REFUGEE WOMEN'S ACCESS TO AND USE OF EMERGENCY CONTRACEPTIVES AS A REPRODUCTIVE HEALTH RIGHT IN KENYA.

BY

ANNET ACHIENG OPIYO

STUDENT NUMBER: U23992884

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR MASTER OF LAW IN HUMAN RIGHTS: SEXUAL AND REPRODUCTIVE RIGHTS IN AFRICA

TO

THE CENTRE OF HUMAN RIGHTS, FACULTY OF LAW

UNIVERSITY OF PRETORIA

PREPARED UNDER THE SUPERVISION OF DR. ASHWANEE BUDOO-SCHOLTZ

CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA

AUGUST 2024.

Plagiarism Declaration

Students are required to attach this form to all assignments and their dissertation:

DECLARATION

I, Student No …**U23992884**……. declare as follows:

1. I understand what plagiarism entails and am aware of the University's policy in this regard.
2. This assignment/examination/dissertation is my own, original work. Where someone else's work has been used (whether from a printed source, the internet or any other source) due acknowledgment has been given and reference made according to the requirements of the Faculty of Law.
3. I did not make use of another student's work and submitted it as my own.
4. I did not allow anyone to copy my work with the aim of presenting it as his or her own work.

Signature:  Date: 12 August 2024

Acknowledgement

I am especially grateful to the Almighty for the strength and good health that enabled me to realise this work. I am also deeply appreciative of the Centre of Human Rights, University of Pretoria, for their invaluable support and the scholarship that enabled me to pursue my Master's in Law degree.

To my supervisor, Dr Ashwanee Budoo -Scholtz, whose unwavering guidance and encouragement throughout the dissertation significantly contributed to the efficacy of the work presented.

Special appreciation to Maryanne Obiagbaoso and Hilda Ngare for taking the time to assist in proofreading and reviewing the dissertation.

To my parents, Dalton Okello Opiyo and Susan Jobaye, for their support throughout my education journey. I appreciate their constant reminders of the importance of hard work and resilience.

To my partner, Oliver Mang'ula, thank you for your support throughout this demanding journey of compiling this mini dissertation. I highly appreciate it.

Lastly, I acknowledge the contribution of my classmates and the entire Master's class of 2024. I highly appreciate their encouragement and constant reminders of the set deadlines.

Summary of the research

This dissertation focuses on discussing the access and usage of emergency contraceptives among refugee women as a human rights issue. The study incorporates the intersectionality and reproductive justice theory to explain the barriers to access and usage of emergency contraceptives among refugee women and demystify the concept of choice. It highlights the refugee women's exposure to sexual violence during a flight from their home country and settlement in the host country as a justification for the provision of emergency contraceptives. Besides, failure to provide access to emergency contraceptives has a grave impact on refugee women's reproductive health.

The study proceeds to evaluate the extent to which emergency contraceptives are available to refugee women residing in Kenya. Notably, access and usage are limited because of the cultural, religious, economic, informational and institutional barriers that occur. Despite the existing barriers, the study acknowledges the existence of legal and statutory frameworks that hold Kenya accountable for actualising the mandate. Invoking article 2(6) of the Constitution of Kenya, the global and regional laws Kenya has ratified on reproductive rights form part of her laws. However, the finding in this research is that despite the existing legal frameworks at the national, regional, and international levels, implementation remains a mirage.

This research proposes two mechanisms, advocacy and professional accountability, to strengthen health systems as a mitigation to the existing barriers and limited implementation. The advocacy initiatives discussed include policy and budget advocacy, community advocacy, legal advocacy through strategic litigation, and media advocacy. With regard to professional accountability, the study relies on the Hippocratic Oath and provisions entrenched under the Health Act Kenya to ensure medical practitioners adhere to the set duty of care to refugee women accessing reproductive health services. Finally, the study recommends the incorporation of an intersectionality theory in the Kenyan legislative process aimed at advancing reproductive rights and access to emergency contraceptives for refugee women. Lumping all women in one category leads to limitations in advancing this right as it fails to consider the unique barriers and challenges refugee women face.

Keywords: Emergency contraceptive, reproductive health rights, intersectionality, reproductive justice theory, refugee woman

List of abbreviation

ACHPR	African Charter on Human and Peoples' Rights
AFP	Advance Family Planning
CAT	Convention Against Torture
CESCR	Committee on Economic, Social, and Cultural Rights
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Court of Human Rights
FIDA	Federation of Women Lawyers
HIV/AIDs	Human Immune-deficiency Virus/ Acquired Immunodeficiency Syndrome
HRC	Human Rights Commission
ICESCR	International Covenant on Economic Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal of Rwanda
ICPD	International Conference on Population and Development
IRC	International Rescue Committee
IPV	Intimate Partner Violence
KNHRC	Kenya National Human Rights Commission
MDG	Millennium Development Goals
MISP	Minimum Initial Service Package
MOH	Ministry of Health
MSF	Médecins Sans Frontieres
NRHP	National Reproductive Health Policy
NFPGSP	National Family Planning Guidelines for Service Providers

SDG	Sustainable Development Goals
SRHR	Sexual Reproductive Health Rights
STI	Sexually Transmitted Infection
UNHCR	United Nations High Commissioner for Refugees
UNFPA	United Nations Population Fund
UNSC	United Nations Security Council
UDHR	Universal Declaration on Human Rights
WHO	World Health Organisation
WRC	Women's Refugee Commission

Table of Contents

Chapter 1: Introduction

1.1 Background

The increase in conflict globally has led to the displacement of over 108.4 million people, including 35.3 million refugees and 5.4 million asylum seekers.[1] Many African countries host refugees, with Kenya hosting 676,332 persons in Dadaab, Kakuma refugee camps, and urban settings.[2] According to the Kenya Demographic Health Survey, 59% of women in Kenya use modern contraceptives, including emergency contraceptives. This percentage encompasses the refugee women living in Kenya; however, the specific data on their usage of modern contraceptives, including emergency contraceptives, is missing.[3]

However, Gitonga and Gage[4] in their study indicates that 24% of refugee women in the urban set-up use modern contraceptives, which encompasses emergency contraceptives, in comparison to 43% of the non-refugee women residing in Kenya.[5] Noteworthy, the specific data on the camp-based refugee women's usage of emergency contraceptives in Kenya is unavailable. The disparity in emergency contraceptive usage invokes the intersectionality theory to understand the barriers impeding usage and access.

The adverse sexual violence women experience in humanitarian set-ups affirms the importance of enhancing access to emergency contraceptives.[6] In addition, famine, insecurity, and poverty refugee women experience increase their vulnerability to unintended pregnancies or exposure to sexually transmitted infections (STI), which is quite severe and could lead to the women having extensive obstetric injuries or death while procuring unsafe abortions.[7] Emergency contraceptive not only reduces exposure to STIs but also to unwanted pregnancies arising from unprotected sexual encounters within 72 hours.[8]

[1] UNHCR '108.4 million people worldwide were forcefully displaced' https://www.unhcr.org/about-unhcr/who-we-are/figures-glance (accessed 11 February 2024).
[2] UNHCR 'Kenya Registered refugees and asylum seekers' 30 October 2023 https://www.unhcr.org/ke/wp-content/uploads/sites/2/2023/11/Kenya-Statistics-Package-31-October-20237.pdf (accessed 9 January 2024).
[3] Kenya National Bureau of Statistics *Kenya Demographic and Health Survey 2022* (2023) 18.
[4] E Gitonga and A Gage 'Modern contraceptive prevalence and its predictors among non-refugees and refugee Somali women in Nairobi city: A comparative view' (2024)5 *Frontiers in Global Women's Health* 2.
[5] Gitonga (n 4) 2.
[6] UNFPA 'Historic drought in the horn of Africa: Women and girls fleeing one crisis for another' 24 March 2023. https://www.unfpa.org/news/historic-drought-horn-africa-women-and-girls-fleeing-one-crisis-another (accessed 25 February 2024).
[7] A Seyife 'Utilization of modern contraceptives and predictors among women in Shimelba refugee Camp, Northern Ethiopia' (2019) *PLos One* 1.
[8] K Kwame and others ' Use and awareness of emergency contraceptives among women of reproductive age in Sub-Sahara Africa: A scoping review' (2022)7 *Contraception and reproductive medicine* 2.

Conversely, due to the unavailability of emergency contraceptives, unsafe abortion practice accounts for 60% of global maternal deaths.[9] Fundamentally, the continuous shortages of emergency contraceptives impede quality access to post-rape care.[10] However, during the crisis, the extensive humanitarian needs such as food, shelter, and sanitation lead to the overlooking of the reproductive health rights needs of women.[11]

Girard and Willard[12] explain that international law incorporates refugee reproductive rights. Additionally, the 1994 International Conference on Population and Development (ICPD)[13] was the onset of this discussion, which emphasised the right to access reproductive rights as a fundamental human right for all women, including refugees and undocumented migrants. However, despite the extensive national, regional, and global legal frameworks to enhance access to reproductive rights, it remains a challenge.

As a mitigation, the United Nations Security Council (UNSC), in its resolution of 1960[14] and resolution 2106[15] and resolution 283[16] of the African Commission on Human and Peoples' Rights (ACHPR) acknowledges that sexual abuse is a weapon of war used to indignify and discriminate against women. Hence, this establishes the importance of incorporating a right-based approach to emergency contraceptive access for all women.

The World Health Organisation (WHO) asserts the importance of ensuring that all women, including refugee women, have conclusive information on contraceptive methods.[17] This ensures that women and girls have the autonomy to make informed decisions on accessing emergency contraceptives. Therefore, this research focuses on discussing access to emergency contraceptives as a reproductive rights issue for refugee women in Kenya.

[9] NT Tran and others 'Strengthening health systems in humanitarian settings: Multi-stakeholder insight on contraception and post-abortion care programs in the Democratic Republic of Congo and Somalia' (2021) 2 *Frontiers in Global Women's Health.*
[10] Women Refugee Commission *Contraceptive Service in Humanitarian Settings and the humanitarian-development nexus: Summary of gaps and recommendations from a State of the Field Landscaping Assessment* 2021 6.
[11] UNFPA 'Humanitarian emergencies' https://www.unfpa.org/emergencies (accessed 12 February 2024).
[12] F Girard & W Waldman 'Ensuring the reproductive rights of refugees and internally displaced persons: Legal and Policy issue' (2000)26 *International Family Planning Perspective* 167.
[13] Report of the International Conference on Population and Development, United Nations Committee (5 – 13 September 1994), A/CONF.171/13/Rev.1.
[14] Resolution 1960 adopted by the Security council at 6453 meeting (16 December 2010) S/RES/1960 (2010).
[15] Resolution 2106 adopted by the Security Council at 6984 meeting (24 June 2013) S/RES/2106 (2013).
[16] Resolution 283 on the situation of women and children in armed conflict (28th April – 12th May 2014) ACHPR/Res.283(LV) (2014).
[17] World Health Organisation 'Contraceptives' https://www.who.int/health-topics/contraception#tab=tab_1 (accessed 17 March 2024).

1.2 Problem statement

Kenya has refugees residing in Kakuma and Dadaab camps, while others reside in urban settings. As of October 2023, the total number of refugee women in Kenya was 151,579, with 29,413 urban refugee women, 66,456 in Dadaab, and 55,710 in Kakuma camp.[18] The central mechanism of a humanitarian response should incorporate information on sexual and reproductive health.[19] However, in most cases, refugees face challenges accessing emergency contraceptives not only because of cultural and social factors but also factors such as the health policies in a country for camp-based and urban refugees, respectively. For instance, Gitonga and Gage[20] highlight that because of the challenges of accessing documentation, the perception is that urban refugees are in the country illegally. As a result, they have limited access to health care services covered under the health policies in Kenya, including accessing emergency contraceptives.[21]

Invoking the intersectionality theory, one category of refugee women who face more challenges accessing emergency contraceptives is those living with disabilities.[22] During crisis, women living with disabilities are more vulnerable to sexual violence and physical assault in comparison to other refugee women.[23] Hence, this affirms the importance of enhancing accessibility, as most face barriers because of cultural and religious factors and physical accessibility.[24]

One common feature in most refugee communities in Kenya is that the society is patriarchal, and this places women in a lower position in comparison to men, thereby increasing their dependency on men.[25] Also, it is essential to note that refugee women have the solemn responsibility of ensuring the continuation of their lineage.[26] Hence, Jewkes and Morrell[27] point out that gender inequalities and power imbalances in sub-Saharan Africa impede women's

[18] UNHCR (n 2).
[19] Centre for Reproductive Rights 'Ensuring sexual and reproductive health and rights of women and girls affected by conflict' (2017) *Briefing Paper* 1.
[20] Gitonga (n 4) 2.
[21] n 4, 2.
[22] M Tanabe and others 'Intersecting sexual and reproductive health and disability in humanitarian settings: Risks, needs, and capacities of refugees with disabilities in Kenya, Nepal, and Uganda' (2015)33 *Journal on sexuality and disabilities* 411.
[23] E Pearce 'Ask us what we need: Operationalizing guidance on disability inclusion in refugee and displaced persons programs' (2015)2 *Disability and Global South* 460.
[24] Women Refugee Commission *Contraception services in humanitarian setting and humanitarian development nexus: Summary of the gaps and recommendations from the state of field landscaping assessment* (2021)8.
[25] N Davidson and others 'Access to preventive sexual and reproductive health care for women from refugee-like background: A systemic review' (2022)22 *BMC Public Health* 3.
[26] AW Kiura 'Constrained Agency: Perceptions, Attitude, and Experiences of Somali refugee women on family planning' Masters Thesis, International Institute of Social Studies, 2012 4.
[27] R Jewkes & R Morrell 'Sexuality and limits of agency among South African teenage women: Theorising femininities and their connection to HIV practices' (2012)74 *Social science in medicine* 1729.

agency to negotiate for safe sex practices. Therefore, this study may reason that lack of agency equally affects refugee women who not only face barriers to being women but also social-economic and cultural barriers. Davidson[28] further states that due to poverty, most refugee women have limited access to money, and this affects their agency to purchase emergency contraceptives when the need arises.

The African Commission on Human and Peoples' Rights (ACHPR), in its resolution 565[29] explains that African states have a solemn responsibility to ensure the inclusivity of the refugees and other forced migrants in the socio-economic decisions made in the host countries. The resolution also invoked the principles of human rights that include non-discrimination and equality[30] in promoting the self-reliance of refugees. Hence, this research recognises the correlation between socioeconomic barriers and access to emergency contraceptives in instances where one may need to purchase or travel to a distant healthcare facility to access them.

Noteworthy, viewing access to emergency contraceptives as a human rights issue enhances access for refugee women. This is achieved by first acknowledging the importance of reproductive rights during humanitarian crises.[31] For instance, in 2018, the minimal initial service package for global responses during emergencies included contraceptives at the onset of the humanitarian crisis.[32] The impact is that it reduces their vulnerability and enhanced access to emergency care to prevent STIs and unwanted pregnancies.[33]

According to studies conducted by the United Nations Population Fund (UNFPA), for women to maintain autonomy over their bodies and reproductive rights in unpredictable situations, the provision of emergency contraceptives remains vital.[34] Further, in Kenya, the National Family Planning Guidelines for Service Providers (NFPGSP)[35] and the National Reproductive Health Policy (NRHP)[36] affirm the existing barriers to accessing family planning,

[28] Davidson (n 25) 2.
[29] Resolution 565 on the inclusion of refugees, asylum seekers, internally displaced persons, and stateless persons in the socio-economic national system, ACHPR Committee (4 August 2023) ACHPR/Res.565(LXXVI).
[30] African Charter on Human and Peoples' Rights 1981.
[31] UNFPA 'Minimal Initial Service Package for SRH in crises' November 2020 https://www.unfpa.org/resources/minimum-initial-service-package-misp-srh-crisis-situations (accessed 22 February 2024).
[32] UNFPA (n 31).
[33] UNHCR 'Sexual and reproductive health' https://www.unhcr.org/what-we-do/protect-human-rights/public-health/sexual-and-reproductive-health (accessed 19 March 2024).
[34] UNFPA Manual and Guidelines *Emergency Contraceptives during humanitarian crises-guidelines on the use of Emergency Contraceptive Pills* (2015).
[35] Ministry of Health 'National family planning guidelines for service providers' (2015) 6 *Reproductive and Maternal Health Service Unit* 13.
[36] The National Reproductive Health Policy 2022 – 2032.

including emergency contraceptives for vulnerable populations such as refugees. However, despite these initiatives, access to emergency contraceptives among refugee women remains a challenge.

Generally, to evaluate access to contraceptive usage among refugee women, it is essential to comprehend the factors leading to contraceptive non-use. This would broaden the understanding of access to contraceptives from an intersectionality lens, thus improving women's reproductive health care.[37] Consequently, this research aims to evaluate a broader scope of emergency contraceptive usage, focusing on the intersectionality strategies that may impede the actualisation of these rights and Kenya's mandate in advancing its access among refugee women.

1.3 Definition of key terms

1.3.1 Emergency Contraceptive [38]

> This refers to the contraceptive method used to prevent pregnancies and sexually transmitted diseases after consensual or forced sexual intercourse and administered within three to five days after the sexual act. For instance, post-exposure prophylaxis is used in emergencies to protect the survivors from STIs within 72 hours, and oral contraceptive pills, copper, and hormonal intrauterine devices (IUDs) are used to prevent pregnancies.

1.3.2 A refugee woman ‘is a person who flees their country or habitual residence to seek refuge in another country because of a well-founded fear of persecution[39] or adverse climate conditions’.[40] In this research, the refugee women include all those residing in Kenya, whether in refugee camps or urban settings.

1.3.3 Reproductive health rights ‘refers to the fundamental rights of all persons to have autonomy over the number, spacing, and timing of the children and have conclusive information to achieve through access to contraceptives.[41] Further, it includes having the highest attainable reproductive healthcare free from discrimination or coercion.

---

[37] LM Yee and M Simon 'The role of the social network in contraceptive decision-making among young, African American and Latina Women' (2010)47 *Journal on Adolescent Health* 2.
[38] World Health Organisation ‘Emergency Contraceptives’ 9 November 2021 https://www.who.int/news-room/fact-sheets/detail/emergency-contraception#:~:text=Emergency%20contraception%20refers%20to%20methods,after%20the%20act%20of%20intercourse (accessed 25 February 2024).
[39] The United Nations Convention relating to the status of Refugees 1951.
[40] The Protocol relating to the status of refugees 1967.
[41] The National Reproductive Health Policy (n 36).

1.3.4 Sexual violence refers to forcefully engaging in sexual activity with an individual without their consent.[42]

1.4 The research aims and objectives

This research analyses access to and use of emergency contraceptives as a human rights issue for refugee women. To achieve this, the study evaluates Kenya's mandates in advancing access and removing the barriers likely to impede the women's agency over autonomy on their bodies to make informed decisions on emergency contraceptive usage.

The main objectives of this study are:

a) To examine the barriers to accessing emergency contraceptives by refugee women and the impact that denial of this reproductive health right has on the women.
b) To examine the national, regional, and global legal frameworks and standards that can be used to ensure the actualisation of the rights to access and use emergency contraceptives for refugee women in Kenya.
c) To examine the mechanisms which Kenya can adopt to ensure refugee women have access to and use emergency contraceptives.

1.5 Research questions

The main research question is the extent to which considering access to and use of emergency contraceptives for refugee women as a reproductive health right contributes to removing the barriers that refugee women face in accessing the same. The sub-questions are as follows:

a) To what extent do refugee women in Kenya have access to and use emergency contraceptives, and what are the barriers impeding usage?
b) What are Kenya's national, regional and global obligations to ensure that refugee women can access and use emergency contraceptives?
c) What mechanisms can Kenya adopt to ensure refugee women have access to and use emergency contraceptives?

1.6 Research Methodology

This study uses desktop research focusing on qualitative research methodology using documented primary and secondary sources. This includes journals, case laws, national,

[42] National Sexual Violence Resource Centre 'What is sexual violence?' https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_What-is-sexual-violence_1.pdf (accessed 4 November 2024).

regional, and international laws, books, and online internet sources. The research incorporates a purposive sampling of the identified literature on the topic. This involves identifying studies on the right-based approach to access emergency contraceptives for refugee women in Kenya. The selected literature supports comparing availability and actual usage, focusing on the existing barriers.

1.7 Significance of the research

General Comment 14 of the Committee on Economic, Social, and Cultural Rights (CESCR) stipulates that states must ensure that all persons, including refugees, have access to the highest attainable form of physical, mental, and reproductive health care.[43] Khosla and Blanchet[44] indicate that due to the interruption of the protective services in the refugee communities, there is an increase in the rate of sexual violence in the humanitarian spaces, with a record of one to five women facing threats. This research is essential as it presents a broader view of access to emergency contraceptives among refugee women. The research further increases the knowledge gap on access to emergency contraceptives, especially for refugee women, while viewing the issue from an intersectional lens by evaluating the existing barriers to the usage.

1.8 Limitations of the study

Article 14(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) emphasises the state's responsibility to advance the reproductive rights of all women in Africa.[45] The research focuses on refugee women in that despite the existing national, regional, and global frameworks protecting women, access to emergency contraceptives among refugee women remains a challenge. Achola and others[46] explain that refugee women face challenges such as limited information on contraceptives, poverty limiting their purchasing powers, and cultural and religious barriers that limit the accessibility to use of contraceptives, including emergencies.

However, one major challenge faced by refugee women that most Kenyan women do not is that due to the conflict, most lose their children and family members, consequently, the desire to replace the lost children.[47] In addition, viewing children as a form of security allows

[43] General comment 14 on the right to the highest attainable standard of health, CESCR Committee (11 August 2000) E/C.12/2000/4.
[44] R Khosla & K Blanchet 'Improving family planning service delivery in humanitarian crises' (2017) *Family Planning Evidence Briefs* 1.
[45] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.
[46] R Achola and others 'Barriers to contraceptives use in humanitarian settings: Experience of South Sudanese Refugees living in Adjumani district, Uganda; an exploratory qualitative study' (2024) *PLoS One* 1-19.
[47] Achola (n 46) 2.

for the continuity of generations and creates the foundation for community leaders to push for stronger societies.[48] Therefore, regardless of the nature of sexual encounters, most refugee women opt to carry pregnancies, and this limits their access to emergency contraceptives.

1.9 Literature review

1.9.1 Introduction

This paper reviews the literature on access to emergency contraceptives among refugee women in Kenya. It reviews the works of scholars, human rights organisations, and legal and statutory frameworks discussing access to emergency contraceptives as a reproductive health right for refugee women in Kenya.

1.9.2 Access to emergency contraceptives among refugee women in Kenya

Historically, during conflicts, the reproductive rights of women were often overlooked despite being incorporated in the minimal standard of health care within the humanitarian setups.[49] In 1994, the International Conference on Population and Development (ICPD) was the first platform to entrench the need to protect reproductive rights within humanitarian settings.[50] Beswick[51] explains the assumption of a secure environment that refugee women have upon arriving in the host countries. However, the reality is that because of the societal breakdown during migration, the physical and sexual violence the refugee women experience increases.[52]

Onyango and others[53] also discuss the importance of incorporating reproductive health as a minimal care package within the humanitarian spaces. This entails the existence of clinical care for post-sexual abuse care for the survivors in these situations. This study interprets the provision to include emergency contraceptives that could assist in protecting women who have faced sexual violence from unwanted pregnancies or STIs that would be fatal because of the possibility of obstetric injuries. However, this thesis critiques the literature highlighted above as it views access to emergency contraceptives from a narrow spectrum where policy development exists, but implementation remains limited.

---

[48] Achola (n 46) 10.
[49] SE Casey 'Evaluations of reproductive health programs in humanitarian settings: A systemic review' (2015)9 *Conflict and Health* 1.
[50] ICPD (n 13).
[51] S Beswick 'If you leave your country, you have no life! Rape, suicide, and violence: The voice of Ethiopian, Somali, and Sudanese Female refugees in Kenya refugee camps' (2001)8 *Northeast African Studies* 69.
[52] Beswick (n 51) 69.
[53] MA Onyango and others 'Minimum initial service package for reproductive health during emergencies: Time for a new paradigm? (2013)8 *Global Public Health* 348.

Noteworthy, one common aspect of access to contraceptives commonly overlooked is that the usage is dependent on the knowledge the person has on the contraceptives. Jemutai and others[54] in their research posit the importance of knowing the contraceptives as this allows for the survivor to make informed decisions. The study concluded that most refugees have a limited understanding of the existing emergency contraceptives, their sexualities, or safe abortion care.[55] This is because they not only face challenges arising from the sexual abuse subjected to them for being a woman but also the poor services available to refugees in the humanitarian setups. This consequently impedes access to emergency contraceptives within the specified timelines.[56]

Gure and others[57] further examine specific humanitarian contexts and highlight that the women were willing to use emergency contraceptives upon understanding their importance in preventing unwanted pregnancies and STIs. However, the cultural and religious barriers limit the autonomy of the women to make informed decisions over their reproductive rights. Subsequently, such impediments can translate into barriers to accessing contraceptives for refugee women. Hence, this research concurs with the provisions in the literature as they broaden the discussion on access to contraceptives by considering the limitations preventing their usage.

Nara and others[58] indicate that because of the limited access to emergency contraceptives in the refugee camps, most refugee women opt to use non-emergency contraceptive drugs to prevent pregnancies, such as anti-malaria drugs, which are readily available. Additionally, the literature reiterates the fact that most refugee women have limited knowledge of contraceptive methods, including emergencies.

Sochaki[59] equally highlights that access to contraceptives, including emergency contraceptives, is important in conflict-prone zones because of the vulnerability of these women to sexual violence. However, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) has put mechanisms in place to enhance access to

[54] J Jemutai and others 'A situation analysis of access to refugee health services in Kenya: Gaps and recommendations a literature review' (2021) *University of York Research* 9.
[55] Jemutai (n 54) 9.
[56] Jemutai (n 54) 10.
[57] F Gure and others 'Emergency contraceptives in post-conflict Somalia: Assessing awareness and perceptions of need' (2015) *The Lancet Global Health* 11.
[58] R Nara and others 'Assessing the availability and accessibility of emergency contraceptive pills in Uganda: A multi-methods study with Congolese refugees' (2020)101 *Contraception* 114.
[59] K Sochacki 'CEDAW and treaty compliance: Promoting access to modern contraceptives' (2018)51 *Vanderbilt Journal of Transnational Law* 664 – 682.

contraceptives to actualise and realise this right.[60] This includes the existence of quasi-judicial decisions, general recommendations and concluding observations that the CEDAW committee develops to evaluate whether a country actualised its mandate. Notably, the decisions are not binding but have assisted in setting precedents and pressuring the state into effective policy strategies.[61]

Further, relying on the domestic politics theory of compliance highlights that the CEDAW committee has strived to enhance abortion laws, thus acknowledging that the committee is not necessarily powerless and can assist in improving access to modern contraceptives, including emergency contraceptives.[62] However, to ensure all these is attained, it is important to ensure that women have information on contraceptives to have informed consent.[63]

Wedekind[64] recommended that emergency contraceptives should not be available only as in post-rape care treatments, but instead, it should be readily available for the women to access even upon engaging in unprotected consensual sex. Based on the above literature review, it is evident that access to emergency contraceptives among refugees is limited.

1.9.3 Barriers to access to emergency contraceptives among refugee women

According to Jelagat[65] the primary factors limiting the usage of contraceptives in humanitarian spaces are illiteracy, ignorance, and poverty. The study incorporates the argument on the supply and demand of contraceptives among refugee women, which includes ensuring the supply of affordable contraceptives to the women. However, this paper criticises the findings in Jelagat's research as it assumes that the availability of contraceptives would increase the demand without factoring in the existing social-cultural and religious barriers likely to impede these rights.

In addition, Gure[66] provides insight into the limited information on modern contraceptives and emergency pills among Somali refugee women, significantly limiting their usage despite their accessibility. Consequently, this study stipulates that with knowledge of the

[60] Sochacki (n 59) 664.
[61] Sochacki (n 59) 671.
[62] Sochacki (n 59) 682.
[63] Sochacki (n 59) 670.
[64] L Wedekind 'Access to family planning in the refugee camp' (2015) *Health and Migration Policy Brief* 1.
[65] MS Jelagat 'Factors affecting utilisation of family planning among refugees at Ifo camp Dadaab in Kenya' (2018)3 *International Journal of Academic Research and Development* 87.
[66] Gure (n 57) 11.

importance of contraceptives, including emergency contraceptives, the usage among refugee women is likely to increase.

Khosla and others[67] point out that stigma and discrimination in health care are rampant against women in marginalised communities, which include refugees. The impact is that such discrimination from the health care providers acts as a barrier to accessing emergency contraceptives. Gele and others[68] opine that most women in humanitarian settings are powerless, as in most medical facilities, healthcare providers demand the husband's approval and their presence before offering contraceptives to the women. Essentially, healthcare providers have a duty of care to ensure that the information to the patients on contraceptives is accurate.[69] In retrospect, this paper stipulates that the medical providers in specific humanitarian contexts lead to barriers with their perceptions by denoting those contraceptives, including emergency, are likely to lead to infertility and, equally, expect the refugee women to provide extensive justification for seeking emergency contraceptives.[70] Also, in most cases, cultural considerations are often overlooked while advocating for access to contraceptives, leading to miscommunication.[71]

Gee and others[72] in their study, affirm that cultural and religious barriers significantly impact women's autonomy over their bodies concerning contraceptive access. The study proceeds to expound on society's perceptions that assert that using any form of contraceptives, including emergency contraceptives, interferes with God's plans.[73] In her thesis, Ameso[74] highlights that patriarchy and culture are also barriers to women accessing emergency contraceptives among the refugee population. In most refugee communities, men have an elevated position in society.[75] As mitigation, it is equally important to include men in the conversation, as emergency contraceptives can also protect women from unplanned pregnancies resulting from consensual sex conduct.

---

[67] R Khosla and others 'Addressing the rights of women in conflict and humanitarian settings' in P Allotey & D Reidpath (eds) *The Health of Refugees: Public Health Perspectives from crisis to settlement* (2019) 153.
[68] A Gele and others 'Pregnant and powerless: Exploring barriers to contraception among women in Mogadishu, Somalia' (2022)9 *Health Services and Research and Managerial Epidemiology* 5.
[69] Gele (n 68) 5.
[70] Gele (n 68) 3.
[71] Reproductive Health Supplies Coalition *Young people and contraceptive access* (2017) 25.
[72] S Gee and others 'The more children you have, the more praise you get from the community: Exploring the role of socio-cultural context and perceptions of care on maternal and newborn health among Somali refugees in Somali supported camps in Kenya' (2019)13 *Journal on conflict and health* 1.
[73] Gee (n 72) 5.
[74] AR Ameso 'Male partner contraceptive uptake amongst urban Somali refugees in Nairobi County Kenya' Masters thesis, Kenyatta University, 2019 3.
[75] Ameso (n 74) 3.

Odimegwu and others[76] denote that female autonomy and empowerment are determinants of modern contraceptive usage. With refugee women in Northern Nigeria facing the same religious and cultural barriers to accessing modern contraceptives, this study is crucial as it emphasises the importance of having information and knowledge to make informed decisions and control reproductive health. Noteworthy, Davidson[77] indicates the need to widen the scope of analysing access to sexual reproductive health rights (SRHR) services among refugee women as they face both the pre-migration and post-migration trauma that is likely to impede their access to primary health care in the host countries. However, the existing gap in literature focusing on refugee women is that SRHR is limited to pregnancy and maternal health among refugees[78] and this needs to consider the actual right-based approach to accessing contraceptives.

1.10 Theoretical framework

1.10.1 Intersectionality theory

Crenshaw coined this theory in 1989 to explain the unique struggle of black women, who faced discrimination arising from their race and gender. This theory significantly expounded feminist views on understanding the unique struggles of different women.[79] Bond[80] highlights that intersectionality theory has expanded discussions on equality by incorporating the notion of multiple oppression systems that impact the actualisation of equality rights. The author proceeds to explain that certain social aspects, such as religion, culture, race, ethnicity, and socio-economic status, significantly affect the experience of an individual's access to certain privileges in the community. Further, sociopolitical, economic, and cultural factors impact migrants, including refugees' lived experiences in the host countries.[81] Accordingly, intersectionality allows for the analysis of the complex issues of privilege and rights while assessing the actualisation of human rights.

[76] CO Odimegwu and others 'Does female autonomy affect contraceptive use among women in Northern Nigeria?' (2019) 23 *African Journal of Reproductive Health* 94.
[77] Davidson (n 25) 2.
[78] Davidson (n 25) 3.
[79] K Crenshaw 'Demarginalising the intersection of race and sex: A black feminist critique of Antidiscrimination doctrine feminist theory, and anti-racist politics'(1989) *The University of Chicago legal forum* 139.
[80] J Bond 'Foundation of intersectionality theory' in Oxford University Press (eds) *Global intersectionality & contemporary human rights* (2021)7.
[81] E Shizha and E Makwarimba 'Introduction to transnationalism, intersectionality and migration ecological trajectories' in Oxford University Press (eds) *Immigrant lives intersectionality, transnationality, and global perspective* (2023) 9.

In this regard, Davis,[82] in evaluating feminism in relation to intersectionality, acknowledges that all women have different experiences. Hence, this research assesses the intersectionality of the refugee women's unique experience in actualising their reproductive rights as they strive to access emergency contraceptives due to the adverse sexual violence, they are likely to experience. This thesis posits that although women in Kenya face sexual violence and may lack access to emergency contraceptives, refugee women have an extra level of challenges such as insecurities, poverty, societal breakdown and cultural and religious barriers.

Possibly, the concealment of emergency contraceptives in refugee setups further endangers personal security, reproductive autonomy, and health, thus leading to unwanted pregnancies likely to resort to unsafe abortions.[83] Therefore, the intersectionality highlighted includes discrimination from being refugee women, poor, facing insecurity, and having high exposure to sexual violence. Incorporating a right-based approach leads to increased access to emergency contraceptives, an understanding of existing barriers, and the development of a mitigation strategy.

1.10.2 Reproductive Justice Theory

The Women of African Descent, whose primary focus was to fight for their rights to protect their bodily autonomy from the existing reproductive oppressions, compounded this theory. Ideally, the reproductive justice theory focused on the unique reproductive challenges that black women faced in the 1990s compared to other races.[84] Morison[85] proceeds to explain that, over time, the reproductive justice movement included other marginalised women in society.

The reproductive justice theory questions dominant views on individual rights and choice. It denotes that any theory focusing on choice only favours privileged women in society and excludes marginalised women such as refugees. Therefore, examining the layers of oppression women face in the community is vital. Access to contraceptives is the pinnacle of reproductive justice theory as it not only protects women from unintended pregnancies but also STIs.[86] Therefore, the reproductive theory also views reproductive issues from an

[82] K Davis 'Intersectionality as Buzzword: A sociology of science perspective on what makes feminist theory successful' (2008) *Feminist theory* 68.
[83] Centre of Reproductive *Rights Displaced and Disregarded: Refugees and their reproductive rights* (2001) Brief Paper 1.
[84] KR Myers 'Little sisters' sorrow: Conversation about contraceptives and reproductive justice' (2018)24 *William & Mary Journal of race, gender, and social justice* 342.
[85] T Morison 'Reproductive justice: A radical framework for researching sexual and reproductive issues in psychology' (2021) 15 *Social and Personality Psychology Compass* 2.
[86] Myers (n 84) 345.

intersectionality lens and examines the factors that are likely to impede access to reproductive rights, such as contraceptives; this mainly includes structural inequalities.[87] Thus, due to the constrained agency and autonomy over their bodies, the study uses the reproductive justice theory to evaluate the human rights perspective on access to emergency contraceptives.

Chiweshe and others[88] contextualise the reproductive justice theory in Africa by focusing on the abortion decision in South Africa and Zambia. The authors explain the aspect of decision-making concerning access to abortion while highlighting the existing barriers to the actualisation of these rights. Hence, in evaluating the theoretical framework, this research proceeds with the assertion of Granzow's[89] argument that deconstructs the notion of choice regarding contraceptive usage among women and emphasises the impact of social and lived experience on the usage. Hence, the study examines the intersectionality approach in relation to the reproductive justice theory.

1.11 Outline of chapters

Chapter 1 introduces the research and analyses the background, problem statement, significance, research objectives, research questions, methodology, and limitations. To effectively present the arguments, the study incorporates the theoretical frameworks and equally identifies the existing literature review through desktop research.

Chapter 2 undertakes a situational analysis of the sexual violence refugee women face in Kenya and the correlation between sexual violence and access to emergency contraceptives. The chapter similarly evaluates the extent to which emergency contraceptives are available to refugee women and the barriers impeding their usage.

Chapter 3 assesses Kenya's obligation to enhance access to emergency contraceptives for refugee women. Noteworthy, the Treaty making and ratification act[90] gives effect to article 2(6)[91] of the Kenyan Constitution, which stipulates that all laws that Kenya has ratified at the regional and global level form part of its laws. For this reason, this chapter explores Kenya's

[87] Morison (n 85) 3.
[88] M Chiweshe and Others 'Reproductive justice in context: South African and Zimbabwean women's narrative of abortion decisions' (2017) 27 *Feminism & Psychology*.
[89] K Granzow 'De-constructing choice: The social imperative and women's use of birth control pill' (2007)9 *Journal on culture, health, and sexuality* 43.
[90] Treaty Making Ratification Act 2012.
[91] The Constitution of the Republic of Kenya, 2010.

mandate to implement the ratified laws on enhancing access and usage of emergency contraceptives among refugee women.

Chapter 4 analyses mechanisms Kenya has in place to increase access and usage of emergency contraceptives among refugee women. This includes advocacy and policy initiatives at different levels and using various strategies, such as strategic litigation and media advocacy. The chapter also evaluates professional accountability to strengthen the health systems as a mechanism for increasing access to emergency contraceptives for refugee women.

Chapter 5 details an overview and findings of the research on access to and usage of emergency contraceptives as a human rights issue among refugee women in Kenya. It also provides a conclusion and recommendation of the study.

Chapter 2: Access to and barriers to usage of emergency contraceptives among refugee women in Kenya

2.1 Introduction

Access to contraceptives is a human rights issue, and all women, including refugees, ought to have this right upheld.[92] For this reason, the International Rescue Committee (IRC) indicates that all women, especially women facing crisis and war, would not willingly choose to have children in such catastrophic scenarios. Hence, this is a clear indication that most refugee women are more likely to choose to have access to emergency contraceptives as it not only protects women from unwanted pregnancies but also STIs.[93] Arguably, IRC asserts that regardless of the cultural, religious, or humanitarian situation, contraception, including emergency contraceptives, is not only desired but also practical.[94]

In addition, the World Health Organisation (WHO) clinical guidelines for sexual violence advocate for the provision of emergency contraceptives in its effort to attain comprehensive woman-centred care for the survivors.[95] Although studies indicate that refugee women are more likely to face sexual violence, the availability of emergency contraceptives is only limited to post-rape care treatment. It fails to consider refugee women who may need emergency contraceptives after consensual sexual encounters.[96]

Notable, this chapter focuses on analysing the sexual violence that most refugee women face in the course of migration and at the time of settlements in the host countries. It proceeds to evaluate the extent to which emergency contraceptives are available to refugee women and the existing barriers, which include the cultural, economic, and access to information in Kenya. In doing so, this chapter focuses on answering the first research question to what extent do refugee women in Kenya have access to and use emergency contraceptives, and what are the barriers impeding usage? Noteworthy, in this analysis, this chapter incorporates the intersectionality and reproductive justice theories by focusing on refugee women living in camp-based, urban-based set-ups and those living with disabilities.

---

[92] World Health Organisation *Guidance and recommendations: Ensuring human rights in the provision of contraceptive information and services* (2014) 4.
[93] International Rescue Committee 'Why refugee women want contraception?' 7 March 2017 https://www.rescue.org/article/why-refugee-women-want-contraception (accessed 7 May 2024).
[94] International Rescue Committee (n 93).
[95] World Health Organisation *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines,* 2013 16.
[96] Wedekind (n 64) 1.

2.2 Sexual violence as a weapon of war against refugee women

As refugees leave their home country and move to the host country, the primary focus is to rebuild their lives because of the disruption in their social and economic lifestyle.[97] Generally, women shoulder the primary responsibility of managing large families upon arriving in the host countries upon their husband's death or abandonment.[98] The breakdown of the family and community structure limits any protection accorded to the refugee women, thus heightening the sexual violence.[99] This subjects women to specific reproductive challenges such as maternal mortality, the spread of STIs, unwanted pregnancies resulting from forceful sexual encounters, and unsafe abortion.[100]

In most cases, refugee women face sexual violence at all stages during war or crisis in their countries, during flights, upon settling in the camps and even after resettlement.[101] Noteworthy, in both urban and camp settlements, refugee women often have limited autonomy.[102] Further General Recommendation 32 CEDAW affirms that violence against women such as rape, sexual assault, and domestic violence are forms of persecution towards refugee women.[103]

However, cultural and religious practices that place women in a subjugated position in comparison to men often lead men to view women as property that they can control. The impact of this assertion is that it leads to aggravated sexual violence.[104] Further, given that men are the primary victims of persecution during the conflict, there is also increased vulnerability and emasculation among refugee men and as a result, they subject women to sexual violence as a strategy for maintaining their dominance.[105]

The current crisis in Sudan has equally highlighted the violations that women experience during war as they flee to seek refuge. Médecins Sans Frontières (MSF) reported that from July to December 2023, 135 of the patients who attended the MSF facilities in Chad were survivors of sexual violence, with 40% indicating that the sexual violence suffered was

---

[97] L Utsch 'Protracted refugee situation in Kenyan refugee camps' (2020) https://ballardbrief.byu.edu/issue-briefs/protracted-refugee-situations-in-kenyan-refugee-camps (accessed 6 April 2024).
[98] AR Friedman 'Refugee women and mental health' The Haworth Press (eds) *Rape and Domestic violence: The experience of refugee women* (1992) 65-77.
[99] Friedman (n 98) 67.
[100] A Mulugeta 'Agenda: Empowering women for Gender Equity' (2003)55 *Women: The invisible refugees* 73.
[101] Guidelines on Prevention and Response of sexual violence against refugees 1995.
[102] Mulugeta (n 99) 73.
[103] General recommendation 32 on gender related dimensions of refugee status, asylum, nationality, and statelessness of women, CEDAW Committee (5 November 2014) CEDAW/C/GC/32, para 15.
[104] Friedman (n 98) 69.
[105] Friedman (n 98) 72.

from multiple perpetrators.[106] Miller[107] explains that refugee women not only face war-related sexual violence but also domestic violence, which is likely to intensify in the post-conflict society. However, due to view of rape culture and the belief that raped women are untouchable and dirty, further heightens the increase in violence as the perpetrators do not face the consequences of their actions.[108] In essence, rape survivors in refugee communities are less likely to get justice as they face discrimination from the people expected to protect them.[109]

Kenya is not an exception as the refugee women face a myriad of sexual abuse for both the camp-based and urban-based refugees. This includes rape, child marriages, and intimate partner violence (IPV).[110] For instance, studies indicate that in Dadaab, five per 1000 women face sexual violence monthly.[111] In addition, refugee women living in Kakuma camp equally reported sexual violence because of the high proportion of female-led households which increases their vulnerabilities.[112]

In retrospect, while camp-based refugees have a systematic procedure to protect them in the instance of sexual abuse because of the existence of the agencies, the same is not accorded to urban refugees.[113] For this reason, urban refugees are more likely to face sexual violence because of limited protection. In addition, lack of access to documentation is also a factor that increases the vulnerability of women as they have no avenue to report any form of abuse as they fear the police would arrest them.[114] Similarly, without documentation, the urban refugees are considered to be in the country illegally and thus not supported in the health policies to access emergency contraceptives when the need arises.[115]

---

[106] MSF Staff 'The hidden wounds of sexual violence in Sudan's war' 10 April 2024 https://nation.africa/africa/news/--4585632 (accessed 16 April 2024).
[107] L Miller 'The irony of refuge: Gender-based violence against female refugees in Africa' (2011) 11 *Human Rights & Human Welfare* 77.
[108] Miller (n 107) 78.
[109] Miller (n 107) 78.
[110] T Kyilah and others 'The Gendered impact of displacement in East African refugee camps' 8 March 2023 https://saisreview.sais.jhu.edu/the-gendered-impact-of-displacement-in-east-african-refugee-camps/ (accessed 5 April 2024).
[111] MH Abdi 'Assessment of sexual and gender-based violence reporting procedures among refugees in camps in Dadaab, Kenya' Masters thesis, University of Nairobi, 2016.
[112] UN Women 'Sexual violence conviction a reality for Kakuma's refugee community' 18 June 2022 https://africa.unwomen.org/en/stories/news/2022/06/sexual-violence-convictions-a-reality-for-kakumas-refugee-community#:~:text=Kakuma%20and%20Kalobeyei%20host%20over,collection%2C%20or%20in%20the%20home. (accessed 5 April 2024).
[113] IW Waweru 'Coping strategies among urban refugee women in Nairobi: A case study of Eastleigh and Kayole' Masters thesis, University of Nairobi, 2014 10.
[114] Waweru (n 113) 11.
[115] Gitonga (n 4) 2.

As mitigation, Aubone and Hernandez[116] advocate for a multi-sectoral approach to enhance the security of refugees within the host countries. Additionally, the United Nations Security Council (UNSC), in its resolution of 1960[117] and resolution 2106[118] and resolution 283[119] of the ACHPR, acknowledges that sexual abuse is used as a weapon of war to indignify and discriminate against women. Also, Makunya and Abelungu[120] point out that the prohibition of sexual violence, including rape, has gained the status of international customary law, thus enhancing the binding state mandate in protecting women during all armed conflicts.

The International Criminal Tribunal of Rwanda (ICTR) reiterated in *The Prosecutor v Jean-Paul Akayesu*[121] that sexual violence is a weapon of war commonly used to subjugate women. The court proceeds to highlight this, relying on the 1994 genocide. In essence, having highlighted the prevalence of sexual violence targeting refugee women, access to emergency contraceptives remains a fundamental reproductive and human right. This is important because the pregnancy likely to result from the sexual encounter would be traumatic to the survivor.[122]

2.3 Access and barriers to access emergency contraceptives among refugee women

2.3.1 The extent of emergency contraceptive accessibility and usage among refugee women in Kenya

Refugee women have the highest rate of unmet contraceptive usage, including emergency contraceptives.[123] Jewkes[124] posits that women in sub-Saharan Africa, including refugees, encounter more discrimination in comparison to men. This occurs as a result of the power imbalance that causes inequality and discrimination, affecting the refugee women's decision to carry the pregnancy, whether consensual or non-consensual, without a man's consent.[125] Besides, in most cases, the reproductive rights of displaced women are often overlooked. [126]

---

[116] A Aubone & J Hernandez 'Assessing refugee camp characteristics and the occurrence of sexual violence: A preliminary analysis of Dadaab complex' (2013)32 *Refugee Survey Quarterly* 22.
[117] Resolution 1960 (n 14).
[118] Resolution 2106 (n 15).
[119] Resolution 283 (n 16).
[120] TM Makunya & JM Abelungu 'Article 11: Protection of women in armed conflict' in A Rudman & others (eds) *The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A commentary* (2023)247-251.
[121] The prosecutor v Jean-Paul Akayesu ICTR (1 June 2001) ICTR-96-4-A.
[122] SVRI 'Emergency contraceptives is a simple part of post-rape care: Why is it not routinely provided?' https://www.svri.org/emergency-contraception-is-a-simple-part-of-post-rape-care-why-is-it-not-routinely-provided/ (accessed 4 April 2024).
[123] M Aptekman & others 'Unmet contraceptive needs among refugees: Crossroad clinic experience' (2014)60 *Research Award for Family Medicine Resident* 615.
[124] Jewkes (n 27) 1729.
[125] AE Frost & FN Dodoo 'Men are missing from family planning' (2009)8 *America Sociology Association* 46.
[126] J Austin & others 'Reproductive health: A right for refugees and Internally Displaced Persons' (2008)16 *Journal on reproductive health matters* 10.

Although emergency contraceptives are crucial in advancing the reproductive health rights of refugee women,[127] the reality is that in Kenya, most refugee women have limited access to emergency contraceptives. The first challenge limiting access to emergency contraceptives is limited knowledge. Ideally, refugee women have a lower understanding of the usage and efficacy of emergency contraceptives in comparison to other women.[128] General Comment 22 of the CESCR[129] affirms the country's responsibility to reform the laws that limit the realisation of the right to access sexual and reproductive health rights.

Noteworthy, this emphasises that accessibility of reproductive services and information is paramount to allowing women to make informed decisions about their reproductive behaviour.[130] Essentially, this research interprets that the general comment ensures that all persons, including refugee women, have access to reproductive services such as emergency contraceptives. However, despite the legal framework, refugee women face challenges in accessing and using emergency contraceptives.

In the refugee community, the patriarchal nature of society places men in an elevated position to make decisions on behalf of women, including the access and usage of emergency contraceptives.[131] Jelagat[132] also stipulates that the primary factors limiting the usage of contraceptives among refugee women are illiteracy, ignorance, and poverty. Besides, with the increased number of persons dying during the flight and settlements in the camps, refugee women garner praise for having more children.[133] Thus, this research argues that this view on increasing the population to replace the children lost affects the agency and autonomy of refugee women over the access and usage of emergency contraceptives. Harris and Symth[134] further, incorporate the intersectionality framework, denoting that the access to reproductive health among refugees cannot be separated from their social and economic environment as the conflict and displacement increase their vulnerability.

[127] The Reproductive Health Response in Conflict Consortium *Emergency contraceptives for conflict-affected settings* (2004) 2.
[128] Wedekind (n 64) 2.
[129] General comment 22 on the right to sexual and reproductive health on article 12, CESCR Committee (2 May 2016) E/C.12/GC/22.
[130] General comment 22 CESCR (n 129) para 6.
[131] Ameso (n 74) 3.
[132] Jelagat (n 65) 87.
[133] Gee (n 72) 4.
[134] C Harris and I Symth 'The reproductive health of refugees lessons beyond ICPD' (2001)9 *Journal on Gender and Development* 10.

The cost implication of contraceptives also impacts the accessibility to emergency contraceptives for refugee women. For instance, Muia and Olenja[135] undertook a study on emergency contraceptive access and usage among refugee women in Kakuma camp. The study concluded that despite no cost implications on access to emergency contraceptives, most refugee women had a limited understanding of how emergency contraceptives work. For instance, some believed it was not only a form of abortion but also affected their fertility.[136]

Gitonga[137] highlights the inequality and discrimination that refugee women, especially those residing in urban areas, face to access contraceptives, including emergency contraceptives. The author explains that while Kenyan women can easily access contraceptives through the health policies, this is not accorded to refugee women who are primarily considered to be in the country illegally and, hence, lack health insurance policies to access emergency contraceptives.[138] In retrospect, due to the economic barriers, most refugee women are unable to purchase emergency contraceptives.[139]

Nevertheless, Gure and others[140] illustrated that, in most cases, refugee women were willing to use emergency contraceptives upon understanding their importance. However, this study argues that even though efforts have been made at the national, regional, and global levels to enhance access to emergency contraceptives for refugee women, the usage is often limited. Thus, this invokes reproductive justice theory, which criticises the ideology of choice concerning contraceptive access and usage by acknowledging the existing structural inequalities that impede access. Women Refugee Commission and others[141] highlighted that in addition to the challenges the other refugee women face, those living with disabilities further face physical accessibility barriers while seeking emergency contraceptives after both consensual and non-consensual sexual engagements.

The Kenya National Human Rights Commission (KNHCR) report on Kenya also affirms that although refugee women in the country are more likely to experience sexual violence, access to sexual reproductive rights services such as emergency contraceptives is

[135] EG Muia & J Olenja 'Enhancing the use of emergency contraceptives in refugee setting: Findings from a baseline survey in Kakuma refugee camp' (2000) *Population council.*
[136] Muia (n 135).
[137] Gitonga (n 4) 2.
[138] Gitonga (n 4) 2.
[139] International Rescue Committee (n 93).
[140] Gure (n 57) 11.
[141] Women Refugee Commission *Contraception services in humanitarian setting and humanitarian development nexus: Summary of the gaps and recommendations from state of field landscaping assessment* (2021)8.

limited because of the unavailability.[142] The impact of Kenya's failure to uphold its responsibility towards refugee women not only leads to increased exposure to STIs but also maternal mortality arising from unsafe abortion procedures. This occurs because of the weak healthcare system available for refugee women.[143] Tran[144] highlights that 60% of the global maternal mortality arising from unsafe abortions is from the humanitarian set-up; this affirms the need for access to emergency contraceptives to not only prevent pregnancy but also STIs likely to cause death.

2.3.2 Barriers to access to emergency contraceptive among refugee women in Kenya

Cultural and religious barriers

Metusela and others[145] explain that access to sexual and reproductive health (SRH) is linked to social-cultural factors. For this reason, it may act as a barrier to accessing knowledge on emergency contraceptives and ultimately influence access to health care. United High Commission for Refugees (UNHCR) and the Women's Refugee Commission (WRC)[146] report that cultural and religious barriers existing within the refugee communities impede access to and usage of emergency contraceptives. For instance, the report highlights that the cultural practice depicts that children are a form of wealth besides the high number of mortalities during migration, women are encouraged to have more children regardless of their sexual encounters to replace the ones lost.[147]

Deyo[148] argues that modern contraceptives, including emergency contraceptives, are highly shunned, and women who opt for its usage hide this from their spouses and the community at large. This is because the community views the usage of emergency contraceptives as a strategy of killing the unborn children and thus, failing to fulfil God's plan; for this reason, as a punishment, God will take the children already born to the family.[149]

---

[142] Kenya National Commission on Human Rights *Realising sexual and reproductive health rights in Kenya: A myth or reality* (2012) 117.
[143] Austin (n 126) 10.
[144] Tran (n 9).
[145] C Metusela and others 'In my culture, we don't know anything about that: Sexual and reproductive health of migrant and refugee women' (2017)24 *International Journal of Behavioral medicine* 836 -845.
[146] UNHCR & Women Refugee Commission *Baseline study: Documenting knowledge, attitude, and practices of refugees and status of family planning services in UNHCR's operations in Nakivale refugee settlement, Uganda (2011)* 5.
[147] UNHCR (n 146) 5.
[148] NS Deyo 'Cultural traditions and the reproductive of Somali refugees and immigrants' Masters thesis, University of San Francisco, 2012 82.
[149] Deyo (n 148) 84.

The WHO, in its report on the 'health of refugees and migrants',[150] highlighted that the identity of most refugee and migrant women focuses on fertility and childbearing as they bear the sole responsibility of ensuring the continuation of their lineage. Noteworthy, cultural and religious beliefs significantly impact women's decisions on emergency contraceptive usage.[151] Arguably, as reiterated throughout this research, most refugee communities are patriarchal, and men have the power to make decisions on women's lives, including on access to reproductive services. For instance, Frost and Dodoo[152] explain the disjunction between the existing framework in enhancing access to contraceptives for all women and the attitude of African men towards women using modern contraceptives.

Maina and others[153] opine that since most refugee women in Dadaab, Kenya, adhere to Islamic religious teachings, the preference for contraceptive usage is mainly the traditional methods such as breastfeeding. Arguably, most of the opponents of modern contraceptive usage argue that it is a western ideology that aims to reduce the population of Muslims contrary to the teachings in the Quran thus, impacting modern contraceptive usage among Somali refugee women.[154] In Kakuma and Kalobeyei where most refugees practice Christianity, studies equally indicate that culture and religion play a significant impact on women's decision to keep their pregnancies even in the instance of sexual violence.[155]

However, despite relevant legal and statutory frameworks, culture and religion take precedence in the migrant and refugee communities as men have a negative attitude towards contraceptive usage, including emergency contraceptives. The negative attitude occurs because it threatens the culturally supported rights that allow men to control women's reproductive rights.[156] This highlights that culture and religion affect the access of women to reproductive health services, including emergency contraceptives.

Conversely, in *Pichon and Sanjous v France*[157] the European Court of Human Rights (ECHR) held that ethics and religious principles are not justifications for denying women access to contraceptive services. The case highlighted service providers' conscientious

[150] World Health Organisation 'Health for all including refugees and migrants time to act now' (2022) *World report on the health of refugees and migrants* 104.
[151] World Health Organisation (n 149) 104.
[152] Frost (n 125) 45.
[153] NK Maina and others 'Family planning as a determining factor in preference to traditional birth attendants among Somali Community in Dadaab Refugee Camp' (2021)6 *European Journal of Humanities and Social Sciences* 4.
[154] Maina (n 153) 4.
[155] Market Shares Associates *Gender assessment of Kakuma refugee camp and Kalobeyei settlement and town* (2019) 57.
[156] Frost (n 125) 46.
[157] (2001) ECHR 49853/99.

objections and the impact of creating barriers to access, which is common in humanitarian spaces with extreme religious and cultural beliefs. Equally, article 17 of the Maputo Protocol[158] entrenches the right to positive cultural experience.

Further, Adetokunbo[159] opines that assuring the realisation of this right entrenched in the Maputo Protocol restores women's agency to participate in influencing cultural practice. Additionally, it allows for a positive balance between cultural practice and women's rights.[160] Thus, the above literature confirms that although culture and religion are impeding factors to access to reproductive health services, including emergency contraceptives, incorporating a positive cultural approach allows for a balance of rights and culture and, ultimately, the actualisation of the right.

Economic and physical barriers

Historically, women remain economically disadvantaged, and the situation intensifies among the displaced population, such as refugees. In most scenarios, refugee women stay unemployed or underemployed in comparison to the women from the host communities and refugee men.[161] The limited economic opportunities lead to diminished purchasing power for emergency contraceptives. Ignorance, illiteracy, and poverty further limit the usage of emergency contraceptives among refugee women in Kenya.[162]

Refugee women in Kenya bear the economic responsibility of ensuring that the family accesses food and basic needs while living in the camps and urban set-ups.[163] However, due to the high level of poverty among refugee women, and reliance on donor funding, women opt out of contraceptives to increase the number of children in the household. This is important because family size determines the portion of the humanitarian sector's food provision, 'bamba chakula'.[164]

Funding is insufficient in comparison to the needs arising in the camps. With most having limited finances to purchase even basic needs such as food, emergency contraceptives

[158] Maputo Protocol (n 45) article 17.
[159] J Adetokunbo 'Article 17: Right to a positive cultural context' in A Rudman & others (eds)*The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A commentary* (2023) 358-359
[160] Adetokunbo (n 159) 358.
[161] International Rescue Committee *Scaling economic opportunities for refugee women: Understanding and overcoming obstacles to women's economic empowerment in Germany, Kenya, and Niger* (2019) 4.
[162]Jelagat (n 65) 87.
[163] GP Opata & SM Singo 'The economics of displacement: A study of the changing gender roles, relations and its impact on the livelihood and empowerment of women in Kenyan refugee camps' (2004) *Centre for refugee studies* 17.
[164] Market shares association (n 155) 57.

may not be a necessity.[165] This research points out that although humanitarian agencies may freely offer emergency contraceptives, with the shrinkage of donor funding, they cannot meet the set goal.[166]

Davidson and others[167] echo the sentiments of the authors highlighted above, financial constraints hinder refugee women's access to SRH services. Further, unlike camp-based refugees in Kenya who can rely on humanitarian agencies for essential assistance, urban refugees are disproportionately affected economically.[168] This is evident during inflation that forces the refugees to live in deplorable conditions and lack primary health care insurance. Most refugees, especially in urban setups, have a challenge accessing medical care, including emergency contraceptives.[169]

Achola and others[170] opine that it is important to incorporate a socioeconomic empowerment programme to mitigate the economic barriers and high levels of illiteracy. It is important to incorporate a social-economic empowerment program to minimise the economic barrier and high levels of illiteracy. Ideally, socioeconomic empowerment among refugee women is important because it increases their autonomy over their bodies and can access emergency contraceptives. Ackerson and others[171] explain that the proximity to healthcare facilities also acts as a barrier to accessing contraceptives, including emergency contraceptives, especially for women living with disabilities.

Information and institutional barriers to emergency contraceptives

Access to contraceptives, including emergency contraceptives, remains challenging because of the knowledge and language barriers arising from the low education levels among refugee women.[172] Noteworthy, due to the institutional and informational barriers, refugee women have no autonomy to decide on access to emergency contraceptives contrary to the provisions entrenched in the Maputo Protocol.[173] For instance, Gure and others[174] indicated that although

[165] H Mwenyango 'The place of social work in improving access to health services among refugees: A case study of Nakavile settlement, Uganda' (2022)65 *International Social Work* 890.
[166] KJ Kelley ' UN pushes refugees self-reliance as donor funding for Kenya dwindles' 25 November 2017 https://nation.africa/kenya/news/UN-refugee-donor-funding-Kenya-dwindles/1056-4202704-n3a88oz/index.html (accessed 2 July 2024).
[167] Davidson (n 25) 30.
[168] International Rescue Committee *The cost-of-living crisis for urban displaced persons in East Africa: The role of inclusive social protection* (2022).
[169] International Rescue Committee (n 168) 5.
[170] Achola (n 46) 16.
[171] K Ackerson and R Zielinski 'Factors influencing use of family planning in women living in crisis affected areas of sub-Saharan Africa: A review of the literature' (2017)54 *Midwifery* 35.
[172] Achola (n 46) 1.
[173] Maputo Protocol (n 45) article 14.
[174] Gure (n 57) 11.

migrant women, including refugees, may have limited knowledge of emergency contraceptives, upon understanding the importance of emergency contraceptives, they were receptive to its usage.

Healthcare practitioners also create institutional barriers to access to emergency contraceptives by demanding spousal consent before offering medical services.[175] This is common because of the religious and cultural practices that place women in a subjugated position in comparison to men.[176] Healthcare providers have a duty of care to ensure that the information to the patients on contraceptives is accurate. However, some doctors in humanitarian spaces deny women access to contraceptives, including emergency contraceptives, denoting that it causes infertility and other reproductive health risks.[177]

Access to information and knowledge on emergency contraceptives is essential as it equally prevents maternal death arising from unsafe abortion.[178] *FIDA Kenya &3 others v Attorney general & 2 others*[179] illustrates the importance of information on emergency contraceptives in giving patients informed consent. In this case, the applicant procured unsafe abortion that led to her death because she failed to receive conclusive information on post-rape care as a rape survivor.

In addition, in *Brownfield v Daniel Freeman Marina Hospital*[180] the applicant filed an application indicating as follows 'failure to provide information about access to estrogen pregnancy prophylaxis to rape victims constitutes a failure to provide optimal emergency treatment for rape survivors'. Although the court denied the application, the case highlighted the impact of institutional barriers in acting as barriers to access to emergency contraceptives for refugee women. The cases highlight the gravity of limited information on emergency contraceptives as it affects not only reproductive rights but also the right to life[181] and health care.[182]

2.4 Conclusion

Access to emergency contraceptives among refugee women in Kenya remains a challenge despite the legal and policy frameworks in place to enhance accessibility. This occurs

[175] Gele (n 68) 1.
[176] Frost (n 125) 45.
[177] Gele (n 68) 3.
[178] Tran (n 9).
[179] Petition no 266 of 2015.
[180] 208 Cal. App 3d, 405, 413-14, 1989.
[181] Constitution of Kenya, 2010 article 26.
[182] Constitution of Kenya, 2010 article 43.

because of existing cultural, religious, economic, physical, and information barriers. In conclusion, this chapter highlights the exposure to sexual violence that refugee women face upon migrating from their home country to settling in the host country. Further, the impact of limited access to emergency contraceptives is that it increases the rate of unsafe abortion practices and exposure to STIs. However, this study affirms that emergency contraceptives should be available to all refugee women for those engaged in both consensual and non-consensual sexual activities. This is important as it gives women autonomy over their bodies and upholds their reproductive rights.

Chapter 3: Kenya's obligation to ensure access to and use of emergency contraceptives as a human right for refugee women

3.1 Introduction

This chapter analyses Kenya's legal obligations towards advancing the reproductive rights of refugee women by enhancing access to emergency contraceptives. Notably, article 2(6) of the Constitution of Kenya[183] as read with treaty-making and ratification act[184] stipulate that all laws that Kenya has ratified at the regional and global levels form part of her laws. Hence, this chapter focuses on answering the second research question on the national, regional and global obligations Kenya has to ensure that women have access to and use emergency contraceptives.

The chapter focuses on highlighting the historical initiatives made to advance the reproductive rights of refugee women. It proceeds to explain the legal framework for access to emergency contraceptives, focusing on different human rights principles entrenched in the law. Although the human rights applicable are not exhaustive, this chapter primarily focuses on the right to life,[185] reproductive autonomy,[186] right to equality and non-discrimination,[187] right to health care,[188] right to dignity,[189] right to privacy,[190] and freedom from inhumane and degrading treatment.[191] It is worth noting that the study focuses on these human rights principles, given that the rights are more relevant to evaluating the legal framework for access to emergency contraceptives for refugee women in Kenya.

3.2 Historical analysis of access to reproductive rights for refugee women

Although refugee rights have existed since 1951,[192] the realisation of the reproductive rights of refugee women happened in 1994 during the ICPD conference. The conference led to the introduction of the minimum initial service package for reproductive health services for displaced persons and refugees, which included emergency contraceptives.[193] This was important as, before that, the primary assumption was that during a humanitarian crisis, the

[183] Constitution of Kenya 2010, article 2(6).
[184] Treaty Making Ratification (n 90).
[185] Constitution of Kenya 2010, article 26.
[186] Maputo Protocol (n 45) article 14.
[187] Constitution of Kenya 2010, article 27.
[188] Constitution of Kenya 2010, article 43
[189] Constitution of Kenya 2010, article 28.
[190] Constitution of Kenya 2010, article 31.
[191] Constitution of Kenya 2010, article 25.
[192] United Nations Convention relating to the status of Refugees (n 39).
[193] L Goodyear & T Mcginn 'Emergency contraception among refugees and the displaced' (1998)53 *Journal of American Medical Women's Association* 266.

principal needs provided included sanitation, water, shelter, and food. In retrospect, humanitarian agencies fail to consider reproductive services.[194]

Wulf[195] conducted a study in 1993–1994 and concluded that refugee women did not receive the reproductive rights accorded to other women. At the time, the primary reproductive health rights focused on prenatal care and traditional birth attendance to enhance safe home delivery for refugee women.[196] Noteworthy, the reproductive rights of refugee women were not only neglected, but also the humanitarian agencies at the time did not see the importance of advancing these rights. Hence, emergency contraceptives for refugee women were not available.[197]

In 1995, UNHCR developed the Geneva Guidelines on Prevention and Response to Sexual Violence against Refugee Women. The guidelines highlighted the vulnerability women face as enemies exert power through raping women.[198] Also, given that men are in control of food and basic needs during crises, it further alienates women. This may force the women to engage in sex in exchange for basic needs. The overall effect is that the disenfranchised refugee men also resort to sexually violating the women to exert their powers.[199] Resolution 1325 UNSC equally acknowledged the uneven effect that armed conflict has on women during the crisis, and this includes increased gender-based violence.[200]

With the operationalisation of the Dadaab and Kakuma refugee camps in the 1990s, the guidelines developed allowed for realising the reproductive rights of refugee women in Kenya. The response to advancing the reproductive rights of refugee women included advancing access to emergency contraceptives.[201] The manual was the first to incorporate the minimal initial service package that included emergency contraceptives.[202] Further, to mitigate the cost barriers likely to affect the access to emergency contraceptives for refugee women, UNFPA opted to fund the initiative.[203]

---

[194] Goodyear (n 193) 266.
[195] D Wulf 'Refugee women and reproductive health care: Reassessing priorities' (1994) *Women's Commission for refugee Women and Children* 2.
[196] Wulf (n 195) 2.
[197] Goodyear (n 193) 266.
[198] Guidelines on Prevention and Response of sexual violence against refugees (n 101) para 1.5.
[199] Goodyear (n 193) 267.
[200] Resolution 1325 on Women Peace and Security (31 October 2000) S/RES/1325.
[201] UNHCR *An interagency field manual: Reproductive health in Refugee situations* 1995.
[202] UNHCR (n 201) 11.
[203] Goodyear (n 193) 267.

The adoption of the Sustainable Development Goals (SDGs)[204] that later replaced the Millennium Development Goals (MDGs)[205] focused on advancing the rights of all persons. Notably, both the MDG and SDG do not expressly provide for refugee women's right to access emergency contraceptives. However, this leads to inferred rights through a collective interpretation of the existing framework. For instance, SDG 5 on gender equality highlights gender-based violence and advocates for women and girls to have conclusive information on their reproductive rights, which could include emergency contraceptives.[206]

SDG 3 strives to ensure universal health care for all persons, including the marginalised, such as refugees, and this includes the advancement of reproductive rights.[207] In retrospect, MDG 5 and MDG 6[208] focuses on improving maternal health and combating the Human Immune-deficiency Virus/ Acquired Immunodeficiency Syndrome (HIV/AIDs) pandemic, respectively. These goals aim to ensure the protection of all women's reproductive rights, including advancing access to emergency contraceptives.

3.3 Kenya's mandate to enhance access to emergency contraceptives for refugee women

As reiterated in the study above, access to emergency contraceptives is a human rights issue.[209] For this reason, the Kenyan Constitution allows for the incorporation and entrenchment of these rights to enhance actualisation. This affirms Kenya's obligation to national, regional, and global legal provisions as the supreme law.[210] Additionally, article 11(3) of the Maputo Protocol[211] entrenches the country's obligation to protect women during armed conflict, including refugees, from sexual violence, as these are considered acts of genocide. This is further reiterated in article 27(2) of Geneva Convention IV[212] and article 76(1) of the optional protocol,[213] which equally protects women from sexual exploitation under international humanitarian law (IHL). Makunya and Abelungu[214] highlight that article 11 of the Maputo

[204] UN 'The 17 Sustainable Development Goals' https://sdgs.un.org/goals (accessed 16 April 2024).
[205] WHO 'Millennial Development Goals' 19 February 2018 https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs) (accessed 16 April 2024).
[206] UN 'SDG 5: Achieve gender equality and empower all women and girls' https://sdgs.un.org/goals/goal5 (accessed 16 April 2024).
[207] UN 'SDG 3: Ensure healthy lives and promote well-being for all at all ages' https://sdgs.un.org/goals/goal3 (accessed 28 July 2024).
[208] WHO (n 205).
[209] HB Croxatto & SD Fernadez 'Emergency contraceptives as a human rights issue' (2006)20 *Best Practice resolution on clinic obstetric gynaecology.*
[210] Constitution of Kenya 2010, article 2(6).
[211] Maputo Protocol (n 45) article 11(3).
[212] Geneva Convention Relative to the Protection of Civilian Persons 1949.
[213] Protocol Additional to Geneva Conventions of 12 August 1949 and relating to Protection of Victims of International Armed Conflict (Protocol 1) 1977.
[214] Makunya (n 120) 250.

Protocol is affixed in customary international law, thus imposing international obligations to all countries, including Kenya.

In emphasising the human rights component at the regional level, this study relies on the provisions entrenched under article 60 of the ACHPR.[215] The Charter indicates that the commission can draw inspiration from international human rights laws that state parties adopt. In light of this analysis, Kenya has the mandate to ensure that it has incorporated mechanisms to advance the reproductive rights of refugee women regarding access to emergency contraceptives.

3.3.1 Right to health and right to life

Access to emergency contraceptives for refugee women directly correlates to the actualisation of the right to health.[216] and the right to life.[217] These rights are non-derrogable, and the country cannot rationalise non-compliance with this crucial obligation.[218] In *Purohit and Moore v the Gambia*[219] the ACHPR acknowledged the state's responsibility to ensure all its citizens have access to quality health care. With health incorporating reproductive rights under article 43 of the Constitution of Kenya[220] the country's mandate in Kenya is to ensure that all persons, including refugee women, access the highest attainable form of health care as this provision is binding.

General comment 22 CESCR[221] also affirms that reproductive health service is an important part of ensuring the right to health is attained. The general comment proceeds to encourage countries to put mechanisms in place to eliminate discrimination and stigmatisation of vulnerable women, including refugees, in accessing reproductive health services.[222] From the global and regional front, different legal statutes include the right to health care. This includes General comment 14 of CESCR,[223] article 12 of the International Covenant on

[215] ACHPR (n 30) article 60.
[216] Constitution of Kenya 2010, article 43.
[217] Constitution of Kenya 2010, article 26.
[218] C Ngwena & RJ Cook 'Rights concerning health' in D Brand & C Heyns (eds) *Socio-economic rights in South Africa* (2005) 117.
[219] Purohit and Moore v the Gambia, Communication 241/2001, ACHPR Committee (2002).
[220] Constitution of Kenya 2010, article 43.
[221] General comment 22 CESCR (n 129) para 4.
[222] General comment 22 CESCR (n 129) para 31.
[223] General comment 14 CESCR (n 43).

Economic Social and Cultural Rights (ICESCR),[224] article 25 of the Universal Declaration on Human Rights (UDHR),[225] and article 16 of ACHPR.[226]

Ngwena and Cook[227] explain that the right to access health care is fundamental to the concept of self-determination and autonomy and the right to human dignity and equality. Thus, this affirms the state's responsibility to enhance access to health care for all refugee women, including those living with disabilities. Arguably, this right is equally entrenched under article 23(1)(b) of the Convention on the Rights of Persons with Disabilities (CRPD),[228] and General recommendation 24 CEDAW.[229] On reproductive health services, it is essential to ensure that all women have access, especially the vulnerable women who have limited access to safe abortion services.[230]

Noteworthy, women's access to quality reproductive health care improves their overall health and the quality of their lives.[231] Incorporating an intersectionality lens, refugee women are more vulnerable to sexual exploitation in comparison to other Kenyan women. Jemutai[232] explains that refugee women are less likely in comparison to other women to access emergency contraceptives through the health insurance policy that covers persons in the host country.[233] Thus, this research posits that for Kenya to realise its mandate of enhancing access to the highest attainable form of healthcare, it should extend emergency contraceptive services to refugee women.

In addition, as highlighted above, refugee women have extensive barriers to accessing emergency contraceptives. Therefore, this affirms the need to realise the vulnerability of refugee women in the host country and as mitigation, the state has the responsibility of ensuring the protection of refugee women, so they do not remain a forgotten group.[234] Section 7 of the Kenya Health Act[235] indicates that all persons have a right to access emergency health care services. Therefore, emergency contraceptives are the emergency health care services alluded

[224] International Covenant on Economic Social and Cultural Rights 1966.
[225] Universal Declaration on Human Rights 1948.
[226] ACHPR (n 30) article 16.
[227] Ngwena (n 218) 131.
[228] Convention on the Rights of Persons with Disabilities 2006.
[229] General Recommendation no 24 on Article 12 of the Convention, CEDAW Committee (1999) A/54/38/Rev.1, para 6.
[230] Ngwena (n 218) 131.
[231] A Hendriks 'The right to health: Promotion and protection of women's right to sexual and reproductive health under international law: The economic covenant and women's covenant' (1995)44 *American University Law Review* 1125.
[232] Jemutai (n 54) 9.
[233] Jemutai (n 54) 5.
[234] JVF Coumans & S Wark 'A scoping review on the barriers to and facilitators of health services utilisation related to refugee settlement in regional or rural area of the host country' (2024)24 BMC *Public Health* 199.
[235] Health Act 2017.

to in the Health Act. Conversely, resolution 135 ACHPR[236] indicated that failure to put mechanisms to protect women is a human rights violation as it may lead to maternal mortality.

This thesis points out that the right to health care directly correlates with the right to life. CEDAW Committee in *LC v Peru*[237] held that the failure of the state to ensure women have access to emergency and essential reproductive services is a human rights violation. The courts in Kenya further restate this in *FIDA & 3 others v Attorney General*,[238] and it is necessary to note that in both cases, the women died as a result of failures to provide emergency health care. This study argues that although both cases do not directly focus on emergency contraceptives, it highlights the state's legal responsibility in ensuring access to emergency contraceptives as a fundamental human rights obligation.

Kenya has the mandate to protect the right to life under article 26 of the Constitution.[239] Further, General comment 3 on article 4 ACHPR[240] and General comment 36 Human Rights Committee (HRC)[241] protects the right to life. The right is equally reflected in article 6 of the International Covenant on Civil and Political Rights (ICCPR),[242] article 4 Maputo Protocol[243] and article 4 ACHPR.[244] Although these legal provisions do not directly focus on reproductive rights, the legal statutes affirm the state's responsibility of protecting the right to life through enhancing accessibility to emergency contraceptives for vulnerable women, which includes refugees.

For instance, the supreme court in India stated in *Paschim Banga Khet Mazdoor v State of West Bangal*[245] that denying emergency medication aid to patients at a government hospital violated the person's right to life. Although the case is not expressly about emergency contraceptives, it focuses on emergency health care services and how the failure to accord them to humans violates the reproductive rights of refugee women.

Noteworthy, access to emergency contraceptives affects both the right to health care and the right to life. The HRC's concluding observation on Kenya asserted the country's responsibility to ensure access to contraceptives, including emergencies for all women. It urged

[236] Resolution 135 on maternal mortality in Africa, ACHPR Committee (24 November 2008) ACHPR/Res.135/XXXXIV/08.
[237] LC vs Peru, Communication 22/2009, CEDAW Committee (4 November 2011), CEDAW/C/50/D/22/2009.
[238] (n 179).
[239] Constitution of Kenya 2010, article 26.
[240] General Comment 3 on Article 4 Right of life, ACPHR Committee (10 November 2015).
[241] General Comment 36 on Article 6 of the convention, HRC Committee (3 September 2019) CCPR/C/GC/6, para 8.
[242] International Covenant on Civil and Political Rights 1966.
[243] Maputo Protocol (n 45) article 4.
[244] ACHPR (n 30) article 4.
[245] 1996 SOL case 169.

Kenya to review its abortion laws to conform to international standards.[246] Based on this analysis, in an ideal situation, viewing emergency contraceptives as a human rights issue would enhance access for all women.[247] With such an adverse impact of lack of access to emergency contraceptives affecting the right to life for refugee women, it is prudent to actualise the right as entrenched under Kenya's global and regional obligations.

3.3.2 Right to reproductive autonomy

Reproductive autonomy refers to women's right to decide whether to have children and with whom. It also incorporates the opportunity to determine the strategy for controlling their fertility.[248] Essentially, in evaluating whether the legal strategy in place guarantees reproductive autonomy, the focus ought to be on access to contraceptives, information, economic resources, maternal health care, and safe abortion care.[249] Sawadogo and others[250] postulate that since most refugee women live in deplorable conditions, it subjects them to the possibility of violation of their reproductive rights.

Further, resolution 283 of the ACHPR[251] acknowledge that during the conflict, women are often exposed to sexual violence, and this is a grave violation of their human rights. Incorporating the reproductive justice theory to evaluate the rights to reproductive autonomy is prudent. It deconstructs the notion of choice by viewing women from an intersectionality lens and acknowledging the existing barriers.[252]

Therefore, this research denotes that the extensive sexual violence women in conflict, including refugees, are exposed to denies them autonomy over choosing their sexual practice. The above assertion justifies the importance of the state incorporating legal strategies to protect refugee women from sexual violence[253] and enhance access to quality reproductive services. The provision at the national levels affirms Kenya's responsibility under the Constitution,[254] the National Family Planning Guidelines for Service Providers (NFPGSP) [255] and the National

[246] Concluding observation on the second periodic report of Kenya, HRC Committee (29 April 2005) CCPR/CO/83/KEN.
[247] Centre for Reproductive Rights & UNFPA *The Right to contraceptive information and services for women and adolescents* (2010) Briefing paper 6.
[248] S Maheshwari 'Reproductive autonomy in India' (2017)11 *NALSAR Student Law Review* 31.
[249] Maheshwari (n 248) 31.
[250] PM Sawadogo and others 'Barriers and facilitators of access to sexual and reproductive health services among migrant, internally displaced, asylum seeking and refugee women: A scoping review' (2023) *PLoS One* 2.
[251] Resolution 283 on the situation of women and children in armed conflict, ACHPR Commission (12 May 2014) ACHPR/Res.283(LV)2014.
[252] Morison (n 85) 2.
[253] Maputo Protocol (n 45) article 4(2).
[254] Constitution of Kenya 2010, article 43.
[255] Ministry of Health (n 35).

Reproductive Health Policy (NRHP)[256] to protect the reproductive rights of vulnerable women such as refugees.

Kenya is a signatory to the Maputo Protocol and CEDAW, and it is responsible for ensuring that all women, including refugees, enjoy this right. General comment 2 on article 14(1) on the Maputo Protocol[257] affirms the right of women to have access to reproductive autonomy through access to reproductive health services. This is further echoed under CEDAW General Recommendation 24 in article 12,[258] which acknowledges the state's responsibility to ensure that vulnerable populations, including refugees, receive specialised health requirements.

As stated, reproductive autonomy also involves having information to make informed decisions on emergency contraceptive usage. Article 35(1)(b) of the Constitution[259] indicates that all persons have a right to access information held by a third party that is required to actualise their rights and freedoms. Conversely, this provision recognises that women should have conclusive information to actualise reproductive autonomy.[260] This is reiterated under article 10(h) CEDAW,[261] article 19(2) ICCPR[262] and article 14 (2)(a) of the Maputo Protocol.[263] By incorporating the intersectionality theory, this study focuses on camp-based, urban-based and refugee women living with disabilities.

For this reason, Kenya has obligations under article 23(1)(b) of the Convention on the Rights of Persons with Disabilities (CRPD).[264] In addition, General comment on article 12 CRPD[265] explained the state's responsibility of enhancing the reproductive autonomy of persons living with disabilities as they have the legal capacity to actualise it. Noteworthy, refugees are quite vulnerable, and this warrants more protection to ensure their rights are realised. Sections 20 and 21 of the Refugee Act[266] in Kenya entrench the protection of women and persons with disabilities respectively. Therefore, based on the above analysis, reproductive autonomy includes both ensuring access to emergency contraceptives and information to allow for informed decisions. Thus, with refugee women being a vulnerable population, Kenya has

[256] The National Reproductive Policy (n 36).
[257] General comment 2 on article 14 of the convention, ACHPR Commission (28 November 2014).
[258] General Recommendation 24 on Article 12 of the Convention, CEDAW Committee (1999) A/54/38/Rev.1, para 6.
[259] Constitution of Kenya 2010, article 35 (1).
[260] Gure (n 57) 11.
[261] Convention on Elimination of All Forms of Discrimination Against Women 1979.
[262] ICCPR (n 242) article 19(2).
[263] Maputo Protocol (n 45) article 14(2).
[264] CRPD (n 228) article 23 (1)(b).
[265] General comment 1 on article 12 of the convention, CRPD Committee (19 May 2014) CRPD/C/GC/1 (2014).
[266] Refugee Act 2021.

the mandate of advancing their reproductive autonomy under the legal and statutory framework.

The CEDAW committee, in its seventh and eighth concluding observation report to Hungary, stated that state parties have the responsibility of ensuring quality access to affordable contraceptives to all women, including refugees and migrant women.[267] However, despite the national, regional and global provisions to enhance autonomy over contraceptive methods, it is essential to view the issue from an intersectionality lens as it widens the scope of discussion by incorporating the barriers while unpacking the experiences, perceptions and attitudes of refugee women towards using emergency contraceptives.

3.3.3 Right to dignity and protection from inhumane treatment.

Article 5 of the ACHPR[268] and article 3 of the Maputo Protocol[269] emphasise that all persons have the inherent right to be treated with dignity. Arguably, from an international legal framework, article 7 ICCPR[270] stipulates that 'no one can be subjected to torture, cruel or degrading treatment or punishment. In particular, no one shall be subjected to medical or scientific experimentation without free consent', which holds Kenya accountable.

At the national level, article 28[271] and article 29(f)[272] the Constitution mandates the state to protect all persons from cruel, degrading, and inhumane treatment. Further, article 25(a) of the Constitution[273] stipulates that these rights are non-derrogable and thus cannot be limited. The Maputo Protocol under article 11(3)[274] confirms the vulnerability of refugee women to sexual violence, as explained throughout this study. For this reason, the Maputo Protocol urges states to incorporate mechanisms to protect refugee women. Cook and Fathalla[275] posit that countries establish different mechanisms to ensure enhanced actualisation of the right to liberty and security. This includes analysing legal frameworks that are not only punitive but create barriers preventing women from enjoying their reproductive rights.

---

[267] Concluding Observation on the combined seventh and eighth periodic report of Hungary, CEDAW Committee (9 February 2015) CEDAW/C/HUN/CO/7-8 (2013) para 19.
[268] ACHPR (n 30) article 5.
[269] Maputo Protocol (n 45) article 3.
[270] ICCPR (n 242) article 7.
[271] Constitution of Kenya 2010, article 28.
[272] Constitution of Kenya 2010, article 29(f).
[273] Constitution of Kenya 2010, Article 25(a).
[274] Maputo Protocol (n 45) article 11 (3).
[275] RJ Cook & MF Fathalla 'Advancing reproductive rights beyond Cairo and Beijing' (1996)22 *Advancing reproductive rights.*

Article 4 of the Maputo Protocol[276] states that countries have a mandate to develop laws that prohibit all forms of violence against women. Therefore, this research interprets the provision to affirm the state's responsibility to ensure security for all women, including refugees and protection from unwanted sexual encounters. Although the Maputo Protocol under article 14[277] makes provision for access to contraceptive methods, it is equally important to evaluate the insecurity refugee women face while fleeing conflict as a determinant of realising this right. In *Doebbler v Sudan*[278] the ACHPR acknowledged the state's responsibility to protect women from inhumane and degrading treatment.

The Beijing declaration and platform of action stipulate that during conflicts, sexual violence is a crucial weapon of war, and this not only violates the woman's right to dignity but also protection from inhumane and degrading treatment.[279] Further, the Cairo platform of action under paragraph 4.10 emphasises the state mandate in protecting vulnerable women such as refugees as follows:[280]

> Countries are urged to identify and condemn the systemic practice of rape and other inhumane and degrading treatment of women as a deliberate instrument of war and ethnic cleansing and take steps to ensure full assistance is provided to the victims of such abuse for their physical and mental liberation.

Therefore, based on the provisions under the Cairo declaration, this research asserts that the assistance alluded to includes emergency contraceptives for refugee women. This was restated in the concluding observation on the fifth and sixth periodic report of Peru, where the Committee Against Torture (CAT)[281] postulated that failure to provide emergency contraceptives to survivors of sexual violence amounts to torture and inhumane treatment. The ACHPR in *Egyptian Initiative for Personal Rights & interights v Egypt*[282] affirmed its commitment towards protecting all women from sexual and gender-based violence by holding states accountable to ensure the implementation of this right.

Resolution 365 ACHPR[283] points out that survivors of sexual violence during wartime suffer grave consequences such as exposure to STIs, unwanted pregnancies, and social

[276] Maputo Protocol (n 45) article 4.
[277] Maputo Protocol (n 45) article 14.
[278] Doebbler v Sudan, Communication 236/2000, ACHPR Committee (29 May 2003).
[279] Beijing Declaration and platform for action, fourth world conference on women, China, September 4-15, 1995, UN. Doc.A/CONF.177/20, para 135.
[280] UNFPA Programme of Action*: Adopted at the International Conference on Population and Development in Cairo* (1994) 25, para 4.10.
[281] Concluding observation on the combined fifth and sixth periodic report of Peru, CAT Committee (21 January 2013) CAT/C/PER/CO/5-6, para 15.
[282] Egyptian Initiative for Personal Rights & interights v Egypt, Communication 323/06, ACHRP Committee (12 October 2013).
[283] Resolution 365 on developing guidelines on combatting sexual violence and its consequences, ACHRP Committee (4 March 2017) ACHPR/Res.365 (EXT.OS/XXI)2017.

stigmatisation. Additionally, the women face substantial challenges accessing medical and psycho-social services. Hence, the resolution urges the states to put strategies to uphold women's rights.[284] Failure to do so impacts their right to dignity and protection from inhumane treatment. In addition, to ensure state compliance, the ACHPR developed the guidelines on combating sexual violence in Niamey.[285]

The HRC in *KL v Peru*[286] set a precedent as the first international case law to hold the state responsible for failure to uphold reproductive and health rights. Although the case was on access to abortion rights, it creates a framework for holding countries accountable. The CEDAW committee, in General recommendation 30[287] equally encourages countries to put measures in place to protect women's human rights during conflict. Hence, having fled their homes, refugee women ought to have protection as they rebuild their lives, and this involves upholding the right to dignity and protection from inhumane treatment. The nonstop sexual violence and community expectation for continuous procreation affirms the need for Kenya to ensure that refugee women have access to emergency contraceptives.

3.3.4 Right to equality and non-discrimination

Lelisa[288] in her thesis, explains that equality implies everyone should enjoy equal rights regardless of social circumstances. Therefore, in this research, the analysis of equality and non-discrimination focuses on access to emergency contraceptives and the existing barriers creating a discriminatory environment limiting women's access to contraceptives. This right is entrenched under article 27 of the Constitution,[289] article 26 of ICCPR,[290] article 2 of Maputo Protocol,[291] article 12(1), article 16 (1)(e) CEDAW,[292] and article 3 ACHPR.[293]

The 57th session report of the Economic and Social Council[294] on the status of women asserted that:

> Violence against women and girls is rooted in the structural and historical inequality in power relations between women and men. It persists in every country in the world as a pervasive violation of the

[284] Resolution 365 (n 283).
[285] The guidelines on combating sexual violence and its consequences in Africa, ACHPR Committee (5 November 2017).
[286] KL v Peru, Communication 1153/2003, HRC Committee (24 October 2005) CCPR/C/85/D/1153/2003.
[287] General recommendation 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW Committee (18 October 2013) CEDAW/C/GC/30.
[288] N Lelisa 'Access to emergency contraceptives among adolescent girls in Lesotho' Masters thesis, University of Pretoria, 2016 19.
[289] Constitution of Kenya 2010, article 27.
[290] ICCPR (n 241) article 26.
[291] Maputo Protocol (n 45) article 2.
[292] CEDAW (n 261) article 12(1) & 16 (1).
[293] ACHPR (n 30) article 3.
[294] Report on the fifty seventh session Commission on the Status of Women, Economic and Social Council (4-15 March 2013) E/2013/27-E/CN.6/2013/11, para 10.

> enjoyment of human rights. Further, the report indicates that the use of power and abuse of power in public and private spheres characterise the violence against women and girls.

Khosla and others[295] also highlight that stigma and discrimination in the healthcare system are shared among marginalised women such as refugees. The impact is that it creates a barrier to accessing emergency contraceptives. The CEDAW committee, under General comment 21 on article 10[296] mandates the state parties to take initiatives to eliminate all forms of discrimination against women concerning exercising their reproductive rights. In addition, the HRC, in General, comment 28 on article 3[297] echoes the sentiments on equality rights for both men and women.

General comment 2 on article 14 Maputo Protocol[298] urges countries to incorporate mechanisms to remove the barriers to access to healthcare services reserved for women. The CEDAW Committee, in its seventh and eighth periodic reports of Hungary,[299] indicates that states ought to ensure that vulnerable women such as refugees have access to affordable contraceptives, including in emergencies. This affirms Kenya's initiative to put strategies in place to increase access to emergency contraceptives for refugee women without any discrimination. The HRC Committee in *Franz Nahlik v Austria*[300] held that states must ensure that all persons within the country are protected from discriminatory practices in both public and private spheres. Lastly, invoking the intersectionality theory, Kenya should equally ensure that refugee women living with disabilities are not deprived of access to reproductive services such as emergency contraceptives, as entrenched under article 6(1) of the CRPD.[301]

To analyse the actualisation of the refugee women's reproductive rights and discriminatory practices that increase barriers, evaluating the right to equality and non-discrimination remains prudent. In affirming Kenya's obligation, implementing these laws occurs at the national, regional, and global levels. General recommendation 24 of the CEDAW Committee[302] illustrates the need for special consideration for vulnerable women, such as refugees. Consequently, this demonstrates the efforts the CEDAW Committee has made to encourage countries to increase access to emergency contraceptives for refugee women. Kenya

---

[295] Khosla (n 67) 153
[296] General comment 21 on article 10 of the convention, CEDAW Committee (1994) A/49/38.
[297] General comment 28 on article 3 of the convention, HRC Committee (29 March 2000) CCPR/C/21/Rev.1/Add.10 (2000).
[298] General comment 2 on article 14 (n 257) para 25.
[299] Concluding Observation on the combined seventh and eighth periodic report of Hungary (n 261) para 19.
[300] Franz Nahlik v Austria, Communication 608/1995, HRC Committee (24 February 1994) CCPR/C/57/D/608/1995 (1996).
[301] CRPD (n 228) article 6.
[302] General Recommendation 24 on Article 12 (n 258) para 6.

is a signatory to the CEDAW and is mandated to realise the rights under this provision. However, the CEDAW recommendation must incorporate an intersectionality strategy to understand the barriers, such as the existing religious and cultural impeding of usage.

The Zimbabwean Supreme Court's finding in *Mapingure v Ministry of Home Affairs*[303] illustrated the impact of the state ignoring the importance of advancing reproductive health rights, such as enhancing access to emergency contraceptives. For instance, in this case, due to the delay in the administration of the emergency pills and denial to procure safe abortion, the applicant had to carry the pregnancy from a rape encounter despite seeking legal redress.[304] This research uses the provisions in the case as a baseline for emphasising the state's responsibility towards enhancing access to emergency contraceptives for all women, including refugees.

In addition, ACHPR developed guidelines on combating sexual violence and its consequences and emphasised the need for states to ensure the accessibility of emergency contraceptives to all women and girls.[305] This affirms that advancing the rights to emergency contraceptives is a human rights issue. Noteworthy, the rights upheld through ensuring access to emergency contraceptives for all women, including refugees, are the right to life, non-discrimination, privacy, dignity, health care, and spacing of the children.[306] Therefore, this thesis argues that this provision supports the assertion of state responsibility to realise these rights as access to emergency contraceptives is a human rights issue.

3.3.5 Right to privacy

Article 31(c) of the Constitution of Kenya[307] stipulates that all persons have a right to protect private information on their families or private affairs. In addition, article 17 of ICCPR[308] mirrors the provisions on the right to privacy as entrenched in the Kenyan Constitution. In the context of access to emergency contraceptives for refugee women, consulting male partners or allowing religious and cultural barriers[309] impedes access and fails to protect the internal spectrum of an individual, which is the essence of actualising the right to privacy. Cook[310] advocates for the abolition of spousal authorisation practices when offering health care services

[303] (2014), SC 22/14.
[304] (n 303).
[305] ACHPR *Guidelines on combating sexual violence and its consequences in Africa* (2017)26.
[306] Centre for Reproductive Rights (n 247) 6.
[307] Constitution of Kenya 2010, article 31(c).
[308] ICCPR (n 241) article 17.
[309] Metusela (n 145).
[310] RJ Cook 'International human rights to improve women's health' in World Health Organisation (eds) *Women's health and human rights: The protection of women's health through international human rights law* (1994) 23.

to women, as they violate the right to privacy. Further, healthcare providers ought to enhance patient confidentiality when offering services per the Hippocratic oath.[311]

General comment 2 on article 14 Maputo Protocol[312] affirms the state's obligation to uphold the right to privacy by stipulating that

> The obligation to protect requires state parties to take necessary measures to prevent third parties from interfering with the enjoyment of women's sexual and reproductive rights. The provision indicates that particular attention must be given to prevention as regards the interference of third parties concerning the rights of vulnerable groups, such as women, in situations of conflict, including refugees.

The actualisation of the right to privacy depends on access to contraceptives and the opportunity to choose the most effective contraceptive per their preference.[313] Noteworthy, access to emergency contraceptives remains crucial within the refugee context to not only enhance autonomy over their reproductive health but also assist in mitigating the adverse effects likely to arise from sexual violence.[314] This asserts the importance of privacy and confidentiality while seeking services because of the existing cultural and religious barriers. The Maputo Protocol under article 17[315] avers that states are responsible for ensuring that women live in a positive cultural context, which entails formulating cultural policies. Thus, this paper argues that invoking the right of privacy to access emergency contraceptives protects women from harmful practices stipulated under article 5 of the Maputo Protocol.[316]

3.4 The minimum initial service package in humanitarian set-ups in Kenya

The refugee women's exposure to sexual violence in the post-conflict society led to the introduction of the minimum initial service package (MISP).[317] The responsibility for implementing the MISP fell on the critical humanitarian staff and the existing government structures.[318] According to the inter-agency field manual on reproductive health that UNFPA developed, the key objectives of MISP included preventing and responding to sexual violence and preventing unplanned pregnancies by ensuring the availability of contraceptive methods, including emergency contraceptives.[319]

---

311 R Hajar 'The physician's oath: Historical perspective' (2017)18 *Heart views* 154-159.
312 General comment 2 on article 14 (n 257), para 43.
313 Centre for Reproductive Rights (n 247) 13.
314 Centre for Reproductive Rights (n 247) 11.
315 Maputo Protocol (n 45) article 17.
316 Maputo Protocol (n 45) article 5.
317 A Nabulsi and others 'Minimum initial service package for sexual reproductive health for women in displaced settings: A narrative review of the Syrian refugee crisis in Lebanon' (2021) 18 *Reproductive health* 1.
318 Onyango (n 53) 4.
319 UNFPA 'Inter-agency field manual on reproductive health in humanitarian settings: Minimum initial service package for sexual and reproductive health' https://www.unfpa.org/sites/default/files/resource-pdf/MISP-Reference-English.pdf (accessed 7 July 2024).

In addition, the manual equally provided a comprehensive package on protecting women from STIs, including HIV/AIDs and advocating for the reduction of maternal mortality and morbidity.[320] Hence, this affirms the importance of ensuring the accessibility of emergency contraceptives. In retrospect, Onyango[321] explains that despite the existence of MISP, its implementation in Kenya remains a challenge because of a lack of qualified staff, limited knowledge of MISP, and poor coordination and logistics. As a mitigation, the implementation plan entails urging states to incorporate MISP in their strategies.[322]

Further, MISP stipulates that the guiding principles include non-discrimination, confidentiality, respect, and safety.[323] Further, section 6 of the health act[324] stipulates that all persons have a right to access effective and affordable family planning services, which includes emergency contraceptives. These are similar to the rights highlighted in this chapter, thus affirming Kenya's responsibility towards fully implementing MISP to enhance the actualisation of rights.

3.5 Conclusion

The legal framework on access to emergency contraceptives for refugee women in Kenya exists to hold Kenya accountable for actualising its mandate. Based on the above discussion, the 1994 ICPD included the reproductive rights targeting refugee women and milestones achieved. With Kenya having ratified laws at the regional and global levels, this illustrates the conducive environment for Kenya to advance access to emergency contraceptives for refugee women. Despite Kenya's existing legal frameworks and initiatives, implementing laws still needs improvement. To ensure the reflection of the vulnerability of refugee women in the legal and statutory frameworks, this paper proposes the incorporation of an intersectionality mindset.

However, although Kenya has yet to fully implement its mandate in realising these obligations, the efforts to improve the reproductive rights of refugees focused on enhancing access to emergency contraceptives is noticeable. Arguably, one notable achievement has been incorporating contraceptives in the minimum initial service package. In conclusion, the general gap identified in Kenya's legal framework is that it fails to focus on refugee women exclusively. The impact is that it leads to the inferring that most legal and statutory provisions

[320] UNFPA (n 318).
[321] Onyango (n 53) 7.
[322] Onyango (n 53) 9.
[323] Interagency agency working group *Interagency field manual on reproductive health in humanitarian settings* (2010)22.
[324] Health Act (n 235) section 6.

which are subject to different interpretations, which delimits the process of advancing the rights of refugee women in accessing emergency contraceptives.

Chapter 4: Mechanisms to ensure refugee women have access to and use emergency contraceptives in Kenya

4.1 Introduction

This chapter focuses on answering the third research through analysing the mechanisms that Kenya can use to enhance refugee women's access to and use of emergency contraceptives. Although Kenya has adopted legal and policy frameworks to advance reproductive rights, it is equally important to evaluate mechanisms to put in place to actualise its mandate. The general comment 2 of the Maputo Protocol[325] explains the state mandate to respect, promote and fulfil reproductive rights. The rights advanced in enhancing access to emergency contraceptives fall under the threshold of progressive realisation. This means that countries have the responsibility of incorporating mechanisms to realise these rights regardless of existing resources.[326]

The chapter is divided into two sections the first part focuses on advocacy as a mechanism to ensure that Kenya is held accountable for realising the reproductive rights of refugee women to access emergency contraceptives. The section considers advocacy at different levels, discussing policy and budget advocacy, community advocacy, legal advocacy through strategic litigation, and media advocacy to bring light to the issue. The second part explains the professional mandates incorporated to strengthen health systems as a mechanism to increase access to emergency contraceptives among refugee women.

4.2 Advocacy engagements

This thesis explains different advocacy strategies for attaining the state's mandate of increasing access to and usage of emergency contraceptives for refugee women. These include budget advocacy and policy engagements at the national level, implementation of legal strategies, and raising awareness among key stakeholders, including the refugee population.[327] In addition to the mechanisms highlighted, this research also examines the incorporation of strategic litigation, professional accountability and strengthened health systems to advance access.

[325] General comment 2 on article 14 (n 257), para 41.
[326] ESCR Committee 'Progressive realisation and non-regression' https://www.escr-net.org/resources/progressive-realisation-and-non-regression (accessed 9 June 2024).
[327] A Fernandez-Cerdeno and others 'Introduction and scaling up of emergency contraceptives: Lessons learned from three regions' (2009)48 *Population review Publications* 119.

4.2.1 Policy and budget advocacy for increased access

The exposure to sexual violence and the reduction of reproductive health services during a humanitarian crisis prompts the need for a policy and budget advocacy strategy. As reiterated throughout this research, access to contraceptives, including emergency contraceptives, is a human rights issue.[328] In light of this, advocacy remains a significant tool in advancing the rights of vulnerable persons, including refugee women and holding the state accountable. The actualisation of advocacy occurs at the grassroots level through community engagements and at the national level through policy engagements.[329] For instance, the incorporation of the minimum initial service package occurred as a result of advocacy and policy engagement on the access to reproductive rights.[330]

Dellmuth and Bloodgood[331] indicate that evaluating the opportunity structure impacts the set advocacy mechanisms. Essentially, opportunity structures refer to institutional arrangements, resource alignment, and policy environments that impact the realisation of the advocacy plans.[332] Gloppen[333] proceeds to highlight that the political opportunity structures in the country plays a significant role in influencing the policy framework which impacts social changes. Further, Jjuuko[334] equally echoes the importance of the political opportunity structure to drive policy changes in a country through advocacy initiatives. Therefore, the literature above explains the role of legislation and policies in advancing human rights through advocacy.

Chapter 3 discusses the legal obligation of Kenya to advance the rights of refugee women to access emergency contraceptives. Notably, advocacy played a crucial role in Kenya's being bound by these obligations. For instance, advocacy brought to the limelight the reproductive rights of vulnerable women, including refugees, during the ICPD conference[335] that led to the enactment of the Cairo[336] and Beijing declarations.[337] Through advocacy, key stakeholders engage in budget advocacy to ensure governments invest in contraceptive commodities, including emergency contraceptives. This is crucial as it leads to sustainability

[328] World Health Organisation (n 92) 4.
[329] Action against Canada for Sexual Health Rights 'The importance of SRHR advocacy: Action Canada in conversation with Claire Dion Fletcher and Martha Paynter' https://www.actioncanadashr.org/news/2022-02-17-importance-srhr-advocacy-action-canada-conversation-claire-dion-fletcher-and-martha-paynter (accessed 5 June 2024).
[330] Onyango (n 53) 4.
[331] LM Dellmuth & EA Bloodgood 'Advocacy group effects in global governance: population, strategies and political opportunity structures' (2019)8 *Interest groups & advocacy* 257.
[332] Dellmuth (n 331) 260.
[333] S Gloppen *Conceptualizing lawfare: A typology and theoretical framework* (2018)24.
[334] A Jjuuko 'Making LGB strategic litigation more effective in stimulating social change' in Daraja Press (eds) *Strategic litigation and the struggle for Lesbian Gay and Bisexual equality in Africa* (2020) 224.
[335] ICPD (n 13).
[336] UNFPA Programme of Action (n 280).
[337] Beijing Declaration and Platform for Action (n 279).

with the shifting donor priorities.[338] General comment 2 of the Maputo Protocol,[339] paragraph 7 of the Maputo plan of action,[340] and paragraph 26 of the Abuja declaration[341] restates the state's responsibility to allocate financial resources for advancing health care, including reproductive. At the national level, the national reproductive health policy[342] stipulates that access to contraceptives is a security issue and proposes that

> The state ensures appropriate costing and ring-fencing of allocated funds for reproductive health programmes in the national and county budgets, including funding for family planning commodities that could include emergency contraceptives.

Schaaf and others[343] introduce the concept of social accountability as a baseline for advancing advocacy initiatives for women's reproductive rights to hold the governments accountable. To attain this, the excluded group, which may include refugees, should have comprehensive information and services[344] on emergency contraceptives. While advocacy has led to positive results in enhancing access to emergency contraceptives, it has equally influenced the key decision-makers at the national level. Further, by influencing the key decision-makers, advocacy allows for the incorporation of mechanisms to exert pressure on the government to maximise positive results.[345]

Therefore, this paper concludes that policy and budget advocacy remain efficient tools to hold countries accountable. The justification for this assertion is the vulnerability of refugee women while accessing emergency contraceptives. Thus, Kenya should equally develop and implement policies at the national level to reflect the country's situation.

4.2.2 Community advocacy initiatives to increase usage.

Loder[346] explains that patients from marginalised communities, such as refugees, often face inequalities in accessing contraceptives. The author proceeds to clarify the different factors impacting contraceptive usage, including structural factors, health system factors, and patient's

[338] J Gribble 'Financing contraceptives: A new funding environment' 2010 https://www.prb.org/wp-content/uploads/2021/01/05272010-toolkit-financing.pdf (accessed 6 June 2024).
[339] General comment 2 on article 14 (n 257), para 62.
[340] Maputo plan of action 2016 – 2030, para 7.
[341] Abuja declaration on HIV/AIDs, tuberculosis, and other related infectious diseases, ACHPR committee (24-27 April 2001) OAU/SPS/ABUJA/3, para 26.
[342] The National Reproductive Health Policy (n 36 above).
[343] M Schaaf and others 'Social accountability as a strategy to promote sexual and reproductive health entitlements for stigmatised issues and population' (2022)21 *International Journal for equality in health* 2.
[344] Schaaf (n 343) 9.
[345] E McGinn & A Lipsky 'Social accountability: A primer for civil societies organisations working in family and reproductive health' (2015) *Social accountability for FP/RH* 21.
[346] C Loder 'Improving contraceptive care for marginalised population (2022) 67 *Contemporary OB/GYN Journal.*

knowledge and information on contraceptive usage.[347] This paper restates the barriers that refugee women have while seeking access to emergency contraceptives. Hence, intersectionality and reproductive justice theories remain effective in understanding how inequality affects the health outcomes of these women.

This study proposes incorporating a community advocacy initiative to address the barriers and inequalities of the refugee women highlighted above. A community advocacy initiative focuses on influencing the outcomes and driving changes on behalf of the community while centering the specific group in its strategic plans.[348] Gloppen[349] introduces the concept of normative opportunity structure, which posits that the social, religious, and traditional norms affect the outcome of an advocacy strategy.

As highlighted above, cultural and religious barriers affect the usage of emergency contraceptives among refugee women.[350] Therefore, this thesis stipulates that the importance of community advocacy is to ensure that the affected population have conclusive information on emergency contraceptive usage. Frost and Dodoo[351] indicate one important strategy is to engage men in the conversations focusing on African family planning. Although this research paper concentrates primarily on access to emergency contraceptives in the instance of sexual violence, it is worth noting that the overall acceptance, even in family contexts, impacts access for all women. For example, in the case of Rohingya refugee women, contraceptive usage remains limited as it is linked to the husband's approval.[352] Most refugees residing in Kenya equally experience this, especially with the patriarchal nature of the community. Hence, this affirms the need to engage both men and women in these discussions. [353]

Essentially, advocacy is the most effective strategy for ensuring that the community, especially men and religious leaders, have accurate information and increases acceptance.[354] However, given that refugee women have lived experience, they should be centred in the advocacy plans. Achola[355] explains that illiteracy, poverty and language barriers impede access

[347] Loder (n 346).
[348] P Weston 'Mobilising community through advocacy' https://granicus.com/blog/mobilising-community-through-advocacy/ (accessed 9 June 2024).
[349] Gloppen (n 333) 18.
[350] UNHCR (n 146) 5.
[351] Frost (n 125) 45.
[352] M Islam & SE Habib 'I do not want my marriage to end: A qualitative investigation of the social cultural factors influencing contraceptive use among married Rohingya women residing in refugee camps in Bangladesh' (2024)21 *Islam and Habib reproduction health* 2.
[353] N Howard and others 'Reproductive health services for refugees by refugees in Guinea 1: Family planning' (2008) 2 *Conflict and health* 1.
[354] Islam (n 352) 8.
[355] Achola (n 46) 1.

and usage of contraceptives, including emergency contraceptives, among refugee women. However, Gure and others[356] point out that although migrant women including refugees may have limited knowledge of emergency contraceptives, upon understanding the importance of emergency contraceptives, they are more receptive to its usage. Potts and others[357] acknowledge the importance of ensuring that refugee women are centred on crucial advocacy initiatives by enhancing creative participatory practices.

Centering refugee women enhances women-led advocacy and improves autonomy, allowing them to control their reproductive rights.[358] The Médecins sans Frontiers (MSF) sex workers project in Malawi illustrates a notable example of a successful community-led initiative. In this initiative, MSF, in collaboration with the Ministry of Health (MOH), centred the sex workers in the advocacy initiative to increase access to HIV/AIDS treatment to assist in bridging the barriers to accessing health care.[359]

Due to the adverse discrimination and stigma, it leads to the denial of healthcare services. Generally, this assertion allows for an in-depth understanding of access to healthcare, and the impact of this initiative is that it has improved the perception that people have towards sex workers to ensure the upholding of access to healthcare.[360] In light of this example, this study hypothesises that a community-led initiative that centres the refugee women on the lived experience is likely to lead to positive outcomes, and a change of perception is expected to increase usage of emergency contraceptives in the instance of both consented and non-consented sexual encounters. The importance of information in advancing autonomy is restated in the Maputo protocol.[361]

4.2.3 Legal advocacy through strategic litigation

Roa and Klugman[362] highlight four conditions for advancing advocacy through strategic litigation: an existing network to advance the advocacy initiative, civil society working on the thematic area, the rights framework, and an independent judiciary.[363] Ideally, strategic

[356] Gure (n 57) 11.
[357] A Potts and others 'Engaging refugee women as experts: co-creating evidence on sexual exploitation and abuse in humanitarian crisis using creative and participatory methods' (2022)18 *Journal of research, debate and practice* 311-335.
[358] PB Guerin and others 'Advocacy as a means to an end: assisting refugee women to take control of their reproductive health needs' (2006)43 *Journal on women Health* 7 - 25.
[359] Médecins sans Frontiers 'Malawi: The sex workers helping others fight HIV/AIDs' 2 May 2019 https://msf.org.uk/article/malawi-sex-workers-helping-others-fight-hiv (accessed 9 June 2024).
[360] Médecins sans Frontiers (n 359).
[361] Maputo Protocol (n 45) article 14.
[362] M Roa & B Klugman 'Considering strategic litigation as an advocacy tool: A case study of the defence of reproductive rights in Colombia' (2014)22 *Reproductive health matters* 31-41.
[363] Roa (n 362).

litigation with legislative success and success in both the social and material sense leads to a positive outlook.[364] Additionally, strategic litigation enhances the principle of progressive realisation by holding states accountable for actualising human rights.[365] In this case, the focus of strategic litigation would not only bring to light the rights of refugee women in accessing emergency contraceptives but also hold the government accountable for the actualisation of these rights.[366]

Ezer and Patel[367] stipulate that the success of the HIV/AIDS movement in advancing legal and health protection relied on strategic litigation. For instance, this paper highlights that strategic litigation led to the advancements of HIV/AIDs women to access reproductive health and equally protected them from harmful practices such as forced sterilisation. *LM and others v the government of the Republic of Namibia*[368] highlighted the how stakeholders including civil societies, used strategic litigation to advance the advocacy to uphold the rights and dignity of women living with HIV/AIDs.[369]

With the success of strategic litigation in advancing the rights of persons living with HIV/AIDs and other reproductive health rights, this study equally highlights and affirms the importance of strategic litigation to advance the rights of refugee women to access emergency contraceptives. Studies conducted by the Open Society Foundation[370] indicate that strategic litigation strengthens grassroots movements, raises public awareness, positively impacts the law and health care, motivates the government to act, and empowers marginalised communities.[371] *Mapingure v Ministry of Home Affairs*[372] is a notable example of the incorporation of a human rights angle of access to emergency contraceptives.

---

[364] S Gloppen 'Litigation as a strategy to hold government accountable for implementing the right to health' (2008) 10 *Health and Human Rights* 22.
[365] ESCR Committee (n 326).
[366] Gloppen (n 364) 22.
[367] T Ezar & P Patel 'Strategic litigation to advance public health (2018) *Health and human rights journal*.
[368] (2012) NAHC 211, Southern Africa legal information institute.
[369] UNAIDS 'Namibia's supreme court upholds dignity of women living with HIV/AIDS' 6 November 2014 https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/november/20141106_PS_Namibia#:~:text=decision%20to%20upho-,GENEVA%2C%206%20November%202014%E2%80%94UNAIDS%20welcomes%20Namibia's%20Supreme%20Court%20decision,in%20Namibia%20and%20the%20world. (accessed 11 June 2024).
[370] Open Society Foundation *Advancing public health through strategic litigation* 2013 15
[371] Open Society Foundation (n 370) 16-17.
[372] (2014) SC 22/14.

4.2.4 Media advocacy

Choge and others[373] affirm that media plays an important role in educating the public on health issues and is equally an efficient tool in advocating for public health strategies. The authors highlight a successful media advocacy strategy that the Advance Family Planning (AFP) initiated.[374] Through media advocacy, the AFP reached the leaders, highlighted the bureaucratic practices that impede access to family planning, and equally fast-tracked the actions of the key decision-makers. This led to strengthening the healthcare system and, as a result, increased accessibility.[375]

In equal measure, Kafu and others[376] affirm the importance of media advocacy but emphasise structuring of the advocacy message. Further, media advocacy allows for the depiction of intersectionality theory.[377] For instance, highlighting refugee women's challenges in comparison to Kenyan women would ultimately compel the government to act. Lastly, an effective advocacy message centres on the key stakeholders. Therefore, this thesis recommends the media as an effective advocacy tool for access to emergency contraceptives for refugee women. Since they are marginalised, efforts should be made to bring the issues to the limelight.

4.3 Professional accountability and strengthening health systems.

Gele[378] highlights that the healthcare providers in the humanitarian setups intensify the barriers to contraceptive access. This occurs in the instance where the health care providers expect the husband's approval before offering contraceptive access to the woman. Additionally, in certain instances, the health practitioners cause misinformation and disinformation to the patients. For instance, indicating that contraceptives lead to permanent infertility.[379]

Jemutai[380] highlights that most refugee women have limited information on contraceptives. This prompts the reliance on the health care practitioners to uphold their duty of care. The courts in *R v Bateman*[381] set a precedent and held that 'If a person holds himself

[373] I Choge and others 'Media advocacy in catalysing actions by decision-makers: Case study of advanced family planning initiatives in Kenya' (2023)4 *Global women's health* 1-5.
[374] Choge (n 373)1.
[375] Choge (n 373) 2.
[376] C Kafu and others 'Exploring media framing of abortion content on Kenyan television: A qualitative study protocol' (2021) 18 *Reproductive health* 1.
[377] Crenshaw (n 79) 139.
[378] Gele (n 68) 3.
[379] n 379, 5.
[380] Jemutai (n 54) 9.
[381] 1925 94 L.J.K.B 791.

out as possessing special skill and knowledge and he is consulted, he owes a duty of care to the patient to use due caution while undertaking treatment'.

The health act under section 11[382] acknowledges the patient's right to confidentiality. Further, the act creates a regulatory body under section 45[383] referred to as the Kenya Health Professional Oversight Authority. In essence, ensuring that the healthcare professions uphold their duty of care strengthens the health system and ultimately increases access to emergency contraceptives for refugee women.

4.4 Conclusion

This chapter effectively proposes mechanisms to uphold the refugee women's right to reproductive access to emergency contraceptives. The mechanisms consider the roles of advocacy at different levels in realising the reproductive rights of refugees. At the national level, it considers policy and budget advocacy, legal advocacy through strategic litigation, and media advocacy. However, this chapter echoes the sentiments highlighted in the different chapters where the policies are initiated; however, implementation is limited. As mitigation, this chapter proposed the incorporation of community advocacy initiatives as it centres on refugee women with lived experience. It equally, recommends the inclusion of men in the conversation given the patriarchal nature of the society. These mechanisms are important because they hold the state and other key stakeholders, such as service providers, accountable for actualising the legal frameworks. In conclusion, the mechanisms proposed are advocacy and enhancing professional accountability.

[382] Health Act (n 235) section 11.
[383] Health Act (n 235) section 45.

Chapter 5: Conclusion and Recommendations

5.1 Brief summary

This research focused on responding to three questions. First, to what extent do refugee women in Kenya have access to and use emergency contraceptives, and what barriers impede access? Second, what are Kenya's national, regional, and global obligations to ensure refugee women have access to and use contraceptives? Lastly, what mechanisms can ensure refugee women have access to emergency contraceptives in Kenya?

The study takes a human rights angle to justify the argument for ensuring that refugee women residing in Kenya have access to emergency contraceptives. It incorporates both the intersectionality and reproductive justice theory to effectively explain the barriers to access, thus affirming the importance of extra mechanisms Kenya should incorporate to advance these rights.

5.2 Conclusion

This study has focused on a human rights approach to analyse access and usage of emergency contraceptives among refugee women as a reproductive right. Kenya hosts several refugees in both the camp-based and urban-based setups. However, the barriers to access and usage of emergency contraceptives cut across. For instance, in answering the first research question, the study highlights the cultural, religious, economic, and informational barriers that impede access. Noteworthy, Munyaneza and others[384] highlight that most refugee women are prone to health challenges, especially reproductive health, upon arrival in the host country. Therefore, chapter two provides a chronology of the assessment of sexual violence as a justification for enhancing access to emergency contraceptives.

In equal measure, the studies International Rescue Committee conducted explain the vulnerability of these women. Therefore, refugee women are less likely to choose pregnancy during flight and upon settlement in the camp, regardless of whether the sexual encounter was consensual or non-consensual.[385] However, it is argued that in the instance that refugee women have conclusive information on emergency contraceptive usage, they are prone to not only having a positive perception but also increasing usage and access.[386]

[384] Y Munyaneza & EM Mhlongo 'Challenges of women refugees in utilising reproductive health services in public health institutions in Durban, Kwazulu natal, South Africa' (2019) 24 *Health SA Gesondheid 2.*
[385] International Rescue Committee (n 93).
[386] Gele (n 68) 3.

In answering the second research question, the study examined the incorporation of legal frameworks to hold Kenya accountable. Invoking the provision under article 2(6) of the Constitution of Kenya,[387] Kenya has ratified regional and global laws or is a signatory to form part of her laws. Chapter 3 highlighted the rights explicitly relating to the access of emergency contraceptives. However, the central gap in the legal frameworks and case laws is that they fail to address emergency contraceptive access and usage for refugee women directly; instead, inferring the findings. This is a delimitation to actualising the rights as the provision is subject to numerous interpretations. Therefore, this study concludes that the realisation remains limited despite the existing legal frameworks to advance this reproductive right and hold Kenya accountable. It is evident that refugee women in Kenya still face challenges accessing and using emergency contraceptives despite this reproductive right being acknowledged during the ICPD conference in 1994.[388]

Lastly, in answering the third research question, the research discussed the different mechanisms available to ensure that key stakeholders, including the decision-makers and service providers, protect these rights. The paper highlighted advocacy and professional accountability as the key strategies that led to strengthening the health systems. Advocacy is an essential mechanism as it amplifies the community's voice at the grassroots level while bringing their plights to the national dialogue. In Chapter 4, the different advocacy engagements discussed were policy advocacy, community advocacy, legal advocacy through strategic litigation and media advocacy.

Notably, although all these advocacy mechanisms have yielded positive results, the policy and community advocacy have had the most impact as it resulted in enactment of the refugee's reproductive rights. In retrospect, the legal advocacy through strategic litigation remains fundamental in advocating and advancing the reproductive rights of women for instance, women living with HIV/AIDs. However, with regards to strategic litigation in advancing reproductive rights for refugee women, it remains a loophole as most cases are not on refugee women but instead on women generally.

Although the right can be inferred from the case laws, incorporating intersectionality illustrates that lumping all women in one category fails to acknowledge the existing barriers. Lastly, this study broadens the understanding of professional accountability regarding

[387] Constitution of Kenya 2010, article 2(6).
[388] ICPD (n 13).

advancing the rights of refugee women in accessing emergency contraceptives through upholding confidentiality while ensuring that refugee women have access to quality information. In future, studies should focus on evaluating access to key reproductive health rights for refugees from an intersectionality and reproductive justice theory lens. This would employ specifically focusing on refugees and Kenya's implementation of the minimum initial service package.

5.3 Recommendation

- For Kenya to advance the reproductive rights to accessing emergency contraceptives among refugee women, it should incorporate an intersectionality approach. This approach would allow the government to view the refugees as vulnerable groups needing extra protection. Equally, laws relating specifically to the reproductive rights of refugees should be entrenched rather than inferring.
- Engaging both refugee women and men in the conversation of access and usage of emergency contraceptives among the population because of the cultural, religious, economic, and informational barriers. Engaging allows for centering the reproductive justice theory and demystifying the ideology of choice regarding access. Thus, this engagement broadens the scope of understanding and increases access and usage through changing perceptions and demystifying the myths.
- This research also recommends the initiation of more strategic litigation initiatives specifically to compel the government to acknowledge the reproductive rights of refugee women to advance access to emergency contraceptives.
- Kenya should incorporate emergency contraceptives in the humanitarian set-up through implementation of the minimum standard care package to ensure that refugee women have increased access to reproductive services.

Word count: 19826

Bibliography

Book

Gloppen, S *Conceptualizing lawfare: A typology and theoretical framework* (Center of Law and Transformation 2018).

Chapter in books

Adetokunbo, J 'Article 17: Right to a positive cultural context' in Rudman, A; Musembi, CM & Makunya, TM (eds)*The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (Pretoria University Law Press 2023).

Bond, J 'Foundation of intersectionality theory' (eds) *Global intersectionality & contemporary human rights* (Oxford University Press 2017).

Cook, RJ 'International human rights to improve women's health' (eds) *Women's health and human rights: The protection of women's health through international human rights law* (World Health Organisation 1994).

Friedman, AR 'Refugee women and mental health' (eds) *Rape and Domestic violence: The experience of refugee women* (The Haworth Press 1992).

Jjuuko, A 'Making LGB strategic litigation more effective in stimulating social change' (eds) *Strategic litigation and the struggle for Lesbian Gay and Bisexual equality in Africa* (Daraja Press 2020).

Khosla, R; Krause, L & Tanabe, M 'Addressing the rights of women in conflict and humanitarian settings' in P. Allotey & D Reidpath (eds) *The Health of Refugees: Public Health Perspectives from crisis to settlement* (Oxford University Press 2019).

Ngwena, C & Cook, RJ 'Rights concerning health' in D Brand & C Heyns (eds) *Socio-economic rights in South Africa* (Pretoria University Law Press 2005).

Makunya, TM & Abelungu, JM 'Article 11: Protection of women in armed conflict' in Rudman, A; Musembi, CM & Makunya, TM (eds)*The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (Pretoria University Law Press 2023).

Shizha, E & Makwarimba, E 'Introduction to transnationalism, intersectionality and migration ecological trajectories' (eds) *Immigrant lives intersectionality, transnationality, and global perspective* (Oxford University Press 2023).

Journal articles

Achola, R; Atuyambe, L; Nabiwemba, E; Nyashanu, M & Orach, CG 'Barriers to contraceptives use in humanitarian settings: Experience of South Sudanese Refugees living in Adjumani district, Uganda; an exploratory qualitative study' (2024) *PLoS One* 1-19.

Ackerson, K & Zielinski, R 'Factors influencing use of family planning in women living in crisis affected areas of sub-Saharan Africa: A review of the literature' (2017)54 *Midwifery* 35-60.

Aptekman, M; Rashid, M; Wright, V & Dunn, S 'Unmet contraceptive needs among refugees: Crossroad clinic experience' (2014)60 Research *Award for Family Medicine Resident* 613-619.

Aubone, A. & Hernandez, J 'Assessing refugee camp characteristics and the occurrence of sexual violence: A preliminary analysis of Dadaab complex' (2013)32 *Refugee Survey Quarterly* 22.

Austin, J; Guy, S; Lee-Jones, L; McGinn T & Schlecht, J 'Reproductive health: A right for refugees and internally displaced persons' (2008)16 *Reproductive health matters* 10-21.

Beswick, S 'If you leave your country, you have no life! Rape, suicide, and violence: The voice of Ethiopian, Somali, and Sudanese Female refugees in Kenya refugee camps' (2001)8 *Northeast African Studies* 69.

Casey, SE 'Evaluations of reproductive health programs in humanitarian settings: A systemic review' (2015)9 *Conflict and Health* 1.

Chiweshe, M; Mavuso, J & Macleod, C 'Reproductive justice in context: South African and Zimbabwean women's narrative of abortion decisions' (2017) 27 *Feminism & Psychology*.

Choge, I; Mwalimu, R; Mulyanga, S; Njiiri, S; Kwachi, B & Ontiri, S 'Media advocacy in catalysing actions by decision-makers: case study of advanced family planning initiatives in Kenya' (2023)4 *Global women's health* 1-5.

Cook, RJ & Fathalla, MF 'Advancing reproductive rights beyond Cairo and Beijing' (1996)22 *Advancing reproductive rights.*

Coumans, JVF & Wark, S 'A scoping review on the barriers to and facilitators of health services utilisation related to refugee settlement in regional or rural area of the host country' (2024)24 BMC *Public Health* 199.

Crenshaw, K 'Demarginalising the intersection of race and sex: A black feminist critique of Antidiscrimination doctrine feminist theory, and anti-racist politics' (1989) *The University of Chicago legal forum* 139.

Croxatto, HB & Fernadez, SD 'Emergency contraceptives as a human rights issue' (2006)20 *Best Practice resolution on clinic obstetric gynaecology.*

Davidson, N; Hammarberg, K; Romero, L & Fisher, J 'Access to preventive sexual and reproductive health care for women from refugee-like background: A systemic review' (2022)22 *BMC Public Health* 3.

Davis, K 'Intersectionality as Buzzword: A sociology of science perspective on what makes feminist theory successful' (2008) *Feminist theory* 68.

Dellmuth, LM & Bloodgood, EA 'Advocacy group effects in global governance: population, strategies and political opportunity structures' (2019)8 *Interest groups & advocacy* 257.

Ezar, T & Patel, P 'Strategic litigation to advance public health (2018) *Health and Human Rights Journal*.

Fernandez-Cerdeno, A; Vernon, R; Hossain, S; Keesbury, J & Khan, ME 'Introduction and scaling up of emergency contraceptives: Lessons learned from three regions' (2009)48 *Population review Publications* 119.

Frost, AE & Dodoo, FN 'Men are missing from family planning' (2009)8 *America Sociology Association* 46.

Gee, S; Vargas, J & Foster, AM 'The more children you have, the more praise you get from the community: Exploring the role of socio-cultural context and perceptions of care on maternal and newborn health among Somali refugees in Somali supported camps in Kenya' (2019)13 *Journal on conflict and health* 1-10.

Gele, A; Shrestha, M & Qureshi, SA 'Pregnant and powerless: Exploring barriers to contraception among women in Mogadishu, Somalia' (2022)9 *Health Services and Research and Managerial Epidemiology* at 5.

Gitonga, E and Gage, A 'Modern contraceptive prevalence and its predictors among non-refugees and refugee Somali women in Nairobi city: A comparative view' (2024)5 *Frontiers in Global Women's Health 2.*

Girard, F & Waldman, W 'Ensuring the reproductive rights of refugees and internally displaced persons: Legal and Policy issue' (2000)26 *International Family Planning Perspective* 167.

Gloppen, S 'Litigation as a strategy to hold government accountable for implementing the right to health' (2008) 10 *Health and Human Rights* 22.

Granzow, K 'De-constructing choice: The social imperative and women's use of birth control pill' (2007)9 *Journal on culture, health, and sexuality* 43.

Goodyear, L & Mcginn, T 'Emergency contraception among refugees and the displaced' (1998)53 *Journal of American Medical Women's Association* 266.

Guerin, PB; Allotey, P; Elmi, FH & Baho, S 'Advocacy as a means to an end: assisting refugee women to take control of their reproductive health needs' (2006)43 *Journal on Women Health* 7-25.

Gure, F; Dahir MK; Yusuf, M & Foster, AM 'Emergency contraceptives in post-conflict Somalia: Assessing awareness and perceptions of need' (2015) *The Lancet Global Health* 11.

Hajar, R 'The physician's oath: Historical perspective' (2017)18 *Heart views* 154-159.

Harris, C and Symth, I 'The reproductive health of refugees lessons beyond ICPD' (2001)9 *Journal on Gender and Development* 10.

Hendriks, A 'The right to health: Promotion and protection of women's right to sexual and reproductive health under international law: The economic covenant and women's covenant' (1995)44 *American University Law Review* 1125.

Howard, N; Kollie, S; Souare, Y; Roenne, AV; Blankhart, D; Newey, C; Chen, MI & Borchert, M 'Reproductive health services for refugees by refugees in Guinea 1: Family planning' (2008) 2 *Conflict and health* 1-10.

Islam, M & Habib, SE 'I do not want my marriage to end: A qualitative investigation of the social cultural factors influencing contraceptive use among married Rohingya women residing in refugee camps in Bangladesh' (2024)21 *Islam and Habib reproduction health* 2.

Jelagat, MS 'Factors affecting utilisation of family planning among refugees at Ifo camp Dadaab in Kenya' (2018)3 *International Journal of Academic Research and Development* 87.

Jemutai, J; Muraya, K; CheChi, P & Mulupi, S 'A situation analysis of access to refugee health services in Kenya: Gaps and recommendations a literature review' (2021) *University of York Research 9.*

Jewkes, R & Morrell, R 'Sexuality and limits of agency among South African teenage women: Theorising femininities and their connection to HIV practices' (2012)74 *Social science in medicine* 1729.

Kafu, C; Ligaga, D & Wachira, J 'Exploring media framing of abortion content on Kenyan television: A qualitative study protocol' (2021) 18 *Reproductive health* 1-15.

Khosla, R & Blanchet, K 'Improving family planning service delivery in humanitarian crises' (2017) *Family Planning Evidence Briefs* 1.

Kwame, KA; Bain, LE; Manu, E & Tarkang, EE 'Use and awareness of emergency contraceptives among women of reproductive age in Sub-Sahara Africa: A scoping review' (2022)7 *Contraception and reproductive medicine* 2.

Loder, C 'Improving contraceptive care for marginalised population (2022) 67 *Contemporary OB/GYN Journal.*

Maina, NK; Gitome, J; Bagelman, J; Mainah, M; Kituku, JM; Mwoma, T & Ndegwa, P 'Family planning as a determining factor in preference to traditional birth attendants among Somali Community in Dadaab Refugee Camp' (2021)6 *European Journal of Humanities and Social Sciences* 4.

Maheshwari, S 'Reproductive autonomy in India' (2017)11 *NALSAR Student Law Review* 31.

McGinn, E & Lipsky, A 'Social accountability: A primer for civil societies organisations working in family and reproductive health' (2015) *Social accountability for FP/RH* 21.

Metusela, C; Ussher, J; Perz, J; Hawkey, A; Morrow, M; Narchal, R; Estoesta, J & Monteiro, M 'In my culture, we don't know anything about that: Sexual and reproductive health of migrant and refugee women' (2017)24 *International Journal of Behavioral medicine* at 836-845.

Miller, L 'The irony of refuge: Gender-based violence against female refugees in Africa' (2011) 11 *Human Rights & Human Welfare* 77.

Morison, T 'Reproductive justice: A radical framework for researching sexual and reproductive issues in psychology' (2021) 15 *Social and Personality Psychology Compass* 2.

Muia, EG & Olenja, J 'Enhancing the use of emergency contraceptives in refugee setting: Findings from a baseline survey in Kakuma refugee camp' (2000) *Population council.*

Mulugeta, A 'Agenda: Empowering women for Gender Equity' (2003)55 *Women: The invisible refugees* 73.

Munyaneza, Y & Mhlongo, EM 'Challenges of women refugees in utilising reproductive health services in public health institutions in Durban, Kwazulu natal, South Africa' (2019) 24 *Health SA Gesondheid 2.*

Mwenyango, H 'The place of social work in improving access to health services among refugees: A case study of Nakavile settlement, Uganda' (2022) 65 *International Social Work* 890.

Myers, KR 'Little sisters' sorrow: Conversation about contraceptives and reproductive justice' (2018)24 *William & Mary Journal of race, gender, and social justice* 342.

Nabulsi, A; Saad, MA; Ismail, H; Doumit, MA, Jamil, FE; Kobeissi, L & Fouad, FM 'Minimum initial service package for sexual reproductive health for women in displaced settings: A narrative review of the Syrian refugee crisis in Lebanon' (2021) 18 *Reproductive health* 1.

Nara, R; Banura, A & Foster, AM 'Assessing the availability and accessibility of emergency contraceptive pills in Uganda: A multi-methods study with Congolese refugees' (2020)101 *Contraception* 114.

Odimegwu, CO; Alabi, O; De-wet, N & Akinyemi, JO 'Does female autonomy affect contraceptive use among women in Northern Nigeria?' (2019) 23 *African Journal of Reproductive Health* 94.

Onyango, MA; Hixson, BL & McNally, S 'Minimum initial service package for reproductive health during emergencies: Time for a new paradigm? (2013)8 *Global Public Health* 348.

Opata, GP & Singo, SM 'The economics of displacement: A study of the changing gender roles, relations and its impact on the livelihood and empowerment of women in Kenyan refugee camps' (2004) *Centre for refugee studies* 17.

Pearce, E 'Ask us what we need: Operationalising guidance on disability inclusion in refugee and displaced persons programs' (2015)2 *Disability and global south* 460.

Potts, A; Fattal, L & Kolli, H 'Engaging refugee women as experts: co-creating evidence on sexual exploitation and abuse in humanitarian crisis using creative and participatory methods' (2022)18 *Journal of research, debate and practice* 311-335.

Roa, M & Klugman, B 'Considering strategic litigation as an advocacy tool: A case study of the defence of reproductive rights in Colombia' (2014)22 *Reproductive health matters* 31-41.

Sawadogo, PM; Sia, D; Onadija, Y; Beogo, I; Sangli, G; Sawadogo, N; Gnambani, A; Bassinga, G; Robins, S & Nguemeleu, ET 'Barriers and facilitators of access to sexual and reproductive health services among migrant, internally displaced, asylum seeking and refugee women: A scoping review' (2023) *PLoS One* 2.

Schaaf, M; Arnott, G; Chilufya, KM; Khanna, R; Khanal, RC; Monga, T; Otema, C & Wegs, C 'Social accountability as a strategy to promote sexual and reproductive health entitlements for stigmatised issues and population' (2022)21 *International Journal for equality in health* 2.

Seyife, A 'Utilization of modern contraceptives and predictors among women in Shimelba refugee Camp, Northern Ethiopia' (2019) *PLos One* 1.

Sochacki, K 'CEDAW and treaty compliance: Promoting access to modern contraceptives' (2018)51 *Vanderbilt Journal of Transnational Law* at 664-668.

Tanabe, M; Nagujjah, Y; Rimal, N; Bukania, F & Krause, S 'Intersecting sexual and reproductive health and disability in humanitarian settings: Risks, needs, and capacities of refugees with disabilities in Kenya, Nepal, and Uganda' (2015)33 *Journal on sexuality and disabilities* 411-427.

Tran, NT; Meyers, J; Malilo, B; Chabo, J; Muselemu, JB; Riziki; B; Libonga, P; Shire, A; Hussein, H; Ali, M; Arab, MA; Da'ar, JM; Kahow, MH; Adive, JE; Gebru, B; Monaghan, E; Morris, CN; Gallagher, M; Jouanicot, V; Pougnier, N & Amsalu, R 'Strengthening health systems in humanitarian settings: Multi-stakeholder insight on contraception and post-abortion care programs in the Democratic Republic of Congo and Somalia' (2021) 2 *Frontiers in Global Women's Health.*

Wedekind, L 'Access to family planning in the refugee camp' (2015) *Health and Migration Policy Brief* 1.

World Health Organisation 'Health for all including refugees and migrants time to act now' (2022) *World report on the health of refugees and migrants* 104.

Wulf, D 'Refugee women and reproductive health care: Reassessing priorities' (1994) *Women's Commission for refugee Women and Children* 2.

Yee, LM and Simon, M 'The role of the social network in contraceptive decision-making among young, African American and Latina Women' (2010)47 *Journal on Adolescent Health* 2.

Thesis and dissertation

Abdi, MH 'Assessment of sexual and gender-based violence reporting procedures among refugees in camps in Dadaab, Kenya' Masters thesis, University of Nairobi, 2016.

Ameso, AR 'Male partner contraceptive uptake amongst urban Somali refugees in Nairobi County Kenya' Masters thesis, Kenyatta University, 2019, 3.

Deyo, NS 'Cultural traditions and the reproductive of Somali refugees and immigrants' Masters thesis, University of San Francisco, 2012, 82.

Kiura, AW 'Constrained Agency: Perceptions, Attitude, and Experiences of Somali refugee women on family planning' Masters Thesis, International Institute of Social Studies, 2012, 4.

Lelisa, N 'Access to emergency contraceptives among adolescent girls in Lesotho' Masters thesis, University of Pretoria, 2016, 19.

Waweru, IW 'Coping strategies among urban refugee women in Nairobi: A case study of Eastleigh and Kayole' Masters thesis, University of Nairobi, 2014, 10.

Reports and papers

African Commission on Human and Peoples' Rights (2017) *Guidelines on combating sexual violence and its consequences in Africa* 26.

Centre for Reproductive Rights (2017) *Briefing paper 'Ensuring* sexual and reproductive health and rights of women and girls affected by conflict' 1.

Centre of Reproductive (2001) *Briefing paper: Rights Displaced and Disregarded: Refugees and their reproductive rights*.

Centre for Reproductive Rights & United Nations Population Fund (2010) *Briefing paper: The Right to contraceptive information and services for women and adolescents* 6.

International Rescue Committee (2019) Scaling *economic opportunities for refugee women: Understanding and overcoming obstacles to women's economic empowerment in Germany, Kenya, and Niger* 4.

International Rescue Committee (2022) *The cost-of-living crisis for urban displaced persons in East Africa: The role of inclusive social protection*.

Interagency agency working group (2010) *Interagency field manual on reproductive health in humanitarian settings* 22.

Kenya National Bureau of Statistics (2023) *Kenya Demographic and Health Survey 2022* 18.

Kenya National Commission on Human Rights (2012) *Realising sexual and reproductive health rights in Kenya: A myth or reality* 117.

Market Shares Associates (2019) *Gender assessment of Kakuma refugee camp and Kalobeyei settlement and town* 57.

Ministry of Health (2015) '*National family planning guidelines for service providers: Reproductive and Maternal Health Service Unit* 13.

Open Society Foundation *Advancing public health through strategic litigation* 2013 15.

Report of the International Conference on Population and Development, United Nations Committee (5 – 13 September 1994), A/CONF.171/13/Rev.1.

Report on the fifty seventh session commission on the status of women, Economic and Social Council (4-15 March 2013) E/2013/27-E/CN.6/2013/11, para 10.

The Reproductive Health Response in Conflict Consortium (2004) *Emergency contraceptives for conflict-affected settings* 2.

United Nations Population Fund Manual and Guidelines (2015) *Emergency Contraceptives during humanitarian crises-guidelines on the use of Emergency Contraceptive Pills*.

United Nations High Commissioner for Refugees & Women Refugee Commission (2011) *Baseline study: Documenting knowledge, attitude, and practices of refugees and status of family planning services in UNHCR's operations in Nakivale refugee settlement, Uganda* 5.

United Nations High Commissioner for Refugees (1995) *An interagency field manual: Reproductive health in Refugee situations*.

United Nations (1995) *Beijing declaration and platform of action*.

United Nations Population Fund (1994) *Programme of action: Adopted at the International Conference on Population and Development in Cairo*.

Women Refugee Commission (2018) *Contraception services in humanitarian setting and humanitarian development nexus: Summary of the gaps and recommendations from state of field landscaping assessment* 8.

World Health Organisation (2014) *Guidance and recommendations: Ensuring human rights in the provision of contraceptive information and services* 4.

World Health Organisation (2013) *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines* 16.

Women Refugee Commission (2021) *Contraception services in humanitarian setting and humanitarian development nexus: Summary of the gaps and recommendations from state of field landscaping assessment* 8.

International and regional instruments

Abuja declaration on HIV/AIDs, tuberculosis, and other related infectious diseases, ACHPR committee (24-27 April 2001) OAU/SPS/ABUJA/3.

African Charter on Human and Peoples' Rights 1981.

Beijing Declaration and Platform for Action, Fourth World Conference on Women, China, September 4-15, 1995, UN. Doc.A/CONF.177/20.

Convention on the Right of Persons with Disabilities 2006.

Convention on the Elimination of all forms of Discrimination against women, 1979.

Concluding observation on the second periodic report of Kenya, HRC Committee (29 April 2005) CCPR/CO/83/KEN.

Concluding Observation on the combined seventh and eight periodic report of Hungary, CEDAW Committee (9 February 2015) CEDAW/C/HUN/CO/7-8 (2013).

Concluding observation on the combined fifth and sixth periodic report of Peru, CAT Committee (21 January 2013) CAT/C/PER/CO/5-6.

General comment 14 on the right to the highest attainable standard of health, CESCR Committee (11 August 2000) E/C.12/2000/4.

Geneva Convention Relative to the Protection of Civilian Persons 1949.

General comment no 22 on the right to sexual and reproductive health on article 12, CESCR Committee (2 May 2016) E/C.12/GC/22.

General Recommendation 24 on Article 12 of the Convention, CEDAW Committee (1999) A/54/38/Rev.1.

General comment 3 on Article 4 Right of life, ACPHR Committee (10 November 2015).

General comment 36 on Article 6 of the convention, HRC Committee (3 September 2019) CCPR/C/GC/6.

General recommendation 32 on gender related dimensions of refugee status, asylum, nationality, and statelessness of women' CEDAW Committee (5 November 2014) CEDAW/C/GC/32

General comment 2 on article 14 of the convention, Maputo protocol (28 November 2014).

General Recommendation 24 on Article 12 of the Convention, CEDAW Committee (1999) A/54/38/Rev.1.

General comment 1 on article 12 of the convention, CRPD Committee (19 May 2014) CRPD/C/GC/1 (2014).

General recommendation 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW Committee (18 October 2013) CEDAW/C/GC/30.

General comment 21 on article 10 of the convention, CEDAW Committee (1994) A/49/38.

General comment 28 on article 3 of the convention, HRC Committee (29 March 2000) CCPR/C/21/Rev.1/Add.10 (2000).

International Covenant of Economic Social and Cultural Rights 1966.

International Covenant on Civil and Political Right 1966.

Maputo plan of action 2016 – 2030.

Protocol Additional to Geneva Conventions of 12 August 1949 and relating to Protection of Victims of International Armed Conflict (Protocol 1) 1977.

Resolution 283 on the situation of women and children in armed conflict (28th April – 12th May 2014) ACHPR/Res.283(LV) (2014).

Resolution 565 on the inclusion of refugees, asylum seekers, internally displaced persons, and stateless persons in the socio-economic national system, ACHPR Committee (4 August 2023) ACHPR/Res.565(LXXVI).

Resolution 1325 on Women Peace and Security (31 October 2000) S/RES/1325.

Resolution 135 on maternal mortality in Africa, ACHPR Committee (24 November 2008) ACHPR/Res.135/XXXXIV/08.

Resolution 283 on the situation of women and children in armed conflict, ACHPR Commission (12 May 2014) ACHPR/Res.283(LV)2014.

Resolution 365 on developing guidelines on combatting sexual violence and its consequences, ACHRP Committee (4 March 2017) ACHPR/Res.365 (EXT.OS/XXI)2017.

Resolution 1960 adopted by the Security council at 6453 meeting (16 December 2010) S/RES/1960 (2010).

Resolution 2106 adopted by the Security Council at 6984 meeting (24 June 2013) S/RES/2106 (2013).

The United Nations Convention relating to the status of Refugees 1951.

The Protocol relating to the status of refugees 1967.

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

The guidelines on combating sexual violence and its consequences in Africa, ACHPR Committee (5 November 2017).

Universal Declaration on Human Rights 1948.

Domestic legislation

Constitution of republic of Kenya, 2010.

Health Act 2017.

National Reproductive Health Policy 2022 – 2032.

Refugee Act 2021.

Treaty Making Ratification Act 2012.

Case law

Brownfield v Daniel Freeman Marina Hospital (1989) 208 Cal. App 3d, 405, 413-14.

Doebbler v Sudan, Communication 236/2000, ACHPR Committee (29 May 2003).

Egyptian initiative for personal rights & interights v Egypt, Communication 323/06, ACHRP Committee (12 October 2013).

KL v Peru, Communication 1153/2003, HRC Committee (24 October 2005) CCPR/C/85/D/1153/2003.

Franz Nahlik v Austria, Communication 608/1995, HRC Committee (24 February 1994) CCPR/C/57/D/608/1995 (1996).

Purohit and Moore v the Gambia, Communication 241/2001, ACHPR Committee (2002).

LC vs Peru, Communication 22/2009, CEDAW Committee (4 November 2011), CEDAW/C/50/D/22/2009.

Federation OF Women Lawyers (FIDA) Kenya &3 others v Attorney general & 2 others (2019) eKLR Petition no 266 of 2015.

LM and others v the government of the republic of Namibia NAHC 211, 2012 (Southern Africa legal information institute).

Mapingure v Ministry of Home Affairs (2014) SC 22/14

Pichon and Sanjous v France (2001) ECHR 49853/99.

Paschim Banga Khet Mazdoor v State of West Bangal (1996) SOL case no. 169.

R v Bateman 1925 94 L.J.K.B 791.

The Prosecutor v Jean-Paul Akayesu. ICTR (1 June 2001) ICTR-96-4-A.

Online database

Action against Canada for Sexual Health Rights 'The importance of SRHR advocacy: Action Canada in conversation with Claire Dion Fletcher and Martha Paynter' **https://www.actioncanadashr.org/news/2022-02-17-importance-srhr-advocacy-action-canada-conversation-claire-dion-fletcher-and-martha-paynter** (accessed 5 June 2024).

Economic Social Cultural Rights 'Progressive realisation and non-regression' **https://www.escr-net.org/resources/progressive-realisation-and-non-regression** (accessed 9 June 2024).

Gribble, J 'Financing contraceptives: A new funding environment' 2010 **https://www.prb.org/wp-content/uploads/2021/01/05272010-toolkit-financing.pdf** (accessed 6 June 2024).

International Rescue Committee 'Why refugee women want contraception?' 7 March 2017 https://www.rescue.org/article/why-refugee-women-want-contraception (accessed 7 May 2024).

Kelley, KJ ' UN pushes refugees self-reliance as donor funding for Kenya dwindles' 25 November 2017 **https://nation.africa/kenya/news/UN-refugee-donor-funding-Kenya-dwindles/1056-4202704-n3a88oz/index.html** (accessed 2 July 2024).

Kyilah, T and others 'The Gendered impact of displacement in East African refugee camps' 8 March 2023 https://saisreview.sais.jhu.edu/the-gendered-impact-of-displacement-in-east-african-refugee-camps/ (accessed 5 April 2024).

Médecins sans Frontiers 'Malawi: The sex workers helping others fight HIV/AIDs' 2 May 2019 **https://msf.org.uk/article/malawi-sex-workers-helping-others-fight-hiv** (accessed 9 June 2024).

MSF Staff 'The hidden wounds of sexual violence in Sudan's war' 10 April 2024 https://nation.africa/africa/news/--4585632 (accessed 16 April 2024).

National Sexual Violence Resource Centre 'What is sexual violence?' https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_What-is-sexual-violence_1.pdf (accessed 4 November 2024).

Sexual Violence Research Initiative 'Emergency contraceptives is a simple part of post-rape care: Why is it not routinely provided?' https://www.svri.org/emergency-contraception-is-a-simple-part-of-post-rape-care-why-is-it-not-routinely-provided/ (accessed 4 April 2024).

United Nations High Commissioner for Refugees '108.4 million people worldwide were forcefully displaced' https://www.unhcr.org/about-unhcr/who-we-are/figures-glance (accessed 11 February 2024).

United Nations High Commissioner for Refugee 'Kenya Registered refugees and asylum seekers' 30 October 2023 https://www.unhcr.org/ke/wp-

content/uploads/sites/2/2023/11/Kenya-Statistics-Package-31-October-20237.pdf (accessed 9 January 2024).

United Nations Population Fund 'Historic drought in the horn of Africa: Women and girls fleeing one crisis for another' 24 March 2023. https://www.unfpa.org/news/historic-drought-horn-africa-women-and-girls-fleeing-one-crisis-another (accessed 25 February 2024).

United Nations Population Fund 'Humanitarian emergencies' https://www.unfpa.org/emergencies (accessed 12 February 2024).

United Nations Population Fund 'Minimal Initial Service Package for SRH in crises' November 2020 https://www.unfpa.org/resources/minimum-initial-service-package-misp-srh-crisis-situations (accessed 22 February 2024).

United Nations High Commissioner for Refugees 'Sexual and reproductive health' https://www.unhcr.org/what-we-do/protect-human-rights/public-health/sexual-and-reproductive-health (accessed 19 March 2024).

Utsch, L 'Protracted refugee situation in Kenyan refugee camps' (2020) https://ballardbrief.byu.edu/issue-briefs/protracted-refugee-situations-in-kenyan-refugee-camps (accessed 6 April 2024).

United Nations Women 'Sexual violence conviction a reality for Kakuma's refugee community' 18 June 2022 https://africa.unwomen.org/en/stories/news/2022/06/sexual-violence-convictions-a-reality-for-kakumas-refugee-community#:~:text=Kakuma%20and%20Kalobeyei%20host%20over,collection%2C%20or%20in%20the%20home. (accessed 5 April 2024).

United Nations 'The 17 Sustainable Development Goals' https://sdgs.un.org/goals (accessed 16 April 2024).

World Health Organisation 'Millennial Development Goals' 19 February 2018 https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs) (accessed 16 April 2024).

United Nations 'SDG 5: Achieve gender equality and empower all women and girls' https://sdgs.un.org/goals/goal5 (accessed 16 April 2024).

United Nations Population Fund 'Inter-agency field manual on reproductive health in humanitarian settings: Minimum initial service package for sexual and reproductive health' **https://www.unfpa.org/sites/default/files/resource-pdf/MISP-Reference-English.pdf** (accessed 7 July 2024).

UNAIDS 'Namibia's supreme court upholds dignity of women living with HIV/AIDS' 6 November 2014 **https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/november/20141106_PS_Namibia#:~:text=decision%20to%20upho-,GENEVA%2C%206%20November%202014%E2%80%94UNAIDS%20welcomes%20Namibia's%20Supreme%20Court%20decision,in%20Namibia%20and%20the%20world**. (accessed 11 June 2024).

Weston, P 'Mobilising community through advocacy' **https://granicus.com/blog/mobilising-community-through-advocacy/** (accessed 9 June 2024).

World Health Organisation 'Emergency Contraceptives' 9 November 2021 https://www.who.int/news-room/fact-sheets/detail/emergency-contraception#:~:text=Emergency%20contraception%20refers%20to%20methods,after%20the%20act%20of%20intercourse. (accessed 25 February 2024).

World Health Organisation 'Contraceptives' https://www.who.int/health-topics/contraception#tab=tab_1 (accessed 17 March 2024).