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NO. 10 OF 1998

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

[L.N. 100/1999.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Community Service Orders Act, 1998.

2. Interpretation

(1) In this Act unless the context otherwise requires—

“**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;

“**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;

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

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,

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 may, 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;
- (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.

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 Permanent Secretary in the Ministry for the time being responsible for matters relating to provincial administration and internal security or his nominee;
- (d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to public works or his nominee;
- (e) the Commissioner of Police or his nominee;
- (f) the Commissioner of Prisons or his nominee;
- (g) the Director of Probation;
- (h) the Director of Children Services;
- (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.

(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) The National Committee shall elect, from amongst its members, a vice-chairman who shall serve for one year but shall be eligible for re-election.

(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.

8. Functions of the National Committee

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

- (a) advise the Minister and the Chief Justice generally on the proper implementation of the provisions of this Act;
- (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.

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;
- (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

(1) 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 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 is repealed.

16. Repeal of Cap. 91

The Detention Camps Act is repealed

17. Regulations

The Minister, 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;

FIRST SCHEDULE

[Section 9(2).]

EXECUTIVE COMMITTEE**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.
 - (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.
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SECOND SCHEDULE

[Section 12(3).]

DUTIES OF COMMUNITY SERVICE OFFICERS

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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NO. 10 OF 1998

COMMUNITY SERVICE ORDERS ACT

SUBSIDIARY LEGISLATION

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COMMUNITY SERVICE ORDERS (CASE COMMITTEES) REGULATIONS, 1999

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4. Duties of committees.
5. Meetings of Committees.
6. Procedure at meetings.
7. Quorum of a Committee.
8. Voting.
9. Records.
10. Committees may regulate procedure.

SCHEDULE

COMMUNITY SERVICE ORDERS (CASE COMMITTEES) REGULATIONS, 1999

[L.N.32/2000.]

1. Citation

These rules may be cited as the Community Service Orders (Case Committees) Regulations, 1999.

2. Establishment of committees

(1) There are hereby established the community service orders Case Committees set out in the First column of the Schedule hereto.

(2) The area in respect of which each committee is established is set out in the Second column of the Schedule.

3. Constitution of committees

(1) Each Community Service Order Case Committee, hereinafter referred to as a committee, shall consist of a chairman and nine members appointed by the Minister and a National Co-ordinator who shall be an *ex officio* member.

(2) The members of a committee, other than *ex officio* members shall hold office for a period of three years, but shall be eligible for reappointment.

(3) Any member of a committee may at any time resign his office by notice in writing addressed to the secretary who shall forward it to the Minister.

(4) A community service officer stationed within the area in respect of which a committee is established shall be the secretary of the committee.

(5) All appointments to a committee shall be notified in the Kenya *Gazette*.

4. Duties of committees

The duties of a committee shall be—

- (a) to examine and review the work of a community service programme in the area;
- (b) to submit returns to the National Committee;
- (c) to implement the policies of the National Committee;
- (d) to sensitize the local community on matters relating to community service orders;
- (e) to review the progress of each individual offender;
- (f) To receive and consider reports from the community service officer;
- (g) to make recommendations concerning the community service programmes to the National Committee.
- (h) to advise and assist community service officers in the execution of their duties;
- (i) to ensure that community service officers perform their duties in a satisfactory manner.

5. Meetings of Committees

A committee shall hold a meeting for the transaction of general business at least twice in a year and at such other times as the chairman may direct.

Community Service Orders

[Subsidiary]

6. Procedure at meetings

The chairman shall preside at every meeting at which he is present, and in the case of his temporary absence, the members present and constituting a quorum shall elect a chairman from among the members.

7. Quorum of a Committee

A quorum of a committee shall be four members.

8. Voting

- (1) The decisions of a committee shall be by a majority of votes.
- (2) The chairman shall have a casting as well as a deliberative vote.

9. Records

The secretary shall maintain records of proceedings of committee and perform such other duties as may be assigned to him by a committee.

10. Committees may regulate procedure

Subject to the provisions of these rules a committee shall have powers to regulate its own proceedings.

SCHEDULE

<i>Names of Committee</i>	<i>Area in Respect of which Committee is Appointed</i>
Mombasa Committee Service Case Committee	Mombasa District.
Kwale Community service Case Committee	Kwale District.
Taita/Taveta Community Service Case Committee	Taita/Taveta District.
Baringo Community Service Case Committee	Baringo District.
Koibatek Community Service Case Committee	Koibatek District.
Nakuru Community Service Case Committee	Nakura District.
Kericho Community Service Case Committee	Kericho District.
Bomet Community Service Case Committee	Bomet District.
Nandi Community Service Case Committee	Nandi District.
Uasin Gishu Community Service Case Committee	Uasin Gishu District.
Keiyo Community Service Case Committee	Keiyo District.
Trans Nzoia Community Service Case Committee	Trans Nzoia District.
Marakwet Community Service Case Committee	Marakwet District.
Samburu Community Service Case Committee	Samburu District.
Kajiando Community Service Case Committee	Kajiando District.
Narok Community service Case Committee	Narok District.
Bureti Community Service Case Committee	Buret District.
Marsabit Community Service Case Committee	Marsabit District.

Community Service Orders

[Subsidiary]

SCHEDULE—continued

<i>Names of Committee</i>	<i>Area in Respect of which Committee is Appointed</i>
Mandera Community Service Case Committee	Mandera District.
Wajir Community Service Case Committee	Wajir District.
Garissa Community Service Case Committee	Garissa District.
Makadara Community Service Case Committee	Eastlands area.
Kibera Community Service Case Committee	Kibera and Nairobi West Area.
Juvenile Court Service Case Committee	Central Business District and Westlands Area.
Meru North Community Service Case Committee	Meru North District.
Turkana Community Service Case Committee	Turkana District.
West Pokot Community Service Case Committee	West Pokot District.
Laikipia Community Service Case Committee	Laikipia District.
Busia Community Service Case Committee	Busia District.
Kisumu Community Service Case Committee	Kisumu District.
Bondo Community Service Case Committee	Bondo District.
Siaya Community Service Case Committee	Siaya District.
Migori Community Service Case Committee	Migori District
Kuria Community Service Case Committee	Kuria District.
Kisii Community Service Case Committee	Kisii District.
Nyamira Community Service Case Committee	Nyamira District.
Homa Bay Community Service Case Committee	Homa Bay District.
Kakamega Community Service Case Committee	Kakamega District.
Vihiga Community Service Case Committee	Vihiga District.
Butere/Mumias Community Service Case Committee	Butere/Mumias District.
Bungoma Community Service Case Committee	Bungoma District.
Mt. Elgon Community Service Case Committee	Mt. Elgon District.
Lamu Community Service Case Committee	Lamu District.
Malindi Community Service Case Committee	Malindi District.
Kilifi Community Service Case Committee	Kilifi District.
Tana River Community Service Case Committee	Tana River District.
Murang'a Community Service Case Committee	Murang'a District.
Maragua Community Service Case Committee	Maragua District.
Kirinyaga Community Service Case Committee	Kirinyaga District.
Nyandarua Community Service Case Committee	Nyandarua District.

Community Service Orders

[Subsidiary]

SCHEDULE—*continued*

<i>Names of Committee</i>	<i>Area in Respect of which Committee is Appointed</i>
Nyeri Community Service Case Committee	Nyeri District.
Kiambu Community Service Case Committee	Kiambu District.
Thika Community Service Case Committee	Thika District.
Embu Community Service Case Committee	Embu District.
Meru Community Service Case Committee	Meru District.
Machakos Community Service Case Committee	Machakos District.
Kitui Community Service Case Committee	Kitui District.
Mwingi Community Service Case Committee	Mwingi District.
Makueni Community Service Case Committee	Makueni District.
Meru South Community Service Case Committee	Meru South District.
Mbeere Community Service Case Committee	Mbeere District.
Isiolo Community Service Case Committee	Isiolo District.
