



## A criminal compensation in Zanzibar: An alarming issue

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### Abstract

The adequacy on the applicability of criminal compensation in Zanzibar receives a big challenge. It has been found that, the compensation is provided by the Constitution of the United Republic of Tanzania of 1977, which is applicable in Zanzibar, the Constitution of Zanzibar of 1984, the Penal Act and the Criminal Procedure Act, however the applicability of it being impracticable. The study examine that the laws are applied through the courts using civil or criminal cases on the compensation are not adequate. There are several shortcomings in the law including absence of specific law on criminal compensation, giving courts wider discretion on criminal compensation, allowing payment of criminal compensation in case of conviction only and silence of law on requirement of payment of compensation on several offences. It seems therefore, the enactment of specific piece of legislation on criminal compensations needed so as to reduce among other issues a judicial discretion in the criminal compensation and victims of crimes to be fully involved in the process of their cases.

**Keywords:** Alarming criminal, compensation, issue, Zanzibar

### Introduction

Crime is considered a disturbance of a legally protected interests or rights. It is a criminal violation of law and order that may be in the physical, financial or psychological forms. Some of the violator of public order is also an offender against an individual victim. There has been renewed recognition during the past few decades that crime gives rise to legal, moral, ethical, and psychic ties not only between the violator and the society, but also between the violator and his victim. Crime upsets the balance not only between the criminal and his social group, but also between the criminal and the individual victim. The study of victimology has been advanced to consider the nature of crime committed against victim, the extent of injury and compensation that should be paid to the victim hence this study examined criminal compensation in Zanzibar.

### Literature Review

Andrew and Alison addressed and critically analyzed the concept of victim's rights and the sentencing process. The writers have tried to address the concept of compensation in general in relation to sentencing process, but they did not specifically address the position of the laws relating to criminal compensation. Hence this study has gone beyond that scope by assessing the laws relating to criminal compensation. In addition, Pravin Bowry (2015) <sup>[16]</sup>, in his analysis of the law on victim presents that in ensuring the protection of victims the concept of protecting victim of crime should be adhered to. This article also addressed the general concept of witness protection in Kenya. This study has reviewed the above article purposely to make comparatives analysis of the position of the laws in Zanzibar and other jurisdictions like Kenya. Moreover, Anusree (2014) <sup>[4]</sup>, in his article tries to discuss in detail the right to compensation of victim in India. Generally, the writer made his analysis within the Indian context. Meanwhile the researcher of this study has gone beyond that scope by making comparative analysis and assessment in relation to

current position of the laws relating to criminal compensation in Zanzibar. Also, the study reviewed a report, submitted to Attorney General and Ministry of Constitutional affair under the Law Review Commission. The report tried to address the legislative way of remedying victims of crime in United Republic of Tanzania. But the report entirely addressed the legislative way of remedying victim of offense only in Mainland Tanzania by assessing various provisions of the laws relating to criminal compensation to victim of crimes. In other words, the report did not touch anything on the side of Zanzibar. Therefore, this study has tried to assess various provisions of the laws relating to criminal compensation to victim of crimes specifically in Zanzibar. More commonly Stephen Schafer (2019) analysis of substantive issues, has addressed the relationship between the victim and the compensation that the compensation of victim of crime accrues for the damage or injury caused by a crime. The author further stated that it indicates that compensation is a civil in nature and that it represents non-criminal goal a in a criminal case. But he did not address the consequences of treating the compensation in victim of crime as a civil character, so the researcher in this research will cover this.

### Results and Discussion

The study has found that in Zanzibar, criminal compensation is provided for in the Constitution of the United Republic of Tanzania of 1977, which is applicable in Zanzibar, the Constitution of Zanzibar of 1984, the Penal Act and the Criminal Procedure Act. It is also hinted out in the Evidence Act No.9 of 2016 and the Interpretation of Laws and General Provisions Act of 1984 all the laws of Zanzibar. The Constitutions require courts to order payment of effective compensation to the victims of crimes and civil wrongs. About pieces of legislation, the Penal Act requires payment of compensation particularly in the offences against morality or sexual offences but it is silent on other offences generally. The Criminal Procedure Act gives the

courts discretion to order payment of compensation against offenders after being convicted. It is mandatory for the compensation to be awarded in the sexual offences. Furthermore, compensation may be ordered to be paid instead of fine and compensation may be enforced by attaching movable or immovable property of the offender.

The Evidence Act allows the courts to consider all necessary factors that can help in determining the amount of damages or compensation when it appears necessary to do so. The Interpretation of Laws and General Provisions Act authorize institution of both civil and criminal matters arising from the same facts. This means that the victim of a crime may enforce criminal compensation by using civil case although the offender has been tried by using a criminal case. On application of laws of criminal compensation, the study found that the laws are applied through the courts using civil or criminal cases. It has been found further that the law on criminal compensation is not adequate in Zanzibar. There are several shortcomings in the law including absence of specific law on criminal compensation, giving courts wider discretion on criminal compensation, allowing payment of criminal compensation in case of conviction only and silence of law on requirement of payment of compensation on several offences.

### Recommendations

The following recommendations have been given in the study:

#### 1. Enactment of Specific Piece of Legislation on Criminal Compensation

There should be specific legislation governing criminal compensation in Zanzibar. This piece of legislation should provide all necessary matters on criminal compensation including guidelines on such compensation. This is a long-term agenda as its implementation may take quite some time hence some other recommendations of short term in nature are given below in order to serve the purpose of effective compensation in the present time.

#### 2. The Law to Define a Victim of Crime

The law in Zanzibar should define victim of crime in order to make it clear on to whom the criminal compensation can be paid. The definition should be exhaustive because crimes have different effects. For example, the offence of murder cause death of a person who may be has several dependents. In this case the victims of crime should include the dependents of the deceased person. This definition is preferably to be given in the Criminal Procedure Act.

#### 3. Criminal Compensation to be Available even if there is no Conviction.

The law should not make it necessary that there must be conviction so that the court can order the convict to pay compensation to the victim. The court should consider existing circumstances. If it is of the view that conviction cannot be secured because of some reasons but it is clear that the accused injured the victim, then criminal compensation can be awarded, nevertheless. When it will so be done, the scope of criminal compensation will be extended in Zanzibar laws.

#### 4. Reducing Judicial Discretion in the Criminal Compensation

The law should not consider criminal compensation as the question of judicial discretion. There should be complete legal directives on criminal compensation. For example;

who should be paid, when and at what amount. The amount may be fixed by estimating the injury the victim has suffered following the criminal wrong committed by the offender.

### 5. Victims of Crimes to be fully involved in the Process of their Cases.

It should be a legal requirement that victims of crimes to be fully involved in the process of their cases. This will help in awarding them effective criminal compensation. It will avoid the situations whereby courts award criminal compensation while the parties are not aware of the compensation awarded by the court.

### Conclusion

It is a common phenomenon to hear especially from the law enforcement agencies that citizens should not take laws in their hands. This means that when a crime is committed against a person, the proper channel is to report the crime to relevant authority to give room to the due process of law. The said process is expected to result into justice to both the accused and the victim of the crime in question. The crime as a wrongful act or omission causes injury to the victim. It can be social, economic, physical or psychological injury. The crime is not something good and should not be considered as paying. The offender should pay for the crime committed. One way of punishing the offender is to order him or her to pay the victim effective compensation. The compensation should be consummating to the injury caused. The victim should be restored to the original position he or she was before the crime to be committed.

In order criminal compensation to be effective, there must be effective legal regime governing the same as well. The citizens will feel happy if they see that the law protects them widely against the wrongs of other persons. The criminal law should not stand as public law awarding public remedies only it should also award private remedies as crime causes the victim to suffer privately from the criminal wrong of the offender.

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