

**THE COMMUNITY SERVICE ORDER BILL**  
(No. XVII of 2002)

**Explanatory Memorandum**

The purpose of this Bill is to introduce into our criminal justice system the sentencing option of community service whereby the courts may order, as an alternative to imprisonment, that convicted persons perform unpaid work in the open at specified places, institutions or organisations.

**S. Lauthan**  
*Minister of Social Security, National  
Solidarity and Reform Institutions*

31 May 2002

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**THE COMMUNITY SERVICE ORDER BILL**  
(No. XVII of 2002)

Arrangement of Clauses

*Clause*

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**A BILL**

**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 2001.

## 2. Interpretation

In this Act –

“community service officer” means a probation officer, or any other officer designated by the Ministry responsible for reform institutions, who is entrusted with the supervision of persons subject to a community service order;

“community service order” means an order specified in section 3 and substantially in the Form of the First Schedule;

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

“imprisonment” includes penal servitude;

“Minister” means the Minister responsible for the subject of reform institutions.

## 3. Community service order

(1) Where a court convicts a person of 18 years old or over and sentences him to a term of imprisonment not exceeding 3 years and not being a sentence fixed by law, the court may, subject to subsection (2), suspend the sentence of imprisonment and make a community service order requiring the convicted person to perform unpaid work in the open for a specified period.

(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 not exceeding 10, 000 rupees with or without costs ordered by a court remain unpaid and the court orders, by warrant or otherwise, that the convicted person undergoes a period of imprisonment in lieu of the payment of the fine and costs, the Court may suspend its custody order by making a community service order requiring the convicted person to perform unpaid work in the open for a specified period.

(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 mandatory sentence fixed by any enactment;
- (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 community service order shall be made for a period of not less than 60 hours nor more than 300 hours, spanning 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 10 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) the name and designation of any particular community service officer under the supervision of whom the convicted person must work;
  - (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.

(3) The court may 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 Second 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, upon information upon oath in the Form of the Third Schedule made before it, 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) impose a fine not exceeding 5,000 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. Commencement**

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

**FIRST SCHEDULE**  
(*section 2*)

**Community Service Order**

To ....., community service officer.

WHEREAS this day/on the ..... of ..... 20..... before me .....,  
..... (called the convicted person)  
is/was convicted 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 the convicted person is unable to pay and I  
have ordered him to undergo ..... imprisonment for non payment of the  
fine and costs.

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

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 upon 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) a fine not exceeding Rs 5000;
  - (ii) a revocation of the order;
  - (iii) an amendment of the order.

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.

I THEREFORE SUSPEND the term of imprisonment/penal servitude 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 must commence on .....
- (b) work must be performed for ..... hours on .....(days) at .....(place) for ..... (government department, local authority, statutory body or any prescribed charitable or voluntary institution or organisation);
- (c) the convicted person should reside at .....
- (d) the convicted person should be under the supervision of ....., a community service officer;
- (e) the convicted person must be of good conduct, should not disturb the public peace and must avoid contact with .....



the victim of the offence with respect to which he is/was convicted,  
or with .....

- (f) the convicted person should abstain from using an offensive  
weapon;
- (g) the convicted person should meet the needs of his dependents;
- (h) the work must be performed diligently and at reasonable speed;
- (i) the convicted person must make his own arrangements, financial or  
otherwise, to attend his site of work.

IT IS FURTHER ORDERED that the convicted person -

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

GIVEN under my hand and seal of the Court on the day and year  
abovementioned.

.....  
Magistrate/Judge

Delete as appropriate

**SECOND SCHEDULE**  
(section 9)

**Application for amendment of community service order**

To the ..... Court of .....

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

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

Date: .....

.....  
Signature of community service officer/  
convicted person

**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 .....

Date: .....

.....  
Magistrate/Judge

**THIRD SCHEDULE**  
*(section 10)*

**Information upon oath**

In the ..... Court of .....  
..... community service officer or .....  
makes oath/solemn affirmation and say that on ..... this court  
made a community service order requiring ....., the  
convicted person, to perform unpaid work in the open for the period of  
.....

And the convicted person has failed to -

.....  
.....

WHEREAS it is urgent and necessary that the convicted person be  
summoned to appear before this court and dealt with in accordance with section  
10 of the Community Service Order Act 2002.

Taken and sworn/solemnly affirmed before me

this ..... day of .....20.....

.....  
Magistrate/Judge