

UNIVERSITY OF NAIROBI

DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK

**THE INTERACTION OF CRIME VICTIMS WITH PROBATION SERVICES: THE
CASE OF THREE SELECTED PROBATION STATIONS IN NAIROBI, KENYA**

BY

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Degree of Master of Arts in Sociology (Counseling) of the University of Nairobi**

2015

DECLARATION

I hereby declare that this Research Project paper is my original work and has not been submitted to any other college or university for credit.

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DEDICATION

This research Project is dedicated to the almighty God, the creator of heaven and earth, living and non-living in the universe, fountain of wisdom and knowledge, fair and just and in his own image he created human beings with rights, privileges and dignity, who entrusted humanity to be stewards of creation in the universe and more for energizing me to undertake this program successfully for his good and that of the people.

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ABSTRACT

The criminal justice system is a web of interactions where victims and offenders of crime are very critical persons in the world. Most studies in criminology have concentrated on offenders and less on victims of crime who bear the greatest burden. The focus of the study was on "The Interaction of Victims of Crime with the Probation Services": A case study of Nairobi, Kenya, whose principle objectives were to establish stakeholder understanding on victimology and the victim, Victims participation in the passing of Probation Sentence, probation sentence reparativeness or appropriateness and, victims' rights and concerns entrenchment in the probation sentences. Review of related literature indicated that Classical Scholars in Victimology and Criminology held that victims of crime were neglected and had concerns with criminal justice system. The study used qualitative and quantitative methodology, cluster, purposive and convenient sampling in the selection of respondents. Key informants guide and the questionnaire were the main instruments of data collection, then, data was coded, cleaned and subjected to SPSS software for analysis and presentation which aided interpretation of data while ensuring ethical considerations. The study had the following findings- That most respondents (victims, offenders and Key informants) had a fair understanding of the subject of victim and victimization in criminal justice system close to the professional meaning attached to Victims in criminology, however, some judicial officers had a definition which seemed to be different from that provided by criminologists. Most stakeholders (Judicial officers, Prison officers, Police Officer and Probation Officers) involved victims in the passing of probation sentence and related programmes in their core mandates, except prison officers who did not involve victims at all in the management and rehabilitation of inmates. Probation sentence was rated to be reparative as offenders were reconciled with victims through probation officers. Victims had concerns and needs as there were legal and policy gaps to entrench their rights in criminal justice system . The available legislation was inadequate and was not fully enforced. The study recommends that awareness and sensitization to promote understanding of the concept of victimization be undertaken, victims of crime to be fully involved in the passing of probation sentence, foster mechanisms of alternative dispute resolution and prioritize victim concerns in criminal justice with initiation of victim support programmes.

CHAPTER ONE : INTRODUCTION

1.1 Background of the Study

The Kenya constitution 2010, article 50 (9) provides for the protection, rights and the welfare of victims of offences. The department of Probation and after care services introduced the victim services programme in respond to the constitutional provisions. Probation and Community Service is a period of time where an offender lives under supervision and under a set of restrictions. Violations of these restrictions could result in arrest and punishment. Probation is typically an option for first time offenders with high rehabilitative capacity. At its core, it is a substitute for prison, with the goal being to spare the worthy first offender from the demoralizing influences of imprisonment and save him from recidivism'(Vanstone and Maurice, 2011).World statistics indicate that-United States of America, has 4,162,536 probationers (Kerbs et. al. 2009), London and Wales, 193,000 (National Offender Management 2004). The Supervisors restrict mobility, social contact, and mandate various other conditions and requirements of the offenders. In Canada, non-custodial supervision of offenders on probation is governed by the Probation Act (Cap P-22).This statute provides for the mandate of probation officers and provides for their employment and terms of service.

In Thailand, probation measures for adult offenders were provided for by the Penal Code of 1956 but they had not been actively implemented due to the lack of specialized agency and probation officers to carry out the court order. In 1979, the law on probation was proposed. It established a specialized agency and appointed probation officers to supervise court orders imposing conditions for rehabilitation of offenders under suspended or deferred sentences. This law thus marked the beginning of the community-based treatment of offenders in Thailand, under the responsibility of the probation officers, volunteer probation officers, and the civil organizations based in the community. In 1992, the Department of Probation was established to handle all adult probations all over the country (Dr. Kittayarak, 2009).

In South Australia, probation service draws its mandate from Offenders Probation Act (1913).This Statute grants the Chief Secretary the power to appoint probation officers and gives the court jurisdiction to release offenders conditionally on a recognizance with a condition that the offenders shall be supervised by probation officers. The Statute has undergone further amendments to make the courts make greater use of probation as a sentencing option (Tulett, 1990).

In Africa the service was introduced by different colonial governments and steadily spread over the years in countries such as South Africa, Botswana and Tanzania. It is instructive to note that studies are scanty on the development of probation in Africa.

The history of Probation Service in Kenya dates back to 1943 when a series of commissions appointed by the British colonial government recommended its establishment. Notable among these was the Patterson Commission of 1938 and later the Probation Ordinance was passed in 1943. Its actual commencement in Kenya was in 1946. In its formative stages, it was confined to the then Nairobi Municipality and dealt with juveniles and women offenders. The department has grown from the initial supervision and rehabilitation of offenders placed on probation orders, to several programs operating in conjunction with other players in the criminal justice administration system (KNAPO 2011). The focus is on the offenders.

Community Service Orders (CSO Act no 10 of 1998) is a multi-sectorial reparative sentence which is the epitome of the new paradigm in offender management. It is a sentence of the court made where the offenders serve on community projects as payback system for the wrong committed. The victims are expected to benefit generally in the reparation as opposed to retribution. Supervision of this category of offenders is specific to the order but also addresses certain salient rehabilitation issues identified by the Probation Officer. It is important to note that under the provisions of the above mentioned statute, Probation Officers double as Community Service Officers. These officers are tasked with the responsibility of providing Social Inquiry Reports to Courts and upon a Community Service Order being made; they are supposed to place the Offenders in predetermined work places. It is instructive to note that in the implementation of the community service orders program, a lot of emphasis and concern is on the offenders with little or no regard for victims and their rights.

Youth offenders in Kenya are placed in correctional facilities known as Borstal institutions for those who have been convicted of criminal offences punishable by imprisonment. The institutions are managed by the Kenya Prison Service mandated by the Borstal Institutions Act (Cap 92). Probation Officers are tasked with the responsibility of providing Social Inquiry Reports to Courts which essentially guide the courts on what category of Juvenile Offenders to be placed in these Institutions.

Rehabilitation schools are established in Section 47 of the Children's Act for custody of children in need of care and protection. All child offenders are committed to rehabilitation schools on

recommendation of probation officers. Section 166 of the Criminal Procedure Code provides for supervision of special (psychiatric) offenders upon discharge from mental hospitals. Probation officers too, are also charged with the responsibility of supervising and rehabilitating this category of offenders upon their release to the community on a psychiatrist's advice. Probation officers are also supposed to supervise and rehabilitate dangerous sexual offenders as provided under the Sexual offences Act 2006 Laws of Kenya.

Probation Officers also supervise and rehabilitate ex-long term offenders. These are persons who initially were sentenced to serve a Prison sentence of more than seven years and who owing to a good record at the prison, their sentences are reviewed on presentation of Social Inquiry Reports to the Sentence Review Boards and if the home environment is conducive, they are released to serve the remaining part of their sentences within the community and under the supervision of Probation Officers.

In the United States, the avenue of victims of crime to ventilate their concerns was for many years through private prosecutions. This practice continued until the Constitution was enacted and the Bill of Rights adopted. There were some concerns on the mistreatment of accused persons under the authority of the Crown; no attention was being given to victims' rights. In light of existence of the avenue of private prosecutions, the drafters of the Bill of Rights of the colonies and the United States Constitution saw no need for including rights for crime victims (Cassell, 1994, at 1380). Later on, the Constitution was amended to provide for victims' rights (Cellini, 1997).

1.1.1. Legal Provisions on Victimology

The United Nations has adopted two General Assembly resolutions dealing with the rights of victims: the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 2006 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The focus of the former was on victims of domestic crimes, while that of the latter is on victims of international crimes; more particularly, gross violations of international human rights law and serious violations of international humanitarian law. The 2006 Principles are, for all practical purposes, an international bill of rights of victims. This declaration was the most fundamental instrument adopted by the United Nations in relation to the improvement of treatment of victims in the crime prevention and criminal justice field.

The declaration recommends the following measures to be taken on behalf of victims of crime at the International, regional and national levels where the country is expected to incorporate in its criminal justice system:-That

- a) Victims of crime are entitled to access to the mechanisms of justice and fair treatment,(Declaration 4-7)
- b) Fair restitution to victims by offenders responsible for their behavior should be realized, (Declaration 8-11)
- c) States should endeavor to provide financial compensation to victims, when compensation is not fully available from the offender,(Declaration 12,13 and
- d) Victims should receive necessary material, psychological and social assistance, (Declaration 14-17).

The declaration affirmed the necessity of adopting international and national measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and abuse of power. Further, the declaration called for UN member states to take necessary steps to give effect to the provisions contained in the declaration in order to curtail .Their adoption has been hard-fought, but their implementation both at the national and international levels is sure to still face many obstacles. Parallel to this historic development have been decisions by the European Court of Human Rights and the Inter-American Court of Human Rights, as well as provisions in the statute of the International Criminal Court (ICC), giving standing to victims in ICC proceedings, but also certain rights of compensation. These parallel developments, as well as others within domestic legal systems, evidence a wide movement towards the recognition of the rights of victims of crime, whether domestic or international, or gross violations of human rights. The Kenyan legal tradition is largely influenced by the common Law of England and other commonwealth jurisdictions which to a large extent have adopted dualist and adversarial system. The common law of England was received into Kenya by way of the Judicature Act of 1897 did not address victims of offences. Similarly, independence constitution did not make provision for the protection, rights and welfare of victims of offences. Besides, almost all the statutes of the pre-independence and colonial period were given continuance in the post-independence era.

The criminal justice system of the pre-independence period was encoded in the Criminal Procedure Code, Penal Code, Judicature Act and Evidence Act. These statutes are still in force

although remarkable changes have been effected from time to time over the last 47 years of independence. The Constitution of Kenya promulgated on 27th August, 2010 has recognized the need for the provision of protection of the rights of victims of offences by the provision of the enactment of a law under Section 50 (9) which states that "parliament shall enact legislation providing for the protection, rights and welfare of victims of offences".

Prior to the promulgation of the constitution, there has been little recognition and practice of victims of offences protection and support. The department's strategic Plan 2008-2012 points out that the department is required to domesticate both international instruments on non-custodial sentence and while at the same time implement fully its mandates.

1.1.2. Criminal Procedure Code (Cap 75 laws of Kenya)

The provisions of the Act that relate to victimology are: Section 177(a) provides for the court to return stolen property held as exhibit to the owner; Section 175 provides for the compensation of the victim; Section 176 provides for reconciliation between victims and offenders; Section 329A provides for victim impact statements which relates to probation officers' presentence reports submitted to courts of law.

1.1.3. Penal code (Cap 63 laws of Kenya)

The sections that contain provisions that relate to Victimology are:

Section 29 (1) provides that when any person is convicted of an offence under any of the following sections, namely, sections 118 and 119, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connection with the commission of the offence or, if the property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Attorney-General may direct. The probation of offenders, Cap 64 places similar weight in reconciliation and rehabilitation of offenders with their victims' restorative practice.

1.1.4. The Sexual Offences Act (No. 3 of 2006 laws of Kenya)

The provisions that relate to Victimology are:

- i. Section 33 provides for the evidence of surrounding circumstances in criminal proceedings and impact of a sexual offence on a complainant
- ii. Section 35(2) provides for the Court at any time in criminal proceedings to make an order for the treatment of a victim of a sexual offence.

iii. Section 39 (7) & (8) provides that where there are review proceedings in the supervision of dangerous sexual offenders the victim including the next of kin of a deceased victim have a right to make representation. The interpretation of the word complainant encompasses the victim or an intermediary which is also given consideration by probation practice through application of risk assessment tool to dangerous sexual offenders on probation sentence, as further stipulated by section 39 of the sexual offences act then

1.1.5. Probation of Offenders Act (Cap 64 laws of Kenya)

The only provision in this Act that provides for an aspect that relates to victims is the following: Section 6 provides for payment of cost for injuries or compensation for loss.

1.1.6. National Cohesion and Integration Act (No. 12 of 2008 laws of Kenya)

The provisions of the Act that relate to Victimology are:

- i. Section 4 in defining victimization has provided that the same can be considered "as an act is injurious to the wellbeing and esteem of the person"
- ii. Section 49 provided mechanisms for conciliation between victims and the other party without resorting to civil proceedings.

The Probation of offenders Act, section 5(1) stipulates conditions for provision of a probation order by the court with further specifications as found necessary.

1.1.7. Witness Protection Act (No. 16 of 2006 laws of Kenya)

The provisions of the Act that relate to Victimology are:

(a) Section 3 (1) (c) defines witness as "a person who has made a statement to:

- i. The commissioner of police or a member of the police force
- ii. a law enforcement agency in relation to an offence against a law of Kenya

(b) Section 3 (1) (e) defines witness protection as "a person who for any other reason may require protection or other assistance under this Act". The probation of offenders Act grants reconciliation between the Victim and the offender in the rehabilitation process.

1.1.8 Truth Justice and Reconciliation Act (No. 6 of 2008 laws of Kenya)

The Act defines a victim as any person or group of persons who with occasion or human rights violation, has suffered any individual or collective damage by acts or commission that violate the rights established in the constitution, international law of human rights, international humanitarian law and international law, and that is considered a crime in a Kenyan legislation.

The Probation of offenders Act seeks remorsefulness from the Offender to the Act and truthful disclosures of his or her social conduct.

1.1.9. The Counter Trafficking in Persons Act (no 8 of 2010 laws of Kenya)

The provisions of the Act that relate to Victimology are:

The act establishes a national assistance trust fund for victims of trafficking in persons in section 22. The purpose of this fund is to assist victims of trafficking in persons. Section 5(1) of Probation of offenders Act specifies residence and other conditions that the court may require or place before granting of approbation sentence.

1.1.10. Evidence Act (Cap 80,laws of Kenya).

The Provisions that relate to Victimology is: section12 which provides that in suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant. Section 4(1) of Probation of offenders Act provide that the court has power to permit conditional release of offenders on probation sentences.

1.1.11. Victim Protection Act, (No. 17 of 2014)

It is the main statute that lends its plight to the needs of the victim. Section 19(4) proposes the enactment of the Victim Protection Board, and the development of the victims rights charter. Section 19(4) of the Act provides for the Victim Protection Board where an offender is convicted to service on the non-custodial sentence under the Community Services Orders Act,10,1998 or the Probation of offenders Act, Cap 64.

1.2. Statement of the Problem

Until recently, victims of crime have been the 'forgotten persons' of the criminal justice system. The historical evolution of the penal system, from private vengeance to state administered justice has resulted in a criminal justice process in which the victims only play a secondary role (Schafer, 1968). They report crimes to officials who decide whether to prosecute the case, how to proceed, and what type of punishment to recommend (where applicable). Victims have no formally recognized role in the trial of their offender, and no mechanism to voice their concerns and feelings regarding the crime and its impact on them. The prosecutor presumably represents the victims and their interests.

The only avenue under the Kenyan law for victims to ventilate their concerns is through the provisions of the Criminal Procedure Code (CAP 75) of the Laws of Kenya. The germane provisions of this Statute are Sections 329 c and 329 d.The jurisdiction of the Court to call for

Victim Impact Statements is discretionary. Indeed, under section 329 d of the above quoted Statute, it is clear that a Victim Impact Statement is not mandatory and that its absence in any proceedings shall not form the basis of any inference that an offence had little or no impact on a victim.

During the last two decades, victims and their advocates have relentlessly championed for an increased victim participation in the courts of justice. This victim driven justice system developed from the practice of the blood feud, where families of the victims and the perpetrator resolved their differences either through compensation or violence (Johnson, 1988; Allen, et.al.2010).

The perception that the criminal law is unresponsive to victim rights has led to demands being made to reintegrate victims into the criminal justice process, or minimally, to provide them with a mechanism for presenting the way in which the crime has affected them, and their concerns or wishes regarding the crime and the disposition of the offender.

However, despite the victim movement's monumental strides, victims still retain limited rights and opportunities to effectively address their concerns in the criminal justice system. As crime rates continue to escalate, and growing numbers of victims enter the criminal justice system, it becomes increasingly important that the policymakers critically review all current victim rights legislation, policies and procedures (Karmen, 2010).

The criminal justice system gives very little attention to Victims in Kenya. At the police station level, the place of a victim is limited to recording a statement highlighting his or her version of events as regards the offence committed. In court from the time an accused person takes plea, the victim does not feature much and even in the trial process, he or she is relegated to a witness whose duty is basically to adduce evidence as to the circumstances under which the crime was committed. Indeed, the victim is not supposed to sit in court when other witnesses are giving their testimony. The Probation Department is a critical player in the criminal justice system in Kenya. The department's interaction with victim rights is quite minimal and there is no proper framework anchoring the same (Ministry of Home Affairs,(Probation Service, Strategic Plan, 2008-2012).Probation officers as stipulated in the Probation of offenders Act submit presentence reports to court for determination of justice and also undertake offender rehabilitation in consultation with the victim for those who have been granted probation sentence by the law courts. Its noted in the strategic plan cited above that victims have been delegated at the

periphery over the years hence making the delivery of its services not to be holistic and very effective.

In the Prisons, concentration is wholly on the offender and absolutely no reference is made to the complainant/victim. Even in those cases where offenders are considered for instance for Presidential Pardon, no attempts are made to seek the views of the victim of the offence.

Victimology in its most simple form is the study of the victim or victims of a particular offence. It is defined as "the thorough study and analysis of victim characteristics" (Turvey, 1999), and may also be called "victim profiling" (Holmes, 1996). A Victimology study is important since the victim constitutes roughly half of the criminal offence, and as such, is as much a part of the crime as the crime scene, weapons, and eyewitnesses. This is especially true when we are presented with a live victim, as this was the last person to witness the crime, and may be able to provide the best behavioral and physical description of the offender (Turvey, 1999).

Though the agencies in criminal justice in Kenya agree that victims should participate in the criminal justice system, not much attention has been dedicated to the study of the extent to which victims interact with probation services in Kenya as modern rehabilitation and reintegration methods require that victims be consulted where possible as this promotes healing and reconciliation among parties (Ministry of Home Affairs, Strategic Plan, 2008-2012). The victim is the person directly injured by the crime and thus the justice system should be responsive to the victim's needs. The extent of the victim's participation in the criminal justice system is the subject of much debate.

The department of Probation in its strategic plan 2008-2012 acknowledges that victims have been placed at the periphery of its practice. Consequently, it is clear that the concept of victimization and discipline of Victimology has not been entrenched in the Kenyan criminal justice hence the need for this study. Police statistics show that between 2008-2013 a total 433,930 (Four hundred and thirty three thousand, Nine hundred and thirty) cases or number of persons committed various crimes during the period (KNBS, Justice and Crime Report 2014). Therefore the number of unreported cases in police stations is unknown which could be more than the number reported in the said period hence pointing to the possible number of victims of crime being in the tune of millions of persons. The current study thus seeks to investigate crime victims' interaction with probation sentences with specific reference to Nairobi County, Kenya.

1.3. Research Questions

- i. Do stakeholders in criminal justice system understand the victim of crime?
- ii. Do crime victims in any way participate in the passing of or determination of probation sentences?
- iii. Do victims of crime view probation sentences as reparative to them?
- iv. To what extent are victims rights entrenched in the criminal justice system?
- v. Do victims have concerns as relates to probation sentences?

1.4. Objectives of the Study

1.4.1. General Objective

To investigate the interaction of crime victims with probation services in Nairobi County.

1.4.2. Specific Objectives

- i. To establish principal stakeholders understanding of the concept of Victimization and its application in society.
- ii. To investigate how victims participate in the passing of probation sentences as determined by law courts from time to time in Kenya.
- iii. To establish the views of victims on probation sentences as a punishment to offenders.
- iv. To seek the views of the criminal justice system players on the status of victims rights.
- v. To understand and profile victims and concerns in relation to probation services in Kenya.

1.5. Basic Assumptions of the Study

This study principally assumes that Victims of crime are consulted or involved in the passing and determination of probation sentences from time to time as handled by the law courts in Kenya.

The researcher assumed that probation sentence may not be deemed reparative by victims.

The study assumed that victims perception of reparation was important Vis avis Victimization.

The researcher also assumed minimal involvement of victims in the passing of probation sentence.

It also assumed that victims rights are not entrenched in the criminal justice system.

The researcher further assumed that probation sentence may not be clearly addressing concerns and needs of the victim.

The study also assumed that for every crime committed there was a visible victim.

1.6. Justification of the Study

The criminal justice system entails the court, law enforcement institutions, rehabilitation and correctional or penal institutions, the offender and the victim of crime. The victim of crime plays a minimal role and it is the intention of this study to bring the victim of crime at the fore of criminal justice consideration and expand on the area of Victimology. David, (2000) presented a new approach called "the Victim's Victimology" which was based on the need for the victimological research and practice.

The area of Victimology is relatively not well understood by many practitioners as specific legislation in the Kenyan context was enacted in September 2014.

1.7. Scope and limitations of the study

Contextually the study was limited to the premise of victimology as an ideology or philosophy as opposed to victimization which is a process of becoming a victim and the later a product of victimization, in respect of how victims interact with probation sentences in Nairobi County. The study sought to further bring to the fore any policy gaps in the entrenchment of Victimology in the criminal justice system. In the realization of its objectives, the study sought views of target groups of people namely; probation officers, police officers, judicial officers, victims of crime and prison officers. The concentration of the study was on Victims interaction with Probation services.

The study therefore excluded people victimized by other factors such as natural and man made disasters for example war and floods as well as other courts sentences which leads to fines, imprisonment etc. In Nairobi the researcher selected three probation stations and therefore excluded other probation centers for the study such as Nairobi probation Hostel because it's a national institution. The concerns of victims were in respect of social and economic issues as opposed to political factors.

1.8. Operational Definition of terms.

1.8.1. Offender

A person convicted of an offence under any written law in Kenya and was placed on probation supervision orders.

1.8.1. Probation Officer

An Officer appointed under section 16 of the Probation of offenders Act, Cap 64, Laws of Kenya

1.8.2. Victim of Crime.

Means persons who, individually or collectively, have suffered harm, physical or mental injury, trauma, emotional suffering, death, economic loss or substantial impairment through acts or omissions that are in violation of the penal laws of Kenya, including violations of traffic laws resulting in personal injury. This may also include where appropriate the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization

1.9. The concept of Victimology

Victimology in its most simple form is the study of the victim or victims of a particular offence. It is defined as "the thorough study and analysis of victim characteristics" (Turvey, 1999). The UN general assembly in 1985 under resolution A/RES/40/34 defined a victim of crime including those of abuse of power as persons who individually or collectively suffer harm, including physical, mental injury, emotional, economic loss, and impairment of fundamental rights nationally or international through criminal actions. Truth Justice and Reconciliation Act, No.6 of 2008, laws of Kenya, defines a victim as any person or group of persons who with occasion or human rights violation, has suffered any individual or collective damage by acts or commission that violate the rights established in the constitution, international law of human rights, international humanitarian law and international law, and that is considered a crime in a Kenyan legislation.

According to Andrew Karmen, (2010) Victimology is the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities. It is instructive to note that Victimologists first and foremost investigate the victims' plight: the impact of the injuries and losses inflicted by offenders on the people they target. In addition, Victimologists carry out research into the public's political, social, and economic reactions to the plight of victims.

Victimologists also study how victims are handled by officials and agencies within the criminal justice system, especially interactions with police officers, detectives, prosecutors, defense attorneys, judges, probation officers, and members of parole boards .From the above definitions, it is clear that Victimology is basically a study of the interaction between the offender and the victim during commission of a crime.

Victimology is a sub-discipline of criminology. Some authors have noted that Victimology is a specific and respectable academic and scientific discipline, a new branch in the scientific study of the victim, which is distinguished by its transparent and peculiar spectrum as well as by a comprehensive and interdisciplinary research methodology. In simple terms, Victimology is the scientific knowledge of the victim. The principal objective is to study the personality of the victim in the victim-offender interaction in the mechanism of becoming a victim (victimization) (Kosticø2010). Andzenge defines Victimology as a perception, the way in which an individual or a group of individuals perceive themselves as victims, which is a subjective perception which significantly affects the degree of victimization. Nonetheless, the writer has emphasized the importance of the subjective perception of other participants in the process of victimization, which also has a significant impact on shaping the victimsøexperiences and subsequent behavior. The origins of the studies in Victimology can be traced back to several articles, books, and research projects initiated by criminologists during the 1940s and 1950s in Europe. Until that time, criminologyø attention was focused entirely on offenders: who they were, why they engaged in illegal activities, how they were handled by the criminal justice system, whether they should be incarcerated, and how they might be rehabilitated. Eventually, perhaps through the process of elimination, several criminologists searching for solutions to the crime problem were drawn to the important role played by victims. In the year 1940, Mendelssohn presented his article in a scientific conference held in Budapest; in the article, written in French, he used the neologism øVictimologyö for the first time. The focus of Mendelssohnø attention was the role of victims in the process of øvictim precipitationö in a violent crime, as a result of provocation, for example. This concept implies that the victims contribute to their own victimization by some characteristics that make them more prone to victimization. In his opinion, the victimø behavior has to be taken into consideration as a mitigating factor in deciding the perpetratorø punishment. Mendelssohn advocated that the perpetrator could defend him by claiming that the victim was partially responsible for the victimization (Kosticø2010).

These criminologists considered victims to be worthy of serious study primarily because they were completely overlooked. The first use in English of the term Victimology was to refer to the scientific study of people harmed by criminals and appeared in a book about murderers written by a psychiatrist (Wertham, 1949).

The first scholars to consider themselves Victimologists examined the presumed vulnerabilities of certain kind of people, such as the very young, the very old, recent immigrants, and the mentally disturbed (Von Hentig, 1948); the kinds of people, in terms of factors such as age and sex, whose actions contributed to their own violent deaths (Wolfgang, 1958); and the resistance put up by rape victims (Mendelssohn, 1940).

Mendelssohn (1940) a defense attorney in Romania, wrote and spoke during the 1940s and 1950s about how victims were ignored, disrespected, and abused within the criminal justice process. He proposed ways to help and protect them by creating victim assistance clinics and special research institutes, and he campaigned for victims' rights. For his foresight, he might be deemed "the father of Victimology" (Dussich, 2009). During the 1960s, as the problem of street crime intensified, the President's Commission on Law Enforcement and the Administration of Justice argued that criminologists ought to pay more attention to victims (Karmen, 2010).

In this call for a shift in focus, the Commission's Task Force stressed the potential practical benefits: more crimes could be prevented and more criminals caught, unrealistic fears could be calmed and unwarranted complacency dispelled, and needless expenditures could be eliminated or reduced. Other goals not cited by the commission that have been added over the years include reducing suffering, making the criminal justice system more responsive, and restoring victims to the financial condition they were in before the crime occurred.

During the 1960s and 1970s, criminologists, reformers, and political activists argued persuasively that offenders themselves were in some sense "victims" of grinding poverty, dysfunctional families, failing school systems, rundown housing, job shortages, discrimination, police brutality, and other social problems (Ryan, 1971). In reaction to this sympathetic characterization of lawbreakers, many people asked, "what about the individuals that they preyed upon who were innocent, law-abiding, and vulnerable? What can be done to ease their suffering?" While grappling with that question, reformers came to recognize that persons targeted by criminals were being systematically abandoned to their fates, and that institutionalized neglect had prevailed for too long. A consensus began to emerge that people

harmful by illegal acts deserved better treatment. Plans for financial assistance were the focus of early discussions; campaigns for enhanced rights within the legal system soon followed. By the 1970s, Victimology had become a recognized field of study with its own national and international professional organizations, conferences, and journals. By the end of the 1990s, students were taking courses in Victimology at more than 240 colleges and universities.(Karmen,2010)

In South Africa history of apartheid and the culture of violence associated with it, political instability, internal conflict and liberation struggles as well as the socio-economic conditions such as poverty and the country's high unemployment rate have resulted in a high crime rate and the violent victimization of innocent individuals. The rights and needs of crime victims received very little attention prior to 1994. The situation has, however, changed and the current concern in South Africa for citizens who suffer the direct consequences of criminality is reflected by the spate of conferences dealing with crime, the prominence of victim issues in local government elections and the way in which research is applied in action.

David, (2000) presented a new approach called "the Victim's Victimology" which was based on the need for the victimological research and practice. This orientation was aimed at changing the victim's perception; it pointed to the importance of the scientific methodology which is to be applied in providing for the victim's needs and interests; it also illustrated a change of focus: instead of the generally proclaimed victim's rights, the focal point is now shifted to the victim's self-awareness and understanding of one's individual needs.

It is clear that the importance of the victims needs does not undermine the importance of the victim's rights; thus, the former gives an entirely new dimension to the latter. The old paradigm (primarily addressing the victim's rights) can be observed as an expression of pure morality in relation to the victim, whereas the new paradigm (addressing the victim's needs) demonstrates consideration and care for morality. The new paradigm involves not only the protection of the victim's rights and interests but also the provisions to meet the victim's needs. The current victimological theory articulates this new paradigm in terms of immediate action and in terms of academic and scientific field of interest. The main action is aimed at changing the perception of victimization, shifting it from the individual to the institutional level and creating cultural and social definition of crime (Kostic, 2010). Since 2001, the government has prioritized fighting crime and victimization as areas of critical concern and increased expenditures for the safety and

justice sectors. Within this context it has become clear that the time is ripe to take stock of the position of victims and the stance of Victimology in South Africa.

In Canada, the Canadian Criminal Code was modified in order to permit victims to make Victim Impact Statements. With this change the word "victim" was introduced into the Criminal Code for the first time. The Victim Impact Statement allows victims to make a written statement about the impact that the crime had on them and submit it to the court at the sentencing hearing after the accused has been found guilty. Since 2000, victims can read their statement aloud in court. Further in 1988, the Federal-Provincial-Territorial Working Group published its Statement of Basic Principles of Justice for Victims of Crime.

As its title suggests, the contents of this Statement strongly reflect that of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration). Many articles are identical to that found in the UN Declaration and, like the Declaration, the Canadian Statement is non-binding. The administration of justice in Canada is under provincial jurisdiction. Hence, following the UN Declaration several provinces introduced their own Bill of Rights for victims. In the province of Quebec a victims' Bill of Rights was adopted in 1988. Once again, this law was strongly inspired by the UN Declaration and uses much the same wording. For example, victims have the right to "express their views and concerns at appropriate stages of the criminal justice procedure, when their personal interests are concerned" (Art. 3). As was mentioned earlier, the UN Declaration is purposely abstract and general in order to accommodate the many different criminal justice systems found among the Member States. There is only one criminal justice system in the province and in fact, only one criminal code for the whole of Canada. On the contrary, one needs to be concrete and specify who is responsible for what (Brienen and Hoegen, 2000).

By copying the wording used in the UN Declaration, victims' rights in Quebec are needlessly vague. Furthermore, like the Declaration, the rights contained in the Quebec legislation are non-enforceable. There is no provision that specifies enforcement measures and victims' recourse when their rights are not respected. The only province in Canada to provide victims with something more than vague rights is Manitoba. In 2011, the province introduced comprehensive victims' legislation, which replaced the prior legislation concerning victims' rights and compensation. The new legislation describes in detail the responsibilities of law enforcement authorities as well as the prosecution and the court administration towards victims. In addition,

the law includes a complaints procedure for victims. Victims in Manitoba who feel that their rights have not been respected can make a complaint to the province's director of Victims' services. While this is clearly an improvement compared to other provinces, it still does not provide legal remedy to victims.

By providing victims with a complaints procedure the Manitoba government recognizes that victims' rights should be respected. However, it fails to view victims as persons before the law with enforceable rights and privileges and give them legal recourse.

Victimology in South Africa recognizes the African values of *Ubuntu* while critically analyzing the dehumanizing notions of victimhood, victimization patterns, hidden victimization in society and secondary victimization by the Western criminal justice system. Justice in traditional Africa did not seek to create offences or offenders, but rather to maintain equilibrium in communitarian societies. This reconciliatory approach stands in stark contrast to the individual-oriented and punitive nature of Western concepts of law and criminal justice, highlighting the need in South Africa – with its history of colonization, apartheid, abuse of power and conflict – to shift the boundaries of Victimology outside the realm of narrow legal and oppressive frameworks of conflict and justice.

Victimology in South Africa contains a cutting-edge presentation of contemporary scholarly discourse that is relevant both contextually and globally, seeking to stimulate further empirical inquiry and theory development, and to inform policy and practice. (Peacock R 2013).

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1. Victim participation in the Passing of Probation Sentences

Probation of Offenders Act (Cap 64 laws of Kenya), is the principal statute that grants mandate to the department of Probation and Aftercare Service. Section 4(1) and 4(2) provides that where a person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved and that it is of the opinion that having regard to youth, character, antecedents, home surrounding, health and mental condition of the offender or to the nature of the offence or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender of probation. In this principle legislation, there is no direct mention to the involvement of the victim in the passing of the probation sentences. Victim involvement as per this act is more passive and indirect. The departments strategic plan 2008-2012 points out that victims are at the periphery of the departments mandates and that they are not consulted or involved in the passing of probation sentences. It is on this basis that the department in its strategic initiative has undertaken to introduce programmes that address to the issues of Victims of crime in future.

The Kenyan jurisprudence does not have proper structures for the recognition and protection of victims' rights. In Article 50(9) of the Constitution of Kenya, 2010 there is an attempt to make provision for victim rights by imposing an obligation on parliament to enact legislation for the protection, rights and welfare of victims of offences. It is important to note that the quoted Constitutional provision does not in actual fact create any victims' rights but merely creates an obligation on the part of parliament to enact necessary legislation. Currently, parliament has not enacted any legislation to provide for victims rights. Moreover, the legislations discussed in the body of this document do not in any way create victims' rights or establish proper structures for the enforcement and enhancement of these rights. Consequently, in Kenya apart from legislation, there is no study on Victimology as regards the interaction of victims and offenders as especially while serving probation sentences. This study was to establish the policy gaps that have occasioned a lack of comprehensive legal framework on victims' rights and protection. This study shall also seek policy suggestions to mainstream Victimology in the criminal justice system.

2.2. Reparativeness and restorative Justice.

Price R larry, Cavali John, Macalister R .et all (2000), in the Position paper on Restorative Justice submitted to the Chief Probation Officers of California, USA, noted that various forms of restorative justice have been used throughout history in cultures in the world. They stated that the purpose of restorative justice was to engage all parties affected by crime to hold the offender accountable, repair the harm done to victims, build offender competencies and engage the communities in finding the solutions associated with the crimes. Therefore restorative justice was to offer a complete approach in addressing the needs of all affected parties-Victims, Offenders and the community. The team envisioned that;

Crime injures Victims, offenders and, communities. Justice process should work to repair the harm and injuries.

Victims, offenders and the community should be actively involved in the justice process at the earliest point possible as fully as possible.

Restorative justice applies process that include the affected parties in the work of identifying and repairing the harm caused by crime

Victims of crime are those most impacted by crime both primary and secondary: victimsø families, friends, offender families, community and criminal justice officials/sector.

Restorative justice takes into account the needs of all parties. Priority being restoration of the Victim and the community

Offenders have personal accountability to victims and to the community and should be held accountable for the crime committed. Offenders to take responsibility for meeting their obligations and develop improved competencies. Success is measured by the integration, or re-integration of offenders as productive members of the community.

Restorative justice does not abolish the right of due process for offenders.

The international journal of offender therapy and comparative criminology (57) 9, 2013, underscores that restorative justice evolved as an attempt to deal with crime, to improve offender treatment and to help victims of crime. The philosophy on restorative justice was catalytic to therapeutic jurisprudence in humanization of laws.

Kenya Law reporting (2014) defines restorative justice as a concept based upon values that emphasize the importance of providing opportunities for moral and active involvement of offenders in the process of offering support and assistance to vcitims,holding offenders

accountable to the people and communities they have violated, restoring the material and the emotional losses the victims have suffered, providing a wide range of opportunities for dialogue and problem solving among crime victims, offering offenders the opportunity for competency development and integration into progressive community life, and strengthening public safety through community building. Restorative justice focuses on the needs of the victims and the offenders as well as the community. Reparation or restitution is the payment made by offenders to the victims to cover losses incurred. Payment can either be in cash or other services. The domain of reparative justice is punitive action against the offenders

2.3. Status of Victim rights in Criminal Justice system.

The principles of sentencing have changed over the course of time, with different generations emphasizing one factor more than the other (Lynch, 1972). The international community gradually recognized the need to integrate victims in criminal justice proceedings. The United Nations in the Seventh Congress on the Prevention of Crime and the Treatment of the Offender acknowledged the fact that criminal law is unresponsive to victims' rights. This led to demands being made to reintegrate victims into the criminal justice process, or minimally, to provide them with a mechanism for presenting their concerns or wishes regarding the crime. (Seventh UN Congress on the Prevention of Crime and Treatment of Offenders Milan, Italy 26 August - 6 September 1985).

In Kenya principle legislation on Probation i.e. Cap 64, mentions little on victims rights. The country recently enacted an act of parliament ie. Victims of Crime protection Act, 2014 which is yet to be fully operationalized.

2.4 .Legislative and Policy issues, Gaps and Concerns

2.4.1. Criminal Procedure Code (Cap 75 laws of Kenya)

This is the law that provides for the procedure to be applied in criminal proceedings both at the High Court and Subordinate Court. The provisions of the Act that relate to victimology are:

Section 177(a) provides for the court to return stolen property held as exhibit to the owner;

Section 175 provides for the compensation of the victim

Section 176 provides for reconciliation between victims and offenders

Section 329A provides for victim impact statements

As stated above, Criminal Procedure Code is a procedural law that does not make provision for rights and especially rights that relate to victims and their support. Moreover, the Courts jurisdiction to call for victim impacts statements is discretionary and rarely used by the Courts.

2.4.2 Penal code (Cap 63 laws of Kenya)

This Statute is the primary substantive legislation on criminal rights and obligations. It creates most of the offences in criminal law. The sections that contain provisions that relate to Victimology are:

Section 29 (1) provides that when any person is convicted of an offence under any of the following sections, namely, sections 118 and 119, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connection with the commission of the offence or, if the property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Attorney-General may direct.

Section 30.(1) Where a person is convicted of any offence mentioned in Chapter XXXI and the offence arose out of, or was committed in the course of, any trade or business, whether carried on by such person or not, the court by which the conviction is recorded may, in addition to any other penalty which it may impose, make an order, having effect for such period as the court may think fit, prohibiting such person from carrying on, or being concerned or employed, directly or indirectly, in carrying on, any such trade or business or any branch of any such trade or business of the same or similar character.

(iii) Section 31 provides any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence, and the compensation may be either in addition to or in substitution for any other punishment.

However, notwithstanding the above provisions, this Statute does not provide substantive victims rights and support. The Act leans more towards providing for accused persons and not victims of crime.

2.4.3 The Sexual Offences Act (No. 3 of 2006 Laws of Kenya)

The preamble to this Act proclaims that it is an Act of Parliament to make provision about sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes. The provisions that relate to Victimology are:

The interpretation of the word complainant encompasses the victim or an intermediary

Section 33 provides for the evidence of surrounding circumstances in criminal proceedings and impact of a sexual offence on a complainant

Section 35(2) provides for the Court at any time in criminal proceedings to make an order for the treatment of a victim of a sexual offence

Section 39 (7) & (8) provides that where there are review proceedings in the supervision of dangerous sexual offenders the victim including the next of kin of a deceased victim have a right to make representation.

The Act still does not create any substantive victims rights and support.

2.4.4 Probation of Offenders Act (Cap 64 laws of Kenya)

This is the principal statute that grants mandate to the department of Probation and Aftercare Service. The only provision in this Act that provides for an aspect that relates to victims is the following:

Section 6 provides for payment of cost for injuries or compensation for loss.

However, this section does not sufficiently address victims rights and needs. Moreover, there are no structures and Regulations to anchor the compensation enforcement mechanism.

2.4.5 National Cohesion and Integration Act (No. 12 of 2008 Laws of Kenya)

The preamble to the Act states that it is an Act of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes. The provisions of the Act that relate to Victimology are:

Section 4 in defining victimization has provided that the same can be considered "as an act is injurious to the well being and esteem of the person"

Section 49 provided mechanisms for conciliation between victims and the other party without resorting to civil proceedings.

The Act nevertheless does not have provisions that provide for victims rights and support. Indeed, the Act leans more towards reconciliation and integration of communities.

2.4.6 Witness Protection Act (No. 16 of 2006 Laws of Kenya)

The preamble to this Act states that it is an Act of Parliament to provide for the protection of witnesses in criminal cases and other proceedings to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes.

The provisions of the Act that relate to Victimology are:

(a) Section 3 (1) (c) defines witness as ña person who has made a statement to:

The commissioner of police or a member of the police force

A law enforcement agency in relation to an offence against a law of Kenya

(b) Section 3 (1) (e) defines witness protection as ña person who for any other reason may require protection or other assistance under this Act.

The programs for protection in this Act include:-

Establishment of new identity

Arrangement for accommodation

Relocation

Provision of transport for the property of the witness

Provision of reasonable financial assistance

Provision of witness services like counseling and vocational training services

Any other thing that the Attorney General considers necessary for the safety and welfare of the witness

Further, Section 35A of the amendments undertaken in 2011 has established a victims' Protection Fund which is meant to take care of persons who become victims in the process of conducting the witness protection program.

This Act does not create victims' rights and support. It remotely covers the victim as far as they are witnesses in court proceedings.

2.4.7 Truth Justice and Reconciliation Act (No. 6 of 2008 Laws of Kenya)

The preamble to this Act states that it is an Act of Parliament to provide for the establishment powers and functions of the Truth, Justice and Reconciliation Commission, and for connected purposes. The provisions of the Act that relate to Victimology are:

Under definition of terms the Act defines a victim as any person or group of persons who with occasion or human rights violation, has suffered any individual or collective damage by acts or commission that violate the rights established in the constitution, international law of human rights, international humanitarian law and international law, and that is considered a crime in a Kenyan legislation.

(Section 5 (b) gives as one of the objectives of the commission the mandate to establish as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights which were committed during the period from 12th December 1963 to

28th February 2008 including antecedents, circumstance, factors and context of violations as well as the perspective of the victims and motives the perspectives of the person responsible for the commission of the violations by conducting investigations and holding public hearings.

Section 5 (e) mandates the commission to determine ways and means of re-dress for victims of gross human rights violation.

Section 5 (g) mandates the commission to provide for victims, perpetrators and general public with a platform for non ó retributive truth-telling that charts a new moral vision and seeks to create a value based society for all Kenyans.

Section 5 (h) mandates the commission to provide victims of human rights abuses and corruption with a forum to be heard and restore their dignity.

Section 6 (i) points out as one of the commission's functions is to develop a policy that should be followed or measures that should be taken with regard of granting of reparations to victims or the taking of other measures aimed at rehabilitating and restoring human and civil dignity of victims. The guiding principles to the commission when dealing with victims of offences as; Victims should be treated with compassion and respect for their dignity; they shall be treated equally, without regard to race, ethnicity, religion, language sex or nationality; and , procedures dealing with victims shall be expeditious and fair; Appropriate measures shall be taken to minimize inconvenience to victims and , when necessary, to protect their privacy, to ensure their safety and that of their families or witnesses testifying on their behalf; and Sufficient measures shall be taken to allow victims to communicate in a language of their choice.

Section 27 provides that the commission may establish special units and adopt specific mechanisms and procedures to address the experience of women, children and vulnerable groups paying particular attention to gender based violations as well as providing opportunities for them to relate their experience.

Section 36 provides that whenever the Commission is conducting amnesty hearings, shall notify the applicant and any victim or person implicated or having an interest in the application, of the hearing and inform the persons of the right to be present at the hearing and testify. Section 36 and 40 provides that the Commission shall:

If possible inform any victim, of the decision to grant amnesty to any person in respect of a specified act, omission or offence.

If the Commission has refused any application for amnesty, it shall as soon as practicable notify-

The person who applied for amnesty;

Any person who is in relation to the act, omission or offence concerned, a victim; in writing of its decision and the reasons for its refusal.(xi) Sections 41 provides for recommendation of reparation and rehabilitation of victims where amnesty is recommended. The sections further provide for the setting of regulations on procedure and criteria applicable.

Despite the fact that these statutes have provisions for victims of offence, they have not been adequately. This Act is more geared towards the reconciliation of communities due to past injustices allegedly committed to them. Consequently, the Act does not have a regime of victims' rights and support mechanisms.

2.4.8 The Counter Trafficking in Persons Act (no 8 of 2010 laws of Kenya)

The preamble to this Act declares it as an Act of Parliament to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes. The provisions of the Act that relate to Victimology are:

The act establishes a national assistance trust fund for victims of trafficking in persons in section 22. The purpose of this fund is to assist victims of trafficking in persons. The Board of Trustees are responsible for the administration of the fund.

Notwithstanding the above provisions, the Act does not make provision for elaborate procedures for victims to access their rights and protection.

In Kenya some progress has been made regarding the entrenchment of victim rights in the legal system. However it is instructive to note that the provisions of the Criminal Procedure Code (Cap 75 of the Laws of Kenya) have not done much to crystallize victim rights. The jurisdiction of the court to call for victim impacts statements is not mandatory and in practice, such reports are only limited to crimes against the person e.g. murder, assault, causing grievous harm and manslaughter cases.

2.4.9 Evidence Act, (Cap 80, and Laws of Kenya)

The preamble to this Act declares it to be the law of evidence. Therefore, this law establishes the procedure for productions of evidence in Court. The provision that relates to Victimology is:

Section 12 provides that in suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant. However, the

entire Act treats victims of offences as witnesses and does not make specific protections, rights and welfare arrangements for them.

2.4.10 Victim Protection Act, (No. 17 of 2014)

It is the main statute that lends its plight to the needs of the victim. Section 19(4) proposes the enactment of the Victim Protection Board, and the development of the victims rights charter.

The act has the following objects.

Recognize and give effect to the rights of the victims of crime; Protect the dignity of victims; Promote co-operation between government departments and other organizations; Provide for victim protection trust and board; Provide for operationalization of the victims charter.

2.5 Theoretical Framework

2.5.1 Introduction

The study observes that various theories have been developed that specifically explain Victimology. In understanding and analyzing the concept of Victimology, this study was guided by victim precipitation theory, lifestyle-exposure theory, deviant place/environmental theory, routine activity theory and conflict theory.

2.5.2 The Victim Precipitation/Culpability Theory

Siegel (2006) views Victimology from the standpoint that the victims themselves may actually initiate, either passively or actively, the criminal act that ultimately leads to injury or death. It implies that the victim has something to do with his/her own victimization. During passive precipitation the victim unconsciously exhibits behaviors or characteristics that instigate or encourage the attack. He lists job promotions, job status, successes, love interests, and the like as examples of these unconscious behaviors and characteristics. Additionally, political activists, minority groups, those of different sexual orientations, and other individuals pursuing alternate lifestyles may also find themselves as targets of violence due to the inadvertent threat they pose to certain individuals of power.

Essentially, the victim precipitation theory focuses on the idea that passive precipitation of violence is a result of a power struggle. A politician may feel threatened by an activist group leader because his action draw attention to negative aspects of his personality and actions that will or may cause loss power in society. This sort of passive precipitation may also be present when the victim is not even aware of the existence of the attacker. In this instance a new worker may push up the ranks quickly, threatening long-time employees; or a transsexual may be the

victim of crime due to their existence "threatening" the beliefs and or ideas of another individual or group of individuals. The latter is a good example of a hate crime in which victims are often unaware of the individuals that perpetrate the crime, yet their actions and/or characteristics trigger the crime.

Active precipitation is the opposite of the aforementioned. Victimization occurs under this theory through the threatening or provocative actions of the victim. One of the most controversial points of this theory is the idea that women who are raped actively contributed in some way, either through provocative dress, a relationship, or suggested consent of intimacy (Siegel, 2006). Because of this viewpoint it is hard to convict an accused rapist who has had some form of relationship with the accused, or one that was behaving provocatively or suggestively. When dealing with this theory we must ask ourselves whether or not it is really okay to blame the occurrence of a crime on the victim. This is especially true in cases of rape when flirtation may be present, yet there is no consent to sexual intercourse. Many victims are not merely innocent victims but sometimes suffer violence that is precipitated by their own violent or threatening actions. In this instance, the victim's actions are presumed to provide criminal motivation of the offender (Wolfgang 1958).

This research observes that the victim precipitation theory has its own limitations. The theory is only limited to cases where victims come into contact with the perpetrators directly. It fails to explain the issue of precipitation in cases where people become victims of crime through offences committed against them in their absence like theft and burglary. The theory further fails to provide tools for measuring the extent to which a victim may precipitate his own victimization. However, this theory is useful to inform the study in content that victims of crime precipitate their own victimization.

2.5.3 The Deviant Place/Environmental Theory

(Siegel, 2006) states that greater exposure to dangerous places makes one more likely to become the victim of a crime. Unlike the victim precipitation theory, the victims do not influence the crime by actively or passively encouraging it, but rather are victimized as a result of being in "bad" areas. In order to lower the chance that one will become the victim of a crime, the individual should avoid the "bad" areas of town in which crime rates are high. For example, South Central Los Angeles is notorious for its gangs, and high crime rate.

The more an individual ventures into South Central, the more likely they are to become the victim of a crime there. Sociologist William Julius Wilson discusses the social and economic inequality that finds more minorities in the seat of the victim since more minorities are from low income households that are unable to move away from the crime than Caucasians (1990). Moreover, the deviant place theory suggests that taking safety precautions in these areas may be of little use since it is the neighborhood and not the lifestyle choices that affect victimization. In a nutshell, if a neighborhood is "deviant," the only way to lower your risk of victimization is to leave the neighborhood for a less deviant, low crime rate area.

This perspective too, has its shortcomings in explaining victimization. Whereas it operates from the standpoint that victimization comes as a result of environment, it fails to explain how some members of a particular environment may become victims of crime and others don't, although all operate from within the same environment. Nonetheless, the theory is relevant to inform the study in content that victimization is a function of environment.

2.5.4 Conflict Theory

(Brownmiller and Russel 1975) explain victimization as a result of power differentials between victims and offenders. This perspective is normally in situations where there are obvious power differences between the offender and the victim especially in sexual assault, child abuse and domestic violence. The outstanding feature of this theory is that the offender's victimization of another is an expression of domination and control. Such expressions of domination and control are presumed to stem from broad structural inequalities based on age and gender and corresponding patriarchal societal values emphasizing dominant males and subordinate females.

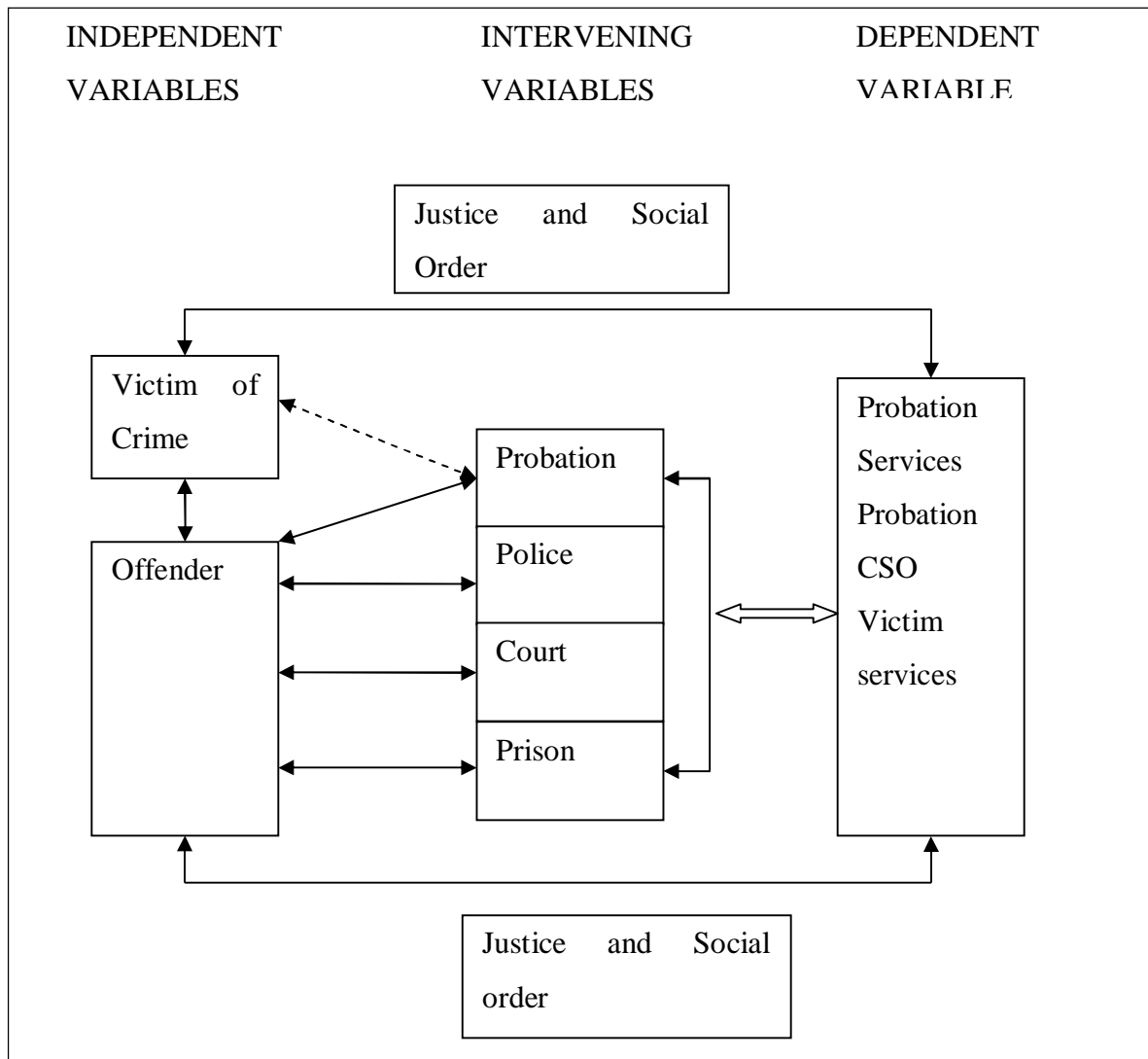
This perspective too, has its limitations in explaining victimization. Whereas it views victimization as a result of class struggle and power differentials, it fails to explain situations where there are power differentials without any victimization. It also has the shortcoming of explaining whether victimization will stop if power differentials are eliminated in the society.

The study has however; chosen this theory to verify the assumption that victimization may be as a result of power differentials between victims and offenders in the broader society. Probation services are inclined to reconciliation, rehabilitation, resettlement and re integration of offenders with their possible victims and the society at large. The theories become useful in addressing the criminogenic forces behind offending and re offending in realization of social order and harmony.

2.6 Conceptual Framework

Figure.2.1. Conceptual framework-Victim interaction with Probation services

The court plays a pivotal role in referring all possible cases of persons who have been convicted for various offences to Probation sentence as it strives to uphold justice and social order in the community of people or society. For any Victim of Crime there are legal processes that one goes through which start from reporting to police for arrests, the court process for determination of once guilt to offence by listening to all parties, complainant and accused persons then for delivery of punishment which may be custodial or non-custodial.



Probation sentence when administered with full involvement of the victim and the offender by all the stakeholders, impacts on the rehabilitation and welfare of both the offender and the victim respectively resulting in justice and social order. The conceptualization is that there is need at all

times for Victims of crime to be involved in the passing of any sentence leading to probation sentencing by their offenders. Such has not been previously practiced leaving them at the periphery and unfairly violating their unique rights and needs. This study focus on victim's interaction with probation sentences with the constitution that probation is expected to provide protection and welfare services such as victim notification, counseling, facilitation of reparation and compensation.

2.7 Conclusion

Theories of victimization are varied. They include those that focus on victimization as a function of opportunity, those that focus on victimization as a function of social interaction dynamics between victim and offender, and those that focus on victimization as a function of deep social division in terms of power and control. All such varied perspectives have received empirical support in research literature. As such, victimization is clearly a complex phenomenon, which results from a multitude of broad social and micro-situational influences. Although these theories tend to be viewed as "competing" and studied in isolation, there is little doubt that all have merit and assist in providing a comprehensive understanding of victimization.

2.8 Operational definition of variables

Victims of crime and the offender were defined as independent variable and probation sentence was identified as dependent variable. Ideally probation sentence is dependent on how well the criminal justice players process both the offender and victims of crimes to promote justice and social order. However the current practice exhibits lack of consultative interactions by the players in the entire sphere resulting to victim isolation and neglect.

The researcher also noted existence of intervening variables like government policy or legislative framework in place as victims interact with probation sentence. The dependant variable is also referred as the predictor variable .In the manipulation of probation sentence it was in the interest of the research to establish understanding of Victimology, participation on sentencing to probation, reparativeness, rights entrenchment, and any concerns which are measured qualitatively. Criminal justice system assumes circular flow which in most cases not always begin with Police arrest of an offender for commission of cognizable offence, the victim is established, from the Police (Reporting) matters are referred to the court by drafting of charge sheet, the court prefers charges, then the offender is put on trial, which the court may convict him/her or acquit, then sentence (penology) to probation, jail or ask to pay fine.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1. Introduction

This chapter sought to provide an overview of methodological approaches selected for this study. It further intended to provide a research design that was based on site description, site selection, sampling methods, research instruments, ethical considerations and procedures for data analysis.

3.2. Site Selection and Description

Nairobi is the most populous city in East Africa, with a current estimated population of about 3 million. According to the 2009 Census, the administrative area of Nairobi had 3,138,295 inhabitants living within 696 km². Nairobi is currently the 14th largest city in Africa, including the population of its suburbs. (Kenya National Bureau of Statistics, 2009).

Nairobi is also one of the most prominent cities in Africa both politically and financially; home to thousands of Kenyan businesses and over one hundred major international companies and organizations, including the United Nations Environment Programme (UNEP) and the main coordinating and headquarters for the United Nations (UN) in Africa & Middle East, the United Nations Office in Nairobi (UNON), Nairobi is therefore an established hub for local and international Institutions of Higher Learning promoting knowledge economy.

The study was conducted in Nairobi County, which is the Capital City of Kenya. Nairobi County is divided into nine sub-counties (districts), twenty nine(29) wards (divisions), seventy one locations(71) locations and one hundred and forty eight(148) sub-locations (Kenya National Bureau of Statistics, 2009). This study picked on Nairobi County because it was cosmopolitan, it is likely to provide efficient location of both primary and secondary respondents.

3.3. Research Design

Munyoki .J.M. and Mulwa. A .S (2012), define research design as a plan and structure of investigation conceived to obtain answers to research questions. The researcher undertook a descriptive study which used both qualitative and quantitative methods of study to gather requisite information from key informants whereas quantitative techniques were used to collect data from offenders on Probation Sentences, key practioners in criminal justice and victims of crime who are the primary respondents.

3.4 Unit of Observation

The unit of observation was offenders on probation sentences, Probation Officers, Judicial Officers, Police Officers and Prison Officers in Nairobi County.

3.5. Unit of Analysis

The unit of analysis was the victims of crime interaction with the probation services.

3.6. Study Population/Target population

The study population centered on victims of crime whose offenders were placed on probation sentence.

3.7 .Sampling.

The researcher used purposive and convenient sampling technique to determine accessible population for the study. Cluster sampling was used to determine the geographical location of the study area. The administrative regions stations were clustered according to the courts jurisdiction namely Kibera, Milimani and Makandara with the probation stations aligned to the same, to facilitate convenience in the process of identifying the offenders and victims. From each cluster, respondents were sampled in respect of the three stations,-Kibra stations whose jurisdiction includes Kibera, Otiende, Langata, Dagorethi, Kilimani, and Karen. Milimani station serves the central district business and Westlands. Makadara station has jurisdiction in the areas of Kasarani, Embakasi, Kamukunji, Mathare and Githurai as reflected in Table 4.4 and appendix Map 1,2, and 3. To get the sample of respondents from each category,a proportion was determined from the same frame which was further selected from the reporting schedules of offenders/probationers of conveniently selected probation officers. The Victims were sampled through the assistance of probation officers and their offenders whereby ten per cent (10%) of the study population was selected as shown in table 3.1. This is in consonance with Kenya Institute of Management publication, Fundamentals of Management Research Methods (2009), which stated that, for descriptive studies, 10% of the accessible population is adequate and representative enough for the sample. Offender recording schedules were used to provide information on the contacts of the victims and arrange for meeting both for offenders and their victims.

Table 3.1. Sample Size Determination

Offenders Sample Size determination				Victims of crime sample size determination			
Station	Target Pop.	Proportion	Actual sample	Station	Target Pop.	Proportion	Actual sample
		10%				10%	
Milimani	270	10%	27	Milimani	210	10%	21
Kibra	450	10%	45	Kibra	120	10%	12
Makadara	510	10%	51	Makadara	420	10%	42
Total	1230	10%	123	Total	750	10%	75

Source; Probation and after care station registers Nairobi County.2014

3.8 Key Informants.

Key informants were purposively sampled from the agencies in the criminal justice system. The judiciary through the office of the registrar assisted in the identification of courts, magistrates and judges who participated in this study. The office of the inspector general of police assisted in the identification of police stations and officers who participated in the study. Prison participants were identified through the office of the Commissioner General. The probation department staff directory assisted identification of officers who participated in the study within Nairobi County. Key informants were also put into clusters and studied according to- stations, courts and their professional contributions- judicial Officers, prison officers, Police officers and probation officers, stations covered were -Milimani court and probation office, Kibra Court and probation Office, Makadara court and probation office, Nairobi probation hostel, probation headquarters office, Jogoo Road police station, KICC police station, Central Police station, International Life House police station, Langata Women Prison and Nairobi remand prison.

3.9. Methods of Data Collection

The researcher used both qualitative and quantitative data collection methods namely-survey, key informants and document review.

3.9.1. Collection of Quantitative Data

A survey method was used to collect data from primary respondents who were offenders and victims. Survey questions were developed targeting each one of these categories. Primary data was collected through direct communication between the researcher and the study subjects where

the researcher was able to profile demographics, socio-cultural-economics, attitude and opinion, experiences, and psychological lifestyles of the subjects in the study. Key informant guide was used to collect data from probation Officers, Judicial Officers, Police Officers, and Prison officers within Nairobi County. The method was deemed to be the most appropriate to interact and unearth underlying information from the offenders and their victims specifically to capture unique and individualized or customized needs and concerns.

3.9.2. Collection of Qualitative Data

Key informants

Key informants method was used to collect data from criminal justice stakeholders through interviews. A total number of 34 respondents were interviewed as follows-Judicial officers-seven, prison officers-ten, police officers-nine, and eighth probation officers. Their information was vital in providing contemporary understanding on policy and legislative issues in the area of study.

3.9.3. Document Review

This method was used to collect data from records held in probation stations as follows- referral registers, central case ledgers, probationer's files, supervision reports, and reporting schedules, in orders to access offenders and their victims. Documents were specific and a confidential source of information tailored to each respondents. This justified the researcher to use the method as the documents were not available anywhere else.

3.10. Tools of Quantitative Data Collection.

The researcher used tools and instruments that are majorly/commonly used in social science research-questionnaires, observation and interview guide.

3.10.1. Questionnaire

The researcher designed respondent specific questionnaires that were administered to victims and offenders which were closed open ended and declarative. The set of questionnaires administered were-Offender and Victims referred as Appendix 1 and Appendix 2.Each questionnaire has an introduction, biodata information, frequency of offences and questions as per research objective as well as any policy and legislate issues and proposed recommendations.

Tools of Qualitative Data Collection.

3.10.2. Key Informant Guide.

A Key informant guide was prepared to gather data from Probation Officers, Judicial Officers, Police Officers and Prison Officers in Nairobi County who were deemed to be critical in the study and were privileged to provide professional information as it relates to their interaction with victims and offenders of crime in criminal justice system. The data was used to enhance the information obtained from the primary respondents.

The key informant guide had the introduction, and well-designed questions covering professional understanding in victimology, probation sentences, policy and legislative provisions, in respect to victims' rights, any gaps there in and proposed recommendations. The researcher intended to capture information that was related to entrenchment of Victimology in the criminal justice system.

3.10.3. Check list

A list of requisite records was prepared and presented to the stations managers requesting them to avail and confirm for the purpose of this research on agreed dates. That was the only way the researcher accessed basic and relevant information to the study. The strategy also was cost and time saving and focused on only relevant data from the stations.

3.11. Validity

The researcher examined the extent to which the instruments addressed the intentions and objectives of the study in terms of content, construct which is both internal and external to the research environment. The researcher keenly designed the questionnaire tool to capture only relevant information. The tool was further forwarded to the supervisor for validation for quality control so that to ensure only relevant and accurate data is collected and accord generalization of findings later in other regions.

Through consultations with selected peers in probation service, The instruments were reviewed and found suitable for the investigation with the key variables agreed upon as designed in the study.

3.12. Reliability

Reliability is a measure of the degree to which research instrument yields consistent results after repeated trials then such results could be generalized. The tool was guarded against collection of irrelevant data and sharpened to lessen possible errors that may be associated with the tool

through internal consistence test and measures. Test re-test was done before the instrument was rolled out and any ambiguities were ironed out. The researcher pre- tested and re-tested the tool in Ngong area, the outskirts of Nairobi sharing similar characteristics with the research area.

The instruments of data collection were validated and a pre- test and re-test conducted before administration of the interview guide to the targeted population to eliminate any ambiguities. Content validity was also ensured by the researchers' careful design of the questionnaire to solicit relevant information, and key respondents carefully identified for the subject of study.

3.13. Ethical Considerations

In this research, respondents were protected by keeping the information they gave confidential and their consent was sought before revealing any information. Anonymity of respondents by not disclosing their identities was protected. The information that was collected is strictly for learning purposes. The researcher acknowledged the assistance received from various individuals such as respondents, professionals, as a matter of courtesy. Other peoples' work used has been acknowledged and neutrality maintained.

The researcher constructed and conducted the study in a manner that was mindful of the distress the subject matter could cause the participants; the interaction offenders and victims in search of data may rekindle hostile emotions. The researcher allowed participants to willingly volunteer to participate in the study as described in the sampling procedure. The researcher upheld fidelity by contacting and briefing the respondents in advance about the intended research study and ensured that an informed consent was obtained from the respondents well in advance. Formal introduction was done by way of presenting the letter of introduction/transmittal.

The research assistants were sensitized so that they could follow ethics. The researcher will adhere to the necessary government regulations that require authority to conduct research from public institutions.

3.14. Data Analysis

The process of data analysis used computer word processor and the SPSS software .The tasks involved coding, sorting, cleaning the data collected, organizing the data systematically, and generating descriptive statistics. The study findings were presented in frequency tables, bar charts and percentages. Interpretations of the findings were based on the objectives of the study and the conclusions drawn and appropriate recommendations made.

Additionally, data from the researcher's interviews was analyzed by summarizing and describing collected information based on the general research objectives and identified themes. The researcher interrogated the two broad categories/themes to decide on which ones were recurring and the central themes which were less significant.

In so doing, the researcher was able to objectively find agreement about the core themes and guard against ambiguities and bias. By employing the qualitative research design and data analysis, the researcher was able to attain convergence between the data produced from diverse sources as a check on the validity of discussions and conclusions.

CHAPTER FOUR : DATA ANALYSIS, PRESENTATION AND INTERPRETATION

4.1 Introduction

This chapter presents information on demographic characteristics of respondents, stakeholder understanding of Victimology, victim participation in the passing of probation sentences, reparativeness/appropriateness of probation sentences, entrenchment of victims rights in the criminal justice system and victims concerns in respect of probation sentences.

4.2. Response Rate

The researcher recorded a response rate of 100% for all categories of respondents. These was attributed to the researchers use of professional skills in administering the instruments and communicating effectively on the sensitivity nature of the subject under study which respondents felt it was an opportune time to contribute towards policy enhancement placing victims concerns centroid in the criminal justice system. This response rate is above 60% threshold provided for in a qualitative and quantitative survey as proposed by Kenya Institute of Management (2009) for credible research findings.

4.3. Demographic Characteristics of Respondents

The general characteristics of respondents indicated their age, gender, education level and place of residences.

4.3.1. Age Range of Offenders and Victims of crime

Most respondents in the category of offenders were in the age range of 18years and above constituting 90 % (adults), while victims were in the age range of 13-15 years constituting 96% of victim (juveniles) respondents. It therefore implies that most offenders were adults while victims were mainly children. This finding is in tandem with the conflict theory propounded by Brownmiller and Russell (1975), explaining victimization as a result of power differentials between victims and offenders, exhibiting expression of domination and control, especially in sexual assault, child abuse and domestic violence.

The most frequent offences as established were-assault, creating disturbance, kidnapping, and child neglect and issuing of bad cheques .Table 4.1 below shows the age of the offenders and victims for various offences.

Table 4.1 Age of offenders and victims of crime

Age Range.(Years)	No.of Offenders	Percentage of offenders	No of Victims	Percentage of Victims
<13	0	0%	0	0%
14-15 years	6	4.9%	72	96.0%
16-17 years	6	4.9%	3	4.0%
18 >	111	90.2%	0	0%
Totals	123	100%	75	100%

4.3.2. Gender of Offenders and Victims

Table 4.2 below shows that out of the total number of offenders sampled, 68.4 % were male while male victims constituted 54.2% of the study. Only 31.6% of female offenders all above age 18 years participated in the study against 45.8% of female victims. Non response was higher for the category of offenders at 7% compared to Victims who did not respond to disclose their gender at 4%.The study therefore established that there were few female offenders as opposed to the victims and that there were many male offenders as opposed to male victims. The findings confirm the conflict theory propounded by Brownmiller and Russel (1975) who expressed that the offender's victimization by another was an expression of domination and control.

This explains the vulnerability of females as victims and males (offenders) as perpetrators of crime and the men who were victims's majority were juveniles who also belong to the vulnerable class (Brownmiller and Russel 1975).

Table 4.2 Gender of offenders and victims of crime.

Gender Description		Offender		Victims	
		Frequency	Percentage	Frequency	Percentage
Gender	Male	85	69.1%	39	52%
	Female	38	30.9%	36	48%
	Total	123	100%	75	100%

4.3.3. Education Level of Offenders and victims of crime

The gender and education levels of offenders and victims of crime indicate that 49% of offenders had attained primary level of education, while 40% of victims had primary qualification. Only 34% of offenders had secondary qualification as opposed to victims sampled 40% had attained secondary education. The Researcher established that 17% of offenders were holders of tertiary qualification, while victims with tertiary qualification were 20% of sampled respondents.

The findings therefore indicated that most crimes were committed with persons with low level of education (Ryan,1971) or failing school systems, due to lack of critical skills to ache a living in the harsh and competitive economic environment in the Metropolitan/cosmopolitan city.

Victims similarly with low level of education portrayed ignorance hence became easy targets as expressed by environmental theory and victim culpability theory where victims exhibit little risk and self-management skills as reflected in Table 4.3 below.

Table 4.3 Education of offenders and victims of crime

Level of Education		Offenders (Freq)	Offenders Percentage %	Victims (Freq)	Victims (Percentage) %
Education	Primary	60	49%	30	40%
	Secondary	42	34%	30	40%
	Tertiary	21	17%	15	20%
	Total	123	100%	75	100%

4.3.4. Offenders and Victims Residences

The distribution and spread of offenders and victims was based on the sample frame which was drawn from the department of Probation and after care records in the identified probation and court areas. A total of one hundred and twenty three offenders were spread as follows-Dagorethi - thirty three, Langata twelve, Makadara thirty, Starehe fifteen Kibra- ten, Milimani- nineteen. The twenty five victims originated as follows-Kibra óten.Makadara -five and Milimani- Ten.

Table 4.4 Residences of Victims and Offenders.

Offender Residential places			Victims Residences		
Residence Region	No. of Respondents	Percentage No of Respondents	Residence Regions.	No of Responses	Percentage No. of respondents
Dagoretti	33	26.8%	Dagorethi	9	12%
Langata	12	9.8%	Langata	3	4%
Makadara	30	24.4%	Makadara	24	32%
Kamukunji	0	00%	Kamukunji	9	12%
Starehe	15	12.2%	Starehe	0	00%
West lands	9	7.3% %	West lands	12	16%
Kasarani	6	4.9%	Kasarani	12	16%
Embakasi	15	12.2%	Embakasi	6	8%)
Central	3	2.4%	Central-CBD	0	00%
Totals	123	100%	Total	75	100%

The study established that most of the offenders and victims came from the urban informal residences of Dagorethi, Makadara, starehe, Embakasi and Langata while victims were from Makadara, Westlands, Kasarani, Kamukunji and Dagorethi (Table4.4 above) or set up. The victims are from more informal geographical concentration of Nairobi where as some of the victims were from peri -urban informal settlement of the city. Siegel (2006) advanced the deviant place theory or the environmental theory whose concern was the possibility of victimization by the fact that victims frequented õbad areaö or crime hot spots. Slums harbour all types of characters and act as hide out for criminals and possible victims. Early criminologist (Ryan, 1971) propounded that offenders themselves could be possible victims of grinding poverty,

dysfunctional families, failing school system, run down housing, unemployment and job shortages, discriminated, brutalized by the police and suffering from other social problems. Dagorethi region had the highest number of registered offenders of crime followed by Makadara, then Starehe and Embakasi by law courts, and the number of police stations as well. Kamumukunji region did not record any offender which could be possible that the resident offender committed their vices in other places away from Kamukunji or changed frequently their residences after the crime. The CBD had the least number of offenders which the researcher associated with having very few residential premises.

Kamukunji region did not record any offender which could be possible that the resident offender committed their vices in other places away from Kamukunji or changed frequently their residences after the crime. Informal settlements in Nairobi County are characterized by high level of unemployment, competition and grinding poverty. Lack of skills attracts huge crowds of residents who are mostly living below one dollar per day.

Makadara had the highest number of victims, followed by West lands and Kasarani. This trend could be associated with the corresponding number of offenders and police stations. The CBD had no victim while Langata and Embakasi had the least number of victims reported. This finding corresponded with the regions with the highest and the least number of offenders. This finding confirms the environmental theory and Ryans findings of crime and victims (Ryan, 1971).

4.3.4.1. Crimes committed by Probationers against their Victims.

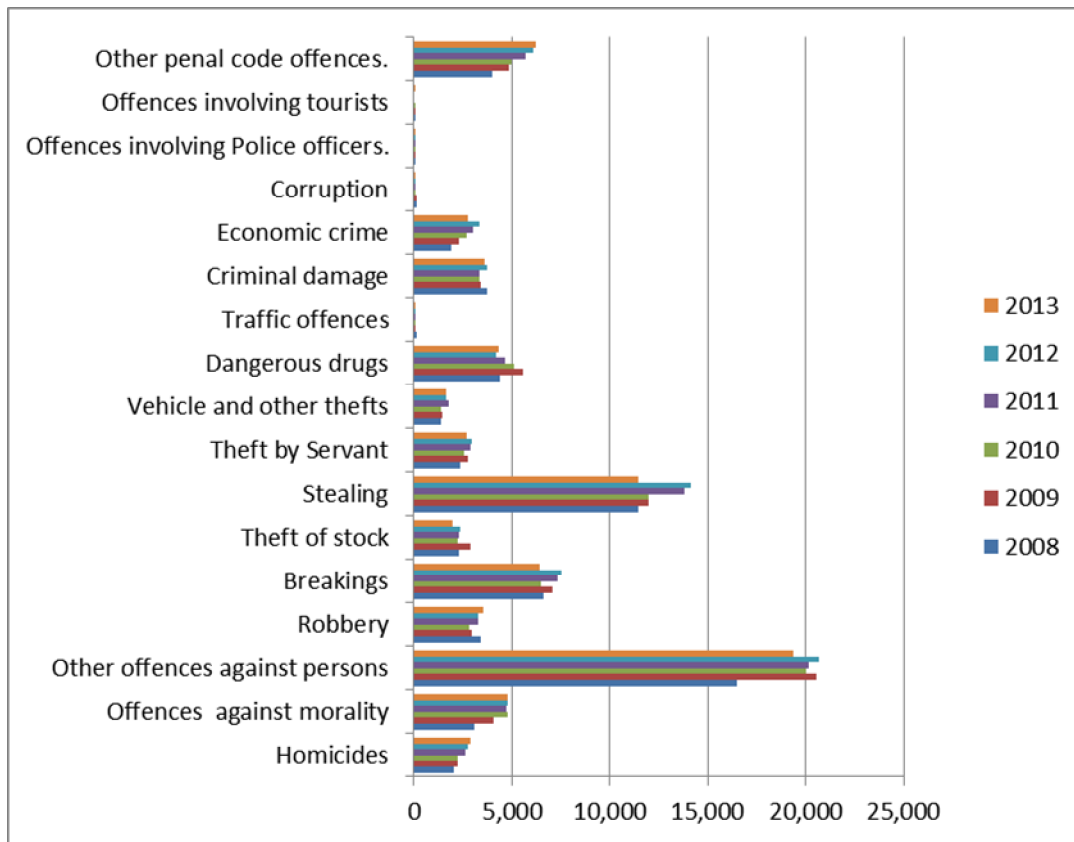
The table below shows various crimes committed across the country to possible victims in the last six years from 2013.

Table 4.5. Break down of crimes nationally 2008- 2013 Reported cases during the year

Cases Reported to Police stations.	2008	2009	2010	2011	2012	2013
Homicides	2,037	2,218	2,239	2,641	2,761	2,878
Offences against morality	3,116	4,068	4,817	4,703	4,806	4,779
Other offences against persons	16,496	20,539	20,012	20,144	20,698	19,344
Robbery	3,401	2,938	2,843	3,262	3,262	3,551
Breakings	6,626	7,053	6,453	7,325	7,558	6,397
Theft of stock	2,269	2,876	2,244	2,269	2,377	1,965
Stealing	11,435	11,972	11,986	13,797	14,111	11,455
Theft by Servant	2,387	2,732	2,591	2,889	2,984	2,702
Vehicle and other thefts	1,358	1,439	1,365	1,768	1,663	1,631
Dangerous drugs	4,407	5,541	5,081	4,649	4,181	4,316
Traffic offences	120	59	103	100	66	45
Criminal damage	3,760	3,417	3,327	3,345	3,769	3,603
Economic crime	1,898	2,324	2,662	3,036	3,369	2,750
Corruption	133	158	62	52	49	57
Offences involving Police officers.	33	56	37	27	69	95
Offences involving tourists	6	5	1	0	0	14
Other penal code offences.	3,994	4,860	4,956	5,726	6,109	6,250
Total	63,476	72,255	70,779	75,733	77,852	71,832

Source: Adapted from Table 205, Page 270, KNBS Justice & Crime Reports 2014

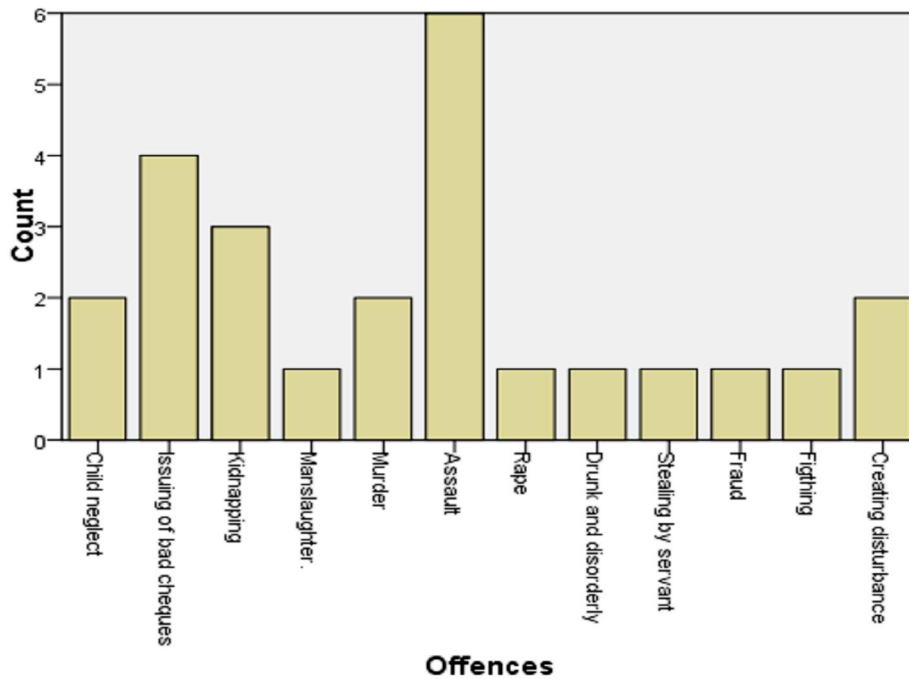
Figure 4.1 Breakdown of Crimes committed Nationally 2008-2013



Source: KNBS Justice&Crime Reports 2014

The above graph 4.1 shows a breakdown of crimes committed to possible victims in the period 2008 to 2013 in Kenya. Most victims in the study fell prey of the offence of assault, issuing of bad cheques, kidnapping, child neglect, creating disturbance, murder, manslaughter, fighting, fraud, stealing by servant, rape and drunk and disorderly as shown in Table 4.2 below.

Figure 4.2. Offences committed



4.3.4.2 Victims

The nature of offences suffered by victims above and the fact that most of the victims were juveniles while offenders were adults suggest applicability of the dominance and vulnerability (Conflict) theory as propounded by classical criminologists and victimologist. (Brown miller and Russel, 1975)

4.3.5. Stakeholder Serving Stations.

Besides the primary respondents, information was also solicited from stakeholders serving in the criminal justice system within Nairobi County on the subject of the subject of study with the aim of collecting comprehensive information. Key informants for judicial officers were drawn in the courts and stations as follows- Milimani, Makadara and Kibra Prison officers from Nairobi West, Nairobi remand, Langata women prison and Langata Maximum prison. Police officers respondents were from Jogoo police station, Central Police, International Life House Unit, and KICC. Probation Officers responses were drawn from Kibra, Probation Headquarters, Milimani and Nairobi Probation Hostel. Key informants who participated were not required to disclose their Age, Gender, level of education and place of residence.

Table 4.6. Selected Officers Serving Stations

Judicial Officers		Prison Officers		Police Officers		Probation Stations	
Station	No	Station	No	Station	No	Station	No
Milimani	2 (40%)	Nairobi West	2(40%)	Jogoo	2(40%)	Kibra	1(20%)
Makadara	1(20%)	Nairobi Remand	1(20%)	Central	1(20%)	Prob H/Q	1(20%)
Kibra	2(40%)	Langata Women	1(20%)	International Life house	1(20%)	Milimani	2(40%)
NIL	NIL	Langata Maximum	1(20%)	KICC	1(20%)	Hostel	1(20%)
Total	5		5		5		5

The table above shows the number of selected Judicial officers, Prison Officers, Police officers and probation officers as per their station of service within Nairobi county and percentage from the respective station.

4.4.1. Officers understanding of Victimology

The views of key stakeholders were sought in determining their understanding of Victimology and what it entailed. Responses were received from judicial officers, prison officers, police officers and probation officers.

Victimology was generally understood differently by all stakeholders with most of them indicating that it referred to the study of the impact of crime on a victim or the complainant.

In very general terms victimology was defined by criminologists as the scientific knowledge of the victims or a study of interaction between the offender and the victim (Karmen, 2010 and Turvey, 1999).The victim protection act September 2014, defines a victim as any natural person who suffers injury, loss or damage as a consequence of an offence. The act also captures support services, dignity, rights, vulnerability, representation, impact statement on psychological, emotional, physical, economic and social impact of the offence committed against the victim.

The United Nations(UN) General Assembly, Resolution A/RES/40/34 defined victims including those of abuse of power as persons who individually or collectively suffer harm, including physical, mental injury, emotional, economic loss, impairment of fundamental rights nationally or international through criminal actions.

The professional definition of the term Victimology constitute the elements of, harm to an individual person or group of people, loss suffered occasioned by criminal activity, a and a consequential relationship between the offender(perpetrator) and the victim(the subject) which goes beyond the accused persons and encompasses other members of society. The study is anchored on the above UN definition.

In view of the above, the professional component of the definition captured by the Victimologists was not well understood by the judicial officers. A male middle aged Judge with long experience in the service defined Victimology as follows:

'Study of the impact of crime on a victim or the complainant'.

The weakness of this definition is that it narrows the understanding of Victimology to the level of a complainant; however it captures the element of crime committed to a victim and probable impact. Another Judge defined Victimology in relation to human rights- *on where offenders' rights are given prominence and the victims are left speaking through the prosecution as contained in the bill of rights, Kenya constitution 2010.'*

A female magistrate recently employed into the service stated that she did not understand the concept of Victimology- *'I do not understand that concept, though I know the term victim and victim rights as provided by the Kenya constitution of. 2010'*

This scenario underlines fact that the concept of Victimology was not well understood by the practioners. One of the magistrates attributed this state of affairs to lack of practicability of legal/legislative provisions which was expected to address to the victims concerns. These findings indicate that some judicial staff being key drivers in the criminal justice system lacked correct understanding of the subject which was associated legislative and policy gaps. The position as at current has witnessed the judiciary undergoing transformative and structural process.

Views of prison officers being key stakeholders in the criminal justice system were also sought. One prison officer provided a definition that encompassed victims, offenders and correctional institutions as stated below

'The study of victims including relationships between victims and offenders, the interactions between victims and criminal justice system i.e. police, prisons, court and correctional institutions'.

Another officer defined Victimology in managerial perspective- *Management of victims and their involvement in the inmates' management'*. These definitions lack key elements as described by criminologist above.

Another young officer who had undertaken a study in criminology defined as a process which involved the conditions of the victims after the encounter with crime.-A *Study of what victims go through from physical, emotional to social as a result of actions' of others who cause harm or crime*

*The above definition accurately compare with the definition provided by Karmen,2010, however it further lack key elements contained in the professional definition as spelt in Victims Protection Act 2014 and UN Resolution A/RES/40/34,1985.*This may be attributed to the fact that prison officers hardly interact with victims in the process of containing and correcting offenders which was associated to lack of legislative provisions.

Police officers had slightly different version of understanding to the concept of Victimology. One senior police officer of long experience defined Victimology in the context of punishment- *'Any form of punishment an offender is subjected to having been taken through the court to determine whether the offender has to be punished.* Another officer conceived Victimology in terms of institutional relationship where he stated that Victimology was- *the study of victimization, relationship between the offender, victim, the court, and the police in the criminal justice system.*

The presented definitions fall short of professional scope of Victimology. They are limited to processes. The scenario could be associated with the limited role police officers play in the criminal justice system where they arrest offenders and consequently present them to court for further directions and other institutional action, which leaves victims without attention.

Probation Officers who also form a stake in the criminal justice system had different views on the meaning of the term Victimization. One officer with long service in the industry associated Victimization to the victim's role in crime commission i.e. *the study of the role the victim plays in the process of crime commission or in crime and criminology*.

Another officer viewed Victimization from effect and harm perspective i.e. *the study of the effect or harm people suffer as a result of offences committed against them*. Though the provided definition contains some elements captured in the larger professional definition, it was not exhaustive. It viewed Victimization as a branch of criminology which mainly concerns itself with the plight of the victims. This persuasion could be associated with the role probation officers play in the rehabilitation of offenders and have little concentration with the victims of crime. Victims from the professional context go beyond witnesses and relatives of victims.

The concept of the victim is mentioned in various pieces of legislation with different connotations-Evidence Act, Sexual Offences Act, witness protection Act, Probation of offenders Act, National cohesion Act, Truth Justice and Reconciliation Act. Judicial officers, Prison Officers, the findings established that the concept of victimization was not well understood by all identified stakeholders. Prison respondents and probation Officers, shared the same definition with Karmen (2010), Turvey (1999) and Wertham (1949), who perceived victimization as the scientific study of the physical, emotional and financial harm people suffer because of illegal activities, a study of victim's characteristics, and scientific study of people harmed by criminals.

The study also established that there were a few key informants respondents whose understanding was different from the convention meaning or definition as provided by the victims protection Act 2014 and UN resolution A/RES/40/34 of 1985. Some judicial officers defined Victimization from their cause of interaction with victims and offenders and legislative provisions of the same where offenders are given prominence and victims speak through the prosecutor. Some police officers reported victimization as a form of punishment; few prison officers felt it was the management of victims and their involvement in inmates' management. Some of the definitions provided were out of context, with some stating lack of understanding while others expressed understanding from their line of duty and interaction with the criminal

justice system which was short of the Victim protection act 2014 and UN definitions. This was because hitherto there was lack of policy and statutory provisions on Victimization given that the victim's protection act was enacted in September 2014 which is still in the process of being operationalized. This revealed that there were institutional capacity gaps which need to be addressed.

4.4.2. Victims involvement in the passing of probation sentence.

The theme of the study was on victim interaction with the probation sentences. The study sought to specifically investigate the extent to which victims participated in the process of delivery of probation sentence or passing of probation sentences.

The study established that most of the offenders (64.1%) stated that victims in their crimes were involved in the passing of probation sentence by officers making home visits, consultation with the victims and significant others, and fostering of reconciliation and compensation initiatives. One of the offenders was reported to have stated, *the probation officer visited my house and interviewed members of my family and significant others* However a significant percentage of offenders (34%) stated that the victims in their cases were not involved while the remaining, (5%) a very small number lacked knowledge whether their victims were to be involved in the passing of probation sentence on their offenders. In majority of the cases many eligible victims were not involved especially where the state only picked principal complainants. The practice in such cases, where offenders victims were unavailable the court could exercise its mandate without any due obligations.

Each of the victims interviewed consented that he/she was involved in the passing of probation sentence a witnesses-. *Being a victim, I agreed to have the offender placed on the probation sentence.*

However one said probation sentence focused majorly on the offender, while another one said that the victim did not benefit because there was lack of compensation was not compensated when the offender was placed on probation sentence. There was no any form of disclosure to the extent of involvement of relatives, family members and the community as contained in the larger definition of Victimization.

There was consensus among probation officers that they involved victims in offender sentencing through consultation with the them, their families, reconciliation and in the process of rehabilitation of offenders placed on probation orders as provided in the probation of offenders Act, No 64. One probation officer was reported to have stated Non involvement in passing of probation sentence by the victims could be associated with late enactment of specific or relevant legislation that factors in victims participation e.g. Victim protection Act September 2014, some of the offences or offenders had no victims especially where the state was the principle complainant.

Most judicial officers stated that they involved victims in the passing of probation sentences through victim impact statements, focus on the impact of the offence on the victim and as witnesses in the trial before sentencing while few did not involve victims in the passing of probation orders sentence. One of the judges expressed that he gave due consideration to the sentiments of the Vitim during trial process--*Due consideration is given to the sentiments voiced by victims in the reports.i.e* victim impact statement and also requested for a pre-sentence report in which he took into consideration the witnesses emotions and behavior. They also stated that courts consider victims views during appeals and review of sentences. One magistrate who did not involve victims of offences, said that it was associated with judicial officers exercising discretion in the handling of matters in court and Victims only involved as witnesses in the case as was stated by some of the respondentsø *When addressing facts of cases we ask for impact assessment for some cases of public interest'*

Occasionally where the state was the principal complainant, there were no victims to be involved giving the court leeway to make its informed decision. Those judicial officers who involved victims did so directly as witnesses or complainant or through consideration of probation officers pre -sentence reports, victim impact statement or any appeals which as provided in the probation of offenders Act Cap 64 include statement and sentiments from the victim and any reservation held.

The study found out that low understanding of Victimology by judicial officers contributed substantively to their low involvement of victims in the passing of probation sentences. Those who involved victims in the passing of probation sentence perceived victims as witnesses or

complainants in the matter. However this does not imply addressing victim needs and concerns in criminal justice. Some of the respondents stated impracticability of some of the legislation especially for compensation of victims of crime.

Prison officers stated that they did not involve victims in the rehabilitation of prison inmates. An officer stated *'Our concern was to deal with the offenders' and had no contact with the victims.* This was due to the act not providing for victim involvement

A prison officer who was informed of the power of mercy act implied that there was a provision of victims in the rehabilitation of inmates when fully implemented.

One of the interviewees from Police officers expressed that he involved victims during the initial investigation process through recording of statements, determination of facts, before preferring of charges to rightful offenders. i.e *I involve complainants during investigations so as to be able to prefer charges to the rightful persons and gather certain relevant facts to sustain the case or sentence'*. Further the study of witnesses was vital in the profiling of offenders.

Victims are complainants who report the matter to the police and they also act as principal witnesses. The UN 1985 definition of a victim goes beyond a witness/complainant. Therefore the police involvement of victims falls short of the expected level of involvement as captured in the UN scope which recognize victims family, witnesses and those who aid them, as they may suffer hardships in the process of assisting to prosecute offenders.

The study thus established that within the UN definition of the Victim, most stakeholders in the criminal justice system- judicial officers, Probation Officers, Police Officers did not involve Victims in the passing of probation sentences. Those who involved victims enjoyed discretion hence were not compelled. Article 4(1)b of the Victim Protection Act 2014, provide that every victim has a right to be heard before any decision affecting him or her is taken and further that the principle in the Kenyan constitution Article 10,27,47,48 and 49 provide for participation of the citizens or stakeholders. Most enacted legislation i.e. evidence act, penal code, criminal procedure code, sexual offences act, probation of offenders act, witness protection act, national cohesion act, truth and justice and reconciliation act all mention requirement and emphasize participation which is captured by this finding.

The findings of this research established that victims were not substantively involved in the passing of probation sentence as anchored in international (UN declaration of Basic Principles for justice of victims of crime and abuse of power) and local instruments in the administration of criminal justice since those involved were not victims but witnesses in the name of victims. Though this provision was clear, its full meaning was not understood and therefore not fully implemented in the determination, giving forth to incidences where victims were not involved in the determination of probation sentences by respective parties.

Though offenders and victims acknowledged involvement in probation sentencing, it is instructive to note this was confined to their role as accused persons and witnesses based on the limited understanding of Victimology.

Table 4.7. Offenders and victim views on Involvement in the passing of probation Sentences

Involvement on Probation sentencing.		YES		NO		GROSS	
		Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Offenders and Victims	Offenders	75	64.1%	42	35.9%	117	100%
	Victims	75	100%	0	0%	75	100%

The above table 4.7 indicates that sixty four percent and one hundred percent respondents of offender and victim consented that they were involved in the passing of probation sentence, but this connotes as witnesses and complainants and not necessarily as victims of crime. Only 36% of offenders felt that victims were not involved in their sentencing.

4.4.3. Victims Views on whether probation sentence was reparative/appropriate.

On the subject of reparation and appropriateness of the sentence, seventy two(72%) percent of the victim respondents consented that probation sentence was reparative, because it provided for; -ö probation orders had conditions to be followedö, and also the offender was kept away from the victim as it further facilitated behavior change of the offender. Victims also expressed that through probation office some of them were compensated by their offenders. One victim commented *probation sentence facilitates behavior changes’ and that ‘Probations orders have conditions to be followed’*. This sentiment was attributed to the reparativeness of the probation sentences. The sentence as expressed by another victim was felt to be punitive as offenders were required to report frequently to probation office.

One of the probation programmes ó community service orders, require that the offender performs unpaid public work for the benefit of the community with the expectation of restoring community social order. Some victims also felt that the sentence concentrated on offenders and reporting itself was punitive enough.

A significant number of victims (18%) were of different opinion and stated that victims were not compensated after losing their assets and suffering harm. Some respondents felt that the available legislation was inadequate to assist victims as need arose especially for compensation and restitution. One victim was of the opinion that the sentence was too lenient and assisted offenders to get scot free as was expressed in their dissatisfaction ‘

The UN (2006) declaration of Basic principles and Guidelines on the right to remedy and Reparation to victims of Gross violation of international human rights and serious violations of international humanitarian law recommended that victims of crime were entitled to access mechanisms of justice and fair treatment, Fair restitution of victims by offenders, states to provide financial compensation to victims when it was not fully available to offenders, and victims were to receive material, psychological and social assistance. The confessions by some victims to have been compensated through probation supervision, attests to the very intentions of reparativeness and restorativeness of the probation sentences and equally upheld by chief probation officers of California, USA in their position paper on restorative justice and as shown in the table below.

Table 4.8: Victims views on reparativeness of probation sentence

Perception		Frequency	Valid Percentage	Cumulative Percentage
Valid	YES	54	72.0%	72%
	NO	21	28.0%	100%
	Total	75	100%	

Though most respondents viewed probation sentence as reparative, Table 4.8 above indicates a significant proportion of 28% felt that it was not reparative whose reasons were captured above. The thinking was associated with most of them not involved in the sentencing process. Those who expressed that the sentence was reparative constituted 78% of the respondents while 28% felt otherwise.

The few offenders who were of contrary opinion expressed that the sentence was non reparative by stating that it assisted the offenders get away, that the victim was not compensated when the offender was placed on probation sentence and that probation sentence majorly focused on offenders. Some of the victims decried to the extent to which the sentence was not reparative which was inconsistent to the UN 2006 Declaration where the state was to facilitate compensation where the offender was unable to fully settle the victim ,to financially compensate the victim using statutory resources. Stakeholder respondents generally viewed probation sentence as appropriate.

Most Judicial Officers stated that probation sentence was reparative and appropriate. One of the judges commented *'Probation sentences offer better rehabilitation as it promotes better reconciliation between the offender and the community.* "This opinion attest that the sentence enhanced and supported restorative justice, it offered better rehabilitation as it promoted reconciliation between the offender and the victim. The court occasionally takes keen interest on offender rehabilitation or treatment programmes. Offender rehabilitation was taken by the court as a necessary defense and granted offenders a probation sentence. It emerged that *'Judicial officers who were sensitized appreciated the use of probation sentence while those who were not sensitized preferred imprisonment'*

The few judicial officers who did not deem probation sentence not appropriate were not sensitized on the potential of the sentence in fostering social harmony and therefore appreciating the sentence was appropriate. This was attributed to lack of awareness forums and supportive legislation for the same. It is in very recent times that the judiciary introduced celebration of judicial week in the month of August every year from 2013, giving opportunity different stakeholders to come together and share in their experiences.

Police officers respondents expressed that the sentence supported and enhanced restorative justice, an officer commented *the sentence gave offenders a second chance to change and retained his or her social-economic status and ties within the community'*

Modern criminologist belief that the best rehabilitation was that fostered within the community or offenders immediate environment as practiced by probation officers. The following sentiments

were made by police officers in relation to appropriateness of probation sentence. Retention of links and within community rehabilitation fostered reconciliation and restorative justice. Some officers felt that probation sentence was the only way offenders and the victims stood guided.

Probation sentence was viewed by one prison officer to be of importance in the decongestion and decontamination of offenders. Decontamination was guarded against as community risk intervention where petty offenders do not graduate to be chronic and dangerous and eventually do not come to terms with their victims and members of the community. The one who felt the sentence was not appropriate was quoted saying that *the prison facility had capacity to rehabilitate inmates*'. Prison facility was felt by an officers to have capacity to rehabilitate inmates, hence the case for custodial sentence. Another officer felt that imprisonment fostered reconciliation as the offender was kept away from the victim.

There was consensus by probation officers that the sentence was appropriate and rehabilitative. A Probation officer stated that offenders retained their social economic status and ties, and praised it as one of the best ways of rehabilitating offenders. This argument was advanced as a platform for victim and the offender reconciliation The sentence was also credited for providing the offender with a second chance to transform his/her behaviour. Probation officers sentiments were expressed in terms of rehabilitation which gave the victim and the offender the platform to agree on their differences and accept to move on to the next level of life.

The Kenya legal instruments mainly the penal code and other legislations cited below required that victims are compensated i.e. restorative and reparative justice. This view is contained in the criminal procedure code section 177(a),175 and 176-return of exhibits to owners, compensation to victims and reconciliation between victims and offenders, The Penal code section 29(a),which provides for forfeiture of property for a person convicted of an offence as under section 118 and 119, and section31 of the penal code which provides for compensation of the victim, Evidence act section 12, probation of offenders act section 6, provides for payment of costs or compensation for loss or injuries to victims., National cohesion and integrity act section 49, which provides victimsø for reconciliation ,Truth Justice and Reconciliation act section 5 (g) which emphasize retributive truth telling in creating value based society. And sec 41 which provide recommendations for reparation of victims. The UN regulations on Non-custodial

(Tokyo Rules 1990) sentence advance for non custodial cause that is reconciliatory and rehabilitative providing opportunity for community reconciliation with upholding of equal rights to offenders and victims of crime. Therefore the findings of this study is within the paradigms of above cited authorities and reasonably accept that probation sentence was reparative and appropriate though with some inadequacies and limitations as stated by prison officer.

The research established that whereas the victims were concerned with reparativeness of the sentence, other stakeholders concerns were on restorativeness of the sentence. The sentence was both reparative and restorative since some victims stated that they were compensated while others denied to have been compensated. The above scenario could be as a result of slow implementation of existing legal provisions and lack of specific statutes on Victimology.

4.4.4. Entrenchment of Victim Rights in the Criminal Justice System

The Researcher sought to establish the extent of entrenchment of victims' rights in the criminal justice system. Whereas matters of the law are the province of judicial officers, the concerns of the researcher included general understanding and knowledge from practitioners.

A Judicial Officer who responded acknowledged that there were policies and legislative framework to foster the need and welfare of the victim. He said that the statutes lacked enforcement and popularization among the stakeholders. This view is contained in the criminal procedure code section 177(a), 175 and 176- which provides for the return of exhibits to owners, compensation to victims and reconciliation between victims and offenders, The Penal code section 29(a), which provides for forfeiture of property for a person convicted of an offence as under section 118 and 119, and section 31 of the penal code which provides for compensation of the victim, Evidence act section 12, probation of offenders act section 6, provides for payment of costs or compensation for loss or injuries to victims., National cohesion and integrity act section 49, which provides victims' for reconciliation, Truth Justice and Reconciliation act section 5 (g) which emphasize retributive truth telling in creating value based society and sec 41 which provide recommendations for reparation of victims.

Though the law existed, it clearly does not directly recognize victims except those who are directly affected. Reference was made to the newly enacted constitution of 2010, article 49 and 50 which highlight on the rights of the accused but silent on the rights of the victim. Legislative provisions of victim compensation in the existing pieces of laws, it was noted that they lacked clear mechanism of enforcement and determination of the magnitude or scale of compensation. The current practice is that courts focus is limited to the accused persons other than victims. One of the prison officerø felt that there were legal and policy gaps on the entrenchment of victimology in the country of study. He was of the opinion that the criminal justice practioners focused most on crime and punishment and less on victimsø welfare. The officer associated the prevailing situation with lack of policy links among key players in the industry. The officer felt that there was lack of distributive justice by the judiciary and victim protection policy. An officer proposed that each county to establish a victim psychological support centre or run victim support programmes.

The officers also cited inadequacies in the available legislation and proposed that victim compensation clauses be implemented or enforced, to address to factors leading to re offending by offenders and timely action of probation officers in their submission of reports to courts.

A Police officer concurred with the views of the prison officer by stating that the current existing legislation favoured offenders more than catering for victimsø needs. Another police officer expressed that the departments operations were under funded to operationalise their legal mandates. One of the officer observed that there was lack of legislation on victim welfare and inability by victims of crime to benefit from legal representation. The officers also stated that there was lack of comprehensive training on victimology for them to handle victims of crime.

Though there were gaps, the officers also alluded to the fact that there were some pieces of legislation which included, Kenya Human Rights Act/Commission which champion the welfare of the victims, the victim protection act advancing the welfare of the victims, and consideration given to the victim by the courts before sentencing. The UN 1985 declaration formulated the basic principle of victims of rights.

A Probation Officer revealed that there were policy and legal gaps in the entrenchment of victimology in criminal justice system. He pointed out that there was lack of compensation

policy, legislation and welfare programmes for victims of crime. The probation of offenders act section 6, provides for payment of costs or compensation for loss or injuries to victims, but lacks provisions for enforcement of sections and clauses i, the penal code on victims, as well as scales for compensation .It also fails to provide for victim advocacy, support centre among other support concerns, One respondent stated that *'' I have never come across such policies''*, another one stated *''that there was no act of parliament to compensate victims''* implying lack of legislation in favour of victims. However some officers stated that there were some legislations touching on the plight of the victims of crime.

The general observation was that there existed legal framework on victim protection in the criminal justice system. This was justified by the legal instruments in place, such as the Kenyan constitution 2010 which has a chapter devoted on the human rights, laws and rules governing probation sentences, penal code, evidence act, witness protection act among others cited in chapter two of the study. Karmen (2010), felt that people harmed by illegal acts deserved better treatment and plans in the reform agenda. He proposed enhanced rights within the legal system and plans for financial assistance and advocated for professionalization of victimology. This school of thought witnessed the enactment of Victim protection Act 2014, in Kenya. However the new act is viewed as lacking in clear definition of roles and responsibilities of each player in the criminal justice e system.

4.4.5. Victims Concerns on Probation Sentences

The UN Declarations for victims of crime and abuse of power (1985) stipulates principles that cater for victimsø justice and fair treatment, restitution, material and psychological support. In South Africa Victimology is anchored on Ubuntu philosophy which entrenches the African value system and abhors dehumanizing notions either by society or secondary precipitated by western criminal justice systems. This study has further established there were gaps and lack of policies and legal framework in the entrenchment of victimsø needs and concerns in the criminal justice system. Most statutes cited in the Kenyan context have inadequacies in fitting victimsø rights and needs. Mendelssohn, a defense attorney in Romania, wrote and spoke during the 1940s and 1950s about how victims were ignored, disrespected, and abused within the criminal justice process. He proposed ways to help and protect them by creating victim assistance clinics and

special research institutes, and he campaigned for victims' rights. The study documented several concerns stated by victims of crime in regard to probation sentence as shown in the summary below.

Summary of Victims Concerns on Probation Sentences

Undeserving people placed on probation sentence	16%
Exclusive probation sentence	12%
Limited victim involvement in sentencing	12%
Lack of funding to victims programs	8%
Ineffective service delivery by probation office	8%
Lack of feedback from criminal justice players	4%
Gravity of sentences	4%
Support towards victim empowerment	36%

Concerns that were raised by respondents ranged from some undeserving people benefiting from probation sentences, victim consent to be sought and compensation made before placement of offenders on probation sentences, need for victim protection from offenders interference, need for victim involvement in probation sentencing and offender rehabilitation, call for government to increase funding towards operations of probation practice, promote prison decongestion through the sentence, probation sentence to provide for shared feedback, enhance effectiveness of probation sentence by making offenders report regularly, victim empowerment to be put into consideration. Majority(36%) were concerned with empowerment of victims.

4.4.5.1 Undeserving people placed on Probation sentence

Regarding the concerns of the victim (16%) stated some undeserving people were placed on the sentence. The kind of offences/crimes they had committed were serious or grave and in their expectation could not attract a probation sentence i.e. murder, manslaughter, rape, kidnapping and assault. Some of the offenders were repeat or crime birds, who were non remorseful and a big cheat on the law. This happening could be associated to lack of co-ordination in the criminal justice system and the discretion of the court in sentencing of offenders to probation orders or sentences to be water tight and protect the victim and consider the victims voice in sentencing. *'There was need to protect the victim from the offenders' interference'*. One victims decried.

4.4.5.2. Exclusive Probation Sentence

Victims (12%) expressed their voice that offenders were placed on probation sentence without duly sealing the harm or loss suffered by them through the offender criminal action. Victims are left out in reaching of the final decision to award a probation sentence. That the sentence should only be accorded after compensation of victims on the loss suffered. Many a times the court does not ensure that victims are adequately compensated, then, with the authority of the victim the offender to be released to serve a probation sentence. Victims respondents had this to say- *'the victim should be compensated first and, then his/her consent sought before the offender is granted a probation sentence.'*

A victim also stated that *'Probation officers should shift their approach and refocus their concerns also on the victims of crime away from the traditional offenders'*.

4.4.5.3. Limited Victim Involvement in Sentencing

Some of the victims (12%) stated that they were not wholly involved in the sentencing of their offenders. The court and other players partially involve them, whereas they bear the greatest brunt of crime. One of the victims expressed that there was need to be actively involved in all stages of criminal justice procedure from registering complain, to arrest, trial, then eventual sentencing. He *proposed that 'probation sentence should foster victim reconciliation'*

4.4.5.4. Lack of Funding to Victims Programmes

A significant (8%) number of Victims expressed that there was need to capitalize operations of the department as what was currently allocated and other members in the criminal justice to expedite victims concerns was inadequate. Information provided by the department's budget office and probation station records reviewed, there was no budgetary allocation for victim programmes and welfare. The link between Probation services and victims and their offenders was curtailed by lack of essentialities to offer a forum of interaction, frequent supervision and monitoring and enforcement of agreements and orders. One victim retorted

‘Let the government increase funding to the department of Probation to facilitate services according to the needs of many Kenyans’.

4.4.5.5. Ineffective service delivery by probation office

Probation department was viewed by victims (8%) and other stakeholders in the criminal justice system not to offer effective services to victims. Victims of crime with other stakeholders proposed that offenders to be asked to report frequently so that breaches of orders are reduced and enhance the safety of the victim. The reporting outcomes were to be shared with the victims, court and prosecution on the progress of the sentence. *‘Probation sentence to be made effective by asking offenders to report regularly to the probation officer to enhance the safety of the victims’*, stated some victims respondents. In The practice offenders do not report as frequently as expected bringing forth breach of orders by some offenders.

4.4.5.6. Lack of feedback from criminal justice players

Victims felt (4%) that progress feedback among the criminal justice members or players be openly shared. Probation to receive feedback from the court, prosecution, the police and victims. Victims to freely access any critical information that they would wish to establish. *‘Probation feedback should be shared and disclosed to the court, prosecution, victims and members of the community’.*

4.4.5.7. Gravity of Sentence

Some Victims (4%) and other stakeholder in criminal justice expressed that probation punishment was not punitive enough. They associated it with the easy way out for offenders

while they attract light sentence and enjoy links with the community and continue with their life styles. The public and victim attitude to the sentence was received as not serious and punitive compared to the pain and loss victims are left with.

David (2000) presented a new approach called the Victimology which called for a paradigm shift not only on the protection of victims rights and interest but endeavor to meet the victims needs and further shift perception from individualization of victimology to institutionalization.

A small number of victims failed to make their responses on concerns on probation sentence. That could be attributed to lack of interaction with probation sentence base due to lack of awareness programmes to facilitate on their roles in the sentencing of offenders to probation sentences. Whereas it is common practice for public service institutions to presume social concerns, this study established that victims had pertinent concerns which needed to be considered during legislation and policy development.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction

The study investigated the victims interaction with probation services from the views of victims, offenders, and key players in the criminal justice sector to determine their understanding of Victimization ,involvement in the passing of probation sentences, reparativeness and appropriateness of probation sentences, entrenchment of victims rights in the probation sentences and victims concerns in respect of probation sentences. Responses were received from offenders on probation sentences, victims of crime, judicial officers, prison officers, police officers and probation officers as captured in Chapter Four of this study. The study undertook review of related literature and further investigation through primary data collection in Nairobi County.

5.2. Summary of findings

Victimology was understood differently by all stakeholders with most of them indicating that it was a study of the impact of crime on a victim or the complainant, study to imply the relationship that subsists between the offender and the victim. It also implied the place of the victim in criminal justice system, a study of what victims go through from physical or emotional agony as a result of actions of others who cause harm or crime.

This definition therefore does not render exhaustive understanding of Victimology and its application as contained in the UN definition of Victimology, as adopted by the Victim protection Act, 2014. In conclusion Victimology was not exhaustively understood by the key players in criminal justice system .The definition implied witnesses but not victims. Investigations revealed that victims were involved to a small extend in the passing of probation sentences as stated by all respondents. Those who were involved were mainly engaged during police investigations, judicial trial process and probation social enquires level.

Majority of the victim respondents consented that probation sentence was reparative and appropriate based on reasons given in chapter four of the study. A significant number of the respondents also felt that the sentence was not appropriate and reparative as they decried lack of compensation and restitution.

Majority of respondents expressed that they were aware of legislation and policies that touch on the victimsø rights and welfare. On the other hand a sizeable number of respondents stated that

they were not aware of the same, this could be attributed to centralized services and limited dissemination of relevant information e.g. only one witness protection office is located in Mulimani law court in Nairobi serving the whole country. The following were identified as gaps in respect of victim rights i.e. Lack of enforcement mechanisms, distributive, justice. and a comprehensive understanding of Victimology.

The following were some of the concerns raised by victims namely-un-deserving offenders placed on probation sentence, exclusive probation sentence, limited victim involvement in sentencing process, lack of funding to victims programmes, ineffective service delivery, lack of feedback and gravity of sentence.

5.3. Conclusions

Victimology was not exhaustively understood by the key players in criminal justice system .The definition was applied to mean witnesses instead of victims.

Probation sentence falls short of victims expectation of reparation because the provision of compensation and restitution is not fully enforced. Many victims of crime never benefited.

Victims of crime were not fully involved in the passing of probation sentence due to lack of clear and practical legislation and policies.

Though legislation was in place, the provisions of relevant clauses were not enforced. and therefore they largely rendered criminal justice system to be in-effective in entrenching victims tights.

Victims had pertinent concerns which can inform priority and strategic issues for planning and development of relevant policies for criminal justice administration in respect of Probation sentences.

5.4. Recommendations

1. That criminal justice players i.e. Police, Judiciary, Prisons and Probation departments should undertake capacity building, awareness and sensitization programmes and dissemination of information that would promote practioners understanding on victims and Victimology.

2. That the criminal justice system or players should provide for victim participation in probation sentence by promoting mechanisms such reconciliation, compensation and support programmes which allow victim participation.
3. That effort should be made to step up legal application and enforcement of existing legislation and entrenchment of restorative justice and other alternative dispute resolution mechanism in probation practice.
4. That before any victim support programmes are initiated, victims' concerns should be prioritized first.

5.4.1. Recommendation for further study.

1. The researcher proposes an undertaking to study new approach known as victimology as applicable in Kenya.
2. The researcher proposes further research to be conducted in the area of the role of the victim interaction with the community and its impact to the victim.
3. There is need to adopt a paradigm shift to foster victimological research and practice.-
Victims Victimology as recommended by David (2000)
4. Further enquiry to be conducted to establish whether repeat victims of crime frequent hot spots to attract victimization.

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APPENDICES

APPENDIX 1: QUESTIONNAIRE FOR OFFENDERS

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is -----.I am a student of -----at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of í í í í í í í í í í ..

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on mobile Noí í í í í E-mailí í í í .

The study intends to interview judicial officers, police officers, prison officers, probation officers, victims of crime and offenders.

1. Which area of residence in Nairobi County do you come from?

2.(a) How old are you?

- (i) 10 ó 12 []
- (ii) 13 ó 15 []
- (iii) 16 -17 []
- (iv) 18 and above []

2(b) What is your level of education?

- (i) Nursery []
- (ii) Primary []
- (iii) Secondary []

(iv) Tertiary education []

3. Respondents gender? Male [] Female []

4. How many times have you been charged with a crime?

(i) Once []

(ii) More than once []

5. What were the circumstances of the offence?

6(a) Was/were the victim(s) of the crime(s) involved in passing of the probation sentence?

Yes [] No []

6(b) If yes, please explain how.

6(c) If no, please give reasons.

7. Do you understand restorative justice?

Yes [] No []

8(a) Do you think that there ought to be policy/ legal framework that expressly deals with the welfare of victims? Yes [] No []

8(b) Please explain your answer.

9(a) Do you think that reconciliation with the victims of crime is important? Yes [] No []

9(b) please explain your answer.

10. Are you aware of policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

Yes [] No []

11. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system?

APPENDIX 2: QUESTIONNAIRE FOR VICTIMS OF CRIME

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is -----I am a student of -----at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of í í í í í í í í í í ..

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities.

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on mobile í í í í ;E-mailí í í í í í

The study intends to interview judicial officers, police officers, prison officers, probation officers and victims of crime.

1. Which area of residence in Nairobi County do you come from?

2(a) How old are you?

(i) 10 ó 12 []

(ii) 13 ó 15 []

(iii) 16 -17 []

(iv) 18 and above []

2(b) what is your level of education?

(i) Nursery []

(ii) Primary []

(iii) Secondary []

(iv) Tertiary education []

2(c) Respondents gender? Male [] Female []

3. How many times have you been a victim of crime?

(i) Once

(ii) More than once

4. What were the circumstances of the offence?

5(a) Were you involved in passing of the probation sentence? Yes [] No []

5(b) If yes, please explain how.

5(c) If no, please give reasons.

6(a) Do you perceive probation as a reparative sentence? Yes [] No []

6(b) Please explain your answer í

7(a) Are you aware of any policy/ legal framework that expressly deals with the welfare of victims? Yes [] No []

7(b) Please explain your answer.

í .

8(a) Do you think that there are victims' protection programmes in the criminal justice system?

Yes [] No []

8(b) If yes, please list the programmes

9. Are you aware of policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

10. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system? Yes [] No []

11. What concerns do you have as regards probation sentences?

APPENDIX 3: KEY INFORMANT GUIDE – JUDICIAL OFFICERS

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is MARY MBAU.I am a student of SOCIOLOGY at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of MASTERS DEGREE.

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on 0721446761

The study intends to interview judicial officers, police officers, prison officers, probation officers and victims of crime.

1. Which Court do you represent?

2. What is your understanding of victimology?

3(a)Do you consider victims issues when passing probation sentences? Yes [] No []

3(b) If yes, please explain how.

3(c) If no, please give reasons.

4.(a)Do you perceive probation as an appropriate sentence? Yes [] No []

4(b) Please explain your answer.

5(a).Are you aware of any policy/legal framework that expressly deals with the welfare of victims? Yes [] No []

5(b) Please explain your answer.

6(a)Are you involved in victim protection programmes? Yes [] No []

6(b) If yes, please list the programmes

7. What policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

8. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system?

APPENDIX 4: KEY INFORMANT GUIDE - PRISON OFFICERS

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is -----.I am a student of -----at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of í í í í í í í í í í ..

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me, -----on mobile;E-mail

The study intends to interview judicial officers, police officers, prison officers, probation officers and victims of crime.

1. Which Prison do you represent?

2. What is your understanding of victimology?

3(a)Do you involve victims in the management of inmates? Yes [] No []

3(b) If yes, please explain how.

3(c) If no, please give reasons.

4.(a)Do you perceive probation as an appropriate sentence? Yes [] No []

4(b) Please explain your answer í

5(a).Are you aware of any policy/legal framework that expressly deals with the welfare of victims? Yes [] No []

5(b) Please explain your answerí í

6(a) Do you think victims contribute towards recidivism? Yes [] No []

6(b) If yes, please explain howí í

6(c) If no, please give reasonsí .

7(a)Do you have victim protection programmes in your organization? Yes [] No []

7(b) If yes, please list the programmes

8. What policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

9. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system?

APPENDIX 5: KEY INFORMANT GUIDE-Police Officers

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is MARY MBAU.I am a student of SOCIOLOGY at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of MASTERS DEGREE

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me on 0721446761

The study intends to interview judicial officers, police officers, prison officers, probation officers and victims of crime.

1.Which police station in Nairobi County do you represent?

2. What is your understanding of victimology?

3(a)Do you consider victims in conducting investigations? Yes [] No []

3(b) If yes, please explain how.

3(c) If no, please give reasons.

4(a)Do you consider the opinion of victims before preferring charges? Yes [] No []

4(b) Please explain your answer.

5.(a)Do you perceive probation as an appropriate sentence? Yes [] No []

5(b) Please explain your answer.

6(a).Are you aware of any policy/legal framework that expressly deals with the welfare of victims? Yes [] No []

6(b) please explain your answer.

7(a)Do you have victim protection programmes in your organization? Yes [] No []

7(b) If yes, please list the programmes

8. What policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

9. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system?

APPENDIX 6: KEY INFORMANT GUIDE-Probation Officers

RESEARCH: Victims interaction with probation sentences: a study of Nairobi County

My name is -----.I am a student of -----at Nairobi University, conducting a research on victims interaction with probation sentences: A case study of Nairobi County. This is in partial fulfillment for the requirements of í í í í í í í í í í ..

The objectives of this study will be to investigate the extent to which victims participate in probation sentences, to seek views of victims on probation sentences as a punishment to offenders and to seek policy suggestions which may be used to guide policy makers on the need to entrench victimology in the criminal justice system.

Victimology can be defined as the scientific study of the physical, emotional, and financial harm people suffer because of illegal activities

You have been identified as one of the respondents to this study. Information provided will be treated with utmost confidentiality and will be purposely used for academic work.

For any query/clarification please contact me, -----on mobile;E-mail

The study intends to interview judicial officers, police officers, prison officers, probation officers and victims of crime.

1. Which Probation Station in Nairobi County do you represent?

2. What is your understanding of victimology?

3(a)Do you involve victims in rehabilitation of offenders? Yes [] No []

3(b) If yes, please explain how.

3(c) If no, please give reasons.

4.(a)Do you perceive probation as an appropriate sentence? Yes [] No []

4(b) Please explain your answer.

5(a) Do you think probation sentence impacts on victims? Yes [] No []

5(b) Please explain your answer.

6(a).Are you aware of any policy/legal framework that expressly deals with the welfare of victims? Yes [] No []

6(b) Please explain your answer.

7(a)Do you think victims contribute towards recidivism? Yes [] No []

7(b) If yes, please explain how.

7(c) If no, please give reasons.

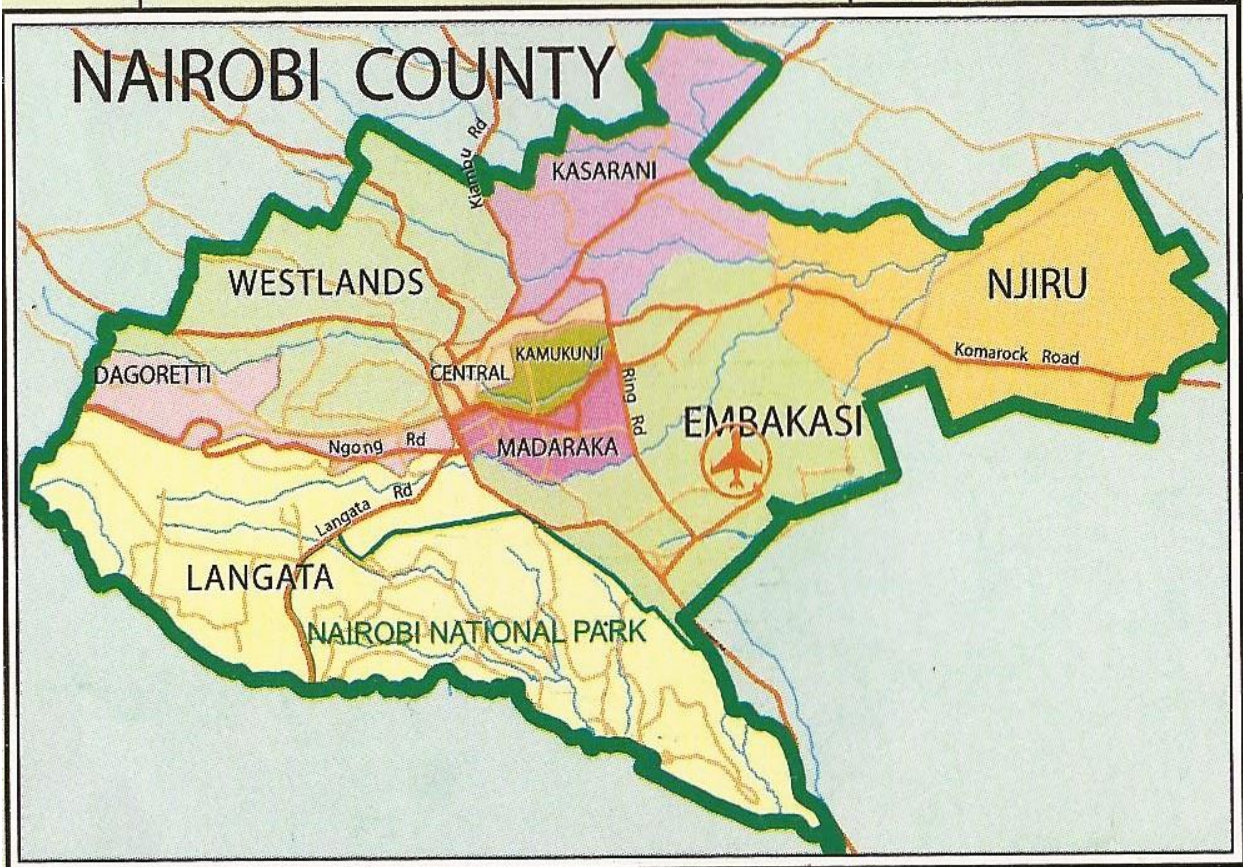
8(a) Do you have victim protection programmes in your organization? Yes [] No []

8(b) If yes, please list the programmes

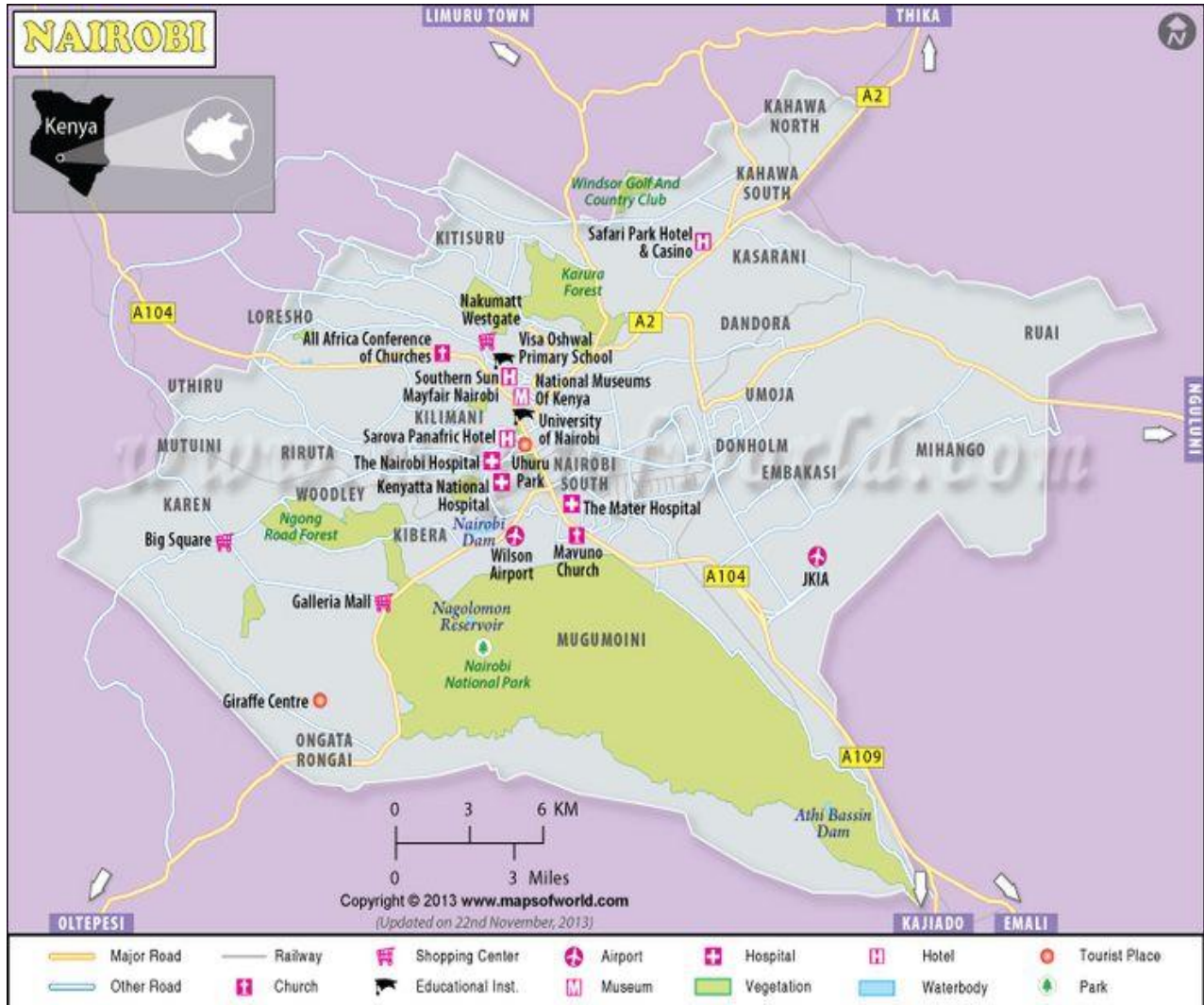
9. What policy/legal gaps would you highlight as hampering the entrenchment of victimology in the criminal justice system?

10. What policy/legal policy recommendations would you suggest that if implemented will entrench victimology in our criminal justice system?

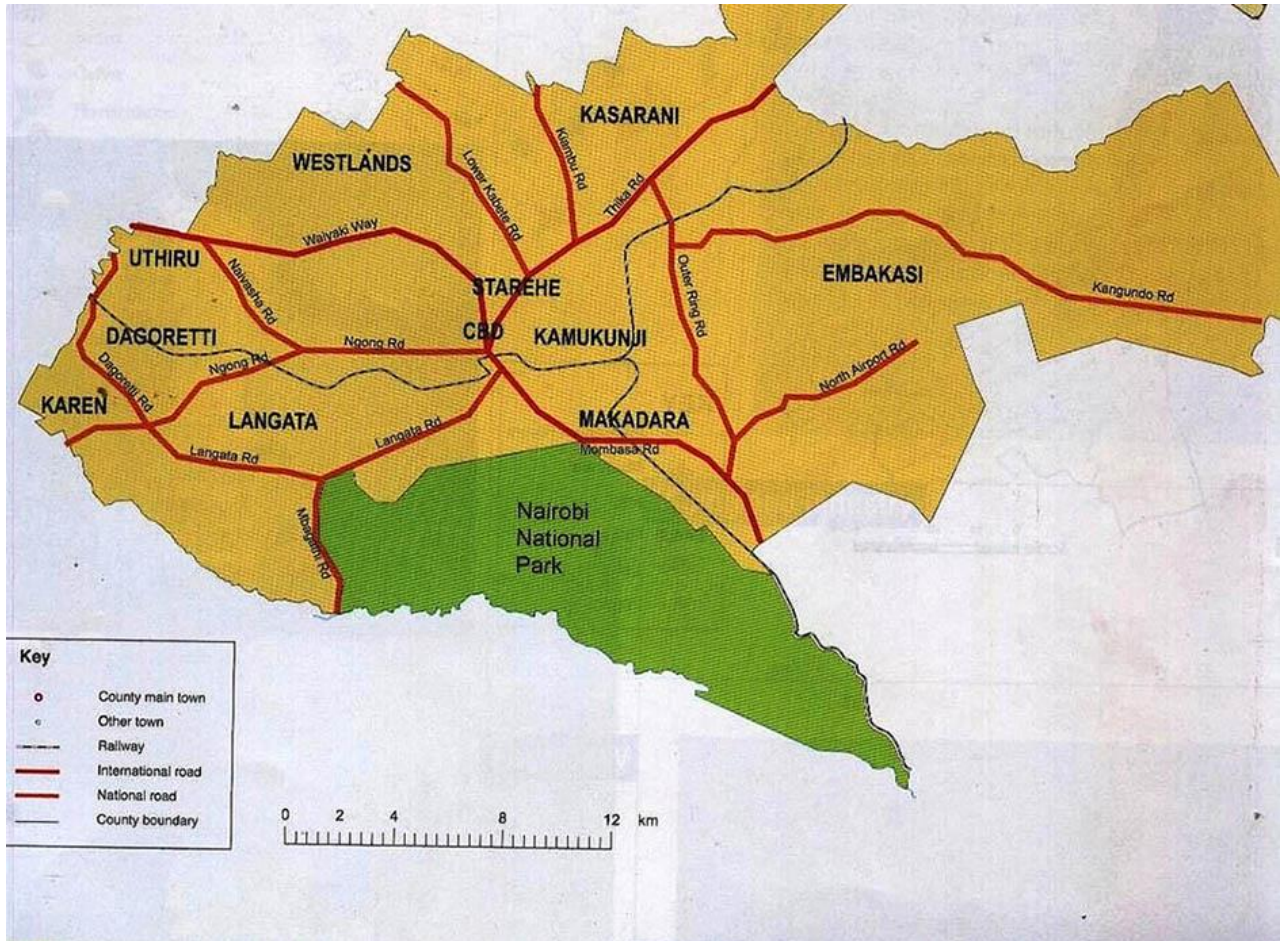
Map 1: Nairobi County



Map 2: Nairobi County



Map 3: Nairobi County



Map 4: Kenya

