

RUAHA CATHOLIC UNIVERSITY



FACULTY OF LAW

**LEGAL EXAMINATION OF THE RIGHT TO EDUCATION IN TANZANIA MAINLAND
"A FORCUSE ON SECTION 60(A) OF THE EDUCATION ACT**

A Research Submitted in Partial Fulfillment of the requirements for the Award of
Bachelor of Laws Degree (LLB) at Ruaha Catholic University.

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RU/LLB/2019/085

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JULY, 2023.

CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by Ruaha Catholic University a Research paper entitled; LEGAL EXAMINATION OF THE RIGHT TO EDUCATION IN TANZANIA MAINLAND "A FORCUSE ON SECTION 60(A) OF THE EDUCATION ACT .In partial fulfillment of the requirements for Degree Bachelor of laws of the Ruaha Catholic University (RUCU)

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Date

DECLARATION

I, CREY N MWANDALIMA, declare that this work is my own. It has not been submitted before for any other award of certificate, Diploma or Degree at any other University or Institution of higher learning

Signature.....

Date.....

CREY N MWANDALIMA

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ACKNOWLEDGEMENT

There are so many people to thank for supporting this work by sacrificing their time to provide me with their skill, abilities and their advice which made this work to materialize, I just say I am grateful to all of them, and I wish to express my gratitude and appreciation for all forms of assistance and their support they have given to me to accomplish this work.

My appreciation goes to my research supervisor, MR. JUSTIN M. MLAY for his kindly supervision in this work, without your advice and critics this work would not attain this standard; I real appreciate your support, thank you sir.

Also, I'm sending my deepest thanks to my parents, my father NIKWISA MWANDALIMA, and my mother SARAH BACRON, who they provided me with all necessities during the whole period of my study, of course I feel indebted to that kind of support, although it's amongst your responsibilities, but thank you very much.

Lastly, also i wish to express my appreciation to my learned brother Jackson Balazi and my friends Joshua Lyombile, Tuginile Swalo and Edina Rulala for their support to accomplish my research also without forget expressing my sincere gratitude to all LLB4 class of 2019-2022 for their support in one way and another in our life time, it's enough to say thanks you all.

DEDICATION

I dedicate this research paper to my family, I appreciate their assistance.

ABSTRACT

This is comprehensive work paper has speaking about the legal examination of the right to education focuses on section 60(A) of the Education Act, which provide the punishment to a person who committed an offence of impregnating the female student at the time attending to school, so the research is to consider the right of a male student who has sentenced for a thirty year in prison according to that provision which seen violating the right of education to school boy, so without the improvement or amendment the victim will proceeding to suffer from lack of the right to education..

The aim of the study is to determine the problem in Education Act against the schoolboy who engaged into case of impregnating the fellow female student on issue of him to enjoy the right of education, so the authority if will pay attention to do deal or cover the gap of this law will abolish the violation of the basic right of education means that this improvement will be effective exercised then will end the imbalances on education aspect between schoolgirl and schoolboy.

This study comprises the data employed qualitative approach on its methodological by using different method include interview, online survey, focus group to ensure the accuracy of findings and interpretation of data obtained in the field And secondary data included various materials such as books, journals, Articles and different research reports, online sources and different legal materials whereas statutes and case laws. The study proves the section 60A (3) of E.A denies constitutional rights to offenders since it exercised contrary to the human right equality bases therefore the law has to be amended.

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LIST OF LEGAL INSTRUMENTS

International legal instruments

The Convention on Elimination of Discrimination against Women of 1981

The Convention on Rights of the Child of 1989

Universal Declaration of Human Rights of 1948

Regional Instruments

The African Charter on the Rights and Welfare of the Child of 1990.

Protocol to the African Charter on Human and people's rights on the Rights of Women in Africa of 2003.

SADC Protocol on Gender and Development of 2016

Domestic Legislation

The Constitution of the United Republic of Tanzania of 1977

The Education Act [Cap.353 R.E 2002] (Miscellaneous Amendment) no.2 of 2016

The Law of the Child Act [Cap.13 R.E 2019]

The penal Code Act cap16 of 2022

LIST OF CASES

Foaled Laurent v Republic, Criminal Appeal No.12 of 2021

Jofrey s/o David v Republic, Criminal Appeal No.50 of 2020

Siyomwe s/o Juma Vs Republic, Criminal Appeal No.56 of 2020

LIST OF ABBREVIATIONS

AEP	Alternative Education pathway
CEDAW	Convention on the Elimination of Discrimination of women
CRC	Convention of the Right of the child
E.A	Education Act
ibid	ibidem
%	percentage
s/o	Son of
SADC	Southern African Development Community
UDHR	Universal Declaration of human right
UNESCO	Convention against discrimination in education
V	Versus
WHO	World Health Organization

CHAPTER ONE

GENERAL INTRODUCTION

1.0 INTRODUCTION

In Tanzania main land, when you look on the law governing the issue of impregnating a school girl is an offence under Education Act of 2016, and the offender is liable to receive a punishment of thirty years' imprisonment as it provided under section 60A (3) state that "any person who impregnates a primary school or a secondary school commits an offence and shall be liable for the conviction of imprisonment for a term of thirty years"¹

In many AU countries developed the continuation policy to those pregnant school girls through passing the laws and policies on the right to education for the pregnant school girl who dropped from school for example of the countries Kenya, Nigeria. like in the provision of the Constitution of Kenya 2010, under (article 43.1.f²) recognizes that " every person has the right to education" as to Kenya provision a man involved for teenage pregnancies should face full force of the law for causing emotional distress to the school girl before they complete their education, this will be an example to those who takes advantages to vulnerable teenage girls. Which was different to Tanzania where the law enforced 2017 was denied the right of Education to the pregnant school girl on return to school, these violating human right since denies the right of education as to the

¹ Education Act no 2 of 2016, S.60A (3).

² The Constitution of Kenya 2010, Article 43

investigation done by Human Right Watch under the senior children's Right Elin Martinez who revealed the absence of these right in Tanzania Main Land as estimated during 2011 and 2013 it was estimated over 55,000 adolescent girls were forced to drop out from school due to pregnancy³.

But, In Tanzania during 2021, after the Late President John Pombe Magufuli taking presidential power in March was introduced the continuation policy to pregnant school girl, in the same year the minister of Education pro. Joyce Ndalichako made an official announcement that the government has to offer the pregnant girl to be allowed to continue with formal education after delivery and offer an alternative path to education to all children missed their education for any reason including girl got pregnancy while in school, through our folk development colleges (FDCs) these changes brought the gaps in the law in situation the amendment was not done in considering the male offender who also is student who has the same right to education contrary he has to serve thirty years which denies the right of male offender student access to education⁴.

1.1 BACKGROUND TO THE PROBLEM

Teenage pregnancy has long been a worldwide social, economic and educational concern for the developed, developing and underdeveloped countries⁵, Teenage

³ Human Rights Watch, "Revoke Decree; Allow Pregnant Girls, Young Mothers to Attend Schools." HRW, 2021, <https://www.hrw.org> accessed On 22 may, 2022, at 04:37

⁴ Reuters. "Tanzania Women Turn to Adult Education Classes to Learn to Read and Write" <https://www.reuters.com/article/us-tanzania-women-education-trfn-idUSKBN21P2WE>. accessed on 20 may 2022

⁵ Nobble, J. "Influence of Economic Hardship and Poor Performance in School by Girls", 1996

pregnancy has long been a worldwide social, economic and educational concern for the developed, developing and underdeveloped countries like in Tanzania. Between 2003 and 2011, over 55,000 adolescent girls were forced to drop out or were expelled due to pregnancy, according to the Center for Reproductive Rights, a global women's rights organization⁶

In February 2020, Zitto Kabwe, the leader of the opposition ACT Wazalendo party, received death threats from members of parliament after he led a coalition of activists who wrote to the World Bank to withhold a loan to the government over the “discriminatory policy” of keeping pregnant girls away from schools continuing with their studies, in 2020 the World Bank said more than 5,000 pregnant girls in Tanzania were barred every year from continuing with their studies. The Supporters of the ban had argued that allowing pregnant girls to continue with school would promote “promiscuity” among students and lead to more girls getting pregnant. While there is no evidence to support this, studies have found lack of sexual education and poverty could both strongly influence girls' likelihood of falling pregnant as teenagers in Tanzania⁷

On November 24, 2021, then-Education Minister Joyce Ndalichako announced that girls who had dropped out of school because of pregnancy could return to school, effective immediately. The Tanzanian government has also pledged to

⁶Human Rights Watch. Tanzania; Pregnant student Ban Harms Thousands.HRW.org, 6,Oct.2021, <https://www.hrw.org/news/2021/10/06/tanzania-pregnant-student-ban-harms-thousands>. (accessed on 23may 2022 at 10:18)

⁷ idem

adopt additional measures. By June, it has agreed to publish new guidelines to provide more details on how long pregnant students can stay in school, how much time they will be allowed to be absent from school after giving birth, and the type of support they will receive when they return⁸

In Tanzania since this amendment of November 2021 which gave out the continuation policy which protected only the right of female student to return to school after birth but denied the male student right to return back to school but has to save the penalties for impregnating their counterpart student which this going contrary to the section 29(2) of the CURT⁹, this is inhumane act, for example by compare the penalties of the offence to other countries has equal right both to male and female student like Uganda penalties Male students who will impregnate their female counterpart at school will also be sent home for the period the girl will spend way during pregnancy and giving birth, as part of the punishment to reduce teenage pregnancies in schools¹⁰.

1.2 STATEMENT OF THE PROBLEM

The research focus on the assessment of the law which provide the punishment to the offender Section 60(A) (3) of the Education Act 2016, provide for the punishment of thirty (30) years imprisonment to a person who caused a

⁸ Human Right Watch.(2014), from <https://www.hrw.org/modal/20348>. (accessed on 23may 2022 at 09:57)

⁹ The Constitution of the united Republic of Tanzania 1977, Article 29

¹⁰ <https://www.monitor.co.ug/uganda/news/national/boys-who-impregnate-female-students-to-be-sent-home-govt-3226166> (accessed on May 23,2020 at 09:21 Am.)

pregnancy to a primary or secondary schoolgirl¹¹, where by fairness and justice the law has not clearly state how a schoolboy can obtain his rights to education when a victim return to school. The problem is manifested and exists in our current society so a researcher had drawn a well attention on how the court should minimize painful by considering circumstances when providing punishments to the offender

Despite the fact that there was an official announcement for pregnant students to access education in a formal way through AEP as held by the senior education minister in November 2021, no amendment of the law which provide the protection to the schoolboy who impregnates a schoolgirl. The balance in human rights between a pregnant schoolgirl and the schoolboy does not well drawn by the law in relation to the punishment since a victim is able to access an expected education after delivery while the offender must serve thirty (30) years in jail, so the research observed that there is no protection to schoolboy rights contrary to article 29(2) of The Constitution of the United Republic of Tanzania 1977¹². Which provides for the protection under the law meaning that the rights of citizens should be protected by the laws governing a certain society, unfortunately the law is silent on the right of education to schoolboy offender in issue of impregnating a schoolgirl and that is driven a researcher to make investigation on relation to justice.

¹¹ Education Act (miscellaneous amendment) no 2 of 2016, Section 60A (3)

¹² The Constitution of the United Republic of Tanzania 1977, Art 29

1.3 LITERATURE REVIEW

McCarthy¹³, states that now a man who marries or impregnates a schoolgirl faces up to 30 years in prison; the jail act as a strong deterrence, but it doesn't fully address the problem of child marriage. The article expressed on the punishment to any person who impregnate a schoolgirl but to some extent has not touch in line with the rights of the offenders when observed to be causative of teenage pregnancies among schoolgirls in a sense that the current educational system allows readmission of schoolgirls who drops out from schools reasonably by pregnancies. Though this article has no direct relation but was useful to extent in the matter at hand on the ground that it says the victim or the teenage girls allowed for re admission to school after delivery under current education system so it seem different to male student offender who denied the right of education since there is no any provision of the law providing the right of readmission to them so expose out the gap of the law which has to be resolved so as the male and female to enjoy equally the right of education.

World Health Organization¹⁴, (WHO) Adolescent pregnancies are a global problem occurring in high, middle, and low-income countries. Around the world, however, adolescent pregnancies are more likely to occur in marginalized communities, commonly driven by poverty and lack of education and

¹³ Global Citizen, Marry or Impregnate a Child in Tanzania and Get 30 Years in jail". <https://www.globalcitizen.org/en/content/tanzania-child-marriage-girls-womens-rights-educat/> (accessed on 23 may 2022 at 10: 58)

¹⁴ World Health Organization, -Adolescent-Pregnancy-Factsheet-Updated,January,2021. From <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy> (accessed on 30 may 2022 9:17)

employment opportunities made a several factors contribute to adolescent pregnancies and births. In many societies, girls are under pressure to marry and bear children early. Across the African Union, at least 30 countries now have laws, policies, or strategies to protect pregnant students' and adolescent mothers' right to education. Human Rights Watch will continue to advocate that girls who are pregnant, already mothers, or married, stay in or are welcomed back to school but does not spoken more to male student the right to return back in school like girls after delivery allowed return back to school; so according to that WHO in the journal states there alot of laws and policies even strategies fo protecting pregant women on the right of education which brough the gap of the law since there is no any laws policies and strategies which stand to protect the male offender who despite caused teenage pregnancy has also to enjoy the same right of enjoy the education right of readmission like the victim who returning to school after delivery.

Paul, on the report Human Rights Watch¹⁵ have long advocated against this discriminatory ban. A 2017 Human Rights Watch report documented many instances in which school officials conducted mandatory pregnancy tests in schools, and expelled students who tested positive. Human Rights Watch made numerous appeals to the World Bank to withhold a loan funding education in Tanzania until the country removed its discriminatory policy and guaranteed equal access to education but failed to access on the right of school boy offender to return back

¹⁵ M, Paul, Tanzania Human Rights Report 2014.

to school so direct show the inconsistency of the law since male is discriminated on the policy of readmission, therefore the thing to be done is the amendment on the education by introducing the part which will be protect the male student to access the education right after being learned the lesson like the male who return after delivery.

FB Attorneys, states that impregnating a schoolgirl will face thirty (30) years imprisonment even if a boy is a student and even the consent of a schoolgirl is not a defense to a charge, Moreover, even though the age of a schoolgirl is 18 years punishment time was impregnated by the accused, age is not a defense to a charge. So consent and age of the victim are immaterial considerations. On the issue where the offender is a boy under the age of 18 years, he cannot be sentenced to thirty (30) years imprisonment since a boy less than 18 years is deemed as child so he would be sentenced according to the law of the child. The offence of impregnating a schoolgirl is proved by two facts; the fact that the girl impregnated was attending a primary or secondary school at the time she was impregnated and the fact that was impregnated by the accused¹⁶.

These gives on the circumstances which results to the determination of punishment but they did not touches the root of the problem, the victim is allowed to return to school while the punishment to the offender still

¹⁶ [https://fbattorneys.co.tz/impregnatingaschoolgirlwhatarethelegalconsequence/.](https://fbattorneys.co.tz/impregnatingaschoolgirlwhatarethelegalconsequence/) accessed on 24 may 2022

unchangeable. This renders the gap on adherence of rule of law high time must amended to balance the equality of education between male and female

Sarah, the Reports on Human Rights practices Country¹⁷., the report states on illegality of sexual practices against female students regardless of age or mutual consent, though there is a law penalizing any person who impregnate a schoolgirl there is no a weighing to offender's rights. At the same page it refer to the words of the Deputy Minister of Education and Vocational Training by that time was Mwantumu Mahiza that, it was "high time" for harsh penalties to be handed down on sexual offenders of female student. The report is supportive to the matter at hand since tries uncover the law from heavily punishment against the male student offenders who impregnates schoolgirls though does not directly state on the legal effects of readmission for schoolgirls versus the punishment to schoolboy offender.

Bisimba H.K and another¹⁸, states that the test as whether mandatory punishment sentence is inhuman and degrading is the disproportionate test which is arbitrary, unusual or disproportionate to the offence as to shock the public conscience. It confer the provision of article 13(6) (e)¹⁹ of the constitution where the state shall make provisions to the effect that no person shall be subjected to torture or inhuman or degrading treatment. "it is my finding therefore that the

¹⁷ L, Sarah , et al, "Tanzania Human Rights Report and practices" 2008.

¹⁸ Bisimba, H.K., & another. (2005). Justice and Rule of Law in Tanzania. Dar es Salaam: Legal and Human Rights Centre. 92-96

¹⁹ The Constitution of the united republic of Tanzania, Article 13

minimum sentence of (30) years is unconstitutional because it is inhuman, it is inhuman because it is disproportionate and excessive as it makes no measurable contribution to acceptable goals of punishment and goes beyond penal objectives”

Upon the constitutional provision of article 30(6) (e), authors did not directly touches on matter at hand like how that provision should be taken into account by the lawmaker to foresee if not allows amendment of the law which provide the punishment could be fair treatment on the determination of the punishment against the offender who is the student (at the time also was attending to school), so the book contribution is materiality because it has connection to the matter at hand.

Ezer, In his report on Tanzania Child Marriage and Guardian ship Report ²⁰, the report states the details on teenage pregnancies and penalties to some extent, where it asserted that if a schoolboy impregnate as schoolgirl will not expelled rather will face any penalties. There portrayers that expulsion of pregnant schoolgirls is a deny to education rights where the education regulations contravenes the international legal frame work like ACRWC under article 11(6) where it allows for the retention of schoolgirls who gets pregnancy before completing their schools.

The report explains on the matter at hand but not deeply touches the situation of offender’s rights since it does not cover the punishment to offenders when

²⁰ Ezer T, “Tanzania Child Marriage and Guardianship Reports” 2006

pregnant schoolgirls are readmitted to schools after they delivery. This report is useful in this research due to the fact that it constitutes the base of the matter at hand.

Pincock²¹, states that in Tanzania If you're a schoolgirl and fall pregnant, it couldnt mean the end of your education. Even though successive governments have made a push for girls education, those that fall pregnant are routinely expelled from school, and prevented from returning. Most recently this punitive approach was taken to the extreme when schoolgirls were arrested and may now be forced to testify in court as to who got them pregnant.

Although the author explain on deprivation of schoolgirls rights by not allowing them to return to school after getting pregnancy, but did not deeply estimate the balance of rights to all parties where It creates biasness due to the facts that pregnant schoolgirls are more favored while the offender suffering from the punishment

1.4 HYPOTHESIS

It seem that, the punishment under section 60A (3) of Education Act infringes the right to education to schoolboy.

1.5 OBJECTIVES OF THE RESEARCH

The research will include both general objective and specific objective

²¹Pincock K, punishment won't stop teenage pregnancies in Tanzania because 'bad behavior isn't the cause .University of Oxford,(2018)

1.5.1 General objective

To examine the right to education in Tanzania mainland with the focus to section 60 A (3) of the Education Act

1.5.2 Specific objective

- I. To examine the right of education to a schoolboy who pregnant a schoolgirl.
- II. Punishment under section 60 A (3) adhere the right of education.

1.6 SIGNIFICANCE OF THE RESEARCH.

The study has great significance since aim to balance the right between the victim and the offender the same to provision Article 29(2)²² which provide that the right of the citizen should be protected by the laws as this going enable the citizen to understand the balance between punishment in consideration to human right,

The study going to enable the flexibility of the law and law maker to make legislation without torture, according to article 98²³ of the Constitution, provide for modification and amendment of the law. Like that announcement of the minister on the allowance of pregnant girl back to school after delivery also should be an amendment on the law by balancing the weight of punishment.

All in all, the study is useful in modification of the law by the interpreters in administration of justice, so the research had drawn an attention on how the court should minimize painful by considering circumstances when providing

²² The constitution of the united republic of Tanzania. Article 29(2)

²³ The constitution of the united republic of Tanzania ,Article 98

punishments to the schoolboy offender's.

1.7 RESEARCH METHODOLOGY

The researcher employed both the primary and secondary data. The researcher used both the primary source of the data and the secondary source of data to obtain the necessary information to address the problem on hand.

1.7.1 Source of data

Primary source of data this includes interview, statutes, domestic law in relation to the protection and promote the right of education to a schoolboy.

Secondary source of data this include research reports, online surveys, journals, articles cases Google scholars in relation to the protection of the right of Education

1.7.2 Primary data collection

In the primary data the researcher base on the field research to collect data. The researcher have tool of data collection like interview to different people having skills regarding the problem.

1.7.2.1 Interview

Under the interview, the researcher has ten (10) different respondent, three (3) advocates, where one from Mwabukusi Law Firm located at forest Mbeya, interview done on 14 September 2022 at 11:25am to 12:45pm, and two (2) are the advocates from the Legal Wall Advocates located at Dodoma, the interview

was conducted on 10 October 2022, one (1) is a resident magistrate from the district court located at Dodoma, the interview was conducted on 09 September 2022, one (1) lawyer from Tumaini university the interview was conducted on a phone call discussion on July 2022 and three (3) lawyers from Ruaha Catholic University, where the interview was done through face to face conversation at the same time on 5 December 2022, two (2) respondents were students from Saint. Aggrey Mbeya interview conducted at Gombe Street. As the information obtained the researcher to observe the right of education to the schoolboy on focus to section 60A (3) of the Education Act.

Also, the interview conducted with four (4) individual respondents who are relatives of the schoolboy faced the punishment face to face conversation, located at Airport Mbeya conducted on 17 September 2022, two (2) heads of school, were One is a headmaster of Mwebetogwa secondary school interview was conducted on 8 December 2022, and another is headmistress of Busokelo Girls secondary school interview was conducted on 22 October 2022 at 10:12am to 10:45am, also two (2) school coordinators from Busokelo District conducted on 22 October 2022 at 04:20pm to 05:25pm. So the information collected from the interview on respondents above observe that the right of education should be treated equal since every person has entitled to right of education.

From the interviews, the views from the respondent all argued its true that the provision of section 60A (3) of the Education Act infringes the right of education to a schoolboy.

1.7.3 Secondary data collection

Researcher base on the library research particularly get information Ruaha Catholic University Library (Benjamin Mkapa Learning Resource Centre). because it's the nearest library to access information concerning the right of education to the schoolboy who impregnated a schoolgirl.

Also the researcher uses online surveys, articles, research reports, cases, statutes and websites were I obtained the relevant information to the study, about the right of education to the school boy who impregnated the school girl against the provision of Education Act and these found that the section 60A (3) of the Education Act cause the schoolboy to lose their right of education since wave away this basic human right.

1.7.4 Data analysis

The study has employed the qualitative method which obtained from the interviews in relation to the study. The qualitative means the description of the terms, ideas and the concept. Where qualitative applied by researcher to obtain data needed from the targeted respondent of the study on the protection of the schoolboy who impregnated the schoolgirl to enjoy the right of education.

1.7.5 Sampling

In this study the researcher has applied most the purposive sampling techniques in collecting data from the people. So the purposive sampling the researcher focus on people who have the knowledge and those their daily activity based on education issues where the maximum number of targeted people is ten (10), so this qualitative method is important since simply it ensures the collection of sufficient information.

1.7.6 Study area

The study has been conducted in Iringa, Mbeya and Dodoma , where in Iringa the researcher obtained the primary data and secondary data by interviewing different people like lawyers head of school and involved the library research at Ruaha Catholic University Library which all together used to prove that this punishment under education act infringes the right of education also in Mbeya and Iringa the researcher obtained the primary data through interview method through asking question to the respondent to obtain the relevant important data on relation to the right of education to a schoolboy.

1.8 SCOPE AND LIMITATION

1.8.1 Scope of the study

The scope of this study was based on the examination of the law of Education

Act under section 60A (3)²⁴ in Tanzania mainland to determine the gap of this existing law against the schoolboy offender toward the full enjoyment of the right of education, so the gap going to be removed in case amendment done on this law since this section brings in equality against male and female student, so this changes will remove these gap.

The study was conducted at Iringa-Tanzania and some extent was done at Mbeya and dodoma on the circumstance at Iringa was easier to collect data while continuing with my studies also at Mbeya and dodoma it was the break time so enabled me to collect data when i was at home spending the break time so the research covered in Tanzania

1.8.2 Limitation of the study

The researcher faced limitation, like Scarcity of resources in this field as many authors of different books and scholars have not written much concerning the matter on the study in dealing with that I only used the resources available in obtain the relevant information

lack enough time for conversation with the respondent for interview since they was so be busy with their duties at work, upon dealing with that the researcher was patient to the in order to accomplish the aim.

²⁴ The Education Act no 2 of 2016

CHAPTER TWO

CONCEPTUAL FRAME WORK ON THE RIGHT OF EDUCATION TO SCHOOLBOY

2.1 INTRODUCTION

This chapter explain different concept relating to the matter on hand ÷

2.1.1 Schoolboy offender

A child or young person who attending to school has been found guilty for causing pregnancy to his fellow female student at the time attending to school therefore this boy is a offender according to the law²⁵ as it provided under section 60A of the education Act.

2.1.2 Schoolgirl

Is a girl attending to school and the one recognized by the law that is below the age of the majority eighteen years (18) while they are at school²⁶ ,on regarding to the matter on hand the victim student is this one schoolgirl who impregnated at the time she attending to school

2.1.3 Minimum sentence of thirty (30) years imprisonment

This punishment is penalized in different offences under our penal laws, but when we turn to the punishment under the law that prohibits teenage pregnancies

²⁵<https://www.collinsdictionary.com/dictionary/english/young-offender> (accessed 9 January 2023)

²⁶ <https://www.merriam-webster.com/dictionary/schoolgirl> (accessed 9 January 2023)

especially to schoolgirls employ the same punishment thirty years imprisonment; where there are two facts that can prove an offence of impregnating a schoolgirl and that facts are here by the court in determining the punishment, these facts are as viewed hereunder.

~The fact that a victim was a primary or secondary schoolgirl at the time was impregnated, a victim must be proved as was impregnated while was attending in primary or secondary school in order to direct the court in determining the punishment for example the case of **Jofrey s/o David vs. R**²⁷ where accused person was convicted on two counts of raping and impregnating a form II schoolgirl.

On these count the accused appealed and one among the ground for appeal was that, the trial court erred in law on convicting accused person by not proving the age of the schoolgirl, the court of appeal dismissed the appeal by holding that the nature of offence does not need the proof of age of the victim rather it needs materially proof that a victim was impregnated at the time was attending to schoolgirl and that the accused is the one who did it , so the age of victim was immaterial consideration.

The fact that a victim was impregnated by the accused, it is upon the prosecution side to prove beyond reasonable doubt that the offence was genuinely committed by an accused by following all circumstances of the case material²⁸

²⁷Criminal Appeal 50 of 2020

²⁸ <https://www.legalmatch.com/law-library/article/what-is-mandatory-minimum-sentencing.html>
(accessed on 7 October 2022 at 04:27)

All in all the punishment is inhuman and unconstitutional to the male student offender because it is disproportionate and excessive as it makes no measurable contribution to acceptable goals of punishment and it goes beyond penal objectives

2.1.4 The concept of right of education

Refers to the basic right of access education the attending to school for study, where every person living in the united republic of Tanzania has entitled with the right of education according to the provision of the constitution under article 11(2) state that "every person has the right to access education...."²⁹ on that circumstance the law provision provide equality in education in aspect any law denies someone education right will be going against the CURT, therefore in this situation the Education Act go against the constitution on considering the provision under 60 A (3)³⁰ of the Education Act denies a schoolboy the right of education on ground this punishment will let him out of his basic right of education.

2.1.5 Readmission of school girls who drop from school after being pregnant

In Tanzania the readmission of teenage girls who drop out because of pregnancies is 95% to complete after the announcement by the education minister. There are many recommendations and policies from international, regional and domestic human rights instrument which triggered the readmission policy in Tanzania some of them persuaded only on the readmission policy

²⁹The constitution of the united republic of Tanzania Article 11

³⁰ The Education Act no 2 of 2016

without determining the penalties and sentences posed to the sexual offenders who impregnates schoolgirls. Moreover readmission is taken as constitutional right on education, human dignity, body and psychological integrity, equal protection and benefits of the law as well as the protection against unfair discrimination

2.1.6 The rationale of the proportionality of the minimum sentence with the offence

Pregnant girls are allowed to access education right after delivery as was announced by the responsible senior education minister on November 2021. Hence the punishment is still their though those who dropped out from schools are allowed to return in school and this mark the inconsistency of Tanzanian legislation system as to the ground male student are not allowed to return differs from girls

2.1.7 The age and consent of a school girl

Impregnating a schoolgirl will face thirty (30) years imprisonment while the consent of a schoolgirl is not a defense to a charge. Moreover, even though the age of a schoolgirl is 18 years old at the time she was impregnated by the accused, age is not a defense to a charge. So consent and age of the victim are immaterial considerations³¹. In the case of **Jofrey s/o David vs. R**³² where accused person was convicted on two counts of raping and impregnating a form II schoolgirl. On the second count the court of appeal dismissed the appeal by

³¹<https://fbattorneys.co.tz>impregnating-a-school>. (accessed on 2 November 2022)

³² Criminal Appeal 50 of 2020

holding that the nature of offence does not need the proof of age of the victim rather it needs materially proof that a victim was impregnated at the time was a schoolgirl and that the accused is the one who did it, so the age of victim was immaterial consideration.

In case the offender is boy under the age of 18 years, he cannot be sentenced to thirty (30) years imprisonment since a boy under age of 18 years is deemed as child so he would be sentenced according to the law of the child and such punishment is contrary to Section 13(1) where a provision reads as,

“A person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment including cultural practices which dehumanizes or is injurious to the physical and mental well-being of a child”³³.

The researcher observed that the punishment of thirty (30) years imprisonment is inhuman and degrade to the child boy contrary to the proportionality of the offence since schoolboys are entitled to be punished in accordance with law of the child and they are not able to serve thirty (30) years on jail rather they may serve short period of time in order to learn the lesson consisting the offence and considering all circumstances of the case, like in the case **Foaled Laurent v republic** where the offender who impregnates a schoolgirl both were form four students, was convicted for thirty (30) years but on appeal the punishment was set aside on the ground that an offender had been in prison almost a year and being a

³³ The law of the child act CAP 13 of 2019

secondary student he learnt his lesson and considering all the circumstances of the case and this seems to be enough punishment³⁴.

2.1.8 Punishment

Is the infliction or imposition of penalty to offender, According to matter on hand the offender it's to be punished but also is a student the punishment given should relies on extralegal punishment factors (XPFs)³⁵ which suggest that court and decision makers go beyond the legal factors and put into account the extralegal punishment factors, where the judges use their discretion to decide what charge to press, the judge can make a different at any point in the criminal justice process according to the rationale ground behind the decision of the punishment therefore on that ground this has to be applied to offender schoolboy since the law is silent to protect the right of education to them.

2.1.9 Conclusion

Summing up to the study at hand under this chapter, there is a disproportionate between a mandatory minimum sentence of thirty (30) years provided under section 60(A) and the offence of impregnating a schoolgirl. This is because those pregnant girls are allowed to return to school so they expected education right while the school boy offender's rights are infringed because the punishment is still there to him. Hence the punishment is uncertain by not considering the rule of law on the issue of equal right of education.

³⁴ Criminal appeal no 12 of 2021

³⁵ <https://Scholrship.law.upenn.edu/facultyscholarship/353/> (accessed may 2 2023 at 09.38)

CHAPTER THREE

LEGAL FRAMEWORKS ON THE RIGHT OF EDUCATION

The chapter provide for the laws divided into levels internationally, domestic, regional which governing the matter on hand focuses on the punishment asserted under section 60(A) of Education Act to a schoolboy who impregnated a school who lacks the education right after being punished by this provision . Under this stance the government authorizes the usage of legal framework in accordance with the rule of law. The following are the laws applicable in Tanzania mainland.

3.1 International Legal Framework for the protection of the right of education to people

These can be Treaties, Charter, Conventions and declaration which the country has ratified or domesticated, these are

3.1.2 Universal Declaration of Human Rights (UDHR), 1948

This declaration of human right where every right of every one has been entitled to, this was adopted by the UN General Assembly on 10 December 1948 since Tanzania member of UN domesticated the use through constitution, on the right of education all person entitled as per Article 5³⁶, state that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", Provide limitation on imposition of punishment and penalties, that it must not be torture, cruel, inhuman or degrading treatment or punishment.

³⁶ Universal declaration of human right (UDHR) 1948

Also article 26(1)³⁷ of the same act state that "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages Elementary education shall be compulsory, Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit". so emphasize the equal right of education provide that shall accessible equal to all to mean it is unlawful to pose penalties to a person on any way pertaining to the infringement of someone right of education due to that the education act provision under section 60A (3) should consider the imposition of this penalty to a school boy offender so as he can return to school.

3.1.3 The Convention on the Rights of the Child (CRC), 1990

This convention promote all human right to be accessed equal by all people ,the convention was adopted by the UN General Assembly on 20 November 1989 become into force in 1990 and it was domesticated in Tanzania through the enactment of the law of the child No 21 of 2009 which incorporated the provision of the CRC in domestic law, were under Article 2(2) ³⁸ which a state that " States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions....." . of the convention prohibits punishment against child in any situation by considering the status of the child.

³⁷ Idem

³⁸ Article 1 (2) of the convention on the right of the child 1990

where under article 29 (1)(d) provides among other thing for the child to have equality of sex and friendship also article 28(1) (e) provide that " Take measures to encourage regular attendance at schools and the reduction of drop-out rates" Tanzania being a membership of international organization must ratify this legal instrument in order to protect the rights of the child there are some cases where Childs face the punishment as causative of pregnancies to their fellow schoolgirls contrary to the international legal framework that if the states will pay attention On the punishment under Section 60

3.1.4 UNESCO Convention against discrimination in education, 1960

This convention was ratified by 91 states and entered into force in 1962, and domesticated in Tanzania on 22 December 1964, provision under Article 1 (a)³⁹ state that "...Of depriving any person or group of persons of access to education of any type or at any level" provide the impurity of educational equality on the circumstance depriving any person or group of persons of access to education of any type for example in cases a schoolboy can lack education right as to the provision of education act section 60(A) 3⁴⁰ which contrary to this international law which prohibit any deprive on school for any kind as this provision depriving a right to education to school boy who had impregnated a school girl in circumstance serving sentence of 30 years in jail and not return to school instead shall be given a little punishment after being learnt a lesson should reinstate to school like the teenage mother.

³⁹ UNESCO Convention against discrimination in education, 1860

⁴⁰ Education act cap 353 no 2 of 2016

3.1.5 Convention on Elimination of Discrimination against Women (CEDAW), 1981

This convention was adopted in 1979 by the UN Assembly and it was instituted in 3 September 1981 were ratified by 189 states which domesticated in Tanzania through the adoption of marriage act in 1971 and child law 2009, to protect any kind of discrimination as per Article 10(e)⁴¹ state that "The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women"; provides for the promotion of women education right by continuation policy and readmission especially for those schoolgirls who drop out from school. Tanzania has now ratified readmission policy in system but there is no legal foresee of the legislation on the flexibility of the law, if then the law allows flexibility it must state the position of offenders rights who is a schoolboy when a teenage mothers resign to school

3.2 Regional Legal Framework

3.2.1 The African Charter on the Rights and Welfare of the Child (ACRWC), 1990

This law was domesticated in Tanzania through the child Act of 2009, were Article 11(6)⁴² state that "States Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their

⁴¹Convention on Elimination of Discrimination against Women , 1981

⁴² African charter on human and people's right on the right of women in Africa, 2003

education on the basis of their individual ability. Of the charter provides for the readmission of pregnant schoolgirls who conceive before completion of their education" The policy is suggested by most of the African charters without foreseeing negative effect of that policy so Tanzania being a member has ratify the charter on 1990 and also to adopted the same policy and consider the provision of the act under Article 1 which state every person shall have the right of education, there must be an amendment in account of punishment to offenders who are also students.

3.2.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

This protocol was domesticated in Tanzania in 2007, were Article 12(1) (c)⁴³ provides for the sanctions against individuals who cause sexual harassment against women in schools. Sub-article (2) (c) of the same article provides for the retention of girls in schools for those who leaves the school prematurely. The sanctions provided includes the punishment of thirty years in jail and this once it came in Tanzania being a member of that framework it rendered into a different manner since offenders are suffering in jail while the victims are re-admitted to schools, so the adherence of rule of law is not in equality.

⁴³Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

3.2.3 SADC Protocol on Gender and Development, 2016

Articles 11(2)⁴⁴ state that "States Parties shall put in place legislative and other measures to ensure that the boy child enjoys the same rights as the girl child" and 14(2)⁴⁵ state that "States Parties shall by 2015 adopt and implement gender sensitive educational policies and programmes addressing gender stereotypes in education and gender based violence, amongst others" provides for the rights to education and protection for boys and girls child, the provision allows for retention of girls who drop out from schools because of pregnancies and other factors. In Tanzania the position for readmission of teenage mothers or schoolgirls exist which is different to schoolboy since the punishment to the offenders is still there with no protection by law for their rights.

3.3 Domestic laws

3.3.1 The Constitution of the United Republic of Tanzania of 1977

The constitution as a mother law provide some prohibitions toward the punishment under article 13(6) (e)⁴⁶ state that "no person shall be subjected to torture or inhumane or degrading punishment or treatment" where it provide that the state shall make provisions to the effect that no person shall be subjected to torture or inhuman or degrading treatment. In relation to the matter at hand the mandatory minimum sentence of thirty (30) years is inhuman and degrading offender's rights since the victim has assurance to achieve the expected education

⁴⁴SADC Protocol on Gender and Development, 2016

⁴⁵ idem

⁴⁶ The constitution of the united republic of Tanzania

right after delivery, the law provides the punishment to an offender contrary to constitutional provision, any provision of any law which contradict with the constitution is rendered to be null and void.

By referring to the punishment of thirty years jail asserted under education act, go contrary to the constitution since it degrading the right of school boy who has impregnated a school in circumstance girl allowed returning to school and a boy not allowed but has to serve the punishment and by considering the article 12(1) of the constitution of united republic of Tanzania state that " All human being are born free and are all equal" means that the schoolboy and schoolgirl has to be treated equal in every aspects and article 11 (2) state that " every person has the right to access education..."⁴⁷

Generally, the constitution requires all laws to be made in compliance of it, in case any law is inconsistence with the constitution such law is declared void. Article 29(2)⁴⁸ offers a protection to every individuals, it provide that every person has the right to equal protection under the laws of the United Republic of Tanzania. According to Article 29(2) and (4)⁴⁹ means that every citizen is offered with protection thus any law which depriving any right is prohibited in that case such law is declared void hence not used.

⁴⁷ The constitution of the united republic of Tanzania Article 11

⁴⁸ idem

⁴⁹ idem

3.3.2 Education Act cap 353 no 2 of 2016

The law provides for the punishment to a person who has impregnate a schoolgirl under section 60A(3) of education Act as amended by section 22 of the Written Laws(Miscellaneous Amendment) act where the provision "any person who impregnates a primary school or a secondary school commits an offence and shall liable for the conviction of imprisonment for a term of thirty years" requires the offender to serve the mandatory minimum sentence of thirty(30) years imprisonment for the offence of impregnating a schoolgirl⁵⁰.

A schoolgirl is presumed to be a child who is in primary or secondary school. Impregnating a schoolgirl under Tanzanian law confers the sentence of thirty (30) years in jail with no mercy and that situation seems to be unfair since the victims are allowed to returning to schools after delivery.

3.3.3The law of the child Act cap 13 of 2019

The law under section 13 (1) state that “ a person shall not subject a child to torture or other cruel, in humane punishment or degrading treatment including any cultural practices which dehumanizes or is injurious to the physical and mental wellbeing of the child ” clearly provides for the prohibition against any inhuman or degrading punishment to Childs⁵¹. In case the offender is under maturity age then will not subjected to the punishment of thirty (30) years as the law against teenage pregnancies requires, rather an offender will be subject to the law child.

⁵⁰ Education act cap 353 no 2 of 2016

⁵¹ The law of the child Act cap 13 of 2019

Under Tanzanian laws the word child means a person who has not attained the age of maturity which is 18 years and in that circumstance most of the primary and secondary students are not well attained the age of maturity and presumed to be Childs. So the punishment provided in education act under section 60(A) when applied to a schoolboy is inhumane since schoolboy is presumed to be a child who has to be punished by the child law.

3.3.4 The penal Code Act cap16 of 2022

Were under section 160B provide for the protection of the right of the child, were at section 160b (a) state that “the code shall prevent the court from exercise of revisionary power to satisfy that, cruel sentences are not imposed to person of below the age eighteen years” therefore this aim at ensuring that child are not treated by the degrading or inhumane punishment which torture them as to the provision under section 60A (3) of the E.A seem to be against this provision of the penal code since this punishment cause torture to the child and through this punishment the schoolboy when punished by it not able to attend to school so hence infringes the right of education to the school boy has to be amended

3.4 Domestic Institutional Framework

3.4.1 The judiciary or court process

The Judiciary of Tanzania being the authority with the final decision in the dispensation of justice it functionally interpret laws to the demanded citizens;

Under article 107A (1) (a)⁵² provides for an independent judiciary meaning that courts are able to stand in its decision without any interference from other government organs. Judiciary is only the legal institution which assures just and fair trial as an indicator to the rule of law hence adherence of human rights towards its people.

Normally local laws are directly applicable in Courts but international instruments are rarely applicable in our legal system unless constitutional circumstances and structure allows. In relation to the matter at hand, courts has been an instrument which adhere the instructions of the law by representing it in different cases likely in the case of **Siyomwe s/o Juma Vs. Republic**⁵³, where the offender who impregnates a schoolgirl though both were form four students, was convicted for thirty (30) years but on appeal the punishment was set aside on the ground that an offender had been in prison almost a year and being a secondary student he learnt his lesson and considering all the circumstances of the case and this seems to be enough punishment. Through court's decision the law may account its position whether it is effective or ineffective in relation with changes that faces our current societies.

⁵² Article 107 of the Constitution of the united republic of Tanzania

⁵³ Criminal Appeal 56 of 2020

3.5 Conclusion

Under this chapter, above is a legal framework including international and domestic laws, conventions, as well case laws which have the position relating to the matter at hand through this law revealed the truth that the Education Act provision under section 60A (3) is unfair since it against all this law above provide for the right of education to all men and women, so the amendment is needed to take responsible measures to for protection of a schoolboy offender according to his status also is a student has to enjoy all right as women especially the right to return to school after being learnt the lesson from the offence committed.

CHAPTER FOUR

DATA ANALYSIS ON THE LAW AND FINDING REGARDING THE RIGHT OF EDUCATION FORCUS ON SECTION 60A (3) OF EDUCATION ACT.

4.1 Introduction

This chapter presents and discusses the findings as the research carried to give the prove of the matter on hand by giving the analysis on the legal examination of the provision under section 60A (3)⁵⁴ which seem hindering the right of a male student to enjoy the right of education, so below are findings which proves my hypothesis and gives the answer on my objectives.

Therefore this chapter on analyzing the research has both primary and secondary data, where primary collected on the field through interviews and On the issue of primary data, the data was collected from the magistrates, advocate and individuals who always witness and experience by their understanding in daily life, and secondary data were written material comprises with case laws and articles.

4.2 Finding on the research objective

This part covers the general finding of the research and answer the finding of each objectives, which contain the general objective and the specific objectives. Were generally the research was intended to make a critical analysis of the law of

⁵⁴The Education Act [Cap.353 R.E 2002] (Miscellaneous Amendment) no.2 of 2016

Education provision section 60A (3)⁵⁵ of Education Act of 2016 on considering this law on whether adhere the right of education to schoolboy therefore the following are answer from the objectives on how it disobey the right of education and what should be done.

4.2.1 General objective

In considering the main objective to examine the right to education in Tanzania mainland with the focuse to section 60 A (3) of the Education Act, as it provided under article 11 (2)⁵⁶ of the CURT that every person has the right to access education and every citizen shall be free to pursue education..."

Therefore on relies to the main aim there need of the amendment of the punishment under section 60A (3) since there is a problem, as it does not consider Equality rule of law as it denies the right of education to a male student to enjoy the readmission to schoolboy who have to save thirty years jail which is inhumane as it go against the constitution as per article 13 (1)⁵⁷ of the Constitution which state that " All people are equal. Therefore the amendment on the specific section of the law of Education Act will ensures equal right of education to both sexes as refers to the article 29 (2) state that "Every person has the right of equal protection under the laws of the united republic as it responsible the changes are important for protection of the schoolboy right of education.

⁵⁵ Education Act no.2 of 2016, section 60A (3)

⁵⁶ The Constitution of the United Republic of Tanzania, Article 11

⁵⁷ Idem

4.2.2 Specific objectives

There only two specific objectives which was to analyze the matter on hand which was paved a way to the primary data collection, were this objectives was collected on regarding here bellow questions which answered by different views from respondents,

4.2.2.1 Does section 60A (3) infringes the right of education to a schoolboy who impregnated a schoolgirl

contributed the view that the act of re admitting the teenage mothers will only recover the status of education but will not reduce the teenage pregnancy so what the means of doing it, therefore the law can't cover all things at the same time it must allow the flexibility and amendment in order to fix the all current issues associate in our society, so according to that the law has to undergo amendments by making this policy to bring equality to women and the offender on the enjoyment of the right of education⁵⁸,

According to the respondent contributed the view if the function of the punishment was to reduce teenage pregnancies and protection of the right to education then how is it only the schoolgirl can return to school after giving birth and only the offender can't return to school⁵⁹, so it seems that this right to education does not protect well the schoolboy who is involved in the offence in which at the same time the constitution provides that every person has to be

⁵⁸ interviews from Mwabukusi Law Firm located at forest Mbeya conducted on 14 September 2022

⁵⁹ Interviews from the respondent at legal wall advocates at Dodoma on 10 October 2022

protected by the law and has the right to education so due to that the law is silent to the right of schoolboy offender proves that does not adhere the right of education.

The response from other respondents viewed that they remained with unclear answer as to why only schoolgirl who dropped from school because of teenage pregnancy are allowed to return to school after giving birth while the schoolboy offender are denied on the ground that both they have right of education and the re admission policy only teenage mothers will not reduce teenage pregnancy⁶⁰ therefore since the law has not drawn well the right of readmission on ground it favors only the victim while also the schoolboy offender is need of this readmission policy which he does not entitled to.

Response from the respondent who viewed that the law has not been drawn well in the manner the sanction build fear to the offender from doing the same offence but it is not fair due to the fact that it protects the victims right by allowing them to return to school after giving birth while the offenders rights are sated aside remain suffering the punishment⁶¹ which does not give him another chance of education so the must undergo the changes so as to ensure the schoolboy given the punishment which let him suffer and the at same time let him enjoy the right of education.

⁶⁰ Interviews from the respondent lawyers at Ruaha catholic university conducted 14 December 2022

⁶¹ interviews from resident magistrate at Dodoma district conducted on 09 September 2022

Also in my street finding, found the respondents who they viewed that that there large number in school of female student who returned to school after birth for example at Busokelo girls secondary was found a number of ten victims student who are only girls also at St. Aggrey approximately more than twenty victim student who returned to school after birth which it's not the same to men they not allowed to the same like victim student as they enjoy the education right it seem this discriminating male student⁶².

4.2.2.2 Does the punishment under section 60(A) 3 of the Education Act, adhere the right of education to a schoolboy offender

Individual respondent who relative to victim faced with the punishment for impregnating a schoolgirl they argue against the law by that time there was no readmission of schoolgirls but the punishment is too severance and when connecting to the offence now days teen mothers are allowed to back in schools this is biasness and unfair treatment to the offenders by the law, a victim receives the expected education rights while offenders suffocating the severe punishment that gap has been created by the law since does not adhere the right of schoolboy offender.⁶³

The provision of the law regulating the offence of pregnancy against schoolgirls reads that any person who impregnate a primary or secondary schoolgirl will be liable for conviction of thirty (30) years in jail, in consideration

⁶² Interviews from students from st. aggrey located at Mbeya Gombe street.

⁶³ Interviews from individuals located at Mbeya Airport conducted on 17 september 2022

of the provision there is no words or phrase within that provision which state anything to the offenders rights and it manifest the gap of the law since currently readmission policy is officially announced and in practical, so the law itself denies offenders rights by considering readmission or continuation policy only to victims so does not consider the offenders right of education so the punishment does not adhere the right of education to a schoolboy offender.

4.2.2.3 Is that punishment under section 60(A) 3 just and fair?

I also interviewed the respondent who contributed that now days cases of teenage pregnancies are highly reported and referred to the court of law located in different areas differ from earlier period where such cases was reported since the matter were settled by the family member. Upon this views by the respondent it clearly shown that there are reports of cases for teenage pregnancies to schoolgirls whereby offenders are liable for conviction of thirty (30) years in jails while in fact those teenage mothers who conceived during their studies they allowed to back in schools after deliver and not to the schoolboy offender it seem to be unfair⁶⁴.

Therefore by relies on the provision of the penal code under section 160B⁶⁵ provide for the protection of the right of the child, were at section 160b (a) state that “the code shall prevent the court from exercise of revisionary power to satisfy

⁶⁴ Interview from teacher at mwembetogwa secondary school on 17 November 2022

⁶⁵ The penal Code Act cap16 of 2022

that, cruel sentences are not imposed to person of below the age eighteen years” generally proves that the punishment is unfair.

4.3 Testing of the hypothesis

The research is guided by hypothesis It seem that, the punishment under section 60A (3) of Education Act infringes the right to education to schoolboy, so the law are unfair regarding the male offender student who committed the offence by impregnating his fellow student on circumstance the girl may return to school but a boy has to serve the punishment in jail no any law protect him to be allowed to return to school.

From the findings the research successful that the punishment under section 60 (A) of the education Act denies the education right of the schoolboy offender since only schoolgirl victim are allowed to return to school while schoolboy are not enjoying this right of education.

4.4 Analysis of the law

The education Act cap 353 no 2 of 2016 under section 60A (3)⁶⁶ gives out the punishment to a person caused teenage pregnancy which is the minimum sentence of thirty years jail, by making analysis to other law like The law of the child Act cap 13 of 2019 which provide that any primary or secondary student is immature termed as the child as to section 13 (1)⁶⁷ clearly provide that they should not face or prohibited against the inhumane punishment to the child also the

⁶⁶ The Education Act [Cap.353 R.E 2002] (Miscellaneous Amendment) no.2 of 2016

⁶⁷ The law of the child Act of 2019

constitution of the united republic of Tanzania under article 13(6) (e)⁶⁸ provide that “no person shall be subject to torture or inhumane treatment therefore in this analysis direct in our mind the schoolboy offender does not deserve that punishment of thirty years jail since it’s a torture and inhumane punishment to the child and denies the right of education therefore the must different punishment for them has the child so as to enjoy their right of education

4.5 The enacted law comply with the mother law which is the Constitution

Any law must comply with constitution in circumstances fail to comply termed as unconstitutional and declared illegal there in order to protect the right of education to the schoolboy must comply with the CURT which going to ensure that the right of a schoolboy protected in ground the constitution emphasis equal treatment of the right of education as per Article 11⁶⁹ states that every person has to access education, therefore since section 60A(3) of E.A does not comply with the constitution has to be amended since gives inhumane punishment to the child also against the Penal Code under section 160B ⁷⁰ prohibit the inhumane punishment to children

⁶⁸ The Constitution of the United Republic of Tanzania

⁶⁹ The Constitution of the United Republic of Tanzania, Article 11

⁷⁰ The penal Code Act cap16 of 2022

4.6 What should be done to protect the right of Education to schoolboy

The schoolboy has to face different punishment than to those who caused but are not student as to that all student presumed to be child should not face inhumane as to the provision of the penal Code under section 160B, so as escape him on dropping from school has to be given the detterable sanction which will render leant them the lesson on a short period and proceed with education were the other who are not student has to be responsible for the minimum sentence has they are not eligible to any denial on education right

Also should posed with the punishment to the schoolboy by using extralegal punishment which will give the punishment on considering the factor of the right of education means will punish him and think how also as the student can return to school and not apply the legal factor or law which is uncertain against the schoolboy will render him not face the right of education

4.7 Conclusion

Generally, this chapter contained the findings and presentation of data that collected in the field pertaining the legal problem in hand which in general gives the conclusion that the problem could become to an end simply by making the improvement on the existing law with equality addressing of right to both male and female as to that the provision under section 60A (3) it's unfair which rendered inequality between the schoolgirl and schoolboy in issue of the punishment provided denied full the right of education to a schoolboy as to that the schoolgirl can return to school but the schoolboy cannot return to school so this must be taken into considered to be amended.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

The research aimed at analyzing and discussing the proportionality of the punishment or minimum sentence provided under section 60(A) 3 of E.A⁷¹ that adhere the rule of law. The researcher in accessing his objective he managed to visit various experts, school teachers and other individuals who have the knowledge and contributed about the matter on hand. So the researcher was insured to identify whether the law is fair on the right to education on focus to section 60(A) throughout secondary and primary data that were collected.

From the response given by different categories of the respondents and from the literature review it shows that the rule of law has not drawn equality between male and female students on the issue of enjoying equal rights to education in relation to the punishment asserted under section 60(A)3, also by looking the announcement of Professor J. Ndalichako (the late Education Minister of Tanzania) in Nov,2021 saying that female students are allowed to return to school after giving birth while there is no law defending men to return to school but they have to serve the penalty, so it proves that there is no adherence of the rule of law according to the matter on hand since fair and justice has not drawn

⁷¹ Education Act cap 353 of 2016

well to a schoolboy offender so it has to be amended the same to the provision under article 29 (2) of the CURT for the protection of the school boy

5.2 Recommendation.

According to the above observing on the answer what should be done in order the schoolboy to enjoy the right of education I recommend the following bellow which gives the answer on those objectives of this findings.

5.2.1. Recommendation to the Government

Amendment of the law In order to ensure boys and girls to enjoy the same right there is the need of amendment by adhering the rule of law that all gapes of the law shall be filled by reforming the existing law. So according to the matter in hand the law should undergo amendment in order to balance the law so as to bring relief to schoolboy offender against inhumane punishment, so this balance will enable schoolboy offender to enjoy the same readmission policy which was already announced favoring the schoolgirl that brought gap by leaving schoolboy offender without right to education.

according to the view of the first objective which answered different by the different respondent all in all the respondent excited from the law which governs the issue of the right of education to remain silent in the huge problem like that which denies the basic right to person on the ground that the punishment does not consider the best interest of the child direct prove that the legal frame work are not effective since the provision of the law of Education is not clear there is the gap since it demolish the right of education

Also on the views of different respondent prove that the provision of the law under section 60A (3) is not just and fair since direct denies the right of education to the schoolboy on the ground that he can't return to school like the schoolgirl done to them after delivery as to them will be serving the punishment in jail they were to attend to school so directly dropped from school as to that punishment given.

Another recommendation to the Government should find the reasonable detterable punishment which will make the offender to learnt the lesson in short period for his wrong so as to enjoy the right of education, Means there must be the improvement in the education Act under section 60A(3) so as the schoolboy offender to enjoy the education right on the following ground that the student who involved in causing pregnancy to a schoolgirl has to face different punishment than to those who caused but are not student, so as escape him on dropping from school has to be given the dettarable sanction which will leant them the lesson on short period and proceed with education were the other who are not student has to be responsible for the minimum sentence has they are not eligible to any denial on education right ,therefore this changes will bring the relief to the schoolboy to proceed enjoying the right of education like the schoolgirl who are enjoying the readmission policy,

So finding other punishment which is simple to the offender for the sake of balancing the interest of male and female in education since through that the

education act will be actin on the provision of the mother law on the ground there will be the equality in education to both gender.

So according to the second objective which say that does the punishment adhere the right of education seem does not adhere as the fact the schoolboy offender no law protect them to enjoy the right of education like female means the law is blind to them as they can't be defended by any way as the student to reduce from degrading punishment do as to rescue them from the lack of the right of education since no law protecting them result that there is no adherence of the law to the protection of the schoolboy offender on right of education so the law has to be amended

5.2.2. Recommendation to the ministry of education

Practice of the re-admission policy by balancing of equality in education to both gender the policy has to be practiced in a proper way with punishment, so when we say in a proper way means that should not be bias means not favoring one part as it is now, so it has to be applied both in order all men and women has to enjoy the re-admission right, also when I say has to be endowed with punishment aim to avoid arrogant since they will set their mind to be don't cares because they aware that they will be re-admitted after delivery so when there is punishment asserted before re-admission it will build fear to them.

Therefore this has to be taken into consideration by authorities so as to remove imbalances between schoolboy and schoolgirl in the enjoyment of the right of

education on regard to the minimum sentence under Education Act which deprive the right of a schoolboy as the punishment cease the education right.

5.2.3 Recommendation to the court of law

Court process had to consider rule of law in adjudication of justice as the court is only organ to interpret the law by determining the validity that law obey the constitution provision where in circumstance the law not fair and injustice they direct it to the legislative assembly for the amendments as to the ground that the court is bound not to follow the law which contradict with the constitution.

Therefore in respect of matter in hand the court is the one to ensure fairness on the hearing of cases by realizing the small bias go against the rule of law like that the schoolboy offender does not enjoy the same right like schoolgirl who enjoys readmission right of education so the court has to deal with it since court is the authority translate laws.

To the court, any unjust law the court has send them to the legislative assembly for discussion for improvement as by referring to the case of **Siyomwe s/o Juma Vs. Republic**⁷², where the offender who impregnates a schoolgirl though both were form four students, was convicted for thirty(30) years but on appeal the punishment was set aside on the ground that an offender had been in prison almost a year and being a secondary student he learnt his lesson and considering all the circumstances of the case and this seems to be enough punishment, so this held was the discretion decision which was just to the schoolboy but out of time

⁷² Criminal Appeal 56 of 2020) [2021] TZHC 2258

denied him to return to school , the court through this has to make this gap of the law as the bill to the legislative assembly for improving this section to schoolboys to face the right of education.

To the court the schoolboy offender should punishable by extralegal punishment factors (XPFs), the judge and other decision maker should pose the punishment to the schoolboy by using extralegal punishment which will give the punishment on considering the factor of the right of education means will punish him and think how also as the student can return to school and not apply the legal factor or law which is uncertain against the schoolboy will render him not face the right of education, therefore extralegal decision making by judges to the schoolboy will render them to enjoy the right of education in some extent like schoolgirl on ground will give the reasonable punishment so that they can return to school⁷³.

5.4 Conclusion

Closing up, The authority like government, has to make consideration under the punishment asserted under the education act at section 60(A) 3⁷⁴ which provide punishment, to make amendment on it as to balance the rights to bring relief to the school boy by consider the punishment when goes direct to schoolboy to serve this punishment which the act cease the right of education to a boy so the thing to be done is find the simple punishment will make the offender to be learnt the lesson in a short time then after he may return to school like that girls return after giving birth.

⁷³ Robinson P, Discretionary factors in assessing criminal punishment 2012

⁷⁴ Education act cap 13 of 2016

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