



## MAINTAINING DISCIPLINE IN TANZANIAN SCHOOLS: A DISCOURSE ON CORPORAL PUNISHMENT AS A VIOLATION OF HUMAN RIGHTS

By Ines Kajiru<sup>1</sup>\*

### Abstract

*This article examines the existing law and challenges on the use of corporal punishment in schools in relation to human rights infringement. A special focus is made on corporal punishment as human rights infringement against the backdrop of the international conventions, the Constitution of the United Republic of Tanzania (URT), 1977, the Law of Child Act 2009 and the Education Corporal (Punishment) Regulation 1979 under the National Educational Act. It discusses the effects of the use of corporal punishment and the resultant abuse of human rights. Secondary data is employed, whereby documentary review has been used, books, journal articles, newsletters, papers, internet sources and reports were*

*reviewed. It is observed that, the ratification of the Convention on the Rights of the Child and other international conventions, resulted into the Parliament responding by enacting the Law of Child Act of 2009. However, this Act neither prohibits corporal punishment, nor does it attempt to repeal the provisions for it in the Education Act and its Regulations. Instead, the use of corporal punishment is still justified by the Education Corporal (Punishment) Regulations. The article concludes that corporal punishment violates human rights. Finally, the article recommends for legislation which shall totally abolish corporal punishment and introduce alternative remedial strategies.*

<sup>1</sup> \* Ms Ines Kajiru LLM, LLB (Mzumbe University) Assistant Lecturer Mzumbe University, PhD Candidate School of Law and management, University of Kwazulu –Natal, South Africa.

**Keywords:** Discipline, Corporal Punishment and Human Rights.

## 1. Introduction

Teaching and learning is a process which demands discipline to maintain skilful order.<sup>1</sup> Maintaining school discipline always needs law and regulations which, among other things, establish rules and procedures to be followed to achieve expected goals.<sup>2</sup> Corporal punishment is among the Punishment which is used in Tanzanian schools as a key means of controlling students on the need to maintain school discipline and respect in school and in education arena.

In teaching and learning process a lot is expected to be achieved. However, to achieve what is expected from school, students are expected to adhere to laws, bylaws, rules and regulations.<sup>3</sup> On other hands, teachers are there to help shape and discipline students to create an environment that is conducive to teaching and learning.<sup>4</sup> Discipline is one of the most important educational concepts in the world in general and in Tanzania in particular. In this context, discipline is said to be taught by teachers to guide, direct, lead, manage or confront learners about behaviour that intimidates or violates the school rules or national laws and the rights of other learners and teachers.<sup>5</sup> Thus, in educational context, when a learner breaks the rules he/she should be sanctioned (or punished) according to the lawful provision.<sup>6</sup> In Tanzania the Education Corporal (Punishment) Regulation 1979 under the National Educational Act provides the procedures under which corporal punishment should be administered. Although it is against human rights, that is the current position. In some jurisdictions the use of corporal punishment has been abolished and some other alternative means have been introduced and applied as well. This article calls for changes, thus the discussion is centred on

- 1 Joubert R & Prinsloo S Creating safe and Effective Classrooms Van Schaik, 2013 p 61.
- 2 Ibid.
- 3 Invocavity J *The effects of corporal punishment on discipline among students in Arusha Secondary Schools* A dissertation submitted in partial fulfilment of the requirements for the degree of Master of Education in Administration, Planning and Policy Studies, Open University of Tanzania 2014.
- 4 Ibid.
- 5 Rahimi M., *The role of teachers' classroom discipline in their teaching effectiveness and students' language learning motivation and achievement: A path method* Iranian Journal of Language Teaching Research, (2015) Vol 3, No 1, pp 57-82.
- 6 Ibid.

challenging the law and practices on corporal punishment as they violates human rights.

## 2 The Concept of Discipline

Discipline and punishment are often considered interdependent, as each requires the other to exist.<sup>7</sup> However, in the education context discipline is a process and not a single act. Primarily, it is about managing positive behaviour and about teaching self-control.<sup>8</sup> Yet it is one of the most misunderstood and most abused concepts in education.<sup>9</sup> School discipline is an action taken by teachers to lead, guide, direct, manage or confront a pupil/student about behaviour that threatens or violates the rights of others.<sup>10</sup>

Good discipline is therefore not an option; it needs to be regulated as it does not occur by chance<sup>11</sup> and it needs to be decisively designed.<sup>12</sup> Discipline is the basis for teaching pupils/students how to be in harmony with themselves and get along with other people.<sup>13</sup> Moreover, discipline should be understood in a positive light. For example, it should be applied to educate or train people to obey rules or a code of behaviour and not to control disruptive or unacceptable behaviour.<sup>14</sup> For discipline to flourish, a safe and sound environment is needed in which the rights and needs of people are respected, promoted and safeguarded.<sup>15</sup> Therefore, discipline in the school environment is about promoting appropriate student behaviour and developing students with self-discipline and

- 7 Maphosa C & Shumba A *Educators' disciplinary capabilities after the banning of corporal punishment in South African schools*, South African Journal of Education, 2015 Vol 30 No 3 p 255.
- 8 Mabeba MZ & Prinsloo E *Perceptions of discipline and ensuing discipline problems in secondary education*, South African Journal of Education, 2000, Vol 20 No 34, p 41.
- 9 Marais P & Merrer C *Disruptive behaviour in the foundation phase of schooling* South African Journal of Education, 2010, Vol 30 No 1, pp 41-57.
- 10 Simwata E M *Management of students' discipline in secondary schools in Kenya: A case of Bungoma County* Department of Education Management and Foundation, Maseno University 2012, p 68.
- 11 Marion M *Positive guidance and discipline strategies: Description and explanation* 2010. Available at <https://www.education.com/reference/article/positive-guidance-discipline-strategies/> (Accessed on 12 May 2017)
- 12 Ibid.
- 13 Joubert R, & Prinsloo S., (note 2 above).
- 14 JP Rossow *Learner discipline in South African public schools: A qualitative study*, 2003, Koers, Vol 68, pp 413-435.
- 15 Shumba, A., *Children's rights in schools: What do teachers know?* Child Abuse Review, 2003, Vol 12, pp 251-260.

responsibility.<sup>16</sup>

According to Wolhuter and Stey, in a school where positive discipline is applied, it is characterised by a self-governing approach to discipline which underlines joint responsibility in reaching decisions and the acceptance of different opinions.<sup>17</sup> They went further stating that, "any school which effectively practices this democratic model of teaching and learning (self-governing approach) is expected to be a more peaceful school."<sup>18</sup> Furthermore, a pleasant learning and teaching environment, order within the school, and opportunities for the students to work independently are the stimulants of a disciplined school.<sup>19</sup> In many cases, the disciplinary committees are expected to act within its powers and authority in schools, and their decision should be as well considered as a tool in controlling the discipline of the students.<sup>20</sup>

## 3. The Concept of Punishment in Schools

Punishment in schools is a penalty or corrective measure imposed on a person who has contravened a school rule and is guilty of misconduct.<sup>21</sup> Punishment in other words is a process that entails procedures used in response to unsuitable behaviour with the intention of correcting or changing that behaviour and reinstating harmonious affairs.<sup>22</sup>

- 16 Ibid.
- 17 Wolhuter, C. C., & Steyn S, C., *Learner discipline at school: A comparative educational perspective* 2003 Koers, Vol 68, pp 521-538.
- 18 Ibid.
- 19 Ibid.
- 20 Invocavity J., (note 4 above)
- 21 Bellevue School Policy., *Classroom management, corrective action* 2016. Available at <https://www.bsd405.org/wp-content/pdf/policy/3241.pdf>. (Accessed on 23 October 2017).
- 22 De Waal E *Discipline: Impact on access to equal education* Paper presented at the Specialist International Comparative Conference on Equal Educational Opportunities: 50<sup>th</sup> Anniversary of Brown v Board of Education and 10<sup>th</sup> Anniversary of South Africa's New Democracy, 2004. Available at <https://www.eldadewaal.co.za/.../2004%20Specialist%20Brown%20International%20Comparative>. (Accessed on 23 November 2017).

Punishment is said to be inconsiderate nature whereas discipline is sensible.<sup>23</sup> Punishment focuses on misbehaviour and may do little or nothing to help a pupil/student behave better in the future.<sup>24</sup> However, one can agree that when students misbehave, teachers and other students expect them to be punished.<sup>25</sup> The degree and type of punishment may depend on the nature of the offence, but also on the school rules and bylaws governing at the time.<sup>26</sup> Punishment is usually tied to a process of supporting the norms of the majority of students who abide by the rules.<sup>27</sup> In other words, when a few learners conduct themselves in a way that is not acceptable to the school and the majority of students in the school, the majority expects punishment for the offenders. This implies that the rule of law within the school is the driver of accountability, for it holds everyone to a common code of appropriate behaviour.<sup>28</sup> However, according to Gershoff, the school punishment is used in operant conditioning to refer to any change that occurs after the behaviour that reduces the likelihood that behaviour will occur again in the future.<sup>29</sup> It also focuses on reducing or eliminating unwanted behaviour.<sup>30</sup> Also, Gershoff alleged that always punishment decreases the chances that a behaviour will occur again.<sup>31</sup> However, in order to avoid unnecessary punishment, students are urged to follow school rules to avoid the punishments.

- 23 Pienaar G A different approach to classroom discipline problems Paper presented at the conference of the Education Association of South Africa (2003).
- 24 Omari, I. M., *Educational Psychology for Teachers* Dar es Salaam. Dar-es-Salaam University Press, (2006).
- 25 Sun RCF *Classroom Misbehavior in the Eyes of Students: A Qualitative Study 2012*. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3415076/> (Accessed on 14 January 2018).
- 26 For example Education Corporal (Punishment) Regulation 1979, which governs the procedures on how corporal punishment should be administered in schools.
- 27 Rosen L *School Discipline: Best practices for administrators* 2005. Available at <https://books.google.co.za/books?isbn=148336139X>. (Accessed on 20 October 2017).
- 28 Sun RCF (note 26 above).
- 29 Gershoff, E. T., *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*. 2002 *Psychological Bulletin* Vol 124 No 4, p 34.
- 30 Ibid
- 31 Ibid

#### 4.0 Corporal Punishment

According to Scarre ‘corporal’ refer to any punishment applied on body including assault or any means that are meant to cause physical pain or humiliation.<sup>1</sup> Corporal punishment is said to be an act which is administered deliberately, and which causes physical pain for the purpose of changing behaviour.<sup>2</sup> Corporal punishment can be in the form of punching, pinching, hitting, slapping and spanking using objects such as belts, paddles and sticks.<sup>3</sup> It is worldwide means of disciplinary action against children and students, Tanzania in particular,<sup>4</sup> and is among the sources of child abuse.<sup>5</sup> Some reports have indicated that, some of the teachers have developed the tendency of enjoying corporal punishment and punishing the children even if it is not necessary.<sup>6</sup>

Corporal punishment is becoming a widespread argument in today’s society.<sup>7</sup> There have been arguments against corporal punishment and its effect on human dignity, emotional and psychological problems upon the learning environment itself.<sup>8</sup> However, the major argument against corporal punishment is that school officials have failed to protect children from violence in school. Thus, McGrath stated that “corporal punishment reflects a failure on the part of the teachers.”<sup>9</sup> The act is denying students their right to be free from all forms of physical or mental violence and the full enjoyment of their right to education.<sup>10</sup> However, as a means of education prosperity needs to be considered thoroughly and implemented with

great compassion.<sup>11</sup> Some societies such as in Egypt have made step forward and corporal punishment is treated as an assault on the dignity of individual and offensive act against the dignity of the teaching profession.<sup>12</sup> In Tanzania, the law still acknowledges corporal punishment as a form of administering discipline. Although it is claimed not to apply in the education system but, where caning does occur, it is administered as “a legitimate and acceptable form of punishment [that is not intended to be] violent, abusive or degrading”.<sup>13</sup> However, one can be in a position to say that, corporal punishment is still a controversial issue to many societies.

The above examination of the key concepts of this article is opening the room to the next item that examines the legal framework of discipline and punishment in schools. The following part discusses both international and national legal frame work

#### 4.1 Tanzania Legal Framework on Punishment

This section discusses various laws governing discipline and punishment, and particularly corporal punishment, in Tanzania. To elucidate this framework, national laws are discussed. There is no doubt that Tanzania has ratified the most important regional and international treaties for protecting children’s rights and especially the right to education<sup>14</sup> as among other rights although it is yet to ratify the Optional Protocol to the International

Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure.<sup>15</sup>

This article is of the view that, although, the Constitution of the United Republic of Tanzania enshrines the general and specific rights of its citizens, most of these rights are generally provided without specifically mentioning a group of people who need specific protection, such as children. In keeping with what it has been stated above, there is no doubt that the Constitution of the United Republic of Tanzania (CURT) of 1977 is the highest legislative norm in the country. More specifically, CURT enshrines, guarantees and protects human rights in all aspects of human life. It is important to this point to note that the founding values of the Constitution, such as human dignity,<sup>16</sup> equality,<sup>17</sup> freedom,<sup>18</sup> privacy and security,<sup>19</sup> are important in the teaching and learning process. The Constitution provides that everyone has the right to freedom, right to privacy and personal security,<sup>20</sup> which includes the right to dignity, the right not to be tortured in any way, and the right not to be treated or punished in a cruel, inhuman or degrading manner<sup>21</sup>. This means that every student has inherent dignity and has the right to have his/her human dignity respected.

Although the CURT includes and defines right to education and article 11 of CURT recognises education as a basic need and right of all citizens. This article 11<sup>22</sup> explicitly does so as a fundamental objective and a directive principle of the country’s policy<sup>23</sup> and not as a basic human right.<sup>24</sup> This means that the provisions of Article 11 are not enforceable by any court.<sup>25</sup> However, CURT establishes general principles to which all other national

laws and policies have to adhere. Calls for reviewing the Constitution have been voiced since 2014 and the proposed draft Constitution mentions the right to education as a human right.<sup>26</sup> However, the existing Constitution is still in operation and therefore this paper focuses on the provisions in this Constitution. It is stipulated under Article 11(2) that “every person has the right to access education and every citizen shall be free to pursue education in a field of his choice up to his merit and ability.” This implies that Tanzanian citizens have the right to education; however, Article 9 of the CURT is of the view that the right to education is not absolute as one can fulfil his/her desire by adhering to the principles of specific laws and policies. This means that the right to education under Article 11 is refuted when other laws and policies supersede it. However, according to article 9<sup>27</sup> all policies should conform to the supreme law

Provisions in the Constitution further imply that mutual respect, including respect for others’ convictions, and privacy<sup>28</sup> is also of importance. As stipulated that every person is entitled to respect and protection of his / her person, i. e the privacy and dignity of his own person. Respect to privacy and dignity are given some weight in this context as sometimes the process of punishment can violate the right to privacy and dignity. Articles 16 and 13(d) are relevant here as they have direct implications in terms of corporal punishment in schools in Tanzania.

Although the National Education Act of 1978 is currently under review, it is Tanzania’s cornerstone law on education. In terms of section 35 of this Act, every child of not less than five years of age is eligible for enrolment for pre-primary for a period of two years and primary education.<sup>29</sup> It is important to note that section 35 of the said Act guarantees compulsory pre-primary and primary education for every child who has reached the stated age.<sup>30</sup> Intentionally, the provision stating that “no child shall be refused enrolment

11 Pandey S *Corporal punishment in schools*, New Front in Education 2001, Vol, 31, pp 347-354.

12 Ritchie, *Spare the rod*. Boston: George Allen & Unwin .

13 Universal Periodic Review 2011.

14 UNESCO Convention Against Discrimination in Education 03 January 1979, International Covenant on Economic, Social and Cultural Rights (ICESCR) 11 June 1976, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 20 August 1985, International Covenant on Civil and Political Rights (ICCPR) 11 June 1976, International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Rights of Persons with Disabilities (CRPD) 10 November 2009 and its Optional Protocol to the CRPD 10 November 2009, Convention relating to the Status of Refugees 12 May 1964, ILO 138 Minimum Age Convention, ILO 182 Worst Forms of Child Labour Convention 16 December 1998, 12 September 2001, African Charter on Human and People’s Rights 18 February 1984, Protocol to the African Charter on Human and People’s Rights, Protocol to the African Charter on Human and People’s Rights, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa 07 February 2006, 03 March 2007, African Charter on the Rights and Welfare of the Child, African Youth Charter 16 March 2003, 20 December 2012 .

15 Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/66/138 of 19 December 2011 entered into force on 14 April 2014

16 Article 13(d) CURT

17 Ibid.

18 Article 15 of CURT.

19 Article 16 of CURT.

20 Ibid.

21 Article 13(e) of CURT.

22 CURT.

23 Under Part II of CURT.

24 Under Part III CURT.

25 Article 7(2) CURT.

1 Scarre, & Geoffrey, *Ethical theory and moral practice* 2003 Vol 6, No 3, 295-316 Available at <http://www.jstor.org/stable/27504271> (Accessed on 20 October 2017).

2 Ibid.

3 National Association of School Nurses (NASN) *Corporal Punishment in Schools*, 2010. Available at <http://www.nasn.org/Default.aspx?tabid=214> (Accessed on 20 October 2017).

4 National Association (note 34 above).

5 Maurer, A., *Paddles Away: A Psychological Study of Physical Punishment in Schools* (1981).

6 Lombardo and Polonko *A comparative Analysis of Human Rights and United States Law on Corporal Punishment of Children’ International Journal of comparative and Applied Criminal Justice* (2005) Vol 29 pp 63-93

7 Human Rights Watch: *Children’s Rights* (1999). Available at <http://www.hrw.org/wr2k/Crd.htm>. (Accessed on 06 July 2018).

8 Ibid.

9 McGrath, R *The Removal of Corporal Punishment from the School System: Something Lost or Something Gained*. Summit Crossroads Press, Colombia, (1999).

10 Maurer A., *Paddles Away: A Psychological Study of Physical Punishment in Schools* (1981).

in school and parents shall ensure that the child regularly attends primary school”.<sup>1</sup> In conforming to the requirements as stipulated in section 35 of the Act, section 56(2) of the same Act contains a non-discrimination clause which states that no person “may be denied the opportunity to obtain any category, nature or level of national education for the reason only of his race, religion or political or ideological beliefs”. Moreover, schools are urged to “afford preference to citizens of the United Republic [of Tanzania] in its admission procedures”.<sup>2</sup>

In any given situation, students and teachers are accountable and have responsibilities as per the school routine and rules regardless of citizens’ rights as provided for by CURT and as stipulated in the National Education Act. However, it is indisputable that students are required to adhere to school regulations. Teachers and schools’ Governing Bodies are required to play a serious role in establishing disciplined schools that guarantee students’ and teachers’ safety and provide equal access to education opportunities.<sup>3</sup> In this context, this article is on the view that students have the obligation to attend school in accordance with the school timetable and to participate actively in the learning process. Teachers have the responsibility to teach students to the best of their ability and in accordance with the laws of the nation. They also have a duty to ensure that students adhere to school rules and regulations.

In Tanzania, if students misbehave, teachers have a duty to discipline them within the provisions of the law. In this case, the National Education Act is the primary law that governs education in Tanzania. Section 60 of the said National Education Act mandates the Minister authority to make rules that govern all schools concerning permissible disciplinary strategies.<sup>4</sup> More specifically, the Corporal (Punishment) Regulation made under the National Education Act, regulates corporal punishment in schools in Tanzania and regulation 3 of the said Regulations makes

provision indicating how corporal punishment should be administered. The regulation makes it clear that the head teacher, headmaster or school manager is the person who has the authority to strike a student four strokes if he/she has been guilty of serious misconduct that threatens the school and/or the nation at large.<sup>5</sup> The regulated corporal punishment is a legal form of school discipline strategy in Tanzania.<sup>6</sup> Education Corporal Punishment Regulations Act, provides the procedures for this practice. Despite that, there has been an increase of cases where teachers were reported to take advantage of regulation 3 of the Corporal (Punishment) Regulations by punishing students without following due procedure. That being the case, many problems associated with the use of excessive punishment such as hitting, slapping learners on the back or head, and beating or caning students has been reported.<sup>7</sup> However, despite the procedures as provided for under the law, one can be in the position to argue that, regulation 3 of the Regulations contravenes many International Conventions and Regional Treaties.

However, the use of excessive corporal punishment in schools is an outrage as students in schools in Tanzania are subjected to physical torture and punishment without reasonable and probable cause of action.<sup>8</sup> As discussed herein above, one can say that, the use of excessive corporal punishment and or other punishment is a reflection on the violation of human rights as provided for in the Bill of Rights and in international conventions. It is an imperative that disciplinary strategies employed by school authorities and teachers must not result in torture.<sup>9</sup>

## 5. The Law and Corporal Punishment in Tanzanian Schools: A Human Rights Perspective

The use of corporal punishment on boys and girls is still a practice in Tanzanian mainland schools. Under Corporal (Punishment) Regulations, corporal punishment means “punishment by striking a pupil”. As stated before, the National Education (Corporal Punishment) Regulations 1979, pursuant to Article 60 of the National Education Act 1978, authorises the Minister to make regulations “to provide for and control the administration of corporal punishment in schools”.<sup>10</sup> As stated earlier, the Minister has such power as directly stated under the law. Further it is provided that corporal punishment “may be administered for serious breaches of school discipline or for grave offences committed, whether inside or outside the school which are deemed by the school authority to have brought or are capable of bringing the school into disrepute.”<sup>11</sup>

However, such punishment must “be reasonable with regard to the gravity of the offence, age, sex and health of the pupils and shall not exceed four strokes on any occasion.”<sup>12</sup> However, it is also stipulated how the disciplinary strategies are to be undertaken and that the head teacher, headmaster or school manager is the one responsible for administering corporal punishment only when the behaviour of the student fell in the ‘serious misconduct’ category.<sup>13</sup> According to this provision, serious misconduct is when a student breaks the school rules or national laws by an act that may be deemed to be grave. Corporal punishment is allowed in such circumstances. However, it has to be administered in consideration of the age, gender and health of the student.<sup>14</sup>

This article is of no doubt that section 3 of the Corporal Punishment Regulation (CPR) is

against the Convention on the Rights of the Child (hereafter CRC) and other international conventions as well as the bill of rights as incorporated in the CURT. The CRC is very important in this article as it directly deals with the rights of child. As stated earlier, Tanzania is a signatory of this Convention and other International Conventions. Therefore, it is morally and legally bounded to adhere to it and take every appropriate measure to protect children and particularly at a learning process.

CPR is used as a regulator of how punishment should be administered. Although what it has been provided for under the CPR is directly against the CRC, on the face of CPR itself, one cannot also hesitate to say that it has been tremendously violated. There has been an increase in incidences in Tanzania where school teachers reportedly took advantage of regulation 3 by caning and beating students without following even the very rules which are against the human rights and against CRC. Article 28 of CRC provides for the respect of dignity. The same article is against any act which is infringement of a student’s right to human dignity. The provision under article 28 is of the view that, state parties (i.e., schools) “are obliged to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity”.<sup>15</sup> However, having in place the Act which supports corporal punishment and administering corporal punishment in schools is therefore a violation of the Convention on the Rights of the Child (CRC).

Torturing, inhumane beating and degrading are not only against the CRC but also violate the Bill of Rights under CURT,<sup>16</sup> the Universal Declaration of Human Rights as well as other international conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). The two covenants both state that all human rights derive from the inherent dignity of the human person,<sup>17</sup> and this right

1 Ibid.  
2 Section 56(3) TNEA 1978.  
3 UNICEF *A human rights –Based Approach to Education for All 2007*  
4 TNEA (note 54 above).

5 Regulation 3 of Tanzania Corporal Punishment Regulation 1979.  
6 National Education Act 1978 (Corporal Punishment Regulation 1979).  
7 The Guardian *Corporal Punishment and sexual abuse widespread in Tanzania’s schools* (14 February 2017) available at <https://www.theguardian.com/global-development/2017/feb/14/sexual-abuse-and-corporal-punishment-tanzania-schools-human-rights-watch-report>. (Accessed on 12 May 2017)  
8 Corporal punishment of children in the United Republic of Tanzania Report by the Global Initiative to End All Corporal Punishment of Children, 2016. Available at [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org). (Accessed on 20 October 2017).  
9 Patel *Corporal Punishment in school: Position paper of the Society for Adolescent Medicine*, Journal of Adolescent Health, 2003. Vol 32, pp 245-261.

10 TNEA 1978  
11 Regulation 3 of Corporal (Punishment) Regulation 1979.  
12 E-OHCHR UPR Submissions “Corporal punishment of children in the United Republic of Tanzania: Briefing for the Universal Periodic Review, 25 the session” 2016. Available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2519&file>. (Accessed on 23 May 2017)  
13 Regulation 3 (note 63 above).  
14 E-OHCHR UPR Submission (note 74 above).

15 Article 28 of the Convention of the Right of the Child.  
16 Article 13(e) of CURT  
17 International Covenant on Economic, Social and Cultural Rights (ICESCR), GA Res 2200A (XXI), 21 UN GAOR Supp (No. 16), at 49, UN Doc A/6316 (1966), 993 UNTS 3; International

is corroborated by CEDAW<sup>1</sup> which is firmly and respectively affirm women's right to non-discrimination in education and Articles 3(b) and 24(2) of CRPD<sup>2</sup> which prohibits discrimination on the basis of disabilities during education process. Moreover, some of international organisations /agencies such as The United Nations Educational, Scientific and Cultural Organization UNESCO,<sup>3</sup> are also against any act which infringes students rights in a process of earning education. Teachers therefore have to be mindful that every student, whether male or female, has the right to privacy, which includes the right not to be humiliated in front of other students. It has therefore become imperative that human rights and human dignity become commonplace in the legal context by enforcing the protection of human rights in various legislative provisions in the Tanzanian legal framework for education. Corporal punishment exposes students to many physical and physiological threats that jeopardise their health and safety in school.<sup>4</sup>

The Convention of the Right of the Child provides that state parties are responsible for taking "all appropriate legislative, administrative, education and social steps to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" and that schools and teachers are required to take measures "to ensure the prevention, identification, reporting, referral, investigation, treatment and follow-up of instances where a child was subjected to maltreatment or abused."<sup>5</sup> However, despite what we discussed above, the United Nations Children's Fund (UNICEF, 2011) study on violence against children and its report indicated that in the whole of East Africa, and in Tanzania in particular, teachers frequently whipped, kicked, punched, slapped or

threatened both female and male students, even using weapons in some instances.<sup>6</sup> In its report UNICEF indicated one student from Kahama in Tanzania who complained how embarrassed she felt when a teacher slapped her. She said, "When I was slapped, I felt I had the teacher's hand on my face."<sup>7</sup> This was clearly a form of unacceptable violence as Article 28 states that slapping, kicking or threatening students with a weapon is a violation of the law.<sup>8</sup> Moreover, treating students in such a manner violates their fundamental dignity as human beings who are inherently entitled to be treated as equal in dignity to all others.

The Law of the Child Act of 2009 was expected to cover the gaps. It places a duty on parents to protect their children from all forms of violence<sup>9</sup> which include beatings that cause harm, as contained in the definition of child abuse.<sup>10</sup> The law also prohibits "torture or other cruel, inhuman punishment or degrading treatment."<sup>11</sup> However, it allows for "justifiable correction"<sup>12</sup> which does not exclude all forms of corporal punishment. This implies that the government sanctions the caning of children under the Act.<sup>13</sup> Moreover, the Act<sup>14</sup> neither prohibits corporal punishment in schools nor does it attempt to repeal the provisions for it in the Education Act and Regulations. Instead, in its report to the Committee on the Rights of the Child, the government confirmed in 2013 that the provision in the Law of the Child Act of 2009 for "justifiable correction"<sup>15</sup> mandated the use of caning in schools.<sup>16</sup> Therefore, up to this point it is worth to note that, although parliament has tried to catch up with international movements by enacting the Law of the Child Act in 2009, the Act fails to address corporal punishment against children.

6 Human Rights Watch (note 39 above).  
7 Ibid.  
8 Article 28 CRC  
9 Article 9 CURT.  
10 Section 3 of the Law of The Child Act No 21 of 2009.  
11 Section 13 ibid.  
12 Ibid.  
13 4 November 2013, CRC/C/TZA/3-5, third fifth state party report, para 87.  
14 The Law of the Child Act 2009 No 21 of 2009.  
15 Section 13 of the Law of the Child Act No 21 of 2009.  
16 4 November 2013, CRC/C/TZA/3-5, third fifth state party report, para. 87.

According to the Universal Periodic Report, the Tanzanian government has refused to abolish corporal punishment by asserting that "corporal punishment does not apply in the education system" but, where caning does occur, it is administered as "a legitimate and acceptable form of punishment [that is not intended to be] violent, abusive or degrading".<sup>17</sup> There is no doubt that, teachers, government officials and politicians, use section 13 of the Law of the Child Act to justify corporal punishment in schools based on the adage that 'if you spare the rod you spoil the child'.<sup>18</sup>

As if the above is not enough, some of the government leaders and other political figures openly seems to support corporal punishment and argue that caning is an incentive to make students learn.<sup>19</sup> For example, on one occasion a political leader repeatedly encouraged corporal punishment in schools.<sup>20</sup> In 2013, the then Deputy Minister of Education and Vocational Training, Philipo Mulugo, publicly linked the absence of corporal punishment to the decline of discipline in schools.<sup>21</sup> Similarly, in March 2016 President John Magufuli attributed his success to the beatings he received in class: "I am wondering why they want to stop caning in schools," he said. "I was also caned and that's why I am standing here today."<sup>22</sup>

At this juncture, one may be in a position to argue that, the statements by the government leaders and politicians render the use of corporal punishment in schools a routine and state-sanctioned part of many students' everyday reality in Tanzania. It is for this reason that physical forms of abuse are alarmingly high in Tanzanian schools as teachers frequently use this loophole to abuse students' rights.<sup>23</sup>

Thus, more incidences have been reported

17 Universal Periodic Review 2011.  
18 Human Right Watch (note 39 above)  
19 Human Rights Watch *In Tanzania, sparing the Rod — and the child — to improve learning* (March 12, 2017) available at <https://www.hrw.org/news/2017/03/.../tanzania-sparing-rod-and-child-improve-learn>. (accessed on 24 November 2017).  
20 Ibid.  
21 Ibid.  
22 Ibid.  
23 The African Child Policy Forum "The African report on violence against children" 2014, p 21.

which exposed widespread use of corporal punishment that exceeded even the legal limit of the government's current regulations.<sup>24</sup> A shocking incident of the violation of a student's right to dignity and privacy occurred in October 2016.<sup>25</sup> A video clip of this incident went viral on the internet all over the country and internationally.<sup>26</sup> The visuals show a group of teacher trainees in Mbeya Day Secondary School brutally beating a student on the head, kicking him and throwing him on the floor.<sup>27</sup> This was his 'punishment' for reportedly not doing his homework.<sup>28</sup> The trainees were suspended and the school's head teacher was demoted.<sup>29</sup> However, a study by the African Child Policy Forum indicated that the Mbeya incident was not an isolated one.<sup>30</sup> Accusations were also made that authorities did not act when teachers abused students.<sup>31</sup> The video recording caused outrage and drew public condemnation and annoyance.<sup>32</sup>

Sadly, incidences of the abuse of students continue to happen in schools. Another example is the very recent incident in which a student died after being beaten and detained in a school store room for more than two hours. The headline in the local newspaper read: 'Mwanafunzi afungiwa stoo na Mwalimu Mkuu apoteza maisha',<sup>33</sup> (meaning 'Student found dead after being detained in a store room').<sup>34</sup> Although regulation 3 of the National Education Corporal Punishment Regulation requires the assessment of factors such as the age and health status of the offender before the administration of punishment, it seems that such factors are not even considered by some teachers. Clearly, some teachers are not ready to listen to their students. Rather, they punish them physically and emotionally without consideration of the consequences. The

24 Ibid.  
25 BBC News *Tanzania outrage as teachers filmed beating pupil* (6 October 2016). Available at <http://www.bbc.com/news/world-africa-37575191>. (Accessed on 24 November 2017).  
26 Ibid.  
27 Ibid.  
28 Ibid.  
29 Ibid.  
30 Human Rights Watch (note 98 above).  
31 Ibid.  
32 Ibid.  
33 Mwanafunzi afungiwa stoo na Mwalimu Mkuu apoteza maisha Mbeya (9 May 2017) available at <http://www.eatv.tv/news/current-affairs/mwanafunzi-afungiwa-stoo-apoteza-maisha-mbeya> (Accessed on 20 November 2017).  
34 Ibid.

Covenant on Civil and Political Rights (ICCPR), GA Res 2200A (XXI), 21 UN GAOR Supp (No. 16), at 52, UN Doc A/6316 (1966), 999 UNTS 171.  
1 Articles 3 and 10 on human dignity which respectively affirm women's right to non-discrimination in education.  
2 UN Convention on the Right of Persons with Disabilities (CRPD).  
3 Article 29 UNESCO.  
4 Tshbangu *Education and violence: Schools' micro and macro politics in Zimbabwe*, Educational Research and Review 2008 Vol 3, pp 219-228.  
5 Article 19 of the Convention of the Right of the Child.

student referred to above was reportedly sick before and during the detention.<sup>1</sup> However, the head teacher allegedly did not allow the student the right of expression.<sup>2</sup> Instead, the teacher insisted on punishing him with the result that he died.<sup>3</sup> It has to be understood that freedom of expression is amongst the rights that are expressed in the Bill of Rights.<sup>4</sup> Therefore, locking up the student in solitary confinement without giving him/her the right of expression was a travesty of this student's rights. Before engaging in any form of punishment or disciplinary action, one has a right to be given a chance to be heard, and this is a fundamental principle of human rights.

Therefore, the above discussion suggests that more is happening in schools than meets the eye. Numerous reports of the violation of students' rights have been received, yet there is no mechanism or forum to address these abuses and therefore many students face the dilemma of abuse.<sup>5</sup> For example, if the video of the Mbeya incident had not gone viral on social media, the incident would have remained unreported. A report by UNICEF showed that students are scared of reporting incidents of abuse because they did not know how, and they also did not trust that their concerns would be addressed.<sup>6</sup> The students were also afraid that if they reported an incident of abuse, they would be held responsible or the teachers would take revenge on them.<sup>7</sup> This comes as many schools in Tanzania have no confidential reporting mechanisms and there are no qualified staff members who are sufficiently trained to address allegations of abuse and counsel students.<sup>8</sup>

Moreover, according to Human Rights Watch, students are caned or beaten without reasonable cause, for example for being late for school.<sup>9</sup> This abuse reportedly often happened when students were late after having walked long distances to get to school, were unable to answer a question correctly, failed an exam,

or did not complete an assignment.<sup>10</sup> However, caning a student after failing an exam is also abusive and unfair and is against the CRC which is addressing the protection of children from violence and authoritatively prohibits the practice of corporal punishment in schools.<sup>11</sup> Article 19(1) requires states to take: all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

Further, the question of gender-based discrimination is also alarming in the due process of administering corporal punishment. While article 2 of CEDAW clearly requires that education must be provided without discrimination on any grounds, yet girl students are reportedly exposed to acts that cause humiliation and emotional trauma,<sup>12</sup> particularly as some female teachers are in the habit of hitting them on the breasts.<sup>13</sup> Moreover, girls suffer additional indignity when they are beaten during menstruation, which reportedly also occurs regularly.<sup>14</sup> Shockingly, it has been reported that teachers in various schools in Tanzania use sticks to punish girls on the buttocks and back, and sometimes they are told to bend forward so that the buttocks may be more easily reached for caning.<sup>15</sup> In such a posture the humiliation is worse as the sanitary towel (pad) may be loosened by beating and the bleeding may stain the girl's clothes.<sup>16</sup> It is unquestionable that compared to boy students, girl students face a lot of challenges in school, including sexual abuse and harassment by teachers who do so with impunity.<sup>17</sup> Acts of violence against female students have reached unprecedented levels and harassment and abuse against them is alarming in the highest degree.<sup>17</sup>

Be that as it may, any form of punishment which is against fairness is a violation of the basic human right and is against international law which requires a learning environment that is respectful of students' circumstances and needs.<sup>18</sup> In light of the above, the author is concerned about the way in which many teachers deal with girls as a specific group of students. It is important to note that female students need special handling even when they are punished, as mistreating them is a serious infringement of their right to human dignity as provided under the following international conventions which Tanzania is a signatory. Article 17 of CEDAW and Article 2 of the Convention on the Rights of the Child (CRC)<sup>19</sup> which set the standard of all rights for all children "without discrimination of any kind," including discrimination on the ground of the sex of the child or the child's parents or legal guardians, within a wide range of other forms of discrimination.

However, this article argues that, although teachers attend courses on for example child and behavioural management, it appears that some cannot apply the knowledge and insights they gained from such courses.<sup>20</sup> It must be understood that teachers are in school to impart knowledge to students and to help them to understand and own subject matter and knowledge. Students are there to meet these expectations, and therefore teachers must at all times execute their duties professionally and with the necessary compassion and care while observing human rights. They must understand that they are not in schools to cause sorrow or physical and psychological pain to students.<sup>21</sup> They practically need to adhere to what is provided in the international conventions. However, there is an urgent need to include courses on human rights in all teacher training courses at colleges and universities.

It is important to note that acts of violence against students are totally unfair and unacceptable, especially when they are committed by teachers who are the custodians of students' security and safety. In the light of reports such as those that were presented here, this article is unstinting in its argument that corporal punishment also violates the right to privacy and dignity as provided for in the Constitution.<sup>22</sup> Also, the CURT provides that every student has the right not to be treated or punished in a cruel, inhuman or degrading manner.<sup>23</sup>

In the school context, punishment is considered to be unfair and unreasonable if it is excessively and negligently administered, if it results in physical or psychological injury, if it is not proportional to the offence, if there is no sufficient cause for punishment, and if it does not suit the age of the learner.<sup>24</sup> It is therefore argued that corporal punishment fits into each of these categories as it is not only a form of torture, but it also affects a child's mental, physical and emotional health. Moreover, corporal punishment negatively impacts a child's ability to learn as well as its behavioural development, and it can therefore lead to a child dropping out of school untimely. Inarguably, inflicting physical pain on students as a form of controlling or correcting behaviour is no longer acceptable, and alternative ways of rectifying behaviour should be devised for the purpose of preserving human dignity.

It is the intention of this article to draw the attention that, unlike the National Education Act of 1978 and the Law of the Child Act of 2009, the government should stand firm and prohibit corporal punishment.

Like the way it has prohibited it in other laws such as the Law of Marriage Act of 1971 which explicitly prohibits the administration of corporal punishment between adults<sup>25</sup> in the following provision: "For the avoidance

1 Ibid.  
2 Ibid.  
3 Ibid.  
4 CURT Part III Chapter I.  
5 Ibid.  
6 Human Rights Watch (note 98 above).  
7 Ibid.  
8 Ibid.  
9 Ibid.

10 Ibid.  
11 Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (1989)  
12 Human Rights Watch (note 98 above).  
13 Ibid.  
14 Ibid.  
15 Ibid.  
16 Ibid.  
17 Human Rights Watch (note 98 above).

18 As provided under CRC article 28, article 19 of CEDAW, CRPD.  
19 1989.  
20 RW Cole *Educating Everybody's Children: We Know What Works – And What Doesn't* (2008). Available at [www.ascd.org/.../Educating-Everybody's-Children@-We-Know-What-Works-And-...](http://www.ascd.org/.../Educating-Everybody's-Children@-We-Know-What-Works-And-...) (accessed on 12 January 2018).  
21 Tshbangu *Education and violence: Schools' micro and macro politics in Zimbabwe Educational*, Research and Review 2008, Vol 3, pp 219-228.

22 Article 16 of CURT.  
23 Example article 13 (e) which prohibit forms of torture and degrading inhuman.  
24 Stelzer L *Teachers have Rights, Too. What educators Should know about School Law* (1980). Available at [files.eric.ed.gov/fulltext/ED199144.pdf](http://files.eric.ed.gov/fulltext/ED199144.pdf). (Accessed on 12 January 2018).  
25 Section 66 of the Law of Marriage Act No. 5 of 1971, Cap 29, R.E. of 2002.

of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.”<sup>1</sup> In this context, it makes no sense that corporal punishment is still allowed in schools. Thus, Maurer argued that the right to be free from violence is one of the basic human rights afforded to adults and is a right child should be granted.<sup>2</sup> As well Graziano stated that if we are legally prohibited from striking other adults, why it is okay to strike a child?<sup>3</sup> In this regards, one might argue that children and adults are different, however in humanitarian ground all people are human being regardless of the age and therefore their rights must be preserved. Clearly, because the government is adamant in its prohibition of corporal punishment between spouses, it follows that corporal punishment should be abolished at all levels of schooling as well. This step will value and recognise the rights of the child as enshrined in the CRC and in the Bill of Rights of the CURT<sup>4</sup> and will also affirm the democratic values of human dignity, equality and freedom. Continuing to uphold corporal punishment in schools is an unmitigated violation of the human rights of young people and our young generation.

Apart from the above, the government have managed to prohibit corporal punishment by the Foster Care Placement Regulations of 2012. According to these regulations, foster parents are forbidden to administer corporal punishment to punish the children in their care<sup>5</sup> and they provide that the responsibilities of foster parents include “guiding the behaviour of the child in a humane manner, promoting positive discipline, and not imposing corporal punishment or any form of physical violence or punishment, or humiliating or degrading forms of discipline [on the children].”<sup>6</sup>

This article therefore argues that it is a

travesty to have such double standards in one country where on the one hand corporal punishment is totally prohibited, while on the other hand it is permissible in schools starting from kindergarten to primary and secondary school level. It is indeed a travesty of human rights that corporal punishment is legalised under the guise of “justifiable correction”.<sup>7</sup> However, it is instructive to note that, under international law, an infringement of right to equality arises where equal cases are treated differently, particularly where there is no point and sound justification for that differential treatment or no proportionality between the intend meaning and the means engaged.<sup>8</sup>

It has to be understood that human rights are fundamentally built on human dignity. Teachers must make sure that disciplinary measures in schools are administered without infringing on human rights. Humiliating students by administering corporal punishment is not only unacceptable, but it is against the law as provided for under Article 13 (2) of CURT that, “no law enacted by any authority in the united republic shall make any provision that is discriminatory either of itself or in its effect” and also the Universal Declaration of Human Rights of 1948 (UDHR) and all other similar international conventions that were ratified by Tanzania.<sup>9</sup> More is that, human dignity flows from compassion, kindness and respect, which are at the very core of making schools the places where the culture of teaching and learning thrive.

## 6. Conclusion

Corporal punishment is a destructive form of discipline that is ineffective in producing educational environments in which students can thrive. Although corporal punishment is recognised under the law, it is high time to understand that this form of punishment is against the human rights instruments. Therefore, rather than relying on harsh provision under the National Education Act and its Regulation, State, Schools and teachers

should join hand together and encourage the need to develop positive behavior supports (PBS), in other words, alternative means of punishment which can be proven effective in reducing the need for harsh punishment. In so doing, the stakeholders should bear in mind that schools are places of knowledge where everyone wishes to be, so it should not be a place of horror and violence. Also, the schools’ rules must therefore protect and promote human rights by ensuring that all students at school feel secure within a friendly learning environment. Punishment must not humiliate and provoke anger. It must be constructive so as to motivate students socially as far as good behaviour is concerned today and in the future. But also, it is a high time, for the government to take measures to totally abolish corporal punishment and preventing teacher-on-student violence and abuse of human rights. Such measures will not only ensure that Tanzania is in compliance with its regional and international human rights obligations, but it will also facilitate an environment in which students can learn and thrive without the threat of physical and emotional harm.

At last, this article takes its position and declares that corporal punishment is against international human rights Conventions and it also contravenes with the Bill of Rights under the CURT. In light of the many misdemeanours in this regard, this article proposes that government should totally abolishes corporal punishment in all schools and at all levels in Tanzania.

The Tanzanian government should thus enact laws and regulations which totally abolish corporal punishment at all education levels, be it in private or public schools. There is a need to eradicate corporal punishment from policy and practice and to repeal all laws authorising corporal punishment, with specific reference to the Education (Corporal Punishment) Regulation of 1979 under the National Education Act of 1978. Revised laws, regulations and policy need to be implemented in order to promote positive discipline in schools. Also, there is a need to review teacher training curricula in all the universities and teacher training

colleges to include information on effective alternative, nonviolent discipline strategies. The introduction of human rights awareness courses for teachers in training in all colleges and universities is a matter of importance. Change is sometimes associated with the need of an individual to adjust himself or herself to adhere to desirable behaviour. It must be borne in mind that the more severe punishment is to maintain discipline among students. More often, such students have grades that are well below average and they are the most likely students to be involved in gangs.<sup>10</sup>

That, for students to develop desired behaviours, a number of techniques needs to be applied. Such techniques include guidance, counselling, and giving directives.<sup>11</sup> Legal provisions must be formulated in such a way that they adhere to the basic principle of human rights, and those who are subject to these laws should know exactly what their responsibilities, rights and duties are.

1 Ibid.

2 Maurer, A., (note 37 above).

3 Graziano., Normative Support for Corporal punishment : Attitude, correlates and Implication: University of South Carolina Press (1990).

4 CURT 1977.

5 Section 11 of the Foster Care Placement Regulations 2012.

6 Section 11(1)(f) ibid.

7 Section 13 of the Law of the Child Act No 21 of 2009.

8 BD Patterson *The Jurisprudence of Discrimination as Opposed to Simple Inequality in the International Civil Services*, Georgia Journal of International Comparative Law 2007, Vol 1, No 36 p 6.

9 Ibid.

10 J Invocavity (note 4 above).

11 Ibid.