

**ASSESSING THE IMPACT OF MEDICAL NEGLIGENCE AND ACCESS TO
JUSTICE IN UGANDA**

JOSELINE NAMBI

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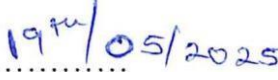


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DECLARATION

I, **Nambi Joseline**, hereby declare that the information presented in this dissertation is a result of my own efforts and initiative. This work has never been presented to any institution for any academic award.

SIGNATURE..........DATE•

NAMBI JOSELINE

.REG.NO. BKS21B11/034

APPROVAL

This dissertation has been prepared under my close supervision and guidance as the university supervisor.

SIGNATURE • 

MR. DANIEL KISA

DATE • 19.5.2025

DEDICATION

ALHAMUDULILAH

I dedicate my research to my family, whose support has enabled me come this far throughout my academic journey and coming up with this research. To my lovely father, Mr. Abdullah Mukalu, you have been my greatest pillar and support throughout my whole life. You have been my backbone, teaching me resilience and perseverance to keep fighting. To my dear mother Ms. Namazzi Josephine, I am so blessed to be called your daughter. Your efforts, support and always looking out for me have been the forces that have sustained me through every storm. Thank you so much. I love you both. May Allah reward you all abundantly.

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Alhamdulillah for the gift of life, strength and knowledge that enabled me manage to carry out my research and accomplish my academic journey.

To my supervisor, Mr. Kisa Daniel I take this opportunity to immensely thank you from the bottom of my heart. Your guidance, willingness, persistence, shared wisdom, knowledge and overwhelming support have created a very positive impact in my academic path. Thank you so much for pushing me to greater heights.

To my parents whose support through a lot of sacrifice I have leaned on throughout my entire life. Thank you for being my number one cheer leaders.

ACRONYMS/ABBREVIATIONS

AHP	:	Allied Health Professional
AHPC	:	Allied Health Professionals Council
APC	:	Allied Professionals Council
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
MN	:	Medical Negligence
NMC	:	Nurses and Midwives Council
PSU	:	Pharmaceutical Society of Uganda
UHRU	:	Uganda Human Rights Commission
UMDPC	:	Uganda Medical and Dental Practitioners Council
UN	:	United Nations
WHO	:	World Health Organization

ABSTRACT

Medical negligence is an unbearable worry and significant concern in the healthcare system filled in the hearts and minds of patients regardless of one's financial status which results into harm to patients' lives causing both psychological and physical disabilities. This leads to increased healthcare costs to rectify the errors or omissions and erodes trust in the healthcare system. Practicing safe and up to the required standard methods of medication and treatment is expected to be the back bone of the health worker's ethical and professional standards. Health workers tend to neglect their sworn values, ethics and standards of practices either intentionally or negligently which puts the health of patients in jeopardy. These can be seen through wrongful acts like misdiagnosis, wrong prescriptions of medicines, improper surgeries carried out, and so many other acts or omissions where they deliberately refuse or fail to do what is required of them. The victims to such actions remain with just one alternative, which is to seek for justice from the institutional frame works that govern the health profession in Uganda. The question then remains, whether this justice is attained and can fully fill up and put together the broken pieces.

The objective of this study was to assess the impact of medical negligence and access to justice in Uganda. The study sought to discuss the legal frame work surrounding medical negligence in Uganda by analyzing and assessing how best the legal and institutional frame work has played a role in ensuring that the victims to medical negligence access the justice they deserve and addressing the matter.

TABLE OF CONTENTS

DECLARATION	ii
APPROVAL	iii
DEDICATION	iv
ACKNOWLEDGEMENT	v
ACRONYMS/ABBREVIATIONS	vi
ABSTRACT	vii
CHAPTER ONE: GENERAL INTRODUCTION	4
1.0 INTRODUCTION	4
1.1 BACKGROUND	5
1.2 PROBLEM STATEMENT.....	8
1.3 OBJECTIVES OF THE STUDY	9
1.3.1 GENERAL OBJECTIVES	10
1.3.2 SPECIFIC OBJECTIVES.....	10
1.4 RESEARCH QUESTIONS	11
1.5 HYPOTHESIS	11
1.6 SIGNIFICANCY OF THE STUDY	11
1.7 JUSTIFICATION FOR THE RESEARCH.....	11
1.7.1 SCOPE OF THE STUDY	12
1.7.2 CONTENT SCOPE	12

1.8 LITERATURE REVIEW	12
1.9 RESEARCH DESIGN	16
1.9.1 Division of study	17
1.9.2 Limitations.....	17
1.9.3 TIME FRAME	18
CHAPTER TWO: RESEARCH METHODOLOGIES	19
2.0 Introduction.....	19
2.1 Research design	20
2.2 Geographical area of study	21
2.3 Study population	21
2.4 Sampling technique and sample size	22
2.5 Data Collection Methods	22
2.6 Data Analysis	22
2.7 Ethical Considerations.....	23
2.7.1 Integrity;.....	23
2.7.2 No computer misuses	23
2.7.3 Disclosure and non-plagiarism	23
2.7.4 Compliance with the university dissertation rules.....	23
CHAPTER THREE: THE STATUS QUO OF MEDICAL NEGLIGENCE IN UGANDA	24
Synopsis of medical negligence	24
Types of medical negligence	27

Misdiagnosis..... 28

Surgical errors..... 28

Medication mistakes..... 29

CHAPTER FOUR..... 38

THE ROLE OF LEGAL FRAME WORKS IN REGULATING MEDICAL NEGLIGENCE THROUGH INFORMED CONSENT..... 38

Legal frame work surrounding informed consent in medical practice; 40

Barriers to the practice of informed consent;..... 42

CHAPTER FIVE 46

Evaluating the existing legal and institutional frame works..... 47

Institutional frame works..... 51

CHAPTER SIX..... 60

Study finding 61

Conclusions 63

RECOMMENDATIONS..... 65

BIBLIOGRAPHY 69

CHAPTER ONE: GENERAL INTRODUCTION

1.0 INTRODUCTION.

Based on personal experience and drawing from the sad stories of victims of physical and Psychological disabilities, it is very clear that these disabilities are not creatures of fate or accidents, not all disabilities are born, but rather, many are creatures of medical negligence, carelessness and inconsiderable actions of health service providers in Uganda specifically in the overly populated areas in Uganda.

Despite the strong policies, laws and regulations as the legal frame works together with the institutional frame works of Uganda, the out cries of the victims of such unfortunate fates have never seemed to be completely and satisfactorily dealt with.

Medical negligence is defined to describe situations where a healthcare provider fails to meet the accepted standards of care, resulting in harm, injury or death of a patient¹. Medical negligence occurs when a health care professional breaches their duty of care by failing to act in accordance with the standard practices expected of a reasonably competent practitioner in similar circumstances². The elements that constitute medical negligence are the duty of care owed by the practitioner, breach of that duty, causation and injury suffered or damage³

¹ The pulse of justice: medical law in Uganda, Isaac Christopher Lugobo

² <https://research.bond.edu.au/en/publications/evidence-based-practice-across-the-health-professions-3> evidence-based practice across the health professions. Hoffman & Del Mar, 2007 (accessed on the 28th/April/2025)

³ Kadimba, Eva & katongole, Simon & maniple, Everd. (2015). Medical litigation in hospitals in Kampala Uganda.3. 204-208.

This proposal contains a detailed background upon which the study was conducted, the statement of the problem which sets out reasons why the study was timely to research about, the objectives of the study and the research questions, significances of the study, scope and limitations of the study.

1.1 BACKGROUND

Access to justice is a notion that a victim to a wrong would wish to obtain fairness and relief if not obtained on time and dispensed fairly. **Justice** is defined as the management and control of the enforcement of laws and dispensation of justice through a judicial process⁴. The process of dispensing justice does not only involve the judiciary as an arm of government but the judiciary also works hand in hand with other institutions and entities like, the Office of the director of public prosecution (ODPP), the Uganda services prisons, the Uganda police, private organizations and entities like the Center for Health, Human Rights and Development (CEHURD), advocates, the Uganda Human Rights Commission and so many others⁵.

At the heart of dispensation of justice, **Article 126(2)(a-c)** stipulates out the principles of delivering justice, that is to say, justice must be done to all irrespective of their social or economic status, justice must not be delayed and adequate compensation must be awarded to victims of wrongs⁶. To the victims of medical negligence and their families, after the misfortunes occurring to them, what is left is rarely taking back the hands of time, but to simply attain the justice deserved, intending to either put them in a position as though the

⁴ Judicial service commission hand book

⁵ Perception on the administration of justice in Uganda by Sylvia Namubiru Mukasa.

negligence did not happen or to punish the wrong doers so as the negligent acts or omissions do not get to the next person.

To the victims of medical negligence and their families, accessing and fully attaining justice is all that's left to wish and look out for. This notion of justice is not simply getting rewarded for the harm suffered, but it speaks to the entire process right from when the complaint is raised till when the wrong is made right through means like compensation. The Latin maxim "**justice delayed is justice denied**"⁷ sums it all up. Even if justice is attained, challenges in accessing it and attaining it are factors that speak directly to that maxim.

After experiencing all the challenges towards accessing justice, it leaves a very big question as to whether the later attained justice is still worth it or fits the harm caused by medical negligence to the victims and their families. **Lord Hewart** in the English case of **Rex V Sussex justices**, laid down a dictum that justice must not only be done, but must also be seen to be done⁸.

Over time, myths and survey reports have ranked the judiciary as the most difficult institution to get through in Uganda. The perception that the financially unstable victims of wrongs can never attain justice through the courts of law in Uganda. Unfortunately, this myth still stands as many Ugandans believe that there are some truths to it and not merely a myth. Victims of medical negligence whose lives end up disabled due to mistakes committed by medical practitioners never appear to attain the satisfying justice for either the compensation for the lives of the loved ones lost or for the permanent injuries and

disabilities occasioned onto them in the hands of medical practitioners. Access to justice for these victims becomes a theory and a myth that seems to never come true.

Medical negligence is an increasing public health concern among health care providers and occurs when a health worker selects, administers, prescribes, directs wrong methods or procedures of treatment or wrongful surgery operations per the required and approved

⁶ 1995 Constitution of the Republic of Uganda, (as amended)

⁷ T Sourdin, Exploring Civil Pre-Action requirements: Resolving disputes outside courts, 2012) 127-47 ⁸ [1924] 1 KB 256.

standard or nether the less, where a health care worker deliberately refuses to do what is required of them in performance of their health duties towards their patients⁶.

All health care workers including general medical doctors, nurses, surgeons, technicians, laboratory attendants, paramedics, physicians and others are responsible for any mistake no matter how slight whether committed or failed to do what is required to be done that can lead to medical negligence.⁷

Medical negligence occurs in a number of ways such as technical errors during operations and surgeries procedures, misdiagnosis of the patients, wrong prescriptions of medicine for treatment, incorrect dosage and failure to do what is required of them forming a tort of

⁶ Dahlawi S, Menezes RG, Khan MA et al. Medical negligence in healthcare organizations and its impact on patient safety and public health: a bibliometric study [version 1; peer review: 2 approved]. F1000Research 2021, 10:174 (<https://doi.org/10.12688/f1000research.37448.1>) (last accessed on 28th April 2025)

⁷ ibid

omission, thereby significantly posing a risk of patient injury, diseases, disabilities both physical and psychological or even worse death of the patients⁸.

To prove medical negligence, the victimized patient or their family in case of death have to prove that the health care provider fell below the required standard of care and that it was the act or omission of the health worker that caused the injury suffered by the patient or even caused death. Medical peers were given the right to determine fellow practitioners alleged negligence basing on professional standards as was established in the case of Bolam V Friern Hospital Management Committee⁹.

1.2 PROBLEM STATEMENT.

Articles 129 and 21 establish the courts of judicature as the custodians of justice to all persons in all spheres before the law which is theoretical to many Ugandans; the general perception being that attaining justice is elusive especially to the vulnerable and marginalized groups of persons which is further exacerbated by a number of challenges like corruption, institutional failures like the judiciary, the police, office of the Director of Public Prosecution and others which has eroded public trust as a result of hard to access or inaccessible delivery of justice.

Research reports show that many cases of medical negligence go unreported in health facilities in Uganda. This is due to the fact that medical facilities utilize the fact that

⁸ ibid

⁹ [1957] 2 ALL ER 118

patients are ignorant about their rights to medical care, and the facilities need to ensure they are not implicated in medical negligence scandals resulting in unreported cases. This leaves the public in total darkness and no awareness is created to cure this. This has been evidenced and supported by speeches and affirmations from the heads of health institutional bodies, for instance, **Dr. Mary Anne Apok** the regulatory officer at the Uganda Medical and Dental Practitioners Council informed the press that there are no specific statistics of medical negligence cases in Uganda although the council averagely records over 50 complaints on medical negligence against health workers annually.

The concern and cries over medical negligence are not only in Uganda but worldwide. The World Health Organization reports show that there is a 1 death out of 3000 caused by induced injury that corresponds to thousands of premature deaths daily and the statistics in developed countries show that as many as 1 out of 10 patients are harmed while receiving treatment and attention from health facilities. For instances, in the United States of America, medical negligence takes the third place in causes of deaths mostly in heart diseases and cancer and about 85000 law suits are filed against medical practitioners every year.

1.3 OBJECTIVES OF THE STUDY

To curb the avoidable actions and omissions which constitute medical negligence and how they occur.

To create awareness amongst the readers and Ugandans at large of their right to informed consent and how it should be exercised.

To evaluate the adequacy and effectiveness of legal and institutional frameworks governing the medical profession towards addressing medical negligence concerns.

To quantify the incidence of deaths and permanent disabilities resulting from medical negligence, and evaluating the accessibility and effectiveness of justice for victims and their families in Uganda.

1.3.1 GENERAL OBJECTIVES

To enhance and improve the performance of the Judiciary and all other institutional frameworks to fit with the laws provided for in the legal frameworks for the victims of medical negligence.

1.3.2 SPECIFIC OBJECTIVES

To find a solution and to reasonably curb medical negligence in health facilities in the suburbs of Kampala

To create an easy way for the victims of medical negligence to access justice for the deaths and disabilities caused by medical negligence.

To ensure that the compensation received by the victims of medical negligence is seen to be just, fair and timely.

RESEARCH QUESTIONS

- 1) What common actions or omissions constitute medical negligence and how they occur?
- 2) To what extent is the principle of informed consent under Article 10 implemented during medical practices?
- 3) How have the legal and institutional frame works that govern the medical field handled and responded to the concerns on medical negligence and ensuring justice is served?

1.5 HYPOTHESIS

Although **Objective XX** provides that the state shall take all practical measures to ensure the provision of the basic medical services to the population¹⁴, it should not stop at merely providing for them, for also regulating their conduct, how they are run and closely ensuring that private health units are fully regulated and licensed to operate.

1.6 SIGNIFICANCY OF THE STUDY

The study is essentially aiming at ensuring that law students, lecturers, victims of medical negligence, health service providers both personnels and facilities, all patients and the population at large understand the essence of informed consent to patients, and the consequences of medical negligence.

1.7 JUSTIFICATION FOR THE RESEARCH

This analytical research essentially analyzed the impact of medical negligence and the failure of the victims to attain the timely and satisfying justice they deserve, premised on

holding the health service providers both the personnels and the facilities accountable and ensuring an effective judicial system to address the concern.

1.7.1 SCOPE OF THE STUDY

The study specifically focused on the forms of medical negligence, their impact to the lives of the victims, how the legal and institutional frame works have ensured that justice is attained by the victims, if anyway justice has been accessed and delivered and the consequences that culprits should face for their actions in the areas of the suburbs of Kampala.

1.7.2 CONTENT SCOPE

This study focuses on the reality between theoretical access to justice by the victims of medical negligence and actual justice attained in reality from 2000 when the Medical and Dental practitioners Act and other laws regulating medics came into play up to date and how to curb medical negligence.

1.8 LITERATURE REVIEW

It is very clear that in the process of doing this research, a list of sources of materials on the topic were be encountered, read, cross checked and analyzed to realize the gaps between the already existing works, appreciated the previous writers and researchers on the topic, analyzed and critiqued for lacuna found. This literature review included statutes, text books, articles, journals, magazines and many other materials.

First and foremost, the back born of this research was drawn from **the 1995 Constitution** from which it is evident that, the entire **chapter 4** right from **Articles 20 to 50** expressly

provide for all other rights¹⁰ which in a broader sense put them at a more advantage at the exclusion of the right to health or proper medical care. Even though **Article 45** is to the effect that those expressly mentioned under the preceding articles shall not be enjoyed at the exclusion of others not expressly mentioned¹⁶. This is a precedented position from case law like **CEHURD & Nakayima Fatumah V the executive director, Mulago national referral hospital and another**¹¹. The constitution being the supreme law, it speaks volumes than mere precedents that can change at a case per case basis and influenced by a number of factors. This certainly raises questions as to whether health is a full and complete right just like all the others expressly provided for and whether its violation through acts and omissions giving rise to medical negligence can be fully punishable to meet the satisfaction of the victims to medical negligence and their families. The constitution does not expressly provide for neither the right to health nor its violation just like any other.

The Medical and dental practitioners Act being a legal frame work governing and regulating medical practitioners in Uganda, it does not expressly mention or create offences and penalties to medical practitioners for their actions or omissions constituting medical negligence¹². This leaves a very big lacuna in the legal system both in the legal and institutional frame works thus leaving victims and their family members at the mere mercy of whoever judicial officer handles theirs case to which, precedents in case law are only at monetary compensation to the victims and the wrongdoers are still left to continue practicing. The system does not provide strong punishments to negligent medical practitioners that can set proper examples to the rest.

¹⁰ The 1995 constitution of the Republic of Uganda, (as amended)

¹⁶ *ibid*

¹¹ Misc.C No.327 of 2016

¹² Cap. 272

The Nurses and midwives Act. One of its main obligations is to discipline nurses and midwives for any wrongs committed. Despite sections specifically 28 and 40, provide for the removal of a nurse or midwife's name convicted of any medical wrong from the register as a punishment and suspension¹³. The Act doesn't in any provision provide for any form of compensation to any victims of medical negligence or clearly stipulate what acts or omissions would constitute medical negligence and how to go about the situation.

The patient's rights and responsibilities charter. Despite the charter under Article 10 providing for the right to informed consent to patients before treatment aiming at ensuring that patients are fully informed and involved in their care²⁰, the article itself and no other article in the charter provides for sufficient guidance on what constitutes informed consent, which potentially leads to variations of interpretation and implementation due to factors like power imbalances and others

The concept notes by His Lordship rtd. Hon.Chief Justice Benjamin Odoki at the "20 years of health policy and the law: celebrating milestones in health and Human Rights work in Uganda" stated that.....in Uganda, the enforcement of health-related violations was not recognized as human rights until recently. This area of law was largely embedded within the law of tort under medical negligence, constitutional law under quarantines for reasons of public health and safety, and criminal law under imposing sanctions on health workers for committing negligent acts. Just like the case is with all other economic, social and cultural rights, recognition of health as a human right has been a real struggle. Until

¹³ Cap. 274

²⁰ 2019

recently, the right to health in Uganda was only recognized in the National Objectives and Directives Principles of State Policy. Through litigation advocacy, the constitutional court has now declared NODPSP justiciable which effectively recognizes the provisions therein on an equal footing with the rights enshrined in the Bill of Rights in the **Constitution of the Republic of Uganda**¹⁴.

The Penal Code Act whose major objective is to establish a code of criminal law, apart from it being a general legislation on the criminal law in Uganda, a part from **Sections like 170** on manslaughter to which even a health care provide can be charged and convicted for causing death to another either through an lawful act or omission, **section 182** that provides for responsibility of person who has charge of another imposes an obligation to fulfill such a duty and omission is punishable. There is no clear provision in the act that speak to the health sector and wrongs committed therein. However, it is important to note that **section 207** imposes an obligation to any person to any surgical operation with reasonable care and skill and failure renders liability¹⁵.

The pharmacy and drugs act. The act was enacted with its main objective to amend and to consolidate the law relating to the control of the profession of pharmacy and trade in and use of the drugs and poisons and any other act related. The act under **Section 5** establishes the pharmaceutical society, whose main function is to oversee and regulate the operations of pharmacists, together with **section 19 and 21** that establish the council and its functions respectively, whose major role is to secure the highest practicable standards

¹⁴ <https://www.cehurd.org/wp-content/uploads/2023/12/KEYNOTE-ADDRESS-FOR-THE-LEADERSHIP-EVENTHEALTH-POLICY-AND-THE-LAW.docx> (last accessed on the 2nd/April/2025)

¹⁵ Cap. 128

in the practice of pharmacy. Despite providing for disciplinary proceedings under **section 16**, the only punishments given for health misconducts as provided for under the **2nd schedule** are just mere reprimands. This can not be termed as clear justice to the victims of medical negligence¹⁶.

The legal frame work that governs medical negligence all rotates around the notion of compensation of the victimized patient or their family members as the health sector treats the patient's interests as being paramount. However, for a patient to be compensated or their families for medical negligence, there must be proof of negligence on the side of the health care worker and that their acts or omissions is the direct cause of the jury or harm suffered by the patient.

Not until health is seen and recognized as a complete human right like all the others, its violation in many forms like medical negligence will never be seen as a violation of a human right and efforts to uphold it will forever be minimal, punishment of the culprits will never face the full actual consequences of their actions and victims of medical negligence will never stand to see and witness the justice they deserve as **Lord Hewart' Cj's** well known dictum; justice must not only be done but seen to be done¹⁷.

1.9 RESEARCH DESIGN

The researcher will adopt an explanatory and diagnostic research design when carrying out the research.

¹⁶ Cap. 280

¹⁷ <https://law.adelaide.edu.au/ua/media/460/air-37-2-ch06-oakes-davies.pdf> (last accessed on the 2nd/April/2025)

1.9.1 Division of study

This study was conducted in four parts that is to say, part one, part two, part three and part four.

Part one entails the introduction, background of the study, the statement of the problem, the significance of the study, limitations of the study, the methodology applied by the researcher in conducting the research, the significance of the study and finally the scope of the study.

Part two comprises of the literature review of the other written literatures about the same topic thus acknowledge of the early writers.

Part three completes the legal and institutional frame work that govern and regulate the medical field and access to justice in Uganda.

Part four consists of the recommendations, suggestions, solutions and conclusions on how to curb medical negligence, ensure justice is accessed, served and seen to be done, by holding the culprits liable.

1.9.2 Limitations

Since the researcher fully conducted a desk research, faced scholarly material constraint while accessing previous studies of various scholars on the same topic. Based on the fact that many concerns and complaints of medical negligence go unreported and never on record. The researcher had to rely on a number of online materials which subjected me to data expenses for online research, and lastly the limitation of time to carry out the required research. The researcher had only one month to carry out the research despite the

hardships in accessing the already existing literature, reviewing it and realizing the lacuna therein.

1.9.3 TIME FRAME

The research study covers a period of twenty-five (25) years from 2000 when most legal frame works that govern and regulate the health sector came into play up to date. This enabled the researcher examine and assessed the impact of the wrongful acts and omissions of health workers to the lives of the victimized patients and how the legal and institutional frame works have ensured that justice is accessed by the victims of medical negligence.

CHAPTER TWO: RESEARCH METHODOLOGIES

A lot of materials and so many researchers and writers have authored and written about medical negligence and how the victims witness or access justice for the harm or injury caused, but unfortunately, there has been no clear and distinctive relief to the aggrieved in Uganda.

2.0 Introduction

The researcher reviewed the existing legal frame works, policies and the reports made by the institutional frame works and several scholars about medical negligence. The researcher applied a desk research methodology. Through the formulated research questions, the researcher reviewed law report database and a secondary search, analyzed the obtained material, note key findings and come up with a well-informed and detailed research.

The desk research tool provides a comprehensive overview of the research report from mainly primary and secondary sources such as the constitution of the republic of Uganda 1995, as amended, statutes, case law, legal documents, reports, articles, textbooks and other relevant documents for the study.

The researcher checked and reviewed a wide range of available data and supporting references in the methodology section, by evaluating the available reference especially the last ten to fifteen years. The researcher in wide consultation with, relied more on online libraries, published books, policies of health, medical negligence, decided cases as precedents, magazines, journals and health institutions websites.

The desk literature is an informative tool of research relating to the research topic as a whole. The ideas and recommendations of different authors and publishers profoundly directed and guided this research data review.

2.1 Research design

The researcher while carrying out this study, relied on the quantitative method of research whose primary aim is knowledge acquisition through objective and numeric mode of acquiring knowledge. By relying on this method of research, the researcher reviewed and analyzed the numerical existing data on the cases of medical negligence in Uganda to fully understand the phenomena and the hypothesis test, analyzing its impact to the patient and access to justice in Uganda.

Even though there are no clear records of medical negligence that much up to the complaints, the researcher enabled to review precedents from decided cases on the topic of study for instance, a number of cases on medical negligence have been reported and concluded. For instance, in **Sarah Watsemwa Goseltine and another V Attorney General**¹⁸, where the plaintiff was forced to push her baby at only 6cm instead of the normal required standard of 10cm. Apart from the few that go on record through formal complaints raised, it is evident that these numbers are not the actual and only complaints of medical negligence in the health sector. Cases like Watsemwa reported, are among the ways through which the victims of medical negligence access and attain justice from the institutional frame works like courts of judicature in Uganda. However, relying on the quantitative method of research, the researcher was able to analyze that not all reported

¹⁸ HCCS No. 675 of 2006

cases on medical negligence attain the required justice per se. To many, the justice is seemingly awarded through a few coins rewarded to the victims and their families.

2.2 Geographical area of study

The research study was conducted in Uganda as a country collecting data from both rural and urban areas. Uganda being a developing country, its health challenges affect all classes of people but mostly the vulnerable and marginalized classes. This gives room to increased cases on medical negligence from both government health institutions and private facilities.

2.3 Study population

The study relies on documentary sources of information as opposed to the individual participation. The sources range from the 1995 Constitution of the Republic of Uganda, the medical and dental practitioner's act, the nurses and midwives act, the penal code act, the pharmacy and drugs act, the allied health professions act and the legislations together with decided cases, articles, journals, regulations, policies and reports on medical negligence both at the national and international level like the world health organization, the Universal Health Coverage monitoring report, World Bank Reports, the Global Health Research and policy and others that provide a comprehensive data and analysis on global health trends and challenges faced. These are crucial in providing an analytical understanding and view on medical negligence, its impact on patients and access to justice in Uganda.

2.4 Sampling technique and sample size

The researcher applied a purposive sampling technique to review material and relied on the most relevant materials and publications for analysis. This sampling technique included reviewing the national legal frame works like the medical and dental practitioner's act, the nurse and midwives act, the allied health professions act, the penal code act and others together with decided cases on medical negligence from the Ugandan jurisdiction and other jurisdictions lie the United states of America, the United Kingdom and other common law jurisdictions, which provided a comparative study on the study research. Generally, around 15 to 20 key documents both primary and secondary sources are analyzed.

2.5 Data Collection Methods

The researcher collected data through a critical analysis of the most relevant materials both from the primary and secondary sources of law, like the Medical and Dental practitioner's Act, the Nurses and midwives Act, the Allied health profession Act together with law journals, articles, publications, scholarly materials, texts books and others respectively. These sources were sourced from libraries both physical and online, websites, articles, legal databases, repositories and others. The selection mode was based on relevancy, authority and impact putting into consideration the new statistics, trends and data on the research topic.

2.6 Data Analysis

The research data was analyzed relying on thematic content analysis where all materials were systematically coded to provide insights into patterns, trends, lacunas, evaluating the existing risk factors associated with medical negligence such as inadequate training,

shortage of labor in health service providers, and challenges towards access to justice by the victimized patients and families as a result of medical negligence. The researcher managed to identify areas of concern, assessed the impact of medical negligence. These gaps within the materials gathered enabled the researcher critically analyze the topic of study.

2.7 Ethical Considerations

The researcher strictly adhered to all ethical considerations throughout the study and ensured that;

2.7.1 Integrity; the researcher was very objective, accountable and honest while conducting the research by referencing clearly and acknowledging all the sources of materials used since the research was a purely desk research.

2.7.2 No computer misuses; The researcher never hacked any site or computer program, and only accessed sites and articles with authorization where signing and acknowledgement was duly required.

2.7.3 Disclosure and non-plagiarism; the researcher has fully disclosed all the sources of information and materials used both primary and secondary sources of information to which the study was based and relied since the study methodology was purely a desk research.

2.7.4 Compliance with the university dissertation rules; The researcher adhered and strictly followed all the institution and faculty regulations and guidelines while conducting the research study.

CHAPTER THREE: THE STATUS QUO OF MEDICAL NEGLIGENCE IN UGANDA

A patient approaches a health worker with expectations of receiving a redress and medical treatment fully putting their trust and hope in the hands of that health care worker due to the skills and level of professionalism they possess. A relationship then is created in form of a contract retaining the elements of a tort. The existence of this relationship comes with duties and obligations a health worker owes to their patient and breach of any of them gives rise to a cause of action against that health worker thus medical negligence.

3.0 Introduction:

The study looked at assessing the current status of medical negligence and its impact to patients in Uganda and access to justice by the victims of medical negligence. This entailed looking at the different forms of medication, treatment and health procedures that constitute medical negligence whether wrongful acts or omissions by health service providers in Uganda, looking at case law or precedents to the study topic, and draw a conclusion.

Synopsis of medical negligence:

In **Blyth V Birmingham Water Works co**, medical negligence is defined to mean an omission to do something which a reasonable man would do or doing something which a reasonable man would not do¹⁹. Furthermore, medical negligence is defined under the **Black's Law Dictionary** as the failure to provide medical, dental or psychiatric care that is necessary

¹⁹ (1856) 11 Ex Ch 781

to prevent or treat serious physical or emotional injury or illness²⁰. Medical negligence occurs where the health services provided by a health care provider falls below the required standards of practice in the medical community, or failure to provide services, causing harm or injury or death of a patient.

These errors occasioned by health service providers have been associated with injurious effects to the patients including physical, emotional pain, increased cost of care, permanent paralysis, disabilities and so many others. Medical negligence is attributed to some challenges faced by the health service providers which may include, poor working conditions, low salary pay, poor accommodation facilities and others. Health workers are overworked due to the overwhelming numbers of patients as opposed to the health service provider's ratio. Due to being under paid, health workers tend to opt away out by setting up their own health facilities that tend to be under staffed and under equipped that is another factor that is attributed to medical negligence.

Others due to being strained, tend to leave the country and look for greener pastures and better paying jobs leaving a big gap in the health sector of Uganda leading to rampant concerns relating to medical negligence.

The history of medical negligence has existed since way back from the early 18th century but specifically to 1828 where the world recorded its first medical negligence case in *Cooper V Wakley* where the defendant was sued for not using anesthesia during his surgery for a gall bladder removal from the plaintiff²¹. Medical errors and omissions have since then

²⁰ Bryan A. Garner, *English Edition*, Thomas West, 2004, Page 1061

²¹ (1828) 172 ER 507

up to date been a major concern worldwide in both developed and developing countries like Uganda.

Medical negligence is attributed to a number of factors including shortage of health workers to run and manage health facilities with high numbers of patients. In Uganda, ratio of patient to doctor is estimated at 1:25,725 and the nurse to doctor is estimated at a ratio of 1:11,000²². This is opposed to the World Health Organization report that suggest the ratio to be at 1:1000 doctor to patients²³.

The ratio in Uganda has tremendously lowered the quality of health care standards given to patients and as such, patients opt for more convenient ways of accessing care including self-medication from drug shops that are run by unprofessional pharmacist who end up giving wrong prescriptions thus medical negligence. For the health worker's that are overly numbered, the health workers tend to get overly exhausted and frustrated by overwhelming numbers of patients they are required to attend too per day thus leading to medical errors like surgical and misdiagnosis.

Other factors that may lead to medical errors by health workers may include, limited resources to enable health workers operate and carry out their duties at the required standards, the introduction of new treatment methods and technology that health workers do not have much experience to operate them per the required standards. The inability to provide adequate and proper or up to the required standard health care may result in unintended consequences such as decreased productivity, deteriorating health conditions,

²² <https://isqua.org/world-patient-safety-day-logs/the-state-of-patient-safety-in-uganda.html> The state of patient safety in Uganda. (last accessed on 25th/ April / 2025)

²³ [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population)) The World Health organization global health observatory (last accessed on the 25th/April/2025)

widening health disparities, and hindered economic and social progress. Consequently, comprehending health-related matters is crucial in handling the existing healthcare crisis in developing nations²⁴

The health sector in Uganda is regulated and governed by a number of both legal and institutional frame works. For example, the Uganda Medical and Dental Practitioner’s council (UMDPC). The council is mandated with a duty to license medical officers and ensure the distribution across the world.

Types of medical negligence

Rosenburg clustered medical negligence into seven types which include, surgical, therapeutic, diagnosis, preventive, medication errors or treatment misdiagnosis and obstetric errors. It is the inevitable consequence of a medical error associated with adverse effects on the patient. In the legal system, there are the hard cases and easy cases. The hard ones are those that fall outside the consensus or required standard of practice and therefore are in the gray areas of medical judgement. The easy ones fall well outside this label and therefore are defined by unaccepted outcomes which give an easily recognizable clinical disaster. Medical negligence depends on four components namely, duty, breach, damage and causation²⁵

²⁴ Rodziewicz, T.L, & Hipskind, J.E (2020). Medical error prevention. Stat pearls. Treasure Island (FL): Stat pearls publishing. Saludininfantil.org

²⁵ . <https://jamanetwork.com/> M.T. Trokel,N.K. Menon, S. G. Rowe, M. T. Stewart, et al., “Assessment of physician sleep and wellness, burnout, and clinically significant medical errors,” JAMA network, 2020 (last accessed on the 27th/April/2025)

Misdiagnosis

Before the treatment of a patient starts, the health worker is required to first obtain material information from the patient concerning their illness basing on the symptoms and signs the patient is experiencing. This is the very first essential part in diagnosing the patient and failure is rendered professional irresponsible.

The moment the diagnosis is wrong, or misinformation is obtained, the chances are very high that the entire treatment and prescriptions are all to be wrong. There are guidelines to medical practice that dictate the collection of sufficient and accurate information from patients upon their first visits to the hospital.

These guidelines mandate doctors to capture symptoms and history of their patients hence creating a base for the disease diagnosis and further examination. The health sector in Uganda is criticized for flouting these fundamental procedures as doctors often overlook such formalities. Doctors are supposed to ensure that patients are given the correct information regarding their diagnosis and its treatment in a proper and professional manner²⁶.

Surgical errors

These are also one of the most common medical negligence claims from patients brought against surgeons. These errors committed, can be through forgetting foreign objects inside a patient's body, using unsterilized surgical tools, improper surgical procedures and so

²⁶ <https://nru.uncst.go.ug/items/da8022c2-a492-4551-ae65-c8197337abf4> E. K. Kagoya, K. Van Royen, P. Waako, “Experiences and views of healthcare professionals on the prescription of antibiotics in Eastern Uganda: A qualitative study,” journal of Global, Elsevier,2021(last accessed on the 27th April 2025)

many others. Many of the instituted malpractice suits involve incidences where equipment had malfunctioned or was not provided.

Many lives of the patients involved could be saved or prolonged if surgical errors were not existent. Surgeons, therefore, need to redesign the complexities of all surgical processes and not only to achieve technical skills, but also improve the intraoperative decision-making, judgement, communication among all surgical team personnel and awareness of human factor and ergonomics principles²⁷

Medication mistakes

This form of medical negligence can occur in very many different ways which may include, providing wrong or incorrect drugs or dosage, errored or flawed prescription, manufacturing and packaging errors, erroneous communication, unsuitable labeling of how to use the drugs prescribed, improper storage and defective administration. These errors can be brought about by a number of factors that is to say, poor handwritings from the health worker prescribing them, wrong labeling, verbal communication to patients on how to use the drugs where the patients tend to forget the proper prescriptions. When a person is injured or harmed or dies from wrong medication the only thing left is to ensue justice through courts of law or other regulatory bodies that govern the health sector like the medical and dental practitioner's council²⁸.

²⁷ <https://pubmed.ncbi.nlm.nih.gov/38219559/> I. Komakech, D. Okello, A. Kavuma, J. Orem, and S.N A. Tagoe, Errors in manual radiotherapy treatment procedures and their evolution in a low resource setting: Uganda's experience," *physica medica*, Elsevier, 2024 (accessed on the 27th/April/2025)

²⁸ <https://www.tandfonline.com> A Dorothy, T. M. Yadesa, E. Atukunda, "prevalence of medication errors and the associated factors: a prospective observational study among cancer patients at mbarara regional referral hospital, "cancer management and research, Taylor & Francis, 2021 (last accessed on the 27th April 2025)

Wrong medication is the most common reported medical negligence concern. It is an essential component of any clinical intervention. In hospital settings all health care providers including nurses, physicians and pharmaceuticals are responsible for the safe delivery of drug therapy. The most frequently reported errors that lead to litigation include prescribing errors, monitoring errors, dispensing errors, administration errors and adverse pharmaceutical events. When they occur, they present critical challenges to the health care provides, since the patient's life or health may be on the line.

The role of the health care providers:

Health service providers are accorded different titles based on their specific duties and specialization. They deliver health care services to patients and ailing either directly as doctors and nurses or indirectly as aides, helpers, laboratory technicians or even medical waste handlers.

The roles of health service providers range right from diagnosis and evaluation of the patient to acquire information from the patients based on the signs and symptoms experiencing, medication management, wound care and controlling infections, operations and surgeries both minor and major and so many other roles based on a health care provider's specialty and duty. It is from the execution of their duties, that concerns of medical negligence arise.

For a health care worker to be liable under medical negligence, he or she must owe a **duty of care:**

A duty recognized by law to take reasonable care to avoid conduct that poses an unreasonable risk of harm to others. The question of when a duty of care in tort of negligence is owed by one person to another is a question about relationships and

responsibility as recognized by the law. The duty of care is usually the arena in which the battle between flexibility and predictability is fought, and it is frequently the area where novel categories or hard cases are decided²⁹.

The duty of care arises where there exists a relationship between the parties such that it is legitimate to make one party legally responsible to the other. This is determined under the principle of proximity. This principle looks at the concepts of relationships and responsibility first, Deane J in the case of *Jaensch V Coffey*³⁷

In the field of health care, the relationship between a doctor and a patient is contractual in nature and it arises when the doctor agrees to diagnose the patient. In **Donoghue V Stevenson**³⁰, Lord Atkins, established the neighbor principle to which he stated that a person should not only be liable to the harm caused to only a person with whom they have a well-established legal relationship, but also to any other person who can be affected by the acts or omissions of the doer. The moment the doctor takes up the role of diagnosing the patient, the duty of care is established and therefore, he or she is expected to act with reasonable care towards the patient and failure is in breach.

Standard of care:

This refers to the degree of care a prudent and reasonable person would exercise who is under a duty of care. The question is whether what the health care provider did is what would have been done by another reasonable man in their shoes. Greer LJ in **Hall V**

²⁹ UNSW law journal; the needle in the haystack; principle in the duty of care in negligence. Vol.23(2)

³⁷ (1984) 155 CLR 549

³⁰ [1932] UKHL 100S

Brookland auto-racing club³¹, defined a reasonable man as the man on the **clapham omnibus**, meaning an average or ordinary person whose opinion or judgement is considered to be the representative of the common sense of the general public.

A health care provider is required to act within the expected standards of medical services and falling below standard is breach. This is a case per case basis and the question of standard of care is based and determined by a number of factors like the use of current technology as opposed to the old technology formerly used and applied in the medical field and others³². In the case of **Bolam V Friern Hospital Management Committee**, court laid down the typical rule for assessing the appropriate standard of reasonable care in skilled professionals such as doctors. It established the bolam test, where it was established that if a doctor reaches the standard of a responsible body of medical opinion, he or she can't be held liable for negligence⁴¹

However, this position of law was overturned in the case of **Montgomery V Lanarkshire Health Board** where court averred that where there was informed consent to the patient after disclosure of the risks of the procedure or treatment by the health worker, the health service provider cannot be held liable for medical negligence⁴².

The Uganda's health sector is governed by bodies like the pharmaceutical society, the medical and dental practitioner's council and others that regulate the practices carried out by health service providers who are expected to act within the set guidelines. For a plaintiff to succeed in a medical negligence suit, he or she must prove that the medical

³¹ [1933] 1 KB 205

³² <https://arxiv.org/pdf/2303.14007> D. Morgan, Y. Hashem, V. J. Straub, and J. Bright, "Team-in-the-loop' organized oversight of high-stakes AI," 2023 (accessed on the 27th/April/2025) ⁴¹ [1957] 1 WLR 582 ⁴² [2015] UKSC 11

officer acted below the required standard of care³³. The standard of care is the threshold of minimal competence and skill to which a given class of professionals will be held accountable and varies by role.

Precedents on medical negligence:

Precedents are one of the sources of law in the Ugandan jurisdiction and legal profession. These have guided and shaped the law on causes of action raised by patients victimized by medical negligence where the legislated law has a lacuna or gaps in the law. These cannot merely be ignored in providing guidance to those who attempt to appreciate the levels of court's decision through the principle of "*stare decisis et non quieta movere*" which means standing by the things decided.

Precedents establish a standard of care through judgements issued by judicial officers. The legal duty of negligence between patients and health workers was first established in the case of **Bolam V Friern Hospital Management Committee** in the leading judgement of Mcnair J, where it was held that a medical professional is not guilty of negligence if he or she has acted in accordance with the accepted practice as proper by a reasonable body or reasonable member of the profession. The case established the famous Bolam test or principle, to which the law relied on for some time to hold health workers liable for medical negligence or not⁴⁴.

³³ <https://www.ncbi.nlm.nih.gov/> p. Moffett and G. Moore, "The standard of care: Legal History and Definitions: the Bad and Good News, 2011. (last accessed on the 27th April 2025) ⁴⁴ supra

This position of law was later changed in the case of **Montgomery V Lanarkshire Health Board** where the position of the law as was established in the Bolam test (ibid), was changed upon the establishment of the element of consent by patient to whom all disclosure was fully done of the entire procedure and treatment to be taken through³⁴. Medical negligence has also been evidenced in the Ugandan jurisdiction and precedents set out by a number of cases. For instance, in the case of **Watsemwa and anor V the Attorney General**, where the plaintiff was forced to push her child at only 6cm instead of the known standard of 10cm. this caused harm to both the mother and the baby who became disabled. Court held that the doctors at Mulago hospital acted negligently for falling below the required standards and thus liable³⁵.

In **CEHURD and anor V the Executive Director of Mulago national referral hospital and another**, where the second plaintiff a Nakayima Fatumah went to the defendant's hospital to give birth but was after theater operation informed that her baby died but the hospital could not provide the dead body of her child. She suffered psychological trauma from the omissions of the defendant's hospital and court held the defendants liable for medical negligence³⁶.

Impact of Medical negligence to patients:

Medical negligence is an unacceptable reality that affects so many patients worldwide whose consequential aftermaths can be devastating and long-lasting. The effects of

³⁴ supra

³⁵ supra

³⁶ HC MSC. NO. 327 of 2016

medical negligence are a double-edged sword that can take shape either physically or psychologically.

Physical impact: This can vary greatly depending on the individual case and the severity of the malpractice and each form of medical negligence (discussed supra) leaves a different impact on the victim. That is to say, misdiagnosis or delayed diagnosis may prevent patients from receiving timely and appropriate medical treatment. This can lead to worsening symptoms, disease progression and physical harm to the patient³⁷.

Birth injuries. This can take shape through brain damages, spinal cord damage leading to deformations like kyphosis and congenital, paralysis, coordination deficits, spinal cord disabilities, damage to the cervix of a woman leading to failure to give birth again or conceive for life, the nerve injuries and so many others. These tend to be so totally fatal injuries causing life times disabilities or worse death.

Surgical errors. Such medical errors also tend to cause fatal injuries, harm and disabilities or death. These can lead to damaging the organs in the patients' body, damaging, cause hemorrhage, infections and other complications that may lead to permanent disabilities or even death.

Psychological impact: This form of medical negligence impact may occur to the victimized patient in person, to their loved ones or both. Aside from the physical harm causing physical pain, medical negligence often contends with psychological trauma such as anxiety,

³⁷ <https://nilepost.co.ug/health/225930/fake-doctor-exposed-in-nbs-tv-investigation-remanded> (last accessed on the 3rd/April/2025)

depression, fear of future treatments, surgeries, guilt of failure to protect themselves in advance from the harm.

Financial consequences: Medical negligence leads both patients and their loved ones into financial constraints. These come as a result of spending on other medical treatments or worse more surgeries associated with long term care to correct the harm or disability caused by medical negligence thus further medical expenses. Financial consequences can also be experienced by lost income. A patient who suffers harm from medical negligence may be forced to take off time from work more than the usual sick leave granted. This in the long run may lead to loss of a job where the patient in question gets replaced if as previously employed and if was self-employed, untimely neglect and abandonment of business may lead to its poor performances thus complete collapse thus financial strain to the patient and family³⁸.

Social impact: The victims of medical negligence suffer from abandonment from loved ones, isolation and stigma associated with the injuries and harm caused. There is also probability of victims being forced by the situation to adjust their daily lives to accommodate the limitations imposed by the harm caused due to medical injuries³⁹.

legal impact. The process of accessing and pursuing justice by the victims or families to the victims of medical negligence is a challenge on its own coupled with a number of hinderances and constrains. These can be through legal fees that tend to be very expensive

³⁸ <https://www.laparoscopyhospital.com/worldlaparoscopyhospital/index.php?pid=682&p=> (last accessed on the 3rd/April/2025)

³⁹ <https://www.sommersandroth.com/blog/.medical-malpractice/the-impact-of-medical-malpractice-on-patients-andfamilies> (last accessed on the 3rd/April/2025)

to which the majority of Ugandans cannot afford. The bureaucracies surrounding the legal and justice system in Uganda that end up making the process so long.

Sections 101(1) and 102 provide that the burden of proof laying on the victim or their parents to prove and they would be the ones to fail incase no evidence is adduced⁴⁰, that they suffered harm and it was as a result of an act or omission by the health service providers tend to be hard to prove since, health facilities as a way of running away from liabilities tend to erase all proof and evidence associated to the wrong or an omission committed against a patient.

Conclusion:

The impact of medical negligence doesn't merely stop at causing physical harm to the victimized patient, but it extends to psychological traumas associated with abandonments, isolation, stigmatization from relatives and others negativity.

⁴⁰ Evidence Act. Cap.6

CHAPTER FOUR

THE ROLE OF LEGAL FRAMEWORKS IN REGULATING MEDICAL NEGLIGENCE THROUGH INFORMED CONSENT.

The relationship between a health care service provider and their patients is consensual. It starts right from when the patient seeks the health services of a health care worker till the very last stage when the patient has been treated and their health challenges are fully cured. It is from this, that the law had to cure the lacuna between the health care worker's duty owed and promoting the welfare of the patient thus the notion patient's consent while medication, as the cornerstone of medicine.

4.0 Introduction:

Informed consent refers to the process in which a healthcare professional educates a patient about the risks, benefits, and alternatives of a given procedure or intervention. The history of informed consent in medicine is rooted in a broader evolution of ethical practices and legal standards surrounding patient autonomy⁴¹. Furthermore, it is a process by which a patient concurs with his/her doctor to undergo medical procedures, based upon an adequate disclosure of facts on the diagnosis, proposed procedure and risks, which enables the patient to make the decision freely and without constraints^{42,43}.

⁴¹ <https://www.ncbi.nlm.nih.gov/books/NBK430827> (accessed on the 6th/April/2025)

⁴² <https://pmc.ncbi.nlm.nih.gov/articles/PMC10335635/> Core concepts of consent in medical practice. (accessed on the 6th/April/2025)

⁴³ N.E. 92, 211 N.Y. 125

Consent occurs when a person voluntarily permits, approves, or agrees to something. It is a complex communication, educational and trust building process where the doctor must balance his or her primary duty to promote the health and welfare of the patient while upholding the patient's wish and preferences.

The notion of informed consent has stood the test of time right from since when it began to merge in response to several land marks from around 1914 where cases such as the **Mary E. Schloendorff V The society of the New York Hospital**⁵⁴, where court ruled that every human being of adult age and sound mind has a right to determine what shall be done with their own body. This ruling established the principle that patients must agree to medical procedures thus patient autonomy.

In the mid-20th century, unethical medical experiences, including the Tuskegee study of Untreated syphilis in the Negro Male and the Nazi human experiments during the world war 11, further underscored the need for stringent consent standards. These events along the establishment of the Nuremberg code and the Declaration of the Helsinki, cemented informed consent as a fundamental ethical standard in research and clinical practice. Informed consent has evolved from simply obtaining a patient's signature to a process centered on clear communication to ensure the patient understands the risks, benefits and alternatives of medical interventions, establishing it as a cornerstone of patientcentered care and medical ethics⁴⁴. The patient must be competent to make voluntary decisions regarding the treatment they are yet to receive. Informed consent can be either express on a consent form or oral.

⁴⁴ <https://www.ncbi.nlm.nih.gov/books/NBK430827/> (last accessed on the 6th/April/2025)

The most important elements to capture in the consent is the nature of the procedure or intervention, the risk and benefits of the procedure or intervention, reasonable alternatives, the risks and benefits of those alternatives and an assessment of the patient's understanding of these elements. In **McCulloch and others V Forth valley health board**⁴⁵ court held that a doctor is only under obligation to inform the patient of the available alternative treatment if he or she considers the alternative reasonable.

Legal frame work surrounding informed consent in medical practice;

Informed consent has been over time supported by a number of legal frame work both international, regional and national. These include; **Article 12 of the International Covenant on Cultural Social and Economic Rights** provides for the right to the highest attainable standard of physical and mental health. This implicitly requires informed consent in health care matters and grants a patient a right to choose and refuse medical treatment where informed consent is crucial but not given⁴⁶. **Article 24(2)(b) of the Convention on the Rights of the Child**, mandates state parties to ensure the provision of necessary medical assistance and health care to all children⁵⁸. This can be exercised through ensuring that parents of the patient children give informed consent before their children undergo any form of medication.

⁴⁵ [2023] UKSC 26

⁴⁶ <https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20mp/ch-iv-03.pdf> (accessed on the 6th/April/2025)

⁵⁸ <https://www.ohchr.org/sites/default/files/crc.pdf> (accessed on the 6th/April/2025)

Objective xx mandates the state to take all practical measures to ensure the provision of basic medical services⁴⁷. It is important to note that those medical services can only fully be enjoyed where there is patient autonomy practiced through patient informed consent. Additionally, **Article 45** of the Constitution guarantees that the enjoyment of the rights, duties and declarations expressly provided for is not to the exclusion of all others that are not expressly provided for⁴⁸. This among others includes the right to health to which its full enjoyment involves patient autonomy.

Article 10 provides for the right to informed consent. Guarantees a right to be given adequate and accurate information about the nature of one's illness, the procedure, the proposed treatment for the patient to make a decision that affects those elements. This consent may be given verbally or in writing, to be witnessed. Additionally, it can be given before treatment or after where is practically impossible to obtain it before treatment as provided for under **Article 10(a and b)**⁴⁹.

The notion of informed consent in Uganda is not well documented in the legal frame work. However, precedents have been set on the principle since time immemorial. Case law has set clear guidelines on the same. In **Njereketa V Director of medical services Mulago**⁵⁰, where the appellant's leg was amputated upon his consent withdraw. Court held the defendant's hospital liable for amputating the appellants leg without his consent. In the

⁴⁷ National Objectives and Directive principles of state policy, the 1995 Constitution of the Republic of Uganda, (as amended).

⁴⁸ 1995(as amended)

⁴⁹ The patient's Charter

⁵⁰ [1950] 17 EACA 60

case of **Montgomery V Lanarkshire Health Board**⁵¹ the supreme court averred that a health worker has a duty to attempt the disclosure risk.

In the case of **Hopp v Lepp**⁵², the appellant was disabled as a result of an operation conducted by the respondent who didn't obtain an informed consent from the appellant. Court held that consent given at operation was not an informed consent as the full potential of risks associated with the disc blockage in the appellant's spinal canal were not disclosed thus holding the respondent liable.

Barriers to the practice of informed consent;

Non- codification; The principle of informed consent is practiced and appreciated differently in different jurisdictions and as for Uganda, it is clear from the above that it is not fully documented. The principle is merely left to be backed up by precedents set by the courts of record and not clearly codified in the legislations of Uganda. It leaves health care providers vulnerable to legal action if patients later claim they were not fully informed. This challenge is among the very many that have hindered its full appreciation and practice in Uganda.

Language barrier; It is important to note that the doctors are trained in English but attend to different patient from different regions of Uganda. Uganda is known for being a multilingual country. Ugandans come from different regions of the country to which many languages are spoken and yet health service providers are only taught in English. Health facilities do not have interpreters to help aid the communications between patients and

⁵¹ [2015] UKSC 11

⁵² [1980] 2 SCR 192

doctors. This thus makes it very difficult or even impossible to conduct well informed communications amongst the two parties, a hinderance to obtaining a wellinformed consent.

This also affects persons with disabilities. **Article 35(1)** mandates the state and society to take appropriate measures to ensure that persons with disabilities realize their full mental and ⁵³physical potential⁶⁵. In the case of **Initiative for Social and Economic Rights (ISER) & 3others V Attorney General**⁵⁴, where the petitioners contended that the respondent's failure to provide sign language interpreters causes communication barriers and affects the quality of health care provided to persons with hearing disabilities. Court averred that persons with disabilities are entitled to full and effective enjoyment of rights.

Power dynamics and perceived authority; patients may feel pressured and end up consenting to treatment due to unequal power relationship between themselves and the health care providers, making it difficult for them to assert their preferences and raise their suggestions and opinions or ask necessary question. This issue is more problematic in vulnerable populations, such as the old, disabled, those facing acute medical conditions who may feel more dependent on the health care provider's decision. Ensuring informed consent in this group demands meticulous attention to detail to uphold their autonomy and rights during treatment decisions⁵⁵.

Incomplete disclosure; ethical concerns when information is incompletely disclosed, either intentionally or unintentionally, such as downplaying certain risks or not presenting

⁵³ constitution of the republic of Uganda, (as amended).

⁵⁴ Const.p no.029/2017

⁵⁵ <https://www.ncbi.nlm.nih.gov/books/NBK430827/>. (accessed on the 6th/April/2025)

all available treatment options, including non-treatment. These occurrences can sometimes be driven by provider bias, where the health care provider may assume what is best for the patient without fully engaging them in decision-making.

Commercialization of the health sector; since health facilities are business ventures like any other forms, health care providers who happen to own the facilities tend to prioritize earnings over their patient's best interests. This is done through only suggesting the most beneficial procedural treatments to their patients and failing or refusing deliberately to disclose other alternatives that might be cheaper and reasonable to the patients thus leaving patients with no choice or alternative to select from hindering informed consent.

Lack of patient comprehension. The medical sector is full of complex jargons and terminologies and varying levels of health literacy often resulting in patients agreeing to procedures or treatments without fully understanding the risks, benefits, or alternatives available to them. This mismatch can lead to uninformed consents⁵⁶.

Conclusion. Informed consent is a notion that is not well appreciated and practiced, not so known to patients to whom it fully benefits. This and many others are the challenges that have hindered its full practice and appreciation in the medical sector. It should be noted that without informed consent obtained from the patients, both health care providers and patients are left vulnerable. That is to say, health care providers are left vulnerable before the law in situations where patients raise lack of informed consent to any treatment

⁵⁶ Ibid.

the health care worker administered without approval of the patient, and not protected from any causes action arising from medical negligence. For patients, due to lack of full disclosure from the health care workers, they are subjected to health risks from procedures they would have objected too incase they were fully informed. Informed consent is one of the factors that can mitigate medical negligence in the health sector.

CHAPTER FIVE: THE EFFECTIVENESS OF UGANDA'S LEGAL AND INSTITUTIONAL FRAMEWORKS IN ADDRESSING MEDICAL NEGLIGENCE AND ACCESS TO JUSTICE.

Medical negligence having turned into a national concern in Uganda irrespective of one's financial status or social standing, the legislators of Uganda have enacted laws by the powers vested onto them under Article 79(1)⁵⁷. This has restored a little hope in the hearts of Ugandans. These laws are implemented by a wide range of institutions thus ensuring that justice is accessed by the victims of medical negligence in Uganda.

5.0 Introduction:

The rise of medical negligence concerns has for so long been one of the leading factors that has led to mistrust and rendering the health care sector in Uganda incompetent. This has forced many Ugandans opt for what they call "better health care services" from countries outside Uganda. As a way of feeling this lacuna in the sector, the legal frameworks have been put into play to regulate the medical profession. The government of Uganda has ensured the protection of patient's safety with regard to health care procedures and facilities by regulating how both private and public health facilities operate and how health care workers carry out their duties.

The government has taken steps towards the fulfilment of this commitment including the ratification of international treaties, conventions, declarations and the establishment of legal and institutional frameworks that govern and protect the right to health and life enjoyed by all Ugandans.

⁵⁷ The 1995 constitution of the republic of Uganda, (as amended)

The Uganda's health care sector for decades to date has been struggling to handle emerging concerns and challenges within the health care sector countrywide for about 48.66million Ugandans as of 2024. Despite all the efforts from the government of Uganda to ensure the protection of the right to health and life of Ugandans, the cases involving medical negligence are frequent leading to a number of undesirable consequences such as death, permanent injury and disability, damage and others. This has been exhibited in a number of cases in Uganda.

Evaluating the existing legal and institutional frame works.

The national legal frame work; The Uganda legal system is governed by a number of legislations and the following regulate and govern the health sector in Uganda. These range right from the Constitution, where **Article 23** guarantees the protection of the right to life, **Article 45** which guarantees the protection of all other rights, duties and declarations not expressly provided for in the Constitution and one of those is the right to health⁵⁸. As a way of ensuring these Articles are adhered too, the state is under obligation to ensure the provision of medical services to the population as provided for under **Objective xx**⁵⁹.

By virtue of **Article 79(1)**, the parliament enacted the following legislations to govern the health sector in Uganda⁷². **The Medical and Dental Practitioner's Act**⁶⁰. Its main objective is to consolidate the law relating to the medical and dental practice and other connected

⁵⁸ The 1995 Constitution of the Republic of Uganda, (as amended)

⁵⁹ National Objectives and Directive Principles of State policy (the 1995 Constitution)

⁷² *supra*

⁶⁰ Cap.272

purposes. The Act regulates the operations of medics and dentists in Uganda to ensure that medical negligence and other related malpractices are mitigated. The **Allied Health Professionals Act**⁶¹. Its main objective is to regulate, supervise, control, register and license the allied health professionals and other connected matters like the establishment of the Allied health professional's council under **Section 2**⁶².

The Nurses and Midwives Act⁶³. Its main objective is to provide for the training, registration, enrollment and discipline of the nurses and midwives of all categories and any other matter related. **The pharmacy and drugs act**⁶⁴. Its main objective is to amend and consolidate the law relating to the control of the profession of pharmacy, trade, use of drugs and poisons and any other matter related. Since medical negligence can as well take the form of wrong prescriptions, the act was put into play to regulate such acts. **The public health Act**⁶⁵. The act's main objective is to ensure protection and preservation of public health in Uganda. **The penal code act**⁶⁶. Its major role is to establish a code of criminal law. It establishes offences and their penalties and clusters them into either felonies or misdemeanors as per **Section 1**⁸⁰. It is important to note that a victim of medical negligence can opt to report a criminal case against a health care worker who might have acted negligently or a civil case under the **Civil procedure Act**⁶⁷ where the victim opts for compensation for the harm caused due to medical negligence. And lastly the principles of

⁶¹ Cap.268

⁶² ibid

⁶³ Cap.274

⁶⁴ Cap.280

⁶⁵ Cap.310

⁶⁶ Cap.128

⁸⁰ Ibid.

⁶⁷ Cap.282

common law. These are well appreciated through mostly precedents set by courts of record to which judgments are based and justice is achieved.

It is important to note that the legal frame works of Uganda as explained above work hand in hand with the policies and legislation formalities on health care as put into play by the government of Uganda. These include the National Development Plans (NDP) which operate for a term of 4-5years from which the second national health policy of 2010 was established and the most recent being the Forth National Development Plan (NDPiv)⁶⁸. The national health policy whose primary aim is to inform, clarify, strengthen and priotise the role of government in shaping Uganda's health care sector in all its dimensions including organization of healthcare services, strengthening regulation and health assurance, prevention of diseases and promotion of good health through cross-section actions, access to technologies, developing human resources for health and others.

The international legal regime; Uganda being a member and signatory to many international instruments like the United Nations, it is bound by many conventions, treaties and declarations and has since time immemorial, ratified a number of international and regional treaties, conventions and declarations addressing issues relating to human rights to which the right to health is imbedded. These include the **International Convention on Economic, Social and Cultural Rights** specifically **Article 12** which provides for the right to the highest attainable standard of physical and mental health⁶⁹.

⁶⁸ <https://parliamentwatch.ug/wp-content/uploads/2025/01/PDF-FINAL-NDPIV-for-Parliament-Approval-131220241.pdf> (accessed on the 8th/April/2025)

⁶⁹ <https://www.ohchr.org/sites/default/files/cescr.pdf> (accessed on the 8th/April/2025)

Article 25 of the convention on the Rights of Persons with Disabilities, provides for the Rights of persons with Disabilities to health, including access to gender-sensitive health services⁷⁰. **The African Charter on Human and People’s Rights specifically Article 16(1) and (2)** which provide for the right to the enjoyment of the best attainable state of physical and mental health. It further imposes an obligation on the state parties to the charter to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick respectively⁷¹.

The treaty for the establishment of the East African Community to which Article 118(b) beseeches partner states to cooperate in the health care provision, management of the health systems, drug policies, harmonization of national health policies and exchange of information and promotion of research⁷².

Article 25(1) of the United Nations Declaration on Human Rights states that every person has a right to a standard of living adequate for the health and well-being of him or herself and of his or her family including, to mention but a few medical care and necessary social services⁷³. **The Abuja Declaration** imposes a 15% budget allocation on health care services by every member state off its national budget as a way of ensuring the highest attainment of good health standards⁷⁴.

These convention, declarations and treaties impose duties and obligations onto member states and signatories to ensure the full realization of the right to health, its highest

⁷⁰ <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (last accessed on the 8th/April/2025)

⁷¹ <https://au.int/sites/default/files/treaties/36390-treaty-0011-african-charter-on-human-and-peoples-rights-e.pdf> (accessed on the 8th/ April/ 2025)s

⁷² <https://edit.wti.org/document/show/6152dafa-e2dd-423c-abc2-94cb4669c45a> (accessed on the 8th/April/2025)

⁷³ <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on the 8th/April/2025)

⁷⁴ <https://iris.who.int/bitstream/handle/10665/341162/WHO-HSS-HSF-2010.01-eng.pdf> (accessed on the 8th/April/2025)

attainable standards by ensuring that a proper proportion of each state's national budget is apportioned to the health sector. For instance, 6.1% of the Uganda's national budget in the financial year 2025/26, which falls short of the Abuja Declaration 15% target⁷⁵⁷⁶.

The ratification of these international legal instruments creates an obligation upon Uganda as a member state and signatory and her developing partners to ensure that legal and institutional frameworks are in place to provide health care services within the minimum standards so as to protect its people against any acts or omissions that might infringe their enjoyment of the right to health including medical negligence.

Institutional frame works

The courts of judicature; Article 129(1) (a-d) establishes the courts of judicature⁹⁰. The judiciary is the custodian of the law whose major mandate is to administer justice through resolving disputes between parties, interpretation of legislations which include those that regulate the health sector, and apply such existing laws to settle disputes. Some of these disputes are the cause of actions arising out of medical negligence complaints. The judiciary remains the cornerstone and an indispensable stakeholder in Uganda's justice system. Uganda's judicial system since time immemorial has exercised its mandate by entertaining cases to which medical negligence cases are among those handled. Through executing its duties, precedents on medical negligence have been set. For instance, in the case of **CEHURD and 4others V Nakaseke District Local Administration**⁷⁷, where court

⁷⁵ <https://parliamentwatch.ug/wp-content/uploads/2025/03/Health-Alternative-policy-Statement-FY2025-26.pdf>
(accessed on the 8th/April/2025)

⁷⁶ Constitution of the Republic of Uganda,(as amended)

⁷⁷ CS NO.111 of 2012

held the defendant liable for violation of the human and material rights of the deceased and that of her children.

The ministry of health; it is a government body set up with the mandate of stewardship and leadership of the health sector. It is responsible for policy review and development, supervision of health sector activities, formulation and dialogue with health development partners, strategic planning, setting standards and quality assurance, resource mobilization, advising other ministries, departments and agencies on healthrelated matters, and ensuring quality, health equity, and fairness in contribution towards the cost of health care⁷⁸. The ministry is the overseer of all operations, activities, personnel and operators of the health care sector in Uganda.

The Uganda Medical and Dental practitioner’s council. It is a body corporate with perpetual succession established under **Section 2**, whose main role is to protect the society from abuse of Medical and Dental practice as well as research on human beings in order to effectively contribute to a healthy and productive population. To further ensure the regulation and enforce standards of education and practice in Uganda so as to protect the society from harmful effects of medical malpractice⁷⁹.

The council has functions provided for under **Section 3** which include, to exercise disciplinary control over medical and dental practitioners, to protect the society from

⁷⁸ <https://health.go.ug/about-moh/> (accessed on the 9th/April/2025)

⁷⁹ The Medical and Dental Practitioners Act, cap.272

⁹⁴ Ibid.

abuse of medical and dental care research on human beings, to exercise disciplinary control over medical and dental ethics and other functions⁹⁴.

The council has a mandate to license registered medical and dental practitioners to engage in private practice provided for under **Section 28**, to register private health units to operate and controls their operations and inspect those private health units as provided for under **Sections 29,31 and 32**⁸⁰ respectively.

The Nurses and midwives council. It is established under **Section 2** with functions including, to regulate the standards of nursing and midwifery in the country, to regulate the conduct of nurses and midwives, to supervise and regulate the training of nurses and midwives, to supervise the registration and enrollment of nurses and midwives and to exercise general supervision and control over the two professions as provided for under **Section 3**⁸¹. **The council** regulates private practice of nurses and midwives in the country, registers maternity homes and nurse health units per **Sections 30 and 32**⁸² respectively.

The Allied health professionals council. It is established under **Section 2** as a body corporate. It has functions including, regulating the standards of allied health professionals in the country, regulate their conduct, approve, supervise and regulate training institutions for the different categories of allied health professionals and other functions as provided for under **Section 4**⁸³. **The council** has a mandate to register allied professionals, to license

⁸⁰ Ibid.

⁸¹ The Nurses and Midwives Act, Cap.274

⁸² Ibid.

⁸³ The Allied Professionals Act, Cap.268

⁹⁹ Ibid.

private practice, to register allied health units, to inspect them and handle disciplinary complaints under **Sections 24, 31,32,35 and 36**⁹⁹ respectively.

The pharmaceutical society of Uganda. It is established under **Section 5** as a corporate body under **Section 6**. The council is charged with a general responsibility for securing the highest practicable standards in the practice of pharmacy as provided for under **Section 21**⁸⁴.

The National Drug Authority is established under **Section 3** as a body corporate responsible for regulating drugs within the country. Its major mandate is to ensure the availability of essential, safe, efficacious drugs for Uganda's population. The authority has functions under **Section 5** which include the development and regulation of pharmacies and drugs in the country, to approve the national list of essential drugs and supervise the revisions of the list in a manner provided by the minister, to control the quality of drugs and other functions¹⁰¹.

The Uganda Human Rights Commission established under **Article 51**. The commission has functions under **Article 52(1)** and specifically **(a)**, the commission has a mandate to investigate, at its own initiative or on a complaint made by any person or group against the violation of any human right. It is important to note that medical negligence cases result in violation of the right to life under **Article 22** and the right to health. The commission further has powers under **Article 53**, to issue summons or other orders requiring the

⁸⁴ The pharmacy and drugs act, cap. 280

attendance of any person and the production of any document before it, to question any person in respect of any subject matter before it and other powers under the Article¹⁰².

Challenges to access to justice and the lacuna in the legal frame work.

Uganda has a wide range of both legal and institutional frame works which regulate, govern and control the health care sector as discussed above. These legal frame works establish a number of institutional bodies which over see the operations of the health care sector right from the ministry of health. It is important to note that regulating the health sector is not a mere walkover and therefore, these institutions face fall backs which give rise to concerns like medical negligence. Where patients are victimized due to medical negligence, they rise complaints to the different councils that govern the different categories of health workers who are mandated to handle disciplinary issues through inquires, and when they fail to get the justice they deserve, they opt to take the matters to courts of law for a legal redress. However, this justice long sought is not easily accessible due to the following challenges.

Inadequate laws to fully address medical negligence. It is undoubtedly true that Uganda is reach in legislations as explained above, however none of these laws directly speak to medical negligence in health care facilities. Starting from the supreme law, the Constitution, does not expressly provide for neither the right to health nor the right to standard health care services.

The provisions in the Medical and Dental practitioners Act are mostly for the establishment and administration of the council. There are no specific provisions for

¹⁰¹ The National Drug policy and Authority Act, Cap.206

¹⁰² 1995 constitution of the Republic of Uganda, (as amended)

regulating licenses for foreign medical and dental practitioners, the act does not regulate e-medicine, no incentives to attract private health practitioners to provide health care services in the under-served and hard to reach areas most the rural areas in Uganda, the act has no provisions on the monitoring and training in institutions for medical and dental practitioners, all that is done is licensing and no close monitoring since the act doesn't provide for a committee to monitor those trainings leading to producing half baked and unfit health care workers thus medical negligent cases. The Act still lacks a provision for the disciplining of health professionals employed under the public service. That is to say, it has become so hard to hold a health worker under government employment personally liable for cases of medical negligence.

The Nurses and midwives Act does not provide clear and detailed offences to charge nurses and midwives who practice without valid certificates, no provisions on the punishments and offences or persons who use the name, trade tools and equipment that are a preserve of the nursing and midwives profession, which has led many Ugandans to fall prey to such operations in the hands of persons with no qualifications in nursing or midwifery. The act provides no clear inspection and regulation of new and existing nursing and midwifery institutions after granting them license of operation.

The Allied Health Professionals Act. This act regulates allied health professionals, however, there is a prolonged and disjointed licensing process which constrains the practice of allied professionals. Further more the act has no provisions for regulating licensing of foreign allied professionals. The act has no provisions for collaboration with other regulatory bodies

such as joint inspection unit private health units and joint disciplinary actions. The act lacks provisions on the regulation, training and examination of the allied professionals.

The pharmacy and Drugs Act. This legislation has no provisions to regulate the management of pharmacies in the hospitals, clinics, retail pharmacies and drug shops. It does not provide for the regulation of private pharmacies, no provisions for the dispensation of medicine on the counters, no provisions on the regulation of the pharmacists, pharmacy establishments and their subsequent management. It has no provisions to gazette the registered names of licensed pharmacies in the national gazette.

All the Uganda's legal frame work governing and regulating the health care sector have no clear provisions for proper enforcement of their disciplinary actions. They provide for mere inquiries, and cancellations of licenses to which both are not practical solutions like compensation to the victims of medical negligence.

The legal frame work lacks clear provisions for holding the government accountable and liable to medical negligence cases that rise from government hospitals like national referrals. It has been evidenced in decided cases on medical negligence that courts only award compensations in monetary terms to victims which compensation in most cases is inadequate since it is not regulated anywhere in any law.

The government never takes up the responsibility of ensuring that the victims of medical negligence receive the medical attention they deserve to rectify the harm caused.

The Uganda's legal frame work governing the health care sector lacks a joint enforcement body for all the medical negligence and malpractices occasioned by different categories of

health care workers. This would save the victims of medical negligence from prolonged court litigations.

This leaves institutions like courts of law with a big lacuna and only left to rely on precedents to which each medical negligence case is handled at a case per case basis.

Lack of awareness. Most patients are ignorant about their right attaining and access medical services. That is to say, very many are ignorant that they have a right to informed consent before undergoing any form of medical services as provided for under Article 10⁸⁵.

The law on limitation of actions. The limitation Act regulates the time frame in which a cause of action can be instituted against a wrongdoer. For instance, **Section 3** provides for the limitation of actions of torts to which most medical negligence cases belong, are only required to be reported to court within three years. In most cases, these limitations are a challenge to many patients victimized with medical negligence since they have to look for money to take them through the process⁸⁶.

Bureaucracies and expensive nature of Uganda's legal system. Many victims of medical negligence fail to access justice due to failure to raise the required legal fees for lawyers to take on their instructions. On top of that, the process is coupled with a lot of endless legal processes right from documentation, filing of court documents, payment of legal fees, endless adjournments and other challenges. These frustrate victims of medical negligence

⁸⁵ The patients' Rights and Responsibilities Charter

⁸⁶ Cap.290

whose main aim is to access justice as the legal maxim goes, ” **justice delayed is justice denied**”.

Inadequate compensation and court awards. It has been evidenced in a number of decided cases in Uganda where victims are rewarded peanuts that cannot even satisfactorily foot their medical bills. For instance, in the case of **CEHURD and Nakayima Fatumah V the Executive Directors of Mulago hospital and another**⁸⁷, where after 7 years of litigation, court awarded the second plaintiff only fifty million shillings as damages for the lose of her child, the trauma she went through, the infections she got that as a result she would never conceive all due to the negligent actions of the defendant’s hospital. This leaves so many patients victimized with medical negligence wonder whether to still opt to go to court and seek a redress.

Conclusion. There are so many challenges patients that suffer medical negligence fates go through that hinder their proper and quick access to justice creating public mistrust in the legal and institutional frame works of Uganda as explained above.

⁸⁷ Misc. no.327 of 2016

CHAPTER SIX: STUDY FINDINGS, CONCLUSION AND RECOMMENDATIONS

This study was based and inspired by personal experiences and sad stories from victims of medical negligence who are harmed, injured, permanently disabled both mentally and psychologically or worse dead. The research was conducted with a purpose of assessing the impact of medical negligence to the victimized patients and how or whether they access justice.

6.0 Introduction:

The research has been carried out under four objectives, that is to say, to curb the avoidable actions and omissions which constitute medical negligence and how they occur, its impact to the victims, to create awareness amongst the readers and Ugandans at large of their right to informed consent and how it should be exercised, to evaluate the adequacy and effectiveness of legal and institutional frameworks governing the medical profession towards addressing medical negligence concerns and lastly to quantify the incidence of deaths and permanent disabilities resulting from medical negligence, and evaluating the accessibility and effectiveness of justice for victims and their families in Uganda.

The analysis and observations made under this study were purely based on an intensive literature review which entailed revising different legislations right from the national legal frame works, the international conventions, declarations and treaties, case law, principles of common law, legal maxims, journals, articles, text books of different authors and news from national accredited television stations, since the study was purely a desk research. The research study was guided by the research questions raised.

Study findings:

The researcher following the guide of the first research question, analyzed the status quo of medical negligence in Uganda. This required the researcher to appreciate the different forms of medical negligence, how they occur, the role and duty of the health care service provider and the impact of medical negligence to the patients and their families.

Through this analysis, the researcher realized that medical negligence cases happen in even the slightest or most ignored action or omission. These errors can occur either deliberately or accidentally. The researcher also found out that medical negligence is both a national and international concern regardless of one's social or financial standing from all health facilities both private and public, ranging from helping women give birth whether natural births or caesarian sections, operations of all forms both minor and major, diagnosis to the prescription of drugs. The researcher also assessed the impact of medical negligence to the patients and their families that range from physical, psychological, financial, social and legal. All these are proved to be fully negative impacts to which no person would wish to go through.

Being guided by the second research question, the researcher assessed the role of legal frame works in regulating medical negligence through informed consent. Upon reviewing the existing legislations both national and international, the researcher realized that there is nothing much that is practical done by the existing legislations in regulating, curbing and fully addressing medical negligence. It also came to the researcher's attention, that the concept of informed consent is a complete myth to many patients and health care workers. So many patients are pressured into implied consenting to the treatment the

health care providers offer based on the terms that financially benefit the health facility the most leaving the patient with no choice of objecting or choosing an alternative.

The third research question guided the researcher into a deeper assessment of the effectiveness of Uganda's legal and institutional frame works in addressing medical negligence and access to justice. The researcher reviewed all the legislations governing and regulating the health care sector in Uganda starting from the 1995 Constitution as the supreme law of land, to policies and institutional frame works put up to enable the implementation of the set laws.

The researcher found lacuna in the legal frames works since right from the constitution, the rights to health is not expressly provided for which leads to cases like medical negligence and a violation of the right to health being so hard to prove as it looks so farfetched. The legal frame works do not provide for the inspection and training of the different categories of health care workers, do not provide for the offences against health care workers as far as medical negligence is concerned, neither do they provide practical solutions to the victims of medical negligence or their families, nor do they provide for a collective enforcement body or authority that can ensure the speedy access to justice by the victims of medical negligence or their families.

It is undeniably true that the most concerns or complaints from patients and their families are always matters of medical negligence. For that therefore, a good legal frame work regulating or governing the health care sector, should ideally have a common goal of ensuring the protection and safety of the public from medical errors. This would require a clearly expressed system of inspecting, training, regulating the health care operations in

both public and private health units, governing and close monitoring of the discipline and behavior of health care workers to mitigate acts or omissions that would result into medical negligence that are avoidable.

The researcher also realized that the existing institutional frame works play a very insignificant role in protecting the public from cases of medical negligence. The councils established to regulate the different categories of health care service providers do not have clear rules and regulations that govern the misconducts of health care workers. All they provide are mere inquiries and cancellation of the licenses but not practical solutions to the victims of medical negligence and their families, making it useless for the victims to report complaints to the councils. On the other hand, the custodians of the law being the judiciary, as the last resort for the victims of medical negligence to attain justice, make it hard due to its endless beau acracies, expensive nature of the system, endless adjournments leading to prolonged justice, unfriendly to users, and awarding peanut compensations to the victims of medical negligence to even cases with permanent disabilities thus creating public mistrust.

The courts rarely give practical and personal punishments to the health care workers liable for medical negligence like imprisonment and other punishments to set examples to the rest. It all stops at compensation and a health care worker liable for medical negligence is sent back to the public to harm more patients.

Conclusions:

Uganda's legal frame works that governs and regulates the health sector have been enacted to simply address the general litigation concerns as their applicability does not

directly address medical negligence as the biggest concern and public outcry. Even the international instruments to which Uganda is a party and ratified, do not directly address medical negligence yet it is the major concern surrounding the health sector.

The courts of law in their deliberation to interpret the existing legal frame works to ensure its applicability to address medical negligence as the biggest concern in the health sector have set precedents through making judgments that have to be followed by lower courts through the doctrine of stare decisis.

This has created a lot of ignorance within the public about their rights to life and health, the ways through which these rights can be violated and taken away from them through cases like medical negligence, the different forms or ways how medical negligence happens to them so as to have a possibility of avoiding them and the way forward incase they fall prey to medical negligence. The existing legal frame works have not bridged the gap between the ignorance amongst the public about their rights and medical negligence, and an expressed redress to medical negligence as it moves in the shadows of the general litigation laws.

The existing legal and institutional frame works have not made access to justice by the victims of medical negligence or their families easy due the complex nature of the legal system and being non-user friendly. The inadequate compensations awarded to victims left with permanent disabilities and failure of the courts at many cases holding individual perpetrators of the law liable sending them back to cause more harm to the public has created mistrust in the system and therefore access to justice is still a myth to many victims of medical negligence and their family members.

RECOMMENDATIONS

Amendment of the 1995 Constitution of the Republic of Uganda, as amended to include the right to health as an expressed right like all the others. It has been observed that the supreme law does not expressly provide for health as a right. Proof of its existence and violation is always attached to **Article 45**. This in away makes its violation very easy as its not considered a complete right.

Revision of the existing legal frame works. That is to say, the Medical and Dental practitioners Act, the Allied Health professionals Act, the pharmacy and Drug Act, the Nurses and midwives Act, the Public health Act and all others legislations that govern the health care sector have no provisions that directly speak to medical negligence yet it is the biggest concern in the sector. They all do not provide for offences and penalties for medical negligence liability against health care workers. They should be revised to cater expressly for medical negligence.

The ministry of health should work closely and hand in hand with all the councils to the different categories of health care workers to ensure proper training and continued education of all health care workers. This will enable the health care workers to properly adopt to the ever-changing technology in the sector, use of new medication and treatment procedures and will be equipped with knowledge of handling and treating emerging diseases like Covid-19, Ebola and others thus mitigating medical negligence.

The ministry of health and all the councils should work with entities like the police to closely and periodically inspect the health care units. This will help keep the facilities in check and ensuring health care workers report to their duties as required. The police will

aid the ministry and the councils access the premises in situations where some facility operators or care takers refuse to grant access.

The courts of law should introduce and implement more practical personal punishments to health care workers who are liable for medical negligence other than simply stopping at awarding compensations to the victims of medical negligence or their families and sending the wrong doers back to operations and harm the public. Personal punishments like imprisonment to serve as examples to the rest of the health care workers.

Create more awareness of the patient's right to informed consent before receiving any form of medication or under going any procedure as provided for under Article 10⁸⁸. If patients are made fully aware of what they are intending to under go would mitigate the risk of rising medical negligence complaints to those cases whose risks were fully disclosed and the patients gave full consent, as the Latin maxim goes, " **volenti non-fit injuria**".

The ministry of health should introduce a mandatory policy to have interpretations and sign language experts at health facilities. This would help in the facilitation of communications among the health care worker and patients with special needs or in situations of language barriers. For instance, a health worker who only knows English and their mother language like Luganda being deployed to work in a health facility in the west Nile region of Uganda where the biggest number of patients to work on speak their native languages. This would be a challenge to full disclosure and obtaining an informed consent.

⁸⁸ The patient's rights and responsibilities charter.

Introduction of medical mal practice insurance policies to cover for both the patients and health workers. These would help cover patients' medical bills when seeking for further medical attention to rectify the harm caused due to medical negligence, and the same would help health care workers settle their compensation with the victims of medical negligence without financial constraints.

The ministry of health should introduce a strict policy of having a background check and mental examination of all health care workers, be provided with clearance certificates and presented as part of their job application documents when ever applying for jobs in any health care unit. This would help their employers have a clear history of their mental state of mind, addictions like alcohol, drugs, mental break downs, traumas and so many other mental issues that might put the patients lives at the exposure of medical negligence.

The ministry of health together with the councils to the different categories of health care workers should inspect closely and regulate the number of health care workers that a health care unit should have to fully operate. This would save health workers from being exhausted with their duties and from working over time that may lead them to un intentional medical negligence.

The government together with the ministry of finance should ensure the allocation of enough funds to the ministry of health. The Abuja declaration mandates every state partner to allocate 15% of its national budget to the health sector to which Uganda is a partner. However, it is unfortunate that the last financial year the government allocated only 6.1% of the national budget to the health sector which automatically affects the sector.

The ministry of health should introduce a policy to which random psychological tests and checks are conducted on all health care workers, to ensure that they are in the proper state of working. That is to say operations are not conducted by surgeons under any form of influence for example alcohol, drugs and any other forms. This would ensure that patients lives are protected from medical negligent forms like operating on the wrong site, leaving foreign objects inside the patients' body, wrong surgical procedures and others.

BIBLIOGRAPHY

TEXTS

1. Exploring Civil Pre-Action requirements: Resolving disputes outside courts, 2012) 127-47 by Tania Sourdin. Bryan A.
2. Judicial service commission hand book
3. The black's law dictionary Garner, English Edition, Thomas West, 2004, Page 1061
4. The pulse of justice: Medical law in Uganda. By Isaac Christopher Lubogo.

JOURNAL/ ARTICLE

1. A Dorothy, T. M. Yadesa, E. Atukunda, "prevalence of medication errors and the associated factors: a prospective observational study among cancer patients at mbarara regional referral hospital, "cancer management and research, Taylor & Francis, 2021
2. Dahlawi S, Menezes RG, Khan MA et al. Medical negligence in healthcare organizations and its impact on patient safety and public health: a bibliometric study [version 1; peer review: 2 approved]. F1000Research 2021, 10:174 Rodziewicz,
3. E. K. Kagoya, K. Van Royen, P. Waako, "Experiences and views of healthcare professionals on the prescription of antibiotics in Eastern Uganda: A qualitative study," journal of Global, Elsevier,2021 I. Komakech, D. Okello, A.
4. Kadimba, Eva & katongole, Simon & maniple, Everd. (2015). Medical litigation in hospitals in Kampala Uganda.3. 204-
5. 208

6. Kavuma, J. Orem, and S.N A. Tagoe, Errors in manual radiotherapy treatment procedures and their evolution in a low resource setting: Uganda’s experience,” *physica medica*, Elsevier, 2024
7. M. T. Stewart, et al., “Assessment of physician sleep and wellness, burnout, and clinically significant medical errors,” *JAMA network*, 2020.
8. P. Moffett and G. Moore, “The standard of care: Legal History and Definitions: The Bad and Good News, 2011 Perception on the administration of justice in Uganda by Sylvia Namubiru Mukasa
9. T.L, & Hipskind, J.E (2020). *Medical error prevention. Stat pearls. Treasure Island (FL): Stat pearls publishing. Saludinfantil.org* M.T. Trokel, N.K. Menon, S. G. Rowe,

STATUTES

1. Medical and Dental Practitioner’s Act Cap. 272
2. The 1995 constitution of the Republic of Uganda (as amended)
3. The Allied Health Professional Act Cap. 268
4. The civil procedure Act, Cap.282
5. The Limitation Act, Cap.290

6. The Nurses and Midwives Act Cap. 274
7. The patient's rights and responsibilities Charter.
8. The Penal Code Act Cap. 128
9. The Pharmacy and Drug Act. Cap.280
10. The public health Act, Cap.310
11. **INTERNATIONAL INSTRUMENTS:**
12. The Abuja Declaration
13. The African Charter on Human and People's Rights
14. The Convention on the Rights of Persons with Disabilities
15. The United Nations Declaration on Human Rights
16. The United Nations International Covenant on Economic, Social and Cultural Rights.
17. The World Health Organization

CASE LAW

1. Blyth V Birmingham Water Works Company (1856) 11 Ex Ch 781, 156 ER 1047.

2. Bolam V Friern Hospital Management Committee [1937] 1 WLR 582
3. CEHURD & 4others V Nakaseke District Local Administration CS No.111 of 2012
4. CEHURD & Nakayima Fatumah V the Executive Director, Mulago National Referral hospital and another Msc.No.327 of
5. 2016
6. Hall V Brookland Auto-Racing Club [1933] 1 KB 205
7. Hopp V Lepp [1980] 2 SCR 192
8. Initiative for Social and Economic Rights & 3others V Attorney General Constitutional
Petition No. 29 of 2017
9. Jaensch V Coffey (1984) 155 CLR 549
10. Mary E. Schloendorff V The society of New York Hospital 105 N.E. 92 (N.Y.1914)
11. McCulloch and others V Forth Valley Health board [2023] UKSC 26
12. Montgomery V Lanarkshire Health Board [2015] UKSC 11
13. Njereketa V Director of Medical Services [1950] 1 EACA 60

14. Rex V Sussex justices [1924] 1 KB 256

15. Sarah Watsemwa Goseltine & another V Attorney General CS.No.675 of 2006.

WEBSITES

1. <https://research.bond.edu.au/en/publications/evidence-based-practice-across-the-health-prfessions-3> (accessed on the 28th/ April/2025)
2. <https://doi.org/10.12688/f1000research.37448.1> (accessed on 28th/April/2025)
<https://www.cehurd.org/wp-content/uploads/2023/12/KEYNOTE-ADDRESS-FOR-THE-LEADERSHIP-EVENT-HEALTH-POLICY-AND-THE-LAW.docx> (last accessed on the 2nd/April/2025)
3. [content/uploads/2023/12/KEYNOTE-ADDRESS-FOR-THE-LEADERSHIP-EVENT-HEALTH-POLICY-AND-THE-LAW.docx](https://www.cehurd.org/wp-content/uploads/2023/12/KEYNOTE-ADDRESS-FOR-THE-LEADERSHIP-EVENT-HEALTH-POLICY-AND-THE-LAW.docx) (last accessed on the 2nd/April/2025)
4. [LAW.docx](https://www.cehurd.org/wp-content/uploads/2023/12/KEYNOTE-ADDRESS-FOR-THE-LEADERSHIP-EVENT-HEALTH-POLICY-AND-THE-LAW.docx) (last accessed on the 2nd/April/2025)
5. <https://law.adelaide.edu.au/ua/media/460/air-37-2-ch06-oakes-davies.pdf> (last accessed on the 25th/April/2025) <https://isqua.org/world-patient-safety-day-logs/the-state-of-patient-safety-in-uganda.html> (accessed on the 25th/April/2025)
6. [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population)) (accessed on the 25th/April/2025)
7. <https://jamanetwork.com/> (accessed on the 27th/April/2025)

8. <https://nru.uncst.go.ug/items/da8022c2-a492-4551-ae65-c8197337abf4> (accessed on the 27th/April/2025)
9. <https://pubmed.ncbi.nlm.nih.gov/38219559/> (accessed on the 27th/April/2025)
10. <https://www.tandfonline.com> (accessed on the 27th/April/2025)
11. <https://arxiv.org/pdf/2303.14007> (accessed on the 27th/April/2025)
12. <https://www.ncbi.nlm.nih.gov/> (accessed on the 27th/April/2025)
13. <https://nilepost.co.ug/health/225930/fake-doctor-exposed-in-nbs-tv-investigation-remanded> (accessed on the 3rd/April/2025)
14. <https://www.laparoscopyhospital.com/worldlaparoscopyhospital/index.pnp?pid=682&p=> (last accessed on the 3rd/April/2025)
15. <https://www.sommersandroth.com/blog/.medical-malpractice/the-impact-of-medical-malpractice-on-patients-andfamilies> (accessed on the 3rd/April/2025)
16. <https://www.ncbi.nlm.nih.gov/books/NBK430827> (accessed on the 6th/April/2025)
17. ¹<https://pmc.ncbi.nlm.nih.gov/articles/PMC10335635/> (accessed on the 6th/April/2025)

18. <https://www.ncbi.nlm.nih.gov/.books/NBK430827/>. (accessed on the 6th/April/2025) ¹
19. <https://parliamentwatch.ug/wp-content/uploads/2025/01/PDF-FINAL-NDPIV-for-Parliament-Approval-13122024-1.pdf> (accessed on the 8th/April/2025)
20. <https://www.ohchr.org/sites/default/files/ceschr.pdf> (accessed on the 8th/April/2025)
21. <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (last accessed on the 8th/April/2025)
22. <https://au.int/sites/default/files/treaties/36390-treaty-0011-african-charter-on-human-and-peoples-rights-e.pdf> (accessed on the 8th/ April/ 2025)
23. <https://edit.wti.org/document/show/6152dafa-e2dd-423c-abc2-94cb4669c45a> (accessed on the 8th/April/2025)
24. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on the 8th/April/2025)
25. <https://iris.who.int/bitstream/handle/10665/341162/WHO-HSS-HSF-2010.01-eng.pdf> (accessed on the 8th/April/2025)
26. <https://health.go.ug/about-moh/> (accessed on the 9th/April/2025)