Human Rights in the Midst of Quarantine

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I. Quarantine of the West Point Slum in Monrovia, Liberia

On August 20th, 2014, an entire community consisting of some 80,000 people was cordoned off and barricaded with barbed wire and wooden checkpoints in an extraordinary measure to fight the recent outbreak of the world’s most deadly Ebola virus. The decision to quarantine this West Point slum of Monrovia, Liberia was made after a holding center for victims was plundered on August 15th, 2014, a week after Liberia declared a state of emergency. In the ransack, Ebola patients escaped while looters stole infected materials and mattresses from the holding center. In a statement defending the quarantine, President Ellen Johnson Sirleaf said that the ransack had “put the entire community at risk,” thus forcing the government to “protect [the community] from themselves.” However, sources monitoring the security sector say that the government’s decision to quarantine was less about the safety of the citizens of the West Point slum, and

"Health without liberty is more dangerous to human dignity than liberty without health."
more an attempt to show that the government was in control of the situation.\textsuperscript{6} Regardless of the true motive, the slum was barricaded with barbed wire and wooden checkpoints without providing residents “with any information concerning the duration of the quarantine, whether or not food and water would be allowed in, or how severe the consequences would be for attempting to escape.”\textsuperscript{7}

Adding to the fear and anxiety induced by the restricting elements of the quarantine, emotions quickly turned to fury when the community watched as the Town Commissioner attempted to escape the armed guards with her family.\textsuperscript{8} The poverty stricken community panicked, and in the midst of rocks being thrown at police and citizens desperately trying to escape across makeshift checkpoints, several people were killed, including a 15-year-old boy fatally shot by police.\textsuperscript{9} The situation in West Point escalated until August 30th, 2014, after ten (10) days of quarantine, when President Sirleaf announced on radio that the quarantine restrictions would be lifted the next morning due to “the overall support and cooperation of the town’s people.”\textsuperscript{10} At 6 a.m. on August 31st, 2014, police and soldiers removed the barbed wire and makeshift wooden checkpoints, marking the end of the quarantine.\textsuperscript{11}

Although the quarantine of the West Point slum has not been sanctioned by the international donor community, Dr. Nestor Ndayimirje, the World Health Organization (WHO) representative to Liberia, had warned that quarantining would only work with the community’s consent – which was neither gained nor sought in West Point.\textsuperscript{12} Furthermore, the African Union Commission Chief Nkosazana Dlamini-Zuma told members at an Ebola crisis meeting, “We must be careful not to introduce measures that may have more social and economic impact than the disease itself.”\textsuperscript{13} Not only do the cramped living conditions, unavailability of access to running water and poor sanitary conditions of slum communities like West Point put them at high risk of becoming “hot spots” for new Ebola infections,\textsuperscript{14} but such extreme quarantine measures of an entire community devastates the pride of the people living within the barricades by stigmatizing their township as an Ebola-infected region.\textsuperscript{15} Deadly epidemics raise difficult questions of how “we” as an international community and “we” as each individual nation respond

\textsuperscript{6} Id.
\textsuperscript{7} MacDougall, supra note 2.
\textsuperscript{8} Id.
\textsuperscript{9} Id.
\textsuperscript{10} Id.
\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
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to fear.\textsuperscript{16} How much liberty each person is willing to sacrifice for an “abstract concept of the general welfare of the nation,” and who we are willing to designate as experts.\textsuperscript{17} In response to the outbreak, President Obama discussed how Ebola necessitates an urgent, strong and coordinated international response:

Ebola is a horrific disease. It’s wiping out entire families. It has turned simple acts of love and comfort and kindness—like holding a sick friend’s hand, or embracing a dying child—into potentially fatal acts. If ever there were a public health emergency deserving an urgent, strong and coordinated international response, this is it.\textsuperscript{18} - President Obama (September 16th, 2014)

In order to prevent future tragic situations such as the quarantine of the West Point slum in Monrovia, Liberia, there needs to be a strong and collective international initiative enumerating restrictions and protocols in times of infectious disease outbreaks.

II. The Rise of The Ebola Outbreak

Although international media outlets first began to broadcast the devastation and horrors of the Ebola virus in 2014, Ebola outbreaks began to occur in West Africa around 2000 as a result of the handling of primates and carcasses.\textsuperscript{19} Ebola virus disease (EVD) is a complex zoonosis that is highly infectious in humans.\textsuperscript{20} Humans are exposed to zoonoses through either direct human contact or indirect contact.\textsuperscript{21} The first type of epidemiological pattern is through direct human contact with the source of the “zoonotic agent,” or through human contact with an animal vector.\textsuperscript{22} Usually, as long as the zoonotic agent is not constantly reintroduced, the infection will die out in the human population; however, with more frequent human contact, not only can the zoonotic agent be maintained but eventually it can be transmitted exclusively among humans.\textsuperscript{23} The second pattern by which humans are exposed to zoonoses involves indirect contact through “foods, water, environmental contamination,” or other methods not relying on direct contact between human and animal hosts.\textsuperscript{24} Both types of epidemiological patterns contributed to the first human outbreaks of the Ebola virus; the result of the

\textsuperscript{17} Id.
\textsuperscript{21} Choi, supra note 19 at 991.
\textsuperscript{22} Id. at 991-92.
\textsuperscript{23} Id. at 992.
\textsuperscript{24} Id.
handling of a distinct gorilla, chimpanzee, or carcass, and the outbreaks consisted of multiple simultaneous epidemics caused by different viral strains.\textsuperscript{25}

Several of the earliest human and animal Ebola outbreaks occurred between 2000 to 2004 in Gabon and the Republic of the Congo.\textsuperscript{26} The marked decline of animal populations during periods of human outbreaks in these areas drew attention to the virus.\textsuperscript{27} For example, during a 2001 human Ebola outbreak, a high number of carcasses were found in forested areas, leading researchers to discover that Ebola outbreaks occur abruptly and strike groups of animals locally (as groups living in other areas were barely affected).\textsuperscript{28} The researchers concluded that the Ebola virus was a more dangerous type of disease as it followed a pattern of graduating from animal-to-human transmission to human-to-human transmission.\textsuperscript{29} Diseases which follow this pattern emerge in settings of high human population density and result from close contact to otherwise wild animals.\textsuperscript{30} It is because of this element of the disease that risk of transmission among healthcare workers is heightened by modern health care techniques which involve centrally located hospitals and invasive surgical procedures.\textsuperscript{31}

The Ebola hemorrhagic fever ("EHF") is a hemorrhagic illness which causes death in fifty-ninety percent (50-90\%) of all diagnosed cases and is transmitted by direct contact with the blood, secretions, organs or other bodily fluids of infected persons.\textsuperscript{32} Symptoms of the virus include fever, headache, joint and muscle aches, weakness, diarrhea, vomiting, stomach pain, lack of appetite, and abnormal bleeding, and most commonly appear between eight and ten days after exposure to the virus.\textsuperscript{33}

In addition to the absence of an effective treatment for the Ebola virus, the surreptitious characteristics of the virus complicate treatment and endanger health care workers and care-givers.\textsuperscript{34} Because the virus’ incubation period can be as long as three weeks, a delay in diagnosis not only puts health care workers at risk of exposure, but potentially exposes the entire community to the infection.\textsuperscript{35} As a result of the difficulties involved with containing a virus that can remain dormant for up to three (3) weeks (yet contagious as ever), there are many secondary cases of Ebola in health care workers and care-givers that have been

\textsuperscript{25} Id. at 997.
\textsuperscript{26} Id.
\textsuperscript{27} Choi, supra note 19, at 997.
\textsuperscript{28} Choi, supra note 18, at 997.
\textsuperscript{29} Id. at 992.
\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{32} Id. at 996.
\textsuperscript{34} See generally Choi, supra note 19.
\textsuperscript{35} Id. at 996.
exposed to blood and body fluids of patients who have not yet exhibited symptoms.\(^{36}\)

In 2014, when Ebola finally became an urgent, international humanitarian concern, major nations declared their strategies to combat the epidemic. The United States’ strategy focused on four key goals: “1) controlling the epidemic at its source in West Africa; 2) mitigating second-order impacts, including blunting the economic, social, and political tolls in the region; 3) engaging and coordinating with a broader global audience; and, 4) fortifying global health security infrastructure in the region and beyond.”\(^{37}\) Moreover, the U.S. Africa Command (led by a general from U.S. Army Africa) set up a Joint Force Command headquartered in Monrovia, Liberia to provide regional command and control support to facilitate coordination with U.S. government and international relief efforts.\(^{38}\)

France’s strategy focused on the Ebola outbreak in Guinea, specifically, as the countries’ are bound together by their economic and political ties.\(^{39}\) In an effort to “display friendship, solidarity and hope,” France mobilized military personnel to care for and train medical staff in Guinea.\(^{40}\) Additionally, France brought “essential equipment” to Guinea, committed EUR 100 million, and contributed to the research effort to find “vaccines, tests and any other solution.”\(^{41}\)

Other nations pledged health care workers and millions of dollars in an effort to combat the outbreak.\(^{42}\) Germany raised EUR 102 million to assist in the fight after President Obama held a conference with the leaders of France, Germany, Italy and the U.K. to discuss a more aggressive response.\(^{43}\) Additionally, Japan promised forty million dollars and Cuba sent 165 health workers to Sierra Leone as the race to catch up with the virus began in October 2014.\(^{44}\)

Although the Ebola combatting strategies of these major nations focused on eradicating the epidemic and preventing the deadly virus from spreading to other nations, they failed to enumerate and specify how the disease would be contained locally, much less the logistics of any quarantine.

### III. Quarantines of the Past

Quarantine is “when the government or a government entity, a board of health, or police chief, restricts a person to a geographic location due to that individual

\(^{36}\) Choi, supra note 18 at 996.


\(^{38}\) Id.


\(^{40}\) Id.

\(^{41}\) Id.


\(^{43}\) Thomas, supra note 42.

\(^{44}\) Id.
having or being exposed to a contagious disease.” The word “quarantine” is derived from the Italian word ‘quaranta giorni’, which means forty days, and refers to the number of days ships were required to remain in isolation before returning to shore during the Black Plague. Quarantines are used as a means to limit the spread of communicable disease by separating or restricting the movement of exposed persons from unexposed persons. Although individual quarantines are a preferable option, in the West Point slum of Liberia the government chose the geographic quarantine by forcefully isolating localities with documented disease transmission from localities still free of infection.

Quarantines can be traced back all the way to biblical times with the isolation of lepers. Quarantine quickly became a form of stigma inflicted on those who were already stigmatized by their predicament, whether that was race, gender, physical ailment, etc.; those who failed to conform to white privileged norms were faced with the greatest adversities. The first, more modern, large-scale quarantines occurred during the 14th century-period of the Black Death, otherwise known as the bubonic plague. As the plague began to spread, “Venice and other southern European coastal trading cities began to impose quarantines on all arriving ships and the travelers coming to land.” The preventative and protective use of quarantines (as exampled during the period of the Black Death) was an idea sustained throughout history, and eventually ruled constitutional in the United States in “certain narrow circumstances.” Although centuries after the bubonic plague, “the world in which the drafters of the Constitution lived was still one in which almost every family lost a child to illness, communicable disease was the norm, and the livelihood of the entire nation was under threat from unfamiliar diseases of the native peoples.” Since “communicable diseases not only threatened individuals, but the state itself, the severity of this” risk was in the forefront of legislators’ minds as they passed acts enabling governmental action against dangerous persons and conditions. Although there was hesitation to grant the government the authority to restrict the liberties of its citizens so soon after gaining independence from Britain, “there was a societal consensus that the protection of the nation was more important than the rights of the indi-

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47 Id. at 113.
48 Id. at 111.
50 Batlan, supra note 16, at 60.
52 Batlan, supra note 16, at 62.
54 Id. at 153.
55 Ogolla, supra note 46, at 153.
As a result, “at the turn of the 20th century, individual quarantine orders by state health authorities were an ordinary part of life, but seventy (70) years of vaccines and antibiotics have driven the practice out of the public’s memory.”

More recent quarantines have highlighted the importance of who belongs to a community (based on their status), who carries the rights of citizenship, and how, even with vaccines and antibiotics, there is still not a cure for human intolerance. Some early epidemics that occurred in the United States and provoked federal quarantines included typhus, cholera, polio and the influenza pandemic. In 1892, the typhus epidemic in New York City prompted the quarantine of thousands of immigrants and city residents, the majority of which were poor Italians and Russian Jews. While the residents were detained in quarantine, the death rate rose dramatically, and this was likely exacerbated by the poor conditions for quarantine itself. The New York City typhus quarantine represented “unchecked municipal power,” which resulted in even more deaths and also further stigmatism (media described the quarantined individuals by their immigrant status and their potential to contaminate others).

Even more stigmatizing than the typhus quarantine, the cholera epidemic was blamed on “incorrect home life of poor immigrants.” Unlike Typhus, yet similar to Ebola, the topic of cholera was discussed as a part of public conversation. Unfortunately, this public dialogue only worsened the stigmatization as health officials, politicians, physicians and journalists portrayed cholera as a disease of “the uncivilized East that attacked the civilized Christian West through the body of the immigrant.” An example of this abhorrent segregation was the “imprisonment” of the upper-class passengers in cabins on Staten Island, while the cabin-class passengers had to remain quarantined on board the ships where infection spread like wildfire. Related racial hostility fueled quarantines even on the other side of the country.

In 1900, the bubonic plague spread throughout Chinatown in San Francisco, California. A federal district judge enjoined a quarantine by the San Francisco Board of Health of that city’s Chinatown and in doing so, sealed it off using the

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56 Id.
58 Batlan, supra note 16 at 96.
59 See generally Batlan, supra note 16.
60 Batlan, supra note 16, at 76.
61 Id.
62 Id.
63 Batlan, supra note 16, at 76.
64 Id. at 81.
65 Id. at 80.
66 Id. at 86.
67 Id. at 100.
68 Batlan, supra note 16, at 105.
same methods as were used in the West Point slum: barbed wire and wooden fence posts.\textsuperscript{69} A small businessman who lived inside the quarantine area challenged the Board’s action, arguing that it was illegal and enforced only against Chinese residents.\textsuperscript{70} The court agreed and held that the quarantine was not medically justified and not a reasonable regulation authorized by the police power.\textsuperscript{71} The court further held that while it may be reasonable to quarantine a particular house when an individual inhabitant was ill, it made no scientific sense to quarantine an entire community.\textsuperscript{72}

More recently, in 2003, the outbreak of Severe Acute Respiratory Syndrome ("SARS") reminded the world that there is no uniform system in place, nor is there any international plan of action to regulate large scale quarantines.\textsuperscript{73} The disease broke the complacency and silence of three decades and made the topic of infectious zoonoses a key headline in public dialogue.\textsuperscript{74} The international dialogue resulted in states joining together to design a more effective "surveillance and response system," including the 2005 International Health Regulations ("IHR").\textsuperscript{75} Although the need for a uniform system or international plan to regulate large scale quarantines has been more prominent on the world agenda in recent years\textsuperscript{76}, the difficulty of winning a legal case involving quarantine is so significant, that through the course of the 20th century few cases have been brought.\textsuperscript{77} Since there is such an immature and underdeveloped jurisprudence in the area, "cases where courts do prevail remind us of the capacity of the courts to intervene in a public health crisis."\textsuperscript{78}

IV. International Organizations and the Governance of Emerging Infectious Diseases

A. Emerging Infection Diseases in the International Community

Emerging Infectious diseases became a prominent public health issue during the 1990s, as was evidenced by the WHO's warning in 1996 that the "world confronted a crisis in the resurgence of infectious diseases."\textsuperscript{79} Although morbidity and mortality rates from infectious diseases such as malaria and tuberculosis grew during the 1990s and early 2000s, HIV/AIDS became the usurping disease, "rivaling some of the greatest plagues in history."\textsuperscript{80} In the United States, concern

\textsuperscript{69} Id. at 108.
\textsuperscript{70} Id. at 107, citing Jew Ho v. Williamson, 103 F. 10, 12(N.D. Cal. 1900).
\textsuperscript{71} Batlan, supra note 16, at 108.
\textsuperscript{72} Id.; Ogolla, supra note 53, at 157.
\textsuperscript{73} Ogolla, supra note 53, at 161.
\textsuperscript{74} Choi, supra note 19, at 990.
\textsuperscript{75} Id. at 991.
\textsuperscript{76} Id. at 990.
\textsuperscript{77} Batlan, supra note 16, at 103.
\textsuperscript{78} Id. at 105.
\textsuperscript{79} Fidler, supra note 1, at 102.
\textsuperscript{80} Id.
about infectious disease became a foreign policy and national security topic during the Clinton Administration, and when the Central Intelligence Agency ("CIA") issued an estimate on the danger which infectious diseases posed on national security in 2000, the issuance of the report symbolized the level of "high politics" infectious disease had achieved in international relations.81

Although diseases like malaria frequently devastate entire tropical communities in sub-Saharan Africa82, they rarely become serious enough to trouble the United States’ health care infrastructure.83 When diseases are serious enough to prompt a collaborative plan of action and strategy from the United States, as the Ebola virus did, it typically involves a failure of national or international collective action against deteriorating societal elements of health, often worsened or created by a rapidly mobile and globalized international community.84 The 2002 Institute of Medicine’s "Microbial Threats to Health" listed seven factors that contribute to enabling diseases, such as Ebola, to thrive.85 They include "human susceptibility to infection, climate and weather, changing ecosystems, poverty and social inequality, war and famine, lack of political will, and intent to harm."86 With these contributing factors in mind, it is easy to see how the world’s worst outbreak of the Ebola virus prospered in a slum of the capital of Liberia.87

B. The WHO and the IHR Concerning Quarantine Procedures

The World Health Organization ("WHO") is the international body responsible for leadership during global health crises and sets health standards for member states to follow through the International Health Regulations ("IHR").88 The WHO was established on April 7th, 1948 when its constitution was adopted at the International Health Conference and signed by 61 state representatives.89 Today the WHO has over 190 member states and its policies and programs are governed by the World Health Assembly ("WHA"), which is a specialized agency of the United Nations whose mandate is "to act as the directing and coordinating authority on international health work."90 Therefore, the WHA has the

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81 Fidler, supra note 1, at 102.
83 Fidler, supra note 1, at 134.
84 Id. at 136.
85 Id. at 103.
86 Id.
90 Choi, supra note 18, at 1004.
authority to adopt regulations on quarantine issues, causes of death, nomenclatures of diseases, public health practices, and standards for international diagnostic procedures.\textsuperscript{91}

Although the Constitution of the WHO enumerates significant treaty-making powers, with which a treaty adopting an international convention regulating quarantines could be made - to date these powers remain largely unused.\textsuperscript{92} This is especially surprising considering that the Constitution provides the WHO with the authority to promote and adopt conventions, regulations, and recommendations that address \textit{any matter within its competence}.\textsuperscript{93} Moreover this "competence" is broad, especially considering that the WHO definition of health "is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity."\textsuperscript{94} This gives the organization ample authority and legal basis on which to develop international quarantine regulations.\textsuperscript{95} Furthermore, Article 21 of the WHO Constitution provides a unique treaty-making procedure for the WHA with which to adopt "legally binding regulations concerning sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease."\textsuperscript{96} With this authority, it is confounding that the WHO has yet to propose an international agreement pertaining to the restrictions and protocol to be used in geographic quarantines.

A fundamental explanation is the fact that the WHO lacks any mechanism with which to enforce member compliance.\textsuperscript{97} For this reason the WHO has only issued a \textit{recommendation} regarding the Ebola virus, saying:

\begin{quote}
All hospital personnel should be briefed on the nature of the disease and its routes of transmission. Particular emphasis should be placed on ensuring that invasive procedures such as the placing of intravenous lines and the handling of blood, secretions, catheters and suction devices are carried out under strict barrier nursing conditions. Hospital staff should have individual gowns, gloves, masks and goggles. Non-disposable protective equipment must not be reused unless they have been properly disinfected. Infection may also be spread through contact with the soiled clothing or bed linens from a patient with Ebola. Disinfection is therefore required before handling these items.\textsuperscript{98}
\end{quote}

Another reason the WHO has been ineffective in leading the fight against Ebola is because it fails to consider the substantive role of human rights in the prevalence of infectious diseases.\textsuperscript{99} Although the WHO Constitution's preamble

\begin{itemize}
\item \textsuperscript{91} Id. at 1005.
\item \textsuperscript{92} Id. at 1004.
\item \textsuperscript{93} Id. at 1005.
\item \textsuperscript{94} Id.
\item \textsuperscript{95} Id.
\item \textsuperscript{96} Choi, \textit{supra} note 18, at 1007.
\item \textsuperscript{97} Campbell, \textit{supra} note 81, at 499.
\item \textsuperscript{98} Choi, \textit{supra} note 18, at 996.
\item \textsuperscript{99} Campbell, \textit{supra} note 81, at 520.
\end{itemize}
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features the right to health ("an economic, social, and cultural right"), it refrains from mentioning civil and political rights. It was not until after the WHO’s creation that infectious disease control was viewed as a legitimate reason for restricting the enjoyment of civil and political rights. Because of this, even though basic human rights include the right to be “free from actions that are injurious to the inherent dignity and security of the human being,” quarantines (such as the one in West Point) which inherently injure the dignity and security of all those imprisoned, were not recognized as a possible adversary to international human rights prior to the drafting of the WHO Constitution.

In 2005, the WHO promulgated the International Health Regulations ("IHR"), which became the only binding international legal rules for infectious disease control. The IHR requires state parties to adhere to more obligations in order to “develop, strengthen, and maintain core capacities to 1) detect, assess, notify, and report disease events; and 2) respond promptly and effectively to public health risks and public health emergencies of international concern.” Where state parties were previously obligated to only report cases of three (3) specific infectious diseases, the revised 2005 IHR requires parties to notify the WHO of any event that may develop into a public health emergency of international concern. A “public health emergency of international concern” is defined by the Regulations of the IHR as an event that poses a public health risk to other States through the international spread of disease, and potentially requires a coordinated international response. This new requirement came after the regulations proved irrelevant to the HIV/AIDS outbreak, where state parties were not obligated to report cases of HIV/AIDS because it was not one of the few diseases subject to the IHR.

In adopting the 2005 IHR, the WHO abandoned its prior strict, limited, and general quarantine system for an instrument that determined which level of intervention to use, only after gaging individual infectious disease outbreaks. This new approach allowed the WHO to potentially exert authority in regions where political and cultural strife was affecting the health of its community. Unfortunately, even nine years after the creation of the IHR, no such regulations were considered as the barricades and checkpoints enclosed the citizens of the West Point slum.

101 Fidler, supra note 1, at 113.
103 Fidler, supra note 1, at 114.
104 Choi, supra note 18, at 1017.
105 Id. at 1015.
106 Id. at 1016.
107 Fidler, supra note 1, at 114.
108 Choi, supra note 19, at 1003.
109 Choi, supra note 19, at 1004.
V. The Need for a Balance Between Human Rights and Individual Freedoms

To argue that the WHO should have binding and enforceable regulations for infectious disease outbreaks is not to say that there should not have been some type of quarantine in the West Point slum. But it is to say that quarantines must incorporate some protection of individual rights as well. The community’s decision-makers must reach a balance between the extremes of complete protection of public health without any protection of individual rights (i.e., quarantine of the West Point slum), and complete protection of individual rights at the expense of public health.\textsuperscript{110} As stated in the opinion of People v. Robertson, “among all the objects sought to be secured by governmental laws, none is more important than the preservation of public health.”\textsuperscript{111} But for every measure taken to protect the public health, it must be moderated against the risk it poses to restrict an individual’s rights to personal liberty and due process.\textsuperscript{112}

As quarantines and isolation severely restrict the freedom of the individuals for whom they are intended to protect, it becomes even more difficult to balance their need for protection from infectious disease with protection of their freedoms.\textsuperscript{113} The most obvious freedoms restricted by quarantines are freedom of movement, right of free association, freedom of assembly and in some cases, freedom of religion.\textsuperscript{114} Even more significant, because quarantine is not considered criminal detention, there is no requirement for - nor right to - counsel; therefore, it is especially important to be cognizant of how due process limits are applied.\textsuperscript{115} Although it is not improper to restrain an individual’s freedom of liberty, privacy or property per se, “it is improper to do so unnecessarily, arbitrarily, inequitably, or brutally.”\textsuperscript{116}

In addition to impinging on the freedoms of individuals, quarantines raise major human rights issues.\textsuperscript{117} Rapidly spreading infectious diseases, such as Ebola, terrify not only those quarantined, but also those who believe that a massive epidemic could kill thousands in their own communities as they have witnessed it do in others.\textsuperscript{118} As disease and society’s response to crisis are never without remnants of the cultures in which they are embedded, this terror often exacerbates the prejudices and discrimination already rooted in the community, priming an already hostile environment for quarantine.\textsuperscript{119} A few ways in which quarantines contribute to human rights issues include: discrimination and stigma against

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\item \textsuperscript{110} Page, supra note 45, at 518.
\item \textsuperscript{111} Id. (quoting People v. Robertson, 134 N.E. 815, 817 (Ill. 1922)).
\item \textsuperscript{112} Carrie Lacey, Abuse of Quarantine Authority the Case for a Federal Approach to Infectious Disease Containment, J.Legal Med. 24: 199-214, 199 (2003).
\item \textsuperscript{113} Choi, supra note 19, at 519.
\item \textsuperscript{114} Ogolla, supra note 53, at 136.
\item \textsuperscript{115} Ogolla, supra note 53, at 136.
\item \textsuperscript{116} Page, supra note 45, at 531.
\item \textsuperscript{117} Ogolla, supra note 53, at 158.
\item \textsuperscript{118} Batlan, supra note 16, at 61.
\item \textsuperscript{119} Id.
\end{itemize}
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carriers of the disease, deprivation of liberty by imposing quarantine measures prior to establishing that they pose a significant risk to the community, and failing to maintain the privacy of health information.\footnote{120}

A. International Agreements Involving Human Rights

There are several International Agreements involving Human Rights, which also pertain to situations of quarantine and other forms of lawful detention. The Universal Declaration of Human Rights (UDHR) has become the authority in international law regarding the preservation of human rights.\footnote{121} Articles 3, 13 and 25 are a few of the most relevant provisions for the analysis of quarantine measures.\footnote{122} While Article 3 is more general in granting the right to life, liberty and security of person, Articles 13 and 25 are less ambiguous and recognize "freedom of movement and residence," and grant the right to "a standard of living adequate for the health of oneself and of one's family."\footnote{123} Although these enumerated rights should be capable of protecting people from such human rights atrocities as occurred in the West Point slum, in reality they are minimal safeguards against such arbitrary government action.\footnote{124}

Other relevant international and regional agreements include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).\footnote{125} The ICESCR is significant to the enforcement of human rights during quarantines with its provision granting a right to work under "just and favorable conditions," as well as the "right to an adequate standard of living, including food, clothing and housing."\footnote{126} The ICCPR was also influential, and established the Siracusa Principles, which have become the legal standard for measuring the validity of limitations on human rights.\footnote{127} And although not internationally binding, the ECHR has become one of the leading treatises on human rights, providing a forum in the European Court of Human Rights to bring claims against member states for violation of any right protected by the Convention.\footnote{128}

Although these international and regional agreements do provide a foundation from which governments can incorporate human rights into quarantine strategies, there are substantial flaws in the agreements which provide opportunity for governments to exploit their power and in doing so, violate human rights. For example, while the Convention of the ECHR guarantees the "right to liberty and

\footnotesize{\begin{itemize}
\item \footnote{120} Asher, \textit{supra} note 102, at 158.
\item \footnote{121} Campbell, \textit{supra} note 88, at 516.
\item \footnote{122} Id.; McCall, \textit{supra} note 49, at 1010.
\item \footnote{123} McCall, \textit{supra} note 49, at 1011.
\item \footnote{124} Id. at 1022.
\item \footnote{125} McCall, \textit{supra} note 49, at 1012; Asher, \textit{supra} note 102 at 147.
\item \footnote{126} McCall, \textit{supra} note 49, at 1012.
\item \footnote{127} Campbell, \textit{supra} note 88, at 517.
\item \footnote{128} Asher, \textit{supra} note 102, at 146, 147 n.68.
\end{itemize}}
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security of person,” it also provides an exception for the “lawful detention of persons for the prevention of the spreading of infectious diseases.”129 Since the Convention does not define “lawful detention,” the vagueness could allow countries to exercise disproportionate control over personal liberties.130 Furthermore, the international agreement provisions do not provide an avenue to contest a quarantine order through an independent legal system, do not indicate for how long an individual may be quarantined, and do not enumerate what standard of proof is required to enforce a quarantine.131 Lastly, a government’s order for an involuntary quarantine, such as the quarantine of the West Point slum, directly violates Article 13 of the UDHR’s provision granting freedom of movement.132 Thus, even with the substantial international and regional agreements granting human rights to all peoples, in times of quarantine, the provisions’ flaws and loopholes are used to avoid repercussions for violating the most basic, yet essential human rights.

VI. Proposal

A. The Need for Communication and Cooperation between Local, Federal and International Agencies

A key reason quarantines have the ability to quickly become dangerous, ineffective opportunities for human rights violations, is because of the lack of communication and lack of cooperation between local, federal and international agencies.133 For this reason, much of the criticism of the authority of international institutions is based on either a lack of democratic accountability, or a lack of procedural rigor and transparency.134 In order to have a unified, legitimate approach to enforcing international guidelines for a restricted and limited quarantine policy, each nation will first have to surrender some of its sovereignty.135 The presence of an additional layer of international governance, to which the highest national officials must answer regarding all quarantine procedures, would prevent nations and local governments (who may have been allocated the decisions regarding quarantine) from being influenced by the societal and cultural bias and prejudice in the region.136 Moreover, this additional layer of bureaucracy that the international governance can provide, will ensure that the international officials making the policy decisions regarding quarantine measures are that much farther removed from the citizens of any given nation, and therefore able to analyze each situation without bias or discrimination.137

129 Id. at 145.
130 Id. at 146.
131 Campbell, supra note 88, at 514.
132 Id. at 516.
133 See generally Id.
134 Choi, supra note 19, at 999.
135 Id. at 990-91.
136 Id. at 1001.
137 Id. at 1002.
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Rather than creating a completely new international institution to propose and enforce such quarantine regulations, the IHR should be utilized to implement international human rights into the quarantine provisions, so to prevent such atrocities as occurred in the West Point slum from recurring.\textsuperscript{138} A consistent and uniform international approach in quarantine law, implementing individual protections and public safety concerns, could prevent potential abuses of authority by state and community public health officials.\textsuperscript{139} The government of each nation needs to be clear about what powers it possesses under a state of emergency, and moreover, consistent in how it utilizes such powers.\textsuperscript{140} As stated by Counselor Tiawan Gongloe, Liberia’s most prominent human rights lawyer, “[the government] must have an even handed approach to strengthen public trust in the government in order to fight Ebola.”\textsuperscript{141}

A good example for the IHR of an informative quarantine strategy that is cognizant of the risk to human rights is Canada’s national quarantine legislation.\textsuperscript{142} For instance, in Canada quarantine law, “an individual cannot be held longer than the length of the incubation period of the suspected disease, but cannot leave without permission of the quarantine officer.”\textsuperscript{143} Just the fact that a provision restricts the duration of a quarantine, creates a system of checks and balances for the government. However, perhaps the most significant provision of Canada quarantine laws, grants citizens the right to an immediate appeal of his detention decision.\textsuperscript{144} The provision elaborates on the appeal process by stating that “a detained individual must immediately be informed of the reason for detention and the right to appeal to the Deputy Minister of Health. . . if the person is to be held more than forty-eight hours, the individual has the right to an attorney and a hearing regarding the detention.”\textsuperscript{145} If the IHR had implemented and enforced similar provisions prior to the Ebola outbreak, the terror, confusion and uncertainty of the West Point quarantine would likely have been dramatically lessened.

In creating the international quarantine regulations, the IHR should also incorporate the strategy used in the global HIV/AIDS crisis of placing a focus on human rights in the development of a global health governance.\textsuperscript{146} In doing so, part of the strategy was to collaborate with non-state actors, such as human rights NGOs, to become involved in public health issues locally, nationally, and internationally.\textsuperscript{147} By framing quarantine regulations in the context of human rights

\textsuperscript{138} Asher, supra note 102, at 150.
\textsuperscript{139} See generally Id. at 156.
\textsuperscript{140} MacDougall, supra note 2.
\textsuperscript{141} MacDougall, supra note 2.
\textsuperscript{142} Page, supra note 45, at 534-35.
\textsuperscript{143} Id. at 535.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Fidler, supra note 1, at 115.
\textsuperscript{147} Id.
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terminology, the trade-offs between individual liberty and a safer and healthier
population will be made knowingly in advance of a public emergency.148

Regardless of which international institution provides and enforces interna-
tional quarantine regulations, it is imperative that there is one and that all nations
adhere to the rules and commit to the common cause because of a fundamental
fact which is the source for situations such as West Point: all disease is ultimately
local when it strikes.149 It is crucial that nations work together and hold each
other accountable as to carrying out international quarantine regulations, and as
provided by Article 44 of the 2005 IHR, State Parties are encouraged to collabo-
rate and assist each other in the detection, assessment of, and response to,
events.150 An appropriate example of what happens when there is no uniform
system in place during a public health crisis is President Obama’s statement on
September 16th, 2014:

Right now, everybody has the best of intentions, but people are not put-
ting in the kinds of resources that are necessary to put a stop to this epi-
demic. There is still a significant gap between where we are and where
we need to be. We know from experience that the response to an outbreak
of this magnitude has to be fast and it has to be sustained. It’s a marathon,
but you have to run it like a sprint. And that’s only possible if everybody
chips in, if every nation and every organization takes this seriously. Eve-
erybody here has to do more.151

B. Health in Terms of Social, Economic & Cultural Rights

In addition to establishing international quarantine regulations and procuring
the agreement and cooperation of all nations, the IHR needs to be cognizant of
individual’s social, economic and cultural rights when drafting provisions.152 In-
dividuals who are isolated or quarantined are not only likely to face stigma, but
are often viewed, rightly or wrongly, as dangerous patients.153 This “dangerous
patient perspective” views the quarantined individual as the source of danger,
rather than the disease.154 In order to combat this inherent effect of quarantines,
it would be beneficial for the IHR to look to the first Bush Administration’s
approach the HIV/AIDS pandemic.155

The Bush Administration’s approach to the HIV/AIDS pandemic took its
human rights inspiration from the U.S. constitutional traditions of protecting civil
and political rights, rather than from the efforts by international organizations and

148 id. at 123.
149 Choi, supra note 19, at 1017-18.
150 id. at 1019.
151 President Obama to the International Community: We Must do More to Fight Ebola, (Sept. 25,
152 Choi, supra note 19, at 1013.
153 Ogolla, supra note 53, at 142.
154 id.
155 Fidler, supra note 1, at 122.
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NGOs.\textsuperscript{156} The approach re-conceptualizes health as “dependent on the achievement of non-negotiable demands of human dignity.”\textsuperscript{157} By intertwining health and ideology, the Bush Administration used the “top-down” Jeffersonian approach that “health without liberty is more dangerous to human dignity than liberty without health.”\textsuperscript{158} In order to achieve such liberty, fundamental macro-level reform is necessary to establish a foundation on which “improved health conditions for the people, of the people, and by the people can be built.”\textsuperscript{159}

Although epidemics and resulting quarantines take place in the realm of science, epidemiology, germs, etc., they are also a cultural phenomena, providing a glance into “issues of state power, individual rights, the role of law, class, gender, race, and a society’s anxieties.”\textsuperscript{160} Disease and society are so interconnected that to attempt to deal with one without the other would be impractical.\textsuperscript{161} In order to prevent quarantines such as took place in the West Point slum, it is critical that the IHR analyze the deeper level of societal causes for each individual outbreak, so as to help uproot the pandemic.\textsuperscript{162}

VII. Conclusion

The 2014 Ebola Outbreak put the international community on notice of the detrimental flaws in the global health system. The inhumane and poorly organized quarantine of the entire West Point slum in Monrovia, Liberia was just one example of how a lack of an additional governance (one without bias or prejudice) allows a community to make rash decisions that can result in further deaths. Although the international community collaborated and responded to the virus, there was no accountability as to the procedures of a quarantine, and as a result, the community of the West Point slum was put at risk even more so than they already were. In order to prevent a situation like the West Point quarantine from ever happening again, the World Health Assembly needs to utilize its authority to adopt regulations on quarantines and implement them in the International Health Regulations.\textsuperscript{163} Once these regulations have been adopted and are enforced, the IHR needs to include human rights provisions along with the procedural measures of quarantines in order to ensure that the citizens are protected from the stigma and discrimination often associated with quarantining. “Society must reach a balance between the extremes of complete protection of public health without any protection of individual rights and total protection of individual rights at the expense of public health.”\textsuperscript{164}

\begin{thebibliography}{9}
\bibitem{156} Id.
\bibitem{157} Id. at 127.
\bibitem{158} Id. at 129.
\bibitem{159} Id.
\bibitem{160} Batlan, supra note 16, at 68.
\bibitem{161} Fidler, supra note 1, at 114.
\bibitem{162} Id.
\bibitem{163} Choi, supra note 19, at 1005.
\bibitem{164} Page, supra note 45, at 518.
\end{thebibliography}