CORONA PAN(dem)IC: THE GATEWAY TO GLOBAL SURVEILLANCE?\(^1\)

R. Surber, 2 April 2020\(^2\)

It is said that the ‘corona crisis’ may be the biggest crisis of the current generation. As of 2 April, 937,783 persons are said to have been tested positive on Sars-CoV-2\(^3\) in 204 countries and territories,\(^4\) and 47,267 people are said to have died from Covid-19.\(^5\) On 11 March 2020, the World Health Organization’s Director General declared Covid-19 as a pandemic.\(^6\) By the end of January and early February 2020, a wave of panic of the unknown physical Covid-19 illness has spread across the planet.\(^7\)

**Governmental restrictions and human rights**

In an attempt to contain the spread of the corona pandemic, and in order for national health care systems not to be overwhelmed by the potentially enormous influx of people suffering from the acute respiratory syndrome that Sars-CoV-2 may trigger, many governments have adopted emergency measures.

Those emergency measures are, arguably, drastic: in order to secure both public order and public health, most governments around the world have temporarily closed educational institutions, impacting 89% of the world’s student population. Several other countries have implemented localized closures that may impact millions of additional learners.\(^8\)

Around 70 countries across the world are limiting entry in order to curb the spread of the virus.\(^9\) Many governments have also implemented curfews or urge people to stay at and work from home. In places where people are still allowed to leave their houses, gatherings of more than a hand full of people are banned.\(^10\) In many countries, doctors’ offices and pharmacies are ordered to close their doors, but restaurants, bars and non-essential shops around the globe are ordered to close their doors. This threatens the existence of small companies, with some businesses already declaring

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1 Based on Regina Surber’s presentation ‘Coronavirus, technology, human rights’ held on 31 March 2020 at SwissCognitive’s and AICapital’s Virtual Conference: AI in Tumultuous Times
2 Regina Surber is scientific advisor to the ICT4Peace Foundation and the Zurich Hub for Ethics and Technology (ZHET).
4 Ibid.
7 Sars-CoV-2 is a mutation of a corona virus known to cause severe disease in the human body; see e.g. Corman, Victor, Muth, Doreen, Neiemeyer, Daniela, and Drosten, Christian, 2018, Hosts and Sources of Endemic Human Coronaviruses, Advances in Virus Research 100, 163-188; Andersen, Kristian, Rambaut, Andrew, Lipkin, W. Ian, Holmes, Edward, and Garry, Robert, 2020, The proximal origin of Sars-cov-2, Nature Medicine, https://doi.org/10.1038/s41591-020-0820-9.
insolvency. Further, in some areas of the world, health access is restricted to almost Covid-19-only cases.

Those restrictions affect our human rights. Curfews and the ban on gatherings may infringe our freedoms of movement and assembly. The closing of educational institutions worldwide severely rephrases access to education, a right granted by the Universal Declaration of Human Rights (UDHR). What is more, the requirement to shift to online-learning exposes education’s digital divide: in poorer countries, children may not have the resources required to be digitally homeschooled. Further, many health institutions and hospitals may be forced to triage patients in case of a sudden overload, which may impede access to medical care. In addition, the shutting down of public life may put jobs and livelihoods into severe jeopardy – possibly affecting our right to work.

Global surveillance

Besides restrictions on physical movement that entail the above-mentioned potential risks to our freedoms of movement and assembly, our rights to access education and health institution, and our right to work, many governments also increasingly rely on emerging technologies in their ‘fight’ against pandemic. Those ‘digital measures’ may severely infringe our human right to privacy, and mark the transition into a world of surveillance technology. What is more, it is precisely the countries adopting those ‘digital measures’, who are said to be most successful in curbing the spread of the virus.

Recently adopted emergency measures that engage new technologies aim primarily at analyzing the spreading pattern of the virus and at monitoring and enforcing the curfews. By relying on digital strategies, governments follow the World Health Organization’s recommendation to trace contacts between their citizens.

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13 Art. 13 (1) Universal Declaration of Human Rights (UNHCR), Art. 12 (2) International Covenant on Civil and Political Rights (ICCPR).
14 Art. 20 (1) UDHR, Art. 21 ICCPR.
15 Art. 26 (1) UDHR.
17 Art. 25 (1) UDHR.
18 Art. 23 (1) UDHR.
20 Art. 12 UDHR, Art. 17 ICCPR.
Emergency measures engaging new technologies may be roughly divided into three groups:

**Digital Tracking:** Digital tracking includes the use of aggregated mobile location data to track citizens during lockdowns, apps designed to help identify the location of those with Sars-CoV-2, and the deployment of advanced mobile monitoring technologies. As of 2 April 2020, 20 countries around the world have adopted digital tracking measures. E.g., government officials across the US are relying on location data from millions of cellphone users to better understand the movements of Americans during the pandemic, and how those movements may be affecting the disease. The British government is working with major mobile network O2 to analyze its users’ location data. On Tuesday, 17 March, Israel’s government approved new surveillance measures that will allow the regime to track citizens by monitoring their mobile phones. The technology, which was originally developed to assist in counter-terrorism operations, is thought to be able to track the physical location of all mobiles in the country, as well as monitor calls and messages. According to digital rights group ‘7amleh’, it is also capable of accessing citizens cameras and headsets. Other countries whose governments retrieve their citizens’ geolocation data are Brazil, South Africa, and others.

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23 See e.g. the tracking-app developed with the support of Swiss researches at the EPFL in Lausanne, Coronavirus: Schweizer Forscher entwickeln Tracking-App mit, Handelszeitung.ch, https://www.handelszeitung.ch/panorama/coronavirus-schweizer-forscher-entwickeln-tracking-app-mit (accessed on 2 April 2020).
Bulgaria, Pakistan, Russia, Singapore, India, Poland, Hong Kong, Italy, Ecuador, Germany, Austria, South Korea, Belgium, Iran and Taiwan.

**Physical Surveillance:** In order to slow the spread of COVID-19, governments are also adopting increasingly extensive physical surveillance measures. Those measures include the deployment of facial recognition cameras equipped with heat sensors, surveillance drones used to monitor citizens’ movements, and extensive CCTV networks. The West Australian police force, the New York Police Department, UK police forces, Belgian police, and Madrid’s police force are increasingly relying on the use of aerial footage through drones in order to enforce ongoing

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34 Poland’s Ministry of Digital Affairs has launched an app for quarantined citizens that invites users to send geo-located selfies at random times throughout the day, helping the government to ensure that they are abiding by the quarantine rules, Poland: App helps police monitor home quarantine, 19 March 2020, Privacy International, https://www.privacyinternational.org/examples/3473/poland-app-helps-police-monitor-home-quarantine (accessed on 2 April 2020).
lockdowns and monitor citizen movements.\textsuperscript{49} Since the corona virus outbreak, also Russia\textsuperscript{50} and China\textsuperscript{51} are relying on a host of extensive surveillance mechanisms, including both drones and facial recognition cameras.\textsuperscript{52}

\textit{Censorship:} Since the outbreak of the corona virus, there has been an acceleration in the spread of false information.\textsuperscript{53} In order to control and contain mis- and disinformation, governments have sought to regulate online content and promote official facts and figures from international health organizations. However, several governments have used the rise of mis- and dis-information about Covid-19 to justify censorship practices that aim at silencing regime critics and at controlling the flow of information. E.g., Cambodian\textsuperscript{54} and Ugandan\textsuperscript{55} authorities have arrested social media platform users that spread info about the virus. In Niger,\textsuperscript{56} authorities have arrested a journalist due to his coverage of the virus. Egypt\textsuperscript{57} has taken away the press credentials of a British Journalist due to his alleged bad faith in how Egypt is dealing with the virus. Iran\textsuperscript{58} blocked access to the Farsi language edition of Wikipedia due to criticism on how its authorities are handling the pandemic. Further countries leveraging the risk of false information about corona for censorship purposes are China,\textsuperscript{59} Singapore,\textsuperscript{60} Kenya,\textsuperscript{61} Hong Kong,\textsuperscript{62} Russia\textsuperscript{63} and Thailand.\textsuperscript{64}

The description of ongoing monitoring and surveillance measures leads to two observations. First, our right to privacy may be severely infringed. And second, for the first time in human history, technology may make it possible to monitor almost everybody, almost everywhere, almost all the time. In other words, the corona panic and pandemic may let us slide into a world of global

\textsuperscript{49} Ibid.
\textsuperscript{52} Ibid.
surveillance. Most unfortunately, due to the level of fear and panic, we seem to accept or even take part in those measures without the usual reflex of questioning them.

**Potential permanence and inefficacy of emergency surveillance measures**

National constitutions as well as international human rights treaties\(^\text{65}\) contain clauses that allow governments to temporarily suspend some of their obligations in a time of crisis. In those situations, governments can invoke special powers that would normally be considered infringements on human rights.\(^\text{66}\) However, those powers are not absolute. The emergency measures must be **necessary and proportionate.\(^\text{67}\)**

Most importantly, emergency measures can qualify as necessary only if they are also **efficacious**. An instrument is efficacious if it produces the intended effect. An instrument that is incapable to produce the intended effect, is, hence, not efficacious and cannot be necessary for achieving that effect. It follows that, in order to determine whether surveillance mechanisms can qualify as necessary measures, one must determine whether those measures can actually provide **reliable and useful** location information, i.e. whether they are efficacious.

Especially measures tapping personal smartphone information could not prove fully efficacious. How can cell phones be tracked? Cell phone towers are one option, but they provide only a very rough measure that is not useful to determine whether the six-foot-proximity threshold is abided by. GPS signals are finer, but they work only outside, and can, therefore, not determine whether two people, e.g., sat in the same train wagon. What is more, as GPS drains battery, many people have it turned off in the first place. A WIFI network or Bluetooth beacon to which a smartphone is connected is a further location indicator. Still, the fact that two cell phones are connected to the same WIFI or Bluetooth does not say that they are not keeping the six-foot distance.\(^\text{68}\)

Besides the requirements of proportionality and necessity, emergency legislation must be **time-bound.**\(^\text{69}\) Unfortunately, crises have a habit to fast-forward certain processes and instruments, whose consequences may not disappear once the crisis is over. Hence, the surveillance measures endangering, in particular, our human right to privacy may not be un-created once the pandemic is successfully contained. Hence, the requirement of time limitation may well be neglected.

Two reasons may support the danger of persisting digital surveillance: On the one hand, it could create financial pay-offs. If anything in the world is growing exponentially today, it is the provision

\(^{65}\) Art. 4 (1) ICCPR.

\(^{66}\) While many states have enacted what have been described as emergency laws in response to the pandemic, not all of these countries have actually declared a ‘state of emergency’ under law. Hence, governmental behavior is not uniform. E.g., Armenia, Estonia, Georgia, Latvia, Moldova and Romania have declared a state of emergency according to Art. 15 of the European Convention on Human Rights (ECHR), Reservations and Declarations of Treaty No.005, Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Status 2 April 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?_p_auth=oC00wpDO (accessed on 2 April 2020). Other countries in Europe, e.g. Italy, Spain, have declared states of emergency in accordance with their constitutional provisions; Italy declares state of emergency over coronavirus, 31 March 2020, France24, https://www.france24.com/en/20200331-italy-declares-state-of-emergency-over-coronavirus (accessed on 2 April 2020); Armstrong, Mark, Covid-19: Spain extends state of emergency until 11 April, 22 March 2020, Euronews, https://www.euronews.com/2020/03/22/covid-19-spain-extends-state-of-emergency-until-11-april (accessed on 2 April 2020). Others, like the UK, have introduced what politicians have described as ‘emergency powers.’ The UK government, e.g., convinced parliament to pass lengthy legislation allowing extra powers in less than a week, Coronavirus Act 2020, 25 March 2020, UK Parliament, https://services.parliament.uk/Bills/2019-21/coronavirus/documents.html (accessed on 2 April 2020).

\(^{67}\) Ibid.


of and the access to personal data. This may curb the AI industry and could partially support the economic recovery once the virus spread is curbed. On the other hand, surveillance technologies may persist if people spread the perspective of the next crisis being ‘just around the corner’. The speed of the Covid-19 panic wave was enormous, and the paralysis of reflection it created severe. Pre-emptive fear may corroborate and consolidate national and global surveillance mechanisms, and may make us blind to our duty to question them.

**Panic and legitimation**

The thought driving our precipitous behavior can be summarized as follows: ‘Any measure necessary to save humanity is legitimate.’ This clause must undergo severe scrutiny:

*What does humanity mean?* If ‘humanity’ is referring to the human species, the pressing question is: Could Sars-CoV-2 extinguish the human species? There exist scientific opinions that draw a less horrible picture. If the claim that corona puts global human existence at risk lacks considerable evidence, it may not ground legitimacy of severely rights-infringing measures. The argument that corona could put the normal functioning of health institutions into jeopardy is better founded. Yet, whether hospital overcrowding justifies the rush into surveillance is doubtful. If ‘humanity’ refers to what may slumber within each individual person, then the justification for increased surveillance may be even more fragile: Surveillance may violate human rights that protect precisely this seed of humanity each of us carries within.

*Is panic the biggest risk?* As it is improbable that corona extinguishes the human race, global panic seems equally ungrounded. Also, if we agree on a civilian duty to reflect upon whether government measures could infringe human rights, our state of excessive emotionality must again be replaced by a state of reason – especially given emergency surveillance’s potential permanence. Put differently, not only the pandemic, but also the panic must stop. If not, we will be incapable to reasonably reflect on whether, and if so, how, to opt out of the path fear has been pushing us on to.

This responsibility lies with all of us. Any institution is only as strong as the reflected minds of its members and the reflected minds of the population it aims to represent. On the one hand side, this conclusion must guide media professionals. Their responsibility to curb fear and provide well-balanced facts in order to push us back to reason is enormous. On the other hand, it must guide those of us whose primary needs are currently met. If we want to move into a balanced future, we must both reconquer and use our individual reflective capacity, which requires time and quietness. This may be one profound advantage of the demand to stay at home, as both can be easily seized. We can and must regard the isolation as an invitation for introspection, an increased level of self-understanding, and a new prioritization of values.


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70 E.g., the European Mortality Statistic does not show a rise in general mortality in Europe, European Mortality Bulletin, Week 12, 2020, https://www.euromomo.eu/index.html (accessed on 2 April 2020); note, further, that ‘(…) COVID-19–related deaths are not clearly defined in the international reports available so far, and differences in definitions of what is or is not a COVID-19–related death might explain variation in case-fatality rates among different countries.’ Also, note that the high fatality rate in Italy may well arise precisely due to a particular counting mechanism: ‘(…) Case-fatality statistics in Italy are based on defining COVID-19–related deaths as those occurring in patients who test positive for SARS-CoV-2 via RT-PCR, independently from preexisting diseases that may have caused death. This method was selected because clear criteria for the definition of COVID-19–related deaths is not available.’ Put differently, a corona-fatality is a patient who died and carried the virus, not one who died from the virus, Onder G, Rezza G, Brusaferro S. Case-Fatality Rate and Characteristics of Patients Dying in Relation to COVID-19 in Italy. *JAMA.* Published online March 23, 2020. doi:10.1001/jama.2020.4683.