



**NATIONAL CRIME RESEARCH CENTRE**

*Fighting Crime through Research*



**A STUDY ON THE DELIVERY OF COMMUNITY-BASED  
SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**



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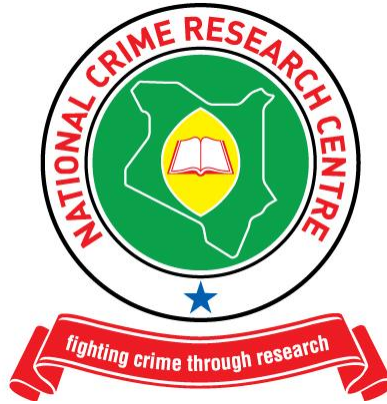
**A STUDY ON THE DELIVERY OF COMMUNITY-BASED  
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# **NATIONAL CRIME RESEARCH CENTRE**



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**NCRC Research Report No. 7**

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# TABLE OF CONTENTS

	Page
<b>COPY RIGHT .....</b>	<b>ii</b>
<b>LIST OF TABLES .....</b>	<b>vi</b>
<b>LIST OF FIGURES .....</b>	<b>viii</b>
<b>FOREWORD.....</b>	<b>ix</b>
<b>ACKNOWLEDGEMENT.....</b>	<b>x</b>
<b>ABBREVIATIONS AND ACRONYMS.....</b>	<b>xi</b>
<b>OPERATIONAL DEFINITION OF KEY TERMS .....</b>	<b>xii</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>xiii</b>
<b>CHAPTER ONE: INTRODUCTION.....</b>	<b>2</b>
<b>1.1 Background of the Study.....</b>	<b>2</b>
1.1.1 General context of Probation Orders .....	2
1.1.2 Global context of Probation Orders .....	3
1.1.3 African context of Probation Orders.....	4
1.1.4 Probation Orders in Kenya.....	6
1.1.4.1 History and purpose of Probation Orders in Kenya.....	6
1.1.4.2 Legal basis of Probation Orders in Kenya .....	7
1.1.4.3 Conditions of a Probation Order .....	8
1.1.4.4 Supervision of Probation Orders.....	9
<b>1.2 Problem Statement.....</b>	<b>9</b>
<b>1.3 Objectives of the Study .....</b>	<b>10</b>
1.3.1 General objective .....	10
1.3.2 Specific objectives .....	10
<b>1.4 Justification of the study .....</b>	<b>11</b>
<b>1.5 Assumptions of the Study .....</b>	<b>11</b>
<b>1.6 Scope of the Study .....</b>	<b>11</b>
<b>1.7 Theoretical Framework of the Study .....</b>	<b>12</b>
1.7.1 Retributive Theory .....	12
1.7.2 Deterrence Theory .....	13
1.7.3 Reformative Theory .....	14
<b>CHAPTER TWO: METHODOLOGY OF THE STUDY .....</b>	<b>25</b>
<b>2.1 Introduction.....</b>	<b>25</b>
<b>2.2 Research Design .....</b>	<b>25</b>
<b>2.3 Sources of Data and Methods of Data Collection .....</b>	<b>29</b>
2.3.1 Sources of data.....	29
2.3.2 Data collection methods and tools .....	29
2.3.2.1 Primary data collection methods and tools .....	29
2.3.2.2 Secondary data collection methods and tools .....	29
<b>2.4 Data Collection and Management .....</b>	<b>29</b>
<b>2.5 Methods of Data Analysis.....</b>	<b>30</b>
<b>2.6 Ethical considerations.....</b>	<b>30</b>

<b>CHAPTER THREE: RESULTS AND DISCUSSIONS .....</b>	<b>32</b>
<b>3.1 Introduction.....</b>	<b>32</b>
<b>3.2 Socio-demographic characteristics of sample respondents.....</b>	<b>32</b>
<b>3.3 Utilization of Probation Orders and its Extent .....</b>	<b>36</b>
3.3.1 Courts' utilization of Probation Orders.....	36
3.3.2 Perceptions on adequacy of utilization of Probation Orders sentence.....	37
3.3.3 Categorization of Probation Orders offenders and crimes/offences .....	41
3.3.3.1 Categorization of Probation Orders offenders .....	41
3.3.3.2 Types of crimes/offences committed by probationers .....	42
3.3.3.3 Number and duration of Probation Orders sentence.....	45
3.3.3.4 Benefits of Probation Orders sentence.....	47
3.3.3.5 Empowerment of probationers.....	52
3.3.3.6 Probationers' rehabilitation and supervision activities .....	55
3.3.2.7 Perceptions on adequacy of utilization of Probation Orders sentence.....	56
<b>3.4 Factors Influencing Utilization of Probation Orders Sentence .....</b>	<b>57</b>
3.4.1 Factors contributing to the adequate utilization of Probation Orders sentences.....	57
3.4.2 Factors contributing to the inadequate utilization of Probation Orders sentence .....	59
3.4.3 General perceptions on key aspects of utilization of Probation Orders.....	61
<b>3.5 Compliance with Probation Orders .....</b>	<b>64</b>
3.5.1 Supervision, monitoring and evaluation of Probation Orders .....	64
3.5.1.1 Supervision of Probation Orders.....	64
3.5.1.2 Monitoring and evaluation of Probation Orders sentence .....	71
3.5.2 Satisfaction with level of compliance with Probation Orders .....	73
3.5.3 Rate of successful completion of Probation Orders sentence .....	76
3.5.4 Key involvement and/or participation aspects and factors influencing compliance with Probation Orders sentence .....	78
3.5.4.1 Key involvement and/or participation aspects influencing compliance with Probation Orders sentence.....	78
3.5.4.2 Key factors influencing compliance with Probation Orders sentence .....	84
3.5.5 General perceptions on key aspects of compliance with Probation Orders sentence ....	86
<b>3.6 Public Attitude towards Probation Orders Sentence .....</b>	<b>89</b>
3.6.1 Public support and attitude towards Probation Orders .....	89
3.6.2 Factors influencing public attitude towards Probation Orders .....	90
3.6.3 Actions needed to achieve enhanced positive public attitude towards Probation Orders .....	93
<b>3.7 Effectiveness of Probation Orders in the Rehabilitation of Offenders .....</b>	<b>95</b>
3.7.1 Perceptions on general effectiveness of Probation Orders sentence.....	95
3.7.2 Perceptions on general effectiveness of specific aspects of Probation Orders sentences .....	96
<b>3.8 Challenges Facing the Effective Delivery of Probation Orders and Possible Solutions .....</b>	<b>99</b>
3.8.1 Challenges facing the effective delivery of Probation Orders .....	99
3.8.2 Suggestions for solving challenges facing Probation Orders sentence.....	102
<b>3.9 Interventions for Strengthening Probation Orders Sentence.....</b>	<b>109</b>
<b>CHAPTER FOUR: SUMMARY OF FINDINGS, CONCLUSION AND</b>	
<b>RECOMMENDATIONS.....</b>	<b>116</b>
<b>4.1 Introduction.....</b>	<b>116</b>
<b>4.2 Summary of Major Findings.....</b>	<b>116</b>

4.2.1 Extent of utilization of Probation Orders .....	116
4.2.3 Factors that affect the levels of compliance with Probation Orders by probationers ..	117
4.2.4 Factors shaping public attitudes towards Probation Orders .....	119
4.2.5 Effectiveness of Probation Orders in the rehabilitation of offenders .....	119
4.2.6 Challenges facing the effective delivery of Probation Orders and possible solutions.	119
4.2.7 Interventions for strengthening Probation Orders sentence .....	121
<b>4.3 Conclusions.....</b>	<b>122</b>
<b>4.4 Key Recommendations .....</b>	<b>122</b>
4.4.1 Policy recommendations .....	122
4.4.2 Recommendations for further research .....	130
<b>REFERENCES.....</b>	<b>131</b>
<b>APPENDICES .....</b>	<b>139</b>

## LIST OF TABLES

	<b>Page</b>
Table 2.1: Sampling of counties and Probation Orders stations .....	25
Table 2.2: Total number of sample respondents .....	28
Table 3.1: Socio-demographic characteristics of sample respondents .....	34
Table 3.2: Actual number of offenders serving Probation Orders sentences between 2014 and 2018 by sex .....	36
Table 3.3: Comparison of custodial and non-custodial sentences for similar offences in 2016 .....	38
Table 3.4: Perceived types of crimes/offences committed by probationers as reported by sample respondents.....	42
Table 3.5: Actual number of offenders (probationers) serving Probation Orders sentence by sex and type of offence in 2018.....	44
Table 3.6: Estimated average monthly Probation Orders placements and caseloads .....	45
Table 3.7: Benefits of Probation Orders sentences and the extent of their realization .....	49
Table 3.8: Average percentage realization to a large extent of benefits of Probation Orders sentences.....	51
Table 3.9: Forms of empowerment of probationers as reported by sample respondents .....	53
Table 3.10: Factors contributing to adequate utilization of Probation Orders sentence .....	58
Table 3.11: Factors contributing to inadequate utilization of Probation Orders sentence.....	60
Table 3.12: General perceptions on key aspects of utilization of Probation Orders.....	62
Table 3.13: Reasons why family members of probationers never contact or rarely contact Probation Officers and Sentencing Officers on probationers' rehabilitation .....	70
Table 3.14: Reasons given for Law Courts never or rarely conducting monitoring and evaluation of Probation Orders sentence .....	72
Table 3.15: Reasons supporting assertion that probationers comply with Probation Orders ..	75
Table 3.16: Estimated rate of successful completion of Probation Orders sentence .....	76
Table 3.17: Actual Probation Orders sentence completions for year 2016 and 2017.....	77
Table 3.18: Responses on freedom of participation in deciding offenders' sentences .....	79
Table 3.19: Explanations on freedoms to decide offenders' sentences before sentencing .....	79
Table 3.20: Explanations on participation of relatives of offenders and/or victims in Probation Orders' sentencing decisions .....	81
Table 3.21: Explanations on local community's participation in deciding the offender's Probation Orders sentence .....	83
Table 3.22: Key factors influencing compliance with Probation Orders sentence .....	84
Table 3.23: General perceptions on key aspects of compliance with Probation Orders.....	87
Table 3.24: Factors contributing to favourable public attitude towards Probation Orders.....	91
Table 3.25: Factors contributing to unfavourable public attitude towards Probation Orders ..	92
Table 3.26: Actions needed to achieve enhanced positive public attitude towards Probation Orders .....	94
Table 3.27: Perceptions on general effectiveness of specific aspects of Probation Orders sentences.....	98
Table 3.28: Challenges facing the effective delivery of Probation Orders .....	100
Table 3.29: Sample respondents' suggestions on possible general solutions to the challenges facing Probation Orders sentence .....	103



Table 3.30: Suggestions for solving challenges facing specific key stakeholders in the Probation Orders sentence .....	104
Table 3.31: Proposed general key interventions for strengthening Probation Orders .....	110
Table 3.32: Stakeholder-specific driven interventions towards strengthening Probation Orders sentence .....	111

## LIST OF FIGURES

	<b>Page</b>
Figure 1: Perceptions on adequacy of utilization of Probation Orders sentence .....	37
Figure 2: Actual number of offenders serving up to 3 years' Probation Orders sentence and less than 2 years prison sentence between 2014 and 2018 .....	39
Figure 3: Responses on whether or not majority of probationers are petty or serious offenders .....	41
Figure 4: Crimes/offences for which probationers were convicted of.....	43
Figure 5: Duration of Probation Orders sentence as reported by probationers.....	46
Figure 6: Duration of Probation Orders sentence as reported by victims.....	47
Figure 7: Responses on whether or not Probation Orders sentence was beneficial.....	47
Figure 8: General perceptions on extent of realization of benefits of Probation Orders sentence .....	50
Figure 9: Probationers' rehabilitation and supervision activities .....	55
Figure 10: Perceptions on adequacy of utilization of Probation Orders sentence .....	57
Figure 11: Responses on whether or not probationers report for supervision and rehabilitation as instructed by Probation Officers .....	65
Figure 12: Frequency of contacts made by Sentencing Officers and Probation Officers to probationers .....	66
Figure 13: Frequency of visits by Sentencing Officers and Probation Officers to probationers in their families and/or homes .....	67
Figure 14: Responses on whether or not Probation Officers and Sentencing Officers contact families of probationers and/or the community concerning probationers' rehabilitation	68
Figure 15: Frequency of contacts made from Probation Officers and Sentencing Officers to families of probationers and/or the community concerning probationers' rehabilitation	68
Figure 16: Frequency of contacts made from family members of probationers to Probation Officers and Sentencing Officers concerning probationers' rehabilitation .....	70
Figure 17: Frequency of monitoring and evaluation of Probation Orders sentence by Law Courts .....	71
Figure 18: Satisfaction with the level of compliance with Probation Orders .....	73
Figure 19: Responses on whether or not probationers comply with Probation Orders .....	74
Figure 20: Responses on whether or not relatives of probationers and/or victims participate in deciding the offender's Probation Orders sentence.....	80
Figure 21: Responses on whether or not the local community participates in deciding the offender's Probation Orders sentence .....	82
Figure 22: Responses on public attitude towards Probation Orders sentence .....	90
Figure 23: Perceptions on general effectiveness of Probation Orders sentences.....	96


## FOREWORD

The provision of public safety is one of the leading functions of public service and successful performance in this role requires a strategic approach that demands concerted efforts by all the stakeholder institutions with an aspect of security functions in their mandates. The National Crime Research Centre (NCRC) has the overriding objective and role of carrying out research into the causes of crime and its prevention and to disseminate such research findings to relevant government agencies tasked with the responsibilities of administration of criminal justice. This is with a view that such information passed over to them will be of great assistance in their policy formulation and planning. Understanding and managing crime in terms of specific crime prevention approaches becomes a practical way of appreciating and tackling it.

Worldwide, penologists have appreciated the critical role of non-custodial approaches of rehabilitation and supervision of petty offenders in crime prevention and management as a better alternative to imprisonment of such offenders. The latter approach has been considered expensive to governments in a number of ways including: the economic costs of maintaining prisoners; prison congestion; hardening of petty offenders to become hardcore offenders and recidivists; and contributing to the breakdown of families and the delinquency of the dependent minors.

The study on Probation Orders was given impetus by the continued use of costly prison sentences on petty offenders despite the existence of the option of probation sentences which have to a large extent been proven to be beneficial in the socio-economic development of the country. In the light of its potential to contribute meaningfully toward the effective administration of criminal justice in the country, the study focused on the: extent of utilization of Probation Orders in Kenya; factors influencing the utilization of Probation Orders by the courts in Kenya; factors affecting the levels of compliance with Probation Orders by offenders; factors shaping public attitudes toward Probation Orders; challenges facing the delivery of Probation Orders in Kenya; and the interventions towards strengthening Probation Orders sentence in Kenya.

This publication brings to fore milestone findings and pertinent issues which if properly utilized and rightly adopted offer good advisory framework in policy formulations and programmatic actions essential for strengthening the utilization of Probation Orders sentence in the administration of criminal justice and crime prevention in the country. I therefore call upon all players in the Governance, Justice, Law and Order Sector and the other agencies represented in the National Council on the Administration of Justice to support the Probation Orders sentence in order to realize its full potential. Finally, I wish to thank all state and non-state agencies and individuals that supported the study, NCRC Governing Council members and management who guided the finalization of this report.



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## **ABBREVIATIONS AND ACRONYMS**

ABS	Australian Bureau of Statistics
BJS	Bureau of Justice Statistics
CSO	Community Service Orders
CUCs	Court Users' Committees
DPP	Director of Public Prosecutions
EPICS	Effective Practices in Community Supervision
FGD	Focus Group Discussion
GJLOS	Governance, Justice, Law and Order Sector
ICPR	Institute for Criminal Policy Research
ICTA	Information and Communication Technology Authority
JTI	Judiciary Training Institute
JUV	Juvenile
KPAS	Kenya Probation and Aftercare Service
KLRC	Kenya Law Reform Commission
KNBS	Kenya National Bureau of Statistics
MTP	Medium Term Plan
NAPO	National Association of Probation Officers
NCAJ	National Council on the Administration of Justice
NCLR	National Council for Law Reporting
NCRC	National Crime Research Centre
OVP & MOHA	Office of the Vice President and Ministry of Home Affairs
PRI	Penal Reform International
PSTC	Prisons Staff Training College
PO	Probation Orders
SPSS	Statistics Package for Social Sciences
STARR	Staff Training Aimed at Reducing Re-arrest
UNAFRI	United Nations African Institute for the Prevention of Crime and the Treatment of Offenders
UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders
UNODC	United Nations Office on Drugs and Crime
UN	United Nations
USA	United States of America
WPR	World Prison Report

## **OPERATIONAL DEFINITION OF KEY TERMS**

### **Challenges facing the delivery of Probation Orders**

These were the difficulties, hindrances or obstacles facing the effective implementation of the **Probation Orders sentence**.

### **Compliance with Probation Orders**

This referred to probationer's adherence to the provisions and/or requirements of the Probation Orders.

### **Factors influencing the utilization of Probation Orders**

These referred to the positive and/or negative aspects which influenced the decision of Sentencing Officers (that is, Magistrates and Judges) to either commit or not to commit offenders to serve Probation Orders sentences.

### **Factors shaping public attitudes towards Probation Orders**

These were the positive and/or negative aspects which influenced the attitude of members of public towards Probation Orders sentence.

### **Interventions towards strengthening Probation Orders**

These referred to a set of actions and/or strategies required to improve the delivery and results of the Probation Orders sentence.

### **Probation Order**

This referred to an Order made by a Law Court placing a person under supervision of a Probation Officer as provided for under Cap 64 Laws of Kenya.

### **Probation Orders Sentence**

This referred to a non-custodial sentence handed to an offender by a Law Court to undergo criminal behavior rehabilitation under the overall supervision and rehabilitation of a Probation Officer for a period of between six months and three years as provided for under Cap 64 Laws of Kenya. A person serving the sentence is called a probationer.

### **Public attitudes towards Probation Orders**

This referred to the positive and/or negative thinking or feeling of the general public about the different aspects of the Probation Orders sentence.

### **Utilization of Probation Orders sentence**

This referred to the action of making practical and effective use of Probation Orders by placing offenders to serve the sentence.

## **EXECUTIVE SUMMARY**

This study aimed at examining the factors influencing the delivery of Probation Orders in Kenya. The specific concerns of the study were to: establish the extent of utilization of Probation Orders in Kenya; establish the factors influencing the utilization of Probation Orders by the courts; identify factors that affect the levels of compliance with Probation Orders by offenders; identify the factors shaping public attitudes towards Probation Orders; examine the effectiveness of Probation Orders in the rehabilitation of offenders; identify challenges facing the delivery of Probation Orders; and suggest appropriate and effective interventions towards strengthening Probation Orders in Kenya.

The study was framed in the context of retributive, deterrence and reformatory theories of crime and their relevance in the non-custodial management of offenders especially with regard to treatment and rehabilitation.

The study employed the descriptive cross-sectional survey design as the most appropriate methodology for generating relevant information on the effective delivery of Probation Orders. Primary and secondary sources were utilized to obtain data. Both probability and non-probability sampling techniques were used in the selection of all respondents for the study. Being a national study, a total of twenty four (24) counties out of the forty seven (47) counties in Kenya were selected randomly for purposes of overall generalizability. These 24 counties were Nairobi, Kiambu, Nyeri, Nyandarua, Machakos, Makueni, Tharaka Nithi, Meru, Isiolo, Taita Taveta, Kilifi, Mombasa, Kajiado, Nakuru, Baringo, Bomet, Kisii, Nyamira, Homa Bay, Kisumu, Siaya, Kakamega, Bungoma and Vihiga. Thirty-seven (37) specific Sub-County Probation Stations (which also had a similar number of Law Court stations) were selected purposively for the study from these 24 sampled counties. The main aim for purposive selection of these specific sites from the sampled counties was in considerations of only those areas that had experienced sizable cases of non-custodial regimes.

The total number of sample respondents was 1,311 comprising of 44 Magistrates, 137 Probation Officers, 561 probationers (offenders), 68 victims and 501 members of the public drawn from the local community surrounding the sampled Probation stations. The Key Informants for the study included Judges, County Directors of Probation and Aftercare Service, Police Commanders, Prison Commanders, Prosecutors and National Government Administrative Officers in the Ministry of Interior and Coordination of National Government. Focus Group Discussions were also conducted with participants drawn from victims, probationers (offenders), Probation Case Committee members, members of the public/community, Probation Officers (that is, Sub-county/District Probation Officers and County Director of Probation Service).

The study utilized an interview schedule with both open and closed ended questions administered by way of face-to-face interviews to the members of the public, probationers

(offenders) and victims to collect both quantitative and qualitative data from them on their general knowledge, perceptions, opinions and experiences about the delivery of Probation Orders in Kenya. Self-administered questionnaires with both closed ended and open ended questions were also used to collect data from the Magistrates and Probation Officers. Key Informant Guides and Focus Group Discussion Guides were used to collect data from Key Informants and participants of Focus Group Discussions respectively.

Qualitative and quantitative methods of data analysis were utilized. Quantitative data was coded and analyzed using Statistical Package for Social Sciences (SPSS) and Microsoft Office excel and the information was presented in frequency and percentage tables and figures. Qualitative data was analyzed by way of interpretation of responses obtained from key informants and participants of Focus Group Discussions. All information from the analyzed data was presented thematically based on the specific objectives of the study.

## **Key Findings**

### **Extent of utilization of Probation Orders in Kenya**

Findings of the study confirmed that Law Courts were utilizing Probation Orders sentences, an assertion supported by actual secondary data which showed that an average of 12,886 probationers per year were serving Probation Orders sentence within the five year period between 2014 and 2018. The actual types of crimes/offences for which offenders were convicted of and placed on Probation Orders sentence (in order of prominence) were mainly general stealing, assault causing actual bodily harm, possession of illicit /illegal brew and drugs, malicious damage to property, creating disturbance and being drunk and disorderly.

Probation Orders were reported to be beneficial to a large extent especially in terms of: assisting in maintaining family ties; preventing hardening of petty offenders; decongesting prisons; enabling offenders to continue with their economic activities; rehabilitation of offenders; imparting skills to offenders; saving public institutions' of money/funds; reconciliation and reintegration of offenders, victims and the community; crime deterrence; reducing stigmatization of offenders; providing an alternative to imprisonment and fines for offenders who can't afford; and empowerment in the form of guidance and counseling, acquisition and transfer of skills, financial support and/or provision of working tools and equipment, and vocational training.

Despite the benefits, between 2014 and 2018, the number of Probation Orders sentences utilized on petty offences remained below 18.0% of the combined number of all the petty offences dealt with through Probation sentences (of between 6 months and 3 years) and short prison sentences of below 2 years. This may therefore be interpreted to imply that Probation Orders sentences are not adequately utilized in the rehabilitation of petty offenders in Kenya even though most sample respondents perceived the sentence to be adequately utilized.



### **Factors influencing the utilization of Probation Orders by the courts in Kenya**

The main factors reported by at least 1 out of 10 respondents in each of the five categories of sample respondents as influencing adequate utilization of the Probation Orders sentence by Law Courts were: the petty nature of crimes and/or type of offenders; committed, efficient and competent Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons. Further, over 50.0% of all sample respondents agreed that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders had encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community had motivated and/or encouraged sentencing officers to continue utilizing the option; and that satisfaction with the rehabilitation of the probationers by the Probation Department had motivated and/or encouraged sentencing officers to continue utilizing the option. The few sample respondents who argued that Probation Orders were not adequately utilized mainly cited the serious nature of most offences committed in the localities and poor supervision of probationers. Over 50.0% of all sample respondents also agreed that: hostility of some victims and local community members to non-custodial sentences discouraged the use of Probation Orders; and that security challenges posed by some offenders discouraged the use of Probation Orders sentences on them.

### **Factors that affect the levels of compliance with Probation Orders by probationers**

Findings from majority of the Magistrates (90.9%) and Probation Officers (95.6%) showed that probationers' compliance with the Probation Orders was satisfactory. The main reasons given to validate the high satisfaction rating were: low levels of absconding; strict supervision by Probation Officers; and reformation and rehabilitation of probationers. Similarly, majority of the members of the public (75.2%), probationers (88.9%) and victims (79.4%) said probationers complied with the Orders and the main reasons given included: fear of imprisonment among the probationers; low levels of absconding; strict supervision by Probation Officers; and benefits associated with Probation Orders.

The rate of successful completion of Probation Orders sentences as a measure of compliance was estimated at 50-74% by most of the Magistrates and 75% and above by majority of the Probation Officers. The key factors influencing compliance with Probation Orders sentence (as indicated by the highest percentage reported by either of the categories of sample respondents) were found to include: fear of incarceration/imprisonment for breach of Probation Orders; the level of supervision of probationers by Probation Officers; community support of Probation Orders; a clear understanding and attitude of the probationer towards the sentence; the benefits the probationer gets from the Probation Orders sentence; and use of local administration and community in the supervision of probationers.

Other important direct and indirect factors influencing compliance with Probation Orders that were reported by more than 50.0% of respondents in most of the categories of sample respondents were: probationers' negative opinion about the sentence; offenders corrupting

Sentencing Officers to get Probation Orders sentences; offenders corrupting Probation Officers to get Probation Orders sentences; direct placement of offenders by courts to Probation Orders supervision; tribalism, nepotism and favouritism within the sentencing agencies; tribalism, nepotism and favouritism within the offender rehabilitation and supervising agencies; lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision; lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision; lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision; lack of support to employed probationers from their employers; and economically unstable probationers who are likely to abscond their sentences to look for livelihoods.

### **Factors shaping public attitudes towards Probation Orders**

The findings from most of the Magistrates and majority of the Probation Officers, probationers, members of the public and victims showed that the public attitude towards the Probation Orders sentence was favourable. The leading factors (as indicated by the highest percentage in either of the five categories of sample respondents) contributing to the favourable public attitude included: community sensitization on the Probation Orders sentence; offender rehabilitation aspect of the Probation Orders sentence; promotion of family unity and/or ties; the fact that an offender does not suffer imprisonment; enablement of the offender to continue with other socio-economic activities; enhanced reconciliation between offenders and victims; and the fact that Probation Orders sentence is a lenient punishment. The single most important action needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence was undertaking of public awareness and sensitization on Probation Orders.

### **Effectiveness of Probation Orders in the rehabilitation of offenders**

Probation Orders sentences were perceived by majority of the Magistrates (86.4%), Probation Officers (94.9%), probationers (89.7%), members of the public (77.0%) and victims (76.5%) to be generally effective in the rehabilitation of offenders. All the specific aspects of Probation Orders were also perceived to be generally effective (with an average rating of above 55.0%), with the highest to the least effective specific aspects of Probation Orders (based on the average percentage rating of effectiveness) being: enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence; decongestion of prisons of non-serious and first offenders; avoiding contamination of non-serious and first offenders by hardened criminals; rehabilitation of non-serious offenders within the community; saving tax payers money; prevention of juvenile delinquency of the dependent minors; promotion of reconciliation between the offender and the victim of crime; individual offender paying back (reparation) for the injury done to the community; acquisition of survival skills; and linking of offenders to potential employers.

### **Challenges facing the effective delivery of Probation Orders and possible solutions**

The major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: lack of knowledge and training on Probation Orders sentence; limited resources for the Probation Department; lack of support and/or negative attitude by relevant stakeholders; non-compliance and reoffending by some probationers; difficulty among probationers in accessing Probation Offices; corruption among some stakeholders; poor supervision of probationers; unfavourable life conditions among Probationers; and failure to compensate victims for injury and/or loss caused by the offender.

The main general possible solutions to the challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: conducting public awareness and sensitization on Probation Orders; provision of adequate resources to Probation Department; establishment of effective rehabilitation programmes for petty offenders; strict and close supervision of offenders; encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence; ensuring convenient reporting venues for Probationers; enhancing empowerment of offenders; encouraging effective collaboration among stakeholders; and providing flexible reporting hours for employed Probationers.

The main suggestions given by at least 1 out of 10 Magistrates and/or Probation Officers in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) on how the challenges facing specific key stakeholders could be addressed towards the effective delivery of Probation Orders sentence in Kenya were: continuous training and/or awareness creation and/or sensitization of the various stakeholders on Probation Orders sentences; provision of adequate resources to the stakeholders; encouraging reconciliation, restorative justice and compensation where possible; ensuring compliance by probationers through guidance and counseling; empowering the probationers to start tangible income generating activities/projects; encouraging data sharing among stakeholders; enhancing collaboration with other stakeholders; involving victims in decision making during the sentencing process; close monitoring of probationers; providing guidance and counseling to victims; putting in place proper rehabilitation programmes at the prison facility; encouraging attitude change among Police Officers towards Probation Orders; encouraging positive attitude towards probationers; and enhancing execution of warrants of arrest against absconders of Probation Orders.

### **Interventions for strengthening Probation Orders sentence**

The proposed general key interventions for strengthening Probation Orders in Kenya which were reported by at least 1 out of 10 of the sample respondents drawn from members of the public, probationers and victims in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: training and sensitization of

stakeholders on Probation Orders; establishment of effective rehabilitation and empowerment programmes for probationers; provision of adequate resources to Probation Department; strict and close supervision of probationers; encouraging reconciliation, restorative justice and compensation where possible; proper coordination among relevant stakeholders; and elimination of corruption in the Probation Orders sentence.

The stakeholder-specific driven interventions for strengthening the Probation Orders sentence which were suggested by at least a third of the Magistrates and/or Probation Officers had to do with: training, sensitization and awareness creation of different stakeholders on Probation Orders; allocation of adequate resources for Probation Orders activities; and guidance and counseling of offenders. Specifically: the Judiciary was to undertake training and sensitization of judicial officers on effective utilization of Probation Orders sentences; the Probation and Aftercare Service Department was to enhance training of Probation Officers on Probation and allocate adequate resources for Probation Orders activities; the National Police Service was to undertake training and sensitization of Police Officers on Probation Orders sentence; the Office of the Director of Public Prosecutions was to undertake training and sensitization of Prosecutors on Probation Orders; the Kenya Prisons Service was to train Prison Officers on Probation Orders sentence; the community was to create public awareness in the community on Probation Orders sentence; the direct victims of crime were to participate in awareness creation on Probation Orders and embrace restorative justice and compensation; and the probationers were to undertake sensitization of other offenders about the Probation Orders sentence and participate in guidance and counseling.

Based on the findings of this study, it is concluded that: Probation Orders sentences for the rehabilitation of petty offenders are underutilized by Law Courts with preference being on prison sentences; most stakeholders are generally satisfied with the level of compliance with Probation Orders by offenders; public attitude towards Probation Orders is generally favourable and that there are key plausible actions that could enhance it; where Probation Orders sentences have been utilized, they are generally effective in the rehabilitation of offenders; the effective delivery of Probation Orders faces some key general and institution-specific challenges which need to be addressed by all relevant players; and that there are key general and institution-specific interventions that need to be put in place towards strengthening Probation Orders in the country.

## **Key Recommendations**

This study recommends:

- 1) That the Judiciary heightens its role in the effective management of the **national crime burden** (of about Kshs. 3.15 billion a year (that is, Kshs. 175 spent per day in maintaining one prisoner) with respect to funds spent on the estimated 50,000 daily prison inmate population) by way of undertaking full implementation of section 7 and 9 of the Sentencing Policy Guidelines which, among others, prioritize the utilization of non-custodial sentences as a first option of sentencing for petty

offenders (especially whose prison sentences would have been three (3) years and below), and focus on the main aim of the Probation Orders sentence of facilitating the reformation and rehabilitation of the offender.

- 2) That the Probation and Aftercare Service Department puts in place offender treatment, rehabilitation and supervision measures that are demographic-specific (especially gender-specific) and targeted at the criminogenic needs of the different offence-categories of the probationers.
- 3) In partnership with the Information and Communication Technology Authority (ICTA), the Judiciary, Probation and Aftercare Service Department and the Kenya Prisons Service establish an inter-linked Offender Record Management System (especially an online real-time portal) dedicated for uploading, sharing and monitoring of prison and non-custodial sentence placements data and statistics and connected across the country's law courts, probation offices and prisons with a view to facilitating the monitoring of sentencing patterns and trends and curtailing the unconscious over-utilization of prison sentences on petty offences.
- 4) That the Probation and Aftercare Service Department designs a programme for securing the trust and confidence of the Judiciary on the effective functioning of the Probation Orders sentence especially by deliberately and regularly sharing with the Judiciary reports of evidence-based milestones realized through the sentence as a compelling reason for Sentencing Officers' continued and enhanced utilization of the sentence.
- 5) That Court Users' Committees (CUCs) and Probation Case Committees in respective jurisdictions spearhead multi-agency and multi-faceted approaches targeted on improvement of the aspects of key stakeholder (including community) support and participation in probationers' management, rehabilitation, supervision and psychological empowerment as key facilitators of offenders' compliance with the Probation Orders and their rehabilitation and reformation in general.
- 6) Addressing youth criminality through expansion of the Youth Empowerment Programme to include a distinct component of youthful ex-offenders' economic empowerment with a special focus on an Ex-offenders' Revolving Fund, Employment and Entrepreneurship (especially skill, business start-up capital and tool boxes) Development Programme.
- 7) A deliberate review of the existing policy, legislative and administrative frameworks on issuance of Police Clearance Certificate (popularly known as Certificate of Good Conduct) to facilitate the issuance of the certificates to rehabilitated and reformed ex-offenders which will in turn facilitate the ex-offenders in securing formal employment and/or addressing their 'lifetime criminal label' and stigma

- 8) That the National Police Service prioritizes and/or commits to ensuring compliance with Probation Orders by undertaking timely execution of warrants of arrest for those probationers who breach the provisions of the Orders especially by absconding the sentence and/or committing further offences.
- 9) That the Judiciary gives punitive yet guaranteed non-custodial graduated fines (that is, fines paid over some time) to those who abscond the Probation Orders sentence aimed at guarding against prison overcrowding by petty offenders and reducing the confidence of probationers to deliberately abscond their sentences.
- 10) That the Probation and Aftercare Service Department strengthens its Probation Training Institute, and partners with other relevant local and foreign training institutions, to implement a continuous Probation Officers' skill and knowledge-base improvement programme which emphasizes on offender rehabilitation-related aspects (such as guidance and counselling) necessary for assisting the offenders overcome criminal behaviour tendencies and other socio-psychological and economic problems responsible for the criminogenic needs of the offenders (that is, the risk factors responsible for offending).
- 11) That all training institutes and/or colleges managed and/or run by specific agencies in the administration of criminal justice need to strengthen their staff training curriculum to include current aspects and/or dynamics of non-custodial sentences in general and Probation Orders sentence in particular.
- 12) That the National Council on the Administration of Justice (NCAJ) and respective Court Users' Committees (CUCs), spearheaded by the Judiciary and the Probation and Aftercare Service Department, sustain and/or enhance positive public attitude towards the Probation Orders sentence through an imaginative and effective media strategy and by undertaking continuous public sensitizations and national and county-based outreach programmes and/or activities (for instance Service Weeks, offender rehabilitation clinics and Corporate Social Responsibility activities) that also showcase the benefits of the sentence to the family, community and crime and offender management in the country in general.
- 13) That the Judiciary institutes a programme for supervision, monitoring and evaluation of Probation Orders towards enhancing effectiveness of the sentence.
- 14) That the National Treasury, in partnership with development partners and county governments, enhance the financial, infrastructural and human resourcing of the Judiciary and Probation and Aftercare Service Department towards enhancing and strengthening the effective delivery of the Probation Orders sentence.

- 15) Strengthening the functions of Corruption Prevention Committees in the Judiciary and Probation and Aftercare Service Department to deal with any forms of corruption in the whole process of Probation Orders sentencing and rehabilitation.
- 16) The prioritization and introduction of a Probation Officers' Outreach and/or Liaison Programme where Probation Officers are deployed (either on full or part-time basis) in national and county government Ministries, Departments and Agencies (MDAs) dealing with youth (including schools) for purposes of offering mainstreamed anti-criminal behaviour guidance and counselling aimed at securing youth dividend outcomes in general and addressing youth criminality in the country in particular.
- 17) That non-custodial offender rehabilitation forms a deliberate standing agenda among all heads of institutions in the administration of criminal justice as a significant contributor in the realization of Vision 2030, the 2018-2022 Medium Term Plan III (MTP III) and the Big Four Agenda especially with respect to crime prevention and management in particular and economic and socio-psychological development of the Kenyan society in general.
- 18) The policy, legal and administrative institutionalization of a parole system (which is not currently practiced in Kenya) and a regular scheduled (preferably quarterly) decongestion programme (especially utilizing Probation Orders) aimed at offloading prisons of all petty offenders and other reformed offenders as a viable crime management and administration of criminal justice strategy.
- 19) The Probation and Aftercare Service Department undertakes enhanced community engagement and participation in non-custodial offender management through a revamped 'Volunteer Probation Officers' Programme' especially enlisting the services of relevant and high integrity serving and/or retired professionals (including religious leaders).

# CHAPTER ONE: INTRODUCTION

## 1.1 Background of the Study

### 1.1.1 General context of Probation Orders

Globally, cases of both petty and serious crimes are on the increase both in developed and developing world. This phenomenon has continued to affect almost all communities around the globe in various ways. Imprisonment as one of the approaches of addressing crime in society has reportedly created challenges in both developing and developed world since it is believed that it no longer serves the purpose for which it was meant - deterrence. This is as a result of the failure of the deterrence and retributive sentencing philosophies that dominated the global criminal justice sector prior to the 20<sup>th</sup> Century (Evans, 2006; Newman, 2010).

Community corrections offer viable alternatives to incarceration of offenders at various stages of the criminal justice system. The alternatives which may be available to offenders include: bail supervision programmes, alternative measure programmes, restitution programmes, fine option programmes, Community Service Orders, Probation Orders, intensive probation supervision, conditional sentence of imprisonment, attendance centre programmes, electronic monitoring, community-based centres, temporary absence programmes and parole (Muntingh, 2005).

The arguments in favor of Probation Orders and other non-custodial sanctions are essentially the mirror image of the arguments against imprisonment. The arguments are that Probation Orders: are considered more appropriate for certain types of offences and offenders; avoid “prisonization” and promote rehabilitation and integration back into the community and are therefore more humane; are generally less costly than sanctions involving imprisonment; and, by decreasing the prison population, they ease prison overcrowding and thus facilitate the administration of prisons and the proper correctional treatment of those who remain in prison. Hence the cost benefit of Probation Orders sentence is effective compared to custodial sentences (Priya, 2014; PRI, 2015).

Probation Orders have been widely advocated as a non-custodial measure in many countries’ penal systems to manage the increasing crime rate and provide protection to their citizens. By Probation Orders, offenders are given individual treatment because crime is seen as manifestations of a social disorder and that such an offender needs help and support. This is in contrast to the traditional principle of punishment fitting the crime since probation provides an offender with a second chance to reform by ensuring a supervision process in order to live a functional life (Newman, 2010; PRI, 2015).

Evans (2006) observes that in some jurisdictions around the globe such as in New Zealand, Australia, Canada, United Kingdom and United States, probation is closely similar to the concept of restorative justice where the victims, including the community, are given a role to



play by the Probation Officers in determining how best to rehabilitate the offenders. Sanctions usually include restitution and community service.

The utilization of Probation Orders as a non-custodial measure in many countries around the world over has been influenced by the rapidly increasing prison populations. For instance, the 2016 World Prison Brief report estimated in excess of 11 million prisoners worldwide with United States of America leading with over 2 Million prisoners. As a matter of concern, many prisons globally are overcrowded hence posing a serious threat in containing this situation. In an effort to address this concern, statutes and policies in different countries have been passed in recent years aimed at reducing or stabilizing prison populations. For instance, in jurisdictions such as USA, courts are reported to have utilized non-custodial options more than custodial sentences (ICPR, 2017).

Probation Orders have been beneficial in many jurisdictions since they are cheaper than custodial sentences; enable offenders to remain free in the society and meet their social and economic obligations for their families thus rendering easier reintegration in the community; they are non-punitive and handle individual criminal cases in their own merit; and have decreased the costs loaded to taxpayers. Probation Orders have therefore helped in rehabilitation of offenders on an individualistic approach (Australian Bureau of Statistics, 2017).

According to McNeill, Raynor and Trotter (2010), several factors affect the levels of compliance with Probation Orders in many countries. These include: encouraging compliance and emphasising on developing good positive working relationship; therapeutic and practical benefits of interacting with the supervising officer that listens to probationers towards desistance through motivation; and encouraging them to solve problems as incentives to compliance. Enforcement strategies that tend to increase community sanctions have been reported to result in high breach rates thus tainting the credibility of Probation Orders in the eyes of Law Courts and the public. On the other hand, extreme tolerance may also damage the credibility of the probation service and community sanctions (Sorsby, Shapland and Robinson, 2017). Therefore, in order to achieve higher compliance rates, there should be a balance on the approaches engaged.

A number of challenges have been observed to face Probation Orders. These include the perception by the community and even the sentencing officers that it is a lenient sanction and lack of community participation in rehabilitation of offenders as well as limited resources. This discourages sentencing officers from imposing the Order thus denying eligible offenders the opportunity to benefit (Penal Reform International (PRI), 2016a).

### **1.1.2 Global context of Probation Orders**

Probation Orders sentences continue to be utilized in many jurisdictions globally. Today in the United States of America, a Probation Orders sentence besides other non-custodial measures has been widely used as an alternative to imprisonment. For instance, according to America's Bureau of Justice Statistics (BJS), there were a total of 6,741,400 prisoners in

2015. Out of this 4,650,900 were serving non-custodial sentences of which 2,173,800 were serving Probation Orders and the rest were serving parole. This is a clear indication that despite the fact that the country has high numbers of prisoners in custody, Probation Orders sentence is highly utilized (Bureau of Justice Statistics, 2017).

In Australia, the Australia Bureau of Statistics (ABS) reported that as at June 2017, the number of probationers stood at 41,156 and those in custody as 41,204. In Western Australia, the cost incurred to manage a probationer is approximately \$24 daily in the community compared to \$332 per day to manage a prisoner in custody (Australian Bureau of Statistics, 2017). This shows that a Probation Orders sentence is cost effective compared to a custodial sentence.

Other countries in Europe are utilizing Probation Orders as a community sanction. For instance, in Sweden Probation Orders is in the form of either probation, probation with community service or probation with contract treatment. According to official calculations, the average cost per client and day adds up to 20 Eur in non-institutional treatment, 160 Eur in an open prison, 230 Eur in a closed prison and 240 Eur in a remand prison. This makes Probation Orders less costly compared to imprisonment. In Netherlands, England and Wales, Probation Orders are increasingly targeting high-risk/dangerous offenders in order to downsize the number of prisoners (Newman, 2010). According to the National Association of Probation Officers (NAPO) in the United Kingdom, there is a considerably greater association of probation service with supervision and rehabilitation of offenders (over 40% for both aspects) and reducing reoffending (11%) than with punishment (2%), public protection (2%) and enforcement which is rated at 4% (NAPO, 2003).

In Asian countries such as India, the provisions of the Probation of Offenders Act 1958 can be applied to first time offenders who have committed minor crimes. The offenders can be released on probation with the supervision of Probation Officers, or they may be released on probation without the supervision of Probation Officers on condition that they promise to conduct themselves well. However, due to the limited enabling statutory framework, these measures are seldom used in India. In Japan, these measures apply to offenders where execution of the sentence has been suspended on condition of probation. They are put under probation supervision from the date of the final adjudication until the end of the suspension of execution of the sentence. Probation orders have been as well in use in other Asian countries such as China and Singapore (UNAFEI, 2002).

### **1.1.3 African context of Probation Orders**

Most prisons in Africa are overcrowded and are inadequately resourced to address the rehabilitation needs of their inmates. The number of prisoners in custody exceeds capacity in more than 20 African countries. For example, according to World Prison Report, South Africa has a prison population of 161,984 compared to prison capacity of 120,000 that includes pre-trial detainees and remand prisoners. In East Africa, Tanzania has a prison population of 31,382 with a prison capacity of 29,552 prisoners (ICPR, 2017). This is a clear

indication that non-custodial sanctions are not adequately utilized as alternatives to imprisonment. While data on the length of the sentences is not easy to obtain, it is likely that those sentenced to prison relatively receive short term prison sentences (PRI, 2012; 2016b).

The problems associated with imprisonment have compelled African countries to re-consider their sentencing practices leading to the adoption of Probation Orders. In South Africa, Probation Orders commenced as early as 1906 when the first Act which contributed to the development of probation services was enacted during Apartheid Era. Although the Act did not make provision for the appointment of Probation Officers, the courts were given the option of alternative sentencing in the form of offenders being placed on probation on condition of good behavior. The regulations issued in terms of the Prisons and Reformatories Act, 1911, explicitly provided for the appointment of Probation Officers. These regulations, published in 1913, spelt out the duties of Probation Officers and the conditions of supervision for offenders. The provisions were aimed at adult offenders, but this opened the path for probation services for child offenders. Ultimately, the Probation Services Act 116 of 1991 was passed which applied to all people (Skelton and Tshehla, 2008).

In West African countries such as Nigeria, probation service was introduced by the colonial government in 1945 but in practice, the service was only for juvenile offenders in the beginning of 1948. It is considered by most correctional authorities as one of the most effective and economic tools for the care, treatment and rehabilitation of adult and juvenile offenders who violate the law (Yekini and Salisu, 2013).

In East Africa, Probation Orders have been mostly utilized in Kenya, Uganda and Tanzania. In Uganda for example, Probation Orders sentence is only imposed for juvenile offenders and social inquiry reports are prepared by Police Officers unlike in Kenya and Tanzania where qualified Probation Officers are involved in preparation of social inquiry reports and supervision of offenders. In Tanzania, a Probation Order is imposed for a period of 1 to 3 years either before or after conviction and mostly for offenders under 18years, elderly or those suffering from ill-health. Adults who are able to work are mostly recommended for Community Service Orders (PRI, 2012).

The problem of prison overcrowding continued despite the introduction of Probation Orders sentencing option in the criminal justice systems in Africa. In response to this challenge, African Nations had to undertake reforms which saw some of them adopt the Beijing Conference resolutions of 1985 and the Tokyo Conference resolutions (popularly known as the Tokyo Rules) of 1990 and several Declarations on utilization of alternatives to imprisonment. This paved way for African countries such as Nigeria, Zimbabwe, South Africa, Kenya, Uganda and Tanzania to start strengthening the utilization of non-custodial sentences. For instance, Zimbabwe's successful experience of utilization of non-custodial sentences in 1990s is as a result of UN Declarations such as the Kampala Declaration of 1996, Kadoma Declaration of 1997 and Ouagadougou Declaration of 2002 (PRI, 2012; 2016).

Probation Orders sentence in Africa has been encouraged in that it: reduces overcrowding in prisons; ensures public safety and security through effective supervision; enhances rehabilitation and reintegration of offenders into the community; permits offender to contribute towards his/her family; avoids an escalation in deviant behavior when petty offenders mix with hardcore offenders; and enables monitoring and supervision of offenders in order to ensure compliance with court orders (Skelton and Tshehla, 2008; Yekini and Salisu, 2013; ICPR, 2017).

#### **1.1.4 Probation Orders in Kenya**

##### **1.1.4.1 History and purpose of Probation Orders in Kenya**

Prior to the enactment of the Probation Ordinance in Kenya in 1943, there were no community corrections. The colonial government largely preferred incarceration of perceived wrong doers to any alternative form of penalty. Community corrections embody all aspects of administering court sanctions in the community by a competent state authority. In Kenya, the establishment of probation service in 1946 was the genesis of such probationary sentences as alternatives to imprisonment. It also came about following the establishment of youth corrective centers (that is, Borstal Institutions and Approved Schools) which required post penal supervision and reintegration (OVP & MOHA, 2009; Owino, 2016).

According to Kenya Probation and Aftercare Service (2017), the first lot of 39 offenders was released on probation in 1946 to the Commissioner of Prisons. The Commissioner was then appointed the Chief Probation Officer given that the programme was domiciled in prison and that there were no trained Probation Officers in Kenya then. Later, organizational positioning saw the Department of Probation aligned to the Judiciary in 1952 before moving to the Ministry of Community Development, enabling the service to superintend over Approved Schools, Remand Homes and accord aftercare supervision to ex-borstal inmates. It was later moved to Office of the Vice-President and Ministry of Home Affairs. This development saw the Principal Probation Officer also become Chief Inspector of Approved Schools. There were several amendments to the probation ordinances before finally the first government of independent Kenya establishing the Probation of Offenders Act Cap 64 Laws of Kenya. Since there were no trained Probation Officers in Kenya, the colonial government brought in 5 British Probation Officers who worked with 9 African Assistants. The colonial government later instituted several policy measures that guided the recruitment and deployment of Assistant Probation Officers. Today, the Kenya Probation and Aftercare Service (KPAS) is in the State Department of Correctional Services in the Ministry of Interior and Coordination of National Government. As of 2016, there were approximately 837 Probation Officers in the country.

Probation Orders is the foundation of community corrections in Kenya. It involves providing personalized case management whose aim is to eliminate circumstances that are associated with driving an individual to commit crime. Thus it aims to forestall re-offending and secure a crime-free life for the offender. Therefore, a probation order is not a punishment but a

rehabilitative order prescribed by the court to be served in the community on the basis of a professional recommendation and supervision of a Probation Officer (KPAS, 2010).

Probation Orders sentence consists of a conditional suspension of punishment where the offender is placed by the courts under supervision and is given individual guidance or treatment by a Probation Officer. Failure to comply with the Orders' condition can lead to revocation. Any crimes other than capital and very serious offences may be considered for non-custodial sentence following a recommendation by a Probation Officer. Those who are likely to be considered are first time offenders, young offenders, women with children, the elderly, terminally ill and people with mental health problems. Repeat offenders are however excluded from consideration (PRI, 2012).

The emphasis on the Probation Orders Programme emanates from its conceived benefits which include: rehabilitation of petty offenders within the community and most of who are poor and marginalized and cannot afford court-imposed fines ; prevention of hardening of petty and first offenders by the hardened ones; enabling the offender to maintain familial ties while at the same time serving the sentence which helps in guarding against the delinquency of dependant minors; promoting reconciliation between the offender, the actual victim of the offence and the community at large for harmonious existence; acquisition of useful survival and/or life skills and linking offenders to potential employers which improves the socio-economic status of community members. The economic benefits of the Probation Orders Programme in the general administration of criminal justice cannot be underestimated. The Programme is credited for saving the tax payers money which would have otherwise been spent on the petty offenders in prisons (UNAFRI, 2011).

The Probation Orders Programme in Kenya has been faced with challenges. Most of these are organizational/institutional and community-related. Within the Judiciary, most Magistrates and Judges are overwhelmed by the many court cases and their small personnel number such that they are not able to undertake effective monitoring of the offenders serving Probation Orders sentences. Some sentencing officers do not have accurate and up-to-date information while others have negative opinion on Probation Orders. Other challenges include: some probation stations which do not have adequate transport facilities to enable them conduct home visits; limited resources as well as lack of adequate skills for Probation Officers to offer rehabilitation therapies to offenders; lack of public awareness among some key stakeholders on the benefits of the sentence; and offenders who have acquired useful skills through the Probation Orders sentence cannot be able to transfer the same for their self-employment because of the prevailing poverty in their families and the community (KPAS, 2010, 2017; PRI, 2012).

#### **1.1.4.2 Legal basis of Probation Orders in Kenya**

The Kenya Constitution and various other statutes have empowered the Department of Probation and Aftercare Service among other criminal justice agencies to participate in the implementation of criminal and correctional services. Generally, the Department derives its

mandate from the Constitution of Kenya 2010 (National Council for Law Reporting (NCLR), 2010) while the specific and direct statutes are the Probation of Offenders Act CAP 64 Laws of Kenya and the Community Service Orders Act N0.10 of 1998 (NCLR, 2012a; 2012b). Other legislations shaping the functions of the Department include the: Prisons Act CAP 90; Children Act of 2001 CAP 586; Borstal Institutions Act CAP 92; Sexual Offences Act N0.6 of 2006; Power of Mercy Act of 2011; Criminal Procedure Code CAP 75; Penal Code CAP 63; Mental Health Act 248; Victim Protection Act No17 of 2014; and Prohibition of Female Genital Mutilation Act No 32 of 2011 (KPAS, 2017; <http://kenyalaw.org/kl/>).

#### **1.1.4.3 Conditions of a Probation Order**

Section 4 of the Probation of Offenders Act CAP 64 Laws of Kenya gives powers to the court to permit conditional release of offenders where a person is charged with an offence which can be tried 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 surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on Probation, the court may convict the offender and make a probation order or without proceeding to conviction, make a probation order. In either case, the court may require the offender to enter into recognisance with or without sureties, in such sum as the court may deem fit (NCLR, 2010).

Generally, before passing a Probation Orders sentence, the court is supposed to consider a social inquiry report on the offender from a Probation Officer. This helps in determining the suitability of the offender to be placed on Probation Orders sentence. The maximum period of a Probation Orders sentence is 3 years while the minimum is 6 months. A Probation Officer may apply to the court to have the order extended but cannot go beyond 3 years. The conditions of a Probation Orders sentence as stipulated under the Probation of Offenders Act CAP 64 are as follows:

- a) To be of good behaviour during the period of Probation Orders sentence
- b) To report to Probation Officer once a month or more frequently if required by the Probation Officer
- c) Not to associate with anyone that is forbidden to associate by the Probation Officer
- d) To receive visits from Probation Officer at home or place of residence
- e) To answer truthfully all questions put to him by the Probation Officer with regard to whereabouts of residence, conduct or employment
- f) To report to Probation Officer any change of employment or residence
- g) To abstain from over-indulgence in intoxicating substances
- h) To endeavour to obtain and remain in regular employment and to follow any direction or advice given by the Probation Officer with regard to employment
- i) To reside at a place known to the Probation Officer, and
- j) To comply with any other additional conditions as may be prescribed by the court.

#### **1.1.4.4 Supervision of Probation Orders**

Supervision is vital because it ensures that the Probation Orders sentences are complied with and that offenders are assisted where necessary throughout the sentence. The intake process of a probationer begins when one is convicted by a court of law after the submission of a Probation Officer's report. The Order spells out the duration of the sentence and is signed and sealed by the Magistrate. The provisions of the Order are read out and explained to the offender, who signs signifying that he/she understands. To check compliance, the Probation Officer may make visits at the home of the offender, school, make phone calls, write mails, and arrange for meetings and regular appointments depending on the risk-levels of the offender. Breach action or non-compliance is enforced by way of caution, warning, variation or revocation of the orders for an alternative sentence) during the supervision. The Probation Officer may arrange for the offender to undergo certain training or undertake services provided by social agencies in the community (KPAS, 2017).

The Probation Officer provides brokerage services with government agencies for the benefit of the offender including schooling, employment and other services meant to increase their employability. The Officer is also mandated to prepare a supervision and rehabilitation plan meant to tackle problem areas and whose objective is to forestall re-offending and effect behavior change. Largely, counseling is the key programme used during supervision and this is provided by Probation Officers and where desirable by other professional counsellors working in the voluntary sector. Assessment, classification and supervision of probationers is also undertaken (KPAS, 2017).

The aim of the offender assessment is to formulate the probationer's problems in terms of needs and risks which guide the development and implementation of the individual treatment plan which also determines the levels of supervision. The Kenyan probation system has not adopted the accredited assessment tools but uses the Strength, Weakness, Opportunity Threats (SWOT) approach to identify the areas of needs and the areas of strength where support is emphasized. In doing this, the Department of Probation and Aftercare Service is guided by professional judgment and social diagnosis of the presenting and underlying problems to be addressed. Social inquiries and interviews conducted by the Probation Officers are key in identifying social and other available resources for empowerment of the offender (KPAS, 2017).

### **1.2 Problem Statement**

The Probation Orders Programme in Kenya is one of the sentencing options for dispensing justice to non-serious first time offenders towards rehabilitation. Despite the existence of this sentencing option, many prisons in Kenya are congested with petty offenders who could otherwise be serving non-custodial sentences. For instance, in 2016, the prisoners serving a sentence of between one (1) and less than two (2) years were 69,061 (that is, 83.8% of the total prison population of 82,433) compared with 11,286 offenders who were serving Probation Orders sentence of a maximum of 3 years (KNBS, 2017). This has constrained Kenya's economy with regard to the unwarranted government expenditure incurred in taking

care of petty offence prison inmates (whose daily allocation is approximately Ksh 175 per inmate) at the expense of other core development programmes (Kenya Prisons Service, 2016).

Probation Orders sentence is a community-based sanction and its success is to a large extent dependent on the positive attitude of community members towards the sentence. The extent to which members of the community have a positive and supportive attitude towards the sentence and the factors influencing their attitude remains largely un-established.

Probationers are required to comply with the issued court orders. Among other provisions of the Probation Orders, they are expected to report to the Probation Officer for rehabilitation sessions and to avoid committing further offences during the period of the sentence and supervision. However, there are reports that some probationers abscond the sentence and engage in further crime during the period of serving the sentence. Therefore, establishing the factors influencing compliance with Probation Orders is one of the key concerns for agencies in the administration of criminal justice.

The Probation Orders sentence is believed to be beneficial to both the offenders and the community. During the period of their supervision, it is assumed that they are provided with livelihood activities and acquire skills which are paramount during and after completion of the sentence. Whether or not most probationers feel that they benefit from the sentence is not clear. Whether or not community members perceive Probation Orders as beneficial to them is an issue to be established. Therefore, this survey critically examines the factors influencing the delivery of Probation Orders sentence in Kenya.

### **1.3 Objectives of the Study**

#### **1.3.1 General objective**

The general objective of the study was to examine the factors influencing the delivery of the Probation Orders in Kenya.

#### **1.3.2 Specific objectives**

The specific objectives of the study were to:

1. Establish the extent of utilization of Probation Orders in Kenya.
2. Establish the factors influencing the utilization of Probation Orders by the courts.
3. Identify factors that affect the levels of compliance with Probation Orders by offenders.
4. Identify the factors shaping public attitudes towards Probation Orders.
5. Examine the effectiveness of Probation Orders in the rehabilitation of offenders
6. Identify challenges facing the delivery of Probation Orders.
7. Suggest appropriate and effective interventions towards strengthening Probation Orders in Kenya.



### **1.4 Justification of the study**

Findings of this study are of value to the agencies in the administration of criminal justice in general and the Department of Probation and Aftercare Service in particular with regard to the effective management of offenders on Probation Orders sentences.

The study is a calling to the players in the criminal justice system and members of the community who are yet to fully appreciate the benefits of Probation Orders in crime prevention in the country because of their apparent inclination to custodial sentences even for petty offences.

The Judiciary is the source and referral point of all criminal proceedings for non-custodial sentences. This report provides highlights on the current state of utilization of Probation Orders and the role of these Orders in prison decongestion with a view to undertaking the necessary reforms.

The policy makers, planners and implementers would find the findings of this study helpful in formulating appropriate policies and programmes to address the problems of financial, human and infrastructural resource allocation inherent among the key players in the Probation Orders sentence for greater improvement and successful rehabilitation of offenders for the good of the society.

The country continues to face a scarcity of useful data on the efficacy and adequacy of criminal investigation and prosecution agencies, the penal system and treatment of criminal offenders. The study is therefore beneficial to academic and other research institutions interested in this area of community-based sentences.

### **1.5 Assumptions of the Study**

This study made the following assumptions.

- i. That public officers in the criminal justice system were aware and appreciated the Probation Orders Programme and would share information freely.
- ii. That respondents across the spectrum would share their experiences and challenges alike.
- iii. That the sample of the probationers selected would be representative of the entire population characteristics within the study areas.
- iv. That there were best examples of Probation Orders' implementations.
- v. That the Probation Officers would be able to provide all the required data on Probation Orders in their respective stations.

### **1.6 Scope of the Study**

This was a national study focused specifically on: the extent of utilization of Probation Orders in Kenya; factors influencing the utilization of Probation Orders by the courts in Kenya; factors affecting the levels of compliance with Probation Orders by offenders; factors shaping public attitudes towards Probation Orders; effectiveness of Probation Orders in the rehabilitation of offenders; challenges facing the delivery of Probation Orders in Kenya; and

interventions towards strengthening Probation Orders in. The study was carried out in 24 selected counties in Kenya and these were Nairobi, Kiambu, Nyeri, Nyandarua, Machakos, Makueni, Tharaka Nithi, Meru, Isiolo, Taita Taveta, Kilifi, Mombasa, Kajiado, Nakuru, Baringo, Bomet, Kisii, Nyamira, Homa Bay, Kisumu, Siaya, Kakamega, Bungoma and Vihiga.

## **1.7 Theoretical Framework of the Study**

All over the world, different societies have their own way of controlling crime and deviance and this is mainly done through sanctions which involve some sort of punishment. In medieval era, punishment was left to the individuals wronged or their families and was vindictive or retributive in quantity and quality and it would bear no special relation to the character or gravity of the offence (Peace, 2006). In Kenya, section 24 of the Penal Code makes provision for various types of sentences that courts may issue (Kiage, 2010). This survey was anchored on the Retributive, Deterrence and Reformatory theories.

### **1.7.1 Retributive Theory**

Retributive theory of justice is associated with scholars such as Herbert Morris (Morris, 1968) and Jeffrie Murphy (Murphy, 1979) who held the view that retributive punishment was necessary to restore the fair balance of benefits and burdens in a system of social cooperation. The theory holds that the best response to a crime is a proportionate punishment, inflicted for its own sake rather than to serve an extrinsic social purpose, such as deterrence or rehabilitation of the offender. This theory is founded on the principles of 'a tooth for a tooth, an eye for an eye, a limb for a limb and a nail for a nail' (Blumenson, 2011).

The retributive theory holds that criminal guilt merits or deserves punishment and that the non-criminal members of the community have a moral duty to inflict the punishment through official authorities (Mohanty, 2015). Accordingly, retribution is not just a necessary condition for punishment but also a sufficient one and that punishment is an end in itself. Retribution could also be said to be the 'natural' justification, in the sense that man thinks it is quite natural and just that a bad person ought to be punished and a good person rewarded (Shuster, 2011).

According to Mohanty (2015), punishment is the negative of criminal who acquires it by infringing the moral law and it is the reward which the offender should receive. Therefore, when offenders are given lighter punishment than they deserve they reap rewards of their misdeeds by reparation. Retributive theory has two forms which is rigorist and liberal. According to rigorist, the criminal should be punished severely for a serious crime. The liberal also includes consideration for the circumstance of the offence (Chackalackal, 2002).

Retributive theory has relevance in the study on Probation Orders sentence in Kenya. In sentencing an offender to a Probation Orders sentence, sentencing officers are trying to ensure that the offender pays for the wrong he/she committed against the society. Secondly, sentencing officers consider the circumstance and severity of an offence as required by the

Probation of Offenders Act CAP 64 Laws of Kenya. Only petty offences qualify for a Probation Orders sentence (National Council for Law Reporting, 2012). The implication of this theory therefore is that petty offenders should not be subjected to prison punishment which is taken to be severe and that prison sentences should be left to the serious offenders only. However, Kenyan prisons continue to fill with petty offenders (United States Department of State, 2014).

### **1.7.2 Deterrence Theory**

The deterrence theory of punishment can be traced to the early works of classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794) and Jeremy Bentham (1748–1832) who have come to be recognized as the fathers of deterrence philosophy in modern day administration of criminal justice (Akers, 2000). These theorists were of the view that nature had placed mankind under the governance of two sovereign masters, that is, pain and pleasure and that one consciously chose to pursue either pain or pleasure through their deeds. The theory is therefore based on the notion that humans are rational beings with free will to govern their own decisions and that laws should be published so that people may know what they represent, their intent as well as their purpose so that human beings are well guided and informed as they make their choices with morality being that which promotes the greatest happiness of the greatest number (Vold, Bernard and Snipes, 2002).

Deterrence theorists considered punishment as an evil but held that it was necessary to maintain order in the society. According to these theorists, there is special deterrence and general deterrence. In special deterrence, punishment is imposed to discourage a person from committing a crime while in general deterrence, an offender is punished to make an example out of him/her (Mohanty, 2015). Further, deterrence is anchored on three individual components, that is, severity, certainty and celerity. The more severe a rationally reasoning individual thinks a punishment is, the more likely that individual will avoid criminal acts. In addition, providing adequate penalty and exemplary punishment to offenders creates some kind of fear in the mind of others thereby helping to keep them away from wrong doing. As a result, the consistency of penal discipline acts as adequate warning to offenders and other and would-be offenders (UKEssays, 2013). Therefore, deterrence is indeed one of the effective policies which almost every penal system accepts despite the fact that it invariably fails in its practical application. It thus aims to create fear in the mind of criminal and protect the society. During medieval period, deterrence was widely accepted and was mostly applied in the form of harsh punishment like exile, death penalty and imprisonment (Beccaria, Cesare and Marchese di, 2006).

Today, a Probation Orders sentence is given to a first time offender with a warning of an alternative prison sentence in case of re-offending or breach of the Order. The sentence has some limitations to one's freedom in terms of restricting some behaviours such as engaging in alcohol and drug use during the sentence period. Therefore, serving the sentence in the full knowledge of the community acts to deter would-be offenders.

### 1.7.3 Reformatory Theory

The reformatory theory was propounded by scholars such as Jeremy Bentham (1748–1832), Alfred C. Ewing (Ewing, 1929) and Herbert Lionel Adolphus Hart (1907–1992). It is also known as rehabilitative sentencing and is based on the humanistic principle that an offender remains to be a human being even if he/she commits a crime (Bedau, 2004; Hoskins, 2011). Some of the central arguments of the theory are that: the object of punishment should be reformation of a criminal for his/her benefit and not just for others; severe punishment may be counter-productive in terms of hardening the offender; capital punishment does not provide the opportunity for reformation; imprisonment facilitates stigmatization and destabilizes offenders and their families economically; offenders largely commit crime because of psychological factors, personality defects, or social pressures; forgiveness can change the nature of the criminal and give the scope of repentance and reformation to the criminal; humane treatment of offenders involving good words and mild suggestions sometimes produces a better result than punishment; sentences should be tailored to the needs of the individual offenders, and majorly include aspects of his/her rehabilitation towards assisting them to become normal law-abiding members of the community once again; sentencing officers, while meting out punishment, should study the character and age of the offender, his/her early breeding, his/her education and environment, the circumstances under which he/she committed the offence, the object with which he/she committed the offence and other precipitating factors; and that physical, intellectual and moral training empowers the offender to change his/her bad character and become a productive law-abiding member of the community (UKEssays, 2013; Priya, 2014; UKEssays, 2015; Stewart, 2016).

According to Saju (2011), the reformatory theory is the most superior among the theories of punishment because it seeks to eliminate the causes of and prevent crime and hence the theory is relevant in this study. In Kenya, reformatory theory has been supported by statutes such as the Penal Code (CAP 63), Probation of Offenders Act (CAP 64), Children Act (cap 586), Borstal Institutions Act CAP 92 and the Prisons Act CAP 90 Laws of Kenya (<http://kenyalaw.org/kl/>).

While prison sentences have been utilized in Kenya with the hope that they are able to reform offenders, this has not been the case. A study by Muteti (2008) showed that 66.7% of ex-prisoners in Taita Taveta County had been imprisoned more than once thus confirming high levels of recidivism. Further, according to Sivi (2017), recidivism in Kenyan prisons between 2000 and 2014 remained 60 to 80 percent. Omollo (2008) and Spjut (2011) have also reported that Kenyan prisons are ranked as some of the correctional institutions with a high rate of recidivism in Africa.

The service motto of Kenya's Probation Service is '*Offenders Can Change*'. This explains why Kenya's criminal justice system recognizes the importance of affording offenders the opportunity to reform through rehabilitation and supervision under Probation Officers as provided for by the Probation of Offenders Act CAP 64 Laws of Kenya. Probation Orders sentence placements were 13,422 in 2015 and 11,286 in 2016 (KNBS, 2017). The

reformation success rate of probationers in Kenya as gauged by the rate of probation sentence satisfactory completion rate was 89.5% for male adults and 93.7% for female adults in 2015 (PRI, 2016b). The website of the Kenya Probation and Aftercare Service (<http://www.probation.go.ke/2015-11-07-10-14-45/2015-12-01-12-56-44.html>) indicates that the interventions in the reformation and rehabilitation of probationers in Kenya range from vocational training within Probation Service institutions, facilitation of informal and formal education, psychological interventions and empowerment with tools after successful completion of the government trade test.

## CHAPTER TWO: METHODOLOGY OF THE STUDY

### 2.1 Introduction

This chapter presents the research design, sampling design, methods and tools for data collection, data collection and management procedures, methods of data analysis and ethical considerations.

### 2.2 Research Design

This study was based on a descriptive cross-sectional survey design in order to generate relevant information on the effective delivery of Probation Orders. The design was instrumental in articulating: the extent of utilization of Probation Orders in Kenya; factors influencing the utilization of Probation Orders by the courts in Kenya; factors affecting the levels of compliance with Probation Orders by offenders; and factors shaping public attitudes towards Probation Orders. The study design also addressed challenges facing the effective delivery of Probation Orders and generated recommendations on interventions towards strengthening the Probation Orders sentence in Kenya.

The study utilized both probability and non-probability sampling techniques and was conducted in twenty-four (24) counties selected using simple random sampling of the 47 counties in Kenya. Being a nationwide study, the sampling method was cognizant of the national representativeness as well as the overall generalizability of the study. Thirty Seven (37) specific Sub-County Probation Stations and a similar number of Law Court stations were selected purposively for the study from the 24 sampled counties as shown in Table 2.1 below. Purposive sampling was appropriate as it ensured that only those areas with sizable non-custodial sentencing regimes were considered.

**Table 2.1: Sampling of counties and Probation Orders stations**

County	Probation Sub-County Station
Meru	Imenti South (Nkubu)
	Imenti North (Meru)
	Igembe South (Maua)
	Tigania West (Kianjai)
Tharaka Nithi	Meru South (Chuka)
	Tharaka South (Marimanti)
Isiolo	Isiolo
Bungoma	Bungoma East (Webuye)
Kakamega	Mumias
Vihiga	Vihiga
Taita Taveta	Voi
	Wundanyi
Makueni	Makindu
	Kilungu

<b>County</b>	<b>Probation Sub-County Station</b>
Bomet	Sotik
	Bomet Central
Kisumu	Muhoroni
	Kisumu West (Maseno)
Kajiado	Kajiado Central
Nyeri	Nyeri South
	Mukurweini
Mombasa	Mvita/Mombasa
	Kisauni
Kilifi	Kaloleni (Mariakani)
Nairobi	Lang'ata (Kibera)
	Makadara
Kiambu	Kiambu East (Kiambaa)
	Kiambu West (Limuru)
Machakos	Athi River
Nakuru	Molo
	Naivasha
Homabay	Mbita
Baringo	Koibatek (Eldama Ravine)
Kisii	Gucha
Nyamira	Nyamira South
Siaya	Ugenya
Nyandarua	Nyandarua North

The sample respondents for the survey were Magistrates, Probation Officers, probationers, victims and members of the public from the local community surrounding the sampled Probation Stations. All Magistrates and Probation Officers in the thirty-seven (37) specific Sub-County Probation stations were purposively targeted for interviews because they were the drivers of the Probation Orders sentence and hence were assumed to be knowledgeable about the subject. Their number was also small (since most rural court stations had an average of 3 Magistrates each while Probation Stations had an average of 3-5 Probation Officers) to warrant any probability sampling.

The population of probationers in a particular Probation station could not be easily determined prior to the study because it was prone to situational changes such as daily completions of the sentence. Therefore, a predetermined minimum sample of fifteen (15) probationers in each of the thirty-seven (37) sampled Sub-county Probation Stations was targeted (to make at least 555 probationers). The visited Probation stations had a stratum for males and females. Therefore, using the caseload registers of placed male and female probationers, stratified random sampling and availability sampling was used to select the probationers. The Probation Officers were requested to identify probationers reporting to the

office during the study period. Other probationers were reached using directions and contacts provided by Probation Officers. Only those available for the study were interviewed in places of their comfort.

The Probation Orders sentence activities are undertaken in the nearest communities surrounding particular Probation Stations. The total population of members of the community/public in the communities surrounding the 37 Sub-county Probation Stations was however unknown. Therefore, the study targeted a pre-determined number of 15 community members who were selected randomly and reached in households (that is, one adult per household who was mainly the available household head at the time of the interviews) around the Stations. Availability sampling was also utilized since some targeted households did not have members present for interviews due to unavoidable circumstances.

Victims of offences committed by probationers are also hard to reach because most Probation Stations do not keep their up-to date records or are in many instances not in constant contact (like they are with the probationers) during supervision and rehabilitation of the offenders. Availability sampling of the victims was therefore undertaken and only two (2) victims per Probation Office Station were targeted for interview based on their availability since some victims were not available for interviews due to inevitable circumstances.

The key informants for the study included Judges, County Directors of Probation and Aftercare Service, Police Commanders, Prison Commanders, Prosecutors and Interior and Coordination of National Government Officers. These respondents were selected purposively because of their small number and knowledge about the administration of criminal justice with regard to crime, sentencing and corrections. Availability sampling was also utilized in selecting and interviewing those who were available at the time of the survey (since some respondents were not available for interviews due to unavoidable circumstances).

The implementation of Probation Orders, among others, receives guidance and advice from Probation Orders Case Committees established through Kenya Gazette notices issued by the Minister (Cabinet Secretary) responsible for corrections. Focus Group Discussions (FGDs) were therefore conducted with participants who included members of the Probation Orders Case Committees and other key local community members and institutional players in order to capture the perspectives on effective service delivery of Probation Orders. Six FGDs were held in the following six (6) Probation Sub-county offices: Kiambu (Kiambu East), Nairobi (Nairobi East-Makadara), Nyandarua (Nyahururu), Taita-Taveta (Voi), Nyamira (Nyamira) and Makueni (Kilungu). The composition of the FGDs included at least 2 victims (male and female), 2 offenders (male and female), 2 Probation Case Committee members, 2 members of the public/community (male and female) and 2 Probation Officers (that is, Sub-county/District Probation Officer and County Director of Probation Service). Overall, the study was able to reach the sample respondents as indicated in Table 2.2 below.



**Table 2.2: Total number of sample respondents**

County	Magistrates		Probation Officers		Members of the public		Probationers		Victims	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Meru	2 (40.0%)	3 (60.0%)	10 (52.6%)	9 (47.4%)	27 (50.0%)	27 (50.0%)	30 (56.6%)	23 (43.4%)	6 (60.0%)	4 (40.0%)
Tharaka Nithi	3 (75.0%)	1 (25.0%)	4 (50.0%)	4 (50.0%)	19 (73.1%)	7 (26.9%)	24 (64.9%)	13 (35.1%)	0 (0.0%)	3 (100.0%)
Isiolo	-	-	1 (50.0%)	1 (50.0%)	8 (57.1%)	6 (42.9%)	11 (55.0%)	9 (45.0%)	0 (0.0%)	1 (100.0%)
Bungoma	2 (66.7%)	1 (33.3%)	3 (100.0%)	0 (0.0%)	6 (50.0%)	6 (50.0%)	9 (64.3%)	5 (35.7%)	1 (50.0%)	1 (50.0%)
Kakamega	0 (0.0%)	1 (100.0%)	2 (50.0%)	2 (50.0%)	8 (66.7%)	4 (33.3%)	17 (85.0%)	3 (15.0%)	-	-
Vihiga	-	-	4 (80.0%)	1 (20.0%)	7 (46.7%)	8 (53.3%)	11 (55.0%)	9 (45.0%)	0 (0.0%)	1 (100.0%)
Taita Taveta	2 (100.0%)	0 (0.0%)	5 (55.6%)	4 (44.4%)	20 (62.5%)	12 (37.5%)	18 (81.8%)	4 (18.2%)	2 (100.0%)	0 (0.0%)
Makueni	0 (0.0%)	3 (100.0%)	5 (83.3%)	1 (16.7%)	13 (61.9%)	8 (38.1%)	8 (38.1%)	13 (61.9%)	1 (100.0%)	0 (0.0%)
Bomet	-	-	4 (57.1%)	3 (42.9%)	23 (54.8%)	19 (45.2%)	27 (67.5%)	13 (32.5%)	4 (57.1%)	3 (42.9%)
Nyandarua	1 (100.0%)	0 (0.0%)	2 (50.0%)	2 (50.0%)	6 (42.9%)	8 (57.1%)	8 (66.7%)	4 (33.3%)	0 (0.0%)	2 (100.0%)
Kisumu	1 (50.0%)	1 (50.0%)	4 (80.0%)	1 (20.0%)	10 (71.4%)	4 (28.6%)	10 (71.4%)	4 (28.6%)	2 (50.0%)	2 (50.0%)
Kajiado	1 (50.0%)	1 (50.0%)	3 (60.0%)	2 (40.0%)	4 (33.3%)	8 (66.7%)	7 (63.6%)	4 (36.4%)	0 (0.0%)	2 (100.0%)
Nyeri	1 (100.0%)	0 (0.0%)	4 (80.0%)	1 (20.0%)	7 (31.8%)	15 (68.2%)	6 (54.5%)	5 (45.5%)	2 (28.6%)	5 (71.4%)
Mombasa	1 (50.0%)	1 (50.0%)	2 (25.0%)	6 (75.0%)	17 (63.0%)	10 (37.0%)	25 (59.5%)	17 (40.5%)	3 (50.0%)	3 (50.0%)
Kilifi	1 (100.0%)	0 (0.0%)	2 (66.7%)	1 (33.3%)	8 (72.7%)	3 (27.3%)	8 (44.4%)	10 (55.6%)	0 (0.0%)	2 (100.0%)
Homabay	1 (50.0%)	1 (50.0%)	2 (100.0%)	0 (0.0%)	10 (71.4%)	4 (28.6%)	9 (56.3%)	7 (43.8%)	0 (0.0%)	1 (100.0%)
Nairobi	3 (37.5%)	5 (62.5%)	7 (70.0%)	3 (10.0%)	19 (52.8%)	17 (47.2%)	46 (85.2%)	8 (14.8%)	2 (22.2%)	7 (77.8%)
Kiambu	0 (0.0%)	2 (100.0%)	3 (30.0%)	7 (70.0%)	13 (52.0%)	12 (48.0%)	28 (73.7%)	10 (26.3%)	-	-
Machakos	1 (33.3%)	2 (66.7%)	3 (75.0%)	1 (25.0%)	8 (53.3%)	7 (46.7%)	8 (61.5%)	5 (38.5%)	1 (50.0%)	1 (50.0%)
Nakuru	2 (100.0%)	0 (0.0%)	1 (20.0%)	4 (80.0%)	12 (42.9%)	16 (57.1%)	22 (78.6%)	6 (21.4%)	-	-
Baringo	-	-	2 (50.0%)	2 (50.0%)	7 (58.3%)	5 (41.7%)	14 (73.7%)	5 (26.3%)	-	-
Kisii	-	-	3 (75.0%)	1 (25.0%)	9 (56.3%)	7 (43.8%)	8 (61.5%)	5 (38.5%)	2 (66.7%)	1 (33.3%)
Nyamira	-	-	1 (50.0%)	1 (50.0%)	9 (75.0%)	3 (25.0%)	7 (53.8%)	6 (46.2%)	2 (66.7%)	1 (33.3%)
Siaya	-	-	2 (66.7%)	1 (33.3%)	4 (26.7%)	11 (73.3%)	4 (33.3%)	8 (66.7%)	-	-
<b>Sub-total</b>	22 (50.0%)	22 (50.0%)	79 (57.7%)	58 (42.3%)	274 (54.7%)	227 (45.3%)	365 (65.1%)	196 (34.9%)	28 (41.2%)	40 (58.8%)
<b>Totals</b>	<b>44 (100.0%)</b>		<b>137 (100.0%)</b>		<b>501 (100.0%)</b>		<b>561 (100.0%)</b>		<b>68 (100.0%)</b>	

## **2.3 Sources of Data and Methods of Data Collection**

### **2.3.1 Sources of data**

The study utilized both primary and secondary sources of data. Primary data was collected from the sample respondents, key informants and Focus Group Discussions. Secondary data materials that were used to supplement primary data included Probation Orders statistics obtained from the Probation and Aftercare Service Department, the Judiciary and the Kenya National Bureau of Statistics (KNBS). Literature review to gain background understanding of Probation Orders in Kenya included review of Probation Orders documents, books, newsletters, magazines, journals and reports.

### **2.3.2 Data collection methods and tools**

The study used both quantitative and qualitative methodologies in obtaining data from the sources.

#### **2.3.2.1 Primary data collection methods and tools**

Primary data from members of public, probationers and victims was collected through face to face interviews after rapport had been established between a researcher and the respondent. English and/or Kiswahili languages were used depending on the language a particular respondent was comfortable with. Interviews were conducted by trained Research Assistants in venues of comfort to the respondents and an Interview Schedule with both open and closed ended questions was used to collect data.

Primary data from Magistrates and Probation Officers was collected by Research Supervisors using self-administered questionnaires containing both open and closed ended questions. Self-administered questionnaires were found convenient owing to the busy schedule and/or nature of work of the Magistrates and Probation Officers. Research Supervisors used Key Informant Guides containing open ended questions to collect data from the key informants while a Focus Group Discussion Guide was used during the six Focus Group Discussions that were conducted.

#### **2.3.2.2 Secondary data collection methods and tools**

Secondary data was collected by way of collating, recording and analyzing national Probation Orders statistics.

## **2.4 Data Collection and Management**

The study objectives were realised through collaboration between NCRC and relevant stakeholders, especially institutions in the criminal justice system. The study was commissioned with approval from the NCRC Governing Council.

Draft interview schedules, questionnaires and a Key Informant Guide based on the objectives of the study were prepared. The researchers at the Centre conducted a pre-test of the draft interview schedules with members of public in parts of Nairobi County which did not form part

of the study sites for the actual data collection. The purpose was to identify any bias and ambiguities in the tools. Respondents in the pre-test survey were requested to highlight any ambiguous or biased questions and to point out if the questions would be able to measure the key issues of the study's objectives. Content validity of the instruments was established to ensure that they reflected the thematic concerns of central concepts in the study. Subsequently, the research instruments were thoroughly revised before the actual data collection. This ensured quality, accuracy and collection of meaningful information.

Actual data collection was preceded by liaison and concurrence with the relevant institutions for their participation. Qualified Research Assistants and Research supervisors were then identified and trained to familiarize them with the research instruments. After training them on basic research processes and techniques, ethics and data management, the research teams were then deployed and facilitated to different study locations. To ensure comparability, accuracy and reliability of the data, each respondent involved in face to face interviews was asked the same questions and in the same order and wording. However, Magistrates and Probation Officers undertook self-administration of the questionnaires. Interviews with all respondents were conducted between 7.00 am and 6.00 pm. Supervision of externally sourced researchers (that is, those who were not part of NCRC regular employees) and quality control of the exercise was done by the NCRC's researchers. After collecting data within the time interval for the field work, interviews were stopped to enable the commencement of data organization and analysis.

Data collected from the field was received and verified by respective Research Supervisors to ensure quality and accuracy, before coding and analysis at NCRC offices.

The final phase of the study involved data organization, analysis, interpretation and report writing. All the data collected was organized and analysed at the NCRC offices. A draft report was compiled by NCRC researchers and reviewed by NCRC Research and Development Committee of the Governing Council and the full Governing Council. A final report was prepared after the draft was validated by stakeholders and peer-reviewed and edited.

## **2.5 Methods of Data Analysis**

The study involved qualitative and quantitative data analysis methods. Data was coded and analysed using SPSS and Microsoft office excel. Qualitative data was analysed and interpreted through content analysis. Quantitative data was summarized in frequency tables, percentages, charts and bar graphs. All information from the analyzed data was presented in themes guided by the research objectives.

## **2.6 Ethical considerations**

The research on Probation Orders in Kenya observed the following ethical considerations throughout the process of the study.

- i. Authority to collect data was sought from the relevant institutions before commencement of the study;

- ii. Respondents were well informed of the research objectives and their consent was sought before commencement of interviews;
- iii. Due to the sensitive nature of the study on issues of crime, sentencing and rehabilitation, the language used when administering the questions was respectful.
- iv. In the course of the research, researchers developed a friendly relationship and cultivated trust with the respondents and;
- v. Ethical conduct was upheld in the whole process of management of the data collected from the field, including during processing and preparation of the report.

## **CHAPTER THREE: RESULTS AND DISCUSSIONS**

### **3.1 Introduction**

This chapter is organized into different sections, namely: socio-demographic characteristics of sample respondents; utilization of Probation Orders sentences; compliance with Probation Orders by offenders; public attitudes towards Probation Orders; challenges facing Probation Orders; and interventions towards strengthening Probation Orders sentence in Kenya.

### **3.2 Socio-demographic characteristics of sample respondents**

This study utilized five (5) categories of sample respondents namely; Magistrates, Probation Officers, members of the public, probationers (offenders) and the victims.

This study found that the majority of the sample respondents were Kenyans aged between 26-49 years and therefore in their productive and reproductive stages of their lives. With regard to criminality, the finding advocates for socio-economic interventions for this category of the population. Therefore, special attention is paramount especially on probationers' economic empowerment in order to address re-offending as well help prevent crime in the country.

On marital status, majority of the sample respondents in all the five categories were married. Majority (55.3%) of the probationers were married thus implying that those with family responsibilities were likely to commit crimes than their single counterparts due to family responsibilities.

The study established that majority of the sample respondents proclaimed the Christian faith. The implication of this finding is that religious institutions such as churches were key stakeholders in crime prevention and therefore needed to take up a more active role in guiding the community in avoiding crimes and offences.

With regard to education, the majority of Magistrates and Probation Officers were university degree holders. Majority of the members of the public and victims were holders of primary and secondary school level education while majority of probationers were holders of primary school education. This finding on education presupposes that most of the community members and probationers engage in menial jobs without steady source of income. The findings support that majority of offenders lack sufficient skills that can assist them acquire meaningful employment.

The study also established that it was likely that Magistrates and Probation Officers had a wealth of experience in their work owing to their many years of service. Most of the male (48.1%) and female (46.6%) Probation Officers had served for periods of 1-5 years while 27.8% of the male and 27.6% of the female Probation Officers had served for 6- 10 years. Majority of the male (72.7%) and female (86.5%) Magistrates had served for periods of 1 10 years with most of them having served for 1-5 years. Holding other factors constant, these

periods could be considered adequate to enable the Magistrates and Probation Officers understand the operations and benefits of Probation Orders sentencing.

The distribution of the sample respondents across the various categories of the socio-demographic variables is shown in Table 3.1 below.

**Table 3.1: Socio-demographic characteristics of sample respondents**

Variable	Category	Socio-demographic characteristics of sample respondents									
		Males					Females				
		Magistrates	Probation Officers	Members Of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims
<b>Age (in years)</b>	Below 18 Years	0 (0.0%)	0 (0.0%)	3 (1.1%)	28 (7.6%)	2 (7.2%)	0 (0.0%)	0 (0.0%)	3 (1.3%)	2 (1.0%)	2 (5.0%)
	18-25	0 (0.0%)	0 (0.0%)	42 (15.3%)	93 (25.5%)	3 (10.7%)	0 (0.0%)	0 (0.0%)	34 (15.0%)	25 (12.8%)	3 (7.5%)
	26-33	3 (13.7%)	19 (24.1%)	79 (28.9%)	92 (25.2%)	3 (10.7%)	9 (40.9%)	17 (29.3%)	85 (37.4%)	62 (31.6%)	9 (22.5%)
	34-41	14 (63.6%)	16 (20.2%)	62 (22.6%)	73 (20.0%)	9 (32.1%)	10 (45.5%)	15 (25.9%)	52 (22.9%)	44 (22.5%)	10 (25.0%)
	42-49	5 (22.7%)	32 (40.5%)	45 (16.4%)	34 (9.3%)	5 (17.9%)	3 (13.6%)	21 (36.2%)	37 (16.3%)	28 (14.3%)	6 (15.0%)
	50-57	0 (0.0%)	9 (11.4%)	25 (9.1%)	24 (6.6%)	2 (7.1%)	0 (0.0%)	5 (8.6%)	10 (4.4%)	23 (11.7%)	3 (7.5%)
	58-65	0 (0.0%)	3 (3.8%)	12 (4.4%)	13 (3.6%)	1 (3.6%)	0 (0.0%)	0 (0.0%)	2 (0.9%)	9 (4.6%)	2 (5.0%)
	66 and over	0 (0.0%)	0 (0.0%)	6 (2.2%)	8 (2.2%)	3 (10.7%)	0 (0.0%)	0 (0.0%)	4 (1.8%)	3 (1.5%)	5 (12.5%)
	<b>Total</b>	<b>22 (100.0%)</b>	<b>79 (100.0%)</b>	<b>274 (100.0%)</b>	<b>365 (100.0%)</b>	<b>28 (100.0%)</b>	<b>22 (100.0%)</b>	<b>58 (100.0%)</b>	<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Marital Status</b>	Single/Never married	0 (0.0%)	4 (5.1%)	63 (23.0%)	138 (37.9%)	6 (21.4%)	5 (22.7%)	16 (27.6%)	55 (24.3%)	37 (18.8%)	10 (25.0%)
	Married	22 (100.0%)	74 (93.6%)	197 (71.8%)	202 (55.3%)	22 (78.6%)	17 (77.3%)	38 (65.5%)	154 (67.8%)	104 (53.1%)	22 (55.0%)
	Divorced	0 (0.0%)	0 (0.0%)	4 (1.5%)	3 (0.8%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (1.3%)	8 (4.1%)	1 (2.5%)
	Separated	0 (0.0%)	0 (0.0%)	7 (2.6%)	19 (5.2%)	0 (0.0%)	0 (0.0%)	4 (6.9%)	10 (4.4%)	25 (12.8%)	4 (10.0%)
	Widowed	0 (0.0%)	1 (1.3%)	3 (1.1%)	3 (0.8%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	5 (2.2%)	22 (11.2%)	3 (7.5%)
	<b>Total</b>	<b>22 (100.0%)</b>	<b>79 (100.0%)</b>	<b>274 (100.0%)</b>	<b>365 (100.0%)</b>	<b>28 (100.0%)</b>	<b>22 (100.0%)</b>	<b>58 (100.0%)</b>	<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Highest Level of Education</b>	None	0 (0.0%)	0 (0.0%)	8 (2.9%)	22 (6.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (1.8%)	17 (8.7%)	5 (12.5%)
	Pre-primary	0 (0.0%)	0 (0.0%)	1 (0.4%)	19 (5.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (1.8%)	11 (5.6%)	0 (0.0%)
	Primary	0 (0.0%)	0 (0.0%)	54 (19.7%)	198 (54.3%)	10 (35.8%)	0 (0.0%)	0 (0.0%)	53 (23.3%)	99 (50.5%)	16 (40.0%)
	Secondary	0 (0.0%)	0 (0.0%)	103 (37.5%)	108 (29.6%)	14 (50.0%)	0 (0.0%)	0 (0.0%)	100 (44.0%)	54 (27.6%)	17 (42.5%)
	Middle Level College	0 (0.0%)	5 (6.3%)	58 (21.2%)	2 (0.5%)	2 (7.1%)	0 (0.0%)	4 (6.9%)	40 (17.6%)	4 (2.0%)	0 (0.0%)
	University	22 (100.0%)	74 (93.7%)	49 (17.9%)	11 (3.0%)	2 (7.1%)	22 (100.0%)	54 (93.1%)	26 (11.5%)	8 (4.1%)	2 (5.0%)
	Adult literacy	0 (0.0%)	0 (0.0%)	0 (0.0%)	5 (1.4%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (1.5%)	0 (0.0%)
	Other	0 (0.0%)	0 (0.0%)	1 (0.4%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
	<b>Total</b>	<b>22 (100.0%)</b>	<b>79 (100.0%)</b>	<b>274 (100.0%)</b>	<b>365 (100.0%)</b>	<b>28 (100.0%)</b>	<b>22 (100.0%)</b>	<b>58 (100.0%)</b>	<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Religion</b>	Traditional	0 (0.0%)	1 (1.3%)	0 (0.0%)	5 (1.4%)	0 (0.0%)	1 (4.5%)	0 (0.0%)	0 (0.0%)	1 (0.5%)	1 (2.5%)
	Christian	22 (100.0%)	78 (98.7%)	252 (92.0%)	319 (87.4%)	28 (100%)	21 (95.5%)	57 (98.3%)	219 (96.5%)	181 (92.4%)	37 (92.5%)
	Islam	0 (0.0%)	0 (0.0%)	22 (8.0%)	41 (11.2%)	0 (0.0%)	0 (0.0%)	1 (1.7%)	8 (3.5%)	14 (7.1%)	2 (5.0%)
	Other (Specify)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)

	<b>Total</b>	<b>22 (100.0%)</b>	<b>79 (100.0%)</b>	<b>274 (100.0%)</b>	<b>365 (100.0%)</b>	<b>28 (100.0%)</b>	<b>22 (100.0%)</b>	<b>58 (100.0%)</b>	<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Nationality</b>	Kenyan			272 (99.3%)	362 (99.2%)	28 (100%)			227 (100.0%)	194 (99.0%)	40 (100%)
	Non-Kenyan	-	-	2 (0.7%)	3 (0.8%)	0 (0.0%)	-	-	0 (0.0%)	2 (1.0%)	0 (0.0%)
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>274 (100.0%)</b>	<b>395 (100.0%)</b>	<b>28 (100.0%)</b>			<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Occupation</b>	Permanent employment in Private Sector	-	-	19 (6.9%)	11 (3.0%)	4 (14.3%)	-	-	11 (4.9%)	8 (4.1%)	1 (2.5%)
	Permanent employment in public sector	-		78 (28.5%)	5 (1.4%)	6 (21.4%)			42 (18.5%)	6 (3.1%)	9 (22.5%)
	Casual/temporary employment in Public or Private Sector	-		58 (21.2%)	115 (31.5%)	14 (50.0%)			45 (19.8%)	52 (26.5%)	20 (50.0%)
	Business and farming	-	-	89 (32.5%)	74 (20.3%)	0 (0.0%)	-	-	97 (42.7%)	66 (33.7%)	0 (0.0%)
	Other (Specify)	-	-	30 (10.9%)	160 (43.8%)	4 (14.3%)			32 (14.1%)	64 (32.6%)	10 (25.0%)
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>274 (100.0%)</b>	<b>365 (100.0%)</b>	<b>28 (100.0%)</b>	<b>-</b>	<b>-</b>	<b>227 (100.0%)</b>	<b>196 (100.0%)</b>	<b>40 (100.0%)</b>
<b>Length of Service</b>	Below 1 year	3 (13.7%))	0 (0.0%)	-	-	-	1 (4.5%)	0 (0.0%)	-	-	-
	1-5 years	9 (40.9%)	38 (48.1%)	-	-	-	14 (63.7%)	27 (46.6%)	-	-	-
	6-10 years	7 (31.8%)	22 (27.8%)	-	-	-	5 (22.8%)	16 (27.6%)	-	-	-
	11-15 years	2 (9.1%)	4 (5.1%)	-	-	-	1 (4.5%)	0 (0.0%)	-	-	-
	16-20 years	1 (4.5%)	4 (5.1%)	-	-	-	1 (4.5%)	6 (10.3%)	-	-	-
	21-25 years	0 (0.0%)	5 (6.3%)	-	-	-	0 (0.0%)	5 (8.6%)	-	-	-
	26+	0 (0.0%)	6 (7.6%)	-	-	-	0 (0.0%)	4 (6.9%)	-	-	-
	<b>Total</b>	<b>22 (100.0%)</b>	<b>79 (100.0%)</b>				<b>22 (100.0%)</b>	<b>58 (100.0%)</b>	<b>-</b>	<b>-</b>	<b>-</b>



### 3.3 Utilization of Probation Orders and its Extent

#### 3.3.1 Courts' utilization of Probation Orders

This study sought to establish whether Probation Orders sentences were utilized by the Law Courts in each respective jurisdiction. All Magistrates and Probation Officers confirmed that Law Courts were utilizing Probation Orders sentences in their areas of jurisdiction.

The information on the utilization of Probation Orders sentence was as well supported by secondary data on actual Probation Orders placements. Table 3.2 below captures the number of probationers serving Probation Orders sentences between 2014 and 2018. The data shows an average of 12,886 probationers per year serving Probation Orders sentence within the five year period between 2014 and 2018.

**Table 3.2: Actual number of offenders serving Probation Orders sentences between 2014 and 2018 by sex**

Year	Actual number of offenders serving Probation Orders sentences between 2014 and 2018 by sex		
	Males	Females	Total
2014	9,329	2,511	11,840
2015	10,756	2,666	13,422
2016	8,933	2,353	11,286
2017	11,816	2,523	14,339
2018	11,176	2,366	13,542

Source: KNBS Economic Survey Data, 2015 - 2019

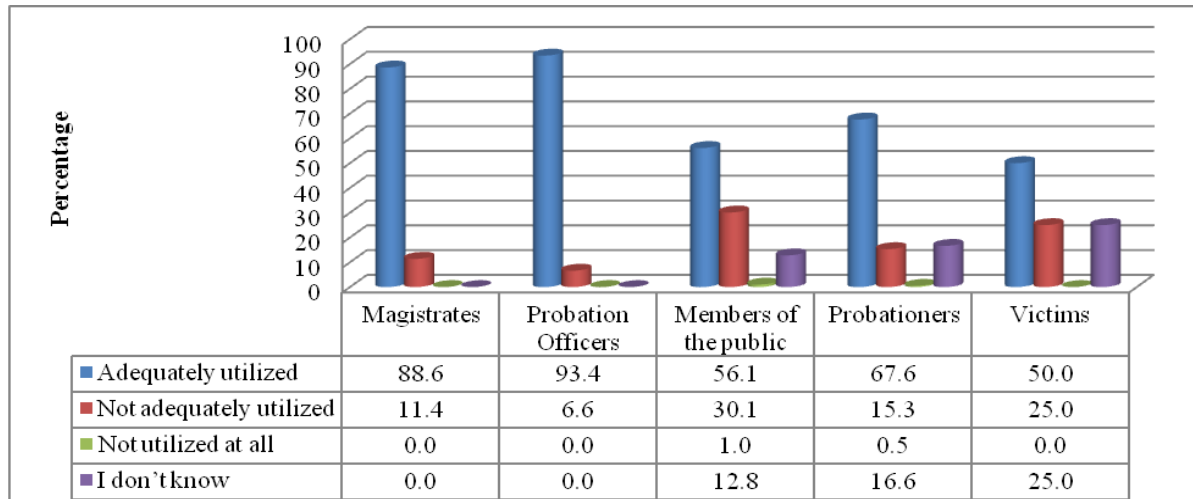
The primary and secondary data of this study confirm that Law Courts utilize Probation Orders sentence in addressing criminality in the country. Therefore, what is unclear is the extent of utilization of the sentence.



**A Law Court Station in Homabay County**

### 3.3.2 Perceptions on adequacy of utilization of Probation Orders sentence

As indicated in Figure 1 below, majority (88.6%) of the Magistrates, Probation Officers (93.4%), probationers (67.6%), members of the public (56.1%) and victims (50.0%) perceived that Probation Orders were adequately utilized.



**Figure 1: Perceptions on adequacy of utilization of Probation Orders sentence**

A key informant from the Kenya Prisons Service in Kajiado County who had been in the locality for over 2 years concurred with the above sentiments. The key informant intimated that:

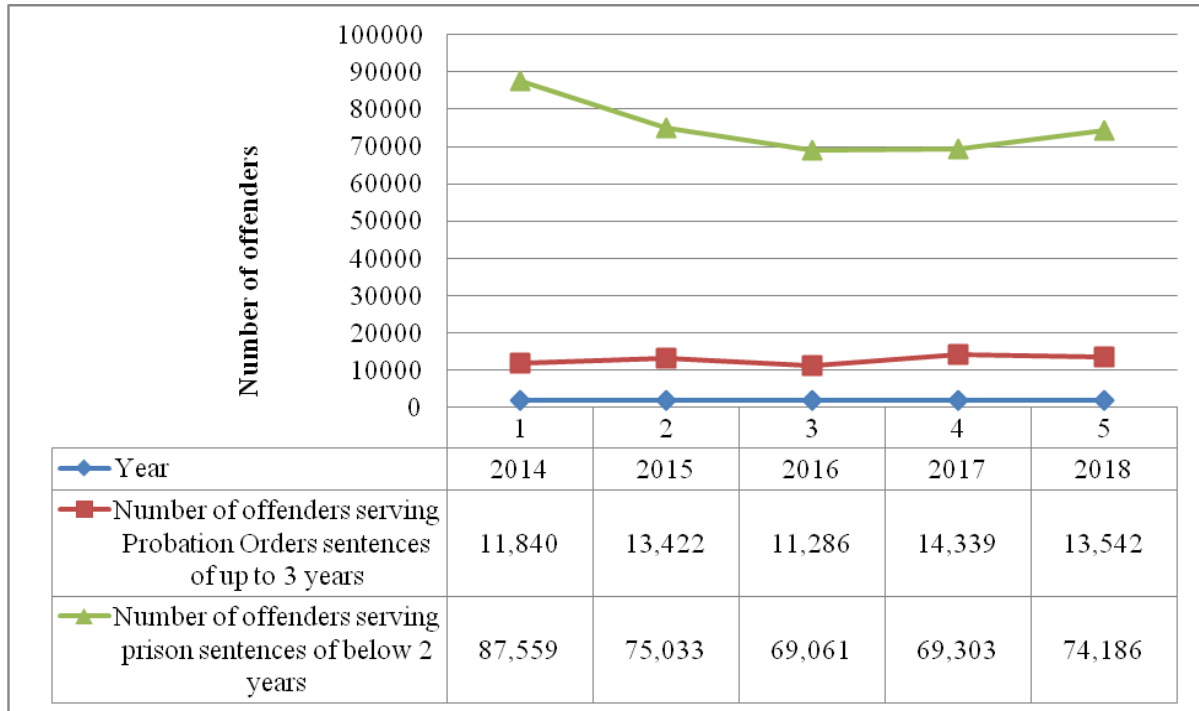
*“Probation Orders sentences are well utilized in this area. Courts in this locality place offenders to serve Probation Orders sentence”*

This study further examined the extent of utilization of non-custodial sentences in general and Probation Orders sentence in particular against prison sentences with a view to establishing the sentencing option mostly utilized by Sentencing Officers with regard to petty offenders. A comparison was made using actual number of offenders serving the three sentencing options of Probation Orders, Community Service Orders and prison sentences. As shown in Table 3.3 below, all offences in 2016 were mainly dispensed with through prison sentences except the one on dangerous drugs (for which most of the offenders were placed on Community Service Orders). Overall, only 37.8% of the offenders were committed to non-custodial sentences compared with 62.2% of offenders who were committed to custodial sentences of less than two (2) years for similar offences.

**Table 3.3: Comparison of custodial and non-custodial sentences for similar offences in 2016**

Offence	Comparison of custodial and non-custodial sentences for similar offences in 2016				
	Number of offenders on non-custodial sentences (that is, Probation Orders and CSO) in 2016			Number of offenders in prison for sentences of below 2 years in 2016	Total number of offenders placed on both custodial and non-custodial sentences in 2016
	Number of offenders on Probation Orders sentence	Number of offenders on Community Service Orders (CSO) sentence	Total number of offenders on non-custodial sentences (that is, Probation Orders and CSO) in 2016		
All other penal code offences	3,059	31,101	34,160 (41.8%)	47,583 (58.2%)	81,743 (100.0%)
General stealing	1,613	952	2,565 (36.2%)	4,512 (63.8%)	7,077 (100.0%)
Dangerous drugs	1,324	2,776	4,100 (63.9%)	2,317 (36.1%)	6,417 (100.0%)
Assault	1,302	506	1,808 (33.6%)	3,577 (66.4%)	5,385 (100.0%)
Other offences against the person	1,276	524	1,800 (32.9%)	3,673 (67.1%)	5,473 (100.0%)
Other offences against property	718	695	1,413 (18.5%)	6,235 (81.5%)	7,648 (100.0%)
Breakings	523	272	795 (20.3%)	3,122 (79.7%)	3,917 (100.0%)
Theft by servants	305	114	419 (23.3%)	1,383 (76.7%)	1,802 (100.0%)
Rape (including attempt)	227	126	353 (27.2%)	944 (72.8%)	1,297 (100.0%)
Theft of stock	219	205	424 (20.8%)	1,615 (79.2%)	2,039 (100.0%)
Handling stolen property	190	291	481 (24.7%)	1,467 (75.3%)	1,948 (100.0%)
Robbery and allied offences	141	22	163 (10.5%)	1,385 (89.5%)	1,548 (100.0%)
Manslaughter	122	20	142 (22.3%)	495 (77.7%)	637 (100.0%)
Murder (including attempt)	82	5	87 (12.6%)	601 (87.4%)	688 (100.0%)
Corruption	58	3	61 (36.7%)	105 (63.3%)	166 (100.0%)
Causing death by dangerous driving	53	11	64 (31.1%)	142 (68.9%)	206 (100.0%)
Theft from motor vehicles	24	41	65 (16.0%)	340 (84.0%)	405 (100.0%)
Theft of motor vehicles	24	4	28 (5.7%)	462 (94.3%)	490 (100.0%)
Theft of bicycles	18	57	75 (34.6%)	142 (65.4%)	217 (100.0%)
Theft of m/vehicle parts	8	4	12 (2.3%)	514 (97.7%)	526 (100.0%)
<b>Total</b>	<b>11,286</b>	<b>37,729</b>	<b>49,015 (37.8%)</b>	<b>80,614 (62.2%)</b>	<b>129,629 (100.0%)</b>

In order to establish clearly whether or not Sentencing Officers preferred custodial sentences over Probation Orders sentences for petty offences, a comparison was made using actual number of offenders serving Probation Orders sentences and prison sentences between 2014 and 2018. From the findings captured in Figure 2 below, it was evident that Law Courts utilized prison sentencing more than Probation Orders sentencing for offences attracting short prison sentences of less than 2 years.



**Figure 2: Actual number of offenders serving up to 3 years' Probation Orders sentence and less than 2 years prison sentence between 2014 and 2018**

It is worth noting that prison population of petty offenders serving short sentences of below 2 years remained higher than that of offenders serving Probation Orders sentences between 2014 and 2018. During this period, Probation Orders sentences for petty offences compared unfavourably with prison sentences for petty offences in that petty offences dealt with through Probation Orders sentences remained below 18.0% of the combined number of all the petty offences dealt with through Probation sentences of between 6 months and 3 years and short prison sentences of below 2 years (that is, 11.9% in 2014, 15.2% in 2015, 14.0% in 2016, 17.1% in 2017 and 15.4% in 2018, with an average utilization of 14.7%). The above findings reinforce the earlier finding that prison sentences were preferred over any of the two non-custodial options for similar offences committed in the country. This is contrary to practice in countries such as New Zealand where Over 30,000 offenders serve community-based sentences at any given time compared to more than 10,000 offenders in prison ([www.corrections.govt.nz](http://www.corrections.govt.nz)). The Sentencing Policy Guidelines of Kenya's Judiciary highlight that there are still many cases in which custodial sentences are imposed in spite of probation orders being the most suitable in the circumstances ([www.judiciary.go.ke](http://www.judiciary.go.ke); NCLR, 2016). According to NCRC (2017c), law courts in Kenya overwhelmingly choose to sanction offenders by way of imprisonment. This therefore puts to question the alleged adequate

utilization of Probation Orders. This is especially so because a sizeable proportion of the community members (30.1%), victims (25.0%) and probationers (15.3%) were of the view that the Probation Orders sentence was not adequately utilized.

The scenario of prison sentences preference over Probation Orders sentences has contributed to the increasing congestion in Kenya's prisons (Kiarie, 2015). Kenya has an estimated total population of 48 million (Worldometers report, 2017) and a prison population of 82,433 while Nigeria has an estimated total population of over 191 million people and a prison population of 68,259 (Kenya National Bureau of Statistics (KNBS), 2017; World meters report, 2017). It is estimated that it costs at least Sh175 per day to keep a prisoner behind bars (Achuka, 2017) thus implying that Kenya spends about Kshs. 8.75 million a day to maintain the estimated 50,000 daily prison population which further translates to about Kshs. 3.15 billion a year. Kenya's prison population therefore calls for urgent interventions given the fact that prison facilities are also overstretched. It is therefore a clear indication that prisons in Kenya are overcrowded with petty offenders who could benefit from Probation Orders sanction thus minimizing the congestion and easing up the unwarranted economic and national crime burden of taking care of imprisoned petty offenders (that is, about Kshs. 3.15 billion a year). The findings: imply that the Judiciary is partly to blame for prison congestion in Kenya because of the Sentencing Officers' preference for prison sentences over Probation Orders and other non-custodial sentencing options for petty offenders; highlight the need for the criminal justice system agencies especially the Judiciary to prioritize addressing the most common petty offences/crimes in the country using Probation Orders as an important non-custodial sentencing option which has the potential to lighten the national crime burden occasioned by the unwarranted prison expenditures on imprisoned petty offenders; and emphasize the need for the Judiciary and the Probation Department to design strategies aimed at enhancing utilization of Probation Orders, with a special focus on Law Courts where the Orders are under-utilized.



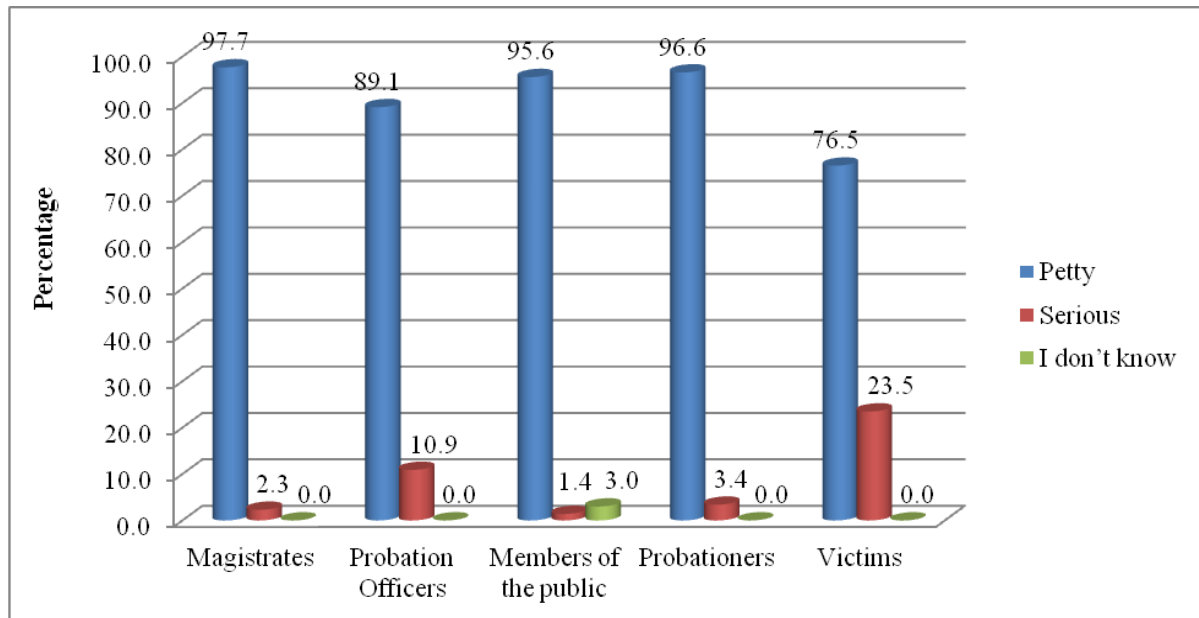
**A prison facility in Kilifi County in Kenya**



### 3.3.3 Categorization of Probation Orders offenders and crimes/offences

#### 3.3.3.1 Categorization of Probation Orders offenders

When asked to comment on whether or not majority of offenders who serve Probation Orders sentence were petty or serious offenders, majority of the Magistrates (97.7%), Probation Officers (89.1%), members of the public (95.6%), probationers (96.6%) and victims (76.5%) reported that the probationers were petty offenders. As shown in Figure 3 below, only 23.5% of the victims, 10.9% of the Probation Officers, 3.4% of the probationers, 2.3% of the Magistrates and 1.4% of the members of the public argued that majority of those who were serving Probation Orders sentence were serious offenders.



**Figure 3: Responses on whether or not majority of probationers are petty or serious offenders**

A key informant in Kajiado South Sub-County in Kajiado County with 26 years' experience in service and who had served in the locality for at least 2 years at the time of the interview observed that:

*“Probation Orders sentences are utilized by law courts mostly to address petty offences in this locality. Some of the offences include possession of illicit brew and gender-based violence”*

A Court Prosecutor who had served for three (3) years in Kiambu Law Courts, Kiambu County, argued that:

*“Probation Orders sentences have been utilized in this locality for petty offenders who have committed offences such as creating disturbance in a manner likely to cause breach of peace, assault causing actual bodily harm”*

The above findings are a clear indication that majority of offenders serving Probation Orders sentence are petty offenders.

### 3.3.3.2 Types of crimes/offences committed by probationers

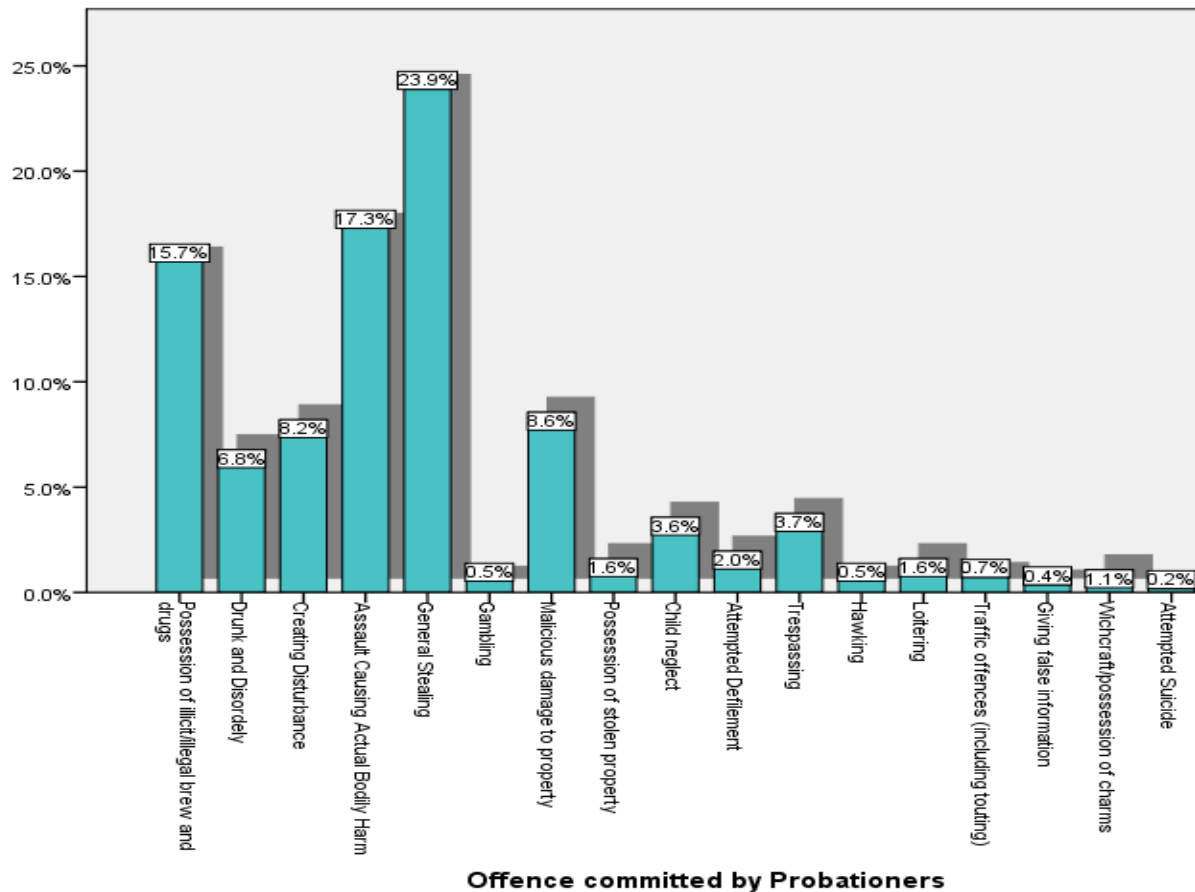
Findings shown in Table 3.4 below showed that the perceived most common crimes/offences (reported by at least a third of sample respondents in any of the sample categories) for which offenders were placed on Probation Orders sentence were: assault causing actual bodily harm (reported by 80.2% of the Probation Officers, 65.7% of the victims, 56.1% of the Magistrates, 46.0% of the members the of public and 44.1% of the probationers); general stealing (reported by 77.0% of the Probation Officers, 52.2% of the victims, 49.1% of the probationers, 48.8% of the Magistrates and 46.0% of the members the of public); possession of illicit brew/drugs (reported by 63.5% of the Probation Officers); creating disturbance (reported by 54.6% of the Probation Officers and 39.0% of the Magistrates); being drunk and disorderly (reported by 39.0% of the members the of public); and malicious damage to property (reported by 37.3% of the Probation Officers).

**Table 3.4: Perceived types of crimes/offences committed by probationers as reported by sample respondents**

Perceived crime/ offence committed by probationers	Responses in frequency and percentage				
	Magistrates	Probation Officers	Members of the public	Probationers	Victims
Assault causing actual bodily harm	23 (56.1%)	101 (80.2%)	230 (46.0%)	237 (44.1%)	44 (65.7%)
General stealing	20 (48.8%)	97 (77.0%)	234 (46.0%)	264 (49.1%)	35 (52.2%)
Creating disturbance	16 (39.0%)	68 (54.6%)	123(24.6%)	132 (24.5%)	19 (28.4%)
Possession of illicit brew/drugs	13 (31.7%)	80 (63.5%)	130 (26.0%)	172 (32.0%)	16 (23.9%)
Being drunk and disorderly	10 (24.4%)	7 (5.6%)	195 (39.0%)	178 (33.1%)	16 (23.9%)
Child neglect	4 (9.8%)	28 (22.2%)	34 (6.8%)	26 (4.8%)	5 (7.5%)
Gambling without a licence	1 (2.4%)	1 (0.8%)	3 (0.6%)	7 (1.3%)	-
Malicious damage to property	1 (2.4%)	47 (37.3%)	46 (9.2%)	48 (8.9%)	10 (14.9%)
Attempted defilement	1 (2.4%)	10 (7.9%)	14 (2.8%)	2 3 (4.3%)	3 (4.5%)
Trespassing	1 (2.4%)	15 (11.9%)	31 (6.2%)	41 (7.6%)	2 (3.0%)
Loitering for purposes of prostitution	1 (2.4%)	1 (0.8%)	31 (6.2%)	24 (4.5%)	1 (1.5%)
Giving false information	1 (2.4%)	3 (2.4%)	4 (0.8%)	4 (0.7%)	-
Hawking without a licence	-	-	17 (3.4%)	8 (1.5%)	-
Attempted suicide	1 (2.4%)	5 (4.0%)	8 (1.6%)	2 (0.4%)	-
Traffic Offences (especially touting)	-	3 (2.6%)	17 (3.4%)	5 (0.9%)	-
Witchcraft/Possession of charms	-	2 (1.6%)	4 (0.8%)	7 (1.3%)	-

Perceived crime/ offence committed by probationers	Responses in frequency and percentage				
	Magistrates	Probation Officers	Members of the public	Probationers	Victims
Manslaughter	-	14 (11.1%)	20 (4.0%)	31 (5.8%)	4 (6.0%)
Possession of stolen property	-	10 (7.9%)	3 (0.6%)	5 (0.9%)	-
Public Health Offenses (such as Handling foodstuff without a medical certificate)	-	-	6 (1.2%)	1 (0.2%)	-

The probationers were further asked on the actual types of crimes/offences for which they were convicted of and placed on Probation Orders sentence. As shown in Figure 4 below, general stealing (23.9%), assault causing actual bodily harm (17.3%), possession of illicit /illegal brew and drugs (15.7%), malicious damage to property (8.6%), creating disturbance (8.2%) and being drunk and disorderly (6.8%) were the common crimes/offences committed by the probationers.



**Figure 4: Crimes/offences for which probationers were convicted of**



The actual types of crimes/offences for which offenders were placed on Probation Orders sentence were further probed by asking each victim interviewee to indicate the offences/crimes committed against them. The victims reported assault causing actual bodily harm (65.7%), general stealing (52.2%), creating disturbance (28.4%), malicious damage to property (14.9%), child neglect (7.5%), manslaughter (6.0%), attempted defilement (4.5%) and Trespassing (3.0%).

Actual secondary data obtained from Probation and Aftercare Department on crimes committed by probationers supported the findings and perceptions of the study respondents. Table 3.5 below shows that the most common crimes/offences committed by probationers in the year 2018 comprised: general stealing; breakings; other offences against the person; rape (including attempt); dangerous drugs; theft of stock; robbery and allied offences; assault; theft from motor vehicles; handling stolen property; and manslaughter.

**Table 3.5: Actual number of offenders (probationers) serving Probation Orders sentence by sex and type of offence in 2018**

Offences for which probationers were serving sentences	Distribution of probationers by sex and offence in 2018		Total
	Male	Female	
All other penal code offences	2,999	1,078	<b>4,077</b>
Dangerous drugs	1,423	332	<b>1,755</b>
General stealing	1537	138	<b>1,675</b>
Other offences against persons	1,170	298	<b>1,468</b>
Assault	1,070	260	<b>1,330</b>
Other offences against property	844	118	<b>962</b>
Breakings	688	23	<b>711</b>
Robbery and Allied offences	290	24	<b>314</b>
Rape (including attempt)	279	7	<b>286</b>
Theft of Stock	268	12	<b>280</b>
Theft by servant	146	41	<b>187</b>
Handling stolen property	127	11	<b>138</b>
Manslaughter	86	14	<b>100</b>
Theft of M/vehicle	78	4	<b>82</b>
Murder (including attempt)	60	3	<b>63</b>
Corruption	43	3	<b>46</b>
Causing death by dangerous driving	29	-	<b>29</b>
Theft of M/vehicles parts	18	-	<b>18</b>
Theft of bicycles	11	-	<b>11</b>
Theft from m/ vehicles	10	-	<b>10</b>
<b>Total</b>	<b>11,176</b>	<b>2,366</b>	<b>13,542</b>

Source: Probation and Aftercare Service Department, 2018

The findings on types of crimes committed by probationers reveal that the most prevalent crimes are related with alcohol and drugs. These findings are consistent with a 2016 study

which showed that 36.0% of female serving non-custodial sanctions had been convicted of alcohol-related offences, with other major offences being assault (18.0%), offences against public health, forest and county by-laws (13.0%) and theft which accounted for 9.0% of the non-custodial offenders (PRI, 2016b). Wanjohi (2012) argues that alcohol and drugs are one of the social factors that lead to crime and that the urge to commit crimes by drug addicts and alcoholics is motivated by the desire to support their habits. According to Renzetti (2001), Criminologists estimate that 30 to 50 percent of crimes committed are due to the influence of drugs and alcohol. In New Zealand, Probation Officers work with people on probation to motivate them to make changes in their lives by, among others, attending programmes to address violence, alcohol and drug abuse or driving offences ([www.corrections.govt.nz](http://www.corrections.govt.nz)).

Based on these findings therefore, measures aimed at assisting probationers and other community members to avoid alcohol and drugs need to be prioritized. The capacity of Probation Officers needs to be enhanced to enable them to effectively assist offenders with alcohol and drug abuse problems. Further, for effective delivery of Probation Orders, Probation Officers need to put in place treatment, rehabilitation and supervision measures that are demographic-specific (especially gender-specific) and targeted at the criminogenic needs of the different offence-categories of the probationers.

### 3.3.3.3 Number and duration of Probation Orders sentence

#### 1. Average monthly Probation Orders placements and caseloads

In determining utilization of Probation Orders sentences, the survey examined the estimates by Magistrates and Probation Officers who were interviewed on the average monthly Probation Orders placements by Magistrates and the average monthly Probation Orders caseload of the Probation Officers.. As indicated in Table 3.6 below, majority (61.4%) of the Magistrates estimated the average monthly placement to be between 0-15 offenders. Majority (62.0%) of the Probation Officers were supervising between 0-15 probationers in a month.

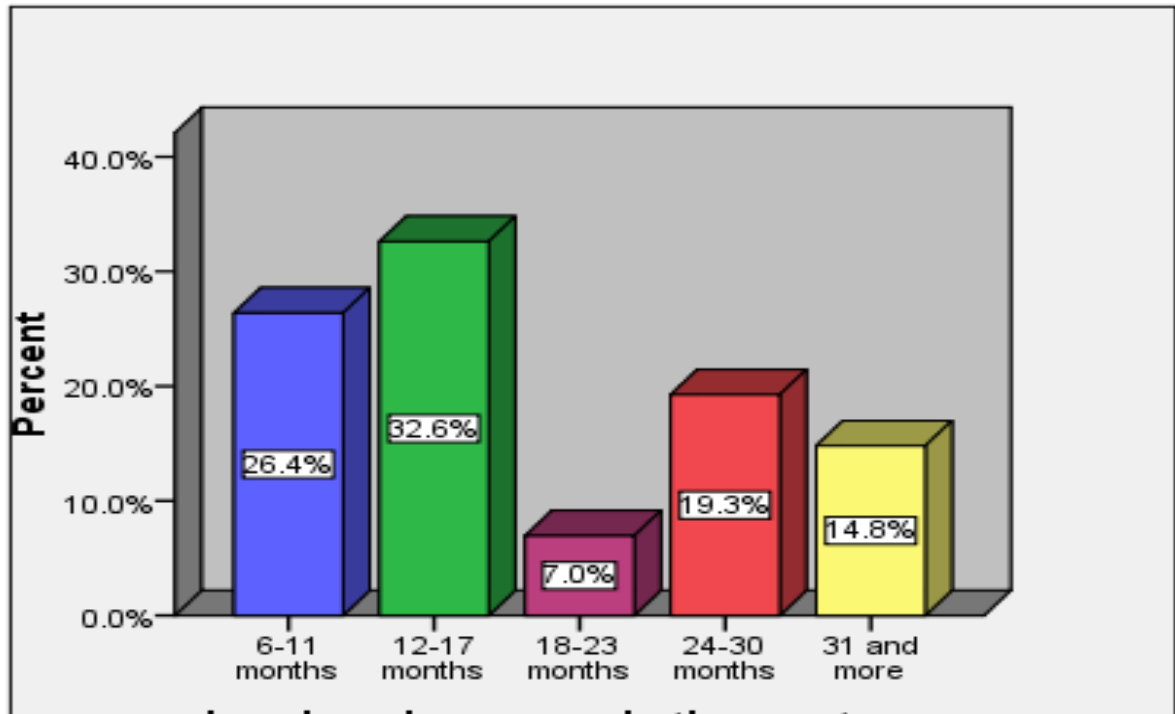
**Table: 3.6: Estimated average monthly Probation Orders placements and caseloads**

Average monthly Probation Orders placements and caseloads	Responses in frequency and percentage	
	Magistrates' placements	Probation Officers' caseload
0-15	27 (61.4%)	85 (62.0)
16-30	8 (18.2%)	19 (13.9)
31-45	6 (13.6%)	18 (13.1)
46-60	1 (2.3%)	6 (4.4)
61-75	1 (2.3%)	1 (4.4)
76-90	0 (0.0%)	4 (2.9)
91+	1 (2.3%)	4 (2.9)
<b>Total</b>	<b>44 (100.0%)</b>	<b>137 (100.0%)</b>

Although the above findings further indicate that Probation Orders are utilized, Sentencing Officers need to be encouraged to embrace this non-custodial mode of sentencing more and more.

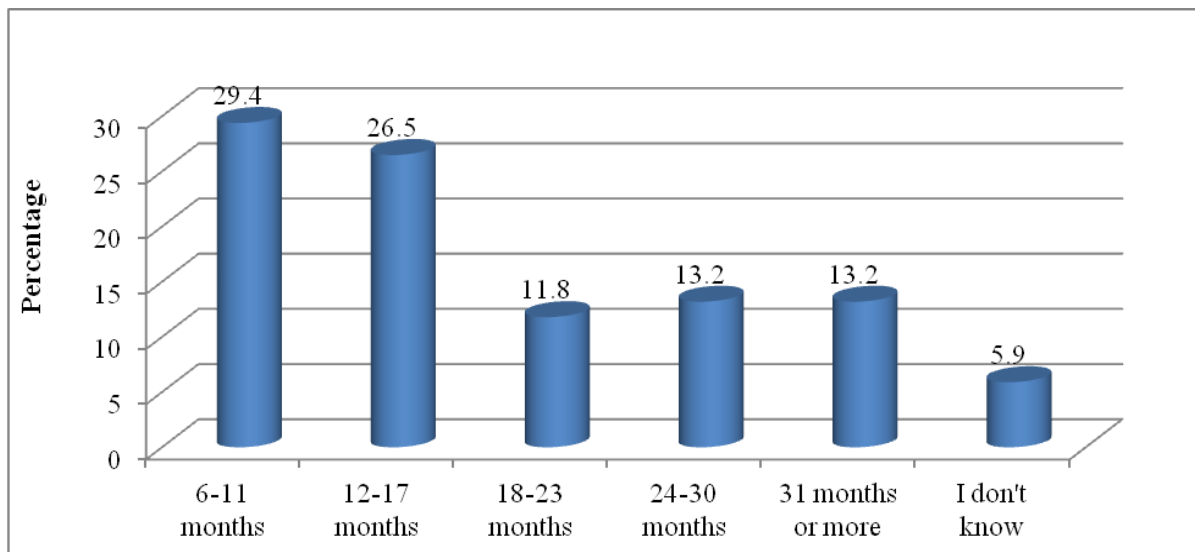
## 2. Duration of Probation Orders sentence

Findings of the study shown in Figure 5 below indicated that majority (59.0%) of the probationers were serving sentences of 6 – 17 months with most (32.6%) of them serving sentences of 12-17 months (36.2%) followed by 6-11months (26.4%). Those serving 18 – 23 months were the least (7.0%).



**Figure 5: Duration of Probation Orders sentence as reported by probationers**

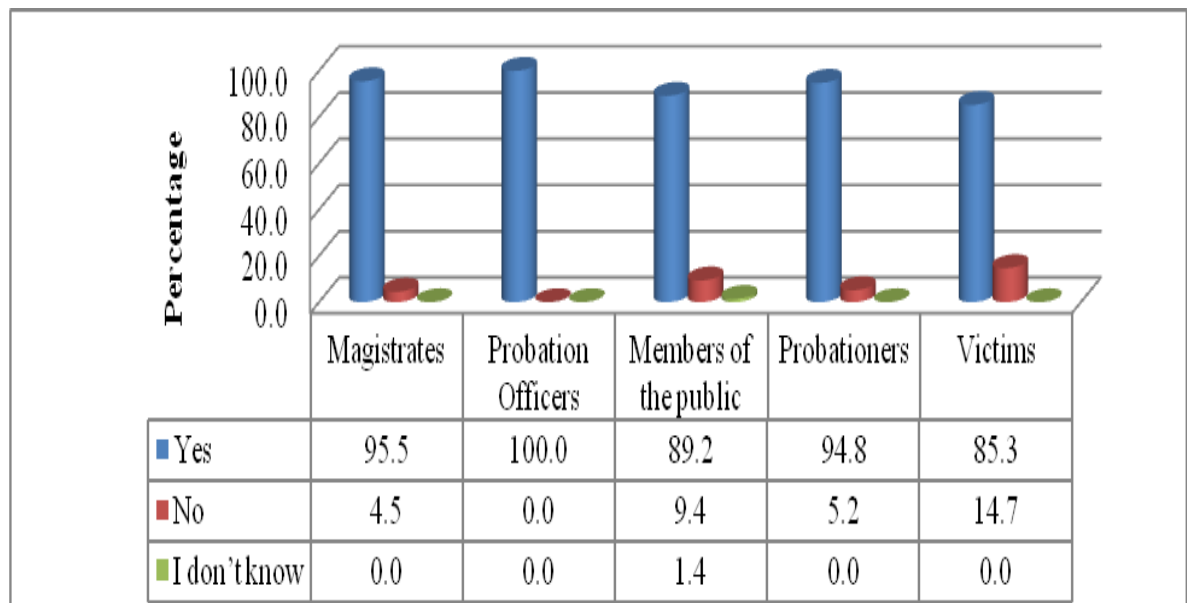
Similarly, the victim respondents were asked to state the length of their offenders' sentence. As shown in Figure 6 below, majority (55.9%) of the victims reported that their offenders had been sentenced for a period spanning 6 – 17 months and that a sentence of 18 – 23 months was the least common (11.8%). These findings were closely related to those obtained from probationers.



**Figure 6: Duration of Probation Orders sentence as reported by victims**

### 3.3.3.4 Benefits of Probation Orders sentence

A question was asked to sample respondents on whether or not Probation Orders sentences were beneficial in their respective localities. As shown in Figure 7 below, all Probation Officers and majority of the Magistrates (95.5%), probationers (94.8%), members of the public (89.2%) and victims (85.3%) argued that the sentences were beneficial.



**Figure 7: Responses on whether or not Probation Orders sentence was beneficial**

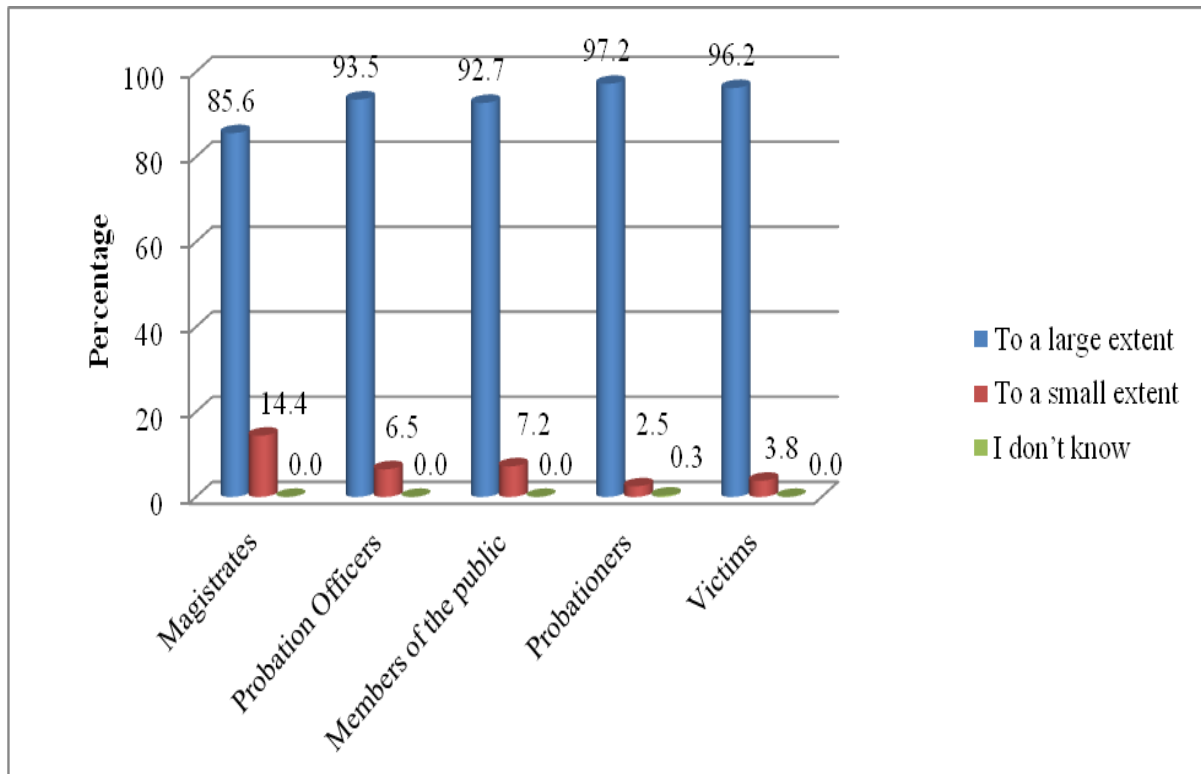
However, a few victims (14.7%) and members of the public (9.4%) were of a contrary opinion. They indicated that Probation Orders were not beneficial and argued that offenders were prone to absconding and re-offending. They also indicated that the type of punishment meted out to probationers was too lenient. Further, the feelings of the victims who argued that Probation Orders were not beneficial could possibly be attributed to the loss they suffered from the offenders.

Sample respondents were further asked to list the benefits of Probation Orders and to indicate the extent to which the benefits had been realized in their localities. The results presented in Table 3.7 below showed that there were notable benefits of Probation Orders sentences which, to most of the sample respondents had been realized to a large extent.

**Table 3.7: Benefits of Probation Orders sentences and the extent of their realization**

Benefits of Probation Orders sentences	Responses (in percentage) on extent of realization of benefits of Probation Orders														
	To a large extent					To a small extent					I don't know				
	Magistrates	Probation Officers	Members of public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of public	Probationers	Victims
Decongesting prisons	92.6	98.4	95.6	100.0	100.0	7.4	1.6	4.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Reconciliation and reintegration of offenders, victims and the community	76.5	86.2	92.3	93.9	92.3	23.5	13.8	7.7	6.1	7.7	0.0	0.0	0.0	0.0	0.0
Saving public institutions' of money/funds	80.0	92.2	89.5	100.0	100.0	20.0	7.8	10.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Rehabilitation of offenders	84.6	97.6	90.4	97.9	97.1	15.4	2.4	9.6	1.6	2.9	0.0	0.0	0.0	0.5	
Assisting in maintaining family ties	100.0	98.7	97.7	98.8	100.0	0.0	1.3	1.7	1.2	0.0	0.0	0.0	0.0	0.0	0.0
Imparting skills to offenders	100.0	85.4	85.7	94.2	100.0	0.0	14.6	14.3	5.8	0.0	0.0	0.0	0.0	0.0	0.0
Reducing stigmatization of offenders	50.0	100.0	91.7	95.0	-	50.0	0.0	8.3	5.0	-	0.0	0.0	0.0	0.0	0.0
Enabling offenders to continue with their economic activities	100.0	95.1	93.1	94.8	100.0	0.0	4.9	6.9	4.4	0.0	0.0	0.0	0.0	0.7	
Preventing hardening of petty offenders	100.0	96.3	94.3	100.0	100.0	0.0	3.7	5.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Crime deterrence	50.0	85.7	85.9	100.0	75.0	50.0	14.3	14.1	0.0	25.0	0.0	0.0	0.0	0.0	0.0
Provides alternative to imprisonment and fines for offenders who can't afford	-	100.0	97.9	98.4	100.0	-	0.0	2.1	1.6	0.0	0.0	0.0	0.0	0.0	0.0

As shown in Figure 8 below, most of the sample respondents generally perceived all the benefits listed in the Table above as having been realized to a large extent. The highest reporting was recorded among the probationers (97.2%) while the least recording was from the Magistrates (85.6%).



**Figure 8: General perceptions on extent of realization of benefits of Probation Orders sentence**

The average percentage realization (that is, the total percentage of realization to a large extent divided by five (5) categories of sample respondents) of the benefits of Probation Orders sentence showed that the benefit that was leading as having been realized to a large extent was that of assisting in maintaining family ties (99.0%) followed by that of preventing hardening of petty offenders (98.1%). Provision of an alternative to imprisonment and fines for offenders recorded the least percentage (of 59.3%) among all the benefits of Probation Orders that had been realized in the localities. These findings are presented in Table 3.8 below.

**Table 3.8: Average percentage realization to a large extent of benefits of Probation Orders sentences**

<b>Benefits of Probation Orders sentences</b>	<b>Average percentage realization to a large extent of benefits of Probation Orders sentences</b>
Assisting in maintaining family ties	99.0
Preventing hardening of petty offenders	98.1
Decongesting prisons	97.3
Enabling offenders to continue with their economic activities	96.6
Rehabilitation of offenders	93.5
Imparting skills to offenders	93.1
Saving public institutions' of money/funds used in incarceration of offenders	92.3
Reconciliation and reintegration of offenders, victims and the community	88.2
Crime deterrence	79.3
Reducing stigmatization of offenders	67.3
Provides alternative to imprisonment and fines for offenders who can't afford	59.3

Some key informants confirmed that Probation Orders sentences were beneficial in their respective localities. For example, a senior Police Officer in Nairobi County who had stayed in the locality for 5 years had this to say:

*“Probation Orders sentence is beneficial to offenders and the community in this locality. It assists to rehabilitate offenders and are integrated back to society and hence keeps family ties”*

Similar sentiments were echoed by a National Government Administration official in Mbita Sub-County of Homabay County who had stayed in the locality for two years and had this to say:

*“Probation Orders sentences in this locality are beneficial to the community as it enables offenders to keep their family ties and help them reform”*

This study established that most (55.3%) of the probationers were married and hence had families. Incarceration is reported to present a crisis to the family in that the whole family goes through stages of stress especially because it puts heavy burdens on them in terms of role changes, loss of a parent, child rearing difficulties and continual financial deprivation in cases where the offender is the breadwinner of the family (PRI, 2016b; UNODC, 2006). Some children who are left by their imprisoned mothers to fend for themselves drift to the streets and engage in juvenile delinquency (Kamau, 2010). Maintaining family ties through the Probation Orders sentence is therefore an important strategy of offender rehabilitation



and crime prevention in the country. Carmichael, Gover, Koons-Witt and Inabnit (2005) argue that community-based correctional programmes are beneficial to women offenders because it allows them to maintain ties with their family and provides them with socio-economic opportunities, for instance, an opportunity to financially support their children. Placing female offenders on probation is also advantageous because of the cost savings compared to imprisonment.

Sivi (2017) and UNODC (2006) have established that there is some tendency for lower risk offenders to be more negatively affected by the prison experience with a consequence of becoming recidivists due to exposure to an environment typically dominated by their higher risk, more hard core peers. Kenyan prisons have a tendency to mix petty and serious offenders within the prison facilities and this has been blamed for increased criminality arising from the petty offence prisoners learning complex crime techniques from the serious offence prisoners. Odegi-Awundo calls prisons in Kenya ‘industries of crime’ or ‘schools of crime’ where petty offenders are moulded into serious ones (Muteti, 2008). Using Probation Orders therefore helps in preventing the hardening of petty offenders.

According to Priya (2014) and Sivi (2017), prison life is characterized by negative social stigma associated with incarceration; excessive use of incarceration has enormous cost implications; and that prisons should not be used with the expectation of reducing criminal behavior because offenders enter prison with a set of antisocial attitudes and behaviours which are little changed during incarceration. Kenyan prisons have a daily population of about 50,000 inmates (Cherono, 2015). Achuka (2017) argues that it costs at least Sh175 per day to keep a prisoner behind bars, which means Kenya spends about Kshs. 8.75 million a day translating to about Kshs. 3.15 billion a year.

The findings of the study on benefits of Probation Orders sentence and their extent of realization therefore call upon the Government in general and the Judiciary and other players in the administration of criminal justice in particular to consider upscaling the utilization of the Orders as a better option in the management of crime and criminals in the country. According to PRI (2015), non-custodial measures such as probation sentences are a more appropriate response to minor crimes because they reduce the unnecessary use of the costly imprisonment option for such offences.

### **3.3.3.5 Empowerment of probationers**

This study sought to establish the forms of empowerment accorded to offenders serving Probation Orders sentence towards their rehabilitation. As shown in Table 3.9 below, the most common forms of empowerment included: guidance and counseling; acquisition and transfer of skills; financial support and/or provision of working tools and equipment and vocational training.

**Table 3.9: Forms of empowerment of probationers as reported by sample respondents**

Forms of empowerment of probationers	Responses in percentage			
	Magistrates	Probation Officers	Members of the public	Probationers
Financial support and provision of tools and equipment	7.7	31.1	8.7	3.3
Guidance and Counselling	88.5	66.4	84.7	90.5
Information sharing during open days		4.1	2.4	2.4
Entrepreneurship training		9.8	3.8	2.1
Vocational Training	11.5	18.9	6.9	4.2
Support in formal education	7.7	23.0	3.1	2.7
Linkage with potential employers	3.8	6.6	1.7	0.3

Key informants also confirmed responses of sample respondents on the forms of empowerment offered to probationers. A senior Probation Service official in Kiambu County who had been in the locality for four years observed that:

*“Probationers are empowered through skill transfer; provision of tools of trade such as carpentry tools and sewing machines to enable them become self-reliant”*

A participant in a Focus Group Discussion observed that:

*“Probationers are empowered in a number of ways including; payment of school fees Provision of tools of trade and vocational/entrepreneurship training (Participant in a Focus Group Discussion held at Makadara Boys Probation Hostel, Nairobi County)”*

Another participant in the same Focus Group Discussion session observed the following:

*“Offenders are assisted with recommendation letters for those seeking employment, Vocational training such as wiring, computer studies and carpentry (Participant in a Focus Group Discussion held at Makadara Boys Probation Hostel, Nairobi County)”*

Probation Orders sentence treatment therapy involves, among other things, empowering probationers (and to some extent, ex-offenders through the Aftercare Service programme) to minimize their chances of re-offending. For instance, corrections counselors help prevent recidivism and discourage an offender from escalating from petty crimes to more serious offenses through guidance and counseling interventions aimed at behavior change (Wake

Forest University, n.d). In the County probation departments in California, probationers convicted of drug possession will often be required to enroll in drug counseling or treatment with the five most commonly reported programmes being anger management, programmes to reduce domestic violence, sex offender treatment, mental health treatment and substance abuse treatment. Some departments also refer probationers to educational and vocational training programmes, family and parenting counseling, and employment assistance programmes (Legislative Analyst's Office, 2009).

According to Government of Canada (n.d), successful crime prevention strategies must address factors contributing to the large number of crimes that are committed by individuals and that the risk factors or the primary criminogenic needs that must be addressed by community-based treatment services are related to: education, employment, accommodation, drugs and alcohol, mental health, social networks, cognitive skills, and attitudes. As shown earlier, most offenders serving Probation Orders sentence had primary school level of education and had no formal employment. According to Zondi (2012), rehabilitation occurs when probationers participate in, among others, vocational, educational and/or counseling programmes that are intended to improve their daily life coping skills. Therefore, empowering probationers prepares them to face socio-economic challenges of day-to-day life both as individuals, family and community members.

The findings of this study therefore highlight the need to improve on probationers' empowerment in all areas in order to enable them become self-reliant during and after the completion of their sentences. Ensuring the probationers' economic stability will require prioritized empowerment in areas such as entrepreneurship training and business start-up capital, vocational training and provision of tool boxes, support in formal education and linkage with potential employers, which were mentioned by only a few sample respondents.



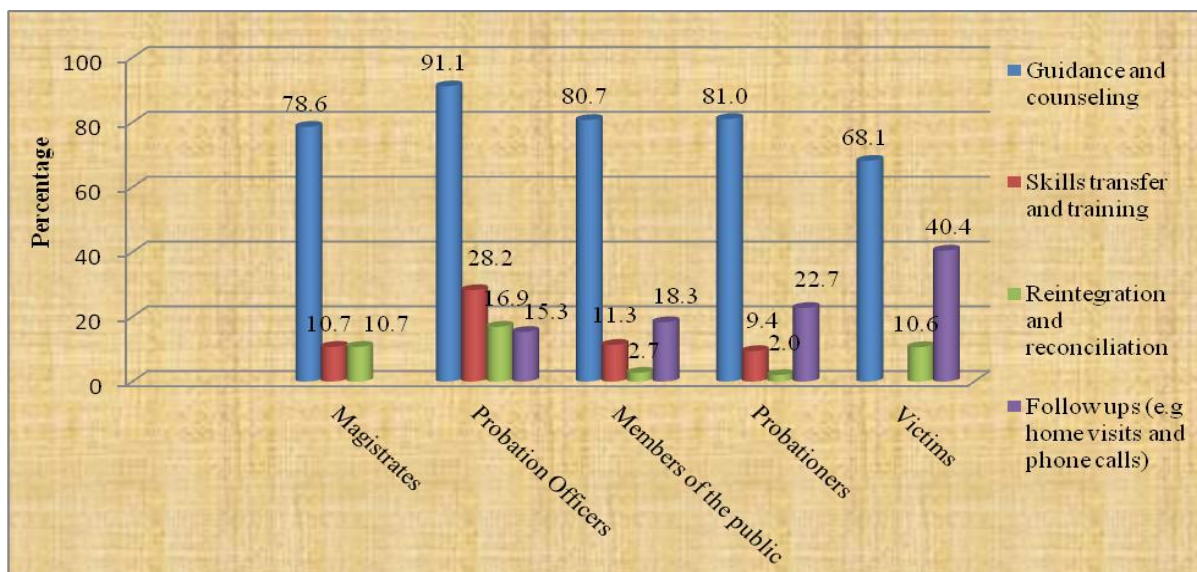
**A female probationer being provided with tools of trade to initiate an income generating activity at Kibera Sub-County Probation Office**



**A juvenile probationer empowered with tailoring skills and a machine at Taveta Probation Office, Taita-Taveta County**

### **3.3.3.6 Probationers' rehabilitation and supervision activities**

An open-ended multiple response question on rehabilitation and supervision activities undertaken by Probation Officers towards probationers was posed to all respondents in the five categories. The survey findings presented in Figure 9 below showed that the main rehabilitation and supervision activity reported by more than two-thirds of respondents in each of the five categories of sample respondents was guidance and counseling.. Other rehabilitation and supervision activities mentioned by a smaller number of sample respondents were life skills transfer and training, re-integration and reconciliation and follow-up of the probationers through home visits and phone calls to establish how they were fairing in their journeys of rehabilitation.



**Figure 9: Probationers' rehabilitation and supervision activities**



The provision of guidance and counseling services to probationers is intended to assist them overcome criminal behavior tendencies and other socio-psychological and economic problems responsible for their criminogenic needs. Hence Probation Officers need to be adequately equipped with guidance and counseling skills to be more effective in this aspect.

Earlier findings showed that most probationers were youthful and had low levels of education and therefore lowly skilled. Other studies have also established that most offenders are youthful persons of low economic status especially due to unemployment and poverty (NCRC, 2012; 2016). Addressing criminality in the country through the probation of offenders approach will therefore require more emphasis on skills transfer and training accompanied by tools of trade and other critical resources for the probationers.

Follow ups through home visits and phone calls were found to be very minimal. This implies that Probation Officers are unable to closely monitor the offenders and this consequently negatively affects the probationers' compliance to sentences. Probation Officers therefore require adequate facilitation in terms of vehicles and fuel or fare and airtime to be able to effectively rehabilitate and supervise offenders.

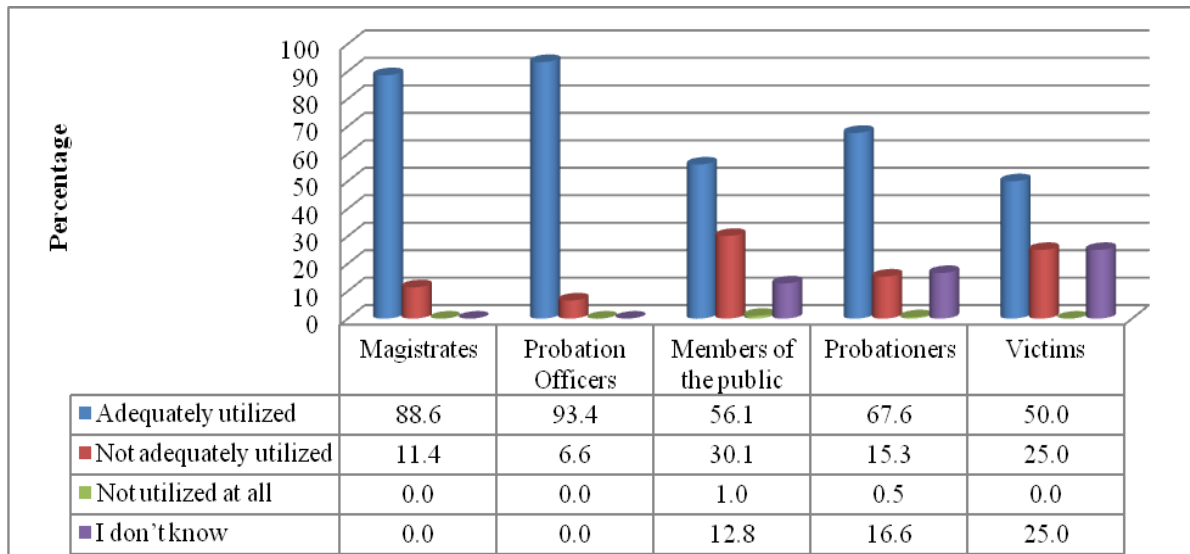
Reintegration and reconciliation of offenders as important rehabilitation and supervision activities were found to be unpopular among all the sample respondents. Recidivism among offenders has been attributed majorly to challenges encountered in the reintegration of offenders back into the community (especially due to stigmatization of offenders) and inadequate reconciliation of the offenders with the victims and other community members they offended. The probation of offenders programme therefore needs to prioritize this aspect of rehabilitation and supervision if re-offending rates in the country are to be effectively controlled (Muteti, 2008; Spjut, 2011; Sivi, 2017).



### **3.3.2.7 Perceptions on adequacy of utilization of Probation Orders sentence**

With regard to perceptions on adequacy of utilization of Probation Orders sentence, the findings from majority (88.6%) of the Magistrates, Probation Officers (93.4%), probationers

(67.6%), members of the public (56.1%) and victims (50.0%) presented in Figure 10 below showed that the Orders were adequately utilized.



**Figure 10: Perceptions on adequacy of utilization of Probation Orders sentence**

From the above findings, a sizeable proportion of the community members (30.1%), victims (25.0%) and probationers (15.3%) were of the view that the sentence was not adequately utilized. Earlier findings of this study on actual placements showed that Law Courts preferred prison sentencing attracting short prison sentences of less than 2 years to Probation Orders sentencing for offences. This scenario has contributed to the increasing congestion in Kenya's prisons (Kiarie, 2015). Therefore, the findings of this study emphasize the need for the Judiciary and the Probation Department to design strategies aimed at enhancing utilization of Probation Orders, with a special focus on Law Courts where the Orders are under-utilized.

### 3.4 Factors Influencing Utilization of Probation Orders Sentence

#### 3.4.1 Factors contributing to the adequate utilization of Probation Orders sentences

Nearly all the respondents pointed out a number of factors that affect adequate utilization of probation orders in the study areas. The results presented in Table 3.10 below showed that the major factor contributing to the adequate utilization of the Probation Orders sentence by Law Courts was the petty nature of crimes and/or type of offenders as was reported by most of the victims (54.5%), probationers (48.9%), Magistrates (41.2%) and members of the public (39.2%). The other factors reported by at least 1 out of 10 respondents in each of the five categories of sample respondents were: committed, efficient and competent Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons.

**Table 3.10: Factors contributing to adequate utilization of Probation Orders sentence**

Factors contributing to adequate utilization of Probation Orders sentence	Responses in frequency and percentage				
	Probation Officers	Magistrates	Victims	Probationers	Members of the public
Committed, efficient and competent Probation Officers	37 (30.3%)	6 (17.6%)	5 (15.2%)	43 (12.0%)	42 (15.4%)
Petty nature of crimes and/or type of offenders	30 (24.6%)	14 (41.2%)	18 (54.5%)	175 (48.9%)	107 (39.2%)
Compliance by offenders	25 (20.5%)	4 (11.8%)	3 (9.1%)	20 (5.6%)	24 (8.8%)
Benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence	23 (18.9%)	5 (14.7%)	7 (21.3%)	51 (14.2%)	42 (15.4%)
Community's positive attitude towards the Probation Orders sentence	21 (17.2%)	2 (5.9%)	3 (9.1%)	43 (12.0%)	38 (13.9%)
Proper coordination among stakeholders	20 (16.4%)	2 (5.9%)	2 (6.1%)	12 (3.4%)	17 (6.2%)
Need to decongest prisons	18 (14.8%)	6 (17.6%)	5 (15.2%)	56 (15.6%)	54 (19.8%)
Maintains family ties	9 (7.4%)	1 (2.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Need to prevent hardening of petty offenders by hard core offenders	2 (1.6%)	-	1 (3.0%)	16 (4.5%)	15 (5.5%)
Influence of corruption	-	-	0 (0.0%)	2 (0.6%)	1(0.4%)

The findings from sample respondents were confirmed by some key informants. For instance, a key informant working with the Office of the Director of Public Prosecutions in one of the Sub-Counties of Machakos County said that:

*“Majority of minor offences do not deserve custodial sentence besides most of the offenders are working people and need to get sentences which will ensure they earn a living and take care of their families)”*

Another key informant from the Kenya Prisons Service in Kajiado Central Sub-county in Kajiado County who had worked for the institution for 39 years, and a year within the locality supported the utilization of Probation Orders had this to say:

*“Probation Orders sentence is adequately utilized as an alternative sentence that decongests prisons and benefits the probationer/offender while serving the sentence outside the prison”*

A Senior Prison Officer in Isinya Sub-county in Kajiado County who had worked for 27 years observed that:

*“In recent years’ Probation Orders have been utilized to decongest prisons. There are many offenders that the courts would want to commit to custody but because of the limited facilities, they are referred for non-custodial sentences and placed under Probation Orders depending on their mitigation and needs”*

The above findings imply that the continued utilization of Probation Orders by Law Courts will be hinged majorly on: the petty nature of offences and/or offenders; the trust and confidence that other players have on Probation Officers as far as the delivery of the Probation Orders sentence is concerned; the accrued benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders arising from the sentence; and the need to decongest prisons. For instance, UNODC (2007) has shown that law courts will most likely issue Probation Orders if, for example, are convinced by the Probation Officer’s report concerning possible treatment for substance abuse, which may help the offender change the behaviour that triggers offending and about how the offender is likely to cope in the community as well as with any conditions or restrictions the law court may impose.

### **3.4.2 Factors contributing to the inadequate utilization of Probation Orders sentence**

As indicated earlier, a few sample respondents argued that Probation Orders were not adequately utilized. These respondents attributed the under-utilization to factors such as: the serious nature of most offences committed in the localities (reported by 67.6% of the probationers/offenders, 66.7% of the victims and 35.5% of the members of the public); and poor supervision of probationers (reported by 66.7% of the Magistrates). The full details of the factors contributing to the inadequate utilization of Probation Orders are captured in Table 3.11 below.



**Table 3.11: Factors contributing to inadequate utilization of Probation Orders sentence**

<b>Contributing factors to inadequate utilization of Probation Orders sentence</b>	<b>Responses in frequency and percentage</b>				
	<b>Probation Officers</b>	<b>Magistrates</b>	<b>Victims</b>	<b>Probationers /Offenders</b>	<b>Members of the public</b>
Lack of stakeholders/ community support (including their negative attitude) to Probation Orders sentence	2 (33.3%)	-	3 (20.0%)	8 (10.8%)	21 (15.2%)
Inadequate or lack of stakeholders' sensitization about the benefits of Probation Orders sentence	2 (33.3%)	-	1 (6.7%)	5 (6.8%)	15 (10.9%)
Poor supervision of probationers	1 (16.7%)	2 (66.7%)	-	2 (2.7%)	8 (5.8%)
Non-compliance and high levels of absconding and reoffending by offenders	1 (16.7%)	-	-	-	-
Inadequate resources	-	1 (33.3%)	-	2 (2.7%)	8 (5.8%)
Difficulty in reaching Probation Offices for reporting, supervision and rehabilitation	-	-	1 (6.7%)	6 (8.1%)	30 (21.7%)
Serious nature of most offences committed in the locality	-	-	10 (66.7%)	50 (67.6%)	49 (35.5%)
Corruption	-	-	-	5 (6.8%)	20 (14.5%)

The above findings are a call to the Judiciary and the Department of Probation and Aftercare Service to especially: improve on supervision of offenders; enhance stakeholders' sensitization about the benefits of Probation Orders sentence; and undertake programmes aimed at enlisting the support of key stakeholders (including the local community) and creating a positive attitude towards the Probation Orders sentence. Enhancing the resourcing of the Probation Orders Programme by the National Treasury is paramount if the benefits of this non-custodial approach of rehabilitating offenders in the country are to be maximized. Resources are required especially for: recruitment of Probation Officers; training of the officers (especially on guidance and counseling); transport and communication facilitation

needed for monitoring, inspection and follow-ups of offenders through home visits and phone calls; and re-integration and resettlement of offenders to guard against their re-offending which is facilitated by socio-economic difficulties.

### **3.4.3 General perceptions on key aspects of utilization of Probation Orders**

The findings of this study showed that over 50.0% of all sample respondents agreed to the following general perceptions on key aspects in the utilization of Probation Orders in the country:

- i. The cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.
- ii. Satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.
- iii. Satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.
- iv. Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.
- v. Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.

The findings therefore imply is that these aspects need to be considered in the implementation of Probation Orders in the country. Table 3.12 below captures the perceptions on key aspects in the utilization of Probation Orders as reported by the sample respondents.

**Table 3.12: General perceptions on key aspects of utilization of Probation Orders**

Statement on general perceptions on key aspects of utilization of Probation Orders	Responses in percentage														
	Agree					Disagree					I don't know				
	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public
Some sentencing officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and therefore do not utilize the Order.	29.5	54.0	-	-	-	65.9	45.3	-	-		4.5	0.7	-	-	-
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the Order.	38.6	64.2	43.5	22.8	38.2	54.5	34.3	48.1	67.0	41.2	6.8	1.5	8.4	10.2	20.6
The cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.	90.9	89.1	80.4	73.8	77.9	4.5	8.8	14.2	15.7	11.8	4.5	2.2	5.4	10.5	10.3
Satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.	88.6	86.1	71.7	74.5	67.6	6.8	10.2	22.2	14.8	22.1	4.5	3.6	6.2	10.7	10.3
Satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.	90.9	94.9	77.8	80.0	75.0	9.1	3.6	17.0	13.2	14.7	0.00	1.5	5.2	6.8	10.3
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives	22.7	44.5	47.5	32.8	35.3	54.5	42.3	42.7	51.9	42.6	22.7	13.1	9.8	15.3	22.1
Unsatisfactory supervision of probationers discourages sentencing officers from issuing Probation Orders.	68.2	53.3	-	9.6	-	25.0	46.0	-	55.4	-	6.8	0.7	-	15.0	-
Most sentencing officers are reluctant to accept Probation Orders recommendations from Probation Officers when they have not referred cases for the same.	72.7	64.2	-	-	-	22.7	27.7	-	-	-	4.5	8.0	-	-	-
Some Probation Officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and supervised and therefore do not recommend the order for use by the courts.	20.5	16.8	-	-	-	70.5	81.8	-	-	-	9.1	1.5	-	-	-
Some Probation Officers have a generally negative attitude	20.5	14.6	-	-	27.9	65.9	83.9	-	-	52.9	13.6	1.5	-	-	19.1

Statement on general perceptions on key aspects of utilization of Probation Orders	Responses in percentage														
	Agree					Disagree					I don't know				
	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public	Magistrates	Probation Officers	Members of the public
towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.															
Some Probation Officers use Probation Orders sentence as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives	34.1	32.1	-	-	-	34.1	59.9	-	-	-	34.1	8.0	-	-	-
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.	34.1	59.9	65.1	54.0	55.9	15.9	38.7	28.9	33.9	26.5	6.8	1.5	6.0	12.1	17.6
Unwillingness of some offenders to adhere to the provisions of a Probation Orders sentence discourages the utilization of Probation Orders.	88.6	59.9	56.5	46.9	54.4	11.4	39.4	39.5	43.9	32.4	0.00	0.7	4.0	9.3	13.2
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.	90.9	68.6	59.7	51.7	55.9	6.8	29.9	37.3	41.5	38.2	6.8	1.5	3.0	6.8	5.9
Good quality Probation Officers' pre-sentence reports contribute to the utilization of Probation Orders by courts.	97.7	96.4	-	-	-	2.3	3.6	-	-	-	0.00	-	-	-	-
Probation Officers have not been adequately trained on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.	54.5	26.3	-	-	-	31.8	73.7	-	-	-	13.6	0.00	-	-	-
Probation Officers have not been adequately sensitized on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.	50.0	19.0	-	-	-	40.9	81.0	-	-	-	9.1	0.00	-	-	-
Probation Officers have not been adequately trained and/or sensitized on issues of offender rehabilitation which in turn affects utilization of Probation Orders.	40.9	26.3	-	-	-	45.5	73.7	-	-	-	13.6	0.00	-	-	-
Most Probation Officers do not have adequate discretion to provide recommendations for Probation Orders sentences when courts have not referred cases for the same.	72.7	57.7	-	-	-	-	20.5	40.9	-	-	6.8	1.5	-	-	-
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.	86.4	71.5	69.3	58.6	66.2	13.6	24.1	26.5	34.4	26.5	0.00	4.4	4.2	7.0	7.4

The findings showed that majority of Magistrates (65.9%) and Probation Officers (54.0%) held opposing views with regard to the statement that ‘some sentencing officers were not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and therefore do not utilize the Order’. Further, majority of Magistrates (54.5%) and Probation Officers (64.2%) held opposing views with regard to the statement that ‘some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the Order’. The two agencies are the key players in Probation Orders and hence the reasons for their divergent opinions need to be addressed if the successful implementation of the Orders is to be realized.

According to the findings, over two thirds of the respondents in each of the five categories of sample respondents agreed with the statements that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option; and satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option. Therefore, the findings imply that key players must pay special attention to these three factors because they are likely to continue shaping the extent of utilization of Probation Orders in the country in significant ways. Some of these factors have also been considered in other jurisdictions in the world such as in the Swedish criminal justice system where the average cost per client and day for non-institutional treatment of offenders such as probation service is lower (that is, 20 EUR) than that of prison, that is, 160-240 EUR (Newman, 2010).

### **3.5 Compliance with Probation Orders**

Compliance is demonstrated by the successful completion of the Orders issued by the court. This is depicted by the probationers’ adherence to the Probation Orders as required by the court and the supervising Probation Officer until a successful completion of the sentence. It is also shown by the offender not re-offending during the period of the sentence. Compliance with Probation Orders is gauged and/or influenced by a number of variables as highlighted in the sections that follow.

#### **3.5.1 Supervision, monitoring and evaluation of Probation Orders**

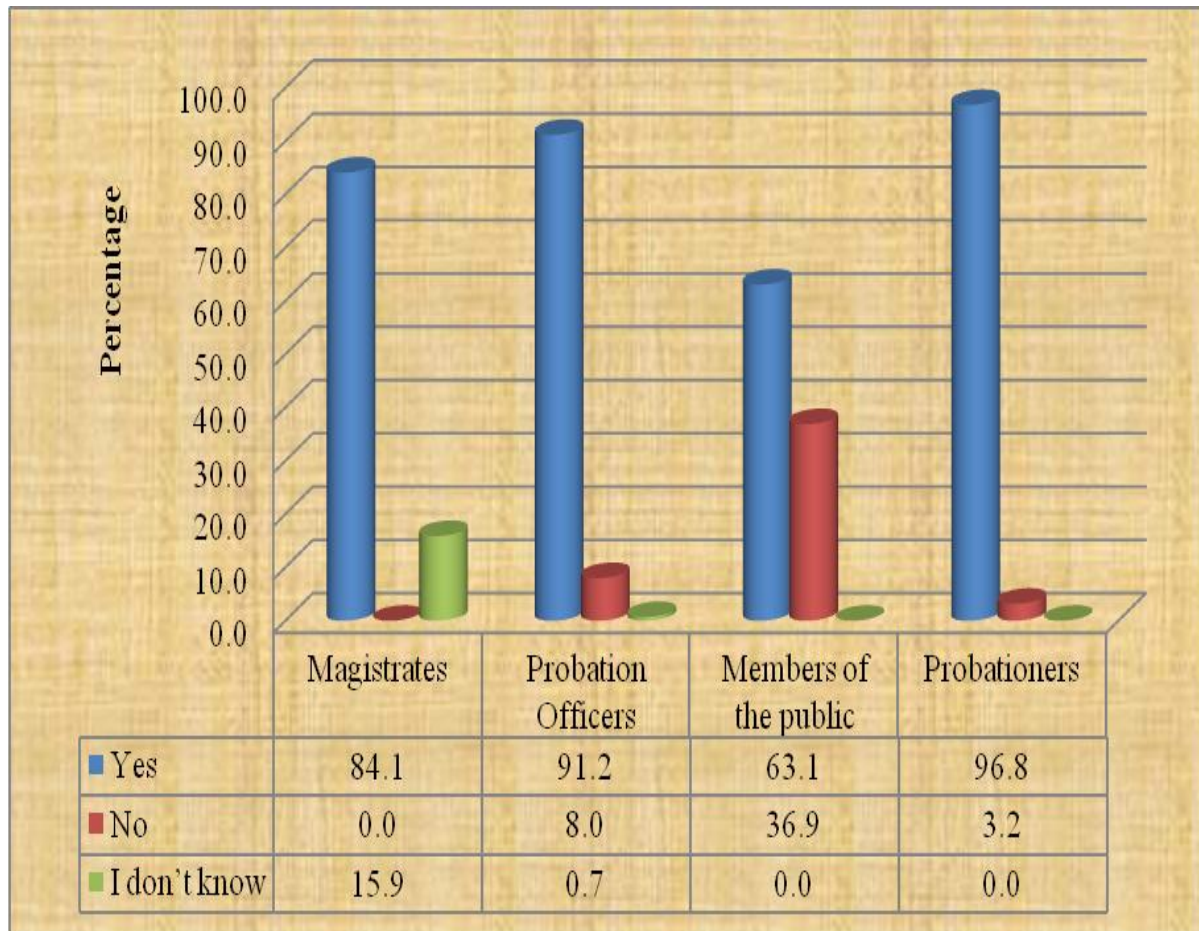
##### **3.5.1.1 Supervision of Probation Orders**

The adequacy of the supervision aspect determines whether or not the probationer will breach or complete the sentence satisfactorily. Supervision is indicated by a number of activities as shown in the sections that follow.

##### **Probationers’ reporting for supervision and rehabilitation**

According to the findings from majority of the Magistrates (84.1%), Probation Officers (91.2%), probationers (96.8%) and members of the public (63.1%) presented in Figure 11 below, most probationers reported to Probation Offices for supervision and rehabilitation as

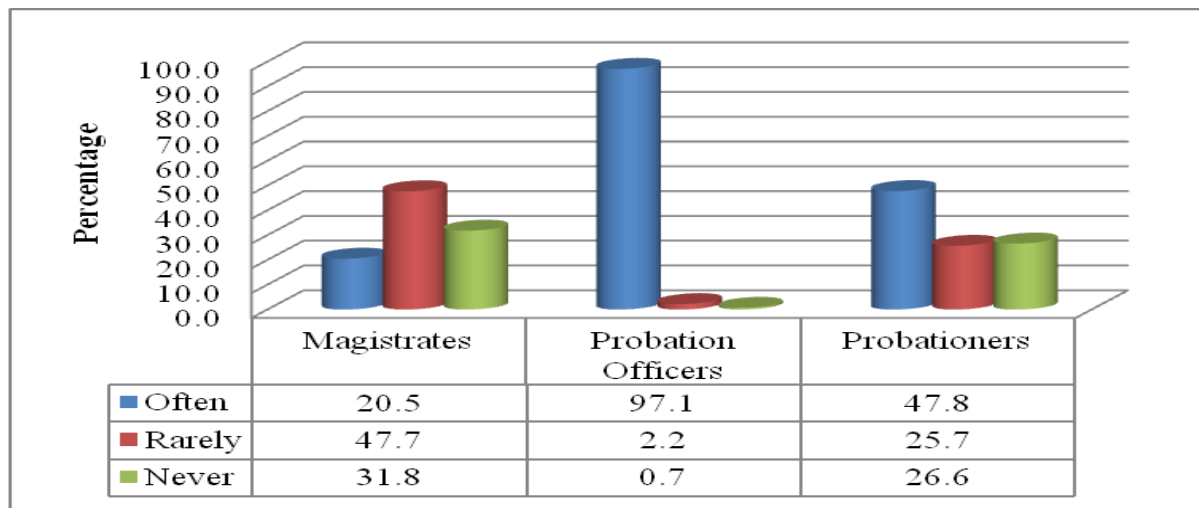
instructed by Probation Officers. These findings were corroborated by 97.1% of the victims who said that they were their offender was serving a Probation Orders sentence and 93.9% of the victims who answered with a 'Yes' to confirm that they knew where their offenders were serving their sentences. Of the members of the public, 77.2% said probationers reported to Probation Officers often, 22.5% said rarely while the rest said they did not know.



**Figure 11: Responses on whether or not probationers report for supervision and rehabilitation as instructed by Probation Officers**

#### **Contacts made by Probation Officers and Sentencing Officers to probationers**

For effective compliance with Probation Orders, regular contacts with probationers especially by Probation Officers are vital. Majority of the Magistrates (68.2%) and Probation Officers (99.3%) indicated that they contact probationers to establish how they (probationers) are progressing with rehabilitation. About three quarters (that is, 73.4%) of the probationers indicated that their Probation Officers contacted them (probationers) while the rest said that the officers never contacted them. With regard to the frequency of the contacts, Figure 12 below showed that: most (47.7%) Magistrates contacted probationers rarely; majority (97.1%) of the Probation Officers contacted probationers often; and most (47.8%) probationers confirmed that their supervising officers contacted them often.



**Figure 12: Frequency of contacts made by Sentencing Officers and Probation Officers to probationers**

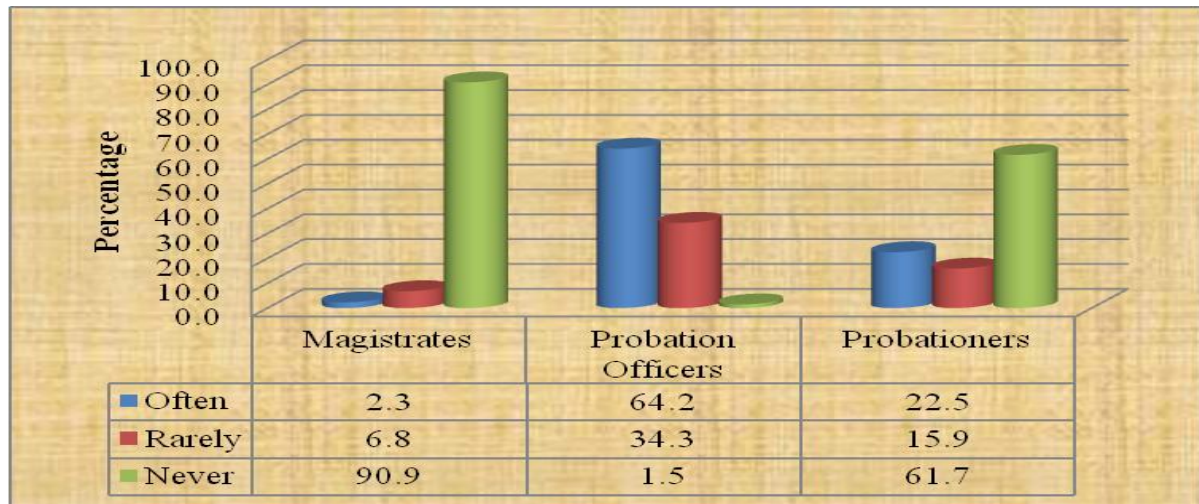
Probation Officers indicated that they contacted their probationers by way of home visits (84.2%), phone calls (73.7%) and probationer reporting to the Probation Office (36.1%). The modes used by Sentencing Officers to contact probationers were home visits (76.9%), probationer reporting to the supervising Probation Officer (15.4%) and phone calls (7.7%).

Sentencing Officers who never or rarely contacted probationers gave reasons such as: Magistrates felt that once an offender had been sentenced, it was upon the Probation officer to make a follow up (61.9%); heavy workload in Law Courts (19.0%); satisfactory compliance of the probationers with the Orders (9.5%); avoiding conflict of interest since supervision is the area of Probation Officers (4.8%); inadequate resources/funds (4.8%); and probationers giving misleading information and contact details about themselves (4.8%). The reasons given by Probation Officers who did not contact probationers or who contacted them rarely were: inadequate resources/funds (75.0%); poor infrastructure (25.0%); and probationers giving misleading information and contact details about themselves (25.0%). According to probationers, the possible reasons for the Probation Officers' failure to contact them or for contacting them rarely were: satisfactory compliance of the probationers with the Orders (73.7%); heavy workload (11.2%); inadequacy of resources/funds to cater for the contact expenses (6.3%); poor infrastructure for the Probation Officer to reach the probationer and vice versa (4.9%); and long distance from Probation Office to probationer's residence (4.4%).

Home visits of Sentencing Officers and Probation Officers to probationers in their families and/or homes were probed further. Majority (90.9%) of the Magistrates indicated that they never visited probationers in their families, 6.8% said that they rarely visited them while 2.3% reported that they visited the probationers often. According to majority (64.2%) of Probation Officers, they visited the probationers often, 34.3% visited rarely while a paltry 1.5% never visited the probationers in their families at all. The Probation Officers who visited probationers in their families did so using government vehicles and/or motorbikes (79.5%), public transport (33.0%) and on foot (11.4%). Home visits to probationers by



Probation Officers were confirmed by only 38.3% of the probationers with the majority (61.7%) arguing that Probation Officers do not visit them at home. The results on frequency of home visits to probationers in their homes are presented in Figure 13 below.



**Figure 13: Frequency of visits by Sentencing Officers and Probation Officers to probationers in their families and/or homes**

The above findings of probationers on home visits contradict those of Probation Officers and therefore raise questions as to the participatory nature and structure of the home visits.

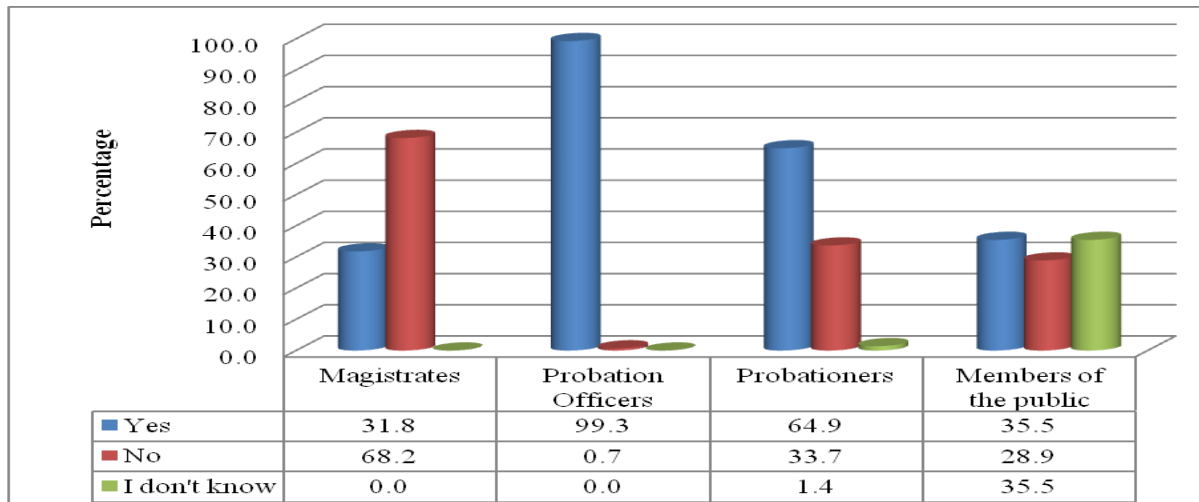
A number of reasons were given to explain why some Sentencing Officers and Probation Officers never visited or visited probationers in their homes and/or families at least rarely. The reasons given by Magistrates were: once offender has been sentenced, it is upon Probation officer to make a follow up (73.1%); heavy workload (23.1%); and satisfactory compliance by probationers thus not requiring any follow up (7.7%). The reasons given by Probation Officers were: limited resources (77.6%); poor transport and communication infrastructure (16.3%); heavy workload (8.2%); and satisfactory compliance by probationers thus not requiring any follow up (8.2%). Probationers guessed the reasons as: compliance by probationers (69.4%), heavy workload (19.4%); long distance between Probation Offices and probationer's residence (6.3%); limited resources (4.4%); poor transport and communication infrastructure (2.9%); and missing contacts of probationers (1.9%).

#### **Contacts made by Probation Officers and Sentencing Officers to families of probationers and the community concerning probationers**

The results of the study showed that majority (68.2%) of the Magistrates never contacted family members of probationers to find out how the probationers were fairing on with their rehabilitation. However, majority of the Probation Officers (99.3%) and probationers (64.9%) indicated that Probation Officers contacted the families to find out how the probationers were fairing on with their rehabilitation. Further, 35.5% of the members of the public reported that Probation Officers contacted members of community to find out how probationers were fairing with their rehabilitation, 28.9% argued that Probation Officers did not contact members of the community while 35.5% said that they did not know whether or

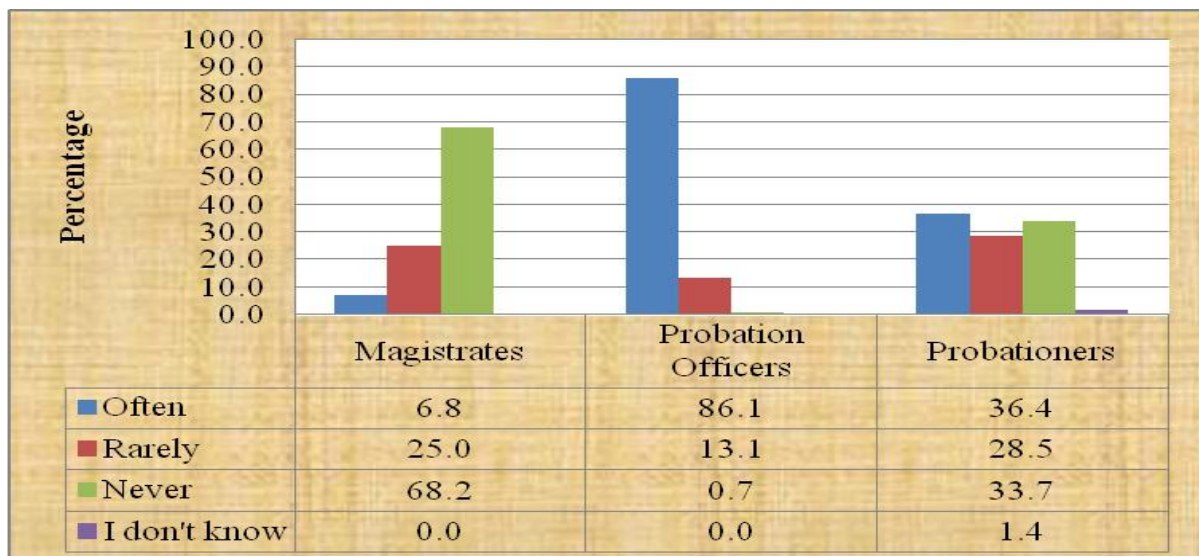


not Probation Officers contacted members of the community. These findings are presented in Figure 14 below.



**Figure 14: Responses on whether or not Probation Officers and Sentencing Officers contact families of probationers and/or the community concerning probationers' rehabilitation**

With regard to the frequency of the contacts made from Probation Officers and Sentencing Officers to families of probationers and/or the community concerning how probationers were fairing on with rehabilitation, the results showed that: majority (68.2%) of magistrates never made any contacts while 25.0% made rarely contacted family members of the probationers; and majority (86.1%) of Probation Officers contacted the families often. Most (36.4%) probationers indicated that Probation Officers contacted their family members often. These findings are captured in Figure 15 below.



**Figure 15: Frequency of contacts made from Probation Officers and Sentencing Officers to families of probationers and/or the community concerning probationers' rehabilitation**

The modes used by the Sentencing Officers and Probation Officers to make contacts with families of probationers and/or the community were varied. For the Magistrates, the modes were official letters (83.3%) and home visits/meetings (16.7%). The modes used by Probation Officers were phone calls (90.2%), home visits/meetings (78.2%) and official letters (20.3%). Probationers confirmed that the modes used by Probation Officers to contact their families and the community were phone calls (81.3%) and home visits (37.8%).

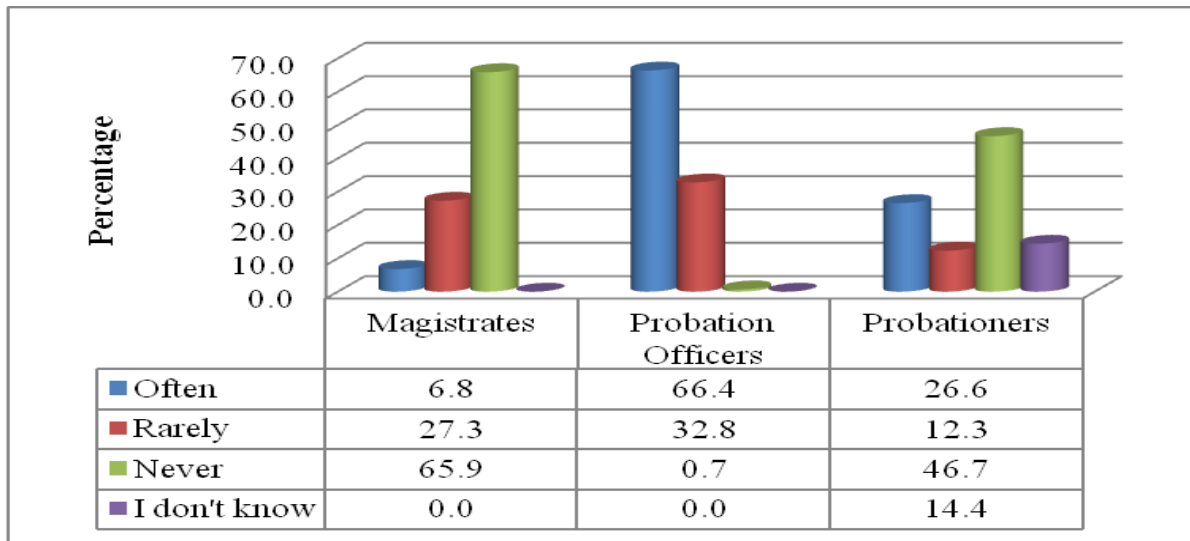
Sentencing Officers and Probation Officers who never contacted or contacted the families of probationers and/or the community at least rarely concerning how probationers were fairing on with rehabilitation gave a number of reasons. Magistrates said that it was because: it was the work of Probation Department to make contacts with families of probationers and/or the community (35.5%); Magistrates relied on Probation Officers' reports (32.3%); they had heavy workloads (19.4%); and avoided conflict of interest with regard to rehabilitation which was a preserve of Probation Officers and sentencing which was a preserve of Sentencing Officers (19.4%). The reasons given by Probation Officers were: inadequate/limited resources including funds (50.0%); satisfactory compliance by probationers (35.7%); poor transport and communication infrastructure (7.1%); heavy workload (7.1%); and reliance on their own Probation Officers' pre-sentence reports (7.1%). Probationers guessed the reasons to be: satisfactory compliance by probationers (61.5%); unavoidable work commitments on the part of Probation Officers (13.2%); missing contacts of supervising Probation Officers to enable the probationer make the contact himself/herself (12.1%); limited resources among probationers to make the contacts to the officers (6.9%); long distance between Probation Offices and probationer's residences (4.0%); poor transport and communication infrastructure (2.3%); and time constraints on the parties involved (0.6%).

Community participation in offender rehabilitation is a critical success factor for community-based sanctions. Zondi (2012) argues that, with the help of members of their families and the community at large, the offender has a greater chance of living a law-abiding life. The likelihood of rehabilitation and re-integration of offenders is enhanced in that the community is able to provide the needed support networks to the offender especially because it has resources that are not always readily available or do not exist in the correctional and/or rehabilitation institutions.

### **Contacts made from families of probationers to Probation Officers and Sentencing Officers concerning probationers' rehabilitation**

Since Probation Orders sentence is a community-based sentence, this study went further to gauge the reciprocal nature of the engagement between officers (both Sentencing and Probation Officers) and family members of probationers. This was done by examining contacts made from the side of family members of probationers to the side of Sentencing Officers and Probation Officers. According to majority (65.9%) of the Magistrates, family members of probationers never contacted to inform them how the probationers were fairing on with rehabilitation. However, majority (66.4%) of the Probation Officers confirmed that families of probationers contacted them (Probation Officers) often. On the other hand, most (46.7%) probationers argued that their family members never contacted Probation Officers to

inform how the probationers were fairing on with rehabilitation. These findings are captured in Figure 16 below.



**Figure 16: Frequency of contacts made from family members of probationers to Probation Officers and Sentencing Officers concerning probationers' rehabilitation**

As shown in Table 3.13 below, the main reasons advanced by Probation Officers, Sentencing Officers and probationers on why family members of probationers never contacted or rarely contacted the officers were satisfactory compliance of the probationers, limited resources and negative attitude.

**Table 3.13: Reasons why family members of probationers never contact or rarely contact Probation Officers and Sentencing Officers on probationers' rehabilitation**

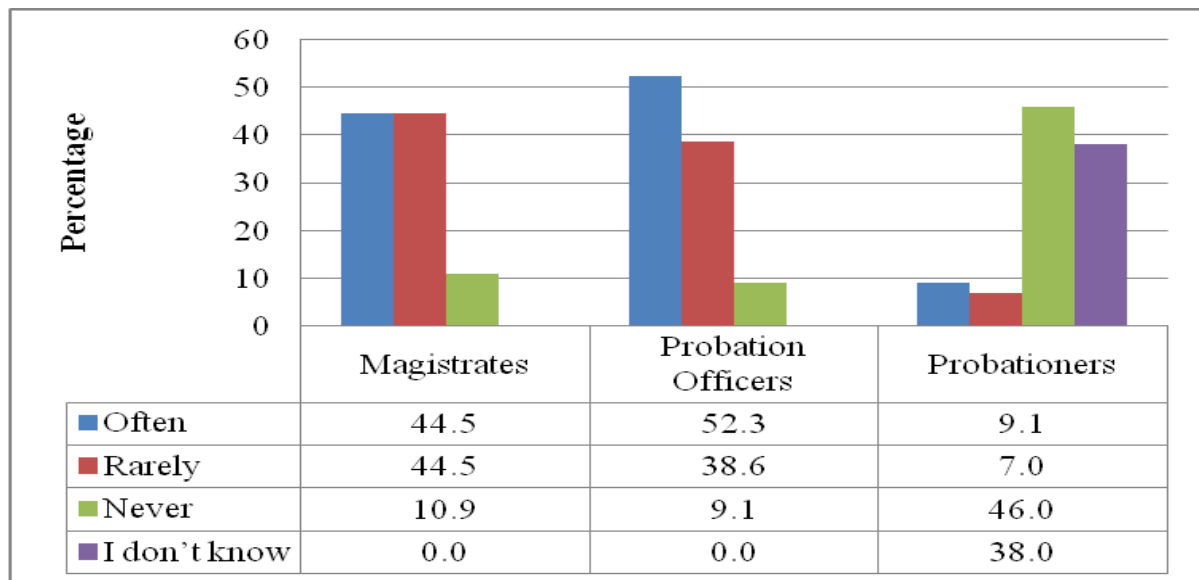
Reasons why family members of probationers never contact or rarely contact Probation Officers and Sentencing Officers on probationers' rehabilitation	Responses in percentage		
	Probation Officers	Magistrates	Probationers
Limited resources	36.8		10.5
Negative attitude	26.3	8.3	4.1
Difficulty in accessing the Probation Office	23.7	-	-
Probationers satisfactorily comply with the Orders and contact and/or report to Probation Office	23.7	75.0	62.7
Inadequate knowledge on probation programme	-	-	6.8
Family does not know the location of Probation Office	-	-	8.6
Poor communication and transport infrastructure	-	-	3.6
Long distance to Probation Office	-	-	5.5

When asked if community members take interest in knowing whether or not probationers comply with the requirements of Probation Orders sentences, most (46.9%) of the members of the public argued that they do not take interest, 32.1% said that community members take interest while the rest (21.0%) said they did not know. Members of the public validated their responses by arguing that: community members are not concerned (44.8%); community members follow up to find out if probationers have complied with the sentence (38.3%); and community members find it difficult to distinguish probationers from other people (17.5%).

With regard to the modes used by family members of probationers to contact Probation Officers and Sentencing Officers, all Magistrates reported visits to both Law Court Offices and Probation Offices. Probation Officers reported the modes used as visits to Law Courts and Probation Department offices (89.7%) and phone calls (84.6%). According to the probationers, the modes used by their family members and the local community to contact Probation Officers and Sentencing Officers were phone calls (78.6%), office visits (34.2%) and official letters (1.1%).

### 3.5.1.2 Monitoring and evaluation of Probation Orders sentence

The monitoring and evaluation of Probation Orders by the Judiciary is critical if the sentence is to adequately realize its intended objectives. Majority of the Magistrates (90.9%) and Probation Officers (89.1%) argued that Law Courts conducted monitoring and evaluation of Probation Orders sentence. However, this assertion was supported by only 16.0% of the probationers who argued that Law Courts conduct monitoring and evaluation (that is, 9.1% often and 7.0% rarely) and discounted by most (46.0%) of the probationers who argued that Law Courts never conduct monitoring and evaluation of the sentence. The details of these findings are presented in Figure 17 below.



**Figure 17: Frequency of monitoring and evaluation of Probation Orders sentence by Law Courts**

As shown in Table 3.14 below, the three main reasons (based on the highest reported percentages) why Law Courts conduct monitoring and evaluation of Probation Orders sentence rarely or never conduct it at all are: Law Courts' reliance on reports from Probation Officers and/or Case Committees with regard to monitoring and evaluation; heavy workload/busy court schedule; and limited resources within the Judiciary.

**Table 3.14: Reasons given for Law Courts never or rarely conducting monitoring and evaluation of Probation Orders sentence**

<b>Reason given for Law Courts never or rarely conducting monitoring and evaluation of Probation Orders sentence</b>	<b>Response in percentage</b>		
	<b>Magistrates</b>	<b>Probation Officers</b>	<b>Probationers</b>
Law Courts rely on reports from Probation Officers and/or Case Committees with regard to monitoring and evaluation	58.8	38.7	67.1
Heavy workload/busy court schedule	17.6	40.3	26.9
Poor coordination among stakeholders	11.8	12.9	0.6
Limited resources within the Judiciary	5.9	19.4	1.2
Law Courts take action only when there is a breach of the Order	5.9	3.2	
Lack of interest among Sentencing Officers	-	14.5	8.4
Inadequate awareness on probation programme	-	9.7	-

A number of critical issues are discernible from the findings on supervision, monitoring and evaluation of Probation Orders. First, the most common modes of contact were phone calls and visits to probationers' homes or the Probation Offices all of which required a number of resources. Second, heavy workload/busy court schedules among both Sentencing Officers and Probation Officers and limited resources were the reasons mainly behind the limitations in making the needed contacts, home visits to probationers and their families and conducting monitoring and evaluation. Third, probationers have not been fully involved in the monitoring and evaluation and hence the reason they were not aware or they believed monitoring and evaluation was never done. Fourth, reports from Probation Officers and/or Case Committees with regard to monitoring and evaluation are an important tool for monitoring and evaluation of Probation Orders sentences. Therefore, the implications of the findings with regard to strengthening of the Probation Orders sentence are that there is need for strengthening of the: Judiciary's and Probation Department's human and other critical resources through additional recruitments, trainings, infrastructure and funding; probationers' sensitization, involvement and participation aspect in the whole process of monitoring and evaluation; and reports from Probation Officers and/or Probation Case Committees because they are an important tool for monitoring and evaluation of Probation Orders sentences.

The findings on supervision, monitoring and evaluation as critical aspects of compliance with Probation Orders are consistent with other studies. Studies have shown that compliance with Probation Orders is significantly a factor of relationships between the Probation Officer and

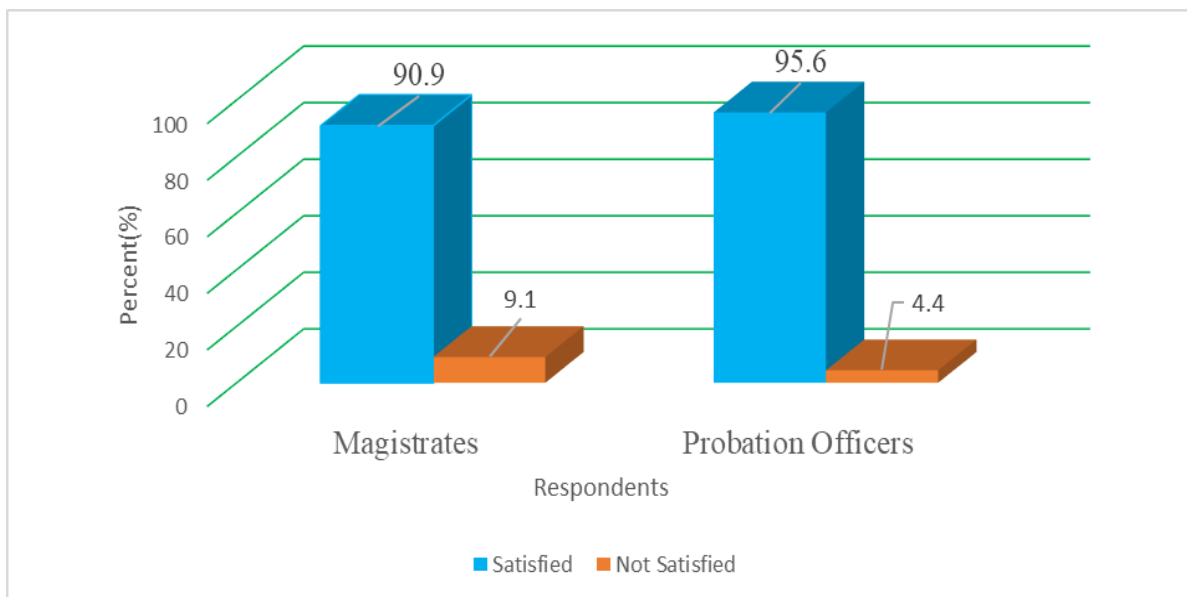
the offender. For instance, Ugwudike and Raynor (2013) argue that the quality of relationships and trust between Offender Managers and those they supervise are core components of offender compliance and effective probation practice in general.

In Kenya, some prisoners are released during prison decongestion exercises to serve Probation Orders sentences. Naser and La Vigne (2006) and Shapiro and Schwartz (2001) argue that families of offenders are expected to play an integral role in the offender's rehabilitation and reintegration process. Taylor (2016) underscores the importance of the family's role and especially the direct effects of emotional support in the reintegration of formerly incarcerated individuals.

On the importance of monitoring and evaluation to ensure that the Probation Orders programme is effective, MCNeill (2010) argues that regular audits and evaluation of the probation programme and special staff training are key ingredients of intensive supervision probation geared towards successful outcomes of need-based treatment of offenders. According to PRI (2016a), probation systems need to be evaluated both to ensure they are working as intended and to identify areas for improvement with countries prioritizing, among others, developing annual research programmes which shed light on particular aspects of probation which are of interest to the authorities (including the criminal justice system agencies), duty bearers and the wider public.

### 3.5.2 Satisfaction with level of compliance with Probation Orders

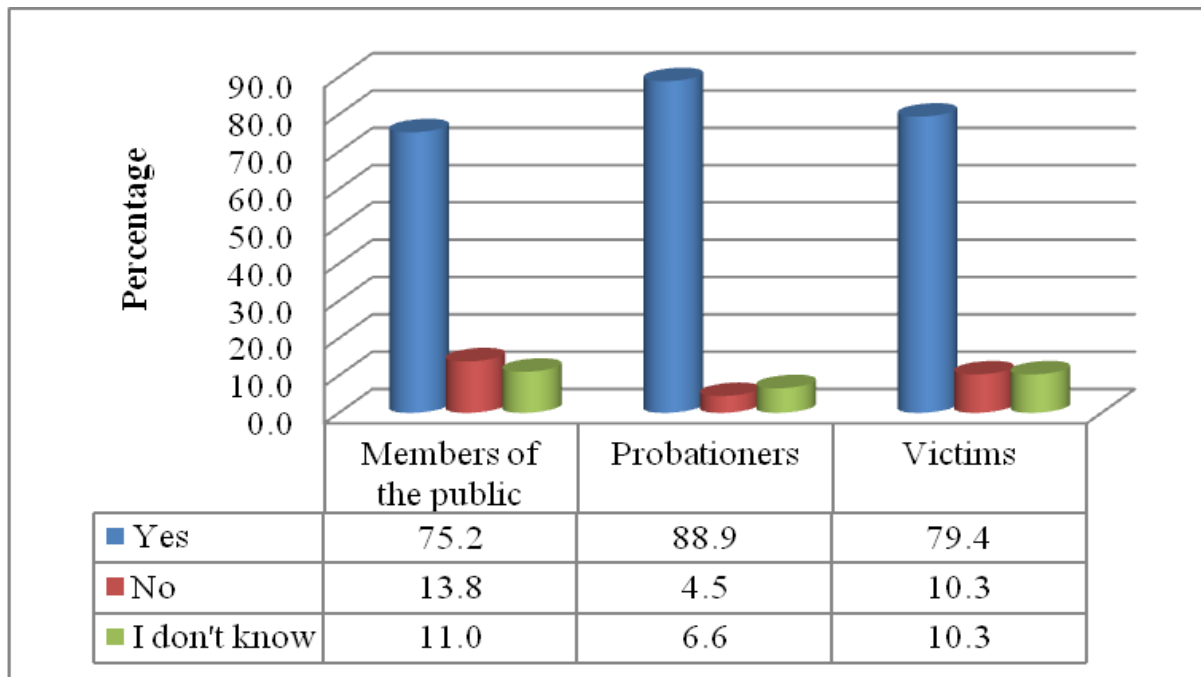
The findings of the study captured in Figure 18 below showed that a majority of Magistrates (90.9%) and Probation Officers (95.6%) were satisfied with the level of probationers' compliance with the Probation Orders.



**Figure 18: Satisfaction with the level of compliance with Probation Orders**

There were a number of reasons given to validate the high satisfaction rating. The reasons given by Magistrates were: low levels of absconding (82.9%); strict supervision by Probation Officers (11.4%); and reformation and rehabilitation of probationers (5.7%). Similarly, majority of the Probation Officers argued that they were satisfied because of: low levels of absconding (85.7%); strict supervision by Probation Officers (11.8%); reformation and rehabilitation of probationers (10.1%); and community knowledge and support of the sentence (5.0%). However, the few Magistrates and Probation Officers who were not satisfied with the level of compliance cited issues requiring attention by the Judiciary and the Probation Department such as high level of absconding, lack of adequate training for Probation Officers, failure by community to adequately embrace Probation Orders and compromised Probation Officers.

This study went further to ask members of the public, probationers and victims to indicate if most probationers complied with the Orders. Majority of the members of the public (75.2%), probationers (88.9%) and victims (79.4%) said probationers complied with the Orders. These results are indicated in Figure 19 below.



**Figure 19: Responses on whether or not probationers comply with Probation Orders**

As shown in Table 3.15 below, the most prominent explanations given in support of the assertions that probationers comply with the Orders were low levels of absconding and fear of imprisonment among the probationers.

**Table 3.15: Reasons supporting assertion that probationers comply with Probation Orders**

Reason supporting assertion that probationers comply with Probation Orders	Responses in percentage		
	Members of the public	Probationers	Victims
Low levels of absconding	49.6	33.3	44.4
Fear of imprisonment among the probationers	41.4	55.0	42.6
Benefits associated with Probation Orders	9.1	10.0	11.1
Strict supervision by Probation Officers	6.2	5.5	13.0
Community knowledge and support of Probation Orders	0.8	1.3	3.7

The above findings help to confirm that Probation Orders are beneficial and have significant offender rehabilitation and crime deterrence values in the prevention of crime in the country.

The few members of the public, probationers and victims who indicated that most probationers do not comply with Probation Orders gave a number of varied reasons which included: failure by community to adequately embrace Probation Orders; high level of absconding; compromised Probation Officers; inadequate knowledge on probation; lack of adequate training on Probation Orders; inadequate and/or lack of proper supervision of probationers; inadequate support of Probation Orders from other stakeholders such as the police; and probationers' difficulty in balancing between attending to Probation Orders' requirements (such as periodical reporting to Probation Office) and other economic activities.

Satisfaction with the level of compliance with Probation Orders has been examined from different dimensions by both practitioners and scholars. For instance, Bottoms, Gelsthorpe and Rex (2001) have highlighted compliance in terms of compliance with the specific legal requirements of the Probation Orders sentence and offender's desistance from offending. Robinson and McNeill (2008) contextualize compliance in terms of, first, the probationer's attitudinal acceptance of the sentence and a willingness to participate or engage with it (also referred to as substantive compliance), and second, whether the Probation Order was completed or official action was taken against any breach (also referred as formal compliance). Bonta, Rugge, Scott, Bourgon and Yessine (2008) argue that the measure of compliance should be a balance between enforcement of the Probation Order and meeting treatment needs of the offender.



### 3.5.3 Rate of successful completion of Probation Orders sentence

Compliance with Probation Orders was further gauged by asking Magistrates and Probation Officers to estimate the rate of successful completion<sup>1</sup> of the Probation Orders sentence. As shown in Table 3.16 below, the rate of successful completion of Probation Orders sentences was estimated at 50-74% by most (45.5%) of the Magistrates and 75% and above by majority (65.7%) of the Probation Officers.

**Table 3.16: Estimated rate of successful completion of Probation Orders sentence**

Estimated rate of successful completion	Responses in percentage	
	Magistrates	Probation Officers
Below 24%	2.3	1.5
25-49%	9.1	4.4
50-74%	45.5	28.5
75% and above	43.2	65.7

The actual rate of successful Probation Orders sentence completions for the years 2016 and 2017 was 54.5% and 91.5% respectively as shown in Table 3.17 below. This meant that the rate of compliance in 2016 was in tandem with the perceptions of most (45.5%) of the Magistrates who had estimated the successful completions at 50-74% while the rate for year 2017 was consistent with the estimation of majority (65.7%) of the Probation Officers who placed the rate at 75.0% and above.

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<sup>1</sup> A probationer is said to have completed his/her sentence when the duration of the sentence comes to an end. Completion comes in the form of : **Satisfactory Completion** (that is, the probationer served to the end of the sentence without any contravention of the provisions of the Order); **Absconded Completion** (that is, the probationer disappeared during the supervision period and a warrant of arrested was issued but was not executed at the time of lapse of the sentence period; and **Unsatisfactory Completion** (that is, the probationer has breached the current Order or committed another offence during the supervision period of the current Order, a warrant of arrest has been issued and executed within the supervision period of the current Order. The annual rate of successful Probation Orders completion is therefore the percentage of all annual successful completions against the total annual completions.

**Table 3.17: Actual Probation Orders sentence completions for year 2016 and 2017**

Month	Probation Orders completions, 2016												Probation Orders completions, 2017											
	Males						Females						Males						Females					
	Men			Boys			Women			Girls			Men			Boys			Women			Girls		
	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory	Satisfactory	Absconded	Unsatisfactory
Jan	426	15	9	68	3	1	127	6	6	14	0	1	364	30	8	94	2	8	120	6	12	20	2	1
Feb	380	17	1566	66	1	14	154	1	3	14	1	1	386	16	14	75	8	8	132	10	3	17	2	0
Mar	399	3810	10	69	5	2	156	10	5	10	2	0	465	24	14	79	3	7	136	1	2	19	0	1
Apr	367	20	10	74	3	9	113	4	2	18	0	0	404	28	13	75	3	2	156	19	3	12	2	0
May	361	20	10	73	10	3	127	4	2	20	0	1	632	25	14	137	3	21	165	3	1	24	4	1
June	334	10	11	77	4	4	118	4	2	24	2	0	480	27	61	75	1	4	158	8	9	21	1	1
July	422	19	11	97	12	3	120	5	3	10	1	0	512	17	62	90	4	17	148	8	5	18	2	1
Aug	361	32	10	67	7	4	144	8	1	18	1	2	402	15	5	67	2	2	112	4	0	28	2	0
Sep	447	18	17	93	6	8	179	10	4	18	3	1	465	16	21	75	4	6	186	2	2	15	1	0
Oct	447	5	8	70	4	4	121	1	0	6	2	1	400	47	9	76	1	2	182	3	2	21	0	0
Nov	350	31	20	59	2	15	89	7	12	8	1	1	386	11	5	89	4	2	123	8	1	17	1	2
Dec	304	9	20	60	1	1	84	11	12	9	1	1	401	17	7	85	3	3	107	4	0	17	0	0
<b>Total</b>	<b>4,598</b>	<b>4,006</b>	<b>1,702</b>	<b>873</b>	<b>58</b>	<b>68</b>	<b>1,532</b>	<b>71</b>	<b>52</b>	<b>169</b>	<b>14</b>	<b>9</b>	<b>5,297</b>	<b>273</b>	<b>233</b>	<b>1,017</b>	<b>38</b>	<b>82</b>	<b>1,725</b>	<b>76</b>	<b>40</b>	<b>229</b>	<b>17</b>	<b>7</b>
<b>Total Completions</b>	<b>13,152</b>												<b>9,034</b>											
<b>Satisfactory completion rate for all probationers</b>	<b>54.5%</b>												<b>91.5%</b>											

Source: Department of Probation and Aftercare Service, 2017

The above findings indicate that the rate of successful completions of Probation Orders sentence is considerably high for all offenders in general and for female probationers in particular. PRI (2012) report on alternatives to imprisonment had also showed that approximately 86.0% of Probation Orders in Kenya were satisfactorily completed. According to (PRI, 2016b), the average national satisfactory completion rates in Kenya were 83.0% in 2013 (that is, 88.2% for females and 77.1% for males), 84.8% in 2014 (that is, 85.2% for females and 84.4% for males) and 78.1% in 2015 (that is, 68.0% and 88.1% for females and males respectively) thus implying that most probationers complied with the Orders. Carmichael et al. (2005) have also shown that majority of the female offender population in the United States is completing their probation sentences in the community as a result of gender-specific interventions such as policies, programmes and treatment regimes that address problems and issues faced by female offenders in the correctional system. Hence ensuring satisfactory completion of Probation Orders in Kenya needs to consider gender-specific interventions.

It is important to note that most previous adult convicts in Kenya who have satisfactorily completed their custodial and/or non-custodial sentences and have been rehabilitated and/or reformed have had to bear with a lifelong criminal tag and stigma after their first conviction thus denying them the opportunity to be issued with a Police Clearance Certificate (that is, Certificate of Good Conduct) which is also required by most prospective employers (PRI, 2016b). Therefore, based on the findings on successful completion of Probation Orders sentences, it is recommended that existing policy, legislative and administrative frameworks on issuance of Police Clearance Certificates be reviewed to facilitate issuance of these certificates to rehabilitated and/or reformed offenders which would in turn assist in addressing their problem of lifelong criminal label and stigma and facilitate the ex-offenders in securing formal employment.

The fact that there were probationers who did not satisfactorily complete their sentences or absconded the sentences calls for concerted efforts among relevant stakeholders to ensure total compliance. Thorough supervision, monitoring and evaluation of the Orders are paramount in order to ensure the effectiveness of the sentence.

### **3.5.4 Key involvement and/or participation aspects and factors influencing compliance with Probation Orders sentence**

#### **3.5.4.1 Key involvement and/or participation aspects influencing compliance with Probation Orders sentence**

This study examined the participation and/or involvement of some of the significant players (such as the offender himself/herself, relatives to the offender, victims, local administration leaders and the larger community) as an important aspect in ensuring compliance through reduced risks of breach of Probation Orders.

The findings from majority of the Magistrates (81.8%), Probation Officers (92.0%) and probationers (62.4%) indicated that most offenders were, in most cases, before sentencing,

given the freedom to participate in deciding whether or not to benefit with Probation Orders sentences. Majority (58.8%) of the victims also confirmed that they were given the freedom, before sentencing, to participate in deciding whether or not their offenders could benefit with Probation Orders sentences. These findings are captured in Table 3.18 below.

**Table 3.18: Responses on freedom of participation in deciding offenders' sentences**

Response on freedom of participation in deciding offenders' sentences	Responses in percentage			
	Whether most offenders are given the freedom before sentencing to participate in deciding whether or not to benefit with Probation Orders sentences	Whether offender was given the freedom before sentencing to participate in deciding whether or not to benefit with a Probation Orders sentence	Whether victim was given the freedom before sentencing to participate in deciding whether or not his/her offender could benefit with a Probation Orders sentence	
	Magistrates	Probation Officers	Probationers	Victims
Yes	81.8		92.0	58.8
No	13.6		6.6	36.8
I don't know/ cannot remember	4.5		1.5	4.4

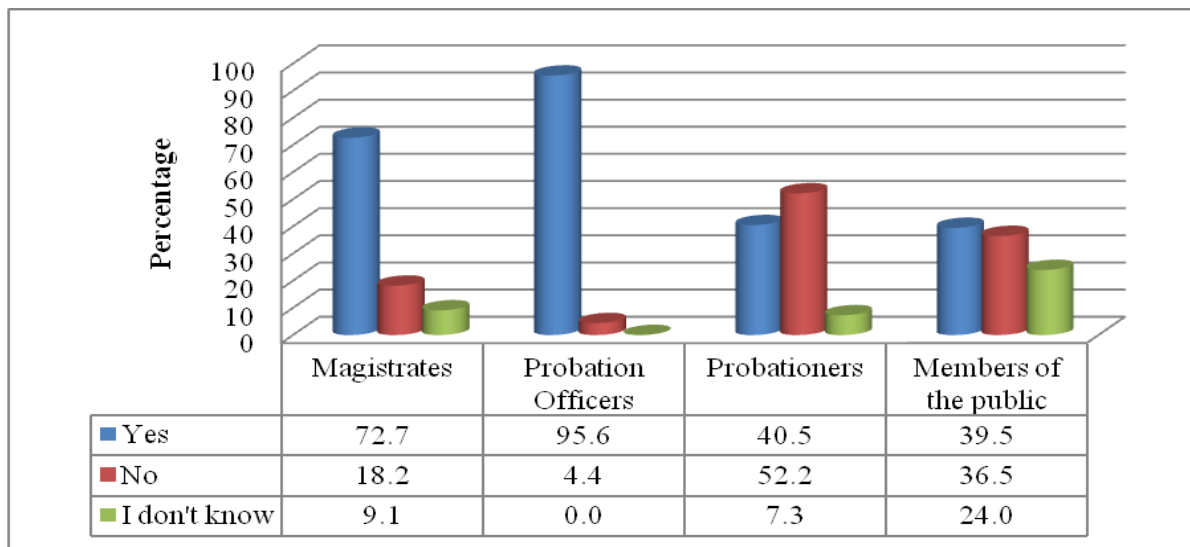
The Magistrates, Probation Officers, probationers and victims were asked to explain their answers on whether or not in most cases offenders and victims were given such freedoms, before sentencing, to decide on Probation Orders sentencing. According to majority of the Magistrates (76.7%), Probation Officers (90.6%), probationers (65.6%) and victims (60.0%), offenders and/or victims are asked about their willingness towards the Probation Orders sentence. These findings are highlighted in Table 3.19 below.

**Table 3.19: Explanations on freedoms to decide offenders' sentences before sentencing**

Explanation on freedoms to decide offenders' sentences before sentencing	Explanations in percentage			
	Magistrates	Probation Officers	Probationers	Victims
Offenders and/or victims are asked about their willingness towards the Probation Orders sentence	76.7	90.6	65.6	60.0
The Probation Orders sentence is determined by Probation Officers or Courts	16.3	6.3	33.2	38.5
Offenders are informed/enlightened on what a Probation Orders sentence entails	7.0	3.1	1.2	1.5

Among the respondents who said that the freedom to participate in decisions on sentencing of the probationer was not granted, they argued that the Probation Orders sentence was determined by Probation Officers or Courts without input from either the offender or victim. However, according to the provisions of the Probation Orders sentence, a Probation Officer is expected to explain to the offender, before he/she is handed the sentence, the requirements to qualify for the sentence. The offender has also to express willingness to be placed and give informed consent to serve the sentence by signing a copy of the Order.

This study probed further about the involvement of relatives of offenders and victims in deciding on whether or not the offenders benefit with Probation Orders sentences. This is because these relatives must work closely with Probation Officers to ensure rehabilitation and compliance of the probationer with the Order. As was reported by most of the Magistrates (72.7%), Probation Officers (95.6%) and members of the public (39.5%), before sentencing, relatives of offenders and/or victims were given the opportunity to participate in deciding whether or not the offender benefits with a Probation Orders sentence. However, as shown in Figure 20 below, this assertion was contradicted by majority (52.2%) of the probationers who argued that their relatives were not given the opportunity.



**Figure 20: Responses on whether or not relatives of probationers and/or victims participate in deciding the offender's Probation Orders sentence**

The observable significant disparity between responses of the probationers and other respondents especially the Probation Officers and Sentencing Officers are explained by the fact that details of social inquiries conducted by the Probation Officers with the relatives of the offender are, under normal practice, not shared with the offender (at least before sentencing) because some relatives could be having strained relationship with the offender and if he/she gets to know of it, enmity could develop or escalate thus complicating the supervision and rehabilitation process. These findings therefore emphasize the need for Probation Officers to inform offenders (especially those still in custody at the time of preparation of the pre-sentence report) that their relatives would be contacted for certain

information even if this information is not going to be shared with them (that is, the offenders).

The sample respondents gave a number of explanations for their responses with regards to whether relatives of probationers and/or victims participate in deciding the offender's Probation Orders sentence. As shown in Table 3.20 below, most of the sample respondents who said that relatives of offenders and/or victims participate in the sentencing decisions argued that a social enquiry is normally conducted involving the relatives to determine the suitability of the offender for a Probation Orders sentence. However, respondents who were of the contrary opinion argued that due to time limit, relatives were not involved and that the sentence was determined by the Probation Officer or Courts without involving the relatives.

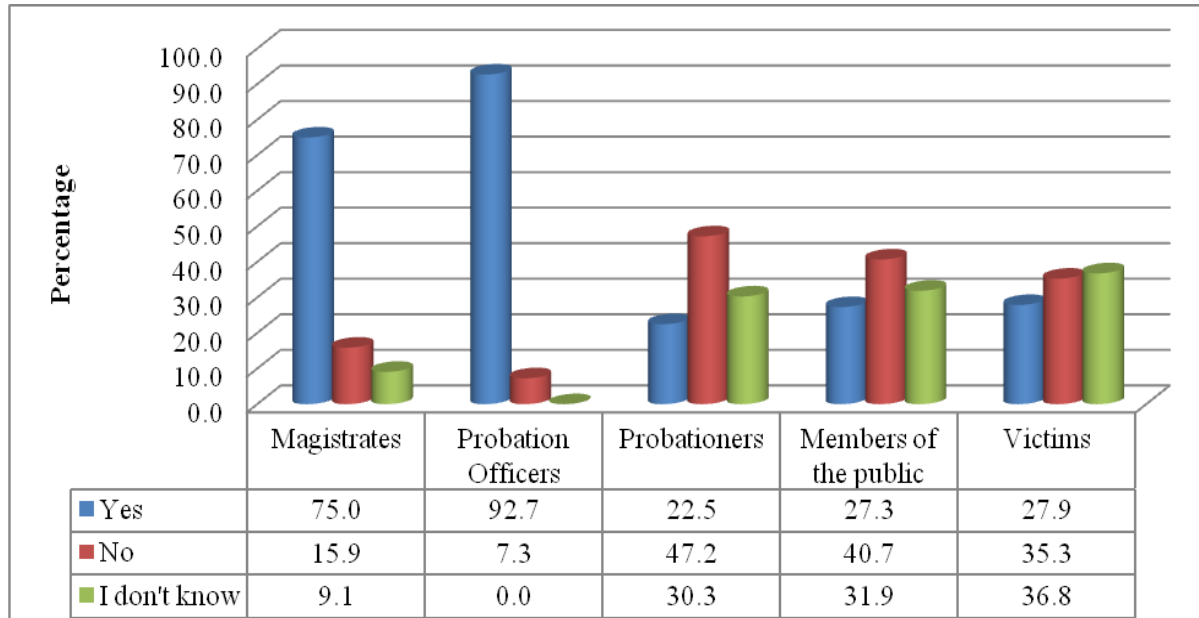
**Table 3.20: Explanations on participation of relatives of offenders and/or victims in Probation Orders' sentencing decisions**

<b>Explanation on participation of relatives of offenders and/or victims in Probation Orders' sentencing decisions</b>	<b>Explanations in percentage</b>			
	<b>Magistrates</b>	<b>Probation Officers</b>	<b>Probationers</b>	<b>Members of the public</b>
A social inquiry is often conducted involving the relatives to determine the suitability of the offender for the Probation Orders sentence	80.0	95.6	48.6	54.2
Probation Orders sentence is determined by the Probation Officer or Courts without involving the relatives	17.5	2.2	50.2	45.2
Due to time limits, relatives are not involved	2.5	2.2	1.2	0.6

Members of the community play a significant role since they provide vital information on the offenders' behaviour at the community level. Usually, Probation Officers include community members' sentiments during the initial stages of preparation of the pre-sentence reports<sup>2</sup>. In

<sup>2</sup> Before an offender is placed on Probation Orders, a Probation Officer is required to take a number of actions: First, to confirm that the Court has asked for a Probation Officer's pre-sentence report. The officer collects the necessary information from the offender's court file then proceeds to interview the offender (who could be in custody or out on bond). The officer then conducts a social inquiry with other significant persons who may include the Arresting Officer, other Government officers such as the area Chief where the offender resides, offender's relatives and friends, the direct victim and other community members. The social inquiry is intended to gather background information of the offender, the circumstances of the crime/offence, the attitude of the offender towards the offence, the victim and the community and the offender's criminogenic needs (that is, what factors drove the offender to the offence) and offender's willing to serve a Probation Orders sentence should he/she be considered for the same. The final section of the social inquiry report is the recommendation to a Sentencing Officer on best sentence options (such as a Probation Orders sentence) for which the offender can be considered for towards rehabilitation. The Court may then grant Probation Orders and place the offender

this regard, participation of the members of the community was examined. According to the findings presented in Figure 21 below, majority of the Probation officers (92.7 %) and Magistrates (75.0%) reported that the local community was given the opportunity to participate in deciding whether or not an offender could benefit with a Probation Orders sentence. However, most of the probationers (47.2%) and members of the public (40.7%) were of the contrary opinion while most victims (36.8%) said that they did not know whether or not the local community was given the opportunity to participate in deciding whether or not an offender could benefit with a Probation Orders sentence.



**Figure 21: Responses on whether or not the local community participates in deciding the offender's Probation Orders sentence**

The above findings highlight the need for the Judiciary and the Department of Probation and Aftercare Service to enlighten probationers, members of the public and victims that the local community has a role to play in the offender sentencing process.

The explanations for the answers given by the sample respondents on whether or not the local community is given the opportunity to participate in deciding whether or not an offender could benefit with a Probation Orders sentence are as presented in Table 3.21 below. Findings from majority of the Magistrates (65.0%) and Probation Officers (83.2%) showed that the local community participates in Probation Orders sentencing decisions through their leaders who give their opinions on offenders. On the other hand, majority of the probationers (61.3%), members of the public (53.2%) and victims (50.0%) argued that the community does not participate in Probation Orders sentencing decisions because the Probation Orders sentence is determined by the Probation Officer and/or Law Courts without involving the community.

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under the supervision and rehabilitation of a Probation Officer with directions where the offender will be reporting for supervision and rehabilitation during the duration of the sentence issued.

**Table 3.21: Explanations on local community's participation in deciding the offender's Probation Orders sentence**

Response on whether or not the local community participates in Probation Orders sentencing decisions	Explanation	Responses in percentage				
		Magistrates	Probation Officers	Members of the public	Probationers	Victims
<b>Yes</b>	The community is involved in Probation Orders sentencing decisions through its leaders who are involved in giving their opinions on offenders.	65.0	83.2	43.0	36.1	50.0
	Local administrators are consulted and asked to give recommendations on suitability of the offender to serve Probation Orders.	17.5	9.5	3.8	2.6	-
<b>No</b>	Probation Orders sentence is determined by the Probation Officer and/or Law Courts without involving the community.	17.5	7.3	53.2	61.3	50.0

The above findings on key involvement and/or participation aspects influencing compliance with Probation Orders sentence highlight at least two major issues: first, the Probation Orders sentence is participatory and respects the rights of offenders and/or victims to participate in decisions affecting them; and second, there appears to be no common understanding among all the parties on what constitutes local community participation in Probation Orders sentencing. This is because on one side, Sentencing Officers and Probation Officers argue that the community participates but on the other side, community members, probationers and victims argue that the community does not participate.

According to Zondi (2012), community participation in community correction operations and offender reintegration is effective if there is shared knowledge between the people living in the area and the public institution (s) charged with executing community-based sanctions, and hence community members need to be educated and/or sensitized on their role in the rehabilitation and reintegration of offenders and ex-offenders. The effective participation of



the local community is likely to address, among others, the challenge of absconding of the probationer and that of inadequate community support in the successful rehabilitation of offenders.

#### **3.5.4.2 Key factors influencing compliance with Probation Orders sentence**

This study probed further to establish some of the key factors influencing compliance with Probation Orders sentence. According to the findings presented in Table 3.22 below, some of the key factors (as indicated by the highest percentage reported by either of the categories of sample respondents) include: fear of incarceration/imprisonment for breach of Probation Orders (reported by 63.7% of the probationers); the level of supervision of probationers by Probation Officers (reported by 44.2% of the Probation Officers); community support of Probation Orders (reported by 31.8% of the Probation Officers); a clear understanding and attitude of the probationer towards the sentence (reported by 23.3% of the Probation Officers); the benefits the probationer gets from the Probation Orders sentence (reported by 19.4% of the Probation Officers); and use of local administration and community in the supervision of probationers (reported by 19.4% of the Probation Officers).

**Table 3.22: Key factors influencing compliance with Probation Orders sentence**

<b>Factors influencing compliance with Probation Orders sentence</b>	<b>Responses in percentage</b>				
	<b>Magistrates</b>	<b>Probation Officers</b>	<b>Probationers</b>	<b>Members of the public</b>	<b>Victims</b>
Level of supervision by Probation Officers	39.5	44.2	23.8	25.5	36.1
Fear of incarceration/imprisonment for breach of Probation Orders	26.3	17.8	63.7	50.1	57.4
Benefits the probationer gets from Probation Orders	18.4	19.4	10.2	11.6	8.2
Community support of Probation Orders	10.5	31.8	3.5	7.6	3.3
Clear understanding and attitude of the probationer towards Probation Orders	7.9	23.3	15.1	13.9	19.7
Facilitation of Probation Officers	5.3	-	2.2	2.1	-
Length/duration of the Probation Orders sentence	5.3	-	2.2	3.5	4.9
Nature/type of offence	5.3	0.8			
Proximity and accessibility to Probation Office from the probationer's residence	-	1.6	1.2	2.4	1.6
Use of local administration and	-	19.4	2.6	4.0	1.6

Factors influencing compliance with Probation sentence	Responses in percentage				
	Magistrates	Probation Officers	Probationers	Members of the public	Victims
community in the supervision of probationers					
Poverty/economic background of the probationer	-	3.1	-	-	-
Probationer's lack of physical permanent residence	-	1.6	-	-	-
Corruption among key players involved in Probation Orders	-	0.8	-	0.7	1.6

A number of key informants highlighted some of the key factors influencing compliance with Probation Orders. For instance, a key informant who was a senior Police officer in Naivasha Sub -County within Nakuru County commented that:

*“Probation Orders sentence is being complied with by the probationers because the sentence, unlike Community Service Orders, does not come with unpaid community work but just a matter of reporting to the Probation Officer once a month or whenever specified by the Officer and adhering to the provisions of the Orders. They have humble time to organize themselves to report whenever required”*

Another key informant who was a senior officer in the Ministry of Interior and Coordination of National Government in Kajiado County with an experience of 26 years in service expressed the following sentiment in regard to compliance with Probation Orders:

*“The requirement of the Probation Orders by the sentencing court instills fear that if the offender/probationer does not comply with the terms and conditions of the Orders, he/she will be committed to custody”*

A Deputy County Commissioner in Nakuru County and who had worked in the county for two years reported that:

*“The level of Probation Orders compliance is not Satisfactory because most probationers don't take the sentence seriously since they always compromise the Probation Officers by corrupting them. Secondly, there is no proper guidance and counseling being offered, hence probationers don't see the importance of the Probation Orders and thus the high chances of absconding”*

In Kisumu County, a Deputy County Commissioner with a working experience of 15 years shared similar sentiments and had this to say:

*“Compliance is average in that there is a high rate of absconders occasioned by corrupt officers colluding with the offenders. Due to low resource allocation of funds there is minimal supervision of the probationers”*

The above findings from sample respondents and key informants indicate that compliance with Probation Orders is a product of key multiple factors requiring consideration by relevant players in the administration of criminal justice. Alarid (2018) argues that if probationers feel that their needs are addressed and that they are treated fairly, they will be more likely to complete the terms and conditions of their supervision.

According to Sorsby (2017), lowering the rates of absconding requires early identification (by the supervising Probation Officers) of the noncompliance with the provisions of the Probation Orders combined with proactive absconder location and apprehension strategies which minimize the confidence of the probationer to abscond. Robinson and Ugwudike (2012) argue that toughening up of enforcement policies on offenders has been used in jurisdictions such as England and Wales, with varying levels of success, to enhance the legitimacy of probation service.

According to MCNeill (2010), to manage practical obstacles to compliance, some Probation Officers use strategies such as offering flexible appointments, reminding probationers to attend appointments and making home visits to assist probationers with transport problems and to accord them time for familial responsibilities such as childcare. A 2016 study showed that most women serving Probation Orders in Kenya struggled to save money to pay for transport to attend their monthly appointments at the Probation Office (PRI, 2016b).

Hence some of the implications of the findings of this study include: instituting measures for improvement of the supervision aspect; ensuring that those who breach the Orders are given alternative deterrent sentences; adequate involvement and sensitization of offenders, victims and the local community on the requirements of the sentence; increasing the visibility of the benefits of Probation Orders to both the offender and the community at large; enlisting the services of local administration and the community in the supervision of probationers; sensitizing the community to support the Probation Orders sentence; and facilitating Probation Officers in the management of the sentence through enhanced financial, human and infrastructural resourcing.

### **3.5.5 General perceptions on key aspects of compliance with Probation Orders sentence**

The findings of the survey established the general perceptions of Magistrates, Probation Officers, members of the public, probationers and victims on key aspects of compliance with Probation Orders sentence. Table 3.23 below captures these perceptions as indicated by the responses to relevant statements on the sentence.

**Table 3.23: General perceptions on key aspects of compliance with Probation Orders**

Statement on general perceptions on key aspects of compliance with Probation Orders	Responses in percentage														
	Agree					Disagree					I don't know				
	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims
Probationers with a negative opinion about the sentence are likely to breach the order.	93.2	94.2	69.1	49.4	67.6	6.8	5.1	30.1	46.2	26.5	0.0	0.7	0.8	4.5	5.9
Offenders who corrupt Sentencing Officers to get Probation Orders sentences are likely to breach the order.	79.5	90.5	75.4	45.3	63.2	9.1	5.1	21.6	44.4	25.0	11.4	4.4	3.0	10.3	11.8
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the Orders.	86.4	92.0	76.2	49.9	67.6	0.0	5.1	20.4	39.4	19.1	13.6	2.9	3.4	10.7	13.2
Direct placement of offenders by courts to Probation Orders supervision contributes to non-compliance with the Orders.	70.5	83.9	43.1	34.0	44.1	22.7	13.1	46.7	53.3	44.1	6.8	2.9	10.2	12.7	11.8
Tribalism, nepotism and favouritism within the sentencing agencies contribute to non-compliance of offenders with the Orders.	47.7	58.4	63.9	39.0	48.5	27.3	33.6	32.9	51.9	36.8	25.0	8.0	3.2	9.1	14.7
Tribalism, nepotism and favouritism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the Orders.	56.8	58.4	63.3	38.1	52.9	25.0	32.8	32.9	52.4	32.4	18.2	8.8	3.8	9.4	14.7
Lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision contributes to breach of the Orders.	88.6	92.7	67.5	56.9	61.8	11.4	7.3	30.9	38.7	35.3	0.0	0.0	1.6	4.5	2.9
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.	88.6	86.1	66.7	55.4	69.1	11.4	13.9	29.9	38.9	29.4	0.0	0.0	3.4	5.7	1.5

Statement on general perceptions on key aspects of compliance with Probation Orders	Responses in percentage														
	Agree					Disagree					I don't know				
	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.	86.4	64.2	58.9	50.4	73.5	13.6	35.0	37.9	40.6	23.5	0.0	0.7	3.2	8.9	2.9
Lack of support to employed probationers from their employers contributes to breach of Probation Orders.	81.8	73.0	69.1	58.5	73.5	13.6	24.1	27.1	30.8	25.0	4.5	2.9	3.8	10.7	1.5
Most Probation Officers have not been trained and/or sensitized on supervision of Probationers	34.1	34.3	-	-	-	50.0	62.0	-	-	-	15.9	3.6		-	-
Most community members have not been trained and/or sensitized about Probation Orders	-	-	90.4	-	-		-	7.6	-		-	-	2.0	-	
Most economically unstable probationers are likely to abscond their sentences to look for livelihoods.	79.5	70.1	66.9	55.1	64.7	13.6	26.3	30.3	40.3	32.4	6.8	3.6	2.8	4.6	2.9

The findings in the Table above indicated that most respondents in the five categories agreed with most of the statements implying that the respondents regarded them as important aspects of compliance with Probation Orders. Hence relevant actors need to consider them as one way of ensuring that the Orders are complied with by probationers.

Most of the sample respondents in all the categories agreed that corruption was a risk to compliance with Probation Orders. Although the details of the corruption aspect were not probed, the finding highlights the need for stringent measures to ensure the sentence is corruption-free.

The institutions charged with the administration of criminal justice are, by principle, expected to be neutral, fair and just to all. Therefore, the tribalism, nepotism and favouritism within the sentencing and offender rehabilitation and supervision agencies which was cited by most sample respondents in all categories except the probationers as an important factor contributing to non-compliance of offenders with the Probation Orders needs to be addressed.

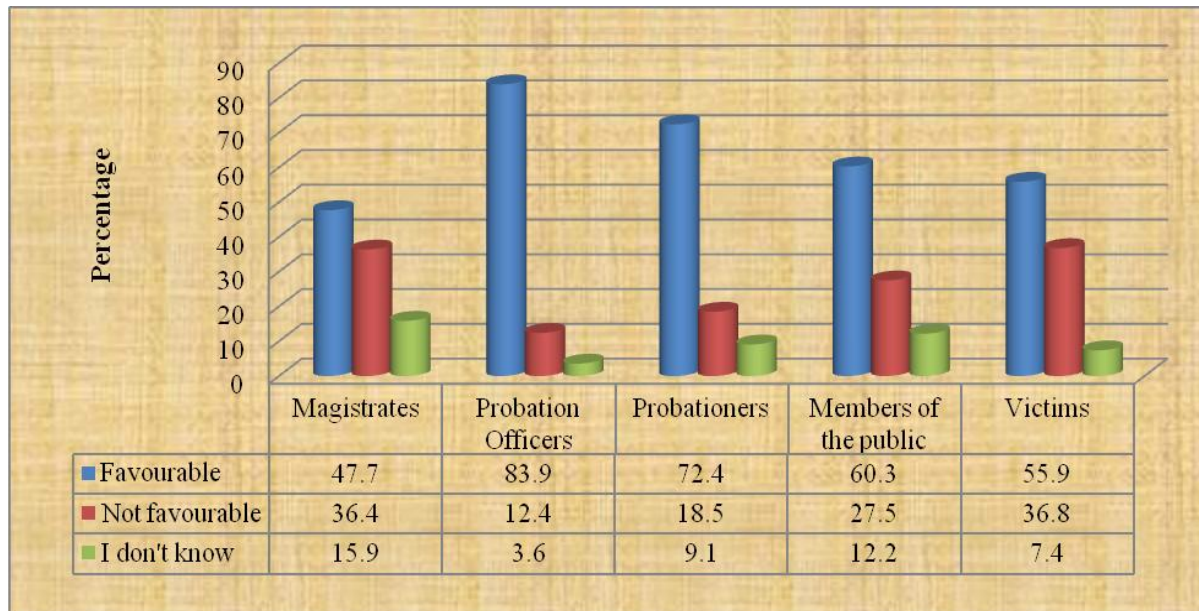
The findings showed that: most economically unstable probationers are likely to abscond their sentences to look for livelihoods; and that lack of support to employed probationers from their employers contributes to breach of Probation Orders. The root cause of most common crimes especially among the youth in Kenya appears to be related to economic challenges of poverty and unemployment (NCRC, 2016; 2017a; 2017b). The findings therefore call for programmes aimed at youth economic empowerment including the enlisting of the support of employers in the implementation of the Probation Orders sentence which was reported to have economic benefits to offenders. The findings also call for support of offenders who are economically unstable to continue with their economic activities and the need to provide linkage of offenders to potential employers.

The findings that lack of support to Probation Officers from the direct victims, probationer's family and the local community contributes to breach of the Probation Orders is a call to the Judiciary and the Department of Probation and Aftercare Service to ensure that these significant others (or parties) are involved in the whole process of supervision and rehabilitation of probationers. According to PRI (2016b), family and community support (especially with regard to emotional and financial support) is a critical component in compliance in as far as enabling probationers to serve their sentences successfully is concerned.

### **3.6 Public Attitude towards Probation Orders Sentence**

#### **3.6.1 Public support and attitude towards Probation Orders**

The findings from most of the Magistrates (47.7%) and majority of the Probation Officers (83.9%), probationers (72.4%), members of the public (60.3%) and victims (55.9%) captured in Figure 22 below indicated that the public attitude towards the Probation Orders sentence was favourable.



**Figure 22: Responses on public attitude towards Probation Orders sentence**

A key informant who was a senior Prison Officer with 24 years of service and who had worked in the locality in Homabay County for 3 years observed that:

*“The attitude towards Probation Orders is favourable because the community appreciates the way the sentence is being service by probationers. The sentence has also empowered probationers”*

Earlier findings showed that only a small percentage (27.3%) of members of the public reported that the local community participates in deciding whether or not the offender benefits with a Probation Orders sentence. Examined against the findings in the above Figure, it implies that their lack of participation does not translate to unfavourable public attitude towards the Probation Orders sentence. This also explains why majority (89.2%) of the members of the public argued that the sentences were beneficial. The findings therefore imply that the Probation Orders sentence in Kenya is sustainable because of the existing public support and favourable public attitude towards it. As articulated by Zondi (2012), sustainability of a community-based programme is significantly hinged on the support and positive attitude it enjoys from the local community interacting with it. According to NAPO (2003), members of the public in the United Kingdom rate the probation service as being best at the things with which they most associate it, that is, reducing reoffending.

### **3.6.2 Factors influencing public attitude towards Probation Orders**

The study also examined the factors contributing to the favourable public attitude towards Probation Orders sentence. The survey results captured in Table 3.24 below showed that the leading factors (as indicated by the highest percentage in either of the five categories of sample respondents) influencing favourable public attitude towards Probation Orders included: community sensitization on the Probation Orders sentence (reported by 61.3% of

the Probation Officers); offender rehabilitation aspect of the Probation Orders sentence (reported by 37.1% of the victims); promotion of family unity and/or ties (reported by 27.4% of the Probation Officers); the fact that an offender does not suffer imprisonment (reported by 23.5% of the Magistrates); enablement of the offender to continue with other socio-economic activities (reported by 20.2% of the probationers); enhanced reconciliation between offenders and victims (reported by 15.1% of the Probation Officers); and the fact that Probation Orders sentence is a lenient punishment (reported by 12.2% of the members of the public).

**Table 3.24: Factors contributing to favourable public attitude towards Probation Orders**

Factors contributing to favourable public attitude towards Probation Orders	Responses in percentage				Victims
	Magistrates	Probation Officers	Probationers	Members of the public	
Community sensitization on the Probation Orders sentence	58.8	61.3	26.5	24.7	34.3
The fact that an offender does not suffer imprisonment	23.5	13.2	13.0	12.9	17.1
Offender rehabilitation aspect of the Probation Orders sentence	11.8	17.9	33.7	26.9	37.1
Life skill training and/or transfer aspect of the Probation Orders sentence	5.9	2.8	3.3	6.1	
Enhanced reconciliation between offenders and victims	5.9	15.1	3.3	2.2	11.4
Promotion of family unity and/or ties	5.9	27.4	19.9	16.8	22.9
Enablement of the offender to continue with other socio-economic activities	-	3.8	20.2	10.8	20.0
Inability by offender to raise fines	-	-	0.3	-	-
Crime deterrence effect of Probation Orders sentence	-	-	2.0	6.5	8.6
Compliance by most Offenders	-	-		2.5	-
The fact that Probation Orders sentence is a lenient punishment	-	-		12.2	-



The few sample respondents who had indicated that public attitude towards Probation Orders was unfavourable (that is, 36.4% of the Magistrates, 12.4% of the Probation Officers, 18.5% of the probationers, 27.5% of the members of the public and 36.8% of the victims) cited reasons which included: the perception of Probation Orders as a lenient form of punishment; inadequate sensitization about Probation Orders sentence; high rates of reoffending; and negative public attitude towards probationers. These results are indicated in Table 3.25 below.

**Table 3.25: Factors contributing to unfavourable public attitude towards Probation Orders**

<b>Factors contributing to unfavourable public attitude towards Probation Orders</b>	<b>Responses in percentage</b>				
	<b>Magistrates</b>	<b>Probation Officers</b>	<b>Probationers</b>	<b>Members of the public</b>	<b>Victims</b>
Perception of Probation Orders as a lenient form of punishment	55.6	75.0	37.8	31.5	50.0
Inadequate sensitization about Probation Orders sentence	44.4	25.0	32.9	51.5	12.5
High rates of reoffending	5.6	6.2	2.4	7.7	29.2
Lack of proper supervision and/or probationers' tendency to abscond Probation Orders sentence	-	6.2	6.1	7.7	8.3
The offender's bad reputation	-	-	1.2	3.8	
Negative public attitude towards probationers	-	-	25.6	-	12.5
Corruption among key players in the Probation Orders sentence				8.5	

A senior Police Officer in Kajiado Central Sub-county who had served in the area for four years said that:

*“Probation Orders sentence is sometimes not favourable especially to the complainants because they feel the sentence is not punitive enough to discourage the criminal acts and hence the probationers may continue with their criminal acts while serving the non-custodial sentence”*

The implication of the above findings is that the Judiciary and the Department of Probation and Aftercare Service need to prioritize measures for sustaining and enhancing the key factors identified as instrumental in ensuring positive public attitude towards Probation Orders sentence.

Although the factors contributing to unfavourable public attitude towards Probation Orders, were cited by a minority of the sample respondents, there is need to guard against their escalation which may be detrimental to the current overly positive public attitude. The public needs to be sensitized that Probation Orders sentence is beneficial to the community and is not an inferior sentence by any standards. Importantly, there is need for the community to support probationers in their road to rehabilitation (as opposed to stigmatizing and/or viewing them negatively) in line with the Motto of the Department of Probation and Aftercare Service which is, '*Offenders Can Change*'.

In the United Kingdom, positive attitude towards probation service has been attributed to community (especially the youth) knowledge arising from sensitization and the fact that probation sentence has been associated with successful offender rehabilitation and reducing reoffending. NAPO (2003) argues that many people, especially those under 35, have interest to know about probation, and over three-quarters of members of the public think that probation disposals are more effective than prison at tackling some crimes.

The supportive relationship aspect of the Probation Officer has been identified as one of the key factors shaping public attitude. Barry (2007) argues that a reciprocal or positive relationship between a Probation Officer and a probationer is important in that it shapes the latter's attitudes towards the sentence and his/her supervision. Appleton (2010) avers that it is impossible to form a helpful relationship if a Probation Officer does not show interest in the well-being of those they are supervising and if the officer lacks qualities such as being respectful, non-judgmental, trustworthy, reliable, flexible, honest, supportive and encouraging. This implies that the recruitment of Probation Officers needs to consider these qualities.

### **3.6.3 Actions needed to achieve enhanced positive public attitude towards Probation Orders**

Respondents were further asked to indicate the actions needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence in their localities. As shown in Table 3.26 below, more than three quarters of all the sample respondents (that is, 94.6% of the Magistrates, 96.1% of the Probation Officers, 81.2% of the members of the public, 77.4% of the victims and 77.5% of the probationers) suggested the undertaking of public awareness and sensitization on Probation Orders.

**Table 3.26: Actions needed to achieve enhanced positive public attitude towards Probation Orders**

Actions needed to achieve enhanced positive public attitude towards Probation Orders	Responses in percentage				
	Magistrates	Probation Officers	Members of the public	Victims	Probationers
Public awareness and sensitization on Probation Orders	94.6	96.1	81.2	77.4	77.5
Offer training to new and existing stakeholders on Probation Orders	5.4	6.3	3.9	-	2.3
Allocation of adequate resources to Probation programme	2.7	3.9	2.0	1.6	0.9
Close and strict supervision of the probationers	2.7	6.3	4.8	6.5	5.0
Encourage reconciliation and reintegration through Probation Orders	2.7	0.8	1.1	3.2	1.6
Encourage integrity among stakeholders	-	3.9	6.1	8.1	1.6
Initiation of tangible projects through Probation programme	-	0.8	2.0	4.8	5.0
Integrate probation programme into education curriculum	-	0.8	0.2	-	-
Establish effective rehabilitation and/or empowerment programmes for probationers	-	-	6.3	-	-
Enforce compliance of the Probation Orders (e.g through stiff penalties for abscondee)	-	-	1.3	8.1	6.8
Enhanced cooperation among stakeholders	-	-	-	16.1	3.0
Effective mechanisms for flexible reporting time for probationers	-	-	-	-	1.6

The importance of public sensitization was emphasized by key informants. For instance, a senior Prison Officer in Homabay County argued that *“it is important to sensitize the*

*community on the importance of the Probation Orders programme*". This view was also held by a senior Police Officer in Kajiado Central Sub-county who said that *"There should be public awareness through Barazas to sensitize the public to embrace Probation Orders sentence"*. Further, an administrator in Kitengela within Kajiado County stated that:

*"Those who are aware of Probation Orders embrace the sentence with a positive attitude. Mostly, the relatives of the offenders would like their kin to be placed on non-custodial sentence"*

Due to their local level presence and distribution, National Government Administrative Officers play a critical role in community mobilization for government policies and programmes and can therefore be instrumental in public sensitization on the Probation Orders sentence. The media (through their radio and Television programmes) and religious institutions (which have membership of about 97% of Kenya's population) are also key in public sensitizations due to their large audience.

According to Chapman, Mirrlees-Black and Brawn (2002), providing simple factual information improves knowledge about crime and sentencing, and also has an impact on attitudes to and confidence in the criminal justice system. Teague (2008) argues that a well-informed people are less likely to assume that sentences are overly lenient or that a community-based disposal amounts to a 'let off', and therefore, expanding public knowledge of probation needs to be a top priority. Among other initiatives, Teague emphasizes the need for an imaginative and effective media strategy with a component of 'production of local publicity packages which tell the good stories which abound within the probation service of victims assured, offenders' lives transformed, beneficiaries satisfied and employers of ex-offenders convinced that their decision to offer employment was right'.

According to NAPO (2003), the United Kingdom's Government strategy for enhancing public attitude towards probation sanctions has been to toughen up community-based penalties in order to encourage the confidence of the general public and sentencing officers in them (penalties). This toughening may be in the form of timely re-arrests, re-sentencing and stricter sanctioning of those who breach the provisions of a Probation Order.

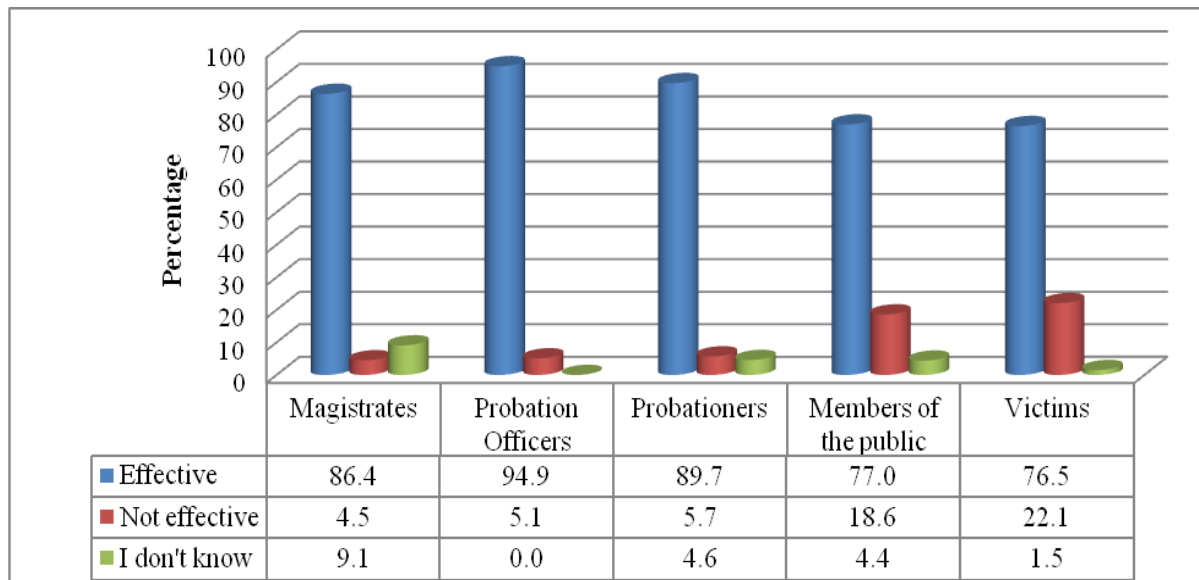
Towards ensuring that the public views probation services as credible, Teague (2008) argues that there is need for greater openness, transparency and public accountability in all the processes involved in the administration of criminal justice. Further, there is need for evidence-based demonstration to the taxpayer and other interested parties the value for money for the probation services offered.

### **3.7 Effectiveness of Probation Orders in the Rehabilitation of Offenders**

#### **3.7.1 Perceptions on general effectiveness of Probation Orders sentence**

This study sought to establish the general effectiveness of Probation Orders sentences through perceptions of the respondents. As indicated in Figure 23 below, majority of the

Magistrates (86.4%), Probation Officers (94.9%), probationers (89.7%), members of the public (77.0%) and victims (76.5%) were of the view that Probation Orders sentences were generally effective.



**Figure 23: Perceptions on general effectiveness of Probation Orders sentences**

The above findings indicate that there were slightly more respondents in the category of victims (22.1%) and members of the public (18.6%) than they were in the other categories of sample respondents who thought that Probation Orders sentences were generally not effective. These findings relate with earlier findings where more victims (14.7%) and members of the public (9.4%) than other sample respondents in the other categories had indicated that Probation Orders sentences were generally not beneficial.

The finding that Probation Orders sentence is generally effective is an important assurance and/or call to key stakeholders to continue utilizing and supporting it in offender rehabilitation and general crime management in the country. In a study in the United Kingdom, probationers rated the overall effectiveness of probation service at 72.0% majorly because Probation Officers supported their efforts and made significant contributions to tackling problems related to further offending (Farrall, 2002). In Scotland, qualitative studies among Probation Officers also point to general effectiveness of probation services especially when the aspects of reducing reoffending, changing attitudes and alleviating needs of probationers are used as measures of effectiveness (McNeill, 2000).

### **3.7.2 Perceptions on general effectiveness of specific aspects of Probation Orders sentences**

Magistrates, Probation Officers, members of the public, probationers and victims were asked to rate the general effectiveness of specific aspects of Probation Orders sentences. Most respondents in all the categories indicated that the sentence was generally effective in most of

the aspects. The highest to the least effective specific aspects of Probation Orders (based on the average percentage rating of effectiveness) were: enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence (97.4%); decongestion of prisons of non-serious and first offenders (93.6%); avoiding contamination of non-serious and first offenders by hardened criminals (91.9%); rehabilitation of non-serious offenders within the community (90.8%); saving tax payers money (86.9%); prevention of juvenile delinquency of the dependent minors (85.2%); promotion of reconciliation between the offender and the victim of crime (81.8%); individual offender paying back (reparation) for the injury done to the community (73.7%); acquisition of survival skills (64.3%); and linking of offenders to potential employers (55.6%). These findings are captured in Table 3.27 below.

**Table 3.27: Perceptions on general effectiveness of specific aspects of Probation Orders sentences**

Aspect of Probation Orders sentences	Responses in percentage on general effectiveness															
	Effective						Not effective						I don't know			
	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Average effectiveness	Magistrates	Probation Officers	Members of the public	Probationers	Victims	Magistrates	Probation Officers	Members of the public	Probationers	Victims
Rehabilitation of non-serious offenders within the community	93.2	97.8	82.8	93.2	86.8	<b>90.8</b>	0.0	1.5	16.2	3.7	10.3	6.8	0.7	1.0	3.0	2.9
Individual offender paying back (reparation) for the injury done to the community	77.3	78.1	64.3	76.8	72.1	<b>73.7</b>	18.2	21.2	33.5	19.4	26.5	4.5	0.7	2.2	3.7	1.5
Decongestion of prisons of non-serious and first offenders	100.0	92.0	93.6	92.7	89.7	<b>93.6</b>	0.0	7.3	5.4	4.6	7.4	0.0	0.7	1.0	2.7	2.9
Saving tax payers money	97.7	97.8	77.2	76.6	85.3	<b>86.9</b>	2.3	1.5	17.4	15.0	8.8	0.0	0.7	5.4	8.4	5.9
Avoiding contamination of non-serious and first offenders by hardened criminals	97.7	96.4	89.2	90.9	85.3	<b>91.9</b>	2.3	2.9	10.0	7.8	11.8	0.0	0.7	0.8	1.2	2.9
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence	100.0	98.5	97.8	96.8	94.1	<b>97.4</b>	0.0	1.5	2.0	2.3	4.4	0.0	0.0	0.2	0.9	1.5
Promotion of reconciliation between the offender and the victim of crime	97.7	95.6	65.3	70.9	79.4	<b>81.8</b>	2.3	3.6	33.1	25.1	20.6	0.0	0.7	1.6	3.9	0.0
Acquisition of survival skills	65.9	83.2	59.3	60.4	52.9	<b>64.3</b>	22.7	16.1	32.1	32.6	39.7	11.4	0.7	8.6	7.0	7.4
Linking of offenders to potential employers	56.8	71.5	49.1	50.6	50.0	<b>55.6</b>	31.8	27.7	42.9	40.5	36.8	11.4	0.7	8.0	8.9	13.2
Prevention of juvenile delinquency of the dependent minors	93.2	92.7	78.2	79.3	82.4	<b>85.2</b>	6.8	5.1	17.4	14.6	13.2	0.0	2.2	4.4	6.1	4.4

The above findings are consistent with earlier findings which indicated that some of the benefits of Probation Orders which had been realized to a large extent included: assisting in maintaining family ties (99.0%); preventing hardening of petty offenders (98.1%); decongesting prisons (97.3%); enabling offenders to continue with their economic activities (96.6%); rehabilitation of offenders (93.5%); imparting skills to offenders (93.1%); saving public institutions' of money/funds (92.3%); and reconciliation and reintegration of offenders, victims and the community (88.2%). Further, the findings are a pointer to the significant contribution of Probation Orders in crime prevention in the country especially with regard to the facilitative aspects of: enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence; decongestion of prisons of non-serious and first offenders; avoiding contamination of non-serious and first offenders by hardened criminals; and rehabilitation of non-serious offenders within the community. Further, the findings call for interventions aimed at improving all the key aspects of offender empowerment and especially those related with linking of offenders to potential employers and acquisition of survival skills by offenders which were not as effective as the other aspects of Probation Orders sentence.

Studies in different jurisdictions have identified a number of parameters for measures of effectiveness of Probation Orders sentences. For instance, Teague (2008) indicates that United Kingdom's National Probation Service has highly effective work. In England and Wales, Probation Officers have majorly focused on the contribution of the sentence in terms of behavioural change (56.0%); improving the quality of offenders' lives (44.0%); stopping or reducing offending (38.0%); and public protection (13.0%). In one metropolitan probation area in England and Wales, probation effectiveness is about its role in the primary 'official' objective of providing alternatives to custody. In Scotland, reducing reoffending, changing attitudes and alleviating needs of probationers were valued most highly by the practitioners. Within the French probation service, effectiveness is about building relationships with offenders, with the key Probation Officers' role being to psychologically support probationers, referring probationers to external, specialized agencies (particularly in relation to drug problems) and probationers' putting own efforts to tackle their social problems. Effectiveness of Probation Orders in Belgium is about the Belgian probation service's priorities of reducing re-offending, limiting the damage caused by judicial intervention and restoring social networks (Shapland, Bottoms, Farrall, McNeill, Priede and Robinson, 2012).

### **3.8 Challenges Facing the Effective Delivery of Probation Orders and Possible Solutions**

This study sought to identify the challenges facing the effective delivery of Probation Orders sentence and how these challenges could be addressed.

#### **3.8.1 Challenges facing the effective delivery of Probation Orders**

According to majority of the members of the public (72.1%) and probationers (62.9%), there were challenges facing the effective delivery of Probation Orders sentence in their localities.



Majority (73.5%) of the victims also argued that they were aware of challenges facing the effective delivery of Probation Orders in their localities.

As shown in Table 3.28 below, the major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: lack of knowledge and training on Probation Orders sentence (reported by 27.7% of the victims); limited resources for the Probation Department (reported by 25.7% of the members of the public); lack of support and/or negative attitude by relevant stakeholders (reported by 23.4% of the victims); non-compliance and reoffending by some probationers (reported by 21.5% of the members of the public); difficulty among probationers in accessing Probation Offices (reported by 19.4% of the probationers); corruption among some stakeholders (reported by 17.8% of the members of the public); poor supervision of probationers (reported by 14.9% of the victims); unfavourable life conditions among Probationers (reported by 10.8% of the probationers); and failure to compensate victims for injury and/or loss caused by the offender (reported by 10.6% of the victims).

**Table 3.28: Challenges facing the effective delivery of Probation Orders**

Challenges facing the effective delivery of Probation Orders	Responses in percentage		
	Members of the public	Probationers	Victims
Limited resources for the Probation Department	25.7	18.1	17.0
Lack of knowledge and training on Probation Orders sentence	23.7	13.9	27.7
Non-compliance and reoffending by some probationers	21.5	17.4	21.3
Lack of support and/or negative attitude by relevant stakeholders	20.6	16.3	23.4
Corruption among some stakeholders	17.8	6.6	4.3
Poor supervision of probationers	9.9	2.8	14.9
Unfavourable life conditions among Probationers	5.9	10.8	4.3
Difficulty among probationers in accessing Probation Offices	4.0	19.4	6.4
Probationers' difficulties in attending to their economic activities	2.3	8.3	2.1
Lack of motivation among Probation Officers	2.0	2.8	2.1
Difficulty in tracing absconders due to lack of adequate offender's information	1.7	1.0	
Heavy work load among Probation Officers	0.3	1.4	2.1
Unexecuted warrants of arrest	0.3	-	-
Failure to compensate victims for injury and/or loss caused by the offender	-	-	10.6
Failure in the reconciliation between the victim and offender	-	-	8.5

Findings from key informants and Focus Group Discussions confirmed some of the findings reported by the sample respondents. For instance, a key informant who was a Senior Prison Officer in Kajiado County and who had stayed in the locality for more than 2 years had this to say:

*“The challenges facing Probation Orders sentence include: lack of public awareness and community participation; lack of enough personnel, that is, Probation Officers and lack of enough resources”*

A participant in a Focus Group Discussion session composed of Probation Case Committee members, probationers and victims observed that:

*“Challenges facing Probation Orders sentence in this locality are inadequate funding of Probation and After Care Department, poor collaboration among stakeholders, lack of community support in provision of relevant information and offender absconding the sentence (Participant in a Focus Group Discussion held in Nyandarua County)”*

Another participant in a Focus Group Discussion held in Makueni County observed the following as the challenges facing Probation Orders sentence:

*“Poor terrain has made some areas inaccessible, lack of funds to facilitate home visit, un-cooperative offenders and members of the community, lack of communication between courts and other stakeholders (Participant in a Focus Group Discussion held at Kitembe in Kilungu Sub-County, Makueni County)”*

The above findings are consistent with other findings of this study which also showed that the main factors influencing unfavourable public attitude towards Probation Orders included: inadequate sensitization about Probation Orders sentence and negative public attitude towards probationers. According to the Sentencing Policy Guidelines of Kenya’s Judiciary, inadequate funding of the Department of Probation and Aftercare Service curtails the effective supervision of probation orders ([www.judiciary.go.ke](http://www.judiciary.go.ke)). UNODC (2006) also indicates that resources (especially financial, infrastructural and human) in many countries are grossly insufficient to ensure adequate working conditions for probation staff. Volunteer Probation Officers have been utilized to supplement the work of mainstream Probation Officers in jurisdictions such as the National Probation Service in the United Kingdom (Crown, 2019).



**A Probation Office in Siaya County**

### **3.8.2 Suggestions for solving challenges facing Probation Orders sentence**

According to the findings of the study, the main general possible solutions to the challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: conducting public awareness and sensitization on Probation Orders (reported by 35.0% of the members of the public); provision of adequate resources to Probation Department (reported by 27.4% of the members of the public); establishment of effective rehabilitation programmes for petty offenders (reported by 22.7% of the victims); strict and close supervision of offenders (reported by 15.4% of the members of the public); encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence (reported by 14.8% of the members of the public); ensuring convenient reporting venues for Probationers (reported by 13.4% of the probationers); enhancing empowerment of offenders (reported by 11.7% of the probationers); encouraging effective collaboration among stakeholders (reported by 11.4% of the victims); and providing flexible reporting hours for employed Probationers (reported by 9.7% of the probationers). These findings are presented in Table 3.29 below.

**Table 3.29: Sample respondents' suggestions on possible general solutions to the challenges facing Probation Orders sentence**

Possible general solutions to the challenges facing Probation Orders sentence	Responses in percentage		
	Members of the public	Probationers	Victims
Conducting public awareness and sensitization on Probation Orders	35.0	28.2	31.8
Provision of adequate resources to Probation Department	27.4	19.8	22.7
Strict and close supervision of offenders	15.4	9.1	11.4
Encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence	14.8	7.0	9.1
Encouraging effective collaboration among stakeholders	10.0	5.0	11.4
Ensuring strict penalties to absconders	7.1	3.0	6.8
Continuous training of relevant stakeholders on the Probation Orders sentence	6.3	3.0	6.8
Enhancing empowerment of offenders	6.0	11.7	4.5
Ensuring convenient reporting venues for Probationers	3.7	13.4	-
Effective capture of necessary supervisees/offender data	2.6	1.3	2.3
Providing flexible reporting hours for employed Probationers	1.7	9.7	4.5
Providing alternative sentence for those who cannot serve Probation Orders	1.4	-	-
Providing motivation and recognition of Probation Officers	0.9	1.3	-
Enhancing resettlement and reintegration follow up of those who have completed Probation Orders sentence	-	0.3	-
Establishment of effective rehabilitation programmes for petty offenders	-	8.7	22.7

Magistrates and Probation Officers were asked to suggest how the challenges facing specific key stakeholders could be addressed towards the effective delivery of Probation Orders sentence in Kenya. As shown in Table 3.30 below, the main suggestions given by at least 1 out of 10 Magistrates and/or Probation Officers in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: continuous

training and/or awareness creation and/or sensitization of the various stakeholders on Probation Orders sentences (reported by 100.0% of the Magistrates); provision of adequate resources to the stakeholders (reported by 76.0% of the Probation Officers); encouraging reconciliation, restorative justice and compensation where possible (reported by 39.3% of the Probation Officers); ensuring compliance by probationers through guidance and counseling (reported by 29.5% of the Probation Officers); empowering the probationers to start tangible income generating activities/projects (reported by 28.6% of the Probation Officers); encouraging data sharing among stakeholders (reported by 22.7% of the Magistrates); enhancing collaboration with other stakeholders (reported by 22.2% of the Magistrates); involving victims in decision making during the sentencing process (reported by 19.6% of the Probation Officers); close monitoring of probationers (reported by 17.4% of the Magistrates); providing guidance and counseling to victims (reported by 16.7% of the Magistrates); putting in place proper rehabilitation programmes at the prison facility (reported by 14.5% of the Probation Officers); encouraging attitude change among Police Officers towards Probation Orders (reported by 13.6% of the Magistrates); encouraging positive attitude towards probationers (reported by 10.5% of the Probation Officers); and enhancing execution of warrants of arrest against absconders of Probation Orders (reported by 10.1% of the Probation Officers).

**Table 3.30: Suggestions for solving challenges facing specific key stakeholders in the Probation Orders sentence**

Suggestions for solving challenges facing specific key stakeholders in the Probation Orders sentence	Responses in percentage	
	Magistrates	Probation Officers
<b>The Judiciary</b>		
Continuous training and/or awareness creation and/or sensitization of Sentencing Officers on Probation Orders sentence	63.9	63.9
Enhanced collaboration with other stakeholders	<b>22.2</b>	13.4
Provision of adequate resources e.g. personnel	11.1	23.7
Establishment of a crime data bank for reference	5.6	-
Fighting corruption and encouraging integrity among Sentencing Officers	2.8	2.1
Frequent monitoring and evaluation of Probation Orders	-	9.3
<b>The Probation and Aftercare Service Department</b>		
Continuous training and/or awareness creation and/or sensitization of Probation Officers on Probation Orders sentence	62.5	35.2
Provision of adequate resources	62.5	<b>76.0</b>
Encouraging collaboration with other stakeholders	4.2	4.0
Motivation of Probation Officers	4.2	5.6
The Department to sensitize the community on the Probation Orders sentence	-	7.2
Increased referral cases	-	1.6
Initiation of tangible probationers' empowerment projects	-	1.6
Fighting corruption and encouraging integrity among	-	1.6

Suggestions for solving challenges facing specific key stakeholders in the Probation Orders sentence	Responses in percentage	
	Magistrates	Probation Officers
Probation Officers		
<b>National Police Service</b>		
Continuous training and/or awareness creation and/or sensitization of Police Officers on Probation Orders sentence	59.1	60.6
Allocation of adequate resources	18.2	17.2
Encouraging attitude change among Police Officers towards Probation Orders	<b>13.6</b>	6.1
Encouraging collaboration between stakeholders	9.1	10.1
Enhanced execution of warrants of arrest against absconders of Probation Orders	4.5	<b>10.1</b>
Maintaining a crime data base for reference	-	2.0
Fighting corruption and encouraging integrity among Police Officers	-	2.0
<b>Office of the Director of Public Prosecutions</b>		
Continuous training and/or awareness creation and/or sensitization of Prosecutors on Probation Orders sentence	68.2	58.5
Encouraging data sharing among stakeholders	<b>22.7</b>	16.0
Encouraging attitude change among Prosecutors towards Probation Orders sentence	4.5	8.5
Digitalization of criminal data and information	4.5	6.4
Provision of adequate resources e.g. personnel	-	18.1
Fighting corruption and encouraging integrity among Prosecutors	-	3.2
<b>The Kenya Prisons Service</b>		
Continuous training and/or awareness creation and/or sensitization of Prison Officers on Probation Orders sentence	75.0	60.2
Putting in place proper rehabilitation programmes at the prison facility	12.5	<b>14.5</b>
Provision of adequate resources	12.5	16.9
Encouraging attitude change among Prison Officers towards Probation Orders	-	8.4
Encouraging collaboration between stakeholders	-	13.3
Ensuring clear policy and guidelines on using Probation Orders for decongestion	-	1.2
<b>The community</b>		
Creating public awareness and sensitization on Probation Orders sentence	<b>100.0</b>	94.7
Encouraging positive attitude towards probationers	-	<b>10.5</b>
Establishment of tangible probationers' empowerment projects	-	1.8
Encouraging reconciliation, restorative justice and compensation where possible	-	4.4
Provision of adequate resources for offender rehabilitation	-	0.9
<b>The direct victims of crime</b>		
Educating and sensitizing victims on Probation Orders sentence	83.3	51.4
Providing guidance and counseling to victims	<b>16.7</b>	9.3

Suggestions for solving challenges facing specific key stakeholders in the Probation Orders sentence	Responses in percentage	
	Magistrates	Probation Officers
Encouraging reconciliation, restorative justice and compensation where possible	4.2	<b>39.3</b>
Involving victims in decision making during sentencing process	4.2	<b>19.6</b>
<b>The Probationers</b>		
Awareness creation and sensitization of probationers on Probation Orders sentence	73.9	39.0
Ensuring compliance by probationers through guidance and counseling	26.1	<b>29.5</b>
Close monitoring of probationers	<b>17.4</b>	14.3
Provision of adequate required resources for probationer's rehabilitation and supervision	4.3	3.8
Empowering the probationers to start tangible income generating activities/projects	4.3	<b>28.6</b>
Ensuring convenient reporting venues for probationers	-	3.8

The above findings were complimented by key informants who suggested a number of possible solutions towards addressing the challenges facing stakeholders in the Probation Orders sentence. For instance, an Assistant County Commissioner in Athi-River Sub-county in Machakos County had this to say:

*“To address the challenges facing Probation Orders sentence, the following should be done: provide Probation Officers with means of transport; undertake sensitization of the public on the implications of the Probation Orders sentence and its importance to the community”*

A Deputy County Commissioner stationed in one of the Sub-counties in Baringo County observed:

*“There is need to increase funding for the Department of Probation and enough resources especially vehicles, capacity building of Probation Officers should be encouraged and creation of community awareness on Probation Orders sentence is paramount”*

A Deputy County Commissioner in Kisumu County said:

*“Interventions to address the challenges should include; community participation; expanding the mandate of Probation Case Committee to have their impact felt; and review Probation and Offenders Act in line with the current situation”*

The above findings are consistent with the general possible solutions to the challenges facing Probation Orders which were suggested by sample respondents drawn from members of the public, probationers and victims.



Conducting public awareness and sensitization on Probation Orders has been emphasized by: Mirrlees-Black and Brawn (2002) who argue that the provision of simple factual information improves knowledge about crime and sentencing and encourages positive attitudes to and confidence in the criminal justice system; and Teague (2008) who posits that a well-informed people are less likely to underrate the importance of community-based sanctions.

The key pillars of the Probation Orders sentence include the successful supervision and rehabilitation of offenders and their compliance with the provisions of the Orders which require adequate resources. However, these resources have continued to be limited. According to UNODC (2006), Probation Officers, who are often overloaded with cases, require adequate office space and technical equipment such as computers to write reports, internet access for gathering information, photocopies, telephones and faxes to communicate and coordinate with a wide range of actors involved in the administration of community sanctions and measures, resource and reference books to assist them with their daily probation work. In 2015, the Department of Probation and Aftercare Service in Kenya had a shortfall of about 9000 Probation Officers (Kiarie, 2015) and this situation is likely to be persisting to date thus putting into question the Department's ability to effectively supervise Probation Orders. PRI (2016b) argues that due to lack of adequate funding, Probation Officers in Kenya are sometimes unable to provide pre-sentence reports on time and that in some cases, enquiries are poorly carried out. As a matter of priority therefore, an effective Probation Orders sentence requires, among others, adequate resources (especially finances, infrastructure and motivated staff) to undertake supervision, rehabilitation, follow-ups, monitoring and empowerment of offenders.



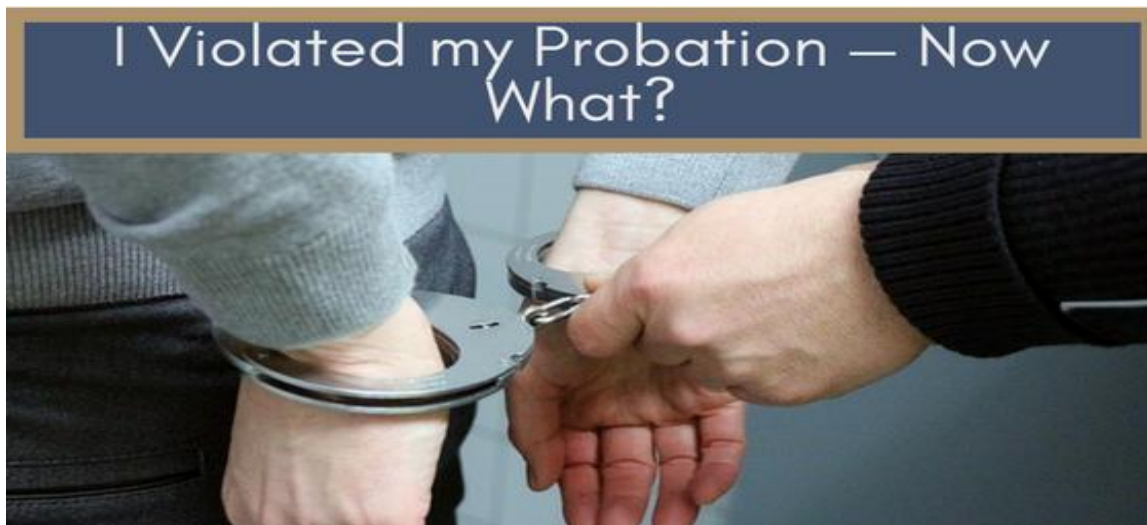
**Some infrastructural resources at the Siaya Girls' Probation Hostel**

With regard to the establishment of effective rehabilitation and empowerment programmes for petty offenders, Zondi (2012) stresses the importance of vocational, educational and/or counseling programmes for the effective rehabilitation of probationers. Legislative Analyst's Office (2009) argues that family and parenting counseling and employment assistance



programmes are also critical for offender rehabilitation. Wake Forest University (n.d) indicates that guidance and counseling interventions aimed at behaviour change help prevent recidivism and discourage an offender from escalating from petty crimes to more serious offenses. Alarid (2018) argues that probationers are more likely to complete their terms and adhere to the conditions of their supervision if there are catered for needs and if they are treated fairly and with dignity.

The importance of strict and close supervision of offenders in addressing the challenge of breach of Probation Orders and re-offending cannot be overemphasized. Toughening up of enforcement policies on offenders to enhance the legitimacy of probation service has been highlighted by Robinson and Ugwudike (2012). Sorsby (2017) advocates for timely identification of the noncompliance with the provisions of the Probation Orders combined with proactive absconder location and apprehension strategies towards lowering the rates of absconding.



Public confidence and positive attitude and support towards the Probation Orders sentence are a factor of integrity, transparency and accountability. Hence encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence has been prioritized by Teague (2008) who advocates for greater openness, transparency and public accountability in all the processes involved in the administration of criminal justice.

Ensuring convenient reporting venues for all probationers and providing flexible reporting hours for employed probationers has been reported to be instrumental in minimizing chances of absconding and other forms of noncompliance. MCNeill (2010) and PRI (2016b) indicate that strategies such as offering flexible appointments, reminding probationers to attend appointments and making home visits as ways of assisting probationers with transport problems and to accord them time to attend to other socio-economic responsibilities helps in managing practical obstacles to compliance.

Encouraging effective collaboration among stakeholders is one of the major ways of addressing the inherent challenges in the probation sentence. For instance, Law Courts need to fully support the sentence by ensuring its appropriate and adequate utilization. However, as argued by UNODC (2007), law courts will most likely issue Probation Orders if, for example, are convinced of the effective treatment and rehabilitation of the offender and that the offender is likely to cope in the community as well as with any conditions or restrictions the law court may impose, and this is a collective responsibility placed on the shoulders of multiple stakeholders. According to NCRC (2012; 2016), most offenders are youthful and have limited economic opportunities. Hence institutions charged with youth economic empowerment have a key role in the success of the probation sentence. Further, as argued by Naser and La Vigne (2006), Shapiro and Schwartz (2001), Zondi (2012) and Taylor (2016), families of offenders and the community at large are expected to play an integral and active role in the offender's rehabilitation and reintegration process especially with regard to emotional and financial support of the probationer. The Police also have a role in the toughening of the probation sentence especially when it comes to the re-arrest of probationers who abscond or breach other provisions of the sentence.

Closely related with awareness and sensitization about Probation Orders is the continuous training of stakeholders involved in the sentence. For example, specialized training of Probation Officers has been reported to sit at the core of the Probation Orders sentence and especially with regard to improved compliance and the successful rehabilitation and supervision of offenders. For instance, in the United Kingdom, probationers supervised under Probation Officers trained using a curriculum dubbed "Staff Training Aimed at Reducing Rearrest (STARR)" experienced a 50.0% reduction in chances of recidivism for moderate-risk offenders while offenders supervised by Probation Officers trained on "Effective Practices in Community Supervision (EPICS)" were 33.7% less likely to recidivate compared to a similar group of offenders who were supervised by officers who did not regularly use these practices (Alarid, 2018).

Therefore, the above findings emphasize the need for concerted efforts with prioritized focus being on the most prominent suggestions which have also been highlighted by scholars and practitioners in other jurisdictions.

### **3.9 Interventions for Strengthening Probation Orders Sentence**

This study sought the opinion of members of the public, probationers and victims concerning the general key interventions that needed to be put in place towards strengthening Probation Orders in Kenya. As indicated in Table 3.31 below, the proposed general key interventions reported by at least 1 out of 10 of the sample respondents drawn from members of the public, probationers and victims in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: training and sensitization of stakeholders on Probation Orders (reported by 48.5% of the members of the public); establishment of effective rehabilitation and empowerment programmes for probationers (reported by 25.1% of the probationers); provision of adequate resources to Probation

Department (reported by 18.3% of the members of the public); strict and close supervision of probationers (reported by 14.0% of the members of the public); encouraging reconciliation, restorative justice and compensation where possible (reported by 13.5% of the victims); proper coordination among relevant stakeholders (reported by 12.8% of the members of the public); and elimination of corruption in the Probation Orders sentence (reported by 9.6% of the victims).

**Table 3.31: Proposed general key interventions for strengthening Probation Orders**

<b>Proposed general key interventions for strengthening Probation Orders</b>	<b>Responses in percentage</b>		
	<b>Members of the public</b>	<b>Probationers</b>	<b>Victims</b>
Training and sensitization of stakeholders on Probation Orders	48.5	46.4	38.5
Provision of adequate resources to Probation Department	18.3	10.9	9.6
Strict and close supervision of probationers	14.0	7.9	13.5
Proper coordination among relevant stakeholders	12.8	6.1	7.7
Establishment of effective rehabilitation and empowerment programmes for probationers	11.9	25.1	23.1
Instituting tough penalties for absconders	4.5	2.3	5.8
Elimination of corruption in the Probation Orders sentence	4.0	4.6	9.6
Encouraging reconciliation, restorative justice and compensation where possible	3.3	2.5	13.5
Enhanced guidance and counseling of offenders	2.4	3.3	1.9
Ensuring convenient reporting venues for probationers	1.7	-	-
Improved record keeping and establishment of an efficient crime data bank	1.2	1.3	3.8

As shown in Table 3.32 below, the stakeholder-specific driven interventions for strengthening the Probation Orders sentence which were suggested by at least a third of the Magistrates and/or Probation Officers had to do with: training, sensitization and awareness creation of different stakeholders on Probation Orders; allocation of adequate resources for Probation Orders activities; and guidance and counseling of offenders.

**Table 3.32: Stakeholder-specific driven interventions towards strengthening Probation Orders sentence**

Stakeholder-specific driven interventions for strengthening Probation Orders	Responses in percentage		Prioritized interventions based on suggestions made in the same stakeholder group by at least 1 out of 10 respondents drawn from each of the Magistrates and Probation Officers categories (marked by √)
	Magistrates	Probation Officers	
<b>The Judiciary</b>			
Training and sensitizing judicial officers on effective utilization of Probation Orders sentences	60.6	41.7	√
Frequent monitoring and evaluation of Probation Orders sentence	30.3	16.5	√
Embracing Probation Orders as a sentencing option for petty offenders	15.2	19.4	√
Encouraging integrity among judicial/sentencing officers	6.1	2.9	
Issuance of tough penalties for absconders	3.0	2.9	
Allocating adequate resources for Probation Orders activities	3.0	8.7	
Enhanced coordination among stakeholders	3.0	17.5	
Putting in place a universal policy for Probation Orders sentencing	-	4.9	
<b>The Probation and Aftercare Service Department</b>			
Enhanced training of Probation Officers on Probation Orders	64.0	27.6	√
Allocating adequate resources for Probation Orders activities	32.0	60.0	√
Enhanced collaboration with other stakeholders	12.0	5.7	
Motivation and proper remuneration of Probation Officers	4.0	3.8	
Proper guidance and counseling of probationers	4.0	4.8	
Conducting public awareness and sensitization on Probation Orders sentence	-	6.7	
Encouraging integrity among Probation Officers	-	6.7	
Frequent and strict supervision of probationers	-	2.9	
<b>National Police Service</b>			

Stakeholder-specific driven interventions for strengthening Probation Orders	Responses in percentage		Prioritized interventions based on suggestions made in the same stakeholder group by at least 1 out of 10 respondents drawn from each of the Magistrates and Probation Officers categories (marked by √)
	Magistrates	Probation Officers	
Training and sensitization of Police Officers on Probation Orders sentence	68.2	52.0	√
Timely execution of warrants of arrest	13.6	16.0	√
Provision of adequate resources for Probation Orders activities	13.6	14.0	√
Establishment of an efficient data bank of crimes committed by probationers	9.1	2.0	
Embracing Probation Orders sentencing for punishing petty offenders	-	9.0	
Enhanced collaboration with other stakeholders	-	9.0	
Encouraging integrity among Police Officers	-	6.0	
<b>Office of the Director of Public Prosecutions</b>			
Training and sensitization of Prosecutors on Probation Orders	68.2	52.0	√
Enhanced sharing of criminal records with other stakeholders	22.7	30.6	√
Establishing and maintaining an efficient database for cases prosecuted and sentenced	4.5	5.1	
Allocating adequate resources for Probation Orders activities	4.5	9.2	
Embracing Probation Orders as a sentencing option for petty offenders		7.1	
<b>The Kenya Prisons Service</b>			
Training of Prison Officers on Probation Orders sentence	78.9	47.1	√
Enhanced rehabilitation of petty offenders	10.5	16.5	√
Creating clear guidelines for Probation Orders sentences for purposes of prison decongestion	10.5	17.6	√
Enhanced collaboration with other stakeholders	-	12.9	
Provision of adequate resources for Probation Orders activities	-	11.8	
Proper guidance and counseling of	-	1.2	

Stakeholder-specific driven interventions for strengthening Probation Orders	Responses in percentage		Prioritized interventions based on suggestions made in the same stakeholder group by at least 1 out of 10 respondents drawn from each of the Magistrates and Probation Officers categories (marked by √)
	Magistrates	Probation Officers	
offenders			
<b>The community</b>			
Creating public awareness in the community on Probation Orders sentence	92.3	79.8	√
Facilitating reconciliation and reintegration of petty offenders in the community	7.7	12.8	
Helping Probation Department in monitoring and supervising probationers	-	18.3	
<b>The direct victims of crime</b>			
Participation of victims of crime in awareness creation on Probation Orders	64.0	40.6	√
Embracing restorative justice and compensation	32.0	42.5	√
Participating in guidance and counseling	8.0	12.3	
Cooperating with rehabilitation officers	4.0	13.2	
<b>The Probationers</b>			
Sensitizing other offenders about the Probation Orders sentence	47.1	38.0	√
Participating in guidance and counseling	35.3	21.0	√
Complying with Probation Orders sentence	23.5	23.0	√
Encouraging reconciliation, restorative justice and compensation where possible	5.9	15.0	
Participating effectively in programmes on empowerment of offenders	-	17.0	

According to the findings in the above Table, the key stakeholder-specific driven interventions for strengthening the Probation Orders sentence included the following: the Judiciary was to undertake training and sensitization of judicial officers on effective utilization of Probation Orders sentences (reported by 60.6% of the Magistrates and 41.7% of the Probation Officers); the Probation and Aftercare Service Department was to enhance training of Probation Officers on Probation Orders (reported by 64.0% of the Magistrates) and allocate adequate resources for Probation Orders activities (reported by 60.0% of the

Probation Officers); the National Police Service was to undertake training and sensitization of Police Officers on Probation Orders sentence (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Office of the Director of Public Prosecutions was to undertake training and sensitization of Prosecutors on Probation Orders (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Kenya Prisons Service was to train Prison Officers on Probation Orders sentence (reported by 78.9% of the Magistrates and 47.1% of the Probation Officers); the community was to create public awareness in the community on Probation Orders sentence (reported by 92.3% of the Magistrates and 79.8% of the Probation Officers); the direct victims of crime were to participate in awareness creation on Probation Orders (reported by 64.0% of the Magistrates and 40.6% of the Probation Officers) and embrace restorative justice and compensation (reported by 42.5% of the Probation Officers); while the probationers were to undertake sensitization of other offenders about the Probation Orders sentence (reported by 47.1% of the Magistrates and 38.0% of the Probation Officers) and participate in guidance and counseling (reported by 35.3% of the Magistrates).

The quantitative findings were corroborated by some key informants and participants in Focus Group Discussions. For instance, a Senior Prison Officer in Homabay County commented the following:

*“There is need to increase funding for the Probation Orders programme and educating the public on the importance of the Probation Orders programme”*

A participant in a Focus Group Discussion observed the following:

*“Sharing of information with stakeholders and computerize courts and Police systems; having a sentencing policy on the probation orders; Probation Officers should undertake a thorough social inquiry of the offender; Courts should place all risk offenders on Probation Orders sentence (Participant in a Focus Group Discussion held in Makadara Boys Probation Hostel, Nairobi County)”*

The findings on interventions for strengthening Probation Orders were consistent and majorly similar with the proposed possible solutions for addressing challenges facing the sentence which included: continuous training and/or awareness creation and/or sensitization of the various stakeholders on Probation Orders sentences (reported by 100.0% of the Magistrates); provision of adequate resources to the stakeholders (reported by 76.0% of the Probation Officers); encouraging reconciliation, restorative justice and compensation (reported by 39.3% of the Probation Officers); ensuring compliance by probationers through guidance and counseling (reported by 29.5% of the Probation Officers); encouraging data sharing among stakeholders (reported by 22.7% of the Magistrates); enhancing collaboration with other stakeholders (reported by 22.2% of the Magistrates); involving victims in decision making during the sentencing process (reported by 19.6% of the Probation Officers); close

monitoring of probationers (reported by 17.4% of the Magistrates); providing guidance and counseling to victims (reported by 16.7% of the Magistrates); putting in place proper rehabilitation programmes at the prison facility (reported by 14.5% of the Probation Officers); encouraging attitude change among Police Officers towards Probation Orders (reported by 13.6% of the Magistrates); and enhancing execution of warrants of arrest against absconders of Probation Orders (reported by 10.1% of the Probation Officers). Hence strengthening Probation Orders needs to focus mainly on the suggestions made by at least 1 out of 10 respondents drawn from each of the Magistrates' and Probation Officers' categories in the same stakeholder group and the key suggestions for addressing challenges facing Probation Orders in Kenya.





## **CHAPTER FOUR: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **4.1 Introduction**

This study aimed at examining the factors influencing the delivery of Probation Orders sentence in Kenya. The specific objectives were to: establish the extent of utilization of Probation Orders in Kenya; establish the factors influencing the utilization of Probation Orders by the courts; identify factors that affect the levels of compliance with Probation Orders by offenders; identify the factors shaping public attitudes towards Probation Orders; examine the effectiveness of Probation Orders in the rehabilitation of offenders; identify challenges facing the delivery of Probation Orders; and suggest appropriate and effective interventions towards strengthening Probation Orders in Kenya.

### **4.2 Summary of Major Findings**

#### **4.2.1 Extent of utilization of Probation Orders**

All Magistrates and Probation Officers who were interviewed confirmed that Law Courts were utilizing Probation Orders sentences in their areas of jurisdiction, an assertion supported by actual secondary data which showed that an average of 12,886 probationers per year were serving Probation Orders sentence within the five year period between 2014 and 2018.

Probation Orders were found to be utilized majorly on petty offenders, a finding highlighted by majority of the Magistrates (97.7%), Probation Officers (89.1%), members of the public (95.6%), probationers (96.6%) and victims (76.5%). The perceived most common crimes/offences (reported by at least a third of sample respondents in any of the sample categories) for which offenders were placed on Probation Orders sentence were: assault causing actual bodily harm (reported by 80.2% of the Probation Officers, 65.7% of the victims, 56.1% of the Magistrates, 46.0% of the members the of public and 44.1% of the probationers); general stealing (reported by 77.0% of the Probation Officers, 52.2% of the victims, 49.1% of the probationers, 48.8% of the Magistrates and 46.0% of the members the of public); possession of illicit brew/drugs (reported by 63.5% of the Probation Officers) ; creating disturbance (reported by 54.6% of the Probation Officers and 39.0% of the Magistrates); being drunk and disorderly (reported by 39.0% of the members the of public); and malicious damage to property (reported by 37.3% of the Probation Officers). The actual types of crimes/offences for which offenders were convicted of and placed on Probation Orders sentence were mainly general stealing (23.9%), assault causing actual bodily harm (17.3%), possession of illicit /illegal brew and drugs (15.7%), malicious damage to property (8.6%), creating disturbance (8.2%) and being drunk and disorderly (6.8%).

According to the findings of the study, majority (88.6%) of the Magistrates, Probation Officers (93.4%), probationers (67.6%), members of the public (56.1%) and victims (50.0%) perceived that Probation Orders were adequately utilized. All Probation Officers and majority of the Magistrates (95.5%), probationers (94.8%), members of the public (89.2%)

and victims (85.3%) argued that the sentences were beneficial, with the benefits having been realized to a large extent (as reported by majority of the probationers (97.2%), victims (96.2%), Probation Officers (93.5%), members of the public (92.7%) and Magistrates (85.6%)), especially in terms of assisting in maintaining family ties (99.0%), preventing hardening of petty offenders (98.1%), decongesting prisons (97.3%), enabling offenders to continue with their economic activities (96.6%), rehabilitation of offenders (93.5%), imparting skills to offenders (93.1%), saving public institutions' of money/funds (92.3%), reconciliation and reintegration of offenders, victims and the community (88.2%), crime deterrence (79.3%), reducing stigmatization of offenders (67.3%), providing an alternative to imprisonment and fines for offenders who can't afford (59.3%), and empowerment in the form of guidance and counseling, acquisition and transfer of skills, financial support and/or provision of working tools and equipment, and vocational training. Despite these benefits, between 2014 and 2018, the number of Probation Orders sentences utilized on petty offences remained below 18.0% of the combined number of all the petty offences dealt with through Probation sentences of between 6 months and 3 years and short prison sentences of below 2 years (that is, 11.9% in 2014, 15.2% in 2015, 14.0% in 2016, 17.1% in 2017 and 15.4% in 2018, with an average utilization of 14.7%). This may therefore be interpreted to imply that Probation Orders sentences are not adequately utilized in the rehabilitation of petty offenders in Kenya.

**4.2.2 Factors influencing the utilization of Probation Orders** The main factors reported by at least 1 out of 10 respondents in each of the five categories of sample respondents as contributing to the adequate utilization of the Probation Orders sentence by Law Courts were: the petty nature of crimes and/or type of offenders; committed, efficient and competent Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons. Further, over 50.0% of all sample respondents agreed that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option; and that satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option. The few sample respondents who argued that Probation Orders were not adequately utilized mainly cited the serious nature of most offences committed in the localities and poor supervision of probationers. Over 50.0% of all sample respondents also agreed that: hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders; and that security challenges posed by some offenders discourage the use of Probation Orders sentences on them.

**4.2.3 Factors that affect the levels of compliance with Probation Orders by probationers** The findings of the study showed that a majority of Magistrates (90.9%) and Probation Officers (95.6%) were satisfied with the level of probationers' compliance with the Probation Orders. The main reasons given to validate the high satisfaction rating were: low levels of

absconding (reported by 82.9% of the Magistrates and 85.7% of the Probation Officers); strict supervision by Probation Officers (reported by 11.4% of the Magistrates and 11.8% of the Probation Officers); and reformation and rehabilitation of probationers (reported by 10.1% of the Probation Officers).

Similarly, majority of the members of the public (75.2%), probationers (88.9%) and victims (79.4%) said probationers complied with the Orders and the main reasons given included: fear of imprisonment among the probationers (reported by 55.0% of the probationers, 42.6% of the victims and 41.4% of the members of the public); low levels of absconding (reported by 49.6% of the members of the public, 44.4% of the victims and 33.3% of the probationers); strict supervision by Probation Officers (reported by 13.0% of the victims); and benefits associated with Probation Orders (reported by 11.1% of the victims and 10.0% of the probationers).

The rate of successful completion of Probation Orders sentences as a measure of compliance was estimated at 50-74% by most (45.5%) of the Magistrates and 75% and above by majority (65.7%) of the Probation Officers. The key factors influencing compliance with Probation Orders sentence (as indicated by the highest percentage reported by either of the categories of sample respondents) were found to include: fear of incarceration/imprisonment for breach of Probation Orders (reported by 63.7% of the probationers); the level of supervision of probationers by Probation Officers (reported by 44.2% of the Probation Officers); community support of Probation Orders (reported by 31.8% of the Probation Officers); a clear understanding and attitude of the probationer towards the sentence (reported by 23.3% of the Probation Officers); the benefits the probationer gets from the Probation Orders sentence (reported by 19.4% of the Probation Officers); and use of local administration and community in the supervision of probationers (reported by 19.4% of the Probation Officers).

Other important direct and indirect factors influencing compliance with Probation Orders that were reported by more than 50.0% of respondents in most of the categories of sample respondents were: probationers' negative opinion about the sentence; offenders corrupting Sentencing Officers to get Probation Orders sentences; offenders corrupting Probation Officers to get Probation Orders sentences; direct placement of offenders by courts to Probation Orders supervision; tribalism, nepotism and favouritism within the sentencing agencies; tribalism, nepotism and favouritism within the offender rehabilitation and supervising agencies; lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision; lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision; lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision; lack of support to employed probationers from their employers; and economically unstable probationers who are likely to abscond their sentences to look for livelihoods.

#### **4.2.4 Factors shaping public attitudes towards Probation Orders**

The findings from most of the Magistrates (47.7%) and majority of the Probation Officers (83.9%), probationers (72.4%), members of the public (60.3%) and victims (55.9%) showed that the public attitude towards the Probation Orders sentence was favourable.

The leading factors (as indicated by the highest percentage in either of the five categories of sample respondents) contributing to favourable public attitude towards Probation Orders included: community sensitization on the Probation Orders sentence (reported by 61.3% of the Probation Officers); offender rehabilitation aspect of the Probation Orders sentence (reported by 37.1% of the victims); promotion of family unity and/or ties (reported by 27.4% of the Probation Officers); the fact that an offender does not suffer imprisonment (reported by 23.5% of the Magistrates); enablement of the offender to continue with other socio-economic activities (reported by 20.2% of the probationers); enhanced reconciliation between offenders and victims (reported by 15.1% of the Probation Officers); and the fact that Probation Orders sentence is a lenient punishment (reported by 12.2% of the members of the public). The single most important action needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence was undertaking of public awareness and sensitization on Probation Orders (reported by 94.6% of the Magistrates, 96.1% of the Probation Officers, 81.2% of the members of the public, 77.4% of the victims and 77.5% of the probationers).

#### **4.2.5 Effectiveness of Probation Orders in the rehabilitation of offenders**

Probation Orders sentences were perceived by majority of the Magistrates (86.4%), Probation Officers (94.9%), probationers (89.7%), members of the public (77.0%) and victims (76.5%) to be generally effective in the rehabilitation of offenders. All the specific aspects of Probation Orders were also perceived to be generally effective, with the highest to the least effective specific aspects of Probation Orders (based on the average percentage rating of effectiveness) being: enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence (97.4%); decongestion of prisons of non-serious and first offenders (93.6%); avoiding contamination of non-serious and first offenders by hardened criminals (91.9%); rehabilitation of non-serious offenders within the community (90.8%); saving tax payers money (86.9%); prevention of juvenile delinquency of the dependent minors (85.2%); promotion of reconciliation between the offender and the victim of crime (81.8%); individual offender paying back (reparation) for the injury done to the community (73.7%); acquisition of survival skills (64.3%); and linking of offenders to potential employers (55.6%).

#### **4.2.6 Challenges facing the effective delivery of Probation Orders and possible solutions**

The major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: lack of knowledge and training on Probation Orders sentence (reported by 27.7% of the victims); limited resources for the Probation Department (reported

by 25.7% of the members of the public); lack of support and/or negative attitude by relevant stakeholders (reported by 23.4% of the victims); non-compliance and reoffending by some probationers (reported by 21.5% of the members of the public); difficulty among probationers in accessing Probation Offices (reported by 19.4% of the probationers); corruption among some stakeholders (reported by 17.8% of the members of the public); poor supervision of probationers (reported by 14.9% of the victims); unfavourable life conditions among Probationers (reported by 10.8% of the probationers); and failure to compensate victims for injury and/or loss caused by the offender (reported by 10.6% of the victims).

The main general possible solutions to the challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims (in order of prominence based on the highest percentage reported by sample respondents from either of these three categories) were: conducting public awareness and sensitization on Probation Orders (reported by 35.0% of the members of the public); provision of adequate resources to Probation Department (reported by 27.4% of the members of the public); establishment of effective rehabilitation programmes for petty offenders (reported by 22.7% of the victims); strict and close supervision of offenders (reported by 15.4% of the members of the public); encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence (reported by 14.8% of the members of the public); ensuring convenient reporting venues for Probationers (reported by 13.4% of the probationers); enhancing empowerment of offenders (reported by 11.7% of the probationers); encouraging effective collaboration among stakeholders (reported by 11.4% of the victims); and providing flexible reporting hours for employed Probationers (reported by 9.7% of the probationers).

With regard to how the challenges facing specific key stakeholders could be addressed towards the effective delivery of Probation Orders sentence in Kenya, the main suggestions given by at least 1 out of 10 Magistrates and/or Probation Officers in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: continuous training and/or awareness creation and/or sensitization of the various stakeholders on Probation Orders sentences (reported by 100.0% of the Magistrates); provision of adequate resources to the stakeholders (reported by 76.0% of the Probation Officers); encouraging reconciliation, restorative justice and compensation where possible (reported by 39.3% of the Probation Officers); ensuring compliance by probationers through guidance and counseling (reported by 29.5% of the Probation Officers); empowering the probationers to start tangible income generating activities/projects (reported by 28.6% of the Probation Officers); encouraging data sharing among stakeholders (reported by 22.7% of the Magistrates); enhancing collaboration with other stakeholders (reported by 22.2% of the Magistrates); involving victims in decision making during the sentencing process (reported by 19.6% of the Probation Officers); close monitoring of probationers (reported by 17.4% of the Magistrates); providing guidance and counseling to victims (reported by 16.7% of the Magistrates); putting in place proper rehabilitation programmes at the prison facility (reported by 14.5% of the Probation Officers); encouraging attitude change among Police

Officers towards Probation Orders (reported by 13.6% of the Magistrates); encouraging positive attitude towards probationers (reported by 10.5% of the Probation Officers); and enhancing execution of warrants of arrest against absconders of Probation Orders (reported by 10.1% of the Probation Officers).

#### **4.2.7 Interventions for strengthening Probation Orders sentence**

The proposed general key interventions for strengthening Probation Orders in Kenya which were reported by at least 1 out of 10 of the sample respondents drawn from members of the public, probationers and victims in order of prominence (based on the highest to the lowest percentage reported by either of these sample respondents) were: training and sensitization of stakeholders on Probation Orders (reported by 48.5% of the members of the public); establishment of effective rehabilitation and empowerment programmes for probationers (reported by 25.1% of the probationers); provision of adequate resources to Probation Department (reported by 18.3% of the members of the public); strict and close supervision of probationers (reported by 14.0% of the members of the public); encouraging reconciliation, restorative justice and compensation where possible (reported by 13.5% of the victims); proper coordination among relevant stakeholders (reported by 12.8% of the members of the public); and elimination of corruption in the Probation Orders sentence (reported by 9.6% of the victims).

According to the findings, the stakeholder-specific driven interventions for strengthening the Probation Orders sentence which were suggested by at least a third of the Magistrates and/or Probation Officers had to do with: training, sensitization and awareness creation of different stakeholders on Probation Orders; allocation of adequate resources for Probation Orders activities; and guidance and counseling of offenders. Specifically: the Judiciary was to undertake training and sensitization of judicial officers on effective utilization of Probation Orders sentences (reported by 60.6% of the Magistrates and 41.7% of the Probation Officers); the Probation and Aftercare Service Department was to enhance training of Probation Officers on Probation Orders (reported by 64.0% of the Magistrates) and allocate adequate resources for Probation Orders activities (reported by 60.0% of the Probation Officers); the National Police Service was to undertake training and sensitization of Police Officers on Probation Orders sentence (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Office of the Director of Public Prosecutions was to undertake training and sensitization of Prosecutors on Probation Orders (reported by 68.2% of the Magistrates and 52.0% of the Probation Officers); the Kenya Prisons Service was to train Prison Officers on Probation Orders sentence (reported by 78.9% of the Magistrates and 47.1% of the Probation Officers); the community was to create public awareness in the community on Probation Orders sentence (reported by 92.3% of the Magistrates and 79.8% of the Probation Officers); the direct victims of crime were to participate in awareness creation on Probation Orders (reported by 64.0% of the Magistrates and 40.6% of the Probation Officers) and embrace restorative justice and compensation (reported by 42.5% of the Probation Officers); while the probationers were to undertake sensitization of other offenders about the Probation Orders sentence (reported by 47.1% of the Magistrates and

38.0% of the Probation Officers) and participate in guidance and counseling (reported by 35.3% of the Magistrates).

### 4.3 Conclusions

Based on the findings of this study, it is concluded that: Probation Orders sentences for the rehabilitation of petty offenders are underutilized by Law Courts with preference being on prison sentences; most stakeholders are generally satisfied with the level of compliance with Probation Orders by offenders; public attitude towards Probation Orders is generally favourable and that there are key plausible actions that could enhance it; where Probation Orders sentences have been utilized, they are generally effective in the rehabilitation of offenders; the effective delivery of Probation Orders faces some key general and institution-specific challenges which need to be addressed by all relevant players; and that there are key general and institution-specific interventions that need to be put in place towards strengthening Probation Orders in the country.

### 4.4 Key Recommendations

#### 4.4.1 Policy recommendations

This study recommends:

1. That the Judiciary heightens its role in the effective management of the **national crime burden (of about Kshs. 3.15 billion a year** (that is, Kshs. 175 spent per day in maintaining one prisoner) with respect to funds spent on the estimated 50,000 daily prison inmate population) by way of undertaking full implementation of section 7 and 9 of the Sentencing Policy Guidelines which, among others, prioritize the utilization of non-custodial sentences as a first option of sentencing for petty offenders (especially whose prison sentences would have been three (3) years and below), and focus on the main aim of the Probation Orders sentence of facilitating the reformation and rehabilitation of the offender.

The findings of this study showed that Probation Orders sentences for petty offences were under-utilized (by Law Courts) in favour of short term prison sentences of three (3) years and below, with probation sentences accounting for an average of 18.0% of the combined number of all the petty offences dealt with through probation and prison sentences between 2014 and 2018.

2. That the Probation and Aftercare Service Department puts in place offender treatment, rehabilitation and supervision measures that are demographic-specific (especially gender-specific) and targeted at the criminogenic needs of the different offence-categories of the probationers.

The findings of the study showed that male and female offenders serving probation sentences had committed different types of offences probably because of their

different socio-cultural, psychological and economic predispositions and/or situations. Hence the effective delivery of Probation Orders needs to consider these variables.

3. In partnership with the Information and Communication Technology Authority (ICTA), the Judiciary, Probation and Aftercare Service Department and the Kenya Prisons Service establish an inter-linked Offender Record Management System (especially an online real-time portal) dedicated for uploading, sharing and monitoring of prison and non-custodial sentence placements data and statistics and connected across the country's law courts, probation offices and prisons with a view to facilitating the monitoring of sentencing patterns and trends and curtailing the unconscious over-utilization of prison sentences on petty offences.

The perception held by majority of the Magistrates, Probation Officers, probationers, members of the public and victims that Probation Orders were adequately utilized may have been unconsciously misinformed. This was possibly due to inadequate or lack of sharing of information on actual Probation Orders placement statistics across the key players.

4. That the Probation and Aftercare Service Department designs a programme for securing the trust and confidence of the Judiciary on the effective functioning of the Probation Orders sentence especially by deliberately and regularly sharing with the Judiciary reports of evidence-based milestones realized through the sentence as a compelling reason for Sentencing Officers' continued and enhanced utilization of the sentence.

Majority of the Probation Officers opined that some sentencing officers had a generally negative attitude towards the Probation Orders sentence and therefore did not utilize the Order. Findings from at least 1 out of 10 Magistrates, Probation Officers, members of the public, probationers and victims sample respondents showed that adequate utilization of the Probation Orders sentence by Law Courts was influenced by factors such as: commitment, efficiency and competence of Probation Officers; benefits of reconciliation, dispute resolution, re-integration and rehabilitation of offenders through the sentence; and the need to decongest prisons. Further, over 50.0% of all these sample respondents were in agreement that: the cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders had encouraged some sentencing officers to utilize Probation Orders; satisfaction with the economic benefits of Probation Orders sentence to the community had motivated and/or encouraged sentencing officers to continue utilizing Probation Orders; and that satisfaction with the rehabilitation of the probationers by the Probation Department had motivated and/or encouraged sentencing officers to continue utilizing the Probation Orders sentencing option. Some of the major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 members of the public, probationers and victims were non-compliance and reoffending by some probationers and poor supervision of probationers. Establishment of effective



rehabilitation programmes for petty offenders strict and close supervision of offenders were some of the most popular suggested solutions to the challenges affecting the delivery of Probation Orders. Hence Probation Officers need to ensure that these positive factors are deliberately enhanced and the challenges addressed and evidence of the same is availed to Sentencing Officers in a regular and timely manner.

5. That Court Users' Committees (CUCs) and Probation Case Committees in respective jurisdictions spearhead multi-agency and multi-faceted approaches targeted on improvement of the aspects of key stakeholder (including community) support and participation in probationers' management, rehabilitation, supervision and psychological empowerment as key facilitators of offenders' compliance with the Probation Orders and their rehabilitation and reformation in general.

Some of the key factors influencing compliance with Probation Orders sentence were found to include: the level of supervision of probationers by Probation Officers; community support of Probation Orders; a clear understanding and attitude of the probationer towards the sentence; the benefits the probationer gets from the Probation Orders sentence; use of local administration and community in the supervision of probationers; lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision; lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision; lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision; Some of the major challenges facing the effective delivery of Probation Orders were difficulty among probationers in accessing Probation Offices and unfavourable life conditions among Probationers. Some of the main general possible solutions to the challenges were: ensuring convenient reporting venues for Probationers; enhancing empowerment of offenders; encouraging effective collaboration among stakeholders; and providing flexible reporting hours for employed Probationers.

6. Addressing youth criminality through expansion of the Youth Empowerment Programme to include a distinct component of youthful ex-offenders' economic empowerment with a special focus on an Ex-offenders' Revolving Fund, Employment and Entrepreneurship (especially skill, business start-up capital and tool boxes) Development Programme.

Most offenders serving Probation Orders sentence were found to be youths with low educational background (that is, primary school level of education) and with no reliable formal employment. Lack of support to employed probationers from their employers and economic instability of probationers were also found to be among the key factors influencing compliance with Probation Orders sentence. Therefore, ensuring the probationers' economic stability will require prioritized empowerment in the areas of entrepreneurship training and business start-ups, vocational training, support in formal education and linkage with potential employers in order to enable

them become self-reliant during and after the completion of their sentences and be able to face the socio-economic challenges of day-to-day life both as individuals, family and community members.

7. A deliberate review of the existing policy, legislative and administrative frameworks on issuance of Police Clearance Certificate (popularly known as Certificate of Good Conduct) to facilitate the issuance of the certificates to rehabilitated and reformed ex-offenders which will in turn facilitate the ex-offenders in securing formal employment and/or addressing their 'lifetime criminal label' and stigma

Findings of the study indicated that most probationers completed their sentences successfully and were rehabilitated. Issuing Police Clearance Certificates to rehabilitated and reformed ex-offenders would therefore assist them while seeking formal employment and/or economic opportunities necessary for their reintegration and resettlement.

8. That the National Police Service prioritizes and/or commits to ensuring compliance with Probation Orders by undertaking timely execution of warrants of arrest for those probationers who breach the provisions of the Orders especially by absconding the sentence and/or committing further offences.

At least 2 out of 10 members of the public, probationers and victims of crime observed that non-compliance and reoffending by some probationers was one of the challenges facing the effective delivery of Probation Orders. According to Probation Officers, it was also one of the main reasons for the inadequate utilization of Probation Orders by some Law Courts. Enhancing execution of warrants of arrest against absconders of Probation Orders was proposed majorly by Probation Officers as one of the solutions to the challenge of non-compliance.

9. That the Judiciary gives punitive yet guaranteed non-custodial graduated fines (that is, fines paid over some time) to those who abscond the Probation Orders sentence aimed at guarding against prison overcrowding by petty offenders and reducing the confidence of probationers to deliberately abscond their sentences.

The findings of the study showed that absconding/ non-compliance and re-offending of probationers were some of the factors contributing to unfavourable public attitude towards Probation Orders sentence in Kenya. Close and strict supervision of probationers and enforcing compliance with the Orders were proposed as actions needed to achieve enhanced positive public attitude towards the sentence. Punitive yet guaranteed non-custodial graduated fines<sup>3</sup> issued by Law Courts to probationers who

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<sup>3</sup> A guaranteed non-custodial graduated fine is used to imply a fine imposed to an offender which is guaranteed by a relative, guardian or significant other and which can be paid over some time and does not have the option of a custodial sentence in case of defaulted payment so as to guard against the fine contributing to prison congestion which the Probation Orders sentence was trying to address.

abscond the sentence may be explored so as to guard against prison congestion by these petty offence probationers. The payment of these fines can be enforced and/or supervised by Sentencing Officers (that is, Judges and Magistrates) and Probation Officers.

10. That the Probation and Aftercare Service Department strengthens its Probation Training Institute, and partners with other relevant local and foreign training institutions, to implement a continuous Probation Officers' skill and knowledge-base improvement programme which emphasizes on offender rehabilitation-related aspects (such as guidance and counselling) necessary for assisting the offenders overcome criminal behaviour tendencies and other socio-psychological and economic problems responsible for the criminogenic needs of the offenders (that is, the risk factors responsible for offending).

The study showed that the offences committed by most probationers who were interviewed were general stealing, assault causing actual bodily harm, possession of illicit /illegal brew and drugs, malicious damage to property, creating disturbance and being drunk and disorderly. These offences are related to economic and/or livelihood difficulties and mental disturbances. Hence Probation Officers need to be adequately equipped with skills and knowledge necessary for the effective sentencing and rehabilitation of such offenders.

11. That all training institutes and/or colleges managed and/or run by specific agencies in the administration of criminal justice need to strengthen their staff training curriculum to include current aspects and/or dynamics of non-custodial sentences in general and Probation Orders sentence in particular.

The study found that some practitioners in the administration of criminal justice did not fully appreciate the place of Probation Orders sentence in the management of crime in the country. For instance, majority of the Probation Officers argued that some sentencing officers were not fully conversant with the provisions and the circumstances under which a Probation Orders sentence could be issued by a court and therefore did not utilize the Order. Towards strengthening the sentence, one of the overriding recommendations was that respective agencies sensitize their staff on the probation sentence. Hence training institutes and/or colleges such as the Judiciary Training Institute (JTI), Probation Training Institute, Prosecution Training Institute, Police Training Colleges and Prisons Staff Training College (PSTC) need to address the probation sentence and service information, skill and knowledge gap among their staff.

12. That the National Council on the Administration of Justice (NCAJ) and respective Court Users' Committees (CUCs), spearheaded by the Judiciary and the Probation and Aftercare Service Department, sustain and/or enhance positive public attitude towards the Probation Orders sentence through an imaginative and effective media strategy and

by undertaking continuous public sensitizations and national and county-based outreach programmes and/or activities (for instance Service Weeks, offender rehabilitation clinics and Corporate Social Responsibility activities) that also showcase the benefits of the sentence to the family, community and crime and offender management in the country in general.

The findings of the study from most of the Magistrates and majority of the Probation Officers, probationers, members of the public and victims showed that the public attitude towards the Probation Orders sentence was favourable and that the leading factors contributing to this favourable public attitude included: community sensitization on the Probation Orders sentence; offender rehabilitation aspect of the Probation Orders sentence; promotion of family unity and/or ties; enablement of the offender to continue with other socio-economic activities; and enhanced reconciliation between offenders and victims. However, there were other key aspects that affected public attitude negatively and hence underutilization of Probation Orders in some jurisdictions. For instance, majority of the Magistrates, Probation Officers, members of the public and victims and most of the probationers held the view that unwillingness of some offenders to adhere to the provisions of a Probation Orders sentence discouraged the utilization of Probation Orders. The major challenges facing the effective delivery of Probation Orders which were reported by at least 1 out of 10 of either the members of the public, probationers and victims included lack of knowledge and training on Probation Orders sentence and lack of support and/or negative attitude by relevant stakeholders. The leading general possible solutions to the challenges facing the effective delivery of Probation Orders which was reported by at least 1 out of 10 of either of the members of the public, probationers and victims was conducting public awareness and sensitization on Probation Orders. The single most important action needed in order to achieve enhanced positive public attitude towards the Probation Orders sentence was also reported to be the undertaking of public awareness and sensitization on Probation Orders.

13. That the Judiciary institutes a programme for supervision, monitoring and evaluation of Probation Orders towards enhancing effectiveness of the sentence.

Most probationers argued that Law Courts never conducted monitoring and evaluation of the Probation Orders sentence. Majority of the Magistrates confirmed that they rarely or never conducted monitoring and evaluation of the sentence.

14. That the National Treasury, in partnership with development partners and county governments, enhance the financial, infrastructural and human resourcing of the Judiciary and Probation and Aftercare Service Department towards enhancing and strengthening the effective delivery of the Probation Orders sentence.

Limited resources for the Probation and Aftercare Service Department was one of the main challenges cited as facing the effective delivery of Probation Orders sentence and

hence the reason why provision of adequate resources to the Department was reported as one of the major possible solutions to the challenges facing the sentence and also a key intervention for strengthening the Orders.

15. Strengthening the functions of Corruption Prevention Committees in the Judiciary and Probation and Aftercare Service Department to deal with any forms of corruption in the whole process of Probation Orders sentencing and rehabilitation.

At least 1 out of 10 members of the public cited corruption as one of the factors contributing to inadequate utilization of Probation Orders. Most Probation Officers and members of the public also opined that some sentencing officers used Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives. Further, most sample respondents in all the categories agreed that offenders who corrupt Sentencing Officers and/or Probation Officers to get Probation Orders sentences are likely to breach the order. Corruption among some stakeholders was cited as one of the major challenges affecting the sentence and that encouraging integrity and fighting corruption among stakeholders in Probation Orders sentence was a key possible solution. The elimination of corruption in the Probation Orders sentence was cited as one of the key interventions for strengthening Probation Orders.

16. The prioritization and introduction of a Probation Officers' Outreach and/or Liaison Programme where Probation Officers are deployed (either on full or part-time basis) in national and county government Ministries, Departments and Agencies (MDAs) dealing with youth (including schools) for purposes of offering mainstreamed anti-criminal behaviour guidance and counselling aimed at securing youth dividend outcomes in general and addressing youth criminality in the country in particular.

Youth form the majority of Kenya's population and are therefore a significant catchment for criminal activities. For instance, findings of the study showed that majority of the probationers (and who had committed the various crimes and/or offences) were youth aged between 18 and 33 years while others were aged below 18 years thus implying a school-going segment of the probationers. The youth are also the majority inmates in Kenyan prisons and facilities such as borstal institutions. Hence deploying Probation Officers in the youth institutions to offer anti-criminal behaviour guidance and counselling alongside the other youth empowerment programmes has the potential to reduce youth criminality significantly.

17. That non-custodial offender rehabilitation forms a deliberate standing agenda among all heads of institutions in the administration of criminal justice as a significant contributor in the realization of Vision 2030, the 2018-2022 Medium Term Plan III (MTP III) and the Big Four Agenda especially with respect to crime prevention and management in particular and economic and socio-psychological development of the Kenyan society in general.

Findings of the study indicated that some officials in the criminal justice system had a negative attitude towards the Probation Orders sentence despite the sentence having important benefits such as: rehabilitation of petty offenders within the community; prevention of hardening of petty and first offenders by the hardened ones; enabling the offender to maintain familial ties while at the same time serving the sentence which helps in guarding against the delinquency of dependant minors; promoting reconciliation between the offender, the actual victim of the offence and the community at large for harmonious existence; acquisition of useful survival and/or life skills and linking offenders to potential employers which improves the socio-economic status of community members. Through the Probation Orders sentence, offenders are empowered in aspects such as: guidance and counseling; acquisition and transfer of skills; financial support and/or provision of working tools and equipment and vocational training.

18. The policy, legal and administrative institutionalization of a parole system (which is not currently practiced in Kenya) and a regular scheduled (preferably quarterly) decongestion programme (especially utilizing Probation Orders) aimed at offloading prisons of all petty offenders and other reformed offenders as a viable crime management and administration of criminal justice strategy.

The study established that Law courts mainly preferred prison sentences to non-custodial sentences in the treatment of petty offenders at the expense of the limited capacity of Kenyan prisons. This had occasioned prison overcrowding with its attendant negative consequences such as unwarranted public expenditure and hardening of petty offenders by the hardened ones.

19. The Probation and Aftercare Service Department undertakes enhanced community engagement and participation in non-custodial offender management through a revamped 'Volunteer Probation Officers' Programme' especially enlisting the services of relevant and high integrity serving and/or retired professionals (including religious leaders).

The findings of the study established that the community had an important role in the successful rehabilitation of offenders within the community but their role had not been tapped to the full. It was further established that the Probation and Aftercare Service Department faced challenges of staff shortage and work overload which hampered effective supervision, monitoring and follow-up of probationers. Therefore, a well-managed 'Volunteer Probation Officers' Programme' especially enlisting the services of relevant and high integrity serving and/or retired professionals (including religious leaders) drawn from the local community could positively and effectively facilitate the Probation Orders sentence.

#### **4.4.2 Recommendations for further research**

This study recommends that further research be undertaken on the contribution of the Probation Orders sentence in the management of Kenya's national crime burden. A comparative analysis of Probation Orders sentences vis-a-vis other non-custodial and custodial forms of offender management in the administration of criminal justice in the country may also be pursued.

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## APPENDICES

### A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA

#### Appendix 1: Questionnaire for Magistrates

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

#### Introduction

Hello, my name is \_\_\_\_\_ and I am working with the National Crime Research Centre (NCRC). We are conducting “**A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya**”. Probation Orders are court sentences used on offenders in Kenya nowadays. As an officer of the court involved with the execution/implementation of the Orders, it is important to gather information from you on the sentence. The information which you will provide will go a long way in advising policy on Probation Orders in Kenya. Therefore, your assistance is kindly requested in making this research a success. The general objective of the study is to examine the factors influencing the delivery of the Orders in Kenya with a view to strengthening community-based alternatives to prison. The study is expected to shed light on factors influencing the utilization of Probation Orders by the courts; identifying the factors that affect the levels of compliance with Probation Orders by offenders; identifying the factors shaping public attitudes towards Probation Orders; identifying challenges facing the delivery of Probation Orders; and suggesting appropriate and effective interventions towards strengthening Probation Orders in Kenya.

As part of the survey, we would like you to provide answers to questions about your knowledge and/or direct/indirect experience with Probation Orders. All of the answers you give will be confidential. Please provide detailed answers as much as possible.



## Background Information

1. Gender
  1. Male
  2. Female
2. Age of Respondent in years.
  1. 18-25
  2. 26-33
  3. 34-41
  4. 42-49
  5. 50-57
  6. 58-65
  7. 66+
3. Marital Status:
  1. Single/Never Married
  2. Married
  3. Separated
  4. Divorced
  5. Widowed
4. Highest Level of Education (Specify)\_\_\_\_\_
5. Religion:
  1. Traditional
  2. Christian
  3. Islam
  4. Other (Specify)\_\_\_\_\_
6. What is your designation in your organization?\_\_\_\_\_
7. How long have you worked with your organization?
  1. Below 1 year
  2. 1-5 years
  3. 6-10 years
  4. 11-15 years
  5. 16-20 years
  6. 21-25 years
  7. 26+ years

## Information on Probation Orders Sentence in Kenya

8. What do you regard as the main pillars of the Probation Orders Sentence in Kenya?\_\_\_\_\_

9. (a) Do law courts in this locality utilize Probation Orders in sentencing offenders? 1. Yes  
2. No

(b) If Yes, who are the majority of the offenders on Probation Orders sentences in this locality?

1. Petty Offenders

2. Serious Offenders

(c) If Yes, please list the types of offences/crimes which have been committed by most probationers (Probation Orders Offenders) in this locality?\_\_\_\_\_

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(d) What is your average monthly Probation Orders placement?

1. 0-15
2. 16-30
3. 31-45
4. 46-60
5. 61-75
6. 76-90
7. 91+

10. (a) Would you say that Probation Orders are beneficial? 1. Yes 2. No 3. I don't know

(b) If Yes, what do you think are the benefits of Probation Orders Sentence in Kenya and to what extent have the benefits been realized by the Probation Orders sentences issued by law courts in this locality? (Please write down the benefits and tick your selected rating inside the box).

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality	
	To a large extent	To a small extent

(c) If No, please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. (a) In which specific ways have offenders been empowered through the Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) What specific offender rehabilitation and supervision activities are conducted through the Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. (a) How adequately have Probation Orders sentences been utilized by law courts in this locality?

1. Adequately
2. Not adequately
3. Not utilized at all
4. I don't know

(b) If Probation Orders sentences have been utilized generally adequately (that is, very adequately and adequately), what factors have influenced their utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) If Probation Orders sentences have not been utilized at all or have been utilized generally inadequately (that is, not adequately, not adequately at all and not utilized at all), what factors have influenced their lack of utilization or inadequate utilization/under-utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Please indicate your level of agreement with the following statements (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Some sentencing officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued			

Statement	Response to statement		
	Agree	Disagree	I don't know
by a court and therefore do not utilize the order.			
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the order.			
The cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.			
Satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Satisfaction with the rehabilitation of the probationers (Probation Orders offenders) by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Unsatisfactory supervision of probationers discourages sentencing officers from issuing Probation Orders.			
Most sentencing officers are reluctant to accept Probation Orders recommendations from Probation Officers when they have not referred cases for the same.			
Some Probation Officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and supervised and therefore do not recommend the order for use by the courts.			
Some Probation Officers have a generally negative attitude towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.			
Some Probation Officers use Probation Orders sentence as a soft landing for some offenders after			

Statement	Response to statement		
	Agree	Disagree	I don't know
being compromised by the offenders and/or their friends and relatives			
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.			
Unwillingness of some offenders to adhere to the provisions of a Probation Orders sentence discourages the utilization of Probation Orders.			
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.			
Good quality Probation Officers' pre-sentence reports contribute to the utilization of Probation Orders by courts.			
Probation Officers have not been adequately trained on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.			
Probation Officers have not been adequately sensitized on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.			
Probation Officers have not been adequately trained and/or sensitized on issues of offender rehabilitation which in turn affects utilization of Probation Orders.			
Most Probation Officers do not have adequate discretion to provide recommendations for Probation Orders sentences when courts have not referred cases for the same.			
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.			

14. (a) Generally, how satisfied are you with the level of compliance with Probation Orders by probationers in this locality?

1. Satisfied
2. Not satisfied

(b) If generally satisfied, please explain. \_\_\_\_\_

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(c) If generally not satisfied, please explain. \_\_\_\_\_

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(d) How would you estimate the rate of Probation Orders sentence successful completions by offenders placed by courts in this locality?

1. Below 24%
2. 25- 49%
3. 50-74%
4. 75% and above

15. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality? \_\_\_\_\_

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16. (a) In most cases and before sentencing, are most offenders given the freedom to participate in deciding whether or not to benefit with Probation Orders sentences? 1. Yes

2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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(b) In most cases and before sentencing, are relatives of offenders given the opportunity to participate in deciding whether or not the offenders benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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(c) In most cases and before sentencing, is the local community given the freedom to participate in deciding whether or not its offenders benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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17. Do most probationers report to probation offices for supervision and rehabilitation as instructed by the Probation Officers? 1. Yes 2. No 3. I don't know

18. (a) How often do you contact offenders placed on Probation Orders sentence?

1. Often

2. Rarely

3. Never

(b) If you contact probationers, what is the mode of contact?\_\_\_\_\_

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(c) If you don't contact or you contact probationers at least rarely, what are the reasons?

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19. (a) How often do you contact family members of probationers to find out how placed probationers are fairing with their rehabilitation?

1. Often

2. Rarely

3. Never

(b) If you contact family members of probationers, what is the mode of contact?\_\_\_\_\_

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(c) If you don't contact or you contact family members of probationers at least rarely, what are the reasons?\_\_\_\_\_

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20. (a) How often do family members of probationers contact you to inform you how probationers are fairing with their rehabilitation?

1. Often

2. Rarely

3. Never

(b) If family members of probationers contact you, what is the mode of contact?\_\_\_\_\_

\_\_\_\_\_

(c) If family members of probationers don't contact you or contact you at least rarely, what could be the reasons?\_\_\_\_\_

\_\_\_\_\_

21. (a) How often do you visit probationers in their families?

1. Often

2. Rarely

3. Never

(b) If you visit probationers, what is the mode of visit?\_\_\_\_\_

\_\_\_\_\_

(c) If you don't visit or you visit probationers at least rarely, what are the reasons?\_\_\_\_\_

\_\_\_\_\_

22. (a) How often do courts conduct monitoring and evaluation of the Probation Orders sentences?

1. Often

2. Rarely

3. Never

(b) If courts don't conduct or conduct monitoring and evaluation of the Probation Orders sentences at least rarely, what are the reasons?\_\_\_\_\_

\_\_\_\_\_

23. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).



Statement	Response to statement		
	Agree	Disagree	I don't know
Probationers with a negative opinion about the sentence are likely to breach the order.			
Offenders who corrupt sentencing officers to get Probation Orders sentences are likely to breach the order.			
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the order.			
Direct placement of offenders by courts to Probation Orders sentence supervision contributes to non-compliance with the orders.			
Tribalism, nepotism and favouratism within the sentencing agencies contribute to non-compliance of offenders with the orders.			
Tribalism, nepotism and favouratism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the orders.			
Lack of probationers' family support to Probation Officers during the offender's rehabilitation and supervision contributes to breach of the order.			
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to employed probationers from their employers contributes to breach of Probation Orders.			
Most Probation Officers have not been trained and/or sensitized adequately on supervision of probationers.			
Most economically unstable probationers offenders are likely to abscond their sentences to			

Statement	Response to statement		
	Agree	Disagree	I don't know
look for livelihoods.			

24. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality?

1. Favourable
2. Not favourable
3. I don't know

(b) If the public attitude is generally favourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

(c) If the public attitude is generally unfavourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

25. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

26. (a) Generally, how effective are Probation Orders sentences in this locality.

1. Effective
2. Not effective
3. I don't know

(b) Generally, how effective are Probation Orders sentences in the following aspects.

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Rehabilitation of non-serious offenders within the community			

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Individual offender paying back (reparation) for the injury done to the community			
Decongestion of prisons of non-serious and first offenders			
Saving tax payers money which would have been spent in taking care of prison inmates.			
Avoiding contamination of non-serious and first offenders by hardened criminals			
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence.			
Promotion of reconciliation between the offender and the victim of crime.			
Acquisition of survival skills			
Linking of offenders to potential employers			
Prevention of juvenile delinquency of the dependent minors			

27. How can the challenges facing the following stakeholders be addressed towards the effective delivery of Probation Orders in Kenya?

(i) The Judiciary?\_\_\_\_\_

\_\_\_\_\_

(ii) The Probation and Aftercare Service Department?\_\_\_\_\_

\_\_\_\_\_

(iii) The National Police Service?\_\_\_\_\_

\_\_\_\_\_

(iv) The Prosecution? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(v) The Prisons Service? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(vi) The community? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(vii) The direct victims of crime? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(viii) Probationers (Probation Orders offenders)? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

28. (a) What specific interventions need to be put in place by the following stakeholders towards strengthening Probation Orders sentence in Kenya?

(i) The Judiciary? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(ii) The Probation and Aftercare Service Department? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(iii) The National Police Service? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(iv) The Prosecution? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(v) The Prisons Service? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(vi) The community? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(vii) The direct victims of crime? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(viii) Probationers (Probation Orders offenders)? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(b) Please propose any other necessary interventions? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

29. Please give any other relevant comments relating to the delivery of Probation Orders sentence in Kenya? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Thank you for your cooperation.**

# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 2: Questionnaire for Probation Officers**

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

### **Introduction**

Hello, my name is \_\_\_\_\_ and I am working with the National Crime Research Centre (NCRC). We are conducting “**A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya**”. Probation Orders are court sentences used on offenders in Kenya nowadays. As an officer of the court involved with the execution/implementation of the Orders, it is important to gather information from you on the sentence. The information which you will provide will go a long way in advising policy on Probation Orders in Kenya. Therefore, your assistance is kindly requested in making this research a success. The general objective of the study is to examine the factors influencing the delivery of the Orders in Kenya with a view to strengthening community-based alternatives to prison. The study is expected to shed light on factors influencing the utilization of Probation Orders by the courts; identifying the factors that affect the levels of compliance with Probation Orders by offenders; identifying the factors shaping public attitudes towards Probation Orders; identifying challenges facing the delivery of Probation Orders; and suggesting appropriate and effective interventions towards strengthening Probation Orders in Kenya.

As part of the survey, we would like you to provide answers to questions about your knowledge and/or direct/indirect experience with Probation Orders. All of the answers you give will be confidential. Please provide detailed answers as much as possible.

## Background Information

1. Gender
  1. Male
  2. Female
2. Age of Respondent in years.
  1. 18-25
  2. 26-33
  3. 34-41
  4. 42-49
  5. 50-57
  6. 58-65
  7. 66+
3. Marital Status:
  1. Single/Never Married
  2. Married
  3. Separated
  4. Divorced
  5. Widowed
4. Highest Level of Education (Specify)\_\_\_\_\_
5. Religion:
  1. Traditional
  2. Christian
  3. Islam
  4. Other (Specify)\_\_\_\_\_
6. What is your designation in your organization?\_\_\_\_\_
7. How long have you worked with your organization?
  1. Below 1 year
  2. 1-5 years
  3. 6-10 years
  4. 11-15 years
  5. 16-20 years
  6. 21-25 years
  7. 26+ years

### Information on Probation Orders Sentence in Kenya

8. What do you regard as the main pillars of the Probation Orders Sentence in Kenya? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. (a) Do law courts in this locality utilize Probation Orders in sentencing offenders? 1. Yes 2. No
- (b) If Yes, who are the majority of the offenders on Probation Orders sentences in this locality?
1. Petty Offenders
2. Serious Offenders
- (c) If Yes, please list the types of offences/crimes which have been committed by most probationers (Probation Orders Offenders) in this locality? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) What is your average monthly Probation Orders placement?
1. 0-15
2. 16-30
3. 31-45
4. 46-60
5. 61-75
6. 76-90
7. 91+
10. (a) Would you say that Probation Orders are beneficial? 1. Yes 2. No 3. I don't know
- (b) If Yes, what do you think are the benefits of Probation Orders Sentence in Kenya and to what extent have the benefits been realized by the Probation Orders sentences issued by law courts in this locality? (Please write down the benefits and tick your selected rating inside the box).



Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality	
	To a large extent	To a small extent

(c) If No, please explain. \_\_\_\_\_

\_\_\_\_\_

11. (a) In which specific ways have offenders been empowered through the Probation Orders \_\_\_\_\_

\_\_\_\_\_

(d) What specific offender rehabilitation and supervision activities are conducted through the Probation Orders sentence? \_\_\_\_\_

\_\_\_\_\_

12. (a) How adequately have Probation Orders sentences been utilized by law courts in this locality?

1. Adequately
2. Not adequately
3. Not utilized at all
4. I don't know

(e) If Probation Orders sentences have been utilized generally adequately (that is, very adequately and adequately), what factors have influenced their utilization by the courts in this locality? \_\_\_\_\_

\_\_\_\_\_

(f) If Probation Orders sentences have not been utilized at all or have been utilized generally inadequately (that is, not adequately, not adequately at all and not utilized at all), what factors have influenced their lack of utilization or inadequate utilization/under-utilization by the courts in this locality? \_\_\_\_\_

13. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Some sentencing officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and therefore do not utilize the order.			
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the order.			
The cost-benefit analysis of Probation Orders sentence over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.			
Satisfaction with the economic benefits of Probation Orders sentence to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Satisfaction with the rehabilitation of the probationers (Probation Orders offenders) by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Unsatisfactory supervision of probationers discourages sentencing officers from issuing Probation Orders.			
Most sentencing officers are reluctant to accept Probation Orders recommendations from Probation Officers when they have not referred cases for the same.			

Statement	Response to statement		
	Agree	Disagree	I don't know
Some Probation Officers are not fully conversant with the provisions and the circumstances under which a Probation Orders sentence can be issued by a court and supervised and therefore do not recommend the order for use by the courts.			
Some Probation Officers have a generally negative attitude towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.			
Some Probation Officers use Probation Orders sentence as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.			
Unwillingness of some offenders to adhere to the provisions of a Probation Orders sentence discourages the utilization of Probation Orders.			
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.			
Good quality Probation Officers' pre-sentence reports contribute to the utilization of Probation Orders by courts.			
Probation Officers have not been adequately trained on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.			
Probation Officers have not been adequately sensitized on issues of Probation Orders supervision which in turn affects utilization of Probation Orders.			
Probation Officers have not been adequately trained and/or sensitized on issues of offender rehabilitation which in turn affects utilization of Probation Orders.			
Most Probation Officers do not have adequate discretion to provide recommendations for			

Statement	Response to statement		
	Agree	Disagree	I don't know
Probation Orders sentences when courts have not referred cases for the same.			
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.			

14. (a) Generally, how satisfied are you with the level of compliance with Probation Orders by probationers in this locality?

1. Satisfied
2. Not satisfied

(b) If generally satisfied, please explain. \_\_\_\_\_

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(c) If generally not satisfied, please explain. \_\_\_\_\_

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(d) How would you estimate the rate of Probation Orders sentence successful completions by offenders placed by courts in this locality?

1. Below 24%
2. 25- 49%
3. 50-74%
4. 75% and above

15. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality? \_\_\_\_\_

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16. (a) In most cases and before sentencing, are most offenders given the freedom to participate in deciding whether or not to benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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(b) In most cases and before sentencing, are relatives of offenders given the opportunity to participate in deciding whether or not the offenders benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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(c) In most cases and before sentencing, is the local community given the freedom to participate in deciding whether or not its offenders benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

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17. Do most probationers report to probation offices for supervision and rehabilitation as instructed by the Probation Officers? 1. Yes 2. No 3. I don't know

18. (a) How often do you contact offenders placed on Probation Orders sentence?

- 1. Often
- 2. Rarely
- 3. Never

(b) If you contact probationers, what is the mode of contact? \_\_\_\_\_

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(c) If you don't contact or you contact probationers at least rarely, what are the reasons?

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19. (a) How often do you contact family members of probationers to find out how placed probationers are fairing with their rehabilitation?

- 1. Often
- 2. Rarely

3. Never

(b) If you contact family members of probationers, what is the mode of contact?\_\_\_\_\_

\_\_\_\_\_

(c) If you don't contact or you contact family members of probationers at least rarely, what are the reasons?\_\_\_\_\_

\_\_\_\_\_

20. (a) How often do family members of probationers contact you to inform you how probationers are fairing with their rehabilitation?

1. Often

2. Rarely

3. Never

(b) If family members of probationers contact you, what is the mode of contact?\_\_\_\_\_

\_\_\_\_\_

(c) If family members of probationers don't contact you or contact you at least rarely, what could be the reasons?\_\_\_\_\_

\_\_\_\_\_

21. (a) How often do you visit probationers in their families?

1. Often

2. Rarely

3. Never

(b) If you visit probationers, what is the mode of visit?\_\_\_\_\_

\_\_\_\_\_

(c) If you don't visit or you visit probationers at least rarely, what are the reasons?\_\_\_\_\_

\_\_\_\_\_

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22. (a) How often do courts conduct monitoring and evaluation of the Probation Orders sentences?

1. Often
2. Rarely
3. Never

(b) If courts don't conduct or conduct monitoring and evaluation of the Probation Orders sentences at least rarely, what are the reasons? \_\_\_\_\_

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23. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Probationers with a negative opinion about the sentence are likely to breach the order.			
Offenders who corrupt sentencing officers to get Probation Orders sentences are likely to breach the order.			
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the order.			
Direct placement of offenders by courts to Probation Orders sentence supervision contributes to non-compliance with the orders.			
Tribalism, nepotism and favouratism within the sentencing agencies contribute to non-compliance of offenders with the orders.			
Tribalism, nepotism and favouratism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the orders.			
Lack of probationers' family support to Probation Officers during the offender's			

Statement	Response to statement		
	Agree	Disagree	I don't know
rehabilitation and supervision contributes to breach of the order.			
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to employed probationers from their employers contributes to breach of Probation Orders.			
Most Probation Officers have not been trained and/or sensitized adequately on supervision of probationers.			
Most economically unstable probationers offenders are likely to abscond their sentences to look for livelihoods.			

24. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality?

1. Favourable
2. Not favourable
3. I don't know

(b) If the public attitude is generally favourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

(c) If the public attitude is generally unfavourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

25. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality? \_\_\_\_\_



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26. (a) Generally, how effective are Probation Orders sentences in this locality.

1. Effective
2. Not effective
3. I don't know

(b) Generally, how effective are Probation Orders sentences in the following aspects.

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Rehabilitation of non-serious offenders within the community			
Individual offender paying back (reparation) for the injury done to the community			
Decongestion of prisons of non-serious and first offenders			
Saving tax payers money which would have been spent in taking care of prison inmates.			
Avoiding contamination of non-serious and first offenders by hardened criminals			
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence.			
Promotion of reconciliation between the offender and the victim of crime.			
Acquisition of survival skills			
Linking of offenders to potential employers			
Prevention of juvenile delinquency of the dependent minors			

27. How can the challenges facing the following stakeholders be addressed towards the effective delivery of Probation Orders in Kenya?

(i) The Judiciary? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(ii) The Probation and Aftercare Service Department? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(iii) The National Police Service? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(iv) The Prosecution? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(v) The Prisons Service? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(vi) The community? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(vii) The direct victims of crime? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(viii) Probationers (Probation Orders offenders)? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

28. (a) What specific interventions need to be put in place by the following stakeholders towards strengthening Probation Orders sentence in Kenya?

(i) The Judiciary? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(ii) The Probation and Aftercare Service Department? \_\_\_\_\_

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(iii) The National Police Service? \_\_\_\_\_

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(iv) The Prosecution? \_\_\_\_\_

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(v) The Prisons Service? \_\_\_\_\_

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(vi) The community? \_\_\_\_\_

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(vii) The direct victims of crime? \_\_\_\_\_

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(viii) Probationers (Probation Orders offenders)? \_\_\_\_\_

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(b) Please propose any other necessary interventions? \_\_\_\_\_

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29. Please give any other relevant comments relating to the delivery of Probation Orders sentence in Kenya? \_\_\_\_\_

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**Thank you for your cooperation.**

# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 3: Interview Schedule for Probation Orders Offenders (Probationers)**

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Name of interviewer \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

### **Introduction**

Hello, my name is \_\_\_\_\_ and I am working with the National Crime Research Centre (NCRC). We are conducting “**A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya**”. Probation Orders are court sentences used on offenders in Kenya nowadays. As an officer of the court involved with the execution/implementation of the Orders, it is important to gather information from you on the sentence. The information which you will provide will go a long way in advising policy on Probation Orders in Kenya. Therefore, your assistance is kindly requested in making this research a success. The general objective of the study is to examine the factors influencing the delivery of the Orders in Kenya with a view to strengthening community-based alternatives to prison. The study is expected to shed light on factors influencing the utilization of Probation Orders by the courts; identifying the factors that affect the levels of compliance with Probation Orders by offenders; identifying the factors shaping public attitudes towards Probation Orders; identifying challenges facing the delivery of Probation Orders; and suggesting appropriate and effective interventions towards strengthening Probation Orders in Kenya.

As part of the survey, we would like you to provide answers to questions about your knowledge and/or direct/indirect experience with Probation Orders. All of the answers you give will be confidential. Can I now start interviewing you?

**1. Consent granted**

**2. Consent not granted**

**Signature of interviewee:**

## Background Information

1. Gender
  1. Male
  2. Female
2. Age of Respondent in years.
  1. Below 18 years
  2. 18-25
  3. 26-33
  4. 34-41
  5. 42-49
  6. 50-57
  7. 58-65
  8. 66 and above
3. Marital Status:
  1. Single/Never Married
  2. Married
  3. Separated
  4. Divorced
  5. Widowed
4. Level of Education:
  1. None
  2. Pre-primary
  3. Primary
  4. Secondary
  5. Middle level College (Specify)\_\_\_\_\_
  6. University
  7. Adult Literacy
  8. Other (Specify)\_\_\_\_\_
5. Religion:
  1. Traditional
  2. Christian
  3. Islam
  4. Other (Specify)\_\_\_\_\_
6. Nationality
  1. Kenyan
  2. Non-Kenyan (Specify)\_\_\_\_\_
7. Occupation
  1. Permanent employment – Private Sector
  2. Permanent employment – Public Sector
  3. Casual/temporary employment(Specify whether in public or private)\_\_\_\_\_
  4. Business person
  5. Other (specify-e.g pupil/student/housewife)\_\_\_\_\_
  6. None of the above (specify)\_\_\_\_\_

## Information on Probation Orders Sentence in Kenya

8. In your understanding, what is a Probation Orders Sentence? \_\_\_\_\_

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9. (a) Based on your experience and/or knowledge, are most of the majority of the offenders on Probation Orders sentences in this locality petty or serious offender?

1. Petty Offenders

2. Serious offenders

(b) Please list the types of offences/crimes which have been committed by most probationers in this locality? \_\_\_\_\_

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(c) What offence (s)/crime (s) did you commit and was placed on Probation Orders sentence? \_\_\_\_\_

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(d) How long is your Probation sentence? \_\_\_\_\_

10. (a) Would you say that Probation Orders sentences are beneficial? 1. Yes 2. No 3. I don't know

(b) If Yes, what do you think are the benefits of a Probation Orders Sentence in Kenya and to what extent have the benefits been realized by the Probation Orders sentences issued by law courts in this locality? (Please write down the benefits and tick your selected rating inside the box).

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality		
	To a large extent	To a small extent	I don't know

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality		
	To a large extent	To a small extent	I don't know

(c) If No, please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. (a) In which specific ways have you been empowered through the Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) What specific offender rehabilitation and supervision activities are conducted through the Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. (a) How adequate have Probation Orders sentences been utilized by law courts in this locality?

1. Adequately
2. Not adequately
3. Not utilized at all
4. I don't know

(b) If Probation Orders sentences have been utilized generally adequately (that is, very adequately and adequately), what factors have influenced their utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) If Probation Orders sentences have not been utilized at all or have been utilized generally inadequately (that is, not adequately, not adequately at all and not utilized at all), what factors have influenced their lack of utilization or inadequate utilization/under-utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the order.			
Some Probation Officers have a generally negative attitude towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.			
The cost-benefit analysis of Probation Orders over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.			
Satisfaction with the economic benefits of Probation Orders to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Some Probation Officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.			
Unwillingness of some offenders to undergo probation service discourages the utilization of Probation Orders.			
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.			
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.			



14. (a) Would you say that most probationers comply with Probation Orders in this locality?  
1. Yes 2. No 3. I don't know

(b) If Yes, please explain. \_\_\_\_\_

\_\_\_\_\_

(c) If No, please explain. \_\_\_\_\_

\_\_\_\_\_

15. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality? \_\_\_\_\_

\_\_\_\_\_

16. (a) Before sentencing, were you given the freedom to participate in deciding whether or not to benefit with a Probation Orders sentence? 1. Yes 2. No. 3. I cannot remember  
Please explain your answer. \_\_\_\_\_

\_\_\_\_\_

(b) Before sentencing, were your relatives given the opportunity to participate in deciding whether or not you could benefit with a Probation Orders sentence? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

\_\_\_\_\_

(c) In most cases and before sentencing, is the local community given the freedom to participate in deciding whether or not its offenders benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

\_\_\_\_\_

17. Do you report to Probation offices for supervision and rehabilitation as instructed by the Probation Officers? 1. Yes 2. No

18. (a) Does your Probation Officer contact you? 1. Yes 2. No

(b) If Yes, how often does he/she contact you?

1. Often
2. Rarely
3. Never

(c) If your Probation Officer doesn't contact you or contacts you at least rarely, what could be the reasons? \_\_\_\_\_

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19. (a) How often does your Probation Officer contact your family members to find out how you are performing your work?

1. Often
2. Rarely
3. Never
4. I don't know

(b) If your Probation Officer contacts your family members, what is the mode of contact? \_\_\_\_\_

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(c) If your Probation Officer doesn't contact or contacts your family members at least rarely, what could be the reasons? \_\_\_\_\_

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20. (a) How often do your family members contact your Probation Officer to inform how you are fairing with your rehabilitation?

1. Often
2. Rarely
3. Never
4. I don't know

(b) If your family members contact your Probation Officer, what is the mode of contact? \_\_\_\_\_

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(c) If your family members don't contact or contact your Probation Officer at least rarely, what could be the reasons? \_\_\_\_\_

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21. (a) Does your Probation Officer visit you in your home? 1. Yes 2. No

(b) If Yes, how often does he/she visit you in your home?

1. Often

2. Rarely

(c) If your Probation Officer doesn't visit or visits you at least rarely, what could be the reasons? \_\_\_\_\_

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22. (a) How often do courts conduct monitoring and evaluation of your Probation Sentence?

1. Often

2. Rarely

3. Never

4. I don't know

(b) If courts don't conduct or conduct monitoring and evaluation of your Probation sentence at least rarely, what could be the reasons? \_\_\_\_\_

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23. Please indicate your level of agreement with the following statements (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Probationers with a negative opinion about the sentence are likely to breach the order.			
Offenders who corrupt Sentencing Officers to get Probation Orders sentences are likely to breach the			

Statement	Response to statement		
	Agree	Disagree	I don't know
order.			
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the order.			
Direct placement of offenders by courts to Probation Orders supervision contributes to non-compliance with the orders.			
Tribalism, nepotism and favouratism within the sentencing agencies contribute to non-compliance of offenders with the orders.			
Tribalism, nepotism and favouratism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the orders.			
Lack of Probationer's family support to Probation Officers during the offender's rehabilitation and supervision contributes to breach of the order.			
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.			
Lack of support to employed Probationers from their employers contributes to breach of Probation Orders.			
Most economically unstable Probation Offenders (Probationers) are likely to abscond their sentences to look for livelihoods.			

24. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality?
1. Favourable
  2. Not favourable
  3. I don't know

(b) If the public attitude is generally favourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

(c) If the public attitude is generally unfavourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

25. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality? \_\_\_\_\_

\_\_\_\_\_

26. (a) Generally, how effective are Probation Orders sentences in this locality.

1. Effective
2. Not effective
3. I don't know

(b) Generally, how effective are Probation Orders sentences in the following aspects.

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Rehabilitation of non-serious offenders within the community			
Individual offender paying back (reparation) for the injury done to the community			
Decongestion of prisons of non-serious and first offenders			
Saving tax payers money			
Avoiding contamination of non-serious and first offenders by hardened criminals			
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence.			
Promotion of reconciliation between the			

offender and the victim of crime.			
Acquisition of survival skills			
Linking of offenders to potential employers			
Prevention of juvenile delinquency of the dependent minors			

27. (a) Are there challenges facing the effective delivery of Probation Orders in this locality?  
1. Yes 2. No 3. I don't know

(b) If Yes, what are the major challenges?\_\_\_\_\_

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28. How can the challenges be addressed towards the effective delivery of Probation Orders in Kenya?\_\_\_\_\_

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29. What key interventions need to be put in place towards strengthening Probation Orders?\_

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30. Please give any other relevant comments relating to Probation Orders in Kenya?\_\_\_\_\_

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**Thank you for your cooperation.**

# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 4:- Interview Schedule for Probationers' victims**

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Name of interviewer \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

### **Introduction**

Hello, my name is \_\_\_\_\_ and I am working with the National Crime Research Centre (NCRC). We are conducting “**A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya**”. Probation Orders are court sentences used on offenders in Kenya nowadays. As an officer of the court involved with the execution/implementation of the Orders, it is important to gather information from you on the sentence. The information which you will provide will go a long way in advising policy on Probation Orders in Kenya. Therefore, your assistance is kindly requested in making this research a success. The general objective of the study is to examine the factors influencing the delivery of the Orders in Kenya with a view to strengthening community-based alternatives to prison. The study is expected to shed light on factors influencing the utilization of Probation Orders by the courts; identifying the factors that affect the levels of compliance with Probation Orders by offenders; identifying the factors shaping public attitudes towards Probation Orders; identifying challenges facing the delivery of Probation Orders; and suggesting appropriate and effective interventions towards strengthening Probation Orders in Kenya.

As part of the survey, we would like you to provide answers to questions about your knowledge and/or direct/indirect experience with Probation Orders. All of the answers you give will be confidential. Can I now start interviewing you?

**2. Consent granted**

**2. Consent not granted**

**Signature of interviewee:**

## Background Information

1. Gender
  1. Male
  2. Female
2. Age of Respondent in years.
  1. Below 18 years
  2. 18-25
  3. 26-33
  4. 34-41
  5. 42-49
  6. 50-57
  7. 58-65
  8. 66 and above
3. Marital Status:
  1. Single/Never Married
  2. Married
  3. Separated
  4. Divorced
  5. Widowed
4. Level of Education:
  1. None
  2. Pre-primary
  3. Primary
  4. Secondary
  5. Middle level College (Specify)\_\_\_\_\_
  6. University
  7. Adult Literacy
  8. Other (Specify)\_\_\_\_\_
5. Religion:
  1. Traditional
  2. Christian
  3. Islam
  4. Other (Specify)\_\_\_\_\_
6. Nationality
  1. Kenyan
  2. Non-Kenyan (Specify)\_\_\_\_\_
7. Occupation
  1. Permanent employment – Private Sector
  2. Permanent employment – Public Sector
  3. Casual/temporary employment(Specify whether in public or private)\_\_\_\_\_
  4. Business person
  5. Other (specify-e.g pupil/student/housewife)\_\_\_\_\_
  6. None of the above (specify)\_\_\_\_\_



## Information on Probation Orders Sentence in Kenya

8. In your understanding, what is a Probation Orders Sentence? \_\_\_\_\_

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9. (a) Based on your experience, was your offender on Probation sentence a petty or serious offender?

1. Petty Offenders

2. Serious Offenders

(b) Did you know your offender personally before he/she committed the offence against you? 1. Yes 2. No

(c) Please indicate the offences/crimes which probationers in this locality have committed? \_\_\_\_\_

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(d) What offence (s)/crime (s) did your offender commit against you? \_\_\_\_\_

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(e) How long is the probation sentence of your offender? \_\_\_\_\_

10. (a) Would you say that Probation Orders sentences are beneficial? 1. Yes 2. No 3. I don't know

(b) If Yes, what do you think are the benefits of Probation Orders Sentence in Kenya and to what extent have the benefits been realized by the Probation Orders sentences issued by law courts in this locality? (Please write down the benefits and tick your selected rating inside the box).

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality		
	To a large extent	To a small extent	I don't know

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality		
	To a large extent	To a small extent	I don't know

(c) If No, please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. What specific offender rehabilitation and supervision activities are conducted through the Probation Orders supervision? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. (a) How adequately have Probation Orders sentences been utilized by law courts in this locality?

1. Adequately
2. Not adequately
3. Not utilized at all
4. I don't know

(b) If Probation Orders sentences have been utilized generally adequately (that is, very adequately and adequately), what factors have influenced their utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) If Probation Orders sentences have not been utilized at all or have been utilized generally inadequately (that is, not adequately, not adequately at all and not utilized at all), what factors have influenced their lack of utilization or inadequate utilization/under-utilization by the courts in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the order.			
Some Probation Officers have a generally negative attitude towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.			
The cost-benefit analysis of Probation Orders over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.			
Satisfaction with the economic benefits of Probation Orders to the community has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Some Probation Officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.			
Unwillingness of some offenders to undergo probation service discourages the utilization of Probation Orders.			
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.			
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.			

14. (a) Would you say that most probationers comply with Probation Orders in this locality?  
1. Yes 2. No 3. I don't know

(b) If Yes, please explain. \_\_\_\_\_

\_\_\_\_\_

(c) If No, please explain. \_\_\_\_\_

\_\_\_\_\_

15. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality? \_\_\_\_\_

\_\_\_\_\_

16. (a) Before sentencing, were you given the freedom to participate in deciding whether or not your offender could benefit with a Probation Orders sentence? 1. Yes 2. No. 3. I cannot remember

Please explain your answer. \_\_\_\_\_

\_\_\_\_\_

(b) In most cases and before sentencing, is the local community given the freedom to participate in deciding whether or not its offenders could benefit with Probation Orders sentences? 1. Yes 2. No. 3. I don't know

Please explain your answer. \_\_\_\_\_

\_\_\_\_\_

17. (a) Are you aware that your offender is serving a Probation sentence? 1. Yes 2. No

(b) If Yes, do you know where your offender is serving the probation sentence? 1. Yes 2. No

18. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Level of agreement				
	Strongly Agree	Agree	Disagree	Strongly disagree	I don't know
Probationers with a negative opinion about the sentence are likely to					

breach the order.					
Offenders who corrupt Sentencing Officers to get Probation Orders sentences are likely to breach the Order.					
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the Order.					
Direct placement of offenders by courts to Probation supervision contributes to non-compliance with the orders.					
Tribalism, nepotism and favouratism within the sentencing agencies contribute to non-compliance of offenders with the Orders.					
Tribalism, nepotism and favouratism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the Orders.					
Lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision contributes to breach of the Order.					
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.					
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.					
Lack of support to employed probationers from their employers contributes to breach of Probation Orders.					

Most economically unstable probationers are likely to abscond their sentences to look for livelihoods.					
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19. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality?

1. Favourable
2. Not favourable
3. I don't know

(b) If the public attitude is generally favourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

(c) If the public attitude is generally unfavourable, what factors contribute to the same? \_\_\_\_\_

\_\_\_\_\_

20. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality? \_\_\_\_\_

\_\_\_\_\_

21. (a) Generally, how effective are Probation Orders sentences in this locality?

1. Effective
2. Not effective
3. I don't know

(b) Generally, how effective are Probation Orders sentences in the following aspects.

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Rehabilitation of non-serious offenders within the community			
Individual offender paying back (reparation) for the injury done to the community			
Decongestion of prisons of non-serious			

and first offenders			
Saving tax payers money			
Avoiding contamination of non-serious and first offenders by hardened criminals			
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence.			
Promotion of reconciliation between the offender and the victim of crime.			
Acquisition of survival skills			
Linking of offenders to potential employers			
Prevention of juvenile delinquency of the dependent minors			

22. (a) Are you aware of challenges facing the effective delivery of Probation Orders in this locality? 1. Yes 2. No

(b) If Yes, what are the major challenges? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

23. How can the challenges be addressed towards the effective delivery of Probation Orders in Kenya? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

24. What key interventions need to be put in place towards strengthening Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

25. Please give any other relevant comments relating to Probation Orders sentence in Kenya? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Thank you for your cooperation.**

# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 5: Interview Schedule for Members of the Public on Probation Orders**

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Name of interviewer \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

### **Introduction**

Hello, my name is \_\_\_\_\_ and I am working with the National Crime Research Centre (NCRC). We are conducting “**A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya**”. Probation Orders are court sentences used on offenders in Kenya nowadays. As an officer of the court involved with the execution/implementation of the Orders, it is important to gather information from you on the sentence. The information which you will provide will go a long way in advising policy on Probation Orders in Kenya. Therefore, your assistance is kindly requested in making this research a success. The general objective of the study is to examine the factors influencing the delivery of the Orders in Kenya with a view to strengthening community-based alternatives to prison. The study is expected to shed light on factors influencing the utilization of Probation Orders by the courts; identifying the factors that affect the levels of compliance with Probation Orders by offenders; identifying the factors shaping public attitudes towards Probation Orders; identifying challenges facing the delivery of Probation Orders; and suggesting appropriate and effective interventions towards strengthening Probation Orders in Kenya.

As part of the survey, we would like you to provide answers to questions about your knowledge and/or direct/indirect experience with Probation Orders. All of the answers you give will be confidential. Can I now start interviewing you?

**3. Consent granted**

**2. Consent not granted**

**Signature of interviewee:**



## Background Information

1. Gender
  1. Male
  2. Female
2. Age of Respondent in years.
  1. Below 18 years
  2. 18-25
  3. 26-33
  4. 34-41
  5. 42-49
  6. 50-57
  7. 58-65
  8. 66 and above
3. Marital Status:
  1. Single/Never Married
  2. Married
  3. Separated
  4. Divorced
  5. Widowed
4. Level of Education:
  1. None
  2. Pre-primary
  3. Primary
  4. Secondary
  5. Middle level College (Specify)\_\_\_\_\_
  6. University
  7. Adult Literacy
  8. Other (Specify)\_\_\_\_\_
5. Religion:
  1. Traditional
  2. Christian
  3. Islam
  4. Other (Specify)\_\_\_\_\_
6. Nationality
  1. Kenyan
  2. Non-Kenyan (Specify)\_\_\_\_\_
7. Occupation
  1. Permanent employment – Private Sector
  2. Permanent employment – Public Sector
  3. Casual/temporary employment(Specify whether in public or private)\_\_\_\_\_
  4. Business person
  5. Other (specify-e.g pupil/student/housewife)\_\_\_\_\_
  6. None of the above (specify)\_\_\_\_\_

## Information on Probation Orders Sentence in Kenya

8. In your understanding, what is a Probation Orders Sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. (a) Based on your experience and/or knowledge, are most of the offenders on Probation Orders sentences in this locality petty or serious offender?

1. Petty Offenders

2. Serious offenders

(b) Please list the types of offences/crimes which have been committed by most probationers in this locality? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. (a) Would you say that Probation Orders are beneficial? 1. Yes 2. No 3. I don't know

(b) If Yes, what do you think are the benefits of Probation Orders Sentence in Kenya and to what extent have the benefits been realized by the Probation Orders sentences issued by law courts in this locality? (Please write down the benefits and tick your selected rating inside the box).

Benefits of Probation Orders Sentence	Response on extent the benefits have been realized in the locality		
	To a large extent	To a small extent	I don't know

(c) If No, please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. (a) In which specific ways have offenders been empowered through the Probation Orders sentence? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) What specific offender rehabilitation and supervision activities are conducted through the Probation Orders sentence? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. (a) How adequate have Probation Orders sentences been utilized by law courts in this locality?

1. Adequately
2. Not adequately
3. Not utilized at all
4. I don't know

(b) If Probation Orders sentences have been utilized generally adequately (that is, very adequately and adequately), what factors have influenced their utilization by the courts in this locality? \_\_\_\_\_

\_\_\_\_\_

(c) If Probation Orders sentences have not been utilized at all or have been utilized generally inadequately (that is, not adequately, not adequately at all and not utilized at all), what factors have influenced their lack of utilization or inadequate utilization/under-utilization by the courts in this locality? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Response to statement		
	Agree	Disagree	I don't know
Some sentencing officers have a generally negative attitude towards the Probation Orders sentence and therefore do not utilize the order.			
Some Probation Officers have a generally negative attitude towards the Probation Orders sentence and therefore do not recommend the order for use by the courts.			
The cost-benefit analysis of Probation Orders over imprisonment of non-serious offenders has encouraged some sentencing officers to utilize Probation Orders.			
Satisfaction with the economic benefits of Probation Orders to the community has motivated and/or encouraged sentencing officers to continue			

Statement	Response to statement		
	Agree	Disagree	I don't know
utilizing the option.			
Satisfaction with the rehabilitation of the probationers by the Probation Department has motivated and/or encouraged sentencing officers to continue utilizing the option.			
Some sentencing officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Some Probation Officers use Probation Orders as a soft landing for some offenders after being compromised by the offenders and/or their friends and relatives			
Previous breach of Probation Orders by some offenders has contributed in under-utilization of the order.			
Unwillingness of some offenders to undergo probation service discourages the utilization of Probation Orders.			
Hostility of some victims and local community members to non-custodial sentences discourages the use of Probation Orders.			
Security challenges posed by some offenders discourage the use of Probation Orders sentences on them.			

14. (a) Would you say that most probationers comply with Probation Orders in this locality?  
 1. Yes 2. No 3. I don't know

(b) If Yes, please explain. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If No, please explain. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. In your opinion, what influences compliance with the requirements of a Probation Orders sentence in this locality? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
16. (a) Before sentencing, are relatives of a victim given the opportunity to participate in deciding whether or not an offender could benefit with a Probation Orders sentence? 1. Yes 2. No 3. I don't know  
Please explain your answer. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (b) In most cases and before sentencing, is the local community given the opportunity to participate in deciding whether or not an offender could benefit with a Probation Orders sentence? 1. Yes 2. No 3. I don't know  
Please explain your answer. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
17. (a) Do you know of offenders who report to Probation offices for supervision and rehabilitation as instructed by the Probation Officers? 1. Yes 2. No
- (b) If Yes, how often do they report to Probation Officers?  
1. Often  
2. Rarely  
3. I don't know
18. Do Probation Officers contact members of community to find out how probationers are fairing with their rehabilitation? 1. Yes 2. No 3. I don't know
19. Do community members take interest in knowing whether or not probationers comply with the requirements of Probation Orders sentences? 1. Yes 2. No 3. I don't know  
Please explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
20. Please indicate your level of agreement with the following statements. (Tick your selected rating inside the box).

Statement	Level of agreement				
	Strongly Agree	Agree	Disagree	Strongly disagree	I don't know
Probationers with a negative opinion about the sentence are likely to breach the order.					
Offenders who corrupt Sentencing Officers to get Probation Orders sentences are likely to breach the Order.					
Offenders who corrupt Probation Officers to get Probation Orders sentences are likely to breach the Order.					
Direct placement of offenders by courts to Probation supervision contributes to non-compliance with the orders.					
Tribalism, nepotism and favouratism within the sentencing agencies contribute to non-compliance of offenders with the Orders.					
Tribalism, nepotism and favouratism within the offender rehabilitation and supervising agencies contribute to non-compliance of offenders with the Orders.					
Lack of probationer's family support to Probation Officers during the offender's rehabilitation and supervision contributes to breach of the Order.					
Lack of support to Probation Officers from the local community during offenders' rehabilitation and supervision contributes to breach of Probation Orders.					
Lack of support to Probation Officers from the direct victims of offences during offenders' rehabilitation and supervision contributes to breach of Probation Orders.					

Lack of support to employed probationers from their employers contributes to breach of Probation Orders.					
Most economically unstable probationers are likely to abscond their sentences to look for livelihoods.					

21. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality?

1. Favourable
2. Not favourable
3. I don't know

(b) If the public attitude is generally favourable, what factors contribute to the same? \_\_\_\_\_

(c) If the public attitude is generally unfavourable, what factors contribute to the same? \_\_\_\_\_

22. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality? \_\_\_\_\_

23. (a) Generally, how effective are Probation Orders sentences in this locality.

1. Effective
2. Not effective
3. I don't know

(b) Generally, how effective are Probation Orders sentences in the following aspects?

Aspect	Response on Effectiveness		
	Effective	Not effective	I don't know
Rehabilitation of non-serious offenders within the community			
Individual offender paying back (reparation) for the injury done to the			

community			
Decongestion of prisons of non-serious and first offenders			
Saving tax payers money			
Avoiding contamination of non-serious and first offenders by hardened criminals			
Enabling the offender to maintain family ties and providing for his/her family while at the same time serving the imposed sentence.			
Promotion of reconciliation between the offender and the victim of crime.			
Acquisition of survival skills			
Linking of offenders to potential employers			
Prevention of juvenile delinquency of the dependent minors			

24. (a) Are there challenges facing the effective delivery of Probation Orders in this locality?  
1. Yes 2. No 3. I don't know

(b) If Yes, what are the major challenges? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. How can the challenges be addressed towards the effective delivery of Probation Orders in Kenya? \_\_\_\_\_  
\_\_\_\_\_

26. What key interventions need to be put in place towards strengthening Probation Orders sentence supervision? \_\_\_\_\_  
\_\_\_\_\_

27. Please give any other relevant comments relating to Probation Orders in Kenya? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Thank you for your cooperation.**



# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 6: Key Informant Interview Guide**

County: \_\_\_\_\_

Sub- County: \_\_\_\_\_

Name of Administrative Location \_\_\_\_\_

Institutional affiliation \_\_\_\_\_

Length of service in the organization \_\_\_\_\_

Length of stay in the locality \_\_\_\_\_

Date of Interview \_\_\_\_\_

Time of Interview: Start Time \_\_\_\_\_ End Time \_\_\_\_\_

## **Information on Probation Orders Sentence in Kenya**

First I would like to learn about what you know concerning Probation Orders Orders sentence in Kenya.

1. What do you know about Probation Orders sentence in Kenya?
2. How does the Probation Orders sentence Programme in Kenya operate?
3. What do you regard as the main pillars of Probation Orders sentence in Kenya?

Next, I would like to discuss about utilization of Probation Orders sentences in this locality.

4. (a) Do law courts in this locality utilize Probation Orders sentence in sentencing offenders? 1. Yes 2. No  
(b) If Yes, who are the majority of the offenders on Probation Orders sentences in this locality? 1. Petty Offenders 2. Serious Offenders  
(c) If Yes, please list the types of offences/crimes which have been committed by most Probationers (Probation Offenders) in this locality.
5. (a) How do you rate the level of utilization of Probation Orders sentences by law courts in this locality? Please indicate whether they have been adequately utilized or they are underutilized?  
(b) If adequately utilized, what factors influence the adequate utilization of Probation Orders sentences by the courts in this locality?  
(c) If under-utilized, what factors influence the under-utilization of Probation Orders sentences by the courts in this locality?

Next, I am interested in knowing about the benefits of Probation Orders sentences in this locality.

6. Would you say that Probation Orders sentences in this locality are beneficial? Please explain.
7. In which specific ways have offenders been empowered through the Probation Orders sentence in this locality?

Next, I would like to know about compliance with Probation Orders.

8. Generally, how satisfied are you with the level of compliance with Probation Orders by supervisees/offenders in this locality? Please explain.
9. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality?

Next, I am interested in finding out from you about the attitude of members of the public towards the Probation Orders sentence.

10. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality? Please explain.  
(b) If the public attitude is generally favourable, what factors contribute to the same?  
(c) If the public attitude is generally unfavourable, what factors contribute to the same?
11. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality?

Next, I want us to talk about challenges facing the effective delivery of Probation Orders.

12. Generally, how effective are Probation Orders sentences in this locality? Please explain.
13. What are the challenges facing the effective delivery of Probation Orders sentences in this locality?
14. How can the challenges facing the effective delivery of Probation Orders in Kenya be addressed?

Finally on Probation Orders, let me know something from you about interventions to strengthen the Probation Orders sentence in Kenya.

15. What specific interventions need to be put in place towards strengthening Probation Orders in Kenya?

**Thank you for your cooperation.**

# **A STUDY ON THE DELIVERY OF COMMUNITY-BASED SENTENCES: THE CASE OF PROBATION ORDERS IN KENYA**

## **Appendix 7: Focus Group Discussion Guide**

County where FGD takes place: \_\_\_\_\_  
Sub-County where FGD takes place: \_\_\_\_\_  
Name of Probation Office where FGD takes place: \_\_\_\_\_  
Date of FGD: \_\_\_\_\_  
Start time: \_\_\_\_\_ End Time: \_\_\_\_\_  
Name of FGD Moderator/Supervisor: \_\_\_\_\_

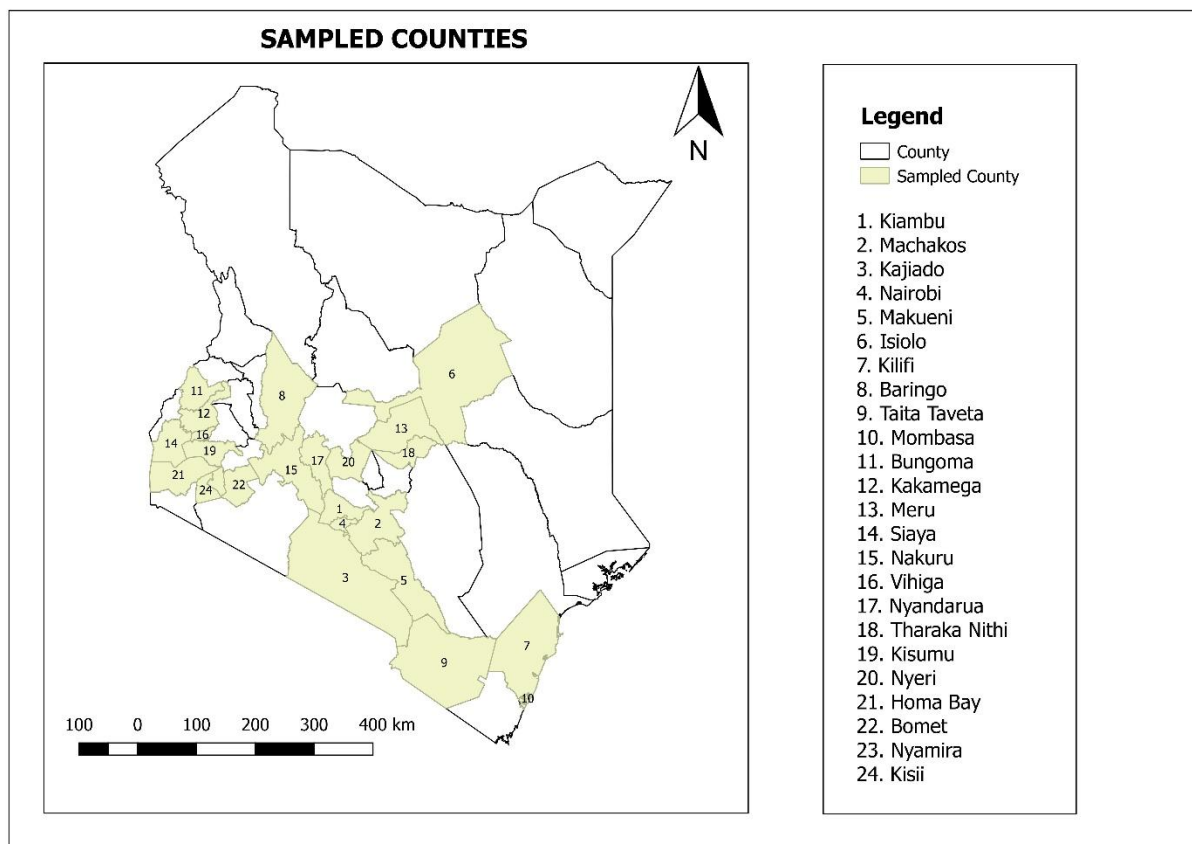
### **Information on Probation Orders in Kenya**

1. What do you know concerning Probation Orders sentence?
2. How does the Probation Orders sentence operate in this locality?
3. What do you regard as the main pillars of the Probation Orders sentence in Kenya?
4. (a) Do law courts in this locality utilize Probation Orders in sentencing offenders? 1. Yes  
2. No  
(b) If Yes, who are the majority of the offenders on Probation Orders sentences in this locality? 1. Petty Offenders 2. Serious Offenders
5. What are the types of offences/crimes which have been committed by most Probationers (Probation Orders Offenders) in this locality?
6. (a) Discuss the utilization of Probation Orders sentences by law courts in this locality? Please indicate whether they have been adequately utilized or they are underutilized.  
  
(b) If adequately utilized, what factors influence the adequate utilization of Probation Orders sentences by the courts in this locality?  
  
(c) If under-utilized, what factors influence the under-utilization of Probation Orders sentences by the courts in this locality?
7. Would you say that the Probation Orders sentence in this locality is beneficial? Please discuss.
8. In which specific ways have offenders been empowered through the Probation Orders sentence in this locality?

9. Generally, how satisfied are you with the level of compliance with Probation Orders by Probationers in this locality? Please explain.
10. In your opinion what influences compliance with the requirements of a Probation Orders sentence in this locality?
11. (a) Generally speaking, what is the public attitude towards the Probation Orders sentence in this locality? Please explain.  
  
(b) If the public attitude is generally favourable, what factors contribute to the same?  
  
(c) If the public attitude is generally unfavourable, what factors contribute to the same?
12. Please indicate what needs to be done to achieve an enhanced positive public attitude towards the Probation Orders sentence in this locality?
13. Generally, how effective is the Probation Orders sentence in this locality? Please explain.
14. (a) What are the challenges facing the effective delivery of Probation Orders in this locality?  
  
(b) How can the challenges facing the effective delivery of Probation Orders in Kenya be addressed?
15. What specific interventions need to be put in place towards strengthening the Probation Orders sentence in this locality?

**Thank you for your cooperation.**

## Appendix 8: A Map on Study sites







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