recruited and new stations were opened in the rural areas.

The Department has since its introduction in Kenya expanded consequently more and more people are being placed under probation each year. In 1977, 3,400 people were placed under probation of which 2,883 were males and 517 were females.¹¹ In 1978, there were 3,982 probationers of which 2,636 were males and 1,346 were females.¹² In 1981 and 1982, there were 4,573 and 4,846 Probationers respectively. In 1981 the Department had 11,526 probationers being supervised by 151

probationers.^{I3} In 1982, the Department had 12,290 probationers under its care.^{I4} The system has now spread all over the country except some districts in North Eastern Province, which ^{are} ~~is~~ served by probation officers from Kitui and Malindi.

The Department undertakes other programmes alongside the home rehabilitation programme. The Department has three hostels namely Likoni Boys Hostel, Nairobi Boys Hostel, and the Nakuru Girls Hostel. It has also acquired a 50 acre plot at Eldoret to build a Boys Hostel to cater for Western Kenya. The probation Hostels are in open places and offenders go out to their respective jobs, or schools and only return in the evenings. The Department also supervises ex-borstal inmates. These inmates are released on licence from Borstal Institutions which are run by Prison Departments after the necessary inquiries by Probation Officers who give their recommendations to the board of visitors to facilitate such release. It also supervises the ^{Psychiatric} ~~cheatric~~ criminals who are released from Mental Hospitals, whose reports are prepared by the Probation Officer and send to the review board for release.^{I5} It can be submitted that the probation service has since its introduction done alot in aiding offenders.

ADVANTAGES OF PROBATION

It is very important that crime be 'cured' and offenders be punished in every society. This is ~~very~~ essential for the protection of the society from dangerous offenders and rehabilitating the offenders to make him became a law abiding citizen. The above can be achieved through punishing of the offender. There are many types of punishment ranging from fines, imprisonment to placing offender under probation. Through punishment the offender is hoped to reform or rehabilitate from crimogenic tendencies. That is to say that the offender is hoped to change to what he was before he committed the offence and never fall back

to crime. It is a commonly held view that "a criminal is not Born but made".^{I6} of course the hypothesis is debatable. An offender may be a product of social economic problems of the community and as such can be reformed through some sort of punishment. These dangerous offenders, who are a threat to the society can be put in prison. Punishment also acts as a deterrence for those with intentions of committing some offences, thus a deterrence to further crimes.^{I7}

First and foremost the offender should reform and become a law abiding citizen. As said above, ^{the} mentioned ^{forms} forms of punishment do not achieve these goals. Take for instance the case of fining offenders, when an offender is fined, the question as to whether he will be reformed will depend on how easily he can raise the fine. It is a debatable point whether a richman who can raise the money without any difficulties will be reformed and never fall back to same or similar crime and whether this can act as a deterrence to those people of ^{his} class with intentions to commit the same offence.

It has been argued that through imprisonment the offender is incapacitated, that he is physically unable to commit ^{any} ~~ne~~ offences during the period of imprisonment and this helps to protect the society.^{I8} But society needs protection from those criminals who are too dangerous to be left alone. It is desirable that such be removed from society ~~lest~~ they commit more serious offences. Therefore only a small percentage need imprisonment. Imprisonment rarely rehabilitates or reforms an offender. There is ~~an~~ infliction of pain and suffering either physically or mentally or both upon the offender by the state. This hardens the prisoner and they are likely to commit crimes after leaving prison because the "fear" of prison that ~~dwells~~ ^{is no longer in them.} dwells in many people ~~who~~.
 A person who
 is in prison acquires some bad habits which he might never abandon after leaving prison, T. Mushanga observes.

"The inmates is denied his liberty, his freedom of choice in what he has to eat, wear and read. The inmate is also denied his/her sexual gratification until he is physically or psychologically forced to take to homosexuality, or masturbation. There is every effort to obliterate his individualism and personality".¹⁹

In prison many prisoners get trained by being shown new techniques of committing more sophisticated offences by fellow prisoners, therefore a number of people come out ^{than} worse ~~that~~ they were before imprisonment. Many countries are now adopting probation as a better alternative to other forms of punishment. The primary objective of probation is the protection of society through the rehabilitation of the offender. It is also to help erst while offenders find their way back into free society where they may live comfortably with themselves and others ~~than~~ was before they were convicted. The system ^{is} based on the belief that many offenders are not expert or dangerous criminals but are weak characters who have surrendered to temptations or through improvidence have been brought within the operation of the police and the courts. In consigning this type of offenders to the care of Probation Officer, the court not only saves him from the possible contermination in prison but also encourages him to use his own sence of responsibility for his future.²⁰

It appears that probation is relatively cheaper for the Government to administer, provided more Probation Officers are recruited than prison wardens. If more Probation Officers are recruited it means more probationers and less prisoners. The probationer need no uniform, houses, electricity fences, guards etc. and Officers (Probation) do not need uniform, boots etc.²¹ The country also spends alot of money in building institutions ^{to} ~~for~~ accomodate juvenile offenders, for instance, there are about nine approved schools in this country having an average daily population of about 2,000 whose ages range from 10 to 18. There are two Borstal Institutions and one youth Corrective Training Centre. Expenditure on these establishments may be counted in terms of recurrent expenditure, that

is staff salaries, inmates food, maintenance costs such as repairs and improvement capital expenditure such as new buildings and machinery. Although young persons are sent to these penal establishments to be trained to become "better men" the expenditure on welfare and education which includes recreation and social rehabilitation represents 3% of the total expenditure. What all this suggest is that Institutionalization involves high overall expenditure with the greatest proportion of it going on custodial staff and security rather than youth welfare and training. If one compares the unit costs of youth custody with those of probation one would find startling contrasts. Probation saves the exchequer alot of money.²²

Probation gives the offender a chance to re-examine himself. In this way, we can look at probation as a system whereby courts could inculcate the spirit of self-esteem and positive self image in the offenders population. This is important because it is the exact opposite of what prisons do to men, that is to ruin self respect, make them brutal and develop antisocial values.²³

Probation makes it possible for the offender to remain on his job and keep his family intact. The young offender is not deprived of the care of his parents. He continues attending ordinary schooling under the professional supervision of Probation Officer.²⁴ The youth who is placed in an insitution is deprived of parental care and guidance. He doesn't benefit from the counselling of both his/her parents and the probation Officer. It has been observed that many families break up or are ruined because of institutions. Many people for instance like children take to crime because of absence of parents who can ^{give them guidance} ~~guide them~~ and support.²⁵

Imprisonment also affects the future and development of many children. This happens when mothers with very young children of ages ^{below} ~~between~~ 4 years get imprisoned. The children accompany them to prison, in terms

of normal child development these are among the most sensitive years of a child's life. To have to come through prison at this age constitutes psychological problems for the child which are most likely to negate his later life, prison environment is not meant for developing children.²⁶ In relation to sentences to women offenders, a survey carried out in 1986 indicates that the majority (88%) of the women in prison were given sentences below 6 months indicating that the offenders were of a non-violent nature and could be dealt with through non-custodial measures with minimum risks to the society. This calls for a shift from custodial treatment to community based programmes like probation.²⁶

By permitting the offender to remain in the community probation helps the society to develop new forms of social control and socially approved behaviour. When offenders are removed every time they are detected, the society may never make necessary regulatory measures to deal with delinquents of various types. The offender while being reformed in the community directly contributes to the wellbeing of others be they the family, next of kin or the community and thus restriction for wrong done accrues directly to his immediate society. The Magistrate is at a discretion to select whom to place under probation. This discretion allows him to treat an offender as an individual, rather than as one group of people who are all treated alike.²⁷ The selected offender is expected with assistance to change his attitude and habits while residing in a free society and a great variety of non-punitive methods²⁸ are used in rendering this assistance. The Probation Officer who gives this assistance is a counsellor for personal and practical problems. He can help the offender to find vocational job or even a health clinic. He is willing to talk with the offender about family or money matters. All these things which the probation benefits from are not available to a prisoner.

In summing up I submit that Probation should be taken as the best type of sentence. This is because in placing people under Probation the family is not going to be interfered with as the probationer will still continue undertaking his responsibilities. The probationer benefits alot from the Probation~~er~~ Officer and he is more likely to reform than a prisoner. Probation should therefore give room to all those offenders who are deemed fit to be placed under probation, thus it should be available to all persons needing it.

FOOT NOTES

1. David Dressler, Practical and Theory of Probation and Parole
(2nd edition I936) P9 245 - 246.
2. I Bid
3. I Bid
4. Kathleen David, Probation in New-York City (I975) P. 2
5. The Probation of Offenders Act section 4
6. I Bid
7. John N, Savitz L, Manuine N, The Sociology of punishment and corrections
(2nd Edition I975) P.66.
8. David Dressler Supra note I Pg. 27.
9. The probation of Offenders Act.
10. The probation service Annual Report Nairobi Government Printer I977.
11. The probation service Annual Report Government Printer I978.
12. The probation service Annual Report, Government Printer I98I.
13. The probation service Annual Report Government Printer I982.
14. I Bid.
15. I Bid.
16. Probation service in Kenya. Objectives and practice. (a paper
presented to commanding officer at staff training college at Langata on
I4th April, I983).

17. Tim Mushanga, Punishment of Offenders (1968) P. 261.
18. I bid
19. Mushanga I bid punishment of offenders (1968) P.261.
20. The colony and protectorate committee appointed to consider the advisability of the introduction of a system of probation to the Colony Report.
21. Mushanga Supra note I7 P. I95.
22. Probation as an alternative to imprisonment with specific reference to children. (A paper presented to Unicef/GK Workshop on criminal Justice and children at KIA on 10th April, 1986 by The Principal probation officer). Pg. 9 - 10.
23. Supra Mushanga note I9.
24. Presentation supra note 20 pg. 6.
25. Mushanga Supra note I9.
26. Penal institutions and children (a paper presented at KIA Workwhop on April 7 - 11, 1986 by The Commissioner of Prisons.
27. Kathleen David Supra Note 4 P. 3.
28. Kind J. F. S. The Probation and After Care. (1959) P. 9.

CHAPTER TWOTHE STRUCTURE AND FUNCTIONING OF THE PROBATION DEPARTMENT

Having examined the origin of Probation, its advantages and introduction in Kenya, this chapter discusses the structure and functioning of the Probation Department.

STRUCTURE

The Probation Department is in the Vice Presidents Office and the Ministry of Home Affairs. The Department whose headquarters are at Nairobi is headed by the Principal Probation Officer, who is answerable to the Permanent Secretary of the Ministry. Other important officials of the Probation Department include The Deputy Principal Probation Officer who is responsible for the execution of policy details, The Senior Probation Officer who is incharge of Administration and Probation Officer I incharge of training of officers through out the Country. The above mentioned officers are stationed at the Headquarters.

Outside the Headquarters we have Senior Probation Officers who are the Heads of the Provinces. Every Province has a senior Probation Officer except North Eastern Province which is served by officers from Malindi and Kitui Districts. The provinces are sub-divided into Districts which are headed by probation officers I and II. The officers are helped in running the Department by two Committees, one at the National Level and the other at the District Level. The one at the National Level is called the Central Committee and the one at the District Level is called the Case Committee. The members of these committees are appointed by the Minister.

FUNCTIONING

Here attention will be focussed on the way the Department handles criminals from the time they first come into contact with the Probation

Officer to the end of the Probation period. This will include, Court Inquiries, Pre-sentence reports, Probation Order, supervision and reporting.

COURT INQUIRIES AND PRE-SENTENCE REPORT

When an accused person has been found guilty of the offence charged with or has pleaded guilty to the offence, the Magistrate decides which sentence to give to the offender. The sentence can take many forms (i.e. Fine, Imprisonment or Probation). If ~~the~~^{he} considers probation as the appropriate form of punishment for the offender, he requests the Probation Officer to make a report regarding the behaviour and social contacts and the suitability of probation for the offender. This is called referring the case for a probation officers report. In Court there is a tray where files for cases needing this report are kept. The probation Officer is required to check on ^{those} files every day to see which cases have been referred to him. If the Probation Officer fails to check on the files and a case comes up he can be informed by the Court Clerk. It is very important that an Officer stays as near the Court as possible so he can start making inquiries as soon as a case is referred to him. But as will be seen later this is not usually the case because there ^{are} very few Probation Officers, ~~this~~ you can find one Probation Officer serving a whole District. In Kenya this Pre-sentence report is required in all juvenile cases ~~to~~ in order to assist the Court to decide what sentence to give. ^I Adult cases are at the discretion of the Magistrate.

The Probation Officer is required to submit the report within a ^{period} of 14 days but in practise this takes longer due ^{to their} heavy work. ~~of~~ The Probation Officer visits the offender. Before he can visit the offender he studies the offenders file and takes note of all the particulars of the offence. The officer should know the offenders name, his fathers name, the offence with which he is charged with and the

particulars of the offence.² This makes conversation between the Officer and the offender easier. The officer visits the offender at home, If he's on bond or he visits him in prison if he's in custody. If the offender is in custody the officer visits him there then after the conversation (~~whose~~^{whose} nature I'm going to talk about below), he visits his home. Here he is supposed to confirm whatever information he has got from the offender. He then visits the offender once more in order to be able to make a uniform report. Whatever the offender tells the officer should not contradict what his parents and others tell the Officer. The report should give a clear picture of the type of person the offender is. If the offender is at home then the Officers work becomes lighter in that he doesn't have to make many visits, since the people he needs to see are in the same village or locality.

When the Officer visits the client, he introduces himself to him and tells him what his work is. As will be seen later the Probation service is not widespread and therefore not known to many people. The Officer should then explain to the offender in details what it means to be placed under Probation. Having known what it means to be placed under Probation, the offender is asked whether or not he would like to be placed under probation. If the offender is not interested the officer can't force him. He reports back to Court that the ~~officer~~^{offender} is not interested and an alternative sentence is given. If he is interested, the Officer then goes and questions him on matters connected with the offence. He should question him to find out the reason behind to^{the} Commission of the offence, ~~and~~^{his} attitude towards crime. The Officer should be so trained as to be able to observe the offender's demeanour. He is supposed to know things like who are the offenders' friends and what are they, ^{what} ~~this~~ he does during his free time if he's working or in school etc. The purpose of the interview is to find out whether the offender is likely to benefit from Probation or not. If the offender is

cooperative and genuinely sorry about what he did, then it is very likely that he shall reform.

The officer interviews other people apart from the offender. These are, his family members, the chief or sub-chief of his area, if he was working then his employer or if in school his teachers and any other person who is likely to know much about the Life history of the offender. From this information the Officer tries to understand the social, psychological economic or environmental factors that led to the commission of the offence. At this stage the Officer should form a personal relationship with the Offender. This lays a foundation for future work and gains the probationers acceptance of supervision. The relationship should be smooth and trouble free.³

After collecting information from the offender and his family and neighbours, the Officer writes a report to be submitted in Court. The Officer is supposed to give a recommendation. He says whether or not the offender is suitable for probation. If he is not suitable then an alternative sentence is given. If the recommendation is that the offender is suitable for probation, then the offender is placed under probation for a period ranging from 6 months to three years. The question whether or not the recommended offender will be placed on probation depends on the discretion of the Magistrate. The Officer's recommendations are not binding to the Court. The Court can either take them or ignore ^{them} and this poses a big problem as will be seen in the next chapter. But upto 95% of them are accepted.⁴ If the recommendation is accepted the Magistrate studies it and then asks the client whether he is interested in being placed under probation. If he agrees, then an order is made. The order can't be made without his consent.

PROBATION ORDER

According to the probation of offenders Act,⁵ the Magistrate can make a probation order, having effect for a period of not less than

six months and not more than three years. He makes this order if he thinks that having regard to youth, character, antecedents home surroundings; health, or Mental conditions of the offender or to the nature of the offence ^{or} to any extenuating circumstances in which the offence is committed, it is expedient to him to release the offender on probation, ⁶ following the order. The offender is issued with a booklet containing the probation conditions. The conditions are read to him and he signs the booklet thus binding himself. Therefore in exchange for being placed under probation, the probationer ^{undertakes} understands certain obligations. First he must be of good behaviour during the probation period, secondly, he must notify the officer of any change of address, thirdly, he must keep on reporting to the Probation Officer as instructed, not to associate with anyone with whom he has been forbidden to associate ^{with} by the officer at his home or place of residence (and any other obligations contained in the booklet). ⁶ The Magistrate warns the offender that he must comply with the provisions of the probation order as read to him in Court and that if he fails to comply he would be brought back to Court and sentenced for that very offence for which he has been released on probation. The order is signed by both the Magistrate and the offender.

SUPERVISION OF THE OFFENDERS

Immediately after the order is made the offender is now under the supervision of the Officer. ^(probation) The Officer takes the ^{offender} offender to his office and reads out and explains the conditions of probation to the probationer. He is again reminded what would happen in case of breach of these conditions. A file is opened for him and he is given a number. This number is written in all the relevant supervision documents. The Officer fixes a date when the offender is to report for the first time. The Probationer is made aware of ^{the} ~~the~~ date and it is also indicated in the probationers booklet. Its very important that the Officer and the

Offender agree on the date incase of any misunderstanding ~~and~~ or incase the offender does not know how to read. The place of meeting and the time is also indicated. Newly placed offenders are required to report more frequently for the first few months so that the officer gets to know them well before they can be allowed to report monthly.

REPORTING

Probationers do not report at the probation Offices except in the big towns where transport is cheap. In the rural area there are poor means of communication, like whether roads which are very muddy during the rain season. As such it would be very inconveniencing for those probationers who might have to travel long distances to reach the probation office. To avoid these inconveniences, reporting is arranged in such a way that probationers report at places near their homes. They report at places like schools, Market Centres, Chiefs Camp or the Sub-chiefs Camp. Here they meet with the Probation Officer. The female probationers must be supervised by female Officers.⁷ This means that female Officers might have to cover large areas because there are very few female Probation Officers. This is at times broken because you find in some districts there are no Probation Officers at all, so female Probationers are sometimes supervised by male Probation Officers. This makes the work of counselling hard and hinders detainance of best results since women are very secretive and there are things they can't confine in a man.⁸ At the reporting centre, counselling ~~is~~ done. The probationer discloses to the officer any problems which might have cropped at home or place of work. The officer should be very friendly and sympathetic in order to enable the probationer to disclose all the problems. The officer then suggests solutions to these problems and gives the offender all the possible aid. The offender is also taught how ^{to live} in the community and requested to display the best type

of behaviour. After the counselling the probationer is free to go and he is told when to report next.

When the Officer goes back to the office he writes a report for the probationers file based on the interview between him and the probationer. If there is any improvement in the character of the client he should note it down. ~~If~~ All the changes should be noted and recorded in the file. The Officer also indicates in the file the date of the next visit. For those who fail to report, the Officer notes this down in their files. When an offender fails to report the Officer is supposed to visit his home and find out why he failed to do so. Some probationers send people to come and report for them giving excuses for their failure to turn up. Others write letters to that effect. The Probation Officer should not rely on that information. He should personally visit the offenders home. When a probationer fails to report for some days, he is said to have breached the probation order.

BREACHES

When it appears to the Probation Officer that a particular probationer has become too difficult to supervise, for example if he has failed to report repeatedly he may apply to Court for a warrant of arrest to be issued. The probationer is arrested ~~or~~ sometimes the police fails to trace him and when this happens he is said to have absconded. When arrested he is brought before the Court and charged with the offence of failing to comply with the probation order. If he is found guilty, he may be sentenced for the original offence for which he was placed on probation and the probation order discharged, or in case of juveniles he may be caned and the order allowed to continue?

RETURNS

Every probation station is required to give a data, showing the number of people placed under probation that month, the number which completed, the number of inquiries and probation orders. This report is submitted to the probation Headquarters at Nairobi for record. It

is from these returns from different areas of the country that are compiled to form a Probation Annual Report.¹⁰ The latest published so far is the 1982 Probation Annual Report.

DISCHARGE OF PROBATION ORDER

The Court by which a Probation Order was made may on the application of the Probationer or Principal Probation Officer discharge the Probation Order. Where the application is made by the Principal Probation Officer, the Court may deal with it without summoning the Probationer.¹⁰ The Probation Officer may give a good recommendation of the offender to the Court, for example he might tell the Court that the offender has made such a good progress that there is no point in continuing to the bitter end. Following such recommendation the Court can discharge the order.~~the~~

COMPLETIONS

A Probationer can complete his probation either satisfactorily or unsatisfactorily. If he complies with all the conditions and reports well until the end, he is said to have completed satisfactorily. If on the other hand he fails to report and his order is discharged, he is said to have completed unsatisfactorily. There are those who just disappear and the police is unable to trace him. When this happens the probationer is said to have absconded. It can be noted with great appreciation that the majority of probationers complete satisfactorily.

FOOTNOTE

1. Interview (Senior Probation Officer I the Probation Headquarters).
2. I bid.
3. Heward Jones: Society against Crime (1981) P. 193.
4. Interview Supra Note I
5. Probation of offenders Act section 5.
6. Interview Supra Note I.
7. Supra note 5 section 14 (2).
8. Interview Supra Note I.
9. Jones Supra Note 6.
10. Interview Supra Note I.

CHAPTER THREE

This chapter will discuss problems faced by The Probation Department, their possible solutions and the future of the Probation Service.

SHORTCOMINGS

The Department encounters many problems which include personnel, Capital, Transport and Language.

I) PERSONNEL

The Department faces the problem of recruitment of staff. It employs graduates from the University of Nairobi. These graduates are not competent for the work, therefore, ^{they take a long time before} they can learn and give adequate service. Most of them find the work very complicated and demanding and they leave very soon after employment. The Department also recruits 25 trained Probation Officers from The Kenya Institute of Administration every year. The number of Officers that get recruited into the service is just enough to replace the number that leave due to resignation, retirement or death, therefore there is little expansion of staff. Due to this Shortage of trained Probation Officers, the few Officers that are there feel ~~be~~ overworked. According to Social work Principles and practice, an Officer should supervise 40 - 50 clients, but ^{this} is not the case in this country because you can find an Officer supervising more than 100 clients^I. As a result counselling becomes a real problem in such cases since only a little time can be afforded for each probationer. The number of cases referred to an Officer cannot be controlled therefore there is nothing an Officer can do but sacrifice his time, money, and energy in order to cope with this amount of work. The Officers work under trying circumstances and especially in the rural areas where there are poor means of transport.

As the Department is understaffed you find that many Courts don't have any stations nearby and therefore benefit very little from the Department. The country is divided into 41 Districts and out of these only 36 have got a Probation Officer. Thus there are 5 Districts which have to be served by Officers from the other Districts. This problem of staffing brings about disparity in sentencing because people from different districts are sometimes going to get different sentences that is one is placed under Probation and the other one goes to jail.²

I suggest that the Kenya Institute of Administration should train more than 25 Officers in a year. The Department should employ those those graduates from The University of Nairobi with a Bachelor of Arts degree in sociology who are attached to the Department during their field study while in the university. This is because these students get trained during this field study are competent enough to work in the Department. The policy makers should make sure that there is a station and an Officer in every Court. Also in service training programmes consisting of refresher courses and seminars should be organised as well as having a good and comprehensive pre-service training. There is need to professionalise the probation service and this can be done through continuous training.

2. CAPITAL

The Probation Department is one of the Departments which are not given much attention by the Ministry of Finance therefore very little money is allocated to it. This retards the expansion of the Department. For instance, the Department doesn't have an after care unit or arrangements. This is a programme whereby probationers who complete their probation period are followed up to find out how they are fairing. After care work also includes semi-liberty sentence like parole and conditional release from prison. These people with semi-liberty sentences need supervision and this can be adequately done by the Probation

Department but due to lack of funds the Department can't do it. In order to know how probationers fair after the probation period is over a research needs to be carried out. (The Department at present follows up a probationer for 2 years and after that nothing is known of what becomes of him). If research is going to be carried, a lot of money will be needed.³

Without this research unit it becomes very difficult for the Department to ascertain how effective it has been since it is not known how many people fall back to crime after satisfactory completion. I suggest that the Ministry of Finance should give more attention to the services rendered by the Department and allocate more money to the Department. With increase of funds the Department will be able to under-take aftercare arrangements.

3. The probation system is still very unknown to the people of Kenya. This is because the Department has taken a long time to expand. Some of the reasons for this is lack of funds to open up new stations and lack of trained Officers. You find most people in the rural areas and especially in the divisions don't know the Services rendered by probation. Most of them have just heard of a form of punishment where an offender is not jailed but he stays at home with his movements restricted. Nobody has ever expanded this little knowledge held by these people by explaining to them what probation really is. There is need for the people in the villages to be reached by Probation Officers and stations opened in the divisions. Another problem is brought about by Magistrates. Most of them give less attention to cases needing probation service, because, as pointed earlier, the Magistrate has a discretion to decide whether or not to place an offender under probation. The number of probationers in any given court will to a great extent depend on the discretion of the Magistrate.

Peoples attitudes towards punishment are not uniform. Some believe that the aim of punishment should be retributive, just deserts others feel its aim should be protection of society. A third category considers that the right ~~of~~ function of punishment ought to be reform and rehabilitation of offenders,⁴ which is best achieved through probation. Due to this different attitudes different method ~~of~~ forms of punishment can be used by different people to get the desired results. The attitude of a large number of Magistrates towards criminals is rather punitive, to them placing a person under probation is being too lenient. As a result you find alot of people in prisons serving sentences ranging from one month or few days to six months. This means the offences committed are too minor. This people can best be treated by placing them under probation. There is the problem of corruption brought about by some Magistrates and Probation Officers. Due to their being corrupt some Probation cases are not genuine. This affects the effectiveness of the probation service because if an offender is not worth of being placed under probation, he is not likely to reform or even finish satisfactorily.

It is suggested that in every court there should be a Probation Officer who together with the Magistrate should decide whether or not to grant probation to a convicted person.

4. TRANSPORT

There is the problem of transport which greatly interferes with supervision of offenders (very much). At present the Department has ~~get~~ very few vehicles allocated to it. This makes it very difficult for many officers to turn up at the reporting stations. It therefore takes longer than is necessary to visit some probationers. It is essential that the Probation Officer visit the home of the probationers any time he deems it necessary. When he visits them, the Officer is in a better position to know more about the offender. Due to shortage of staff, you can find one probationer^{Officer} servicing a whole District. If he

is going to do this he needs quick and available transport. Due to lack of transport the Officers don't reach all the Courts in a District and as said earlier this brings about disparity in sentencing.

5. LANGUAGE

The problem of language interferes with supervision to a great extent. This is very serious in the rural areas where many people understand and speak only one language, that is their mother tongue. The Officer and the probationer should understand each other if counselling is to be done well. This is not possible if it is going to be done by using a language which is not very well understood by both. I submit ^{that} every Officer should have a translator who understands or speaks the probationers language and can translate it well to a language which the ^{probation} Officer understands well.

6. Counselling of offenders involves aiding them both socially and economically. Crime is contributed by both economic and social factors. If the Officer is going to help the offender he should know the cause of the crime and also provide a remedy to it. For example an offender might have being charged of with the offence of brewing local beer, in order to get money to support his family. An Officer who tells him never to brew beer without showing him a way of earning money is not helping him (offender) at all. The country lacks facilities where these people can be absorbed. I suggest that there should be employment facilities, schools, colleges like village polytechnics or farms where the ex-probationers can be taught skills and utilize them. This will help the probationer, his family, and society as a whole.

USEFULNESS OF PROBATION

The Department has been quite useful despite the many problems that face it. This can be deduced from the fact that about 3/4 of the probationers do not re-offend the rules of probation order.⁵ Therefore it can be noted with much happiness that most of the probationers finish

satisfactorily. Also after the probation period this success rate falls but not so much. At least 2 years after the probation period about 60% of the probationers have not re-offended. As pointed above, no research has been carried out to find out how many probationers fall back to crime five years after the probation period is over.

For the last nine years, 50% of those placed under probation do not re-offend, while still on probation and this shows that the department has ^{been} quite useful in its work rehabilitation. Information extracted from the 1982 probation service annual report confirms this.⁶ Over 80% of the probationers complete satisfactorily, the figure never falls below 50% and this can be said to be a big success.⁷

THE ^{FUTURE} FAILURE OF THE PROBATION SERVICES

At present there is a move against imprisonment as a form of punishment. The Government is realising that probation is an alternative to all other forms of punishment. This was the major emphasis by speakers at the recent seminar held at The Kenya Institute of Administration. Probation while seeking to protect the society and rehabilitating the offender through the supervision to which the offender is required to submit, it both minimises the restriction placed upon him and offers him the help of the society in adjusting his conduct to its demands.⁷ Prison institutions are getting over crowded and soon they won't be able to accommodate more prisoners. It is ^{hoped} ~~jepped~~ that in the future more offenders will be placed on probation. The Department hopes to recruit a large number of officers so as to lighten the work of supervision. Also it hopes to open up stations in all the Districts and make sure that there is a station where there is a Court and a Probation Officer at that Court. If financed by the Government the Department plans to start undertaking aftercare work, thus expanding the Department.

FOOTNOTES

1. Interview (Mr. Muhoro from Probation Headquarters Nairobi).
2. I bid
3. I bid
4. I bid
5. Probation as an alternative to imprisonment with specific reference to children (a paper presented to Unicef/GK Workshop on Criminal Justice and Children at K.I.A. on 10th April, 1986. By Principal Probation Officer).
6. See Appedix table A.
7. I bid

CHAPTER FOURCONCLUSION

This paper has been written about the probation service in Kenya, its structure, functioning and the problems facing it. The Probation Department is under the Vice Presidents Office and the Ministry of Home Affairs. Probation has been very much in use especially ⁱⁿ the Nairobi, Central and Rift-Valley Provinces. In the other provinces it is still unknown to many people (not to mention North Eastern Province where it has not been introduced).^I All efforts are being made to make sure that it is known to all the people in the country. This^{is} being done by opening up new stations and employing more Probation Officers.

The advantages of probation over other forms of punishment like imprisonment are numerous therefore probation should be used. First of all, probation gives the offender a chance to re-examine himself. This is motivated by the counselling he/she gets from both his family and the Probation Officer and also the encouragement he gets from his friends. This is something that can't happen in prisons. In Prison the prisoner doesn't get the counselling that a probationer gets from the Probation Officer or his parents. Instead prisons are quite damaging socially and psychologically, they destroy or impair self-reliance, minimise the likelihood of interaction with ones friends, fracture, family ties, and prejudice the prisoner's future prospects for improvement in his economic and social status.

Secondly, Probation makes it possible for the offender to remain on his job, or continue attending school and keep his family in tact. The young offender is not deprived ^{of the care of his parents. When} in prison one loses his job, stops attending school and is separated from his family.

Thirdly, Probation is relatively cheaper for the Government to run than the other institutions like prison. A lot of money is spent in ^{buying} ~~buying~~ uniform for the prisoners, prison guards, food and construction of prison

buildings. A probationer doesn't need uniform, he takes his meals at home and also the Probation Officer doesn't need uniform.

Fourthly, the probationer is at liberty to learn social duties and in so doing strengthens his responsibilities to the community. Indeed probation in practice extracts from the probationer ^{a social economic contribution} within limits of his/her capacity, given available resources.² For instance, the offender can contribute in communal work, like building schools, constructing roads and dams. He can also contribute to Harambee fund raisings. This probation while exercising some limitation on the offender strives not to interfere with the individual liberty and freedom. The overflow effects of a convicted offender who is imprisoned are avoided. There is continuity of life in secure social environment.

Probation is convenient in cases where incarceration of upto one year has done more effects to the offender with subsequent rising incidence of recidivism. It is particularly convenient in dealing with offenders whose root causes in committing crime has social problems as their source.³

Due to the numerous advantages of probation over other forms of punishment it is suggested that probation should be the more used form of punishment. Prisons and other Institutions like approved schools should be used for those offenders (adults) who are a risk to the society and those juveniles who can't be contained in the community. In other words only those offenders who are completely unfit for probation should be jailed. In probation there is counselling and from this the offender gains alot. Here the chances of reforming are quite high. After the probation period is over, the probationer doesn't feel like an outsider in the society unlike an ex-prisoner who feels ^{like} an outsider.

I submit that probation services should be employed extensively and especially in cases whose charges are very minor. This is very vital at this stage of social economic development. The money used to run the ^{institutions} ~~constitutions~~ can be best used in development. It is suggested that only a small number of offenders should be locked up prisons. Probation system as a method of rehabilitating offenders is one of the few so far acknowledged ways which approximates our traditional society's ways of handling members who breached community norms (and prescribed sanctions were community based). The idea of imprisonment was unknown in pre-colonial days. Traditionally the offender was punished within the community. There were no prisons where offenders were placed ~~from~~ separate from the other members of the community. The punishment involved some restrictions just like probation. Probation may be the only acceptable way of punishing offenders if only it can be fully introduced to the people. But as said earlier the service is still unknown to many people and especially in the rural areas.

It is suggested that if the community is going to appreciate the services rendered by the Probation Department then a fully ^{Probation Department} expanded ~~is~~ is needed. It is further suggested that if the Department is going to be expanded, then the numerous problems facing it must be solved. These are problems like lack of adequate capital, transport problems, understaffing and language problem. I suggest that more capital should be allocated to the Department. This may solve some of the problems which hinders very much the expansion of the Department.

First, many people especially in the rural areas can't be reached by Probation Officers. With enough capital the Officers will have vehicles to transport them to the rural areas. New stations can be opened and more Probation Officers may be employed. Secondly, the Department will be able to have a station at every court, with a

Probation Officer to serve that particular Court. Thirdly, with available capital the Department will be able to start an after care unit. This will enable to Probation Department to know how effective it has been.

It is suggested that more officers should be trained at the Kenya Institute of Administration and more University graduates recruited. The Government should therefore give more attention to the Department and give it more aid. It can make sure that the Department gets more Probation Officers and allocate more capital to the Department.

Probation should be preferred to the other forms of punishment because a number of convicted offenders can probably benefit from it. Probation should therefore be given to all those offenders who qualify.

FOOTNOTES

1. Interview (Mr. Muhoro, Probation Headquarters).
2. Probation Services in Kenya (a paper presented to Commanding Officers Staff Training College Langata on 14th April, 1983 by P. K. Muhoro).
3. I bid page 3

APPENDIX TABLE A

TABLE A

A TABLE SHOWING PROBATIONERS UNDER SUPERVISION IN THE YEARS 1978 TO 1982

YEAR	TOTAL ON PROBATION	REMAINING ON PROBATION	COMPLETING	COMPLETING SATISFACTORILY		COMPLETING SUTISFACTORILY	
1978	5728	5728	3662	3184	86.9%	476	13.3%
1979	5849	5849	3470	2934	84.6%	516	15.4%
1980	6953	6953	3611	2174	60.3%	1437	39.7%
1981	7451	7451	6325	3479	55.0%	284	45.0%
1982	7620	7620	4612	4072	86.0%	540	14.0%