



REPUBLIC OF KENYA

Probation and Aftercare Service

Guidelines for social investigations and pre-sentence reports¹

Introduction

Social inquiry and pre-sentence reports form one of the key features of probation work. Social inquiry or investigation is a process of generating data and information on a specific subject matter or an offender for the purpose of documenting and understanding the attendant causes of behaviour and events. Pre-sentence reports provide advisory information to the courts with a view to the court making sentencing verdicts, including decisions on alternative measures to imprisonment.

The investigations are conducted with the aim of collating verifiable information and for writing various assessment reports including pre-sentence reports. In sentencing decision making, social investigations help in:

- Formulating plausible theoretical explanations of the criminal behavior of an offender
- Understanding the personality of the offender beyond the crime committed
- Developing a basis for intervention/rehabilitation
- Identifying resources required to effect change

Purpose of social inquiries

In the context of pre-sentence investigations, the aim of social inquiries is to produce information that forms the basis for assessing offenders and advising the courts on the suitability for a particular mode of sentence. Specifically, the aim of social investigations in the light of a pre-sentence report is to:

- Appraise the background, personality and conduct of the offenders in the light of the offence committed and what they think of their ill action
- Identify the criminogenic factors at play (the offender's risk and needs factors)
- Evaluate the seriousness of the offence and the impact on victims in order to determine a proportionate sanction
- Identify the likely impact of a sentence on any dependents (children or any other dependent members of the (extended) family)
- Engage families, employers, partnership organizations and significant others in the community about the offender

1. These Guidelines have been revised in 2017 within the project 'Working towards gender-sensitive community service and probation orders in Kenya', jointly implemented by the Kenya Probation and Aftercare Service (KPAS) and Penal Reform International (PRI), with funding from the Thailand Institute of Justice (TIJ).

- Identify and arrange for partnership with organizations which can aid the process of eventual rehabilitation
- Gain knowledge of the culture and resources available in the local communities
- Propose cogent measures necessary to address the identified ‘needs’ and forestall any risk of reoffending, including through an appropriate sentence.

Scope

These Guidelines relate to social investigations conducted in respect to cases referred for pre-sentence reports which may result in the court handing down a probation order or community service order at the subordinate court level. They also relate to investigations conducted for the purposes of generating a pre-sentence report at the superior court level on cases emanating from the superior court exercising its original and appellate jurisdictions. The Guidelines affect reports produced in respect to these cases by all probation officers and heads of stations, as supervisors of the reports and case managers, as they are duty bound to enforce them.

Mandate

Various constitutional and legislative mandates influence the generation of inquiries and the pre-sentence reports. These include the constitutions under Art 49(1h) and (2), section 4(1) and (2) of the Probation of Offenders Act, section 3(1) of the Community Service Orders Act, section 137 (I) of the CPC, section 39 of the Sexual Offences Act, section 38, the Penal Code, and part XIII of the Children’s Act of 2001.

Rule 7.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) provide for the preparation of a social inquiry

report to the judicial authority by a competent authorized official or agency whose content would detail a person’s pattern of offending and current offence. The report should be *factual, objective and unbiased*.

The UN Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules) supplement the Tokyo Rules and provide standards tailored to the gender-specific² background and needs of women offenders (see Rules 57-66 on sentencing and non-custodial measures and sanctions). The UN Convention on the Rights of the Child (to which Kenya is a State Party) demands that courts must consider the best interests of the child when making a decision that concerns children. This means that the best interests of the child of an offender must be considered when sentencing.

The African Charter on the Rights and Welfare of the Child (to which Kenya is a signatory) provides that ‘States Parties...shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers.’³

Furthermore, the Sentencing Policy Guidelines 2016⁴ for judges and magistrates include guidance relevant for probation officers, notably with regard to sentencing options (Part II), categories of offenders requiring particular attention (Part III) and with regard to the duties of probation officers (Part IV, paras. 22.8 – 22.16).

These guidelines are therefore based on these combined mandates and regulations, including the international instruments, which govern the generation of such reports.

2. The term “sex” (male/female) is used as a biological term, describing physical attributes and chromosomes that are universal, whereas the term “gender” refers to the roles, behaviours and attributes society attaches to and considers appropriate for men and women.

3. For further interpretation of Article 30 see General Comment No. 1 of the African Committee of Experts on the Rights and Welfare of the Child. Section 36 states: ‘Implementation of Article 30 requires that States parties review their sentencing procedure and reform it accordingly so that: (a) A sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so. (b) The court should also ascertain the effect on the children concerned of a custodial sentence if such a sentence is being considered. (c) If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated. (d) If the appropriate sentence is clearly non-custodial, the court must determine the appropriate sentence, bearing in mind the best interests of the child. (e) Finally, if there is a range of appropriate sentence, then the court must use the principle of the best interests of the child as an important guide in deciding which sentence to impose.’

4. The Sentencing Policy Guidelines for judges and magistrates were developed by a Task Force appointed in 2014 through Gazette Notice No. 4087 with the mandate to review the past sentencing patterns and policies and recommend how to reduce unwarranted disparity and promote proportionality in passing judgment. The Guidelines were launched by Hon. Chief Justice, Dr. Willy Mutunga, D.Jur, SC, EGH on 25 January 2016, available at: <http://kenyalaw.org/kenyalawblog/sentencing-policy-guidelines/>

Method of inquiry

Information for the pre-sentence report will always be generated from the offender, victim(s) and significant others, as the case may be. Other than the information on court and prosecution records, the offender is the first source of information (and should be sought before verifying the information with others through an inquisitorial method).

The probation officer will be expected to first use the clinical approach in getting the information through insightful and relevant questions that allow the offender to propound and illuminate on a particular subject matter.

The key thematic areas that the probation officer needs to pay particular attention to are: family and social life, any care-giving responsibilities, the offender's living circumstances prior to arrest, education and economic status including employment status, means of subsistence, skills and qualifications, health and medical issues including pregnancy, mental health, drug and substance use as well as any prior experience or risk of domestic violence or other abuse, and previous conflict with the law noting the developmental stages of conflict. These must be in congruence with and bear relevance to the offence at hand or the pattern of offending. So, any information included in the report about the offender's family, educational and economic circumstances, emotional or mental health etc., should not be included just for information's sake, but must be explained in terms of the link to his/ her offending, the potential for rehabilitation, the impact of different types of sanctions on his/ her family and how best to prevent further offending.

In addition, the critical questions that should be asked to the offender include those that will help clarify the offender's underlying problems or criminogenic needs that best explain the reason for offending, or the 'crime causal factor'. The questions should relate to his or her background (having relevance to the current offence or conduct), personal development including relationship with family members, peers, and significant others, victim and community concerns, intervention measures that may work and risk of re-offending. Welfare issues such as

unemployment, poor mental health or a history of violence or victimization⁵ should be addressed, where doing so would reduce the risk of offending.

Female offenders are a minority within the offender population and often exhibit complex needs in relation to their economic survival and care-giving responsibilities. Exposure to domestic violence, sexual violence and other abuse during their lives is also prevalent among female offenders, and may have had a direct or indirect link to the offence. Such background factors should be identified in order to inform proportionate sentencing (see Rule 61 of the UN Bangkok Rules) and to guide the determination and supervision of any sanction. Mental health issues should not be misinterpreted as risk factors.

The officer needs to find out motivations and relevant characteristics of the offender to work towards (positive and negative risk factors), in the context in which the offender is seeking to adjust and how these may be explored.

Sources of data and information

The following are sources of information from which probation officers may seek and collect information in the process of inquiry:

Court file

Which provides the name, file number, charge, specifics of the offence (as per prosecution charge sheet) which are points of reference during the interview. It will also provide you with judgment and verdict information and other issues of concerns that the court may want to be examined in the inquiry, including the kind of sentence that the court may wish to impose, i.e. community punishment (CSO), community supervision (probation) or otherwise. The court file will also give you the address of the victim(s) and significant others that the probation officer may wish to interview.

The offender

Data on the offender must be obtained through a face-to-face interview while in remand prison or in the office or at home if on bail or another suitable place.

5. The term "victimisation" is used to describe the process of becoming a victim. "Secondary victimization" refers to behaviour/ attitudes of society and experiences in the (criminal) justice system etc which further victimize the victim after the initial abuse, for example, if it is the victim of rape who is stigmatized, punished or isolated by family/ society as a result of the sexual abuse.

Relatives

Information from relatives can be obtained when they visit the probation office or through a home visit/inquiry. (When deciding upon relevant interviewees for your inquiry take into account the likelihood with which they can provide valuable and credible information, and the risk of stigmatization of the offender by the family and community which is known to be particularly high for women offenders.)

Neighbours and opinion leaders

They can provide independent data to verify what the offender and family say.

Teachers

In case of pupils and student offenders in relation to performance, conduct and liking for school.

Employer

To determine where he or she is reliable and if there are chances of retention if the offender were to be granted a non-custodial sentence.

The victim/complainant

Whether there is willingness to forgive and room for reconciliation. The impact of the offence on the victim and/or secondary victims is also very important.

Remand institutions/ place of safety/ or any such facility

To determine the offender's conduct for the time he/she has been there and any (authentic) previous criminal records that they may have.

Assessment interviews

The following are key ingredients that should be observed in assessment interviews:

- The interviews should be carried out in a convenient place that provides the interviewee with room to speak freely and in confidence. Women offenders who may have experienced violence need to be interviewed in a safe, non-threatening environment.
- The probation officer should introduce themselves and explain the purpose of the interview.
- The officer should not ask questions in a complicated way and check whether the offender understands the questions.
- The process of assessment should not negatively affect the offender or expose them to public stigmatization.
- In certain circumstances, it may be necessary to offer women offenders the option of being interviewed by a female officer and/or of being interviewed in a women-only environment.
- When interviewing family members, the officer must be alert to the possibility of a background of abuse within the family against the offender. Because of the stigma of such abuse, a (woman) offender may not reveal such a background immediately, particularly in cases of sexual abuse.
- The officer should prepare and organize questions for each interview giving regard to areas of interest and issues documented beforehand. Open questions should be used to elicit more comprehensive answers.
- The officer should ensure that adequate time is allocated for each interview giving regard to the number of cases to be interviewed and the depth to be covered.
- Ensure that the questions are objective, insightful and concentrate on central/thematic issues and probable needs and risk areas while avoiding peripherals.
- Officers should avoid unusual and unnecessary issues.
- The questions should be ordered sequentially and appropriately. Deal with each thematic area exhaustively and come back to it to 'tie up loose ends'.
- The officer should ensure that the questions are sensitively worded in a manner that protect the offender from psychological distress.
- Always ensure neutrality, be non-judgmental, and avoid biases based on sex, religion, social class, age etc. Take cognizance of the age of the offender and respect the elderly.
- Finally, the officer must take time to analyze the generated information and effectively interpret the findings using professional expertise, experience and insight.

Reflective questions to address in assessment interviews

1. What is the client's understanding of their offending behaviour? And how does this make sense to them?
2. How do they construe themselves and significant others including their victims? Was the client's role in society a factor when committing the offence (for example, responsibility as a mother, claims of having been influenced/ coerced to commit the offence, seeking to help a partner/spouse)?
3. Is the deviant behaviour or crime related to their core role (for example, as a bread winner, a mother etc.)?
4. How does their offending and sense of self-image link to their childhood experiences and other difficulties in life such as a background of violence or victimization? Can you link this offending behaviour to some plausible criminological explanation?
5. Does the offender see the need to change? Or does he or she believe that change is impossible?
6. What are the potential obstacles to change, for example, stigma, self-imposed attitudes, trauma, poverty, ill-health, lack of employment, negative influence of peers, etc.? Are there opportunities to address these obstacles, such as skills training to improve employment prospects or counselling?

Collection of social inquiry information

Information for social inquiries should only be collected on areas which have relevance to the understanding and discerning of the offender's conduct and the offence, and which address the risk of further offending. The guiding questions below follow the recommended/ model structure for pre-sentence reports outlined below:

Section on CASE DETAILS

This section will include name(s), date of birth/ age, sex, nationality/identity, passport number, tribe, clan, district of origin, district of residence, division, location, village, local leaders (i.e. chiefs, village elders), particulars of the criminal charges indicating the circumstances as noted in the charge sheet, the duration of stay in custody, etc.

Section on PERSONAL DETAILS

Family and personal history

- Social and economic standing of the parents.
- The training and discipline the parents have given to the offender and his or her siblings.
- An overview of the offender's developmental history, noting any gaps and incidences that may help to understand the current behavior, including any history or risk of violence or victimization.
- Consider the mental and emotional state of the offender by examining whether he or she exhibits any symptoms such as having trouble with sleeping, eating and focusing; fears about the future that are difficult to cope with etc.
- How he or she relates to other people and how they may influence his/ her conduct.
- The interpersonal relationship with siblings and/or spouse.

(Note: Social/ marital status relates to the position of the offender in society. This can include information on whether the person is married, widowed, divorced or separated in order to understand the background of offence and offender, and potential consequences of a sanction on the offender and his/ her family.

It is unnecessary to document information on family members if that information has no relation to the offender's conduct and would not help in any future interventions.)

Section on BACKGROUND INFORMATION

Dependent(s)/ Care-giving obligations

- The number and age of any (minor) children or other dependents such as elderly or family members with disabilities.
- Who does he or she look after on a daily basis?
- Whether he or she is the sole or main financial provider for these dependents.
- An overview of the impact of a community disposition or of a sentence of imprisonment on any children, noting who would care for them, whether they would still be able to attend school and the impact on their protection and healthcare needs. Also, consider if any young children are likely to live in prison with their mothers, if imprisoned.
- Whether the offender is currently pregnant or breast-feeding.

Living circumstances/ Home environment

- Place of residence prior to current charges, including any placement in a criminal justice facility.
- How the offender was meeting the living expenses, looking at indications that may connect the type of offence and the lifestyle of the offender.
- Who the offender has been living with.
- Frequency of shifting/ changing houses/ locations often and why.
- Conditions of housing he or she has lived in for most of his or her life.
- Whether the family is supportive of the offender regarding rehabilitation efforts.
- Whether the offender is safe in his or her home environment.
- Strengths in the home environment, family and community.

Section on OTHER DETAILS

Circumstances of the offence

- What are the mitigating and aggravating factors?
- Look at the contribution to the commission by the complainant, friends, relatives and other mitigating factors. Has the offender been coerced, pressured or provoked into committing/ aiding/ abetting the offence?
- The reason *why* he or she committed the offence ('push factors'). Note that this is not a re-narration of *how* the offence was committed.
- What are obstacles to change?
- How does the offender feel about apologizing to/ compensating the victim?

(Note: international research has found that women offenders are often coerced into aiding/ abetting an offence by their partners or husbands.)

Conduct/ character/ offender's attitude towards the offence and previous criminal activities

- Any genuine repentance.
- Any tendency to blame others.
- Any confession/revelation about his/her previous criminal activities.
- What he/she perceives of his/her ill action.

Education and occupation data

- Level of education achievements and how this may be an asset.
- Whether employed or not, and, if employed whether employment is formal or informal, casual or regular.
- If he or she has particular employable skills or requires training to acquire skills.
- Level of education. Whether the offender has completed schooling or any academic qualifications/ achievements.
- Report from school or employer to his or her commitment to education/work.

(Note: Reporting on education can include information of literacy levels and should seek to provide a better understanding of the background of the offender and identify adequate measures to reduce the risk of reoffending. Economic means should be captured as relevant: this can include information on how the offender earns a living and the income of the spouse (where relevant). It should enable an assessment of the consequences of a prison sentence or a non-custodial sanction.)

Leisure/ Other interests

- How does he or she spend leisure time, and with whom?
- What are his or her interests and hobbies?
- How does the offender generate money to sustain this leisure?
- Any participation in pro-social activities

(Note: Information to this end could help identify skills and adequate assignments for community service orders or reveal a potential to help with skill-building in the interests of preventing re-offending.)

Section on VICTIM INFORMATION

Victim(s) and community thoughts

- What they think of the actions of the offender.
- Any room for reconciliation and any need of compensation.
- How the offence has impacted on the life of the victim(s).
- What is the emotional and financial impact of the offence on the victim?
- What protective measures may be necessary to forestall any re-victimization?

Preparation of the pre-sentence report (summary)

The reports need to be drafted based on the direction/request of the court, and for certain selected offenders before or after conviction.

It must be borne in mind that report writing is a skill built around the probation officer's communication tools, and language and should be tailored to the audience, ie. taking into account the preferences of the court. Language should be clear, without ambiguity and should not use jargon.

These Guidelines can be used to prepare a continuous narrative prose report as well as for when filling out the online Offender Records Management System (ORMS) generated pre-sentence reports.

A form which can be used for pre-sentence reports is annexed to the Guidelines (Annex 2). However, courts may prefer to receive the pre-sentence report as a narrative. The form and Annex 1 contain a possible structure/ checklist for a pre-sentence report.

1. The report prepared must be objective, impartial and factually accurate. This can be realized through social inquiries, assessment instruments (where applicable) and verifiable documents.
2. The report must be based on a one-to-one interview with the offender and be verified with other sources, which can include family members/ significant others where admissible.
3. It must provide an understanding of the nature of the offence and circumstances of the offender, the causes of the deviant behaviour and the attendant risk that may be created on the public.
4. The report must be free from discriminatory language and stereotypes.
5. The report should be gender-sensitive, taking into account the specific background of women offenders and the impact of sentencing on both them and their children and families, in line with the UN Bangkok Rules.
6. If the offender has any care-giving responsibilities for children, the report must provide the court with sufficient information to allow the court to take the best interests of the children into account when sentencing (see Article 3 of the Convention on the Rights of the Child).
7. The report needs to state explicitly whether the offender is suitable for a community sentence. This may highlight the purpose of the community order preferred, desired outcomes and the envisaged interventions to be undertaken, including supervision levels.
8. It may also include any special condition that the court may consider appropriate for the offender, including residential orders and restriction of movement, if such orders deemed are prudent in securing the offenders abidance with a community sentence.
9. The report should encapsulate the opinion of the victim, where admissible, with a view to providing protection to the victim and the offender and also for the promotion of desired reconciliation.
10. The report can be in writing or be made orally in accordance with these Guidelines.
11. The conclusion of the report must provide an evaluation of the offender's motivations, needs and ability to change and action to be taken to reduce reoffending. Professional judgment is required to weigh up the needs of each case and assess, on balance, which recommendation is suitable.

Introduction

The introductory section should indicate sources of the information contained in the report including those from institutions like the religious organizations, employer, schools, administration, neighbours, etc.

I. Case details

1. Name, gender and age of offender
2. Charge, penal code section and court file number
3. Court name and police station
4. Previous convictions with respective police file numbers
5. Mention date, plea and information about remand or bond if applicable
6. Specifics of the offence
7. Sources of information

II. Personal details

1. ID/ No and telephone
2. Marital and social status, religion
3. Education
4. Occupation
5. Disability (if applicable)

Body of the pre-sentence report

This section should describe the background, detailing the family background, care-giving responsibilities, personal history/ education and employment/ means of subsistence, history of victimization, living circumstances, circumstances of the offence, criminal history/ victims statement etc. and recommendations. All information should have relevance to the offence and the personality of the offender.

III. Background information

1. Father, mother and spouse
2. Dependents (children and other members of extended family)
3. Likely impact of recommended sentence on welfare of dependents
4. Siblings
5. Family type, guardian and contact person
6. District, town and landmark, division, estate and nearest shop, sub location/ assistant chief, village elder (as relevant)
7. Nearest school and prominent person (as relevant)
8. Change of residence

IV. Other details

1. Conduct/ character
2. Physical health status
3. Mental health status
4. Drug & substance dependency
5. Home environment (including experience of domestic violence and possible stigma in the family as an offender, risk of violence or victimization)
6. Living circumstances
7. Employment (full-time, part-time, casual, regular?)
8. Economic means/ means of subsistence
9. Vocational experience or skills
10. Community ties and community attitude
11. Other interests/ leisure

V. Victim information

1. Name, ID No and gender
2. Relationship with offender and DOB
3. Victim attitude towards offender
4. Attitude of the victim's attitude towards offender

Conclusion/ recommendations

VI. Conclusion

1. Summary
2. Intervention strategy
3. Recommendations
4. Name of probation officer (include whether male or female)
5. Date and signature

This section should summarize the body of the report laying emphasis on key issues that can inform the recommendations (including underlying risk factors and motivating factors, summary of the supervision rehabilitation plan and the suggested disposal method).



Probation and Aftercare Service

Pre-sentence report format⁶

Reference number

Case details		
Name	Sex	Age
Charge		
Penal code section	Court file No.	
Court name	Police station	
Previous conviction	Police file No.	
Mention date	Plea	Remanded/Bonded
Specifics of the offence		
Sources of information		

Personal details	
ID No.	Telephone
Marital and social status	Religion
Education	
Occupation	
Disability	

6. A Pre-sentence report is a report in writing, made or submitted by a probation officer with a view to assisting the court in determining the most suitable method of dealing with an offender.

Background information

Father	Mother	Spouse
Dependants (children and other members of extended family)		
Likely impact of recommended sentence on welfare of dependants		
Siblings		
Family type	Guardian	Contact person
District	Town	Landmark
Division	Estate	Nearest shop
Location/Chief		
Sub-location/Ass. Chief		
Village/Village Elder	Nearest market	
Prominent person	Nearest school	
Change or residence: from _____ to _____		

Other details

Circumstances of the offence	
Conduct/character	
Physical health status	
Mental health status	
Drug and substance dependency	
Home environment (including experience of domestic violence and possible stigma in the family as an offender, risk of violence or victimization)	Living circumstances
Employment (full-time, part-time, casual or regular)	
Economic means / means of subsistence	
Vocational experience or skills	Other interests/leisure
Community ties	
Community attitude	

Victim information

Name	ID No.	Gender
Relationship	DOB	
Victim attitude towards offender		
Attitude of the victim's attitude towards offender		

Conclusion

Summary	
Intervention strategy	
Reccomendation	
Name probation officer	Male/female
Date	Signature

The Kenyan Probation and Aftercare Service is the sole administrator of community based sanctions in Kenya.

The Department is one of the agencies that form the Kenyan criminal justice system and is specifically charged with the responsibility of implementing supervised non-custodial correctional services within the community.

We are driven by the desire to reform and cause positive change in the lives of offenders. We believe that offenders can change given a second chance by providing appropriate rehabilitation and treatment interventions.

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