

JUSTICE FOCUS

# Gender-Sensitive Approach to Probation in Kenya: Project Evaluation



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# Executive Summary

This evaluation assesses a pioneering, multifaceted project, focusing on the experiences of women completing non-custodial sentences, specifically Community Service Orders and Probation Orders in Kenya and the investigation of how to best adopt a gender-sensitive approach. It was devised and implemented as a partnership between Kenya Probation and Aftercare Service (KPAS) and Penal Reform International (PRI), with financial support from the Thailand Institute of Justice (TIJ), leading advocates for the promotion of rights and treatment of women within justice systems.

The overall objective of the project was to:

1. **Develop and pilot gender-sensitive Community Service Orders and Probation Orders based on evidence and consultation with women offenders.**

Additional objectives included:

2. Contribute to Sustainable Development Goal 5<sup>1</sup> (gender equality) and Goal 16<sup>2</sup> (access to justice for all)
3. Develop a project model, which is replicable across international contexts

To achieve the objectives, the project planned several activities, divided into four phases:

**Phase 1** included a **Research Report**, investigating the experiences and recommendations of women offenders who have served Community Service and Probation Orders. Key findings and lessons were highlighted in a shorter **Briefing Document** and a **Short Film** and presented at a validation meeting by the researcher to project partners.

**Phase 2** focussed on the amending of **pre-sentence reports and guidelines** on the obtaining and implementation of gender-sensitive community based sanctions. This was then followed by training and sensitisation of probation officers and a preliminary testing period in pilot locations (Kisumu and Nakuru).

**This evaluation** represents **Phase 3** of the project with the aim to assess the first two phases and provide feedback from key stakeholders on **Relevance, Effectiveness and Sustainability** of the activities. Originally, the evaluation was planned to take place as the fourth and final stage of the project, but this was changed during the project so that findings of the evaluation could be included in the final project activities.

**Phase 4**, will include the **finalisation of the pre-sentence report structure and accompanying guidelines**, as well as of a **training module** developed to be used in the initial training of new probation officers. Findings will then be disseminated amongst all relevant stakeholders by KPAS, presented at a multi-stakeholder meeting and disseminated by PRI internationally. Follow-up projects will then be discussed.

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<sup>1</sup> [SDG 5: Achieve gender equality and empower all women and girls](#)

<sup>2</sup> [SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels](#)

The Research Report highlighting the experiences of women completing Community Service Orders and Probation Orders was extremely well received by international experts, who identified the report as an innovative and internationally relevant piece of research of an area with little previous examination. While the context of the research does focus on Kenya, technical experts stated that the close adherence of the report's structure to international standards and guidance, mean that the findings are valuable to a global audience.

The Short Film showcases the findings of the report and was found to be very effective in communicating the key messages. While originally imagined to relate to an international audience, interviewees felt that it would also have great value as a training tool domestically and several mentioned their intention to use it this way. However, it appears that neither the Short Film or the Research Report have received the level of attention that the findings warrant and more needs to be done by all parties involved to promote these effective materials.

The introduction to the amended tools was conducted by a team from Kenya Probation and Aftercare (KPAS) senior management and took place at individual probation stations. Probation officers were very positive about the new approach to interviewing and tools, although they would have liked longer to discuss the approach and ask questions. Some excellent local initiatives broke down elements of the approach into more manageable summaries and also provided additional space for discussion.

While one of the pilot counties maintained more close adherence to the amended guidelines, probation officers in both locations explained that it was a change in mind-set, rather than any particular tool that was the greatest outcome. Many officers explained that although they felt that they had intuitively treated women differently in the past, it wasn't until they had the project training that their thinking on the topic had crystallised. One female probation officer noted:

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*“Before I thought an offender is an offender and it doesn't matter if they're male or female. My thinking was there is no excuse for committing a crime. But after I have gotten a change of perception. Now I take a little more time to dig deeper and find out more and what really caused them to offend.”*

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Several probation officers also observed a change in their female clients' behaviour after they had changed the approach to interviewing them. Officers stated that women became more ready to open-up and reveal further details and there also appeared to be similar positive effects with male clients.

Every interviewee mentioned the UN Bangkok Rules without prompting and many commented that it had provided an evidence-based backing to treat women differently. Many also highlighted the ability to point to these Rules as a key factor that empowered them with the confidence to advocate for an improved approach towards women.

Officers gave examples of ways that they had changed their behaviour since the training and pointed out clear examples of how these supported women and in some cases suggested it had sparked an increase in non-custodial sentences. Other examples were given where probation officers had completed improved and detailed reports, but magistrates had not taken notice or ignored the recommendations. Greater sustainability of positive impacts is therefore likely to be gained where other relevant stakeholders are sensitised to the approach.

Probation officers indicated that their reporting is now more exhaustive as a result of the training and they ask questions that they had previously not thought were relevant to ask. Some probation officers felt that the more in-depth enquiries prompted an increase in workload, however many others, including the County Probation Directors felt that any change that there may have been in workload remained manageable within their current capacity.

The response from those implementing the project was encouraging across all aspects and probation officers all hoped that the approach would be expanded across Kenya. The structure of the project means that it is easily replicable in other countries also, and experts from various agencies voiced interest in following the formula of piloting improvements to domestic tools and guidelines after evidence-based recommendations from detailed field research.

Kenya Probation and Aftercare Service staff stated that they have felt complete ownership of the project from conception to implementation and take great pride in leading the world in this specialised area of research.

# Acronyms

<b>CSO</b>	Community Service Order
<b>CUC</b>	Court User Committee
<b>JTI</b>	Judicial Training Institute
<b>KPAS</b>	Kenya Probation and Aftercare Service
<b>LRF</b>	Legal Resources Foundation
<b>OC</b>	Officer in Charge
<b>PRI</b>	Penal Reform International
<b>PTD</b>	Pre-trial detention
<b>SPPS</b>	Swedish Prison and Probation Service
<b>TIJ</b>	Thai Institute of Justice
<b>UNODC</b>	United Nations Office on Drugs and Crime

# Acknowledgements

The evaluator would like to give particular thanks to members of the following organisations:



**Probation and Aftercare Service, Ministry of Interior and Coordination of National Government, Kenya (KPAS)**



**Penal Reform International (PRI)**



**Thailand Institute of Justice (TIJ)**

Great thanks to all those who took part in the evaluation, including everyone who was interviewed and provided information. Special thanks also to Clement Okech for overseeing all Kenya based logistics, to Andrea Huber for all the hours put in to ensure the evaluation was a success, and to both County Probation Directors, William Otieno and Paul Kimani King'e, for their excellent hospitality and generosity with their time, in their respective regions of Kisumu and Nakuru.

# Suggested Reference:

Khan, O. P. (2017) **Gender-sensitive approach to probation in Kenya: Project Evaluation**. Penal Reform International: London, UK.

# Project Background and Context

## Implementation of the Bangkok Rules

In 2010 the [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the ‘Bangkok Rules’\)](#)<sup>3</sup> were adopted by the UN General Assembly. Until this point, there had been a clear absence of standards providing for the specific characteristics and needs of women offenders and prisoners. The Bangkok Rules were adopted in recognition that criminal justice systems and the codes that govern them were designed with male offenders in mind and that the typical characteristics, roles and backgrounds of women offenders, need to be taken into consideration.

Research on the background of female offenders across many countries, typically identifies a history of domestic and sexual violence, alcohol and substance dependence and mental healthcare needs, often with a clear link to victimisation. Most of the efforts to apply this knowledge and the guidance in the Bangkok Rules to justice systems, has been focused on improving the experience of women in custody. What has been lacking, however, is a gender-sensitive design of non-custodial measures that considers the background of women, as well as their current circumstances, such as pregnancy, being a mother or having other caretaking responsibilities, their employment status, their place of residency and whether they have any support from family, among others.

The Bangkok Rules call for ‘gender-sensitive non-custodial measures’ (in particular Rules 57, 58, 60, 62), recognising the history of victimisation of women offenders and their caretaking responsibilities including the harmful impact of prison on children. However, little research and good practice is available on how to capture gender-specific information or to guide gender-specific design and implementation of non-custodial measures.

## Project Rationale

The concept of the project was developed by PRI to investigate the experiences of women who had served non-custodial sentences and to use the findings as a basis for developing gender-sensitive tools and guidance to then be tested, refined and replicated elsewhere.

Kenya was selected as the best location for a pilot for several reasons, including the pre-existing strong working relationship between PRI and KPAS and the organisational capacity of the department to be able to realistically implement and sustain any reforms. The enthusiasm and readiness of KPAS to improve gender-sensitivity within their service was a key factor and Ms Hannah Maingi, Assistant Director at KPAS, explained the evolution of the project and how it was driven by KPAS from the outset:

*“In 2013 I attended a senior conference in Japan on the Bangkok Rules and treatment of female offenders and after this experience, I was determined to focus on this issue in Kenya, whether there were resources or not.”*

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<sup>3</sup> [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#)

*“We looked internally at our own policies and practices and reworked the Community Service Training Manual, as we had also been thinking about this while working closely with PRI on the EXTRA Project<sup>4</sup> to improve the use of CSOs.*

*In 2014, we decided that we needed more officers to know about the Bangkok Rules and requested in-person training after ten of our officers completed the e-learning course.<sup>5</sup> Later that year, a multi-stakeholder workshop took place involving the judiciary and prisons as an initial sensitisation exercise.*

*We were very proud to be the pioneers of research in this area and worked alongside researchers to gain information specific to the Kenyan context about the experiences of women throughout the probation process and in the community completing CSOs.”*



**Ms Hannah Maingi**, Assistant Director of KPAS

An important addition was the high level backing and political support for implementation of the Bangkok Rules. Such sentiments were emphasised by key actors at a training event conducted by PRI on the Bangkok Rules in Nakuru, Kenya on 30<sup>th</sup> March 2015:

*“My department through the Special Needs Offenders Committee, which I chair, classified women offenders as a special category requiring special attention. I am an advocate for use of non-custodial measures in cases involving women. However, I regret the appalling lack of research on women offenders in the country and in the region. It is my hope that one of the key recommendations arising from this training workshop will be to undertake research to inform approaches and interventions for women.”*

**Ms Josephtha O. Mukobe**,  
Principal Secretary, State Department of Coordination of National Government

*“There is urgent need therefore to map out current practices and experiences of key players such as magistrates, police, probation officers and other stakeholders working with women offenders, share experiences and make recommendations on how best to address their concerns. This would then inform the pre-bail/pre-sentence reports, how to design and implement gender-sensitive probation/community service.”*

**Mr J.W.O. Oloo**,  
Director of KPAS (at the time of speaking)

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<sup>4</sup> Excellence in Training on Rehabilitation in Africa (EXTRA) Project tested a new model for effective delivery of Community Service Orders (CSOs) in three pilot regions of Kenya, Tanzania and Uganda. See: <https://www.penalreform.org/where-we-work/africa/alternatives-imprisonment/excellence-training-rehabilitation-africa-extra/>

<sup>5</sup> Penal Reform International, [Women in Detention: putting the Bangkok Rules into practice \(e-course\)](https://www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice/), <https://www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice/>

The above note training event was one of several initiatives conducted in Kenya to improve awareness of gender-sensitivity within the criminal justice system, which provided a good environment for the pilot study. Other initiatives included further ‘Training of Trainer’ programmes, to empower prison and probation officers to train other officers in the importance and merits of the Bangkok Rules, organised by the Swedish Prison and Probation Service and delivered by PRI in September 2016 and in April 2017, and the completion of PRI’s e-course on the Bangkok Rules by several officers.

A final reason for the selection of Kenya for the pilot project was that by selecting a middle-income country, the replicability of the pilot may be increased to a greater number of other contexts, compared to a country at either extreme of the socio-economic spectrum.

## Project Plan

### Objectives

The overall objective of the project was to:

1. **Develop and pilot gender-sensitive Community Service Orders and Probation Orders based on evidence and consultation with women offenders.**

Additional objectives included:

2. Contribute to Sustainable Development Goal 5 (gender equality)<sup>6</sup> and Goal 16 (access to justice for all)<sup>7</sup>.
3. Develop a project model, which is replicable across international contexts.

### Project partners

A project was designed jointly between the below partners:

- **Probation and Aftercare Service, Ministry of Interior and Coordination of National Government, Kenya (KPAS)**  
Implementing government department.
- **Penal Reform International (PRI)**  
Leading international non-government organisation on the promotion of the UN Bangkok Rules and gender-sensitive criminal justice systems.
- **Thailand Institute of Justice (TIJ)**  
Project Donor. Established and part funded by the Thai government with the aim to promote excellence in research and capacity-building in crime and justice and promote the implementation of the UN Bangkok Rules.

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<sup>6</sup> [SDG 5: Achieve gender equality and empower all women and girls](#)

<sup>7</sup> [SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels](#)

## Project Phases

The project was planned for a period of 12 months (with an additional two months for an external evaluation) and arranged into four phases:

- Phase 1:** A **Research Report**, investigating the experiences and recommendations of women offenders who have served Community Service and Probation Orders. The findings were to be presented at a validation meeting by the researcher to project partners. Key findings and lessons were also planned to be highlighted in a shorter **Briefing Document** and in a **Short Film**.
- Phase 2:** Development of offender **assessment tools, guidelines and training material** on the obtaining and implementation of gender-sensitive community based sanctions. This would then be followed by a preliminary testing period of two months in pilot locations. Those involved in the implementation were then to be interviewed to provide feedback on the tools and guidelines.
- Phase 3:** The offender assessment tools, guidelines and training materials would be amended according to the feedback and then disseminated amongst all relevant stakeholders by KPAS, presented at a multi-stakeholder meeting and disseminated by PRI internationally.
- Phase 4:** Evaluation of the project and case study documenting the experience of the project completed. Planning of a follow-up project.

## Changes to project structure during implementation

During the course of implementation, project managers from KPAS and PRI concluded that it would be more valuable to conduct the evaluation and case study directly after the piloting of the assessment tools and guidelines in 'Phase 2', rather than at the end of the project. The reason for this was so that the opinions of those involved in the piloting of the amended tools and guidance could be captured in the evaluation (now 'Phase 3') and be factored into the finalisation of amended tools and training module (now 'Phase 4').

Donor agencies do not often agree to such large structural changes to projects, but due to the flexibility and understanding of TIJ staff, the pilot project plan was adjusted according to the project management team's recommendation.

## Evaluation Plan

The consequences of the above noted changes to the project structure for this report are that the evaluation focuses on those activities planned for 'Phases 1-2', with learning and recommendations from this report to feed into the final phase, which will focus on the finalisation and dissemination of the findings and tools, explained in more detail below:

# Evaluation Objectives

## Evaluation of Phase 1

1. Provide feedback from key stakeholders on **Relevance, Effectiveness and Sustainability** of materials created using findings of the research, namely:
  - a. The Research Report (investigating the opinions and experiences of women who have completed Community Service and Probation Orders in Kenya)
  - b. The Briefing Document of the findings of the Research Report
  - c. The Short Film (highlighting the key issues from the Research Report)
2. Identify recommendations for institutionalising the learning in the KPAS system
3. Identify recommendations for applying learning to other counties within Kenya, whether implemented by PRI or other stakeholders

## Evaluation of Phase 2

1. Provide feedback from key stakeholders on **Relevance, Effectiveness and Sustainability** of piloting of amended tools, namely:
  - a. Pre-sentence Report
  - b. Guidelines for Social Investigations and Pre-sentence Reports
2. Identify recommendations for institutionalising the amended tools in the KPAS system
3. Identify recommendations for applying learning to other countries

# Evaluation Methodology

## Location

The two pilot regions for implementation of the amended tools and interviews with Field-based Probation Teams were:

- Kisumu – Probation Stations: Maseno, Winam, Muhoroni and Kisumu.
- Nakuru – Probation Stations: Nakuru, Molo, and Naivasha.

The evaluator also held several meetings with PRI staff managing the project and communicated with them throughout the evaluation.

## Documents and statistics

The evaluation also includes analysis of:

- A comparison of the structure and content of samples of pre-sentence reports, completed both before and after training.
- Statistics gathered from the PRI website on downloads of the reports, views of the reports and viewer's intended actions are also discussed.

## Interviews

The evaluator conducted a series of semi-structured interviews and focus groups, collecting qualitative data from relevant stakeholders over the key analysis areas of **Relevance, Effectiveness and Sustainability**.

Representatives of the following organisations were interviewed:

- Thailand Institute of Justice (TIJ)
- Kenya Probation and Aftercare service (Headquarters Management Team)
- United Nations Office on Drugs and Crime (Vienna and Nairobi Teams)
- Swedish Prison and Probation Service (SPPS) (implementing a project with KPAS)
- Research Report Research Team (Kenya-based researchers)
- The Judiciary (a judge and several magistrates)
- Field-based Probation Teams (Regional Probation Director, Country Probation Directors, station-based probation officers)

## Presentation of findings

Opinions within this report are presented in the words of the interviewee wherever possible. Readers of this evaluation from outside of Kenya may be unfamiliar with the turn of phrase in some instances, however, the voice of the participant is maintained wherever possible for authenticity and accuracy. The evaluator has made efforts to clarify these instances in brackets or footnotes of the report. Some names of interviewees have been removed to maintain anonymity.

Conclusions and recommendations have been drawn after consideration and assessment of all available information.

## Evaluation limitations

The training sessions and sensitisation of probation officers on the amended tools and guidelines (referred to by probation staff as ‘induction clinics’), were completed by KPAS in mid-February 2017, and the field research for this evaluation was carried out by the evaluator from 27<sup>th</sup> March to 7<sup>th</sup> April. The time between the induction clinics and the evaluation, was therefore, much shorter than initially planned and meant that the new approach had a minimal time to become embedded before it was evaluated.

Most of the probation officers interviewed had received cases of female defendants since the induction clinics. Those who had not yet had the chance to put the new approach into practice with women, were almost exclusively male officers. It was emphasised on several occasions by officers, that a further analysis at a later date would enable them to assess the amended tools and the consequences of their implementation in a more detailed and informed manner.

Although the Research Report was explained to the implementing probation officers during the induction clinics, none of the officers interviewed had read it or the Briefing Document, nor had they seen the Short Film. Analysis of the resources produced as a result of the Research Report is thus restricted to international experts and KPAS senior management.

# Phase 1 Activities

## Research Report

The report, '[Community service and probation for women: a study in Kenya](#)<sup>8</sup>', was produced in partnership between PRI and KPAS and examines the context in which women serve community sanctions (Community Service Orders and Probation Orders) in Kenya and their interactions with and experiences of it. The research seeks to identify and understand the distinct challenges women face when completing these orders and is the first of its kind globally. The report was intended for both those with an interest specifically within the Kenyan context and for those interested in exploring methods of improving gender-sensitive processes within Probation systems elsewhere.

### Key objectives of the Research Report:

1. Examine current practices and experiences of magistrates, probation officers and other stakeholders involved in Community Service and Probation Orders.
2. Examine experiences and recommendations of women offenders who have served Community Service Orders or Probation Orders.
3. Provide the basis to develop guidance in terms of how to incorporate gender aspects in pre-sentence reports, how to design and implement gender-sensitive Community Service and Probation Orders.

### Research questions

The study was intended to answer the following key research questions, among others:

- To what extent are gender concerns informing placement of women in Community Service and on Probation Orders?
- Are gender-specific considerations (sufficiently) explored and taken into account in pre-sentence reports and community sanctions?
- What types of work can be assigned to women within Community Service programmes that are suitable and safe, but not gendered?
- Do and how do women's familial roles impact on Community Service placements and (compliance with) Probation Orders?
- How can victimisation or drug or alcohol dependency be addressed in Community Service placements? How has the experience of Community Service improved or hindered the circumstances of women offenders?

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<sup>8</sup> PRI and KPAS (2016) Community service and probation for women: a study in Kenya. Available at <https://www.penalreform.org/resource/community-service-and-probation-for-women-a-study/> Accessed 13/05/2017

## Methodology

A total of 97 women offenders were interviewed across ten stations<sup>9</sup> - 50 women who were serving or had served CSOs and 47 women who were serving or had served Probation Orders. Another five young female offenders were interviewed at a Probation Hostel in Nakuru and focus groups were also used to gather information. Twenty judicial officers, 22 probation officers and 18 Community Service Supervisors were interviewed and a focus group discussion with women serving CSOs was also held. A quantitative assessment of the background of women offenders was carried out with a view to identifying common attributes. Qualitative research was then undertaken to understand the experience of female offenders and the views of relevant staff.

## Key findings of Research Report

### Research Report Briefing Document

[‘Community service and probation for women: Lessons and recommendations based on a study in Kenya’](#)<sup>10</sup>, was a second resource created from the same research investigation. It is a summary version of the research and highlights the key findings and recommendations. It aimed to be an accessible, shorter alternative to the full Research Report and therefore consumed by a larger audience both domestically and internationally. [A Swahili version of the summary](#) document is also available (ibid.).

### Profile of women serving CSOs or Probation Orders in Kenya

Interviews indicated that most women serving a CSO or Probation Order were:

- mothers with young children  $\frac{3}{4}$  had children under the age of 18.
- offending to earn money: 67% said they had offended to earn money and support family.
- unable to access a lawyer: only 6% had access to legal representation.
- convicted of minor and non-violent offences: e.g. 36% of women were convicted of selling alcoholic drinks without a licence and 13% for other minor offences such as collecting wood in forests or failure to construct a toilet.
- unskilled: most women interviewed were semi-illiterate and unskilled
- of low educational status: only 21% had been to secondary school and none had university qualifications.
- in poor health: many women interviewed was living with HIV/AIDS.
- survivors of violence: 33% disclosed to have been subjected to domestic violence at one point in their lives.
- low earners: the majority worked informally in agricultural or domestic activities e.g. hairdressing or selling household goods.

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<sup>9</sup> Field research was carried out at the following Probation and Aftercare Services (KPAS) stations: Kibera (Nairobi), Mombasa, Nyeri, Maua (Meru), Garissa, Bungoma, Kisii, Kisumu, Makindu, Kapsabet and the Nakuru Probation Hostel.

<sup>10</sup> PRI and KPAS: Community service and probation for women: Lessons and recommendations based on a study in Kenya. Available at: <https://cdn.penalreform.org/wp-content/uploads/2016/12/Final-PRI-Briefing-Lessons-and-recommendations-Community-sanctions-women-WEB.pdf> Accessed 13/05/2017

## Issues for women completing non-custodial sanctions in Kenya

Box A outlines key learning points related to the issues affecting women completing CSOs and Probation Orders.

### **Box A: Research findings of issues affecting women completing non-custodial sanctions**

#### **1. Certain offences affect women more than men**

Women surveyed in Kenya serving Community Service or Probation Orders had been convicted disproportionately compared to men for offences linked to economic survival and supporting their families. These included income-generating activities such as brewing and selling of alcoholic drinks without a licence and collecting firewood from forests for cooking (an offence under wildlife conservation laws). Conviction for these minor offences has a huge impact on women's lives, often perpetuating poverty for them and their families.

#### **2. Pre-trial detention (PTD) is overused for women defendants**

PTD was experienced by 87% of women. However, the high completion rates of orders by women (above 95%) suggest that court attendance could have been secured without detention. Women explained that PTD disrupted their income-generating activities, impacted on childcare and led to them being held in dire conditions with infants. Among women who were granted bail, many could not meet the bail conditions required. Only 6% had access to legal representation and in some cases, delays in the submission of pre-sentence reports by probation officers resulted in extended periods of time in PTD.

#### **3. Importance of pre-sentence reports**

Sentencing guidance and pre-sentence reports (also referred to as social enquiry reports) and other tools used by probation services are gender-neutral and need to be adapted to allow courts to consider individual circumstances which may reflect gender roles or characteristics, in accordance with the Bangkok Rules. Judicial officers stated that in most cases they do request a pre-sentence report for women to guide sentencing, but that probation officers do not always provide reports on time or of high quality.

## Relevance

### Kenyan context

Lead Researcher for the Research Report, Ms Sarah Kinyanjui, stated that throughout her career, she had not come across any studies specifically addressing gender within the non-custodial setting. Ms Kinyanjui explained that she had previously led and lectured on the course 'Gender in Criminal Justice' at a university in Zimbabwe and maintained that it was incredibly hard to find relevant work on women and non-custodial sentences.

Many interviewees mentioned the ongoing gender-mainstreaming that has been widely accepted and constitutionally backed in Kenya generally, however, there is very little available research addressing the treatment and experience of women within the criminal justice system, and even less when specifically examining the probation related experience.

Indeed, a recent and otherwise comprehensive study of gender-mainstreaming within Kenya, Frosina and Mwaura (2016)<sup>11</sup> scrutinises areas including, social, health and economic status, political environment, access to resources and decision making, yet makes no mention of the criminal justice system.

The Africa Gender Equality Index<sup>12</sup>, compiled by the African Development Bank Group, rank Kenya as 14<sup>th</sup> among 52 active countries with data. The index does include an assessment of ‘Equality Before the Law’ (P.23), yet this focuses mainly on economic or household rights and constitutional equality, rather than access to justice and treatment.

Lead Researcher Ms Kinyanjui agreed with the idea that generally Kenya has done well in terms of gender-mainstreaming, however, she maintains that the “ignorance within probation systems hasn’t really been about gender issues, but rather there is just not enough emphasis on progress in criminal justice as a whole”.

## International context

Ms Chontit Chuenurah, Chief Programme Officer for the Implementation of the Bangkok Rules and Treatment of Offenders Programme, TIJ (the donor agency for this project), said that she was very impressed with the report. Ms Chuenurah noted that while TIJ’s work focuses mainly on South East Asia, the replicability of the project means that both the methodology and results are applicable to other regions around the world. “In Thailand we have many similarities with the Kenyan system and we also work with Myanmar, which is just beginning to look at probation, so it could help both groups.” Ms Chuenurah added:

*“The recommendations are broad enough to be applicable in other regions and it is more of a guidance on how to implement the Bangkok Rules”.*

These sentiments were echoed by UN experts, such as a representative from the United Nations Office on Drugs and Crime (UNODC), who commented:

*“Honestly, I have not seen anything to this level of specificity. We (UNODC) are custodians of the Bangkok Rules. We have worked with many countries about promotion and implementation and this is incredibly useful.”*

A second UNODC representative added that, “usually research is from England and Wales or other ‘developed’ nations, so to have this context is very welcome”. He went on to add that “this confirms some trends we see globally, but having specific examples really helps, especially with the link between women’s offending and poverty”.

The evaluator did not come across a single interviewee that suggested anything other than the notion that report was a hugely relevant piece of research, and after analysis of the document and interviews with technical experts, is of the same opinion.

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<sup>11</sup> Frosina, N. L. and Mwaura, G. M. (2016) [An assessment of gender mainstreaming in STI and the Knowledge Society in Kenya](#). African Centre for Technology Studies.

<sup>12</sup> [African Development Bank Group \(2015\) Africa Gender Equality Index](#)

# Effectiveness

## Representativeness

The Research Report notes within the ‘Research Methodology’ section that ‘whilst the sample size was small, interviewing respondents across ten regions provides a fairly representative sample and a diversity of contexts’ (page 6) and when questioned, KPAS staff and SPPS staff based in Kenya agreed that this was the case.

The districts were chosen to account for differences in culture, religion, use of non-custodial sentences and the urban/rural divide. The Lead Researcher, Ms Kinyanjui, did note, however, that “if there was more time and funding, it would have been great to visit more stations. It almost felt like every station we went to had something different”.

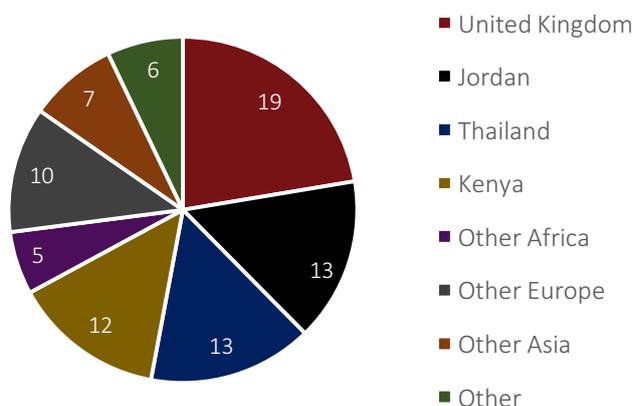
Ms Kinyanjui explained that she believed that the voices of the women involved in the criminal justice system were expressed and that the KPAS team were completely behind the idea and had complete ownership of the project:

*“They really engaged and did a lot of planning, it was really their project. What was great was although the proposal was PRI’s, the actual implementation was about hearing people’s stories and not telling them what should be done. It was not a top down approach.”*

## Accessibility

Unfortunately, none of the probation officers or magistrates interviewed had read the Research Report, or the Briefing Document. Several interviewees observed that the accessibility of information was a significant gap, especially to those in the field. Senior Probation staff noted that they did not have enough copies of the research documents to share the findings with all those in the pilot. Of all those interviewed in the field, only one had read the report (a County Probation Director). There were positive steps in place, however, in developing a Swahili version of the Briefing Document, in order to be more accessible to some in the field and for use in neighbouring countries in the future.

**Chart A: Unique Downloads of Research Documents**



Both the Research Report and the Briefing Document are available to download on the PRI website. Chart A displays the combined unique downloads of these two documents from December 2016 until March 2017.

A total of 85 downloads globally suggests that further and enhanced promotion of the material is required for the valuable materials to have impact.

The results suggest that the resources have been downloaded mainly by those within the close networks of the project partners. While the data does not include downloads from PRI staff, as the NGO has offices in both the UK and Jordan, it appears that interested parties have mainly come from these countries. The project donor, TIJ, is based in Thailand, so staff from this organisation and their network are a likely cause for another significant portion of the downloads. With the focus of the study being Kenya, it is unsurprising that one of the highest rates of download is found there.

Given the lack of resources in this area of study and the possible benefits to other contexts, greater distribution and accessibility of the Research Report and Briefing are required beyond immediate networks in order for the lessons from the study to be effective.

## Impact of research in Kenya

In the short time since the publishing of the Research Report (September 2016), KPAS have acted on the information learned from the study. The recommendations from the Research Report are comprehensive and 'Phase 2' activities within this project are clearly in response to the first of five recommendations aimed at KPAS<sup>13</sup>, as outlined in Box B below:

### **Box B: Research Report Recommendation 6 - Development of tools and guidelines**

Probation officers should incorporate gender-specific characteristics and needs in pre-sentence reports. To this end, the 'Practice Guidelines' and 'questionnaire' model structure used by probation officers should be reviewed and adapted as necessary to incorporate the Bangkok Rules and good practice. Additional guidelines, which explain the rationale and provide information about gender-specific needs and characteristics, may be useful when operationalising the tools.

Senior Probation staff have also used the results of this study to advocate for more female officers to be recruited and be placed into areas where they are absent. There has already been a successful placement in Muhoroni (a town within Kisumu County), which previously had no female staff to work with women offenders. Three hundred new probation officers will also have been recruited in 2017 and KPAS have stated that they intend to continue to place female officers strategically to ensure that the social enquiries into and supervision of women offenders can be completed by female officers.

The development of tools and guidelines and the conscious placement of female officers to locations where they are absent are two clear examples of where the research has had a very swift and positive impact. The potential for further impact of the research within Kenya is great, and although as yet unrealised, it is unrealistic to expect changes at this stage at the governmental or judicial levels, without a specific strategy to engage these parties. The clearly structured recommendations for each key stakeholder group within the Research Report, represent a clear pathway for future impact.

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<sup>13</sup> Recommendations of the Research Report are arranged aimed various levels of the justice system, including the government, the judiciary, KPAS and probation officers. Recommendation 6 can be found on page 25 of the report: <https://cdn.penalreform.org/wp-content/uploads/2016/10/Revised-PRI-Kenya-women-prisoners-report-WEB.pdf>

## Impact of research internationally

Both representatives of UNODC and TIJ mentioned that the consideration given to the structure of the report meant that the findings were impactful and effective. A UNODC representative, stated that results can be used as a good practice example for other countries and emphasised that:

*“The usefulness and beauty of the report is that it follows in such positive manner the international standards and guidance.”*

Ms Chuenurah, TIJ, noted that “the findings confirmed what we already know in terms of profile and characteristics of women in conflict with the law, which is helpful. But also, it makes us think more about the non-custodial part of the Bangkok Rules, so this has influenced our strategy a little – this could be something we work on in near future”.

Ms Chuenurah also noted that the report was strong on statistics and graphics, but felt that it would have benefitted from a greater level of qualitative data. For example, some case studies with a deeper level of detail. A UNODC representative agreed that the statistics were compelling, but that the impact may have been more pronounced if they were framed within the greater context. “At times I felt a bit lost as there was not much to compare the data [on women] to. I would have liked general information or statistics on the criminal justice system to be given first and then the specifics on women”.

A meeting was held in Nairobi to launch the Research Report and raise awareness of the issue with key stakeholders from Kenya and those with a regional mandate. The findings were discussed and the Short Film shown. A UNODC representative based in Kenya, explained that the findings were very well received by all who attended and even though she had not read the report she felt that:

*“The issues were extremely relevant and the learning will be valuable not just to Kenya, but to the wider East African region.”*

At this stage, so soon after the release of the report, the research cannot have been expected to impact international policy or practice, yet there is great potential for it to do so. Representatives from PRI, TIJ and UNODC all gave clear indications that they intend to use these findings to further develop gender-sensitive approaches elsewhere.

## Sustainability

### Sustainability within Kenya

Lead Researcher for the Research Report, Ms Kinyanjui, felt strongly that “there has to be a deliberate strategy on giving life to the report - if left as it is, it probably will not have the desired impact.” Ms Kinyanjui stated that the discussions she and her team had had with officers “did get them to think about gender sensitivity, but this was with only a few officers and could easily be forgotten”.

Ms Kinyanjui, was more positive about the impact the research had on policy leads and that the subsequent adapted training manual could have a real impact over the long term. Ms Kinyanjui emphasised that now is the time to act and that leaving dissemination too long after a project can lead to a weaker impact.

Senior Probation staff noted that they are considering the conversion of many of the Research Report's recommendations into policy directives. If this does take place, then national guidance could also be actioned via a government circular to give further weight and importance. Ms Kinyanjui also suggested that sending the Briefing Document to every station involved would be a positive move. She noted that confirmation and conclusions of the study would help the feeling that the opinions of those involved are valued, leading to greater sustainability on the ground.

There are clear intentions to embed the findings and recommendations from the research into KPAS policy and practice, and moves such as including amendments to guidelines and training modules into normal procedure will ensure the learning becomes ingrained in the culture of the department. An overall strategy to embed changes and engage key stakeholders including politicians and the judiciary will be required to ensure sustainability of the findings in Kenya.

## Sustainability internationally

While the movement to make positive reforms to the system in Kenya is underway, the process is very much at the initiation stage at the international level. Sustainability of the research would be represented by the creation of projects in other countries inspired by the learning from this project.

UNODC representatives felt that the Research Report would be a convincing base from which to raise funds, both within government and with international donors, in order to test the project concepts in other countries. One UNODC representative observed:

*“Funding for programmes always calls for evidence and information, but we don’t always have this luxury. Yet this investigation has been started in the proper manner, with research first and then clear recommendations, so now there is an excellent opportunity for UNODC to work with PRI and KPAS to take further steps.”*

Sustainability of the research on the global stage cannot be effectively assessed at this stage, and new projects to investigate these concepts are dependent on attracting funding. However, given the strength of the research, the interest of international agencies such as TIJ and the UNODC, and the fact that work in this area could contribute towards achieving SDGs, there are positive signs that the research can have an ongoing and sustained impact beyond Kenya.

## Conclusions

The first two objectives for this Research Report, which aim to highlight the experiences of both the female offenders and professional stakeholders involved in Community Service and Probation Orders, have clearly been met. All stakeholders commenting on the report were overtly positive in their assessments and the findings do provide a first step in filling a significant gap in knowledge.

Although the sample size was small, as a pilot project the findings still do gather a valuable cross-section of experiences. It was apparent that efforts were made in the planning of the project to cover the rich diversity of contexts in Kenya and that KPAS staff felt complete ownership of the research, which is a promising sign for longevity of research.

The findings are useful both internationally as a model of good-practice in terms of investigating the Bangkok Rules and gender-sensitivity within a given context, and as rich and valuable data to use as a basis on which to build specific domestic plans in Kenya, which is the essence of the third objective of providing guidance for implementation of reform. Indeed, the Research Report was the spur for Phase 2 of the project and changes to pre-sentence reports and guidance were amended according to these findings and expert interpretation.

Accessibility has been the clear issue, both in terms of probation staff in Kenya receiving the Research Report or the Briefing Document, and in terms of international downloads. However, the research is clearly relevant and combined with the further learning from the implementation of 'Phase 2', access to the new knowledge can be increased rapidly.

Given the short time between the release of the Research Report and this evaluation, it is difficult to determine the long-term impacts and sustainability of those impacts. However, there are positive signs that KPAS intends to act on specific recommendations from the report (and has done so already through 'Phase 2'). An integrated strategy to embed the recommendations and engage other key stakeholders including politicians and the judiciary will be required to ensure sustainability of the findings in Kenya. Members of international organisations have also indicated intentions to use the content as a good practice example of implementation and the structure as a model to replicate elsewhere.

## Recommendations for the Kenyan context

### To improve access to research resources

1. KPAS to provide the Briefing Document to all probation officers, with priority given to those who took part in the original research and those in pilot regions for the amended tools.
2. KPAS to identify Kenyan champions to disseminate the findings both internationally to attract further donors and nationally to sensitise criminal justice stakeholders.

## To improve impact and sustainability

The UNODC, TIJ, KPAS and PRI all emphasised the need to continue to ensure that the Kenyan government have ownership over next steps and implementation. While this is internationally pioneering research, it is the Kenyan Probation team who have the technical expertise and knowledge to operationalise recommendations on the ground and to explain the context both within Kenya and to an international audience.

3. KPAS to develop a long-term, strategy and action plan with key national stakeholders (including but not limited to senior judiciary) to action the Research Report recommendations for the increased gender-sensitivity of Probation policies and tools.
4. International Partners to support KPAS with strategy development and implementation where requested.

## Recommendations for the international context

### To improve access to research resources

5. PRI to actively promote the research materials by approaching relevant agencies and Probation Departments internationally to download the report, as well as greater online promotion.
6. PRI to target international and national agencies working on SDGs 5 (Gender Equality) and 16 (Peace, Justice & Strong Institutions) to share research widely.

## To improve impact and sustainability

This approach to context specific research has proven to be valuable in identifying issues and recommendations particular to Kenya. PRI should work with international partners such as the UNODC and TIJ to create a strategy for implementing replications of the research elsewhere, leading to evidence-based recommendations and implementation.

Regional plans could also be created, where a primary country is identified for initial research and subsequent countries selected for secondary implementation. Officials from the secondary countries could be involved in discussions and learning during the primary country's implementation. E.g. if research is carried out in Thailand, officials from other countries, due to also carry out research, such as Myanmar or Vietnam, would benefit from being exposed to the discussions before their own projects.

7. PRI to work with international partners to develop a long-term international strategy to engage Probation departments from other countries to replicate the research model globally.
8. Implementing partners should consider regional plans for research to be developed, so that neighbouring countries can be involved in discussions and learning.

# Short Film

[‘Equal justice: making community sanctions work for women in Kenya’](#),<sup>14</sup> is a Short Film, (less than 8 minutes) that highlights the benefits for, but also the challenges experienced by women serving Community Service and Probation Orders in Kenya and accompanies the earlier described Research Report. It also includes interviews with KPAS and PRI project leaders and women who have completed non-custodial sentences.

## Intended audience of the Short Film

The Short Film was created with an international audience in mind, to highlight the need and benefits of a gender-sensitive approach to community sanctions. It was envisaged that it could be viewed at international conferences or presented at round-table meetings to interested governments and official bodies (e.g. Ministries of Justice, Probation departments) and Intergovernmental policy-making and influencing institutions, such as UN bodies. It was also aimed to appeal to those directly involved in execution and implementation of non-custodial sentences, such as judges, magistrates and probation staff.

## Key objectives of the Short Film

1. To raise awareness that:
  - a. Non-custodial sanctions do not consider the specific needs of women
  - b. Relatively low resource intensive adjustments could help increase rates of completion for women on probation
2. To publicise KPAS’ efforts to embed a gender-sensitive approach to non-custodial sentences into the probation system
3. To encourage similar work and approaches in other countries.

## Relevance

All parties interviewed agreed that communicating the results via a visual medium is a valuable method of spreading the messages of gender-sensitivity. Representatives from the UNODC stated that the content is very relevant to their work and they intend to use it in training on the Bangkok Rules in the future. One UNODC representative explained:

*“I am very visual and this was very well done. The structure and perspective would be valuable to policy makers as an immediate target, so is an excellent advocacy tool, but also relevant to practitioners. Our need for better understanding of the topic is so deep and vast that this can have an effect even as a general overview.”*

The absence of materials that focus on the experience of women completing alternatives to imprisonment is a clear indication of the strong relevance of this Short Film. The intended environments for the viewing of the material greatly benefit from the addition of visual information and storytelling.

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<sup>14</sup> [‘Equal justice’: making community sanctions work for women in Kenya](https://www.penalreform.org/resource/equal-justice-making-community-sanctions-work-women-kenya/) (also referred to as the ‘Short Film’) Available at: <https://www.penalreform.org/resource/equal-justice-making-community-sanctions-work-women-kenya/> [Accessed 15/05/2017]

# Effectiveness

## Accessibility of the Short Film

As with the Research Report, the Short Film could have been accessed by a much larger global audience. Table 1 displays the views of the Short Film from December 2016 to March 2017.

The Short Film was shown at the meeting to launch the Research Report findings and PRI have intentions to use it at future international events. Indeed, the Short Film has already been used by the PRI Middle East and North Africa (MENA) Office as a training aid during a

Table 1: Global Views of the Short Film

Host	Views
Vimeo:	147
PRI Website:	12
<b>Total:</b>	<b>159</b>

project on alternatives to imprisonment in Tunisia. UNODC representatives also stated their intentions to use the Short Film at any future training sessions on the Bangkok Rules, however, the resource has the potential to speak to a much larger audience and greater promotion is required to facilitate greater international awareness.

## Impact of the Short Film

All those interviewed who had seen the Short Film, mentioned that it gave extra longevity to the impact of the research on them. Ms Kinyanjui, who led the research on which the Short Film was produced, was impressed and remarked that:

*“Even after having gone to the field, watching the Short Film was great! It really makes a lasting impression.”*

The fact even the lead researcher of the original report could take something new from the visual presentation, demonstrates the effectiveness of the Short Film to communicate the key messages.

A representative from the Swedish Prison and Probation Service (SPPS), based in Nairobi and also working with KPAS, voiced his admiration for the Short Film, saying

*“I am a bit jealous! It was a good compliment to the report. It gave flesh and blood and life to it. We were thinking of stealing the idea! It is really good as an introduction to the topic.”*

The SPPS representative went on to point out that people are easier to connect with via audio-visual materials and felt that often brochures are not read beyond the day of training.

Ms Chuenurah, TIJ, felt that “the Short Film succinctly captured all the key areas” and that “it was also great to hear from people directly involved in the conceptualisation from KPAS and PRI.”

An online survey carried out by PRI on their website asked viewers to comment on the Short Film. The sample size of 14 respondents is too small to draw any meaningful conclusions, but it is still interesting to note that:

- 79% of respondents found the film either ‘motivating’ or ‘extremely motivating’.
- 64% said it increased their knowledge either ‘quite a lot’ or ‘a lot’.
- 93% said they would take at least one further action (the most popular being telling a colleague at 50%).
- 57% said they would take two or more further actions.

While the mere statement from a respondent that she/he would take a further action, is no guarantee that this would actually take place, it is a good indication that the film was impactful in terms of motivating the viewer to act in some form.

## Technical aspects of the Short Film

Senior Probation staff noted that at some points during the film, it is not easy to tell whether the subject of discussion was a Probation Order or a CSO. They felt that the film maker may not have fully appreciated the difference and the Short Film could have benefited from greater differentiation. They questioned whether further editing of the Short Film would be possible, e.g. a voiceover or text to explain where what Order a woman had received and why.

While young offenders and dependents of women were not the subject of this project, a substantial part of the reasoning offered for the alternative considerations for women, is that there are implications for families and especially children, when a mother is imprisoned. A UNODC representative asserted that she would have liked to have seen and heard more from and about these families, “as a viewer, I would have liked to have heard these voices. Also, the positive impacts on them, where the woman is not in custody.”

While it would be interesting to hear the issues and opinions of the children of women who have been or would have been imprisoned, PRI’s Project Manager explained that it was challenging to find women offenders willing to speak in front of the camera, even with assurances of anonymity, and that the project team decided not to put children through such an exercise. This approach is also in line with PRI’s Child Protection Policy, which emphasises that the foremost consideration is that any action taken should do no harm to children.

Right: Screenshot from the Short Film of women completing Community Service



## Sustainability

Senior Probation staff said that the Short Film is ‘useful and informative’ and that they felt that there is a longevity to the film, as the issues will remain relevant and will not disappear overnight. They added that greater sustainability could be achieved with further publicity

material beyond the Short Film for a Kenyan audience. Suggestions included using some of the Short Film or some infographics on a television advertisement, the creation of pamphlets with similar information, or posters that highlight the importance of promoting gender-sensitivity within criminal justice.

## Conclusions

The impact of the Short Film has been limited by the number of people that have viewed it, but this is an easily rectifiable issue. Those who have seen the Short Film have emphasised its effectiveness in communicating the messages in a way that a written report is unable to.

The Short Film succeeds in expressing the importance of taking a gender-sensitive approach and the reasons why. Those questioned about the Short Film felt that it was powerful to hear directly from the women involved and from those involved in design and implementation, so that the project could be explained at the conceptual level too.



Above: Screenshot from the Short Film of Andrea Huber, Policy Director, PRI

One of the objectives of the Short Film was to highlight the idea that ‘relatively low resource intensive adjustments could help increase rates of completion for women on probation’; and the viewer hears women directly explaining the beneficial impacts of regularly meeting with a probation officer or learning skills during the completion of their non-custodial sentence. These interventions are presented as genuinely positive experiences for the women, but perhaps there could have been a little more detail on what occurs during those interventions that helps the women, or what offences were committed that required these interventions to prevent reoffending. Of course, there is only so much information that can be covered during a Short Film and the idea that some small changes can be effective is covered, however, presenters should be aware that viewers may want greater detail on this area. This could even be a good point of discussion following the Short Film.

The Short Film certainly highlights the efforts of KPAS to reform processes and improve the experience for women, which was the focus of ‘Objective 2’. International experts were full of praise for the Short Film and its potential to emphasise the need to reform on a global scale. Several interviewees explicitly stated that they intended to use the Short Film in other international contexts and encourage other countries to engage in similar initiatives, giving a clear indication that the third objective of the film was achieved.

While probation officers in Kenya were not the target audience for the Short Film, interviewees were unanimous in suggesting that the Short Film would also be useful in Kenyan domestic training of probation officers and magistrates, meaning that this aspect of the project would be even more impactful.

# Recommendations for the Short Film

## To improve access to the Short Film

9. KPAS to actively promote the Short Film and use it as a tool to help involve key Kenyan stakeholders to engage further with the research findings and wider gender-sensitive agenda.
10. PRI to actively promote the Short Film by approaching relevant stakeholders to engage further with the research findings and wider gender-sensitive agenda.

## To improve impact and sustainability

11. KPAS to produce more resources to support the objectives and key messages of Short Film and to direct the reader to watch it.
12. All parties to use the Short Film in all future training on the Bangkok Rules and consider it for use as part of centralised governmental training of new probation, police and prison officers as well as new magistrates.

## To improve technical aspects

It is understandable that a Short Film made with the intention of appealing to an international audience, may not go into explicit detail around the exact nature of Probation work, however, clearly defining the different non-custodial sentencing options is very relevant for this topic and would be an advantage in future productions.

Although the final version of the Short Film was shared with KPAS senior management before release, involving implementing probation officers in earlier stages of resource development can help ensure that any technical changes are made before distribution.

13. Any use of the Short Film should also be accompanied with a discussion of the advantages and disadvantages of differing community-based sentencing options, such as fines, Probation Orders and Community Service Orders.
14. Subject matter implementers to view early versions of visual resources to ensure technical points can be corrected before distribution.

# Phase 2 Activities

## Amended Tools

Following the recommendations of the Research Report, KPAS worked with PRI and international experts to amend the 'Pre-sentence Report' structure and the 'Guidelines for Social Investigations and Presentence Reports', used by probation officers, with the aim of improving the gender-sensitivity of the process.

After amendments were agreed by all parties, two locations, Kisumu and Nakuru, were identified as pilot locations to introduce probation staff to the tools and emphasise a new approach to working with women.

## Key Objectives

### For amending the tools

1. To provide probation officers with the tools and guidance to facilitate a more gender-sensitive approach to working with women completing non-custodial sentences.

### For piloting the amended tools

2. Raise awareness among key implementing stakeholders that:
  - a. There is a need to consider the gender-specific situation of offenders
  - b. Small adjustments can lead to improved community sanctions for women
3. To identify any further changes required to the tools before their finalisation.

## Implementation Methodology

Neighbouring counties Kisumu and Nakuru were selected as pilot locations due to the logistical advantage of a close proximity to Nairobi and the need to implement and evaluate the project within a short timeframe. Other advantages were that they have probation stations that are located in both urban and rural areas and are counties which have seen previous investment in training on the Bangkok Rules.

A team of senior probation staff travelled to the pilot locations and met with probation officers in their stations to carry out training, or 'induction clinics'. All probation officers for each court were in attendance, including some called-back from leave, so that the entire team was sensitised. The team also spoke individually with judicial officers where possible.

The induction clinics broadly covered three areas:

- An overview of the Bangkok Rules and why they are important
- An overview of the Research Report findings
- An introduction to the amended tools and on the relevance of the tools to supervising female offenders

## Methodological limitations

The senior probation team have many different duties and the clinics needed to be conducted within a short timeframe. Some of the probation stations are in very rural areas of the pilot regions, which meant that each probation station did not receive an equal amount of time spent in discussion of the topic. Officers reported that the clinics lasted from between two hours to half a day. In some cases, magistrates were sensitised, and on one occasion a judge, but this was based on opportunities at the time the induction team were at a station, in addition to, rather than a part of the planned strategy.

While the findings of the Research Report were explained by the senior probation team, they noted that there were not enough copies of the actual Research Report document or the Briefing Document to provide to the probation officers in the piloting districts.

## Relevance

Several actions could have been taken following the recommendations of the Research Report; the decision to focus on the pre-sentence report was explained by Mr Clement Okech, Deputy Assistant Director of Probation, KPAS:

*“We chose to focus on the pre-sentence report as this is the main report used by probation officers and is the bridge with the magistrate. With the resource constraints of the project, we strategically chose this report as we felt that it was the best opportunity to highlight the issues of women and connect with the court.”*

The importance of training both women and men was also highlighted, even as a logistical issue. Many stations throughout Kenya are run by men, and in a small number, there are currently no female staff. It is important that the male officers understand the importance of the differing approach to female clients and for the managers to be able to support their staff in their efforts. Including men in the training has obvious benefits for sustainability and ownership, but the space for discussion on the topic also allowed senior staff to provide clarity of approach where there has been confusion in the past. For example, within the Probation Act, it is clear that female clients’ cases should be led by female probation officers, but the CSO Act is silent on this issue. The training allowed staff to emphasise the important elements of supervision for female clients and address any doubts.

Senior probation staff gave examples of occasions where they became aware that a magistrate had remanded women to custody where they knew that there were no female probation officers to conduct the assessments. It is therefore important to sensitise male officers to be empowered to advocate for female defendants in these cases.

The Nakuru Regional Probation Coordinator, also pointed out that if this approach had been in place previously, then some issues could have been avoided”

*“Sometimes we have had a lady who we didn’t know was expecting, and it wasn’t until her belly got big when she was in prison that we realised. If our officers had been sensitised, then it could have been prevented.”*

The Nakuru Regional Probation Coordinator added, “these actions are very relevant and have a practical impact (...) and if we don’t do this, we are not being alive to progress on the Bangkok Rules. It is an eye opener for things we have not been considering for a very long time”.

A female probation officer from Naivasha, Nakuru County, supported the training by emphasising that, “it is important to know what the international community thinks and what people’s rights are, or I may even violate them unknowingly”. She explained an instance of this occurring where a woman with elephantiasis was remanded in prison. The probation officer only found out about the condition when prison officials informed her, as she had not asked about medical conditions and the woman had been too intimidated at court to speak about it. The probation officer stated that had she have known to ask about such conditions, she could have requested non-cash bail.

In some cases, even those who had not been privy to the specific project sensitisation, still spoke favourably about the relevance and importance of thinking about working differently with women within criminal justice. A male magistrate local to Maseno (Kisumu County), stated, “the Bangkok Rules are very important because women and children are the most adversely affected. We have a very paternalistic society and cash bail can be hectic for a woman if there is no man willing to support her, meaning she is more badly affected by the system.” He also added that he explains to people that:

*“Women are the CEOs of households. Locking them up means everything else will end in ruin.”*

The choice of selecting the pre-sentence report and the accompanying guidance appears to have been a relevant, considered and popular move. The report is the key document when working with a person going through the court process and is the key source of information used by magistrates when making their decisions about whether to order a non-custodial sentence. All probation officers and magistrates encountered, spoke of the sensitisation and amendments to improve gender-sensitivity as a positive move and relevant to their work.

## **Alternative methodology present in the pilot regions**

Another agency was also working with KPAS on related issues during this period. In Kisumu, specific training on probation and interviewing was delivered by foreign technical experts on a ‘gender-neutral’ European system, with the aim of embedding it within Kenya. The approach clearly differs from the methodology within this project, which supports KPAS staff to amend the current system and facilitates them to train their own staff.

The evaluator asked international stakeholders about their experiences with different approaches to technical assistance. A representative of UNODC was clear; “I have seen many examples where countries have tried to translate an approach or tool in a county with a different background. (...) Over the past 10 years the UN and international players have understood that it is something not feasible or positive and does not bring positive impact”. She explained that “this is why it is important to develop general principles, such as the Bangkok Rules - then it’s up to the country how to implement at the national level”.

Ms Chuenurah, TIJ, stated, “we do not promote any approaches that are gender-neutral as it goes against recommendations of the Bangkok Rules”.



Senior Officers from KPAS stated a clear preference for the approach that invested in working with KPAS to reform its own policies and processes. Indeed, Mr Okech of KPAS (left), confirmed the preference for this approach to training and the ownership he and his team feel over the project:

*“From concept development to implementation, the project has been ours, as those with the relevant knowledge and experience. We and PRI have the same goals. We are together.”*

With these points in mind, it is apparent that the approach taken through this project, of evolution, rather than revolution, is a more participatory model of implementation, leading to greater likelihood of sustainability and is also supported by international stakeholders.

## Effectiveness

### Effect of training

The nature of the training was a KPAS initiative: to meet with the implementing staff in their own stations via a series of ‘induction clinics’ throughout the pilot regions. Mr Okech, of KPAS, explained that this decision was taken so that they could speak directly about the specific context for those officers. He stated that small groups led to fruitful discussions and the chance to look at real case files and reports and discuss areas for development.

All probation officers interviewed gave positive feedback about the training and were very happy to have had the opportunity to be involved. One probation officer from Nakuru said:

*“To know the issues that are being discussed at high levels now made us realise how important we are in mainstreaming of gender rules.”*

Some officers did also offer some ways training could be improved in the future:

*“It needs to be more intensive. It was a little rushed and there was more to discuss. (...) It’s important that it’s an ongoing process and not just one day, otherwise it can appear more of a ‘PR thing’ rather than serious, deeper impact needed to give the weight it deserves.”*

Probation officers across both counties suggested that a greater level of discussion on practical challenges and real-life examples or in-depth case studies would have been valuable, although in Nakuru, officers did speak with great appreciation for the additional arrangements put in place by the County Probation Director (see Box F p41).

## Changing understanding of a gender-sensitive approach

There was a great diversity in understanding of gender-sensitive practice among probation officers before the training. Some officers had already attended Bangkok Rules training (conducted by Legal Resources Foundation [LRF]) or had completed the PRI e-learning course<sup>15</sup>, and had passed on knowledge to colleagues, while others admitted to not having thought of treating women differently. One officer from Maseno, Kisumu County, noted:

*“Now I am able to realise why women offend. Before I would just generalise and not look at the background, but now I see there is a reason I should focus on this.”*

The vast majority of interviewees claimed that they had always intuitively treated women differently, but that this evidence-based backing helped to improve their performance. The ability to point to international standards, which guided their more informed actions, appeared to be a significant factor for many. Some comments from officers included:

*“I feel empowered because you don’t just make recommendations, but you have the backing for this justification.”*

*“When I tell magistrates about the Bangkok Rules, I also mention bonds [meaning access to non-cash bail], and they listen.”*

Some officers pinpointed significant learning points, such as those illustrated in Box C:

### **Box C: Specific learning point identified by probation officers**

*“The report should be confidential. I now don’t interview at cells where it is crowded. (...) [the report] should always be centred towards the offence and should ask objective questions, taking into consideration not to stigmatise them and not ask questions about other things.”*

*“After training, I used the guidelines to get more information – specifically the needs and circumstances unique to women. I got a deeper insight. Apart from offence, I look at reasons as to why they commit offence. It also gives a good layout when preparing reports.”*

*“It was effective! (...) I’d never written that she has X number of children or had no father figure; but now I want to know more about her.”*

The induction clinics managed to bring into focus some specific issues for probation officers to consider when working with female clients, even for those who felt that they had previously treated women differently and the knowledge of the Bangkok Rules seemed to have given an additional layer of conviction to the efforts of the probation officers.

<sup>15</sup> Penal Reform International, [Women in Detention: putting the Bangkok Rules into practice \(e-course\)](https://www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice/), <https://www.penalreform.org/resource/women-detention-putting-bangkok-rules-practice/>

## Effect on relationships with female clients

In both pilot regions, probation officers mentioned that they had noticed an improvement in the way that female clients related to them after adopting the new gender-sensitive approach:

*“I used to treat them just as offenders. Now I have a better understanding I am more sympathetic and find out who they are and why they may have committed offence. The women have been more accepting of my questions and open-up more. If you show that you want to understand they are more friendly and give more details about their life.”*

Female Probation Officer, Molo, Nakuru County

*“They trust more because we are addressing their issues and now want guidance in even more ways. Rather than being strict, you relate in a more humane way (...). Sometime that’s all they need – someone to listen. They really appreciate. It even improved our confidence in the courts. I believe in future, the community will start appreciating. They will see we are helping people and we are preventing future crime in the community.”*

Female Probation Officer, Winam, Kisumu

## Effect on approach to pre-sentence report writing

Several officers spoke passionately about the new approach and maintained that it genuinely changed how they interviewed clients and improved the quality of their reports, including a female probation officer from Winam, Kisumu County:

*“Before I would have brushed over issues and used closed questions, not taking time to probe and find out details. Now I engage them more and use open ended questions – giving time to express themselves and explain. I also specifically find out gender related issues – not just criminal. For example, I would never have asked about reproductive health before.”*

When asked whether he had noticed any change in the quality of reporting from probation officers over the last month, a male magistrate in Maseno stated, “I have received much more detailed pre-sentence reports, including details from neighbours and family and exactly who they are, rather than before when they didn’t say much about them or agencies involved.” A female in Nakuru echoed these sentiments, “I did notice a change in the reports; they are now much more detailed and in depth. I have only seen this change in reports for women and now want to see this approach used for men”.

Whilst conducting interviews in the probation stations, probation officers were asked to provide examples of reports completed both before and after the training. Below, Table 2 displays the identifiable differences in reports for women offenders.

Table 2: Observable changes in report writing for female clients

Station	Post-Training	Comments
Nyando, (Kisumu)	<ul style="list-style-type: none"> <li>▪ Structure different - includes both 'particulars of offence', followed by 'circumstances of offence'.</li> <li>▪ Under 'source of information' does not identify the community members.</li> <li>▪ Village, nearest school and nearest market identified.</li> <li>▪ Conduct/Character just says 'good'.</li> </ul>	Clear improvement in collection of data. Still needs greater expansion of details and identification of sources. Both old and new report recommended non-custodial sentences based on child caring responsibilities.
Nakuru	<ul style="list-style-type: none"> <li>▪ Identifies family background: her mother died when she was 6 months old and the father always absent.</li> <li>▪ Identified high achievement at school but dropped out when she became pregnant.</li> <li>▪ Clear detail on current circumstances as a carer of an elderly sick relative, her own infant and others.</li> <li>▪ Detail on context of the offence - exploitation by neighbour who employs women to sell chang'aa</li> <li>▪ Identifies a village elder who has promised to ensure the offender keeps her word.</li> </ul>	The context has been drawn very well and it is clear that the offender requires alternative forms of income generation. If empowerment was available, this would have been a relevant support mechanism. No structured form was completed; the details were set out in an essay structure.
Molo (Nakuru)	<ul style="list-style-type: none"> <li>▪ Includes dropping out of school due to finances.</li> <li>▪ Good level of detail about home context and single mother to four children.</li> <li>▪ Committed the offence (traditional alcohol) to raise school fees</li> <li>▪ Includes family and local administration's attitudes</li> <li>▪ Includes Children's Officer's view on best interests of the children.</li> </ul>	No structured form was completed; the details were set out in an essay structure. Doesn't give personal details of family or those giving views.

Improvements in the quality of the reports completed were observable from the examples provided, however, there were also easily identifiable areas for improvement. Indeed, while accompanying the evaluator to the different stations, the County Director for Probation continued to coach officers on ways to improve. It is unrealistic to expect every officer to implement every suggestion within one month of training, therefore, continued monitoring and support should be provided, with concerns and queries discussed and addressed.

## Effect on supervision of women offenders

While the changes in structure and the adapted guidelines focused on the pre-sentence reporting stage of the probation process, discussions during the clinics also explored differences that can be made once a woman has received a non-custodial sentence. Several officers took the initiative to apply the gender-sensitive approach to later stages in the probation process:

*“Now we are more keen on where you place women in the community – which agencies to work with. We think about if she has a child and whether she would have to go with the child. How long will it take her to get there and how long can she stay? Even the pregnant women we think differently about. We make sure they are assured they can have a break to rest and after delivery she should do only a light job.”*

Female Probation Officer, focus group, Maseno, Kisumu County.

*“The strongest advantage is when it comes to the intervention and rehabilitation plan. It really guides you to prepare good intervention plans and eventually good treatment plan to help work with offender to help them change and reduce reoffending rates.”*

Female Probation Officer, Winam, Kisumu County.

The long-term effects of any of these adjustments made by probation officers will need to be monitored and analysed, but for the purposes of this project, the gender-sensitive approach appears to have been taken on-board and executed throughout the probation process.

## Ease of use of the amended tools

During a focus group in Maseno, Kisumu Country, probation officers made the below observations on the changes in structure to the pre-sentence report:

*“Changes have made the summary more detailed so that it holds the important facts, so that a magistrate can read it and see information easily (...). I also like the suggestion of writing the reports in a way to guide magistrates as much as possible to consider non-custodial options.”*

In Nakuru, unlike Kisumu, they do not have access to an online system for reporting and continue to use the old hand-written system. These differing approaches to report writing may have also effected how this training was interpreted, as those in Nakuru did not adopt a clear structure to the reporting. A female probation officer in Nakuru noted, “we did not discuss a change in structure but now we include more details, e.g. drug and substance dependency - physical health; things like that, which we didn't bother with before”.

Right: Case-file information storage at a court.



## Speed and impact on caseload

Whether the change in approach to interviewing and the amendments to the tools had an impact on the time demands of probation officers remains unclear. Some claimed that the increased travel to the community and the greater level of detail led to cases taking longer, while others felt that the speed was increased or that there was no impact on their workload as they have always had to conduct interviews.

At Kisumu Court Station, the Probation Officer in Charge (OC) explained that there had been five cases of female offenders handled since the training and that, “before we could wait two days to speak to relatives and three to complete a report. Sometimes we would ask for more time, but we now no longer wait. We write an instant report and call relatives to come to court. We also call the Sub Chief or Elders to come”. Officers did also explain that relatives or witnesses cannot always attend immediately and they still do conduct phone interviews. Some that have attended have also complained about travel costs.

A female probation officer in Nakuru, maintained that she had not noticed a difference in workload despite the changes. However, she did note that there are periodical fluctuations in the amount of probation cases, “while three cases may be normal, other times in the season we have ten pending in a week. In December, with festivities, people are arrested more, as well as at election time. Also after the courts come back from leave”. This presents a clear case for monitoring the effects of the project over a longer period.

While direct impacts of the sensitisation of probation officers’ caseloads are unclear, there may have been indirect implications where sensitisation influenced the expectations of magistrates. For example, officers in Winam, Kisumu County, noted that the number of referrals to probation from magistrates (and thus, their workload) had increased:

*“One day of training changed many things. The reports are more comprehensive and so take longer, but we are also now receiving more referrals from court as their confidence in us has increased and information sharing with magistrates has improved due to the quality of our reports.”*

Female Probation Officer, Winam, Kisumu

A male probation officer in Nakuru County, felt that the increase in speed, demanded by magistrates now wanting to give women’s cases priority, led to a compromise in the reports’ quality.

*“One-day reports do not have the same quality. It means we don’t involve all the others who don’t come to our office. A two to three-day period would bring better quality.”*

In Naivasha, Nakuru County, some officers also noticed a change in response from other stakeholders. A female officer noted that, “referrals have gone up since the training. Even the prison is now telling us ‘*this lady has this problem*’, and want to know what can happen”. Officers at this station noted that usually there were two or three referrals per month, but that in March 2017, the month immediately following the training, there were nine.

## Use of non-custodial sanctions

Several probation officers stated that previously it was common practice for them to recommend custodial sentences, but that after the training they have solely recommended either CSOs or Probation Orders. One female officer from Molo, Nakuru County, stated that she recommended that all four women she had worked with since the training should not face prison terms, and that this training had also influenced the type of non-custodial sentence she now recommends for women:

*“Before, if I felt that a woman was suitable for a non-custodial sentence, I would recommend a CSO, but now I favour probation. On probation, the woman has time to feed and attend to her children, but on CSO it is harder to have time to gather funds for the children.”*

A female Kisumu probation officer, explained the effect that the new approach had on the decisions made by magistrates for women at court:

*“Since the training, I have handled five cases of women. The investigations were exhaustive. I realised that they had many issues that mostly came from the family set up. All were sole providers for their family and committed crimes out of desperation. They needed empowerment and counselling and I had to send two of them for family planning, as they were young and already had children with different men. They were both illiterate and didn’t know there are services free to help.”*

The officer stated that she believed that if she had adopted normal procedures, the magistrate would have given custodial sentences for all the offences, or that if fines given, the women would not have been able to pay them. Table 4 displays the offences committed by these five women, and a comparison between the sentences usually received for such offences and those actually received since the officer had received the induction training on gender-sensitisation.

**Table 4: Difference in sentencing outcomes for women since intervention**

Offence	Usual Sentence <sup>16</sup>	Sentence Received
Brewing illicit liquor	Fine of more than KES 50,000 (GBP £374 or USD \$478) <sup>17</sup> or 6 month prison sentence	1 year probation
Brewing illicit liquor	Fine of KES 30,000 (GBP £224 or USD \$287) or 3 month prison sentence	6 months probation
Brewing illicit liquor	Fine of KES 30,000 or 3 month custodial sentence	6 months probation
Fixing electricity without authority	Fine of more than KES 100,000 (GBP £747 or USD \$956) or prison sentence of more than 3 years	2 years probation
Obtaining money by false pretences	Fine of more than KES 100,000 or prison sentence of 2 years	2 years probation

<sup>16</sup> Note. All ‘Usual Sentence’ descriptions are estimates based on the Probation Officer’s experience.

<sup>17</sup> Exchange rate calculated using Oanda Currency Converter and rounded to nearest GBP or USD.

<https://www.oanda.com/currency/converter/> Accessed 25/04/2017

## Challenges

### Magistrates

A theme that was repeated throughout several interviews was that magistrates do not always read the reports submitted, or read only the recommendations without the whole context. One officer noted, “I may spend a week on a case. Go to the community, speak to local administration, parents, neighbours and community at large. I can put in a quality report and present it, but they don’t even look at it and give a custodial sentence”.

Without the cooperation of the magistrates, the improved report quality may be redundant at the pre-sentence stage. One example stood out as a demonstration of the need for collaboration across criminal justice agencies as described by a female officer in Box D:

#### **Box D: Importance of early intervention and collaboration between justice agencies**

“One woman who was mentally depressed was charged with child neglect. In court, she didn’t answer questions or talk at all. The magistrate called for a probation report and I did an enquiry. I explained that she was homeless and needed support, but the court did not heed my report. The woman had explained that she had not neglected her child, but she had nowhere to go; she was sick and they were on the street together in the rain. She spent a long time on remand and during that time the prison examined her and found that she was HIV positive, which came with more trauma.

Eventually the magistrate got frustrated and just discharged her when she refused to take plea. Unfortunately, the magistrate did not see that there was a recommendation that she be sent to a rescue centre, which had been willing to take her. After spending three months on remand, she was released from prison, but there was no longer a vacancy at the rescue centre and the only other place don’t take people with HIV. The prison called me about the woman because she had nowhere to go.

I talked to the police officer from the gender desk who knew her case well and we arranged for a boda (motorcycle taxi) to pick up the woman and take her to the police. They allowed her to stay in the police cells at night for a while and eat prisoner food, but leave during the day. They helped her on her feet and even collected some money from around the station so that she could start to make and sell food and secure a place to stay.”

Sensitisation of other stakeholders was outside the scope of this project, yet if the magistrate in the case had been fully sensitised to the gender-sensitive approach, then it is likely that the woman would have been spared three months of custody and may have got help she required at an earlier stage. The support that she did finally receive came from the good will of police and probation officers, who went beyond their duties to help.

### Support structures during non-custodial sentences

Whilst enthusiastic about the improved process, probation officers were frustrated about the lack of support programmes to which they could refer women offenders. A common example was that many of the women are deemed to need counselling. Some probation officers have received some low-level counselling training, yet this is not sufficient in terms of skill level or availability. Box E displays comments from probation officers on this topic:

**Box E: Support structures required during non-custodial sentences**

*“It is hard to follow through with non-custodial sanctions for women when there are few agencies to refer them to. The lack of support structures, such as resettlement centres and hostels is an impediment. It can leave an officer hopeless and frustrated.”*

Female Probation Officer Nakuru

*“The major problem is empowerment. Women have real issues in terms of economic status within family or psychological issues usually emanating from family situation. They can really be good citizens with the appropriate help and can live a good life, but opportunities to empower them are not there.”*

Female Probation Officer, Winam, Kisumu

Some officers were aware of women who had skills or experience such as in hair salons or soap making, but there were no institutions available to support their empowerment. It was also mentioned that previously there had been some investment in an empowerment programme, but that funding had been discontinued. Others mentioned that men have historically been favoured for empowerment. A male probation officer from Nakuru explained, “bicycles, carpentry tools and resources usually go to men and they don’t really target women so much”.

Assessment or provision of support infrastructure available to women offenders, were also beyond the scope of this project, but findings from this evaluation suggest that further steps are needed to ensure that support is provided to those who require it and so that women are not criminalised for their circumstances.

**Prosecutors**

While some senior probation staff noted that there had been improvements with the prosecutor role being changed to be carried out by a lawyer, rather than a police officer, several the officers noted further difficulties with this group:

*“Prosecutors don’t know much about probation, or what we do when writing report. Most think we are always biased against the victim and that victims are not properly addressed. Most of the time they also don’t have knowledge of the importance of community based corrections and they really need to be sensitised.”*

Female Probation Officer, Winam, Kisumu County.

### **Victim and community perceptions**

Probation officers mentioned that the victims often did not agree with what they saw as too lenient a sentence. During a focus group, a male probation officer explained “a man does not want to look at it like she is a mother looking after children; he just wants a punitive sentence as he feels he has been wronged.” The officer went on to note that “in that case it is up to us to write a convincing report in a way to guide the court and recommended non-custodial sentences if appropriate.” The group agreed that it is difficult to gain information from the victim in these circumstances and so at times, there are still gaps in their reports.

Officers from Kisumu Court Station also observed that people in the community have become accustomed to expecting that a person will be remanded for two days if charged with an offence, and thus have been surprised when an instant report, recommending against remand, has led to the accused returning home the same day. The officers called for community-based sensitisation to avoid any problems.



Above: Kisumu Court Station

### **Cultural Differences**

Kenya is a very diverse country and some interviewees noted the need to understand the culture of all places that a new approach is taken to and that localised adaptations will need to be made. A male magistrate in Molo noted, “in Kissi they take chang’aa, and offer it to guests, so don’t think of it as a criminal offence”.

There was a further question of whether to include a client’s tribe in reports, due the differences in cultural practices. A female probation officer in Molo, gave the example of how it is accepted that members of the Maasai tribe are legally able to carry what would be considered a weapon if a member of any other tribe was holding it. Such broad differences suggest that there are likely to be other nuanced differences in expectations of women across different areas of Kenya, which should be considered when implementing any new approach.

### **Accessibility**

As is the case with most probation stations throughout Kenya, staff voiced concerns that they did not have sufficient resources to be able to complete their work to the level that they would like to. Every station examined in this study stated that they did not have sufficient modes of transport (or they weren’t suitable for the terrain), enough funds for fuel or for phone credit. This is not a challenge unique to the implementation of this project, however, the challenge certainly is pertinent and as many probation officers are now enthused to collect quality data, the lack of accessibility could be a threat to the effectiveness and sustainability of the project.

## Unexpected outcomes

### Local initiative

Phase 2 of the project involved training by senior probation staff and trialling of revised tools by probation officers in two pilot regions. County Probation Directors were involved by KPAS head office, but exceeded the expected commitment and additional activities were completed in Nakuru, thanks to the initiative by the County Probation Director.

Having ‘shadowed’ the induction clinics in several stations in his county, the County Probation Director observed that not all the staff were fully convinced and that greater time to discuss and scrutinise the approach would be beneficial. He also noticed that they were overwhelmed by the length and detail of the guidelines. After making these observations, the County Probation Director took the initiative to support his staff and the project goals, as explained below in Box F:

#### **Box F: Description of local initiative taken by Nakuru County Probation Director**

##### **Meeting of local probation leadership**

A meeting was held with the Officers in Charge from each of the Probation Stations in the region to discuss the gender-sensitive approach and how best to sensitise their officers. OCs were asked to talk to their teams in more detail about the approach and collect their thoughts and questions to bring to a regional meeting.

##### **Summary Documents**

The County Director made material more accessible to officers by providing summaries of international standards (Bangkok Rules), of the Guidelines for Social Investigations and Presentence Reports, and on justifications for a gender-sensitive approach.

##### **Regional Meeting**

Probation officers from all four project stations of the region were called together for a whole day to discuss the new approach in detail, identify challenges, exchange ideas and answer any outstanding questions.

Every officer interviewed in Nakuru, spoke with immense praise for the initiative. For example, A female probation officer from Molo Station said:

*“The exchange of ideas was very insightful. (...). It changed our thinking because we learned from colleagues ... and you feel good when you can help them in return.”*

In Kenya, all agencies involved in the court system meet once a month in ‘Court User Committees’ (CUCs) to discuss relevant topics. In Kisumu, the probation team decided to sensitise the CUC on the project and the gender-sensitive approach to increase awareness and gain support. The OC in Kisumu explained that he was able to inform 67 members of the CUC:

“I explained that we have changes backed by the Bangkok Rules and the Mandela Rules<sup>18</sup>. (...) I gave examples of chang'aa or drugs and how this may be done out of a need to feed children, especially where a husband is far away or dead. We agreed that in all but capital offences, if they are given a personal bond<sup>19</sup> they should be accepted back in society”.

Although these initiatives were not planned activities, they were hugely appreciated by staff and were effective in communicating the philosophy on which this project is based. The local initiatives also highlighted what can be achieved with a modest budget and committed staff.

#### Box G: Court User Committee - Kisumu

Judiciary (Chair)  
Probation (Secretary)  
Police  
Prisons  
Children's Services  
Local government officials  
Relevant NGOs  
Women's group leaders  
Local community/religious leaders

### Effect on male investigations

A female probation officer from Kisumu, observed that female magistrates referred women more often, but that even male defendants were being considered more frequently, as she believed that the magistrates did not want to appear biased towards women.

Several male probation officers explained that they had not interacted with a female client as there had always been female officers present, but that they applied the philosophy behind the new approach to the male clients. One male officer from Molo noted:

*“Now I capture more details that I had presumed previously to be minor and unimportant. I don't just look at family background of the man, but fully report on other relevant details”*

Although the focus of the study has been on women, since as a group they have been overlooked in the probation system; a complete gender-sensitive approach is where an individual's gender role is considered and taken into consideration, whether that be of a female or a male (in a gender binary context<sup>20</sup>). It is therefore commendable that probation officers have applied the positive concepts covered in the training, of considering what would be the most effective way working with any individual client.

<sup>18</sup> [The United Nations Standard Minimum Rules for the Treatment of Prisoners \(Mandela Rules\) General Assembly resolution 70/175, annex, adopted on 17 December 2015.](#)

<sup>19</sup> ‘Bond’, defined as: An undertaking, with or without sureties or security, entered into by an accused person in custody under which he or she binds him or herself to comply with the conditions of the undertaking and if in default of such compliance to pay the amount of bail or other sum fixed in the bond.

‘Surety’, defined as: A person who undertakes to ensure that an accused person will appear in court and abide by bail conditions. The surety puts up security, such as money or title to a property, which can be forfeited to the court if the accused person fails to appear in court.

See National Council on the Administration of Justice (2015) Bail and Bond Policy Guidelines [http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Bail\\_and\\_Bond\\_Policy\\_Guidelines.pdf](http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Bail_and_Bond_Policy_Guidelines.pdf) Accessed 18/05/2017

<sup>20</sup> Gender binary is defined as 1) a classification system consisting of two genders, male and female.

2) a concept or belief that there are only two genders and that one's biological or birth gender will align with traditional social constructs of masculine and feminine identity, expression, and sexuality.

<http://www.dictionary.com/browse/gender-binary> Accessed 18/05/2017

# Sustainability

## Amended tools

Although this was a pilot project, probation officers were adamant that they preferred and saw the value of the gender-sensitive approach. Officers in Maseno, Kisumu, declared that they had no intention of going back to previous processes, with one stating:

*“We have already adopted these and there is no going back. As an office, we hold case conferences, so we discuss cases as a team and assist each other to find a way forward to rehabilitate the offenders.”*

In fact, many officers called for similar adaptations to be made to other tools. Suggestions included looking at other ways to improve the gender-sensitivity of the supervision and rehabilitation aspects of probation, as well as access to bail.

## Sensitising others

The trial intervention was specifically targeted at probation officers. However, these officers do not exist in a vacuum and the sustainability of the work they implement is also reliant on other actors. For example, many officers called for better engagement with judges and magistrates, with one probation officer noting:

*“Sometimes, when you do a report and take into consideration all factors, you really feel that they need rehabilitation and not a punitive sanction, but you are left frustrated when the court does contrary. I tend to think they have not fully embraced it.”*

As the people who ultimately make the decisions about how long a woman remains in custody (if at all), it is vital that magistrates understand the reasoning of a gender-sensitive approach.



Left: Naivasha Court

## Effect of other training programmes

Some officers mentioned that they had been trained on related topics, such as special needs offenders and counselling, which were helpful in thinking about how to work with their client group. Others had been trained on the Bangkok Rules, from KPAS, PRI or Legal Resources Foundation (LRF). Officers all stated that they would like further training on these topics and suggested training on conflict resolution and specialised rehabilitation programmes. A female probation officer from Nakuru, highlighted the impact of a colleague sharing information after attending training on the Bangkok Rules (conducted by LRF):

*“Previously the prison was very congested with women, but after she shared information with us all, the judge started sharing more cases for review and after looking into their cases, we placed more women on non-custodial sentences.”*

Probation officers from three of the four pilot stations in Kisumu had also attended training conducted by a foreign government agency, focused on a range of probation tools, such as needs and risk assessment. The approach differed from that in this project as it took a gender-neutral approach and carried out longer training sessions, delivered by foreign facilitators.

When asked how the differing approaches affected their thinking and actions towards female clients, probation officers all stated that that the tools were complementary and the change in mind-set was the greatest effect of either training. The alternative method called their approach ‘motivational interviewing’, yet officers described a considered gender-sensitive approach suggested by KPAS and PRI as leading them to the same improved interactions. A female probation officer from Winam, Kisumu explained:

*“The differing tools have been an enhancement, not a challenge. Each officer does things according to their own understanding. They cover the same issues, so add flesh to the skeleton we had to enhance our practice.”*

The Probation County Director for Kisumu added to this view by stating “the [other agency’s] training reinforced the report writing introduced by the KPAS team, rather than confusing it. It was more about relaxing the client and improving the conversation to lead to an informed decision, which is very applicable to working with women”.

## Conclusions

The pilot aimed to provide probation officers with the tools and guidance required to facilitate a more gender-sensitive approach to working with women completing non-custodial sentences and this has largely been achieved.

Some probation officers highlighted other resources that would have improved or in fact did improve their understanding and ability to work with women, such as summary documents of key concepts or example questions. KPAS should consider creating high quality, accessible documents sanctioned at headquarters level to supplement the amended tools and guidance.

The approach adopted in this implementation was effective and certainly did raise awareness among probation officers of the need to consider the gender-specific situation of offenders. While many officers felt that they had naturally been considering some of these aspects, the project highlighted and emphasised the adjustments needed to improve community sanctions for women. The fact that the approach was underpinned by international standards such as the Bangkok Rules appeared to make a significant difference to probation officers, both in terms of having confidence in the approach and in convincing others of its value.

No specific changes to the amended tools were suggested by probation officers and indeed some officers were keen to hear that the tools would be finalised and signed-off at national level. Although the two regions operationalised the changes to their pre-sentence reports in different ways, with one following a structured check-list style and the other an essay style, improved gender-sensitivity was evident in both approaches.

Magistrates, probation officers and reports reviewed by the evaluator, all indicated an increase in quality of reports. Examination over a longer period will reveal whether the change in approach will impact the workload of probation officers. The case may be that, rather than there being a direct change in workload due to an adaptation to tools, it is an increase in magistrates' confidence and expectations of probation officers that leads to an increase in workload, with more women being referred to Probation and reports expected more swiftly.

The positivity with which probation officers spoke about the new approach is a good indicator of sustainability and officers explicitly said that they did not have any intentions of reverting to a previous approach. The sustainability of the new approach will gain greater strength as more stakeholders are sensitised to the value and application of a gender-sensitive approach.

Right: Winam Probation Station



# Recommendations: Amended tools

## Finalisation and distribution of tools

Amendments to the pre-sentence report structure and guidelines have been welcomed by implementing staff, but supplementary documents were requested. Senior Probation staff may wish to build on the work of the Nakuru County Director and produce high quality, KPAS management approved versions of key summary documents.

15. KPAS to provide probation officers in the pilot regions with copies of the 'Briefing Document', which outlines the findings of the Research Report.
16. KPAS to develop supplementary summary documents on relevant topics, including but not limited to:
  - Key changes to the guidelines
  - Bangkok Rules related to non-custodial sentences
17. Include supplementary documents developed by KPAS and Short Film in training module for new probation officers.

## Monitoring and evaluation

As with any new project, it is important to continue to regularly monitor the effects of activities and in this instance, County Directors have called for the mandate to carry this task out officially. Systematic assessment should include:

- probation officers' adherence to the new gender-sensitive approach and the quality of pre-sentence reports
- Impacts on probation officers' workload
- Impacts on female offenders completing non-custodial sentences

Where funds can be made available, a secondary external evaluation is also advisable after one year to allow for seasonal fluctuations of Probation work and the greater embedding of the approach.

18. KPAS to empower the County Director role to periodically monitor and evaluate the level of adherence of probation officers in their county, to the new gender-sensitive approach.
19. A second external evaluation of the impacts of project activities to be completed after one year of implementation.

## Recommendations: Future replication in Kenya

After finalisation of the tools, other areas of Kenya could be engaged to replicate the project and introduce a gender-sensitive approach. Points to consider include:

### Introducing adapted tools

20. Provide probation officers in new project regions with access to the Briefing Document, Short Film and high quality supplementary documents from the outset.
21. PRI to amend current, or introduce new Bangkok Rules resources that focus more specifically on non-custodial sentences.

### Training

There were many advantages of carrying out ‘clinics’ in each probation station. However, those who took part in a larger regional event, hugely appreciated the opportunity and were more fluent in identifying gender-sensitive actions. Ensuring that sufficient time is assigned to discussion of the approach is therefore of great importance.

22. Future training of probation officers to include initial ‘clinics’ at Probation Stations, followed by regional meetings to answer outstanding questions, and share ideas and experiences.
23. Initial clinic at the Probation Station should be of sufficient length to sensitise officers on the key topics and tools and allow time for discussion and queries.

While there is merit in training probation officers separately, as there are many specifics related to report writing and interviewing that are pertinent only to this group, there were several requests for combined training, which could also improve the overall probation process. Sensitisation of magistrates, prosecutors and probation officers jointly, would be valuable so that each stakeholder can fully appreciate the needs, pressures and expectations of each role when taking a gender-sensitive approach.

24. Hold joint sensitisation meetings with Magistrates, Prosecutors and probation officers to identify and agree localised approaches to improve gender-sensitivity.
25. Hold round-table sensitisation meetings including, but not limited to: judiciary, probation, police, prison, local government administration staff and Chiefs, to discuss a local strategy.
26. Conduct exposure visits for magistrates and prosecutors to prison and police cells and CSO sites so they may see the realities faced by women in custody.
27. Identify ‘champions’ within KPAS and empower them to speak at CUCs and local community meetings to sensitise the community more broadly.

# Final Conclusions

The project's overall objective was to: **'Develop and pilot gender-sensitive Community Service Orders and Probation Orders based on evidence and consultation with women offenders'**.

The adaptations to tools that have been piloted in this project (Phase 2) to improve the approach to women completing non-custodial sentences were made after considered and thorough evidence-based research (completed in 'Phase 1'), which included significant consultation of women. The objective has therefore been successfully achieved.

'Phase 2' has certainly been effective in improving the approach to collecting information for, and planning of, non-custodial sanctions taken by probation officers in terms of gender-sensitivity, yet it was not designed to pilot an implementation of actual gender-sensitive CSOs and Probation Orders. Further study is required into whether this approach translates into improved experiences for women completing the non-custodial sentences. The indications from all those interviewed as part of this evaluation are positive, however, this can best be assessed with evidence from women offenders themselves and this falls outside the scope of the activities piloted in this project. Therefore, as far as the specific scope for activities can be assessed, this objective has been achieved.

The first of the additional objectives was to **'Contribute to Sustainable Development Goal 5 (gender equality) and Goal 16 (access to justice for all)'**. While the aims of this project cannot be specifically matched to the limited official targets or indicators within the SDGs,<sup>21</sup> the learning from the project clearly follows the ethos within the SDGs and contributes to the understanding of gender quality within the justice system, as well as taking an initial step to achieving it. This learning is also in an area with previously little to no reliable information.

The final additional objective was to **'Develop a project model, which is replicable across international contexts'**. The model adopted was praised by international technical experts for several reasons, chief of which was its replicability in other contexts since it aligns so closely to the Bangkok Rules.

The model, displayed briefly in Box H, has the flexibility to be used in any country, whilst maintaining a structure that will allow for international comparison and valuable regional learning (see Annex A for an expanded version).

## Box H: Replicable model

- 1 Thorough research examination of the context, including the voices of women completing non-custodial sentences
- 2 Adaptations to national tools, based on evidence-based recommendations and testing and sensitisation in pilot locations
- 3 External evaluation and recommendations
- 4 Finalisation of tools and guidance

<sup>21</sup> For specific targets and indicators of each of the Sustainable Development Goals see: <https://sustainabledevelopment.un.org/sdgs> Accessed 15/05/17

Ownership over the project displayed by all KPAS staff interviewed also indicates that the overt and conscious inclusion of the host country's probation leaders is a positive and commendable model.

In terms of overall project relevance, international experts able to locate this project in the wider landscape of gender equality and probation related work, expressed views that the project has been hugely relevant both to the Kenyan context and, due to close observance of international standards, also has many lessons applicable to a global audience.

Taking the recommendations from the Research Report and focusing on the examination of the pre-sentence reporting structure and guidance was a logical step, and discussions around a reformed approach to women led to improvements throughout the probation process. Indeed, because the implementation went so well, there have been many calls for a follow-up project expanding on additional aspects of probation work and other criminal justice stakeholders, in order to move towards a completely gender-sensitive system.

All interviewees who had read the Research Report or Briefing Document or who had viewed the Short Film, were full of praise for the quality and content. The resources are effective in communicating the findings of the research and highlighting the need for gender-sensitivity, therefore, further promotion is highly advised.

There have been some strong examples given by several probation officers to highlight the effectiveness of the training, including many instances of the new approach leading to the collection of information that would have otherwise been overlooked, which in turn led to non-custodial sanctions being received in cases where custodial sentences were the norm.

At this stage, the impact of the new approach on the workload of the probation officers is unclear and mixed opinions have been voiced. Naturally, some officers have taken longer to adapt to a new approach and require further coaching and support. The evaluation uncovered no evidence to suggest that probation teams are unable to manage the current caseload with the improved approach in place, and all parties are united in identifying an increase in quality.

There are two caveats to this statement:

- 1) Caseload and quality of reporting need to be monitored over a longer period, both to give the approach a greater time to be implemented and to account for seasonal fluctuations in probation work. While the probation officers may have had the capacity to complete the work at the time of the evaluation, at other times the workload may become unmanageable.
- 2) Quality may be compromised where magistrates demand a pre-sentence report the same day and probation officers rely on phone calls and interviews with only those able to arrive at the court at short notice.

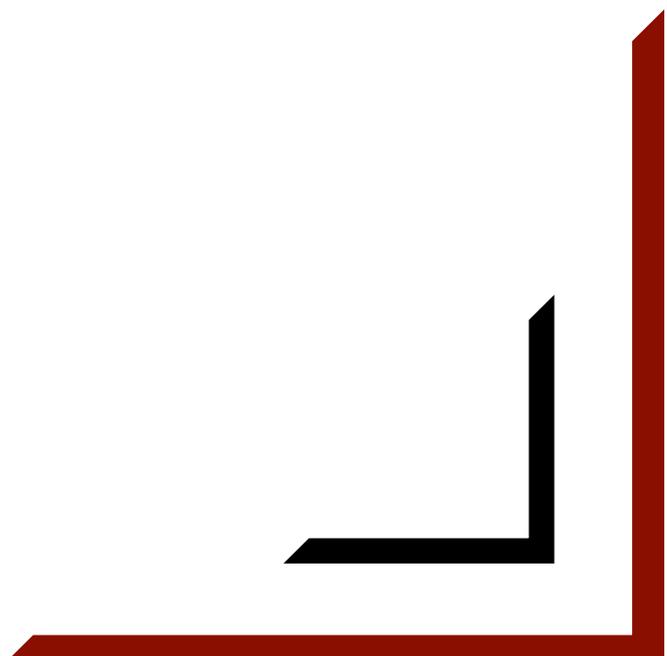
Investigation at the local level suggests that without the support from other stakeholders, particularly the judiciary, that sustained progress may be limited for women completing non-custodial sentences. It should be remembered however, that this was a pilot study that built on the pre-existing strong working relationship between KPAS and PRI, and with limited resources, it made sense to focus on the Probation Officer role, which has the closest

proximity to women during the process. The sensitisation of other groups however, does present an opportunity to improve the sustainability of impacts.

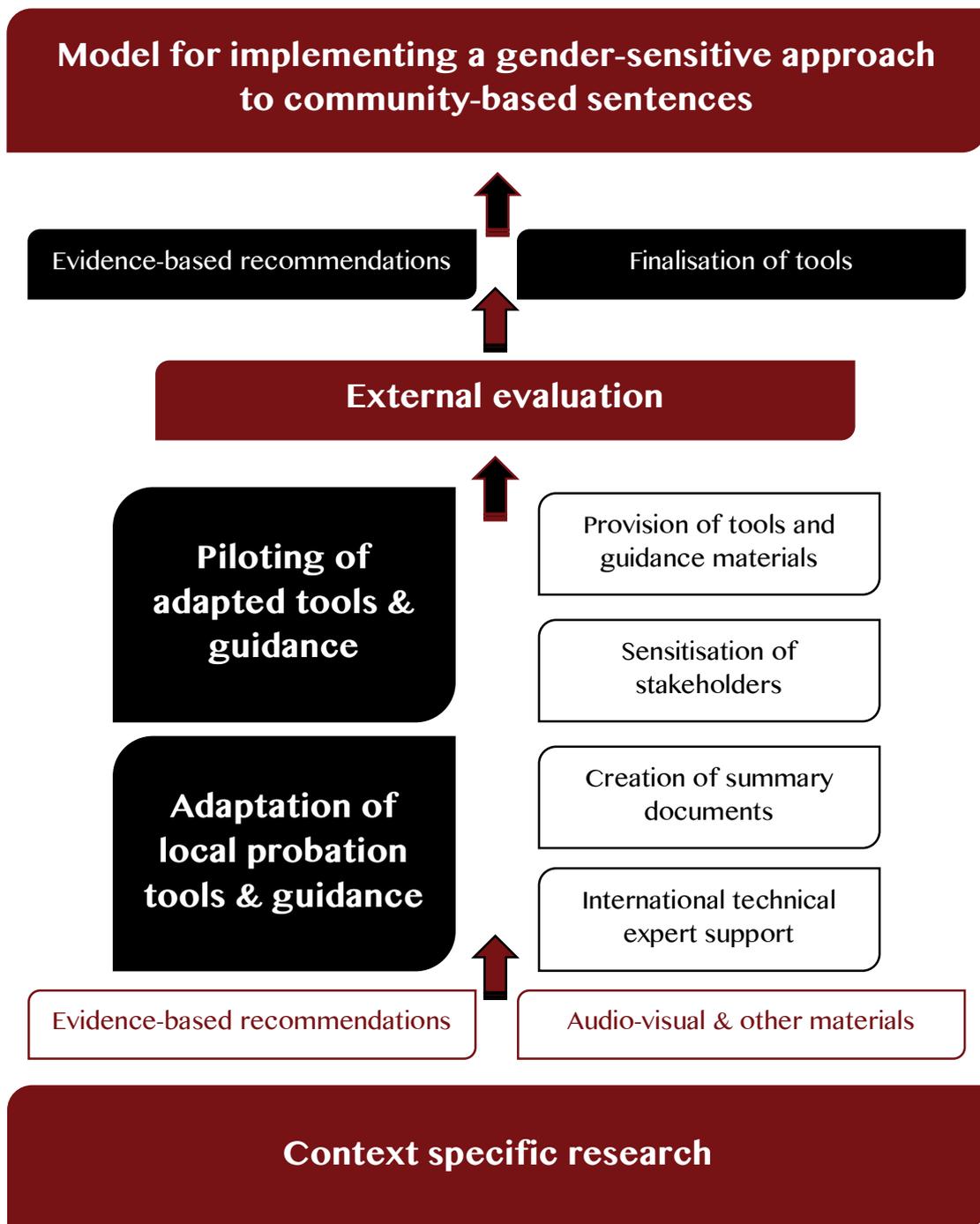
Probation officers stated that they felt empowered by the investment in them from KPAS management and continued support and guidance both from County Director level and Headquarters level would be valued by the implementing officers.

The evaluator was very impressed with clear passion for ensuring the best outcomes for women and how all probation officers had embraced the new approach. The ability to point to UN level international standards also gave officers confidence when actioning the approach and in convincing others of its importance. Every single probation officer and magistrate that the evaluator met, spoke of the UN Bangkok Rules and their importance, without any prompting, which left a strong impression that the concepts bound within them will be sustained.

The project genuinely broke new ground in terms of research, was effective in terms of improving the gender-sensitive approach of probation officers to women offenders and has provided an easily replicable model that can be scaled-up within Kenya and applied to other countries globally. Further evaluation is encouraged to assess long-term effectiveness and sustainability of the activities and the impact on women completing non-custodial sentences.



# Annex A: Replicable model for implementing a gender-sensitive approach to community-based sentences



## Annex B: Recommendations for international replication

The model for introducing a gender-sensitive approach to non-custodial sentences has been designed in a manner to allow for international replication. Below are 10 key points to consider when replicating this project in a new country:

1. Conduct a study on the experiences and challenges of women completing non-custodial sentences and of relevant criminal justice stakeholders to gain an in-depth understanding of the specific country's context.<sup>22</sup>
2. Use evidence-based recommendations from the study to identify relevant steps to improve gender-sensitivity, in consultation with national practitioners and international experts.
3. Identify and adapt existing tools and guidelines incorporating research findings and a gender-sensitive approach. Tools to consider include:
  - Social enquiry forms
  - Pre-sentence reports
  - Tools for supervision of non-custodial alternatives
4. Create supplementary resources such as a shorter briefing document and audio-visual material. Additional, accessible summary documents including but not limited to:
  - Key changes to the guidelines
  - Bangkok Rules related to non-custodial sentences
5. Provide probation officers and magistrates with the research study findings and the amended tools and conduct 'induction clinics' at local probation stations to introduce the gender-specific approach.
6. Hold regional meetings for implementing probation officers to share ideas and experiences on implementing a gender-sensitive approach across different probation stations.
7. Hold joint sensitisation meetings with magistrates, prosecutors and probation officers so that each stakeholder can fully appreciate the needs, pressures and expectations of each role when taking a gender-sensitive approach.
8. Commission an external evaluation of the project to assess the impact of activities, after a test phase is completed. Use recommendations from the evaluation to finalise the adapted tools.
9. Identify 'champions' within the probation service and empower them to speak to other relevant stakeholders and at local community meetings to sensitise the community more broadly.
10. Identify a senior probation staff role to support and periodically monitor and evaluate the level of adherence of probation officers to the new gender-sensitive approach.

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<sup>22</sup> Such a study could also include alternatives to pre-trial detention. As a pilot project of small scale, the project implemented in Kenya did not address non-custodial measures as an alternative to pre-trial detention for women, but the incorporation of this issue would be recommended in any replication