

REVIEW ARTICLE

The Ebola Virus and Human Rights Concerns in Africa

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Abstract

In the wake of the Ebola virus disease (EVD) that is ravaging parts of Africa certain measures are being taken by governments to prevent the spread of the epidemic within their borders. Some of these measures are drastic and may likely have implications for the fundamental rights of individuals. The EVD outbreaks have brought to the fore again the tension between public health and human rights. This article discusses the origin and mode of transmission of the EVD and then considers the human rights challenges that may arise as a result of states' responses to the disease in Africa. (*Afr J Reprod Health 2015; 19[3]: 18-26*).

Keywords: Ebola, Public Health, human right.

Résumé

Dans le sillage de la maladie à virus Ebola (MVE) qui ravage certaines parties de l'Afrique sont les mesures prises par les gouvernements pour prévenir la propagation de l'épidémie au sein de leurs frontières. Certaines de ces mesures sont drastiques et peuvent vraisemblablement avoir des implications pour les droits fondamentaux des individus. Les épidémies de la MVE ont mis en évidence à nouveau la tension entre la santé publique et les droits humains. Cet article traite l'origine et le mode de transmission de la MVE, puis il examine les défis des droits humains qui peuvent survenir à la suite des réponses des Etats à la maladie en Afrique. (*Afr J Reprod Health 2015; 19[3]: 18-26*).

Mots clé : Ebola, de santé publique, droit humain.

Introduction

Anyone listening or watching news media in the past few months can affirm the deadly spread of the Ebola virus disease (EVD). The current outbreak has been lethal and has claimed many lives ever recorded. It is highly contagious and is currently not under control. According to the World Health Organization (WHO), the outbreak of EVD, formerly known as Ebola haemorrhagic fever, in West Africa has continued to escalate with over 27 748 suspected, probable, and confirmed cases in Guinea, Liberia and Sierra Leone¹ and more than 11 279 reported deaths² but many go unrecorded. EVD is a severe and sometimes fatal illness with death rate of about 90%. In recent times some countries in West Africa such as Nigeria, Senegal and Mali have been able to curtail the spread of EVD; nonetheless, infection rates in other parts of West African remain a source of concern².

It is believed that EVD outbreaks often occur in rural and tropical areas, particularly in Central and Western parts of Africa³. The virus is believed to be transmitted to people through wild animals and then spreads among humans through human-to-human contact. Infected persons require urgent and intensive care as no vaccines has currently been approved for treatment in humans and animals⁴. In the wake of the EVD that is ravaging parts of West Africa certain measures are being taken by governments to prevent the spread of the epidemic within their borders. Some of these measures are drastic and may likely have implications for the fundamental rights of individuals. The EVD outbreaks have brought to the fore again the tension between public health and human rights. This article discusses the origin and mode of transmission of the EVD and then considers the human rights challenges that may arise as a result of states' responses to the disease.

The Origin and Mode of Transmission of EVD

According to WHO, the origin of Ebola virus is unknown; however, fruit bats are thought to be the likely host of the virus⁵. The first reported cases of Ebola virus occurred in 1976 during two outbreaks in Nzara Sudan and in Yambuku, Democratic Republic of Congo (DRC)⁶. The incident in DRC occurred in a village close to the Ebola River, from where the disease takes its name. Since then the EVD has been found in Uganda, Gabon, Guinea, Liberia, Sierra Leone and Nigeria.

As a communicable disease, Ebola can be transmitted among human population through contact with the blood, secretions, organs or other bodily fluids of infected animals. Although scientists are still investigating how victims are infected, it is believed that the transmission has occurred through the handling of infected chimpanzees, gorillas, fruit bats, monkeys, forest antelope and porcupines found ill or dead or in the rainforest⁷. As noted earlier the spread of Ebola within the population is usually through human-to-human transmission as a result of infection from direct contact (through broken skin or mucous membranes) with the blood, secretions, organs or other bodily fluids of infected people, and indirect contact with environments contaminated with such fluids. In some situations infection may occur from contact (through broken skin or mucous membranes, including the nose, eyes and mouth) with environments that are contaminated with an Ebola patient's infectious blood or body fluids, such as soiled clothing, bed linen, or used needles⁸.

Worse still, it is believed that transmission can occur during burial ceremonies if mourners have direct contact with the contaminated body of a deceased person⁹. A person that has recovered from the disease can still transmit the virus through their semen for up to 7 weeks after recovery from illness¹⁰. Weak information and communication networks, community suspicion and mistrust of health care workers, populace reluctant and unwilling to receive treatment have been highlighted as some of the issues that have

further compounded and exacerbated the spread of EVD.

More importantly, health care providers are said to be highly susceptible to infection in the cause of treating a patient with EVD. Recently, two American doctors that provided treatment to a patient with EVD are said to have been infected with the virus¹¹. Also, a Liberian national who travelled by air in July 2014 to Nigeria was admitted to hospital with symptoms of EVD and died a few days later. Two of the nurses that were involved in providing medical care to the Liberian patient later died of the disease¹². This highlights the ease with which the disease could spread. While for now there is no official case of EVD in some countries such as South Africa, there has been one imported case of EVD documented in the country. In 1996, a Gabonese doctor working with EVD patients in Libreville, Gabon, was admitted to a hospital in Johannesburg. A nurse caring for the patient became infected and died¹³. Stopping the transmission has been emphasised by WHO as the key to curbing the spread of EVD. Healthcare workers like foot soldiers have been at the forefront. Although death toll is not the only way to assess deadliness of the EVD, as at May 2015, there were a total of 880 health worker reported infections in the 3 intense-transmission countries (namely Guinea, Liberia, and Sierra Leone), with 510 reported deaths¹⁴.

After an exposure to EVD, there is an incubation period of 2 – 21 days (on average, 8 – 10 days), after which the person begins to manifest some of the symptoms. These may include fever, weakness and lethargy, muscle pain, headache and sometimes sore throat¹⁵. At a later stage these may lead to vomiting, diarrhoea, abdominal pain, and sometimes a rash. In other situations, infected persons may experience bleeding inside and outside of the body; this is the most serious complication. As such EVD is highly communicable disease. In an effort to take precaution when providing healthcare for potentially infectious patients, health care workers (nurses and doctors) treating patients of EVD now wear protective body-suits similar to those worn by personnel dealing with toxic chemicals.

Currently, there is no approved vaccine or treatment for EVD, however, some experimental drugs are currently undergoing human clinical trials¹⁶. This has heightened fears and concerns about the deadly disease. Given the high fatality rate of the EVD it is quite understandable the drastic steps and measures being taken by states to curb its spread. The Ebola incident has further reminded us how closely connected we are in this world and how vulnerable we could all be. Aginam has argued that given the global nature of some diseases, the rich countries as well as poor countries both have the duty to ensure that appropriate measures are taken to address a public health emergency¹⁷.

Failure to do so will put the entire world in danger. The largest concern is the spread of the disease to other countries. Some of the measures adopted by countries to curtail EVD include quarantine (preventative), isolation (reactive), refusal of entry into a country's border and forcible testing to ascertain Ebola infection, cremation of a dead body of Ebola victim. Although noble, such efforts can easily violate a wide range of human rights if imposed and enforced unjustly. The questions that may arise regarding these measures include: how consistent with human rights principles and standards are these measures? Or will individual rights be sacrificed at the altar of public good?

Public Health and Human Rights

It has been observed that public health responses to an epidemic or diseases may have implications for human rights in one way or another¹⁸. This is often so because the aim of public health is to protect the community as a whole, while human rights principles are more concerned with securing individual rights. This tension is further illustrated by the decision of the US court in *Jacobson v Massachusetts*¹⁹. The bone of contention in that case was whether a state, in applying a public health measure to prevent the spread of small pox, could forcibly vaccinate an individual against his will. The plaintiff had argued that such a measure would erode his fundamental right to liberty.

In upholding the conviction of the plaintiff, the US Supreme Court noted that based on the

principle of paramount necessity, a state or community has the right to protect itself against an epidemic of a disease that threatens the safety of its members²⁰. Implicit in this decision is that in some situations the need to protect the well-being of the community may override respect for individual rights. In essence, public health emergencies may necessitate the need to strike a balance between communal good and individual rights. Such an approach is by no means easy.

Human rights are fundamental rights inherent in human beings by virtue of their humanity. Human rights are guaranteed in international, regional and national laws and documents. Examples of human rights instruments at the United Nations level include the Universal Declaration on Human Rights of 1948, the International Covenant on Civil and Political Rights (ICCPR)²¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)²². The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²³ and the Convention on the Rights of the Child²⁴. At the African Regional level, human rights are guaranteed in documents such as the African Charter on Human and Peoples' Rights²⁵, the African Charter on the Rights and Welfare of the Child²⁶, and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²⁷.

The Bill of Rights in chapter 2 of the South African Constitution of 1996 is an example of the entrenchment of human rights in national law²⁸. Human rights are said to be universal, interdependent, indivisible and interrelated. According to Mother Theresa, 'human rights are not a privilege confers by government. They are every human being's entitlement by virtue of his humanity'²⁹. They cover many aspects of human existence such as the right to life, dignity, privacy, equality, health, shelter, food and family life. In addition, human rights are founded on core principles such as universality, fairness, dignity, equality, autonomy and participation. It should be noted that human rights are not absolute and may sometimes be limited. However, the scope and extent of such limitations is often a subject of contention. Generally, limitations of rights are permitted in certain

circumstances such as for the protection of public health, order or morals; the national interest; national security, public safety or the wellbeing of the country; public order; the prevention of disorder or crime; or the protection of the rights and freedoms of others³⁰. But in accordance with the Siracusa Principles, rights can only be restricted if it is in accordance with the law, serves a legitimate objective of general interest, is strictly necessary in a democratic society, no less intrusive or restrictive means exist to achieve similar ends and restrictions are not arbitrarily imposed³¹.

Also, some provisions of national constitutions such as section 36 of the South African Constitution allow for limitation of rights only by laws of general application, and only to the extent that the restriction is reasonable and justifiable in 'an open and democratic society based on human dignity, equality and freedom'. It should be noted, however, that certain rights are non-derogable and are therefore not subject to limitation. These include the rights to life and dignity, freedom from torture and freedom from non-discrimination³².

Given that no cure currently exists for the Ebola disease, it has become necessary for governments to adopt drastic preventive or precautionary measures to reduce the spread of the disease. These include using the military to enforce quarantined zones, imposing curfews and lockdowns, forcible medical test, screening people entering major towns and cities and cremation of body of Ebola victim. While these preventive measures are essential, it is important that they do not unduly undermine individual human rights. In one of its statements in response to the EVD, the African Commission on Human and People's Rights (African Commission) notes with concern that 'the current spread of the Ebola virus is unprecedented and has indescribable consequences of suffering and prevention from fully enjoying economic, social and cultural rights³³.

The discussion that follows examines from human rights perspective the justification or otherwise of some of these measures.

Justif Ying quarantine, isolation or ex-communication

As noted above EVD is a communicable disease that spreads easily through mere contact with body fluids or materials of an infected person. Thus, it becomes necessary for an infected person to be isolated in the interest of others. In some countries such as Liberia and Sierra Leon individuals or communities have been quarantined or clamped down due to fear of EVD. 'Kabia explains that 'in August 2014 attempts by Liberian security forces to quarantine residents of the West Point district in Monrovia descended into violence. The outbreak has also led to serious stigmatization of individuals and whole communities suspected or confirmed to be infected or to have survived Ebola'³⁴. Actions as these can undermine the right to liberty guaranteed in numerous human rights instruments. Most human rights instruments guarantee an individual's right to liberty or freedom of movement. This implies that an individual's right to move around should not be unduly restricted.

While quarantine or ex-communication of persons suspected to be with EVD may likely infringe the right to liberty or movement of an individual, such an infringement may be justified based on the mode of transmission and fatal nature of EVD. This situation may be contrasted with the earlier stage of HIV where a similar approach was wrongly adopted to prevent the spread of the epidemic. Human rights institutions are unanimous in condemning such an approach as a gross violation of human rights since HIV is not transmissible through casual contact³⁵.

HIV can only be transmitted through unprotected sexual intercourse with an infected person, blood transfusion or from a pregnant woman to an unborn child. In the case of EVD, mere contacts with clothing or other external materials of an infected person may expose others to infection. Indeed, it is believed that touching a corpse of a person who died of EVD may also lead to the transmission of EVD³⁶. The question may be asked are there no other less intrusive

ways of preventing the spread of the virus? From scientific evidence available so far, it would seem isolation of an infected person is the most reasonable way to minimize or prevent the spread of the virus to others.

Besides, the right to liberty is a derogable right and can therefore be limited under certain circumstances. Indeed, human rights instruments such as articles 12 of the ICCPR and 12 of the African Charter permit reasonable limitations to the right to liberty and movement. Recent developments have shown that health care workers that were involved in providing medical care to EVD patients have themselves been exposed to the virus and even some have lost their lives³⁷. This clearly underlines the fatal nature of EVD and further justifies the drastic measures, including quarantine, being adopted by states to prevent its spread. It is important to note however, that persons quarantined are neither in 'detention' nor accused persons and therefore they are entitled to be treated with utmost respect and assured of their other fundamental rights. They are already paying a big price for the society for being isolated from family members and friends; they must not be treated as 'culprits'. It is also important to state that people should not be quarantined based on mere suspicion of EVD, 'rather isolation must only be adopted where a person has been exposed to EVD or there exist real risks of transmission to others'. Under no circumstances should quarantine be used as a routine measure or be targeted at certain groups of people. Therefore, the recent lockdowns in some countries such as Liberia and Sierra Leone, as 'laudable' as they may seem, constitute serious threats to enjoyment of the human rights in general and the right to liberty in particular³⁸. There is no evidence to show that such measures will reduce the spread of EVD. As noted by Eba the unabated spread of EVD in these countries attest to the ineffectiveness of such measures and may further erode the enjoyment of other human rights such as access to food and health care³⁹.

With regard to the travel restrictions being contemplated by some countries on individuals from countries where EVD is prevalent, this should be approached with caution. Unlike HIV/AIDS which cannot be easily 'imported'

into a country unless there is direct contact with the blood or semen of an infected person, EVD can be imported to a country since mere presence of an infected person in another country poses great risk to the host population. This is particularly so if the person begins to exhibit some of the symptoms of the virus. Indeed, the first reported case of Ebola in Nigeria was imported by a Liberian by name Sawyer who died shortly after he was diagnosed with EVD. His presence in the country had further exposed about 8 other persons to the virus and has even claimed the life of one of the nurses that provided medical care to him.

Restrictions on travel

Although there have been no formal bans on international travel, some airlines have suspended flights to the West African region⁴⁰. Due to its infectious potential and the ease at which the EVD spreads, theoretically it is just a plane flight or bus ride away. While a travel restriction on a person infected with or exposed to EVD may be justified it is doubtful if a blanket ban or restriction on citizens from countries where EVD is prevalent can be justified. Though it would make no economic sense, it is also an undue restriction on the right to movement if every Guinean, Liberian or Sierra Leonean is banned from entering South Africa or any other country for that matter.

From the statistics so far provided by WHO, which indicate that about 26, 000 cases of EVD have so far been confirmed in some countries in West Africa, this would seem to be a very small fraction of the population of these countries. Moreover, WHO has advised that for now there is no need for any travel or trade restrictions as a result of the EVD⁴¹. This is the same position taken by some developed countries. In essence, available fact and scientific evidence do not seem to support an imposition of a blanket travel ban on citizens from countries with prevalence of EVD. Thus, countries contemplating travel bans must carefully think through this and ensure that a balance is struck between the human rights implications and quest to prevent spread of EVD.

Forcible testing for EVD

Another measure being contemplated by states is to subject some individuals to forcible testing for EVD. The argument behind this approach is to enable an early detection of EVD and be able to prevent spread to others. Recently a US nurse returning to her country after a trip to West Africa was quarantined and made to undergo EVD test before she could be released⁴². Subjecting people to EVD test may likely erode the right to autonomy guaranteed in human rights instruments. Although the right to autonomy is not explicitly guaranteed in any human rights instrument this right is directly linked to the rights to privacy, security of persons and dignity. Article 9 of the ICCPR guarantees the right to liberty and security of persons. This implies that no intrusion to the body of a person is permitted unless the person has consented to it. Also, section 12 of the South African Constitution guarantees the right to bodily integrity, and reproductive rights.

One of the essential elements of the right to health is freedom from non-consensual medical treatment or experimentation⁴³. It is a fundamental principle of medical ethic that no medical treatment can be conducted on a patient without his/her informed consent freely and willingly given. It was reported recently that the government of Hong Kong detained and tested a Nigerian for EVD after he manifested some symptoms of the virus. He was only released when he tested negative to the virus⁴⁴. This incident clearly exemplifies likely threats to human rights, which may occur as a result of drastic public health measures aim at protecting the community. Undoubtedly, the aim of the government of Hong Kong is to protect their citizens from being exposed to EVD.

However, there is need for caution so that this does not become an excuse to trample on individuals' fundamental rights. Resorting to routine or mandatory testing of individuals or passengers from other countries simply on the suspicion of EVD cannot be justified. An individual should only be made to undergo EVD test if there is a justified reason for so doing. In other words, unless a person has exhibited or

manifested symptoms of EVD, it might amount to an intrusion to the right to autonomy for an individual to be detained and compelled to undergo EVD test. Indeed, appropriate preventive measures can be put in place at the airport to ensure screening of travellers entering the country. This may seem to be a more realistic and cost effective measure than resorting to mandatory testing of passengers entering the country. Moreover, Ebola virus has an incubation period of about 8 days so resorting to mandatory testing may not really help in detecting if a passenger is already infected.

Non-availability of treatment

Since the first reported case of EVD in 80s, it remains a cause for concern to note that no cure exists nor has there been a vaccine⁴⁵ to prevent transmission of the disease. Since its outbreak the EVD has spread sporadically mainly in West and Central Africa. In all its incidences, it has been highly contagious with high mortality rates⁴⁶. The fact that pharmaceutical companies in developed countries have been slow in developing a cure or vaccine for Ebola merely confirms the fact that these companies hardly invest in tropical or neglected diseases that may benefit millions of people in poor regions. This can compromise the right to health guaranteed in numerous human rights instruments. The recent renewed efforts by pharmaceutical companies to develop a vaccine for EVD may have been attributed to the fact that developed countries are not immune from the virus. Reports from worst affected countries (Liberia, Guiana and Sierra Leone) show that the health care systems are overwhelmed by the incidence of EVD and lack both infrastructural and human capacity to handle the situation⁴⁷. This in turn has led to inability of these countries to respond to other health challenges such as maternal and child health. Indeed, reports have shown people dying from treatable diseases due to the fact that several health care centres have closed down⁴⁸.

Article 12 of the ICESCR, is by far the most comprehensive provision on the right to health. It guarantees the right to highest attainable standard of physical and mental health of every

individual. In addition, it recognises states obligation in relation to social determinant of health including ensuring a healthy environment and adopting preventive measures to address epidemic. The Committee on Economic Social and Cultural Rights responsible for monitoring the implementation of the ICESCR has noted that the enjoyment of the right to health requires states to take appropriate measures to ensure that people have access to goods and services, including relevant medicines and drugs⁴⁹. The former United Nations Special Rapporteur on Health has noted that failure of pharmaceutical companies to invest in medicines needed by people in poor regions is a matter of social injustice and a human rights issue as the rights to health and life of people in poor regions may be undermined⁵⁰. The slow response from pharmaceutical companies in developed countries to Ebola ravaging poor regions of the world exemplifies little regard for lives in Ebola-stricken countries. As Gostin and Madison rightly argue;

“A failure to act expeditiously and with equal concern for all citizens, including the poor and less powerful, harms the whole community by eroding public trust and undermining social cohesion. It signals to those affected and to everyone else that the basic human needs of some matter less than those of others, and it thereby fails to show the respect owed to all members of the community⁵¹.”

Implicit in this statement is that every nation, in the interest of justice, has the duty to act in order to address EVD irrespective of where it occurs. This is because justice is not bound by national borders but binds the human community around the globe. Echoing Donne, ‘every man is a piece of the continent and a part of the main’ therefore the death of a human being in any part of the word diminishes us all⁵². The African Commission has called on member states of the African union to ‘mobilize the necessary human and financial resources for an appropriate

response and the search for an effective treatment for the deadly virus⁵³.

One question may be asked: if a vaccine were to exist will it be justified to compel every individual to be vaccinated? Given the fatal nature of EVD and the fact that it is highly contagious, compelling individuals to be vaccinated will not only protect them from possible infection but will also be to the benefits of the community as a whole. Moreover, from economic point of view, it is reasonable and cost effective. As the saying goes prevention is better than cure. To that extent such a measure may be justified even though it may interfere with an individual’s right to autonomy.

Indeed, in the *Jacobson* case discussed earlier the plaintiff had argued that compelling him to undergo immunization against small pox was a violation of his right to liberty. The US Supreme Court, however, rejected this argument claiming that respect for individuals’ rights will need to be balanced with common good of the society. Also, the European Court of Human Rights had the chance to rule on Article 8 and compulsory vaccination in 2012 in *Solomakhin v Ukraine*⁵⁴. The court found that even though compulsory vaccination evidently interfered with the applicant’s bodily integrity and therefore fell under Article 8, the interference was justified in a democratic society as it ‘could be said to be justified by the public health considerations and necessity to control the spreading of infectious diseases in the region.’

Conclusion

The Ebola outbreak has further reminded us of the fact that we live in a global village where we cannot afford to be complacent about the fates of others in any part of the world. More importantly, attempts by the international community to address public emergency and epidemic must take into consideration implications for human rights. But it should be borne in mind that human rights are never absolute and may be limited in certain justified circumstances, including the common good of society. While some of the measures currently adopted by states to combat

the Ebola virus may be justified, there is need for caution so that individuals' rights are not sacrificed at the altar of common good.

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