

**STRATHMORE UNIVERSITY
SCHOOL OF LAW**

**ADDRESSING LEGISLATIVE AND OPERATIONAL DEFICIENCIES:
STRENGTHENING THE CAPACITATION OF PROBATION OFFICERS
IN KENYA**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF BACHELOR OF LAWS (LL.B) AT
STRATHMORE LAW SCHOOL**

BY

WANJIRU BRIDGITTE

145726

**PREPARED UNDER THE SUPERVISION OF
SUSSIE MUTAHI**

May 2025

WORD COUNT: 12045 words

DECLARATION

I, WANJIRU BRIDGITTE, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



Signed: _____

Wanjiru Bridgitte

Date: 8 May 2025

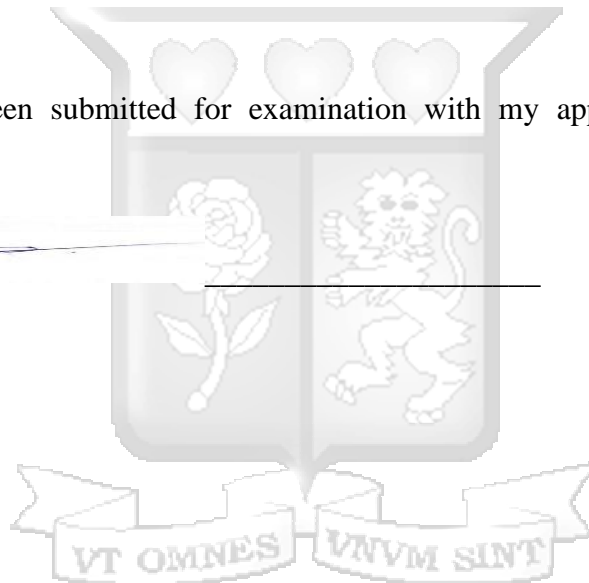
This dissertation has been submitted for examination with my approval as the University Supervisor.



Signed: _____

Sussie Mutahi

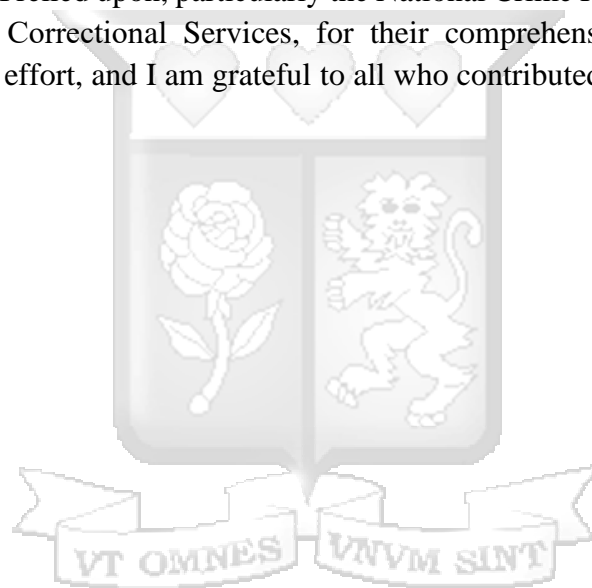
Date: 8 May 2025



ACKNOWLEDGEMENT

I express my deepest gratitude to my supervisor, Ms Sussie Mutahi, for their unwavering guidance and insightful feedback throughout this research journey. Their expertise and encouragement shaped this dissertation into a meaningful exploration of Kenya's probation system. I am also indebted to the Strathmore Law School faculty for providing an enriching academic environment that fostered my growth.

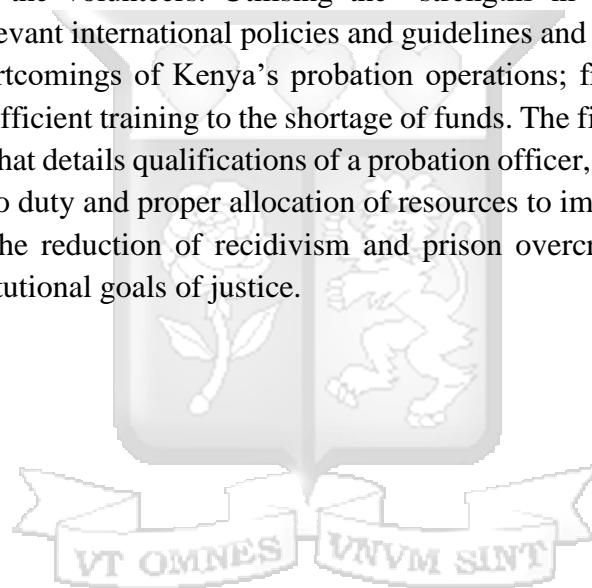
My heartfelt thanks go to my mother, Ms Miriam Chege, whose love and support has sustained me all throughout my 4 years in law school. Special appreciation is due to the Probation Officers at Kahawa Law Courts, whose insights on their experience inspired me to write this paper and also enriched my understanding of probation realities in Kenya. I also acknowledge the authors and institutions whose works I relied upon, particularly the National Crime Research Centre and South Africa's Department of Correctional Services, for their comprehensive data. This work is a culmination of collective effort, and I am grateful to all who contributed, directly or indirectly, to its completion.



ABSTRACT

This dissertation analyses the framework and implementation voids which diminish capacitation of probation officers in Kenya. Probation orders are established and governed by Cap 64, the Probation Services Act of 1943. This Act does include subsidiary legislation, few pages within the Act limited to the operations of the probation committees and the duties of a probation officer. The latest amendments, in 2002 served to further clarify on said duties and amend a few terms but nothing is provided for the qualifications, requirements and proper training of probation officers. For officers tasked with integrating offenders back into society, the law should specifically provide for their job requirements and consistent training modules so as to empower them to work more effectively as well as to help them grow in that career field.

South Africa has been able to achieve this in their Probation Services Act, No. 116 of 1991, and the resultant regulations by including qualifications and powers not only of the probation officers themselves but also for the volunteers. Utilising the strengths in South Africa's probation legislations as well as relevant international policies and guidelines and scholarly work, this study shall investigate the shortcomings of Kenya's probation operations; from the vagueness in the relevant legislations, insufficient training to the shortage of funds. The findings suggest enactment of subsidiary legislation that details qualifications of a probation officer, provides for their training before and after entry into duty and proper allocation of resources to improve their efficiency and consequently aiding in the reduction of recidivism and prison overcrowding, overall working towards achieving constitutional goals of justice.



List of Abbreviations

BPS: Budget Policy Statement

FET: Further Education Training

GJLO: Governance, Justice, Law and Order Sector

GST: General Systems Theory

NCRC: National Crime Research Centre

PACS: Probation and Aftercare Service

PLEAD: Programme for Legal Empowerment and Aid Delivery

PO: Probation Officer

RJ: Restorative Justice

SAQA: South African Qualifications Authority

SOJAR: State of the Judiciary and Administration of Justice Report

UNICRI: United Nations Interregional Crime and Justice Research Institute

UNODC: United Nations Office on Drugs and Crime



List of Legal Instruments

Kenya: Probation of Offenders Act (Cap 64 of 1943)

Kenya: Children Act (No. 29 of 2022)

Kenya: Community Service Orders Act (No. 10 of 1998)

Kenya: Penal Code (Cap 63)

Kenya: Criminal Procedure Code (Cap 75)

The Statute Law (Miscellaneous Amendments) Act (No. 18 of 2018)

South Africa: Probation Services Act (No. 116 of 1991)

South Africa: Probation Services Amendment Act (No. 35 of 2002)

South Africa: Social Service Professions Act (No. 10 of 1978).

United Nations: United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, 1990)



List of Cases

Republic v Joseph Odhiambo Ouma [2022] eKLR

Republic v Purity Kathambi [2019] eKLR

Republic v Truphena Ndonga Aswani [2021] eKLR

David Felix Hamisi v Republic and ODPP [2024] eKLR

Gilbert Mwangi Kiai v Republic [2017] eKLR

S v Mokoena 2014 (2) SACR 108 (SCA)



TABLE OF CONTENTS

Cover page.....	i
Declaration.....	ii
Acknowledgment.....	iii
Abstract.....	iv
List of abbreviations.....	v
List of legal instruments	vi
List of cases.....	vii
Chapter 1: Introduction.....	1
1.1 Background of the Study.....	1
1.2 Statement of the Problem.....	4
1.3 Justification of the Study.....	4
1.4 Research Objectives.....	5
1.5 Research Questions.....	5
1.6 Literature Review.....	6
1.7 Research Methodology.....	9
1.8 Chapter Breakdown.....	9
1,9 Theoretical Framework.....	9
CHAPTER TWO: Theoretical Framework and Analysis of the Current Probation System in Kenya.....	10
2.1 Theoretical Framework.....	11
2,2 Legal and Institutional Framework.....	12
2.2.1 Probation of Offenders Act.....	12
2.2.2 Probation and Aftercare Service.....	14
2.3 Roles and Functions of Probation Officers.....	14
2.4 Challenges Facing Probation Officers.....	16
CHAPTER THREE: Analysis of probation officers in South Africa.....	19
3.1 Legal Framework of Probation Services.....	19
3.2 Roles and Powers of Probation Officers in South Africa.....	20
3.3 Provision for Volunteers.....	21
3.4 Capacitation and Training of Probation Officers in South Africa.....	22
CHAPTER FOUR: Lessons from South Africa for Strengthening Probation Officers in Kenya.....	24
4.1 Legislative Clarity and Enforcement Powers.....	24
4.2 Structured Training and Capacitation.....	26
4.3 Application to Kenya's Context.....	29
CHAPTER FIVE: Conclusion and Recommendations.....	30
5.1 Conclusion.....	30

5.2 Recommendations.....32
BIBLIOGRAPHY.....35



CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

Probation in the legal sense is defined as a “court-mandated sentence” whereby, pursuant to specific conditions and prohibitions, a convicted offender is allowed their liberty within society for the duration of the rest of their sentence.¹ It stems from the Latin verb *probare*, which means to test or to prove.² The aspect of proof is included in a further definition of probation, where the convicted offender in his probationary sentence is required to exhibit commendable conduct while under the custodial oversight of a ‘probation officer.’³ A probation officer is defined as an officer who is tasked with the investigation, reporting and overseeing of the behaviour of convicted persons who have been granted probation.⁴ The probation officer would be living proof and have actual documented proof of the rehabilitation of the offender.

The very first ‘probation officer’ of sorts was historically recorded to have been one John Augustus, a boot maker residing in Boston, who had been said to have become partial to offenders of the law, secured their release through bail and extended empathetic and rehabilitative supervision to them.⁵ He is affectionately termed as the “Father of Probation.” and was the first to use the word probation.⁶ In 1841, he bailed out a drunkard who, upon return to court for sentencing three weeks later, emerged a different man, sober in the company of Augustus, much to the surprise of all those present.⁷

Probation was first codified in Massachusetts in 1878, and from there the law disseminated to other parts of the United States.⁸ In the United Kingdom during the Middle Ages, while it had not been codified, harsh sentences were substituted for lesser ones such as pardons and in time, the courts started to give orders of conditional temporary release where the offender was required to observe good behaviour so as to obtain reduced sentences.⁹

For Kenya, Probation was introduced during the colonial period through the Probation Ordinance of 1943 having all the required staff outsourced from Britain due to lack of trained locals as they

¹ Wex Legal Dictionary, < <https://www.law.cornell.edu/wex> > on April 1st 2025.

² New York City Probation, ‘History of Probation,’ <<https://www.nyc.gov/site/probation/about/history-of-probation.page#:~:text=Probation%20%2D%20From%20the%20Latin%20verb,%2D%20to%20prove%2C%20to%20test.>> on April 1st 2025.

³ Black’s Law Dictionary, 2 ed.

⁴ Merriam Webster Dictionary, 4 ed.

⁵ Lewis D, ‘What is Probation,’ 51 Journal of Criminal Law and Criminology 2, 1960-1961, 189.

⁶ New York City Probation, ‘History of Probation,’ <<https://www.nyc.gov/site/probation/about/history-of-probation.page#:~:text=Probation%20%2D%20From%20the%20Latin%20verb,%2D%20to%20prove%2C%20to%20test.>> on April 1st 2025.

⁷ New York City Probation, ‘History of Probation,’ <<https://www.nyc.gov/site/probation/about/history-of-probation.page#:~:text=Probation%20%2D%20From%20the%20Latin%20verb,%2D%20to%20prove%2C%20to%20test.>> on April 1st 2025.

⁸ Lewis D, ‘What is Probation,’ 51 Journal of Criminal Law and Criminology 2, 1960-1961, 189.

⁹ New York City Probation, ‘History of Probation,’ <<https://www.nyc.gov/site/probation/about/history-of-probation.page#:~:text=Probation%20%2D%20From%20the%20Latin%20verb,%2D%20to%20prove%2C%20to%20test.>> on April 1st 2025.

were trained to become assistant probation officers.¹⁰ With time this has changed and as of now, probation in Kenya is established and governed by the Probation of Offenders Act Kenya, Cap 64 of 1943.¹¹ Section 17 allows the Minister to enact regulations concerning duties of probation officers in Kenya, probation committees, institutions, remuneration and relevant records.¹² The subsidiary legislations detailed in the last pages of the Act had been enacted in the 1960s and 70s, since then, there have been no additions.¹³ As for the Act itself, the latest amendments were made in 2019, where some duties of probation officers were expounded upon, some definitions added and some words substituted.¹⁴ While that is good progress, it is important to note that for probation officers, the Act simply details their duties, some powers, that is in case of non-compliance by a probationer, their selection and delegation of powers to them.¹⁵ There is no subsidiary legislation that provides for their qualifications or their training. Their qualifications have become implied over the years yet still remain uncodified in the law. A previous job listing provides the qualifications for a probation officer as provided by the public service commission (PSC), to be possession of a degree in any of a number of fields inclusive of but not limited to law, sociology, criminology, agriculture, good communication skills and commitment to further education in the career field.¹⁶ The career qualification options are wide and a number of fields are accepted. Some of these are not exactly related to the duties and expectations of a probation officer. For instance agriculture and information technology, while useful in their own capacities, would require a lot of training before and on the job.

The Principal Probation Officer is responsible for the training of probation staff.¹⁷ This is as far as the Act and subsidiary legislations detail for training and there have been no developments of the same legislatively. As of 2023, it has been necessary for all probation officers to possess at least two years of training in sociology and all of them were skilled in different fields of social sciences.¹⁸

The United Nations prescribes minimum standards in regards to the selection of non custodial staff.¹⁹ Though they may not be legally binding, they should ideally still provide guidance for Member States as they enact their own policies on the same in the spirit of widely accepted

¹⁰ Dr. Ng'ang'a, Abraham D, Cynthis S, 'Historical Background of Probation Practice,' *Kenya Probation Service: Leading the Way in Africa and Globally*, Probation and Aftercare Service, Nairobi, 2023.

¹¹ Probation of Offenders Act (No. 64 of 1943).

¹² Section 17, Probation of Offenders Act (No. 64 of 1943).

¹³ List of Subsidiary Legislation, Probation of Offenders Act (No. 64 of 1943).

¹⁴ The Statute Law (Miscellaneous Amendments) Act (No. 18 of 2018)

¹⁵ Sections 14, 18 and rules under 17, Probation of Offenders Act (No. 64 of 1943).

¹⁶ < <https://www.myjobmag.co.ke/jobs/probation-officer-ii-at-public-service-commission-kenya-psck>> on April 1st 2025.

¹⁷ Rule 2, Probation of Offender Rules (Cap 79 of 1948).

¹⁸ Ng'ang'a *et al*, 'Historical Background of Probation Practice,' *Kenya Probation Service: Leading the Way in Africa and Globally*, Probation and Aftercare Service, Nairobi, 2023.

¹⁹ UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

international customary law.²⁰ Rule 15 specifies that apart from prohibition of discrimination when selecting staff, they should be individually well suited for the task and if opportunities are available, they should have proper and suitable professional training and functional experience all of which should be precisely stated in the law.²¹ Additionally, the job should offer various benefits and sufficient compensation vis a vis the work being performed as well as chances for career development and progress.²² The Handbook states that at the very least the provided for selection requirements should mention; professional qualifications or academic requirements, relevant past experience, age, health and mental fitness, any legal or administrative limits, minority, gender, disability status if any, training opportunities or requirements and fair fitness standards.²³ This is the ideal situation as proposed in 1998 and Kenyan legislation in this regard has not been adjusted to this modern outlook. This puts probation officers at jeopardy because one may not know to what extent they are under, over or rightly qualified, the current qualifications are subpar and would not allow probation officers to achieve the objectives of the Probation Service to the best of their abilities. Additionally, the lack of provisions for consistent training and review do not provide opportunities for growth and development within the career hence low motivation to apply in the first place.

South Africa to a great extent has managed to codify the powers and duties of probation officers in their Probation Act, as well as their qualifications and training in subsidiary legislation, leaving little room for vagueness or omission.²⁴ They have gone a step further and listed specific initiatives supported by the Ministry for the purposes of reducing crime rates and recidivism.²⁵ This enables each person, offender, prospective or current probation officer and the community at large to understand the purpose of probation, what they are in for and what the probation officer should purpose to achieve and how. This dissertation will investigate whether borrowing such from South Africa could benefit the operations of the probation service in Kenya.

Many developing countries, inclusive of both Kenya and South Africa, struggle with congestion in their correctional spaces.²⁶ A good way to curb this is utilisation of non custodial forms of sentencing, such as probation.²⁷ This however, would mean that on top of the usual caseload,

²⁰ Jon F. K, Handbook on Probation Services; Guidelines for Probation Practitioners and Managers, United Nations Interregional Crime and Justice Research Institute (UNICRI) and Commonwealth Secretariat, Rome/ London, 1998, 11.

²¹ Rules 15.1 and 15. 2, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

²² Rule 15.3, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

²³ Jon F. K, Handbook on Probation Services; Guidelines for Probation Practitioners and Managers, United Nations Interregional Crime and Justice Research Institute (UNICRI) and Commonwealth Secretariat, Rome/ London, 1998, 76.

²⁴ Probation Services Act (No. 116 of 1991) (South Africa).

²⁵ Section 3, Probation Services Act (No. 116 of 1991) (South Africa).

²⁶ George M Murage, 'Challenges Facing Kenya Prisons in Implementing Reform Strategies' (PhD Thesis, University of Nairobi 2011) <<https://erepository.uonbi.ac.ke/handle/11295/12934> on April 1st 2025.

²⁷ Law Society of Kenya, Unlocking Justice; A Collective Effort to Decongest Prisons and Deliver Legal Aid Position Paper, p4 <https://lsk.or.ke/wp-content/uploads/2024/05/FROM-BARS-TO-JUSTICE_POSITION-PAPER-2024.pdf > on April 1st 2025.

probation officers would have to make room for other cases accorded to them for reports and other probationers for supervision as a result of decongestion efforts. Even within the Probation and Aftercare Service (PACS), there are understaffing and caseload management issues which the service has attempted to deal with by allowing volunteers in accordance with the Tokyo Rules.²⁸ South Africa has a legislative provision on the same in its Probation Act.²⁹ Additionally, they also amended their Act to establish assistant probation officers who basically assist the probation officers.³⁰ This dissertation will also look into the plausibility of such a measure for Kenya. Lastly, probation officers put themselves at risk as they supervise probationers or gather information in high risk areas for purposes of their reports. In 2020, 4 probation officers were attacked in Nyamira County, severely injured and had their car burnt down by villagers who thought them to be a hindrance to justice.³¹ Additionally, more probation officers were attacked in Nkubu and Meru by local society members who were ignorant of their functions.³² This lack of public awareness has proved detrimental to probation officers and the concept of probation as a whole. South Africa has a legal provision for information classes, not only for the probationers but could also open to the public at large for their benefit if so deemed by the probation officers.³³ Kenya, while attempting to improve on probation as a non-custodial sentencing method, puts a lot on the shoulders of probation officers who without adequate support from the government are not able to provide the one on one focus for each of the probationers to aid them in their restoration and reintegration journey. They may likely end up focusing on the administrative parts, gathering information for reports and filing and organising for cases in court. This dissertation investigates how to lighten the burden on their shoulders by improving legal capacitation. Codification is the proposed solution as it inspires the government to pay more attention to the otherwise neglected area.

1.2 Statement of the problem

The absence of up-to-date subsidiary legislation aligned with contemporary standards and developments in international customary law, coupled with inadequate capacitation of probation officers, undermines the effective management of the assigned cases, which in turn compromises the goals of offender rehabilitation and endangers public safety across Kenya.

1.3 Justification of the Study

Even with the core role probation officers play in Kenya's criminal justice system, particularly in facilitating non-custodial sentencing, offender reintegration and rehabilitation as well as

²⁸ Probation and Aftercare Services Newsletter, Issue 31, September 2023, 11.

²⁹ Sections 9 through 13, Probation Services Act (No. 116 of 1991) (South Africa).

³⁰ Section 4A, Probation Services Amendment Act (No. 35 of 2002).

³¹ Ruth M, 'Villagers beat up 4 Nyamira probation officers, burn their car,' Daily Nation, June 29 2020, <<https://nation.africa/kenya/counties/nyamira/villagers-beat-up-4-nyamira-probation-officers-burn-their-car-147566>> on April 1st 2025.

³² The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report*, 2018-2019, 314.

³³ Sections 8, Probation Services Act (No. 116 of 1991) (South Africa).

decongestion of prisons, their legal framework, training and educational standards and institutional backing remain underdeveloped and inconsistently applied.³⁴ While some operational directives exist through subsidiary legislation, departmental handbooks and reports, the absence of statutory codification has created vagueness in qualifications, job descriptions and accountability structures.³⁵ This gap has contributed to chronic underfunding, reliance on donor funded training and operational inefficiencies within the Probation and Aftercare Service (PACS).³⁶

This study is therefore necessary to investigate these systemic gaps and to analyse how legislative codification and institutional strengthening can promote efficiency, professionalism and societal effect of probation officers in Kenya. It aims to fill a scholarly and policy oriented void by offering recommendations grounded in comparative legal analysis and institutional best practices.

1.4 Research Objectives

This work purposes to investigate legislative and functional deficiencies in Kenya's probation system and proposes reforms based on the strengths in South Africa's model. The specific research objectives of this dissertation are as follows:

1. To analyse the legal and institutional framework governing probation officers in Kenya
2. To examine the qualifications, training requirements and operational challenges faced by probation officers in Kenya.
3. To analyse the legal and institutional framework and functioning of a probation system with a better established jurisdiction, in this case South Africa, and draw lessons from them.
4. To evaluate how codification and clearer institutional governance could improve service delivery, policy support and professional standards.
5. To propose practical recommendations for legislative and institutional reforms in the Kenya Probation System, improving capacitation of probation officers in the process.

1.5 Research Questions

1. What legal and institutional guidelines presently govern probation officers in Kenya?
2. What qualifications and training requirements exist and how are they applied and enforced?
3. What operations and structural challenges affect the performance and efficiency of probation officers in Kenya?
4. How does the legal framework of another Jurisdiction, such as South Africa, compare and what good practices can Kenya borrow?
5. How would codification of probation officer's roles and standards improve budgetary allocations, training and overall system effectiveness.

³⁴ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report (SOJAR) 2023 - 2024*, 30.

³⁵ *Kenya Probation Service: Leading the Way in Africa and Globally*, Probation and Aftercare Service, Nairobi, 2023.

³⁶ Christine A, *Effective Resettlement of Offenders by Strengthening Community Reintegration Factors: Kenya's Experience*, 62.

1.6 Literature Review

The role of probation officers (POs) in criminal justice systems is globally shaped by legislative frameworks, professional training and operational resources, necessitating a critical examination of Kenya's Probation of Offenders Act and South Africa's Correctional Services Act 11 of 1998 and such other relevant legislation. This review synthesizes scholarly works, judiciary reports and case law to highlight the legislative gap in Kenya's probation system, specifically the lack of sufficient up-to-date and well-adjusted subsidiary legislation under sections 16(1) and 17 of the Probation Act. It also draws lessons from South Africa's probation and community corrections model, focusing on professionalism, legitimacy, training and risk management as elements of proper capacitation for probation officers.

Kenya's Probation Act was enacted in 1943 and lacks subsidiary legislation under section 17 to specifically define PO qualifications, training requirements and opportunities or enforcement powers, undermining the effectiveness of probation officers as they carry out their duties.³⁷ Mwangi argues that this gap leaves POs without clear enforcement powers, contributing to a 40% recidivism rate.³⁸ The State of the Judiciary and Administration of Justice Report 2023 highlights probation's 5% budget allocation, limiting training and vehicles, exacerbating 240% prison overcrowding.³⁹ Miano notes operational risks, such as 2018 slum breaches, where POs' reliance on section 8(1) warrants delayed responses.⁴⁰ Republic v Joseph Odhiambo Ouma [2022] eKLR illustrates warrant delays increasing recidivism.⁴¹ Kamau links understaffing (1:20 ratio) and rural assaults (Republic v Peter Mwangi Kariuki [2020] eKLR) to legislative ambiguity.⁴² South Africa's Correctional Services Act 111 of 1998 empowers 2,500 POs with Section 56(2) detention powers, managing 62,000 cases at a 31% recidivism rate.⁴³ The Judicial Inspectorate for Correctional Services Annual Report 2022/23 details a R21 billion budget (10% for community corrections) and Kroonstad training, though rural gaps persist.⁴⁴ S v Mokoena 2014 (2) SACR 108 (SCA) shows trained POs' breach management efficacy.⁴⁵ Terblanche praises the Act's clarity, balancing rehabilitation and enforcement.⁴⁶

³⁷ Probation of Offenders Act (No. 64 of 1943).

³⁸ Mwangi, J K, 'Non-Custodial Sentencing in Kenya: Challenges and Opportunities' (2020) 4(2) African Journal of Law and Criminology 45, 47.

³⁹ Judiciary of Kenya, State of the Judiciary and Administration of Justice Report 2023 (2023) Judiciary of Kenya, Nairobi, 70.

⁴⁰ Miano, P W, 'Probation Services and Criminal Justice in Kenya' (2019) University of Nairobi Repository, Nairobi, 32.

⁴¹ Republic v Joseph Odhiambo Ouma [2022] eKLR.

⁴² Kamau, S M, 'Rehabilitation Through Probation: A Kenyan Perspective' (2021) 6(1) Journal of East African Criminology 23, 25.

⁴³ Sec 56(2) Correctional Services Act 111 of 1998, Government Gazette, Cape Town.

⁴⁴ Judicial Inspectorate for Correctional Services, Annual Report 2022/23 (2023) JICS, Cape Town, p 30

⁴⁵ State v Mokoena 2014 (2) SACR 108 (SCA), Supreme Court of Appeal.

⁴⁶ Terblanche, S, Guide to Sentencing in South Africa (2016) LexisNexis, Durban, ch 3 'Non-Custodial Sentences', p 47.

Professionalism, per Evetts, requires statutory training and autonomy, absent in Kenya due to s 16(1)'s gap.⁴⁷ Freidson argues professional dominance needs legislative support, evident in South Africa.⁴⁸ Annison emphasizes training for PO identity, challenging Kenya's ad hoc workshops.⁴⁹ Deering finds trainee POs value structured education, as in South Africa's Kroonstad.⁵⁰ Trede links work-integrated learning to professionalism, urging Kenya to adopt similar programs.⁵¹ Legitimacy, per McNeill, is vital for community sanctions but falters in Kenya without legislation.⁵² Robinson (2016) notes privatization's threat to legitimacy, avoided in Kenya but navigated in South Africa's public funding model.⁵³ Deering (2017) questions post-privatization legitimacy, relevant to South Africa.⁵⁴ *S v Ngubane* [2016] ZASCA 8 demonstrates South African POs' legitimacy via breach handling.⁵⁵ *Republic v Purity Kathambi* [2019] eKLR reveals Kenya's legitimacy gaps due to untrained POs.⁵⁶ Risk management is weak in Kenya. Fitzgibbon critiques risk approaches without training, evident in Kenya's rural issues.⁵⁷ Hardy argues risk assessment needs resources and these remain unsupported by Kenya's current budget.⁵⁸ The SOJAR Report 2023 ties underfunding to overcrowding failures.⁵⁹ South Africa's JICS Report 2022/23 notes urban risk management success with technology.⁶⁰ Kemshall emphasizes defensible risk decisions, feasible in South Africa (*S v Van der Westhuizen* [2014]) but not Kenya.⁶¹

⁴⁷ Evetts J, 'Professionalism: Value and Ideology' (2013) 61 *Current Sociological Review* 778, p 780, < <https://doi.org/10.1177/0011392113479316> > on April 1st 2025.

⁴⁸ Freidson, E, *Professional Dominance: The Social Structure of Medical Practice* (1970) Atherton Press, New York, ch 4 'The Formal Structure of Professional Control', p 71.

⁴⁹ Annison, H, 'People First: Probation Officer Perspectives on Probation Work' (2018) 55 *Probation Journal* 259, p 261, <https://doi.org/10.1177/0264550508095122>. on April 1st 2025

⁵⁰ Deering, J, 'Attitudes and Beliefs of Trainee Probation Officers: A 'New Breed?'' (2010) 57 *Probation Journal* 9, p 11, < <https://doi.org/10.1177/0264550509354671> > on April 1st 2025.

⁵¹ Trede, F, 'Role of Work-Integrated Learning in Developing Professionalism and Professional Identity' (2012) 13 *Asia-Pacific Journal of Cooperative Education* 159, p 161.

⁵² McNeill, F, 'Liquid Legitimacy and Community Sanctions' in *Legitimacy and Compliance in Criminal Justice* (2012) Routledge, London, ch 6, p 104.

⁵³ Robinson, G, 'Probation, Privatisation and Legitimacy' (2016) 56 *The Howard Journal of Crime and Justice* 137, p 139

⁵⁴ Deering, J, 'Questions of Legitimacy in Probation Practice After Transforming Rehabilitation' (2017) 56 *The Howard Journal of Crime and Justice* 158, p 160

⁵⁵ *S v Ngubane* [2016] ZASCA 8, Supreme Court of Appeal,

⁵⁶ *Republic v Purity Kathambi* [2019] eKLR

⁵⁷ Fitzgibbon, W, 'Risk Analysis and the New Practitioner: Myth or Reality?' (2007) 9 *Punishment & Society* 87, p 89.

⁵⁸ Hardy, M, 'Practitioner Perspectives on Risk: Using Governmentality to Understand Contemporary Probation Practice' (2014) 11 *European Journal of Criminology* 303, p 305.

⁵⁹ Judiciary of Kenya, *State of the Judiciary and Administration of Justice Report 2023* (2023) Judiciary of Kenya, Nairobi, p 72.

⁶⁰ Judicial Inspectorate for Correctional Services, *Annual Report 2022/23* (2023) JICS, Cape Town, p 27

⁶¹ Kemshall, H, 'Defensible Decisions for Risk: Or it's the Doers Won't Get the Blame' (1998) 45 *Probation Journal* 67, p 69.

Neoliberal reforms, per Brown, prioritize efficiency over rehabilitation, a tension in Kenya's prison-centric budget.⁶² Garland's "culture of control" marginalizes probation, evident in Kenya's funding disparities.⁶³ Burke examines neoliberal impacts on probation culture, relevant to South Africa.⁶⁴ Kirton critiques privatization's professionalism risks, urging Kenya's public control.⁶⁵ Tidmarsh (2020) notes marketization's autonomy threat, underscoring South Africa's balance.⁶⁶ UNODC advocates statutory probation officer powers and training, met by South Africa but not Kenya.⁶⁷ Njuguna (2020) calls for Cap 64 amendments, emphasizing digital records.⁶⁸ The NCRC Crime Trends 2023 links 40% recidivism to legislative gaps, recommending South African reforms.⁶⁹ Raynor supports correctional service models, aligning with this dissertation.⁷⁰ Phillips critiques audit-driven probation, a risk Kenya can avoid with regulations.⁷¹ Comparative studies are scarce. Mwangi and Miano focus on Kenya, Terblanche and Skelton on South Africa, with few bridging both.⁷² This dissertation fills this gap, using SOJA 2023 and JICS 2022/23.⁷³ Foucault's governmentality highlights South Africa's effective governance, unlike Kenya's ambiguity.⁷⁴ Mawby emphasizes PO identity, supporting a Kenyan training college.[39]⁷⁵ Grant reinforces structured capacitation needs.⁷⁶

1.7 Research Methodology

This study employs a qualitative comparative case study design to analyse legislative and operational deficiencies in Kenya's probation system and draw lessons from South Africa. The primary method is doctrinal legal analysis, examining Probation of Offenders Act (Cap 64) and

⁶² Brown, W, *Undoing the Demos: Neoliberalism's Stealth Revolution* (2015) Zone Books, New York, ch 2 'Revising Foucault', p 79.

⁶³ Garland, D, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001) University of Chicago Press, Chicago, ch 5 'Crime Control and Social Order', p 123.

⁶⁴ Burke, L, 'Probation Migration(s): Examining Occupational Culture in a Turbulent Field' (2017) 17 *Criminology & Criminal Justice* 192, p 194 < <https://doi.org/10.1177/1748895816656905> > on April 1st 2025.

⁶⁵ Kirton, G, 'When Welfare Professionals Encounter Restructuring and Privatization' (2019) 33 *Work, Employment & Society* 929, p 931, < <https://doi.org/10.1177/0950017019855229> > on April 1st 2025.

⁶⁶ Tidmarsh, M, 'The Probation Service in England and Wales: A Decade of Radical Change or More of the Same?' (2020) 12 *European Journal of Probation* 129, p 131.

⁶⁷ United Nations Office on Drugs and Crime, *Handbook on Probation Services* (2018) UNODC, New York, p 34.

⁶⁸ Njuguna, E W, 'Community-Based Corrections in Kenya' (2020) 5(3) *East African Law Journal* 67, p 69.

⁶⁹ National Crime Research Centre, *Crime Trends in Kenya* (2023) NCRC, Nairobi, p 47.

⁷⁰ Raynor, P, 'Towards a Correctional Service' in *Handbook of Probation* (2007) Willan, Cullompton, ch 2, p 34.

⁷¹ Phillips, J, 'Target, Audit and Risk Assessment Cultures in the Probation Service' (2011) 3 *European Journal of Probation* 108, p 110.

⁷² 36. Skelton, A, 'Community Corrections in SA' (2021) *Acta Criminologica*, Pretoria, p 89.

⁷³ State of the Judiciary and Administration of Justice Report 2023 (2023) Judiciary of Kenya, Nairobi, p 70; Judicial Inspectorate for Correctional Services, *Annual Report 2022/23* (2023) JICS, Cape Town, p 30.

⁷⁴ Foucault, M, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979* (2008) Palgrave Macmillan, London, ch 10 'The Birth of Biopolitics', p 271.

⁷⁵ Mawby, R, *Doing Probation Work: Identity in a Criminal Justice Occupation* (2013) Routledge, London, ch 3 'Identity and Professionalism', p 45, < <https://doi.org/10.4324/9780203107409> > on April 1st 2025.

⁷⁶ Grant, S, 'Constructing the Durable Penal Agent' (2016) 56 *British Journal of Criminology* 750, p 752, < <https://doi.org/10.1093/bjc/azv075> > on April 1st 2025.

Correctional Services Act 111 of 1998, supplemented by case law. Secondary data includes judiciary reports and newsletters, government institution documents, and peer-reviewed literature sourced from various online scholarly websites. Thematic analysis identifies legislative gaps, probation officer capacitation, and reform feasibility, guided by Restorative Justice and Deterrence Theory. South Africa's system is purposely selected for its structured probation framework, contrasting Kenya's deficiencies. Data triangulation ensures validity, cross-verifying statutes, cases, and reports. Limitations include restricted access to recent Kenyan probation officer training data, mitigated by leveraging public reports. Ethical considerations involve using publicly available data, ensuring no harm to participants. This methodology robustly addresses the research questions, offering actionable recommendations for Kenya's probation system.

1.8 Chapter Breakdown

Chapter One of my study of this dissertation will provide an introduction to the study, Chapter Two will analyse the functionality of probation and probation officers in Kenya while identifying gaps that hinder optimal capacitation of probation officer, Chapter three will analyse a similar Jurisdiction's probation system, South Africa, Chapter Four will draw lessons from South Africa and investigate implementation in Kenya and Chapter Five will conclude the study and provide recommendations.

1.9 Theoretical Framework

This analysis is grounded in two primary theories, the General Systems Theory and the Restorative Justice Theory.

General Systems Theory

Lewis Diane proposes that probation could be defined as a mixture of case work and administrative functions.⁷⁷ This is to say that probation encompasses looking at each offender's circumstances as a whole and not simply focusing on the crime, on a case by case basis, as well as ensuring legally mandated executive duties such as reports and interviews are carried out.⁷⁸ In agreement with this view, the General Systems Theory proposes the understanding of a person by looking at them as a singular system, getting to know and comprehend their constituents, functioning and patterns for the purposes of integration between people and their surroundings.⁷⁹

The theory was first coined by Ludwing von Bertalanffy, a biologist, in the 1930s and he proposed that a certain context or system cannot be comprehended simply by focusing on one of its components.⁸⁰ Probation officers have a duty to collect, compile and issue the courts with

⁷⁷ Lewis D, 'What is Probation,' 51 *Journal of Criminal Law and Criminology* 2, July-August, 196.

⁷⁸ Lewis D, 'What is Probation,' 51 *Journal of Criminal Law and Criminology* 2, July-August, 196.

⁷⁹ ,Bruce D, Friedman and Karen N, 'Systems Theory' in Jerrold R (ed) *Theory and Practice in Clinical Social Work*, 2 ed, Sage Publications United States of America, 2011,

⁸⁰ Adam H, 'Systems Theory,' 2 < <https://www.siue.edu/~adheil/Systems%20Theory%20Paper.pdf> > on April 1st 2025.

information that provides proper context for the offender's sentencing, be it gathered from their community, the victim's or from the offender themselves, and to give informed suggestions on how to proceed.⁸¹ Such compilations are known as social inquiry reports and could either be for pre sentencing or pre bail.⁸² Here the offender is not dismissed and sentenced solely based on the crime he committed but also their circumstances, their impact on the victims and their community, and his own community as well. The offender's personal circumstances are also looked at in social inquiry reports, their health, financial situation, context of the crime and such others.⁸³ Here it is visible that the offender as a system is assessed as well as his place in a larger system that is society. The integration between these two systems gives rise to informed decisions surrounding the sentencing process, in a manner that is suited to the offender and the aggrieved as well.

Another proponent of the Systems theory is German Lawyer Niklas Luhmann. He states that one of the elements of systems and subsystems in society is *autopoiesis*, which refers to their autonomy and ability to self-regulate and adapt to changes over time.⁸⁴ This emphasises the need for each system to have its own set of rules and means of operations which are flexible to evolving times all while still being able to integrate with other systems. His views regarding the legal system within the same theoretical context provides the essence and value of codification of laws. He posits that for a legal code to have effect, it must be accompanied by structured programs for example, judicial precedents, statutory provisions and international agreements to form a basis for proper its application, without such, the code would remain an abstract formulation devoid of interpretive and practical meaning.⁸⁵ This is to say, institutional norms would not be functional in a legal system without legal backing. He adds that the difference between other norms and legal norms or laws is that they have the capability to stabilise expectations in a counterfactual manner, allowing them to remain valid irrespective of whether they are followed or not.⁸⁶ That means that codified norms would still be a valid source of authority regardless of non compliance and this validity is something the institutional norms or other policies not recognised by and in the law lack.

Restorative Justice Theory

⁸¹ UNICRI, Professional Responsibilities in John K (ed) *Handbook on Probation Services: Guidelines for Probation Practitioners and Managers* ,31.

⁸²Rule 7, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

⁸³ UNICRI, Professional Responsibilities in John K (ed) *Handbook on Probation Services: Guidelines for Probation Practitioners and Managers* ,32.

⁸⁴ Clemens M, The system Theory of Nkilas Luhmann and the Constitutionalization of the World Society, 4 *Goettingen Journal of International Law* 2, 2012, 628.

⁸⁵ Clemens M, The system Theory of Nkilas Luhmann and the Constitutionalization of the World Society, 4 *Goettingen Journal of International Law* 2, 2012, 633.

⁸⁶ Clemens M, The system Theory of Nkilas Luhmann and the Constitutionalization of the World Society, 4 *Goettingen Journal of International Law* 2, 2012, 632.

This theory is a criminal justice theory that allows both the offender and the victim to take part in the resolution of the offence in a manner that promotes peace and justice.⁸⁷ Restorative justice (RJ) can be dated back to the 1970s, specifically 1977, where Albert Eglash describes it as justice method whose primary focus is to provide an intentional pathway for the offender to make up for his actions and to try and make amends with the victim and mend the ill caused to the victim.⁸⁸ Howard Zehr, famously referred to as the grandfather of restorative justice, describes it to be anchored on three things; ill caused (to not just the victim but the offenders and their respective communities), involvement of relevant parties and tasks that allow the offender to be held answerable for his actions.⁸⁹ He avers that RJ at the very least should respond meaningfully to the hurt caused to the victims and their requirements, ensure that offenders take re for said hurt and encourage the meaningful participation of all parties vested in the resolving process of the offense for purposes of restoration.⁹⁰ This is where probation officers come in, as parties invested in the resolution of the crime and facilitators of the offender's rehabilitation, restoration of their relationship with the victims and the community at large. This dissertation examines the role of probation officers working towards restorative justice and how to empower them in their work through legislation and borrowing from the strengths of other systems.

CHAPTER TWO: THEORETICAL FRAMEWORK AND ANALYSIS OF THE CURRENT PROBATION SYSTEM IN KENYA

2.1 Theoretical Framework

Kenya's justice system is a reflection of the systems theory by Ludwig von Bertalanffy as explained above. This is because the Department of Justice in 2007 established the Governance, Justice, Law and Order Sector (GJLO) for the purposes of inter-system integration and collaboration among the relevant departments and institutions concerned with justice and the rule of law.⁹¹ This is itself a system composed of subsystems which include the State Department for Correctional services, State Department for Immigration and Citizen Services, the National Police Service, the National Police Service Commission, Witness Protection Agency, Kenya National Commission on Human Rights, Independent Electoral and Boundaries Commission, State Department for Internal Security and National Administration, State Law Office, National Gender Equality Commission and the Independent Policing Oversight Authority (IPOA).⁹² The proper

⁸⁷ UNODC, Restorative Justice and the Criminal Justice Process, *Handbook on Restorative Justice Programmes*, 2 ed, Vienna, March 2020, 4.

⁸⁸ Theo G, Restorative 'Theory' and 'Practice' in context, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, 2ed, United Kingdom, 2020 11.

⁸⁹ Howard Z, Ali G, Restorative Principles in *The Little Book of Restorative Justice*, Unigraphics Peshawar, 2004, 21 - 23.

⁹⁰ Howard Z, Ali G, Restorative Principles in *The Little Book of Restorative Justice*, Unigraphics Peshawar, 2004, 23.

⁹¹ < <https://www.statelaw.go.ke/government-services/governance-justice-law-and-order/> > on April 5th 2025.

⁹² Dr. Raymond O, 'Governance , Justice, Law and Order Sector,' 2024, 3 < <https://www.treasury.go.ke/wp-content/uploads/2024/11/FINAL-FINAL-GJLO-PRESENTATION-KICC-20th-Nov..pdf> > on April 5th 2025.

functioning of these systems individually allow for the effective functioning of the Justice system in Kenya. Therefore, understanding each individually and how to improve them would be for the better. The focus of this dissertation is the State Department for Correctional Services which the Probation and Aftercare Services (PACS) is a part of.⁹³

The PACS has its own institutional norms for recruitment, training and qualifications.⁹⁴ The Probation of Offenders Act and subsequent subsidiary legislation and amendments have not covered all of this and more in specific detail leaving a number of institutional practices without legal validation, with regard to probation. As Luhmann explained above, laws are more stable norms and allow for effective amendment and adjustments through specified systemic structural procedures and channels, hence a more internalised influence over operations as opposed to outsider approaches and opinions.⁹⁵ The PACS would not only be able to propose already agreed to and utilised internal regulations and norms to be integrated into the law but also benefit from the enforcement capability, stability and legal protection that are packaged therein. Additionally, such codification would make it easier for the general public as well as prospective probation officers to understand the role they play, what it takes to acquire and develop a career within the institution as well as empowering their operations through a legal and functional foundation. This would empower PACS to achieve its goals of restoring offenders into society and reducing recidivism in the country.

2.2 Legal and Institutional Framework

The legal basis of probation in Kenya is primarily in the Probation of Offenders Act Cap 64 of 1943 and the Institution incharge of probational operations is the Probation and Aftercare Service.⁹⁶

2.2.1 Probation of Offenders Act

This Act was first enacted in Kenya in 1943 as the Probation of Offenders Ordinance, heavily borrowing from the British Ordinance of 1947.⁹⁷ At the time, Kenya being a British Colony, Kenyans could only take on assistant probation officer roles after completing the courses being offered from 1947.⁹⁸ Since then, subsidiary legislation has been enacted starting from 1948 to the latest one having been published in 1962 while gazetted amendments to them were published in the same year.⁹⁹ Additionally the Act was revised in 2012 and the latest amendments to it have

⁹³ < <https://www.probation.go.ke/> > on April 5th 2025.

⁹⁴ Kennedy O, Teresa O, Peter M, Christine N, Human Resource Management and Development in *Kenya Probation Service: Leading the Way in Africa and Globally*, Probation and Aftercare Service, Nairobi, 2023, 217.

⁹⁵ Clemens M, The system Theory of Niklas Luhmann and the Constitutionalization of the World Society, 4 *Goettingen Journal of International Law* 2, 2012, 635.

⁹⁶ < <https://www.probation.go.ke/background> > on April 5th 2025.

⁹⁷ Omboto J, An Analysis of Probation Service Order and Its Application in Kenya *Open Journal of Social Sciences* 10, 2012, 112.

⁹⁸ Omboto J, An Analysis of Probation Service Order and Its Application in Kenya *Open Journal of Social Sciences* 10, 2012, 112.

⁹⁹ Probation of Offenders Rules (Cap 79 of 1948).

been recorded in 2018.¹⁰⁰ Despite these recent revisions and amendments, the substantive provisions for the most part remain unchanged. The Act still reflects colonial era priorities and lacks the structural modernisation necessary for today's rehabilitative justice landscape.

There are a few sections of the Act that are particularly relevant to the scope covered by this dissertation. To begin with, and in no particular order, section 14 of the Act which pertains to recruitment of probation officers.¹⁰¹ The section provides that all probation officers must be selected by the principal probation officers and that a female probation officer must be allocated for the supervision of women or girls.¹⁰² While section 16 specifies that they must be enough selected in number and that they must be qualified by character and experience,¹⁰³ The Act does not define any specific educational requirements, training or professional standards. Such vagueness leaves recruitment open to administrative discretion contributing to the lack of uniformity in the professionalisation of probation officers.

Section 5 talks of the duration for a term of probation, a maximum period of 3 years and a minimum of 6 months, within which the probationer has to be supervised by a probation officer and could be subjected to various conditions by the court for purposes of adequate and efficient supervision and rehabilitation of the offender's behaviour.¹⁰⁴ However, the Act does not provide for specific qualifications or training that a probation officer has to possess in order to supervise such orders. This gap renders the supervisory aspect susceptible to mismanagement and role overreach.

Section 7 outlines what should be done in case a probationer commits more offences while their probation order is ongoing and it provides that summons may be given by the court to appear before them or a warrant for their arrest if they fail to appear in order to evidentially establish said offence(s).¹⁰⁵ Similarly, section 8 provides for the issuance of summons or an arrest warrant for probationers who are found to have continuously failed to comply with the conditions stipulated in the probation order.¹⁰⁶ For both of these offences, fines or sentences could be issued. However, there are no stipulations for immediate action that probation officers can take in cases of disorderly conduct or various forms of harm that probationers could possibly cause them while they undertake their supervisory or social inquiry duties.

Section 17 empowers the Minister to create rules pertaining to a number of things concerning the proper execution of probation orders, including the duties of both probation officers, probation committees, probation institutions and principal probation officers, along with their financial compensation among other rules they deem necessary.¹⁰⁷ Despite this over the years, no substantive

¹⁰⁰ Statute Law (Miscellaneous Amendments) Act (2018).

¹⁰¹ S 14, Probation of Offenders Act (Cap 64 of 1943).

¹⁰² 14 (1) & (2), Probation of Offenders Act (Cap 64 of 1943).

¹⁰³ Section 16 (1) (b) Probation of Offenders Act (Cap 64 of 1943).

¹⁰⁴ Section 15 (1) Probation of Offenders Act (Cap 64 of 1943).

¹⁰⁵ Section 7 (1), (2) Probation of Offenders Act (Cap 64 of 1943).

¹⁰⁶ Section 8(1), (2) Probation of Offenders Act (Cap 64 of 1943).

¹⁰⁷ Section 17 Probation of Offenders Act (Cap 64 of 1943).

rules have been updated or gazetted since the 1960s and 70s.¹⁰⁸ This legislative inertia has led to operational confusion, outdated practices as well as insufficient inter-system collaboration and coordination.

The Act as it is currently does not meet a number of International standards, for instance, a number of those set out in the Tokyo rules for non custodial measures as this analysis will show. Additionally, the lack of contemporary subsidiary regulations and other such adjustments that the Minister is empowered to make displays unfair administrative action (or lack thereof in this case) on the Minister's end as the omission affects the legal rights of probationers and probation officers alike.¹⁰⁹ A comprehensive reform of the Act and subsidiary legislation is needed.

2.2.2 Probation and Aftercare Service (PACS)

PACS is a state department which is presently within the State Department for Correctional Services in the Ministry of Interior and National Administration.¹¹⁰ While probation was formalised in 1943 through the Probation of Offenders Ordinance modelled after the British Ordinance of 1907, PACS' post-independence mandate is obtained through the following statutes: the Probation of Offenders Act (Cap 64), Children Act (2001), Community Service Orders Act (no. 10 of 1998), Criminal Procedure Code (Cap 75), Penal Code (Cap 63), Power of Mercy Act (No. 21 of 2011), Sexual Offences Act (2006), Prohibition of Female Genital Mutilation Act (No. 32 of 2011), the Borstal Institutions Act (Cp 92), Prisons Act (Cap 90), Prevention of Terrorism Act (No. 30 of 2012) and the Victim Protection Act (2014).¹¹¹

In terms of management, the Cabinet Secretary of the Ministry of Interior and National Administration is at the top of the hierarchy followed by the Principal secretary of the Correctional Service and the Secretary of the PACS.¹¹² The Cabinet secretary appoints the director who oversees the operations of the probation department and additionally appoints the probation officers.¹¹³ There are 6 directors who in the hierarchy are followed by 24 deputy directors, 94 assistant directors, 389 principal probation officers, 676 senior probation officers as of 2023.¹¹⁴ Presently there are over 1000 probation officers spread throughout all 47 counties of the country.¹¹⁵ PACS plays a core role in the administration of criminal justice in Kenya through its oversight of community-based corrections.¹¹⁶ Its main objectives are: to generate offender-specific social information for use by the judiciary and allied institutions in the dispensation of justice, to supervise court-imposed non custodial sanctions, such as probation orders, while supporting the

¹⁰⁸ Probation of Offenders Rules (Cap 79 of 1948).

¹⁰⁹ Section 5 Fair Administrative Action (No.4 of 2015).

¹¹⁰ < <https://www.probation.go.ke/background> > on April 7th 2025.

¹¹¹ < <https://www.probation.go.ke/mandate> > on April 7th 2025.

¹¹² < <https://www.probation.go.ke/management> > on April 7th 2025.

¹¹³ Section 16 Probation of Offenders Act Cap 64 (1943).

¹¹⁴ Probation and Aftercare Service, Crossover Report 2016 to 2023, PACS, Nairobi, 2023, 14.

¹¹⁵ Dr, Ng'ang'a, 'Historical Background of Probation Practice,' 5.

¹¹⁶ < <https://www.probation.go.ke/background> > on April 7th 2025.

rehabilitation of offenders and former offenders, to facilitate the reintegration and resettlement of offenders within their communities following their release, to actively participate in crime prevention initiatives and promote community safety and finally to safeguard the welfare of victims.¹¹⁷

2.3 Roles and Functions of Probation Officers

The probation officer's role in achieving PACS's objectives summarily is to undertake the following tasks: supervision of probationers, conducting regular home visits and behavioural assessments and maintaining consistent communication tailored to the probationer's needs, to conduct social inquiries to possibly be utilised by the courts to understand the offender's background and circumstances, to monitor a probationer's academic progress if they are in school, to ensure compliance with court-ordered conditions and promote positive behaviour through guidance, counselling and support, to guide, assist and maintain a friendship with the probationer where it is paramount to find him proper employment, to ensure young probationers engage in youth programmes, to maintain updated records for every probationer they oversee.¹¹⁸

The role of Community Service orders in conjunction with other non-custodial orders is properly articulated in the case of *Gilbert Mwangi v Republic* where they were essentially held to be pathways for offenders, even grim ones, seeking to be better, to be restored back to society whilst living their daily life.¹¹⁹ It is far from a "cop out" sentence. This reintegration and rehabilitation can be facilitated through professional counselling, motivational interviewing, cognitive behavioural therapy (CBT), pro-social modelling. Problem solving methods, anger management, family group conferencing, change intervention programme for probation and probationer empowerment.¹²⁰ The Probation Act as it stands demands a very personalised approach on a case by case basis for each offender, asking that the probation officers befriend and assist them with their reintegration.¹²¹ The PACS has had staffing, infrastructural, training and funding issues even up until 2022.¹²² Regardless of these issues, targets of 40,000 probationer reports are demanded of them, supervision of at least 37,500 probation orders and rehabilitation of at least 22,000 offenders all while having hired 986 probation officers, only trained 569 of them as of 2023.¹²³ Even where the targets are achieved and even overly achieved, how effective is the supervision and reintegration with so much demanded of the probation officers who still have administrative functions of report writing which also have targets per year?

¹¹⁷ < <https://www.probation.go.ke/background> > on April 7th 2025.

¹¹⁸ Probation of Offenders Rules under section 17 (Cap 79 of 1948).

¹¹⁹ *Gilbert Mwangi Kiai v Republic* (2017) eKLR.

¹²⁰ Joe M, Edwin K, Jenevive A, Probation Orders in *Kenya Probation Service: Leading the Way in Africa and Globally*, Probation and Aftercare Service, Nairobi, 2023 41 - 55.

¹²¹ Rule 3 (g) Probation of Offenders Rules under section 17 (Cap 79 of 1948).

¹²² PACS Strategic Plan 2018 to 2022, Probation and Aftercare Service, Nairobi, 2020, 17.

¹²³ Governance, Justice, Law and Order (GJLO) Sector Report, *Medium Term Expenditure Framework 2024/2025 - 2026/2027*, December 2023, 12- 13.

In the case of *David Hamisi v Republic* in 2024, the applicant challenged his sentencing on several grounds but in particular claimed that the court convicted him without understanding his life circumstances because it failed to wait for his probation report.¹²⁴ The court held that while not fatal to the sentence it is paramount for a court to take into consideration the circumstances of the accused person during their detention and note any changes good or bad, for the sake of full perspectives.¹²⁵ Seeing the numbers of reports demanded in a year and the amount of information they contain regarding the offender, his family and home life, the victim's and their family's perspective and such other, a comprehensive report cannot possibly be generated in minutes. Such delays in furnishing of reports lead to obstruction of justice and cases remain in court due to appeals such as the one above.

It is clear that probation officers need all the assistance they can get and the PACS elected to help with staffing issues through volunteers who aid in supervision.¹²⁶ It is important to note that this is a voluntary role, the volunteers not being considered figures of authority or public service officials and it is not for those seeking financial compensation or viewing it as an employment opportunity.¹²⁷ Their reach is specifically required in desert and semi desert areas in the country and slum areas in the cities.¹²⁸ Unfortunately, Kenya has no legislative guidelines governing their operations, safeguarding their welfare and even on their remuneration or at least stipends and other such things to attract them.¹²⁹ This is further detrimental to the volunteers and to the probation service seeing as those who reside in the areas that the volunteers are recommended to be from are likely not doing the best financially, lack of financial incentives and benefits of employment are likely to discourage applicants whose rights are not enshrined in and protected by law to begin with. There is no subsidiary legislation or amendments to the Probation Act that provides for volunteers; it is merely a program.

The personalised approach is further reflected in the case of the *State v Truphena* in 2021 where the probation officer was required to organise counselling sessions for the accused person to aid in trauma recovery.¹³⁰ A probation officer is required to create a personalised supervision or treatment plan known as an Individualised Treatment Plan (ITP), which is a structured, individual centric framework designed to guide the rehabilitation process of a probationer and is tailored to their unique risks, needs and responsivity factors.¹³¹ With a number of other case work treatment and judicial administrative functions and a caseload as well as a need for continuous training to

¹²⁴ *David Felix Hamisi v Republic and the Office of the Director of Public Prosecutions (ODPP) 2024 eKLR.*

¹²⁵ *David Felix Hamisi v Republic and the Office of the Director of Public Prosecutions (ODPP) 2024 eKLR.*

¹²⁶ Joseph N, Community Probation Volunteers Supporting Supervision, PACS Newsletter 31, Probation and AfterCare Service, Nairobi, September 2023.

¹²⁷ Probation and Aftercare Service, Community Probation Volunteers (CPV) pamphlet, 3 < <https://probation.go.ke/sites/default/files/downloads/CPV%20PAMPHLET.pdf> > on April 7th 2025.

¹²⁸ Probation and Aftercare Service, Community Probation Volunteers (CPV) pamphlet, 3 < <https://probation.go.ke/sites/default/files/downloads/CPV%20PAMPHLET.pdf> > on April 7th 2025.

¹²⁹ The Kenya National National Volunteerism Policy (2015) 5.

¹³⁰ *Republic V Truphena Ndonga Aswani (2021) eKLR.*

¹³¹ Joe M, Probation Orders, 39.

equip them with skills to effectively rehabilitate the probationers such an individualised approach may not be executed properly.

2.4 Challenges Facing Probation Officers

First, is the challenge of lack of a well-rounded and up-to-date legislative framework governing the operations of probation officers.¹³² The analysis of the current legal provisions shows vagueness and omissions when it comes to pivotal operational requirements such as training fulfilments and requirements and an overall lack of adjustment of the 1943 Act to modern times. This leads to the agencies involved and the PACS to work using institutional normative regulations which have no legal basis.¹³³ A lot of administrative discretion is accorded to these agencies and the lack of specific legislations that are otherwise known to agreed upon by the relevant stakeholders and members of the public is detrimental to inter- judiciary system collaboration, communication and coordination which is necessary for the execution of justice.¹³⁴ This has a net effect and plays a role in other challenges that probation officers face.

Additionally, the lack of adequate legislative framework plays a role in the problem of insufficient funding.¹³⁵ The Judiciary in 2024 and the past two years received a mere 0.92% of the total budget from the National Government, with additions from revenue generated from fines and fees.¹³⁶ A far cry from the ideal ideally prescribed 3%, this leaves the Judiciary in a constant state of financial insufficiency leading to hindrance of judicial functional and financial independence effective operations.¹³⁷ The PACS is a department that is within and funded by the Judiciary and along with other similar agencies, its mandate gives rise to numerous specificities and intricacies which require different levels of funding for proper and consistent implementation.¹³⁸ The National Treasury may not be inclined to allocate funding to projects that are essentially foreign to the law. Allocating funds based on inconsistent and uncodified institutional norms leaves room for misappropriation of financial resources as justification for the uses could change sporadically. Furthermore, there is the issue of dangerous work environments and threat of harm while on duty. This can be attributed to the public not having knowledge on the role of probation officers leading

¹³² PACS Strategic Plan 2018 to 2022, PACS, 2020, 18.

¹³³ Christine A, Effective Resettlement of Offenders by Strengthening Community Reintegration Factors: Kenya's Experience, 62.

¹³⁴ Christine A, Effective Resettlement of Offenders by Strengthening Community Reintegration Factors: Kenya's Experience, 62.

¹³⁵ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report (SOJAR) 2023 - 2024*, 30.

¹³⁶ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report (SOJAR) 2023 - 2024*, 27.

¹³⁷ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report (SOJAR) 2023 - 2024*, 27.

¹³⁸ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report (SOJAR) 2023 - 2024*, 30.

to an otherwise negative attitude towards them.¹³⁹ Such has led to probation officers getting attacked in 2018 in Nyamira, Nkubu and Meru.¹⁴⁰ Additionally there is no legal provision mandating police escorts to dangerous areas or any empowering probation officers to take immediate action, for instance detention, in such cases. Rule 14.5 in the Tokyo rules provides that such should be prescribed by the law.¹⁴¹

In addition there is the lack of legal provisions providing for standardised training modules and educational requirements and qualifications. The Tokyo Rules recommend that probation officers, who are non-custodial practitioners, should be well suited to the role and possess professional training and these requirements should be well detailed in the law.¹⁴² The PACS does not detail professional requirements beyond a degree in sociology, law and many other social sciences, the rest are skills such as listening communication and report writing.¹⁴³ While valiant efforts have been made to come up with training modules and diploma courses together with institutions of higher learning such as Egerton, there is still nothing in the laws concerning the minimum standards of training requirements and continuity or educational qualifications of probation officers which is important to back the training modules PACS comes up with.¹⁴⁴ There is still a deficiency of important skills in probation officers when it comes to execution rehabilitation programmes.¹⁴⁵ Recruiting based on a singular degree from a variety of different courses with differing content is not nearly enough to obtain well trained probation officers, it just makes it mandatory for thorough induction training from scratch leading to longer training and recruitment processes.

The training is also largely supported by international partners, its programmes barely having backing from the Kenyan government.¹⁴⁶ While these connections allow probation officers to receive necessary training, lack of a specific training regimen and consistent and continuous programmes may lead to insufficient equipment of skills. The partners control what programmes they say yes to, the funding and the timelines. For instance the Programme for Legal Empowerment and Aid Delivery (PLEAD) in Kenya is a 5 year project with a budget of 34,150,000

¹³⁹ Stephen M, Sebastian M, Gladys C, A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya, Summary of Findings and Recommendations, National Crime Research Centre, Nairobi, 2019, 5.

¹⁴⁰ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report, 2018-2019*, 315.

¹⁴¹ Rule 14.5 UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

¹⁴² Rule 15.2 UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

¹⁴³ Kennedy O, *Human Resource Management and Development*, 220.

¹⁴⁴ Probation and Aftercare Service, *Crossover Report 2016 to 2023*, PACS, Nairobi, 2023, 14.

¹⁴⁵ Christine A, *Effective Resettlement of Offenders by Strengthening Community Reintegration Factors: Kenya's Experience*, 62.

¹⁴⁶ Probation and Aftercare Service, *Crossover Report 2016 to 2023*, PACS, Nairobi, 2023, 20.

euros funded by a number of international partners, for a wide umbrella of legal aid initiatives and objectives, not just to improve probation.¹⁴⁷

Lastly there is a problem with supervision of offenders. Ineffective supervision of offenders poses a challenge to efficient undertaking of probation orders.¹⁴⁸ Non compliance hinders efficient supervision and is rampant particularly in the slums where probation officers find it quite difficult to handle and arrest those who do not comply.¹⁴⁹

While recognising Kenya's efforts to curb these issues, there is room for benchmarking more efficient legal systems of probation so as to learn from their strengths and weaknesses alike, this dissertation analyses South Africa's system.

CHAPTER THREE: ANALYSIS OF PROBATION OFFICERS IN SOUTH AFRICA

3.1 Legal Framework of Probation Services

The cornerstone of South Africa's probation system is the Probation Services Act of 1991. This Act defines a probation officer as one who fulfils the prescribed requirements and has been selected in accordance with said Act.¹⁵⁰ The requirements that a probation officer has to fulfil are provided for in subsidiary legislation, that is, the regulations relating to the registration of a speciality in probation services found in the Social Service Professions Act.¹⁵¹ In order for a social worker to apply for registration to be a specialised probation officer they must hold: a recognised social work qualification and be duly registered as a social worker by the council, a relevant Master's degree endorsed by the Probation services council coupled with a minimum of two years of practical experience in probation that is based on evidence or they must have completed an approved postgraduate diploma or certificate in probation services, coupled with three additional years of evidence based practical experience or finally, have accumulated five years of evidence based practical experience in probation services and demonstrates the required level of expertise by satisfying the Council's assessment requirements. For competence purposes.¹⁵² These rigorous academic requirements are backed by section 2 of the Probation Services Act allowing them to be

¹⁴⁷ Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) < https://www.undp.org/sites/g/files/zskgke326/files/migration/ke/e7aae6d2dcc97b5b15974b7bcf8c3cf2ee9752548db_a66326de0f31b29c642be.pdf > on April 7th 2025.

¹⁴⁸ Stephen M, Sebastian M, Gladys C, A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya, Summary of Findings and Recommendations, National Crime Research Centre, Nairobi, 2019, 6.

¹⁴⁹ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report*, 2018-2019, 314.

¹⁵⁰ Probation Services Act (No. 116 of 1991).

¹⁵¹ Social Service Professions Act (No. 10 of 1978).

¹⁵² Rule 2, Regulations Relating to the Registration of a Speciality in Probation Services (No. R 116 of 2013).

uniformly enforced in a non biased and non secretive manner.¹⁵³ Probation officers in South Africa are appointed by the Minister, the necessity at his discretion.¹⁵⁴

The Minister is also empowered to enact subsidiary legislation regarding any matter pertaining to the Act, however those pertaining to finances must be made in conjunction with the Minister of State Expenditure.¹⁵⁵ The Minister has since taken this provision seriously and has worked with other State Departments to enact subsidiary legislations that serve to improve the functioning of the probation system. For instance, the Minister of Social Development, utilising suggestions from SA council for Social Service Professions made regulations pertaining to registration of specialities in probation services empowered by the the Social Service Professions Act.¹⁵⁶ These rules clarify exactly the scope of probation services in South Africa, Inclusive of what is mentioned in the Probation Service Act.¹⁵⁷ They include: Delivering advocacy and educational programs targeted at individuals families groups and communities, conducting expert assessments of vendors and victims to evaluate needs risks and resilience levels thereby information and sentencing options, serving as expert witnesses in court particularly in relation to the sentencing of both adults and children, supporting their integration of children released from reforms schools and secure care facilities into their communities, supervising children placed under home based supervision ensuring they remain under the care of a suitable adult, addressing offending behavior through structured interventions that promote accountability and help offenders and understand the impact of their actions on themselves their families their victims and the wider community, preparing compliance reports on individuals and are probation supervision detailing adherence or non adherence to prescribed conditions, facilitating diversion programs and restorative justice processes, Providing care support mediation and referrals for victims of crime.¹⁵⁸ This allows probation officers to tailor their operations around legally provided for services, reducing confusion caused by ambiguity or total lack of legal provisions.

The Act has also been amended to reflect contemporary evolution through the Probation Services Amendment Act of 2002. While various definitions have been added and clarified the most notable and relevant provision to this study is added section 4A which establishes assistant probation officers and details their functions.¹⁵⁹ These officers are appointed by the Minister at his discretion to undertake the following roles; Overseeing children pleased under whom beast super vision to ensure compliance with court directives, monitoring individuals who are under probationary supervision, conducting family tracing to support reintegration and rehabilitation efforts, collecting background information and relevant data to it the probation officers assessments and

¹⁵³ Section 2 (4) Probation Services Act (No. 116 of 1991).

¹⁵⁴ Section 2 (1) Probation Services Act (No. 116 of 1991).

¹⁵⁵ Section 16 Probation Services Act (No. 116 of 1991)

¹⁵⁶ Section 28 (1) (a), Social Service Professions Act (No. 110 of 1978).

¹⁵⁷ Rule 1, Regulations Relating to the Registration of a Speciality in Probation Services (No. R 116 of 2013).

¹⁵⁸ Rule 1, Regulations Relating to the Registration of a Speciality in Probation Services (No. R 116 of 2013).

¹⁵⁹ Probation Services Amendment Act (No. 35 of 2002).

recommendations, providing general support probation officers in the execution of their official responsibilities.¹⁶⁰

3.2 Roles and Powers of Probation Officers in South Africa

Section 4 of the Act provides for the functions and authority of probation officers.¹⁶¹ These include; investigating the circumstances surrounding an accused individual, with the purpose of submitting a report to the court concerning their possible treatment or placement in an institution as well as offering support to the individual's family, assisting probationers in adhering to the terms of their probation particularly in a manner that enhances they are ability to functions socially and reintegrate into the community, Promptly notifying the court or the commissioner if the probationer fails to observe or in any way deviates the set conditions of the probation, Providing regular progress updates to the court or the commissioner as directed regarding a probation as compliance with probation terms and overall rehabilitation of efforts, designing and carrying out intervention programs either generally or tailor to specific individuals as outlined in relevant legislation, recruiting and training volunteers, overseeing their participation in probation related activities and establishing rules for their conduct, supervising community-based committees related to probation services and promoting effective stakeholder collaboration, Facilitating public awareness sessions including educational classes designed to inform individuals and communities about rehabilitation processes and crime prevention strategies.¹⁶²

A case that shows the role of probation officers while highlighting the court's discretion to make use of the probationer's pre-sentence reports is the *Sv Smith* Case. In this case the probationer conducted interviews with the offender's mother, the deceased's former wife, his son and a social worker in their proximity to garner information on the accused's life circumstances.¹⁶³ From these interviews the officer was able to provide information to the court that aided in the tempering of her sentence as she had been a victim of domestic abuse and was not a repeat offender.¹⁶⁴ Regardless of the probation officer recommending a non custodial sentence the accused still got sentenced to 16 years and 5 years of imprisonment respectively on both counts.¹⁶⁵

As for obstruction any individual who deliberately resists abstracts or interferes with a probation officer or any authorised volunteer in the course of executing their duties commits an offense and upon conviction is subjected to a fine of up to 4,000 Rand a custodial sentence not exceeding 12 months or both.¹⁶⁶ To deal with non compliance of probation order stipulations, probation officers are required to make an application for arrest warrants of the errant probationers and upon their arrest by a peace officer are presented before the court.¹⁶⁷ However, prior to this the probation

¹⁶⁰ Section 4A Probation Services Amendment Act (No. 35 of 2002).

¹⁶¹ Section 4 Probation Services Act (No. 116 of 1991).

¹⁶² Section 4, Probation Services Act (No. 116 of 1991).

¹⁶³ *State v Smith* (2022) High Court in South Africa.

¹⁶⁴ *State v Smith* (2022) High Court in South Africa.

¹⁶⁵ *State v Smith* (2022) High Court in South Africa.

¹⁶⁶ Section 4 (2), Probation Services Act (No. 116 of 1991).

¹⁶⁷ Section 4 (3), Probation Services Act (No. 116 of 1991)

officer, in a bid to foster the officer - probationer relationship could; give a warning, become more strict in supervising or adjust the terms of the probation order pursuant to court annexed scope.¹⁶⁸ However if the offender is a repeat non complying person then within 72 hours the officer can seek an arrest warrant or apply for a review of the non custodial sentence.¹⁶⁹

3.3 Provision for Volunteers

The Act also provides for Volunteers and prescribes guidelines pertaining to them in depth.¹⁷⁰ Essentially, they are appointed by and report to probation officers.¹⁷¹ Probation officers assess the qualification of volunteers and they cannot qualify for appointment unless they have finished the required course and signed an agreement with the probation officer and if all these conditions are met a certificate of appointment is granted.¹⁷² No one can undertake tasks in the capacity of a volunteer unless they have this certificate which they must show upon request, if they masquerade as one they are committing an offence and can be held liable if found guilty.¹⁷³ Probation Officers also have the power to end the appointment of a volunteer if- the volunteer does not properly undertake his duties as agreed upon and written down on his certificate, if they have furnished them with untrue statements or information, if their services are not needed anymore.¹⁷⁴

Section 13 provides that volunteers may be compensated fully, according to the Minister's discretion from funds allocated by Parliament for the very purpose, for expenses incurred in execution of their duties.¹⁷⁵ This is done after the volunteer writes a detailed statement of funds within three months of incursion of the expenses.¹⁷⁶ However, they may not be compensated if they had already or if it had been recommended that he avoid incursion of said expenses.¹⁷⁷ Falsifying statements of expenses is an offence.¹⁷⁸ Their welfare is also safeguarded in that they can be compensated by the State for harm and loss they face in the line of duty where possible.¹⁷⁹

3.4 Capacitation and Training of Probation Officers in South Africa

Probation officers have an important role to play in any criminal justice system that is focused on not only punitive measures but also restorative justice as shown so far. Equipping the probation officers with necessary skills, training and funding goes a long way in ensuring the efficiency of a

¹⁶⁸ Elsa J, Correctional Supervision in South Africa: The Practical Application, Department of Correctional Services, Pretoria in *Criminal Law and Procedure*, November 1993, 985.

¹⁶⁹ Elsa J, Correctional Supervision in South Africa: The Practical Application, Department of Correctional Services, Pretoria in *Criminal Law and Procedure*, November 1993, 985.

¹⁷⁰ Sections 9 through 15, Probation Services Act (No. 116 of 1991).

¹⁷¹ Section 9, Probation Services Act (No. 116 of 1991).

¹⁷² Section 9, Probation Services Act (No. 116 of 1991).

¹⁷³ Sections 10 and 12 Probation Services Act (No. 116 of 1991).

¹⁷⁴ Section 11, Probation Services Act (No. 116 of 1991)

¹⁷⁵ Section 13 (1) Probation Services Act (No. 116 of 1991).

¹⁷⁶ Section 13 (2) Probation Services Act (No. 116 of 1991).

¹⁷⁷ Section 13 (3) Probation Services Act (No. 116 of 1991).

¹⁷⁸ Section 14 Probation Services Act (No. 116 of 1991)

¹⁷⁹ Section 15 Probation Services Act (No. 116 of 1991)

justice system. South Africa has done well with the codification of training and educational requirements as well as professionalisation of probation as a career beyond sociological aspects.¹⁸⁰ In South Africa, a probation officer must have their foundation in social work, otherwise they cannot be recruited.¹⁸¹ The other qualifications are as stated in the requirements of a probation officer above.

South Africa succeeded in the creation of a probation training curriculum which has obtained approval from their qualifications board (SAQA) and is now a two year programme rolled out to relevant learning institutions throughout the country.¹⁸² People who seek to apply for this course are required to have qualified the 12 th grade or a similar level of qualification.¹⁸³ In the first year training encompasses the practice of probation and learning about its practitioners, Crime in the South African Community, evaluation and mediation and the moral and ethical standards of probation as a practice.¹⁸⁴ In the second year, the students learn about governance and regulation, the criminal justice system, crime deterrence and operation and service support and frameworks.¹⁸⁵ Presently, the South African Qualifications Authority (SAQA) has registered the Further Education Training Certificate in Probation Work to professionalise entry into probation services through work-based learning, recognising both new and existing assistants in the field.¹⁸⁶ This level 4 qualification, consisting of 142 credits, combines functional community-based experiences with foundational communication skills and mathematical skills.¹⁸⁷ It responds directly to the Probation Services Act and targets to formalise and professionalise auxiliary probation roles, improve crime prevention outcomes and create pathways for career progression in the field.¹⁸⁸ Its recognition of previous learning allows social workers who are keen on furthering their education and improving their skillset to apply for the training and consequentially aid in staffing issues within the probation department.¹⁸⁹ The qualifications training modular structure encompasses

¹⁸⁰ Robert G, What is happening to the Professional Board for Probation Practice?, 14.

¹⁸¹ Rule 2 Regulations Under the Probation Services Act (No. R 66 of 2012).

¹⁸² University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

¹⁸³ University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

¹⁸⁴ University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

¹⁸⁵ University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

¹⁸⁶ <

[https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > on April 12th 2025.

¹⁸⁷ <

[https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > on April 12th 2025.

¹⁸⁸ <

[https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > April 12th 2025.

¹⁸⁹

[https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > April 12th 2025.

fundamental, core and elective components, leading to seven exit-level outputs that span across communication, mathematical application, professional competence, and community based and youth care work.¹⁹⁰

To further inspire young aspiring professionals into the field of correctional services, South Africa has also formulated a 12 month to 16 week Department of Correctional Service training programme which will take place at Kroonstad and Zonderwater training colleges.¹⁹¹

It is however important to note that in 2004 the South African Government allocated 1 million rand (approximately 7.068 million Kenyan shillings) towards the development of the probation training curriculum.¹⁹² These funds greatly assisted the concerned parties in the undertaking of the project.

CHAPTER FOUR: LESSONS FROM SOUTH AFRICA FOR STRENGTHENING PROBATION OFFICERS IN KENYA

4.1 Legislative Clarity and Enforcement Powers

From the analysis of the two frameworks it is evident that South Africa has managed to evolve with the times and codify much more and more progressively than Kenya has. Kenya's Probation Legislative framework is limited to a shallow and outdated Probation of Offenders Act and equally outdated subsidiary legislation while South Africa has a more robust, modern-adjusted and greatly detailed Probation Act.

In South Africa, the statutory framework explicitly defines probation officers duties and authority. the probation services act 116 of 1991 (and its regulations) was enacted to provide for the establishment and implementation of programs that seek to fight crime through the probation service.¹⁹³ Key definitions in the act include “probation officer” and “authorised probation officer” clarifying that probation officers are appointed by the minister in function under the Department of Social Development.¹⁹⁴ Section two of the act empowers the minister to appoint as many people as he opines are required as probation officers to exercise the powers and to perform their duties conferred or imposed by or under this act or any other law on a probation officer.¹⁹⁵ The effect of

¹⁹⁰ <

[https://regqs.saga.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saga.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > on April 12th 2025.

¹⁹¹ Media Statement: Correctional Services Committee Updated on Leadership Programme. 12 March 2025, < <https://www.parliament.gov.za/press-releases/media-statement-correctional-services-committee-updated-leadership-programme#:~:text=The%20programme%20runs%20for%2012,the%20department%20as%20correctional%20officials.>> on 12th April 2025.

¹⁹² University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

¹⁹³ Probation of Services Act (No.116 of 1991).

¹⁹⁴ Section 1, Probation of Services Act (No.116 of 1991).

¹⁹⁵ Section 2, Probation of Services Act (No.116 of 1991).

this is that probation officers are formally recognized as officers of every magistrates court and are regulated in categories or classes as required.¹⁹⁶

Section 4 of The Act enumerates probation officers' powers and duties in detail.¹⁹⁷ for instance, a probation officer must investigate the circumstances of an accused person and report to the court regarding appropriate treatment or institutional referrals inclusive of care for victims' families.¹⁹⁸ Officers must also assist probation as in complying with their conditions to improve social functioning and they are required to immediately report any failure or deviation by a probationer.¹⁹⁹ The act mandates that provision officers implementary habilitation programs as outlined in section 3, and oversee committees and volunteers assisting in probation work.²⁰⁰ The Tokyo Rules provide for planning and implementation of programmes for non-custodial measures as a pivotal part of any criminal justice system.²⁰¹ Codifying them , as South Africa has, gives them legal backing and the government is mandated to see to their execution. Notably statutory protection is given to officers; it is a criminal offence punishable by fine or imprisonment for any person who will fully Hinder or obstruct a probation officer or volunteer in performing official duties.²⁰²

Kenya while dependent on volunteers to assist in staffing issues ironically does not have a legislative framework for volunteers.²⁰³ The Tokyo rules provide that volunteers should be carefully selected and trained for their duties which would be specified all while acquiring mental and psychological support through counseling as well as backing from well versed practitioners.²⁰⁴ Additionally they advocate for the proper reimbursement, insurance in case of physical harm in the course of duty as well as public acknowledgement.²⁰⁵ South Africa has managed to comply with these international standards in its Probation Services Act which details all of this information.²⁰⁶

The act also grants enforcement authority to probation officers. If a probationary defaults on the conditions of supervision a probation officer may apply in writing to a magistrate on the matter and seek a warrant of arrest for the probationer.²⁰⁷ Once the warrant is issued the Offending probationer can be arrested like any other offender. These provisions ensure that probation officers are active agents in supervising of custodial sentences rather than merely passive intermediaries.

¹⁹⁶ Section 2 (1) Probation of Services Act (No.116 of 1991).

¹⁹⁷ Section 4, Probation of Services Act (No.116 of 1991).

¹⁹⁸ Section 4 (a), (b) (c) Probation of Services Act (No.116 of 1991).

¹⁹⁹ Section 4, Probation of Services Act (No.116 of 1991).

²⁰⁰ Section 4, Probation of Services Act (No.116 of 1991).

²⁰¹ Rule 21, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

²⁰² Section 4 (2), Probation of Services Act (No.116 of 1991).

²⁰³ The Kenya National National Volunteerism Policy (2015) 5.

²⁰⁴ Rule 19. 1, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

²⁰⁵ Rule 19.3, UNGA, *United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)*, UN A/ Res 45/110 Dec 14 1990.

²⁰⁶ Sections 9 through 15, Probation Services Act (No. 116 of 1991).

²⁰⁷ Section 4 (3), Probation of Services Act (No.116 of 1991).

In comparison, Kenya's Probation of Offenders Act is far less detailed. The act's texts focus on courts and probation orders rather than the powers of probation officers.²⁰⁸ Section 16 directs the public service commission to appoint a director of probation to organize and supervise the probation service along with a sufficient number of probation officers qualified by character and experience.²⁰⁹ However the act does not define specific tasks or powers beyond the duties provided for by the prescribed rules made under the Act.²¹⁰ Practically speaking, this means that most guidance on officers' roles recites in subsidiary rules and internal guidelines not in primary legislation. The lack of statutory clarity has Created Weakness in qualifications job descriptions in accountability structures for Kenya's Probation service.

Pertaining to enforcement, Kenya's act pleases responsibility largely on the judiciary, that is, if a probationer fails to comply with the order the court may, after hearing evidence on oath, issue summons or arrest warrant.²¹¹ The act unfortunately does not explicitly empower probation officers to initiate arrest proceedings, instead, it requires information to be presented to a judge.²¹² And like South Africa law there is no penalty and a Kenyan law for obstructing a probation officer. Therefore Kenyan probation officers are not legally protected from attacks such as the ones that occurred in 2018 among other such hindrances in the line of duty.²¹³ Thus Kenyan provision officers lack the express legal backing that their South African counterparts enjoy in enforcing compliance or seeking Court orders.

This contrast highlights a systemic gap in Kenya's framework. under the general systems Theory approbation system is a subsystem of the broader justice system and its effectiveness depends on clear roles channels in feedback loops. South Africa's statutory model provides those elements; officers' responsibilities are codified and they have legal tools to address breaches. In Kenya the absence of detailed statutory provisions means the system relies on ad hoc arrangements. Probation officers must navigate uncertainties about their authority and recourse when a supervised offender defaults. From our restorative justice perspective this is problematic because restorative justice emphasizes repairing her main facility integration tasks that require active Case Management. without clear enforcement powers probation officers may struggle to uphold restorative plans, such as community service or counselling, of non-compliance.

4.2 Structured Training and Capacitation

Another area where South Africa offers lessons is the training and professional development of probation officers. In South Africa, probation is treated as a recognized profession within the social development sector. The law provides that it is solely social workers who may qualify to be appointed as probation officers.²¹⁴ Does entering the probation service normally requires a relevant

²⁰⁸ Probation of Offenders Act (Cap 64 of 1943).

²⁰⁹ Section 16, Probation of Offenders Act (Cap 64 of 1943).

²¹⁰ Probation of Offender Rules (Cap 79 of 1948).

²¹¹ Section 4, Probation of Offenders Act (Cap 64 of 1943).

²¹² Section 4(2), Probation of Offenders Act (Cap 64 of 1943).

²¹³ The Judiciary of Kenya, *State of the Judiciary and the Administration of Justice Annual Report, 2018-2019*, 315.

²¹⁴ Rule 2 Regulations Under the Probation Services Act (No. R 66 of 2012).

tertiary qualification of an in social work psychology or criminology and professional registration.²¹⁵ Recognizing the need for specialized knowledge, universities and training institutions have developed curricula for probation practice. For instance the University of Cape Town into an in4 lost their first dedicated probation curriculum are two years course for assistant probation Officers.²¹⁶ Since then, postgraduate diplomas and certificates in probation work have become available in institutions such as UCT, University of Johannesburg and University of Pretoria.²¹⁷ South Africa education authorities have also registered an official qualification, the Further Education and Training (FET) certificate for probation work which provides entry level training for assistant officers and support staff.²¹⁸

Continuous training is likewise emphasized. government policy through the Department of Social development and correctional services mandates ongoing in service training and competency development.²¹⁹ For instance, probation officers are expected to complete annual professional development hours and specialized workshops, covering topics such as restorative justice methods, community project development and legal updates.²²⁰ Moreover, because South African probation officers operate within the prison and Child justice , they often receive joint training alongside correctional officials, ensuring our coherent approach to offender management. To summarise, South Africa's model combines formal academic qualifications with practical vocational training and continuous skill building, resulting in a fully fledged career path. Kenya's probation service has not had a similarly robust training framework. Clement or catch in his historical overview notes that during the Colonial period the government indeed implemented structures for training of probation staff. ²²¹ The inclination towards social work training equipped officers with professional skills in counseling and Case Management, however he posits that these programmes were terminated over twenty years prior.²²² As of 2023, most of the probation officers, Whole

²¹⁵ Section 17, Social Service Professions Act (No 110 of 1978).

²¹⁶ University of Cape Town, Probation Curriculum a First, 4 October 2004 < <https://www.news.uct.ac.za/article/-2004-10-04-probation-curriculum-a-first> > on April 12th 2025.

²¹⁷ Ann S & Boyane T, Probation Services, Institute for Security Studies, 38. < <https://globcci.org/wp-content/uploads/2021/06/Probation-Services-in-South-Africa-Institute-for-Security-Studies-2008.pdf#:~:text=Th%20is%20led%20to%20the,any%20offi%20cial%20status%2C%20but> > on April 17th 2025.

²¹⁸ < <https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=PURPOSE%20AND%20RATIONALE%20OF%20THE,QUALIFICATION%20PEquipped officersurpose> > on April 17th 2025.

²¹⁹ < <https://www.gov.za/about-government/government-system/justice-system/correctional-services#:~:text=The%20Department%20of%20Correctional%20Services,successful%20reintegration%20programmes%20are%20implemented.> > on April 17th 2025.

²²⁰ < [https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers\).](https://regqs.saqa.org.za/showQualification.php?id=50041#:~:text=During%20the%20first%20year%20of,24%20hours%20for%20detention%20officers).) > on April 12th 2025.

²²¹ Clemment O, Reforming Probation: The Changing Perspectives of The Probation Service In Kenya A Keynote Presentation at the World Congress on Probation and Parole: The Hague, 17th April 2024, 8.

²²² Clemment O, Reforming Probation: The Changing Perspectives of The Probation Service In Kenya A Keynote Presentation at the World Congress on Probation and Parole: The Hague, 17th April 2024, 9.

degrees in Sociology criminology and psychology among other social sciences but they may likely lack specialized probation training or credentials.²²³

Today, Kenya's in-service training is constrained and patchy. The Kenya School of Government offers occasional courses for probation and correctional officers (for instance, a two-week "Middle Cadre" management course offered at Embu and Kabete campuses) but these are ad hoc and have limited reach.²²⁴ International development partners have sometimes supplemented this, and probation volunteers receive basic orientation, but no standardized national curriculum is in place.²²⁵ A 2019 by the National Crime Research Centre, specifically recommended establishing a dedicated and empowered Probation Training Institute and initiating a continuous professional development program focusing on rehabilitation skills.²²⁶ Those authors noted that a consistent programme that equips Probation Officers with necessary skills and knowledge improving over time is required, emphasizing guidance and counselling techniques and other socio-economic interventions for offenders.²²⁷

In other words, Kenya's capacitation of probation staff remains largely informal. This has practical consequences. Without a clear career path or mandatory training standards, the service struggles with uneven competencies. Some probation officers gain expertise only through work experience or scattered workshops. Crucial restorative justice skills for instance facilitating victim-offender dialogues or community reintegration planning, are not systematically taught. Niklas' Systems Theory would suggest that an organization's effectiveness depends on training of its personnel; here, the probation subsystem is weakened by skill gaps. The restorative justice framework also highlights the importance of professional competency in achieving rehabilitative outcomes: officers need knowledge of community resources, cultural mediation, and trauma-informed care. South Africa's model, by contrast, ensures that probation officers are social welfare professionals with both theoretical grounding and ongoing practical training.

Therefore, the lesson for Kenya is evident. The probation service should adopt structured educational pathways and continuing education schemes similar to South Africa's. For example, Kenya could partner with universities to create diploma or degree programs in probation/aftercare studies as South Africa has similarly done. An assistant probation officer qualification or in other words a higher national diploma, could formalise entry-level training. Additionally, reinforcing the requirement that probation officers have social work or related professional credentials would allow for training to improve knowledge already previously acquired instead of taking time to start anew. Regular in-service courses utilising the Kenya School of Government's infrastructure and resources provided by UNODC and other international partners should instead be

²²³ Kennedy O, Human Resource Management and Development ,220.

²²⁴ < <https://ksg.ac.ke/wp-content/uploads/2023/09/KSG-Consolidated-Training-Calendar-2023-2024.pdf-sep-21.pdf#:~:text=MCPO%20Management%20Course%20for%20Probation,officers%20Embu%2FLower%20Kabete%20On%20request> > on April 17th 2025.

²²⁵ Probation and Aftercare Service, Crossover Report 2016 to 2023, PACS, Nairobi, 2023, 20.

²²⁶ National Crime Research Centre, A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya, .Report no. 7, 2019, xx.

²²⁷ National Crime Research Centre, A Study on the Delivery of Community-Based Sentences: The Case of Probation Orders in Kenya, .Report no. 7, 2019, xx.

institutionalized.²²⁸ The NCRC report’s recommendation for a permanent training institute could be funded and realized, ensuring that every officer receives initial orientation in probation practice, restorative approaches, and criminal justice procedures. Continuous professional development (through workshops, seminars, online modules) should be mandated by law. These measures would address the high levels of under-capacitation noted in earlier analysis. In combination with legislative clarity, improved training would help stabilize Kenya’s probation subsystem as part of the larger justice system.

4.3 Application to Kenya’s Context

From the comparative analysis above and assessment of Kenya’s current Probation legislative and institutional framework, it is evident that there is need for reform strategies in that regard.

Legislative adaptation

Kenya should consider updating or replacing Cap 64 to align with contemporary principles. A new Probation Act could *explicitly codify* probation officers’ responsibilities (investigation, supervision, reporting, rehabilitation programs) much like South Africa’s law does. For example, the Act could require officers to prepare pre-sentence inquiry reports and supervise probationers, with statutory authority to request judicial action on breaches. It should also define probation-related concepts (such as “community service,” “probation order,” and “aftercare”) and align with related statutes (the Children’s Act, Community Service Orders Act, etc.). Importantly, Kenya can incorporate restorative justice values: its law could provide for victim participation, family conferencing or circles, and alternative dispute resolution within probation orders. As in South Africa’s 2002 amendments, Kenya might explicitly mention diversion programs and victim-offender dialogue as legal options. Furthermore, the law could enshrine protections for officers (e.g. sanctioning interference with supervision) and clarify career structure (establishing the Probation Director’s authority and oversight of all officers). These legislative changes would create a clear system blueprint.

Organizational reform

²²⁸ UNODC East African News and Stories, 28th April 2022, < <https://www.unodc.org/easternafrika/en/Stories/elearning-innovation-to-boost-probation-in-kenya.html#:~:text=The%20training%20modules%20cover%20essential,crime%20prevention%2C%20among%20other%20topics.> > on April 17th 2025.

The Probation and Aftercare Service (PACS) should be strengthened as a coherent body within the criminal justice system. This might involve better integrating PACS with the broader governance framework – for example, through clear lines to the Department of Corrections or independent statutory status. Under systems theory, probation must coordinate with courts, police, prisons, and social services. Kenya could establish formal interagency committees (like South Africa’s multi-disciplinary probation committees) to manage complex cases. The Justice Sector (under the National Council on Administration of Justice) should monitor probation outcomes (recidivism rates, compliance levels) and report them in sector reviews (GJLOS reports). Budgetary support is essential: Kenya’s *Budget Policy Statements* and GJLOS strategic documents should prioritize funding for probation officer posts, training budgets, and facility upgrades (echoing their mention of probation in sector budgets).

Training and capacity building

The probation service should implement a systematic training program. As South African experience shows, continuous learning sustains quality. Kenya could make initial professional training mandatory for all new officers (for instance, via a probation academy certificate). Existing degrees in social work or psychology should include modules on probation and restorative justice (to prepare graduates for entry into PACS). The government should launch or expand probation training centers – the slide from Okech indicates plans for a “Probation Training Institute” ; this initiative should be realised with curricula co-developed by practitioners and academics. In-service training programs covering case management, community resources, mental health, legal updates, etc.) must be institutionalized. The Kenya School of Government’s probation courses could be extended into mandatory induction; likewise, the International Corrections and Prisons Association has provided probation training in Kenya and such partnerships should continue. Additionally, every correctional service training school, be it the police, prisons, judiciary, must include probation modules, as recommended by NCRC, to ensure that court clerks, prosecutors, and police understand how to work with probation orders.

Restorative integration

Embedding restorative justice requires both policy and practice shifts. Probation officers need tools and support to engage communities and victims. Kenya could pilot specialized probation units focused on restorative conferencing. Legal reforms should empower officers to facilitate victim-offender meetings and to coordinate community reparation projects. For example, Kenya’s law could explicitly allow community service not just as a punishment, but as a restorative program (with victims and communities involved in planning). Lessons from South Africa’s diversion programs can be adapted: community panels (drawn from religious or civic leaders) have been used in SA for minor offenses. Kenya might institute formal diversion panels under judicial oversight, with probation officers as coordinators. These steps would make probation more “repair-centric,” in line with RJ ideals.

Together, these measures will address the systemic deficiencies identified in earlier chapters. Kenya's probation service currently suffers from "chronically underdeveloped institutional backing" and resource shortages. By codifying officers' roles and empowering them legally, Kenya would establish a firm foundation. By professionalizing and training its workforce, it would ensure that the probation subsystem can function effectively. Viewed through General Systems Theory, the probation service would move from a loose collection of guidelines to a well-integrated component of the criminal justice system. Through a restorative lens, the reformed service would be better equipped to transform offender management into community healing. In the next chapter, we will summarize these findings and propose concrete recommendations.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusions

This study set out to evaluate Kenya's probation system and draw reform lessons from South Africa's model. It focused on two main dimensions: legislative/institutional frameworks and training/capacitation of probation officers, conducted an investigation through General Systems Theory and Restorative Justice Theory. The major takeaways can be concluded as follows:

Legislative Framework

South Africa's laws provide a comprehensive probation framework. The Probation Services Act 116 of 1991, along with its amendments, clearly defines probation officers' authority and functions. Officers are legally empowered to report non-compliance and seek arrest warrants and the law penalizes obstruction of probation work. On the other hand, Kenya's Probation of Offenders Act (Cap 64) is outdated having been enacted in 1943 and skeletal. It provides for the appointment of a Director and probation officers but leaves their specific functions to rules, with minimal statutory detail. Kenyan magistrates are able to deal with non compliance and probation order condition breaches through law but the Act itself does not equip officers with corresponding enforcement powers or clear mandates. In practice, this lack of clarity has led to ambiguity in roles and fragmentation of the probation function. The comparative analysis shows that South Africa's codification supports a functional probation subsystem whereas Kenya's legislative gaps have hindered system effectiveness.

Training and Capacitation

South Africa treats probation as a specialised profession within social development. Only qualified social workers are appointed as probation officers and the country has developed dedicated qualifications (from further education certificates to university diplomas and degrees) and continuing education programs for these professionals. This has resulted in a highly

professionalised workforce knowledgeable in criminology, social work and RJ principles. Kenya, on the other hand, has lacked a consistent and continuous training pipeline. While there was more intensive training during the colonial era, formal professional training of officers stopped decades ago, nowadays probation officers are generally university graduates without specialized probation training, and in-service learning is irregular. Studies and reports confirm that Kenya's probation staff have insufficient training and support. Consequently, Kenyan officers often lack the skills and resources needed for rehabilitation-focused work.

- **Systemic Implications:** These deficiencies in law and training have real effects. Kenya continues to over utilise probation as an alternative to incarceration without empowering those on the ground carrying it out hence the probation caseload management becomes poor and rehabilitation is insufficiently carried out leading to high rates of recidivism and re-offending. The system's fragmented nature, highlighted by General Systems Theory, means communication and accountability among agencies is poor. Likewise, the lack of RJ orientation reduces the service's ability to achieve restorative outcomes. South Africa's example demonstrates that clear legal mandates and comprehensive training contribute to a coherent probation system that can fulfill both public safety and rehabilitative goals. Kenya's Justice System's stakeholders have also expressed collaborative interests for common goals such as decongestion of incarceration centres.²²⁹

To finalise, the comparative analysis suggests that Kenya's probation service can be strengthened by adopting key elements of South Africa's model. Codifying probation officers' roles and powers in law and investing in their professional development would address systemic gaps. These reforms should be designed with an eye to holistic system integration and restorative justice goals. The next section outlines specific recommendations to realise these improvements.

5.2 Recommendations

Based on the above analysis, the following recommendations are proposed for Kenyan policymakers and justice sector stakeholders. Each recommendation is aimed at addressing the identified legislative and operational shortcomings, drawing on practices from South Africa and relevant theory:

Update the Probation Law

Amend the *Probation of Offenders Act (Cap 64)* or enact a new *Probation Services Act* to explicitly define the mandate of probation officers. The law should list officers' primary duties such as pre-sentence social inquiries, supervising compliance, reporting and handling of compliance breaches,

²²⁹ Law Society of Kenya, 'Unlocking Justice, A Collect Effort to Decongest Prisons and Deliver Legal Aid Position Paper 2024, 10.

facilitating rehabilitation programs the way to South Africa's Section 4 does.²³⁰ It should also empower officers to seek judicial enforcement (e.g. application for warrants) and to impose court-mandated sanctions for non-compliance, paralleling SA's provisions. Introducing an offence for obstructing a probation officer would protect the service as in SA. Additionally, the law should recognize restorative justice concepts: include definitions for diversion, victim-offender conferencing, and community service. For example, a provision could allow probation officers to coordinate restorative conferences between offenders and victims, thereby institutionalizing restorative principles.

Fortify Institutional Governance

Clearly establish the organisational structure of the probation service. The law should formalise the probation profession through codification. Inter-department coordination mechanisms should be mandated (e.g. national and county probation committees, involving judiciary, police, health and social services) to integrate probation into the criminal justice system as per systems theory, as South Africa has done involving all the relevant Ministries collaboratively in law making processes. Strengthening data collection and reporting to the GJLOS framework will help monitor performance such as number of probation orders, rates of recidivism. Budget Policy Statements should allocate dedicated funding to PACS for staffing, operations, and training, reflecting its role in crime prevention.

Promote Training and Professionalisation

Require that new probation officers hold appropriate qualifications and undergo induction training. For instance, Kenya could specify in regulations or policy that probation officers must be social work graduates or possess a recognized probation certificate.. Develop specialised academic programmes in probation or criminal justice in Kenyan universities, and accredit them for officer training (following South Africa's model of university diplomas and certificates.²³¹ Launch a national *Probation Training Institute* as recommended by the NCRC, to conduct standardized pre-service courses covering criminal law, counselling, community resources, and RJ techniques. Ensure that all probation officers complete this training before field assignment.

Implement Continuous Professional Development

Institutionalise ongoing training programs for serving officers. The Kenya School of Government (KSG) should schedule regular courses for probation officers such as advanced case management, restorative conferencing, digital record-keeping. Make such courses compulsory for promotion. Collaborate with international partners and NGOs to provide workshops on best practices while still striving to avoid being overlooked by the government due to lack of legislative progress and

²³⁰ Section 4 Probation Services Act (No 111 of 1991).

²³¹ <

<https://regqs.saga.org.za/showQualification.php?id=50041#:~:text=PURPOSE%20AND%20RATIONALE%20OF%20THE,QUALIFICATION%20PEquipped%20officersurpose> > on April 17th 2025.

evolution. Encourage peer learning by establishing benchmarking schemes where experienced officers guide new recruits. This will build capacity as envisioned by GST (reinforcing the human capital subsystem). It also aligns with restorative justice goals by equipping officers with skills to support offender rehabilitation and community reintegration.

Promote Restorative Community Engagement

Embed community and victim involvement in probation practice. Encourage the formation of *Volunteer Probation Committees* (similar to South Africa's use of volunteers and community-based groups) to assist officers in supervising and rehabilitating offenders. This could involve former volunteers trained in RJ who help organize community service projects or victim restitution activities. The probation service should develop partnerships with civil society and faith-based groups to provide counseling, skills training, and support networks for probationers. These steps operationalize the restorative justice emphasis on healing and stakeholder participation.

Strengthen Monitoring and Evaluation

Develop indicators to evaluate probation outcomes and publish them in sector reports. For example, track the percentage of probationers who successfully complete supervision, rates of reoffending, and stakeholder satisfaction (courts, communities, offenders). The judiciary and PACS should review these metrics periodically to identify gaps. As part of evidence-based policy, consider periodic external evaluations of probation programs. Incorporate feedback loops (a systems theory principle) so that lessons learned inform future training and legal reforms.

Each of these recommendations draws on South Africa's experience or recognised best practices. For instance, clarifying legal mandates and empowering officers mirrors South Africa's structured approach, Establishing formal training pathways reflects the SA example of specialized qualifications and university programs, Emphasizing restorative community engagement follows the principles inserted into South African law and practice, which Kenya can adapt. Finally, reinforcing coordination, communication and cooperation that satisfies General Systems Theory's call for connected subsystems of the justice system.

Implementing these reforms will require political commitment and robust resource investment, but they promise a more effective probation system. In the long run, stronger probation services can reduce prison overcrowding and recidivism, improve offender reintegration, and promote public safety – aligning with Kenya's Vision 2030 goals for security and social welfare. By learning from South Africa's legislative clarity and capacitation strategies, Kenya can transform its probation service from a marginal alternative into a cornerstone of a restorative, systemic approach to criminal justice.

BIBLIOGRAPHY

Books

- Banda F, *Criminal Justice and Human Rights in Africa*, Oxford University Press, 2015.
- Carmona Cuenca E, *Probation Measures and Alternative Sanctions in the European Union*, Tirant lo Blanch, 2020.
- Dambazau AB, *Criminology and Criminal Justice*, Spectrum Books, 2007.
- McNeill F, Raynor P and Trotter C, *Offender Supervision: New Directions in Theory, Research and Practice*, Routledge, 2010.
- Robinson G and McNeill F, *Community Punishment: European Perspectives*, Routledge, 2016.
- Wacquant L, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Duke University Press, 2009.

Book Chapters

- Muntingh L, 'Probation and the Role of the Probation Officer' in Sloth-Nielsen J (ed), *Children's Rights in Africa: A Legal Perspective*, Ashgate, 2008, 261–278.
- McNeill F, 'Four Forms of "Offender" Rehabilitation: Towards an Interdisciplinary Perspective' in Ugwudike P, Raynor P and Annison J (eds), *Evidence-Based Skills in Criminal Justice*, Policy Press, 2014.
- Howard Z, Ali G, *Restorative Principles in The Little Book of Restorative Justice*, Unigraphics Peshawar, 2004.

Journal Articles

- Bhana D, 'Understanding the Gendered Dimensions of Schooling in South Africa' 67 *Educational Review* 2, 2015.
- Clark D, 'Developmental State: A Critique' 61 *Theoria* 140, 2014.
- Dandurand Y, 'The Role of Probation in Criminal Justice' 78 *United Nations Asia and Far East Institute Journal*, 2016.
- Duflo E, Dupas P and Kremer M, 'Education, HIV, and Early Fertility: Experimental Evidence from Kenya' 105 *American Economic Review* 9, 2015.
- Kilcommins S, 'The Role of the Probation Service in the Criminal Justice System' 3 *Irish Probation Journal*, 2006.
- Muntingh L, 'Ten Years After the Jali Commission: Assessing the State of South Africa's Prisons' 53 *South African Crime Quarterly*, 2015.
- Omboto JO et al, 'The Challenges Facing Rehabilitation of Prisoners in Kenya and the Mitigation Strategies' 2 *International Journal of Research in Social Sciences* 2, 2012.

Singh A, 'The Efficacy of Probation Services in South Africa' 30 Journal of Social Development in Africa 1, 2015.

Tonry M, 'Why Punish?' 104 Criminal Justice Matters 1, 2016.

Wairagu F, 'Community Service Orders in Kenya: Practice, Challenges and Opportunities' 61 Probation Journal 4, 2014.

Conference Papers

UNODC, 'Handbook on Probation Services: Institutional Framework and Probation Practices', UN Expert Group Meeting on Criminal Justice Reform, Vienna, 2010.

Department of Social Development (South Africa), 'Capacitation of Probation Officers: Strategic Planning Report', National Probation Practitioners Conference, Pretoria, 2012.

Reports

Judicial Inspectorate for Correctional Services, Annual Report 2022/23 (JICS, Cape Town).

Judiciary of Kenya, State of the Judiciary and Administration of Justice Reports (2018–2024).

Kenya Probation and Aftercare Service, Crossover Report (2016–2023).

Kenya Probation and Aftercare Service, Strategic Plan (2018–2022).

UNODC, Handbook on Probation Services, United Nations, 2018.

UNODC, Restorative Justice and the Criminal Justice Process, Handbook on Restorative Justice Programmes, United Nations, 2020.

Online and Internet Resources

