

Legisprudential and human rights inconsistency of the law regulating school corporal punishment in Tanzania

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Summary: *For many years, the administration of corporal punishment in schools has generated considerable debate in Tanzania and beyond. The debates hinge on the questions of whether or not corporal punishment in school should be abolished and, if maintained, how the punishment should be administered. Both questions are pertinent and attract different reactions depending on one's ideology. In an attempt to strike a balance between maintaining the punishment and regulating its proper administration to avoid the likely negative effects, Tanzania in 2002 introduced the Education (Corporal Punishment) Regulations, 2002 under the Education Act. The overall purpose behind the legislation is to control and regulate the administration of corporal punishment in schools. In spite of its desired positive results, the implementation of this law has caused practical difficulties. Led by principles and theories guiding legislation of subsidiary legislation, penal statutes and human rights standards, this article challenges the Corporal Punishment Regulations for being vague, contradictory, overbroad and, therefore, unenforceable. Besides, the study reveals that the Regulations are generally inconsistent with national and international human rights standards protecting the rights of children and are in conflict with established court interpretations.*

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Thus, the study recommends amendments to the Regulations to address the identified gaps, or to outlaw corporal punishment from the statutory books.

Key words: *legisprudence; legislative gaps; corporal punishment; school pupils; human rights; Tanzania*

1 Introduction

More often than not, the laws regulating corporal punishment in schools and beyond are studied with reference to their tenability in the modern world. That is to say, most existing studies focus more on the adverse effects of corporal punishment laws and policies on students' welfare than on their effectiveness in achieving their intended objectives. Being a legisprudential¹ and human right study, this article seeks to explore the underlying legislative and human rights inconsistencies of the law regulating the administration of corporal punishment in schools in Tanzania.

Since corporal punishment attracts divergent ideologies and conceptualisation, there is no all-embracing universally accepted definition. However, in the context of the school, the term is generally used to mean the use of physical force with the intention of causing a child to experience pain so as to punish or correct their behaviour.² The Corporal Punishment Act defines corporal punishment, in the case of a juvenile, to entail caning.³ This law regulates the infliction of corporal punishment to children in conflict with the law outside the school context. The Regulations made under the Education Act define corporal punishment to mean 'striking a pupil on his hand or on his normally clothed buttocks with a light, flexible stick but excludes striking a child with any other instrument or on any other part of the body'.⁴

Corporal punishment is often justified on the basis that it helps shape pupils' behaviour and constitutes an essential aspect of child rearing.⁵ This argument finds backup in historical religious

1 A practical study into rationality of legislation or a jurisprudential inquiry into legislation; see, generally, LJ Wintgens *Legisprudence: Practical reason in legislation* (2012).

2 ET Gershoff, KM Purtell & I Holas *Corporal punishment in US public schools: Legal precedents, current practices, and future policy* (2015) 2.

3 Corporal Punishment Act, Cap 17 RE 2023 sec 2.

4 Education (Corporal Punishment) Regulations, 2002 Reg 2.

5 R Sungwa, L Jackson & J Kahembe *Corporal punishment in preschool and at home in Tanzania: A children's rights challenge* (2022) 3.

flagellation,⁶ moral and pedagogical justifications.⁷ However, as Gershoff and others contend, there is no substantial evidence linking corporal punishment and positive behavioural change, on the one hand, and the increase in juvenile delinquency consequent to the abolition of corporal punishment, on the other.⁸ Conversely, corporal punishment in schools has been linked to poor academic performance, school drop-out, and both physical and psychological harm.⁹ The negative impact of beatings and severe punishments in schools is also a concern of the National Education and Training Policy.¹⁰

In this article, the term ‘legislative inefficiency or inconsistency’ is employed to denote the failure in purpose of the legislation at its inception or implementation stage. Although many legislative failures become noticeable at the implementation stage and are levelled against administrative incapacities, poor drafting is among the significant contributing factors. While I subscribe to the view that it is not always possible to attain perfection in legislative drafting,¹¹ it is equally important to strive to avoid serious drafting mistakes, especially in penal legislations. Barnhizer suggests that a law may fail at its inception stage for several reasons, including the omission of factors essential to its effectiveness, as well as being drafted in overly broad, overly narrow, or ambiguous terms.¹² Against this backdrop, the article offers a brief background to corporal punishment regulation in Tanzanian schools (part 2), the overview, purpose and mandate of the Education (Corporal Punishment) Regulations, 2002 (part 3), followed by an evidence-based analysis of drafting inefficiencies and human rights inconsistency of the Tanzanian Education (Corporal Punishment) Regulations.

6 P Lenta *Corporal punishment: A philosophical assessment* (2018) 171.

7 BJ Saunders & C Goddard *Physical punishment in childhood: The rights of the child* (2010) 165-167.

8 Gershoff and others (n 2) v.

9 ET Gershoff ‘School corporal punishment in global perspective: Prevalence, outcomes, and efforts at intervention’ (2017) 22 *Psychology, Health & Medicine* 224, 231-233.

10 United Republic of Tanzania Ministry of Education, Science and Technology ‘Education and training policy 2014’ (2023) 58 para 3.8.

11 VCRAC Crabbe ‘The ethics of legislative drafting’ in AZ Borda (ed) *Legislative drafting* (2011) 3.

12 D Barnhizer ‘The implementation gap: What causes laws to succeed or fail?’ (2013) 5-6, https://csuohio.elsevierpure.com/en/publications/the-implementation-gap-what-causes-laws-to-succeed-or-fail/?utm_source=chatgpt.com (accessed 30 May 2026).

2 Background to school corporal punishment regulation in Tanzania

Corporal punishment in schools is neither a new phenomenon in world history, nor is it peculiar to Tanzania. Corporal punishment in schools existed and was advocated by education philosophers since ancient Greece.¹³ Corporal punishment was considered morally acceptable and a necessary tool for learning. For instance, Plato considered corporal punishment an indispensable element of moral education.¹⁴ To St Augustine, corporal punishment of children was to be employed to overcome ignorance.¹⁵

In pre-colonial Africa, little is documented on the use of corporal punishment in teaching children despite being perceived as culturally grounded and justified.¹⁶ However, the use of corporal punishment both in schools and as penal sentences was intensified by the colonial regimes.¹⁷ Arguing on the factors behind promotion of corporal punishment during colonial times, Mbikyo argues:¹⁸

During the colonial era, Africans who refused to pay taxes or who did not obey were caned in public. Caning was a symbol of authority since an African lawbreaker was canned by the colonizers. So, parents and teachers have to play similar role because without corporal punishment, the school would descend into chaos, children would become more unruly by the time they reach high school.

Unlike the British, the Germans favoured corporal punishment against the 'natives' as an effective means of compelling compliance in all their activities. In April 1896, following the growing criticisms against the German brutal colonial administration, the Colonial Department in Berlin issued a circular that excluded Arabs, Indians and females of all ages and children under the age of 16 years from corporal punishment.¹⁹ During the British rule over the area that now constitutes Tanzania, spanning the period from 1920,²⁰ to independence in 1961, corporal punishment (for both adults and

13 Gershoff and others (n 2) 61.

14 RF Stalley 'Punishment in Plato's Protagoras' (1995) 40 *Phronesis* 1, 13; also see Lenta (n 6) 3.

15 Lenta (n 6) 3.

16 Sungwa and others (n 5) 4, 77; SE Duff *Children and youth in African history* (2022) 173.

17 C Chege, JM Bustrum & TM Caddell 'Spoil the rod and spare the child: Examining the colonial and missionary implications of corporal punishment in contemporary Kenya' (2022) 4 *African Journal of Clinical Psychology* 1, 4-5.

18 DM Mbikyo 'Views and controversies on physical punishments in education' (2012) 1 *Rwandan Journal of Education* 30, 33.

19 GO Ekemode 'German rule in North-East Tanzania 1885-1914' PhD thesis, University of London, 1973 1, 224.

20 British administration over Tanganyika was officially established by the Tanganyika Order in Council of 22 July 1920.

juveniles) took a new shape through the imposition, in 1930, of the Corporal Punishment Ordinance²¹ and the Corporal Punishment Order.²² According to the Corporal Punishment Order, corporal punishment was inflicted on juveniles on the bare buttocks and with a rattan cane that is free from knots and is of a lighter type than that used on adults.²³ Further, the law described the nature of the cane and manner of administering corporal punishment. Corporal punishment against criminal offenders was also permitted under the colonial Penal Code.²⁴ Aimed at promoting the colonial legacy and instilling obedience to colonial teachers and the missionaries, corporal punishment was institutionalised in colonial schools.²⁵ Further, during the colonial era, corporal punishment was also used in schools to discipline breaches of school rules, which were largely discriminatory against the native population.

Save for the corporal punishment laws passed in the context of the criminal justice system,²⁶ it was not until 1978 that independent Tanzania enacted the Education Act,²⁷ which entered into force on 1 July 1979. Under section 61(o), the Act authorises the Minister responsible for education to make regulations to provide for and control the administration of corporal punishment in schools. To that end, the Education (Corporal Punishment) Regulations of 1979 were enacted. The Regulations were subsequently amended in 2000, and again in 2002.

3 Overview, purpose and mandate of the Education (Corporal Punishment) Regulations, 2002

Subsidiary legislation denotes the process under which the legislative role is delegated to the executive for purposes of supplementing details to an Act of Parliament. Parliament delegates legislative powers due to limited parliamentary time, the technical nature of the subject matter, and the practical difficulty of drafting detailed legislation. Crabbe states that it is 'the power conferred by Parliament on subordinate authorities to put flesh and blood on the skeleton of an Act of Parliament'.²⁸

21 Corporal Punishment Ordinance 14 of 1930.

22 Government Notice 74 of 1930 (Corporal Punishment Order).

23 Corporal Punishment Order (n 22) sec 3.

24 28 of 1945 (the current revised Penal Code Cap 16).

25 Sungwa and others (n 5) 38.

26 Corporal Punishment Act 55 of 1963 and Minimum Sentences Act 29 of 1963 (which was repealed and replaced by the Minimum Sentences Act 1 of 1972) to mention a few.

27 Act 25 of 1978.

28 VCRAC Crabbe *Legislative drafting* (1994) 214.

In the same spirit, article 97(5) of the Constitution of Tanzania²⁹ empowers Parliament to confer on any person or department of government the power to make regulations having the force of law. Conferment of parliamentary powers is usually made via the enabling law, for instance, section 61(o) of the Education Act. Thus, the validity of a subsidiary legislation depends on some other legislation. In 1932, the Report of the Committee on Ministers' Powers (commonly known as the Donoughmore Report) listed regulations, rules and orders to constitute subsidiary legislation. In almost the same way, section 4 of the Interpretation of Laws Act defines 'subsidiary legislation' to mean any order, proclamation, rule, regulations, notice, by-law or instrument made under any Act or other lawful authority.

Thus, being a subsidiary legislation, these Regulations were enacted in 1979 to give effect to section 61(o) of the Education Act. Since then, the Regulations were subjected to a series of amendments due to internal and external pressure. For instance, the 2000 amendments reduced the number of strokes from six to four and restricted the authority to administer corporal punishment in schools to the head of the school. The current Regulations, dated 2002, revoked the 2000 version.³⁰ The spirit of the Regulations, as stated in the enabling provision, is 'to provide for and control administration of corporal punishment in schools'. Emulating the position under the 1930 colonial law, the Regulations aim to regulate the manner in which corporal punishment should be administered in schools for curbing indiscipline and maintain school order and reputation.³¹

According to the Regulations, corporal punishment should be administered for serious breaches of school discipline or for grave offences committed inside or outside the school that are considered to bring the school into disrepute.³² Further, in the course of administering corporal punishment, attention should be given to the gravity of the offence committed, and the age, sex and health condition of the pupils.³³ The Regulations mandate the school head to administer corporal punishment or to carefully select, delegate and authorise a member of the teaching staff to exercise that authority.³⁴ A female pupil may only receive corporal punishment from a male

29 Constitution of the United Republic of Tanzania, 1977 (as amended).

30 Education (Corporal Punishment) Regulations GN 421 of 2000.

31 Sungwa and others (n 5) 41-42.

32 Corporal Punishment Regulations (n 4) Reg 3(1).

33 Corporal Punishment Regulations (n 4) Reg 3(2).

34 Corporal Punishment Regulations (n 4) Reg 4(1).

teacher where there is no female teacher at the school, in which case the school head or his delegate may administer the punishment.³⁵

In addition, the Regulations require schools to keep records in writing of the name of the pupil, the offence or breach of discipline, the number of strokes and the name of the teacher who administered the punishment on every occasion where corporal punishment is administered.³⁶ The refusal to accept corporal punishment by a pupil or a parent on a pupil's behalf may lead to the exclusion of the pupil from the school,³⁷ and any violation of the Regulations can attract disciplinary action against the head of school or school authority.³⁸

4 Legisprudential inconsistencies of the Education (Corporal Punishment) Regulations, 2002

It is acknowledged that attaining perfection in the legislative process is challenging. As Kennedy argues, success in drafting legislation is assessed by the extent to which the drafter comes close to achieving it.³⁹ On this account, the role of the court in refining the law through interpretation becomes necessary. Commenting on the impossibility of complete fulfilment of the drafter's task and the duty of a draftsman to try avoid ambiguity, Driedger contended that '[t]he perfect bill has never been written, and never will be. The most a draftsman can do is try to reduce doubt, ambiguity and foreseeable problems to a workable minimum, and his success will depend upon the extent to which he achieves this end.'⁴⁰

In spite of the foregoing, the Education (Corporal Punishment) Regulations, 2002 ought to conform to the legislative principles and theories guiding the drafting of penal and subsidiary legislation. The quality of legislation is measured, among others, by its effectiveness in achieving the desired results. This takes into account the clarity and precision of legislative communication, sound enforcement mechanisms, adherence to principles of statutory interpretation and the rule of law. Therefore, the legislative competence of these Regulations is tested against a myriad of criteria. Likewise, since corporal punishment is penal in nature, the Regulations should

35 Corporal Punishment Regulations (n 4) Reg 4(2).

36 Corporal Punishment Regulations (n 4) Reg 5(1).

37 Corporal Punishment Regulations (n 4) Reg 6.

38 Corporal Punishment Regulations (n 4) Reg 7.

39 DL Kennedy *Bill drafting* (1958) 37.

40 EA Driedger 'The preparation of legislation' (1953) 31 *Canadian Bar Review* 33, 41.

not be inconsistent with specific principles guiding legislation and application of criminal statutes.

4.1 Lack of specific detail

Being subsidiary legislation, the purpose behind its enactment was to provide a great deal of detailed 'specifics' of how corporal punishment in schools is to be administered.⁴¹ To put it more clearly, McLeod is of the view that subordinate legislation addresses broad areas of law that require substantial detail to make general principles workable.⁴² The office of the Attorney-General in Tanzania in its Drafting Guide emphasises the need for drafters of subsidiary legislation to supply details since that is one of the reasons for Parliament to delegate legislative powers to executive organs.⁴³

Cognisant of this importance, the enabling law (the Education Act) empowers the minister responsible for education to make regulations to, among other purposes, provide for and control the administration of corporal punishment in schools.⁴⁴ The law further reiterates that the overall purpose behind regulations is for *the better carrying out of the provisions and objects of the principal legislation*.⁴⁵ This objective clause is fundamentally defeated.

The Regulations fall short of the expected specifics in some of its provisions. For instance, one would have expected the Regulations to provide procedural details on how the health condition of a pupil is to be determined before the infliction of corporal punishment. Even the colonial laws required the presence of a medical doctor to certify that the offender was in good physical condition before the administration of corporal punishment.⁴⁶ Since verification of the pupil's health status is among the conditions precedent the infliction of corporal punishment under the Regulations, details on the means to achieve this are imperative. This lacuna in the Regulations suggests the use of non-medical tests in determining the health condition of the pupil. In turn, the practice can be injurious to pupils and defeats one of the distinctive functions of law – to direct human action through a particular method or toward a specific end.⁴⁷ Thus, the

41 The 'Legislative drafting manual' emphasises that subsidiary legislation is meant to accommodate procedural issues. See United Republic of Tanzania, Office of the Attorney-General 'Legislative drafting manual' (2023) 24.

42 I McLeod *Principles of legislative and regulatory drafting* (2009) 159.

43 'Legislative drafting manual' (n 41) 59.

44 Education Act, Cap 353 RE 2023 sec 63(o).

45 Education Act (n 44) sec 63.

46 Ekemode (n 19) 224.

47 J Crowe *Natural law and the nature of law* (2019) 180.

failure by the drafters to provide the means to achieve the intended end renders the law deficient against this standard and, in effect, ineffective.

Further, the lack of specifics in these Regulations is witnessed by the absence of substantive and procedural contents to achieve the intended regulatory purposes. For example, it is provided under Regulation 2 that corporal punishment will be inflicted on a pupil using 'a light flexible stick'. This information is not sufficient to describe the nature of the stick to be used. Instead, the lightness and flexibility of the stick are left to be determined by teachers using, what Terance called, imagination and standards of human decency. The risk is that individuals are likely to interpret 'common sense' differently, as it is not universally shared. In an attempt to address this risk, the 1972 Education (School Discipline) Regulations of Kenya,⁴⁸ before they were revoked in 2015 following the abolition of corporal punishment in the country, categorically stipulated that only a cane or smooth light switch or a strap not less than one and a half inches in diameter may be used.⁴⁹

Tanzania has witnessed incidences where the caning of school pupils caused extreme injuries, physical disability and even death.⁵⁰ It may be difficult to believe that such severe injuries and deaths were caused by light, flexible sticks. This belief is supported by the records in the case of *Republic v Respicius Patrick & Another*,⁵¹ where a renowned pathologist from a Bugando referral hospital testified in his post-mortem report that the cause of the deceased's death was neurogenic shock due to blunt force impact. By any standard, a light, flexible stick cannot be regarded as a blunt object. It is therefore possible that the stick used by teacher Respicius Patrick to punish the deceased pupil did not fall within the descriptions provided in the Regulations.

4.2 Overbroad provisions

The function of law is to mark the boundaries of permissible social conduct.⁵² Leaving wider provisions may lead to multiple

48 Education (School Discipline) Regulations, 1972 LN 40 of 1972.

49 School Discipline Regulations (n 48) Reg 13.

50 Eg, see *Republic v Lenard Joseph Mnungu* Criminal Session Case 21 of 2004 (High Court of Tanzania, Mtwara Registry) (*Mnungu*); *Selina Rutabingwa v Republic* Original Criminal Case 807 of 1975, Court of Appeal of Tanzania, Dar es Salaam (*Rutabingwa*); *Republic v Respicius Patrick & Another* Criminal Case 56 of 2018 (High Court at Bukoba) (*Respicius Patrick*); and *Leonard Ngarya v Republic* Criminal Appeal 102 of 2021 (HC Dodoma Registry) (*Ngarya*).

51 *Respicius Patrick* (n 50).

52 Crowe (n 47) 174.

interpretations and abuse. While it is generally acceptable that the law should be comprehensive (detailed), drafters are also expected to maintain clarity and precision. Overbroad provisions may lead to vagueness, different interpretations and inconsistent application. The Regulations contain a number of provisions that are overbroad and unclear. For instance, Regulation 3(1) states that '[c]orporal 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'.⁵³

The cited Regulation neither defines what amounts to 'serious breaches of school discipline' nor lists 'grave offences' for the purpose of corporal punishment. All these are left to be defined and deemed so by the school authority. Two major implications are likely to result: first, a lack of consistency because there is no universal code of school indiscipline for the purpose of corporal punishment across the country or within a particular district council. An act deemed to be serious indiscipline or grave offence for purposes of corporal punishment to one school may not be classified so to other schools. This defeats the condition of legislating penal law and the rule of law that emphasises predictability of punishment versus the offence committed.⁵⁴ It is also the position of the court that overly broad provision in the legislation leads to vagueness and legal uncertainty.⁵⁵ Similarly, the Court of Appeal of Tanzania in *Attorney-General v Geremia Mtobesya*⁵⁶ remarked that the law must not be drafted too widely to easily give way to an abuse of the powers conferred by it.⁵⁷

Another intriguing aspect of the provision is the improper authority to determine serious breaches of school discipline and grave offences punishable by corporal punishment. According to the provision, such powers are vested in the school authority.⁵⁸ This triggers the need to probe the nature of the referred school authority. Regulation 2 defines 'school authority' to mean all teachers excluding other members of staff. The Regulations are silent on the quorum of teachers to constitute school authority. Thus, it is unclear whether the term 'school authority' refers to the collective body of teachers at the school or whether each individual teacher constitutes a school authority. However, the practice confirms that every teacher, without

53 My emphasis.

54 McLeod (n 42) 1.

55 See, eg, *Tito Magoti v Attorney General*, Miscellaneous Civil Cause 18 of 2023 [2024] TZHC 1939 (8 May 2024).

56 Civil Appeal 65 of 2016.

57 *Mtobesya* (n 56) 68-69.

58 Corporal Punishment Regulations (n 4) Reg 3(1).

consulting others, can determine whether an act amounts to a serious breach of school discipline or grave offence punishable by corporal punishment.

Unlike the Corporal Punishment Regulations, the corresponding Regulations governing the expulsion or exclusion of pupils from schools⁵⁹ are clearly articulated. For instance, Regulation 4 lists the offences for which a pupil may be expelled from school to include theft, malicious injury to property, prostitution, drug abuse, offences against morality and entry into wedlock. The Regulations are equally clear regarding the authorities empowered to order the suspension, exclusion and expulsion of pupils from schools: The head of school is vested with the power to order suspension and exclusion, while the school committee or governing board is responsible for expulsion.⁶⁰

By being too general, as indicated above, the Education (Corporal Punishment) Regulations fail to adequately regulate corporal punishment in schools and are therefore susceptible to abuse. As Xanthaki observes, 'a good law is simply a law that is capable of achieving the regulatory reform that it was released to effectuate',⁶¹ and the converse is also true.

4.3 Lack of effectiveness

To achieve the legislative intent, drafters must ensure that the drafted law meets the effectiveness test. This takes on board, among other things, compliance with the Constitution and the enabling legislation, respect for the rule of law, responsiveness to societal needs, and the reduction of litigation and frequent legislative amendments.⁶² Since the desired objective behind these regulations as stated under section 61(o) of the Education Act was to provide for and control the administration of corporal punishment in schools, any failure to provide effective mechanisms for achieving these objectives renders the Regulations ineffective in practice. Given the identified number of deficiencies, it cannot reasonably be contended that these Regulations can be smoothly implemented without recourse to judicial interpretation.

59 Education (Expulsion and Exclusion of Pupils from Schools) Regulations GN 295 of 2002.

60 Expulsion and Exclusion Regulations (n 59) Regs 3, 5 & 7.

61 H Xanthaki 'Misconceptions in legislative quality: An enlightened approach to the drafting of legislation' in AD Oliver-Lalana (ed) *Conceptions and misconceptions of legislation* (2019) 33.

62 'Legislative drafting manual' (n 41) vi-vii.

Similarly, effectiveness is lacking at the level of compliance by the implementing authorities. For instance, while the Regulations plainly state that a student can only receive four strokes on any occasion, strict adherence and monitoring of compliance are challenging. As noted earlier in *Republic v Respicius Patrick & Another*, the evidence tendered before the Court suggested that the deceased student was repeatedly flogged to death. Smooth implementation of these regulations would require, for instance, effective systems to determine the manner in which corporal punishment is administered, having regard to the age, health condition and severity of the misconduct committed. In *Republic v Lenard Joseph Mnungu*,⁶³ a student succumbed to death following extra strokes and other forms of punishment that were concurrently administered by a teacher without due regard to the health condition of the student.

4.4 Inconsistent with criminal law principles

Drafting subsidiary legislation that also contains penal provisions requires drafters to exercise extra care.⁶⁴ This includes ensuring that the legislation observes a number of principles governing penal statutes. The first principle governing punishment is that a person shall not be punished twice for the same offence. Regulation 3(1), which imposes corporal punishment for school indiscipline or grave offences committed whether inside or outside the school, may subject a pupil to double jeopardy treatment contrary to section 21 of the Penal Code. These Regulations, being subsidiary, are not expected to derogate from the principles enshrined in the principal legislation, and in the event of derogation, such by-laws are considered *ultra vires* and void to the extent of any such inconsistency.⁶⁵

It is not uncommon for a student to be punished both at school and outside school premises (by parents or the state) for the same misconduct. It is noteworthy to say that impliedly schools punish students for misconduct on behalf of parents or the community (*in loco parentis*). The United States Supreme Court in *Mahanoy Area Sch Dist v BL* held that a public school may not punish a student for off-campus misconduct that did not cause substantial disruption of a school activity or a threatened infringement of the rights of others.⁶⁶ The point of emphasis was that to punish students for off-campus

⁶³ *Mnungu* (n 50).

⁶⁴ R Rose *Commonwealth legislative drafting manual* (2017) 93.

⁶⁵ Rose (n 64) 108; see also Interpretation of Laws Act, Cap 1 sec 36(1).

⁶⁶ 20-255, 2021 WL 2557069 (US 23 June 2021).

misconduct, the school must be able to prove the nexus between the misconduct and its direct impact on the school.

Second, offences are to be created by statutes and not deemed or assumed by the authority. As per the Drafting Guidelines issued by the Office of the Attorney-General, penal provisions must be properly drafted to ensure that the created offences with their ingredients or elements are clearly stated to avoid any ambiguity. The Corporal Punishment Regulations fall short of this requirement. For instance, Regulation 3(1) simply imposes punishment for 'grave offences' committed inside or outside school. Regrettably, the Regulations are silent on what constitutes grave offences. Instead, the offences are left to be determined as such by the school authority. Consequently, school indiscipline and grave offences are invariably defined by the respective school code of student conduct with many variations. As noted earlier, this leads to inconsistencies. Uniform discipline rules would add to predictability, an important principle of criminal justice.

Third, according to Regulation 3(2), the severity of corporal punishment inflicted should be reasonable having regard to the gravity of offence, the age, sex and health condition of pupils. The intriguing question arising from this provision concerns how proportionality between the punishment and the gravity of the offence committed, on the one hand, and the age, sex and health condition, on the other, is to be achieved. In criminal law, the proportionality principle requires that the severity of criminal sanctions should be proportional to the seriousness of the offence being punished.⁶⁷ Being subsidiary legislation regulating corporal punishment, it is objectionable for the Regulations to be drafted *in de minimis* spirit. Therefore, the failure by the drafters to direct how to observe these benchmarks could result into two implications: first, a failure of the overall objective, that is, to control the administration of corporal punishment in schools; and, second, the violation of children's rights as discussed in the subsequent parts of this article.

67 RS Frase and others 'Proportionality of punishment in common law jurisdictions and in Germany' in K Ambos and others (eds) *Core concepts in criminal law and criminal justice: Volume 1, Anglo-German dialogues* (2020) 213.

5 School corporal punishment and human rights implications

5.1 Human rights standards regarding child protection

Children are entitled to the protection of their fundamental rights. They are generally entitled to protection as any other human being and specifically as children due to their vulnerability. The rights of children, either in school or at home, are protected under various national, regional and international human rights instruments.

In Tanzania, the general and child-specific human rights standards are contained in a number of legal instruments, ranging from the Constitution to principal and subsidiary legislation. The Constitution of Tanzania contains a number of general rights provisions that may possibly be violated by the administration of corporal punishment to school children. These include the right to education⁶⁸ and protection against torture or inhuman or degrading punishment or treatment.⁶⁹ Specifically, children's rights are protected by the Law of the Child Act. The Act under section 13(1) expressly prohibits any act or practice likely to subject a child to torture or other cruel, inhuman punishment or degrading treatment. Unfortunately, the Act endorses the use of corporal punishment under the pretext of 'justifiable and reasonable correction'.⁷⁰ Potentially, such subjective terms can lead to a violation and abuse of children rights in school.⁷¹ The situation is compounded by the fact that the law requires correction measures to consider the capacity of a child to understand the purpose behind the correction, the age, physical and mental condition of the child without setting the safeguard mechanism under which the conditions could be realised. As revealed in the preceding parts, the Education (Corporal Punishment) Regulations also lack precision, leading to arbitrary application and abuse.

For its part, the Tanzania Education and Training Policy articulates under its objective clause that education and training in the country should seek to develop and enhance professionalism, self-confidence, inquiry and 'respect for human dignity and rights'.⁷² Through this policy statement, the government recognises, in unequivocal terms, the need to respect and uphold the rights and dignity of learners.

68 Constitution of Tanzania (n 29) art 11(2).

69 Art 13(6)(e) Tanzania Constitution (n 29).

70 The Law of the Child Act, Cap 13 [RE 2019] sec 13(2).

71 Sungwa and others (n 5) 43.

72 Education and Training Policy (n 10) para 2.1.2(d).

At regional and international level, the main instruments protecting children against corporal punishment include the African Charter on the Rights and Welfare of the Child (African Children's Charter); the Convention on the Rights of the Child (CRC); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Universal Declaration of Human Rights (Universal Declaration); and the United Nations Convention Against Torture (CAT).⁷³

5.2 Implications of the Education (Corporal Punishment) Regulations, 2002 for selected child rights

As demonstrated in the preceding parts of this article, Tanzania still legalises corporal punishment in criminal and school settings. The Penal Code⁷⁴ and Corporal Punishment Act⁷⁵ are penal legislation regulating infliction of corporal punishment for both adult and juvenile offenders. Administration of corporal punishment in schools, as consistently presented in this article, is regulated by the Education Act and its Regulations. Retention of corporal punishment laws and practice violate Tanzania's international law obligation to respect and protect human rights including the rights of children. This obligation is categorical mainly under ICESCR,⁷⁶ the International Covenant on Civil and Political Rights (ICCPR),⁷⁷ CRC⁷⁸ and the African Children's Charter.⁷⁹ Therefore, Tanzania is bound under the international law principle of *pacta sunt servanda* to respect, protect and fulfil its obligations assumed under the above instruments.⁸⁰

Although there are laws regulating the administration of corporal punishment in the country, the same laws still violate principles of human rights. The discussion below shows the extent to which the use of corporal punishment in schools, more often than not, has caused physical and mental torture to children, thus impairing their health. Similarly, the punishment violates the child's right to be free from violence, infringes upon a child's right to education and, in some instances, violates the right to life.

73 The details on how these and other regional and international human rights instruments protect children against corporal punishment practices and their resultant impact are offered under part 5.2 of this article.

74 Penal Code (n 24) sec 25.

75 Corporal Punishment Act (n 3) secs 5 & 6.

76 Arts 12 & 13 ICESCR. Tanzania acceded to this Covenant on 11 June 1976.

77 Arts 7 & 24(1) ICCPR. Tanzania acceded to ICCPR on 11 June 1976.

78 Arts 1, 19, 28(2) CRC. Tanzania ratified this Convention on 10 June 1991.

79 Arts 11 & 16 African Children's Charter. Tanzania ratified this Convention in March 2003.

80 Art 26 Vienna Convention on the Law of Treaties, 1969.

5.2.1 *Deprivation of the right to due process*

The concept of due process, being a sub-set of the principle of fair trial, entails, among other considerations, giving the parties concerned the right to be heard and to be told the reason for the allegations as well as the right to challenge the decision. The right to due process is well entrenched under various national and international laws, importantly, articles 13(3) and 15(2)(a) to (b) of the Constitution of Tanzania and articles 14 and 15 of ICCPR.⁸¹

We submit that these attributes of fair trial need to be observed before and after corporal punishment is inflicted. Conversely, the Regulations contain no provision guaranteeing pre- and post-deprivation remedies, such as the right to be heard and to challenge the decision and action for damages when corporal punishment is unlawfully or excessively administered. The Regulations only provide for disciplinary action against a teacher if the administration of corporal punishment is violated.⁸² This contrasts with the corresponding regulations governing the exclusion and expulsion of students, which provide detailed procedures to be followed both before and after a decision to exclude or expel a student is made.⁸³ The attributes of due process listed in these Regulations include making inquiries before punishment; detailing the circumstances of the case; hearing by an independent body (the school committee or the board); and the right to appeal.⁸⁴

5.2.2 *Compromising the right to life and health*

It was demonstrated above how corporal punishment has led to physical and mental health problems to children in schools. Tragically, corporal punishment has on occasion claimed the lives of innocent pupils in schools as it leads to bruises, broken bones, internal injuries and, in extreme cases, death. By requiring school authorities to consider the health condition of a pupil before administering corporal punishment, the Regulations purport to align with the National Education Policy and international instruments such as CRC. CRC, being a landmark international child rights treaty adopted by the United Nations (UN), sets out the civil, political, economic, social and cultural rights of children and outlines how government should work together to ensure the protection and realisation of those rights. CRC was created to ensure that all persons

81 16 December 1966, UNTS 171.

82 Corporal Punishment Regulations (n 4) Reg 7.

83 See Expulsion and Exclusion Regulations (n 59) Regs 8-11.

84 As above.

under the age of 18 years are afforded the necessary protection of their human and individual rights.⁸⁵ Tanzania became a state party to CRC on 10 June 1991, thereby committing itself to upholding the rights and protections provided under the Convention. As a state party, Tanzania is legally bound to uphold and implement all provisions of CRC. Under the Convention, corporal punishment in schools refers to the use of physical force intended to cause pain or discomfort as a method of disciplining children. In the context of international law and CRC, this practice violates several key articles that aim to protect the dignity, safety and well-being of children. The provision of article 19 requires the state party to protect children from all forms of violence. The article reads:

States Parties shall 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, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Because Tanzania is a state party to CRC, it is obliged by article 19 to protect children from all forms of physical and mental violence, including corporal punishment in educational settings. In Tanzanian schools, corporal punishment remains legally permitted. This is particularly so because the Education (Corporal Punishment) Regulations, 1979, as discussed above, expressly authorise its use subject to specific conditions. However, this practice conflicts directly with article 19, which does not allow for any exceptions where violence is concerned. Even 'moderate' or 'disciplinary' physical punishment is considered a violation. In the same vein, the provision of article 28(2) insists on school discipline and dignity. The article reads: 'States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.'

This article emphasises that any school disciplinary measures must respect the inherent dignity of the child. Corporal punishment, by its very nature, undermines the dignity of children, often inflicting not only physical pain but also emotional and psychological harm. In Tanzanian schools, practices such as caning or other forms of physical punishment stand in direct contradiction to the principles of this article.

85 Art 1 CRC.

The corporal punishment that is practised in Tanzania can often amount to cruel, inhuman or degrading treatment, especially when applied excessively or arbitrarily, as it has always been done. Even when not extreme, the humiliating and painful nature of corporal punishment is inconsistent with the protection envisioned by article 37. The UN Committee on the Rights of the Child, in its General Comment 8 (2006) explicitly states that corporal punishment is incompatible with article 37. The Committee defines corporal punishment broadly as 'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light'.⁸⁶ Further, this Committee called for the elimination of legislation allowing for reasonable or moderate correction, and the repeal of all legislation allowing schools the authority to practise corporal punishment.⁸⁷ It emphasises that corporal punishment is invariably degrading. This provision obliges Tanzania to reform disciplinary regulations in schools to promote non-violent forms of discipline, such as positive behavioural interventions and restorative practices.

For its part, ICESCR also recognises the right to the highest attainable standard of physical and mental health.⁸⁸ Nationally, the right to life is protected under article 14 and the right to dignity under article 12(2). Although the Regulations provide how a pupil must be punished, there is sufficient evidence suggesting that teachers or school authorities often go far beyond the stipulated benchmarks. Striking students with sticks not indicated by the law, belts or other hard objects, especially on the head or vital organs, can cause internal injuries that may result in death.

The danger is escalated by the fact that even the courts in Tanzania, in some instances, have continued to shield teachers who deliberately and disproportionately inflict corporal punishment on pupils. For instance, in the case of *Selina Rutabingwa v Republic*,⁸⁹ a pupil (Nassoro Saidi) suffered grievous harm leading to 10 per cent disability to his right eye as a result of improperly administered

86 Report of the UN Committee on the Rights of the Child on the 7th session, UN Doc CRC/C/34, Annex IV 63 (November 1994); see also Concluding Observations of the Committee on the Rights of the Child: Ethiopia, 26th session, paras 38-39, 47, UN Doc CRC/C/15/Add 144 (2001); and Concluding Observations of the Committee on the Rights of the Child: Mozambique, 29th session, paras 38-39, UN Doc CRC/C/ Add 172 (2002).

87 Concluding Observations on the Initial Report of the United Republic of Tanzania, CRC Committee (9 July 2001) UN Doc CRC/C/15/Add.156 paras 38-39; Concluding Observations on the Initial Report of Kenya, CRC Committee (7 November 2001) UN Doc CRC/C/15/Add.160 paras 33-34; CRC Committee General Comment 8 (n 87) paras 31-32.

88 Art 12 ICESCR.

89 *Rutabingwa* (n 50).

corporal punishment by a teacher. Surprisingly, the Court of Appeal was of the view that corporal punishment is administered by teachers in the public interest and that it is inappropriate to hold them responsible for every unfortunate incident. Also, in the case of *Republic v Lenard Joseph Mnungu*,⁹⁰ despite the conclusion of the Court that the student's death was caused by extra drill and strokes administered by the teacher, the High Court still acquitted the accused on the ground that the teacher had the good intention of instilling discipline in his students.

Judicial rulings in such cases have, at times, relied on the argument that the teachers act *in loco parentis* (in place of parents) and, therefore, within their disciplinary role. However, this interpretation directly contradicts the legal and constitutional principle underlying the regulation of corporal punishment in educational institutions. Furthermore, such judicial leniency not only undermines the protective framework established for children under the Law of the Child Act and the Constitution of Tanzania, but also conflicts with Tanzanian obligations under international treaties such as CRC and the African Children's Charter, both of which call for the abolition of all forms of corporal punishment.

It could rightly be argued that the intention behind permitting certain forms of corporal punishment under the Education Act was to maintain school discipline or correct a pupil, not to cause serious harm or death. Thus, when the punishment administered is excessive, disproportionate or leads to physical and psychological harm as well as death, it no longer falls within the bounds of lawful discipline, but rather constitutes criminal assault, grievous bodily harm and a violation of right to life and health. In that regard, it is my view that disciplinary action instituted by the Teachers Service Commission against a head teacher or school authority for violating the corporal punishment regulations⁹¹ is not sufficient to address the negative impact caused to victims.

5.2.3 Impeding the realisation of the right to education

Corporal punishment in schools often creates a hostile, unsafe and fearful learning environment, which in turn causes students, particularly those from difficult backgrounds, to disengage from schooling or drop out entirely. When students are pushed out due to violence or abuse, their right to education is effectively denied,

⁹⁰ *Mnungu* (n 50).

⁹¹ Corporal Punishment Regulations (n 4) Reg 7.

which is contrary to article 13 of ICESCR⁹² and articles 11 and 16 of the African Children's Charter.⁹³ Tanzania became party to ICESCR on 11 June 1976. By acceding to the Covenant, Tanzania agreed to be legally bound by its provisions, including those in article 13 relating to the right to education and the prohibition on practices that undermine human dignity, such as corporal punishment in schools. Article 13 of ICESCR is the most comprehensive article on the right to education in international human rights law. According to the Covenant, 'education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. It shall enable all persons to participate effectively in a free society.'

ICESCR also affirms that primary education shall be compulsory and freely available to all, and that secondary and higher education shall be made accessible, by appropriate means.⁹⁴ Although article 13 does not specifically mention corporal punishment, the use of corporal punishment in educational settings is fundamentally incompatible with the objectives of education as outlined in ICESCR. Corporal punishment violates the dignity of the child, which article 13 emphasises must be upheld. It contradicts the principle of respect for human rights and fundamental freedoms and undermines the aim of developing the child's personality and enabling them to participate fully and effectively in society.

The UN Committee on Economic, Social and Cultural Rights (ESCR Committee), the body that monitors the implementation of ICESCR, under its General Comment 13 takes the position that corporal punishment is inconsistent with the fundamental guiding principles of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants.⁹⁵ Therefore, every state party is required to take measures to ensure that discipline that is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. This affirms that corporal punishment in schools violates article 13 by compromising

92 International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976.

93 The African Charter on the Rights and Welfare of the Child (African Children's Charter) was adopted on 11 July 1990 by the Heads of State and Government of the Organisation of African Unity (OAU) in Addis Ababa, and entered into force on 29 November, 1999.

94 Art 13 ICESCR.

95 Adopted at the 21st session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (contained in Document E/C.12/1999/10) para 41.

students' dignity and personal development and by creating a hostile and degrading learning environment.

As viewed by the Committee, the South African Constitutional Court in *Christian Education South Africa v Minister of Education* emphasised that corporal punishment undermines human dignity and violates the right to bodily and psychological integrity.⁹⁶ By allowing corporal punishment in schools, Tanzania arguably is not complying with its obligations under article 13 of ICESCR. The continued legality of corporal punishment undermines efforts at ensuring an educational environment that upholds human dignity, protects children from violence and harm, and promotes effective learning through respectful and inclusive practices.

As has been stated by Aslam, if students are forced to leave school due to fear or trauma caused by corporal punishment, the state may be legally accountable for failing to provide an accessible and non-discriminatory educational system.⁹⁷ Further, it could be correctly argued that if corporal punishment leads to drop-out among girls, children with disabilities or minority groups, this violates the principle of non-discrimination under article 2 of CRC and art 2(2) of ICESCR. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has affirmed that practices leading to drop-outs violate the child's right to education, dignity and protection from abuse.⁹⁸

On the other hand, the administration of corporal punishment, specifically caning, in schools has a detrimental impact on a student's academic performance and overall well-being. Numerous studies and legal precedents have demonstrated that such punitive measures foster an environment of fear rather than learning, thereby undermining the student's ability to concentrate, participate actively in class, and achieve their full academic potential.⁹⁹

Several studies, however, have established that violence results in cognitive and intellectual impairment and that children living with violence experience diverse negative impacts on learning.¹⁰⁰ They further reveal that experiences of violence result in the development

96 CCT4/00 [2000] ZACC 11 para 47.

97 MS Aslam, S Ghazal & A Irfan 'Short and long-term impact of corporal punishment: A phenomenological analysis of how students cope and survive' (2021) 31 *Journal of Behavioral Sciences* 5, 12.

98 A body established in 2001 by African Union to monitor the implementation of the African Charter on the Rights and Welfare of the Child.

99 Gershoff (n 9) 232.

100 HakiElimu 'The state of violence against school children in Tanzania mainland: An exploratory study' (2020) 20.

of problems of poor concentration, a short attention span and a decline in academic performance. Furthermore, corporal punishment may constitute a violation of children's rights as enshrined in both national legislation and international conventions, such as CRC, which emphasise the right of every child to protection from all forms of physical or mental violence.¹⁰¹ In this context, it is argued that the continued use of corporal punishment in schools not only impedes a child's educational development, but may also breach legal standards pertaining to humane and dignified treatment. As such, there is a strong legal and moral basis for the prohibition on corporal punishment in educational institutions to ensure a safe, supportive and rights-respecting learning environment.

5.2.4 Catalysing torture, cruel and inhuman treatment

Corporal punishment often leads to torture, cruel, inhuman or degrading treatment within the meaning ascribed under article 1 of CAT.¹⁰² The use of corporal punishment in schools can result in the abuse of children, especially when teachers do not follow the legal guidelines on discipline. In many cases, corporal punishment is applied excessively, negligently, emotionally or arbitrarily, leading to violations of the child's fundamental human rights, including the right to dignity, protection from violence, and freedom from torture and inhuman treatment.¹⁰³ Prohibition on torture is also central to CRC, with article 37 guaranteeing freedom from torture and degrading treatment. The provision unequivocally states that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'.

From a human rights perspective, every child has the right to grow up in an environment free from fear, violence and humiliation, as expressed by the African Children's Charter. The Charter requires that the educational measures practised in a state must be such that they protect the child from degrading maltreatment.¹⁰⁴ Furthermore, this Charter establishes that even when a child is subjected to discipline in schools, they should still be treated with humanity and dignity.¹⁰⁵

The African Children's Committee under its General Comment 5 emphasises that children's rights under the African Children's

¹⁰¹ Art 19 CRC.

¹⁰² Arts 1 & 16 CAT.

¹⁰³ HakiElimu 'Does school environment affect student achievement? An investigation into the relationship between secondary school characteristics and academic performance in Tanzania' (2013) 11.

¹⁰⁴ Art 16(1) African Children's Charter.

¹⁰⁵ Art 11(5) African Children's Charter.

Charter must be interpreted and implemented as a holistic and interconnected set of entitlements.¹⁰⁶ This means that civil, political, economic, social and cultural rights are all equally important and interdependent. The Committee insists that '[c]orporal punishment constitutes violence against children and is a violation of the Charter'. It calls on state parties to adopt explicit legal bans on corporal punishment in all settings, including schools.

When schools practice corporal punishment, they risk normalising violence and undermining the values of respect, accountability and justice. International law, especially under article 2 of CAT, article 7 of ICCPR and article 5 of the Universal Declaration¹⁰⁷ prohibits torture and all inhuman treatment. The UN Committee Against Torture, the Human Rights Committee and UN Special Rapporteurs have consistently interpreted corporal punishment as falling within the scope of international instruments prohibiting torture and inhuman treatment, especially when inflicted by state authorities.¹⁰⁸

Many teachers abuse corporal punishment as a tool to torture pupils in an attempt to force confessions for mistakes or offences, some of which may have occurred outside the school environment or committed by unidentified pupils (indiscriminate punishment). For instance, in the case of *Leonard Ngarya v Republic*,¹⁰⁹ it was reported that a teacher randomly administered corporal punishment to a group of students, some while they were in class and others while they were outside the classroom, accusing them of making noise. Consequently, one student, Clemencia John aged 13, was badly injured, and the evidence from Benjamin Mkapa Referral Hospital in Dodoma and Muhimbili National Hospital indicated that she had a disc dislocation. This behaviour goes far beyond the intended purpose of discipline in the context of the Regulations. Instead of correcting behaviour, it becomes a means of intimidation and fear, often infringing on the personal boundaries and rights of the child.

106 African Committee of Experts on the Rights and Welfare of the Child 'General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (art 1) and systems strengthening for child protection' (1 October 2018) sec 5.3.

107 General Assembly Resolution 217 A (III) of 10 December 1948.

108 Human Rights Committee 'General Comment 20 on Article 7 (prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)' (10 March 1992) para 5; UN Committee Against Torture 'Report of the Committee Against Torture' (1995) UN Doc A/50/44 paras 169 & 177; T van Boven 'Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment' (2 July 2002) UN Doc A/57/173 para 53; N O'Neal 'Corporal punishment in public schools: A call for legal reform' (2008) 8 *African Human Rights Law Journal* 60, 65 & 68-69.

109 *Ngarya* (n 50).

The African Children's Committee, in its Concluding Observations on Tanzania, expressed deep concern that corporal punishment remains lawful and widely practised in Tanzania as a judicial sentence, in schools, in alternative care institutions and in the home, even though such practices clearly contradict international children's rights norms.¹¹⁰ It is the observations of the Committee that specific provisions on education laws, which explicitly permit physical discipline, are contrary to children's rights obligations. The Committee, therefore, encouraged the state to revise the Education Act and prescribe the prohibition on corporal punishment in school settings.¹¹¹ The Committee urged Tanzania to repeal or amend all laws and regulations that permit corporal punishment, including 'justifiable correction' clauses in legislation such as the Law of the Child Act and the Education Act.¹¹² The Committee called on the state to launch awareness-raising campaigns targeting parents, teachers, guardians and professionals working with children. These campaigns should emphasise the harmful impact of corporal punishment and promote positive, non-violent, participatory discipline methods.¹¹³ The Committee also recommended training for teachers, parents, guardians and staff in alternative disciplinary approaches, guided by General Comments from the CRC.¹¹⁴

6 Conclusion and recommendations

As a subsidiary legislation, the Education (Corporal Punishment) Regulations of 2002 are expected to contain detailed rules setting out substantive and procedural requirements for proper implementation of section 61(o) of the Education Act. Conversely, the Regulations are overbroad, imprecise and inconsistent with their actual implementation. While overbroad provisions and a lack of clarity have led to abuse and inconsistent application, there is little judicial guidance by courts on their interpretation.

110 African Committee of Experts on the Rights and Welfare of the Child 'Concluding observations and recommendations to the government of the United Republic of Tanzania on its combined second, third and fourth periodic reports on the implementation of the African Charter on the Rights and Welfare of the Child' (July 2017) para 19.

111 As above.

112 Concluding Observations on the combined third to fifth periodic reports of the United Republic of Tanzania, CRC Committee (3 March 2015) UN Doc CRC/C/TZA/CO/3-5 paras 37(a)-(c).

113 Concluding Observations on Tanzania (n 112) paras 37(b)-(c).

114 CRC Committee General Comment 8 (n 87) paras 45-49; Committee on the Rights and Welfare of the Child 'General Comment 13 on the right of the child to freedom from all forms of violence' (18 April 2011) UN Doc CRC/C/GC/13 para 44.

The study has consistently demonstrated that the Regulations to a large extent have contradicted the rules and guidelines of drafting statutes, in general, and subsidiary legislation, in particular. For instance, while the overall purpose behind delegation of the parliamentary powers to make laws is to overcome the difficulty of legislating in details on technical and procedural matters,¹¹⁵ the Corporal Punishment Regulations lack this purpose. Further, the study observed that the Regulations do not observe a number of principles governing penal statutes, including avoiding provisions leading to double jeopardy and a failure to create offences. The latter has resulted in a lack of predictability and consistencies during the implementation.

Regarding children's rights, the article has clearly demonstrated that maintaining corporal punishment on school children under the Education (Corporal Punishment) Regulations fundamentally is in contravention of a myriad of national, regional and international human rights standards. Specifically, the nature of the Education (Corporal Punishment) Regulations of 2002 and their arbitrary application are in violation of the right to education, the rights to life and health, and amounts to torture, cruel and inhuman treatment contrary to national and international human rights standards.

From a legisprudential point of view, the major recommendation is that the Education (Corporal Punishment) Regulations of 2002 should be amended to ensure precision and the intended efficacy. That could be achieved through factoring in the conditions prescribing the manner of administering corporal punishment. Further, the grave offences and serious breaches of school discipline punishable by corporal punishment need be categorically described in the Regulations and not left to be defined by each school. Based on human rights standards and states' commitments to ending torture, cruel and inhuman treatment of children, on the one hand, and ensure enjoyment of the right to education in safe and dignified environment to children, on the other, Tanzania should consider outlawing school corporal punishment.

115 The authority to delegate legislative powers to the executive by Parliament stems from art 97(5) of the Constitution of Tanzania (n 29).