

# **THE COMMUNITY SERVICE ORDER ACT 2002**

**(AMENDED BY ACT NO. 5 OF 2009)**

## **ARRANGEMENTS OF SECTIONS**

1. Short title
2. Interpretation
3. Community service order
4. Pre-conditions for community service order
5. Duration of community service order
6. Conditions of a community service order
7. Obligations of the convicted person
8. Obligations of the community service officer
9. Amendment of community service order
10. Breach of community service order
11. Regulations
12. Transitional provisions
13. Commencement

## **An Act**

### **To provide for community service orders as an alternative to imprisonment**

ENACTED by the Parliament of Mauritius, as follows:-

#### **1. Short title**

This Act may be cited as the **Community Service Order Act 2002**.

#### **2. Interpretation**

In this Act -

"community service officer" means a probation officer who is entrusted with the supervision of persons subject to a community service order;

"community service order" means an order requiring a convicted person to perform unpaid work in the open for a specified period and in the form set out in the First Schedule;

"disqualification" includes cancellation, suspension, revocation, endorsement or any other order of similar nature;

"Minister" means the Minister responsible for the subject of reform institutions;

"minor" means a person who has attained the age of 16 and is under the age of 18;

“probation officer” has the same meaning as in the Probation of Offenders Act.

### **3. Community service order**

- (1) Where a Court –
- (a) convicts a minor and, in accordance with the Juvenile Offenders Act, sentences him to a term of imprisonment, not being a sentence fixed by law; or
  - (b) convicts a person of the age of 18 or over and sentences him to a term of imprisonment not exceeding 2 years and not being a sentence fixed by law,

the Court may suspend the sentence of imprisonment and make a community service order.

- (2) Subsection (1) shall not preclude the court from making such order for costs or from imposing such disqualification against the convicted person as may be made or imposed under any enactment.

- (3) Where a fine –
- (a) not exceeding 25,000 rupees with or without costs ordered by a Court remains unpaid; or
  - (b) exceeding 25,000 rupees with or without costs ordered by a Court has an unpaid balance of 25,000 rupees or less,

and the Court orders, by warrant or otherwise, that the convicted person shall undergo a term of imprisonment *in lieu of* the payment of the fine and costs, the Court may suspend the sentence of imprisonment and make a community service order.

- (4) Notwithstanding any other enactment, a convicted person shall not, by reason of work performed under this Act, be treated as an officer, servant or préposé of the State.

- (5) In this section, "sentence fixed by law" means-
- (a) a sentence of penal servitude for life or detention during the President's pleasure;
  - (b) a sentence in respect of an offence for the prosecution of which section 205 of the Criminal Procedure Act provides that Part X of that Act shall not apply.

### **4. Pre-conditions for community service order**

- (1) Before making a community service order, the court shall explain to the convicted person in a language which he understands -

- (a) the purpose, effect and duration of the order;
  - (b) the conditions which it intends to attach to the order and the consequences of a breach of any condition;
  - (c) that the court may amend the order upon application made by the convicted person or a community service officer.
- (2) A court shall not make a community service order unless -
  - (a) the convicted person gives his consent thereto;
  - (b) the court, after considering a report from a probation officer or hearing the probation officer, is satisfied that the convicted person is a suitable person to be the subject of such an order; and
  - (c) adequate arrangements have been made for the carrying into effect of the order.
- (3) When a court makes a community service order, it shall
  - (a) take into account the convicted person's free time, including weekends;
  - (b) consider whether the convicted person may be a threat to public safety;
  - (c) ensure that the work to be performed by the convicted person will benefit the State, a statutory body, a charitable institution or a voluntary organisation.

## **5. Duration of community service order**

- (1)
  - (a) The duration of a community service order shall be calculated in the manner specified in the Second Schedule.
  - (b) A community service order shall span over a period of not more than 12 months.
- (2) Where a court makes community service orders for 2 or more offences, the court may direct that they shall be concurrent or consecutive.
- (3) Where the court directs that 2 or more community service orders be consecutive, it shall not impose in the aggregate more than 300 hours of work.

## **6. Conditions of a community service order**

- (1) The court shall, in a community service order, specify -

- (a) the day on which work must commence, not being a day later than 45 days from the making of the order, or from the date of release of the convicted person if he is detained at the time of the making of the order;
- (b) the times at which the work must be performed;
- (c) the place where the convicted person shall perform the work;
- (d) the place where the convicted person must reside;
- (e) the name and location of the government department, local authority, statutory body or any charitable or voluntary institution or organisation as may be prescribed for which the convicted person must work;
- (f) whether the convicted person shall be subject to counselling and shall receive visits at his home by the community service officer;
- (g) whether the convicted person must avoid contact with the victim of the offence with respect to which he is convicted, or any other person;
- (h) whether the convicted person shall -
  - (i) abstain from using any offensive weapon;
  - (ii) meet the needs of his dependants;
  - (i) such other condition as the court deems appropriate.
- (2) The court shall deliver a copy of the order to the convicted person and the community service officer on the day the order is made.
- (3) The court shall require the community service officer to submit periodical reports on every convicted person at such times as it may fix.

## **7. Obligations of the convicted person**

Where a person is the subject of a community service order, he shall -

- (a) report to the community service officer on the days specified by the court or the community service officer;
- (b) perform the number of hours of work ordered by the court diligently and at a reasonable speed;

- (c) make his own arrangements, financial or otherwise, to attend his site of work;
- (d) be of good conduct;
- (e) not disturb the public peace.

## **8. Obligations of the community service officer**

A community service officer shall, in respect of every convicted person under his supervision -

- (a) prepare a work and management plan for the execution of the order;
- (b) avoid conflict with the religious beliefs of the convicted person;
- (c) apply for amendment of the order where the circumstances of the case so require.

## **9. Amendment of community service order**

- (1) A court which imposes a community service order may amend the order -
  - (a) upon application made by the convicted person or the community service officer;
  - (b) by imposing such other conditions, including the furnishing of security, as it deems fit.
- (2) The court shall not amend a community service order unless it is satisfied that it is in the interests of justice to do so having regard to all the circumstances of the case.
- (3) The application for amendment and the order for amendment shall substantially be in the Form of the Third Schedule.
- (4) Where the court finds that it would be impracticable to amend the community service order, the court may revoke the order and deal with the convicted person as provided in section 10(5).

## **10. Breach of community service order**

- (1) Where a convicted person -
  - (a) fails to comply with any of the conditions of a community service order; or
  - (b) breaches any of his obligations specified in section 7,

the court which imposed the order may, on a report submitted pursuant to section 6(3), summon the convicted person to appear before it and show cause why he should not be fined or the community service order should not be revoked or any of the conditions of the order should not be amended.

- (2) The court may issue a warrant if the convicted person fails to attend pursuant to a summons issued under subsection (1).
- (3) The court may, pending a decision under this section, remand the convicted person to custody or to bail.
- (4) Upon hearing the community service officer, the convicted person and such other persons as it may deem fit, the court may –
  - (a) without prejudice to the continuance of the order, impose a fine not exceeding 10,000 rupees;
  - (b) revoke the community service order; or
  - (c) amend the order.
- (5) Where the court revokes the community service order, it may order the convicted person -
  - (a) to serve the suspended sentence in its totality;
  - (b) to serve such reduced term of imprisonment as the court may deem fit, taking into account the number of hours of work already performed under the order.

## **11. Regulations**

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may provide for-
  - (a) the levying of fees and charges;
  - (b) the amendment of the Schedules;
  - (c) the constitution and duties of a community service committee, or the entrusting or the supervision of community service orders to any probation committee prescribed under the Probation of Offenders Act.

## **12. Transitional provisions**

Notwithstanding section 96 of the District and Intermediate Courts (Criminal Jurisdiction) Act, the Supreme Court may, upon hearing an appeal lodged before the entering into force of this Act, refer the case back to the Intermediate or District Court, as the case may be, for

that Court to consider whether a community service order should be made in respect of the convicted person.

**13. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.

Passed by the National Assembly on the ninth day of July two thousand and two.

**SCHEDULE**

*[Section 8]*

**FIRST SCHEDULE**

*[Section 2]*

**COMMUNITY SERVICE ORDER**

1. WHEREAS this day/on the.....of .....20.....\*, ..... (“the convicted person”) is/was\* convicted before me for having on ..... committed the offence of ..... in breach of ..... and the convicted person is/was\* sentenced to undergo ..... /to pay a fine of ..... rupees and.....rupees for costs which the convicted person is unable to pay\* and I have ordered him to undergo ..... imprisonment for non-payment of the fine and costs.

2. WHEREAS after considering a report from...../hearing the probation officer\*, I am satisfied that the convicted person is a suitable person to be the subject of a community service order.

3. WHEREAS I have explained to the convicted person in the ..... language –  
(a) the purpose, effect and duration of the order;  
(b) the hereunder mentioned conditions attached to the order and the consequences of a breach of any condition;  
(c) that the Court may amend the order on application made by the convicted person or a community service officer; (d) that any breach of the Act or any condition of the community service order renders him liable to –  
(i) without prejudice to the continuance of the order, a fine not exceeding 10,000 rupees;  
(ii) a revocation of the order; or  
(iii) an amendment of the order.

4. WHEREAS I have ascertained that –  
(a) the convicted person gives his consent to the making of the order;  
(b) adequate arrangements have been made for the carrying into effect of the order.

5. I THEREFORE SUSPEND the sentence of imprisonment imposed on the convicted person and make a community service order requiring the convicted person to perform unpaid work in the open for ..... hours, subject to the following conditions –  
(a) work shall commence on ..... ;



- (b) work shall be performed for ..... hours on .....(days) at ..... (place) for..... (Government department/local authority/ statutory body/prescribed charitable or voluntary institution or organisation\*);
- (c) the convicted person shall reside at.....;
- (d) the convicted person shall be under the supervision of....., a community service officer, or any other community service officer designated by the Commissioner of the Mauritius Probation and Aftercare Service;
- (e) the convicted person shall be of good conduct, shall not disturb the public peace and shall avoid contact with ....., the victim of the offence with respect to which he is/was\* convicted, or with .....
- (f) the convicted person shall abstain from using an offensive weapon;
- (g) the convicted person shall meet the needs of his dependants;
- (h) the work shall be performed diligently and at reasonable speed;
- (i) the convicted person shall make his own arrangements, financial or otherwise, to attend his site of work;
- (j) the convicted person shall be subject to counselling and shall receive visits at his home by the community service officer.

6. I FURTHER ORDER that the convicted person –

- (a) shall pay..... rupees for costs;
- (b) is disqualified from.....

7. GIVEN under my hand and seal of the Court on this ..... day of .....

.....

Magistrate/Judge\*

District Court of ...../Intermediate Court/Supreme Court\*

\*Delete as appropriate

**SECOND SCHEDULE**  
*[Section 5]*  
**HOURS OF COMMUNITY SERVICE**

<i>Duration of suspended term of imprisonment</i>	<i>Corresponding hours of community service</i>
Less than 1 month	60
1 month	70
2 months	80
3 months	90
4 months	100
5 months	110
6 months	120
7 months	130
8 months	140
9 months	150
10 months	160
11 months	170
12 months	180
13 months	190
14 months	200
15 months	210
16 months	220
17 months	230
18 months	240
19 months	250
20 months	260
21 months	270
22 months	280
23 months	290
24 months	300

**THIRD SCHEDULE**

*[Section 9]*

**APPLICATION FOR AMENDMENT OF COMMUNITY SERVICE ORDER**

To the District Court of ...../Intermediate Court/Supreme Court\*

I, ..... (community service officer)/or ..... (the convicted person)\* apply for an amendment of the community service order for the following reason(s) –

.....  
.....  
.....

Signature of community service officer/convicted person\*

Date:.....

**AMENDMENT OF COMMUNITY SERVICE ORDER**

Upon application made by

....., community service officer/convicted person\*, and being satisfied that an amendment of the order is necessary in the interests of justice, having regard to all the circumstances, I hereby amend the community service order by

.....  
.....  
.....

Magistrate/Judge\*

District Court of ...../Intermediate Court/Supreme Court\*

Date:.....

\*Delete as appropriate