

# **An Analysis of Nigeria’s “Compulsory Treatment and care for Victims of Gunshots Act, 2017.”**

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## **Abstract**

Gunshot victims in Nigeria have for a long time found it very difficult to get prompt medical care in hospitals and healthcare centres all over the country. This is motivated by the practice of demanding for a police report from injured persons before they can be treated by medical personnel; a practice which is occasioned by the application or misapplication of the provisions of the Robbery and Firearms (Special provision) Act Cap R11 LFN, 2004. This has undoubtedly led to hardship to the citizenry and has in a plethora of times resulted in loss of lives under conditions where the deaths could have been averted. Consequently, in December 2017, President Muhammadu Buhari assented to the Compulsory Treatment and Care for Victims of Gunshot Act 2017, which makes provisions for the compulsory treatment and care for the victims of gunshots regardless of the reason for which they were shot. This paper analysed this recently passed law and determined the implication for the Nigerian populace and the Nigerian legal system, making comparative analysis with International Legal Frameworks and the provisions in other Jurisdictions and recommends that effective implementation is crucial for the success of the Act by taking a holistic approach, which recognizes key stakeholders, sensitizes healthcare practitioners, hospital authorities, the police and other security agents with a view to changing attitudes forged over the years.

**Keywords:** *Gunshot, Victims, legislation.*

## **1. Introduction**

Over time, the need for immediate medical attention for gunshot victims in Nigeria has been shrouded in controversy and concern, with divided opinions on what, how and when medical attention should be given to gunshot victims. The plight of gunshot victims in Nigeria has for the longest time been a social problem and a source of concern for the nation. Gunshot victims are routinely rejected by hospitals as a result of the tendency of the police to harass and incriminate medical personnel for commencing treatment without obtaining clearance. This erroneous assumption by the police is attributed to the belief that every gunshot victim was wounded as a result of engaging in criminal activities. However this cannot be farthest from

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the truth, as gunshot wounds are occasioned by various factors, which are sometimes unforeseen. Additionally, when these accidents take place, it is expected that the victims are instantly given medical attention irrespective of the reason why they were shot. Unfortunately, this is not the case in Nigeria, as hospitals or healthcare centres blatantly refuse to treat gunshot victims unless a police report is obtained.<sup>1</sup>

The proclivity of hospitals and other healthcare centres to deny treatment to gunshot victims until police report is obtained has been an issue of concern, as it has in numerous occasions' endangered lives and resulted in death in situations where the deaths could have been averted, and even though the right to life is guaranteed by the constitution,<sup>2</sup> gunshot victims are still denied treatment. Furthermore, the National Health Act<sup>3</sup> makes provision for emergency treatment of persons for any reason whatsoever. Notwithstanding these provisions, gunshot victims are still denied treatment and subjected to inhuman treatment. Consequently, the Compulsory Treatment and care for Victims of Gunshots Act, 2017 (Gunshot Victim's Act, 2017) was enacted. This new legislation empowers medical personnel to provide medical attention to gunshot victims without waiting for police report. This legislation is a welcome development and underscores the sanctity of life.

Therefore, this paper conducts an in-depth analysis of the Act, the objectives and the implication of its provisions. It delves into background of the Act, its key components and its alignment with international best practices and other jurisdictions; and concludes that the law

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<sup>1</sup> The Vanguard Newspaper 16<sup>th</sup> May 2018 "Stop rejecting gunshot victims, Lagos police warn doctors" <https://www.vanguardngr.com/2018/05/990725/> Accessed 19 July 2018; The Guardian Newspaper 12<sup>th</sup> January 2018 "Treatment of Gunshot Victims" <https://guardian.ng/opinion/treatment-of-gunshot-victims/> Accessed 19 July 2018.

<sup>2</sup> Section 33(1) Constitution of the Federal Republic of Nigeria, 1999, as altered.

<sup>3</sup> Section 20 of the National Health Act, No. 8 2014 provides (1) A health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason whatsoever. (2) Any person who contravenes this section is guilty of an offence and is liable on conviction to a fine of ₦100, 000.00 (one hundred thousand naira) or to imprisonment for a period not exceeding six months or to both.

is a step in the right direction. However some of its provisions must be revisited, and that specific actions must be taken to move the law from words on paper to active implementation.

## **2. Background and overview of the Compulsory Treatment and care for Victims of Gunshots Act, 2017**

The predilection of hospitals and other health facilities to deny traumatized gunshot victims medical attention until police report is obtained has been a serious flaw in the Nigerian Legal System which has endangered the lives of many. This practice is occasioned by the application or misapplication of the provisions of the Robbery and Firearms (Special provision) Act.<sup>4</sup>

With the end of the Nigerian Civil war, armed robbery became a significant phenomenon in the country.<sup>5</sup> The immediate causes are not farfetched. Both separatist forces and some members of Nigeria`s Armed Forces, especially volunteers and those who were conscripted, had just been disbanded and much of the arms used in prosecuting the war had not been effectively mopped up.<sup>6</sup> There were several clusters of abandoned arms and combat-gear which soon found their way into wrong hands.<sup>7</sup> The temptation to go into armed robbery increased due to the economic setback and austerity which followed the end of the war as many people lost their means of livelihood and properties to the war.<sup>8</sup> Thus, in order to deal with the menace, the military Government responded by promulgating the Robbery and Firearms (Special Provision) Decree no. 47 of 1970 (now Robbery and Firearms Act, CAP R11 LFN, 2004).<sup>9</sup>

Unfortunately, the incidents of robbery were still on the increase, as some perpetrators of the robberies who got wounded would escape and get themselves treated, and resume their terrorization of the citizenry.<sup>10</sup> As a result of this, the Government, in order to enable the police

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<sup>4</sup> CAP R11, Laws of the Federation of Nigeria, 2004.

<sup>5</sup> O Marenin, "The Anini Saga: Armed Robbery and the Reproduction of Ideology in Nigeria" (1987) *The Journal of Modern African Studies*, Vol. 25, No. 2.

<sup>6</sup> O Aigbovo and O Eidenoje, "Theorising Nigerian Crime Problems" (2016) *Mizan Law Review*, Vol. 10, No.1.

<sup>7</sup> *Ibid* at p. 230.

<sup>8</sup> *Ibid*.

<sup>9</sup> R A I Ogbobine, *Armed Robbery in Nigeria, Causes and Prevention*, (Warri: Rufbine Books Centre, 1982)

<sup>10</sup> E Nnadozie, A Akpor and E Usman, "Victims of firearms crime : The case of Guardian Editor , Bayo Ohu and others" Vanguard Newspaper 26th September 2009

to arrest and prosecute wounded armed robbers, amended the Robbery and Firearms (Special Provisions) Decree No. 21 of 1984 in 1986 by inserting a new provision in Section 4(2) of the Decree.<sup>11</sup>

Section 4(2) of the Robbery and Firearms (Special provision) Act provides that “it shall be the duty of any person, hospital, or clinic that admits, treats, or administers any drug to any person suspected of having bullet wounds to immediately report the matter to the police.” This section is the pivot which the police used in issuing a directive banning emergency medical attention for gunshot victims without prior police permission.<sup>12</sup>

The objective of this Act, which has largely been misinterpreted, is to facilitate easy apprehension of criminals carrying gunshot wounds when they seek medical attention. But in the process of trying to realise this seemingly laudable goal, many innocent victims of armed robbers, hired assassins, stray bullets and so on have lost their lives.<sup>13</sup>

Arguments have been canvassed on whether or not the police are justified in issuing the directives. The school of thought that argued against the directive predicated their arguments on the notion that health workers were by the directives, compelled to watch helplessly as patients with gunshot wounds bled to death, while awaiting police clearance for them to administer medical care<sup>14</sup>; others have defended the directive on the notion that it is intended to enable doctors distinguish between wounded armed robbery suspects escaping from scenes of violent crimes from their innocent victims or motorists and commuters hit by the accidental discharge of rifles.<sup>15</sup>

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<https://www.vanguardngr.com/2009/09/victims-of-firearms-crime-the-case-of-guardian-editor-bayo-ohu-and-others/> Accessed 10 July 2018;

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> T Ogunbiyi, “Gunshot victims and police report” The Guardian Newspaper, 21<sup>st</sup> March 2018. <https://guardian.ng/opinion/gunshot-victims-and-police-report/> Accessed 15 October 2018; I Madike, “Hospitals’ Refusal to treat Gunshot Victims: The Lies, The Truths” New Telegraph Newspaper June 2 2018, <https://newtelegraphonline.com/2018/06/hospitals-refusal-to-treat-gunshot-victims-the-lies-the-truths/> Accessed 15 October 2018.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

Nevertheless, It may be argued that a clear interpretation of Section 4(2) above shows that nothing precludes hospitals or healthcare centers from initiating treatment for gunshot victims immediately they are brought in. Hospitals and health care centres are only mandated by the Act to report such treatments to the Police timeously, as failure to do so amounts to an offence and as such, punishable under the Act.<sup>16</sup>

The interpretation of the Robbery and Firearms (Special provision) Act clearly puts the cart before the horse. Victims of gunshot wounds must first be ferried to the police station to secure police report before they are taken to the hospital to be attended to by medical personnel. This practice is inconsistent with cross-country experience.<sup>17</sup> For instance in the wake of the upsurge in knife and gun violence in the United Kingdom, civil rights activists and the police in 2007 demanded an attitudinal change to official response to emergencies.<sup>18</sup> “The patient should remain the medical team’s prime concern at all times and the police’s arrival should not be allowed to delay or hamper treatment or compromise the patient’s recovery. The healthcare team and the police must abide by this decision.”<sup>19</sup>

Indeed, treatment of the victims should come first and takes precedence over and above any other consideration, as the first responsibility of the healthcare team is to the patient's welfare.<sup>20</sup> However in Nigeria, questions must be asked by medical personnel in liaison with the police before they can attend to life-threatening, emergency cases of gunshot wounds. This procedure is absurd and also completely at variance with the Hippocratic Oath which requires physicians to, among others, place the highest premium on saving lives.

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<sup>16</sup> Section 4(3) Robbery and Firearms (Special provision) Act.

<sup>17</sup> In the UK, Doctors are required to inform the police whenever they treat a suspected victim of gun or knife crime. The revised guidance on confidentiality from the General Medical Council (GMC) 2017, extends the previous policy of mandatory reporting of gunshot wounds to clearly stating that doctors should consider whether disclosing confidential information is in the ‘public interest.’

<sup>18</sup> “Compulsory Treatment of gunshots victims” The Punch Newspaper, January 12<sup>th</sup> 2018.

<sup>19</sup> Ibid.

<sup>20</sup> C Bentley, “When should doctors report gunshot, knife wounds and other violent injuries?” (2017) <https://www.bevanbrittan.com/insights/articles/2017/when-should-doctors-report-gunshot-and-knife-wounds/> Accessed 10 July 2018.

Thus, in what smacks of sheer ineptitude and insensitivity, the relevant authorities would rather allow the lives of all victims of bullet wounds to be put in jeopardy than for some felons to escape justice. There are a plethora of reports in the media of gunshot victims who were rejected by hospitals because of the propensity of the police to harass and incriminate doctors and other medical personnel for treating them without obtaining clearance.<sup>21</sup> This erroneous assumption by the police have been attributed to the phenomenon that every gunshot victim might have been an armed robber, who escaped from their bullets.<sup>22</sup> Ironically, the real victims of this inadequate law are innocent persons; because well organised criminal gangs often have their trusted medical personnel who attend to their wounded members outside the public glare, while some other less organized criminal gangs seek alternative means of medical assistance to treat gunshot wounds.

Consequently, the signing into law of the Bill that empowers medical personnel to provide care to gunshot victims without waiting for police clearance has given legal backing to the persistent call by the citizenry for higher premium to be placed on life and to preserve the fundamental right – right to life as enshrined in Section 33 (1) of the Constitution of the Federal Republic of Nigeria 1999, as altered. Thus no one, the Constitution emphasizes, shall be deprived of his life save in the execution of the sentence of a Court in respect of a criminal offence for which the person had been found guilty.

The Gunshot Victim's Act, 2017, provides generally that a person with gunshot shall be received for immediate and adequate treatment by any hospital in Nigeria with or without police clearance<sup>23</sup>; further, it states that a person with gunshot wounds shall not be subjected

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<sup>21</sup> E Nnadozie, A Akpor and E Usman, art. cit; C Unini, "Gunshot victims and Police report" (2018) <http://thenigerialawyer.com/gunshot-victims-and-police-report/> Accessed 10 July 2018; The Tide Newspaper 17<sup>th</sup> November 2017 "Banigo Decries Hospitals' Rejection Of Gunshot Victims" <http://www.thetidenewsonline.com/2017/11/17/banigo-decries-hospitals-rejection-of-gunshot-victims/> Accessed 26 July 2018.

<sup>22</sup> C Unini, art cit.

<sup>23</sup> Section 1, Compulsory Treatment and case for Victims of Gunshots Act, 2017. (Gunshot Victim's Act, 2017)

to any inhuman or degrading treatment by any person or authority, including the police and other security agencies, in the process of having his or her life saved.<sup>24</sup>

From the above overview, the law certainly, represents a step forward in an attempt to respect human dignity and preserve life. It is uncivilized, and undeniably inhuman, to abandon a traumatized and distressed person who urgently needs medical attention on the flimsy notion that there is no police clearance on the circumstance of the injury sustained.

### **3. Comparative Analysis of the Gunshot Victims Act 2017 with International Legal Frameworks and other Jurisdictions**

Matters that have long troubled the populace, for example the difficulty faced by medical personnel in administering treatment to victims of gunshot wounds without police clearance or the blatant refusal by some health care centers and hospitals to treat gunshot victims without initial monetary deposit are addressed in this Act. The key questions that may arise, however, are; (i) how well does the Act protect gunshot victims? and (ii) are there further gaps in the Act that may need to be addressed in the future?

In an attempt to provide answers to these questions, this study begins by identifying briefly some legal instruments that have developed internationally and in other jurisdictions. The aim is to measure the Gunshot Victims Act against international standards that have developed over time. Under International Human Rights Law, a plethora of instruments exist to ensure protections of persons against inhuman and degrading treatment or torture, as well as preservation of the right to life.

Article 3 of the Universal Declaration of Human Rights 1948 (UDHR)<sup>25</sup> provides that “Everyone has the right to life, liberty and security of person.” Similarly, Article 5 UDHR provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment

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<sup>24</sup> Section 2 of the Gunshot Victim’s Act, 2017.

<sup>25</sup> Universal Declaration of Human Rights 1948 (UDHR) <http://www.un.org/en/universal-declaration-human-rights/> Accessed 19 July 2018.

or punishment.” These Articles are widely regarded as expressing customary international law.<sup>26</sup> Within the United Nations framework, torture and other cruel, inhuman or degrading treatment or punishment are explicitly prohibited under a number of international treaties, which are legally binding on those States which have ratified them.<sup>27</sup> The International Covenant on Civil and Political Rights (ICCPR) was the first universal human rights treaty that explicitly included prohibition of torture and other cruel, inhuman or degrading treatment, which aims to protect both the dignity and the physical and mental integrity of the individual;<sup>28</sup> in addition, Article 6 (1) of the ICCPR states that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Article 2 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provides that “Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”<sup>29</sup>

Similarly Article 4 of the African Charter on Human and Peoples' Rights (African Charter)<sup>30</sup> states that “Human beings are inviolable. Every human being shall be entitled to respect for

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<sup>26</sup> “Torture in International Law, a guide to jurisprudence” *Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL)*, (2008) [https://www.apt.ch/content/files\\_res/jurisprudenceguide.pdf](https://www.apt.ch/content/files_res/jurisprudenceguide.pdf) Accessed 11 July 2018.

<sup>27</sup> Article 5 of the Universal Declaration of Human Rights 1948; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article, A/RES/39/46 adopted by the UN General Assembly on 10th December 1984, <http://www.un.org/documents/ga/res/39/a39r046.htm> Accessed 15 October 2018.

<sup>28</sup> Article 7 International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 19 December 1966. <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> Accessed 11 July 2018.

<sup>29</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) of 9 December 1975. <https://www.ohchr.org/en/professionalinterest/pages/declarationontorture.aspx> 19 July 2018.

<sup>30</sup> African (Banjul) Charter on Human and Peoples' Rights. Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) <http://www.achpr.org/instruments/achpr/> 19 July 2018. (African Charter)



his life and the integrity of his person. No one may be arbitrarily deprived of this right;” while Article 5 states that “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”<sup>31</sup>

In addition, the African Charter also emphasises that the Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them<sup>32</sup> and that “Every individual shall have the right to enjoy the best attainable state of physical and mental health.”

Further, the participation of doctors and other medical personnel in acts of torture or other cruel, inhuman or degrading treatment or punishment is prohibited by the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1982 (Principle of medical ethics).<sup>33</sup> “It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”<sup>34</sup>

Other international bodies representing medical professionals have also established guidelines and ethical principles against the participation of doctors in practices amounting to torture and

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<sup>31</sup> *Ibid.*

<sup>32</sup> Article 1, African Charter.

<sup>33</sup> Principles of Medical Ethics, A/RES/38/118 (1982) <http://www.un.org/documents/ga/res/37/a37r194.htm> Accessed 16 July 2018.

<sup>34</sup> *Ibid* at Principle 2.

cruel, inhuman or degrading treatment or punishment. According to World Medical Association's Guidelines for physicians concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment, "The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense of which the victim of such procedure is suspected, accused or guilty and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.<sup>35</sup> Further, the physician shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.<sup>36</sup>

With regard to other jurisdictions, in the US for instance all but five states have laws mandating that health care providers report knowledge and/or treatment of certain injuries,<sup>37</sup> For instance the provision of the law in the State of Alaska generally states that "A health care professional who initially treats or attends to a person with... a bullet wound, powder burn, or other injury apparently caused by the discharge of a firearm... shall make certain that an oral report of the injury is made promptly to the Department of Public Safety, a local law enforcement agency or a village public safety officer."<sup>38</sup> This provision envisages that the healthcare professional would have initiated treatment of the victim before making the report to the appropriate authority. Notably, this provision is largely mirrored in nearly all US States.<sup>39</sup> Similarly, in

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<sup>35</sup> Declaration 1, Declaration of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975. <https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/> 19 July 2018. (Declaration of Tokyo).

<sup>36</sup> *Ibid* at Declaration 2.

<sup>37</sup> These injuries include Gunshot wounds, see Mandatory reporting of non-accidental injuries: A State by State guide (2014) Victim Rights Law Center. <https://www.victimrights.org/sites/default/files/Mandatory%20Reporting%20of%20Non-Accidental%20Injury%20Statutes%20by%20State.pdf> Accessed 16 July 2018.

<sup>38</sup> AS08.64.369. Health care professionals to report certain injuries. <http://www.touchngo.com/iglcnr/akstats/Statutes/Title08/Chapter64/Section369.htm> Accessed 16 July 2018.

<sup>39</sup> Mandatory reporting of non-accidental injuries: A State by State guide, *art cit*.

various legislation enacted in Canadian districts, a health care facility or emergency medical assistant who treats a person for a gunshot or stab wound must disclose the information to the local police or authority”<sup>40</sup> Again treatment must also have been commenced on the victim.

The commonality of the provision of the law in these jurisdictions is that the right to life is respected above all, healthcare professionals are mandated to report certain injuries (including gunshot wounds) to the appropriate authority, and in doing so, are not deterred from administering medical treatment to the victims as soon as they are admitted.

Further, as has been established previously in this study, the Constitution of the Federal Republic of Nigeria, 1999, provides for fundamental human rights to include right to life<sup>41</sup> and right to respect a person’s dignity and the prohibition to be subjected to torture or to inhuman or degrading treatment.<sup>42</sup> The Gunshot Victim’s Act encompasses the provisions of the international instruments as outlined above, with a view to aligning the Nigerian legal system with international best practices on the protection of the gunshot wounded; thus the Act expressly makes provision for immediate treatment of any person with a gunshot wound as well as prohibiting the subjection of gunshot victims to inhuman and degrading treatment or torture by any person or authority.<sup>43</sup>

#### **4. Analysis of the Gunshot Victim’s Act, 2017**

One of the key ingredients of an ideal legislation on the treatment and care for victims of gunshots in Nigeria will be the acknowledgment of the right to immediate and adequate treatment for gunshot victims; and recognizing the harrowing experience of gunshot victims

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<sup>40</sup> Gunshot and Stab Wound Mandatory Disclosure Act, Statutes of Alberta, 2009 Chapter G-12; The Gunshot and Stab Wounds Mandatory Reporting Act, Statutes of Saskatchewan, 2007 Chapter G-9.1; Gunshot And Stab Wound Reporting Act Statutes of Newfoundland and Labrador, 2011 Chapter G-7.1; Gunshot and Stab Wound Disclosure, 7 Statutes of British Columbia, 2010.

<sup>41</sup> Section 33(1) 1999 Constitution, as altered.

<sup>42</sup> Section 34(1) (a) Constitution 1999 Constitution, as altered.

<sup>43</sup> Sections 1 and 2(2) (b) Gunshot Victim’s Act.

and their families as well as the needless loss of life occasioned by failure to administer medical treatment.

Section 1 of the Gunshot victims Act stipulates that every hospital in Nigeria whether public or private shall accept for immediate and adequate treatment with or without police clearance, any person with a gunshot wound. This section imposes a compulsory duty on all hospitals to receive and immediately treat gunshot victims without waiting for police clearance. This section certainly, represents a step forward in an attempt to respect human dignity and preserve life.

Accordingly, the Act provides for the duty to assist in section 2, which specifically compels every person, including security agents, to render every necessary assistance to ensure that a gunshot victim is taken to the nearest hospital; while also providing for compulsory treatment of gunshot victims by hospitals *without initial monetary deposit*. The importance of this provision cannot be over emphasised, because apart from fear of being implicated by the police, some hospitals refuse gunshot victims purely on the basis of demanding for an upfront payment of the cost of treatment. Notably, implementing this section may be problematic, as hospitals may have to bear the cost of treatment where the victims lack the money to pay after they have been treated or where the patient dies in the course of or after treatment have been administered. However, given the complexity of this provision, it should not be out of place for the State to defray the cost of treatment of gunshot victims that cannot afford treatments within reasonable limits. In addition, the section provides that a gunshot victim shall not be subjected to inhuman and degrading treatment or to torture by any person or authority;<sup>44</sup> thus ensuring that the

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<sup>44</sup> Section 2 (2) (b) Gunshot Victims Act 2017.

fundamental rights of the victims are protected in line with international law provisions and the Constitution.<sup>45</sup>

Further, the right created by section 1 of the Act establishes a corresponding duty on hospitals and other healthcare institutions to report the fact to the nearest police station within two hours of commencement of treatment, to enable the police to immediately commence investigation with a view to determining the circumstances under which the person was shot.<sup>46</sup> Consequently, any hospital that fails to make a report to the police upon commencement of treatment commits an offence under the Act and shall be liable to pay a fine of ₦100,000, while every doctor directly involved with the treatment shall be liable on conviction to a term of 6 months imprisonment or to a fine of ₦100,000 or both.<sup>47</sup>

In general, the Act provides extensively for the treatment of gunshot victims, and as well provides protection for all person that may in one way or the other be involved with gunshot victims. The Act penalizes defaulters of its provisions, (including cooperate bodies)<sup>48</sup> and also provides for an order of restitution, (in addition to any other penalty under the Act) ordering convicted persons or corporate bodies to pay to the victim an amount equivalent to the loss sustained.<sup>49</sup> Additionally, the Act provides for the respect and protection volunteers or helpers of a victim from being subjected to unnecessary and embarrassing interrogation in their genuine attempt to save life.<sup>50</sup>

While the Act represents a ground-breaking effort to provide the citizenry with solace on the issue of the treatment of gunshot victims, there are however some deficiencies with the

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<sup>45</sup> Principle 2, Principles of Medical Ethics; Declaration 2, Declaration of Tokyo (1975); Article 5 African Charter; Section 34(1) (a) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>46</sup> Section 3 Gunshot Victims Act, 2017.

<sup>47</sup> Section 5 Gunshot Victims Act, 2017.

<sup>48</sup> Section 13 of the Gunshot Victims Act, 2017.

<sup>49</sup> *Ibid.*

<sup>50</sup> Section 8 of the Gunshot Victims Act, 2017.

provisions of the Act. For instance, section 6 provides thus: “A person who receives the report under section 3(2) of this Act shall furnish or the hospital on demand, with background information on the victim as he may be compelled to incriminate the victim.” This section appears perplexing as the question now arises as to why the hospital will require information to incriminate the victim? It is not the duty of the hospital to conduct investigations, as according to section 3(1) of the Act, hospitals are only required to make a report to the police. It is noteworthy that section 3(2) provides that upon receipt of the report from the hospital on the commencement of treatment of a gunshot victim by the police, the police shall commence investigations with a view to identifying the circumstances under which the person was shot. Consequently, it may be argued that the intention of this section is to compel the hospital to furnish the police, on demand with information that may incriminate the victim, however this was not properly captured in the section. It is imperative that this section be amended for the purpose of clarity in interpretation.

In addition, Section 9 provides “A person who commits an offence under the Act which leads to or causes substantial physical, mental, emotional and psychological damage to the victim, commits an offence and is liable on conviction to imprisonment for a term of not more than 15 years and not less than five years without the option of fine. The keyword in this section is substantial. Arguably, this presents a difficulty as to the determination of what constitutes “substantial physical, mental, emotional and psychological damage to the victim.” The interpretation section in the Act does not define “substantial” as it relates to the Act. Moreover, section 11 provides that “Any person or authority including any police officer, other security agent or hospital who stands by and fails to perform his duty under this Act which results in the unnecessary death of any person with gunshot wounds commits an offence and is liable on conviction to a fine of ₦500,000 or imprisonment for a term of five years or both.”

It may be argued that section 11 encompasses the essence of the Act, as it imposes certain duties and failure to perform those duties constitutes an offence and punishable under section 11. Taking into consideration the provisions of section 11, this paper now ponders on the necessity of section 9 of the Act, given its ambiguity. As established the determination of what constitutes “substantial physical, mental, emotional and psychological damage to the victim” poses a difficulty, and it is speculative at best.

## **5. Conclusion**

The Gunshot Victim’s Act, 2017 is a ground-breaking effort to provide the citizenry with the protection of law against the inhuman treatment meted out to gunshot victims. Despite its deficiencies, it is wide-ranging and covers protections, duties and offences not previously provided for in the Nigerian legal system. The provisions of the Act would aid in ensuring that no person nor institution, particularly healthcare institutions and security officers act in a manner which would jeopardize the life or health of a gunshot victim.

Unfortunately, the legal framework protecting gunshot victims face either the challenge of interpretation or implementation; as previously established, no law specifically required police report as a prerequisite for the treatment of gunshot victims, the practice was developed as a result of the misinterpretation of the Robbery and Firearms (Special Provisions) Act. And despite the plethora of directives by relevant authorities to abolish the practice; it subsisted.<sup>51</sup> Similarly Section 33 (1) of the 1999 Constitution provides for the fundamental right to life, and yet healthcare institutions and security agents, including the police, disregard the sacrosanct

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<sup>51</sup> E N Iwuala, “Treatment of Victims of Gunshot and Police Reports in Nigeria” (2010) <http://nigeriancommentaries.blogspot.com/2010/01/treatment-of-victims-of-gunshot-and.html> Accessed 19 July 2018; Premium Times Newspaper 21 August, 2015 “Police IG: Hospitals free to treat all accident, gunshot victims” <https://www.premiumtimesng.com/news/top-news/188795-police-ig-hospitals-free-to-treat-all-accident-gunshot-victims.html> Accessed 19 July 2018.

nature of the constitution in this regard. Apart from the constitution, the National Health Act<sup>52</sup> also makes provision for emergency treatment of persons for any reason whatsoever.

Although there is much to applaud about the Gunshot Victims Act, it is not a perfect legislation. Thus amendments to address the issues pointed out in the analysis of the Act are of importance and should be considered in the near future. Additionally, to ensure implementation of section 2 of the Act, with specific regard to the treatment of victims without initial monetary deposit, an option may be to ensure that the National Health Insurance Scheme (NHIS) facilitates such treatment, by including the treatment of gunshot victims in its scope of coverage. Notably, section 3(1) of the National Health Act provides that the Minister, in consultation with the National Council on Health, may prescribe conditions subject to which categories of persons may be eligible for exemption from payment for health care services at public health establishments.<sup>53</sup> Also, one of the objectives of the scheme as provided by its enabling Act is to “protect families from the financial hardship of huge medical bills.”<sup>54</sup>

Nevertheless, it is important to recognise that legislation is only one instrument amongst others in eliminating the inhuman attitude of hospitals, healthcare institutions, the police and other security agencies towards gunshot victims. Legislation alone will not be sufficient to eradicate longstanding practices which are deeply rooted. Education and enlightenment are key to making laws like the Gunshot Victims Act truly effective.

No one would argue that it is imperative that this Act achieves its objective, as it has the potential to change the way gunshot victims are treated in Nigeria, therefore effective implementation is crucial for its success. The Act will also have a fuller effect when taking a holistic approach; an approach that recognizes key stakeholders, sensitizes healthcare

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<sup>52</sup> Section 20 National Health Act, No. 8 2014.

<sup>53</sup> Section 3(1) National Health Act, No. 8 2014.

<sup>54</sup> Section 5(b) National Health Insurance Scheme Act, CAP N42 Laws of the Federation of Nigeria, 2004.



practitioners, hospital authorities, the police and other security agents with a view to changing attitudes forged over the years, as well as creating a nationwide publicity of the law, in order to keep the citizenry abreast of its provision.