



Considerations on the Impact of Measures Relating to Ebola Virus Disease, on Persons Who Are or May Be in Need of International Protection

Introduction

1. In the context of the outbreak of Ebola Virus Disease (EVD) in certain West African countries starting in March 2014, a number of States have put in place public health measures such as the screening of travellers on arrival and the use of quarantine for persons who have been identified as suffering from the disease or who may have been exposed to the virus. Other States are considering the introduction of similar measures. Such efforts, multilateral or national, directed at containing this infectious disease and preventing its spread are in line with responses recommended by the World Health Organization (WHO).¹
2. Whereas such public health measures may not specifically target asylum-seekers or other persons who may be in need of international protection, they may have far-reaching consequences for such persons. This paper explores such possible consequences, against the background of State obligations under international refugee law and human rights law.²

WHO Recommendations Relating to International Travel

3. For recommendations and advice relating to appropriate public health measures in the context of international travel, including to and from States affected by EVD transmission, UNHCR refers States to the advice provided by the WHO.³
4. UNHCR recalls that the WHO “does not recommend travel restrictions to or from the countries affected, except for EVD patients, contacts of EVD patients and corpses of EVD patients.”⁴

¹ See at <http://www.who.int/csr/disease/ebola/en/> under “technical Information”.

² Including the principle of *non-refoulement*, as contained in: UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>, Art. 33; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations Treaty Series vol. 1465, p. 85, <http://www.refworld.org/docid/3ae6b3a94.html>, Art. 3; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html>, Arts 6 and 7; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>, Arts 2 and 3. See also Lauterpacht and Benjamin, “The Scope and Content of the Principle of Non-Refoulement: Opinion”, in Feller, Turk and Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultation on International Protection* (CUP and UNHCR: 2003), <http://www.refworld.org/docid/470a33af0.html>.

³ World Health Organization, *International Travel and Health: West Africa – Ebola Virus Disease*, 10 September 2014, <http://www.who.int/ith/updates/20140910/en/>.

⁴ *Ibid.*, para 4.2.

5. For States affected by EVD transmission, the WHO recommends exit screenings of all persons at international airports, seaports and major land crossings, for “unexplained febrile illness consistent with potential EVD.” The WHO recommends furthermore that any person with an illness consistent with EVD should not be allowed to travel, unless the travel is part of an appropriate medical evacuation.⁵
6. The WHO notes that where a person who has been exposed to the Ebola virus and who has developed symptoms boards a commercial flight or other mode of transport without informing the transport company of his/her status, such patients should seek immediate medical attention upon arrival, and they should then be isolated to prevent further transmission.⁶

Treatment Accorded to Asylum-Seekers from EVD-Affected Countries

7. Restrictive immigration measures, such as visa restrictions,⁷ implemented at the point of departure and specifically targeting individuals departing from countries affected by EVD transmission on the basis of nationality or most recent place of residence or stay, are not in line with WHO recommendations. Such measures may have a negative impact on bona fide asylum-seekers. The WHO Director-General has stated that no evidence exists to support the effectiveness of travel bans as a protective measure.⁸
8. When an individual from a country affected by EVD transmission is able to depart and seek asylum abroad, the person’s nationality or, in the case of a stateless person, his/her country of former habitual residence, is not a relevant consideration insofar as the asylum State’s obligation to allow the person to enter and claim asylum is concerned. Any specific concerns relating to the health of the individual in question as well as broader public health concerns need to be addressed by means of appropriate, proportionate and non-discriminatory measures.⁹ Such measures need to be in accordance with international law, in particular international human rights and refugee law, and should not lead to a circumvention or suspension of the principles on which the protection of refugees is based.
9. The isolation of asylum-seekers who are EVD patients or suspected EVD patients in a non-discriminatory manner, i.e. on the same footing as other EVD patients or suspected EVD patients, is an appropriate public health measure.¹⁰
10. UNHCR recognizes that the sharing of data between States may be an important part of a wider strategy to contain the spread of EVD. However, in the event that an asylum-seeker is an EVD patient or suspected EVD patient, States need also to take into account the well-established principle that information on asylum-seekers should not be shared with the country of origin. This could, depending on the nature of the information, put asylum-seekers and/or family members remaining in the country of origin or habitual residence at

⁵ *Ibid.*, para 4.2.1.

⁶ *Ibid.*, para 3.3.

⁷ For measures implemented by Australia: see e.g. The Sydney Morning Herald, *Australia Shuts Borders to Ebola-affected Countries*, 28 October 2014, <http://www.smh.com.au/federal-politics/political-news/australia-shuts-borders-to-ebolaaffected-countries-20141027-11ciut.html#ixzz3HRoUE29U>, and as regards Canada see: Government of Canada, *Protecting the Health and Safety of Canadians*, 31 October 2014, http://news.gc.ca/web/article-en.do?nid=898999&_ga=1.201320494.1408279375.1414795930 and Ministerial Instructions as regards these measures, at <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-10-31-x8/html/extra8-eng.php>.

⁸ See Bloomberg, *WHO’s Chan Slams U.S., Australia Travel Curbs for Ebola*, 30 October 2014, <http://www.bloomberg.com/news/2014-10-30/who-s-chan-slams-u-s-australia-travel-curbs-for-ebola.html>.

⁹ World Health Organization, <http://www.who.int/csr/disease/ebola/en/>.

¹⁰ The targeting for detention of asylum-seekers or refugees who are nationals or former residents of countries affected by EVD transmission for reason of their nationality or place of recent residence or stay would not be in line with applicable standards relating to the detention of asylum-seekers. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.refworld.org/docid/503489533b8.html>.

risk. Best State practice incorporates a strict confidentiality policy. Should it exceptionally be deemed necessary to contact the authorities in the country of origin, for example to alert the authorities to the need to trace all persons with whom the asylum-seeker may have been in contact prior to his departure to screen them for signs of EVD, there should be no disclosure of the fact that the individual has applied for asylum.

Resettlement and Humanitarian Entry / Visa Programmes

11. Resettlement programmes in the sub-region¹¹ have been affected by the EVD outbreak. Some resettlement selection missions have been cancelled. To the extent that the cancellation of selection missions are motivated by protective measures for staff responsible for the selection of refugees for resettlement, UNHCR is ready to facilitate other forms of resettlement processing, which do not require face-to-face interviews (dossier-based processing or use of Skype or video-conferencing facilities), so as to allow the selection of vulnerable refugees for resettlement from EVD-affected countries to continue.
12. In some cases, departures from EVD-affected countries of refugees accepted for resettlement have also been put on hold. One resettlement country has indicated the possible introduction of a quarantine period before departure, whereas others appear to be awaiting policy instructions.¹² UNHCR has requested resettlement countries to continue to facilitate refugee departures for resettlement from EVD-affected countries. There are no public health justifications for imposing additional or different public health measures on refugees departing for resettlement than in relation to other international travel.
13. At least one State is known to have announced a suspension of humanitarian visa / humanitarian entry programmes for persons coming from EVD-affected countries.¹³ The manner of implementation of such measures remains to be seen; however, given the potential for serious negative impact on persons who are or may be in need of international protection, or their family members, UNHCR encourages implementation in a manner which is sensitive to individual circumstances and protection needs. A blanket suspension of humanitarian entry / visa processing based on nationality (or former residence, stay or transit) in relation to EVD-affected countries would give rise to concern and may affect a much wider group of persons than EVD patients or suspected EVD patients. As such, any such measures may target and affect persons beyond the public health measures advised by the WHO.

Forced Return to Countries Affected by EVD

14. The outbreak of the Ebola Virus Disease has created a wide range of challenges, including relating to the rule of law system. Among others, there has been widespread “fear, misinformation, paranoia and distrust”.¹⁴ There have also been reports of the normal legal, social and policing structures being disrupted, resulting in insecurity and incidents of crime and in some instances limited avenues for justice. In a number of incidents, security

¹¹ It should be kept in mind that West-Africa represents only 1.1% of resettlement submissions out of Africa on an annual basis (based on 2013 resettlement statistics).

¹² Information available to UNHCR.

¹³ See e.g. The Sydney Morning Herald, *Australia Shuts Borders to Ebola-affected Countries*, 28 October 2014, <http://www.smh.com.au/federal-politics/political-news/australia-shuts-borders-to-ebolaaffected-countries-20141027-11ciut.html#ixzz3HRoUE29U>.

¹⁴ See Inter-Agency Standing Committee, *Humanitarian Crisis in West Africa (Ebola) Gender Alert*, September 2014, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/iasc%20final%20humanitarian%20crisis%20in%20west%20africa%20ebola%20gender%20alert%20%20september%202014.pdf>.

personnel have reportedly resorted to a disproportionate use of force to maintain public order.¹⁵

15. When States consider the forcible return of an individual from an EVD-affected country who has had his/her asylum claim rejected in final instance, they should take into consideration the continuously developing situation in EVD-affected countries and the individual circumstances of the case. A number of States have reportedly implemented a temporary stay of forced returns to (one or more) countries affected by EVD.¹⁶
16. In October 2014 the European Court of Human Rights (ECtHR) decided that an individual from Liberia would be able to take individual measures upon return to Liberia to reduce the risk of EVD infection and that, therefore, his forcible return would not lead to a breach of Article 3 of the European Convention on Human Rights (ECHR).¹⁷ However, in a number of asylum States courts have ruled against the forced return of individuals from EVD-affected countries.¹⁸ In relation to States Parties to the ECHR, UNHCR considers that, while the circumstances in Liberia at the time of the ECtHR decision may not have reached the level which would generate a violation of Article 3 of the ECHR, the reportedly deteriorating situation in EVD-affected countries must be taken into account in future decisions on forcible returns to EVD-affected countries. Similarly, in relation to States Parties to the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"),¹⁹ UNHCR considers that the reportedly deteriorating situation in EVD-affected countries will need to be taken into account in assessing whether the criteria contained in Article 1(2) of the OAU Convention may be met with reference to "events seriously disturbing public order". In particular, reports of (i) measures to maintain public order which contravene the rule of law,²⁰ of (ii) food security being under threat,²¹ and of (iii) the State being unable to provide basic services,

¹⁵ In Sierra Leone, for example, armed forces have reportedly shot at people trying to cross the border illegally. See ACAPS, *Briefing Note - 14 October 2014, Ebola in West Africa*, 14 October 2014, http://acaps.org/img/documents/b-acaps_bn_ebola_west_africa_impact_protection_14_oct_2014.pdf. In Liberia, security forces have reportedly used excessive force to implement the state of emergency and curfew. See ACAPS, *Briefing Note - 14 October 2014, Ebola in West Africa*, 14 October 2014, http://acaps.org/img/documents/b-acaps_bn_ebola_west_africa_impact_protection_14_oct_2014.pdf.

¹⁶ These countries include (amongst others) Belgium (see e.g. AFP, *Belgium stops deportations to Ebola-hit African countries*, 27 October 2014, <http://www.afp.com/en/node/2989037/>), Germany (see e.g. Die Welt, *Bundesländer setzen Abschiebung wegen Ebola aus*, 1 October 2014, <http://www.welt.de/politik/deutschland/article132817416/Bundeslaender-setzen-Abschiebung-wegen-Ebola-aus.html>), Switzerland (see e.g. Swissinfo.ch, *Deportations Stopped to Worst-hit Ebola Lands*, 7 November 2014, <http://www.swissinfo.ch/eng/deportations-stopped-to-worst-hit-ebola-lands/41104192>) and the United States (see e.g. Washington Times, *Obama Blocks Deportation for Thousands of Liberian Illegals, Citing Ebola crisis*, 26 September 2014, <http://www.washingtontimes.com/news/2014/sep/26/obama-extends-safe-haven-liberians-ebola-crisis/>).

¹⁷ As reported in: NLTimes.nl, *Judge Stops Man's Deportation to Ebola Area*, 28 October 2014, <http://www.nltimes.nl/2014/10/28/judge-stops-mans-deportation-ebola-area/>. European Convention on Human Rights (as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13) ("ECHR"), 4 November 1950, http://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹⁸ See e.g. a case in France: Radio France International (RFI), *French court scraps Guinean's deportation because of Ebola epidemic*, 19 September 2014, <http://www.english.rfi.fr/africa/20140919-french-court-scraps-guinean-s-deportation-because-ebola-epidemic>. Another case was reported in the Netherlands: NLTimes.nl, *Judge Stops Man's Deportation to Ebola Area*, 28 October 2014, <http://www.nltimes.nl/2014/10/28/judge-stops-mans-deportation-ebola-area/>.

¹⁹ Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

²⁰ See paragraph 14.

²¹ See e.g. OHCHR, *West Africa on the brink of a major food crisis as Ebola threatens food security, warns UN expert*, 11 November 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15276&LangID=E>. See also: "Increasing food insecurity, following the disruption to agriculture and food production, is compounding the underlying rates of chronic malnutrition in the three countries. Food prices have risen across the three worst affected countries, forcing some families to live on one meal a day," in General Assembly, *Letter Dated 12 November 2014 from the Secretary-General Addressed to the President of the General Assembly*, A/69/573 ("UNMEER 30 day report"), 12 November 2014, http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fmptf.undp.org%2Fdocument%2Fdownload%2F13568&ei=kF54VOSqLYHZOK_KgdAF&usq=AFQjCNG1hXV4ajV0y7FIJXRsxTgk8wihwA&sig2=vykbJv0tnzeyQ6EviKOEw&bvm=bv.80642063,d.ZWU&cad=rja.

including health and education to the population,²² should be taken into account in all decisions on the forcible return of individuals to EVD-affected countries.

17. There may also be individual circumstances which impact on the possibilities for an individual to reduce the risk of EVD infection upon return. In individual cases, the conditions in which the individual may find him- or herself on return may increase the risk of infection, such as close proximity to infected persons, living conditions or livelihood-related risks. In such circumstances, refraining from return or postponing return until the specific risk factors can be mitigated or have been removed would, in UNHCR's view, be appropriate.

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²² See e.g. on the provision of health services: “Beyond the public health emergency, the current crisis of unprecedented scale is a threat to healthcare systems with an impact on standard medical care for other pathologies”, in European Center for Disease Prevention and Control (ECDC), *Rapid Risk Assessment, Outbreak of Ebola virus disease in West Africa, Eighth update*, 18 November 2014, <http://www.ecdc.europa.eu/en/publications/Publications/Risk-assessment-Ebola-haemorrhagic-fever-Zaire-ebolavirus-Sierra-Leone-Liberia-Guinea-Spain-United-States.pdf>; see also “Needles, beds, nurses, doctors, intravenous fluids, sterile protective gear—everything is in short supply. The sick and dying are overwhelming the medical system”, in The New Yorker, *Ebola in the Maternity Ward*, 29 October 2014, <http://www.newyorker.com/tech/elements/ebola-maternity-ward>. As regards education, see: “Schools remained closed indefinitely, leaving an estimated five million children out of school”, in General Assembly, *Letter Dated 12 November 2014 from the Secretary-General Addressed to the President of the General Assembly*, A/69/573 (“UNMEER 30 day report”), 12 November 2014, http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fmptf.undp.org%2Fdocument%2Fdownload%2F13568&ei=kF54VOSqLYHZOK_KgdAF&usg=AFQjCNG1hXV4ajV0y7FIJXRsxTgk8wihwA&sig2=_vykbJv0tnzeyQ6EviKOEw&bvm=bv.80642063.d.ZWU&cad=rja. As regards the economic situation in Ebola-affected countries, see “The Ebola epidemic continues to cripple the economies of Liberia, Sierra Leone, and Guinea. The crisis is resulting in flat or negative income growth and creating large fiscal needs in all three countries, as they work to eradicate the virus”, in The World Bank, *Update on the Economic Impact of the 2014 Ebola Epidemic on Liberia, Sierra Leone, and Guinea*, 2 December 2014, <http://www.worldbank.org/content/dam/Worldbank/document/Economic%20Impact%20Ebola%20Update%202020Dec%202014.pdf>.