THE EFFECTIVENESS OF UGANDA'S LEGAL AND POLICY FRAMEWORK IN PROTECTING THE RIGHT TO HEALTH OF REFUGEES

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DECLARATION

I, NYAKETCHO CATHERINE NEKI, do hereby declare that this research report is entirely my original work, and has never been submitted to any institution for any academic award. I have appropriately referenced any external literature or sources.

Signature: .....

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APPROVAL

As the research supervisor of the student mentioned above, I certify that I have read this research report and have approved of the changes required.

SUPERVISOR

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LIST OF ABBREVIATIONS

CRRF: Comprehensive Refugee Response Framework

ICESCR: International Covenant on Economic, Social, and Cultural Rights

HSIRRP: Health Sector Integrated Refugee Response Plan

HIV/AIDS: Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome

NDPIII: National Development Plan III

NHP: National Health Policy

UNHCR: United Nations High Commissioner for Refugees

WHO: World Health Organisation

ICEAFDAW: International Convention on the Elimination of All Forms of Discrimination Against Women.

CRC: Convention on the Rights of the Child

ABSTRACT

Introduction: The purpose of this study is to analyse whether the legal framework and policy of Uganda effectively guarantee and protect the right to health of refugees through the establishment of the elements of the right to health despite the mediating factors. Uganda has been a host to refugees since the aftermath of the First World War. The influx of refugees into the country has surged over time. The Refugee Act, which transformed from the Control of Aliens Act, was established to serve as a principal act governing the affairs of refugees while going about their lives in Uganda.

Methods: This research was conducted qualitatively through document analysis.

Results: The legal framework of Uganda extends minimal protection to the refugees regarding their right to health, providing mainly for non-discrimination of marginalised groups of women and children. The component of accessibility of medical services or other underlying determinants of health, such as safe water, clean and healthy environment, is hardly established, and as such, the right to health of refugees is ambiguously provided for. With the non-existence of provisions as to accessibility and availability, it is hard to establish the means to attain acceptability and, resultantly, quality of the right to health of the refugees.

Conclusion: The legal framework of Uganda, in cognisance of the principal act providing for the affairs of refugees, is effective in protecting the right to health of the refugees to the extent that it covers the components of accessibility guaranteed through protection against discrimination, availability and the underlying determinants of health. The elements of quality and acceptability hang in the balance, as such, the right to health of refugees is offered partial protection by the laws of Uganda.

Keywords: The right to health, Refugees, Effectiveness, Protection.

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

Historical background

Uganda has acquired a reputation on the global scene as the salient exemplar of progressive policy pertaining to refugees. This extends as far back as the 1950s in the aftermath of the Second World War, when Uganda, through the British colonialists, provided refuge to the Polish people. On 27th September 1976, Uganda adopted the **1951 Refugee Convention,** which defines who qualifications for a refugee, establishing their rights and the obligations of the states to protect them. It applied only to the European refugees displaced before 1951. However, the **1967 Protocol** supplements the 1951 Refugee Convention by making the Convention globally applicable and establishing principles of non-refoulment, access to courts, education, work and protection from discrimination, providing a basis for the enactment of the Refugee Act 2004, currently the **Refugee Act CAP 312**[1] which governs the affairs of the refugees in Uganda.

Theoretical background

The macro and meso theories explain the factors subjecting refugees to forced displacement and why they choose the destinations they do.[2]

Macro theory encapsulates objective conditions such as push and pull factors, which have been deemed crucial for forced displacement relating to refugee-based migration. Despite the discrepancies, the theory possesses, they have been circumvented by the meso theory. The meso theory focuses on locating migration flows within a complex system of linkages between states. It embodies two concepts: systems and networks. Migration is assumed to occur within a migration system comprised of countries linked by economic, political and cultural ties. Networks, on the other hand, refer to a set of individual and collective actors with multiple social and symbolic ties that link them together. Networks substantially influence the direction and volume of flows, all while

[1] Alexander Betts, Refugees and Patronage: A Political History of Uganda's "Progressive" Refugee Policies, African Affairs, volume 120, issue 479, April 2021 https://doi.org/10.1093/afraf/adab012

providing resources to facilitate people to move, ranging from information, contacts, economic and social support. This theory fails to explain the forced displacement of refugees, though it explains why refugees decide on the destinations to which they flee.[3] Macro factors take precedence to a larger extent, granted that the level of forced displacement corresponds to the level of violence in the country of origin.[4]

Refugees seek asylum in Uganda due to the prevalent violence as a result of war in their countries of origin and such push factors comprising of political, social and economic networks tie into the right to health. For instance, the accessibility and availability of the underlying determinants of health, medical and health-related services that would facilitate the attainment of the highest standard of living guaranteed through Uganda's preceding reputation as a host to refugees is a rather enticing factor for refugees to seek asylum in Uganda.

Conceptual background

The key concepts of the study are discussed as follows: the right to health is an exclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and portable water, adequate sanitation, adequate supply of safe food, nutrition and housing, access to health-related education and information on sexual reproductive health. Therefore, the right to health for refugees is the application of the above to the refugee population. It also encompasses the highest attainable standard of physical and mental health[5] In Uganda, the right to health is embedded in the Constitution of Uganda, that provides for the underlying determinants of health, the right against non-discrimination[6], right to life, a right to education[7], a clean and healthy environment[8] and a right to seek redress guaranteed through the right to a fair hearing[9]. The Mental Health Act has integrated mental health into primary health care, ensuring its accessibility at all levels of the health system as well as establishing the rights of persons with mental health illness to include informed

[3] Christina Boswell, Addressing the Causes of Migratory and Refugee Movements: The Role of the European Union, December 2002 Working Paper no.73, page 3, accessed 12/03/2025
[4] A. Suhrke, Environment Degradation and Population Flows, 1994. accessed 12/03/2025
[5] John Tobin, the Right to Health in International Law, Oxford University Press 2012, page 21
[6] The Constitution of the Republic of Uganda 1995, article 21
[7] The Constitution of the Republic of Uganda, 1995, article 30
[8] The Constitution of the Republic of Uganda, 1995, article 39
[9] The Constitution of the Republic of Uganda, 1995, article 28

consent, confidentiality and protection from discrimination and abuse. The Public Health Act provides for the right to health through providing for disease prevention and control, sanitation and environmental health, vaccination and environmental health, food and drug safety as well as safety measures during public health emergencies.

The right to health in Uganda has also been partially justiciable primarily through the constitutional interpretation as was with the case of **CEHURD v. Attorney General Constitutional Petition no. 16 of 2011** which through the supreme court was overturned with emphasis that courts are empowered to interpret the Constitution and ensure that all organs of government act within the constitution, affirming that the right to health is justiciable especially when violations involve the states breach of obligation leading loss of life and delivery of poor quality services. Justiciability refers to the mechanism through which individuals, entities, and parties enforce/seek redress from the court to seek/enforce their right to health. This is plausible in Uganda as enshrined under **Article 8A (1),** which provides that "Uganda shall be governed based on the principles of national interest and common good enshrined in the national objectives and directive principles of state policy". This position was reiterated in the case of **Amooti Nyakaana Godfrey v. NEMA, Attorney General** and **Ors** [10] where Justice Bart Katureebe mentioned that these objectives have added weight under Article 8A. They are a guiding principle. They have gone beyond merely guiding us but they may in themselves be justiciable

Additionally, Uganda ratified the CESCR, ICEAFDAW, and CRC that provide for the right to health of marginalised groups such as the women, children and persons with disabilities by combating discrimination through advocacy for affirmative action to boost equal opportunity and access to services. Uganda, through its ratified instruments has been accorded the main mandate to protect respect and fulfil the right to health under the **General comment no.14 of the ICESCR**[11] other obligations include the to fulfil, and provide through progressive realisation of the right to health.

A refugee, for context, "is a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or,

[10] Constitutional Appeal No. 03 of 2005
[11] CESCR general comment no.14, para 33

owing to such fear is unwilling to avail himself of the protection of that country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".[12] For instance, the Tutsis sought asylum in Uganda along the Rwanda- Ugandan boarder districts, following the Rwanda genocide of 1994 where they were subject to persecution on grounds of race and religion[13] A refugee may also be deemed a person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality.[14] For instance, the Ethiopians who are seeking asylum in Uganda following the civil conflict regarding the bitter dispute between Abiy Ahmed's federal government and the Tigray regional leaders over the instituted reforms and the boundary, [15] serves as a reference to the serious event that grossly affects public order.

Protection is defined as the state of keeping or remaining safe.[16] It may involve taking the necessary actions as soon as possible to prevent subsequent abuse or exploitation of the right to health of refugees, to prevent self-destructive acts [17]and facilitate their attainment of the highest standard of mental and physical health.

On the other hand, effectiveness concerns the fact of producing a result that is wanted or intended, and successful.[18] With regard to the law it primarily refers to the efficacy of the law, particularly with actual observance as distinguished from the validity or the binding force of the law.[19] The meaning of effectiveness may be construed with insight from international law.

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[12] The Organisation of the African Union Convention 1969, article 1(1)
[13] Barnett, Michael, *Eyewitness to a Genocide: The United Nations and Rwanda* (Afterword ed.). Cornell University Press, 2015. pp. 1, 15, 131–132
[14] Article 1(2) of the Organization of the African Union Convention 1969
[15] Ethiopia's recurring civil conflict <https://www.bbc.com/news/world-africa-54805088> accessed 22/ 04/2025
[16] Oxford leaners dictionary 9th edition
[17] Law Insider <https://www.lawinsider.com/dictionary/protectioncases#:~:text=Related%20to%20%Protection%20Cases,person%2C%20property%2C%20and%20funds> Accessed 26/05/2025
[18] Oxford learners dictionary 9th edition
[19]Hiroshi Taki, Effectiveness, encyclopedia entries, 2013 <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e698> accessed 22/04/2025

Contextual background

The right to health of individuals comprises the elements of availability, accessibility, acceptability and quality of services delivered of medical services and the underlying determinants of health.[20] Refugees ought to be the most entitled to this right to health given the fact that they are victims of prevailing acts of violence, persecution or conflict in their countries of origin that threaten their right to life and dignity. With the establishment of the right to health for refugees, the refugees are guaranteed the utmost protection for the safety of their lives, which is the barest minimum that they seek while they seek asylum. This model of handling the refugee problem is because temporary solutions are being provided for them. This is ineffective, considering that it is highly unknown when a civil conflict may come to an end. For instance, the refugees in Uganda are provided demarcated settlements in places like Kyaka and Kyangwali that are in game reserves and riddled with tsetse fly infestation.[21] Such places are isolated and established far away from necessary amenities such as health and education. The CRRF policy is to the effect that refugees may wean themselves off aid through taking part in agriculture, from which they obtain food for consumption and the surplus is sold off to acquire capital to afford their necessities. As such they are settled in arears with vast land. However, it undermines the right to health of refugees by initially exposing them to the risk of communicable diseases and isolating them from access to desirable amenities that facilitate the attainment of the highest attainable standard of health.

1.2 Problem Statement

The irrefutable universality of the right to health is embedded in how interlinked it is to all other existing rights of essence to the attainment of the highest attainable standard of living. In light of the provisions of the Refugee Act, the elements of the right to health: availability, accessibility, acceptability and quality, as well as the underlying determinants of health, are scantily established. The existing provisions further undermine the justiciability of the same right. This begs the question: what then is the yardstick of the highest attainable standard of living of refugees in Uganda, and how effective has the Refugee Act, alongside the ratified international instruments, national

[20] CESCR General Comment No.14: the right to the highest attainable standard of health (article 12) para 12.
[21] Deborah Mulumba, Humanitarian Assistance and its Implications on the Integration of Refugees in Uganda: some observations, page 13.http://makir.mak.ac.ug/handle/10570/4077 accessed 12/05/2025.

policy and strategy in fostering the right to health in favour of the refugees? With the increasing number of refugees across all the country's borders, we must ascertain the route to the attainment of the right to health at its core to enhance the self-reliance objective and status of the refugees in Uganda.

1.3 Objectives of the study

1.3.1 General Objective of the Study

To assess whether the provisions of the legal framework and policy of Uganda relating to the affairs of refugees have facilitated the enjoyment of the right to health by the refugees through the attainment of the highest attainable standard of living.

1.3.2 Specific Objectives of the Study

1. To analyse the provisions of the Refugee Act in relation to the right to health of refugees.
2. To examine Uganda's obligations under the ratified international treaties concerning the right to health of refugees.
3. To assess the implementation and effectiveness of the legal framework in fostering the right to health of refugees.

1.5 Significance of the Study

1. Contribute to the existing body of knowledge on the right to health of refugees
2. Provide valuable insights for policymakers, legal practitioners and organisations working with refugees.
3. Offer practical recommendations to improve the legal protection of the right to health for the refugees in Uganda.

1.6 Scope of the Study

1.6.1 Content scope

The right to health ascertained through the attainment of the highest attainable standard of living by refugees is best guaranteed and measured through the law that provides for the refugees in Uganda, i.e. the Refugee Act.

1.6.2 Geographical scope

To achieve the above objectives of the study, the researcher has limited this study to Uganda. This is because it is the principal jurisdiction governed by the Refugee Act, which has incorporated the ratified international instruments on the affairs of refugees.

1.6.3 Time scope

This researcher has limited the scope to the year 2023 to date.

1.7 Conceptual Framework

The primary goal of this study is to assess how the right to health of refugees has been fostered by the provisions of the Refugee Act CAP 312 alongside other international instruments. The dependent variable in this case comprises the elements of the right to health, i.e. acceptability, availability, quality, affordability and the underlying determinants of health. The independent variable in the study is the Ugandan legal framework, i.e. the Refugee Act Cap 312.

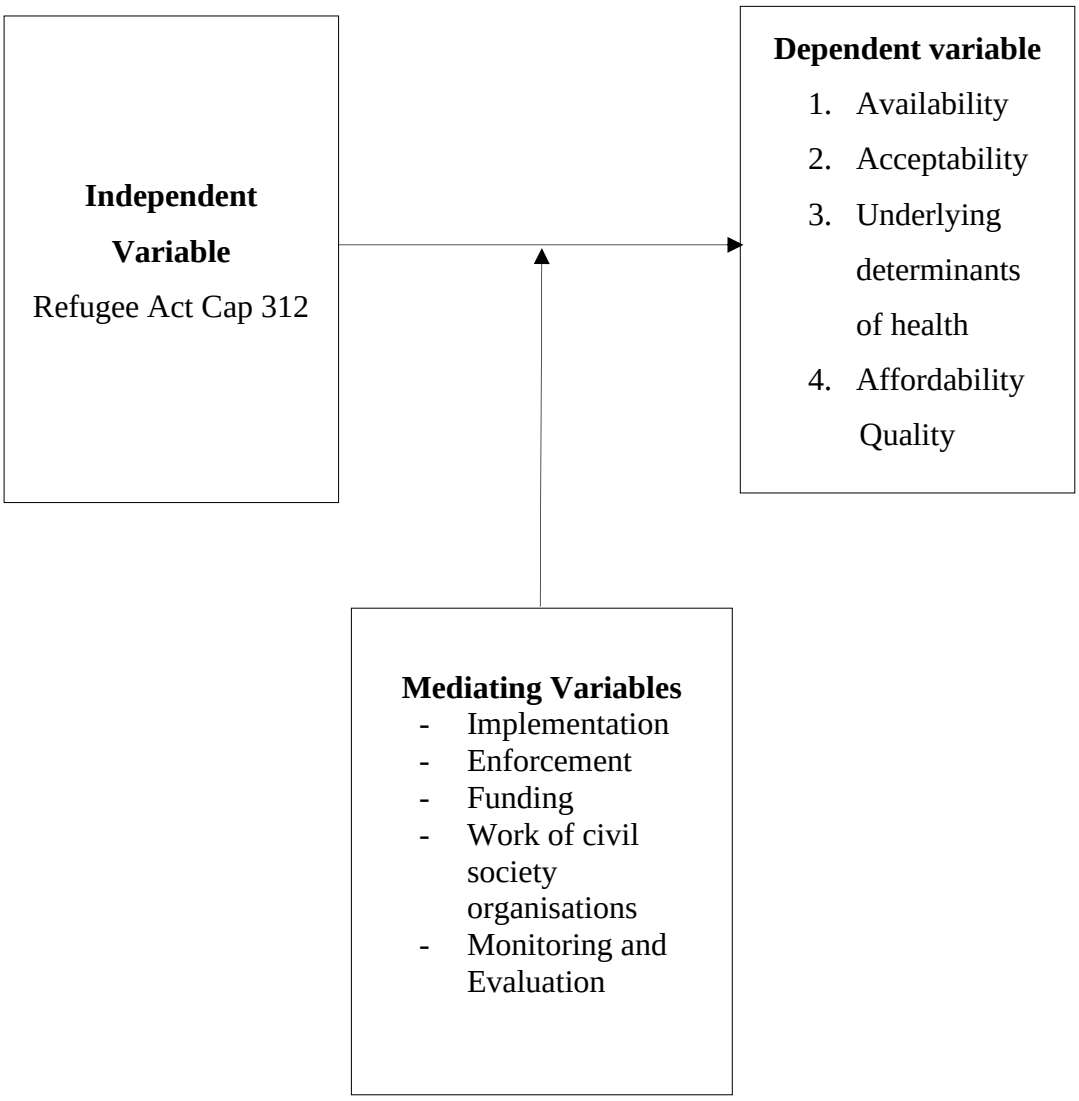

Figure 1: Conceptual Framework

CHAPTER TWO: LITERATURE REVIEW

2.1. Introduction

This chapter consists of the analytical review of documented information, on the law governing refugees, the right to health and the establishment of the relationship between the dependent and independent variables.

The right to health is the highest attainable standard of physical and mental health. According to John Tobin, four arguments advanced in light of the definition above are that; the level of health enjoyed by an individual is dependent on factors peculiar to an individual and the resources available to a state; the meaning of health should extend to a biopsychological model which recognizes potential not merely a pathological condition to limit the functioning of the individual in society; a persuasive case can be made to extend the scope of the right to health to freedoms the implications of which can be made in context of sexual autonomy of adolescents, consent to medical treatment and the practice of consensual sterilization of the insane; the qualitative elements of the right to health that health care and related services be available, accessible, acceptable and of appropriate quality support in understanding of this right.[22]

The right to health is an exclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and portable water, adequate sanitation, adequate supply of safe food, nutrition and housing, access to health-related education and information on sexual reproductive health.[23] The right to health is not to be mistaken for the right to be healthy but it is rather comprised of freedoms and entitlements .i.e. right to reproductive and sexual freedom, right to be free from interference and entitlement such as the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable standards of living.[24] The right to health is riddled with interrelated and essential elements. Their applications differ from state to state. They are as stated under the conceptual framework. In a detailed discussion, as follows

[22] John Tobin, the Right to Health in International Law, Oxford University Press 2012, pg. 21- 23
[23] Article 12(1) of the International Covenant on Social, Cultural and Economic Rights; Paragraph 11 General Comment no.14: the right to highest attainable standard of health (article 12)
[24] Paragraph 12 of Covenant on Economic, Social and Cultural Rights General Comment No.14: the right to highest attainable standard of Health (article 12)

Availability: functioning public health and health care services, as well as programs, have to be available in sufficient quantity within the state party. The underlying determinants of healthcare include safe water, food security,

Accessibility: health facilities, goods and services have to be accessible to everyone without discrimination. It has four possible dimensions. Non-discrimination, health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds. Article 21 of the constitution provides for the right against discrimination based on gender, race, political affiliation or religious views. The 1959 Convention on Refugees provides that states should offer equal treatment to refugees as their citizens. This is best fronted with regard to freedoms and rights, and appropriate health resource allocation[25]

It should be noted that even in times of resource constraints, the state should endeavour to protect the rights of the minority groups against discrimination through adoption of low-cost targeted programs (look for examples for this regarding refugees).[26] The Refugee Act declines to elaborate on what such models against discrimination might be.

Safe physical accessibility of health services goods, and facilities for all sections of the population especially marginalized population and vulnerable persons. The right to health fact sheet identifies migrants as one of the vulnerable and marginalized populations. The **Refugee fact sheet as of 2023** establishes that of the percentage population of refugees and asylum seekers in the country, there are persons living with HIV/AIDS, persons with disabilities, children and mothers[27]. This therefore, forms the minority of the minority ground and are therefore deserving.

Affordability: must be affordable for all, inclusive of the refugee population of the state. The payment for health services as well as underlying determinants of health has to be

[25] CESCR general comment no. 14: the right to highest attainable standard of health (article 12), para 19.
[26] CESCR general comment no.14: the right to the highest attainable standard of health (article 12), para 18.
[27] The Uganda Refugee fact sheet as of 2023

based on the principle of equity ensuring that these services, whether privately or publicly provided are affordable to all.

Information accessibility which covers the right to seek, receive and impart information and ideas. This is reiterated under **Article 29 of the Constitution**[28] that provides for everyone to exercise the right to freedom of expression. This however shouldn't impair the right to confidentiality and privacy of their medical data.

Acceptability, all health facilities, goods and services must be respectful of medical ethics and culturally appropriate of individual cultures and minority cultural groups. This should be accommodative of refugee groups and their various cultural practices.

Quality: medically appropriate. This requires medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and portable water and adequate sanitation. However, as it stands today, the quality of health is progressively realised for the citizens. It would spike curiosity as to what the refugees would then have access to.

2.2 Statutes

The 1995 Constitution of the Republic of Uganda provides for the right to health through the establishment of the underlying determinants of health. The state is accorded the duty to promote free and compulsory education, with individuals, religious bodies and other non-government organisations exercising the liberty to found and operate educational institutions if they comply with the general educational policy of the country.[29] The State is also obligated to take all practical measures to ensure the provision of medical services to the population[30], promote good water management systems at all levels, encourage people to grow and store adequate food, establish national food reserves and encourage and promote proper nutrition through mass education[31]. The national objectives and directive principles of the state are to serve as a guide to all organizations, agencies of the state, all citizens, organizations and other bodies and persons in applying or interpreting the constitution or any other law and in

[28] The Constitution of the Republic of Uganda, 1995, Laws of Uganda.
[29]The National Objective and Directive Principles of State Policy, the Constitution of Uganda, 1995, the law of Uganda, and the laws of Uganda, Objective XVIII.
[30] Supra, objective XX.
[31] Supra, objective XXII.

taking and implementing any policy decisions for the establishment and promotion of a just and democratic society. The principles therefore apply to the interpretation of the refugee act and policy concerning the refugees.

The Refugee Act CAP laws of Uganda: The independent variable, the Refugee Act, provides for and governs the affairs of refugees while seeking asylum in Uganda. It provides for the procedure by which they may acquire refugee status and the rights and freedoms they may enjoy in their host state. Additionally, only the refugees deemed and recognised are those who have been registered and acquired such status in the country by virtue of registration with the office of the prime minister, with the refugee department. This is important to note as the refugees or victims of persecution who are unable to afford acquiring refugee status are left high and dry. As such, they are unrecognised, and such rights embedded therein are prescribed only for the refugees who have acquired such status. Refugees are accorded obligations under the act, such as not to sabotage the security of the host state, however, they can only be in a position to fulfil their responsibilities if they are legally guaranteed health rights. Furthermore, the act establishes the obligations of the state to the refugees by assuming responsibility over them.

The 1951 Refugee Convention provides for core principles such as non-refoulement, where a refugee is not to be returned to a place where they face serious threats to their life or freedom. It further provides for the basic minimum standards for treatment of refugees, including the right to housing, work and education while displaced to ensure that refugees live dignified and independent lives. Additionally, their rights and obligations of the state towards them are enunciated therein. The provisions of this act have been adopted as stated in the Refugee Act because refugees are subjected to extremely vulnerable circumstances, facing challenges to their safety and well-being. Despite the above, the ambiguous disclosure as to the elements of the right to health that would guarantee the highest attainable standard of living among the refugees defeats the essence of the protection of the refugees in their host states.

It may be argued that the establishment of rights such as the right to life, the right to dignity, and freedom from torture and discrimination would connote the right to health, seeing that the right to health is interlinked with the other rights. However, the established rights overlook the right to health by neglecting its elements and the means

of enforcement of the elements. This is detrimental considering how vital the highest standard of mental and physical health is to the overall capital economy of the state.

It is trite in governance and policy that the law is a major tool in furthering universal health coverage, which is crucial for sustainable development. Law affects global health in multiple ways by structuring, perpetuating and mediating the social determinants of health. These have loosely been affirmed and embedded in the constitution of our nation. The right to health, a legally binding norm on the international scene, provides a foundation for advancing global health and should underpin health-related legal reforms.[32]

The status quo proves that it has been a long-standing issue in Uganda that the government, legislators and policy makers have under-utilized the full potential of the law to establish the statutory right to health to ensure a right-based universal health coverage based on principles of equity, non-discrimination, affordability, financial protection, transparency, accountability, participation and sustainable financing[33] for its citizens. Therefore, the absence of this right on statutory grounds for the refugees is deeply rooted, and it poses greater risks of competition for resources by the refugees and host communities, and worse by those who are deemed self-sustaining. This is bound to cultivate or perpetuate disgruntled mannerism among the citizens and the refugees which would culminate into a civil agony within Uganda.

2.3. Jurisprudence and Institutional Oversight

The justiciability of the right to health remains a contentious issue within Uganda's legal framework. While the Constitution provides broad socio-economic aspirations, these are not directly enforceable in courts of law. Consequently, vulnerable populations like refugees face an additional layer of structural invisibility, particularly in the context of accessing quality health care services.

International human rights bodies have attempted to address this gap by promoting accountability through soft law mechanisms. The Committee on Economic, Social and Cultural Rights affirms the interdependence and indivisibility of human rights and

[32] Professor Lawrence et al, The Legal Determinants of Health: Harnessing the Power of the Law for Global Health and Sustainable Development, The Lancet Commissions, Volume 393, Issue 10183 <https://www.thelancet.com/journals/lancet/article/PIIS0410-6736(19)30233 >accessed 12/04/2023
[33] Ibid

places states under a tripartite obligation to respect, protect, and fulfil the right to health. However, Uganda's implementation and domestication of these obligations remain inconsistent, especially where non-citizens such as refugees are concerned.

Further complicating the situation is the overlapping jurisdiction between various government bodies and non-state actors. While the Office of the Prime Minister, through the Department of Refugees, oversees refugee affairs, the Ministry of Health is tasked with national health policy. This disjointed institutional framework often leads to fragmented service delivery and poor health outcomes for refugees. Despite partnerships with international organisations like UNHCR and WHO, gaps in funding, coordination, and political will undermine the efficiency of health interventions for displaced populations.

2.4. Policy Gaps

While Uganda has received international praise for its open-door refugee policy, including freedom of movement and access to employment and education, the operationalisation and subsequent protection of the right to health within this framework remain ambiguous. Refugee settlements report chronic shortages of medical staff, essential drugs, and malnutrition amongst the refugees[34] and culturally competent care. Refugees with special needs, such as persons with disabilities, victims of sexual violence, or those living with chronic conditions like HIV/AIDS, are particularly disadvantaged.

Moreover, the policy's silence on specific enforcement mechanisms for refugee health rights creates room for inequitable implementation and accountability. Health financing in Uganda is already under strain, and while refugee-hosting districts are supposed to receive additional support under the Refugee and Host Population Empowerment strategy, evidence suggests the resources are insufficient and inequitably distributed. This often leaves refugee health care to the mercy of donor priorities, which may not align with national or community-level health needs.[35]

[34] IRC warns of alarming increase in acute malnutrition cases in Uganda's refugee settlements, Press release, <http://www.rescue.org/press-release/irc-warns-alarming-increase-acute-malnutrition-cases-ugandas-refugee-settlements> accessed 1/05/2025

[35] UNHCR Uganda Fact Sheet September -October 2024 <https://data.unhcr.org/en/documents/details/113390> Accessed 31/04/2025

2.5. Conclusion

While Uganda's legal and policy framework provides a foundational base for the protection of refugee rights, significant gaps remain in the operationalisation of the right to health. The constitution recognises health-related rights in principle but lacks enforceable statutory provisions specific to vulnerable populations such as refugees. The Refugee Act, though progressive in some respects, remains silent on critical aspects of health rights and does not fully align with international best practices or human rights standards.

There is a critical need for legislative reform to enshrine the right to health as a justiciable right applicable to all individuals within Uganda's borders, irrespective of nationality or refugee status. In doing so, Uganda would fulfil its international obligations and reinforce its global reputation as a leader in refugee protection.

CHAPTER THREE: METHODOLOGY

3.1 Introduction

This chapter outlines the methodology employed to explore the relationship between Uganda's legal framework governing refugees and the realisation of the right to health. The study adopted a qualitative research design, using document analysis as the primary data collection method. This approach was chosen because it allows for a thorough examination and interpretation of legal texts, policy documents, conventions, and secondary literature that shape and reflect the legal and health rights landscape for refugees in Uganda.

3.2 Research design

A qualitative, descriptive and interpretive research design was employed to gain an understanding of the statutory framework surrounding the right to health for refugees. The study did not seek to quantify data but rather to critically examine and interpret legal provisions and policy content. Document analysis was used for this study.

3.3 Data Collection Methods

Document analysis involves reviewing and evaluating materials. For this study, documents were selected based on their relevance and contribution to understanding the scope and implementation of refugee law and the right to health in Uganda.

3.3.1 Types of Documents Reviewed

The analysis focused on the following categories of documents:

- *International Instruments:*

    1. The 1951 Refugee Convention and its 1967 Protocol
    2. Universal Declaration of Human Rights
    3. International Covenant on Economic, Social and Cultural Rights (ICESCR), especially Article 12
    4. Convention on the Economic, Social and Cultural Rights: General Comment No. 14 on the Right to Health (Article 12)
    5. The Protocol to the African Charter on Human and People's Rights of on the Rights of Women (Maputo Protocol)

- *Regional Instruments:*

    1. The African Charter on Human and Peoples' Rights
    2. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

- *National Legal and Policy Documents:*

    1. The Constitution of the Republic of Uganda, 1995 as amended
    2. The Refugees Act, 2006
    3. The Public Health Act
    4. Mental Health Act
    5. Uganda's National Health Policy
    6. National development Plan III 2020/21- 2024/25
    7. Comprehensive Refugee Response Framework (CRRF)
    8. Health Sector Integrated Refugee Response Plan (HSIRRF)

- *Secondary Sources:*

    1. Reports on refugee health and migrant health system review.
    2. Research paper by Henry Komakech, Shatha Elkanib, et al on Examining the Integration of Refugees into the National Health System in Uganda: An Analysis using the Policy Triangle Framework, Conflict and Health, 2025

3.3.2: Data Analysis Procedure

The analysis was conducted following the following steps.

1. Document Selection and Justification: Documents were selected based on relevance to the study. Both binding (laws, conventions) and non-binding (policies, reports) documents were included.

2. Thematic Coding: Key themes were identified, including *availability*, *accessibility*, *affordability*, *acceptability*, and *quality* of health services, as well as *non-discrimination*, *legal protection*, and *rights entitlements*. The themes were guided by the **WHO's right-to-health framework** and **General Comment No. 14.**

3. Interpretation: Legal provisions and policy content were interpreted considering Uganda's obligations under international and national law. A critical lens was applied to assess whether existing legal and policy frameworks adequately protect refugees' health rights and what gaps remain.

3.4 Ethical Considerations

This study involved no direct human participants and therefore posed minimal ethical risks. Nevertheless, academic integrity was upheld by acknowledging all sources appropriately.

3.5 Limitations of the Study

The study is limited to publicly available documents and may not include unpublished or internal government reports. Document analysis cannot capture the lived experiences of refugees, which may limit the depth of understanding regarding implementation challenges.

3.6 Conclusion

This chapter has described the methodology employed through document analysis to investigate the realisation of the right to health of refugees in Uganda. The study aims to establish whether Uganda's legal framework sufficiently protects the health rights of refugees and what gaps or implementation challenges persist.

CHAPTER FOUR: FINDINGS

4.1 Introduction

This chapter discusses the findings from the review of the documents providing for the right to health in Uganda, the right to health of refugees and how they integrate the elements of health such as availability, accessibility, acceptability, quality, and the underlying determinants of health.

4.2 Summary of Documents Reviewed

Document type	**Title**	**Main point**	**Relevance to study**
Normative	Constitution of the Republic of Uganda, 1995 as amended	Underpins the underlying determinants of health and establishes the idea of the Right to health	Bestows the mandate on individuals, organisations and bodies to implement policy
Act	Refugee Act Cap 312	Provides for the right to health for refugees through reception of medical care, as well as the right to education, clean and safe environment	Ambiguous as to enforcement mechanisms or redress in the event the services are denied. No references made to other health laws to complement these provisions
Act	Public Health Act Cap 310	Empowers minister to regulate entry by statutory order and to impose necessary requirements and conditions to mitigate diseases.	Absence of procedural safeguards such as informed consent, counselling, non-discriminatory application

Strategy	National Development Plan III	Identifies the challenge of funding to establish the right to health of refugees despite the improved access to medical and health services for the rest of the general public.	No financial budget allocations or means of resources to be allotted towards the refugee cause was provided.
Strategy	CRRF	Advocates for inclusivity of refugees in planning & in decision making processes that concern them as well as integrated service reception through the incorporation into the health sector plans and budgets.	The elements to signify involvement of refugees in the planning and decision-making processes is undefined and thus no parameters for enforcement and accountability.
Strategy	HSIRRP	Incorporation of refugees into national health programs ranging from immunization, UPE and USE to infrastructural development Supplements the NHP with respect to the affairs of refugees	Ambiguity as to how the refugees are to be integrated into national health programs
Policy	NHP	Prioritises using a human rights-based approach to improving the health status of the general population	Through prioritising a human rights-based approach, it recognizes the right to health however, it is not legally binding.

Report	Refugee & Migrant Health System Review	Insist on resource allocation and fostering collaboration with relevant bodies as a means of protecting the right to health of refugees.	Highlights systemic underfunding of refugee health and its determinants as a result of heavy reliance on humanitarian aid and no mandate for sustainable government funding.
Research paper	Examining the Integration of Refugees into the National Health System in Uganda: An Analysis Using the Policy Triangle, conflict and health 2025	Uganda has, through its national health system integrated health services for refugees progressively and as such fulfilling the CRRF.	Highlights the persistence in implementation of policies since the legal commitments do not establish clear and actionable plans at all levels.
Act	Mental Health Cap 308	Admissions and treatment of people not ordinary residents are done at a fee. Continuous care via transfer back home can be arranged	The provisions highlight the availability of mental health treatment; however, the accessibility is inhibited by non-specificity and lack of culturally competent care, which resultantly impacts on the quality of care given.

Table 1: reviewed documents

It can be observed that the policies and strategies are well established, giving insight into and addressing the needs and challenges of the refugees as regards their right to health. However, the action plans bear no specific procedure of the enforcement of the said strategies in line with the quality and acceptability of health care and related services and as such, the protection of the right to health is compromised by uncertainty

and absence of key steps for progressive implementation, accountability which inform the key indicators.

4.3. The provisions of the Refugee Act concerning the right to health of refugees.

Section 28(1)(vii)[36] proffers a blanket provision as to any other right that may be legally accorded to a refugee. Hereunder is where the right to health may be contemplated to have been included. It is ambiguous and leaves the right to health of refugees to unguided misinterpretation.

Additionally, the element of availability of medical care is ambiguous in the sense that the sources of the culturally competent health care are undisclosed and the parameters of what health care to the refugees' entail are non-existent. As such, the general application of the term medical care is misleading and if taken in its actual meaning, is riddled with shortcomings such the non-inclusion of reproductive and maternity care as well as mental treatment.

The Act addresses non-discrimination with regard to children[37] to receive the same treatment as nationals pertaining to elementary education, and women[38] to be provided equal opportunity and affirmative action as protection against discriminatory practices. The act excludes the refugee persons with disability and the elderly, yet they are the probable victims of non-discrimination. However, the minister is accorded the power to enact statutory material in line with affirmative action for the refugees who are women, children or persons with disability. As a matter of fact, all refugees by virtue of their tribe, language are susceptible to discriminatory practices, and they are covered under the Constitution of Uganda that provides for the right against non-discrimination[39].

The Refugee Act further provides for and protects the right to health of recognised marginalised groups, particularly women[40] and children[41] through cross referencing the Constitution, the African Charter on the Rights and Welfare of the Child and the

[36] The Refugee Act Cap 312
[37] Supra, section 31
[38] Supra, section 32
[39] The Constitution of the Republic of Uganda, 1995 as amended, article 21
[40] Refugees Act Cap 312, section 32
[41]Supra, section 31

Convention on the Elimination of all Forms of Discrimination Against Women. The Constitution provides for taking affirmative action towards availing the marginalised groups opportunities to attain the highest standard of living.[42] Additionally, the minister is granted the power, under Section 49 (j), to establish the procedure that provides for affirmative action in integration of refugee women, children and refugees with disabilities.

Section 43[43] establishes the State's effort to guarantee provision of settlement for refugees through the Minister's designation of places or areas on public land for temporarily accommodating refugees awaiting to be granted status and local settlement of refugees who have acquired refugee status. However, insight into the certainty of the existence of basic implements such as health care, food, safe water and a clean environment is non-existent. This dissatisfies the components of health, such as availability and accessibility.

Integration and local settlement provided under section 43(1)(b) [44]points towards the adoption of the CRRF that provides for the adoption of a self-reliance policy for refugees to wean them humanitarian aid which is unsustainable. It also attests to the adoption of the HSIRRP that complements the NHP in purposely integrating refugees in the health system of the country. However, the procedure as to how this may be done is ambiguous as the integration may be construed strictly with regard to settlement and therefore poses as a gamble. Despite the progress made in the realisation of the right to health through codifying policy, the provision by virtue of its ambiguity, provides little to no protection to the right to health of refugees.

Section 28 (1)(h) [45]provides for refugees' right to access the courts of law to seek legal redress and assistance. Therefore, the right to health for refugees may be justiciable. However, without clarity as to the what the right of health for refugees entails, it is problematic to pursue ascertain the cause of action before the courts of law. The refugees' right to health is left unprotected and subject to violation without legal implication.

[42] The Constitution of the Republic of Uganda, 1995 as amended, article 32
[43] Ibid
[44] Ibid
[45] The Refugee Act Cap 312

The legal framework of Uganda emphasises the principles of non-discrimination of refugees and the special groups. The failure to recognise the parameters within which their rights and entitlements would prevail inhibits the establishment of the nature of quality and acceptability of the right of health.

4.4 Uganda's obligations under the ratified international treaties

Uganda is obligated under the ICESCR to provide, protect, facilitate and deliver health facilities and services[46], and the underlying determinants of health such as education, safe food and water, clean and healthy environment and reproductive safety for women on a non-discriminatory basis. The state is also obligated to progressively realise the needs of the refugees to enable them to obtain the highest attainable standard of living physically and mentally.

The state is obligated to protect the refugees from non- refoulment[47], provide access to a fair hearing during asylum procedures[48], protect them from non-discrimination[49] and grant them access to basic rights such as education, employment, housing and freedom of movement. The Refugee Act has established the principles mentioned.

The intersection between the obligation of the state to protect, fulfil and provide under the right to health and the affairs of refugees is on account of non- discrimination and provision of basic rights. These have been established under the Refugee Act and as such, have ironed out the mediating factors in the realisation of the right to health.

Henry Komakech, et al, in his research paper established that the law through the refugee act has progressively integrated the refugees into the national health system by providing for the refugee entitlement to access to the same public services as the nationals. [50] However, the procedural steps and means of enforcement and implementation within the act, any other law or policy are ambiguous and as such there is not guaranteed protection for this right to health for the refugees.

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[46] CESCR General Comment No.14 on the right to health, para 33
[47] The Convention relating to the Status of Refugees, 1951, article 33
[48] Supra, article 32,
[49] Supra, article 3,
[50] Komakech, Elkanib, et al, Examining the Integration of Refugees into the National Health System in Uganda: An Analysis Using the Policy Triangle, Conflict and Health 2025<https://conflictandhealth.biomedcentral.com/article/10.1186/s13031-024-00640-2> accessed 12/04/2025

The paper also notes that the laws have recognised the refugees as a category of the population, however, this is questionable. Despite their recognition, no considerations are made of them in the drafting of the national budget. The responsibility of the realisation of the right to health for refugees is seemingly exclusive to humanitarian aid and related civil society organisations.

4.5 The implementation and effectiveness of the legal framework

The implementation of the legal framework is still a challenge due to the non-establishment of practical steps to achieve the desired result of rendering protection to the refugee's right to health. Additionally, the law providing for the right to health of refugees lacks key indicators to aid in monitoring and evaluation of the progressive realisation of the right to health of the refugees, which impedes accountability. This renders the law ineffective in sustainably protecting the right to health of the refugees.

The legal framework of Uganda provides mainly for components of availability and accessibility, but the aspects regarding quality and acceptability are hard to determine regarding the provisions of the law. Additionally, the justiciability of the right to health for the refugees is curtailed due to a lack of reference to the means and bodies to which enforcement for violation of the right may be made. As such, the right to health of refugees is partially rendered protection through the law.

CHAPTER FIVE: DISCUSSION

5.1 Discussion of Main Findings

The analysis of Uganda's legal and policy framework concerning the right to health for refugees reveals a fragmented approach to the protection and fulfilment of this right. While the Refugee Act Cap 312 is the principal legislation affirming the right to health for refugees, it primarily establishes this right through a general entitlement to access medical services. This provision partially addresses the availability and accessibility of healthcare services. However, its lack of specificity concerning what constitutes "medical services" significantly undermines the other core dimensions of the right to health as defined by international human rights standards.

Acceptability involves providing culturally sensitive and appropriate health care, while quality encompasses the scientific and medical appropriateness of services. In the Refugee Act, there is no mention of culturally competent care, nor any minimum standards of service, which is a crucial omission given the diversity of Uganda's refugee population. For instance, mental health care is referenced in the broader legal framework (e.g., Mental Health Act Cap 308), but its accessibility to refugees is hampered by the lack of clarity on fees, procedures, and linguistic or cultural adaptation, rendering the implementation inconsistent and inequitable.

The presence of supplementary policies and strategies (Table 1), such as the National Development Plan III, reflects Uganda's progressive stance toward refugee integration. These documents advocate for inclusive planning, service integration, and the extension of national programs to refugee populations. However, their effectiveness is severely limited by their non-binding nature. Policies, unlike the acts of Parliament, do not have the force of law unless enacted as legislation. Consequently, although they articulate important principles such as inclusion, equity, and human rights-based approaches, they lack enforcement mechanisms, timelines, and institutional accountability structures.

Moreover, none of the reviewed policies provides a clear implementation roadmap with designated actors, budget allocations, or measurable indicators. This absence of concrete procedural guidance results in a legal vacuum where the actual realisation of the right to health for refugees remains aspirational rather than operational. Most

importantly, the State violates its obligation to fulfil as imposed under **paragraph 33 of the CESCR, general comment no.14**

The 1995 Constitution of Uganda, through its National Objectives and Directive Principles of State Policy, attempts to fill some of these legal gaps. It mandates all organs, agencies, and individuals to uphold the dignity and rights of all people, which by implication includes refugees. This provision lays the foundation for a universal, inclusive interpretation of human rights protection. However, in practice, this broad constitutional directive lacks precision in responsibility-sharing, creating room for institutional neglect and uncoordinated implementation. When everyone is equally responsible, there is a risk that no one is held accountable.

Furthermore, the justiciability of the right to health is questionable. Although refugees may, in theory, access courts to claim their rights (as per Section 28(1)(h) of the Refugee Act), the absence of clear definitions and standards around what constitutes the right to health makes legal enforcement challenging. Refugees and their advocates are thus placed in a difficult position, while legal redress is theoretically possible, the ambiguity of the law renders the right practically unenforceable. Overall, Uganda's framework exhibits a commendable intent to integrate refugees into national systems, including health care. However, the combination of legal ambiguity, policy non-bindingness, and lack of implementation infrastructure results in inconsistent and inadequate protection of the right to health.

5.2 Recommendations

The law makers should embrace aligning and integrating the law and policy relating to the refugees into the Refugee Act through cross referencing other related national laws that provide for the right to health since the refugees are integrated into the national health system. This should offer legal protection of the right to health of the refugees by policy, acquiring a legally binding effect.

Specificity as to procedure and requirements regarding the strategy and policy should be pronounced to provide clear parameters within which to operate, establish key indicators to serve as an accountability mechanism for the state in the fulfilment of its obligations towards protecting the right to health of refugees.

Conclusion

The legal framework of Uganda, in cognisance of the principal act providing for the affairs of refugees, is effective in protecting the right to health of the refugees to the extent that it covers the components of accessibility, availability and the underlying determinants of health. the elements of quality and acceptability hang in the balance, as such the right to health of refugees is offered partial protection by the laws of Uganda.

REFERENCES

Statutes

The Constitution of the Republic of Uganda 1995 as amended, Laws of Uganda

The Refugee Act CAP 312

The Public Health Act CAP 308

Mental Health Act CAP 310

Regional Instruments

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

The African Charter on Human and Peoples' Rights

Convention on the Rights of The Child

International Instruments

Covenant on Economic, Social and Cultural Rights General Comment No.14: the right to the highest attainable standard of Health (article 12).

The Convention relating to the Status of Refugees, 1951

International Convention on Economic, Social and Cultural Rights

National Policy

Uganda's National Health Policy

National Development Plan III 2020/21- 2024/25

Comprehensive Refugee Response Framework (CRRF)

Health Sector Integrated Refugee Response Plan (HSIRRF)

Articles

Alexander Betts, 'Refugees and Patronage: A Political History of Uganda's "Progressive" Refugee Policies, African Affairs, volume 120, issue 479, April 2021 <https://doi.org/10.1093/afraf/adab012> accessed 26/02/2025

Barnett, Michael, *Eyewitness to a Genocide: The United Nations and Rwanda* (Afterword ed.). Cornell University Press, 2015. pp. 1, 15, 131–132

IRC warns of alarming increase in acute malnutrition cases in Uganda's refugee settlements, Press release, <http://www.rescue.org/press-release/irc-warns-alarming-increase-acute-malnutrition-cases-ugandas-refugee-settlements> accessed 1/05/2025

Komakech, Elkanib, et al, Examining the Integration of Refugees into the National Health System in Uganda: An Analysis Using the Policy Triangle, conflict and health 2025 <https://conflictandhealth.biomedcentral.com/article/10.1186/s13031-024-00640-2> accessed 12/04/2025

Christina Boswell, Addressing the Causes of Migratory and Refugee Movements: The Role of the European Union, December 2002, Working Paper no.73, page 3, <https://www.refworld.org.reference/research/unhcr/2002/en/87341> accessed 12/03/2025

Professor Lawrence et al, The Legal Determinants of Health: Harnessing the Power of the Law for Global Health and Sustainable Development, The Lancet Commissions, Volume 393, Issue 10183 <https://www.thelancet.com/journals/lancet/article/PIIS0410-6736(19)30233 >accessed 12/04/2023

Suhrke, Environment Degradation and Population Flows, vol.47, no.2, Refugees and International Population Flows, 1994 page 476 https://ww.jstor.org/stable/24357292 accessed 12/03/2025

Hiroshi Taki, Effectiveness, Encyclopaedia entries, 2013 <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e698> accessed 22/04/2025

Reports

UNHCR Uganda Fact Sheet September -October 2024 <https://data.unhcr.org/en/documents/details/113390> Accessed 31/04/2025

Textbooks

John Tobin, *The Right to Health in International Law*, Oxford University Press, 2012, page 21