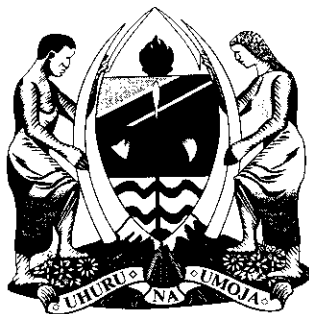


**THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION
OF TANZANIA**



**REPORT ON THE INTRODUCTION OF
CURRENCY POINTS IN TANZANIA**

**PRESENTED TO THE MINISTER FOR
JUSTICE AND CONSTITUTIONAL AFFAIRS
ON 22nd DECEMBER 2004**

THE COMMISSION

At the time of compiling this report the Commission comprised the following:-

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1. Hon. Mr. Justice (Rtd)
Anthony N. Bahati - Chairman
2. Hon. Mr. Justice (Rtd)
Edward A. Mwesiumo - Full-Time Commissioner I
3. Mr. William J.M. Mdundo - Full-Time Commissioner II
4. Hon. Pius Msekwa - Part-Time Commissioner
5. Hon. Dr. Asha-Rose Migiro - Part-Time Commissioner
6. Mr. Mohamed Ismail - Part-Time Commissioner
7. Mr. Onel Malisa - Part-Time Commissioner
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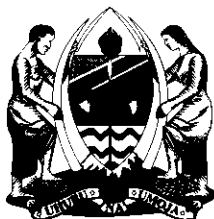
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3rd December, 2004

Hon. Harith Bakari Mwapachu (MP)
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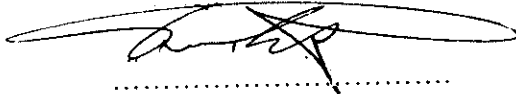
REPORT ON THE INTRODUCTION OF CURRENCY POINTS IN TANZANIA

In 2004 the Law Reform Commission of Tanzania, on its own accord, commenced a study on the introduction of currency points in Tanzania.

The aim for undertaking the study was to rationalize the value of the current penalty fines by having in its place a penalty or a financial redress in the form of a currency point system at the existing inflation rate in our legislation.

The Commission has completed the study and hereby submits to you the report on the above subject matter pursuant to section

14(1) of the Law Reform Commission of Tanzania Act, 1980 (Act No.11 of 1980).



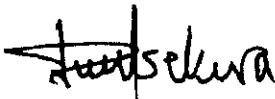
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Hon. Mr. Justice (Rtd) Anthony Bahati
Chairman
Law Reform Commission of Tanzania



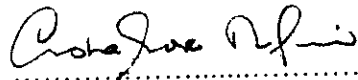
.....
Hon Mr. Justice (Rtd)
Edward Mwesiumo
Full-Time Commissioner I



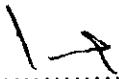
.....
Mr. William Mdundo,
Full-Time Commissioner II



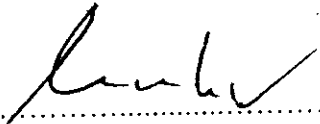
.....
Hon Pius Msekwa,
Part-Time Commissioner



.....
Hon. Dr. Asha-Rose Migiro
Part-Time Commissioner



.....
Mr. Mohamed Ismail,
Part-Time Commissioner



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Mr. Onel Malisa,
Part-Time Commissioner

Executive Summary.

This short study intends to introduce into our national legal framework a new concept whereby the use of definite fines and other financial redress will be expressed in currency points. Briefly what this means is that instead of, for instance, a magistrate stating a certain amount of money in shillings as a fine, he will do the same by stating a number of currency points. The value of a currency point will vary from time to time depending on the fluctuation of the national currency. The Commission proposes that the Minister for Justice and Constitutional Affairs be empowered to set the value of a currency point after consultation with the Minister for Finance and other financial authorities. The Minister may set the value of a currency point for a period of one year or two years or even more depending on the performance of the national currency in the economy. The introduction of this system in our national legal framework will have the effect of having all the fines and other financial redresses in our statute book move tandem with the times. The level of fines will always be up to date, as they will be updated by a single notice instead of the current cumbersome system that requires amendments in individual legislation by separate notices leading to other penal clauses not being reviewed in a long time and thus falling into desuetude.

The currency point system has been used with great success in Uganda and Malawi. The comparative study that has been undertaken indicates that the system can be used in our country with equal success. The Commission recommends that Tanzania adopt this system by enacting a law that will introduce it in the national legal framework. At the end of this report is a draft bill that could assist the Chief Parliamentary Draftsman in the drafting of the requisite legislation.

TABLE OF CONTENTS

	PAGE
List of legislation	vi
INTRODUCTION	1
Mandate.	1
Historical Background... ..	1
THE NEED OF THE STUDY	2
The Workmen's Compensation Ordinance 9Cap 263)....	3
The Affiliation Ordinance (Cap 278)....	4
The Road Traffic Act, 1973 (Act No.10 of 1973(Cap 168)	4
The Sexual Offences (Special Provisions) Act, 1998 (Act No. 4 of 1998 (Cap.101)	5
EXPERIENCE FROM OTHER JURISDICTIONS	6
Malawi	7
Uganda.	7
CONCLUSION AND RECOMMENDATIONS	8
RECOMMENDATIONS	9

LIST OF LEGISLATION

PRINCIPAL LEGISLATION

1. The Workmen' Compensation Ordinance (Cap 263)
2. The Affiliation Ordinance (Cap 278)
3. The Road Traffic Act, 1973 (Act No.10 of 1973) (Cap 168)
4. The Sexual Offences (Special Provisions) Act, 1998 (Act No.4 of 1998) (Cap 101)
5. The Motor Vehicle Insurance Ordinance (Cap 169)

THE USE OF CURRENCY POINT SYSTEM

INTRODUCTION

Mandate

- 1.0 The Law w Reform Commission of Tanzania Act, 1980 (Act No 11 of 1980) established the Law Reform Commission of Tanzania having the mandate among others to, consider and advise on proposals for the adoption of new or more effective methods for the administration of the law and the dispensation of justice.¹
- 1.1 It is from this mandate that the Commission has found it pertinent to reconsider and rationalize the value of the current penalty fines by having in its place a penalty in the form of a currency point system, *whereby the shilling is given a value in point form depending on the existing inflation rate.*
- 1.2 The currency point system, if adopted, would automatically update the penalty value of fines in all statutes to levels that are approximate with the value of the Tanzanian currency.

Historical Background

- 1.3 Tanzania, like most developing countries, depends on donor communities because of economic instability, which brings about the fluctuating of the value of its currencies.
- 1.4 Since independence, in 1961 Tanzania's economy has never been stable apart from the first decade after independence

¹Section 4

where there were some signs of economic growth. At that time the rate of growth was 5.6% per year. In 1981 and 1984, for instance, the annual economic growth rates were - 0.5% and -2.4% respectively. In the 1980s up to the 1990s there was some recovery in the economy, but not a significant one.²

- 1.5 The aforesaid economic instability caused inflation, for instance between the 1970s and the 1980s inflation averaged at 7.5% annually.³
- 1.6 In the 1970s one United States dollar was equivalent to seven Tanzanian shillings while in 2004 the same currency unit fetches 1200 Tanzanian shillings. The devaluation of our currency shows that the cost of living has gone up, and in the like manner what was considered a severe sentence of fine in the 1970s would not be considered so at the present time.

THE NEED OF THE STUDY

- 2.0 It has been observed by the Commission that, the level of fines and other financial redresses in our laws are not in tandem with reality and are grossly inadequate for a meaningful regime of penal sanctions. Therefore the introduction of currency point system to express monetary values in legislation would cater for the inflation effect of our currency.
- 2.1 The continued use of the depreciated levels of these financial redresses in legislation has negative effect in the legal system. The first one being, the amount of compensation provided under our laws is not

²Lucian A. Msambichaka Development Challenges and Strategies for Tanzania, An Agenda for the 21st Century

³ Ibid p.5

commensurate with the cost of living because in calculating the amount of compensation, the inflationary tendency of our currency is not taken into account. We have by way of examples the following legislation:

The Workmen's Compensation Ordinance (Cap263)

2.2 This law was enacted in 1948 to provide for compensation to workers for injuries suffered in the course of their employment.

2.3 The Workmen's Compensation Ordinance provides as follows:

"Where permanent total incapacity results from the injury, the amount of compensation shall be a sum equal to fifty four months' earnings:

Provided that **in no case** shall the amount of compensation in respect of permanent total incapacity be greater than one hundred and eighty thousand shillings but not less than two thousand shillings."⁴

As it can be seen in the proviso of this section, the law provides for compensation of an amount that is between a maximum of one hundred and eighty thousand shillings and a minimum of two thousand shillings. This is deplorably a small amount and is of no considerable help to the injured victim.

2.4 Again, section 49(1) of the same law provides that, failure by an employer to comply with a compensation order without any reasonable cause shall be liable to a fine not exceeding forty thousand shillings. This is not a reasonably adequate amount in the present circumstances.

⁴ Section 7(1)

The Affiliation Ordinance (Cap 278)

2.5 This law provides for the maintenance of children born out of wedlock. Under section 5 (3)(a), the putative father is required to make payment to the mother of the child or to any other person who may be appointed to have the custody of the child a sum of one hundred shillings every month for the maintenance and education of the child. However, in the alternative, under the provisions of Section 5(4) it is provided that, where a magistrate thinks fit he/she may order the monthly payments be calculated from the birth of the child or in lieu of monthly payments, he/she should pay to the mother a lump sum of not more than fifteen thousand shillings.

2.6 In cases where the law is strictly applied the amount being so inadequate that it cannot sustain the maintenance and education expenses of the child the court order is rendered virtually meaningless. As a result victims have developed a negative attitude towards the judiciary not knowing that, that is the actual position of the law, and not the fault of the presiding judge or magistrate. However, in some cases courts have applied wisdom by granting in their opinion a reasonable amount of money for such maintenance. Having posed therefore these two different positions over the same matter the result is uncertainty and inconsistency as to what is the actual sum to be compensated as redress.

The Road Traffic Act, 1973 (Act No 10 of 1973)

2.7 Under section 18 of the Road Traffic Act, 1973, the use of a motor vehicle without registration mark, the giving of false

information upon registration, the alteration of mileage record and the failure to surrender the certificate of registration for alteration on change of ownership are offences punishable by a fine not exceeding ten thousand shillings or a term of imprisonment not exceeding two years or both fine and imprisonment.

Ten thousand shillings is too small an amount that can stand as a deterrent punishment and also it cannot today be commensurate with the prescribed term of imprisonment.

The Sexual Offences (Special Provisions) Act, 1998 (Act No 4 of 1998)

2.8 Section 9 amends section 135 of the Penal Code and reads as follows:

“Any person who, with the intention to cause sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intended that such word or object shall be heard or the gesture or object shall be seen, by that other person commits an offence of sexual assault and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding three hundred thousand shillings or to both the fine and imprisonment”

2.9 The fine provided in the aforesaid provision was adequate in 1998 but taking into consideration the value instability of our currency, will it be adequate ten years to come?

2.10 The above cited legislation show that fines, compensation and other financial redresses are virtually meaningless and are of no effect since their penalty value for the same offence

that was originally intended is no longer commensurate with the severity of prescribed terms of imprisonment.

The inflation and currency depreciation affects the penalty value of these financial redresses. The existing financial redresses cannot stand the test of time, they are not deterrent and due to that some victims are discouraged to institute civil actions in court as they consider the amount of compensation is not worth the trouble.

- 2.11 The second issue is that, in some statutes that were enacted during the colonial times, the fines provided for, still appear in Sterling pounds instead of a shilling. This can be found in the Motor Vehicle Insurance Ordinance (Cap 169). Under section 19 of this law, the prescribed penalty for general offences is a fine that does not exceed fifty pounds or a term of imprisonment not exceeding three months or to both that fine and imprisonment.
- 2.12 The third issue is that the penalties provided in our laws are not standard. It is fair to have standardized fines that will correspond with related terms of imprisonment. The Commission feels that legislation should therefore provide for a standard ratio between fines and terms of imprisonment.

EXPERIENCE FROM OTHER JURISDICTIONS

- 3.0 The currency point system has been adopted in some countries in the Commonwealth and in the SADC region whose currencies are not stable. Countries like Malawi and Uganda have adopted the currency point system in their legal systems.

3.1 Malawi

The Malawi Law Commission made a study in 2000, to address the issue of fines that may be imposed by courts as punishment for offences to keep them abreast with inflationary trends in the value of the Malawi currency. After the study, it was reported that there was an inadequacy of fines in most of the Malawian statutes especially in the Penal Code (Cap:01)

At that time the Commission observed that the levels of fines in the Code were not tandem with reality. Most of the fines were found to be grossly inadequate. Furthermore some fines in some statutes still appear in sterling pounds, the currency in use before and after independence up to 1971 when the country adopted the Kwacha.⁵

The Malawi Law Commission in its 2003 report entitled "Criminal Justice Reform on Conversion of Fines" recommended that there was a need to have a separate statute to regulate and update the level of fines taking into account the depreciation in the value of the Malawi currency and to ensure meaningful fines are imposed. Based on this report a draft bill entitled "Fines (Conversion) Bill has been drafted incorporating the Malawi Law Commissions' recommendations.⁶

Uganda

3.2 In Uganda the use of currency points was proposed by the Uganda Law Reform Commission, and was first introduced in 1997 in the Local Government Act (Laws of Uganda) Cap 243. As was the case in Malawi, this was

⁵ The report of the Law Commission on Criminal Justice Reform on Conversion of Fines, December 2003. at p.7

⁶ Ibid at p. 11

also inevitable because some of the provisions in the Ugandan statutes were found to be overtaken by inflation and devaluation of the national currency⁷ In criminal matters fines have been found to be affected by inflation and currency depreciation since 1964 when most of the fines were proposed making them almost insignificant⁸

Due to these factors the government of Uganda found it desirable to express financial amounts in legislation in terms of currency points with the rationale that this would cater for the inflationary effects of the currency on the financial provisions in the legislation such that where need arose, it would require a single statutory instrument to alter the value of the currency point having an across the board effect on all legislation other than having to amend all the legislation separately.⁹ As a result of this there has been developed in Uganda, a Bill entitled "The Law Revision (Fines and Other Financial Amounts in Criminal Matters) Bill 2004, which was tabled in Parliament on the 13th February 2004.

CONCLUSION AND RECOMMENDATIONS

4.0 Tanzania is experiencing the same problems as experienced by Malawi and Uganda. Consequently, the Law Reform Commission of Tanzania finds the need for the introduction of the use of currency points in the Tanzania legal system as well. If the currency point system is adopted, it will cater for the inflationary effects on our currency. In addition to that whenever there is a need for review of the penalty values in our laws, the amending process will be simpler in the sense that, there will be no need to amend each relevant legislation separately. Instead of that there will

⁷The Currency Reform Statute 1997. Statute No.2 of 1997 (Uganda)

⁸A Case Study of the Penal Code Act (Cap 120) in 2000

⁹ The use of currency Points on Legislation: The Ugandan Experience p.1

be a single amending instrument altering the currency points in all legislation.

This approach will empower the Minister responsible for legal affairs when circumstances so require, to publish a notice in the *Gazette* varying the fines, compensation and other financial redresses *pro rata*, while taking into consideration the current value of the shilling.

RECOMMENDATIONS

- 4.1 The Law Reform Commission after reviewing the existing legal system in relation to fines and terms of imprisonment in our statutes, is minded to make the following recommendations:
1. Fines, compensation rates and other financial redresses appearing in all written laws of Tanzania should be converted into currency points at a rate to be specified by the Minister responsible for legal affairs.
 2. The Minister responsible for legal affairs to be conferred powers to vary the value of a currency point after consultation with the Minister responsible for finance whenever the need requires.
 3. There should be provided in our legislation a standard ratio between fines and related terms of imprisonment
- 4.2 The Commission has prepared a draft legislation as part of this Report in the form of a draft bill entitled " The Law Revision (Fines and Other Financial Redresses) Bill, incorporating the recommendations of this Report

A Bill for

An Act to provide for the revision of fines and other financial redresses into currency points at a prescribed value; and to provide for a standardized ratio between fines and related terms of imprisonment; and to provide for other related matters

Enacted by the Parliament of the United Republic of Tanzania

- | | |
|------------------------------|--|
| Short title and commencement | 1. This Act may be cited as the Law Revision (Fines and Other Financial Redresses) Act, 2004 and shall come into operation on such date as the Minister may, by a notice published in the Gazette, appoint |
| Application | 2. This Act applies to any written law which makes provision for fines and other financial redresses |
| Interpretation | 3. In this Act unless the context otherwise requires—
“currency point” means the value of a currency in points form as prescribed in the schedule to the Notice;
“Minister” means the Minister responsible for legal affairs;
“Notice” means the Notice published in the <i>Gazette</i> ;
“written laws” includes a provision of a written law |
| Powers of Minister | 4. The Minister, after consultation with the Minister responsible for finance may by a notice published in the <i>Gazette</i>

(a) specify the value of a currency point in shillings;
(b) convert fines, compensation and other |

- financial redresses into currency points taking into consideration inflation and other causes and amend the value of the currency point accordingly
- (c) raise fines, compensation and other financial redresses in the value of the Tanzanian shillings and in the value of those amounts owing to inflation and other causes;
 - (d) standardize the ratio of fines to corresponding terms of imprisonment in all written laws;
 - (e) amend or vary the value of the currency point specified in any written law; and
 - (f) provide for any other related matters
- 4 .(2) The Minister may for easy application of any amount converted into currency points cause the amount to be rounded upwards or downwards to the nearest whole whether the amount is higher or lower.
- Penalty of a fine without terms of imprisonment 5. Where any written law prescribes a penalty of a fine without a term of imprisonment the prescribed fine shall be multiplied by a factor that shall be converted into currency points at the value of currency points specified by the Minister and published by a notice in the *Gazette*
- Ratio of fines and terms of imprisonment 6. Where any written law prescribes a fine and a corresponding term of imprisonment, the ratio of that fine to the term of imprisonment shall be the currency points specified by the Minister and published by a notice in the *Gazette*.
- Compensation and other financial redress 7. Where any written law prescribes any amount as compensation or other financial redress other than fine, the amount shall be multiplied by a factor as prescribed by the Minister and converted into currency points at a value prescribed in the Schedule to the Notice

