

A Critical Appraisal of Compliance with the Compulsory Treatment and Care for Victims of Gunshot Act 2017

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Abstract

Aim: The practice of demanding police report before gunshot injury victims receive medical care in Nigeria has led to needless loss of life in several instances. The practice stems from the (mis)application of the Robbery and Firearms (Special provision) Act 1984. Thus, the Compulsory Treatment and Care for Victims of Gunshot Act 2017 was enacted to mandate expedite medical treatment for gunshot victims without demand for police report.

Methods: Adopting the doctrinal research methodology, this paper assessed the legacy of the Robbery and Firearms Act on the treatment of gunshot injury victims. It equally examined medical practitioners' level of compliance with the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017 and the legal implication of non-compliance, while highlighting remedial options available under the law.

Results: The study found that despite the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017, gunshot victims are still haunted by the ghost of the Robbery and Firearms (Special Provision) Act. Medical practitioners are still uneasy about the treatment of gunshot casualties without police reports due to apprehension about police harassment.

Conclusion: This paper concludes that the lack of publicity about the current realities of the law and lack of coordination between medical practitioners, police officers and other key stakeholders is responsible for non-compliance with the Act.

Recommendation: The study therefore recommends the need for enforcement of professional and penal sanctions against erring medical practitioners who fail to provide expedite medical treatment for gunshot injury victims.

Keywords: *Gunshot victims, human rights, legislations, compulsory treatment, care of gunshot victims.*

1. INTRODUCTION

Gun has been judicially defined as a weapon used for firing bullets or shell; it is a tool that uses pressure to send out substance or an object.¹ Gunshot is “a bullet, projectile, or other shot fired from a gun”.² Multiple discharge from gun are often referred to as gunfire.³ Injuries sustained from gunshot are referred to as gunshot injuries. When a person is hit by a gunshot projectile, it bores a big and deep hole into the body of the target victim, which often result in excessive bleeding. It could lead to instant death or death within a short period of time if emergency medical treatment is not quickly administered on the victim. The lethal and fatal nature of gunshot injury has also been judicially recognized. The Supreme Court noted, in the case of *Ibikunle v. State*⁴ that, “it is trite knowledge that the result of shooting persons with a gun is either to cause the death of the victim or cause him grievous hurt”. Evidence from research and reported cases suggests that armed robbery attacks is preponderantly responsible for incidence of gunshot injuries in Nigeria.⁵

Under Nigerian law, there is a standard practice on the handling of victims of gunshot injuries, particularly with respect to providing medical treatment and care for these sets of persons. Most hospitals would not offer treatment or even admit victims of gunshot injuries into their facilities at the risk of loss of human life, notwithstanding that the injury is such that requires emergency treatment. Medical practitioners or facilities would usually demand a police report from the victim before treatment is issued. This practice has become rampant over the years. The implication is that before the police report is obtained, it may have become too late to save the life of the victim who may have lost so much blood and died.⁶

There are several instances where victims of gunshot treatment have been denied emergency treatment due to lack of police clearance and they eventually died. In September, 2009, OgunbayoOhu, an editor of Guardian Newspaper, received several gunshots in his house during the morning hours from suspected assassins. According to his neighbors, he was still alive when he was rushed to a nearby private hospital. He was denied medical attention by the hospital due to lack of police clearance. He eventually died along the way as efforts were made to take him to the General Hospital.⁷ In an earlier incidence in 2008, AlhajiSalau Saka, the Chairman of National Union of Road Transport Workers, was attacked and shot several times by four armed men. The nearby hospital where he was taken refused to even admit him into their premises. They allowed his bullet ridden body to bleed to death, as no medical treatment would be administered unless police report was obtained.⁸

¹ *Idi v. State* (2016) LPELR 40813 (CA).

² Dictionary, ‘Gunshot Definition and Meaning’, <<https://www.dictionary.com/browse/gunshot>> accessed 3 March 2023.

³ Definition, ‘Definitions for Gunshot’, <<https://www.definitions.net/definitions/gunshot>> accessed 3 March 2023.

⁴ (2007) 1 SC (Pt. 11) 32.

⁵ M Oboirien, SP Agbo& BK Adedeji, ‘Civilian Gunshot Injuries: Experience from Sokoto, North-West, Nigeria’, (2016) 15 (1) Journal of Trauma and Treatment 1, 3.

⁶ Editorial, ‘Emergencies: Hospitals’ insistence on police report’ Punch (25 June 2021) <<https://www.google.com/amp/s/punchng.com/emergencies-hospitals-insistence-on-police-report/%3famp>> accessed 18 May 2023.

⁷ E Nnadozie, A Akpor& E Usman, ‘Victims of Firearms Crime: The case of Guardian Editor, BayoOhu and Others’, Vanguard (26 September 2009) <<https://www.vanguardngr.com/2009/09/victims-firearms-crime-the-case-of-guardian-editor-bayo-ohu-and-others/amp/>> accessed 3 March 2023.

⁸ Fidh, ‘Assassination of Mr. AlhajiSaula Saka- NGA’, <<https://www.fidh.org/en/region/Africa/nigeria/Assassination-of-Mr-Alhaji-Saula>> accessed 3 March 2023.

There are several other recorded and non-recorded instances of persons who have lost their lives as a result of the practice of demanding for police clearance before administering medical treatment to victims of gunshot injuries. The prevalence of these incidence, prompted the National Assembly to enact the Compulsory Treatment and Care for Victims of Gunshot Act in 2017. This Act sort to address this anomaly and provide respite for victims of gunshot injuries in Nigeria. Indeed, the legislation was long overdue, considering the prevalence of gunshot injuries sponsored by the unlawful possession of small arms and light weapons by non-state parties who continue to wreck violence on the Nigerian State in recent times.

The thrust of this work is to critically assess the legacy of Robbery and Firearms Act on the treatment of gunshot injury victims and examine the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017, to determine whether it has been able to achieve its objective. Particularly, the work will examine the attitude of medical practitioners and their level of compliance with the provisions of this law. The study goes further to examine the legal implication of non-compliance and proffer suggestions on what needs to be avail gunshot victims with the much-needed respite under the law. The study then compares the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017 with other jurisdictions, made its conclusion and recommendations.

2. LEGACY OF ROBBERY AND FIREARMS ACT ON TREATMENT OF GUNSHOT INJURY VICTIMS

The Robbery and Firearms (Special Provision) Act was first promulgated as a military government decree in 1984. The decree was eventually regarded as an existing Act of the National Assembly pursuant to Section 315 (1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. The decree was created as government's response to rampant incidence of armed robbery prevalent within that period. Hence, the decree was a special purpose statute to address incident of armed robbery in Nigeria.⁹

It should be noted that prior to the establishment of the Robbery and Firearms (Special Provision) Act, the Criminal Code Act had provisions that created and provided punishment for armed robbery. Section 401 of the Criminal Code Act provides for the offence of robbery, which is punishable with 21 years' imprisonment or more.¹⁰ Section 402 (2) (a) and (b) creates the offence of armed robbery punishable by death sentence. However, the Robbery and Firearms (Special Provision) Act was created with the intent of making the punishment for armed robbery more severe and exemplary. Hence, the prescribed sanction for armed robbery is death by firing squad.¹¹ Execution by firing was usually carried out in public places and members of the public were allowed access to watch the execution proceedings. This is done in a bid that the execution would drive home the disablement and deterrent lessons.¹²

Other than just the severe punishment imposed on the offence of armed robbery, the Act also sought to establish precautionary and preventive measure against the offence. One of such measures was the requirement that a police report should be lodged before hospital, clinic or

⁹CC Ani, 'Armed Robbery and National Security', (Legalpaedia)

<<https://google.com/amp/s/legalpaediaonline.com/armed-robbery-and-national-security/amp/>> accessed 3 June 2023.

¹⁰Criminal Code Act Cap. 38 LFN 2004, s. 402 (1).

¹¹Robbery and Firearms (Special Provision) Act, s. 1(3).

¹²Tony Fagbemi, 'Bring back public execution by firing squads' (23 September 2022)<<https://guardian.ng/opinion/bring-back-public-execution-by-firing-squads/>> accessed 18 May 2023.

medical personnel before any form of treatment for gunshot injury sustained by any person could be administered.¹³

The mischief behind the legal requirement for police report before administering treatment of gunshot injury victims is a means to checkmate medical practitioners who are aiders and collaborators of armed robbery gang. The idea is to prevent medical personnel from rendering medical service to armed robbery gang members who may have escaped crime scenes with bullet injuries arising from gun battles with security officers or other persons who put up resistance to the armed robbery attack. It is anticipated that, where a gunshot injury victim presents himself before the police to obtain clearance for treatment, the police would be in a position to render report attesting to the fact that the victim is not an armed robber, in which case s/he would be given clearance to obtain medical treatment. On the other hand, whereas the injured victim is a member of an armed robbery gang or must have obtained the injury in the course of carrying out an armed robbery operation, the police would be in a position to arrest the person in the attempt to obtain a police report to enable him get medical treatment.

It is to be noted that, it is the person or medical facility that is about to offer medical treatment to the victim that is duty bound to notify or report to the police that it has a patient with gunshot injury.¹⁴ In the language of the Act, the report has to be made “immediately”. This would suggest that the notification has to be made before the person or medical facility commences treatment on the victim. Non-compliance with this provision of the Act is a serious infraction that is punishable with imprisonment for up to five years or monetary fine in the case of medical institution being convicted.¹⁵ The medical care giver or facility stands the chance of forfeiting its assets upon conviction under this provision of the Act.¹⁶

It should also be noted that the provision of the Act did not state that police clearance should be obtained but that the incidence should be reported to the police. It did not also state that the victim should be the one to report the incidence to the police; rather that duty is imposed of the person rendering the medical treatment. The provision did not also state that treatment should not be administered on the victim until the police gives a clearance of certification to that effect. The law merely required the caregiver to report the incidence to the police. It is left for the police to determine what to do with such information, while the caregiver performs his own duty of treating the patient.

The prevailing practice is a distortion or extra judicial amendment of the provision of the law, fueled by the wanton, arbitral and extra-judicial insertion of the police clearance requirement by the police. Medical facilities were repeatedly faced with inordinate harassment, intimidation, threat of prosecution and clampdown from the police, should they fail to comply with the orders of the police. This is in view of the powers conferred on the police to effect forceful arrest by any means necessary where the provision of the Act is breached.¹⁷ Medical practitioners or facilities would rather turn down a victim of gunshot injury who has not himself obtained a police clearance before coming to get medical treatment, in abdication of their statutorily imposed duty to report to the police themselves.

The legacies of the Robbery and Firearms (Special Provision) Act 1984 is that medical practitioners have begun to operate in the erroneous fear that a gunshot wound victim has to be

¹³Robbery and Firearms (Special Provision) Act, s. 4(2).

¹⁴Compulsory Treatment and Care for Victims of Gunshot Act, s. 3

¹⁵Robbery and Firearms (Special Provision) Act, s. 4(4).

¹⁶Robbery and Firearms (Special Provision) Act, s. 7(1).

¹⁷Robbery and Firearms (Special Provision) Act, s. 8(1).

armed with a police clearance before (s)he is eligible to receive medical treatment. This has spelt doom for victims, who by reason of their condition after obtaining such injury, are in a near death situation and can hardly help themselves or have sufficient time to get to the police station to obtain police clearance. Notwithstanding that the Act is regarded as draconian and inhumane because it was established under military regime, a proper understanding and application of the law as it would fare better for victims. This is because the Act only requires the medical care giver to notify the police of the incident of having a gunshot wound patient. Information and communication technology can be leveraged upon to instantly notify the police through a phone call, text message or email, which saves sufficient time for medical attention to be granted to avoid the risk of fatality.

3. CREATION OF THE COMPULSORY TREATMENT AND CARE FOR VICTIMS OF GUNSHOT ACT 2017

It may not be correct to assert that the Compulsory Treatment and Care for Victims of Gunshots Act 2017 was the first attempt to address the injustice perpetrated on gunshot injury victims. Before the enactment of the Act, the National Health Act had already been enacted in 2014. Section 20 (1) of the National Health Act provides that “a health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason”. The Act provides penal sanctions of up to six months imprisonment or/and N100, 000.00 fine.¹⁸

Even though the aforementioned provision did not expressly or specifically mention gunshot injury, its terms are of general expression and application, such that it could be applied to address broader spectrum of emergencies, including gunshot injuries. However, the need to expand the utilitarian value of the provision became its undoing, as it gave room for medical practitioners to circumvent its application in instances of gunshot injuries. Since the Act did not indicate instances that could be regarded as emergency, health care service providers were left to make that determination. They opted to disregard gunshot injuries as emergency situation, thus they are not under obligation to give compulsory treatment to victims, in a bid to avoid clash with police.¹⁹

Considering that the National Health Act has not been able to address the challenges of gunshot injury patients, the National Assembly enacted a specific law to address this issue. The effort which began in 2008 finally paid off in 2017, after the law received presidential assent. The Act provides that “every hospital in Nigeria whether public or private shall accept or receive for immediate and adequate treatment with or without police clearance any person with a gunshot wound”.²⁰ The use of the word, “shall”, suggest that this is a mandatory requirement of the law.

Section 1 appears to have cured the conventional practice of demand for police clearance. However, the provision seems to have limited application by the specific mention of hospital. It means that health care facilities other than hospitals are not covered under the provision of the Act. Also, medical practitioners who give independent treatment or offer treatment to gunshot victims outside the vicinity of the hospital will not be protected under the provision. In a comparative analysis of this provision and its counterpart provision in Section 4 of the Robbery and Firearm Act, one cannot help but notice that the use of the phrase, “any person,

¹⁸ National Health Act, s. 20 (2).

¹⁹AF Imosemi, ‘Compulsory Treatment for Victims of Gunshot Act (2017): Saving Lives in Nigerian Hospitals or a Contradiction of the Provisions of the Administration of Criminal Justice Act (2015)?’, (2018) 27 (4) Nigerian Journal of Medicine 333, 335.

²⁰Compulsory Treatment and Care for Victims of Gunshots Act, s. 1.

hospital or clinic” in the latter statute, is more encompassing. Consequently, category of persons not contemplated within this provision shall continue to suffer the consequences of Section 4 of the Robbery and Firearm Act.

Since the Compulsory Treatment and Care for Victims of Gunshots Act 2017 did not expressly repeal or amend Section 4 of the Robbery and Firearm Act, both statutes continue to apply *parripassu*. The implication is that, the misinterpretation under the former regime will continue unabated and police will continue to hide under the cover of the Robbery and Firearm Act to perpetrate misapplication of the law. The shortcoming of the Robbery and Firearm Act could have been addressed by inserting an express provision in the Compulsory Treatment and Care for Victims of Gunshots Act 2017 repealing or setting aside Section 4 of the Robbery and Fire Arms Act 2017.

Section 2 of the Compulsory Treatment and Care for Victims of Gunshots Act 2017 empowers persons, including security officers, to assist gunshot wound victims by taking them to the nearest hospital. The implication is that, even if the police apprehend a suspected offender who sustained gunshot injury, the police is duty bound to take the victim to hospital before subjecting the person to interrogation or placing the person on custodial arrest. This is because the duty to assist a victim of gunshot injury assess medical treatment is inputted on law enforcement officers by law. However, the gains of this provision may be deflected by the provision of Section 6 (1) of the Anti-Torture Act 2017, which provides that a person in custodial sentence has the right to assess medical or psychological assessment “after interrogation”. Assuming a gunshot wound victim is arrested and is in police custody, the police may hide under the cover of ongoing “interrogation” to deny the victim’s right to assess medical care and treatment in good time.

On the other hand, the gain of this provision is that it encourages bystanders to play the role of “good Samaritan” in saving the lives of helpless gunshot victims.²¹ This provision is more appreciated in view of the hitherto harassment which “good Samaritans” undergo in the hand of police and security personnel for undertaking the harmless act of assisting a gunshot victim. In certain cases, “good Samaritans” have landed into police custody or jail for their charitable act. Thus, this provision protects them and absolves them from any form of liability that may arise. Consequently, people will be encouraged to give assistance to the wounded instead of exercising apathy due to fear of police harassment.

Section 2 (2) (a) mandates every hospital to commence medical treatment on the victim without demanding for initial financial deposit for the medical bills. It also protects gunshot wound victims from being made to experience any form of inhuman or degrading treatment.²² This provision of the Act is also in line with Section 1 of the Anti-Torture Act 2017, which is targeted at preventing torture and perpetration of inhuman and degrading treatment against gunshot wounds victims by individuals, police or any other security paraphernalia.²³

Although Section 2 (2) is well thought out for dispensing with the issue of initial monetary deposit for medical bills, which could be a major cause of delay in the treatment and eventual loss of victim’s life if the hospital should insist on it. However, this provision could be well served if the Act had created a special fund for the indemnification of hospitals who provide treatment for gunshot injury victims without payment of initial monetary deposit or whole

²¹Compulsory Treatment and Care for Victims of Gunshots Act, s. 8.

²²Compulsory Treatment and Care for Victims of Gunshots Act, s. 2(2)(b).

²³MI Ezeuko, ‘The Laws Guiding Emergency Treatment in Nigeria in Cases of Gunshot Victims’, (2019) 87 (1) Medico-Legal Journal 47, 47.

medical bills in the instance that they could not recover the medical bill from the patient after treatment. In deserving instances, the hospital would approach the fund with proof of treatment, medical bill and other particular requirements to claim the fees from the fund. By so doing, medical facilities will be encouraged to give prompt medical attention to victims of gunshot injury with fear of loss of revenue. Indeed, efforts have been made to amend the Compulsory Treatment and Care for Victims of Gunshots Act 2017, which amendment would create the fund for treatment of gunshot wound victims.²⁴ However, this amendment is yet to scale through the legislative process.

Section 3 mandates a hospital to report incidence of treatment of gunshot victim to the closest police station, not later than two hours after the commencement of treatment. By this provision, the hospital must first begin the effort to save the victim's life before they make a report to the police. It is immaterial whether the victim is a suspected fleeing offender. This enables a medical practitioner to perform its basic duty to save lives before performing the general duties imposed on all citizens to assist the law enforcement agent in crime prevention and control.²⁵ Even after make such report to the police and it is confirmed that the victim is a fleeing offender, the police cannot take the person out of the custody of the hospital in the guise of criminal investigation, except the Chief Medical Director of such hospital gives a certification that the victim is medically fit to withstand police interrogation and investigation.²⁶

4. ASSESSING COMPLIANCE WITH THE ACT

Despite the gains of the Compulsory Treatment and Care for Victims of Gunshots Act 2017 as highlighted in this work, it is still not left without some lapses. There are still incidences of rejection of gunshot victims in hospitals and medical facilities even after the enactment and enforcement of the Act. On the 25th January 2021, a young Systems Engineer named David Ntekim-Rex was attacked and shot in Yaba. Upon being rushed to the Military Hospital in Yaba, he was not offered treatment because they could not ascertain that he was not an armed robber. Upon being brought to Lagos State University Teaching Hospital, treatment was further delayed until he died.²⁷ In another incidence that did not involve gunshot wound, the victim, a woman, was stabbed but she was also refused medical treatment.²⁸

Sometimes in 2019, one Precious Owolabi, National Youth Service Corp member working as a media correspondence of Channels Television, was hit by stray bullet from the Police who were trying to quell down a religious protest that went confrontational in Abuja. Attempts to save the young man's life proved abortive after he was refused medical treatment by hospitals where he was rushed to.²⁹ In June, 2021, one Ebenezer Ayeni was shot by armed robbers in his Ibadan residence. Two hospitals refused him treatment for lack of police clearance before he

²⁴ 'Senate Considers Bill for Treatment of Gunshot Victims', Thisday (6 October 2021)

<<https://www.google.com/amp/s/www.thisday.com/index.php/2021/10/06/senate-considers-bill-for-treatment-of-gunshot-victims/amp/>> accessed 5 March 2023.

²⁵ AF Imosemi, 'Compulsory Treatment for Victims of Gunshot Act (2017): Saving Lives in Nigerian Hospitals or a Contradiction of the Provisions of the Administration of Criminal Justice Act (2015)?', (2018) 27 (4) Nigerian Journal of Medicine 333, 338.

²⁶ Section 4 Compulsory Treatment and Care for Victims of Gunshots Act 2017.

²⁷ 'Senate Considers Bill for Treatment of Gunshot Victims', Thursday (6 October 2021)

<<https://www.google.com/amp/s/www.thisday.com/index.php/2021/10/06/senate-considers-bill-for-treatment-of-gunshot-victims/amp/>> accessed 5 March 2023.

²⁸ *ibid.*

²⁹ O Umah, 'Compulsory Treatment for Victims of Gunshot', The Nigerian Lawyer (17 June 2021)

<<https://thenigerianlawyer.com/compulsory-treatment-for-victims-of-gunshot/>> accessed 5 March 2023.

eventually passed on two hours later.³⁰ This shows that the hospital had sufficient time to save his life if treatment had been commenced immediately as required by the law.

In another instance Anthony Igwe, a businessman resident in Lagos, was shot several times in his residence by armed men. Upon being rushed to an Ikeja hospital, doctors insisted that he obtain a police clearance and make a down payment of 200,000 naira in order to commence treatment. His neighbors were able to raise the money in good time, but the doctors insisted that they would not commence treatment until the police clearance is obtained and presented. Thus, Igwe helplessly bled to death.³¹

It should be noted that the aforementioned incidence under this section all occurred post-2017 after the enactment of the Compulsory Treatment and Care for Victims of Gunshots Act. The reason for the continuous practice of demand for police clearance could give room for one or more of the following assumptions: the hospitals and medical care givers are ignorant about the current position of the law; they are aware of the provision of the law but concerned about recovery of medical bills to treating gunshot victims; the police are still engaged in the practice of harassing medical care givers who treat gunshot victims without police clearance; the victims or their family members are not aware of their rights and remedy under the law in order to enforce it accordingly; etc. To get a clearer picture as to which of these assumptions is the prevalent reason for the continuous practice, one would need to undertake a quantitative research, which is outside the scope of this study. However, whichever of these assumptions is correct, proper dissemination of information to concerned parties could go a long way to correct the anomaly.³²

5. LEGAL IMPLICATIONS OF NON-COMPLIANCE WITH THE ACT

There are several reasons for advocating that gunshot wound victims should be given urgent medical attention without the use of police report to cause undue delays. Gunshot injuries are of fatal nature within a very short time, considering the trauma it occasions on victims. In recent times, gun control has been a matter of serious challenge to the Nigerian government. So many unauthorized and unlicensed persons are in possession of firearms.³³ There have been several instances of arms attack on innocent citizens by non-state actors, terrorist, kidnappers, secessionist, killer herdsmen, etc. This has resulted in several Nigerians sustaining gunshot injuries without being involved in any form of armed robbery. Also, the emergency response system of the country is plagued with several challenges such as: inadequate response facilities, shortage of trained personnel, exorbitant and inaccessible medical facilities, uncertainty on who is to bear financial responsibility, etc. These short comings cause undue delays which reduces the chance of gunshot injuries surviving the experience. To now insist on police clearance before medical attention is given to victims further complicate the issue and reduces chances of victim's survival.

³⁰ C Nwali-Chukwu, 'Compulsory Treatment for Victims of Gunshot Act 2017: How Effective', (OlisaAgbakoba Legal, June 21, 2021)<<https://oal.law/compulsory-treatment-for-victims-of-gunshot-act-2017-how-effective/>> accessed 5 March 2023.

³¹ N Nwoke, 'How Police, Hospitals Cause Untimely Deaths of Gunshot Victims', The Sun 6 August 2021. <<https://www.sunnewsonline.com/how-police-hospitals-cause-untimely-deaths-of-gunshot-victims/>> accessed 5 March 2023.

³² AO Mustapha, 'Compulsory Treatment and Care for Victims of Gunshot Act 2017; An Appraisal', (Social Science Research Network)<<https://ssrn.com/abstract=311756>> accessed 5 March 2023.

³³ SO Soetan, 'Proliferation of Arms and Security Challenges in Nigeria', (2017) 3(3) International Journal of History and Cultural Studies 33, 33.

In any case, even though a gunshot victim is a suspected offender, he is still entitled to medical treatment. Such person still has the right to be kept alive to withstand trial.³⁴ Allowing the person to bleed to death from gunshot injury simply because the person was involved in criminal activity is a form of jungle justice, where a person is executed without being given the opportunity to defend himself. For a medical care agency to be involved with the valued question as to whether a gunshot victim sustained such injury from involvement in criminal activities or insist on police clearance before administering medical treatment would amount to the hospital constituting itself into a law court.³⁵ Our criminal justice system abhors this practice.

Section 36 (4-6) Constitution of the Federal Republic of Nigeria (CFRN) 1999 empowers a person accused of a criminal offence to be charged to a court of competent jurisdiction for trial; presumed innocent until the otherwise is proven; and entitlement to a fair trial, respectively. Further to this, Section 33 CFRN 1999 guarantees the right to life of every person, which must not be violated except towards executing the criminal conviction and capital sentence of a court of competent jurisdiction in Nigeria. It is argued that the right of gunshot victims to medical assistance and treatment is a constitutional right, default of which amounts to unlawful deprivation of life.³⁶

The fundamental rights of individuals to protection from degrading or inhuman treatment is catered for under Section 35 CFRN 1999. Refusing a gunshot victim access to medical treatment under whatever guise is equivalent to a hunter shooting a wild animal and letting it bleed to death in order to use its carcass as meat. This is a most degrading treatment to subject a human being, whose fundamental rights are adequately catered for by the constitution.

6. REMEDIAL OPTIONS

Where a person claims that his or her fundamental right has been breached, such person can approach the State High Court or Federal High Court to enforce such rights. Such action for enforcement of fundamental right may come under the heading of right to life; right not to be subjected to inhuman or degrading treatment; or right to liberty of the person, depending on whether the victim was kept in police custody. Considering the comparative swiftness in the determination of fundamental right actions and the exemplary nature of damages awarded, this course of action is encouraged.

Medical practitioners should be more cautious of the criminal liability they may face for failure to offer prompt medical treatment to victims of gunshot injuries than the threat and harassment of the police. This is because police harassment for failure to demand police clearance is not a requirement of law that could cause them their professional license or make them incur any civil or criminal liability. Hospitals which failed to treat a patient in a state of emergency is liable to imprisonment and or fine amounting up to 6 months and 100,000 naira respectively.³⁷

Pursuant to Section 5 of the Compulsory Treatment and Care for Victims of Gunshot Act 2017 any medical doctor who refuses to comply with the requirement of the Act is liable to similar

³⁴ FE Bassey, 'The Demand for Police Report and the Response of Gun Violence and Road Accidents in Nigeria', (2012) 2 *Uniuoyo LAWSAN Journal* 98, 99.

³⁵ A Friday, 'An Assessment of the Compulsory Treatment and Care for Victims of Gunshots Act under the Gunshots Victims Act 2017', (2021) 11 (2) *Nigerian Bar Journal* 79, 85.

³⁶ IL Uwaegbulem, 'Right to Life of a Gunshot Victim; A Constitutional Right in the Context of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017', *Social Science Research Network* <<https://ssrn.com/abstract=3953770>> accessed 5 March 2023.

³⁷ National Health Act, s. 10 (2).

penalty upon conviction, whereas the hospital is only liable to criminal liability of 100,000 naira in fine. It is submitted that the liability for the hospital is too trivial considering the seriousness of the matter, which involves a case of life and death. Hospitals may conveniently opt for payment of the meagre fine instead of performing their lawful duty of serving the victim. However, according to the Act, a person or entity whose action or inaction leads to serious physical, emotional, psychological damage or death of a gunshot victim might be liable to between 5 to 15 years imprisonment or fine of 100,000 naira.³⁸

It is to be noted that a gunshot victim or dependents who have suffered some losses due to failure of certain persons to perform their duties under the Act can commence civil action for negligence in order to recover damages. However, the Act provides that, any of the entities under the Act, upon conviction, may be ordered by court to pay compensation to victims or family members, in restitution to the loss suffered by the victim, which could be enforced like a civil judgement action.³⁹ In other words, the judgement creditor can execute the order by writ of fi fa, garnishee or other means of execution of judgement under the Sheriff and Civil Process Act. This provision is well thought out because it saves time, energy and resources which would have cost a victim or dependents to invoke a civil process to obtain damages, after undergoing the rigor of criminal procedure in Nigerian Courts that are infamous for delayed court proceedings.

The requirement of police clearance before a medical treatment can be offered to a gunshot wound victim presupposes that, whereas a person is not accompanied by the police, the patient will escape after treatment has been administered to the person. In other words, the Armed Robbery and Fire Arms Act reckons that hospitals and medical practitioners assist the Police in their crime prevention and detection duties. This is in combination with the general duties imposed on individuals to assist law enforcement officers to effect arrest on suspected offenders under the Criminal Code and Administration of Criminal Justice Law.⁴⁰

It is uncharitable to impose this duty on medical officers, particularly when it is in stark contradiction with their professional duties of saving lives. Medical practitioners are sworn to the Hippocratic Oath⁴¹ before they are issued a practicing license and inducted into the medical profession. By that oath, they swore to use their professional skill to save lives. Acting contrariwise of that solemn oath amounts to a professional misconduct that could cost them their medical license.

The Medical and Dental Council of Nigeria is a professional and administrative body responsible for the regulation of medicine, dentistry and alternative medicine practice in Nigeria. It has the duty to issue license to qualified individuals to practice medicine in Nigeria. On the other hand, the Medical and Dental Practitioners Disciplinary Committee (MDPDC) is charged with the responsibility of discipline of medical and dental practitioners who have breached the ethics of the medical profession or involved in any form of professional misconduct. Whereas the MDPDC finds a medical practitioner culpable of any act of

³⁸ Compulsory Treatment and Care for Victims of Gunshot Act, ss. 9 and 11.

³⁹ Compulsory Treatment and Care for Victims of Gunshot Act, s. 14.

⁴⁰ Criminal Code, s. 201, Criminal Procedure Act, s. 34, and Administration of Criminal Justice Law of Oyo State, s. 28 and 54(2).

⁴¹ The Hippocratic Oath, named after Hippocrates of Kos, Greece, the “father of medicine”, is a medical ethics oath. “*Primum non nocere*” —“first do no harm” in English—sums up this oath. Doctors should save lives, not take them. “A physician shall always bear in mind the obligation of preserving human life”, states the International Code of Medical Ethics. “A doctor owes his patients complete loyalty and all his science”.

professional misconduct, such person is liable to sanctions which could include withdrawal of practice license.⁴²

7. LESSONS FROM OTHER JURISDICTIONS

Gunshot injury reporting obligation is not unique to Nigeria alone. In most developed countries, there are laws which imposes such obligations on medical care givers to report incidence of gunshot injuries to law Enforcement bodies. For instance, in the Scotia Nova region of Canada, the Gunshot Wounds Mandatory Reporting Act 2007 has a compulsory health care facilities' reporting obligation of incidence of firearm-related traumas. However, the objective of law is not for the purpose of apprehension of armed robbers, as the case is in Nigeria. It rather focuses on solidifying regulations guiding the sale, procurement, custody and movement of firearms.⁴³ Thus, Section 3 of the Act mandates the healthcare facilities to make disclosure to the police that a person "is being treated or has been treated for a gunshot wound".

Section 3 (3) goes further to clarify that the disclosure can be made whenever it is "reasonably practicable to do so without interfering with the individual's treatment". The implication is that, the law does not require that such report must be made before treatment of the gunshot victim. The use of the word "is being" implies that treatment must have commenced and is ongoing; while the use of the term "has been" implies that the treatment has been concluded. It means a healthcare provider is not under compulsion to make such disclosure before commencement of treatment but has the discretion to exercise either of the options based on professional assessment of a proper timing to make a disclosure at such a time that would not be detrimental to the well-being of the patient. In any case, the Canadian Supreme Court has made it clear that "the primary concern of physician must be the care of the patient. The physician must not be made part of the law enforcement machination of the state".⁴⁴

The foregoing depicts a system that is mindful of the life and well-being of its citizens. It takes cognizance of the fact that the lives of its citizens come first in the scale of importance, as against the apprehension of offenders. It also recognizes that individuals are entitled to their right to access medical treatment. The Act further protect personnel or entities from procuring civil or criminal liability for offering medical treatment to victims of gunshot injuries and making disclosures in accordance with the Act. Should this provision be replicated in Nigeria, it will insulate medical care service providers from constant harassment, intimidation and threat of prosecution from police and other security agencies.

8. CONCLUSION

This paper examined the extent of implementation and compliance with the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017. It covered the handling of gunshot victims under the regime of the Robbery and Firearms (Special Provision) Act 1984 and the rationale for the enactment. Thereafter, it considered whether the Compulsory Treatment and Care for Victims of Gunshot Act 2017 has created any positive impact in the handling of gunshot victims. The study finds that despite its gains, the Compulsory Treatment and Care for Victims of Gunshot Act 2017 is still plagued by the shadows of the Robbery and Firearms (Special Provision) Act 1984. Medical practitioners are still apprehensive about the

⁴² Medical and Dental Practitioners Act, s.15 and 16; MI Ezeuko, 'The Laws Guiding Emergency Treatment in Nigeria in Cases of Gunshot Victims', (2019) 87 (1) Medico-Legal Journal 47, 47.

⁴³N Bennett, M Erdogan, M Karkada, N Kureshi & RS Green, 'Mandatory Gunshot Wound Reporting in Nova Scotia: A Pre-Post-Evaluation of Firearm-Related Injury Rates', (2022) 24 Canadian Journal of Emergency Medicine 439, 440.

⁴⁴*Rv.Dyment* DLLR (1988) 503.

treatment of gunshot victims without police report, which have resulted into needless death even after the creation of the Act. Cases of refusal to treat gunshot injury victims continues unabated despite the provisions of the Act. The paper went further to examine the legal implication of this state of affairs, which warranted it to make useful suggestions on how it can be addressed.

The misunderstanding and misapplication of the provision of the law by medical practitioners and security forces has led to the untimely and avoidable death of many victims of gunshot injuries. Also, the poor relationship between medical practitioners and members of the police force, coupled with the lack of coordination and cooperation with other key stakeholders continues to bear negative impact on the provision of emergency response to victims of gunshot injuries in Nigeria. This occasions the need for coordinated publicity response, enlightenment of medical personnel, members of police force, other security paraphernalia and other concerned stakeholders and advocacy on the requirement of the law and the legal implication of non-compliance thereto. While it appears that, by virtue of the Compulsory Treatment for Victims of Gunshot Act 2017, the ghost of the Robbery and Firearms Act have been buried, it still rules, hunts and hurts victims of gunshot injuries from the grave. It is now left for medical care givers to be brave enough to scathe through it undeterred.

9. RECOMMENDATION

In order to uproot the stronghold of Section 4 of the Robbery and Firearms (Special Provision) Act restraining gunshot injury victims from getting expedite medical treatment, it would have made for more legislative dexterity if Section 1 of the Compulsory Treatment and Care for Victims of Gunshots Act 2017 is amended to commence with the clause: ‘notwithstanding anything to the contrary under any other law...’

Regardless, of the prevailing position of the law, it is submitted that when there is a conflict between two co-ordinate statutes, the latter would prevail over the former. It is deemed that the intendment of the legislators is to abandon their previous position in the former statute for a new position in the latter statute. Therefore, the Compulsory Treatment and Care for Victims of Gunshots Act 2017 should take preeminence over the Robbery and Firearms (Special Provision) Act by virtue of its position as the latter statute.

Specifically, medical practitioners need to be reminded of their hallowed duty to preserve lives. Non-compliance with this should warrant sanctions their professional regulatory body and penal sanction in accordance with the provisions of applicable laws. On the other hand, the police and other law enforcement officers should be warned against harassment of medical practitioners who offer medical attention to victims of gunshot injuries, provided there is compliance with the requirement of the law.

It is necessary to unearth the reason behind the prevalence of the practice of medical practitioners demanding for police clearance before giving medical treatment to gunshot injury victims despite the existing legal reforms in this regard. By its very nature, doctrinal research methodology adopted in this work has limitations in proffering answer to this question. It is therefore suggested that, future studies should adopt a socio-legal approach by applying qualitative research methodology, which contemplates obtaining data from concerned stakeholders in this regard. This will provide a clearer picture of the answer to this question.

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