

THE PROBATION SERVICE IN KENYA:
ITS ORGANISATION, FUNCTIONING
AND EFFECTIVENESS //

By

CASPER B. ODEGI-AWUONDO

**THIS THESIS HAS BEEN ACCEPTED FOR
THE DEGREE OF M.A. 1978
AND A COPY MAY BE PLACED IN THE
UNIVERSITY LIBRARY**

A Thesis submitted in part ^{ful} fulfilment for the
Degree of Master of Arts in the University of
Nairobi

1978

UNIVERSITY OF NAIROBI LIBRARY



0146177 1

Bd 17230

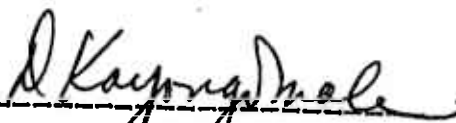
Afr.
HV
9278
•03

This Thesis is my original work and has not been presented for a degree in any other University.

A handwritten signature in black ink, appearing to read 'Casper B. Odegi-Awuondo', written over a horizontal dashed line.

CASPER B. ODEGI-AWUONDO

This Thesis has been submitted for examination
with our approval as University Supervisors.



DR. DIANE KAYONGO-MALE



TIBAMANYA mwene MUSHANGA

TABLE OF CONTENTS

	<u>Page</u>
ACKNOWLEDGEMENTS	i
ABSTRACT	iii
 <u>CHAPTER ONE: INTRODUCTION</u>	
\ The Problem	1 -
Literature Review and Theory ...	4 ✓
The Nature of Criminal Law	4
Theories of Crime	<u>7</u>
{ Theories of Punishment and Treatment	12
Probation Treatment	16 ✓
Historical Background	22
 <u>CHAPTER TWO: METHODOLOGY</u>	
Sites	27
Sampling	29
Data Collection	38
 <u>CHAPTER THREE: THE STRUCTURE AND FUNCTIONING OF THE PROBATION SERVICE</u>	
/ Structure	41
/ Functioning	45
(Court Inquiries and Pre-sentence Reports	47
/ Juveniles and Young Persons	55 -
/ The Supervision of the Probationers	<u>58</u>
/ Reporting	60
Entries	63
Breaches	64
Returns	65
Reviewing Cases	65
· Completions	66

34
27
II

CHAPTER FOUR: DATA ANALYSIS

SECTION A: DATA ON CASE STUDIES

The Crimes	70
Crime and Age	74
Occupational Categories and Crime	77
Literacy	80
Language	82
Marital Status	82

SECTION B: PROBATION TREATMENT EFFECTIVENESS

The Supervision: A Critical Appraisal Effectiveness:	84
(a) The Social and Economic Conditions	90
Marital Status and the Family	90
Economic Activities and Income	92
Attitude to Probation Treatment	103
Comments on Crime	106
(b) Recidivism ✓	

CHAPTER FIVE: IMPLICATIONS AND CONCLUSION 118

FOOTNOTES	133
OTHER REFERENCES	135
APPENDIX: QUESTIONNAIRE	136

LIST OF TABLES

<u>Table No.</u>		<u>Page</u>
1	Cases Per District by Sex	30
2	Cases Per District by Sex and Offenses	31
3	The Final Fate of the 100 Sample Cases	35
4	The 46 Interviewees by District, Offenses and Sex	37
5	Some of the Cases Placed on Probation: 1974 Annual Report.	46
6	Distribution of the Offenses in Sample	70
7	Age Distribution of Probationers	75
8	Details of Crime and Age Groups	76
9	Occupational Categories of Offenders	77
10	Type of Crime and Occupation of Probationers	78
11	Occupational Categories by Districts	79
12	Literacy Rate and Age	80
13	Marital Status when Placed on Probation	83
14	Marital Status Before and After Probation	91
15	Occupational Categories by Districts Presently	93
16	Occurence of Offenses in the Occupational Categories	109
17	Age and Recidivism	111
18	Relationship of Probation Period to Length of Time Before Recidivism	113

ACKNOWLEDGEMENTS

I am grateful first to the University of Nairobi for awarding me the post-graduate scholarship which covered this research.

I thank Prof. Philip M. Mbiti, Chairman, Department of Sociology, University of Nairobi, for his encouragement and assistance.

Special debt of gratitude is owed to my research supervisors, Dr. D. Kayongo-Male and Mr. T. m. Mushanga for they showed keen interest in my work and offered commendable guidance.

Thanks also go to Dr. J.H. van Doorne for reading the draft and offering useful remarks.

Out in the field thanks are due particularly to Mr. L.A. Odiango of the Probation Headquarters Nairobi for allowing me to have access to the materials and records I needed .

Finally I am greatly indebted to all those I am not able to name individually but who contributed

towards the success of the study.

The views expressed in the thesis are however those of the author and he remains solely responsible for any errors thereon.

ABSTRACT

This was an exercise in testing the effectiveness of the Probation of Offenders in 'curing' crime. The substance of the dissertation is built on the basic assumption that crime is part of normal social behaviour. Like all other types of behaviour it can be motivated and increased, discouraged and reduced. It can be studied, understood, and means of effective 'cure' sought and applied.

The data reveal that in modern society there are two sets of law working side by side. viz. the unwritten common law and the written statutory law.

The analysis on the long term effectiveness of probation as a penal system reveals that where these two sets of law are complementary it is much easier to reduce crime or 'cure' it since the common law assists and reinforces the statutory law by exerting pressure or social control on the individual, but where the two sets are divergent, statutory law has little chance of success. The picture portrayed on the strength of the available data is that of some degree of success with large clusters of ineffectiveness. Success is noticeable mostly in those situations where the general populace is exposed to diversified economic

opportunities for improving their lot. Secondly, it is more successful in those areas of crime that the social system condemns, and so acts as a regulating force. Ineffectiveness on the other hand is associated with limited economic opportunities and poverty and associated socio-economic problems. The people develop and continue to engage in illegitimate means of satisfying their basic biological needs, and these are strongly adhered to and supported by the social system to the extent that probation treatment is but a waste.

It has been recommended therefore that to improve the performance of the service:

- (1) There is urgent need to study the respective social systems and the factors that influence criminality before proceeding to rehabilitation.
- (2) The common law be made to complement the statutory law.
- (3) Only qualified personnel be hired to handle the work of rehabilitation since fighting crime is an arduous task that demands thorough training in the field of Sociology, Psychology, Psychiatry and Social Work.

- (4) There should be no goal displacement from the historical origin of penal systems. The overriding task of the service should be to 'cure' crime and it is that goal that ought to be relentlessly pursued.
- (5) Research findings should assist the service to improve on its weak points, hence the need for subsequent surveys to supplement this first attempt.

CHAPTER ONE

INTRODUCTION

THE PROBLEM

Probation treatment of offenders was first introduced to Kenya by the Probation of Offenders Ordinance of December 20, 1943.¹ Due to World War II however it was not until the year 1946 that the first group of offenders ever benefited from it. In that year 39 offenders were released on probation. In subsequent years the system was gradually expanded by a series of subsidiary legislations, and it was extended to many more offenders, and salaried probation officers attached to courts were appointed to do the work of supervision for the purpose of rehabilitation. In 1962 the Ordinance was revised and assumed the new title of: The Probation of Offenders Act (Rev. 1962), chapter 64, Laws of Kenya. It is the one which is currently in force in Kenya.

From time to time selected candidates were recruited into the service to work as Probation Officers. At present recruitment takes the form of a two year residential course at the Kenya Institute of Administration, Kabete, before being appointed

Probation Officers. Once in a while certain selected serving officers proceed to England for advanced training in Probation work for one year. At the time of the survey one such officer was attending such a course at the University of Swansea. This increase in trained staff to man the department has enabled it to expand fairly rapidly in recent years and many more offenders are now released on probation than the case was previously. In 1974, for example there were 9,090 offenders on probation.²

And as the service expands, the number of offenders that complete their probation periods (i.e. output) correspondingly increases yearly. In 1974 there were 3,393 such completions.³

The aim of any penal system is both to "cure" and to prevent crime. The offenders are expected to be law-abiding after the treatment has been given. This is if the treatment was effective. No one should ever fall back to crime. Probation treatment is no exception to this rule. The basic assumption underlying probation treatment is that by counselling, guidance and assistance in the context of his social environment (including the family) the offender should at the end of the probation period have adjusted himself to the

norms of society, from which he had been 'uprooted' by the crime, and thus become law-abiding citizen. It is believed that this non-punitive approach pays more dividends as opposed to the punitive approach.'

' In Kenya, since its introduction up till now there is no information whatsoever to show the effectiveness of probation treatment in 'curing' crime, leave alone preventing it.' The information that is available is on the performance during the probation period but not after. For example, out of the 3,393 completions in 1974, 82.3% were satisfactory completions while the rest 17.7% were failures.⁴ And this is the kind of information available through the years and published in the Annual Report.^{information on} The overall success rate during probation is given to be 80% and the failure rate 20%. But there is no information as to what happens to the 80% after they have bade farewell to the service. Do they remain law-abiding or are they the ones that fill our prisons? No one knows.'

It was in response to this critical professional and academic ~~lacuna~~ that this research was originally designed. The survey was to attempt an enquiry into the long term effectiveness of probation treatment of offenders. The social and economic factors which

influence the success or failure of the approach in the long run were enquired into. It in essence attempted an analysis of the salient factors of social control that assist or inhibit probation treatment effectiveness.

To make it possible for a follow-up exercise to be made, the survey was located in a rural setting, where there is comparatively low population mobility vis-a-vis the urban centres. Two districts (Siaya and Kericho) representing different socio-economic backgrounds were selected to facilitate some kind of comparative analysis.

LITERATURE REVIEW AND THEORY

The Nature of Criminal Law

In law crime is the contravention of the Penal Code of the state. The state makes laws and gives the courts the power to punish those ~~who~~^{who} break the law. Criminal law has been from time immemorial punitive for it always punishes. Since the formulation in c. 1875 B.C. of the code of Hammurabi of "an eye for an eye and a tooth for a tooth",⁵ the reaction of societies to crime is that criminals must suffer for their wrong-doing. This doctrine of Hammurabi later found refuge in the

classical school of penology led by Cesare Beccaria and such giant philosophers as Rousseau, Montesquieu, and Voltair. This school maintained the doctrine of psychological hedonism that the individual calculates pleasures and pains in advance of action and regulates his conduct by the results of his calculations.* It was argued that since crime is committed after a careful planning using one's free will in pursuit of pleasure, the society must react by inflicting suffering or pain to the criminal. The punishment had to be mathematically calculated and had to be uniform, certain, clear and severe for all.

Jeremy Bentham attempted to work out precise mathematical laws for the inflicting of punishment.

(see Bohring, J. (ed) - The Works of Jeremy Bentham, Edin. 1843)

The principle on which our present criminal law is based however, developed about the time of the French Revolution. It was first advanced by the neo-classical school. Whereas the school agreed in principle with the punitive approach, it advocated for certain concessions to be allowed. Some concessions had to be given to children and the insane since they were not capable of making calculations as to pleasures and pain before committing the crimes. They should not be punished but dealt with in some other non-punitive way. This was later accepted and codified into the

criminal law. Later further developments were made to put into account what are termed 'mitigating factors' including the criminal's responsibilities in society. The meting of punishment then became varied from one case to the other; and also from one society to the other. The backbone of criminal law still remained punitive with some elements which were non-punitive. And this is the nature of criminal law today. The non-punitive elements are even sometimes considered merely as leniency and not practice.

It is the Italian or the positive school that later argued that criminals are not responsible for their crimes and that they must not be punished. To them "society prepares crime, the criminal commits it,"⁶ or to put it the other way, "a criminal is the victim of the criminal forces generated by the society". It is the criminal forces that ought to be dealt with and not the individual criminals. Little attention has been paid to this school of thought by the law-enforcement authorities and what persists and lives with us is the punitive approach of criminal law to crime, although now it is not as popular as it was during its hey-day. | It is now interwoven with many other non-punitive approaches such as the Suspended Sentence, Work Release and Probation among others.

Theories of Crime

There is no one theory of crime but a number. One or two of the theories that are applicable to this study will be mentioned by way of reference.

The most popular and conventional theory of crime that is extensively used in the administration of criminal justice is the doctrine of the "Free Will".⁷ This doctrine holds that all men are born with equal ability to choose the right from wrong, that man chooses deliberately to do wrong; and that this is a misuse of the God-given faculty of free will. The principle of establishing Mens Rea (Guilty mind, criminal intent) in every criminal case that comes before court is based on this classical doctrine. Mens Rea is a legal requirement that a person is not to be held responsible for a crime unless he committed the crime intentionally, voluntarily, or with malice aforethought.

Psychologists and sociologists give different explanations as to the causes of crime. Theirs are genetic theories. The psychologists give the individual-oriented theory which concentrates on the development of the individual's personality. The environment and the experiences of the early years are assumed to create predisposing factors which make some individuals

vulnerable to crime commission. Crime is explained as the result of genetic defects, emotional imbalances, psychiatric disorder, anti-social drives, ego-super ego conflicts, or faulty socialization and education. This approach to crime sees the individual and the family as the most important entities in the treatment of offenders.

The most carefully stated sociological theory of crime is Sutherland's "Differential Association"⁸ theory. It concentrates on the social environment as the major transmitter of criminal tendencies. It regards criminals as being subject to the socio-cultural organization of the society upon which they prey. The theory views criminal behaviour as learned rather than inherited. The major postulate is that crime is rooted in the social organization and is an expression of that social organization.

Sutherland laid out the theory in nine propositions:

- (1) Criminal behaviour is learned.
- (2) Criminal behaviour is learned in interaction with other persons in a process of communication.

(3) The principal part of the learning of criminal behaviour occurs within intimate personal groups.

(4) When criminal behaviour is learned, the learning includes:

(a) Techniques of committing the crime, which are sometimes very complicated, sometimes very simple;

(b) The specific direction of motives, drives, rationalizations, and attitudes.

(5) The specific direction of motives and drives is learned from definitions of the legal codes, as favourable or unfavourable.

(6) A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law.

(This is the Principle of Differential Association)

(7) Differential Associations may vary in frequency, duration, priority, and intensity.

- (8) The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
- (9) While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values since non-criminal behaviour is an expression of the same needs and values.

This theory seems to have developed out of Emile Durkheim's social control paradigm. In his study of suicide as an index of group integration, Durkheim had observed that when there is a state of anomie, the rate of suicide increases. This he argued, happens because the group loses control over the individual. According to him, it is the society that moulds the individual to fit in it, and he must conform to the norms of society. The society is the regulator and the individual is nothing but a recipient of group influence.⁹

The theory of differential association has been developed further and applied to real situations in terms of normative conflict and culture conflict. Normative conflict develops as a result of the shift

from traditional society to modern society due to social change and development. New values, goals and aspirations emerge with no specific means of achieving them. For example in developing countries, there has been a rapid shift from subsistence economy to monetary economy where wealth is now used as a measure of status; and yet there are no laid down rules for acquiring wealth. The means seem not to matter, what matters above all is acquisition. X Once you have grabbed you have status. Those who fail to use legitimate means therefore resort to illegitimate means i.e. criminality. Robert Merton¹⁰ is the greatest proponent of this theory. He advances it that a state of anomie develops, as a result of the clash between institutional means and cultural goals in access to a given success goal by legitimate means. He points out that most modern societies emphasize material success in the form of acquisition of wealth by education as an acceptable status goal, but at the same time they fail to provide adequate means or norms for members of the lower class and the poorer groups to achieve these goals. Marshall B. Clinard has also made similar observations in his study of crime in developing countries. There are such structural barriers that one cannot always use legitimate means.

The culture conflict theory is very close to normative conflict theory. Sellin¹¹ outlines the various ways in which conflicts between norms of behaviour of divergent cultural codes may arise leading to deviance. An actor may behave in a way that is legal to his own culture only to discover that his behaviour is illegal according to the other culture. What is traditionally legal in our society may be totally illegal and consequently a crime by the standards of the western culture we have now inherited. A Maasai moran who goes raiding cattle to prove his manhood according to his culture is charged with the crime of "stock theft". Elopement, a traditional Luo way of marriage is now a crime of either "unlawful custody" or "rape". The conflict has an attribute of strong belief and adherence to customary way of behaviour in a particular situation with little regard for the related statutory law. Or it may also be a product of total ignorance of such laws.

Theories of Punishment and Treatment

The most popular theory of punishment is based on the hedonistic psychology that since man commits crime in pursuit of pleasure as opposed to pain, there is justification to make him suffer for his crime. It is as if to say "the only purpose for which power can rightfully be exercised over any member of a civilized

community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a warrant".¹²

The punishment may take any of the four forms:¹³

- (1) Removal from the group by death, exile or imprisonment;
- (2) Physical torture;
- (3) Social degradation;
- (4) Financial loss.

These are all punitive reactions to crime. The punishment is supposed to have two-edged functions. First, by inflicting pain on the criminal it is believed that he will reform and not take part in such behaviours in future. It is to teach him not to misuse his free will and to learn that crime does not pay. The capital punishment is however used in cases that are considered to be beyond reform. Secondly punishment is believed to scare potential criminals and make them abstain from criminal behaviour. Capital punishment for example is to scare others as they risk similar treatment if they try. So at the first level it is to cure criminals and

in the second it is to prevent crime. Punishment is thus considered as a deterrent. Before passing sentence one often hears a magistrate pronounce:

"This type of crime is on the increase in this town and needs a good dose of deterrent punishment".

Note particularly the use of the analogy "dose" from medicine. It implies that the punishment cures the criminality in the defendant. And that the heavier the punishment the more effective the cure is.

This hedonistic theory is still very popular in the administration of justice particularly in the developing countries. It is however bitterly opposed by psychologists and sociologists. They offer alternative theories of treatment for criminals. They argue that inflicting pain or suffering on the criminal does not reform him, may be it only makes him worse. Two theories are then developed: the clinical and the group relations theories.

Psychologists who believe that crime commission is a product and function of certain psychiatric defects in the personality of the criminal favour a clinical approach in dealing with criminals. Each criminal case

is to be given a "diagnosis" and the underlying psychological causes analysed and treated. This is to be given on individual basis without bothering about the social aspect of the crime. It is done in the same way a doctor treats a patient with tuberculosis or malaria. Once the causes are known by diagnosis the "medicine" is administered into the criminal. This is referred to as: individualistic psychiatric theory of criminality. *It believes that it is the personality traits of an individual that causes crime and it is the personality that is to be dealt with. The essence of such treatment is that the internal emotional maladjustment in the personality of the criminal must first be eliminated by individual psychiatric treatment before the criminality in the "patient" can disappear.

More recent discoveries in the field of criminology and penology reveal that personality is determined by the social environment, it is "situation determined" rather than "trait determined". This is a paradigm developed out of Sutherland's "Differential Association" theory of crime. The criminal behaviour is a product and a function of his group relationships. To reform the criminal there is need to reform the group as a whole. His relationship with the law-abiding elements must be promoted and that with pro-criminal elements discouraged. Treatment is to aim at the group and not

at the individual in isolation. This group relations theory is quite reminiscent of the positive school of criminology.

Probation Treatment

Probation has the following terms of reference. It is to be used "to provide an individualized programme offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement under the tutelage of a probation officer and under the continued power of the court to impose institutional punishment for his original offense in the event he abuses the opportunity".¹⁴

Probation may therefore be defined as the suspension of a sentence during a period of liberty in the community conditional upon good behaviour of the convicted offender. The normal procedure takes any of the three forms:

- (1) After conviction, sentence is suspended and the offender placed on probation.
- (2) After conviction, sentence is passed and the execution of the sentence is suspended and have the offender placed on probation.

- (3) After conviction fines may be imposed as a condition for release on probation.

The logic behind the arrangement is that in case of breach then:

- (1) If he had not been sentenced then the conduct during the probation period is put into account to help the court decide on the appropriate sentence. The sentence is then passed and executed.
- (2) If the sentence had been passed then the court only orders that the sentence now be executed. It does not take into account the probation period.
- (3) If sentence had not been passed but the probationer had paid fine then the fine is put into account when deciding on the sentence now to be passed. Sentence is passed and executed.

In the United States the most commonly used procedure is the suspension of the execution of sentence. If the sentence is imprisonment then the period of probation is made almost the same as that the offender would serve in jail.

In Kenya the system is slightly different in that in almost all the cases it is sentence that is suspended. The length of the probation period is then arbitrarily decided on. There seems to be no rule as to the length so long as it is between 6 months-3 years. This was laid down in 1943 and it has not been altered. One wonders why. Otherwise probation service is the same everywhere and has in itself two distinct aspects: the authoritarian aspect and the guidance aspect. The two different aspects are together termed supervision. It is this supervision part of probation that makes it different from the suspended sentence alone.

The Authoritarian Aspect: is reflected in the conditions as laid down in the probation order. The probationer is given rules that he must comply with. He is warned that if he does not comply the court would be informed and the suspended sentence be imposed on him and executed. It is the fear of impending punishment and the use of threats by the probation officer that compel many probationers to comply - they do not do it voluntarily. In this case the probation officer is an agent of the court and the police. In our society (Kenya) to the public probation officers are policemen in plain clothes. Probationers believe they are dealing with policemen, they cannot see the difference between the two.

The Guidance: part of probation is where the real work of rehabilitation is. The law requires that during the period the offender be guided or assisted to adjust to the norms of society and to become law-abiding citizen. The guidance is based on the enquiries and findings for the pre-sentence report. This had included family background, neighbourhood environment, education history, employment history, associates, hobbies, physical and mental health, circumstances of the crime and attitude towards the crime - whether repentant or indifferent. All these help to give a fair "diagnosis" of the circumstances leading to the commission of the offense. The information had assisted in preparing the pre-sentence report and the subsequent recommendation that the offender be released on probation. (The same information is used to formulate method of rehabilitating him. As the officer gets to know the client better he would then discover new ways of assisting him.)

Walter C. Rackless has summarized the salient points of supervision as follows:¹⁵

- (1) Proper initial interpretation of the probation conditions, the probationer's responsibilities and the officer's role.

- (2) Formulation of treatment plan, taking into account goals the probationer wants to reach.
- (3) Throwing as much responsibility as possible on the probationer for his own improvement.
- (4) Encouragement in the use of or actual referral to local resources and agencies.
- (5) Building up a good (working) relationship with the probationer so that the officer can help.
- (6) Periodically reviewing case progress to see whether there has been any improvement or deterioration and taking appropriate steps.

This is the non-punitive approach to crime that makes probation be popular with psychologists and sociologists. It assumes individualistic casework method of handling criminals. The approach looks all that simple on paper but in practice it is quite demanding. The society must put into it a lot of resources both material and human if it is to be effective at all.

One of the most necessary prerequisites for its effectiveness is the availability of well-trained and qualified personnel to do the actual work of guidance and not just for "paper work". There is need to have well-trained psychologists and sociologists who are also

social workers. And not only that they must have experience and be keenly interested in the welfare of man in society. They must also be resourceful, imaginative, initiative, considerate, patient, fair and honest. These are qualities that are a very rare commodity and only helps to demonstrate the difficulty of the work. It is not as simple as one might think. It requires dedication and patience if it is to be properly done, leave alone effectively done. In other words probation officers must be, for all intent and purposes, more qualified than the magistrate who places the offender on probation. It is the probation officer that has to diagnose his problem and find a cure (which to me is a myth) while the magistrate merely pronounces from the chair that the offender is placed on probation and that is all. The whole process of rehabilitation and its effectiveness rests solely with the probation officer and not with the court as such

Secondly, other resources are required. Since casework approach is the essence of the guidance it means that a lot of attention must be paid to the social and economic conditions of the client together with that of the family. Employment opportunities, health facilities, recreational facilities, educational

facilities, and many others must be available locally so that the probation officer can use them whenever need arises. Otherwise it means simply taking the person back to the social environment where he committed the crime. New opportunities should be open to him through the efforts of the probation officer. It is the society to provide these opportunities, the probation officer only deploys them as best as he can to assist the probationer.

Historical Background

Probation is a fairly new approach to crime treatment. It may be traced to the year 1841¹⁶ when John Augustus was allowed by a Boston Court to bail out a criminal at his request. Under his care the criminal turned out to be industrious and law-abiding. Following on the legal justification that courts have power to suspend sentence, many more people were released and placed under his care and he acted as surety. By the year 1859 when Augustus died he had acted as surety for 1,152 males and 794 females and gave less formal aid to many others. This success of the new approach attracted the attention of several voluntary organizations in and around Boston who then stepped in to boost its development. The development of the behavioural sciences played a crucial role and enabled the approach to move

from strength to strength. In 1878 it became mandatory in Boston and in 1891 in the whole state of Massachusetts, and paid probation officers attached to courts were appointed to supervise the offenders. The approach spread to other states and in 1925 it was enacted into the federal law as an approved system of treating offenders. From United States the system found its way to Australia, New Zealand (1886) and England in 1907.

From England the British introduced it into Kenya in 1943. It was enacted into the Kenya legal system by the Probation of Offenders Ordinance of December 20, 1943. It stated among other things;¹⁷

- 4(1) "Where any person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved but is of the opinion that, having regard to youth, character, antecedents, home surrounding, health or mental condition of the offender, or to the nature of the offense, or to any extenuating circumstances in which the offense was committed, it is expedient to release the offender on probation, the court may -
- (a) Convict the offender and make a probation order, or
 - (b) Without proceeding to conviction, make a probation order, and in either case may require the offender to enter into a recognisance, with or without sureties, in such sum as the court may deem fit:

Provided that before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to the sentence or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order".

4(2) Similarly for the Supreme Court

Due to World War II, this Ordinance was not effective until 1946 when the first lot of offenders were released on probation. That year a total of 39 criminals were released on probation. By a series of subsidiary legislations in subsequent years rules were made and the service took shape and expanded. It found great boost during the Emergency days 1952-1960. This is the period that it expanded rapidly. Many young offenders and suitable adult criminals were placed under the supervision of probation officers. It was that time that most of the present experienced officers were first recruited into the service. The system then spread out into the rural areas and many new stations were opened. By the following Subsidiary Legislations the service was extended to the areas shown: 18

Cap. 79 (1948) Subsidiary Legislation	The Central Province
Proc. 29/1950	The Coast Province
Proc. 10/1952	The Nyanza Province
Legal Notice 475/1957	The Rift Valley Province
Legal Notice 617/1960	Kajiado District
Legal Notice 618/1960	Kitui District
Legal Notice 619/1960	Nairobi Extra - Provincial District

Up till now the North-Eastern Province has not been reached. It is partly due to lack of staff and partly due to the nomadic way of life of the people there that would make supervision difficult.

By 1974 there were some 112 probation officers in Kenya supervising some 9,090 probationers. Most of the probationers were adults above the age of 18 years. 3,393 completed their periods at the end of the year leaving 5,697 to continue. Total on probation on December 31, 1974:

Adults	3,394
Juveniles	2,303
Total	<u>5,697</u>

YCTC

The average case load per officer was at that time between 50-60 probationers. This is considered heavy work load by probation standards. For real effective supervision the work load should be somewhere between 30-40 probationers per officer. More officers are now undergoing training at Kenya Institute of Administration, Kabete to cater for the envisaged expansion. The training lasts two years. There were two lots of 20 students each. The first lot completed in December 1977 and were posted in January 1978. They were all "A" level candidates.

CHAPTER TWO

METHODOLOGY

Sites

The study was conducted in two districts - Siaya and Kericho. Both are in a rural setting. Siaya is in Nyanza Province near the Kenya-Uganda border, and Kericho is in the Rift Valley Province, bordering the Nyanza Province to the east. The rural districts were selected to facilitate easy follow-up exercise. People in rural areas are fairly more stable and not as mobile as the urban dwellers. Using the home particulars in the probation files, their home could easily be traced and their whereabouts found. In the towns the exercise would have been very difficult as only the estates and addresses are recorded. The residents are highly mobile and difficult to locate so many years after the completion of their periods.

Secondly, the two districts were selected because they represent two different climatic, ecological and cultural settings which would aid in some kind of comparative analysis. Siaya has a hot dry climate and the land is dry and fairly underdeveloped agriculturally. It has mainly subsistence peasantry economy with very little cash crop economy. The standard of living of the people is lower than that of the

Kericho residents. Socio-culturally the people are Luo who still practice the traditional mode of life. Kericho district on the other hand has a cool, wet climate with fertile volcanic soil suitable for a large range of agricultural practices. It is a high potential agricultural region. It is famous in the world as the seat of tea production in Kenya. This is grown in large estates owned by multinational companies and also in individual farms. Grade cattle do extremely well and it is not uncommon to find individuals owning large farms with hundreds of grade cattle kept. Of course the small scale farms or peasants may own two or three depending on their financial ability. Maize also does quite well and many people grow the hybrid type. The yield here is about 20 bags per acre and many people cultivate an average of 5 acres per year. The maize yield is used both for home consumption and for sale. A number of people grow pyrethrum as well, among others. The area is therefore teeming with a wide range of high income agricultural activities. Socio-culturally the people are Kipsigis (Kalenjin) and they still observe their traditional customs.

Sampling

This was mainly a survey. Units of study and analysis were the individual former adult offenders who had been released on probation for various crimes and had completed their periods satisfactorily between January 1970 - December 1971. The rationale for the choice of the period were:

- (1) To allow for at least 5 years time lapse between the time of the completion and the time of the survey. Most of them had completed 6-7 years previously. It would enable one to test the long term effectiveness of the treatment so many years after the last contact with the probation service.
- (2) To make it possible to conduct a follow-up as records indicating home particulars were still traceable at the probation stations.

The population studied consisted of all adult former probationers in Siaya and Kericho districts who had completed their probation period satisfactorily during that selected period. The records obtained at the Probation Headquarters, Nairobi, showed 229 such completions for the two districts combined. Siaya had 149 and Kericho 80 completions.

A random sample of 100 cases was selected and it brought 64 cases for Siaya and 36 for Kericho. 64 out

A further breakdown of the 100 cases into men and women indicated the following:

Table 1: Cases Per District by Sex

	Men	Women	Total
Siaya	45	19	64
Kericho	30	6	36
Total	75	25	100

Table 2: Cases Per District by Sex and Offenses

	<u>Siaya</u>		<u>Kericho</u>		Total
	Men	Women	Men	Women	
1. Theft (all types)	17	3	10	2	32
2. Assault	14	6	14	3	37
3. Possession of ASI*	1	5	-	-	6
4. Possession of Bhang	4	3	-	-	7
5. Possession of Part I Poison	1	-	-	-	1
6. Damaging Property	-	2	5	1	8
7. Forgery and Uttering f.d.	1	-	1	-	2
8. Creating Disturbance	1	-	-	-	1
9. Being Drunk and Disorderly	2	-	-	-	2
10. Affray	1	-	-	-	1
11. Receiving and Retaining Stolen Property	1	-	-	-	1
12. Attempted Suicide	1	-	-	-	1
13. Arson	1	-	-	-	1
Total	45	19	30	6	100
	64		36		

* African Spirituous Liquor (chang'aa)

The original sample was 100, however, due to the field problems outlined below, only 46 out of the 100 cases were actually traced, found and interviewed. The problems were:

- (1) Location: Locating the respondents was sometimes difficult. Home particulars were available but these were not precise enough. The nearest school or market was indicated but were in many cases miles away from the actual homes and it was not always easy to find one who knew the respondents at these centres. Sub-locations were also recorded in the files but some of these sub-locations are so large that one had to travel the whole length of it forwards and backwards before finally reaching the home. Sometimes the homes were missed altogether.
- (2) Names: Finding the correct name of the respondents in a number of cases particularly in Kericho district was in a number of cases difficult and one ended up one's follow-up exercise with the result that the person is unknown in the locality. The researcher had to rely on the recorded names but as it was later discovered, some of the names were not the ones these people are known by in their

home areas. In Kericho for example young men keep changing names and are sometimes better known by their father's names or nicknames and not by the names they used when they were arrested and charged. One therefore had to know all the possible names of an individual in order to find him. Sometimes criminals, particularly the mischievous youth, simply use fictitious or less known names so that they are later not easily identified by the law-enforcement authorities for one reason or another. This is a common practice particularly with thieves.

- (3) Repeated Visits: One very disturbing problem was that of missing a respondent after spending a lot of time looking for him. A second visit had to be made and if the researcher was lucky he could be found; if not then it was bad enough. On average there were only two interviews per week due to this problem. It was quite time-consuming. Large distances had to be covered sometimes travelling at night in order to reach the places at dawn. Worse still the respondents did not know one another to provide any assistance as to where to find the next interviewee. To locate

and interview the 46 took $1\frac{1}{2}$ years instead of six months as had been originally scheduled. The respondents who had been convicted of theft were the most difficult to deal with. They were very difficult to get hold of. Many of them were either "unknown" or in towns. Extra time had to be given for tracing them, otherwise those "found and interviewed" would have been very few.

Table 3:

The Final Fate of the 100 Sample Cases

	Size in original sample	Respondents			Dead	Total
		Found and interviewed	In towns or unknown	Missed altogether		
1. Theft	32	11	8	11	2	32
2. Assault	37	15	10	12	-	37
3. Possession of ASL	6	3	-	2	1	6
4. Possession of Bhang	7	4	1	2	-	7
5. Possession of Part I Poison	1	1	-	-	-	1
6. Damaging Property	8	6	-	1	1	8
7. Forgery and Uttering f.d.	2	-	1	-	1	2
8. Creating Disturbance	1	1	-	-	-	1
9. Being Drunk and Disorderly	2	2	-	-	-	2
10. Affray	1	1	-	-	-	1
11. Receiving and Retaining Stolen Property	1	-	-	1	-	1
12. Attempted Suicide	1	1	-	-	-	1
13. Arson	1	1	-	-	-	1
Total	100	46	20	29	5	100

1
35

The table shows that out of the 100 cases in original sample, 46 were found and interviewed. Of the rest 54, 5 were found to have died, 20 were either unknown or were in towns and the rest 29 remained at large. In spite of repeated visits they were still missed.

The 46 cases are distributed as follows:

Siaya 32, Kericho 14.

Table 4: The 46 Interviewees by District, Offenses and Sex

	<u>SIAYA</u>		<u>KERICHO</u>		<u>Total</u>
	Men	Women	Men	Women	
Theft	8	-	3	-	11 ✓
Assault	6	2	7	-	15 ✓
Possession of ASL	-	3	-	-	3 ✓
Possession of Bhang	3	1	-	-	4 ✓
Possession of Part I Poison	1	-	-	-	1 ✓
Damaging Property	1	1	4	-	6 ✓
Forgery and Uttering	-	-	-	-	-
Creating Disturbance	1	-	-	-	1 ✓
Being Drunk and Disorderly	2	-	-	-	2 ✓
Affray	1	-	-	-	1 ✓
Receiving and Retaining	-	-	-	-	-
Attempted Suicide	1	-	-	-	1 ✓
Arson	1	-	-	-	1 ✓
Total	25	7	14	-	46

Due to the problems already outlined, not many respondents were found in Kericho and in fact the ~~women~~ ~~were~~ never found. The names as recorded could not aid in finding them. And again in Kericho station a number of the files in the original sample were missing and had to be substituted with others that were available, but had not fallen into the sample. In Siaya no substitution was made. All files were available.

Data Collection

The study covered two areas: the first section dealt with the set-up and functioning of the probation service. Sources of data for this section were documents and organisational charts, together with information gathered through discussions with the Principal Probation Officer and the Senior Probation Officer (Training) at the Probation Headquarters, Nairobi.

The second section was on the long-term effectiveness of probation treatment of offenders. Supervision files, documents, and interviews were the sources of data for this section. These were:

- (1) A careful study of the individual supervision files and related documents to ascertain the nature of supervision and the frequency of contacts made with the probationer. His progress during probation period was studied.
- (2) A follow-up of the individual respondents. 46 were found and interviewed using an interview schedule. The responses to the questions provided the basic data for analysis. Supplementary questions were used and a record of field notes compiled. Some data were also collected through observation.

The information gathered included:

- (i) Social conditions - age, marital status, family size, health, etc.
- (ii) Economic conditions - sources of income, level of income, ways income is spent.
- (iii) Convictions after probation and for what offense(s) and when.
- (iv) Circumstances surrounding the commission of the subsequent offense(s) and the sentence imposed in each case.

- (v) Comments on probation treatment as they received it and the benefits realised or suffering incurred thereon.

Responses

The interviews had to be done with a bit more caution than an average research interview with ordinary citizens. One was essentially dealing with criminals and in any case many of them were very suspicious as to their fate after the interview. Many of them if not all of them thought the visits aimed at taking them back to court. This was more so with the recidivists. Interviews therefore took the form of discussion and the interview schedule was used with a lot of care. Supplementary questions were used. After the interview key informants were used to validate some of the facts.

CHAPTER THREE

THE STRUCTURE AND FUNCTIONING OF THE PROBATION SERVICE

Structure

The Probation Department is one of the four departments in the Vice President's office and Ministry of Home Affairs. The departments are: Prisons, Childrens', Immigration and Probation. They are under a Permanent Secretary who is responsible to the Minister. The day to day activities of the department are looked after by the Principal Probation Officer who sits at the Probation Headquarters in Nairobi. To assist the Principal Probation Officer at the Headquarters are a Senior Probation Officer in charge of Training and one Probation Officer Grade I in charge of Administration.

Out in the field the country is divided into seven large units following on Provincial Administration lines (except that North-Eastern Province has yet to be reached). The seven units are: Central, Coast, Eastern, Rift Valley, Nyanza, Western Provinces and Nairobi area. These are run from the Provincial Headquarters by a Senior Probation Officer in charge of Province. Below them then come the districts headed by Probation Officer Grade I in the case of the senior districts like Kericho or Siaya, the rest are headed by

Probation Officer Grade II. The smallest administrative units are called sub-stations and are run by Probation Officer Grade III.

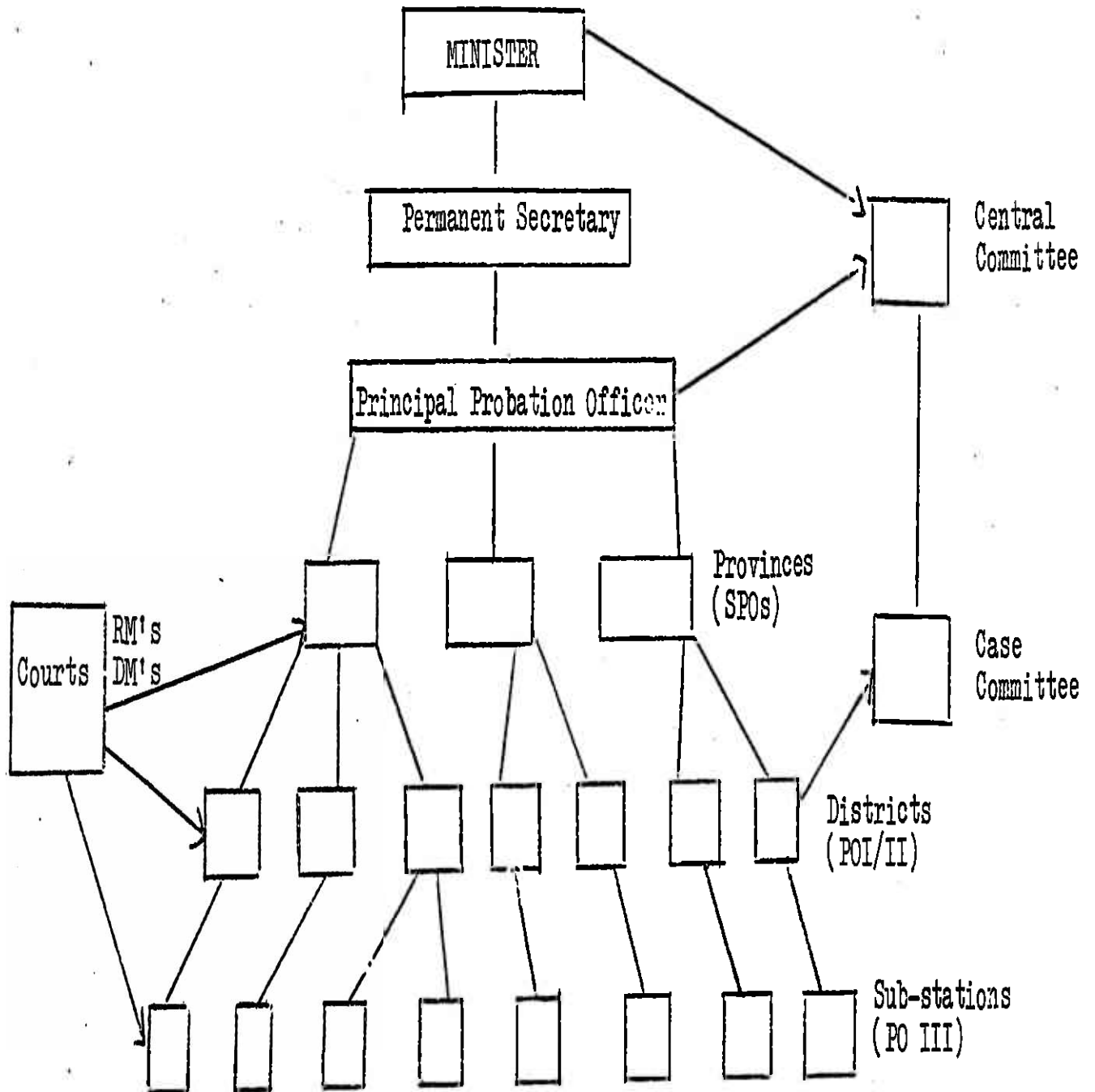
Slightly outside the vertical structure there are two very important committees whose members are appointed by the Minister. They are appointed for a period of three years at a time, to help run the department professionally and not administratively. They are the Central Probation Committee at the national level, and the Probation Case Committee at the district level. Every district has its Case Committee. Members of the Central Committee are: the Hon. Chief Justice (Chairman), the Principal Probation Officer (Secretary), ten members each representing:

- (1) Ministry of Home Affairs (Permanent Secretary)
- (2) Ministry of Labour
- (3) Ministry concerned with Social Services
- (4) Kenya Police Force (Director of CID* or his representative)
- (5) Community
- (6) Nairobi City Council *Commissioner*
- (7) Christian Council of Kenya
- (8) Roman Catholic Church
- (9) Salvation Army
- (10) Nairobi Chamber of Commerce

* Criminal Investigation Department

and not more than seven others to represent different interests. The committee meets four times in a year i.e. once every three months. Members of the Case Committees in each district are also appointed by the Minister and serve for a period of three years at a time. He appoints seven people, and the Principal Probation Officer is ex-officio member. The Chairman is usually the District Commissioner of the area and the Secretary is the Probation Officer in charge of district. The committee meets twice a year, i.e. once in every six months. All these appointments made by the Minister for both committees appear in the official Kenya Gazette.

SET UP AND COMMUNICATION CHANNEL: PROBATION DEPARTMENT, KENYA



Functioning

We look at the functioning of the department in terms of how it handles the criminal. The treatment of the criminal from the time he first comes into contact with the probation officer to the end of his probation period is the concern of this section. It in fact constitutes the main work of the department. The officers handle cases from District Magistrate's Courts and Resident Magistrate's Courts. The crimes they deal with include almost all the crimes under the Penal Code and those under local government acts. The crimes include theft, assault, murder, robbery with violence and manslaughter. The crimes of theft and assault dominate. Just to have a quick look at the 1974 national figures placed on probation one finds the following:

Table 5: Some of the Cases Placed on Probation:
1974 Annual Report. Total Placed for
the Year was 3,641

Penal Code Section	Offence	Adults		Juveniles		Totals
		Male	Female	Male	Female	
275	Theft	436	61	484	41	1,022
251	Assault	296	63	181	25	565
281	Stealing by servant	188	21	26	40	275
279	Stealing from Person	102	16	89	9	216
304	Burglary and Theft	30	2	12	-	44
332	Arson	33	10	6	2	51
349	Forgery	44	1	6	-	51
204	Murder	2	-	1	-	3
205	Manslaughter	11	4	5	-	20
226	Attempted Suicide	23	17	2	1	43
140	Rape	10	-	5	-	15
278	Stock Theft	69	-	16	-	85

Court Inquiries and Pre-Sentence Reports

The probation officers are attached to courts. The probation officers are as near to the courts as possible to enable the officers to be in court as soon as they are called upon to report when a case comes up. The court clerk may either ring the probation officer or he can place the court file in a special tray that is always in the court for that purpose. The probation officer checks that tray everyday just in the same way you check your mail box. This is termed "referring the case for a probation officer's report". It is only when the criminal has been convicted that the case is referred. It is done in lieu of sentence, hence the report is in USA and Britain known as pre-sentence report. In Kenya this pre-sentence report is required in all juvenile cases to assist the court decide what sentence to give. We shall discuss the case of juveniles later. Adult cases that are referred are those that the court feels would benefit when released and placed under the supervision of a probation officer. The officer is usually given 14 days to submit the report to court. If during the trial the offender was in custody, then he remains there until the report is made in court. But if on the other hand he had been bonded, then the bond is extended.

On receiving the telephone call from the court the officer may report immediately if the would-be client is bonded and has to leave for home. He has to meet the criminal before he leaves. The offender's particulars are taken and they arrange to meet at home. On the other hand if the criminal is in custody then the officer waits until a convenient day and visits him in custody. That is where the first physical contact is made. Of course before leaving court the magistrate had informed the offender that his case is referred for a probation officer's report and he is informed of the state when the report is expected. The officer's visit should therefore not surprise him. Before making the first visit the officer had studied the court file and took note of all the particulars of the criminal. The officer therefore makes his visit when he already has some slight idea about what his client is - his name, father's name, location of his home, the offence, circumstances of the offence, and the manner the case went in court.

One important aspect of the first contact is that the officer must introduce himself to the client and explain to him what his work is and what it means to be placed on probation. This he does because many people do not know what probation is all about. Many

think probation treatment is only for children and not for adults. So this introduction is essential before anything is done. After the brief introduction the officer then asks the client if he would be pleased if released on probation. If he says No, then the officer's work stops there. He reports back to court that the offender is not interested in probation treatment. The court then decides on alternative treatment. If the client would be happy to be placed on probation (the majority are) then the officer work proceeds. It takes the form of an interview. However, this type of interview has to be done with a great deal of caution. The offender has had several of this kind of interviews by the Polace during interrogation. He is even now fed up with such interviews, and they look to him routine and not helpful to him at all. The offender therefore may simply say things that are not reliable just to keep the discussion going. The officer must therefore be very polite and persuade the offender to tell him the truth without hiding anything. The interview is carried out in private and not in the presence of the prison officers. This is to enable the client to talk with some freedom. During the interview some offenders may be very uncooperative and the answers he gives may all be lies. This puts the officer in difficulty as he then finds it difficult to render any useful service

to the client. In the majority of cases however the offenders are cooperative and as much as possible try to tell the truth. The officer questions him on matters surrounding the commission of the crime. He studies the offender's temperament and his attitude towards the crime. He finds out if the offender is repentant or not. If he is repentant then that is considered positive as he may be easy to supervise as he has confessed his wrong-doing and promised to reform. If he is not repentant then that is an indication that he may be a difficult case to supervise. The circumstances that led to the commission of the offense according to the offender are carefully recorded. This is later compared with what the police wrote in the charge sheet. At the end of the interview the officer takes his home particulars and the particulars of some other adults in the locality that the client says know him well. If the offender is employed, the particulars of his place of work, his boss and a few of his workmates are taken.

One or two days after the interview and depending on the availability of transport, a visit is made to his home. If the particulars given were correct then tracing the home is not difficult but if the particulars were wrong then his home may not be reached. In that case the offender is revisited and an attempt is made

to get the correct home particulars. This time the home may be reached but if not then the offender is considered uncooperative and a report is made to court that the home cannot be traced and that the case cannot benefit if released.

If the home is located then the family is interviewed. The officer discusses the matter with the family in order to find out what really happened and if it is possible that the offender would benefit if released on probation. All along the officer attempts to unearth the social, psychological, economic or environmental factors that led to the commission of the crime. His responsibilities in the home are enquired into including any past criminal record. After completing with the family a number of independent people are also interviewed. These are normally the people the offender had given their particulars but the officer may discover others by himself such as the Assistant Chief of the area or headman. These can provide very useful information. These people are interviewed to help the officer confirm the facts he already has. He then returns to the office with the notes. Maybe the following day a visit is made to his place of work if the offender is employed. The officer talks to the boss and enquires about his conduct in the place. He finds out if the boss is willing

to take him back. It is always very encouraging if the boss promises to take him back if released. This becomes a very good reason for recommending probation treatment as he will remain in his employment, which he would lose if say imprisoned. Workmates may also be interviewed if necessary.

① After all these visits and interviews are complete, another visit is made to the offender. A second interview is conducted to try to iron out any conflicting statements to enable the officer to build up one coherent picture about the offender. At the end of the interview the officer informs or rather reminds the client of the date of the report and that they meet in court. The enquiry is complete. The same procedure operates where an offender is released on bond. The officer visits the home and interviews the offender and the family in the same way. A few locals are also interviewed, including the boss if he is employed. This is the diagnosis. (Rickless, 1973 Sutherland and Cressey, 1970).

Back at his office the officer is now ready to write a report based on his diagnosis. He makes his draft and gives it to the typist to type it out on a legal document known as PR 1 form, two copies are made. In his report the officer gives the home background of

the offender, his attitude towards the offense, the circumstances surrounding the commission of the offense. As much as possible the report should show the possible social, economic, environmental or psychological factors that might have led to the commission of the offense. From that analysis then come the recommendation as to the best type of treatment possible. The officer gives his recommendation as whether the case is suitable for probation treatment or not. If the officer recommends probation treatment in his report then after the report has been written, three copies of probation order are prepared, one of them in booklet form. The report and the orders are then brought to court on the fixed date for the report. If on the other hand probation treatment is not recommended, then only the report is submitted and no orders. In this case alternative treatment is recommended and it is up to the court to decide on what type of sentence to give.

In court the case comes up and the probation officer, who sits next to the court clerk, hands over the report to the court clerk who in turn hands it over to the magistrate. The magistrate studies it carefully and looks at the recommendation. He then tells the offender what the officer has recommended. If the recommendation is probation treatment, the magistrate

tells him so and asks him if it would be all right with him. He says yes. The magistrate then pronounces the period which may range from 6 months - 3 years but not more than 3 years. The provisions of the Probation Order are then read out to the offender in the language he understands best. These are:

"The following are the provisions which you are ordered to obey:

- (1) You will be of good behaviour during the period of your probation.
- (2) That you report in person to the Probation Officer once in a month or more frequently if instructed by him.
- (3) That you do not associate with anyone with whom you are forbidden to associate by the officer at your home or place of residence.
- (4) That you receive visits from the Probation Officer at your home or place of residence.
- (5) That you will answer truthfully all questions put to you by the Probation Officer with regard to the whereabouts of your residence, your conduct, or your employment.
- (6) That you will report to the Probation Officer any change of your employment or residence.
- (7) That you abstain from over-indulgence in intoxicating liquor.
- (8) That you endeavour to obtain and remain in regular employment and that you follow any directions or advice given to you by the Probation Officer with regard to your employment.

- (9) That you reside at (home).
- (10) Additional conditions as ordered by the court.....(If any e.g. compensation in assault case etc.)." (Probation of Offenders Act, (Revised 1962), Chapter 64, Laws of Kenya).

The period of the probation is then entered in the three orders. The magistrate warns him that he must comply with the provisions of the order as read to him in court that day and that if he fails to comply he will be brought back to court and be sentenced for that very offense for which he has been released on probation. The magistrate then signs the orders, the offender also signs and the court clerk stamps them with the Seal of Court. Of the three orders, the original goes to the court file together with the original copy of the report, one of the orders (in booklet form) is given to the offender, and the remaining order and one copy of the report are for the probation officer. Thus the court has placed the criminal on probation on the recommendation of the probation officer.

Juveniles and Young Persons

Under normal circumstances pre-sentence report should be made to court in all juvenile cases and those of young persons. The procedure of referring cases and of making enquiries is similar to that in the case of adults. There is however slight difference in writing

the report. The offender is not considered a criminal rather he is seen to be having problems. Home background is studied together with the history of his up-bringing. The parents are interviewed, and if he is schooling, his teachers and headmaster are also interviewed. In the report the possible causes of the instant problem (not crime) are outlined. Then follows what the officer finds to be the appropriate treatment to be given. There are four possible recommendations the officer can give depending on home background, age, and the nature of the problem:

- (1) Probation treatment may be recommended and then the procedure of releasing offenders on probation is followed, except that with juveniles their cases are dealt with in juvenile court, usually in the chambers, and not in the open court. The preparation of the report, orders and the placement and subsequent supervision is similar to that of adults.
- (2) If the home conditions are not suitable for probation treatment, then in the cases of youths under the age of 14 years, the officer may recommend that the offender be committed to an Approved School. Approved schools are under the

Childrens Department whose head is the Chief Inspector of Children. An application is made and then the child is sent to the nearest Approved School.

- (3) In the case of youths above 14 years of age but below 18 years, who are not suitable for probation treatment, it may be recommended that they be committed to a Borstal Institution, for a period of two years. Borstal Institutions are under the Prisons Department, controlled by the Commissioner of Prisons. And at present there are only two such institutions in Kenya - Shikusha in Western Province and Shimo la Tewa in the Coast. The probation officer then makes application to the Commissioner requesting for a vacancy in the institutions. The Commissioner sends back a reply indicating where the vacancy is available, the officer informs the court. The court then arranges to transport him to the institution. If there is no vacancy in the institutions then the court gives any alternative treatment suitable but not imprisonment because under Childrens and Young Persons Act no one under 18 years should ever be imprisoned.

- (4) The probation officer may recommend alternative treatment right away. It is then up to the court to dish out the appropriate treatment. It is normally strokes or he may be warned and be given conditional discharge.

The Supervision of Probationers

The work of supervision starts when the criminal has been placed on probation. The probation officer takes him (the probationer as he is now called) to his office for briefing and preparation of relevant supervision documents. A file is opened in the client's name with a serial number given to it, for example KER/DC/AD/45 or SYA/DC/W/14 for Kericho District Magistrate's Court adult number 45 to be placed on probation and Siaya District Magistrate's Court woman number 14 to be placed respectively. The serial number appears in all the supervision documents including the booklet and the returns. A copy of the report and a copy of the order are filed in the newly opened file. The officer then explains to the client very carefully the provisions of the order as they were read in court. He points it out to the probationer that failure to comply with the provisions may land him in trouble, so it is in the interest of both that he complies, otherwise he can be sent back to court for breach of the order. After

that the officer will then give the date when he wants the probationer to make the first report. The date is entered in the client's booklet so that he does not forget. Newly placed offenders are required to report more frequently say fortnightly for the first few months so that the officer gets to know them before they can be allowed to report monthly. So when the date of the first reporting has been given and the place of meeting also indicated then the probationer is free to go home.

The officer then makes further entries in the file. He states when the offender was placed on probation, by which court and for what offense. The period for which he is placed is also entered in the file. He states that the provisions of the order were read and explained to the client and that he understood them and agreed to comply. He then states when the first report will be made. If when the person was placed on probation any members of his family were in court the officer would bring them to the office and all the discussions and explanations given in their presence. The provisions would be read and explained to all of them so that they would cooperate and assist the officer in the work of rehabilitation. The officer would talk to them on the form the supervision will take and how and where their cooperation would be required. All these

discussions have to be entered in the file as well. They are useful for any future reference. The officer indicates the date of the first report, he signs the entry and proceeds to the next case. Entries continue when the first report is made.

Reporting

At present reporting has been organised in such a way that the probationers do not necessarily have to come to the office except in a place like Nairobi. This is to facilitate better supervision in the rural areas. Most of the clients live in remote parts of the districts and have no easy means of reaching the probation stations. So if they were all required to be reporting at the office, perhaps very few of them would be turning up. The officers therefore make themselves available at certain selected reporting centres. These centres may be at a chief's camp, a school, market place or even under a certain conspicuous large tree. The probationers report at these centres according to which one is nearest to you. Back at the office there is a time-table showing when the visits are scheduled to be made and by which officers and at what times. In most cases the district is arbitrarily sub-divided into regions or areas depending on the number of staff at the station. For example, if at Kericho station there are three male

officers and one female officer, then there would be three regions; each of the three male officers would be concerned with one area only while the woman officer would work in all the three since female cases must be supervised only by a woman officer. The woman officer can of course supervise juvenile male probationers but no male officer should ever supervise females. So if there are regions A, B, C and officers X, Y, Z, then right from the onset, cases are assigned accordingly so that all the cases from region A go to officer X and those from B to Y and so on. In this case, as the magistrate refers cases for probation officers report, they are entered in a register in the probation office and are accordingly assigned to the respective officers who then start their court enquiries. Transfer of cases from one officer to the other when enquiries have started is discouraged and professionally improper. Once an officer has started handling a case, he should continue with it to the end i.e. including the supervision. In this way each officer builds up his 'work load' as time passes. An average work load at present is 40-60 probationers per officer.

The officers therefore report to the reporting centres on the scheduled date and the probationers in that locality report to him there. One officer may have

many reporting centres in his region and it is up to him to arrange a visiting schedule. At the station the officer talks to or rather interviews one probationer at a time and it is done in private and not in the hearing of the others. It is an affair between two people only. It is during such interviews that counselling is done. The officer and the client hold free friendly discussion hinging on his problems at home or place of work, his health conditions, family relations, economic problems, his plans for the future and so on and so forth. During the discussion the officer tries to make the probationer feel very free and become friendly and expose to the officer his inner feelings. The officer tries to understand him and his problems so that he can plan how to assist him. When the discussion is over the probationer is informed of the next reporting date which is entered in his booklet and then he leaves. The officer of course has been taking notes and when he is satisfied that his records are up-to-date, he invites the next client for a similar interview. He continues until all the cases are dealt with and then leaves for the office or for the next reporting station where similar interviews are then conducted. An officer may be in one reporting station in the morning and in the other in the afternoon depending on his schedule.

Entries

In the office the officer for the next one or two days gets the individual files and makes his entries following the notes he took during the interviews. He records what he discussed with the probationer and what new discoveries he has made about his life and how this would assist in the supervision. If there are any particularly outstanding developments or problems that cropped up, these must be entered in the report. Then suggestions are made on future supervision strategy if any. The officer indicates the next date of reporting and then signs. He does the same thing for each of the remaining probationers.

For those who failed to report, the officer makes entries in their files stating that they failed to report. In such cases it is the duty of the officer to try to visit their homes and find out why they failed. Due to lack of transport the officer may not be able to do this. He states in the entry that attempts would be made to trace him and find out why he did not report.

Reporting should continue regularly as scheduled or as the officer directs. Newly placed probationers report fortnightly for the first few months but later reporting is once a month. After every three months,

the officer makes 'quarterly summary' in every file. He briefly states the progress of the probationer in the past three months and then outlines his next direction of supervision. He records his plans in the case of each probationer.

Breaches

When it appears to the Probation Officer that a particular probationer under his supervision has become too difficult for him to supervise for example, if he fails repeatedly to report, he may apply to court for a warrant of arrest to be issued. If this is done a warrant of arrest is issued and the probationer is traced and arrested. He is brought before court and charged with the offense of failing to comply with the provisions of the Probation Order. He has to explain or rather defend himself. The court then decides what to do. He may be sentenced for the original offense for which he was placed and have the Probation Order discharged for breach, or he may be say canned and the order allowed to continue to be in force, or he may simply be warned and told to continue reporting. All what happens must be entered in the file. It constitutes part of the supervision. All the records must be kept properly.

Returns

There are monthly statistical returns from every station submitted to the Probation Headquarters for record. These returns show several things among which are: number placed on probation during the month, the number of satisfactory completions, unsatisfactory completions, case load per individual officer. The returns are made at two levels: (1) Each officer prepares his/her own returns and (2) the station prepares its combined returns. When they are ready they are typed out accurately and neatly on appropriate forms, and forwarded to the Headquarters, the station retaining copies. At the end of each year the Headquarters prepares and publishes an overall Annual Report. The latest published so far is for 1974.

Reviewing Cases

In exercising its powers the Case Committee meets twice a year to review all the cases in the area. It reviews the progress of individual cases. Each officer presents his work load and the cases that seem difficult are discussed and recommendations made as to what is to be done. It is this committee that may advise an officer to go and apply for a warrant of arrest in the case of a particular probationer. Apart from reviewing cases, the committee also submits

recommendations concerning the Probation Service to the Central Probation Committee. It also advises and supervises the officers in the execution of their duties.

The Central Committee also reviews cases from the Case Committee. Its other duty is policy formulation concerning the working of the Case Committee and advising the Minister on the policies governing the running of the department.

Completions

- (1) Satisfactory: The probationers that continue reporting well and complete the probation period as free men are considered to have completed 'satisfactorily'. It does not matter whether he was a very good probationer or very poor probationer in terms of reporting. So long as he has completed he is signed off as having 'completed satisfactorily'.
- (2) Unsatisfactory: Those that have their orders discharged for breach or those that go to jail when the order is still in forces are signed off as unsatisfactory completions if the date of completion reaches when they are still in jail.

Of course an order can be discharged without necessarily having to take one to jail but all the same the person has completed unsatisfactorily.

(3) Absconding

One absconds when he simply just disappears and cannot be traced. When a warrant of arrest is issued and the person cannot be apprehended before the date his probation period ends, he is considered to have absconded. So unsatisfactory completions and those that abscond constitute the failure rate during probation.

Supervision of the Officers

The Principal Probation Officer does the work of supervision once in a while. He visits the stations and inspects the work of the officers. Frequent inspection is however done by the senior probation officer in charge of the province. He visits all the stations and reads all the probation files under the care of each officer. After visiting all the stations he prepares a report showing what he saw in each station and in the case of each officer. This he does to enable those not doing very well to pull up while

those doing well should improve on it.

Other Duties Carried Out by the Department

There are a number of duties carried out by the department which actually do not appear in the Probation of Offenders Act.

- (1) Psychiatric Reports: The probation officers are occasionally called upon to submit a home report in psychiatric cases. This report is required when a patient is considered to have recovered and may return home. The probation officer therefore makes home enquiries and submits the report to the Hospital say Mathare. If the report says home conditions are favourable the patient is then released.

- (2) Borstal Innates' Reports: Before a Borstal institution inmate is released, the institution requests a probation officer in the home area to submit home report. This is similar to that of psychiatric cases. When a favourable home report is received the inmate is released.

- (3) Long-term Prisoners Report: There is a Long Term Review Board for those imprisoned for many years say 14 years. The Principal Probation Officer is a member of the Review Board. Before these long term prisoners are released the prison officers or rather the Board may require home report. It is the probation officers that are called upon to submit such a report.
- (4) After Care Work: The probation officers also supervise, voluntarily of course, psychiatric cases released and Borstal institution inmates released on license.

CHAPTER FOUR

DATA ANALYSIS

SECTION A: DATA ON CASE STUDIES

The Crimes

In comparison with the national figures the offenses for which these people had been placed on probation are by and large minor crimes such as being drunk and disorderly; possession of African Spirituous Liquor, common assault and petty theft. (cf. E. Muga, 1975). Theft and assault dominate and constitute about 56% of all the cases handled. Their distribution is as follows:

Table 6: Distribution of the Offenses in Sample

Offenses	No. of Cases
1. Theft (all types)	11
2. Assault	15
3. Possession of ASL	3
4. Possession of Bhang	4
5. Possession of Part I Poison	1
6. Damaging property	6
7. Creating disturbance	1
8. Drunk and disorderly	2
9. Affray	1
10. Attempted suicide	1
11. Arson	1
Total	<u>46</u>

Cases of theft range from stealing a packet of cigrattes to stealing bicycles and cash. The majority of the cases are in any case minor ones. Cases such as these quoted below are typical:

Charge

(1) On 18.1.69 at Kap^ktatet Village stole two tins of maize the property of Jonathan A. Langat valued at shs. 8/-.

Age: 30 years

Placed: 2 years

(2) On 20.12.69 at Boro Market stole one packet of Sportsman valued at shs. 1/90 the property of Jacob Oduol.

Age: 46 years

Placed: 1 year

(3) On 25.3.69 at Amoyo Market stole one skin of goat valued at shs. 4/- the property of Rispa Okelo w/o Odhiambo.

Age: 55 years

Placed: 1 year

(4) On 20.4.69 in Kisumu jointly stole rear light the property of Dhirendra Mulji Raja from motor vehicle No. KHN 829 valued at shs. 40/-.

Age: 18 years

Placed: 2 years

- (5) On 3.10.69 in Kisumu stole one pair of socks valued at shs. 8/- the property of Bata Shoe Co. Ltd.

Age: 19 years

Placed: 1 year

A few of the cases of theft are however serious enough but their occurrences are very rare. Those considered serious are such as these:

- (1) On 24.8.69 at Nyanza Cinema stole a bicycle valued at shs. 290/- the property of Nicols Odege.

Age: 19 years

Placed: 2 years

- (2) On 2.6.69 at Litein Trading Centre stole cash shs. 450/- the property of Paulo Rono.

Age: 18 years

Placed: 2 years

Assault cases top the table but again are of minor nature, ranging from quarrels over girl friends to family disputes. They are not very serious cases and it appears the courts felt the offenders would benefit if released on probation rather than imprisonment.

A study of the court files revealed that these people were mostly first offenders. Nearly all of them

pleaded guilty to the charges and asked the court for leniency.

The other types of offenses are few and minor too. Possession of African Spirituous Liquor and of bhang placed many on probation in Siaya district. In lieu of fines or jail sentence the courts placed the offenders on probation. The brewing and consumption of changaa (ASL) is a common practice in Siaya district. Many people appear in courts charged with the offense. A few who are first offenders and are lucky to escape fine or imprisonment are placed on probation. The other common crime is the possession of cannabis sativa (bhang). Most of the people charged with the offence are usually found growing the crop in their shambas or near their houses in the homestead. These items are in small quantities for the owners use as smoke. The poor people particularly the elderly may be addicted users of bhang. One old man insisted for example that he has a disease that cannot be cured unless the medicine is mixed with bhang. So in spite of repeated arrests and fines he still grows the plant in the homestead. The cases of possession of bhang and of changaa that were studied were all found in Siaya and none in Kericho. It is interesting to note that the areas of crimes studied in Kericho could be placed in three categories

only viz. theft, assault and damaging property. It is in Siaya that the whole array of crimes were found to have been committed. This was an interesting finding that merits further enquiry.

Another very interesting observation was that there are many more women criminals in Siaya than Kericho. That may partly be attributed to the fact that Siaya women engage a lot in changaa brewing to earn a living and often get apprehended whereas Kericho women engage mostly in farm activities. There are also more assault cases in Siaya than in Kericho. . Could it be that Siaya women are more aggressive than those of Kericho?

Crime and Age

For a long time many people thought or still think that it is only children that are ever placed on probation. That is not true. Probation treatment is open to all regardless of age. In this exercise, incidentally only the offenders from the age of 18 years and above at the time of the commission of the offense were selected for study. The rationale for this has been discussed elsewhere. The ages ranged from 18 years to 65 years. The whole adult population was thus represented. The age distribution was like this in the 46 cases studied:

Table 7: Age Distribution of Probationers

Age Range in Years	Number of Cases
18 - 25	26
26 - 35	4
36 - 45	11
46 - 55	1
56 - 65	4
	<hr/>
	46
	<hr/>

Those in the age group 18-25 years dominate but this only tends to reflect the national crime trend. Crime statistics in the country as a whole show that crime is committed mostly by people in that age category. (Muga, 1975).

Table 8: Details of Crime and Age Groups

	Age		Total
	Under 26 years	Over 26 years	
Theft (all kinds)	7	4	11
Assault	9	6	15
Damaging property	5	1	6
Possession of ASL or Bhang	3	4	7
Others	2	5	7
Total	26	20	46

As the table shows there is no one type of crime that is left to a particular age group. Except that the crime of possession of ASL* and bhang is committed mostly by the elderly. The three cases of possession in the under 26 are of married women who were charged with the offense of brewing changaa and one schoolboy who sold changaa to get money to pay his school fees with. Otherwise the crime of possession is found mainly in the ages over 26 years. Age therefore does not seem to relate very much to the type of offense committed.

* African Spirituous Liquor

Occupational Categories and Crime

At the time of the instant offense the people studied could be grouped into three broad categories: unemployed, peasants and those in wage employment including the self-employed artisans.

Their distribution in the sample is shown in the table below:

Table 9: Occupational Categories of Offenders

	Under 26 years	26 and over	Total
Unemployed	20	1	21
Peasants	4 (women)	18	22
Wage employment	2	1	3
Total	26	20	46

The unemployed under 26 years and the peasants of 26 years and above dominate. Out of 46 cases there were 21 cases of unemployment and nearly all of them were under 26 years of age. And out of the 46 cases 22 were peasants and most of them were elderly except the case of the four women who were at the time still under 26 years old. There were only three wage

earners. One is therefore dealing with the unemployed youth and the elderly peasants. Those are the two largest occupational groups. If one was to look at the distribution of the crimes in the various occupational groups then it would be something like what the following table shows:

Table 10: Type of Crime and Occupation of Probationers

	Unemployed	Peasants	Wage employment	Total
Theft (all kinds)	7	2	2	11
Assault	8	6	1	15
Damaging property	4	2	-	6
Possession of ASL and Bhang	1	6	-	7
Others	1	6	-	7
Total	21	22	3	46

Two observations are made here. First, the unemployed engage in three areas of crime: theft, assault and damaging property. These are mostly the unemployed youth. Second, the peasants engage in two areas of crime: assault and the possession of ASL

and bhang. So if anything then the unemployed youths specialize in thievery while the elderly peasants spend a lot of time brewing and consuming changaa and smoking bhang. Assault is common to both groups.

Table 11: Occupational Categories by Districts

	Siaya	Kericho	Total
Unemployed	14	7	21
Peasants	18	4	22
Wage/Artisans	-	3	3
Total	32	14	46

The unemployment situation among the youth is the same for the two districts. Except that the bulk of the peasantry is in Siaya with 18 out of the 22 cases placed on probation. At the time these offenders were placed on probation there were only three wage earners and they were all to be found in Kericho working in the tea estates. Two of them had been convicted of theft by servant.

Literacy

One striking aspect of the offenders' social status was the presence of very high rate of illiteracy. 25 out of the 46 cases constituting some 54% of the sample were found to be illiterate. The rest were of some little primary education with only two cases of any secondary Form II education.

Table 12: Literacy Rate and Age

Age	Illiterate	Std. I-IV	Std. V-VIII	Form II	Total
Under 26 years	11	5	9	1	26
26 years and above	14	2	3	1	20
Total	25	7	12	2	46

There are more cases of illiteracy among the elderly. 14 out of 20 are illiterate i.e. 60% of them are illiterate. The illiteracy rate in the under 26 years age group is 11 out of 26 which is 42%. The younger generation is also a bit more educated. 14 out of 26 have some primary education while only 5 out of 20 of the older generation had any primary education. Generally the standard of education is

very low in the sample. Many of the youth were primary school drop-outs or CPE failures. This low standard of education might have made supervision difficult as we shall see later.

With the elderly it is easy to understand why few of them are literate and those who are better off are semi-literate. This is because in the colonial days few of their lot ever went to school and adult literacy classes were non-existent. But in the case of the younger generation other explanations must be sought. Home background played a major role in their social life and education. The majority come from the poor peasantry homes, and their parents could not meet the cost of sending them to school. And even those who went dropped out before attaining any reasonable standard of literacy. Others lost (one of) their parents and the remaining parent could not bring up the children properly. This was more so when it is the father that died. Of course some of them simply dropped out of school on their own due to bad associates. These are some of the contributing factors to the low literacy rate.

Language

Due to the high illiteracy rate and the low standard of education the language the offenders understood well was their mother tongue. Very few understood Kiswahili or English. The situation is worse in the case of Siaya. In Kericho some of the people can speak some broken Kiswahili even if they cannot speak English. In Siaya one hardly finds any interviewee who can speak even broken Kiswahili leave alone English. As will be discussed later, the language factor had a lot of bearing on the effectiveness of probation treatment.

Marital Status

At the time they were placed on probation, 22 of the offenders were married, 21 were unmarried, 1 had married and divorced and two were widows. Most of the married had fairly small families at that time. The average size of the household being 4. The unmarried were mostly the youth between 18-25 years old who had not actually reached marrying age by the time. Of the married, 17 were in Siaya and 5 in Kericho, and the unmarried, 12 were from Siaya and 9 from Kericho. The divorced and the widowed were also from Siaya.

Table 13: Marital Status when Placed on Probation

	Siaya	Kericho	Total
Married	17	5	22
Unmarried	12	9	21
Divorced	1	-	1
Widowed	2	-	2
Total	32	14	46

SECTION B: PROBATION TREATMENT EFFECTIVENESS

The Supervision: A Critical Appraisal

It would be useful at this point to say something on the kind of supervision that had been given to these people. All the people interviewed say they liked the type of supervision they were given and that the officers were kind to them. That is fine. Supervision records seem to have been well kept and a number of booklets and files were still available at the station. Entries in the available files are safe and none of the files studied had pages missing except in one case where one letter had been pulled out of the file. Copies of the returns submitted to the headquarters are also available and in safe custody, i.e. the 'paper work' aspect of it. On the face of it all one would quickly conclude that the supervision was smoothly and effectively done. A careful and detailed scrutiny of the whole situation based on available data bring to light certain discrepancies. There is sufficient evidence that the officers had a host of problems to contend with and which in any case inhibited proper supervision. Maybe a few of these problems be cited here to illustrate this statement.

- (1) Some probationers were uncooperative and gave the officers difficult time tracing them and

making them report. Many never ever reported regularly as required. In some cases warrant of arrest were applied for, the probationers arrested, sent back to court and warned before reporting could continue. There were also cases where reporting was extremely irregular and it took the officers about three months at a time to meet a probationer. In other cases probationers never reported in person but kept writing letters in lieu giving this or that reason for having not reported. In one case a probationer 'reported' 11 times by correspondence.

- (2) There was the problem of transport. It made many officers fail to turn up at the reporting centres as scheduled. It therefore sometimes took longer than necessary before meeting some probationers. Probationers could report at the reporting centre but no officer turned up due to lack of means of transport. Some went to the extreme as in the case of one schoolboy who always left school to make a report as directed but was not in any one occasion able to meet the officer at the reporting centre. He sent several letters to the officer concerned complaining of the situation. He could always

get a reply suggesting the next reporting date and centre. Again he would report as directed but the officer never would turn up. In the end he had to travel to the Probation Station - some 40 miles off - to try and meet the officer at his office. Interestingly enough, when he reported he found the officer had applied for a warrant of arrest for failing to report! In this case who was supervising who? And did the boy benefit from probation treatment? How?

- (3) Transfer of staff or cases from one officer to another in the course of supervision affected its effectiveness adversely. When cases were transferred from one officer to another, it took quite some time before the new officer came to know his new clients well enough to be able to render useful counselling. Sometimes transfer of cases were haphazardly done.
- (4) Language as m means of communication is vital ^{∠ a} in probation treatment. Since the supervision is done by way of interviews and counselling, it is important that the officer and the client talk in a language they both know well. In the

case of the probationers, their standard of education is either nil or extremely low to the extent that the only language they know well is their mother tongue - Kalenjin or Dholuo. This inevitably meant therefore that for the supervision to be really effective, Kericho station had to be staffed with only Kalenjin speakers and Siaya with Dholuo speakers. And this was not always the case. You find for example the women in Siaya were supervised by a non-Luo woman probation officer. She did her best anyway as we shall soon see below; but in one particular case there was a probationer that never understood even ~~the~~ simplest Kiswahili phrase. She ended up completing her period before she even knew what probation was all about. The researcher had first of all to brief her on what probation treatment is before the interview could proceed. And in fact she had only three contacts with the officer and her home was never visited. The point one wants to argue here is that occasionally probationers were handled by people they could hardly communicate well with. The supervision then became a matter of seeing the

client, taking down his name and serial number and then informing him/her of the next reporting date. No counselling.

- (5) Caseload (work load) was on average heavy due to lack of trained staff. One great problem with the department is that it is understaffed and therefore the few officers that are in the field get over-worked. An average work load per officer is 60 probationers. In 1974 that average was even higher. There were at that time some 9,090 probationers to be supervised by only 112 officers. That meant that each officer supervised an average of 70 offenders. By probation standards these averages are just too high for effective supervision. The average ought to be in the region of 30-40 cases per officer. Making court enquiries, returns, and supervising a heavy case load at the same time is a formidable task indeed. And as if that is not enough there is still Borstal enquiries and psychiatric cases to be dealt with, among others.⁴ Much of the supervision in this respect boiled down to 'paper work' mostly with very little counselling.

(6) It was noticed that home visits were rarely made. This is partly due to lack of transport already discussed. Visiting a probationer's home during the course of supervision is an integral part of probation rehabilitation strategy. It enables the officer to deal with the client in the context of the family. It is by visiting the family or the home that one gets to understand the probationer's problems and thus meaningfully formulate methods of assisting him. But relying solely on the verbal reports at the reporting centre might be misleading. How do you know the client is telling the truth concerning his problems at home? One has to deal with the probationer at close quarters and not at a distance. The 'treatment' in these cases was poorly done.

These are some of the problems the officers encountered which appear to have inhibited a more effective supervision. This should not in any way be construed to mean that the officers did not do their duties as required. Far from it, it has only been an attempt to give a critical appraisal of the supervision the way the offenders received it. The officers did their best as much as possible as the next section reveals.

EFFECTIVENESS

In this section we shall examine the performance of the service i.e. its long term effectiveness. This will be done under two sub-headings: (a) the present social and economic conditions of the former probationers, (b) recidivism.

(a) The Social and Economic Conditions

Marital Status and the Families

The majority of the respondents were at the time of the survey adults above 25 years of age. Only 6 in Siaya and 2 in Kericho were 24 or 25 years old and most of them married women. The rest were 26 years old or above. Most of them are married with children to support and the average family size is 6. Before probation only 22 out of 46 making 48% were married. 17 married after probation making the present married to be 37 i.e. 80% married. We arrive at the figure 37 after excluding 2 cases who divorced after probation but were married at the time they were placed on probation. In this way we would say that they benefitted since they were able to acquire new status in society as married couples. It is also a sign of responsibility.

Table 14: Marital Status Before and After Probation

	<u>Siaya</u>		<u>Kericho</u>		<u>Totals</u>	
	Before	After	Before	After	Before	After
Married	17*	25	5**	12	22	37
Unmarried	12	3	9	1	21	4
Divorced	1	2	-	1	1	3
Widowed	2	2	-	-	2	2
Totals	32	32	14	14	46	46

* One divorced after probation

** One divorced after probation

All the married (except one case) were found to have children. In Siaya a few men were polygamists. There were only four men who were unmarried. This was mainly due to poverty. They were unable to raise enough income to acquire wives with and eventually to support the family with. There were three cases of divorce. One was a recidivist who is a bhang addict and had several previous convictions. He divorced before probation. The wife left him because of his criminal activities. He is now an old man of 50 years. He was recently imprisoned for behaving in a manner likely to cause a breach of peace by chasing his son with

a spear during a domestic quarrel. At the time of the interview he had just come out of jail. The other two divorced after probation. One of them was in Kericho. He was also an old man. He is 46 years old. He lives alone and sells or hires out his plots to earn a living. The last one was an old woman of 45 years. She is also a recidivist. She left the husband after committing a subsequent crime of arson. She locked up the husband in the house and set fire to it then she fled. She now has no fixed abode and lives on charity. Then there are also two widows in the sample. They are in Siaya, Both lost their husbands before probation. They are now aged 46 and 47 years respectively. One has grown-up daughters who are all married. She therefore stays alone. The other had four children. One of them is a grown-up daughter and is married. The other three are still schooling, they stay with her and she supports them with her meagre income.

Economic Activities and Income

The majority of these people are peasants. 26 out of the 46 earn their living by tilling the land. This is 57% of the people. 10 are still unemployed constituting 21% of the sample, and another 10 are in one kind of wage employment or another, i.e. self-employed

or wage employed. The self employed are mainly carpenters in Siaya district. The wage employed are mainly in Kericho working in the tea estates - one is a driver, the other is a watchman, one is a "mnyapara" (overseer) and the other one is a plucker. The average monthly income was estimated at shs. 200/- per month making it roughly shs. 2,400/- per annum.

The bulk of the population consists however of peasants the majority of whom are to be found in Siaya.


Table 15: Occupational Categories by Districts Presently

	Siaya	Kericho	Total
Unemployed	7	3	10
Peasants	19	2	21
Progressive peasants	-	5	5
Wage/Artisans	6	4	10
Total	32	14	46

As compared with the previous situation (Table 11, page 79) the following developments were found to have taken place economically:

- (1) Of the previous 14 cases of the unemployed in Siaya, 6 of them trained in some skill particularly carpentry and are now self-employed.
- (2) One of the previously unemployed settled down as a peasant. The peasantry therefore swelled by one to 19 in Siaya.
- (3) In Kericho district out of the previously 7 unemployed, one took up wage employment in the tea estates, and 3 settled down as peasants. The number of peasants in Kericho therefore went up from 4 to 7 and 5 of them became very progressive small-scale farmers. Of the 4 wage employed, 3 of them had retained their jobs when they were placed on probation.

So in the final analysis at the end of probation period, the number of the unemployed had gone down from the original 21 to 10. It was reduced by more than 50%. The peasantry remains fairly constant, have moved from the original 22 to 26 an increase of 4. The wage employed went up from the original 3 to 10. It more than trebled. One is therefore dealing with basically the same occupational categories one started



off with - the unemployed, peasants and wage employed. None of the categories has completely disappeared.

The peasants constitute 57% of the population studied. A more close examination of their condition of living would therefore be worthwhile. They may be considered in roughly three arbitrary categories or strata according to their level of income: the very poorest, the average and the more progressive ones. The very poorest peasants are usually those with tiny plots ranging from $\frac{1}{4}$ -1 acre. They have the practice of cultivating small plots the size of a tennis pitch and the rest left fallow. On the small plots one finds poor maize, millet and occasionally beans and other vegetables. In one instance there was no shamba cultivated except that around the house there were some poor banana plants, some maize and between them bhang was growing. The respondent is an elderly man who lives alone and smokes bhang profusely. He is a habitual criminal and his wife left him because of that. Formerly he had a large piece of land but he has sold all of it until now nothing remains. Other such poor peasants supplement their meagre income from the plots with money earned from the sale of changaa or even bhang. One elderly man travels on his bicycle to distant places where changaa is brewed in large quantities and sold cheaply. He buys the brew in a large container and sells

it in Siaya township where Mathare Valley type of shanties are coming up. Apart from that many women whose husbands are poor and cannot support the family well engage in brewing changaa to earn a living. The same thing happens with the growing and sale of bhang. In one particular foresty sub-location visited, there is booming trade in bhang. This is encouraged by buyers who come from as far afield as Nairobi and Uganda. Some buyers at one time went there in a GK vehicle. The respondent visited was a woman and she remarked that the drug fetches them a lot of money and the cultivation cannot be stopped as it is the only source of reasonable income. Practically everyone in the neighbourhood grows it and it sells like hot cake. She remarked that her husband is a carefree man who drinks excessively and cares very little about the welfare of the family. The home looks very poor and her house is a mud hut that is almost collapsing. Directly behind her house the drug is growing and is doing quite well. Some grow among the sugar cane in the bushy river valley nearby, she informed the researcher. She has four children. They were either naked or half-naked, extremely dirty wearing gloomy faces painted with soot. They looked hungry and unhealthy with bulging bellies. None of them ever goes to school. Such is the situation with the very poorest peasants. They are

no better than the unemployed. They simply live in misery.

The better off in this lower stratum may be termed the average peasants. They are mostly the people who have resolved to settle down and earn a decent living though difficult it is. They still retain much of their land and have not sold them as the case was found with the poorest peasants. Some of these people who were in Siaya are polygamists. The husband together with the wives work hard in the fields to earn enough for subsistence and if possible have surplus for sale. In this stratum one now finds some head of cattle, goats and sheep kept. This is not the case in the very poorest peasant stratum. The domestic animals are kept as a "saving". When sold enough money is earned for taking the children to school, buying them clothes and also for buying food for the family particularly during scarcity. In this stratum one finds a bit of life. The families are well fed comparatively and well clothed. They look healthier than those of the lower stratum. But the standard still remains low by Kenya standards. The diet consists mainly of starch foods such as ugali and uji with vegetables for days on end. Fried vegetables is unheard of in most cases. Some milk may occasionally be used when a cow

is on milk. The cows are however the local breed giving no more than one litre of milk a day. This situation is mostly noticeable in Siaya. Protein foods are sadly missing in the diet and if meat or fish is eaten once a week then it is always a feast in itself. Such a family would be considered to be doing very well. Otherwise the normal diet is ugali, uji, maize with beans, potatoes and what have you. In statistical terms the average income of the peasants in these two categories already discussed is difficult to estimate. It may be termed "below subsistence" level but that alone is still not specific enough and difficult to use for analysis and comparison. Some have nothing, some just a little, and some enough to keep them alive. The situation can be described but figures were difficult to come by.

The high income stratum in the class of peasants is to be found only in Kericho. Here five cases were found which may be termed "progressive" peasants or small scale farmers. Incidentally all of them are cases which had previously gone in record as "very good" probationers. They seemed to have taken seriously the advice of their probation officers and settled down to work and become law-abiding. And again none of them has fallen back to crime. One of them was previously

unemployed and a thug who kept roaming about with bad associates drinking and beating up people. It was during one of these fights in a bar that they damaged the owner's counter glass. He was arrested, charged and convicted of damaging property. He was then placed on probation. At the time he was 20 years old and unmarried. Due to the advice of the probation officer he left his bad associates and settled down to work. His father is a rich farmer with two separate farms one small and the other a large one of 250 acres where 50 grade cattle are kept. When the youngman showed signs of good behaviour, he was left in charge of the smaller farm. It is 12 acres. He was also given two grade cows to look after. He then got married. At the time of the survey he was 30 years old, married with 3 children. The cows are doing very well and give them enough milk for home use and for sale. The milk gives him 60/- per month. Half acre of his land was under pyrethrum and that fetched him 65/- per month. And he has 2 acres under tea which fetches about 100/- per month. The average family income is therefore about k.shs. 225/- per month, i.e. k.shs. 2,700/- per annum. Most of the income is used for livelihood - supporting the family and his mother who also stays with him in the smaller farm. Another case is that of a young man of 28 years at the time of the survey. He is

married with six children. He owns 16 acres of land, 2 hybrid (crosses) cattle and 4 local breed. He cultivates 6 acres yearly and plants them with maize. The yield is 20 bags per acre i.e. 120 bags per harvest. 20 bags are used for home consumption and the rest 100 bags sold at shs. 80/- each bringing a total of k.shs. 8,000/- per annum since in Kericho there is only one crop a year. The cows give enough milk for domestic use. His farm is well fenced, and the homestead is very tidy, with a big tin store in the home for storing the maize. He says he uses the income for improving his farm, livelihood, school fees and uniform for the children. Members of the family look well fed, cheerful and healthy. One factor that has assisted him to prosper is the fact that his elder brother is a very rich farmer who owns a tractor and cultivates more than 30 acres per season. He (the respondent) hires the tractor to cultivate his land too. Second, he got a cattle loan through the help of the local Assistant Agricultural Officer and was given two grade cattle and two hybrid (crosses). Although the two grade cows died, the crosses are doing very well and give the family sufficient milk for home use and sometimes the surplus sold. The other progressive peasant is now 35 years old, married with 6 children. He has $7\frac{1}{2}$ acres of land, 4 head of cattle and 2 goats. Normally he

plants 2 acres with maize and gets about 15 bags per acre i.e. 30 bags in all. 10 bags are used for home consumption and the rest 20 are sold at 80/- per bag - giving a total of k.shs. 1,600/- per annum. The income is used for livelihood and sending the children to school. These examples have been examined in some details to show how they differ from the other peasants dealt with earlier. One therefore sees clearly that these cases stand out from the others as really progressive peasants.

One would therefore argue from these findings that ecological factors, climate, home background and the dominant economic activities of an area have a lot of bearing on the level of income of the former probationers. It is not merely a question of whether they were supervised effectively or not. Other factors come into play that finally determine the economic status of these people. Where the land is dry, desolate and inimical to economic activities particularly agricultural activities such as in Siaya district, the peasants stand to gain very little however hard they toil. But where the land is so fertile and the climate so conducive for agricultural activities and willing to give high returns as the case is with Kericho district then there is every possibility for the peasants and even the

unemployed to drastically improve their lot. Furthermore, in a place like Kericho the government is apparently very close to the people and willing to advise and assist the peasants in every possible way including giving loans and providing expertise. These facilities are just at their doorsteps. Keeping grade cattle for example is now becoming the order of the day. In Siaya one has a completely different situation. Agricultural officers and their assistants are never anywhere near the people. Land is left idle and under bush all over the place with tiny plots here and there under such poor breed of crops that is hardly sufficient even for subsistence. People live from hand to mouth. Taking loans for development is a strange and dreaded practice that must be avoided. It is still mistakenly considered a governments trick of eventually robbing the loan defaulters of their land. I am sure very few people, if any, have ever seen a grade cattle in that district. Of course the very hot and dry climate there militates against the keeping of grade cattle but the people are also apathetic, they do not want even to try and see if it fails entirely. Recently the growing of sugar cane was introduced to feed the many mushrooming sugar factories but I am afraid even that has not taken root. None of the respondents was found to grow sugar cane for sale. The point one wants to argue in this analysis

is that the range of economic activities is limited. The Kericho people are on the contrary blessed to have a wide range from growing maize and pyrethrum to growing tea and keeping grade cattle. With such cash crops as pyrethrum and tea doing so well, including grade cattle, not to mention maize, one inevitably expects a high standard of living there anyway.

Attitude to Probation Treatment

All except two of the people interviewed said they benefitted from probation treatment. One of the two who said they did not benefit anything is a young unemployed man who first of all complained that he had a lot of trouble during his reporting period chasing the probation officer here and there and not meeting him. He then complained that they had been promised jobs but he has since remained unemployed and he is experiencing a lot of difficulties. Life is very difficult with him, he complained. When questioned further he however agreed that by being placed on probation he was able to continue with his education and completed standard VII. Also he was able to assist the mother at home. The other was a woman who said she even did not know what probation was all about. She does not understand Kiswahili - not even a word and yet

all the supervision was done in Kiswahili, she said. The probation officer (woman) was not a Luo and only spoke to her in Kiswahili. Again the probation period was very short - 6 months only. She said she made only three reports.

Apart from these two isolated cases the rest, (44 cases) i.e. 95% praised probation treatment and wished it was expanded and extended to many more offenders. They said that the officers treated them well and that they were friendly and gave good advice. They all like probation because it saved them from going to jail. They thus remained free people in society as before and were able to look after their families and continue with their previous activities. There were particularly two cases of wage employees who were grateful because they retained their jobs which they would otherwise have lost if they went to jail. Generally speaking therefore the attitude of these people towards probation treatment was a warm one. Consider for example what this one said:

"I was able to look after my family and I also got a second child, a baby girl during my probation period. She is now in standard I. If I was sent to jail she would not have been with us here now ... all first offenders be placed on probation to test whether the offense was accidental or not. If it was accidental then the offender can become law-abiding"

he concluded.

Another respondent said:

"Probation benefited me greatly. I married (this) my second wife, when I was still on probation. If I was jailed that would not have happened"

he remarked.

And one of the progressive farmers in Kericho remarked, when asked to give any comments:

"I am very pleased with your visit and this shows that the probation officer still remembers me. Please do visit me again another time. And tell the officer to visit me. He was very useful to me and made me settle down".

Such comments were very many in response to the question, "What is the greatest thing you benefitted by being on probation?"

Compared to the men respondents, the women were slightly more grateful. They praised particularly the woman probation officer that supervised them. It happened to be one officer in all the cases. One respondent was so happy that she asked:

"Is so and so still in Kisumu? I want to give you "kuku" (hen) to take to her. She was so friendly to me".

I said politely,

"Yes, she is still in Kisumu but I'm sorry I'm still in the field for some time before I return to Kisumu so taking the "kuku" to her would not be possible right now".

She then pleaded with me to send her greetings and remind the officer to visit her at her home when she ever goes to Siaya. I said I would definitely do that then the interview continued in a very happy mood.

Comments on Crime

During the survey the respondents were asked to give their views on why people continue committing crimes even after probation treatment. The answers given were varied. Some said crime is accidental and part of social life and that it cannot be avoided even after excellent probation treatment. Others said that only the habitual criminals would fall back to crime. And still others said they fall back to crime because they are forced by circumstances beyond their control. One widow said, and I quote her:

"I am a widow and have three children to support and educate. Brewing changaa has been the only means of earning a living. So I cannot stop it if we are to survive".

And yet another woman said:

"Bhang is grown in this area extensively. There is hardly any home that does not grow it. It is grown just as one would grow maize or millet. And it fetches a lot of money for us. It is poverty that makes us grow it. There is no other source of such high income".

Her statement was later supported by the assistant chief of the area when he was visited in his home for further enquiries on the economic activities in the area. I was particularly intrigued by the fact that a good many women from that locality get convicted for possessing bhang. Possessing bhang should be the domain of men and not women. It was strange with this area.

(b) Recidivism

The purpose of any penal system is to "cure" crime hence this section is the most important part of this survey. For our purpose recidivism will mean simply the falling back to crime. Anyone who completed his probation periods satisfactorily and later commits

another crime and gets convicted in court is a recidivist.

The data show that 14 out of the 46 cases studied had so far fallen back to crime at the time of the survey. This means that the rate of recidivism was 30.4%. This is higher than the 17.7% U.S. rate (England 1955). The offenses committed are however still of minor nature such as petty theft, possession of ASL and bhang and many other isolated ones. The range of the crimes and their seriousness is very much similar to those for which probation treatment had been given. However they seem to be committing the crimes quite often. Five of the recidivists have been convicted twice. One of the 14 has been convicted once for two different crimes. A total of 21 convictions have so far been made for the whole group. The dominant offenses are the possession of ASL and of bhang. These have been committed 8 times - of ASL 5 and of bhang 3. The next highest is theft which has been committed 3 times. The next is affray which has been committed twice. The rest of the offenses have been committed only once, these include assault, damaging property, Arson, tax defaulting, creating disturbance, illegal assembly, unlawful custody and trading without license.

Table 16: Occurrence of Offenses in the Occupational Categories

	Unemployed	Peasants	Wage Artisans	Total
Theft	3	-	-	3
Assault	1	-	-	1
Possession of ASL	-	4	1	5
Possession of bhang	-	3	-	3
Damaging property	-	1	-	1
Arson	1	-	-	1
Affray	-	-	2	2
Tax defaulting	-	-	1	1
Creating dis- turbance	-	1	-	1
Illegal assembly	-	-	1	1
Unlawful custody	-	1	-	1
Trading without licence	1	-	-	1
Total	6	10	5	21

The data reveal that the offense of assault that topped the table in the offenses for which the offenders were placed on probation, has almost disappeared totally. In the original table there were 15 assault cases as opposed to the present 1 only.

Stealing still continues and it retains its second position in the table. But thievery is now concentrated in the unemployed category. The offense of possession of ASL and of bhang now tops the table with 8 occurrences as compared to 7 in the previous table. It means that those two types of offenses are on the increase and constitute more than one third of all the offenses committed. The offenses are again concentrated in the peasantry just as the case was previously. It appears that offenses of possession of ASL and of bhang have become a way of life for the peasants and they are not just offenses. The people involved are found to be the very poorest peasants in Siaya district. The brewing of changaa is considered a means of earning a living and unless a suitable substitute is found it appears it will continue to be on the increase. The fact that it is increasing means that life is becoming more and more difficult for the people involved for they get arrested, convicted and fined or imprisoned but they still continue in the business. Similarly bhang is considered a useful stimulant for the people concerned just as cigarettes are to many people. Once they get addicted they cannot abandon it unless by some kind of miracle. To others it is a source of money. These people do not see these activities in the context of crime but of earning a living. Similarly thievery

among the unemployed is difficult to eliminate unless an outlet is found. These two observations confirm my earlier statement that the unemployed seemed to specialize in thievery while the peasants spend a lot of time brewing and consuming changaa and smoking bhang. It has clearly reappeared in the case of recidivism. And finally from the table no one category of the population could be singled out as potential recidivists. Everyone be he a peasant, the unemployed or the wage-earner is a potential recidivist.

Table 17: Age and Recidivism

	Recidivists	Crimes
Under 26	7	10
26 and over	7	11

Note: Ages when they were placed on probation are used.

The finding is again that age does not decide recidivism (cf. Sutherland, 1970). Out of the 14 recidivists, 7 were under 26 years when they were placed and 7 were above 26 years. Secondly putting into account the occurrence of the individual crimes there is equal distribution between the two: one 10:7 and

the other 11:7. However, the younger generation repeated the crimes of thievery and affray including assault while the older generation as before engage in such offenses as the possession of ASI and bhang. Putting the two arguments together one concludes that the young unemployed are more likely to repeat the crimes of theft and assault while the elderly peasants those of possessing changaa and cannabis sativa.

Perhaps it would be useful to examine how soon the recidivists fall back to crime after completing their probation periods. We shall consider also the duration of the probation period.

Table 18: Relationship of Probation Period to Length of Time Before Recidivism

Probation Period	Time Lapse Before Another Crime is Committed						
	Under 1 year	After 1 year	After 2 years	After 3 years	After 4 years	After 5 years	
Half year	-	2	-	-	-	-	2
One year	-	-	2	1	1	2	6
Two years	-	2	-	1	2	1	6
Total	-	4	2	2	3	3	14

The table shows that none goes back to crime within the first one year after completion of probation period regardless of the duration of the probation period. The early recidivists fall back to crime after one year and it appears again that the period for which they had been in probation does not actually matter. What seems to matter is the personality of the individual. For example two of the earliest recidivists here were two young men who had been placed for being drunk and disorderly. Their subsequent offenses were those of illegal assembly, affray, tax defaulting and again drinking changaa. These two guys were simply carefree. They still remained just as disorderly as they were before and continued drinking changaa which had made them to be placed on probation. They just did not care the hell what may happen to them. And they continued to commit many more offenses. One of them had had a bad criminal record earlier on. The other two earliest recidivists were also unstable characters. One of them was also a young man who had been placed for theft. His home background is unsatisfactory and he seemed to have been brought up poorly. His progress during probation period was very poor. He soon went back to crime and committed the same crime of theft. He was this time imprisoned, and he had just come out of prison the previous week at the time of the interview. He is

described by neighbours as a notorious thief. The other was an elderly man who had been dismissed from his employment when he committed the offense for which he had been placed. He stays at home unemployed with no useful source of income. He has a very tiny plot of land with two wives and cannot support them. He and the wives therefore brew changaa to earn a living. They have been convicted twice since the completion of the period.

Then we have those who fall back to crime after being law-abiding for more than two years. These included a very stubborn woman, unsteady character with no fixed abode. She committed the crime of arson. The others committed subsequent offenses with the passage of time, but by and large the offenses are not very serious ones. The only interesting aspect of it all is that they seem to multiply and many more new offenses are committed.

One more thing needs mention before closing the discussion on recidivism. There was evidence to show that those who had previous criminal records before they were placed on probation i.e. those who were not first offenders at the time, tend to fall back to crime quite easily. For example in the sample there were

five cases with previous criminal record. And four of them are among the 14 recidivists. Furthermore they seem to be committing crimes much more frequently than the others. Of the 21 convictions, they together have had 7 i.e. an average of two convictions per person. This tends to confirm an earlier hypothesis that recidivism has a positive concomitant correlation with criminal record.

Conclusion

In this section we have looked at the rate of recidivism in the case of former probationers and found it to be 30.4%. This figure might be higher for a number of reasons:

- (1) Much of the information for analysis came from the former probationers themselves. They are the ones who gave their criminal record. But as we know people are never free to talk about their personal criminal records, it is therefore possible that some of the convictions were not revealed and therefore not recorded for analysis.

- (2) Others have repeatedly committed subsequent offenses but, have been only lucky to escape arrest.
- (3) Some former probationers, though few, remain so hostile to the established authority that one wonders what they benefitted from probation treatment. The case in point is that of a young man who refused any interview having believed that the researcher and his assistant were policemen. He gathered a group of *thugs* and demanded to know why he was to be arrested. His lieutenants were so hostile that our explanations as to the purpose of our visit landed on deaf ears. There was nothing left for the researcher except to drive off. How does one categorize such a case in terms of benefitting from probation treatment and recidivism?

Following from these observations one would be justified to conclude that the actual rate of recidivism is higher than the 30.4% recorded and also much higher than elsewhere, (Federal Probation, 1955; Sutherland, 1970).

CHAPTER FIVE

IMPLICATIONS AND CONCLUSION

The analysis brings out two distinct observations. Firstly, there are crimes where probation treatment may be said to have had some positive effect. These included theft, assault, being drunk and disorderly, damaging property and a few other isolated ones. But even here the crime of assault seems not to have been 'cured' purely by probation treatment. Something different seems to come into play that eliminate it. It is in the first place an act which is disapproved of by the society and in that case the social system exerts pressure on the individual and keeps him away from situations that may lead to the commission of similar offense (E. Durkheim, 1897). In the second place it may be argued that the crime of assault was largely accidental and that is why after receiving probation supervision it rarely reappears. Accidental assault cases arise out of provocation, the victim provokes the offender. It is also true that out of a population of several thousands it is not these particular offenders that would continue to be provoked. So one would argue that assault is not an internalized crime. It is not learned, planned and executed as Sutherland would have liked us to believe (Sutherland

and Cressey, 1970; Mushanga, 1976). Second, there are crimes where probation treatment flatly failed. The socio-economic conditions of the offenders never improved in the first place, and after probation they quickly fell back to crime, particularly ~~those~~ same offenses for which they had been placed on probation. These included changaa brewing and the possession of cannabis sativa. As has been discussed earlier, the statutory law look on these as offenses but according to the norms of the respective communities these are activities that are part and parcel of normal living. The people do not see brewing changaa or trading in it as a crime and there is ready market for the brew. It gives cash income where there exist no alternative avenues for such income. The trade in it is booming and it sells faster than Tusker beer. Many families depend on it as a source of income for livelihood including educating the children.

When an individual commits an offense, he is considered to have been 'uprooted' from the society so he has to be rehabilitated by punishment or probation treatment. It is assumed that he would be made to adjust to the norms of the society. But in this particular instance of illicit brewing and trade in changaa there seems to be nothing to be rehabilitated

since the offenders are in perfect agreement with the norms of their society, call it community if you like. Treatment if effective would only mean that the individual is 'adjusted' out of his social environment. And that is standing rehabilitation theory on its head! Here the problem of social control comes to the fore again, now with an opposite effect. It means that common law is in conflict rather than agreement with statutory law (T. Sellin, 1938). In this case the society reinforces the common law and opposes statutory law. The offender continues to behave according to the norms of his community. The statutory law although reinforced by the probation treatment and the courts has no support in the society. The treatment for all intent and purposes is bound to fail when supervision ends, and that is exactly what has happened in these cases.

Perhaps an instance be cited here to illustrate the extent of the conflict between common law and statutory law. Some time during this survey the authorities i.e. District Commissioner, District Officers and chiefs had become very concerned as to the rise in the brewing and consumption of changaa in certain locations in Siaya district and thought something had to be done to stop it. Barazas were held and the

chiefs and assistant chiefs were made to condemn the practice in the strongest possible terms and they warned that drastic measures would be taken against such offenders. After the baraza however, on their way home, the assistant chiefs questioned among themselves: "where is it today? We need some refreshment after being too long at the baraza". One of them quickly and importantly announced that one of his wives (he is a polygamist) had made a very strong one. So all the people in the group called on her and entertained themselves and were pleased! And yet these were the very assistant chiefs who had spent the whole day condemning changaa brewing and its consumption. They are themselves the leading brewers in the first place and also the greatest consumers. They have to condemn it at the barazas because they want to keep their jobs anyway. What does all this mean to a sociologist? It means that the "offense" is a normal way of living in that particular community. An attempt to "cure" it by probation treatment or by punishment is by and large a futile exercise and a waste of both human and natural resources which could be more meaningfully deployed elsewhere. It means we ought to understand the common law in any given society if statutory law is to succeed. The two sets of law ought to be complementary if any type

of "cure" is to be successful.

This inevitably brings us to the crux of the matter. In a situation where there exist divergent laws that may affect probation treatment adversely there is urgent need to have qualified staff who are capable of understanding the various social systems before preparing presentence reports. The whole work of supervision requires well trained sociologists and psychologists who are not only interested in the welfare of human beings but who also understand the conditions conducive to the well-being of the offenders (W.C. Rickless, 1973).

And if we are to look at probation from that point of view then we must admit that in Kenya we are still along way off to go. The service is sadly short of staff both in quality and quantity. There is no single officer who is a sociologist or psychologist out of a national total of 141 probation officers at the time of writing. There are three university graduates, a few "O" level trained officers and the rest are of doubtful educational backgrounds. Moreover the type of training provided at the Kenya Institute of Administration, Kabete is of very low standard. The candidates are taught too many subjects in too

short a period that leaves a lot to be desired. Within a period of two years they are expected to master: Sociology, Psychology, Law, Criminology, Probation, Economics, Social Casework, Social Groupwork, Social Welfare and Administration, Community Development, Survey Methods, History and Government of Kenya, Adult Education, Health Education and Nutrition and English and Kiswahili. The course is called Probation Theory and Practice. In that short period they are also expected to go for field work. What it means is that each item is covered very superficially to keep things going. And for the serving officers there has never been any refresher courses or seminars organised and attended by the officers to enable them to learn current rehabilitation methods. This makes the service comparatively "dormant" and unknown to many. Most of the officers do not command the respect of magistrates due to the quality of their work. Some officers write reports which are uninformative and not comprehensive at all. The so called "diagnoses" are in many cases not "diagnoses" at all but mere routine reports to the court. Some officers even carry their typewriters to court, question the offender briefly and quickly type out a haphazardly prepared report based on that scanty information from the offender. And that is all, the diagnosis has been made and a

pre-sentence report written. Interestingly enough these are the kind of officers who are considered efficient and hard working for they complete their enquiries with the minimum of delay. They eventually get promoted for their "efficiency". And may I assure you, magistrates are not idiots; the boys know ~~the~~ **their** work well. ~~And~~ these "learned" friends are very particular indeed. When they learn that the probation officers are all that inefficient they with-hold referring cases for probation officers reports and this has been one of the factors that has slowed down probation service expansion for many years. Many magistrates refuse to refer cases to officers who do not know their work. One magistrate informed the researcher that for quite a long time he refused to refer cases to a certain officer because, and I quote him, "he was so stupid and did not know his work. I wonder who appointed him probation officer" the magistrate retorted. Another magistrate also had to order a probation officer out of court for failing to prepare a report in time and no reasons given. The officer was apparently drunk at the time and in fact, needed to be placed on "probation" himself. And then there is the supervision by clerical officers and office messengers. ~~the~~ code name is "taking particulars". This is quite widespread

again. When a probationer reports at the probation station and finds his officer out of the office, the clerical officer or office messenger puts down the serial number and name of the probationer on a small piece of paper. He is then informed of the next reporting date which the "new probation officer" indicates in the booklet. The date is also indicated on the small piece of paper. This may be done for several cases. They read for example:

KER/DC/AD/44 ARAP SOI
 reported here today 2.8.78
 told to report again on 2.9.78.

Later the probation officer collects these pieces of paper and makes entries in respective files stating for example that: "the probationer is doing well and reports regularly as directed; and the last time he reported he was cheerful and looked quite healthy. He is improving a great deal and helps his parents in shamba work. He had nothing to complain about. Next date of report is 2.9.78 at the office here". These are what have been referred to earlier as fictitious reports. And they seem to be many judging from the fact that many reports and entries are stereotype. The point one wants to argue here is that for probation treatment to be effective there is

need to have qualified staff both in terms of education and experience to man the department. At present those that seem better qualified for example university graduates (there are 3) and those who return from England after advanced studies in probation end up sitting behind desks at the provincial or national headquarters dealing with "paper work" rather than with criminals. The actually challenging task of rehabilitation is left in the hands of the least qualified and least efficient and poorly paid officers down there. And many are overworked and even disillusioned with the work. They are dealing with a situation they neither understand well nor can tackle well. They are like the blind groping in the dark.

If subsequent surveys reveal the same state of affairs as this one here at the national level, and unless the quality of staff is improved then I am afraid the future of the probation service in this country is clearly in danger. You do not expect the least qualified person in the society to effectively handle one of the most difficult and demanding tasks in society - fighting crime.

Perhaps one more thing should be mentioned here by way of conclusion. In the absence of any feedback information on the long term effectiveness of probation treatment the authorities concerned have for a long time argued that the reasons for the approach is that:

- (1) It is cheaper than custodial alternative treatments such as imprisonment. That the money used in keeping one prisoner in jail is enough to enable the department to supervise many more offenders.
- (2) It enables the offenders to remain free in society and meet their social and economic obligations to their families and the society.
- (3) It is non-punitive and deals with the individual criminal cases in their own merit.

No one is against these reasons as such; what one wants to argue here is that these should not be the major reasons for retaining probation. The first and most important aim of probation as a penal system should be to 'cure' crime. The rest are secondary objectives or reasons. Whether it is cheaper or not is besides the point. The first question is

"does it effectively cure crime?". In which case the values and goals presently attached to probation seem to be faulty hence its ineffectiveness in 'curing' crime as the rate of recidivism reveals in this survey. The training given to the probation officers and the way the supervision is done reveal that it is not meant first and foremost to 'cure' crime. This is reflected in the fact that the quality of training, personality, education and experience of the officers fall far short of the minimum requirements for such an arduous task. The officers are sadly ill-equipped for fighting crime.

If the right goals and values were attached to the approach it would automatically follow that only the right calibre of officers would be hired to do the work of rehabilitation based on properly prepared analysis - "diagnosis".) The bulk of the work at present seems to be "paper work" and this is fairly well done and most of the promotions are based on it. The training at KIA,* Kabete is at best producing more and more efficient probation 'clerks'. And also recently several new posts were opened up for clerical officers and copy typists to more efficiently deal with paper work and yet not a single post was opened for sociologists, psychologists, psychiatrists or even

* Kenya Institute of Administration

university graduates. This is clearly indicative of the importance attached to keeping records i.e. paper work.

For a long time therefore the service has been operating along faulty guidelines due to the absence of research findings to assist it in defining its goals and embark on a relentless pursuit of those goals. There has been goal displacement from the historical origin of penal systems and all the training and subsequent 'supervision' have been guided to a very large extent by the new goals i.e. reducing the cost of crime and saving offenders from going to jail. But again if these are the main reasons for retaining the approach then suspended sentence (without supervision) and conditional discharge would be the most efficient alternative. After all those placed on probation are 'hopeful' cases who can easily reform even with social pressure alone as has been demonstrated by assault cases in this survey. Moreover the supervision done is at best for only five minutes a month at the time the report is made, this means an average of (5 x 12 = 60 min.) one hour a year. Does it mean that by meeting an offender once a year and giving him a brief lecture on crime and the need to be a law-abiding citizen for one hour would change his life style from

a criminal to a law-abiding citizen? Impossible. I am sure if the offenders were given conditional discharge and made to attend chiefs' barazas, they would get better lectures on crime and at close quarters by people who live with them and know them well and their environment. This would not cost the tax payer any extra expenses. And yet it would turn out to be even more effective in the long run than probation treatment the way it is presently.

In conclusion therefore it should be pointed out that the aim of probation treatment should be to 'cure' crime. And if it is to achieve that aim there is urgent need to lay emphasis on the cure at all levels, and that inevitably means that only qualified staff be recruited for the work of rehabilitation. The supervision should emphasize more interaction with criminals than with paper. Well trained social workers, sociologists, psychologists and even psychiatrists be hired. This is done almost in all other countries in the world where probation is practised, why not in Kenya? The present training programme at KIA Kabete for probation officers if cannot be improved could as well be stopped. As for the serving officers, seminars and refresher courses including conferences should be organised from time to time and all the officers

* Kenya Institute of Administration

should have the opportunity of attending. This would assist the officers in improving the quality of their work by learning more current methods of crime treatment. But most important for the future of probation in Kenya is the fact that the authorities must change their attitude and reorganise the department with one over-riding task - 'curing crime'. The right goals and values ought to be attached to the service followed by a systematic mobilization of the necessary resources to achieve those goals. It would only then that it would operate along sounder guidelines and be more effective than it has been in the past.

Future Research

If the probation service is to operate along sound guidelines then subsequent surveys ought to be conducted to supplement this first attempt.

- (1) More such surveys be conducted in other districts to see if some of the issues raised here could further be discussed.
- (2) Other surveys should be designed for the urban centres.

These two sets of survey should help to bring out the state of affairs at the national level.

The major issue at stake is: under which conditions is probation treatment effective and under what conditions is it a failure, and why? And how could the service be improved so that it becomes more effective?

It is recommended that future surveys be conducted not just **by** one individual as the case has been here but by a team of researchers. It is a task too heavy for one researcher even at a small scale level. One is essentially dealing with criminals and you know what that means in terms of research.

Footnotes

1. Probation of Offenders Act (Rev. 1962).
Chapter 64, Laws of Kenya, p. 1.
2. Probation Service Annual Report 1974, p. 1.
3. Ibid., p. 2 .
4. Ibid., p. 2.
5. Sutherland, E.H. and Cressey, D.H., Criminology
J.B. Lippincott Co., 8th ed. 1970, p. 326.
6. Dinitz, S. et.al. Deviance: Studies in
Definition, Management Treatment, p. 21.
7. See: Mushanga: Crime and Deviance, E.A.P.L.
1976.
Odera Oruka: Punishment and Terrorism
in Africa, E.A.L.E., 1976.
8. Sutherland, E.H. op.cit., pp. 75-77.
9. Emile Durkheim, Suicide, 1897. Transl. 1951.
10. Robert Merton, "Social Structure and Anomie"
in his book Social Theory and Social Structure,
pp. 185-214.
11. Thorsten Sellin, "Culture Conflict and Crime"
in Social Science Research Council 1938, pp. 63-67.
12. Denitz, S. et.al. op.cit., p. 301.

13. Sutherland, E.H. op.cit., p. 303.
14. Ibid., p. 462.
15. Walter C. Rickless, The Crime Problem, Meredith Corporation, 1973, pp. 463-493.
16. Sutherland, E.H. op.cit., pp. 463-464.
17. Laws of Kenya, Chapter 64, The Probation of Offenders Ordinance, December 1943.
18. Subsidiary Legislation, The Probation of Offenders Act (Revised) 1962.
19. Probation Service Annual Report, 1974.

OTHER REFERENCES

1. Smelser, N.J. Sociology, Introduction.
2. Johnson, H.E. Crime, Correction and Society.
3. Marshall B. Clinard and Abott, J. Crime in Developing Countries: A Comparative Perspective.
4. England, Ralph, W. Jr., "A Survey of Post Probation Recidivism Among 500 Federal Offenders" in Federal Probation 19: September 1955.
5. Cressey, D.R. and David Ward, Delinquency Crime and Social Process.
6. Richard Quinney, The Social Reality of Crime.
7. H. Prins, The Criminal Behaviour.
8. Feldman, M. Philip, Criminal Behaviour: A Psychological Analysis. John Wiley and Sons, 1977.
9. William Clifford, An Introduction to African Criminology, Oxford University Press, 1974.
10. Erasto Muga, Crime and Delinquency in Kenya E.A.L.B. 1975.

APPENDIX

INTERVIEW SCHEDULE

My name is Odegi. I am a student of the University of Nairobi. I am doing research on Probation. The research has been cleared by the President's office. Clearance no.

There are a few things I would like you to tell me about Probation Treatment as you now know it to assist me in this work.

General Information

1. Name
2. Age
3. Sex *g. ? why.*
4. Tribe
5. Religion
6. Marital status
7. Size of household
8. No. of childrer supported
9. Occupation
10. Land use
11. Property owned
 (1) Land (2) Cattle (3) Goats....
 (4) Sheep (5) others
12. Sources of income:
13. Average yearly income from:
 (1) Farming (2) Formal employment
 (3) Any other sources
14. Ways income is spent

Probation Period

15. When were you on probation? From ... to ...
16. In which court were you tried and placed?
.....
17. For what offence were you convicted?
.....
18. What circumstances surrounded the commission
of the offence?
.....
19. Who was your Probation Officer?
.....
20. How did you like the supervision he gave you?
.....
21. What drawbacks in your normal life did you
suffer during your probation?
.....
22. What family relationships were disturbed?
.....
23. What other normal activities were interfered with?
.....
24. What is the greatest thing you benefited by
being on probation?
.....
25. What other benefits did you gain from probation
supervision?
.....

26. What is the greatest thing you suffered or lost by being on probation?

.....

27. In your own view would you say the probation treatment you received was useful to you?

Yes/No. Give reasons

Before Probation

28. What previous Convictions did you have before the one for which you were placed on probation?

Convictions (Previous)	Date

29. In which courts were you tried?

.....

30. What circumstances surrounded each offence?

.....

31. What sentence were you given in each case?

.....

32. How would you compare the terms of these sentences (in 31) with those of probation?

.....

After Probation

33. What subsequent convictions have you had since completing your probation?

Convictions (Subsequent)	Date

34. In which courts were you tried and convicted?
.....

35. What circumstances surrounded the commission of each subsequent offence?
.....

36. What sentence were you given in each case?
.....

37. How would you compare the terms of these sentences with the previous ones including those of probation?
.....

38. One would have expected that after receiving guidance, counselling and all that assistance during probation, one would not commit further crimes, what is your opinion on this?
.....

39. And in your own case what would you say drove you back to committing each of these subsequent offences?
.....

40. What would you suggest should be done to assist people to keep away from criminal behaviours and so become law abiding citizens?

.....

41. What does your own traditional custom say about the type of offences we have talked about in this interview?

.....

42. And finally would you say that your life and that of your family improved since completing your probation period?

Yes/No. Give reasons

43. Any other relevant comments

.....

Thank you very much for your assistance.
Stay well.