

COMMUNITY SERVICE ORDERS AS PART OF JUDICIAL DISCRETION IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

State responsibility includes *inter alia* the promulgation and provision of rules and institutions to maintain peace and security and protect the integrity of the State. Compliance with or obedience to social norms is a *sine qua non* for the achievement of this objective. The history of penology teaches that the search for compliance with rules and norms has resulted in the imposition of a variety of punishments which include incarceration. Whilst incarceration has traditionally been recognized in the penology of the criminal justice systems worldwide as both a punishment and a crime prevention strategy, research, however, greatly discounts this theory and reformists of criminal justice systems all over the world have advocated community-based corrections as an alternative crime prevention strategy in certain instances. The imposition of community service orders or correctional supervision is within the general criminal jurisdiction of the Courts but there is the need for legislative intervention to provide for the additional legal regime required for the complete implementation of the programme in Namibia. This paper investigates the merits of community-based corrections as an alternative crime prevention strategy and argues for its incorporation in the criminal justice system of Namibia.

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INTRODUCTION

The realization that human survival depends on social cohesion has prompted man since creation to find adequate methods to ensure compliance with or obedience to social norms and panacea for anti-social behaviour and transgression and to bring the non-conformists back into the mainstream of social behaviour. The history of penology teaches that the search for compliance with rules and norms has resulted in the imposition of a variety of punishments which include, since primordial times, where the law of the jungle, or euphemistically put, the law of the survival of the fittest was the order of the day, the deprivation of the weakest members of the society of their access to basic human and social needs as a result of their relatively feeble dispositions.

As man became wiser and more decent, this was replaced by banishment and stoning. During the days of the Greeks and the Romans punishment took a combination of torture, incarceration, and banishment. The more enlightened members of that society interpreted human punishment as a consequence of divine retribution. During Biblical Times the crude version of the law of the fittest was given the trappings of decency by the Mosaic rule of an eye for an eye and a tooth for a tooth. This was discounted by the teachings of love and forgiveness by Jesus Christ². In modern times the late Dr. Martin Luther King warned that adherence to the Mosaic rule will leave us all without limb and eyes. In the history of Europe during the Middle Ages, one reads of the trial by ordeal and witch hunting. Modern society cannot exonerate itself entirely from these rather crude versions of punishment. We still have vigilante justice, stoning and amputation, corporal punishment and capital punishment as part of penal and justice systems. The paradox or irony in such instances is that at times one begins to wonder who really is the offender or the perpetrator of an offence and whether man has changed very much since the days of the rule of the *'survival of the fittest'*.

2 "For if you forgive people their offenses, your heavenly Father will also forgive you. But if you do not forgive people their offenses, your Father will not forgive your offenses." Mathew 6:14 – 15; "Watch yourselves! If your brother sins, rebuke him, and if he repents, forgive him..." Luke 17:3; cited from the International Standard Version. Rick Meyers. E-sword 9.0.3. 2000 – 2009. Franklin, TN. USA

Traditional Philosophy of Penology

The need for a means of ensuring compliance with the norms of the society and more importantly the compensation of victims of transgressions, has justified the need for a programme of penology in the criminal justice system of every society but the more conscientious observers of society have argued for a more humane and decent methods of penology that serve the basic objectives of punishment and also retain the dignity of man in particular and human rights in general. It may be realized that the traditional philosophy of penology emphasizes the deterrent and retributive aspects of punishment and consists of the following basic elements; isolation from the society; infliction of some form of pain (either monetary or otherwise); rehabilitation and compensation. Over the years many role players in criminal justice either as members of the general public or as professionals, have been making their points of view heard. For instance, Jonathan Wolff writes in a recently published article:

When we political philosophers teach our students about the justification of punishment, we tell them that there are four main theories: deterrence, rehabilitation, retribution and public protection. Society sends people to prison to deter others from the same act; to turn criminals into better citizens; as an act of pure punishment; or to take criminals off the street. If imprisoning individuals is to affect the future crime rate, then at least one of the deterrence, rehabilitation and "off the street" arguments would have to be effective, since the retribution argument is entirely backward-looking. Rehabilitation is also a poor candidate, because only a few of those who break the law find themselves in prison, and so rehabilitation, even if effective, could only have a marginal effect on future crime rates³.

In the case of *The State v. Paulus Alexander*⁴, Maritz AJA, commenting on deterrence and the role of the Judiciary in crime prevention and penology stated as follows:

Deterrence, as a universally recognized important sentencing objective, finds particular application in serving the interests of the community (c.f. S v. Da Costa and Another, 1990 NR 149 (HC) at 151D). More so too, when the crimes are grave and all too frequently committed. It must become well-known to those tempted to gratify their illicit desires, needs and urges by wanton disregard for their victims' rights and at the expense of law and order in society, that the Courts will do what they can, through the imposition of condign punishment on offenders, to stem the tide of serious crime.

3 Jonathan Wolff, 'Crime and Punishment' Prospect Magazine 1 Issue 144, March 2008
4 Case No: SA 5/1999

There are two elements in this statement that need to be highlighted. First, the recognition that deterrence is a universally recognized sentencing objective; secondly, in the exercise of the judicial functions the imposition of condign punishment by the Courts as a crime prevention strategy, the nature of the punishment must be proportionate to the severity of the crime and must serve the objectives of sentencing. This is within the discretion of the court.

The type of sentencing mentioned by the Judge Maritz above, which is the traditional approach, places a lot of emphasis on incarceration and in the context of community service as part of the discretionary power of judges in the exercise of their criminal jurisdiction in the criminal justice, the limitations and appropriateness of incarceration as an effective sentencing strategy will become our point of departure.

Modern jurisprudence on incarceration as punishment places less emphasis on custodial form of punishment, but more emphasis on alternatives that encourage socialization and social contact with the outside world, taking into consideration, *inter alia*, the moral blameworthiness in the commission of the crime, absence of previous conviction and the interest of the community. The search for appropriate punishment needs to start with an enquiry into the reasons for an individual's fidelity to law or conversely the individual's propensity to criminality. These are human dispositions that are determined by variables and therefore a proper identification and assessment of these variables will help determine the nature of punishment that will serve the needs of the society and the positive objectives of penology. An individual's fidelity to law might be determined by inherent attributes to conformity and belief in the legal system; by the desire to maintain professional, social and family recognition and respect, to maintain economic status; etc . No one is born a criminal and therefore conversely an individual's propensity to criminality might be the product of social and economic factors, peer pressure etc. Not all these predispositions can be addressed by incarceration alone.

This observation is also highlighted by H.L.A. Hart in his masterpiece *The Concept of Law*⁵. Hart argued that we need to distinguish two different attitudes people can have to the law: "internal" and "external." The internal attitude is held by those who identify with the laws of the land, and think of them as "my

5 Hart, H.L.A. *The Concept of Law*, Oxford University Press, Oxford, pp163-176: 189-195.

own.” To have the internal attitude is to see the law as an absolute constraint on one’s actions. Those who have it do not weigh up whether or not to obey the law, and decide that the benefits of obedience outweigh the benefits of breaking it. They simply do not contemplate courses of action that involve a breach of the law. By contrast, to have the external attitude is to see the law as attaching costs, or at least risks, to desired actions, and the higher the risks the more likely one is to obey the law. This is, it seems, the economic cost-benefit analysis. Perhaps part of our nostalgia for the past is based on the thought that in the good old days, many more people would have had the internal attitude, but that the cynicism of the current age has caused a significant proportion of the population to lose their implicit reverence for the law and to start playing the odds of not being found out.

We need, though, to add some further categories to Hart’s pair. A third attitude is neither internal nor external but chaotic — what we might call “disconnected.” Disconnected crimes are crimes of passion; they are prompted by impulse, or anger, or pride, without much, if any, thought to the consequences. Many murders and other serious assaults are of this nature. The final criminal attitude is that of the “anti-authoritarian,” who takes positive pleasure or satisfaction in breaking the law.

It may be that no individual fits purely into one of these categories. A successful middle-aged businessman might take the internal attitude to private property law: it just never crosses his mind to shoplift. At the same time, he might take the external attitude to various aspects of tax and business law, and will cheat if the chance of detection is very low. No doubt his attitudes to some laws have changed. Perhaps he once took the external attitude to drinking and driving, but now, as a result of government campaigns, wouldn’t dream of driving under the influence. Yet perhaps he also loses control from time to time at home, and has been known to threaten his wife. Finally, maybe he smokes the odd joint, taking pleasure in reminding himself of his more bohemian youth and partly in protest at what he thinks are overly intrusive drug laws⁶.

Maritz, J. in a judgment delivered in the case of *Paul Kennedy and Others v The Minister of Prisons and Correctional Services*⁷ observed that:

6 Jonathan Wolff, *ibid*

7 Case No:(P)I 147/2005

when sentencing convicted criminals to effective terms of imprisonment, the Courts are always hopeful that they will use the time of relative seclusion to reflect upon their misconduct, reassess their lives and rehabilitate themselves to rejoin society upon their eventual release with a fresh commitment to fully realize their potential as human beings, to be a positive force in their communities and to respect the laws set by society for the regulation, protection and benefit of all its members. Sadly, the harsh realities of life in the captive environment of prisons too often produce a different result. This is especially true in correctional facilities where the pervasive sub-culture of prison gangs lures prisoners under the guise of "protection" even further into the darker reaches of criminal conduct- often violent, as the disturbing facts of this evidence.

These observations on the traditional concepts of punishment have prompted the need for rethinking and revisiting the traditional corrections policies and the fashioning of alternative corrections strategies. Most jurisdictions therefore, have incorporated in their corrections policies and programmes a variety of community based corrections strategies ranging from probation, correctional supervision, and community service as part of their criminal justice system within the discretion of the courts to pronounce in appropriate cases but with the requisite enabling legislative authority. These jurisdictions include the United States of America, South Africa, Malawi, Uganda, Zimbabwe etc. Since we are propagating the virtues of community based corrections, we shall concentrate on community service.

Inadequacies of Incarceration

Protagonists of community service argue that incarceration involving long sentences *per se* does not act as deterrent for people contemplating the commission of crime and that it is the certainty of apprehension and punishment, rather than the severity of the sentence, that is the real deterrent. In the case of *S v. R*⁸, Krieger AJA declared:

The Legislature has unequivocally indicated by the shift of emphasis which is apparent from the amending Act as a whole, that punishment, reformatory but if necessary highly punitive, is not necessarily or even primarily to be achieved through incarceration

In his article, *State Punishment and Human Rights in South Africa*⁹, Koen, states that

8 1993 1 SACR 209 (A) 1993 1 SA 476 (A)

9 Koen R. 1999 Stellenbosch Law Review / Regstydskrif, 10 (2), 184-190

in response to South Africa's crime crisis there was a public outcry from various quarters that called for harsher sentences to be imposed upon convicted offenders. The belief is that it is imperative that the type of punishment imposed by the courts must send a clear message to the offenders and to the community that crime does not pay. According to this view then, punishment should operate as mechanism of discouragement as well as a crime deterrent . Consequently, the Criminal Law Amendment Act 105, stipulating the minimum sentences to be imposed by the courts for certain serious offences was introduced in 1997.

This position however, was not supported by the evaluation of the Act by the Inspecting Judge of Prisons. He criticized the rationale behind the Act and confirmed that according to research, long sentences are not necessary to act as deterrent for people contemplating the commission of crime.¹⁰

Davis, Takala and Tyler¹¹ add that the incarceration of offenders is costly and if it works, it does not rehabilitate the offender or deter him or her from re-offending.

Another reason given for the inadequacy and ineffectiveness of incarceration involving long sentences is that long sentences lead to overcrowding in cells¹² and its ripple adverse effects on the human rights and the health of the inmates. Smit¹³citing Goyer¹⁴ states as follows:

Overcrowding of prisons is one of the most important factors affecting the health of prisoners and therefore the reduction of the prison population is essential to prison reform. Goyer (2002:25) also states that high-risk behaviour, the prevalence of gang activities and the impact of prison conditions on general prisoner health are all exacerbated by the severe crowding.

Another critique on the notion whether imprisonment is worth it in terms of its

10 Fagan JJ. The Inspecting Judge of Prisons, *Annual Report for the period 1 April 2002 to 31 March 2003*. Pretoria: Government Printer.

11 Davis, M; Takala, J.P & Tyler, J. 1996. *A penological Esperanto and sentencing parochialism, a comparative study of the search for non-prison punishments*. Dartmouth: England.

12 Smit, J. *Community corrections as an alternative to imprisonment in South Africa* in *Acta Criminologica* 17 (3) 2004 pp 55-71

13 *ibid*

14 Goyer, K.C. 2002. *Prison Health is Public Health*. Article in *SA Crime Quarterly*, No. 2 November 2002, Institute for Security Studies, 2002, Pretoria pp23-26

massive cost is by Joubert and others¹⁵ who assert that:

Courts are constantly urged to impose imprisonment more readily, and for longer periods. ... The fact is that imprisonment is by no means as successful in curbing crime as one would instinctively feel. ... the entire prison environment with its discipline and subcultures is singularly unhelpful for preparing any prisoner to live in a free society.

The South African National Commissioner of Correctional Services in the Annual Report of 2001, expressing his general concern over the problems posed by overcrowding concluded that overcrowding did not only result in the violation of the human rights of the offenders, but also in the overextension of staff. The National Commissioner added that overpopulated prisons create conditions that undermine the rehabilitation programmes offered to incarcerated offenders.

Amanda Dissel in her article 'Tracking Transformation in South African Prisons'¹⁶ states that:

Overpopulation in prisons continues to be an ongoing problem and a serious threat to the recognition of basic rights of prisoners. In 2002 the Judicial Inspectorate reported that:

Conditions in prison, more particularly for unsentenced prisoners, are ghastly and cannot wait for long term solutions; for example, 1 toilet is shared by more than 60 prisoners; [there is a] stench of blocked and overflowed sewage pipes; shortage of beds resulting in prisoners sleeping two on a bed whilst others sleep on the concrete floors, sometimes with blanket only; inadequate hot water; no facilities for washing clothes; broken windows and lights; insufficient medical treatment for the contagious diseases that are rife. The list of the infringement of basic human rights caused by overcrowding is endless (Judicial Inspectorate Report on Prison Overcrowding 2000).

The Judicial Inspectorate, in charge of independent oversight of prisons, has made a number of recommendations to reduce the prison population over the long term. In response, the Department of Correctional Services has committed itself to the enhancement of community corrections by diverting low-risk awaiting-trial prisoners to community corrections, and utilizing electronic monitoring on awaiting trial-prisoners and those serving parole. It remains to be seen whether implementation of the recommended measures will reduce overcrowding.

15 Joubert, J.J. Editor. Criminal Procedure Handbook. 9th Edition. 2009. Claremont. Juta & Co p 304

16 Prison Transformation in South African Prisons vol. 11 No.2 April 2002

In Namibia statistics on the profiles of prisoners, including the offences for which prisoners are incarcerated, indicate a similar trend in the Namibian Prisons. It is reported that a total admission of convicted offenders in 2003/4 were 4106 and out of these, 51 % were serving sentences arising from non-serious offences and sentenced to six months and below. Another group, which amounts to 35% were offenders serving sentences of over six months to two years. Only 14% were serving sentences emanating from serious crimes, which are over two years' sentences.¹⁷

Furthermore, the majority of these offenders are illiterate and poor, to such an extent that they are not able to pay bail or a fine in monetary terms. Thus, the state coffers will consequently be utilized to provide basic necessities such as nutritious food, clean portable water, adequate health care, clothing, bedding and so on, to offenders who do not pose a serious threat to society. In the final analysis, the imprisonment of petty offenders offers no tangible benefit to society. It would make sense, on the other hand, if such an offender would be given an opportunity to repay society at his or her own cost.

In the light of these statistics, the Namibian authorities have demonstrated the resolve to implement the Government policy of community service as alternative to incarceration. Over the last few months, there have been many initiatives taking root in the Namibian Criminal Justice System. Most notable among these is the newly formed National Criminal Justice Forum. The forum is a platform where the various institutions playing a role in the country's criminal justice system – such as the Judiciary, Office of the Prosecutor-General, Namibian Police Force, Namibian Correctional Service, Directorate of Legal Aid in the Ministry of Justice, Anti-Corruption Commission, Law Society of Namibia and various ministries and agencies – **will be able to meet to map out a unified and coordinated approach** in the fight against crime. Until recently, each and every component of the Criminal Justice System was operating in isolation and consequently, creating an unhealthy situation where it was not possible to clearly give impetus to the credible reform agenda. As a result alternatives to imprisonment such as Community Service Order with all its benefits were not being utilized at all. But following the establishment of the forum there is ample evidence that the efforts of the various institutions are coordinated and directed towards the achievement of the reform agenda.

17 *Namibia Community Service Orders Pilot Project*, April, 2005 Windhoek.

Towards the end of 2009, the Namibian Correctional Service was mandated to ensure that the highly acclaimed Pilot Project on Community Service Orders in the Northern regions of Namibia is implemented nationally. Community Service Orders officers, District Committees as well as the National Committees have been reinforced in an effort to ensure that petty offenders do not fall victim to habitual criminals upon incarceration.

The above mentioned inadequacies of incarceration notwithstanding, most disturbing is the phenomenon of recidivism that is associated with incarceration and undermines the whole concept of incarceration as a crime prevention strategy. Goyer¹⁸ estimates the recidivism rate in South Africa to be as high as 94%. One of the most important advantages of a properly functioning Community Service Orders system is that young offenders as well as first time offenders are easily salvaged from the possible contamination they were almost certain to endure upon incarceration. Even though official statistics are yet kept as yet on recidivism in Namibia, considering the experiences of other jurisdictions, it is almost certain that a petty offender who is sent to prison will almost certainly come back with a much more serious offence. This is due to the fact that hard-core criminals have created very strong and unbreakable subcultures in prisons which do more harm to a novice upon contact and this damage may never be repaired. For this reason, it is absolutely essential that society must ensure that no new criminals are injected into the society inadvertently; sending non-serious offenders under the pretext that justice is being served in fact results in more serious problems for society.

In the preparatory stages towards the introduction and implementation of Community Service Order as part of the criminal justice in Uganda by the promulgation of the Act in 2000, the Interim Committee supported its justification for the introduction of community service as alternative sentencing, with the inadequacies of incarceration as stated above, namely, poor prison conditions, overcrowding, high costs of running prisons, recidivism, and lack of rehabilitative programmes for prisoners.

The above does not represent elimination of incarceration as punishment but it argues for alternative correctional strategies that will address some of the concerns raised above, and one of them being the community service system or community corrections. In Africa, some jurisdictions have already promulgated legislation introducing community service, and these include South Africa, Uganda, and Malawi and Zimbabwe.

18 (ibid)

Community – based Corrections

The argument for the paradigm rethinking in shifting from overemphasis on incarceration to community based corrections as advanced above, necessitates a brief exposition of the nature and advantages of community- based corrections.

Bruyns et al.¹⁹ describe community corrections (service) as:

a sentence imposed by a court and served within the community. The convicted offender is thus not removed from his or her family, job and neighbourhood.

Jonker²⁰ defines the term community corrections as:

Being a collective for the various forms of sentences served in the community.

Kriegler AJA in the case of *S v. R*,²¹ stated as follows:

correctional supervision does not so much describe a specific sentence, but rather that it is a collective term for a wide range of measures which share one common feature, namely that they are executed within the community.

And Terblanche states that:

correctional supervision is a form of punishment which an offender serves in the community, and during which the offender is not incarcerated in a prison or removed from the community in which he lives and works. It limits the freedom of the offender through house arrest, and it requires direct and free service to the community through community service²².

In its list of definitions the proposed Community Service Order Bill defines as:

a court order made under this ACT requiring an offender to perform unpaid work within the community for a specific period of time.

The purpose of community corrections is therefore to monitor and exercise supervision, and control over offenders who have been sentenced directly by a court to correctional supervision, prisoners whose sentences have been converted after serving a certain time in prison and who have been released

19 Bruyns, HJ; Jacobs-du-Preez, N; Jonker, JM; Kriel, J; Mguni, BN; Ramabulana, AO & van der Merwe, J.S. 2002. *Community Corrections Fundamentals and Philosophy*. South Africa: TSA Publishing

20 Jonker, J. *Correctional Services Law II Study Guide*. Florida: Technikon SA.

21 1993 1 SACR 209 (A); 1993 1 SA 476 (A)

22 Terblanche SS, *The Guide to Sentencing in South Africa*, Butterworths, Durban, pp327-331

from prison under correctional supervision and persons who have been released on parole.²³

Advantages

The advantages of community based corrections system have been said to include its substantial potential to promote the rehabilitation of the offender despite its high punitive value as a sentence; the offender is not incarcerated and therefore is not exposed to hardened criminals; he does not suffer the isolation and stigma attached to imprisonment; prison space is not taken up; the offender can keep his employment and support his family and society does not lose the skills of someone who can look after himself.

The Legal Regime of Community Service and The Role of the Courts.

The legal regime for the implementation of community service/corrections programme and imposition of appropriate orders will be appropriate enabling legislation and the exercise of judicial discretion either expressly provided for or implied by law²⁴. In every legal system with or without the jury, the criminal jurisdiction of the Courts includes the power of sentencing which can be traced to the Constitution, and the pedigree of legislation that establishes a particular court. Therefore, for example, in Namibia, the general jurisdiction of the superior courts can be traced to the Constitution and their sentencing powers to their specific acts of Parliament, the Supreme Court Act and the High Court Act and rules. As pointed out by Judge Maritz in the case of *The State v. Paulus Alexander*²⁵ one of the sentencing objectives embodied in the jurisdiction of the Courts is deterrence or crime prevention – but this does not necessarily have to be achieved exclusively by the imposition of condign sentences and incarceration in all cases. This can also be achieved through the imposition of community-based corrections orders.

In the context of the existing legal system of Namibia, the courts can implement community – based corrections orders within the legal framework of the Criminal Procedure Act, 51 of 1977, which is still applicable in Namibia. Section 1 of the Act defines ‘correctional supervision’ a community – based punishment; and therefore a substantive sentence²⁶.

23 Smit J (ibid)

24 S v Alexander (SA5/99 ; SA5/99) [2003] NASC 5 (13 February 2003)

25 (ibid)

26 It must be noted that this amendment currently does not apply in Namibia..

Furthermore, in terms of the Act, offenders may be sentenced or a sentence of imprisonment may be converted to correctional supervision in accordance with the following sections:

- (i) 276(1)(h) – Direct sentence to correctional supervision not exceeding three years after receiving a formal report from an assessment official.
- (ii) 276(1)(i) – Sentence of imprisonment not exceeding five years, which can be converted, at the discretion of the Commissioner of Correctional Services, into correctional supervision after the offender has completed one-sixth of the sentence unless the court has directed otherwise.
- (iii) 276A(3)(a)(i) – Sentence of imprisonment not exceeding five years, which may be referred to the court *a quo* after serving at least one quarter of the sentence
- (iv) 276A(3)(a)(ii) – Sentence to imprisonment not exceeding five years, which may be referred to the court *a quo* when the date of sentence expiration is not more than five years in future.
- (v) 287(4)(a) – Sentence to imprisonment not exceeding five years with the option of a fine which may be converted into correctional supervision as soon as possible after admission unless the court admits otherwise.
- (vi) 287(4)(b) – Sentence to imprisonment exceeding five years with the option of a fine, which may be referred back to the court *a quo* when the date of sentence expiration in future is five years at the most.
- (vii) 297(1)(a)(i)(cc) – Where a court convicts a person of any offences, other than an offence in respect of which any law prescribes a minimum punishment, the court may in its discretion postpone for a period not exceeding five years, the passing of sentence and release the person concerned on one or more conditions, whether as to the performance without remuneration and outside the prison of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, in the opinion of the court, promotes the interests of the community.
- (viii) 297(1)(b) or 297(4) – The court may place a person under correctional supervision as a condition for suspension or postponement of a sentence.

It must be added that currently it is only section 297 that is applicable in Namibia. However, the other sections discussed earlier are included in the Draft Namibian Criminal Procedure Bill. This indicates, therefore, that the Criminal Procedure Act provides for some legal framework within which the Court can exercise their sentencing jurisdiction to impose community – based Corrections Orders. It must be mentioned, however, that for the programme to have the desired effect the provisions of the Criminal Procedure Act, may not be adequate. In almost all jurisdictions that have implemented the community based programme as alternative to incarceration additional legislation has been promulgated to cater for the appropriate institutional structures and all other related matters. This is precisely what the proposed Namibian draft Bill on Community Service seeks to address.

Clause/section 2(1)(a)(b) of the Community Service Order Bill, give the Court the discretion to make a community service order requiring the offender to perform community service where any person is convicted of an offence punishable with imprisonment not exceeding three years, with or without the option of a fine, or imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less, with or without the option of a fine.

Conclusion

Incarceration has traditionally been recognized as a punishment in penology as a crime prevention strategy. However, research greatly discounts this theory and reformists of criminal justice systems all over the world have advocated community-based corrections as an alternative crime prevention strategy in certain instances. The imposition of community service orders or correctional supervision is within the general criminal jurisdiction of the Courts but there is the need for legislative intervention to provide for the additional legal regime required for the complete implementation of the programme in Namibia.

