



Surveillance technologies implemented to confront COVID-19 must not endanger human rights

The undersigned organisations, which are dedicated to the promotion and defence of human rights, express their concern over the announcement of the use of satellite monitoring and georeferencing systems to track individuals as part of the disease containment measures established in Ecuador. The announcement was made on 17 March 2020 by Interior Minister María Paula Romo,¹ who announced a series of measures adopted by the government to confront the COVID-19 outbreak alongside the declaration of a state of emergency.²

Use of surveillance and monitoring technologies must adhere to criteria of necessity and proportionality

While the measures adopted in the framework of the state of emergency are aimed at slowing the spread of the virus in order to protect public health, it is crucial to ensure that the use of information and communications technologies – especially technologies for the surveillance and monitoring of the population – strictly adhere to the criteria of necessity and proportionality, in order to safeguard the exercise of human rights that could be negatively impacted by these measures, particularly the rights to privacy, physical and mental integrity, and non-discrimination.

On 16 March, United Nations human rights experts issued a statement urging governments not to abuse emergency measures to suppress human rights. "While we recognize the severity of the current health crisis and acknowledge that the use of emergency powers is allowed by international law in response to significant threats, we urgently remind States that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory," the experts stated.³

There is a danger that some states may use the public health emergency as a justification to implement measures that arbitrarily restrict public freedoms, and that, in

1 <https://www.ecuadortv.ec/noticias/covid-19/romo-vigilancia-epidemiologico-covid19->

2 Article 11 of Decree N° 1017 issued by President Lenin Moreno states: "To fulfill the restrictions of this Decree, satellite and mobile telephone platforms can be used to monitor the location of persons subject to health quarantine and/or mandatory isolation measures who fail to comply with the restrictions imposed, in order to place them at the disposal of the competent judicial and administrative authorities."

3 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>

the absence of robust legal and institutional frameworks, these restrictions could become permanent, given the impossibility for citizens to ensure that they are adequate, necessary and proportionate. In their statement, the UN experts stress: "To prevent such excessive powers to become hardwired into legal and political systems, restrictions should be narrowly tailored and should be the least intrusive means to protect public health."

The state of health of individuals must be viewed as highly protected information

Because of its intrinsic connection with human dignity, information on the state of health of individuals is confidential and personal, and in accordance with both national and international norms, it should be subject to reinforced protection to prevent it from being used in a discriminatory manner. The legislation of most countries around the world treats health-related data as sensitive data within legal data protection frameworks, in terms of both general and health sector-related legal standards, which establish strict requirements for authorisation for its processing, and particularly severe penalties for violation of the rules on the use, storage and provision to third parties of this data.

In Ecuador, legal protections are very clear in this regard. In article 66 of the country's constitution, paragraphs 11, 19 and 20 establish the confidentiality of personal information, including health-related data, which can only be disseminated with personal authorisation or under a court order. Likewise, the Patients' Rights and Assistance Act, in articles 2 and 4, establishes the right to be treated with dignity and the confidentiality of health-related information, which is reinforced in article 61 of the Organic Health Act, which obligates health care institutions and professionals to guarantee the confidentiality of all information provided and received. The country's criminal code includes provisions aimed at protecting reserved, personal and confidential information, such as articles 179 and 180, which establish the revelation of information covered by professional secrecy and restricted information as criminal offences.

Given the delicate and confidential nature of health-related information, any measure that entails the identification of individuals as patients with specific diseases could exacerbate pre-existing situations of vulnerability and become a direct or collateral source of arbitrarily discriminatory actions by those who have legitimate or illegitimate access to this information, creating social stigma whose consequences may be as severe as those of the disease itself, as illustrated by recent experiences from the COVID-19 outbreak in South Korea.⁴ It is crucial to ensure that the implementation of prevention and control measures related to the pandemic do not aggravate the already vulnerable situation of minority groups or individuals who are at greater risk of infection due to socioeconomic or other factors.

Added to this concern is the evidence of the high degree of imprecision and fallibility of mass surveillance systems, and the impact they have on people's personal safety and privacy due to their intrusiveness. In countries that have used georeferencing to track the population's movements during a COVID-19 outbreak, there have been reports of

4 <https://www.bbc.com/news/world-asia-51733145>

system errors that not only led to false positives, but also stigma against certain patients because of the locations they may visit during their daily activities (for example, if they are in the vicinity of supposedly high-risk areas). In addition, these systems make it possible to trace links between patients that reveal private information, exposing them to public scrutiny, such as in cases where the disease is contracted during an extramarital affair, or while undergoing a particular type of treatment, for example.⁵

The fallibility of georeferencing technology becomes an even greater risk when it is used to facilitate the criminal prosecution of individuals who violate medical quarantine measures. It is therefore important to ensure that legal proceedings against individuals deemed to have violated the measures established through the state of emergency adhere to the principles of due process and international human rights standards, and that the enforcement of justice is carried out in an independent and impartial manner. It is worth noting that in order for evidence to be admissible in a legal proceeding, it cannot be obtained through means that violate the constitution or other laws.

The concerns outlined here around the use of georeferencing systems to track patients infected with COVID-19 are pertinent even in countries that have specific data protection legislation, which provides an institutional framework to curb abuses in the gathering and use of this information. The situation is even more worrying in Ecuador, because, in spite of the protections established in article 66, paragraphs 11, 19 and 20 of the constitution, the country continues to lack specific legal standards for data protection and an independent technical body that could effectively monitor the implementation of the measures to ensure that they respect the principles of adequacy, necessity and proportionality compatible with the rule of law.

It is critical to protect those who work in the defence of human rights

We call on the government of Ecuador to provide the necessary guarantees to ensure that the implementation of surveillance and monitoring measures do not negatively impact individuals whose work is essential to protect the exercise of human rights, such as human rights defenders or digital security experts, among others. In this regard, the statement issued by UN human rights experts emphasises that any emergency declaration based on the COVID-19 outbreak "should not function as a cover for repressive action under the guise of protecting health nor should it be used to silence the work of human rights defenders."

Finally, it is essential that the government of Ecuador provide sufficient information on the scope of the measure announced: the time frame during which it will be in effect, the way the data will be handled, and the conditions of access, storage and security of the information gathered. At the same time, the protocols to be adopted should be clearly communicated in order to prevent third parties – within and outside the public administration – from gaining access to the information gathered and using it for illegitimate purposes. This will contribute to strengthening trust in the government's actions to confront the crisis, as an essential condition for the safety and well-being of

⁵ <https://www.theguardian.com/world/2020/mar/06/more-scary-than-coronavirus-south-koreas-health-alerts-expose-private-lives>

the population, and provide a minimum guarantee of the democratic legitimacy of any system adopted, as well as assurance that its use will be ended once the emergency has abated.

It is crucial for the government of Ecuador, which has recently invested significant effort in the digitalisation of the country, to take advantage of the opportunities offered by the use of information and communications technologies to respond to the emergency situation posed by COVID-19 in a manner compatible with the standards of the international and Inter-American human rights systems, which form part of the constitutional order of Ecuador.

Signatories

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Asociación por los Derechos Civiles (ADC)

Asociación Seguridad en Democracia (SEDEM)

Association for Progressive Communications (APC)

Barracón Digital

Confederación de Nacionales Indígenas de la Amazonía Ecuatoriana (CONFENIAE)

Datos Protegidos

Derechos Digitales

Digital Defenders Partnership (DDP)

Fundación Acceso

Fundación Karisma

Hiperderecho

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