

A PANDEMIC AS VECTOR FOR STATE SURVEILLANCE AND OTHER ABUSES



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A PANDEMIC AS VECTOR FOR STATE SURVEILLANCE AND OTHER ABUSES



Once the World Health Organization (WHO) declared the COVID-19 outbreak as a global pandemic in March 2020, governments from around the world adopted a wide range of preventive and remedial measures to respond to the crisis. Given the nature of the virus and its transmission, many of those measures consisted of digital solutions such as the use of mobile apps and devices, artificial intelligence (AI), open government data, and telemedicine.¹ They involved the collection and subsequent processing of troves of personal data since case identification and monitoring played a central role in the effective containment of the outbreak.

Unfortunately, many governments took advantage of the narrative and used it as a pretext for subjecting their constituents to unwarranted surveillance. For some, it even allowed them to commit graver human rights violations, like the harassment of the media and political opponents and the stamping out of any form of dissent.

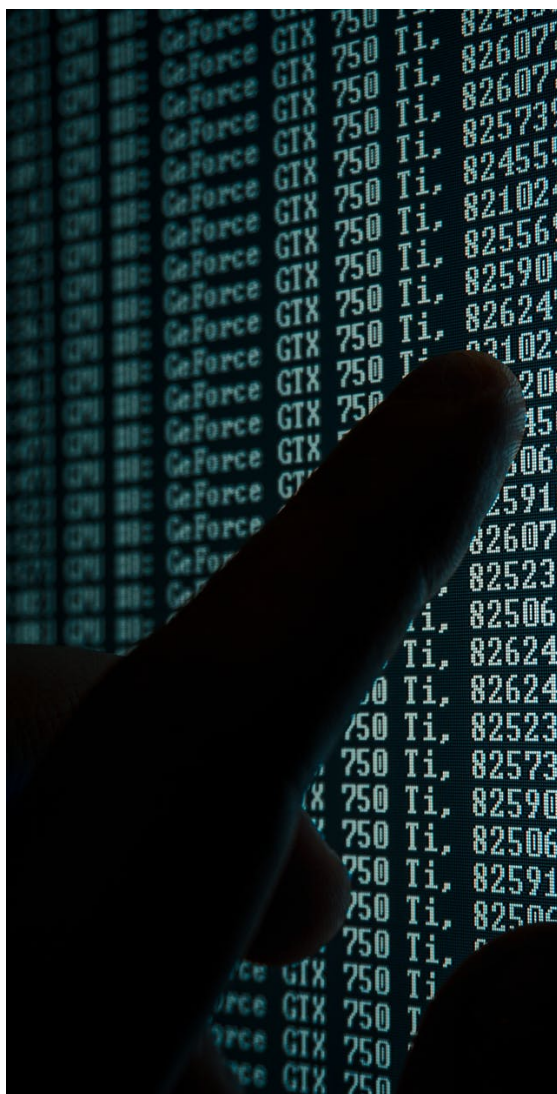
This Report is premised on that reality. It documents and analyzes the range of initiatives introduced by the Philippine government during the COVID-19 pandemic, particularly those that significantly impact privacy and data protection. They include contact-tracing applications, state-maintained databases, and even policies that form part of the current administration's pandemic response. The Report highlights prominent issues and calls for urgent interventions that are meant to align the featured state initiatives with applicable privacy and data protection laws, as well as international standards and best practices.

¹ Singh, H., Couch, D., & Yap, K. (2020). Mobile Health Apps That Help With COVID-19 Management: Scoping Review. https://www.researchgate.net/publication/343200862_Mobile_Health_Apps_That_Help_With_COVID-19_Management_Scoping_Review

I. SURVEILLANCE AS PANDEMIC RESPONSE

The bulk of the state-sanctioned measures introduced during this COVID-19 health crisis may be classified according to their primary purpose or function, namely: (1) case identification; (2) case monitoring and response; (3) vaccination delivery and monitoring; (4) digital transactions and payments; and (5) remote work and learning. This Section describes some examples that provide an overview of how governments have tapped technology during this pandemic. They also seek to establish the context of the ensuing analysis.

- **Case identification, monitoring, and response.** A lot of countries have turned to digital applications for their contact tracing efforts. Singapore makes use of two—TraceTogether and SafeEntry—as complementary contact tracing tools. While SafeEntry serves as a national digital check-in system that logs the identification numbers and mobile numbers of individuals visiting particular venues, TraceTogether is used to identify people who have been in close proximity with an infected person. With the latter, no data is shared with the government. Collected data is stored locally on the user's phone and is encrypted.²



² Koh, D. (2020, March 20). Singapore government launches new app for contact tracing to combat spread of COVID-19. Mobi Health News. <https://www.mobihealthnews.com/news/apac/singapore-government-launches-new-app-contact-tracing-combat-spread-covid-19>



In China, the State's AI-enabled camera surveillance system has been used for contact tracing and for accosting individuals and establishments that violate COVID-19 restrictions.³ Facial recognition and infrared temperature detection technologies have also been deployed to identify passengers in public transportation that exhibit COVID-19 symptoms. Meanwhile, drones are used to broadcast public warnings, reprimand health protocol violators, and register health information using QR code scanning technology.⁴ India and France have found similar uses for their drone devices.^{5,6} Meanwhile, in Hong Kong, the government utilizes wearable technology to monitor people's compliance with quarantine restrictions.⁷

- **Digital payments and transactions.** Given the way the pandemic has disrupted economic activities, a rapid shift towards digital payment and transaction systems became inevitable. In Peru, the government is taking advantage of the country's wide network of retail agents to ramp up digital government-to-person payments using more private banks and mobile money services. Just like other countries with functioning digital identity systems (e.g., Chile, Thailand, etc.), it has tapped its own ID database to make direct payments to beneficiaries of social protection programs.⁸ At the same time, digital platforms are also being used to boost small online businesses. In Costa Rica, for instance, the government launched a smartphone app and texting service to facilitate trade among producers of agricultural, meat, and fish products. The Indonesian government, for its part, launched a capacity-building program to expedite digitalization among micro, small, and medium enterprises.⁹
- **Remote work and learning.** Monitoring technologies have also been used for remote work and online learning. In Hong Kong, civil servants are asked to scan a QR code before entering and leaving government offices.¹⁰ The Indian government required all public and private-sector employees to use a government-backed Bluetooth tracing app when reporting to their offices around the same time lockdown measures in lower-risk areas were being relaxed.¹¹ In the case of online learning, academic institutions differ in their approaches. Some have fully transitioned online—courtesy of video conferencing, learning management systems, and digital materials—while others have adopted a hybrid version, choosing to retain offline modes with the use of printed modules, worksheets, and even television and radio broadcasts. Either way, schools have had to establish monitoring mechanisms to keep track of the progress of classes and the overall learning process.

³ Cadell, C. (2020, May 26). China's coronavirus campaign offers glimpse into surveillance system. Reuters. <https://www.reuters.com/article/us-health-coronavirus-china-surveillance-idUSKBN232OLZ>

⁴ Chaturvedi, A. (2020, May 11). The China way: Use of technology to combat Covid-19. Geospatial World. <https://www.geospatialworld.net/article/the-sino-approach-use-of-technology-to-combat-covid-19/>

⁵ The New Indian Express. (2020, April 8). You are being watched: Cops deploy drones to monitor social distancing. <https://www.newindianexpress.com/cities/chennai/2020/apr/08/you-are-being-watched-cops-deploy-drones-to-monitor-social-distancing-2127167.html>

⁶ Bourdon, M., & Moynihan, G. (2020, March 21). One of the largest cities in France is using drones to enforce the country's lockdown after the mayor worried residents weren't taking containment measures seriously. Business Insider. <https://www.businessinsider.com/coronavirus-drones-france-covid-19-epidemic-pandemic-outbreak-virus-containment-2020-3>

⁷ Meisanzahl, M. (2020, May 4). People arriving in Hong Kong must wear tracking bracelets for 2 weeks or face jail time. Here's how they work. Business Insider. <https://www.businessinsider.com/hong-kong-has-tracking-bracelets-to-enforce-coronavirus-quarantine-2020-4>

⁸ Rutkowski, M., Garcia Mora, A., Bull, G., Guermazi, B., & Grown, C. (2020, March 31). Responding to crisis with digital payments for social protection: Short-term measures with long-term benefits. World Bank Blogs. <https://blogs.worldbank.org/voices/responding-crisis-digital-payments-social-protection-short-term-measures-long-term-benefits>

⁹ UNCTAD (2021, March 15). How COVID-19 triggered the digital and e-commerce turning point. <https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point>

¹⁰ Chan, J. (2021, February 18). Hong Kong sees rush for burner phones as government pushes contact-tracing app. Business World. <https://www.bworldonline.com/hong-kong-sees-rush-for-burner-phones-as-government-pushes-contact-tracing-app/>

¹¹ ABC News. (2020, May 2). India makes Government's coronavirus tracing app mandatory for all workers. [abc.net.au/news/2020-05-02/india-makes-coronavirus-tracing-app-mandatory-for-all-workers/12209182](https://abcnews.go.com/US/story?id=68444440)



- **Vaccine delivery and monitoring.** To help countries gradually reopen their borders, one measure often considered is the use of immunity passports. One of the early adopters is China, which now issues a non-mandatory certificate containing information about the holder's COVID-19 vaccination and test results. The digital document uses encryption to enable authorities to verify the holder's information.^{12 13} Several European Union countries like Greece¹⁵ and Spain¹⁶ are now also using digital vaccination certificates. Others, however, remain skeptical because of concerns around privacy and discrimination.¹⁷ The United Kingdom is one example. For months, its government seriously considered the use of "COVID status certificates", before eventually downplaying the possibility of its adoption. It may be possible to credit this to experts describing the mechanism as enabling more intrusive government monitoring of people's movements and health status.¹⁸ UK Ministers also noted potential issues involving discrimination, particularly in the context of employment, where businesses could exclude unvaccinated individuals.¹⁹

In the Philippines, devising a typology of stated-induced measures is a much more difficult task. This, since many of the technologies in use are designed for specific functions only, making it necessary to employ multiple tools to achieve one overarching objective. With contact tracing, for example, local contact tracing apps are often nothing more than digital logbooks that record the ingress and egress of people vis-à-vis buildings and other venues. They do not actually facilitate the actual tracing of close contacts of confirmed COVID-19 cases. To carry out the latter, several government offices will have to coordinate effectively, using different tools and internal processes.

- **Quarantine enforcement.** Coinciding with the declaration of COVID-19 as a pandemic was the imposition by the Philippine government of a country-wide lockdown (i.e., community quarantine). Apart from official issuances and the deployment of uniformed personnel, government agencies and local government units (LGUs) also came up with technology-enabled strategies for quarantine enforcement.

¹² Al Jazeera (2021, March 9). China launches 'virus passport'. <https://www.aljazeera.com/news/2021/3/9/china-launches-worlds-first-virus-passport>

¹³ Liu, R. & Munroe, T. (2021, March 9). China launches COVID-19 vaccine passport for cross-border travel. Global News. <https://globalnews.ca/news/7685366/covid-vaccine-passport-china/>

¹⁴ Leng, S. & Fan, A. (2021, March 15). Chinese vaccine recipients to enjoy easier visa application step. Global Times. <https://www.globaltimes.cn/page/202103/1218478.shtml>

¹⁵ Llakos, C. (2021, February 24). Greece calls for EU to adopt Covid vaccine passport. CNN. https://edition.cnn.com/world/live-news/coronavirus-pandemic-vaccine-updates-02-24-21/h_4d8f1b93cca682aeb61f6d474c37a119

¹⁶ Gibbons, B. (2021, March 10). Spain announces Covid vaccine passport plan for UK visitors. Birmingham Live. <https://www.birminghammail.co.uk/news/uk-news/spain-announces-covid-vaccine-passport-20038960>

¹⁷ Smith, H. & Boffey, D. (2021, February 24). Greece in talks with UK to allow holidays with vaccine passports. The Guardian. <https://www.theguardian.com/world/2021/feb/24/greece-in-technical-talks-with-the-uk-to-allow-holidays-with-vaccine-passports>

¹⁸ Global News (2021, February 16). U.K. will issue vaccine passports if needed, but won't use at home. <https://globalnews.ca/news/7642872/uk-covid-vaccine-immunity-passports/>

¹⁹ Woodcock, A. (2021, February 24). Vaccine passports to prove Covid immunity could be banned in some circumstances, Boris Johnson indicates. The Independent. <https://www.independent.co.uk/news/uk/politics/coronavirus-vaccine-passports-boris-johnson-b1806070.html>

In Pasig City, one barangay (i.e., an administrative division) supposedly deployed 73 video surveillance cameras equipped with an Artificial Intelligence (AI) software that allows the real-time monitoring of residents' movements. It was also reported as planning to adopt an SMS-blasting platform for advisories and announcements, in partnership with one of the country's major telecommunications companies.²⁰ In Cebu City, quarantine compliance was monitored in part with the help of camera drones piloted by the police. Personnel were immediately deployed to areas where quarantine violations were spotted.²¹ Surveillance of online spaces was also introduced. In September 2020, the government task force charged with implementing community quarantine protocols²² directed police officers to regularly check social media for possible violations.²³

- **Contact tracing.** In April 2020, the Department of Health (DOH) issued guidelines for contact tracing.²⁴ It was also around that time that government agencies and LGUs also started developing different contact tracing tools. StaySafe.ph, the country's so-called "official social-distancing, health-condition-reporting, and contact-tracing system" was formally adopted on 22 April 2020.²⁵ The Philippine National Railways began using an AI surveillance system that can identify the destination of passengers confirmed as COVID-19 cases.²⁶ The system is connected to a network of 219 video surveillance cameras in railway stations. The Metro Rail Transit System Line 3 (MRT-3), on the other hand, launched MRT-3 Trace, which uses QR code technology to log passengers.²⁷ Meanwhile, the Manila Light Rail Transit System came up with ikotMNL, which functions both as an information platform and a contact-tracing tool by using Bluetooth technology to detect nearby passengers. As per its developers, the app is "automated, anonymous, and privacy-first by design".²⁸ In the case of LGUs, there were already at least 14 contact tracing applications as of March 2021. Only seven are prescribed for mandatory use. Most apps were developed by third-party private contractors. In the capital, several LGUs proceeded to integrate their respective systems thereby allowing the use of their respective apps in the partner cities.²⁹



²⁰Philippine News Agency (2020, March 30). Pasig village boosts measures to mitigate spread of Covid-19. <https://www.pna.gov.ph/articles/1098189>

²¹Ramos, C. (2020, June 28). 11 drones now in Cebu City to monitor quarantine compliance – Eleazar. Inquirer.net. <https://newsinfo.inquirer.net/1298698/11-drones-now-in-cebu-city-to-monitor-quarantine-compliance-eleazar>

²²The Joint Task Force COVID-19 Shield is composed of the Philippine National Police, the Armed Forces of the Philippines, the Philippine Coast Guard, and the Bureau of Fire Protection. It serves as the enforcement arm of the national government in implementing quarantine rules and protocols during the COVID-19 pandemic.

²³Gotonga, J. (2020, September 5). Police to 'regularly monitor' social media for quarantine violations. Rappler. <https://www.rappler.com/nation/police-regularly-monitor-social-media-quarantine-violations>

²⁴Department of Health (2020, April 17). Department Memorandum No. 2020-0189. Updated Guidelines on Contact Tracing of Close Contacts of Confirmed Coronavirus Disease (COVID-19) Cases. <https://doh.gov.ph/sites/default/files/health-update/dm2020-0189.pdf>

²⁵Inter-Agency Task Force for the Management of Emerging Infectious Diseases (2020, April 22). Resolution No. 27 / Recommendations Relative to the Management of the Coronavirus Disease 2019 (COVID-19) Situation.

²⁶PTV News (2020, November 11). PNR installs AI surveillance system. <https://www.ptvnews.ph/pnr-installs-ai-surveillance-system/>

²⁷Adonis, M. (2021, January 19). Tracing app pesters MRT commuters. Inquirer.net. <https://newsinfo.inquirer.net/1385354/tracing-app-pesters-mrt-commuters>

²⁸Balinbin, A. (2020, September 24). LRT-1 operator offers contact-tracing tool. Business World. <https://www.bworldonline.com/lrt-1-operator-offers-contact-tracing-tool/>

²⁹Inquirer.net (2021, March 1). Mandaluyong joins Valenzuela, Pasig, Antipolo for unified contact tracing. <https://newsinfo.inquirer.net/1401311/mandaluyong-joins-valenzuela-pasig-antipolo-for-unified-contact-tracing-2>

- **Digital government transactions.** With establishments and government offices forced to halt physical operations due to the lockdown, most domestic payments and transactions also had to shift online. To keep up, the government, alongside banks and other financial institutions, ramped up its efforts to encourage people to make the switch. In August 2020, a bill was filed in the Senate, which, if passed, would require all national government agencies, government-owned and controlled corporations and LGUs to “utilize safe and efficient digital payment” in the collection of taxes, fees, tolls, imposts, and other revenues, as well as in the payment of goods, services, and other disbursements. It also called for the adoption of account-based disbursements whereby target recipients directly receive government payments through their bank or digital accounts. A counterpart bill was also filed in the House of Representatives.³⁰ State agencies also started transitioning to cashless systems in its distribution of financial aid. The Department of Social Work and Development partnered with Paymaya³¹ and GCash,³² probably the country’s two biggest mobile wallet systems, for the delivery of the government’s Social Amelioration Program for COVID-19 response. Needless to say, online transactions make for easier monitoring of individuals and their financial activities.



³⁰Ramos-Araneta, M. (2020, September 6). 'Digital payment now a must', Manila Standard. <https://manilastandard.net/mobile/article/333439>

³¹Palautsanon, M. (2020, August 24). All target beneficiaries to get SAP-DSWD chief. The Freeman. <https://www.philstar.com/the-freeman/cebu-news/2020/08/24/2037437/all-target-beneficiaries-get-sapdsdw-chief>

³²Endo, J. (2020, July 19). Digital payment grows in Philippines amid COVID-19 fears. Nikkei Asia. <https://asia.nikkei.com/Business/Companies/Digital-payment-grows-in-Philippines-amid-COVID-19-fears>



- Vaccine delivery and monitoring.** When the government finally launched its vaccine distribution program, it turned again to digital technology. Finding themselves in the frontlines of this effort, LGUs proceeded to come up with vaccine registration solutions. Cities like Manila, Makati, Muntinlupa, and Navotas launched new platforms that cater specifically to vaccine registration. Quezon City,³³ Las Piñas City, and Quirino province, on the other hand, tapped eZConsult, an existing telemedicine app developed by a private pharmaceutical company. The cities of Valenzuela, Taguig, and Pasig utilized their existing contact tracing apps as registration portals. Other local governments turned to free platforms like Google Forms.³⁴ There have also been legislative proposals both at the national³⁵ and local³⁶ levels for the use of immunity passports or vaccination cards, with some LGUs looking to give certain perks and privileges³⁷ to legitimate cardholders. On 23 Feb 2021, the DOH released guidelines for such a program featuring templates for a standardized physical vaccination card and a health declaration screening form.³⁸

³³Quezon City has since terminated its contract with the Zuellig Pharma Corporation for the use of eZConsult, following several instances of the platform exhibiting technical issues.

³⁴Madarang, C. (2021, April 8). This is how Metro Manila residents can register for free COVID-19 vaccine online. Interaksyon. <https://interaksyon.philstar.com/trends-spotlights/2021/04/08/189254/this-is-how-metro-manila-residents-can-register-for-free-covid-19-vaccine-online>

³⁵Torregoza, H. (2021, January 21). Senators Cayetano, Poe fill bills on vaccine passport program. Manila Bulletin. <https://mb.com.ph/2021/01/21/senators-cayetano-poe-fill-bills-on-vaccine-passport-program/>; see also: House Bill No. 8280 https://www.congress.gov.ph/legisdocs/basic_18/HB08280.pdf

³⁶Cabico, G. (2021, March 10). Philippines to vaccinate 250,000 daily when most COVID-19 shots arrive. Philstar.com. <https://www.philstar.com/headlines/2021/03/10/2083374/philippines-vaccinate-250000-daily-when-most-covid-19-shots-arrive>

³⁷Gomez, C. (2021, March 3). Negros Occidental exec suggests giving 'passports' to 1st COVID-19 vaccine takers. Inquirer.net. <https://newsinfo.inquirer.net/1402412/negros-occidental-exec-suggests-giving-passports-to-1st-covid-19-vaccine-takers>

³⁸Department of Health (2021, February 23). Department Memorandum No. 2021-0099. Interim Omnibus Guidelines for the Implementation of the National Vaccine Deployment Plan for COVID-19. <https://doh.gov.ph/sites/default/files/health-update/dm2021-0099.pdf>



- **Others.** Platforms were also developed for other purposes, such as travel management and the repatriation of overseas Filipino workers. The OFW Assistance Information System (OASIS) was developed by the government's labor and overseas employment agencies as a COVID-19 response tracking system for returning overseas Filipino workers.³⁹ All collected information are submitted to the COVID-19 task force: the COVID-19 Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases.⁴⁰ The "Uwian Na" portal organizes the transport of returning OFWs to their respective hometowns. Registration in the system includes turning over a copy of the individual's negative COVID-19 test result.⁴¹ S-Pass, a travel management system developed by the Department of Science and Technology, lets local travelers access information on travel restrictions being implemented by different LGUs.⁴² Users can apply for a Travel Coordination Permit or a Travel Pass-Through Permit through the system. The process involves registering one's personal mobile number and submitting requirements via the S-Pass website. Perhaps one of the most ambitious and comprehensive of the digital platforms conceptualized during the pandemic is Go SMARTApp, which was developed for the government's Anti-Red Tape Authority (ARTA). Initially meant only for business permit and licensing in local governments, it is being prepped for integration with StaySafe.ph and the Department of Information and Communications Technology's (DICT) Electronic Business Permits and Licensing System (eBPLS) software. ARTA is reportedly in talks as well with other agencies for the possibility of using the app for aid distribution.⁴³ With respect to private sector-led aid distribution initiatives, the government seemed keen on monitoring them as well. In the case of so-called "community pantries",⁴⁴ law enforcement operatives were widely reported to have engaged in unwarranted profiling by asking organizers to fill up forms, asking for a number of personal details including their email addresses, Facebook accounts, and family information.⁴⁵ Finally, the government also decided to push through with the scheduled launch of the country's national ID system, the Philippine Identification System (PhilSys), which has consistently been linked to all pandemic responses by the government. Established by law in 2018, it was scheduled for full system rollout in 2020 before COVID-19 disrupted that plan. The ensuing lockdown has made it extremely difficult to complete the entire registration process which requires physical contact (e.g., collection of biometric information). Amidst all this, PhilSys is constantly offered as a magical, good-for-all type of pandemic response measure. To date, it has already been touted as an effective tool for contact tracing, aid distribution⁴⁶, economic recovery and financial inclusion,⁴⁷ and even vaccine distribution.⁴⁸

³⁹CNN Philippines (2020, June 11). DOLE activates tracking system to assist returning OFWs amid pandemic. <https://cnnphilippines.com/news/2020/6/11/DOLE-tracking-system-OFW-OASIS.html>

⁴⁰Department of Labor and Employment (2020, June 14). OFW tracker to be shared with IATF. <https://ptvnews.ph/ofw-tracker-to-be-shared-with-iatf/>

⁴¹PTV News (2020, May 21). OWWA launches 'Uwian Na' portal for OFWs. <https://ptvnews.ph/owwa-launches-uwian-na-portal-for-ofws/>

⁴²Department of Science and Technology (2021, March 24). DOST Develops S-Pass for Easy Coordination in Areas with Different Travel Restrictions. <https://www.dost.gov.ph/knowledge-resources/news/72-2021-news/2168-dost-develops-s-pass-for-easy-coordination-in-areas-with-different-travel-restrictions.html>

⁴³Anti-Red Tape Authority (2021, March 18). ATA to harmonize existing EODB platforms of the government into a single platform. <https://www.rappler.com/nation/ntf-elcac-parlade-admits-organizers-profile-organizers-community-pantries>

⁴⁴Lalu, G. (2021, April 25). Robredo to community pantry critics: Will people line up if they have enough? Inquirer.net. <https://newsinfo.inquirer.net/1423663/robredo-to-community-pantry-critics-will-people-line-up-if-they-have-enough>

⁴⁵Bolledo, J. (2021, April 20). Parlate admits profiling of community pantry organizers. Rappler. <https://www.rappler.com/nation/ntf-elcac-parlade-admits-organizers-profile-organizers-community-pantries>

⁴⁶Newsbytes.PH (2020, November 18). Nat'l ID can address delays in gov't aid distribution, says DSWD. <https://newsbytes.ph/2020/11/18/natl-id-can-address-delays-in-govt-aid-distribution-says-dswd/>

⁴⁷Plad, T. (2020, October 12). Financial inclusion now easy with national ID-Fintech group. Business Mirror. <https://businessmirror.com.ph/2020/10/12/financial-inclusion-now-easy-with-national-id-fintech-group/>

⁴⁸Cordero, T. (2020, December 16). NEDA offers use of nat'l ID for COVID-19 vaccine distribution. GMA News Online. <https://www.gmanetwork.com/news/news/nation/768208/neda-offers-use-of-natl-id-for-covid-19-vaccine-distribution/story/>

II. LEGAL AND REGULATORY SAFEGUARDS

At the global stage, there are policies that help manage the negative impact of state-sponsored pandemic initiatives. From a data protection perspective, there is Convention 108⁴⁹ of the Council of Europe (CoE) and the Privacy Framework⁵⁰ of the Organisation for Economic Co-operation and Development (OECD), which remain, to this day, the only legally binding international treaties on the subject. Given its number of state-parties, Convention 108 appears to wield more influence. Both, however, are widely recognized as setting the foundation for most data protection legislations that currently exist, including that of the Philippines.⁵¹

There have also been recent and more specific issuances—in the form of guidelines—that require due regard for human rights in the pandemic response and call for effective data protection. The OECD issued recommendations highlighting the role of data protection authorities in ensuring the privacy of individuals vis-a-vis the use of digital technologies in health surveillance, especially in jurisdictions without adequate protection against widespread surveillance.⁵²



⁴⁹Council of Europe (2018). Convention 108+ Convention for the protection of individuals with regard to the processing of personal data. <https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regard-to-the-processing-of-personal-data/16808b36f1>

⁵⁰Organisation for Economic Co-operation and Development (2013). The OECD Privacy Framework. https://www.oecd.org/sti/economy/oecd_privacy_framework.pdf

⁵¹Greenleaf, G. (The UN should adopt Data Protection Convention 108 as a global treaty: Submission on 'the right to privacy in the digital age' to the UN High Commission for Human Rights, to the Human Rights Council, and to the Special Rapporteur on the Right to Privacy. <https://www.chchr.org/Documents/Issues/DigitalAge/ReportPrivacyinDigitalAge/GrahamGreenleafAMProfessorLawUNSWAustralia.pdf>

⁵²Organisation for Economic Co-operation and Development (2020, 14 April). Ensuring data privacy as we battle COVID-19. <https://www.oecd.org/coronavirus/policy-responses/ensuring-data-privacy-as-we-battle-covid-19-36c2f31e/#section-d1e181>



In 2017, the World Health Organization (WHO) also released ethical guidance for public health surveillance across nations to prevent unwarranted intrusions on privacy, discrimination, and stigmatization, especially in light of the increasing dependence on data-centric technological revolution in healthcare.⁵³ The COVID-19 crisis has proven that the concern is urgent. Accordingly, as an appropriate follow-up, the body issued another set of guidelines identifying seventeen (17) principles from which such surveillance systems should be founded on, including those that promote and uphold people's privacy.⁵⁴

Regional guidelines have come from such institutions as the European Data Protection Board (EDPB) and the European Data Protection Supervisor, which drew up an advisory⁵⁵ on the use of digital technologies like contact tracing applications, and opinions⁵⁶ on the possible use of vaccination certificates and its alignment with the requirements of the General Data Protection Regulation (GDPR), respectively. Notably, the Association of Southeast Asian Nations (ASEAN), where the Philippines is a member, have also issued guidelines relating to pandemic response, but none of them have so far delved into data protection concerns. As of this writing, it has released guidelines relating to health safety during flights,⁵⁷ shared response funds, medical supplies,⁵⁸ and cross-border road freight transport⁵⁹.

At the country level, those with more mature data protection regimes, like the United Kingdom⁶⁰ and New Zealand⁶¹, have managed to issue more proactive and direct protocols for managing privacy and data protection issues caused by the pandemic. This has allowed for fewer complaints and controversies when it comes to their governments' COVID-19 programs.

⁵³World Health Organization (2017). WHO guidelines on ethical issues in public health surveillance. <http://apps.who.int/iris/bitstream/handle/10665/255721/9789241512657-eng.pdf;jsessionid=05BC65352013943CF65B8758D10C3AA3?sequence=1v>

⁵⁴World Health Organization (2020, May 28). Ethical considerations to guide the use of digital proximity tracking technologies for COVID-19 contact tracing. https://www.who.int/publications/item/WHO-2019-nCoV-Ethics_Contact_tracing_apps-2020.1

⁵⁵European Data Protection Board (2020, 21 April). Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak. https://edpb.europa.eu/sites/edpb/files/file1/edpb_guidelines_20200420_contact_tracing_covid_with_annex_en.pdf

⁵⁶EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate). https://edps.europa.eu/system/files/2021-04/21-03-31_edpb_edps_joint_opinion_digital_green_certificate_dcg_en.pdf

⁵⁷Iwamoto, K. (2020, 12 November). ASEAN discusses regional travel corridor for faster COVID recovery. Nikkei Asia. <https://asia.nikkei.com/Politics/International-relations/ASEAN-discusses-regional-travel-corridor-for-faster-COVID-recovery>

⁵⁸Tamayo, B. (2021, 26 April). Asean to use common fund to buy vaccines. The Manila Times. <https://www.manilatimes.net/2021/04/26/news/national/asean-to-use-common-fund-to-buy-vaccines/367560/>

⁵⁹United Nations Economic and Social Commission for Asia and the Pacific (2021, 18 February). Road freight in ASEAN: New COVID-19 Response and Recovery Guidelines. UNESCAP. <https://www.unescap.org/news/road-freight-asean-new-covid-19-response-and-recovery-guidelines>

⁶⁰Information Commissioner's Office. Working from home – security checklists for employers. <https://ico.org.uk/for-organisations/working-from-home/working-from-home-security-checklists-for-employers/>

⁶¹New Zealand Ministry of Education (2020). Video conferencing options and guidance for early learning services, schools and kura. <https://www.education.govt.nz/covid-19/video-conferencing-tools-and-guidance-for-eece-schools-and-kura/>



Meanwhile, the Philippine experience has been far from ideal. As a public health concern, COVID-19 is covered by the Mandatory Reporting of Notifiable Diseases and Health Events of Public Concern Act (MRNDHEPCA)⁶², which gives the DOH and local health offices the authority to process personal data in connection with its crisis management responsibilities. The law recognizes that people's privacy should be respected even while ensuring public health and security. Reinforcing its tenets is the Data Privacy Act of 2012 (DPA) whose primary purpose is to ensure the protection of personal data, without unnecessarily restricting the free flow of information. There is also the Cybercrime Prevention Act of 2012 (CPA) that lends its support by further addressing the unlawful use (or even mere access) of computer systems.

Outside of national laws, pandemic-related guidelines are also issued by the IATF. Specific agencies, by their lonesome or in cooperation with others, then develop their own rules to address any policy gaps that remain in the respective sectors, such as transportation, commerce, labor, and education. Among those that have released joint issuances are the Department of Trade and Industry (DTI) and the Department of Labor and Employment (DOLE).⁶³ The DOH, despite its role as chair of the IATF, still finds the need to issue separate guidelines on specific concerns. In contact tracing, for example, the agency came up with rules⁶⁴ outlining the contract tracing process, the minimum data requirements of such process, and the development of a vaccine recipient master list, including the corresponding forms that will be used for these processes. Meanwhile, some degree of guidance has also been provided by regulatory agencies like the DICT and the National Privacy Commission (NPC). The DICT issued Circular No. 009 (2020) which established the vetting process for all COVID-related ICT solutions providers. Through it, the agency attempts to standardize and streamline the screening requirements for services, products, and applications that are supposedly meant to be used by the government in its handling of the crisis. It requires proponents to submit a letter of intent to the DICT, accompanied by favorable endorsement from the end-user government agency. The proposed service will then undergo departmental vetting and evaluation based on the following standards: ICT service management, project management, enterprise architecture, cybersecurity, and data privacy. The Circular also outlines the steps to be taken when finally donating or entering arrangements with the end-user agencies.⁶⁵

⁶²Republic Act No. 11332, Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act. <https://www.officialgazette.gov.ph/downloads/2019/04apr/20190426-RA-11332-RRD.pdf>

⁶³Department of Trade and Industry & Department of Labor and Employment (2020, August 15). Joint Memorandum Circular 20-04-A s.2020, DTI and DOLE Supplemental Guidelines on Workplace Prevention and Control of COVID-19. <https://ulap.net.ph/ulap-news/advisories/532-dti-dole-joint-memorandum-circular-jmc-no-20-04-a-series-of-2020.html>

⁶⁴Department of Health (2020, April 17). Department Memorandum No. 2020-0189, Updated Guidelines on Contact Tracing of Close Contacts of Confirmed Coronavirus Disease (COVID-19) Cases. <https://doh.gov.ph/sites/default/files/health-update/dm2020-0189.pdf>

⁶⁵Department of Information and Communications Technology (2020, May 29). Department Circular No. 2020-009, Guidelines for Departmental Vetting and Evaluation of Proposals for ICT Services, Products, and Applications for Government Use in Addressing the COVID-19 Situation. https://dict.gov.ph/wp-content/uploads/2020/06/Department_Circular_No_009_Guidelines_for_Departmental_VettingEvaluation.pdf

On the part of the NPC, the Commission issues supplemental advice on the protection of personal data for the duration of the pandemic. In April 2020, it released an issuance (i.e., Joint Memorandum Circular No. 2020-0002) alongside the DOH, which sets privacy guidelines for the collection, processing, and disclosure of COVID-19-related data in pursuit of disease surveillance and response. The Circular instructs the IATF Task Group on Strategic Communications, in coordination with the DOH Epidemiology Bureau, the DOH Data Protection Officer (DPO), and the NPC, to set policy directions and oversight on all matters relating to privacy and data protection of COVID-19-related data. It also designates the National eHealth Program Management Office under the DOH as the technical and administrative secretariat for all activities related to such matters. Finally, it also requires entities offering or providing ICT solutions in connection with the pandemic to register with the NPC, including their respective data processing systems (DPS) and DPOs. Such entities must also follow the minimum ICT standards set by DICT and DOH's Knowledge Management and Information Technology Service.

LGUs have the prerogative to release their own policies if these are consistent with national guidelines. This has allowed certain localities to come up with their own rule that consider their respective needs and situation. Naga City, for instance, released an ordinance concerning the use of its own contact tracing application called the eSalvar.⁶⁶ The Province of South Cotabato did the same and enacted an ordinance⁶⁷ formalizing the creation and adoption of its own contact tracing application. The provincial policy outlines the digital logbooking procedure that makes use of the application, as well as manual logbooking requirements for business establishments and government offices in the province. It also created an implementing committee for the contact tracing system, designating the Chief of the Provincial Epidemiology and Surveillance Unit as the Data Controller and DPO.

Even with all the existing policies that purport to regulate the use of surveillance amid the pandemic and the technologies that facilitate them, the Philippine policy landscape continues to play catch-up. Gaps are aplenty, allowing for numerous transgressions to occur unchecked, with their perpetrators able to evade accountability with ease. Take the case of CCTV systems. A national policy has been proposed as early as 2014, but it continues to be just that—a proposal—until today.⁶⁸ There are LGU ordinances like that of Quezon City,⁶⁹ but they sorely need updating, especially with all the issues and questions that have surfaced during this pandemic. Recognizing that is probably what prompted the NPC to issue an advisory⁷⁰ recently on the lawful use of CCTV systems. The problem with the advisory is that it just a compilation of guidelines, and therefore inherently recommendatory by nature. There are some policies, which, despite their limited scope, are at least able to offer concrete directives. There is a DTI-DOLE joint issuance⁷¹ and a DOH Department Memorandum⁷² that allows employers and health authorities, respectively, to use CCTV footage for contact tracing. But these are rare and require substantial reinforcement.

⁶⁶City Government of Naga (2020). eSalvar official website. <https://esalvar.com/>
⁶⁷Province of South Cotabato (2020, May 26). Ordinance no. 13, Series of 2020: COVID-19 Contact Tracing System Ordinance of the Province of South Cotabato. <https://www.facebook.com/provgovtsocot/posts/ordinance-no-13-series-of-2020-otherwise-known-as-the-covid-19-contact-tracing-s/2937899502959585/>

⁶⁸House Bill No. 3835. https://www.congress.gov.ph/legisdocs/basic_16/HB03835.pdf

⁶⁹Quezon City Ordinance No. 2695, s. 2018. <https://drive.google.com/file/d/19HBem8yNk4yc1XIRf9h79RNwBrTHC1E/view>

⁷⁰<https://www.privacy.gov.ph/wp-content/uploads/2020/11/Advisory-on-CCTV-16NOV2020-FINAL.pdf>
⁷¹Department of Trade and Industry & Department of Labor and Employment (2020, August 15). Joint Memorandum Circular 20-04-A s.2020. DTI and DOLE Supplemental Guidelines on Workplace Prevention and Control of COVID-19. <https://ulap.net.ph/ulap-news/advisories/532-dti-dole-joint-memorandum-circular-jmc-no-20-04-a-series-of-2020.html>

⁷²Department of Health (2020, October 6). Department Memorandum No. 2020-0439. Omnibus Interim Guidelines on Prevention, Detection, Isolation, Treatment, and Reintegration Strategies for COVID-19. <https://doh.gov.ph/sites/default/files/health-update/dm2020-0439.pdf>



Specific areas of concern that are at least covered by existing policy proposals include the use of drones, vaccine passports, and digitization of transactions. In 2019, a bill⁷³ seeking to regulate the use of drones was filed with the Senate but it only covers drone use by private individuals for leisure or commercial purposes. An existing regulation of the Civil Aviation Authority of the Philippines (CAAP) fulfills the same purpose,⁷⁴ albeit relative to government agencies who use drones for revenue-generation purposes.⁷⁵ In 2020, vaccine or immunization passports that aim to make COVID-19 vaccine a precondition to international and domestic travel, employment abroad, and access to establishments, also became the focus of a number of bills filed in Congress.⁷⁶ For now, even without an enabling law, there is already an existing administrative policy⁷⁷ requiring the issuance of a digital vaccine card to recipients. The main difference between the proposed passport and the current card is the information they contain. The latter does not require any medical history to be included in the document. Finally, there are also legislative proposals on the digitization of transactions.⁷⁸ While they are tackled in the legislature, government agencies have already started adjusting their respective systems to accommodate and promote digital transactions.⁷⁹

⁷³Aguilar, K. (2019, 11 October). Bill regulating ownership, operation of drones filed at Senate. Inquirer.net. <https://technology.inquirer.net/91250/bill-regulating-ownership-operation-of-drones-filed-at-senate>

⁷⁴Crismundo, K. (2021, 26 April). Gov't accelerates digitalization of services. Philippine News Agency. <https://philippinedrone.net.com.ph/drone-industry-news/philippine-drone-laws-licenses-and-registration-2021-updated/>

⁷⁵Presentation on Unmanned Aerial Vehicle (UAV). <https://pcieerd.dost.gov.ph/images/glad/UAVPresentation-CAAP.pdf>

⁷⁶Malaya Business Insight (2021, 22 February). Next imposition: COVID-19 vaccine passport. Malaya Business Insight. https://malaya.com.ph/index.php/news_opinion/next-imposition-covid-19-vaccine-passport/

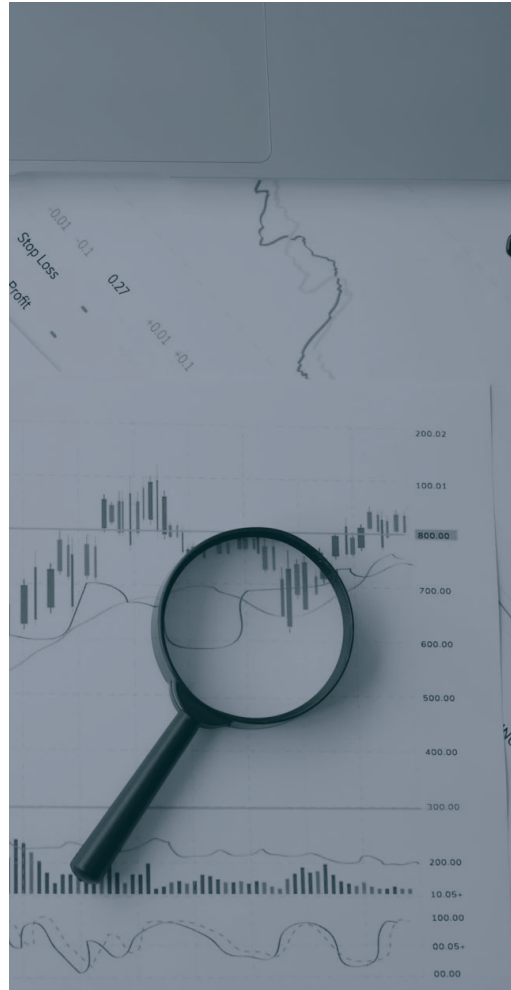
⁷⁷Department of Health & National Task Force Against COVID-19 (2021, March 26). Joint Administrative Order No. 2021-0001, Implementing Rules and Regulations of Republic Act No. 11525 known as "An Act Establishing the Coronavirus Disease 2019 (COVID-19) Vaccination Program Expediting the Vaccine Procurement and Administration Process, Providing Funds Therefor, and For Other Purposes". <https://doh.gov.ph/sites/default/files/health-update/DOH-NTFAC2021-0001.pdf>

⁷⁸Cervantes, F.M. (2021, 22 March). Bill promoting digital payments hurdles 2nd reading in House. Philippine News Agency. <https://www.pna.gov.ph/articles/1134472>

⁷⁹Crismundo, K. (2021, April 26). Gov't accelerates digitalization of services. Philippine News Agency. <https://www.pna.gov.ph/articles/1138083>

III. ANALYSIS

The right to privacy of individuals and other related rights and freedoms have been put at greater risk since the beginning of the pandemic, because of numerous surveillance systems being expanded, normalized, and legitimized under the guise of public health and safety protocols. In some cases, data protection authorities appeared to even endorse them by lifting typical restrictions on the processing of personal data.⁸⁰ Unfortunately, despite these systems' notable benefits, the risks and harms some of them pose sometimes tend to be greater than those they are meant to protect people from. This has gradually become more obvious as more countries, especially among Southeast Asian nations like the Philippines, find themselves dealing with the same contentious issues. The use of contact tracing data for law enforcement purposes,⁸¹ excessive tracking of people's movements, unwarranted monitoring of social media posts,⁸² and opaque data sharing agreements between government and private companies are just a few examples of the issues that have arisen during this period.



⁸⁰Ng, A. (2020, 21 March). Coronavirus pandemic changes how your privacy is protected. Cnet. <https://www.cnet.com/health/coronavirus-pandemic-changes-how-your-privacy-is-protected/>

⁸¹Han, Kirsten (2021, 10 February). COVID app triggers overdue debate on privacy in Singapore. Aljazeera. <https://www.aljazeera.com/news/2021/2/10/covid-app-triggers-overdue-debate-on-privacy-in-singapore>

⁸²Ng, A. (2020, 25 March). Governments could track COVID-19 lockdowns through social media posts. Cnet. <https://www.cnet.com/health/governments-could-track-covid-19-lockdowns-through-social-media-posts/>



In the Philippines, the more prominent issues can be classified into three main themes: (a) infringement of data privacy principles; (b) weak regulation; and (c) negative impact on other human rights.

Infringement of data privacy principles

Most government initiatives tend to flout the fundamental principles enshrined in data protection laws like the DPA. Take, for instance, the overlapping concepts of transparency and purpose specification. The first mandates that individuals be informed of the nature and extent of processing their personal data will be subjected to, while the latter emphasizes the need to declare the purpose of said processing. Several government measures fail to adhere to these principles. They are governed by terms and conditions that are often opaque or inaccessible, owing to the absence of applicable privacy policies or data processing contracts. Sometimes, limited accessibility is due to the chosen format. Practically all entities maintaining privacy policies have them only in English, which can be an insurmountable hurdle for some users not familiar with the language. They end up agreeing to data processing activities they do not even understand. A prime example of this aversion to transparency is the questionable profiling by the police of community pantry organizers and volunteers⁸³ which appears to be devoid of any objective other than to subject said individuals to unwarranted profiling and harassment.⁸⁴ Another would be the deployment of drones and AI-powered CCTV cameras by some LGUs without defined limitations to their use. Very little is actually known about the extent of their data processing capabilities. The protocols for some contact tracing systems can be just as obscure, with some utilizing privacy policies that are poorly written or patently inaccurate. There are those that speak of uses for the data that are not related to a pandemic measure, including data sharing with unidentified third parties. Meanwhile, contracts, such as those relating to public-private partnerships for purposes of aid distribution, are rarely made public, and therefore, escape public scrutiny. Compounding the problem is the tendency to have multiple rules governing the same subject. This is true for contact tracing, where it has been difficult for people to keep track of requirements because of varying guidelines issued by different authorities. Because the IATF failed to provide the minimum data necessary for contact tracing, agencies like the Land Transportation Franchising and Regulatory Board,⁸⁵ the Maritime Industry Authority,⁸⁶ DOLE, and DTI⁸⁷ prescribed their own datasets in their respective guidelines. They ended up imposing different and sometimes excessive information requirements.

⁸³Andrade, J. (2021, 23 April). Red-tagged? Community pantries get military help. Inquirer.net. <https://newsinfo.inquirer.net/1422736/red-tagged-community-pantries-get-military-help>

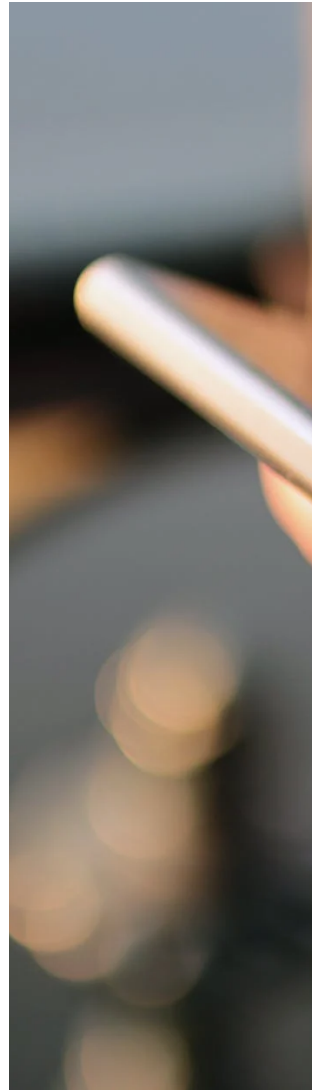
⁸⁴Bolledo, J. (2021, 20 April). <https://www.rappler.com/nation/quezon-city-police-district-apology-red-tagging-post-community-pantries>

⁸⁵Land Transportation Franchising & Regulatory Board (2020, May 1). Memorandum Circular No. 2020-017. Guidelines for Public Transportation for Areas Under General Community Quarantine (GCQ). <https://lfrb.gov.ph/wp-content/uploads/2020/04/MC-2020-017-RE-GUIDELINES-FOR-PUBLIC-TRANSPORTATION-AREAS-UNDER-GCQ-min.pdf>

⁸⁶Maritime Industry Authority (2020, June 26). MARINA Advisory No. 2020-51. Additional Information on Passenger Manifest Required Under MC 180 for Additional Measures for Contact Tracing. <https://marina.gov.ph/wp-content/uploads/2020/07/MA-2020-51.jpg>

⁸⁷Department of Health (2020, September 30). Workplace Handbook on COVID-19 Management and Prevention, Version 1. <https://doh.gov.ph/sites/default/files/publications/workplace-handbook-on-covid-19-management-and-prevention.pdf>

Collection limitation is another related principle. Situated within the broader concept of proportionality, it calls for the accumulation of the least amount of data necessary to achieve the desired purpose. This principle seems lost on those behind some initiatives, like contact tracing programs. The StaySafe.ph app, for example, was once criticized for the excessive and dangerous permissions (e.g., access and control to a phone's GPS and Bluetooth features that enables location tracking⁸⁸) it was asking from its users.⁸⁹ Were it not for the ensuing public outrage, the developers would have likely retained those functionalities. Right now, though, despite their removal, the app still collects far more information compared to other contact tracing apps.⁹⁰ Some LGU systems are on the same boat. Naga City's eSalvar previously collected the birthdate and sex of registered users. When the enabling ordinance was challenged before a court, the provision imposing those requirements was struck down.⁹¹ Meanwhile, there are apps like eZConsult that collect a considerable amount of information because of their multiple use cases (i.e., they are not meant solely for vaccine administration). Most people who have installed them are not even aware that they are not just meant for vaccination administration. Still under the proportionality principle is use limitation. It provides that, as a general rule, an entity should only use personal data pursuant to the previously declared purpose of its collection. "Function creep" is the term utilized to describe a problematic scenario wherein a system that is specifically designed for one purpose is gradually used for other unrelated purposes, often without the knowledge of those most affected by it. There is plenty of it among the government's pandemic initiatives. Once again, the StaySafe.ph app is an ideal case study, since its current features are no longer just limited to data collection,⁹² contrary to the original declaration by the government.⁹³ According to its developer, it also boasts of other components, such as a health condition reporting mechanism, a social distancing system, and an information dissemination platform that LGUs may choose to use. At the same time, the country's data protection authority has also been receiving reports regarding the unlawful (or at least unauthorized) use of contact tracing data by some businesses for unrelated purposes like marketing⁹⁴ and profiling⁹⁵.



⁸⁸Ferreras, V. (2020, 14 December). No more GPS, Bluetooth in StaySafe system following data privacy concerns. CNN Philippines. <https://cnnphilippines.com/news/2020/12/14/StaySafe-remove-GPS-Bluetooth-data-privacy-concerns.html>

⁸⁹Ranada, P. (2020, 8 June). 'Borderline spyware': IT experts raise alarm over Duterte admin contact-tracing app. Rappler. <https://www.rappler.com/newsbreak/in-depth/borderline-spyware-information-technology-experts-alarm-stay-safe-app>

⁹⁰Malig, K. and RC (2020, 26 June). IT experts express concern on use of StaySafe.ph over privacy issues. GMA News Online. <https://www.gmanetwork.com/news/scitech/technology/7444409/it-experts-express-concern-on-use-of-staysafe-ph-over-privacy-issues/story/>

⁹¹Yu, E. (unknown). Court declares 2 'eSalvar' sections unconstitutional but rest of ordinance legal. Bicol Mail. <https://www.bicolmail.net/single-post/court-declares-2-esalvar-sections-unconstitutional-but-rest-of-ordinance-legal>

⁹²Rita, J. (2021, 29 March). StaySafe.Ph contact tracing app turned over to gov't. GMA News Online. <https://www.gmanetwork.com/news/news/nation/781664/staysafe-ph-contact-tracing-app-turned-over-to-gov-t/story/>

⁹³CNN Philippines Staff. (2020, 11 June). Gov't-backed contact tracing app told to turnover all data to DOH. CNN Philippines. <https://cnnphilippines.com/news/2020/6/11/StaySafe-contact-tracing-data-turnover.html>

⁹⁴Lalu, G.P. (2021, 31 March). Contact tracing forms could just be used for data mining, ex-Comelec exec warns. Inquirer.net. <https://newsinfo.inquirer.net/1413437/contact-tracing-forms-could-be-used-for-data-mining-ex-comelec-exec-warns>

⁹⁵Dela Cruz, R.C. (2020, 29 October). Privacy body warns biz of 'repurposing' contact tracing data. Philippine News Agency. <https://www.pna.gov.ph/articles/1120167>



There have also been complaints involving unsolicited SMS,⁹⁶ harassment,⁹⁷ and unauthorized posting on social media,⁹⁸ all of which may be traced to the country's balkanized and loosely supervised contact tracing regime. Things may still turn for the worse. Proposals to have it latch on to other systems⁹⁹ that have significantly different functions will surely increase the chances of data abuse or misuse, absent any meaningful set of regulations. Meanwhile, video surveillance cameras being utilized for health protocol monitoring and enforcement is also a curious example of function creep. Their use by the government predates the pandemic. They are primarily meant to support the effort to reduce the country's crime rate.¹⁰⁰ Nowhere in their enabling policies is it stated that they can also be used for public health purposes,¹⁰¹ complete with AI integration.¹⁰² This, and yet that is exactly what is happening at the moment. For the other programs (e.g., drone mobilization¹⁰³), it is the absence of rules—restricting their use, in particular—that is encouraging function creep. Meanwhile, with immunity passports, the issue has to do more with plans to imbue them with benefits such as fewer travel restrictions. Having them take on additional uses—apart from providing evidence of full vaccination—is risky not only for those people around passport holders, but also for those who remain uninoculated, for whatever reason. After all, there is no conclusive proof that fully vaccinated individuals will never get the virus,¹⁰⁴ At the same time, those who have not yet been vaccinated may find themselves socially excluded and subjected to various forms of discrimination.¹⁰⁵ When it comes to data retention, different government agencies have been prescribing different retention periods in their guidelines, which obviously causes a lot of confusion. This is particularly true for data collected with contact tracing in mind. There are also no clear directives or pronouncements from the government as to when surveillance systems put up during the pandemic will eventually be dismantled, if at all.

⁹⁶Olivares, R. (2020, 15 June). NU Pep Squad coach cries harassment allegedly from contact tracing. PhilStar Global. <https://www.philstar.com/sports/2020/06/15/2021060/nu-pep-squad-coach-cries-harassment-allegedly-contact-tracing?fbclid=IwAR10M6DzbCcJu7oBRZeuktWfVgJ0S9VvK0I6aJvMjITZh-TPJSvSbVXr8Y>

⁹⁷Yap, T. (2020, 5 April). Stoning of residence of family being ravaged by COVID-19 condemned. Manila Bulletin. <https://mb.com.ph/2020/04/05/stoning-of-residence-of-family-being-ravaged-by-covid-19-condemned/>

⁹⁸Desiderio, L. (2020, 27 April). NPC to probe unauthorized disclosure of COVID patients' information. PhilStar. <https://www.philstar.com/headlines/2020/04/27/2010104/npc-probe-unauthorized-disclosure-covid-patients-information>

⁹⁹Alaman, R.J. (2020, 18 December). National ID can be used for contact tracing. Philippine Information Agency. <https://pia.gov.ph/news/articles/1062077>; see also: Geducos, A.C. (2021, 8 April). ARTA's anti-red tape app to include SAP aid distribution feature. Manila Bulletin. <https://mb.com.ph/2021/04/08/arta-anti-red-tape-app-to-include-sap-aid-distribution-feature/>

¹⁰⁰Tuquero, L. (2019, 22 November). Año says China-funded Safe Philippines project will be 'all-Filipino'. Rappler. <https://www.rappler.com/nation/ano-china-funded-safe-philippines-project-all-filipino>

¹⁰¹De Guzman, R. (2020, 21 April). QC gov't installs CCTV cameras to help monitor physical distancing in markets. UNTV News and Rescue. <https://www.untvweb.com/news/qc-govt-installs-cctv-cameras-to-help-monitor-physical-distancing-in-markets/>

¹⁰²Grecia, L. (2020, 27 March). AI-equipped CCTV cameras enable a barangay to monitor people out on the streets. Top Gear Philippines. <https://www.topgear.com.ph/news/motoring-news/san-antonio-pasig-street-monitoring-system-w4354-20200327>

¹⁰³Gascon, M. (2020, 19 April). Drones tapped to help enforce lockdown. Inquirer.net. <https://newsinfo.inquirer.net/1260981/drones-tapped-to-help-enforce-lockdown>; See also: The Manila Times (2020, 4 May). Liloan launches drones to combat the pandemic. The Manila Times. <https://www.manilatimes.net/2020/05/04/public-square/liloan-launches-drones-to-combat-the-pandemic/722335/>

¹⁰⁴World Health Organization (2021, 5 February). Interim position paper: considerations regarding proof of COVID-19 vaccination for international travellers. <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-covid-19-vaccination-for-international-travellers>

¹⁰⁵Ramos, C.M. (2021 February 17). Some senators wary of 'vaccine passports'; say it can be 'discriminatory'. Inquirer.net. <https://newsinfo.inquirer.net/1397055/some-senators-wary-of-vaccine-passports-say-it-can-be-discriminatory>

The data quality principle requires each data custodian to ensure that the information in its possession is complete, accurate, and, to the extent possible, up-to-date. In the context of the current pandemic where many lives are at stake, upholding it is crucial since reliable data is needed for effective policy-making and informed decisions. Unfortunately, there have been plenty of issues with it, as well. The DOH database housing the personal data of all COVID-19 patients and those who have taken confirmatory tests is riddled with inaccuracies. Errors were spotted involving patients' basic information like sex, location, test results¹⁰⁶, and even recovery status (i.e., dead to recovered).¹⁰⁷ No less than the country's contact tracing czar admitted that the database is unreliable.¹⁰⁸ Contact tracing systems are similarly exposed. Many of the entities collecting personal details from customers or visitors do not have the technological resources (e.g., access to mobile apps) or know-how for effective data collection. Most rely on manual data gathering, which is prone to errors and inaccuracies. This also occurs during the vaccination phase, as shown by the experience of one vaccination site where a vaccine was mistakenly recorded as having been administered to a different person.¹⁰⁹



¹⁰⁶NB GMA News (2020, 27 March). RITM says Yap negative for COVID-19, apologizes for error. GMA News Online. <https://www.gmanetwork.com/news/news/nation/731592/ritm-says-yap-negative-for-covid-19-apologizes-for-error/story/>

¹⁰⁷Santos, E. (2020, May 12). Experts see 'alarming errors' in DOH's coronavirus. CNN Philippines. <https://www.cnnphilippines.com/news/2020/5/12/doh-covid-19-data-.html>

¹⁰⁸Talabon, R. (2021, 30 March). Magalong: Contact tracing is worsening in PH. Rappler. <https://www.rappler.com/nation/magalong-says-covid-19-contract-tracing-worsening>

¹⁰⁹Moaje, M. (2021, 25 May). Human error causes QC vax registration mix-up. Philippine News Agency. <https://www.pna.gov.ph/articles/1141428>



Then, there is security. The urgent need to address the rapid influx of COVID-19 cases constantly puts security and privacy in the backseat during the development and implementation of most measures. A worrying fact given the government's lackluster record when it comes to securing information systems. In contact tracing, this has been evident in the case of the StaySafe.ph app whose security has been questioned several times already since its endorsement by the government. The Citizen Lab, an organization based in the University of Toronto that focuses on "research, development, and high-level strategic policy and legal engagement at the intersection of information and communication technologies, human rights, and global security",¹¹⁰ discovered in 2020 major vulnerabilities in the app.¹¹¹ One, in particular, allowed an ordinary user to access or track other users' geolocation, universally unique identification, self-reported health status. With adequate skills, that user can even uncover another user's real identity. Once informed by Citizen Lab, the developer of the app, MultiSys Corporation, fixed the issue by limiting access to the program's database. Despite this, it may still be possible to exploit the same vulnerability using a contact tracer's account. Privacy advocates were also not impressed with the developer's decision not to allow the DOH to assess the app's source code and functionality as part of its turnover to the government. Instead of acquiescing, MultiSys chose to donate the app to another agency instead: the Department of the Interior and Local Government (DILG).¹¹² Citizen Lab also discovered flaws in the COVID-Kaya system, the national database for COVID-19-related data. It turned out that a failed login attempt using an invalid username or password could give someone access to the app's API endpoints and tools which, eventually leads to the users' credentials (i.e., usernames and full names). Another vulnerability gave Citizen Lab access to names of healthcare workers and affiliated health centers, which the app contained.¹¹³ The organization believed that further exploitation of the vulnerabilities could also reveal the names of COVID-19 patients. It stated that it also had reason to believe that there had already been earlier unauthorized access and attacks to the system, although it is unclear who carried them out.¹¹⁴ If plans to integrate multiple systems push through, any potential data breach could be exponentially more damaging. The involvement of third parties also has security implications, especially if the entities involved also have a poor history on the subject. Here, the country's massive CCTV project (i.e., "Safe Philippines Project") is worth looking into. The involvement of China—long known to be a surveillance State that is also actively engaged in cyber espionage against other countries¹¹⁵—in the Project has already been flagged by some legislators as a possible national security concern.¹¹⁶

¹¹⁰Lin, P., Knockel, J., et. al. (2020, December 21). Unmasked II: An Analysis of Indonesia and the Philippines' Government-launched COVID-19 Apps. Citizen Lab. <https://citizenlab.ca/2020/12/unmasked-ii-an-analysis-of-indonesia-and-the-philippines-government-launched-covid-19-apps/>

¹¹²Arnaldo, M.S. (2021, 5 May). DILG Chief Has 'Buyer's Remorse' On 'Overrated' Contact-Tracing App. Business Mirror. <https://businessmirror.com.ph/2021/05/05/dilg-chief-has-buyers-remorse-on-overrated-contact-tracing-app/>

¹¹³Lin, P., Knockel, J., et. al. (2020, 10 November). COVID-KAYA and the Exposure of Healthcare Worker Data in the Philippines. Citizen Lab. <https://citizenlab.ca/2020/11/unmasked-covid-kaya-and-the-exposure-of-healthcare-worker-data-in-the-philippines/>

¹¹⁴Lin, P., Knockel, J., et. al. (2020, 10 November). COVID-KAYA and the Exposure of Healthcare Worker Data in the Philippines. Citizen Lab. <https://citizenlab.ca/2020/11/unmasked-covid-kaya-and-the-exposure-of-healthcare-worker-data-in-the-philippines/>

¹¹⁵Badilla, N. (2017, 25 May). China, Vietnam behind cyber attacks on PH, Asia. Manila Times. <https://www.manilatimes.net/2017/05/25/news/national/china-vietnam-behind-cyber-attacks-ph-asia/329196/>

¹¹⁶Luna, F. (2020, 5 January). Probe into Safe Philippines CCTV project sought. PhilStar. <https://www.philstar.com/headlines/2020/01/05/1982217/probe-safe-philippines-cctv-project-sought>



Finally, there is accountability. This last but critical guidepost establishes the primordial duty of entities to safeguard their data processing systems and all the information these contain. The current administration has shown little interest in owning up to such responsibility. Its “implement first, regulate later” approach to program development and implementation is a dead giveaway. Always in full display is its propensity to implement measures sans clear and useful parameters, with only an occasional reference to data protection as a token provision. As a result, problematic measures remain, exposing the population to unnecessary risks. The IATF’s haphazard endorsement of the StaySafe.ph is a good example. It came about without a proper vetting process, and with many of the procedural and documentary requirements still left unfulfilled.¹¹⁷ Despite all the transactional hiccups and security issues associated with the app,¹¹⁸ the government has not withdrawn (or even withhold temporarily) its endorsement. Instead, it has doubled down on its show of confidence by requiring the app’s use in all public and private establishments.¹¹⁹ As if that were not enough, the government also included the app’s use among the requirements establishments must meet to qualify for its Safety Seal Program.¹²⁰

This, despite the DILG Chief himself admitting later on that he remains unconvinced of the program’s usefulness.¹²¹ This indifferent attitude towards accountability is not unique to the national contact tracing app. It manifests itself in the other measures, too. Many of them, like the use of drones and AI-powered CCTV systems, remain in need of meaningful policies to guide their proper use. In the meantime, implementers are given broad discretion over the way they deploy such technologies. To make matters worse, implementers are often non-responsive when confronted with inquiries and complaints. The presence of regulators has offered little help, if at all. The NPC which is supposed to call out entities who fail to protect people’s data has remained silent for the most part, when issues involving government initiatives are brought up. On the few occasions they have spoken out, they usually come up only with general reminders and some vague promise to launch a probe on the hot-button issue. To date, however, it has not released a single report or update regarding any investigation it has taken involving any of the government’s controversial measures.¹²² For the most part, the Commission seems content with releasing the occasional press statement that is too general to have some real impact. It has been noticed, as well, that sometimes, there needs to be some level of public outrage first before it steps in. As if that were not enough, it even found the time to make data sharing involving government agencies easier and more convenient by doing away with its data sharing agreement requirement.¹²³ Meanwhile, the DICT, another major proponent of StaySafe.ph, seems to have ignored its own guidelines on the proper vetting of third-party applications. Otherwise, how else might one explain the continued government support for the app despite the latter’s glaring security issues?

¹¹⁷Ranada, P. (2020, 8 June). ‘Borderline spyware’: IT experts raise alarm over Duterte admin contact-tracing app. Rappler. <https://www.rappler.com/newsbreak/in-depth/borderline-spyware-information-technology-experts-alarm-stay-safe-app>

¹¹⁸Merez, A. (2020, 11 June). Gov’t tightens leash on PH contact tracing app after ex-DICT official sounds alarm. ABS-CBN News. <https://news.abs-cbn.com/news/06/11/20/govt-tightens-leash-on-ph-contact-tracing-app-after-ex-dict-official-sounds-alarm>

¹¹⁹Perez-Rubio, B. (2020, 4 December). COVID-19 task force requires all establishments to use StaySafe app. PhilStar. <https://www.philstar.com/headlines/2020/12/04/2061458/covid-19-task-force-requires-all-establishments-use-stay-safe-app>

¹²⁰DILG (2021, 3 April). DILG, LGUs to inspect all public buildings, markets, etc. to award Safety Seal to fight COVID. <https://dilg.gov.ph/news/DILG-LGUs-to-inspect-all-public-buildings-markets-etc-to-award-Safety-Seal-to-fight-Covid/NC-2021-1076>

¹²¹Arnaldo, M.S. (2021, 5 May). DILG Chief Has ‘Buyer’s Remorse’ On ‘Overrated’ Contact-Tracing App. Business Mirror. <https://businessmirror.com.ph/2021/05/05/dilg-chief-has-buyers-remorse-on-overrated-contact-tracing-app/>

¹²²National Privacy Commission Statement: Using COVID-19 health data as travel requirement calls for ‘privacy by design’ approach (2021, 16 April). <https://www.privacy.gov.ph/2021/04/using-covid-19-health-data-as-travel-requirement-calls-for-privacy-by-design-approach/>

¹²³National Privacy Commission Circular 2020-03 (2020, 23 December). Data Sharing Agreements. <https://www.privacy.gov.ph/wp-content/uploads/2021/01/Circular-Data-Sharing-Agreement-amending-16-02-21-Dec-2020-clean-copy-FINAL-LYA-and-JDN-signed-minor-edit.pdf>

Negative impact on other human rights

Many of the government initiatives meant to curb the spread of COVID-19 do not only affect the individual right to privacy, but other rights and freedoms too. Certainly, a dangerous context under the current administration, wherein the weaponization of laws and processes for the purpose of silencing dissent has become the norm. Following tradition, it seems, people have seen how even policies and measures meant to manage the current health crisis now play a role in human rights violations. One that appears to be most threatened is the right to freedom of expression. Relying on reports that misinformation and disinformation online have increased during the pandemic,¹²⁴ as well as news of various lockdown violations as shown on social media,¹²⁵ the government has managed to justify its monitoring activities targeting people's behavior online. The manner by which it has enforced its powers in this regard proves that it is very susceptible to abuse. Instead of reducing the prevalence of "fake news", online surveillance has mostly targeted individuals critical of the government. In one case, a person was subpoenaed for a post made about the misuse of government funds.¹²⁶ Another individual was arrested despite merely stating his opinion on the actions of one particular lawmaker.¹²⁷ The DILG Secretary also filed charges against an individual for supposedly accusing him of having uttered one controversial statement.¹²⁸ It seems the only time people are able to evade liability is when they turn out to be popular supporters of the administration. Meanwhile, freedom of movement and one's right to liberty have also been affected during this period. COVID-19-related monitoring systems are being used to amplify the presence of—and in some cases, intimidation by—security forces in certain areas. In Naga City, one of the grounds for challenging the local contact tracing system was its supposed violation of the people's right to freedom of movement. The petitioners argued that because the local government required the use of eSalvar in all establishments, while prohibiting manual collection of contact tracing data, people's mobility was being subjected to unwarranted and disproportionate restrictions.¹²⁹ In some cases, it is the individual right to associate freely that is violated. This has been the experience of the community pantry organizers and volunteers approached by law enforcement operatives and asked to provide various personal data, including their social media accounts. Some have become afraid and discouraged from continuing their charity work because of the low-key harassment and intimidation tactics.¹³⁰ ¹³¹ To some extent, even the right to health is impaired by health surveillance systems. While these systems are helpful in case monitoring, their efficacy remains questionable given the prevailing digital divide in the country. A clear example would be the use of apps that are not compatible with older devices which millions of Filipinos still use. When contact tracing and vaccination administration are done solely using online platforms, people without access to such platforms or the devices they are installed in will inevitably be left out,¹³² possibly leading to serious consequences to their health.

¹²⁴Macaraeg, P. (2020, 23 December). Fact-checking: A year of infodemic. Rappler. <https://www.rappler.com/newsbreak/iq/fact-checking-year-infodemic-2020>

¹²⁵Luna, F. (2021, 17 March). Police still monitoring social media for quarantine violations. PhilStar. <https://www.philstar.com/headlines/2021/03/17/2084988/police-still-monitoring-social-media-quarantine-violations>

¹²⁶ABS-CBN News (2020, 2 April). Chilling effect: NBI going after netizens for social media posts on COVID response - Diokno. ABS-CBN News. <https://news.abs-cbn.com/news/04/02/20/chilling-effect-nbi-going-after-netizens-for-social-media-posts-on-covid-response-diokno>

¹²⁷CNN Philippines (2020, May 14). Salesman arrested for social media post against Bong Go, Duterte. <https://www.cnnphilippines.com/news/2020/5/14/Duterte-cyberlibel-arrest-Agusan-del-Norte.html>

¹²⁸Barcelo, V. (2020, September 8). Palace defends socmed monitoring. Manila Standard. <https://www.manilastandard.net/news/top-stories/333555/palace-defends-socmed-monitoring.html>

¹²⁹Bicol Mail (unknown). Court asked to declare: 'eSalvar' unconstitutional. Bicol Mail. <https://www.bicolmail.net/single-post/2020/10/09/court-asked-to-declare-esalvar-unconstitutional>

¹³⁰Andrade, J. (2021, 23 April). Red-tagged? Community pantries get military help. Inquirer.net. <https://newsinfo.inquirer.net/1422736/red-tagged-community-pantries-get-military-help>

¹³¹De Leon, D. (2021, 10 May). Community pantry in Marikina closes amid fears of police profiling. Rappler. <https://www.rappler.com/nation/community-pantry-marikina-closes-may-10-2021>

¹³²Camus, M. (2020, 7 June). Ex-DICT sec Rio says he was eased out of govt after pointing out StaySafe.ph app limitations. Inquirer.net. <https://business.inquirer.net/299358/ex-dict-sec-rio-says-he-was-eased-out-of-govt-after-pointing-out-staysafe-ph-app-limitations>

IV. CONCLUSION

The Philippines' overall pandemic response is perceived by many as tragic for continuing to rely on policies that are mostly inadequate and contradictory. Policymakers who are expected to come up with logical solutions propose half-baked measures that do not only fail to help but end up creating a different gamut of problems instead, like infringement of human rights. Indeed, many of the technological solutions that have been deployed to curb the debilitating effects of the pandemic have turned out to be tools for propagating privacy violations and other human rights abuses. Meanwhile, there are very few effective mechanisms around to prevent their misuse and abuse. The lack of effective oversight and regulation by the proper authorities is remarkable. Still, it remains possible to nudge matters back into the right track.



To get things going, the government should start by seeing to it that all concerned offices have the same objective in their sights, through a unified and synchronized strategy. There needs to be better coordination and more accessible communication lines. The national government cannot continue imposing standards if individual agencies and LGUs are free to develop and prescribe their own anyway. New issuances, offices, or measures—whether they be national or local in scope—should complement existing ones to avoid sowing confusion. With contact tracing, for instance, only one standard set of information should be collected. Agencies should not come up with guidelines requiring different datasets. During implementation, the creation of new committees or task forces should be the last resort. New or more is not always better. Sometimes, improving on existing mechanisms is actually more efficient and effective since there is less likely to be contradictory policies or overlaps in the performance of functions. For example, there are already regulators like the DICT and NPC through which technologies can be submitted for appropriate vetting. All that is necessary is for the government to stand by this and make centralized screening a basic requirement. This will put a stop to the unbridled development of multiple apps, with intersecting functions and varying levels of security. The responsibility to facilitate this herculean task falls primarily on the IATF as the body charged with overseeing the national pandemic response. Within the task force, the DOH should assert itself as the lead agency. The pandemic being a health crisis should be treated as such, instead of a law enforcement or national security matter. Once that has been firmly established, the approach should be cascaded to all implementers, from the policymakers all the way down to the frontliners.



There also needs to be better regulation and oversight independently managed by specific state agencies. One cannot reasonably expect the IATF to police itself, including its member agencies and private sector partners. Regulators should also exhibit greater resolve in the exercise of their respective mandates. Apart from the DOH, the NPC and the DICT, agencies like DTI, DOLE, DOTr, and DILG must also up their game. They must not shy away from taking appropriate steps even against fellow agents of the state. They, more than anyone else, ought to know how comprehensive and exacting government measures can get when the state is allowed to impose its will unrestrained. It is also crucial for them to ensure that all surveillance measures introduced during this crisis will not be used for other purposes, especially once the pandemic has passed. Local governments have a special role to play in all this, as more immediate representatives of their respective constituencies. They are in a better position to ascertain how national policies will directly affect their localities, especially any ensuing negative impact. As such, they must craft local policies and programs that fit the people's needs, while working towards the national targets. Once national standards are available, they should align their initiatives with such standards and avoid redundant and conflicting efforts. Together with civil society organizations (CSOs), they must see to it that the interests of the more vulnerable sectors, such as the poor, persons with disabilities, the elderly, and LGBTQI+ communities, are adequately represented. The degree of independence they enjoy should be used to keep the central government in check, especially when using surveillance systems for pandemic control. They ought to recommend changes to policies sent out from the capital if these are ineffective or already curtail fundamental human rights.

CSOs must continue to act as the watchers in the night, constantly on the lookout for abuses perpetrated by the government and even the private sector under the false claim that its measures are necessary to serve the public's interests. As social actors immersed on the ground, with the communities, they also play a key role in relaying the people's actual needs. Moreover, they will also have to do their part in educating the public about how various technologies, while potentially useful, can also be used to infringe on their civil liberties, and how people may protect themselves from such violations. For the private sector, especially those actively providing technological solutions to the pandemic, they need to be responsible and avoid using the crisis to further their business interests, at the expense of public health and human rights. When it comes to privacy and data protection, they should strive to provide services aligned with the privacy principles espoused by the DPA.





Right now, more or less the entire world is earnestly trying to return to the normal state of things, but not countries like the Philippines. Just recently, the nation was dubbed as the least safe country by the Global Finance Magazine,¹³³ with COVID-19 risk as one of the factors that were measured. This is disheartening. More than a year has passed, and the country is still dealing with the most basic concerns like effective contact tracing and mass testing. So far, the belief that surveillance technologies are the solution to the country's pandemic woes has not paid any dividends. In fact, they seem to have made things worse, and only added to the heavy burden already being shouldered by the population. People find themselves under constant surveillance, especially online, more so now than ever before. If it is not the government, it is businesses looking to monetize their personal data. Meanwhile, the entities handling their information are rarely capable of protecting them effectively. Many have not even tried to do so, since the government has done little to hold them accountable.

Pandemic response is not a walk in the park. It is a major undertaking that can neither be handled by a lone agency nor solved solely by relying on technology. However, it is hoped that this Report has trained enough light on some of the problems at hand to emphasize the urgency of the need to resolve them effectively and soon. To do just that, the government, while working with the people, needs to find the right balance between genuine public interest and the individual freedoms every person is entitled to.

¹³³De La Cruz, C. (2021, 8 July). The Philippines Has Been Named Least Safe Country in the World. SPOT.ph. <https://www.spot.ph/newsfeatures/the-latest-news-features/86730/philippines-safety-index-last-world-safest-countries-a833-20210708>

ABOUT FMA

The Foundation for Media Alternatives (FMA) is a non-stock, non-profit organization founded in 1987 soon after the People Power Revolution in the Philippines. Its mission is to assist citizens and communities - especially civil society organizations and other disadvantaged sectors - in their strategic and appropriate use of various communications media for democratization and popular empowerment.

In 1996, FMA focused on information and communications technologies (ICTs) and the emerging phenomenon of the Internet, and began to frame communication rights as human rights.

Today, FMA continues to focus on policy research and progressive agenda-building towards engaging the State and the private sector in democratizing Philippine information communications policy and internet governance. It has represented civil society in the ICT policy-making bodies in the Philippines and abroad. It has written numerous policy papers on the Philippine information society and has led a national effort to codify a Philippine Declaration on Internet Rights and Principles: *Isang Internet na Ipaglalaban* (An Internet to fight for).

FMA is a founding member of the Philippine Internet Freedom Alliance, a member of the Philwomen on ASEAN, and the Philippine National Organizing Committee for the ASEAN Civil Society Conference/ASEAN Peoples' Forum. It is a member of the global Association for Progressive Communications (APC). FMA is also a member of the Women's Rights Online Network of the World Wide Web Foundation, and partners with Privacy International in regional and local initiatives on privacy rights. It plays a leading role in campaigns both at the local and international levels. In March 2015, it co-organized and served as the local host of RightsCon Southeast Asia held in Manila.