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NO. 10 OF 1998

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COMMUNITY SERVICE ORDERS ACT

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NO. 10 OF 1998

COMMUNITY SERVICE ORDERS ACT

[Date of assent: 31st December, 1998.]

[Date of commencement: 23rd July, 1999.]

An Act of Parliament to introduce and regulate community service by offenders in certain cases, and for connected and incidental purposes

[Act No. 10 of 1998, Legal Notice 100 of 1999, Act No. 11 of 2017, Act No. 18 of 2018.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Community Service Orders Act.

2. Interpretation

In this Act unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to correctional services;

"community service officer" means a community service officer within the meaning of section 12;

"community service order" means an order made under section 3;

"court" means the court which made a community service order and includes a court within whose jurisdiction an offender may be residing while serving under a community service order;

"Minister" *deleted by Act No. 18 of 2018, Sch.;*

"National Committee" means the National Community Service Orders Committee established under section 7;

"offender" means a person convicted and sentenced by a court for an offence under any written law;

"Permanent Secretary" *deleted by Act No. 18 of 2018, Sch.;*

"Principal Secretary" means the Principal Secretary in the Ministry for the time being responsible for matters relating to correctional services;

"supervising officer" means an officer appointed under section 13 to supervise an offender performing community service under this Act.

[Act No. 11 of 2017, Sch., Act No. 18 of 2018, Sch.]

PART II – COMMUNITY SERVICE ORDERS

3. Community service orders

(1) Where any person is convicted of an offence punishable with—

- (a) imprisonment for a term not exceeding three years, with or without the option of a fine; or
- (b) 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, to be appropriate,

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the court may, subject to this Act, make a community service order requiring the offender to perform community service.

- (2) (a) Community service shall comprise unpaid public work within a community, for the benefit of that community, for a period not exceeding the term of imprisonment for which the court would have sentenced the offender.
- (b) For the purposes of this Act, public work shall include but not be limited to—
- (i) construction or maintenance of public roads or roads of access;
 - (ii) afforestation works;
 - (iii) environmental conservation and enhancement works;
 - (iv) projects for water conservation, management or distribution and supply;
 - (v) maintenance work in public schools, hospitals and other public social service amenities;
 - (vi) work of any nature in a foster home or orphanage;
 - (vii) rendering specialist or professional services in the community and for the benefit of the community,

and the nature or type of public work shall, in any particular case, be determined by the court after consultation with the community service orders committee.

(3) Where a court determines that a community service order should be made, it shall, before making the order, direct a community service officer to conduct an inquiry into the circumstances of the case and of the offender and report the findings to the court.

(4) An inquiry under subsection (3) shall be conducted in such manner and the report shall be in such form and cover such matters as may be prescribed.

(5) A court shall not make an order under this section in respect of an offender unless the offender is present and the court is satisfied—

- (a) that adequate arrangements exist for the execution of the order; and
- (b) after considering the report made under subsection (3) and, where necessary, after hearing the community service officer, that the offender is a suitable person to perform community service under the order.

(6) Where a court makes an order under this section in respect of two or more offences committed by the same offender, the court may direct that the period of community service specified in any of those orders shall be concurrent with or in addition to that specified in any other order.

(7) The court which makes a community service order shall forthwith give copies of the order to the community service officer of the area where the offender resides or will reside during the period of the order and the community service officer shall give a copy of the order each to the offender and to the supervising officer.

(8) Before making an order under this section, the court sentencing an offender shall explain to the offender in a language that he understands—

- (a) the purpose and effect of the order and in particular, his obligations under section 4;

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- (b) the consequences specified in section 5 for failure to comply with the order or with any of the requirements of that section; and
- (c) the powers of the court under section 6 to review the order on application either by the offender or of a community service officer.

(9) Where a person is convicted of an offence, and is placed under a Community Service Order, such conviction shall be disregarded for the purpose of any enactment by or under which any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of an offence committed after a previous conviction:

Provided that if the original order is set aside and the offender is sentenced for the original offence, this section shall cease to apply in respect of that offence, and the offender shall be deemed for purposes of any enactment imposing a disqualification to have been convicted on the date of sentence.

(10) Subsection (1) of this Act shall not apply to a person who is convicted under the following legislation—

- (a) the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003);
- (b) the Sexual Offences Act, 2006 (No. 3 of 2006);
- (c) the Prohibition of Female Genital Mutilation Act, 2011 (No. 32 of 2011);
- (d) the Prevention of Terrorism Act, 2012 (No. 30 of 2012);
- (e) the Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009); or
- (f) the Bribery Act, 2016 (No. 47 of 2016).

[Act No. 18 of 2018, Sch.]

4. Obligations of person subject to community service order

(1) A person who is subject to a community service order shall—

- (a) report to the supervising officer specified in the order for assignment of work; and
- (b) perform, for the period specified in the order, such work, at such times and at such place as he may be instructed by the supervising officer; and
- (c) report to the supervising officer any change of address which may occur from time to time.

(2) A supervising officer shall, as far as practicable, avoid giving instructions under this section which conflict with the offender's religious beliefs.

5. Breach of community service orders

If an offender commits a breach of or fails to comply with any of the conditions or requirements of a community service order, the court may, on the application of the area community service officer or supervising officer, issue summons to the offender to appear before the court at the time specified in the summons or issue a warrant of arrest for the offender to be arrested and brought before the court, as the case may be, and the court may, after hearing the offender, do any of the following—

- (a) caution the offender and require the offender to comply with the order; or

- (b) amend the order in such manner as may suit the circumstances of the case; or
- (c) revoke the order and impose any other sentence under the law as the court deems appropriate.

6. Review and variation of community service orders

(1) Subject to subsection (4), an offender may seek a review of a community service order in any material point by informing the community service officer or supervising officer in writing of the material particulars upon which such review is sought.

(2) Where the review of an order is sought under subsection (1), the community service officer or supervising officer shall apply to the court in the prescribed form setting out the material particulars specified under that section and the court may suitably review or vary the community service order:

Provided that—

- (a) in special circumstances, the offender may make the application to the court without prior reference to the community service officer or the supervising officer; and
- (b) the community service officer or the supervising officer may apply for review for any justifiable reason.

(3) Where the review or variation of an order under subsection (1) results in change of residence of the offender, the court varying the order shall inform the court having jurisdiction for the area where the offender intends to reside, and shall cause copies of the community service order to be presented to court within whose jurisdiction the offender will reside and to the community service officer of the area.

(4) A review of an order under this section shall not be necessary where an offender changes residence without affecting a subsisting order or without leaving the jurisdiction of the court which made the order.

PART III – MANAGEMENT AND ENFORCEMENT OF COMMUNITY SERVICE ORDERS

7. The National Community Service Orders Committee

(1) There shall be a committee to be known as the National Community Service Orders Committee (in this Act referred to as "the National Committee") which shall consist of—

- (a) a chairman who shall be a judge of the High Court appointed by the Chief Justice;
- (b) the Director of Public Prosecutions or his nominee;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to the interior and co-ordination of national government;
- (d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to public works or his nominee;
- (e) the Inspector-General of Police or his nominee;
- (f) the Commissioner-General of Prisons or his nominee;
- (g) deleted by Act No. 18 of 2018, Sch.;
- (h) the Director of Children Services;

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- (i) a nominee of the Council of the Law Society of Kenya;
- (j) two persons with training and experience in the criminal justice system, one of whom shall have experience in the teaching of law and the other shall be a magistrate of the first class, both appointed by the Chief Justice;
- (k) the National Community Service Orders Co-ordinator; and
- (l) five members appointed by the Minister from a panel of not less than seven names submitted by the National Committee and of whom two shall be representatives of non-governmental organizations involved in social welfare work and registered under the Non-Governmental Organizations Co-ordination Act, 1990 (No. 19 of 1990) for such objectives.

(1A) The Director of Probation shall be the Vice-Chairman of the Committee.

(2) The National Committee may, at any time co-opt not more than three persons whose assistance or advice it requires or considers necessary in the discharge of its functions, to serve on the Committee for such period as it thinks fit.

(3) Deleted by Act No. 18 of 2018, Sch.

(4) Every nomination by a member under paragraphs (b), (c), (d), (e) (f) and (i) of subsection (1) shall be made in consultation with and with the written approval of the chairman.

(5) The members appointed under paragraphs (j) and (l) of subsection (1) shall serve for terms of three years each but shall be eligible for re-appointment.

(6) The conduct and regulation of the business and affairs of the National Committee shall be as provided in this Act, but subject thereto, the Committee shall regulate its own procedure.

[Act No. 11 of 2017, Sch., Act No. 18 of 2018, Sch.]

8. Functions of the National Committee

(1) The functions of the National Committee shall be to—

- (a) advise the Cabinet Secretary and the Chief Justice generally on the proper administration of this Act or on any other matters relating to community services;
- (b) co-ordinate, direct and supervise the work of community service officers;
- (c) collect and collate data on the operation of this Act for the purpose of improving the national policy on community service orders.

(2) Without prejudice to subsection (1), the National Committee may, through the chairman, advise the Chief Justice on any need for enhanced application of the provisions relating to revision under the Criminal Procedure Code (Cap. 75) so that the courts may make better use of community service orders in the appropriate cases.

[Act No. 18 of 2018, Sch.]

9. Executive Committee

(1) There shall be an executive committee of the National Committee which shall consist of—

- (a) the chairman of the National Committee who shall be the chairman;
- (b) the vice-chairman of the National Committee;

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- (c) the Director of Probation;
- (d) the National Co-ordinator appointed under section 10 who shall be the secretary; and
- (e) one other member appointed by the National Committee.

(2) Subject to any directions which may be made by the committee, the functions of the executive committee shall be as specified in the First Schedule.

10. National Co-ordinator

(1) There shall be a National Community Service Orders Co-ordinator (in this Act referred to as "the National Co-ordinator") who shall be appointed by the Chief Justice for a period of three years, but shall be eligible for re-appointment.

(2) The National Co-ordinator shall also be the chief community service officer and the secretary to the National Committee.

(3) The National Committee may delegate to the National Co-ordinator such of its functions under this Act as are necessary to enable him transact or perform the day to day business of the National Committee.

(4) If the National Co-ordinator is absent or incapacitated for any reason, the Chief Justice shall appoint a person to act in his place during such absence or incapacity.

11. District, divisional and locational community service orders committees

The Minister shall, in consultation with the National Committee, by order published in the Gazette, establish community service orders committees at district, divisional and locational levels comprising such members and to perform such functions as may be prescribed in the order.

12. Community service officers

(1) The probation officers appointed under the Probation of Offenders Act (Cap. 64) shall be community service officers for the purposes of this Act.

(2) The Minister may, in consultation with the National Committee, appoint such additional community service officers as may be necessary for the purposes of this Act.

(3) A community service officer shall perform the duties specified in the Second Schedule.

(4) A community service officer other than a public officer shall receive such remuneration for services rendered under this Act as the Minister, after consultation with the National Committee and the Minister for Finance, shall determine.

13. Supervising officers

For the purposes of supervising offenders under this Act the court shall, in consultation with the relevant community service Orders Committee, appoint supervising officers and one supervising officer may be appointed for several offenders.

PART IV – MISCELLANEOUS**14. Amendment of Cap. 63**

Section 24 of the Penal Code (Cap. 63) is amended by deleting paragraph (b) thereof and inserting the following new paragraph—

"(b) imprisonment or, where the court so determines under the Community Service Orders Act, 1998 (No. 10 of 1998), community service under a community service order".

15. Amendment of Cap. 90

Part XII of the Prisons Act (Cap. 90) is repealed.

16. Repeal of Cap. 91

The Detention Camps Act (Cap. 91) is repealed.

17. Regulations

The Cabinet Secretary, in consultation with the National Committee, may make regulations generally for the better carrying out of the purposes of this Act and in particular but without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) any matter which requires to be prescribed under this Act;
- (b) the constitution and duties of community service orders committees;
- (c) any question or matter relevant to the appointment of any person for purposes of supervising offenders under this Act.

[Act No. 18 of 2018, Sch.]

FIRST SCHEDULE

EXECUTIVE COMMITTEE

[Section 9(2).]

1. Functions

The Executive Committee shall be responsible for—

- (a) the supervision of the day to day running of the secretariat;
- (b) the collection, storage and dissemination of data relating to the implementation of community service orders;
- (c) transmitting to and advising the community service orders committees on the policies formulated by the National Committee;
- (d) undertaking educational activities aimed at sensitising members of the public and criminal justice agencies on the role and purpose of community service orders;
- (e) co-ordinating with other agencies on matters relating to and beneficial to community service; and
- (f) any other duties that may be assigned to it by the National Committee from time to time.

2. Meetings

- (a) The Committee shall have power to regulate and determine its own procedure and the quorum at its meetings.
- (b) Subject to any requirement as to quorum, the Committee may act notwithstanding any vacancy among its members.
- (c) The Committee shall meet at least 4 times a year.

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- (d) The Committee may in its discretion invite any person who is not a member to attend any of its meetings, but such person shall not take part in decision making.

SECOND SCHEDULE**DUTIES OF COMMUNITY SERVICE OFFICERS**

[Section 12(3).]

Community Service Officers shall perform the following duties—

- (a)** identify suitable work placements;
 - (b)** oversee the work and progress of offenders;
 - (c)** ensure that community service orders are complied with and that the scheme works smoothly;
 - (d)** apply to the court for review of orders;
 - (e)** facilitate or promote reconciliation of offenders and the community;
 - (f)** ensure that safety conditions are satisfactory for both the community and the offenders serving under community service orders;
 - (g)** guard against discriminatory practices in dealing with offenders;
 - (h)** maintain confidentiality of information on or relating to offenders;
 - (i)** undertake counselling of offenders for rehabilitation and liaise with any other persons or organisations of persons dealing with similar problems;
 - (j)** keep an up-to-date record of offenders' performance and appraisal of the same;
 - (k)** submit periodic reports to appropriate or relevant community Service Orders Committees and the Co-ordinator in respect of offenders;
 - (l)** provide pre-sentence reports to the court; and
 - (m)** co-ordinate the activities of the Committees and the courts in relation to commuting service orders.
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