

# The Influence of Probation Orders on the Reformation of Offenders in Nakuru County, Kenya

Grace N. Kimani<sup>1</sup>., Erick Kiprono Bor <sup>2</sup>, Samwel Auya<sup>3</sup>

<sup>1</sup>Department of Peace Security and Social Studies, Egerton University, P.O.BOX 536-20115, Njoro, Kenya

<sup>2</sup>Department of Peace Security and Social Studies, Egerton University, P.O.BOX 536-20115, Njoro, Kenya

<sup>3</sup>Department of Peace Security and Social Studies, Egerton University, P.O.BOX 536-20115, Njoro, Kenya

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**Abstract:** Legislation provides for petty offenders to be placed on non-custodial sentences as opposed to incarceration in Kenya. However, there exists scanty empirical evidence in Nakuru County on how probation orders is contributing to probation sentences against a backdrop of persons who have committed crimes being placed on probation every year. This study aimed at examining the influence of probation orders on the reformation of offenders in Nakuru County Kenya. This study was informed by Classical Theory, Risk-need-responsivity (RNR) model and Social Control Theory. This study was carried out in Nakuru County whose ratio of petty offenders to serious offenders is significantly large. The study adopted a descriptive survey research design and a mixed research approach. A total of 229 probationers, 16 probation officers and 19 chiefs constituted the study population. Stratified, purposive and random sampling techniques were used to arrive at the sample size which was 92 made up of 76 probationers, 7 chiefs, and 6 probation officers, sub-populations in the main study. Questionnaires were primarily used to collect quantitative data from probationers while the interview schedule was instrumental in the collection of qualitative data from key informants, the probation officers, and the chiefs. Qualitative data was analyzed using content analysis. Quantitative data was analyzed using descriptive statistics (for frequencies, percentages, means, and standard deviations) and inferential statistics (correlation and regression between the independent and the dependent variable). This was done using Statistical Package for Social Sciences (SPSS). The results of the foregoing analyses were presented in tabular form. The study concludes that probation orders are important for the effective implementation of probation including a display of good behavior on the side of the probationer, reporting monthly, and dissociation with persons of questionable behavior. The Government agencies (the judiciary, the local administration, and the Probation and After Care Services P&AS) Department should include opportunities for employment for probationers to increase the success rate of reformation. The study findings could be useful to probation departments in Kenya and more so Nakuru County Kenya. Further, the findings could inform government policymakers on probation sentencing in formulation policies and reconciliation of offenders within the community.

**Keywords:** Probation Orders, Reformation, Offenders.

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## 1. INTRODUCTION

Globally, many countries are grappling with the problem of increased crime rates, both within and outside their national boundaries (Haenel, 2017). Crime is known to affect almost all societies adversely in their social, economic, and political spheres. Probation, a sentence against some form of crime has its origin in religious practices where offenders had to reform and lead better lives (Hanson, 2014). The same applies to a date where an offender has to abide to a routine upon release; he/she has to stay either at home, an approved residence, a halfway house, or a residential treatment facility. The offenders

have to be off charges and abide by certain rules (conditions of probation) and must strictly follow specific restrictions and guidelines. These conditions are not identical to all offenders but are tailored per each person's context of crime committed (House of Commons, 2011).

In the context of Africa, different colonial governments introduced probation sentences. It then steadily spread over the years in countries such as South Africa, Botswana, and Tanzania. In South Africa, probation services were first enshrined in the First Offenders Act (1906) of the Cape Colony which gave courts options of alternative sentencing of offenders. The Act did not provide for the appointment of probation officers. However, offenders were to be placed on probation on the condition of good behavior (Institute for Security Studies, 2008). The current South African law requires the probation officers only to be appointed by qualified social workers, whose tasks include crime prevention, treatment of offenders, care and treatment of victims of crime, and with families and communities. In the past few years training programs on probation services have been developed in the Universities of Cape Town, Johannesburg and of Port Elizabeth (Western Cape Government, 2017).

In Nigeria, probation was unknown before the colonial era since it never formed part of the then-prevalent traditional non-custodial disposition methods. It was statutorily introduced in 1945 on the enactment of the Criminal Procedure Act (CPA) that made probationary provisions for juveniles and adults. Currently, juvenile offenders' probation services started in 1948 when the Boys Remand Home were established in central Lagos and are only available in Nigeria for adult offenders (Yekini & Salisu, 2013). In the country, the law allows for the use of probation as a non-custodial measure in punishing offenders, however, its application is limited to juvenile offenders. The probation system in the country faces challenges in implementation due to lacks of adequate institutional facilities. The magistrates and judges in the country prefer sending offenders to prison or awarding fines to offenders with simple offenses. Yekini and Salisu (2013) further postulated that there are an estimated of 53,100 prisoners across the country this number would not be so high if non-custodial measures are used in sentencing petty crime offenders.

Probation sentence in Tanzania is stipulated by the Probation of Offender's Act, which also governs community service orders. Community service orders require the offender to perform unpaid public work within the community. The number of offenders sentenced to probation comprised of 175 out of the 1898 offenders in 2011. Probation sentences in the country are given to those offenders who have committed minor crimes, which can attract bail, offenders who are under 18 years, those who have ill-health, and also the elderly. About 3,500 offenders are sentenced to imprisonment each year for a period of six months or less due to typical offences, which include reckless driving, abusive language, cheating, illegal gambling, shop breaking and possession of illicit liquor, which can be dealt with using alternative sentencing methods (UKAID, 2012). The kind of offenses that lead to probation sentencing in Tanzania would most likely resemble those in Kenya, though there could be differences between how it is implemented between the two countries. This difference is wider when you compare implementation in Nigeria (where only juveniles are held in probation). The level of training for probation officers in South Africa is a good point of comparison with those in Kenya.

### 1.1 Situation in Kenya

In Kenya, the Probation of Offenders Act Cap 64 grants mandate to the (Probation and After care Services) P&AS Service. Its principal function is administration of community-based sanctions. Probation is under the Ministry of Interior and Coordination of National Government (Softkenya, 2011). History of Probation Services first promulgation dates back in 1943 in the colonial era under British rule. It was meant to decongest the swelling prison population and to deal with petty offenders. P&AS continued to grow and now has presence in all 47 Counties in Kenya with its headquarters in Nairobi. Their main role is to provide advisory reports to courts and other penal release organs and to effect supervision of court orders for those offenders put under statutory supervision in the community. Therefore, the efforts of the probation and after care department is mainly advisory in a tripartite framework of itself, court and enforcers.

According to Richards (2011), community members also play an active role in the CJS by supporting reformation of offenders. At the community, rehabilitation of offenders (criminals and delinquents) is supported by its members (parents, peers, schools and neighbors) thus are diverted from injurious outcomes of other forms of rehabilitation such as imprisonment. A key expectation of any correctional institution is that offenders undergo rehabilitation and avoid re-offending (OVP&MOHA, 2011). Thus, this study sought insights on communities' participation in the rehabilitation process through probation service.

The prisons in Kenya hold up to 10 times the number of inmates they were originally designed to hold in incarceration (Onyango, 2013). Therefore, probation sentences help to ease up this congestion. As at year 2013, there were 33,194

offenders in prison where 12,704 were first-time light offenders who were qualified for release under the Community Service Order under supervision of either Probation Officers or Administration Authorities or both. The P&AS Department issued 50,722 non-custodial orders in the period of 2012 to 2013. The probation sentences in the country faced various challenges that range from limited and reduced funding, weak and outdated laws and lack of an approved policy on aftercare and bail information, underemployment, lack of adequate training of the probation officers and inadequate vehicles for supervision (National Council on Administration of Justice (NCAJ), 2018). However, though the courts still place offenders on probation sentences, the majority of them end up in prison. In Nakuru law courts between the months of March-July 2019 the court had a total of 317 persons who would have benefited from the probation sentence. However, 229 (about 72%) benefited from the sentence (Nakuru probation office, 2019). Therefore, it is imperative to examine the link between probation sentences and the reformation of offenders in Nakuru County bearing in mind offenders continue to be placed on probation

## 2. RESEARCH PROBLEM

In Kenya, the reformation of offenders through probation sentence remains an area of concern to many probation and after care service practitioners in many counties including Nakuru County. Crime incidences have continued to rise and become complex with research showing that many offenders who have been sentenced to probation still end up in prisons. Probation and After-care Services continue to put in place various rehabilitation activities whose ultimate aim is to ensure the offenders are effectively rehabilitated in the community while serving their probation sentence. However, persons who have been placed on probation continue to be sentenced to jail. There is a need to generate more empirical evidence in Nakuru County on how probation orders influence the reformation of offenders and the challenges facing probation orders in Nakuru County.

## 3. LITERATURE REVIEW

Bureau of Justice (2009) asserts that individuals on probation make up 84% of total community supervision population in the United States. With such large numbers of probationers, it is essential to understand requirements to successfully complete this sentence. Probation officers' close proximity to probationers offers an important perspective regarding which programs and conditions lead to successful outcomes. Officers' experiences and beliefs of what contributes to success of probation are hypothesized to be consistent with empirical descriptions of the challenges to determine what contributes to success; these challenges are due to the numerous factors influencing success, including the obstacle of conflicting goals between rehabilitation and law enforcement.

A study conducted by Krishnan and Latha (2018) assessed the trend of the reported cases on which probation was granted by the Supreme Court in India. The study examined the impact of probation on the criminal activities of offenders. Data were obtained from secondary sources, which included publication research, journals and historical information. The study noted that probation led to a decline in criminal activities and the rate of offenses. The study also noted that probation helped in reformation and rehabilitation of the offender without subjecting the offender to the deleterious effects of jail life. This current study collected primary data and focused on the effect on probation sentence on reformation of offenders in a Kenyan situation.

A study in Monroe County in the USA reveal that a clear understanding of Probation programs and characteristics provide knowledge to agencies regarding the "street level" view of program efficacy. This could help agencies increase the implementation of programs that have been determined to lead to the greatest chances of success, therefore increasing the number of individuals who successfully complete probation. Individuals on probation committed 12.5% of felonies and 7.6% of misdemeanors in 2011 (Division of Criminal Justice Services, 2011). These significant statistics reflect the importance of implementing successful probation programs to decrease the number of recurring offenses. Therefore, it is of the essence for this current study to unearth and clearly document the effectiveness of probation orders on the reformation of offenders in Nakuru County.

## 4. METHODOLOGY

### 4.1 Research Design

Sampling design, statistical design and operational design on the area of study was used to enhance collection, measurement and analysis of data (Kombo & Tromp, 2006). This study adopted a cross-sectional survey research design which allowed mixed methodologies (Kothari, 2004). A mixed methods research design is a procedure for collecting, analyzing, and

“mixing” both quantitative and qualitative research and methods in a single study in order to understand a research problem (Creswell, 2012). This is because the nature of this research was both quantitative and qualitative in data collection and analysis. The study not only involved a cross-section of participants, but was also carried out over a specified period of time.

In line with Setia’s (2016) assertion, the study purposed to measure the outcome regarding probation sentences and reduction of petty crimes at the same time. In addition to the chosen research design, the study adopted a mixed approach, which was a bred of both quantitative and qualitative approaches. This method was chosen since its evolvement has gained prominence since it draws benefits from the strengths of both quantitative and qualitative methods in addressing the ever-increasing complexity of social research (Creswell, 2009). In this case, therefore, the study sought to have numerical and non-numerical data collected and analyzed with regard to both probation sentences on reformation of offenders’ in Nakuru County, Kenya.

#### 4.2 Target Population

According to Kothari (2004), an aggregate of subjects, objects, individuals or entities sharing similar or related character traits constitute target population. With regard to this study, individuals who directly deal with issues touching on probation sentences and petty crimes especially the rehabilitation of petty offenders in Kenya constituted the target population. Accessible population, which is a subset of the target population, comprised probation officers, chiefs, and probationers who have served probation sentence for 6 months and above, in Nakuru County. According to the data as at July, 2022, the town has 15 probation officers, 19 chiefs, and 229 persons who have served before or in probations. The total number was 264 . Chiefs and probation officers were key informants in the study. This study was based in Nakuru probation office.

#### 4.3 Sampling Procedure and Sample Size Determination

In this section, the procedure of determining the sample size and obtaining the sampled respondents from the study population are illustrated.

When the unit of analysis is relatively large, sampling is necessitated (Kothari, 2004). As such, a sample was determined and obtained from the study population. Nassiuma’s (2008) formula used to calculate the size of the sample is illustrated below.

$$n = \frac{NC^2}{C^2 + (N - 1) e^2}$$

Where:

‘n’ = Sample size

‘N’ = Study population (264)

‘C’ = Coefficient of variation ( $21\% \leq C \leq 30\%$ )

‘e’ = Precision level ( $2\% \leq e \leq 5\%$ )

The equation is substituted as follows;

$$n = \frac{263 \times 0.32}{0.32 + (365 - 1) 0.0252}$$

$$n = 93.4 \approx 91$$

$$n = 91 \text{ respondents}$$

The study used stratified sampling, random sampling and purposive sampling to arrive at the participants that was distributed proportionately in the sample. Under stratified sampling, the 91 respondents were allocated proportionately along the different sub-groups in the sample to be as per the table below. Random sampling was used to determine the specific participant under each sub-group. Purposive sampling is a non-probabilistic method in which participants in a study a chosen based on the researcher’s judgement. The researcher chose 7 chiefs and 6 probation officers based on their experience and willingness to contribute in-depth information that is relevant to the study. The distribution was as per Table

1

**Table 1. Sample Size**

Category	Population (N)	Sample
Probation officers	16	7
Chiefs	19	6
Probationers	229	78
Total	264	91

#### 4.4 Methods of Data Collection

This study collected both primary and secondary data. A semi-questionnaire was used to collect data from probationers, while an interview schedule was used to collect qualitative data from probation officers and chiefs. The data collection instruments allowed mixed methodologies of data analysis. Main data collected was quantitative.

##### 4.4.1 Questionnaire

A semi-structured questionnaire was administered on probationers. A questionnaire is a set of carefully selected and ordered questions used in survey studies. Questionnaires are resourceful data collection instruments which enable the researcher to measure the variables of concern (Cuervo-Cazurra, Mudambi, Pedersen, & Piscitello, 2017). This is informed by the simplicity of its administration, scoring of items as well as their ease of use in the data analysis process. The questionnaire consisted of items applying the Likert scale with the responses ranging from strongly disagree, disagree, not sure, agree and strongly agree on a 1,2,3,4,5 rating scale respectively. The researcher used the to obtain data directly from the respondents. It covered the independent and the dependent study variables. The questionnaire also consisted of both open- ended and closed-ended questions to offer opportunities for collection of qualitative responses through comments and suggestions. It was pretested during a pilot study that was done in the neighboring Nyandarua county, to a number of respondents equal to 20% (that is 16) of the respondents.

##### 4.4.2 Interview Schedule

An interview schedule was administered to probationers and chiefs. This method was used to bring issues from probation officers who are part of the players involved in the Criminal Justice System. Interview guides are appropriate in an incisive study where respondents need to give deep insight; a fact that justifies their use in interviewing probation officers. An interview guide was developed to get information from these participants based on their knowledge and experience in probation services. The rationale of collecting data from probation officers was to determine the extent of corroboration of their views with those of probationers and chiefs with regard to probation sentences and how it influences the reformation of offenders within the County. The interview guide was based on the probationers' reforms and structured along the three objectives; probation orders, the role of local administration, and probation supervision; in Nakuru County. It obtained qualitative responses on the rehabilitation outcomes. Interview questions allowed the respondent to grant broad responses that provided requisite depth and insight.

## 5. RESULTS

The study began by asking respondents about the components of probation sentences they like. The study the responses are shown below.

### 5.1 Probation Orders Influence Reformation of Offenders

The paper explores how probation orders influence the reformation of offenders. Responses are given in Table 2.

**Table 2: Probation Orders and Reformation of Offenders**

Statement	Stat	SD-1	D-2	U-3	A-4	SA-5
The probation order requires that am of good behaviour	F	0	10	2	45	19
	%	0	13.2	2.6	59.2	25.0
The probation order compels me to report to the probation office once a month	F	0	23	0	53	0
	%	0	30.3	0	69.7	0
Probation order ensures that I do not associate with persons of questionable behaviour	F	29	0	0	44	3
	%	38.2	0	0	57.9	3.9
The probation officer visits my home frequently	F	0	50	0	21	5
	%	0	65.8	0	27.6	6.6

Probation orders ensures that I engage in meaningful employment	F	22	21	12	21	0
	%	28.9	27.6	15.8	27.6	0
Probation orders are only applicable to first time offenders	F	0	52	0	24	0
	%	0	68.4	0	31.6	0
The probation order will be cancelled if I do not comply.	F	0	21	13	32	10
	%	0	27.6	17.1	42.1	13.2

The study obtained data on whether the probation order requires that respondent be of good behavior. Majority 59.2% (n=45) agreed while 25% (n=19) strongly agreed. This cumulatively gave 84.2% of those that agreed. This implied that a requirement to display good behavior was an important issue among the probation orders. Behavioral change has been shown to be a major issue of focus in probation services. This agrees with views that community support and participation encourage behavioral change in the rehabilitation of probation offenders in Machakos County (Owino, 2016). Literature review reveals that probation workers are receptive to behavior modification concepts. Behavioral management as a new framework for community supervision combines the traditional theoretical approaches of law enforcement (monitoring and compliance) and social work (resource broker and/or counseling) (Taxman, 2014). This study revealed that behavior change is an important consideration in the rehabilitation efforts of probationers in Nakuru County, Kenya.

The study further aimed at examining whether probation order compels probationer to report to the probation office once a month. Majority at 69.7% (n=53) agreed compared to 30.3% (n=23) of those who disagreed. A study that founded on RNR model of offender assessment and treatment revealed that with low-risk offenders, officers utilizes minimally invasive supervision with little to no interventions (Martz, 2021). This implies that reporting to the probation office for the probationers is an important item in probation orders but this is guided by the risk level of the probationer.

The study obtained data on whether probation order ensures that they do not associate with persons of questionable behavior. The majority (57.9%, n=44) of the respondents agreed while 3.9% (n=3) strongly agreed. This gave a cumulative total of 61.8% of those who agreed against 38.2% who disagreed. Based on arguments for RNR model, criminal behavior is multi-factorial and includes social and cultural factors (Andrews & Bonta, 2010). Observing associations to encourage the positive ones therefore becomes imperative for positive behavior modification. This implies that associations are an important consideration in a probation order.

The study obtained data on whether the probation officer visits my home frequently. The majority at 65.8% (n=50) agreed while 34.2% cumulatively disagreed (27.6% agreed and 6.6% strongly agreed representing a total of 26 respondents). Visits should be guided by the level of risk of the probationer (Martz, 2021). This implies that in the implementation of probation orders, visiting of homes by probation officer is an important activity and is critical where the behaviors of a probationer indicate a higher likelihood of reoffending.

The study further sought to determine whether probation orders ensure that the probationers do engage in meaningful employment. Results in table 4:8 reveals that majority at 56.5% cumulatively disagreed (n=43) of which 28.9% strongly agreed and 27.6% agreed. This was against 27.6% of those that agreed. Based on post estimation survival curves a study by Siying and Christi (2022) revealed that probationers who are divorced or separated and those unemployed experienced the quickest time to recidivism. This implies that lack of employment is an important item in the probation orders that could affect the success rate of probation service.

The study further sought data on whether probation orders are only applicable to first time offenders. The results as presented in Table 4:7 shows that majority of respondents at 68.4% disagreed against 31.6% of those that agreed. This implies that in most incidences, probation orders are applicable to anyone regardless of whether they are reoffending or not. However, this contrasts a study by that investigated effectiveness of Probation and Community Service Order Sentencing on Offenders: A Case Study of Nairobi County, that showed that individual's gravity of the offence and criminal history of offender, were factors that led probation sentencing Mutisya, (2020). It implies the history of an offender influences consideration for probation orders.

The study further obtained data on whether a probation order will be canceled when probation fails to comply. The results showed that the majority at 55.3% (n=42) were cumulatively (42.1% agreed and 13.2% strongly agreed) in agreement. This is against 27.6% (n=21) of those who disagreed. The POs response revealed that they will always get back to the sentencing court when probationers abscond or fail to adhere to the orders. This implies that probationers are aware that probation orders should be adhered to failure to do so has consequences.

## 5.2 Challenges of Probation Orders

The study obtained data from probationers on how they perceived probation orders. The majority at 65% cited the inability of officers to reach them always, while 17% said they were not always free to go to any place that they wanted. For example, when cattle move, the thinking that they are being observed will mean they cannot go far. Another case is when they cannot attend even critical family issues. The responses also showed that 18% of the respondents thought that lack of adequate vehicles was a challenge that faced probation officers. The finding was confirmed during interviews that the failure of the probation officers to reach them always is a challenge facing probation orders in the study area.

## 6. CONCLUSIONS AND RECOMMENDATIONS

The study concludes that probation orders are important for the effective implementation of probation including a display of good behavior on the side of the probationer, reporting monthly, and dissociation with persons of questionable behavior. It also includes visiting probationers' homes with a probation officer and encouraging the probationers to engage in meaningful employment. Lack of employment is an important item in the probation orders but currently, lack of employment is an impediment. The orders do apply to not only first-time offenders but to all. These orders are canceled when probationers fail to comply (abscond) thus they should be adhered to without failure since absconding has consequences. The Government agencies (the judiciary, the local administration, and P&AS) should include opportunities for employment for probationers to increase the success rate of reformation.

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