

ANALYSING THE ROLE OF COURTS IN THE REALISATION OF THE RIGHT TO HEALTH IN UGANDA

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DECLARATION

I declare that this dissertation is my original work and has not been submitted for any award of Bachelor's Degree of Law (LLB)

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ABSTRACT

This dissertation analyses in detail the manner in which Courts facilitate the attainment and enforcement of the health right in Uganda. The regional and International legal instruments observe the right to health, but unfortunately Uganda's Constitution does not bound the country to provide the best possible standard of health. Through the use of significant rulings and public interest litigation, this study examines how well judicial systems address international and Constitutional health rights. It also looks into how infrastructure, poverty, government, the legal and illegal healthcare systems interact to influence health outcomes. A comparison with the legal frameworks of Kenya, South Africa and Nigeria reveals the possibilities and limitations of judicial activism in enhancing health equity. This research relies on qualitative method with secondary data, case law, and doctrinal legal analysis. The findings indicate that despite the fact that Ugandan courts have enhanced opinion rights to health, there is inadequate expertise within the judiciary, weak enforcement mechanisms, and poor funding which restrict full realization of health rights. The dissertation concludes with policy and legal recommendations aimed at enhancing the adjudication and actual enforcement of health rights in Uganda. Some of these suggestions include a Constitutional change, judicial education on health law, heightened public education, enhanced healthcare funding, and stronger general healthcare economics.

APPROVAL

I hereby certify that I supervised this Dissertation on the Topic Analysing the Role of Courts in the Realisation of the Right to Health in Uganda has been under my supervision

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Date.....14/5/2025

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(Supervisor)

DEDICATION

This research is dedicated to my parents Mr. Kasule Abdul and Ms. Saada Nzowa for the constant support and motivation they have given me during this journey. To my sisters and brother Maimunah Sheebrah, Sumayah Ashurah, Sayeed Kasule for the support, inspiration and prayers to enable me finish this work successfully. May the Almighty God grant them their heart desires.

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TABLE OF CONTENTS

DECLARATION.....	i
ABSTRACT	ii
APPROVAL.....	iii
DEDICATION.....	iv
ACKNOWLEDGEMENT.....	v
CHAPTER ONE.....	1
GENERAL BACKGROUND	1
1.0 Introduction	1
1.1 BACKGROUND.....	2
1.2 PROBLEM STATEMENT.....	3
1.3 GENERAL OBJECTIVE OF THE STUDY	4
1.4 SPECIFIC OBJECTIVES.....	4
1.5 RESEARCH QUESTIONS.....	4
1.6 SIGNIFICANCE OF THE STUDY	4
1.7 JUSTIFICATION OF THE STUDY	5
1.8 HYPOTHESIS	5
1.9 SCOPE OF STUDY.....	5
1.9.1 TIME SCOPE	5
1.10 LITERATURE REVIEW	5
1.11 RESEARCH METHODOLOGY	8
1.11.1 Research Design.....	8

1.11.2 Data source	8
1.12 LIMITATIONS	9
1.13 CONCLUSION.....	9
CHAPTER TWO.....	10
NON-LEGAL ASPECTS THAT ENTAIL THE RIGHT TO HEALTH	10
2.0 Introduction	10
2.1 Key elements of the right to Health.....	10
2.2 Social Determinants of Health	11
2.2.1 Intermediate determinants include the following;	12
2.2.1. 2 Structural determinants of health	13
2.3 Major challenges affecting healthcare in Uganda.	14
Conclusion.....	15
CHAPTER THREE	16
LEGAL REGIMES GOVERNING THE RIGHT TO HEALTH IN UGANDA: A COMPARISON TO OTHER LEGAL REGIMES IN SOME AFRICAN COUNTRIES.....	16
3.0 Introduction	16
3.1 International Laws that Govern the Right to Health.....	16
3.2 Regional Instruments on the Right to Health	21
3.3 Domestic Perspective on Legal Regime Governing the right to health	22
3.3.1 Legal Regime governing the Right to Health in Uganda.	22
3.3.2 Role played by Courts in the realization of the Right to Health in Uganda	26
3.3.3 Challenges to Judicial implementation	30

3.4 Legal Framework governing the right to health in other African Countries.....	30
3.4.1 Laws governing the right to health Kenya.....	30
3.4.2 The Role of Courts in realising the right to health in Kenya.	31
3.4.3 Legal Regime Governing the Right to Health in South Africa	32
3.4.4 Judicial implementation of the right to health: Role played by Courts in realising the Right to Health in South Africa.	33
3.4.5 Legal Regime Governing the Right to Health in Nigeria	33
3.5 Comparison of the Legal Regimes.....	34
3.6 Conclusion.....	34
CHAPTER 4.....	35
SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION	35
4.0 Introduction	35
4.1 Summary of findings	35
4.2 Recommendations	37
4.3 Conclusion.....	39
BIBLIOGRAPHY.....	41

CHAPTER ONE

GENERAL BACKGROUND

1.0 Introduction

Health is a fundamental aspect of life that every Country or Nation needs to Constitutionalise in order to safeguard the wellbeing of its citizens. The preamble of the Constitution of the World Health Organisation states that health is a state of complete, physical and mental wellbeing and not merely the absence of infirmity or disease.¹ International, Regional and Domestic laws are explicit on the right to health and provide guidance to states on how to realise that right. **Article 12 of the International Covenant on Economic Social and Cultural Rights** and **Article 16 of the African Charter on Human and People's Rights** impose clear obligations on states to ensure that health rights are upheld. With regards to Uganda, the Right to Health is not directly provided for like other rights however, the National Objectives and Directive Principles give an overview on this right.

For example, **Objective XX** states that the state shall take all practical measures to ensure the provision of basic medical services to the population.² In addition, the parliament of Uganda has enacted Legal Regimes and Policy Framework towards the realisation of the right to health. For example the **Public Health Act** advocates for access to quality medical services. The Patients Charter states that patients have the right to be provided sufficient and accurate information regarding one's illness,

¹ Constitution of the World Health Organisation Preamble

² Constitution Of the Republic of Uganda (1995) as Amended

diagnostic procedures, and the proposed treatment for one to make an informed decision regarding any of these matters.³ Despite several Legislative measures being put in place to protect the right to health, Ugandans still face challenges in fully realizing this right. This research therefore explored the need to realise Right to Health in Uganda, the implementation, implications and recommendations towards realizing this right.

1.1 BACKGROUND

The Right to Health is an inherent right which needs to be given utmost priority from all states. This is because it forms a foundation of human existence. It is recognised as among the second generational rights which manifest in the **International Covenant on Economic Social and Cultural rights (ICESCR)**

It should be noted that the WHO was the first international instrument to recognise the right to health. ⁴ In addition, over the years, the right has been gradually included in the various international and regional instruments such as the ICESCR⁵, CEDAW⁶, CRC⁷, ACHPR⁸, Women’s protocol to the ACHHR⁹. The right to health is interrelated and indivisible to other human rights, such as the right to food, housing, and education. This means that, health as a human right cannot be provided for in isolation of other rights.

³ Ministry of Health Patients Charter, 2009

⁴ Ben Twinomugisha Fundamentals of Health Law in Uganda Chapter 2 Pg 19

⁵ Article 12

⁶ Article 12&14

⁷ Article 24

⁸ Article 16

⁹ Article 14

However the 1995 Constitution does not explicitly state this right. The right is inferred from the National Objectives of State Policy.¹⁰ As such Uganda continues to face persistent disparities in healthcare access particularly, vulnerable groups such as women, children, Persons living with HIV/AIDS among others. Globally, Courts have increasingly played a transformative role in advancing healthcare rights. For instance in South Africa, Court made decision mandating the government to take measures to reduce the risk of HIV positive mothers from transmitting HIV/AIDS to their children at birth through provision of an antiretroviral drug called nevirapine in hospitals.¹¹ Similarly in Uganda the Judiciary has progressively interpreted the right to health through Public Interest Litigation and as a result, maternal healthcare is recognised as a justiciable right.¹² Unfortunately, the impact of these rulings remains contested.

1.2 PROBLEM STATEMENT

The government of Uganda has come up with various legislative, policy and institutional framework towards realizing the Right to Health. However, concerns have been raised about the Constitutionality of this right, this is due to the fact that the right to health is not expressly defined in Chapter 4 of the 1995 Constitution of Uganda which covers most of the rights (both first and second generational rights). This has brought about various challenges towards full realisation of this right. Hence this research investigated the extent Constitutional, Civil and Criminal litigation has effectively advanced health rights in Uganda.

¹⁰ CEHURD (2018) Review of Constitutional Provisions on the Right to Health in Uganda. A case Study Report, CEHURD, EQUINET, Uganda

¹¹ Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT 8/02) [2002] ZACC 15

¹² CEHURD & 3 Others v the Attorney General Constitutional Petition No.16 of 2011

1.3 GENERAL OBJECTIVE OF THE STUDY

To analyse the Role played by Courts in realisation of the right to health in Uganda

1.4 SPECIFIC OBJECTIVES

- To critically analyse the development of health rights in Uganda through examination of key Constitutional cases
- To examine the positive and negative impacts of Judicial interventions on health policy
- To explore the laws regarding the right to health
- To propose recommendations aimed balancing the right to health and other human rights.

1.5 RESEARCH QUESTIONS

1. What is the significant effect of judicial Activism on Health policy?
2. What are the laws governing the right to health in Uganda?
3. How can Uganda achieve a balance between the right to health and other rights?

1.6 SIGNIFICANCE OF THE STUDY

Findings of this research offer practical insights for stakeholders including judges, litigants crafting legal strategies and policy makers implementing Court orders while addressing society concerns.

1.7 JUSTIFICATION OF THE STUDY

This study is justified by the increasing health concerns and debates and its impact on other human rights. The research therefore examined the Legal gap by providing systematic analysis of Ugandan Courts' evolving role in health rights adjudication.

1.8 HYPOTHESIS

Judicial enforcement of health rights in Uganda has achieved symbolic victories in clarifying state obligations but has been constrained by systematic barriers including weak enforcement mechanisms.

1.9 SCOPE OF STUDY

This research focuses on analysis of how Ugandan Courts interpret and apply Constitutional and International health rights obligations.

1.9.1 TIME SCOPE

The research was conducted for 2 months. Since it is the timeframe provided for the researcher to have completed this research

1.10 LITERATURE REVIEW

Health is an inherent human right and every individual regardless of sex, religion, age, ethnicity or nationality is entitled to the health services, medicines and devices that are there, accessible, and acceptable and of good quality.¹³ Similarly, the World

¹³ Montel, L., Ssenyonga, N., Coleman, M.P. ET AL. How should implementation of the human right to health be assessed? A scoping review of Public Health literature from 2000 to 2021. *Int J Equity Health* 21,139 (2022)

Health Organisation (WHO) recognises that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.¹⁴

Lawrence O. Gostin¹⁵ states that “what makes the right to health a compelling framework for holding states accountable is that it has wide international acceptance as binding law.” This true because most of all the states all over the world have complied with the international standards on this right and it has gradually developed the health sector in most of the developing countries. For example African countries like South Africa and Kenya explicitly uphold the right to health in their Constitution(s) in addition Courts in these Countries have tried to address the violations associated to this right. Similarly in Uganda, the right to health is gradually developing due to the public interest litigation that has created public awareness of the right to health.

Much as the right to health offers a critical framework for national and global responsibilities for health, it also suffers from limitations such as, few enforcement powers by some of the bodies such as the UN Committee on (CESCR), the legal duty on health rights lies on the state and not international Community. Furthermore, international laws like the ICESCR require states to observe the health rights progressively and not immediately which offers only a staggered and uncertain path towards full realisation.¹⁶ In Uganda, health rights have not been prioritised mainly because the international standards (ICESCR) do not require immediate action of these social rights but rather a gradual process. This has greatly affected Uganda’s health system hence resulting into underfunding of the public health facilities. In

¹⁴ *ibid*

¹⁵ Lawrence O. Gostin, *Global Health Law*, Pg 20

¹⁶ *ibid*

addition, **Lawrence Gostin** suggests that states should have a shared responsibility in order to endorse Global Health. Uganda has been struck off some of the international programs which offer assistance mainly because of its enactment of the law that prohibits Homosexuality. Hence Uganda is at a risk of suffering from sanctions.

Uganda's ratification of treaties like the ICESCR mandates it to uphold equitable, sustainable health policies. Therefore there is need for effective accountability mechanisms to ensure that states uphold their obligations not only within their borders but also in their extraterritorial engagements.¹⁷

Similarly, looking at Uganda's history, specifically the healthcare systems, it evolved from the precolonial, colonial and post-colonial times, therefore Uganda's healthcare system transformed from a focus on traditional medicine in pre-colonial era to modified health care services in post-colonial period. However Uganda continues to face challenges in the health sector. In the 2023/2024 financial year, Uganda allocated just 6.5% of the national budget to the health sector but the current fiscal year, this spending has fallen to 4%. This decline is due to Uganda's shortage of external funding, caused by the passage of the Anti-Homosexuality Law in 2023. In addition, the U.S executed a variety of actions which have worsened healthcare underfunding yet courts have not addressed these external pressures.¹⁸ As a result the lack of donor funds only leads to further decrease of funds given to

¹⁷ Moses Mulumba, Jessica Oga, .et al. "Enforceable Commitments to Global Health Needed to fulfil rights". <https://www.hhrjournal.org/2025/03/05>. Accessed on 21st April 2025

¹⁸ Will Gronefeld, "cervical Cancer in Uganda: A preventable strategy. <http://lawblogs.uc.edu>. Accessed on 22nd April 2025.

the healthcare system across Uganda. Hence leading to competition among different districts for funding.

In conclusion, while the above literature sheds light on critical issues surrounding healthcare systems in Uganda, addressing these gaps would provide a more balanced and actionable analysis. Incorporating diverse perspectives, examining legal frameworks, detailing implementation processes, contextualizing within broader health practices, and offering constructive recommendations would significantly strengthen the literature's impact and credibility.

1.11 RESEARCH METHODOLOGY

1.11.1 Research Design

The study mainly focused on the qualitative approach over quantitative approach because it gave an in depth exploration of perceptions and experiences and it focused on doctrinal legal research and case study analysis.

1.11.2 Data source

The research was based on primary legal sources like Court judgments, Constitutions, Statutes and International treaties. The research also based on secondary sources including scholarly articles, legal documents, books, journals, reports and case studies. This is because they offered the most comprehensive approach given the data limitations and allow for examination of the legal framework potential across the healthcare sector.

1.12 LIMITATIONS

The researcher faced the challenge of self-censorship as some respondents withhold information that was be very vital to the study.

Data inaccessibility which was due to language barrier or restricted access to court documents

The rapid evolution of case law may affected the relevance of the study.

1.13 CONCLUSION

In conclusion, while legislations have helped in promoting the Right to health, this research will basically examine the role played by courts in full realisation of health rights.

CHAPTER TWO

NON-LEGAL ASPECTS THAT ENTAIL THE RIGHT TO HEALTH

2.0 Introduction

This chapter will present an understanding of factors that impact on health. These include components of the right to health and Social Determinants of health and health care challenges in Uganda. Hence this will help provide a better understanding on how these aspects affect the right to health.

2.1 Key elements of the right to Health

Availability. It is essential that health-care facilities are made available and adequately supplied by the state. The government of Uganda has tried to make health services available to its citizens through provision of free medical services and free health education for everyone. In addition the government has decentralised health services through empowering local governments to deliver health services at district level. Furthermore community health insurance systems are being developed to ensure service delivery.

However there is still scarcity of health care facilities in Uganda. During the COVID-19 pandemic, most of the mental health hospitals were turned into isolation units until May 2022, such a result, there was reduction in availability of medical healthcare services to persons suffering from mental illness.¹⁹

¹⁹ Kaggwa Mark Mohan .et al. "Mental Health care in Uganda" <https://www.thelancet.com/journals>. Accessed on 23rd April 2025

Accessibility. This component emphasises nearness and convenience of healthcare for everyone. In Uganda, over 80% of the persons with Disability live in rural areas and to participate in all aspects of life is often limited by lack of accessible physical environment and transportation. In addition, there is limited use of assistive devices and technologies and the old public buildings lack provisions for Persons with disability. As a result the population is at a risk of failing to access the appropriate medical care.

Acceptability. This component brings out the need for health workers to provide services that are ethically acceptable by the community. In Uganda, Patients Charter elaborates more on this element as it provides for patients' rights among which include right to informed consent, participation in decision making as well as non-discrimination on grounds of disease, religion, disability, race, nationality.

Quality. This element emphasises that healthcare items like drugs have to be of good quality and be up to standards that have been set by the international instruments. Uganda is facing the challenge of counterfeit medicines and these are very many on the market and as a result, Ugandans are denied accessing good quality medical care.

2.2 Social Determinants of Health

Health outcomes are influenced by non-medical factors known as the Social Determinants of Health. They are the conditions in which individuals are born, grow, work, live, and age.²⁰ Health disparities are influenced by the Social Determinants

²⁰ <https://www.who.int/health-topics/social-determinants-of-health>.

of Health, therefore it is important to address the SDH in a way that promotes health.

The Social Determinants of Health are categorised into two and they include, Intermediate determinants and Structural determinants as discussed below;

2.2.1 Intermediate determinants include the following;

Environment. Key factors in the physical environment which impact on health include; access to clean water for sanitation, adequate housing, and waste management including rubbish collection furthermore, healthy living practices such as handling food in kitchens.²¹

Food insecurity. The Uganda National food and Nutrition Policy (UFNP) establishes a framework for addressing malnutrition, food insecurity and diet related diseases in Uganda. The policy promotes food security and nutrition at all levels and advocates for mobilisation of resources for food and nutrition interventions in Uganda. In Uganda, the Uganda Nutrition Action Plan II 2020/21-2024/25 outlines challenges that inhibit accessibility to nutritious food which has led to food insecurity such as the increasing trend of urbanization, poverty and low house hold income, climatic changes in some regions of the country like Uganda Karamoja limit agricultural produce hence leading limited access to food. Such challenges can be addressed through Government interventions in areas that are faced by climatic changes by provision of free food. In addition there is need for government to source for more to funds through international programs like the World Food Program

²¹ <https://healthinonet.ecu.edu.au>.

among others. Finally, strengthening agricultural sector as well as creating public awareness on the benefits associated with good feeding.

2.2.1. 2 Structural determinants of health

Environment and Climate Change. Environmental determinants of health are factors to which an individual is exposed as they do about their daily life. These come from the environment such as high temperatures, substances hazardous to health and environment among others.²² In Uganda, environmental and climate changes like floods and landslides have greatly affected the population in a way that most of the people are displaced from their homes. As a result, they are exposed to health inequities such as housing insecurity, travel barriers among others.

Governance. The level of governance determines the society's health. It shapes healthcare access, disease control, nutrition and the overall wellbeing of individuals. A good governance system coupled with strong health policies leads to better healthcare for example, Uganda's National Health Policy aims at healthcare for everyone. During the COVID-19 pandemic in Uganda, the Ministry of Health introduced preventive and control measures which included a lockdown and restricted travelling to and from high risk countries. This measure had been put in place to combat the spread of COVID-19. However, it affected Ugandans in a way that some could not access medical care. In addition, underfunding of the healthcare sector and corruption limits progress.

Values and beliefs. Cultural beliefs and traditions shape the eating habits, hygiene practices and overall lifestyle practices. For example, traditional medicines

²² Lucille Paltriguera, Fernando Beamud .et.al "Environmental Determinants of Health, including those caused by climate Change" May 2024 Pg 15,16

continue to hold relevance to most of the people around the world and frequently make meaningful contributions to health care.²³ In Uganda, there has been limited access to medical services caused by cultural barriers, some beliefs inhibit people from accessing the necessary healthcare.

2.3 Major challenges affecting healthcare in Uganda.

Inadequate Health care Financing. Uganda's healthcare system is not provided with adequate resources needed to cater for health, leading to shortage of medical personnel, equipment and medicines.²⁴ In addition, the lack of proper medical care means that many illnesses go undiagnosed and untreated, leading to avoidable suffering and death.²⁵

Inadequate Skilled Medical Personnel, in a case study carried out by Advocates Coalition for Development and Environment in Nebbi district in 2011, it was established that "there was chronic shortage of trained workers especially at the lower health centres thus overworking the available ones."²⁶

Uneven distribution of healthcare services. While urban centres enjoy relatively better access to health facilities, rural and remote regions continue to struggle. In addition limited transport infrastructure and geographical barriers exacerbate the problem making it difficult for people in these areas to healthcare services in a timely manner.²⁷

²³ <https://kiu.ac.ug/assets/publications/2919>. Accessed on 24th April 2025

²⁴ <https://thinkmd.org/project/addressing-healthcare-challenges-in-uganda>. Accessed on 24th April 2025

²⁵ Bagombeka Job "challenges of poor health care and education in Uganda" <https://eloiministries.org>. Accessed on 24th April 2025

²⁶ <https://www.acode-u.org/uploadedFiles/infosheet9.pdf>. Accessed on 24th April 2025

²⁷ <https://smihs.ac.ug/the-state-of-healthcare-in-uganda>. Accessed on 24th April 2025

Payment of bribes to access medical care, one type of corruption in healthcare systems occurs when patients make informal payments to healthcare providers for medicines, lab testing, beds or other services to which they are entitled.²⁸

Conclusion

This chapter highlights the need to examine the non-legal aspects of the right to health. Understanding the social determinants and the elements of the right to health is crucial for ensuring fair and sustainable health experiences. Finally, by acknowledging these non-legal aspects we gain a complete understanding of the challenges faced in the health sector.

²⁸ <https://www.afrobarometer.org>. Accessed on 24th April 2025

CHAPTER THREE

LEGAL REGIMES GOVERNING THE RIGHT TO HEALTH IN UGANDA: A COMPARISON TO OTHER LEGAL REGIMES IN SOME AFRICAN COUNTRIES

3.0 Introduction

International, regional and domestic frameworks have been a force behind promotion of health rights across different Nations. Therefore this chapter will aim at examining the influence of International and Regional laws on healthcare. The Domestic laws governing Health rights in Uganda as well as the Role played by Courts in implementing the right to health in Uganda. Finally, the chapter will give an understanding on how the Legal Regime on the Right to Health in Uganda is compared with some of the African Countries.

3.1 International Laws that Govern the Right to Health.

The Universal Declaration of Human Rights (UDHR) 1948

The UDHR sets out all inherent rights that are to be respected by all states and individuals. Most of the provisions of the UDHR are regarded to be part of customary international law and therefore are universally binding. The UDHR gives a better understanding on the right to health most notably Article 25 which sets out the standard adequate for health and wellbeing of everyone including housing, food, clothing, medical care. In addition Article 25(2) accords special protection to mothers and children. Uganda is a signatory to this international instrument however, this right has not been fully recognised in Uganda as the standard of living

is not equal for everyone, and the population is facing various challenges such as poverty, unemployment especially among the youth and poor housing due to the environment and climate changes. There is need to adequately take measures to solve these inequities in order to promote health

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The ICESCR, protects the second generational rights. It mandates states to take steps and measures basing on all available resources to fully recognise the all rights therein. The ICESCR acknowledges the right to health which brings out the aspect of highest attainable standard of physical and mental health. The key components that entail the right to healthcare extend to the underlying determinants of health such as safe drinking water, adequate food security, health education and information among others. The Committee on Economic, social and Cultural Rights in its General Comment No. 14 clarifies and gives a clear understanding of the right to health. Paragraph 12 of General Comment No.14 sets out the AAAQ imperative. This approach offers guidelines essential for healthcare access. Furthermore, General Comment No. 14 calls for immediate action by the states to ensure access to basic health services for all people especially the vulnerable groups, provide essential drugs and prohibit discrimination in healthcare. As a signatory to the ICESCR, Uganda has come up with various health related laws such as the Public Health Act, Mental Health Act, and Persons with Disabilities Act among others. Despite the fact that such laws are put in place to protect health rights, they have not been enforced by the state. In addition, there is ignorance on the right to health by both state and non-state actors for example most of the judges are specialised in Civil and Commercial Law hence there is need to create massive public awareness of the

health rights. Notwithstanding the above, Ugandan Courts have greatly contributed to the development of healthcare whereby individuals, and civil organisations acting on behalf of victims of violations of the right to health have been able to seek and granted redress by Courts. Finally, Like the Commercial division, there is need for establishment of a High Court division for Health and this would in turn dispose off cases expeditiously and consequently up hold the right to health.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),

The Convention prohibits discrimination against women and sets out obligations for states to eliminate such discrimination. The CEDAW basically protects women's rights such as equality in employment, non-discrimination, equal participation and most importantly sexual and reproductive health rights. It mandates states under to take measures to eliminate discrimination against women in the field of healthcare in order to improve access to healthcare services including family planning. Much as the CEDAW is very elaborate on Women's rights to health care, there have been challenges implementing it. For example some Countries like Uganda restrict women from Abortions yet the CEDAW clearly upholds women's sexual and reproductive rights. In addition, gender stereotyping is another major challenge to implementing the Convention. In Uganda most people are still attached to the precolonial times when women were considered to be inferior and not equal to men. This has brought about social stigma which is a barrier to implementing the Convention on the Elimination on all Forms of Discrimination against Women. Furthermore, maternal healthcare in Uganda is still a challenge, most public health hospitals lack facilities to cater for pregnant women and this has led to violations of healthcare rights.

Finally, women in maternity are not given the special care and attention they need. However Ugandan Courts have tried to resolve this challenge through enforcing maternal healthcare (**CEHURD & others v Nakaseke District Local Government**). In addition to maternal health care, the CEDAW prohibits discrimination of women on grounds of maternity. In Uganda, this provision has not been fully upheld in that some workplaces restrict their employees and threaten to dismiss them from work in case of pregnancy.

The Convention on the Rights of Child (CRC) 1989

The CRC essentially promotes the rights of children to healthcare, which entitles a child to enjoy the highest attainable standard of health and access facilities for treatment of illness and rehabilitation. The Convention on the Rights of a Child also mandates to take measures to lower infant and Child mortality, provide health education and combat diseases through immunisation of children. Uganda has tried to live up to the standards set out by the CRC, For example the Ministry of Health advocates for immunisation of all new-born babies as a way of prevention of spread of diseases and protecting the health of children. In addition there has been progress in fighting malaria and malnutrition in children however, Ugandans in Rural Area are still having difficulty in accessing immunisation for their children. The CRC also protects children from harmful practises which may be dangerous and harmful to their health for example Female Genital Mutilation. In Uganda, Courts have ensured protection of all women and children from such harmful practises for instance in the land mark case *of Law & Advocacy for Women in Uganda v Attorney General*²⁹ where court declared the custom of FGM null and void because it contradicted the

²⁹ Constitutional Petition No.8 of 2007

provisions of the Constitution. In conclusion therefore, Uganda has made notable efforts in promoting Children's rights however the deep rooted poverty coupled with weak enforcement continue to hinder full compliance with the provisions of the CRC.

The Convention on the Rights of Persons with Disability (CRPD)

The CRPD offers guidelines states should take in order to uphold rights of Persons with Disability. The CRPD explicitly protects the right to health under Article 25. It mandates states to ensure accessibility of medical care for persons with disability, provides discrimination free healthcare and train healthcare workers on the rights of Persons with Disability. Uganda has taken steps to align its laws with the Convention on the Rights of Persons with Disability for instance, the Persons with Disabilities Act makes provisions for ramps, braille materials and language support as a way of emphasising the rights of Persons with Disability. In addition there is provision of free medical care for Persons with Disability by the government. Furthermore the National Policy on Disability promotes inclusive health service and rehabilitation programs. Despite the positive elements of legal, policy and institutional framework in Uganda, there is still a challenge of implementation of the CRPD. Most healthcare workers in Uganda are not trained hence lack knowledge on how to handle Persons with Disability. In addition, there is weak enforcement of the Persons with Disabilities Act that most Health care facilities charge high fees on the people making it difficult for the Persons with Disability access the appropriate medical care they need. Furthermore, the low salaries to health workers has significantly contributed to corruption which is a threat to healthcare because it brings about inequality and discrimination. There is need for Courts to impose

strategies to combat corruption among the health officials as a way of balancing the right to health and other human rights.

International Humanitarian Law

The Geneva Convention (III) relative to Treatment of Prisoners of War (1949). The convention imposes an obligation on detaining powers to provide free medical attention to Prisoners of War. The Convention also advocates for clean and safe Camps of the prisoners of war in order to ensure and prevent spread of diseases amongst themselves. The convention therefore imposes an obligation on the detaining power to take appropriate measures to ensure that detainees are kept in a clean and healthy environment.

3.2 Regional Instruments on the Right to Health

The African Charter on Human and Peoples Rights (ACHPR) 1987

In Africa, the ACHPR addresses the right to health primarily under Article 16. The Charter also sets out obligations to be taken by states in order to realise the right to health which include, health education through massive awareness, access to essential medical care and disease control. It is relevant to note that women's rights are outlined in the Protocol on the Rights of Women in Africa which is established under the ACHPR. The Protocol acknowledges reproductive rights of women and empowers them to control their fertility, number and spacing of their children. In addition, the Protocol protects the rights of women by authorising abortion in cases of sexual assaults, rape, incest and where the pregnancy endangers the mother's physical and mental health. Uganda is a signatory to this Protocol but reservations

on this specific article 14(2) (c) relating to abortion. Hence Abortion is not allowed in Uganda. But this is a challenge that affects most women because most of them are victims of Rape and incest. Other Jurisdictions like Kenya allow abortion however, it should only be carried out under medical advice of a health professional.

3.3 Domestic Perspective on Legal Regime Governing the right to health

3.3.1 Legal Regime governing the Right to Health in Uganda.

The Constitution mandates the state to observe **National Objectives and Directive Principles of State Policy** in interpreting the Constitution. Therefore Objective XX states that the state has a duty to ensure the provision of basic medical services to its citizens. Similarly Objective XXII states that the state shall establish national food reserves and promote proper nutrition through mass education. Below is a discussion of the various laws passed by the parliament that contain health related provisions.

The *Public Health Act*³⁰, provides for prevention of an infectious disease and it empowers a medical officer to inspect premises. Furthermore, the medical officer has power to decontaminate any building or any part of the building which is likely to retain infection.³¹ The Public Health Act however manifests shortcomings as it only provides authority to specific persons to carry out different tasks and it leaves out Courts and NGOs which are a key player in as far as protection of healthcare is concerned. The Public Health Act therefore needs to be revised to incorporate

³⁰ Public Health Act Cap 310

³¹ Section 13 and 14 of the Public Health Act Cap 310

Courts and NGOs as Key Players in protection of health. As a result, health services will be provided in a timely manner.

The *Medical and Dental Practitioners Act*³², is a domestic legal framework that has promoted healthcare in Uganda. The Act establishes Eligibility of practitioners and a person is only authorised to practice if he or she holds a degree of Bachelor of Medicine and Surgery or Bachelor of Dental Surgery granted by a University established in Uganda by law or a medical or dental qualification recognised by the council. In addition to the above, one cannot practice as a medical practitioner if they are not registered under the Act. The Medical and Dental Practitioners Act sets up standards and requirements that must be met in order to practice as a medical personnel, however the Act has not been fully implemented by the various health facilities in Uganda. This is because most health facilities in Uganda use medical interns who are not experienced to treat patients and this has led to violations of the right to health. This is seen in the case of **CEHURD, Nantumbwe Ritah, Kitaka Ronald v The Registered Trustees of Mengo Hospital and others**, where a new born baby was injected by a medical intern and the baby later on died.

The *Persons with Disabilities Act*³³, outlines important health provisions for the protection of Persons with Disability. The act establishes non-discrimination of Persons with Disability emphasising that a health unit should not discriminate against a person with disability on the basis of disability. Furthermore, the Persons with Disabilities Act emphasises that Persons with disability should be accorded

³² Medical and Dental Practitioners Act Cap 300

³³ Cap 115

accessibility to buildings by providing safe and well dimensioned staircases with appropriate railing and elevators.

Some of the Public Health facilities in Uganda do not have such provisions on their buildings hence making it hard for Persons with Disability to access the necessary medical services. This is because the health sector is not given enough funds therefore priority is given to other services like provision of drugs, immunisation of Children among others. This leaves out Persons with Disability. As a result, they suffer health inequities like uneven distribution and access to medical services.

The *HIV and AIDS Prevention and Control Act*, The Act devises measures to ensure that the right of access to equitable distribution of health facilities, goods and services including essential medicines is done on a non-discriminatory basis. However, in Uganda, People living with HIV/AIDS are still facing a challenge of discrimination. In addition such persons are not given full medical attention because of the status they hold in society and this makes them vulnerable in society. Courts have tried to enforce Affirmative Action in regard to vulnerable groups. However, this has mostly been upheld among women and children. Other vulnerable groups like Persons living with HIV/AIDS are not given the attention they need. Courts failure to integrate rights of Persons living with HIV/AIDS with other human rights has manifested discrimination and inequality among the population.

The *Allied Health Professionals Act*,³⁴ basically makes provisions for regulation, supervision and control of the Allied health Professionals. They include audiologists, dietitians, occupational therapists, physical therapists among others. The Act establishes a Council which is responsible for regulating the conduct of the Allied

³⁴ Cap 296

Health Professionals, approving their courses of study and registration of the allied health professionals. Similarly, the Act makes provisions for making recommendations to the government on matters relating to the Allied Health Professionals. However, the Allied Health Professionals in Uganda face still challenges while carrying out their work such as inadequate equipment and supplies, delayed salaries yet they work overtime, exposure to infections, they are not included in health policy formulations, limited career training. There is need to implement the Laws relating to the Allied Health Workers as well as revise the existing laws to include them in health policy making.

The ***National Drug Policy and Authority Act***³⁵, introduces an inventive step towards health through provision of drugs to all people. The Act establishes a National Drug policy which ensures that safe and essential drugs are made available to the entire population. However, the provisions of the Act have not been complied with because counterfeit medicines are still plenty on the market and consequently, the public is denied quality medical care. In addition there is shortage of drugs in public health Facilities which mainly caused by corruption and embezzlement of funds by the health workers. Furthermore, some of the public hospital charge these drugs highly and this denied the unemployed or the poor from accessing medical services.

The ***Mental Health Act*** introduces a big step towards protecting the rights of persons with Mental illness through treatment and admission of persons with mental illness. The Act clearly protects persons with mental illness from discrimination. Section 54 of the Mental Health Act, provides that determination of the mental health of a person shall only be carried out by a psychiatrist or a senior mental health

³⁵ Cap 198

practitioner. Much as the Act stipulates that diagnosis or determination of mental health shall be carried out by authorised personnel, some of the mental health facilities in Uganda delegate such work to persons that are not medically fit to treat persons suffering from mental illness.

The *Patients Charter*³⁶ is a policy framework established by the Ministry of Health. It outlines the rights and responsibilities of patients in healthcare. In addition, the Patients Charter ensures that all patients are treated fairly with dignity and transparency. The Charter establishes various rights of patients such as the right to privacy and confidentiality in the course of consultation and treatment. Right to access health services in a safe and timely manner, right to informed consent, right to information about a patient's diagnosis. The Patients Charter also accords the right to respect and dignity of patients. However to a larger extent, the Charter has not been complied with. Most of the healthcare workers are mean and rude to the patients. In addition, patients are not given accurate information on their drug prescriptions which is mainly caused by insufficient training of health workers.

3.3.2 Role played by Courts in the realization of the Right to Health in Uganda

The Constitution upholds independence of the judiciary. This means that Courts are at liberty of making decisions on their own without influence or authority of any other body.

³⁶ Ministry of Health Patients Charter, 2009

First and foremost, it is relevant to note that the Constitution enforces the fundamental rights of people under Article 50 which establishes the concept of applying to Court for redress in case of any violations of human rights.

Ugandan courts have ably tried to bring about enforcement of health rights and this is seen in a number of decided cases among which include the following.

There has been protection of maternal health and this is seen in the case of ***CEHURD & 3 Others v the Attorney***³⁷ the petitioners in this case disputed the omissions of the government and its agents in delivery of maternal health services which included inadequate budget allocation to the maternal health sector and immoral behaviour of health agents towards pregnant women. The Constitutional Court had dismissed CEHURD's petition on basis that it did not raise competent issues required for Constitutional interpretation. However Court directed that the matter be referred back to the Constitutional Court and they should hear the case on merit. Justice Kisaakye also ordered that there was need for the country to develop its Constitutional jurisprudence in the areas covered by the case. This clearly indicates that Ugandan Courts have tried to protect and ensure development of health rights.

Courts have greatly fought against offences like embezzlement by imposing criminal sanctions against people who steal drugs and sell them to third parties. For example, in the case of ***Uganda v Kyasimire Florence and Another***,³⁸ The accused were jointly charged in two counts of embezzlement. Count 1 was embezzlement of assorted medical items valued at Shs.2M and count 2 which was embezzlement of assorted medical items valued at Shs. 152,430 which were property of Isingiro

³⁷ Constitutional Appeal No. 01 of 2013

³⁸ Criminal session case 63, 2013

District Local Government. On 13th/01/12, the District Internal Security Officer of Isingiro District, acting on information of an anonymous caller intercepted the 1st accused with a green bag. On search, the accused was found in possession of drugs including magnesium drugs, coartem drugs and government mattresses. Court found the accused guilty of the offence of embezzlement and sentenced them to 1 year and 8 months imprisonment respectively. Court also ordered that the medical items be returned back to the hospital and be used for treatment of the local community.

In the case of *CEHURD & Others v Nakaseke District Local Government*.³⁹The plaintiffs sued on behalf of a woman who died at the defendant's hospital because she did not get any emergency obstetric care. The plaintiffs alleged that the deceased experienced obstructed labour due to her not receiving the correct medical care as a result of the assigned doctor being absent on that day. The plaintiffs sued Nakaseke Local District Government for negligence of their worker. Court concluded that the deceased woman did not receive the care and protection she was entitled to as a result the neglect of duty by the assigned doctor.

Courts have also ensured that patients are accorded appropriate information in as far as their treatment is concerned. For example in the case of *CEHURD & 2 Others v Attorney General and Executive Director of Mulago Hospital*,⁴⁰ a mother gave birth to twins but was given only one baby after delivery with allegations that the second baby was dead. Court held that the failure of the hospital to give the complainant information concerning the whereabouts of the baby violated her right

³⁹ Civil Suit 111/2012

⁴⁰ HCCS No. 212 of 2013

to health. Court also ordered for compensation of the victim for the trauma she went through.

Ugandan Courts have ensured affordability of health-care services and this is seen in the recently decided case of *Dr. Mulumba Moses & CEHURD v The Attorney General, The Medical and Dental Practitioners Council and Anor.*⁴¹ The case was filed challenging the government and the medical council for failure to act in response to the high fees that were being charged on persons suffering from COVID-19. Court made an order to regulate the rates charged for the management and treatment of COVID-19.

Courts have ensured that victims of the violation of the right to health are compensated amicably. In the case of *CEHURD, Nantubwe Ritah and Kitaka Ronald v The Registered Trustees of Mengo Hospital and others,*⁴² a new born baby was injected by one of the Medical Interns of Mengo Hospital and it turned Black. The baby later on died hence the plaintiffs brought the case to Court. The matter was resolved out of Court and a consent judgement was entered. The defendant was to pay the plaintiff Shs.35 Million. The consent judgment also required the defendants to continue to enforce the Uganda Medical Internship Guidelines to regulate the supervision of intern doctors and student nurses at Mengo Hospital.

⁴¹ MISC. APP No.489 of 2021

⁴² Civil Suit No. 176 of 2015

3.3.3 Challenges to Judicial implementation

Delays in Judicial processes. Many health rights cases require immediate action but Courts delay in delivering rulings and judgements due to the slow court processes as well as the long process for filling the matter to case till trial.

Limited Public Awareness. Most of the Ugandans are unaware of their right to health or the appropriate procedure of seeking redress. In addition the high rates of corruption in the health sector undermine Courts efforts to enforce accountability.

Courts are also faced with a challenge of implementing the decisions passed by them. Courts have tried to safe guard people's health rights by ordering the government to provide health services but in most cases, there decisions are not put in action mainly due to the budgetary limitations on the health sector. In addition, judicial decisions require increased funding for medical facilities but the government still fails to comply.

Lack of a legislation that sets out the states' obligation for health rights is a challenge faced by Judicial Officers as it makes it difficult for them to deliver rulings.

3.4 Legal Framework governing the right to health in other African Countries.

3.4.1 Laws governing the right to health Kenya

The Constitution of Kenya acknowledges the right to highest attainable standard of health and it states that every person has the right to the highest attainable standard of health which includes the right to health care services, including reproductive healthcare. In addition, the constitution prohibits abortion except for where a

health professional has confirmed the need for emergency treatment which is a clear indication that there has been compliance with the international laws that entail women's rights.

3.4.2 The Role of Courts in realising the right to health in Kenya.

The right to health in Kenya has developed due to various cases that have been resolved by Courts and this brought about development of health Rights in Kenya.

In the case of *Patricia Asero Ochieng & 2 others v Attorney General & AIDS Law project*.⁴³ The petitioners contested the constitutionality of the provisions of the **Anti-counterfeit Act**. They alleged that the state had not recognised and expressly exempted generic drugs and medicines from the definition the definition of Counterfeit goods under the Counterfeit Act. The petitioners also averred that the enforcement and application of the Act particularly sections 2, 32 and 34 will endanger their well-being as they would be denied access to affordable and essential drugs. In conclusion therefore Court declared that Sections 2, 32 and 34 of the Anti-Counterfeit Act violate the petitioners' right to life and human dignity. This case shows the role played by Courts in full realisation of health rights. Court held that the state had a responsibility of reconsidering the provisions of Section 2 of the Anti-Counterfeit Act and make appropriate amendments to ensure the rights on generic medicines are not put in jeopardy. This shows how Courts have contributed to Revision of laws that Contradict with the provisions on the right to health.

Courts have addressed issues to do with medical negligence in line with sexual and reproductive rights of women in the case of *AAA v Registered Trustees (Aga Khan*

⁴³ High Court of Kenya at Nairobi petition No 409 of 2009

University Hospital Nairobi).⁴⁴ The plaintiff was advised to insert an implant known as implanon as it was the best and suitable method. The plaintiff was told by the defendants that the implant would protect her from any unwanted pregnancy and that she did not require a Condom as a preventive method. The plaintiff averred that she followed the advice of the defendant's medical staff. After some time, in the month of August, the plaintiff was unpleasantly surprised to have missed her menses and later on found out that she was pregnant. The plaintiff brought the case to Court alleging that the defendant was negligent and this resulted into her giving birth to an unplanned kid which had caused her emotional distress. Court therefore awarded General Damages to the plaintiff for the damage caused by the defendant. This case discussed the right to reproductive health as guaranteed in Article 14 of the Maputo protocol. This case shows how Courts have interpreted and enforced provisions of regional instruments such as the Protocol to the African Charter which clearly prohibits abortion.

In conclusion therefore, the Courts in Kenya have greatly contributed to the implementation and development to the right to health.

3.4.3 Legal Regime Governing the Right to Health in South Africa

The Constitution of South Africa under Article 27 acknowledges access to healthcare services and mandates the state to take legislative measures, within its available resources to achieve the progressive realisation of each of these rights.⁴⁵ The Constitution also makes substantive provisions on other rights including the right to adequate housing, and to a clean and healthy environment.

⁴⁴ High Court of Kenya [2015] KEHC 7282

⁴⁵ Constitution of the Republic of South Africa, 1996

3.4.4 Judicial implementation of the right to health: Role played by Courts in realising the Right to Health in South Africa.

The Courts have interpreted the right to health in several landmark cases among which include the following;

Courts have upheld rights of children through prevention and control of the spread infectious diseases such as HIV/AIDS. In *Minister of Health and others v Treatment Action Campaign and others*,⁴⁶ petitioners challenged the government's refusal to provide the appropriate drugs to prevent transmission of HIV/AIDS from expectant mothers to their children at Child birth. The issue for determination was whether the government's refusal to provide Nevirapine to prevent mother-to-child HIV transmission at public hospitals violated the right to health. Court held and ordered the government to expand access to nevirapine. This case is significant in a way that it imposed a legal obligation on government to provide access to healthcare and medication especially those related to HIV/AIDS. In addition the case protects children from contracting the disease which shows that Courts have up held provisions relating to Children as per the Convention on the Rights of a Child.

3.4.5 Legal Regime Governing the Right to Health in Nigeria

The Constitution of Nigeria does not explicitly state the right to health as a fundamental right. However, the country is a signatory to international treaties that promote the right to health such as the ICESCR, UDHR CEDAW among others. In addition, the ACHPR has been implemented and the domestication of the Charter has brought changes in Nigeria as a country in as far as health is concerned. Efforts

⁴⁶ No.2 (CCT8/02) [2002]

to improve the healthcare in Nigeria. For example the National Health Insurance Scheme Act which aims at ensuring that every Nigerian has access to good healthcare services, limit the rise in cost of healthcare services and maintain high standards of healthcare delivery services.

3.5 Comparison of the Legal Regimes

Similarities: All the three perspectives uphold the health right. Additionally, there has been enforcement of health rights through judicial activism. Furthermore, the three countries are signatories to the international and regional standards governing the right to health.

Differences. The level of enforcement varies across the jurisdictions. While the Kenyan and South African Constitution(s) explicitly emphasise the right to health, the Ugandan Constitution as well as the Nigerian Constitution do not expressly provide for this right. Instead, there has been enactment of National Legislation to offer specific legal protections and enforcement mechanisms on the Right to health.

3.6 Conclusion

The discussions examined the legal regimes governing the right to health in Uganda and how this right has been enforced in specific African Countries. The study further reviewed the role played by Courts in realizing the right to health in Uganda and the other African countries. Finally the chapter showed the comparison of the different jurisdictions, specifying both differences and similarities.

CHAPTER 4

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.0 Introduction

This chapter discusses the findings of the entire research and suggest necessary recommendations to overcome the challenges raised in this research. Finally I will give a conclusion on the research

4.1 Summary of findings

Courts have had a great impact in as far protection and development of the right to health is concerned. Hence bringing about peace and harmonisation within society. Courts have tried to exercise their power in conformity with the law. This has been achieved through enforcement of the judgments on protection of health rights. This has brought about compensation of the victims of the violations of the right to health, affordability, accessibility and availability of medical care.

Notwithstanding, Courts often face challenges such as lack of independence especially when it comes to enforcement of judgements. In addition there is a limited number of judges that are knowledgeable about health law, most of the judicial officers are specialised in commercial or criminal law.

Similarly Economic, Political and Socio-cultural factors play a great role in determining one's enjoyment of the Right to health. These aspects consequently affect the accessibility and affordability of health-care services among individuals. These include; unemployment, poverty, political governance, discrimination, gender stereotyping among others.

The study reveals that the components of the right to health are still wanting within Uganda especially in rural areas. There is still a shortage of medical centres and people have to walk long distances in order to acquire the appropriate healthcare. In addition, counterfeit medicines are plenty on the market and as a result Ugandans are denied accessing good quality medical care. In the end, this breeds the major challenges faced in the health sector such as, uneven distribution of medical services, inadequate skilled medical personnel, corruption and bribery, inadequate healthcare financing among others.

The study further shows that health rights have recognised universal. It stretches to armed conflicts as per International Humanitarian Law. These frameworks establish the guidelines, rights and obligations of the state and individuals towards health rights, specifying Progressive Realisation of the right to health through international assistance and utilizing the maximum resources available. The research shows that Countries like Kenya and South Africa have tried to comply with the standards set up by the International laws through specifically recognising the right to health in their Constitutions and this has promoted the development of health rights in both countries.

Much as the International laws are very specific on this right, it has not been interpreted the same way in some jurisdictions. For example in Nigeria, the right to health is not expressly provided for in its Constitution. However, the Government of Nigeria incorporated the African Charter on Human and Peoples Rights in its Domestic laws and enacted Policy frameworks that govern the health sector. Similarly, Uganda's constitution is not specific on this right.

The comparison between the Legal Regimes of the specific African countries such as Kenya, Nigeria and South Africa to Uganda's National Legislation, shows that Uganda as a country has to a greater extent tried to promote the Right to Health through enforcement of laws governing the different health care bodies. Additionally, the Ugandan Courts have supplemented on the enjoyment of the Right to Health through decisions that are by nature promoting the observance, respect, enforceability and enjoyment of the right to health through decisions such as (CEHURD & 3 Other v Attorney General) among other Court decisions on the Right to health. As a result, there has been a balance between the Right to Health and other human rights such as the rights of women as a vulnerable group.

4.2 Recommendations

Empowering all Ugandans especially the vulnerable groups through education and awareness. There is a need to sensitize and implement education programs among the people. The Ministry of Health in collaboration with Non-Governmental Organisations should make initiatives towards enhancing public awareness. This may be done in the form of targeted outreaches, workshops and seminars. In addition, Public awareness may be enhanced through mass media like television advertisements relating to health, use of newspapers of wide circulation as well as other media platforms. This would in turn reduce the levels of ignorance among individuals on their health rights.

Equal participation in decision making. There is a need to involve all categories of people regardless of their background or social standing in decisions that directly affect them. Equal participation includes policy formulation, fair representation in the healthcare workforce, and access to quality healthcare. I therefore recommend

that the state strengthens equal participation among individuals as a way of balancing health and other human rights (equality and non-discrimination).

Improving healthcare worker capacity. This can be done in the form of recruitment of skilled medical personnel in order to address the shortage of qualified healthcare professionals particularly in rural areas. The study showed that one of the major disparities faced by the health sector is inadequate skilled medical personnel. Therefore, there is a need to invest in training and development programs for healthcare workers.

Focusing on prevention and early intervention. Prevention of infectious diseases or any other health related risk may be achieved through prioritizing health promotion and prevention activities such as sanitation and hygiene. In addition, there is a need to strengthen pandemic preparedness measures to effectively respond to emerging health threats. The study revealed that during the COVID-19 Pandemic, mental health facilities were turned into isolation units for COVID-19 patients. This greatly affected persons suffering from mental illness as there were no facilities to cater for them. I would therefore recommend that the Ministry of Health works together with the Local Governments and provide guidelines to enforce sanitation and hygiene in order to prevent spread of diseases.

Improving healthcare infrastructure. There is a need to invest in infrastructural developments for example medical buildings, water and electricity utilities for health facilities, waste management systems for the healthcare facilities, medical furniture and transportation services. Therefore, I recommend that the government puts more focus on developing health infrastructure in rural areas to resolve the disparities of uneven geographical distribution and accessibility.

Strategies to address corruption. The various forms of corruption include, under table payments (bribery), extortions, greed, low salaries to health workers, false accountabilities among others. There is a need to sensitize the population to identify corrupt officials. The study identified corruption as one of the challenges affecting the health sector. I therefore recommend that serious sanctions are instituted on corrupt medical officers and expose the culprits in the media among other forms of punishment.

Effective and efficient budgeting. Improving planning and budgeting may include, mapping of all sources of health financing, among others. The study showed that the funds accorded to the health Sector are not enough which is detrimental to the population. There is need for the state to source more funds to cater for the health sector through seeking for international assistance, increase the health sector budget and planning efficiently for the health sector.

4.3 Conclusion

Health is an inherent that every country or Nation needs to prioritise. It is impacted by factors such as poverty, governance, housing, climate and environmental change. In addition, the right to health as a human right is indivisible, for example, it cannot be separated from other rights. This means that in order to enjoy the right to life, one has to be healthy.

The study examined the Role of Courts in realizing the Right to Health in Uganda, covering the legal framework governing this right internationally, regionally and domestically. However, the research was not only limited to the legal perspective, further research was conducted on the non-legal aspects such as the Social

Determinants of health which affect one's right to health, positively and negatively and the need to address the challenges associated with these factors.

In conclusion therefore, while Courts serve as a mechanism for protecting the Health right, significant challenges still manifest in affecting their effectiveness. Moving forward, there is a need to revise the Existing Laws to incorporate the Right to Health under the Bills of Rights to ensure that Courts fully recognise this right. There is also a need to strengthen the enforcement and independence of Courts. One of the major challenges affecting the Courts is that most judges are not independent in decision making. Finally, effective enforcement of both international laws together with the domestic legal framework coupled with increased awareness among the population about their health rights is essential to create a more equitable and justiciable environment.

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