

THE UNITED REPUBLIC OF TANZANIA  
THE LAW REFORM COMMISSION OF TANZANIA



REPORT ON  
STATUTORY SYSTEM OF  
COMPENSATION TO  
VICTIMS OF CRIME

PRESENTED TO THE ATTORNEY-GENERAL AND  
MINISTER FOR JUSTICE  
AT  
DAR ES SALAAM IN MAY 1987

THE UNITED REPUBLIC OF TANZANIA  
THE LAW REFORM COMMISSION OF TANZANIA

REPORT ON STATUTORY SYSTEM OF COMPESATION TO  
VICTIMS OF CRIME

PRESENTED TO THE ATTORNEY - GENERAL AND MINISTER  
FOR JUSTICE AT  
DAR ES SALAAM IN MAY 1987

The Law Reform Commission of Tanzania was established by the Law Reform Commission of Tanzania Act 1980 and began functioning on 21st October 1983.

The Commissioners are:

- |                                    |   |  |
|------------------------------------|---|--|
| Hon. Justice Hamis A. Msuni        | - | Chairman   |
| Mr. George Liundi                  | - | Full-time commissioner   |
| Mr. Pius Msekwa                    | - | Principal Secretary, office of the Prime Minister and First Vice President |
| Prof. Josephat L. Kanywanyi        | - | Associate Professor of Law, University of Dar es Salaam                    |
| Mr. Mohamed Ismail                 | - | Advocate of the High Court and Court of Appeal of Tanzania                 |
| Hon. Mrs. Justice Eusebia N. Munuo | - | Judge of the High Court of Tanzania  |
| Hon. Henry K. Limihagati           | - | M.P- Chairman ,Tanzania Red Cross Societiy                                 |
| Mr. Nathaniel Issa                 | - | Secretary to the Commission  |

The Commission offices are located along India/Chusi Streets, P.O. Box 3580, Dar es Salaam:. Telephone Numbers 26934 and 32598.

To

The Honorable Mr. Justice D.Z. Lubuva, MP. Attorney-General and Minister for Justice, DAR ES SALAAM

Dear Mr. Minister.

**REPORT ON STATUTORY SYSTEM OF COMPENSATION  
TO VICTIMS OF CRIME**

Pursuant to Section 8(1) of the Law Reform Commission of Tanzania Act, 1980 the commission acting on one of your references which were received by the Commission in November, 1983, made a study of the subject of Statutory System of Compensation to victims of crime -with the view of advising the government on how such a system of compensation may be established without inviting, or facilitating undesirable losses to the public purse.

In September, 1985 a Committee of eleven members, under the chairmanship of Commissioner Mohamed Ismail was formed to research, consider and advise the Commission on the reference. The Committee submitted its report to the Commission on 14th February 1987.

At its Twenty-second meeting held at Dar es Salaam on 27th March 1987 the Commission considered the report of the Committee. Report on the subject has been delayed because Committee's work interrupted during the months of May to December, 1985 owing to the involvement of the Committee Chairman and another member in the country's second treason trial.

We have made in our report a thorough evaluation of the problem and we are confident that our recommendations will assist in resolving the problems described. NOW, THEREFORE, ON BEHALF OF THE LAW REFORM COMMISSION OF TANZANIA I HAVE THE HONOUR TO SUBMIT OUR REPORT ON STATUTORY SYSTEM OF COMPESATION TO VICTIMS OF CRIME

Yours respectfully,

Justice Hamis A. Msumi  
CHAIRMAN  
LAW REFORM COMMISSION OF TANZANIA

Introduction .....	1
Discussion Paper .....	6
Short-comings in the Present Scheme of Statutory Compensation to Victims of Crime. ....	6
Recommendations for Reform .....	12
Summary Recommendations .....	16
The composition of the committee on statutory system of compensation to victims of crime (Appendix) .....	20
Mailing list of the discussion paper and a questionnaire (Appendix 2) .....	21



## **I. INTRODUCTION**

The reference on the subject was received by the Commission in the following terms:

“The Judicial System Review Commission recommended that there be established a statutory system for the compensation of persons bodily injured, or whose property is injured or destroyed in the course of stopping, or helping the Police to stop, the commission or continued perpetration of crime. The commission is invited to study the matter and advise on how the measure may be affected without inviting, or facilitating undesirable losses to the public purse.”

2. The Commission first examined the scope of the reference and formed the opinion that the wording of the reference is too narrow, in that:
  - (a) the term “Police” applied in the reference is rather restrictive. It denies benefits of the proposed scheme of compensation to persons who may get injured or whose property may be injured or destroyed while assisting law enforcement agencies other than the police, (and these are many, such as the People’s Militia, members of the National Service, the 10 - Cell leaders, Game wardens, many others of the like )in “stopping” the commission or continued perpetration of crime;
  - (b) the provision, in the terms of reference, to the effect that the statutory scheme of compensation to victims of crime should only be open to those persons injured or whose property is injured or destroyed while “stopping or helping the police to stop” the commission or continued perpetration of crime is also restrictive
  - (c) the expression statutory system” which appears in the terms- of reference is rather inappropriate in the context of the reference In the examination of the reference the commission has tried to make distinction between the two expressions; “statutory system of compensation”. scheme or schemes of compensation”. Throughout our report when we have been making a reference to more than one

“scheme of compensation” we have used the expression “system of compensation” referring to both schemes of compensations, one that is under the Criminal Procedure Act, sections 37(1) and 348(1) and the proposed new scheme

- (d) the wording of section 37(1) of the criminal procedure Act, 1985 has prompted the Commission to draw an inference to the effect that the Government intends to introduce a new scheme of compensation to victims of crime (other than that under sections 348(1) and 350(1) of the Criminal Procedure Act, 1985) to be funded out of the public purse.

Our reason for this inference is that, while compensation to victims of crime under sections 348(1) and 350(1) of the Criminal procedure Act, 1985 is to be paid by the offender out of his own pocket, compensation for victims of crime under section 37(1) of the Criminal Procedure act 1985 is not if provided Section 37(2) and (3) of the criminal Procedure Act, 19B (5), read together with our terms of reference on the subject throws some light as on the source of funds for compensation to the victims of crime contemplated under section 37 (1) of the Criminal Procedure Act, 1985;

- (e) on the other hand, the Commission has treated the expression “policy in the terms of reference to mean other lawfully recognized law enforcement agencies”. also the words “to stop” or ‘stopping the Commission or continued perpetration of crime to mean, generally, “crime prevention process”.

3. This reference laid a result of recommendations made by the Judicial System Review Commission (the Msekwa Commission) on the subject to the Government.. To assist the Commission to arrive at the co-recto interpretation of its terms of reference, it has been necessary for the Commission to appraise? itself with those recommendation of the Judicial System -(review Commission on establishment of an additional-statutory scheme of compensation to victims of crime.

4. The Msekwa Commission made two recommendations to the Government on statutory system of - Compensation to victims of crime:

- (I) It was recommended that persons assisting police officers and other officers in the execution of their duty or persons who on their own motion are take steps to stop the commission of an offence, should be paid compensation for injuries or losses suffered by them and that their- dependants be compensated if they die, as a result of such action.

The reasons advanced for this recommendation were that:

- (a) the law-enjoins a duty upon a, private citizen to assist a magistrate or police officer in the crime prevention functions. In so doing the individual citizen is running a risk of getting injured. - While the police officer may get redress under the Workmen's Compensation scheme for injuries sustained in the course of his duty; there is absolutely no law in existence under which a private individual could be paid: compensation for injuries sustained while assisting the police or other officers of the law - arrest law-breakers.
- (b) there is a need for a positive action on the part of the State to show that it Cares for its citizens who participate in crime prevention and as a result get injured or killed. It has been argued further that such positive action on the part of the State will greatly alleviate the now existing negative attitude towards the police and would in a way reduce the specter of "instant justice" on criminals.
- (A) It was also recommended that Provision should be made in our law to establish machinery for compensating victims of crime in appropriate cases (including those cases of persons who suffer injuries while assisting the police).

This recommendation was made for the reason that the statutory scheme of compensation to victims of crime as under section 176(1) of the old Criminal Procedure Code (Cap 20) was restrictive and inadequate.

According to the said provision no one could recover any compensation unless the offender is first apprehended prosecuted and convicted The Msekwa Commission criticized the scheme in the following terms:“It so happens, however, that it is not in all cases that offenders are convicted. In fact, in some cases the offender might not be apprehended, or if he is apprehended he might be acquitted. En assuming that the offender is convicted he right be impecunious and therefore incapable of paying compensation, thereby making the order for compensation a dead letter Should victims of crime, under these inadequate legal circumstances, be left to go uncompensated’?” (p 236)

On the other hand the Msekwa Commission has recommended that the manner of payment and the source of revenue for compensation in both of these recommendations be considered together.

5. Together with the observations made in paragraphs (2) and (3) above and the inferences drawn from the recommendations of the Msekwa commission as discussed in the preceding paragraph (4); the Commission decided to approach the subject in its wider perspective so that the envisaged statutory system-of compensation to victim’s of crime should benefit as many people as possible, if at all this new scheme is to be meaningful to the society. In so doing the Commission was not at all unmindful of the cost element involved.
6. While the Commission was working on the reference a new Criminal Procedure Act, No.9 of 1985 was enacted to repeal and -replace the old Criminal Procedure Code (Cap 20). The new Act carne into force on 1st November 1985. The work on the new act was done elsewhere and the Commission was not aware of the new changes in the Criminal Procedure law, affecting compensation to victims of crime until the new Act was published in the gazette.
7. The new Criminal Procedure Act, 1985 introduced a new section 37(1) (2) and (3) which affects the Statutory system of compensation to victims of crime by improving the then existing scheme of compensation in the old Criminal Procedure Code, sections 176(I) And 178(I) which have been re-enacted as sections 348(1) and 350(1) respectively.

8. The new section 37(1) (2) and (3) of the Criminal Procedure act, 1985) introducing the idea of scheme of compensation to victims of crime to be funded out of the public purse had by no means made the work of the Commission obsolete.

The new section 37(1) (2) and (3) provides:

- (1) where any person suffers material loss or personal injury, or dies in consequence of taking steps in the cause of assisting a magistrate, a police officer or any other officer by the law to stop the commission of an offence or in arresting a person who has or is reasonably suspected to have committed an offence, such person shall be entitled to receive compensation for such loss or injury and where such person dies, his dependents or legal representative shall be entitled to receive the compensation he would have received had he not died.
- (2) The amount of compensation to be paid under-sub-section (1) shall be assessed, and all other matters regarding the payment of compensation shall be dealt with, in accordance with the provisions of the law for the time being in force regarding the payment of compensation to victims of crime.
- (3) Any compensation to be paid under this section shall be paid in such manner and out of such funds as may be prescribed by the law referred to in sub- section (2)

The new provisions do not establish a separate scheme of compensation to victims of crime apart and to suggest the unsatisfactory one under the provisions of sections 348( 1) and 350(1) of the Criminal Procedure Act, 1985. The Commission was still charged first with the task of examination and evaluation of the then existing scheme of compensation to victims of crime and to suggest changes where appropriate. Secondly, the Commission went on with the task of finding out alternative scheme of compensation to victims of crime to suit our social and economic circumstances

## **II. DISCUSSION PAPER**

9. A Discussion Paper -No. 1/86 and a questionnaire were issued in September 1986. The paper and the questionnaire were issued to solicit views on the subject from people who are connected with the -subject in their day-to-day official functions (Appendix 2). This paper was issued as a seminar paper in the Law Seminar on LAW AS INSTRUMENT OF DEVELOPMENT jointly organized by the Tanganyika Law Society and the Law Reform Commission of Tanzania. The seminar was held in Dar es Salaam on 29th. - 30th January 1986.
10. The Discussion Paper focused on examination and evaluation of the old and “compensation to victims of crime as ordered under the old criminal Procedure Code, Cap 20 and the new Criminal Procedure Act, 1985. Shortcomings of sections 176(a) and 178(1) of the Criminal Procedure Code (reproduced as section 348(1) and 350(1) in the Act) were extensively discussed and- some amendments proposed. The paper also discussed the possibility of establishing a new statutory system of compensation to victims of crime and proposals for a new scheme was set out in the Discussion Paper.

## **III. SHORT COMINGS IN THE PRESENT SCHEME OF STATUTORY COMEPATION TO VICTIMS OF CRIME**

11. The Commission is of the view that the present law on statutory system of compensation to victims of crime is inherently insufficient and it is riddled with a number of shortcomings inherited from the provisions of the Criminal Procedure Code (Cap 20), sections 176(a) -130 (re-enacted in the new law sections 3-8)
  - a) 350 (i). Respectively with their ills and shortcomings) as discussed below. The provisions of sections 348(1), 50(1) and 357 of the Criminal procedure Act, 1985 are as follow:

348 (1) when an accused person is convicted by any Court of any offence not punishable by death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case has suffered material loss or personal injury in consequence of the offence committed and that

substantial Compensations, in the opinion of the court, recoverable by that person by civil suit, such court may, in its discretion and in addition to any other lawful punishment order the convicted person to pay to that other person such compensation, in kind or in money as the court deems fair and reasonable. 349 The sums allowed for costs or compensation P2all in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recoverable under this Act; and in default of payment of such costs or compensation and in default of distress as her after provided the person in default shall be liable to imprisonment for a term not exceeding six months unless such costs or compensation shall be sooner paid.

350 (1) whenever any court imposes a fine or confirms on appeal, revision or otherwise a sentence of fine, or a sentence of which a fine: terms part, the court may, when passing judgment, order the whole or any part of the fine - recovered to be applied:

- (a) in defraying expenses properly incurred in the prosecution;
  - (b) in the payment to any person of compensation of any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.
- (2) if the fine is imposed in a case which is Deject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
- (3) at the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any compensation paid or recovered under section 3LjS or this section.

(357) There upon the apprehension of - person charged with an offence, any property is taken from him, the court before which he is charged may order:-

- (a) (Provides-for restoration of the stolen property to the owner)
- (b) that the property or part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.”

The application of these provisions has the following shortcomings:

- (1) The person causing injury or loss must be apprehended. It -is not always possible for the offender to be apprehended. One may be injured or his property destroyed an offender who cannot be apprehended.
- (2) The person must be charged and convicted An offender may be charged but acquitted on technical; grounds. This fact should not deprive a victim of the right to compensation for injuries sustained.
- (3) The convict must be able to pay the compensation
  - (a) from his own means; or
  - (b) as part of the fine imposed on him; or
  - (c) from property found in his possession (if not restored to its lawful owner). The offender may be impecunious with no property, which could be attached -to pay for the injuries of his victim.
- (4) In terms of section 27(3) of the Penal Code; VA person liable to imprisonment may be sentenced to pay fine as an alternative to, or -instead of, imprisonment “ This provision is rarely applied by trial courts:

Almost all the offences which could lead to personal injuries or loss to-property are punishable by imprisonment and do not provide fine alternative. On sentencing, trial courts tend to impose imprisonment terms only without consideration of fine, which could be applied as compensation to the victim without

consideration of fine which could be applied as compensation to the victim without consideration of fine which could be applied as compensation to the victim. Thus, the provisions of section 350(1)(b) of just like the old section 178(1)(b) are defeated in practice.

- (5) The order for payment is discretionary and that discretion is limited. To recover under these provisions the victim must be able (in the opinion of the court) to recover a "substantial compensation" in a civil suit. The distinction between criminal trial and a civil suit for recovery of damages is not always clear to ordinary citizens.
  - (6) The victim cannot as of right claim compensation if the court does not exercise its discretion in his favour. These provisions are too legalistic to be of assistance to an ordinary citizen.
  - (7) If the victim dies, his dependants cannot recover under these provisions, even if the victim was the sole breadwinner of the family.
12. The Commission is of the opinion that the present scheme of compensation under the Criminal Procedure Act, 1985 can be improved by suitable statutory amendments to the Act as follows:
- (1) The provisions of section 37(1)(2) and (3) which provide that compensation out of Fund to be prescribed by law may be paid to any person who suffers material loss or personal injury, or dies in consequence of taking step or in the course of assisting a magistrate, a police officer or any officer of the law to stop the commission of an offence or continued perpetration of crime should remain as they are. The proposed law establishing a new statutory scheme of compensation to the victims of crime must have regard to these provisions.
  - (2) Sections 248 - 351 of the Criminal Procedure Act, 1985 should be amended along the following lines:
    - (a) The requirement that to recover- under section 348(1) one must be able to recover "substantial" compensation in a "civil- suit" should be abolished;-

- (b) the provisions of section 350(1) (b) should be repealed. This provision is superfluous and difficult to apply in practice.
13. It is the considered opinion of the Commission that the scheme under the provisions of the Criminal Procedure Act, 1985 are "inadequate and do not meet the requirements of the objectives of the system of compensation to victims of crime that are envisaged under the new provisions of section 37(2) and (3). Under the circumstances, it is imperative that an additional scheme of compensation to victims of crime be established to operate independently of that provided in the Criminal Procedure Act, 1985, and in such a way that the two complement each other.
14. Such kind of a statutory scheme of compensation to victims of crime is not a novel idea in the common law system as well as in other legal systems.

However, the Commission could not draw up a list of other developing countries operating such schemes of compensation, other than examples from United Kingdom, New Zealand, United States of America, Canada and Australia. Nevertheless the Commission is of the opinion that to operate such a scheme does not rest on the question whether a country opting for such scheme lies in the developed or developing part of the world, but, rather on the ability and willingness to operate such a scheme. Hence the Commission recommends introduction of such a scheme in our country for the following reasons among many others:

- (1) Last two decades have seen a rising tide in the study of the victim of crime and his relation with the offender. Victimology has ushered a new interest in the plight of the victim of crime vis-a-vis his offender on one hand and the State on the other. In some quarters it has been argued that;

"The victim has a moral and legal right to be compensated by the wrongdoer" (Jackson p 380-381) This proposition only holds if the victim knows his wrongdoer and the wrongdoer is able to compensate the victim. Short of that the victim will suffer without redress. In this situation, where an innocent citizen gets injured or suffers loss due to acts or omissions of a criminal element in society; if the state cannot punish the offender it should at least compensate the victim.

According to the Msekwa commission they had tried to answer this question in the following terms :

“in a humane society persons whose livelihood is adversely affected or completely shattered by crime should be compensated by society for the injuries suffered” (p 237).

- (2) The State has a duty to protect life and property of its citizens. When the enjoin private citizens to protect own life and property on behalf of the State or in assistance of the machinery of the state and the citizens get injured or suffer material loss in the process, the state must undertake to compensate such citizens.
- (3) A citizen is prohibited to take law unto his own hands. It is argued that a good scheme of compensation to victims of crime will be an incentive to private citizen to participate in crime prevention and it will be a better alternative to instant justice. - (Msekwa Report, p 62).
- (4) Claims by way of civil suit for injuries caused by wrongful acts of criminal elements in society is bureaucratic, cumbersome, limited and beyond reach of many of the affected citizens.
- (5) It has been noted that there is a greatest demand for better treatment of offenders than there is for the promotion of the interest of their victims. This state of affairs is unsatisfactory and ought to be rectified.
- (6) It has been noted that there is a greatest demand for better treatment of offenders than there is for the promotion of the interest of their victims. This state of affairs is unsatisfactory and ought to be rectified.
- (7) with the advent of standardized minimum sentences, which are normally long, criminals are imprisoned for longer jail terms and deprive the victims any chances of recovering any compensation from the jailed offenders.

#### IV. RECOMMENDATION FOR REFORM

15. After an examination of the problem of statutory system of compensation to victims of crime, the Commission makes the following recommendations for reform.

- (1) That there should be established a statutory Scheme of Compensation to Victims of crime to be funded from the public purse.
- (2) In other jurisdictions where similar schemes have been established their administration is normally placed in the hands of an independent Board established by the law that sets up such schemes. The Commission had -given serious thought to this reason that the scheme so administered will be unnecessarily expensive. - Hence, it is recommended that the administration of the Scheme should be placed in the jurisdiction of the courts and the Chief Justice should be responsible for its better administration.

The courts are in a better position to be in a position to administer the Scheme efficiently and economically.

- (3) That compensation out of the proposed scheme should be paid-in respect of a person injured or killed (or. his property injured or destroyed) when the injury or death:
  - (a) is the direct result of a criminal act or omission of another person that occurred in the United Republic whether that person ties been apprehended or not;
  - (b) directly resulted to the person while he was endeavoring to:
    - (i) stop or attempting to stop any person from committing a crime or in his endeavor to preserve peace, or
    - (ii) Assist the police or any other officially recognized law enforcement agency in his duties with respect to law enforcement in the United Republic.

- (4) It is recommended that the court upon receipt of an application for compensation or on its own initiative may, when the circumstances allow make an order for compensation to a victim of crime in accordance with the law that will establish the scheme for payment of compensation.
- (5) Any claim for compensation under the scheme should be made independent of any criminal case, pending or contemplated against an offender, whether or not such offender has been apprehended.
- (6) It is also recommended that such compensation under the scheme may be paid to the victim in person or his legal representatives and beneficiaries where the victim dies as the result of the injuries sustained.
- (7) Compensation should also be recoverable to a Person 14 in respect of pecuniary loss suffered or expenses incurred by that person as the result of an injury to a victim where the maintenance of the victim is the responsibility of that person.
- (8) The following should be the basis for compensation:
  - (a) expenses actually and reasonably incurred as a result of the victim's injury or death and any other expenses that in the opinion of the court, it was necessary to incur;
  - (b) Pecuniary- loss to the victim resulting from the total or partial incapacity of the victim to work;
  - (c) pecuniary loss to dependants as a result of the victim's death;
  - (d) other pecuniary loss resulting from the victim's injury;
  - (e) loss or damage to property of the victim, as a direct result of an offence committed.

The new scheme should operate side by side with the system of compensation that is sections 7(Y), 348, 349, 3-” and 357 of the Criminal Procedure act, 1985,(10) A victim of crime may be paid compensation out of the under the scheme where:

- (a) the offender is unable to compensate his victim; or
  - (b) the offender is not apprehended; or
  - (c) the offender is apprehended but is not convicted due to legal technicalities; or
  - (d) where the court does not make an order for compensation under the provisions of section 548(1) of the Criminal procedure act 1985; or
  - (e) Where the victim is not satisfied with the court order under the provisions of section 348(1) of criminal Procedure Act, 1985.
    - (ii) The court should have powers to investigate whether or not the offender is able to compensate his victim and where the court is satisfied that the offender is able to pay his victim compensation, fully or partially should make an order for the offender to refund such amount of compensation to the Fund of the scheme to that extent which the offender is able to pay.
- (12) That any person appearing before an competent court in respect of an application for the payment of compensation may do so in person or by his recognized agent or by an advocate duly instructed to act on his behalf..
- (13) That in order to avoid and discourage fraudulent claims, it has been necessary to recommend that, it should be an offence for any person, in any hearing, inquiry or other proceedings in respect of an application for compensation under the scheme where knowingly:-

- (a) makes a false statement in respect of such hearing, inquiry or other proceedings in connection with an application for compensation under the scheme,
- (b) misleads or attempts to mislead the court in such proceedings, hearing or inquiry,
- (c) make a false claim for compensation

(14) That:-

- (a) A victim of crime should be free to choose whether to ask for compensation under the scheme or prefer civil suit against the offender.
- (b) That in the event that the victim chooses to prefer a civil suit against the offender the court should be notified of the fact. This recommendation is important to avoid double jeopardy on the part of the offender on one hand and double payments on the part of the victim on the same facts arising out of the same transaction.

(15) That a fixed scale of compensation along the lines of the Workmen's Compensation scheme should be introduced in the proposed scheme. Such a scale will make the scheme both predictable and easy to administer.

(16) That the Fund for the scheme should come out of the monies to be appropriated for that purpose by Parliament.

## **V. SUMMARY OF RECOMMENDATIONS**

In the course of this report the Commission: has made the following major recommendations to the government on establishment of a statutory scheme to compensation to victims of crime. Those recommendations are:

### **1. ESTABLISHMENT OF A STATUTORY SCHEME OF COMPENSATION TO BE FUNDED OUT OF THE PUBLIC PURSE**

That the scheme that now exists- under the criminal Procedure Act, 1985 is inadequate; discriminatory and cumbersome. We recommend another scheme should be established to work side by side with that scheme under the Criminal Procedure Act, 1985. Such scheme may be established by an act of Parliament or by way of amendment to the Criminal Procedure Act, 1985.

### **2. AMENDMENTS OF THE CRIMINAL PROCEDURE ACT, 1985**

The present (scheme of compensation to victims of crime as contained in the provisions of -Sections 348(1) - 350(1) of the Criminal procedure Act, 1985, is cumbersome and inefficient. These provisions should be amended so as to eradicate some of the anomalies and make the - said scheme more accessible to the persons intended to serve.

The following are the proposed amendments:

- (a) the requirement that 1 to recover any compensation under section 348(1) one must be able to recover “substantial” compensation in a “civil suit” should be abolished
- (b) the provisions of section 350(1) (b) should be repealed, as the provision is superfluous and difficult to apply:-

### **3. ADMINISTRATION OF THE SCHEME AND ACCOUNTABILITY**

- (a) Where such a new scheme, is established, it is recommended that it should be - administered by the existing court system.

- (b) The overall administrator of the scheme should be the Chief Justice and that all magistrates and Judges, as the case may be, should be accountable to the Chief Justice for better administration of the Scheme.

4. **ENTITLEMENT TO COMPENSATION**

Compensation under the Scheme should be made under the following circumstances only. That is where a person is injured or killed and the injury or death;

- (1) is a direct result of an act or omission of another person
- (2) directly resulted to the person while he was endeavoring to
  - (a) arrest any person or preserve peace, or
  - (b) assist a police officer or any other lawfully recognized law enforcement agency in carrying out his duties with respect to law enforcement, the court may upon receipt of an application for compensation make an order in accordance with the law establishing the scheme for payment of compensation
    - (I) to or for benefit of the injured person, or
    - (II) to a person, in respect of pecuniary loss suffered or expenses incurred by the person, as the result of an injury to a victim where the maintenance of the victim is the responsibility of the person, or
    - (III) to anyone or more of the victim's dependants.

**5. BASIS FOR COMPENSATION**

It is recommended that compensation to victim of crime or his dependants should be awarded taking into account any of the following matters:

- (a) Actual expenses incurred as a result of the victim's injury or death;
- (b) Pecuniary loss to the victim resulting from total or partial incapacity of the- victim to work;
- (c) pecuniary loss to dependants;
- (d) other pecuniary losses resulting from the victim's injury.

**6. REPRESENTATION AT THE HIRING**

It is recommended that, any person appearing before the court in respect of an application for the payment of compensation may do so in person or by his recognized agent or by an advocate duly instructed to act on his behalf.

**7. CIVIL ACTIONS**

It is recommended that where the victim or his dependants, as the case may be, opts to file a civil action against the offender who caused the injury or death of the victim the court must be duly notified of the fact. In appropriate circumstances the court may advise a victim or his dependants, as the case may be, to prefer a civil suit against the offender who has caused injury or death of the victim in either case once a victim or his dependants- have opted for a civil suit against the offender the court should not make any order of compensation out of the funds of the scheme.

**8. RECOVERY OF MONEY FROM THE OFFENDER**

It is recommended that where appropriate the court should make an order of compensation to a victim of crime and pay compensation out of the funds of the scheme regardless of whether or not the offender is able to pay. After making such order and payment the court should seek to recover an equivalent amount of money or part of it from the offender:

**9. OFFENCES AND PENALTIES**

It is recommended that it should be an offence for any person,- in any hearing, inquiry or other proceedings before the court to:

- (a) make a false statement;
- (b) mislead or attempt to mislead the court;
- (c) make a false claim for compensation to the court.

**10. SOURCE OF FUNDS FOR THE SCHEME**

It is recommended that the funds for the proposed scheme should be appropriated by Parliament.

## APPENDIX 1

### THE COMPOSITION OF THE COMMITTEE ON STATUTORY SYSTEM OF COMPENSATION TO VICTIMS OF CRIME

Mr. M. Ismail, Commissioner (LRCT)	Chairman
Mr. Mkude, Chief Corporation Counsel(TLC)	Member
Mr. O.W. Temu, Corporation Secretary (NIC)	Member
Mr. J.V. Mwambuma, Juwata Headquarters	Member
Mr. G. Mapunda, Director Of Manpower Development And Administration Ujenzi	Member
Mr. M. Songambebe, Political Commissioner (Tanesco)	Member
Mr. J. A. Namata, Chairman At	Member
Mr. W. Mdundo, Hazin	Member
Mr. H.P. Kobelo, Nbc	Member
Ho. M. Maganga, M.P. (National)	Member
Mr. A.S. Chale, Director Of Personnel Policy-Utumishi	Member
Mr. S.M. Sadallah, Law Research Officer (LRCT)	Secretary

## MAILING LIST

### DISCUSSION S PAPER AND A QUESTIONNAIER WERE DISPATCHED TO HE FOLLOWING PEOPLE TO SOLICIT VIEWS AND COMMENTS

(Those who responded their names are marked with asterics \*)

1. Principle Secretary / Dag	Sheria	Dar es Salaam
2. D.P.P	Sheria	”
3. C.P.D	Sheria	”
4. Chief Justice	Court of Appeal	”
5. Mustapha	Court of Appeal	”
6. Makame, J . A	Court of Appeal	”
7. Kisanga, A	Court of Appeal	”
8. Omar, A	Court of Appeal	”
9. Jaji Kiongozi	High Court of Tanzania	”
10. Mapigano, J	High Court of Tanzania	”
11. Lukakingira, J	High Court of Tanzania	”
12. Maina, J	High Court of Tanzania	”
13. Bahati, J	High Court of Tanzania	”
14. Mtenga, J	High Court of Tanzania	”
15. Kazimoto, J	High Court of Tanzania	”
16. Mihayo, Registrar	High Court of Tanzania	”
17. Lukanga, Dr	High Court of Tanzania	”
18. Mrema, Dr	High Court of Tanzania	”
19. L.S. Bwana	Court Appeal	”
20. *Longway (Ms)	Court Appeal	”
21. Rm I/C	Rms Court Dar es Salaam	”
22. Inspector General Of Police	POLICE HQS	”
23. General Manager	NIC	”
24. D.C.	Central Police	”
25. Kamishna	P.O.Box 9014	”
26. Katibu	Utamaduni	”
27. Chief Cooperation Counsel	T.LC	”
28. Chairman	Ate	”
29. Chairman Dsc	Chamber Of Commerce	”
30. Secretary	Juwata Hqs.	”
31. Mkuu Wa Chuo Cha Ustawi Wa Jamii		”
32. Dean	Faculty Of Law	”

33. Dr. Shaidi	Faculty Of Law	„
34. *Dean Faculty of Arts And Social Science		„
35. M. Lakha Lakha & Co Advocate		„
36. Raithatha, Advocate	Raithatha & Co Advocates	„
37. *M.M Marando	Marando & Co Advocates	„
38. Dharani, Advocate	Dharani &Co Advocates	„
39. N.S. Patel	Patel & Co Advocates	„
40. E. Kisusi Emmanuel Dismus Kisusi & Co. Advocates		„
41. President	The Tanganyika Law Associate	„
42. Director General	Muhimbili Medical Centre	„
43. The Principal Stock	Verifier Mahakama Kuu	„
45. Prof. Massawe	IDM Mzumbe Morogoro	