

# The Securitisation of COVID-19 Health Protocols:

Policing the Vulnerable,  
Infringing Their Rights

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ASIA CENTRE

In collaboration with:



HARM REDUCTION  
INTERNATIONAL



# The Securitisation of COVID-19 Health Protocols: Policing the Vulnerable, Infringing Their Rights

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# Acknowledgements

The COVID-19 pandemic has tested the capacities of governments worldwide with the execution of a proportionate, legal and effective health legislation. Amidst the pandemic, however, many governments have undertaken a securitised approach in tackling the health crisis, with military and police forces dominating the task forces. The lack of health leadership has resulted in overt surveillance and the trespassing of digital rights. Crucially, the pandemic has exacerbated the negative impacts exerted onto various vulnerable communities, including ethnic minorities, migrant workers and refugees.

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Asia Centre seeks to create positive social impact in the region through its programme of activities. *The Securitisation of COVID-19 Health Protocols: Policing the Vulnerable, Infringing their Rights* is thus pivotal in understanding the state of regional and global affairs, wherein the pandemic has led to a disproportionate neglect of our vulnerable communities.

Asia Centre hopes to continue its collaboration with HRI in championing the implementation of health protocols that are foremostly centred on people and society.

Your Sincerely

**Dr. James Gomez**  
Regional Director  
Asia Centre



# Preface

In an attempt to contain the spread of COVID-19, governments around the world adopted exceptional measures, sometimes invoking emergency executive powers. Several countries pivoted towards highly securitised responses, declaring wars against the virus and treating COVID-19 as an ‘enemy to be defeated’. The military became symbols of the pandemic response in some cities, with tanks employed to patrol streets and security personnel involved in implementation of health protocol. Failure to comply with COVID-19 control measures was in many cases criminalised, with sanctions envisaged and enforced with little consideration for health and human rights consequences. Thousands of people were arrested and detained in overcrowded, unhygienic facilities or underwent degrading treatment and abuse as forms of punishment.

For organisations working on sensitive public health issues, especially drug control, these trends are sadly familiar. Although drug use is primarily a matter of health and bodily autonomy, governmental as well as international responses to drugs have been overwhelmingly punitive, and have disproportionately targeted already vulnerable and marginalised communities. Far from safeguarding public health and security, the war on drugs has resulted in a vast increase in prison populations worldwide, a booming drug market, corruption, grave human rights violations, and a failure to effectively tackle HIV/AIDS and viral hepatitis.

A key lesson from drug policy is that punitive responses to health issues do not work; and that in times of emergencies, priority should be given to health-centred, human rights based interventions that respond to the needs of all communities, in particular people who are criminalised, stigmatised or marginalised.

The findings of this report show that this lesson is as true for COVID-19 as it is for drug policy. Regrettably, many countries seem to have ignored this lesson at the most critical of times. We still have an opportunity to re-think COVID-19 responses, and to prioritise more effective and rights-based approaches.

**Naomi Burke-Shyne**

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# Abbreviations

<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>ASEAN</b>	Association of South East Asian Nations
<b>AWARE</b>	Association of Women for Action and Research
<b>Bayanihan 1</b>	Bayanihan to Heal as One Act
<b>Bayanihan 2</b>	Bayanihan to Recover as One bill
<b>BNPB</b>	Indonesian National Board for Disaster Management
<b>BUMN</b>	Ministry of State Owned Enterprises
<b>CB</b>	Circuit Breaker
<b>CMCO</b>	Conditional Movement Control Order
<b>COTF</b>	Compliance Operation Task Force
<b>COVID-19</b>	Coronavirus Disease 2019
<b>CPRC</b>	Crisis Preparedness and Response Centre
<b>DICT</b>	Department of Information and Communications Technology
<b>ECOSOC</b>	United Nations Economic and Social Council
<b>ECQ</b>	Enhanced Community Quarantine
<b>EMCO</b>	Enhanced Movement Control Order
<b>FDWs</b>	Foreign Domestic Workers
<b>GQF</b>	Government Quarantine Facilities
<b>HIV</b>	Human Immunodeficiency Virus
<b>HRI</b>	Harm Reduction International
<b>ICCPR</b>	The International Covenant on Civil and Political Rights
<b>ICA</b>	Immigration and Checkpoints Authority
<b>ICJ</b>	International Commission of Jurists
<b>JTF COVID Shield</b>	Joint Task Force COVID-19 Shield
<b>KPCPEN</b>	COVID-19 Handling and National Economic Recovery Committee
<b>LGBTQI+</b>	Lesbian, Gay, Bisexual, Transgender, Queer and Intersex
<b>LGUs</b>	Local Government Units
<b>LSSR</b>	Large-scale Social Restrictions
<b>MAF</b>	Malaysian Armed Forces (APM)
<b>MCO</b>	Movement Control Order

<b>MMEA</b>	Malaysian Maritime Enforcement Agency
<b>MOH</b>	Ministry of Health
<b>MTF</b>	Multi-Ministry Task Force
<b>NOCPCO</b>	National Operation Centre for Prevention of Covid-19 Outbreak
<b>NTF</b>	National Task Force
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PCR</b>	Polymerase Chain Reaction
<b>PDRM</b>	Royal Malaysia Police
<b>PNP</b>	Philippine National Police
<b>POFMA</b>	Online Falsehoods and Manipulation Act
<b>POLRI</b>	Indonesian National Police
<b>PPKM</b>	Community Activities Restrictions Enforcement
<b>QCs</b>	Quarantine Centres
<b>QPDO</b>	Quarantine and Prevention of Diseases Ordinance
<b>RMCO</b>	Recovery Movement Control Order
<b>RMP</b>	Royal Malaysia Police
<b>SAF</b>	Singapore Armed Forces
<b>Satpol PP</b>	Satuan Polisi Pamong Praja (Municipal Police)
<b>SDAs</b>	Social Distancing Ambassadors
<b>SEMCO</b>	Semi-Enhanced Movement Control Order
<b>SHN</b>	Stay-Home Notices
<b>SLMA</b>	Sri Lanka Medical Association
<b>SOPs</b>	Standard Operating Procedures
<b>SPF</b>	Singapore Police Force
<b>TNI</b>	Indonesian National Armed Forces
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WHO</b>	World Health Organization

# Executive Summary

Following the declaration of the Coronavirus Disease 2019 (COVID-19) as a Public Health Emergency of International Concern on 30 January 2020 (WHO, 2020), a number of countries have turned to temporary COVID-19 laws or state of emergency ordinances to ensure rapid public compliance with health measures. These laws have been used to bypass bureaucratic regulations so as to expedite the allocation of additional resources or niche technical assistance for the emergency. Such laws have had the effect of securitising the COVID-19 response when state enforcement agencies such as police forces, the armed forces, border guards and intelligence services became involved in the decision-making and implementation of governments' pandemic responses.

Among the countries analysed in this study, states of emergency were declared in Indonesia, Malaysia, and Philippines, while Singapore and Sri Lanka enacted temporary COVID-19 laws. Within these laws, COVID-19 health and travel protocols such as a movement control order, city lockdown, self-quarantine, social distancing, and contact tracing requirements were stipulated, with fines and prison terms enforced against those in non-compliance. Politicians and/or security officials dominated the COVID-19 national task forces. Preliminary analysis indicated that law enforcement (police and the military) were given significant roles in the development and implementation of pandemic-control strategies, and that new tools were introduced to facilitate contact tracing that could potentially violate fundamental human rights. This early analysis pointed to the need for more research on the human rights implications of the responses as the crisis endured.

Overall, this study reveals that emergency health protocols have provided cover to governments that sought to discipline their population over pre-existing matters at politically sensitive times, while passing these off as necessary interventions to halt the spread of the virus. Vulnerable communities such as migrant workers, refugees, ethnic minorities, the urban poor, people in detention, women and children have been disproportionately impacted by the securitisation of COVID-19 responses. This has further exposed them to health risks, abuses and rights violations, in some cases leading to death.

In Indonesia, the lockdown measures have resulted in intensified policing over Papua's long disgruntled ethnic minorities. Police have leveraged the health crisis to enter remote conflict zones under the guise of transporting cargo and medical personnel. In Malaysia, the pandemic has exacerbated longstanding discrimination targeted towards undocumented workers and refugees. These vulnerable groups have been denied access to

health facilities, and face unjust detainment by the authorities. In the Philippines, strict policing and excessive movement restrictions have resulted in significant increase in abuses by law enforcement agencies, including excessive use of force, arbitrary detentions and extra-legal arbitrary and summary executions, with impunity. There has also been a recorded spike in mental health issues among young Filipinos. In Singapore, strict border controls prevented vulnerable communities from returning to their homelands prior to months of lockdown. This led to a spate of suicides among migrant workers, arising from months of strict quarantine in dormitories. In Sri Lanka, the military-led pandemic response has featured the excessive usage of drones for surveillance purposes, as well as the unjust designation of Tamil schools as quarantine facilities.

This report recommends a range of measures broadly divided into two areas. First, the de-securitisation of health responses, which can be achieved by ensuring that decision-making and implementing bodies are led and staffed by civilian public health experts. Crucially, in accordance with the principle of democratic control over law enforcement agencies and armed forces, the role of law enforcement should be limited to what is absolutely necessary and proportionate in the context of a health emergency. For example, executing day-to-day law enforcement operations and providing technical assistance, including the transportation of frontline workers and distribution of medical supplies. Expansion of their authority and functions requires accountability under national civil and criminal laws that are in alignment with international human rights standards.

Second, even in the context of de-securitised pandemic response measures, special attention must be paid to the rights of vulnerable communities, who should not be victims of scapegoating on "national security" grounds or due to xenophobia. The protection of all of their rights, including their rights to health and non-discrimination on any grounds whatsoever, must be prioritised within public health policies and practices, including governments' COVID-19 countermeasures and future health crises.

This pandemic has underscored the importance of integrating fundamental and international human rights standards into health protocols during pandemics. With the trend of securitising health protocols, vigilance is required to ensure adherence with international standards. Laws and regulations implemented during a state of emergency must be proportionate, legal and justified to the crisis at hand. Special protections for inalienable rights of vulnerable communities must be safeguarded and mainstreamed in such measures.

# 1. Introduction

In the five countries under this study - Indonesia, Malaysia, Philippines, Singapore and Sri Lanka, COVID-19 temporary laws, emergency decrees, the formation of national task forces (which were often dominated by security personnel) and the surveillance and tracking of the movement of residents have spurred the securitisation of COVID-19 health protocols. Non-compliance with COVID-19 control measures was criminalised in many cases, with sanctions envisaged and enforced with little consideration for their health consequences. Arrests and restrictions were conducted without due consideration for one's socio-economic status or nationality. Law enforcement were tasked with activities typical of health professionals, both in the management and in the implementation of the response. However, in many cases, this led to violence, abuse of force, and discrimination. Data collected through surveillance and contact tracing was shared within government agencies without adequate privacy protections. The report reviews these developments and evaluates the impacts on vulnerable communities, where the effects of law enforcement were exerted disproportionately onto them compared to the general population.

## a. Scope and Methodology

The research for this baseline study was undertaken from 15 January to 12 July 2021 and covers the period from March 2020 to July 2021. It identifies five Asian countries (Indonesia, Malaysia, Philippines, Singapore, and Sri Lanka) as subjects of the study, because national governments across five countries have either introduced specific COVID-19 laws, or proclaimed a state of emergency to enhance their executive powers to manage the public health crisis. This occurred while there were allegations that vulnerable communities within these countries were subjected to abuses of power and rights violations.

The study is based on desk research, online interviews and discussions. The desk research draws from primary materials including domestic laws and emergency decrees, such as Indonesia's Public Health Emergency Decree, Malaysia's Emergency Ordinance, Movement Control Order (MCO) and the MCO Federal Government Gazette, Philippines' Bayanihan to Heal as One Act, the COVID-19 Temporary Act of Singapore, and Quarantine and Prevention of Diseases Ordinance (QPDO) of Sri Lanka. Other primary sources consulted include news reports, UN reports and ICCPR General Comments. U.S. Department of State's Country Reports on Human Rights Practices were also examined.

The interviews were undertaken with scholars and civil society members who are based in the five countries, examining how COVID-19 health protocols were enforced and what were the health impacts on vulnerable communities. Feedback on the draft report from Harm Reduction International staff and input from speaking engagements such as *The Management of the COVID-19 Pandemic in the Asia Pacific Region*, organised by UNITE, the Asia Centre and HRI on 18 June 2021, was taken on-board for the report as well.

This report reviews the temporary laws and emergency decrees in five Asian countries, the agencies that enforce such legislation and the use of surveillance and contact tracing technology. In doing so, it points to the securitisation of health protocols and evaluates the impact on marginalised populations and vulnerable communities across the five countries under study. The report ends with a set of recommendations to respond to the securitisation of pandemic management. The next chapter will review legal measures including COVID-19 legislation, state of emergency ordinances, government directives and the chronology of their implementation.

## b. The COVID-19 Pandemic

**Table 1:** Number of COVID-19 infections (as of 12 July 2021)

Country	Number of COVID-19 Cases	Number of Deaths	Number of COVID-19 Vaccine Doses Administered	First Dose	Fully Vaccinated (Population)
<b>Indonesia</b>	2,527,203	66,464	51.2M	36,193,076	14,969,330 (Pop. 5.5%)
<b>Malaysia</b>	836,296	6,158	11.1M	7,649,848	3,425,645 (Pop. 10.7%)
<b>Philippines</b>	1,473,025	25,921	12.9M	9,576,619	3,365,745 (Pop. 3.9%)
<b>Singapore</b>	62,692	36	6.16M	3,895,149	2,267,975 (Pop. 39.8%)
<b>Sri Lanka</b>	274,538	3,502	5.13M	3,754,422	1,354,170 (Pop. 6.3%)

Source: The Center for Systems Science and Engineering, 2021; Rappler, 2021; Ministry of Health of Singapore, 2021; Our World in Data, 2021

According to the World Health Organization (WHO), as of 5:29 pm CEST, 9 July 2021, there have been 185,291,530 confirmed cases of COVID-19, including 4,010,834 deaths worldwide. As of 7 July 2021, a total of 3,078,787,056 vaccine doses have been administered worldwide (WHO, 2021). It is imperative to note, however, that a majority of the vaccines administered were in vaccine-producing nations, or in wealthy countries that possess the financial and political ability to sign agreements with pharmaceutical manufacturers to procure large doses of vaccines for themselves, ahead of these vaccines being made available to other countries (Khan, 2021). Several countries in Asia, including Indonesia, Malaysia, the Philippines, and Sri Lanka faced difficulties in securing vaccine supplies due to the global shortage (BBC News, 2021). This was compounded by a lack of financial ability to procure these vaccines prior to other countries (The Straits Times, 2021), thus impeding their vaccination efforts. With the world undergoing a vaccine apartheid, referring to the vaccination gap between high-income, low, and lower-middle countries (Reuters, 2021), China has intervened by offering the Sinovac vaccine as part of its 'vaccine diplomacy' agenda (Zhao, 2021). As of 12 May 2021, Indonesia has purchased 125 million Sinovac doses (Westcott, 2021), with its pharmaceuticals company Bio Farma collaborating with China in becoming a regional Sinovac production hub, boosting domestic vaccine supplies amidst being one of the worst hit countries, by the coronavirus, in Southeast Asia (Soeriaatmadja, 2021). As of 22 May 2021, Malaysia has purchased 15 million Sinovac doses (Noorshahrizam, 2021), with China contributing an additional 500,000 doses as of 16 June 2021 (Reuters,

2021). As of 28 February 2021, 600,000 doses of Sinovac were donated from China to the Philippines, atop of the 25 million doses purchased from China separately (CNA, 2021), amid the Filipino government's relatively slower acquisition of Sinovac compared to other regional governments. As of 28 June 2021, China donated an additional batch of Sinovac vaccines to the Philippines (The Star, 2021). On 23 February 2021, Singapore received its first shipment of Sinovac (CNA, 2021) under the advanced purchase agreement of 200,000 Sinovac vaccines established in 2020. As of 7 July 2021, Sinovac has been approved by the Singapore authorities for use, but individuals vaccinated with Sinovac will be excluded from the national vaccine tally due to "little data on (Sinovac's) efficacy against new COVID-19 variants" (Lin, 2021). As of 9 June 2021, 3.1 million Sinovac doses have reached Sri Lanka (CGTN, 2021), with Sri Lanka announcing its intention to manufacture 13 million Sinovac doses locally starting in July 2021 (EconomyNext, 2021).

In Indonesia, the first two COVID-19 cases were officially reported on 2 March 2020 (Yulisman, 2020). Notably, commentators have questioned the authorities' transparency about the spread of the virus in the country in the first months of 2020, pointing to the government focus on safeguarding the economy by downplaying the severity of the health situation (New York Times, 2020; Satrio, 2020). By 12 July 2021, there were 2,527,203 confirmed cases of COVID-19, with 66,464 deaths recorded. 2,023,548 cases of infection have recovered (German-Indonesian Chamber of Industry and Commerce, 2021). On 6 December 2020, the first batch of COVID-19 vaccines, comprising 1.2

million doses ordered from China's Sinovac Biotech Ltd, arrived (Bangkok Post, 2020). The government began the COVID-19 vaccination program on 13 January 2021 with President Joko Widodo receiving the first shot (Cabinet Secretariat of the Republic of Indonesia, 2021). On 8 March 2021, Indonesia received the first 1,113,600 doses of the AstraZeneca vaccine (Unicef, 2021). By 31 March 2021, the first dose of the COVID-19 vaccine was distributed to more than 8 million citizens and 3.7 million citizens for the second dose (Reliefweb, 2021). As of 12 July 2021, a total of 51,162,406 vaccine doses have been administered (Reuters, 2021).

In Malaysia, the first three COVID-19 cases were detected on 25 January 2020 (New Straits Times, 2020). By 19 April 2021, there were 836,296 confirmed cases of COVID-19, with 6,158 deaths recorded. The number of recoveries amounted to 747,194 (Hirschmann, 2021). On 21 February 2021, the first batch of 312,390 doses of the Pfizer-BioNTech vaccines arrived (Reuters, 2021). On 24 February 2021, Prime Minister Muhyiddin Yassin first received the vaccine (The Straits Times, 2021). The Malaysian authorities have announced that they aim to complete vaccinations for 80% of Malaysia's adult population by February 2022, dividing vaccination administration into three phases (Tan, 2021). However, state tensions with the federal government over vaccine supplies (Anand, 2021) as well as an overall vaccination delay have slowed vaccination rates (The Straits Times, 2021). As of 12 July 2021, a total of 11,075,493 vaccine doses have been administered (Reuters, 2021).

In the Philippines, the first COVID-19 case was confirmed on 20 January 2020 (WHO, 2020). As of 12 July 2021, there were 1,473,025 confirmed cases of COVID-19, with 25,921 confirmed deaths (Reuters, 2021). 1,397,403 individuals were listed as recovered (Worldometers, 2021). As of 19 January 2021, the Philippines announced that it had bought 20 million doses of Moderna's COVID-19 vaccine, bringing the total supply of vaccine doses ordered from AstraZeneca, Novavax, Sinovac and Moderna to 72 million doses (Reuters, 2021). As of 31 January 2021, it was reported that the Philippines would receive 117,000 doses of the Pfizer-BioNTech vaccine in mid-February, 5.5 million to 9.3 million doses of the AstraZeneca vaccine, and 50,000 Sinovac vaccines in February (CNA, 2021). As of 28 February 2021, the Philippines received 600,000 Sinovac doses, and the vaccination for medical frontline workers commenced on 1 March 2021. On 4 March and 7 March 2021, 487,200 and 38,400 AstraZeneca doses were donated respectively to the Philippines. As of 29 April 2021, 1,562,815 individuals received their first dose, while

246,986 received their second dose. As of 8 May 2021, the Philippines received over 2 million doses of AstraZeneca vaccines, and as of May 18 2021, the Philippines made its largest order of 40 million Pfizer-BioNTech vaccine doses (The Straits Times, 2021). The government intends to vaccinate two million to three million Filipinos per week by July 2021 (Jalea, 2021). As of 12 July 2021, 12,942,364 vaccine doses have been administered (Reuters, 2021).

The first case in Singapore was confirmed on 23 January 2020. By 12 July 2021, there were 60,852 confirmed cases of COVID-19, with 30 deaths recorded. 60,503 were listed as recovered. In 2020, Singapore had made advanced purchase agreements for three vaccines, developed by Pfizer-BioNTech, Moderna and Sinovac (Baker, 2021) respectively. This purchase was made ahead of the approval given by the Health Sciences Authority (Chong, 2021). Singapore received its first shipment of the Pfizer-BioNTech (Goh, 2021), Sinovac (Baker, 2021), and Moderna vaccine doses in late December, late February, and mid-March respectively, with the Pfizer-BioNTech and Moderna vaccines being authorised and administered in vaccination centres. Vaccinations started on 30 December 2020. As of 12 July 2021, the total number of vaccines administered amounted to 6,163,124, while 3,895,149 people have received at least one dose of the vaccine, and 2,267,975 completed the full vaccination regimen (Ministry of Health, 2021). Singapore is aiming to have two-thirds of the population vaccinated by 9 August 2021 (CNA, 2021), and have its entire population of roughly 6 million people vaccinated by the end of 2021 (Reuters, 2021).

In Sri Lanka, the first COVID-19 case was detected on 27 January 2020 (Colombo Page, 2020). By 12 July 2021, there had been 273,031 confirmed cases of COVID-19 with 3,467 deaths recorded and 244,437 recovered (Health Promotion Bureau, 2021). On 2 June 2021, the Sri Lanka Medical Association (SLMA) reported that hospitals were overwhelmed with symptomatic COVID-19 patients (SLMA, 2021). The AstraZeneca vaccine was approved on 22 January 2021 (The Week, 2021). On 29 January 2021, with 500,000 doses of the AstraZeneca vaccines donated by India, the vaccination program commenced, with priority given to frontline health workers (Xinhua, 2021), followed by members of the tri-forces, the police, and security forces (Himal Southasian, 2021). By mid-February, the vaccination for the general public began, prioritising those between 30 and 60 years of age (Himal Southasian, 2021). As of 12 July 2021, a total of 4,528,948 vaccine doses have been administered (Reuters, 2021). Sri Lanka has further expanded the scope of vaccines administered, with 50,493 people receiving the first dose of the Chinese

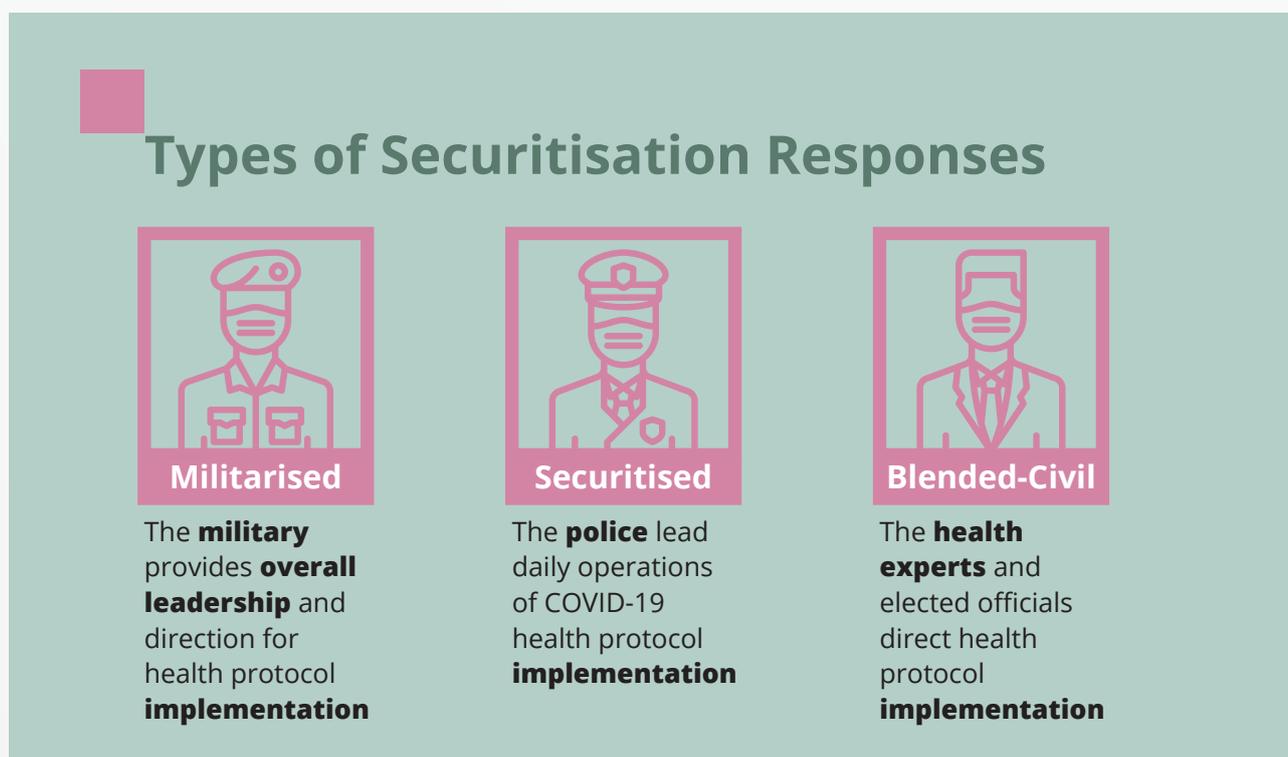
Sinopharm vaccine, 9,850 people receiving the second dose of the AstraZeneca vaccine, and 5,460 people receiving the first dose of the Sputnik vaccine on 12 May 2021. This was partly driven by the reduced exports of the Indian-manufactured AstraZeneca vaccine, leading Sri Lanka to administer the Sinopharm and Sputnik vaccines during the second phase (Farzan, 2021).

### c. Types of Securitisation Responses

Across all five countries, various degrees of securitisation can be observed in the pandemic responses implemented. A common narrative across these, and other, countries was the identification of COVID-19 as an enemy to be defeated, and of COVID-19 control strategies as wars or military campaigns (See, 2021); thereby justifying the consolidation of power by both the executive and of law enforcement. Other punitive strategies significantly focused on control and surveillance, sometimes at the expense of social support and even individual and public health. These responses can be broadly categorised into three primary approaches: militarised, securitised and blended-civil responses.

‘Blended-civil’ responses refer to responses where health experts and elected officials are in charge of the national task force, with the police and military providing secondary support in terms of day-to-day law enforcement and niche technical assistance. Singapore is an example of a blended-civil response to COVID-19. ‘Securitized’ approaches focus on the police force leading the daily operations of COVID-19 health protocol enforcement, while a response is deemed as ‘militarised’ when the military provides overall leadership and directions for the implementation of health protocols; with both approaches treating the public health crisis as a public security threat. Indonesia and Malaysia are examples of implementing the securitized approach, while the Philippines and Sri Lanka are countries wielding the militarised approach.

As expounded on in Chapter 2, a common feature of COVID-19 responses in these, and other, countries, was the introduction of administrative or criminal sanctions for violating quarantines and other regulations. The enforcement of COVID-19 control measures through criminal law are problematic from both a human rights and a public health perspective. With regards to the former, punitive measures are only compliant if they are necessary and proportionate. In the case of COVID-19, it has been argued that social and economic support, community engagement, transparency and evidence-based information sharing may achieve better results than the mere threat of sanctions (Sun & Zilli, 2020).



Source: Asia Centre & Harm Reduction International, 2021

## d. International Standards and States of Emergencies

During the pandemic, countries found themselves encumbered with inter-ministry bureaucratic rigidity, limited compliance with control measures by the public, and strained public health infrastructures. Hence, some governments opted to declare a state of emergency to install executive decision making, simultaneously mobilising additional resources and manpower. In most cases, this involves the increased role of the police forces and the armed forces in public health decision-making and implementation. In some countries, state-of-the-art technology such as mobile apps, tracking devices, robots, drones or artificial intelligence (Estrin, 2021) were utilised by national intelligence services to conduct contact tracing and clinical surveillance of COVID-19 patients. These approaches collectively securitised the COVID-19 response, raising concerns among the population. Additionally, the lack of training and experience law enforcement personnel possess in the public health sector may result in the heightened exposure of vulnerable communities when health protocols including movement control orders, community quarantines, and night curfews are enforced, based on the proclamation of a state of emergency. As examples in this report show, security personnel usually mistake health protocols for disciplinary measures, and this has resulted in law enforcement that borders on abuses and human rights violations.

United Nations human rights mechanisms, such as the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Human Rights Committee, have provided clear guidelines on the application of emergency measures during the COVID-19 pandemic, including the Emergency Measures and COVID-19 Guidance (OHCHR, 2021), which builds upon the standards elaborated in General Comment No. 29 on States of Emergency and the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (ECOSOC, 1984), among others. It is emphasised that the paramount objective of a government declaring a state of emergency must be to maintain a return to a state of normalcy, where full respect of rights under the Covenant must be secured. This is articulated under Article 4 of the ICCPR, which states:

**In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating**

**from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.**

Hence, while temporary suspensions of or derogation from certain human rights could be acceptable under Article 4 of the ICCPR during public emergencies, General Comment No. 29 (OHCHR, 2001) states authoritatively that such action, as well as its material consequences, must be subject to a specific regime of safeguards. As stipulated in Article 4, paragraph 1, any derogations from the Covenant must fulfil a fundamental requirement, in that such measures are limited to the extent strictly required by the exigencies of the situation. This encompasses “the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency”. In other words, state parties must ensure that the principle of proportionality applies when instituting such measures in order to guarantee that provisions under the Covenant, no matter validly derogated from, are still applicable to the state parties’ behaviour.

Although Malaysia and Singapore are not signatories to the ICCPR, rights guarantees were stipulated under the Constitutions of both countries, as well as international customary law. Besides, international standards such as the Siracusa Principles state that when the restrictions of rights are involved, countries must maintain the objective of mitigating a public health emergency, and the criteria of legality, evidence-based necessity, proportionality, and gradualism must be ensured.

Overall, the role of criminal law in enforcing health-related measures must be limited. Similar to the COVID-19 pandemic (as this report will present), the HIV/AIDS epidemic evidenced how criminalising the exposure and transmission of infectious diseases exacerbates the violation of human rights, as well as prejudice and discrimination against those living (or suspected to living) with the disease, undermining public health outcomes (Sun & Zilli, 2020). In criminalising and perpetuating the discrimination against COVID-19, individuals are less incentivised to undergo COVID-19 testing, resulting in a prolonged health crisis. To successfully curb the spread of the virus, the enactment of evidence and rights-based legislation must be at the forefront of any protocol implemented.

## e. Cases of Vulnerable Populations Experiencing a Disproportionate Impact of COVID-19

The UN defines vulnerable populations as those that “live in poverty without access to safe housing, water, sanitation and nutrition and those who are stigmatized, discriminated against, marginalized by society and even criminalized in law, policy and practice” (United Nations Development Programme, 2021). Across social strata, the COVID-19 pandemic, and respective health protocols, have exacerbated the negative impacts experienced by vulnerable groups. Due to their already disadvantaged position, the marginalised, including women, migrant workers, refugees, and ethnic minorities (UN, 2020), amongst others, were exposed to health-related risks both from the pandemic and their governments’ securitised responses. The table below, though not exhaustive, highlights some of the high-risk populations that – according to our research – have experienced a disproportionate impact from the implementation of COVID-19 measures, compared to the general population.

In Indonesia, the pandemic has exacerbated the vulnerabilities of the ethnic minorities of West Papua, urban poor, and poor women, with figures estimated at 753,399 (Arifin et al., 2015), 11.16 million (Samir, 2020) and 87.2 million (Data Commons, 2020; The Conversation, 2020) respectively. Due to their lack of property and

citizenship rights, these communities lack access to basic necessities and assistance packages, with the military even trespassing in remote conflict zones (International Coalition for Papua, 2021; Roziqin et al., 2021).

In Malaysia, the vulnerable communities that experienced exacerbated vulnerability include migrant workers, undocumented migrants, and refugees, with figures estimated at two million, two to four million (Lee, 2020) and 178,920 (UNHCR, 2021). The lack of identification and citizenship rights that these communities face have resulted in poor access to medical facilities, immigration raids under the guise of COVID-19 control (Sukumaran & Jaipragas, 2020), unhygienic detention, and even COVID-19 clusters surfacing from overcrowded detention facilities (The Straits Times, 2020).

In the Philippines, vulnerable communities include LGBTQI+ individuals, the homeless, and Filipino youth. Exact statistics pertaining to the LGBTQI+ community are not published. The homeless were estimated at 4.5 million in 2018 (Chandran, 2018). The exact statistics pertaining to the Filipino youth are not published, but it is estimated that there are 30 million young people between the ages of 10-24 years old, accounting for 28% of the population (UNFPA, 2021). The militarised pandemic response has resulted in unfair assaults including gross violation of human rights, with inhumane punishments and even deaths occurring (See, 2021; Coronel, 2020; Santos, 2020).

**Table 3:** Vulnerable Populations

Country	Vulnerable Populations
<b>Indonesia</b> (Pop. 276,361,783)	In <b>Indonesia</b> , the ethnic minorities of West Papua, the urban poor, and poor and marginalised women reported a negative impact of COVID-19 measures.
<b>Malaysia</b> (Pop. 32,776,194)	Migrant workers, illegal migrants, asylum seekers and refugees were disproportionately affected by COVID-19 and related measures in <b>Malaysia</b> .
<b>The Philippines</b> (Pop. 110,882,462)	In the <b>Philippines</b> , the LGBTQI+ community as well as homeless people were disproportionately impacted by the implementation of COVID-19 measures.
<b>Singapore</b> (Pop. 5,896,686)	In <b>Singapore</b> , foreign domestic workers and migrant workers from Construction, Marine Shipyard, and Process sectors experienced negative impacts arising from the COVID-19 measures.
<b>Sri Lanka</b> (Pop. 21,493,581)	In <b>Sri Lanka</b> , Tamils, Muslims, garment workers as well as prisoners were negatively impacted by the COVID-19 measures .

Source: Macrotrends, 2021

In Singapore, vulnerable communities include migrant workers and foreign domestic workers (FDWs), with figures estimated at 323,000 (Illmer, 2020) and 247,400 (Ministry of Manpower, 2020) respectively. Vaguely-worded legislation and poor living facilities compounded the physical, emotional, and mental toll exacted onto both groups, resulting in suicide in some cases (Geddie & Aravindan, 2020; Wong, 2020). With the pandemic proving to have no end in sight, the new contact-tracing technology targeting these communities is particularly intrusive in retaining personal data for an indefinite period of time.

In Sri Lanka, vulnerable groups include the Tamils, Muslims, garment workers, prisoners, and the general population, with figures estimated at 2,270,924 in 2011 (Department of Census and Statistics, 2011), 1,967,523 in 2012 (Department of Census and Statistics, 2012), 300,000 (Clean Clothes, 2021) and 28,915 (World Prison Brief, 2020) respectively. The lack of citizenship rights, and the militarisation of the pandemic response have resulted

in these over-policed groups being denied health and housing rights, facing unhygienic detention and resultant COVID-19 clusters surfacing in overcrowded detention facilities (Amnesty International, 2021; Ellis-Petersen, 2020; Satkunanathan, 2020), including compulsory drug detention centres (Economynext, 2020).



The COVID-19 situation has exerted a disproportionate impact on the vulnerable communities across the five countries. Hence, the following chapters will expound on the emergency laws, law enforcement agencies, and digital surveillance and technologies leveraged amidst the pandemic. Thereafter, the subsequent chapters will evaluate the impacts exerted upon the vulnerable communities, as well as provide a set of recommendations specific to each stakeholder.

## 2. COVID-19 and Emergency Laws

Since 2020, authorities in Indonesia, Malaysia, Philippines, Singapore, and Sri Lanka have either enacted temporary COVID-19 legislation, declared a state of emergency, or issued directives that restrict social gatherings, limit cross-border and inter-state travel, require the download and use of contact tracing apps, mandate mask wearing, implement curfews, mandate the closure or regulation of business operations, and introduce penalties for non-compliance. The purpose is to limit people-to-people activities in order to contain the spread of infections, but as it will be noted later in this report, in many cases, this has resulted in an over-expansion of the reach of law enforcement, and in strict surveillance. In turn, this has negatively and unnecessarily impacted on fundamental rights of the general population, with a particularly dire impact on vulnerable, marginalised, and already discriminated communities. Additionally, either within these legislations or separately, these governments have also introduced sanctions to curb the spread of COVID-19 related misinformation and ‘fake news’. In practice, these laws are often directed at critics who call out the government’s mismanagement of the pandemic. The government frames these criticisms as “insults” against government officials, using legislation to threaten and punish critics.

### a. Indonesia

**Table 4:** Indonesia’s Emergency Laws

Law	Legislation	Penalties
<b>Public Health Emergency</b> (Decree 11/2020)	Large-scale social restriction (travel and gathering)	Fine of US \$10.30
	Mask wearing mandate	Undertake community service aimed at public shaming
	Prosecution against spread of fake news	Fine of up to US\$50,000 and/or a jail sentence of up to 4 years

Source: Multiple government agencies and news websites

On 31 March 2020, President Joko Widodo declared a Public Health Emergency (Decree 11/2020) under Law No. 6 of 2018 on Health Quarantine (SSEK Indonesian Legal Consultants, 2020). Government Regulation No. 21 of 2020 allows regional governments to impose various measures targeting the limitation of physical activity. As a result, several areas of the country were placed under ‘large-scale social restriction’ (LSSR/PSBB), with many of the derivative regulations stipulated in Peraturan Menteri Kesehatan (Permenkes) No. 9 of 2020. Under Presidential Decree No. 9 of 2020, the President appointed the military personnel to head the COVID-19 Task Force, with the Secretary-General of the Ministry of Health appointed as the Vice, and not Chief executive, of the Task Force. Additionally, many of the high level executives within the task force belonged to the military and police agencies (Ayuningtyas et al., 2021).

The large-scale restriction included closing public places, restricting travelling, limiting religious activities and shutting down schools, limiting overall public mobility. For example, public transportation services were allowed to have only 50% of their usual passenger capacity, and app-based motorcycle rideshares were not allowed to operate (Fachriansyah, 2020). The restrictions were executed by local governments with approval from the Ministry of Health, and have been reinstated several times in different regions. For example, Jakarta was the first area to formally adopt the LSSR measures on 10 April 2020, extending it past its initial implementation of 14 days. On 4 June 2020, the restrictions were loosened due to the decrease in the number of COVID-19 patients, but were subsequently reinstated in September and December 2020, extending until March 2021. Subsequently, Indonesia entered its sixth volume of micro-scale Community Activities Restrictions

Enforcement (PPKM) (Farisa, 2021). Starting from 3 July 2021, the Indonesian government applied emergency PPKM, whereby non-essential sectors are fully closed, and essential sectors are operating with 50% of their capacity until 20 July 2021, as the response to increasing COVID-19 cases (Kompas, 2021).

In addition to social restrictions, on 5 April 2020, the Indonesian government announced a nationwide mask wearing mandate (Lestari, 2020). In Jakarta, under the Jakarta Gubernatorial Regulation No. 79/2020, penalties for refusal to wear a mask include a fine of US\$16.92, or 60 minutes of community service. Second-time offenders are subject to a doubled fine amount, or 120 minutes of community service, while third-time offenders are subject to a tripled fine amount, or 180 minutes of community service (ASEAN, 2020). In the rural regions of East Java, penalties encompassing public-shaming acts of doing push ups, staying in 'haunted houses' (The Jakarta Post, 2020), or burying COVID-19 victims (Burrows et al, 2020) have been enforced (Andri, 2020). On 14 September 2020, Metro Jaya Police spokesperson, Yusri Yunus, suggested that there should be a criminal charge towards people who violate COVID-19 protocols, commenting "If harsh punishments are necessary, available laws include Law No.4/1984 on the pandemic spread, Law No.6/2018 on health quarantine, or if it is needed there is Criminal Code Article 212, 216, and 218" (Nugraha, 2020).

Apart from implementing laws on social restrictions, on 4 April 2020, the Indonesian Police Force issued Surat Telegram (Ghaliya, 2020), granting the police authority

in prosecuting the spread of false information regarding COVID-19, and the government's handling of the pandemic (Lokataru Foundation, 2020). The law of Electronic Information and Transaction, which was enacted in 2008, became a primary tool to criminalise individuals who "distribute, transmit or make accessible electronic content that contains insults, pornography, hate speech, threats or fake news". Those found guilty are subject to a fine of up to US\$50,000 and/or a jail sentence of up to 4 years (Lestari, 2021). From January to November 2020, at least 104 people have been arrested for spreading false information on COVID-19, of whom 17 of them were detained (Melda, 2020).

Overall, the legislation of the Emergency Decree was initially in line with the Siracusa Principles, which articulated that "public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population pertaining to the criteria" (American Association for the International Commission of Jurists, 1985). However, the criminalisation of COVID-19 exposure and transmission, such as punishing individuals with humiliating acts of burying the deceased, severely violates the Principles' aims of "preventing disease or injury or providing care for the sick and injured". Additionally, as explored in further chapters, the imposition of large-scale social restrictions has overlooked the populations' lack of access to basic necessities, and the need for enhanced support to ensure an adequate standard of living amidst the pandemic (Amnesty International, 2020).

## b. Malaysia

**Table 5:** Malaysia's Emergency Laws

Law	Legislation	Penalties
<b>Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance 2021</b>	<p>Movement Control Order (including Enhanced, Semi Enhanced, Conditional, and Recovery)</p> <p>Large-scale social restriction (travel and gathering)</p> <p>Mask wearing mandate</p>	<p>Fined up to US\$2,425</p> <p>Jail sentence of seven years, or a fine of up to US\$24,245 (for offences in which no penalty is expressly provided)</p>
<b>Emergency (Essential Powers) (No. 2) Ordinance 2021</b>	<p>Prosecute against wholly or partly false content related to the pandemic or the emergency declaration</p>	<p>3-year imprisonment and a fine of up to US\$121,000</p>

Source: Multiple government agencies and news websites

The Malaysian government imposed different types of Movement Control Order (MCO) for people to avoid physical contact. The measures range from high-risk to low-risk areas: Movement Control Order, Conditional MCO and Recovery MCO (Flanders Trade, 2021). Smaller areas with high numbers of COVID-19 patients, such as apartment complexes or office buildings, can enforce Enhanced MCO. These orders are issued by the federal government of Malaysia.

On 16 March 2020, the government imposed a MCO under the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967, which took effect on 18 March. The order – which does not formally declare a state of emergency in the country – prohibits mass assembly in any activities and interstate travel. It also includes the closure of all houses of worship, non-essential businesses, kindergartens, government and private schools, public and private vocational and higher education institutions, and all non-essential government and private premises. The MCO was extended by two weeks several times until 12 May 2020. During this period, from 27 March, specific locations were subjected to a stricter order, dubbed the *Enhanced Movement Control Order (EMCO or Enhanced MCO)*, for 14 days in areas where a large cluster of infections were detected. In these instances, residents and visitors were not permitted outside their homes, required instead to be quarantined for 14 days and get tested for COVID-19. During the 14-day quarantine period, authorities distributed food supplies, with only the head of a family permitted to purchase necessities from supermarkets. On 1 May 2020, Prime Minister Muhyiddin Yassin announced the *Conditional Movement Control Order (CMCO or Conditional MCO)*, relaxing MCO regulations targeted towards the controlled re-opening of the Malaysian economy. CMCO received mixed reactions among state governments and backlash by politicians, health experts, and the general public over concerns of a possible resurgence of COVID-19 cases (Malay Mail, 2020).

From 14 May 2020, Pudu area in Kuala Lumpur was placed under the *Semi-Enhanced Movement Control Order (SEMCO)*. Soldiers and police put up barbed wire fences at road exits. As new COVID-19 cases decreased, the *Recovery Movement Control Order (RMCO)* phase was announced for between 10 June and 31 August 2020. Interstate travel was allowed from 10 June 2020, barring areas remaining under the EMCO. Religious activities at mosques were allowed, whilst government and private pre-schools, kindergartens, nurseries and day-care centres were scheduled to resume operations, alongside a range of businesses and activities. Under the various MCOs, individuals who violate any of its

standard operating procedures (SOPs) can be fined up to US\$2,425 under the Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance 2021 (Legal Affairs Bureau (BHEUU), 2021). Moreover, companies can face a fine of up to US\$12,122 if they do not follow the SOPs. Section 24 of the Ordinance states that individuals who commit an offence “for which no penalty is expressly provided” can face a jail sentence of seven years, or a fine of up to US\$24,245 (Tee, 2021).

On 12 January 2021, the government declared a State of Emergency until 1 August 2021, the first time in 50 years (BBC News, 2021). The state of emergency significantly centralises power within the executive, as it allows the prime minister to impose temporary laws without the approval of parliament since there will be no state assembly or election during the state of emergency (Al Jazeera, 2021). Whilst the pandemic constitutes a “public emergency” that aligns with the Siracusa Principles externally, the “explanation of the reasons which actuated the government’s decision to derogate” appears insubstantial, with critics citing political infighting as the rationale for declaring the state of emergency. The current government comprises an unstable Perikatan Nasional coalition (Tayeb, 2021), and it is suggested that current Prime Minister Muhyiddin Yassin declared a state of emergency to evade elections and prolong his hold on power. Crucially, the declaration has restricted the necessary parliamentary sittings that debate emergency ordinances and the national recovery plan, resulting in a poor health protocol that fails to curb the rising number of daily COVID-19 cases (CNA, 2021).

On 12 March 2021, the Prime Minister imposed the Emergency (Essential Powers) (No. 2) Ordinance 2021 (CNA, 2021) with the power given from the Proclamation of Emergency announced in January. The Law was met with widespread condemnation, for it is vaguely-worded and criminalises anyone who publishes or shares any “wholly or partly false” COVID-19 information, subjecting the convicted to 3 years imprisonment and a fine of up to US\$121,000 (Teoh, 2021). Since the enforcement of the Ordinance, Inspector-General of Police, Datuk Seri Acryl Sani Abdullah Sani, stated that the police had opened 21 investigation papers and detained 10 individuals. Under the existing Penal Code and Communications and Multimedia Act, caricature artist Fahmi Reza was arrested for his satirical artwork, further highlighting the repressive attitude of the government amidst the pandemic (Access Now, 2021).

On 1 June 2021, the Malaysian government announced that the country will be, once again, in full lockdown for the next two weeks (Babulal, 2021), with the lockdown extending indefinitely due to the cases having exceeded 5,000 daily, as well as the strain on healthcare and intensive care unit facilities (Rodzi, 2021). Overall, while there are justifications for the extension of the lockdown, in fulfilling the Siracusa Principles' criteria of being "limited (in) duration" and "proportionate" (Human Rights Watch, 2020) and in achieving the objective of mitigating the virus outbreak, subsequent chapters note the lack of resources channelled towards ensuring that the livelihoods of populations are safeguarded. The rulers of Malaysia have

even issued a statement articulating "The unity among the people is increasingly cracked" (CNA, 2021). Additionally, despite the state of emergency being "limited (in) duration", the duration of the emergency from 12 January 2021 till 1 August 2021 has been deemed excessive and a political ploy of Muhyiddin's to prevent parliamentary sittings (Tayeb, 2021). With the daily number of COVID-19 cases having increased threefold when comparing numbers pre-lockdown till now, it appears that Malaysia's COVID-19 measures appear to be politically motivated, rather than health-oriented.

## c. Philippines

**Table 6:** Philippine's Emergency Laws

Law	Legislation	Penalties
<b>State of Public Health Emergency</b>	<p>Authorise all government agencies and local government units to enforce disease control prevention measures</p> <p>Enhance Community Quarantine</p>	<p>Fined up to US\$2,425</p> <p>Jail sentence of seven years, or a fine of up to US\$24,245 (for offences in which no penalty is expressly provided)</p>
<b>State of Calamity</b>	<p>Authorise President to exercise powers necessary in executing national policy</p> <p>Draw emergency funds faster</p>	<p>2 months imprisonment, and a fine of up to US\$20,000</p>
<b>Bayanihan to Heal as One Act</b>	<p>Grant enhanced powers to the executive department</p> <p>Enforced measures including lockdowns, closure of schools and public meeting places, provision of financial aid, amongst others</p> <p>Prosecute against false information regarding the COVID-19 pandemic</p>	<p>2 months imprisonment and/or a fine up to US\$20,000</p>

Source: Multiple government agencies and news websites

On 9 March 2020, President Rodrigo Duterte announced a State of Public Health Emergency lasting for three months until 29 May 2020 (Official Gazette, 2020). A State of Public Health Emergency authorises all government agencies, including local government units, to "enforce

quarantine and disease control prevention measures". In the announcement, the Philippines National Police and other law enforcement agencies were called to provide assistance.

As the number of COVID-19 cases continued to rise, on 16 March 2020, the President declared a State of Calamity (Official Gazette, 2020) which allows the government to “mobilize the necessary resources to undertake critical, urgent, and appropriate disaster response aid”. The declaration also imposed an *Enhanced Community Quarantine (ECQ)* in Luzon, which referred to stay-at-home regulations that resembled an effective lockdown. The ECQ was extended and re-imposed multiple times during the pandemic, with various degrees of quarantine introduced in different risk areas, including the *Modified Enhanced Community Quarantine (MECQ)* and *General Community Quarantine (GCQ)*. Local government units (LGUs) outside Luzon and Metro Manila also imposed various measures to limit the spread of the virus in their communities. The State of Calamity was initially placed for 6 months, but was extended for one year until 12 September 2021 (Rappler, 2021) to allow the government to draw emergency funds faster, as well as to harness the military and police in ensuring public compliance (Associated Press, 2020). This also provided LGUs with sufficient latitude in using the “quick response fund” to “monitor and control prices of basic necessities and prime commodities, and provide basic services to the affected populations” (Xinhua, 2020).

Moreover, to grant enhanced powers to the executive department (Vallejo & Ong, 2020), President Duterte declared a state of emergency and signed the Bayanihan to Heal as One Act (Bayanihan 1) into law on 24 March 2020 (Congress of the Philippines, 2020), allowing the government to “move, decide, and act freely for the best interest of the Filipino people during this health crisis” (Valente, 2020); which included directing the implementation of public health measures, enforcing lockdowns, closing schools and public meeting places, directing private hospitals operations, and providing financial aid, among other measures. In addition to acts or omissions penalised under existing law, the Act subjects anyone who does not comply with the orders to 2 months imprisonment, and a fine of up to US\$20,000. Section 6(f) of the Act criminalises individuals who “create, perpetrate or spread false information regarding the COVID-19 crisis on social media and other platforms”, subject also to 2 months imprisonment and/or a fine up to US\$20,000 (Congress of the Philippines, 2020). The law was set to last for 3 months until 24 June 2020, but has since been supplemented with The Bayanihan to Recover as One bill (Bayanihan 2).

Criticism has been directed at Bayanihan 2 for being unnecessary, as “emergency procurement powers” were already provided to Duterte and his government prior to the passing of Bayanihan 1 (Buan, 2020). Additionally, the emergency provision targeting fake news has been cited as an infringement on free speech (Buan, 2020). Petitions regarding the controversy of the Bayanihan act were discarded, which suggests poor and insubstantial reasons targeting the “proclamation, notification, and termination of a public emergency” as stated in the Siracusa Principles. The militarisation of the pandemic response and how this has violated the Siracusa Principles will be elaborated on in Chapter 3.

Bayanihan 2 was introduced on 11 September 2020 as a supplementary bill to allot an estimated US\$8,321,280,000 to tackle the pandemic (Gotonga, 2020). Bayanihan 2 also shifted the emphasis from movement restriction to facilitating public education, as well as mass testing for infections and vaccinations. As of 26 June 2021, the government intends to extend and/or create another Bayanihan law. However, this proposal has been criticised for abusing taxpayers’ monies, for an estimated US\$206,093,000 of unused funds would be reverted back to the treasury once Bayanihan 2 expires on 30 June 2021, should the government introduce Bayanihan 3 (Ramos, 2021).

Despite the Bayanihan acts being formally directed towards the aim of mitigating the pandemic outbreak, the excessively securitised response evidently violates the Siracusa Principles as it harms public safety, health, rights and freedoms of its population (University of Minnesota, 1985). The legitimacy of the state of emergency has also been impinged by the additional legislation added, which seems to have been introduced primarily to enhance governmental control, rather than for public health reasons. Furthermore, the implementation of curfews led to deprivation of liberty, which was weakly provided for and in most cases did not grant populations sufficient time to access necessary supplies. The derogatory and disproportionate measures exacted on the population for breaching COVID-19 measures were therefore poorly justified and in severe violation of the Siracusa Principles (Sun, 2020).

## d. Singapore

**Table 7:** Singapore's Emergency Laws

Law	Legislation	Penalties
<b>COVID-19 (Temporary Measures) Act 2020</b>	Circuit Breaker (Social gathering restriction)	6 months imprisonment and a fine of up to US\$ 7,440
	Mask wearing mandate	Fine of up to US\$224 for their first time offence, and US\$750 for repeat offenders
	Mandatory use of contact-tracing system	
<b>Online Falsehoods and Manipulation Act (POFMA)</b>	Prosecution against false and opposing information.	Maximum fine of US\$14,000 and/or a jail sentence of one year
		Maximum fine of US\$7,300 and/ or an imprisonment up to 3 years

Source: Multiple government agencies and news websites

The Singapore government's countermeasures to mitigate the COVID-19 pandemic could be divided into three main phases: initial measures, tightened measures, and relaxed measures. Marking the implementation of the initial measures phase, on 7 April 2020, the Singapore government passed COVID-19 (Temporary Measures) Act 2020 to impose restrictions on the movement of people. The act enforced Singapore circuit breaker (CB) measures which prohibited gatherings of any size. Offices and schools were closed, and restaurants were not allowed to have dine-in services. Individuals who violate the act can face up to 6 months imprisonment and a fine of up to US\$ 7,440. On 14 April 2020, mask wearing in public areas became mandatory. Anyone who refuses to wear a mask can face a fine of up to US\$224 for their first time offence, and US\$750 for repeat offenders (Ang & Phua, 2020). Foreigners working, living, and studying in Singapore additionally risked having their visas revoked.

After discovering that the migrant workers' dormitories spawned new clusters of transmission, additional measures were introduced on 21 April 2020 when Prime Minister Lee Hsien Loong extended the circuit breaker to 1 June 2020 (Prime Minister's Office, 21 April 2020). Existing measures were tightened. For example, the list of essential services was reduced, and possible disease hotspots, such as wet markets and some retail franchises, had to determine entry based on an individual's last ID number, on whether it was odd or even. On 2 May 2020, the Ministry of Health announced that the Multi-Ministry Taskforce will progressively ease some of the tighter circuit

breaker measures over the coming weeks (Ministry of Health, 2 May 2020). On 5 May 2020, essential residential activities were allowed, followed by the re-opening of small, home-based businesses on 12 May 2020. On 19 May 2020, face-to-face school sessions resumed for those requiring urgent assistance, and for small groups in graduating cohorts. On the same day, the Ministry of Health also mandated the use of the contact-tracing system 'SafeEntry' at all business premises and services.

On 19 May 2020, the government announced the plan to re-open the country, dividing it into 3 phases: Phase 1 (Safe Reopening), Phase 2 (Safe Transition) and Phase 3 (Safe Nation) (Singapore Government, 28 May 2020). The first two phases started on 2 and 19 June 2020 respectively. On 28 December 2020, the first administration of Pfizer-BioNTech vaccine marked the beginning of Phase 3.

The Act which was passed on 7 April 2020, was subsequently amended on 5 June and 18 September 2020 and covers:

- (1) Temporary relief from inability to perform contractual obligation;
- (2) Rental Relief Framework for SMEs and NPOs;
- (3) Temporary relief for financially distressed individuals and businesses;
- (4) Alternative arrangements for meetings;
- (5) Relief for contracts affected by construction delays; and
- (6) Concessions for Collective Sale Procedures.

During the COVID-19 pandemic, the government also employed existing laws such as the Online Falsehoods and Manipulation Act (POFMA) and 1997 Miscellaneous Offences (Public Order and Nuisance) Act to curb “disinformation”. The POFMA legislation stipulates a maximum fine of US\$14,000 and/or a jail sentence of one year for the “communication of ... false statement[s]” (Singapore Legal Advice, 2020). Meanwhile, Section 14D of the 1997 Miscellaneous Offences (Public Order and Nuisance) Act penalises any person who “transmits or causes to be transmitted a message which he knows to be false or fabricated shall be guilty of an offence” with a maximum fine of US\$7,300 and/or an imprisonment up to 3 years (Singapore Statutes Online, 2021). Most orders were issued to civil society activists, opposition politicians, and alternative media sites that questioned different aspects of the government’s management of the COVID-19 pandemic (Abdullah & Kim, 2020; Freedom House, 2021).

Overall, the management of the COVID-19 pandemic is aligned towards the principles of maintaining the “public health”, “national security”, and “public safety”, and has been implemented for a clearly stipulated “duration” (American Association for the International Commission of Jurists, 1985). However, the punishments exacted onto violators of COVID-19 protocol appear to be derogatory and disproportionate. An example would be the heavy penalties imposed on eight Britons who were caught breaching social distancing and mask wearing mandates, which resulted in the cancellation of work pass permits and a hefty US\$2,213 fine imposed on each individual (Wong, 2021). This follows the deportation of 12 people who had flouted the COVID-19 regulations in 2020 (CNA, 2020), indicative of the country’s punitive approach that is misaligned with fundamental human rights.

## e. Sri Lanka

**Table 8:** Sri Lanka’s Emergency Laws

Law	Legislation	Penalties
<b>Quarantine and Prevention of Diseases Ordinance</b>  <b>Police Ordinance</b>  <b>Public Security Ordinance</b>	Quarantine curfew  Isolation order  Mask wearing mandate	Fine of up to 10,000 rupee (US\$55) and/or six months imprisonment
<b>Penal Code and Criminal Procedure Code</b>	Prosecution against spread of fake news	Five-year imprisonment and a fine of up to US\$5,500

Source: Multiple government agencies and news websites

Responses to contain the spread of the coronavirus in Sri Lanka were managed initially through directives issued through a series of press releases from the Presidential Office and the National Operation Centre for Prevention of Covid-19 Outbreak (NOCPKO). From late January to March 2020, the focus was on suspending visas on arrival for foreign tourists from countries with large outbreaks (Amaratunga et al, 2020). Thereafter, the focus was on in-country regulations. Some of these measures included

a ban on all public gatherings, closure of all education centres including schools and universities, discontinuation of non-essential services, enforcement of an island wide curfew and encouraging work from home.

As the President had dissolved parliament on 2 March 2020 due to internal politics, the declaration of a state of emergency was impossible (Al Jazeera, 2020). The Sri Lankan government thus imposed a series of

quarantine curfews in several parts of the country. These were temporarily eased in early May 2020, but with the second wave of COVID-19, entire Western provinces were placed back into curfew again until mid-November 2020 (Ganeshathasan, 2021). The quarantine curfews have been questioned due to three main reasons: parliamentary suspension, vaguely-worded and defined legislation, and the lack of a legal basis - stemming from both the misuse of the 1897 Quarantine and Prevention of Diseases Ordinance (QPDO) and the lack of "regulations made under the Public Security Ordinance" (Ganeshathasan, 2021).

Evidently, the Sri Lankan government is violating the Siracusa Principles by restricting movement with no clear, legal basis. The strict limitation of movement and permitting authorities to "enter a house or premises for the purposes of ascertaining whether any of the occupants are suffering from any disease of a contagious, infectious or epidemic nature" exacerbates the situation, with the further delegation of power to the military and police forces militarising the pandemic response (Witharana, 2020). Under the ordinance, those convicted may be imprisoned "for a term not exceeding six months or a fine not less than two thousand rupees and not exceeding ten thousand rupees or to both". The QPDO does not operate in isolation, but in tandem with the Penal Code, Criminal Procedure Code, Police Ordinance and the Public Security Ordinance.

On 15 October 2020, the Sri Lankan government made wearing masks compulsory. The regulations were made by the Minister of Health under Sections 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (the Ordinance) by Gazette Extraordinary No. 2197/25 (Centre for Policy Alternatives, 2020). Anyone caught not wearing a mask in public, or failing to maintain physical distance,

is subject to a fine of up to 10,000 rupee (US\$55) and/or six months imprisonment (The New Indian Express, 2020).

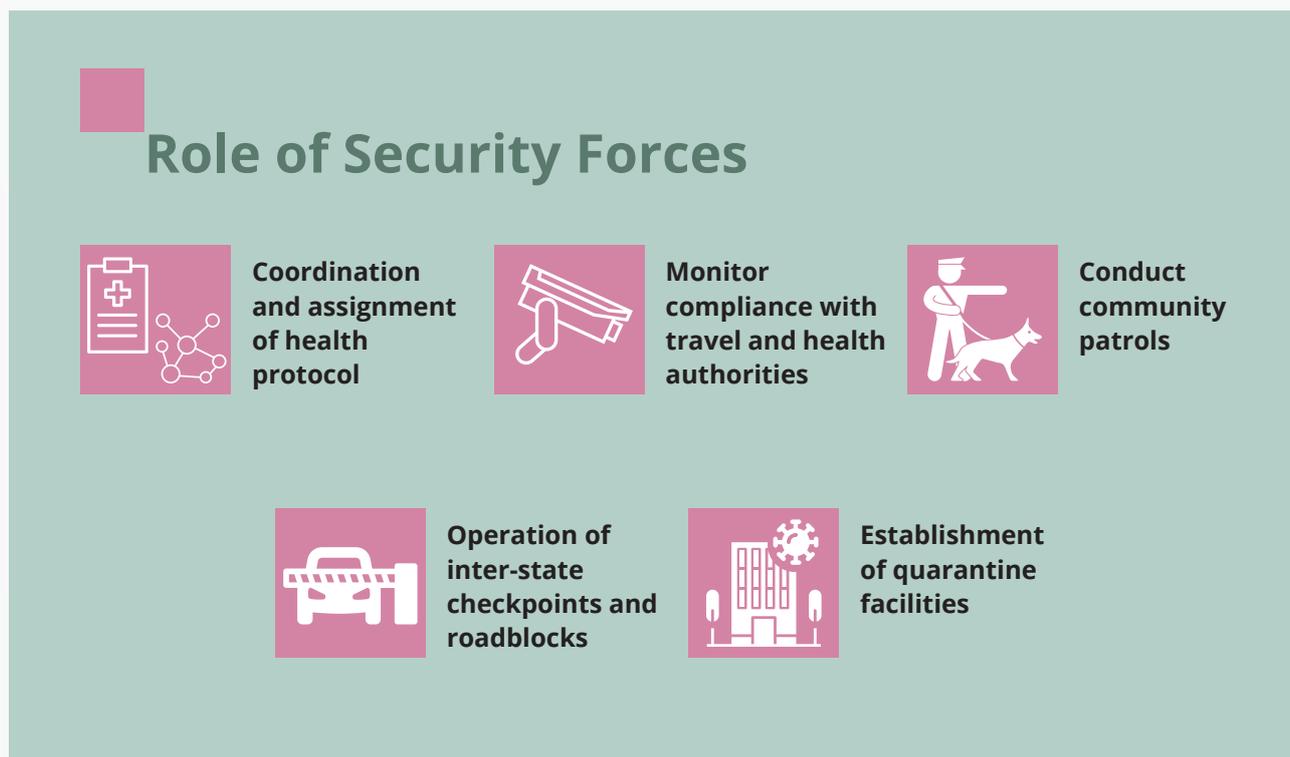
The COVID-19 pandemic has increased reference to the Penal Code and Criminal Procedure Code targeting the prevention of spreading fake news on social media. Individuals who spread fake news "including statements that impact national security and incite violence between communities" can be subjected to five-years imprisonment and a fine of up to US\$5,500 (Agrawal, 2019). Since April 2020, it was noted that there have been a series of arrests of those who criticise government officials for their mismanagement of the pandemic (Human Rights Watch, 2021). This prompted response from the Human Rights Commission of Sri Lanka "that any arrest for the mere criticism of public officials or policies would be unconstitutional", and from the United Nations that "saying any actions taken to stop the spread of false information must be proportionate" (OHCHR, 2020).



Across the five countries, national governments have introduced temporary COVID-19 laws and/or declared national emergencies to avail themselves of executive powers for two main purposes: firstly, restricting travels, curtailing mass gatherings, implementing social distancing, contact tracing, and mandating mask wearing; and secondly, curbing the spread of COVID-19 fake news, as well as criticism of mismanagement. This has resulted in a significant centralisation of power in the hands of the executive, which in some cases led to the side-lining of the legislative and the judiciary powers, as well as an expansion in the role of law enforcement agencies, as further explored in the next chapter.

### 3. Role of Law Enforcement Agencies

Across the five countries reviewed in this report, the overarching authority is usually an inter-ministerial “national task force” made up of ministers and top civil servants. The national police and armed forces form the next tier of authority, playing a prominent role in enforcing movement control orders, social distancing and mask wearing. Thereafter, civil servants, park rangers, private security personnel and other private sector employees perform gate-keeping functions including temperature checks, ensuring tracing app sign-ins or manually recording visitor details.



Source: Multiple government agencies and news websites

#### a. Indonesia

On 13 March 2020, the COVID-19 Response Acceleration Task Force was formed to direct Indonesia’s response to the COVID-19 public health crisis. Coordinated and headed by the Indonesian National Board for Disaster Management (BNPb), the national task force also included the Ministry of Health, Ministry of State Owned Enterprises (BUMN), Minister for Human Development and Cultural Affairs, Political, Legal, and Security Affairs, Ministry of Finance, National Resilience Council, Indonesian National Police (POLRI) and the Indonesian National Armed Forces (TNI). In July 2020, the Response Acceleration Task Force was dissolved and their functions were handed over to the COVID-19 Handling and National Economic Recovery Committee (KPCPEN) (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2020), which comprised of three main bodies: first, the

Policy Committee (led by POLRI, TNI, Coordinating Ministry for Economic Affairs and BUMN), second, the Task Force for COVID-19 Response (led by BNPB) and third, the Task Force for National Economic Recovery (led by BUMN). In total, it is estimated that there were at least 21 retired and active duty military officers directly involved in the decision-making process to control the pandemic (Laksmana & Taufika, 2020; Asia Centre & Harm Reduction International, 2021).

In practice, POLRI and TNI were the main law enforcement agencies supervising the implementation of COVID-19 countermeasures. In April 2020, following the proclamation of public health emergency, National Police Chief Idham Azis issued a set of directives to his subordinates to guide their conducts in containing the COVID-19 pandemic based on the Law No. 6 of 2018 on

Health Quarantine (Oktavianti, 2020). Policemen were deployed according to the government's zoning system based on local infection rates, from zero-risk green zones to high-risk red zones. In May 2020, 340,000 personnel of the Indonesian National Armed Forces were mobilised to help ensure public observance of COVID-19 policies in the four provinces of West Sumatra, Jakarta, West Java, and Gorontalo (Al Jazeera, 2020). By June 2020, POLRI had placed 7,550 personnel to green zones, 8,981 personnel to yellow zones, 35,830 personnel to orange zones and 25,536 personnel to red zones (The Jakarta Post, 2020).

The Police's auxiliary unit, such as the Municipal Police (Satpol PP), was also involved in the enforcement of COVID-19 health protocols, conducting routine patrols in communities to educate and remind the public to wear masks and maintain social distance (Tobing, 2020). Given the sensitivity, Satpol PP also held regular meetings with local religious leaders to discuss and streamline the applications of PSBB protocols on places of worship such as mosques, churches, and temples (Sanubari, 2020). The Jakarta gubernatorial Regulation No. 79/2020 (Adjie, 2020) stipulates punishments for negligence to comply with the COVID-19 protocols, including fines up to US\$70 and four-hour community service at maximum, subject to repetition of their violations.

In August 2020, the role of POLRI and TNI in enforcing COVID-19 health protocols was expanded through the Presidential Instruction (Inpres) No. 6/2020, mandating both institutions to help local administrators by monitoring public compliance with travel and health advisories, including the conduct of mobile community patrols (Syakriah, 2020). The Presidential Instruction also appoints Army Chief of Staff Gen. Andika Perkasa and National Police Deputy Chief Comr. Gen. Gatot Eddy Pramono as vice-chairmen of the KPCPEN. Police Spokesperson informed the press that, when dealing with violators, POLRI and TNI officers will prioritise pre-emptive and preventive approaches, while stricter enforcement such as imposing quarantines, community service or penal procedures, such as fines and temporary closure of businesses, will be a last resort (Lestari, 2020).

Both police and military officers were tasked with strictly health-related tasks, ranging from establishing and conducting PCR testing, collecting data (Ayyubi, 2020), disinfection, COVID-19 drug manufacturing, forced pick-up of COVID-19 patients and, as discussed more in detail in Chapter 4, contact tracing (Oktavianti, 2021). POLRI also played a central role in curbing government dissent by monitoring the circulation of government-dubbed "fake news". Additionally, the President ordered both military

and police forces to conduct a separate vaccination drive to supplement the Health Ministry's programme, aiming to distribute one million vaccine doses daily (Strangio, 2021). Within Central Java, Police Chief Insp. Gen. Ahmad Luthfi reported that 5,500 vaccinators from the provincial health department, the police and the military had administered 141,000 doses, as of 26 June 2021 (Tambun, 2021).

To illustrate the strict enforcement measures, in one of the joint POLRI-TNI operations dubbed 'Operasi Yustisi' executed between 14 to 17 September 2020, 379,000 verbal warnings and 56,000 written warnings were issued in 30,000 locations. Meanwhile, fines totalling Rp 399 million were collected from 16,000 violators, and the forces also suspended 63 businesses that did not comply with COVID-19 health protocols (Syakriah, 2020). On 26 March 2021, Culture Minister Muhadjir Effendy announced an internal travel ban during Mudik (CNA, 2021). In May 2021, the ban was extended to prevent mass transmissions of the coronavirus during the Eid period. POLRI was further activated during the Eid period to conduct roadblocks, in attempts to identify and isolate positive COVID-19 cases amongst the 1.5 million people who left for travel before the extension of the ban (South China Morning Post, 2021).

Overall, the approach to COVID-19 in Indonesia was a heavily securitised one, with the government itself likening the response to the virus to a 'military strategy' (Sugianto, 2020). The increase in POLRI's budget from US\$6.3 million to US\$7 million is suggestive of the extent of police involvement within the pandemic response (Supriatma, 2020). Commentators have highlighted how this heavy involvement of the military is not a new phenomenon in the country, but rather the continuation of an ongoing trend witnessed under the Widodo administration, who has been gradually expanding the military's role since being elected in 2014 (Chandran, 2020).

## **b. Malaysia**

The enforcement of COVID-19 travel and health protocols rested on public health officials and Royal Malaysia Police (RMP). Subsequently, a National Task Force (NTF) targeting border security enforcement was formed, comprising the Malaysian Armed Forces (MAF), RMP, the Malaysian Maritime Enforcement Agency (MMEA), and immigration-related government agencies such as the Malaysian Immigration Department (Krishnan, 2020). A semblance of a COVID-19 national task force would only emerge in May 2020, when the country entered the CMCO period, which will be explained in more detail below.

On 18 March 2020, after initial warning by the Inspector-General of the Royal Malaysia Police (PDRM) that violation of MCO was criminally punishable under the Penal Code, Attorney-General's Chambers published the Federal Government Gazette specific to the MCO, which outlined criminal liability of such violation with a fine up to US\$239 and/or up to six months imprisonment (Ahmad, 2020). During MCO and CMCO, PDRM conducted roadblocks, manned inter-state checkpoints, monitored and ensured that travellers followed COVID-19 protocols and arrested violators (Azman, 2020). On 20 March 2020, the army was mobilised to assist the police in enforcing the MCO. Their assignments included helping the PDRM operate checkpoints, conducting patrols in urban and rural areas, and maintaining order security at public health facilities (The Strait Times, 2020). By April 2020, a total of 7,000 MAF personnel had been deployed. In April 2020, the government also started converting 13 academies under the Prison Department into temporary detention centres for those who flouted COVID-19 travel and health advisories, with conditions adhering to "normal prison standard operating procedure" (Malaysiakini, 2020). Additionally, due to the rapid spread of COVID-19, the NTF was established to mitigate the spread of the coronavirus, with the armed forces, police and border security enforcement agencies denying refugees and migrants entry into Malaysia (The Jakarta Post, 2020).

Over 20,000 people were arrested for violating MCO between 18 March and 26 April 2020 alone (Daim, 2020). Civil society denounced arbitrary implementation of MCO and discrimination against vulnerable and marginalised communities, such as people living in poverty (who may not afford to abide to COVID-19 regulations, such as lockdown and compulsory face masks) and LGBTQI+. In line with the findings in other countries, violence and degrading treatment were also reported as forms of punishment, including beatings and strenuous physical exercise (Kua, 2020).

In May 2020, when the CMCO was implemented with the focus shifted to a 'controlled' resumption of economic activities, the RMP formed a Compliance Operation Task Force (COTF) (Ministry of Health Malaysia, 2020) to ensure public compliance with public health-based Standard Operating Procedures (SOPs) during the relaxed lockdown period (Malay Mail, 2020). The COTF, apart from hospital directors, comprised 12 government agencies, namely the RMP, MAF, Civil Defence Forces, MMEA, Department of Labour, Department of Occupational Safety and Health, Public Works Department, Ministry of International Trade and Industry, Immigration Department of Malaysia,

Ministry of Plantation Industries and Commodities, Ministry of Education Malaysia, and Construction Industry Development Authority of Malaysia.

However, it was during this CMCO period that a worrying trend emerged. In Kuala Lumpur, for example, poor neighbourhoods inhabited by migrant workers and refugees, an already marginalised population (Ambrose, 2020), were contained by barbed wire and patrolled by armed troops. Video footage showed that COVID-19 testing in these areas was used to identify undocumented migrant workers. Police raids were also conducted, which included rounding up, testing, fingerprinting, and detention of undocumented workers and refugees (Fishbein & Hkawng, 2020). Once in detention, migrants were denied contact with their family members and lawyers (Al Jazeera, 2020). RMP Inspector-General rationalised that "they were detained to ensure that they did not move around and spread the disease" (BBC News, 2020). In late 2020, it was reported that the Malaysian government "falsely promis[ed] no action on refugees for taking Covid tests, but later ended up arresting and detaining many to be deported" (Freedom House, 2021).

In early June 2021, footage emerged of Immigration Department officers rounding up migrants and spraying them with disinfectant, a move that has been defined by health experts as demeaning and counterproductive (Loheswar, 2021). In May 2020 alone, over 2,000 undocumented migrants were arrested (Ding, 2020). Similarly, on 15 February 2021, it was announced that Malaysia will continue to deport Myanmar refugees in light of enhanced border security controls, enforced by the Malaysian Immigration Department. Malaysian immigration chief Khairul Dzaimie Daud elaborated on the validity of the deportation, referring to the refugees' lack of travel documents and relevant visas (CNA, 2021). However, UNHCR, with support from the International Organisation for Migration, has stated that a "states' prerogative to regulate the entry of foreigners to their territories cannot – even in the context of a global pandemic – result in a denial of people's right to seek asylum from persecution" (UNHCR, 2020). Amidst a context of increased xenophobia and Islamophobia, this has resulted in a spate of verbal and physical abuse against minorities and in blaming minorities for the spread of COVID-19 in the country (Zainul, 2020), highlighting the injustices levelled at this minority group during the pandemic.

False accusations have also been levelled at refugees and migrant workers for reportedly having a higher risk of contracting COVID-19. Amidst poor working and living

conditions, discrimination, and limited access to health services (Sukumaran, 2020), such practices are not only in direct violation of fundamental rights, but also risk exposing migrant workers and the wider community to COVID-19, driving people further to the margins and impeding testing and contact tracing efforts. This was clearly demonstrated by the fact that detention centres themselves became, by summer 2020, COVID-19 hotspots (Al Jazeera, 2020).

Despite the proclamation of its state of emergency in January 2021, Malaysia did not change decision-making processes or the hierarchy of command where COVID-19 countermeasures were concerned. Analysts and observers speculate that this was intended to buy time for Prime Minister Muhyiddin Yassin to consolidate power prior to the general election, which he promised would be when the pandemic ends (Jamal, 2021).

### c. Philippines

In the Philippines, three bodies are mainly responsible for the COVID-19 response: first, the Inter-Agency Task Force, which focused on policy-making; second, the Joint Task Force COVID-19 Shield (JTF COVID Shield), which is in charge of daily operations; and third, the National Incident Command, focusing on the enforcement of quarantine protocols (GovPH, 2020). JTF COVID Shield is composed of the Philippine National Police (PNP), the Armed Forces of the Philippines, the Philippine Coast Guard, the Bureau of Fire Protection, and Barangay tanods. Police Lieutenant Gen. Guillermo Lorenzo Eleazarthe was appointed to head the JTF COVID Shield to enforce quarantine measures, inter-provincial checkpoints and maintain public order throughout the country. In total, and discounting the active officers, President Duterte called in four retired generals to serve in leadership positions in COVID-19 management bodies (ABS-CBN News, 2020; Asia Centre & Harm Reduction International, 2021). As in the case of Indonesia, reliance on military personnel and tactics is not a new phenomenon, but rather a typical and characteristic feature of the Philippines' current government; with Duterte himself declaring, "the backbone of my administration is the uniformed personnel" (Dizon, 2020).

In practice, within an ECQ, the police manned checkpoints and enforced nightly curfew; while the military implemented border controls and facilitated the movement of healthcare workers, medical equipment, and supplies (Gotinga, 2020). Community patrols were normally delegated to Police Community Precincts where,

starting from 9 PM, policemen and barangay officials would survey streets, urging people to go home and stay in-door until 5AM (Gotinga, 2020). PNP's Highway Patrol Group also conducted random patrols to check on whether public utility vehicles including buses, tricycles and jeepneys complied with minimum health protocols (Journal Online, 2020).

By July, however, the government's response to the pandemic had become incrementally 'securitised' and had significant parallels with President Duterte's ferocious war on drugs, under which thousands of extrajudicial killings were reported. In enforcing the citywide lockdown in Cebu, for example, military and police personnel were deployed to set up checkpoints, with pamphlets being dropped from helicopters to villages (Macasero, 2020). In April 2020, the Special Action Force, an elite commando unit of the PNP, were called in to help local police enforce ECQ. In July 2020, the authorities started to deploy police accompanying frontline healthcare workers during their door-to-door visits in the localities (Deutsche Welle, 2020), triggering alarm of potential police abuse cases (Aspinwall, 2020). The method was similar to 'Oplan Tokhang' where police would knock on the doors of suspected drug dealers or users, before asking them to quit and turn themselves in. President Duterte himself employed an authoritarian rhetoric and ordered the police and the military to 'shoot them dead', when referred to quarantine violators (Capatides, 2020). Indicative of the government's priorities is the fact that between 17 March and 2 May 2020, more people were warned or fined for quarantine violations than tested for COVID-19 (Coalition for People's Right to Health, 2020).

The securitisation of the pandemic response further resulted in an inequitable distribution of vaccines. In July 2020, President Duterte declared that the military, together with police officers, would also be put in charge of vaccine distribution, allegedly to avoid politicisation (Buan, 2020). Notably, in December 2020, Secretary Lorenzana admitted that members of the Presidential Security Group were vaccinated before the very start of the vaccination campaign, and with illegally smuggled drugs that violated the Food and Drug Administration rules (Galvez, 2020). Additionally, families with military involvement were prioritised for the vaccination programme, which has sparked controversy and debate over the government's claim that the vaccination priority is for frontline and vulnerable sectors (Ranada, 2021).

Abuse of power and arbitrary enforcement of COVID-19 countermeasures were reported, ranging from physical

threats and beatings to public humiliation, which in at least three cases led to death (BBC News, 2021). In Luzon, curfew violators received disproportionate punishments, with some being locked inside dog cages under the “intense midday sun” (Human Rights Watch, 2020). Oftentimes, vulnerable communities such as the poor and sexual minorities were on the receiving end of such abuses. Peer pressure and public surveillance was encouraged when the JTF COVID Shield created a Facebook account to facilitate the reports of quarantine protocols violations (GMA News, 2020).

Arrest and detention in overcrowded settings, as well as the marginalisation of already surveilled and targeted communities demonstrates that the heavy involvement of law enforcement is not effective in slowing the spread of a highly infectious virus whose tracing and control are essential for the response. On the contrary, these punitive approaches hindered attempts at countering infections, and were ultimately detrimental to public health goals. As commentators concluded, “the people’s angry reaction to Duterte’s heavy-handed approach to the pandemic, though, showed that a shock and awe tactic alienates the public from the government instead of getting them to cooperate and follow day-to-day health protocols” (Dizon, 2020).

## d. Singapore

On 22 January 2020, Singapore inaugurated the Multi-Ministry Task Force (MTF) (Ministry of Health, 2020) to manage the COVID-19 pandemic, which in turn was supported by the Homeland Crisis Executive Group. MTF was co-chaired by Minister of Health Gan Kim Yong and Minister of National Development Lawrence Wong, while other ministers are members and part of the MTF, reflecting the ‘whole-of-government’ approach (Civil Service College, 2020). As far as law enforcement is concerned, the Immigration and Checkpoints Authority (ICA) and the Maritime Port Authority were first activated to implement public health screening at border checkpoints. They were later joined by the Singapore Civil Defence Force, Singapore Police Force (SPF) and Singapore Armed Forces (SAF), when contact tracing and setting up of quarantine facilities were required at a later stage.

SPF’s roles in the pandemic response included securing the Government Quarantine Facilities (GQFs), facilitating dormitory operations, and ensuring public compliance with CB measures (Shah, 2020). Since late January 2020, when the GQFs were designated, SPF’s officers were

deployed to maintain law and order at GQFs and other related facilities such as Community Care Facilities, Swab Isolation Facilities, Gazetted Isolation Areas, also assisting dorm operators in ensuring that migrant workers followed health protocols. At times, while on day-to-day policing duties, SPF personnel were called in by Social Distancing Ambassadors (SDAs) to reinforce CB measures when encountering uncooperative individuals. Meanwhile, the military was involved in the nation’s response to the pandemic as well, but their roles were assigned to providing logistical support. For example, SAF personnel were mobilised to help the distribution of more than 5 million masks to an estimated 1 million households (CNA, 2020). Some of SAF base camps, such as Jurong, Bedok, Amoy Quee, Guillemard, Tanjong Gul and Lim Chu Kang, were also converted into Community Recovery Facilities (Quek, 2020).

Due to its cosmopolitan nature, whereby non-citizens (permanent residents and migrant workers) constitute 38% of total population, Singapore’s Immigration and Checkpoints Authority (ICA) has been involved in the enforcement of COVID-19 countermeasures. ICA was the first line of defence against the pandemic as it dealt with human traffic coming in and out of Singapore, which necessitated health protocols for border control, such as travel bans on visitors from locations where the pandemic was spreading, temperature screening at checkpoints, and issuing Stay-Home Notices (SHN). SHN were issued to overseas visitors who were believed to be at-risk, requiring them to stay indoors for a 14-day period. For non-citizens working and living in the city-state, violations of SHN would result in a fine or incarceration, with one’s permanent residency or work passes revoked (Iau, 2021). In March 2020, the Ministry of Manpower (MOM) revoked more than 89 work passes for those who had breached entry approval and SHN (Ministry of Manpower, 2020). Similar punishments, such as deportation, also applied for refusal to comply with health protocol (CNA, 2020), with SPF and ICA enforcing the deportation of 12 foreign nationals during July 2020 (CNA, 2020).

Another unique aspect of COVID-19 law enforcement was the mobilisation of the so-called SDAs. While they could not issue fines, these SDAs were tasked with monitoring and reminding people to follow COVID-19 regulations. Employed by entities such as the Singapore Tourism Board or Enterprise Singapore, SDAs numbered around 3,000 and were paid up to S\$2,500 a month (Ong, 2020). Despite the meagre remuneration, the scheme offers short-term economic relief when their livelihoods were affected by the pandemic (Yong, 2021).

With the 2021 resurgence in COVID-19 cases worldwide, the ICA was pivotal in COVID-19 law enforcement regarding the Singapore-Johor border. With the discontinued Reciprocal Green Lane, the ICA was crucial in aiding people from Singapore and Malaysia to travel on compassionate grounds to see their family members for emergency reasons. Enforcement and evaluation under the Death and Critical Illness Emergency Visit scheme (Yeo & Sim, 2021) was thus executed by the ICA.

## e. Sri Lanka

Sri Lanka Armed Forces and Sri Lanka Police are the main law enforcement agencies overseeing the execution of COVID-19 measures. Law enforcement features heavily both in the National Operations Centre for Prevention of COVID-19 Outbreak (NOCPKO), which was inaugurated on 17 March 2020, and in the Presidential Task Force “to direct, coordinate and monitor the delivery of continuous services and for the sustenance of overall community life” (Task Force) established on 26 March 2020 (The Gazette of the Democratic Socialist Republic of Sri Lanka, 2020). In March 2020, Commander of the Army Gen. Shavendra Silva was appointed as Head of NOCPKO. Silva is, in fact, an accused war criminal, due to his actions against the Liberation Tigers of Tamil Eelam, during the final stage of the Sri Lanka civil war in 2009, when up to 70,000 Tamil civilians perished (Borger, 2020). The broad and vague powers of the Task Force have been heavily criticised by local civil society, together with its necessity, the legal basis for its creation, and a lack of accountability and transparency characterising its operations (Centre for Policy Alternatives, 2020)

The parliament was dissolved earlier for the general election, but as the election was postponed to August, and the President refused to reconvene the dissolved parliament during March to the first week of August 2020, all decisions related to COVID-19 public health crisis, including the implementation of ‘quarantine curfew’, were taken by the NOCPKO without parliamentary or judicial oversight. This is of particular concern, as the Sri Lankan Constitution and Public Security Ordinance prescribe that for both Proclamations of States of Emergencies and curfew Orders to be valid, the President must communicate them to Parliament (Centre for Policy Alternatives, 2020). It was only after the general election in August that a semblance of checks-and-balances returned to national politics.

Initially, Sri Lanka Police took the lead in implementing COVID-19 measures, which included imposing curfew, setting up checkpoints, and issuing passes, evidently

possessing the power of arrest. The tasks of the military were similar to the police as mentioned earlier, with one additional task of running the quarantine centres which, by 7 May 2020, amounted to 41 military-run quarantine facilities across the country (Farzan, 2020). Police were also mobilised to maintain social distancing and deter public gatherings. This can be observed by the example on 11 June 2020, when the force cracked down on the ‘Black Lives Matter’ solidarity protest in Colombo (Kumarasinghe, 2020).

Sri Lanka’s pandemic response increasingly became militarised as time passed. This was especially the case in the Northern and Eastern parts of the country where the Tamil ethnic minority reside. Despite the new directive (Ada Derana, 2020) mandating the police to be the sole agency responsible for issuing curfew passes, there were reports of extra-legal action and arbitrary enforcement from the military, as they remained involved in the pass authorisation process. Additionally, the role of the military and the State Intelligence Service in contact-tracing compounded the worries of civil society actors, as both enlisted the help of telecommunication companies to trace an individuals’ contacts and locations visited, while also looking into people’s immigration records and resorting to drones to monitor villages affected by the pandemic (Adayaalam Centre for Policy Research, 2020). Local media also reported the military carrying out typical health functions, such as conducting random temperature checks and directing people to hospitals (Centre for Policy Alternatives, 2020). The lack of a justified and legal basis to enforce these regulations raises questions around the motive of the militarised health operations, which heightened the potential for the discrimination and abuses against the Tamil ethnic minority.

In January 2021, Gen. Silva appointed 25 senior officers to coordinate the COVID-19 control operations in all 25 districts of the country. Each of the units are to be led by a Major General. It is significant to note that at least 16 of the 25 appointed military officers were involved in the final phase of the 2009 military operations that brutally ended the civil war, when war crimes were allegedly committed by the Sri Lanka Army (International Truth and Justice Project, 2021). In May 2021, the Sri Lankan police and military were mobilised in enforcing movement restrictions in Jaffna, a Tamil-dominated state, despite COVID-19 travel restrictions being eased. On 13 May 2021, the Sri Lankan police arrested 30 Tamils for allegedly not wearing masks (Tamil Guardian, 2021), whilst on 15 May 2021, 50 Tamils were arrested for allegedly violating coronavirus regulations (Tamil Guardian, 2021).

Due to a failure to integrate digital tools into Sri Lanka's public health response (Citra Social Innovation Lab, 2020), which will be further discussed in the next chapter, the government has adopted a militarised response towards the pandemic (Shabaz & Funk, 2020). This has been viewed as problematic for at least two reasons: first, the military, who have a long-seated history of committing crimes and abuses, are overall in charge, while public health agencies have been side-lined amidst the COVID-19 health emergency. Secondly, such overreliance on law enforcement has led to several violations of basic human rights. For example, under the guise of restricting movement to limit the transmission of COVID-19, by 30 April 2020 Sri Lankan police forces had arrested nearly 40,000 individuals for violating a curfew, subsequently contradicting themselves by placing detainees in overcrowded and confined places (Adayaalam Centre for Policy Research, 2020).



Although to different degrees, the enforcement of COVID-19 movement restrictions, social distancing, mask wearing and management of quarantine facilities largely fell to the military and police in the five countries reviewed. The analysis in this chapter indicates that in enforcing these measures, there was a militarisation and securitisation of health protocols. Amidst the securitisation of pandemic responses, it was evidenced that governments leveraged the emergency context to enhance the power of executives, legislating vaguely-worded laws that significantly infringed free speech and fundamental rights. This is particularly problematic in countries where a securitising trend was already ongoing before COVID-19, such as in Indonesia, the Philippines, and Sri Lanka. This also raises concerns regarding the further entrenchment of security in the health realm, endangering the rights of all people. Apart from the physical "policing" of the population, the use of technology, apps, and personnel to undertake contact tracing and monitor the movement of people was executed, which Chapter 4 will analyse.

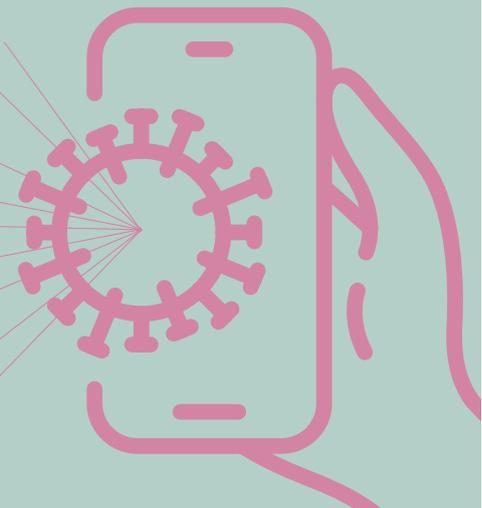
## 4. Digital Surveillance and Contact Tracing

To mitigate the spread of COVID-19, governments from Indonesia, Malaysia, Philippines, Singapore and Sri Lanka established digital surveillance and tracing measures, with physical contact tracing measures implemented and enforced by security officers, should digital contact tracing not suffice. WHO supports the use of digital surveillance “to enable rapid detection, isolation, testing, and management of cases” as well as to “detect and contain clusters and outbreaks, especially among vulnerable populations” (WHO, 2020). However, in practice, many of these measures risk infringing on privacy, with governments leveraging the introduction of COVID-19 surveillance measures to infiltrate and obtain personal information and share it across government agencies for law enforcement. In the process, marginalised and vulnerable communities were disproportionately affected, while digitised tools for data collection reinforced the digital and systemic inequalities.

### Surveillance and Privacy

- **Contact-tracing apps** are often **developed** by **public** and **private** enterprises
- **Existing digital infrastructure** is leveraged to institute the **data collection** system
- In **lower-middle-income** countries, apps produced are often **low-cost** and **low-quality**
- **Concerns** over **data** and **privacy breaches** have thus ensued

- ❶ **Passport number**
- ❶ **Contact number**
- ❶ **Full name**
- ❶ **Age**
- ❶ **Gender**
- ❶ **Ethnicity**
- ❶ **ID number**
- ❶ **Home address**
- ❶ **Email address**



Source: Multiple government agencies and news websites

#### a. Indonesia

In Indonesia, the PeduliLindungi (Care and Protect) app was launched in late March 2020 (Lin et al., 2020) to support contact tracing, tracking, and geo-fencing (Arkyasa, 2020). PeduliLindungi collects data through the activation of an individual’s location, providing users with information regarding crowd control and zoning (PeduliLindungi, 2021). The zones are classified according to the intensity of the spread of COVID-19, as well as the number of confirmed COVID-19 cases, represented by the colours green, yellow, and red. Another app, 10 Rumah Aman, also known as 10 Safe Houses, was launched on 31 March 2020 (OneTrust DataGuidance, 2020) to complement PeduliLindungi. 10

Safe Houses allows individuals to measure their body temperature and independently monitor their health through Artificial Intelligence technology. It also provides information on potential locations that may spread COVID-19 based on an analysis of an individual’s body temperature (Dharmaraj, 2020), monitoring the spread of COVID-19 on a community and home-environment basis (Dharmaraj, 2020). For public areas such as shopping malls, residents must scan a QR code and fill in their basic personal information that will help in tracking and limiting the number of people within the mall (Sandi, 2020).

PeduliLindungi was developed through a joint collaboration between the Communications and Information Ministry

and State-Owned Enterprises Ministry (The Jakarta Post, 2020). All data captured is stored encrypted on a secure PeduliLindung server. As of 16 December 2020, it was reported that 4,600,000 Indonesians have downloaded PeduliLindungi (Johnson, 2020). 10 Safe Houses was developed by a joint collaboration between the President's Staff Office and the Ministry of Communication and Information Technology. Whilst both apps did not specify where the data collected would be stored, it is most probable that such confidential and strategic data would be stored with the central government, specifically the Minister of Communication and Informatics (Norton Rose Fulbright, 2020).

Privacy infringement and mass surveillance concerns, however, have arisen. Despite PeduliLindungi only requiring a user's full name and phone number for tracking purposes, the app is programmed to request unsuspecting users access to their device's camera and memory card. In June 2020, the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights and civil society organisations denounced the "high potential [of the app] to put users' privacy at serious risk", and asked the government to make public the application's source code and privacy policy (Article 19, 2020). 10 Safe Houses further requests for more information, including a user's address. The personal information on both apps is at risk of being misused because there are third-party companies, apart from the government, that process this data information. The Indonesian government has stated in two ministerial decrees (Ministry of Communication and Information, 2020) that both apps are securely protected from phishing and malware, confirming that personal information collected will be removed from the database following the end of the pandemic. Yet, the exact duration the data would be kept for, and the purposes for which the government can use the data, were not specified. Furthermore, Indonesia has weak data protection laws and reporting protocols. It does not have a specific institute to regulate data protection, with data breaches handled by the same Ministry of Communication and Information Technology, and National Police's cybercrime division (Florene, 2020). The lack of measures to prevent and address data breaches, as well as periodic assessments of data theft, result in poor data management.

Apart from mobile applications, Indonesian national security agencies have also been heavily involved in contact tracing. Specifically, the State Intelligence Agency has prepared rapid test mobile laboratories in areas including Jakarta, South Tangerang, Tangerang, and Surabaya. It

is imperative to note, however, that their actions have received criticism for firstly, lacking the epidemiology and public health knowledge required to tackle COVID-19 effectively, and secondly, lacking transparency in their intelligence work (Chairil, 2020). As of 25 August 2020, manual contact tracing remained weak due to a lack of community health centre workers. Many workers were overwhelmed by the influx of COVID-19 cases, with many infected, or under self-imposed quarantine. Additionally, residents were unwilling to provide contact tracers with personal data, stemming from mistrust towards the authorities. Many contact tracers have reported physical and verbal abuse, with families who are still mourning for the deceased, uncooperative in stating where and who the patient interacted with (Rayda, 2020). The high mobility rate of many city dwellers further reduced the effectiveness of contact tracing (Syakriah, 2020). Lastly, despite heavy involvement of law enforcement, a lack of PCR testing kits and poor health preparedness, together with widespread distrust towards the government response and its lack of transparency, made efforts to trace and control the spread of the virus overall ineffective (Riefky et al., 2020).

## b. Malaysia

Malaysia has launched several contact tracing apps locally, including MySejahtera (MySejahtera, 2021), MyTrace (MOSTI, 2020), PgCare (PGCare, 2020), and SabahTrace (SabahTrace, 2020). This however, led to an initial inefficacy of contact tracing, with the system being too decentralised to properly capture data. Thus, as of August 2020, the government has mandated MySejahtera to be the compulsory data tracing app in all regions (The Straits Times, 2020), with an estimated reach of 25 million users, or one in five people (CodeBlue, 2020). Failure to comply will result in a penalty of up to RM10,000 (US\$2407) for individuals and up to RM50,000 (US\$12,019) for businesses (Cho, 2021). MySejahtera was launched in April 2020 under the Prevention and Control of Infectious Diseases Act 1988 (Act 342). The app provides information including outbreak hotspots, hospital locations, and most recently, vaccination registration (Othman & Babulal, 2020). MySejahtera's data collection includes an individual's contact number, email address, full name, identity card number, age, gender, ethnicity, and home address (Boo, 2020).

MySejahtera was developed by Entomo, a Malaysian analytics company formerly known as KPISOFT. The MySejahtera system, on the other hand, was developed through a strategic cooperation between the National

Security Council, the Ministry of Health, the Malaysian Administrative Modernisation and Management Planning Unit and Malaysian Communications and Multimedia Commission and Ministry of Science, Technology and Innovation (MOSTI). An individual's data is only extracted from the database when potentially linked to a positive COVID-19 case. The government is strictly adhering to the regulations of the Medical Act 1971, and the Prevention and Control of Infectious Diseases Act 1988, treating data as confidential patient information (MalaysianWireless, 2020). Thus, the institutions able to access private data are limited to seven entities, inclusive of the national Crisis Preparedness and Response Centre (CPRC), the disease control division under the Ministry of Health, and the National Cyber Security Agency. Regular performance assessment tests are conducted to ensure that the app is safe from malware or phishing attacks.

The digital nature of MySejahtera, however, has led to privacy infringement concerns. Similar to Indonesia, MySejahtera does not merely collect location data. According to Exodus Privacy, users granting access to MySejahtera unintentionally allowed the app to delete content on SD cards, modify phone contacts, find accounts on a device, and directly call phone numbers (CodeBlue, 2020). The government, additionally, is exempted from the Personal Data Protection Act under Section 3(1) (Dina, 2020), implying poor enforcement of data protection and privacy regulations. Residents have also complained about the ineffectiveness of the app, with MySejahtera being overwhelmed and subsequently missing thousands of close contacts and positive COVID-19 cases (Sukumaran, 2021).

The pandemic has further highlighted the marginalisation of certain communities. In particular, individuals from lower income groups (Aiman, 2020) who lack access to mobile devices and Internet connectivity have been deeply impacted, with 36% of Malaysians estimated to not own a smartphone (Dayangku, 2020). In a similar vein, undocumented migrant workers, amounting to a total of two to four million according to the International Organisation for Migration (Lum, 2021) lack proper identity documents to facilitate data tracing (Beh, 2020).

To mitigate this issue, authorities from District Health Offices have employed manual methods of contact tracing, establishing both a risk assessment and a response team to collect the relevant information for data recording purposes, which is subsequently passed to the CPRC. Manual methods of contact tracing, however, remain tedious, and issues pertaining to faking personal

information remains. COVID-19 has further shed light on the unjust treatment varying across different income and social groups. Notably, Cabinet Ministers were exempted from the mandatory 10-day quarantine upon arriving back in Malaysia (Anand, 2021), amidst a worsening pandemic. This sparked much controversy and exemplified the double standards in regulating COVID-19 (Sukumaran, 2020).

## c. Philippines

The Philippines launched StaySafe.PH as its official health condition reporting, contact tracing, and social distancing app on 2 September 2020 (StaySafe, 2020). The app collects an individual's name, age, gender, and residence, with optional details including one's company name, address, photo, and ID.

StaySafe.PH was developed by Multisys Technologies Corporation in collaboration with PLDT-Smart Group, PLDT Enterprise and the Interagency Task Force on the Management of Emerging Infectious Diseases (IATF-MEID), as well as the National Task Force on COVID-19. As of 30 March 2021, an estimated 15 million individual users and 700 LGUs have adopted the StaySafe.PH app (Government of Philippines, 2020). The government has declared that StaySafe.PH will only submit an individual's personal data should they be suspected or confirmed as a COVID-19 patient, as per the Mandatory Reporting of Notifiable Diseases and Health Events of the Public Health Concern Act. Additionally, StaySafe.PH supports Manual Contact Tracing data, with local governments in the Philippines granted access towards the aforementioned set of data. According to the government, Digital Contact Tracing Data shall be destroyed after 30 days, and Manual Contact Tracing data shall be destroyed after a 60-day period.

The transparency of StaySafe.PH, however, has not been made clear. According to the Inter-Agency Task Force on Emerging Infectious Diseases, StaySafe.PH is mandated to abide by the minimum data requirements set by the Department of Health's Memorandum No. 2020-0436, thus treating StaySafe.PH as a disease reporting, epidemiology, and surveillance unit, instead of solely as a contact tracing app. The classification of StaySafe.PH as a disease reporting unit implies the substantial submission of information to government authorities (Jacob, 2020). Furthermore, as an Information and Communications Technology-based app, StaySafe.PH is vetted by the Department of Information and Communications Technology (DICT). Concerns are arising because the multi-agency body comprising DICT,

Department of Science and Technology, Department of the Interior and Local Government, the Philippine National Police, and the Armed Forces of the Philippines may potentially use data collected by StaySafe.PH for law enforcement and military purposes. The deterioration of contact tracing in the Philippines, evinced by a declining contact tracing ratio from 1:7 to 1:3 between the time frames of 28 February 2021 to 14 March 2021, and 15 March 2021 to 29 March 2021 (Talabong, 2021), can likely be attributed to the potential privacy infringement StaySafe.PH poses. Experts have also attributed such a trend to the lack of a unified contact tracing system, further worsened by companies competing against each other to produce different apps (Aurelio, 2021). Additionally, the lack of credibility of StaySafe.PH, evinced by the delayed production of certification by the Department of Information and Communications Technology, has led to the withholding of government funding that can improve and expand StaySafe.PH's data surveillance methods (Ranada, 2020).

Moreover, lapses in the implementation of contact tracing have been observed. A widening inequality gap has emerged, with the poor abused to the extent of being beaten with a paddle, and forced to conduct degrading and humiliating acts, while the rich and powerful easily evade punishment for flouting COVID-19 quarantine regulations. For example, in January 2021, Philippines' contact-tracing chief Benjamin Magalong attended a birthday party, where few attendees wore masks or exercised social distancing requirements. Initially, he claimed ignorance of the illegal gathering until a YouTube video surfaced confirming his attendance (Robles, 2021). While he tendered his resignation letter, the NTF rejected his resignation and kept him on the post.

Lastly, the Philippines lacks digital assimilation, having relied heavily on hospital-based care (Philippine Society of Public Health Physicians, 2020) and physical contact tracers to contain the spread of COVID-19. The lack of public health care facilities and resources targeting the effective training of tracers, (Arcangel, 2021) have led to poor contact tracing; with the data of confirmed COVID-19 patients often failing to be updated and encoded. For example, in November 2020, it was estimated that out of the 'capacitated' 135,000 contact tracers in the Philippines, less than half were remunerated. This was attributed to the Bayanihan to Recover as One Act, or the Bayanihan 2, which only allowed the release of budget for 50,000 contact tracers until December 2020 (CNN Philippines, 2020), amplifying the transience of these workers. Whilst the government is progressively attempting to bridge

the gap through its Disadvantaged/Displaced Workers or TUPAD Program - wherein the Department of Labor and Employment planned to hire and deploy 5,754 contact tracers in Metro Manila for three months with a minimum wage of ₱537 (US\$10.78) per day (The Star, 2021) – physical contact tracing remains weak.

## d. Singapore

The government launched two complementary apps, namely TraceTogether and SafeEntry (TraceTogether, 2020), to facilitate contact tracing. The TraceTogether app was launched on 20 March 2020 (Tang & Mahmud, 2020), whilst the physical TraceTogether Token, which uses Bluetooth low energy to transmit data (Chee, 2021), was launched officially on 28 June 2020. SafeEntry was utilised from 23 April 2020 onwards (Government of Singapore, 2020). The purpose of TraceTogether is to identify individuals who were in close proximity with confirmed COVID-19 cases, while SafeEntry locates potential clusters by logging the places a person has visited via QR code scanning. TraceTogether collects data including an individual's contact number, identification details, a random anonymised User ID, and Bluetooth proximity data, which will be automatically deleted after 25 days (TraceTogether, 2020). SafeEntry collects an individual's full name, identity card number or equivalent, mobile number, address and timestamp of the subject premises entered (SafeEntry, 2021). To prevent privacy infringement, TraceTogether has omitted the collection of real-world location data, instead exchanging short-distance Bluetooth signals with nearby users of the token or app to identify potential COVID-19 cases (GovTech, 2020). If an individual has been diagnosed with COVID-19, their data would be uploaded to the Ministry of Health's database for decryption and contact tracing purposes (Personal Data Protection Commission, 2021).

Both apps were developed by a joint collaboration between the Government Technology Agency and Ministry of Health (MOH). As of 26 February 2021, an estimated 90% of the population uses TraceTogether (Wong, 2021). Manual check-ins were thus discontinued after 31 May 2021, with check-ins being recorded by the TraceTogether app or token (Low, 2021). As of 12 July 2021, contact tracing and surveillance is enforced by TraceTogether only, wherein SafeEntry is mandatory in all venues, and individuals will have to use either the TraceTogether token or app to check-in (SafeEntry, 2021). With regards to TraceTogether, the Bluetooth proximity data collected is stored securely on an individual's device, only shared with MOH should one

test positive for COVID-19. TraceTogether and SafeEntry store the collected details in a secure Government server (TraceTogether, 2021), which can only be accessed by the relevant authorities to facilitate contact tracing, or criminal investigations and proceedings as defined by the COVID-19 (Temporary Measures) Act 2020 (SafeEntry, 2021; Singapore Statutes Online, 2021).

Issues pertaining to privacy infringement, however, have arisen. Prior to the adoption of the aforementioned bill, it was revealed that Singaporean authorities could access private data for criminal investigation purposes, contradictory to their initial claim of only accessing TraceTogether data should one be tested positive for COVID-19 (Illmer, 2021; Tham, 2021). This was met with severe public backlash, even after the introduction of the Covid-19 (Temporary Measures) (Amendment) Bill, which specifies seven crimes in which personal contact tracing data can be used for investigations or criminal proceedings (Chee, 2021) – and is thus in itself problematic. Leader of the Opposition Pritam Singh further highlighted how other law enforcement and investigation tools, such as CCTV footage and forensic examinations of devices, could be utilised in place of TraceTogether’s data collection, surfacing that convenience in tackling investigations should not compromise individual privacy (Han, 2020). Opposition Party Progress Singapore Party further reinforced that TraceTogether data should be clearly defined and used in contact tracing, with its employment under the Criminal Procedure Code potentially discouraging residents from using TraceTogether altogether (Wong, 2021).

Singapore’s high digital connectivity and mobile penetration rate has led to the gradual phasing out of manual contact tracing. This has also impacted communities, such as foreign workers in the construction, marine, and process sectors, who were mandated to download the TraceTogether app by a stipulated deadline amidst soaring COVID-19 cases in Singapore’s foreign worker dormitories. Being registered on TraceTogether soon became a criterion for workers to meet before being granted access to leave their dormitories for work (Wong, 2020). However, as per a MOM report published in 2015, only 53% of foreign workers use phones, with 19% lacking Wi-Fi access at their accommodation (Ministry of Manpower, 2015). The usage of the contact-tracing token, BluePass, therefore mitigates the issue arising from the migrant worker’s lack of access to digital connectivity, with its functionality as a velcro-strap watch suiting the dormitory and worksite environment (Ng, 2020). As of early November, more than 450,000 workers have received BluePass. Close-contact data from BluePass is encrypted

“with no personal identifiable information stored” (CNA, 2020), but concerns have arisen related to its potential long-term implementation within the new normal (CNA, 2021).

## e. Sri Lanka

Sri Lanka leveraged an existing platform, District Health Information Software 2 (DHIS2), to execute surveillance and vaccine delivery. Implemented in 2013 (Manoj et al., 2013) and created by the Health Information Systems Programme, DHIS2 undertakes the functions of contact tracing, daily reporting, surveillance, and port of entry screening (Inter-American Development Bank, 2021). In particular, to track incoming travellers from regions with high risk of COVID-19 infection, a new DHIS2 Tracker was created (DHIS2, 2021). Upon an individual’s first point of registration, the tracker collects data including one’s name, date of birth, gender, email, passport number, and telephone number (Amarakoon, 2020). After the 14-day quarantine, DHIS2 health care workers will monitor and follow up with individuals to check for symptoms of COVID-19 (Exemplars in Global Health, 2020). Utilising the tracker is mandatory for all incoming travellers.

Systemic discrimination has been further perpetuated during the COVID-19 crisis. Military personnel purposely placed a higher proportion of quarantine centres in predominantly Tamil and Muslim regions, despite these areas having relatively low infection rates. Moreover, military personnel have utilised a combination of contacts, places visited, and immigration records to discriminatorily trace Tamils and Muslims (Independent Professionals Alliance, 2020). It appears that the data collected has not been properly encrypted, and how exactly individual data is handled has not been clearly articulated.

As part of manual contact tracing regulations, the military have further employed drones in executing digital surveillance (Farzan, 2020). Specifically, drones survey borders of provinces under lockdown, and trace those breaking the prohibition (LIRNEasia, 2020). This has sparked controversy over the infringement of privacy, in terms of collecting data pertaining to individual residences and tracking of locations (Xinhua, 2020). Arbitrary arrests of individuals have led to speculation of the military abusing its power through an unjust collection of data and privacy infringements.



A review of the technology used and contact tracing undertaken in the five countries shows that multiple apps were developed, and that challenges exist surrounding uptake rates, especially among the digitally disadvantaged and vulnerable communities. Where access to technology was limited, the focus was more on physical contact tracing and surveillance. The main concern remains around the collection of data, its storage, privacy, and data sharing between ministries for law enforcement. The next chapter will review how the laws, enforcement agencies, and contact tracing and surveillance impact vulnerable communities and exacerbate the digital divide.

## 5. Impact on Vulnerable Communities

Following the review of COVID-19 and state of emergency laws, the role of enforcement agencies and monitoring and contact-tracing protocols, this chapter will highlight how these measures, designed to curb the spread of coronavirus, have affected vulnerable populations across the five countries. Measures such as lockdowns, curfews, movement control orders, as well as regulations pertaining to the designation of quarantine facilities have had a debilitating effect on various vulnerable communities, with refugees, indigenous and ethnic minorities, foreign domestic workers, migrants, and undocumented workers suffering from the impact of state laws.

### a. Indonesia

In Indonesia's West Papua, ethnic minorities have suffered from brutal and inhumane lockdown measures. This has been exacerbated by two factors: the enforcement of discriminatory COVID-19 protocols, and the region's ongoing armed conflict (Asia Pacific Report, 2021). The militarised response towards COVID-19 has resulted in a skewed power imbalance within the enforcement system, alongside a fundamental abuse of human rights. For example, on 25 May 2020, in attempts to disperse a group of local residents that the police claimed had refused to follow instructions, a water cannon was employed, resulting in the death of a Papuan man (International Coalition for Papua, 2021). The transport of cargo and medical personnel, additionally, was leveraged by the military to enter Papua's remote conflict zones, thereby putting minorities at risk (Solidarity for Indigenous Papuans, 2020). This is in spite of renewed lockdown measures being imposed within the region, evincing the military's guise in dehumanising West Papuans amidst the COVID-19 pandemic.

The urban poor refer to communities living below the urban poverty line, with a significant proportion not registered as residents, or simply denied entry into cities (Aji, 2015). This has resulted in them being denied social assistance, failing to obtain assistance packages including cash, staple food, and medical supplies (Wilson, 2020). Their lack of access to clean water and basic sanitation facilities has also been compounded by the pandemic, with the economic downturn resulting in their lessened ability to purchase water from private vendors. According to Statistics Indonesia, poorer households comprising four to five family members had a median income of Rp 3.36 million in 2019, implying for water consumption to be a significant burden in terms of a family's spending. Though handwashing is known to be one of the most effective ways to curb the spread of the coronavirus, such a basic right appears to be a luxury to the tens of millions of people

in abject poverty, who have little to no access to proper sanitation and medical facilities (Syakriah, 2020). The need for social distancing and self-isolation, lockdowns, and the criminalisation of pandemic-related responses further compounds the urban poor's inability to earn wages, as most of their livelihoods are dependent on the informal economy (Arshad, 2021).

The COVID-19 pandemic has also worsened the marginalisation of poor women. Poor women are more likely to be working in the informal sector, and self-isolation impedes their income flow. This impact is further underscored in female-headed households, which account for 15% of total households in Indonesia. Statistics underline how female-headed households are likely to have poorer living conditions than their male counterparts (National Bureau of Economic Research, 2019), with an estimated 2.5 million female-headed households needing to take care of children at primary school age, and an estimated 5 million female-headed households needing to support their parents. One in two poor female-headed households also have to provide care for people with disabilities in their home (University of Indonesia, 2020). With self-isolation measures implemented, the burden on these women is severely intensified. A combination of lockdown and self-isolation measures have also led to a rise in domestic violence cases. The Legal Aid Foundation of the Indonesian Women's Association for Justice (LBH APIK) said it had received 1,178 reports of violence against women and children in 2020, a significant increase from 794 reported cases in 2019, and 837 in 2018 (Syakriah, 2021). Moreover, the lockdown has reduced the avenues for reporting abuses, with unreported cases of violence against women becoming a trend (Syakriah, 2021).

## b. Malaysia

For the purposes of this study, migrant workers are defined as those that fulfil low-wage earning, irregular, and unskilled occupations (Phua & Min, 2020). It is estimated that there are between three and four million migrant workers in Malaysia. The onset of COVID-19, as well as the enhanced Movement Control Order (MCO), limited the operation of several informal sectors, many of which employed migrant workers. In fact, employers were told to limit their human resources to 50% or lower of the total workforce during the enhanced MCO period, preventing many daily-wage and productivity-based migrant workers from working. The Human Rights Commission of Malaysia further reported that the employment status of many migrant workers was ambiguous and not clearly communicated across by employers, and the uncertainty surrounding the renewal of their work pass permits further reinforced the irregularity of workers (Human Rights Commission of Malaysia, 2020).

Additionally, policy regulations regarding migrants' access to medical facilities were unclear, causing an unequal distribution of rights. Specifically, on 30 January 2020, the MOH indicated that migrants suspected to be COVID-19 positive would be exempted from paying outpatient fees, inclusive of registration, examination, treatment, and hospital fees (Wahab, 2020). However, on 23 March 2020, the government stated that the aforementioned fees should be paid by migrant workers, though MOH refuted the government's statement (Batumalai, 2020). Such discrepancies reflect an uncoordinated response towards the treatment of migrant workers, hinting at deep-seated prejudices that deny this vulnerable community fundamental rights.

Moreover, poor and unhygienic living conditions render migrant workers extremely susceptible to the coronavirus, as corroborated by the escalating positive COVID-19 cases amongst this community. Statistics highlight how positive COVID-19 cases amongst migrant workers constituted 72% of total COVID-19 cases during the period of 7 May 2020 to 12 June 2020, a significant proportion compared to the local community (Wahab, 2020). The poor living and working conditions in Top Glove factory, for example, resulted in Malaysia's largest COVID-19 outbreak and active cluster of 2020, with over 2000 migrant workers testing positive (The Straits Times, 2020).

The undocumented status of many migrants and asylum seekers led Malaysia to discredit formal recognition of this

vulnerable community (Daniel & Yasmin, 2020). Malaysia's stance towards asylum seekers has significantly hardened, leveraging the pandemic as an excuse to deny refugees entry. Hence, for boats intercepted close to shore or onshore, asylum seekers aboard are detained; while boats intercepted further out at sea are escorted out of territorial waters (Jeffrey, 2020). For example, a boat carrying an estimated 396 Rohingya had been turned away from Malaysian waters three times before being rescued by a Bangladesh coast guard, with 32 ethnic Rohingya having passed away prior to rescue (Paul, 2020). The transient status of undocumented migrants and asylum seekers, as well as their lack of citizenship rights, has complicated their obtainment of proper COVID-19 treatment. This has been exacerbated by the Malaysia government's backpedalling of its promise not to conduct immigration raids (Free Malaysia Today, 2020), leading many to refrain from seeking proper COVID-19 treatment and testing, thus escalating their vulnerability to the virus and its spread in the community. The Rohingya community, for example, is considered an "at-risk" group, estimated to be one of Malaysia's largest COVID-19 clusters (Malay Mail, 2020).

With an estimated two million undocumented workers, Malaysia's securitised response to the pandemic has resulted in many immigration raids, alongside the subsequent detainment of both undocumented workers and refugees in areas such as Kuala Lumpur and Klang Valley. Human Rights Watch and the Asia Pacific Refugee Rights Network said over 700 migrants, including young children, were taken into custody (The Straits Times, 2020) during massive raid operations conducted by the immigration, police, and civil defence forces (Sukumaran & Jaipragas, 2020). Specifically, the raid conducted on 11 May 2020 at Selayang Wholesale Market, where many illegal migrants previously worked, witnessed them undergoing an "identity verification" exercise that resulted in an estimated 1,300 people arrested, with many women separated from their husbands. Even as the Wholesale Market reopened, undocumented migrants were denied entry and jobs, despite the lack of locals willing to take up the migrants' occupations (Soo, 2020) - indicative of the rise in xenophobic sentiments targeting foreign nationals amidst the pandemic. Moreover, the poor conditions of the detention centres reflect the authorities' inhumane treatment of illegal migrants, with dozens often packed into one cell (The Straits Times, 2020). This has rendered social distancing impossible, exacerbating the spread of COVID-19 and thus resulting in coronavirus clusters at the immigration detention centres in Bukit Jalil, Semenyih, Sepang and Putrajaya (Wahab, 2020).

## c. Philippines

Members of the LGBTQI+ community were targeted for purportedly violating the COVID-19 travel and health advisories. In April 2020, there was a report of village officials in Pampanga province using public humiliation as a tactic to punish curfew violators. After three LGBTQI+ people were detained for staying outdoors after the curfew, the Barangay officer ordered them to kiss, dance, and do push-ups on a live social media broadcast (ABS-CBN News, 2020). On 3 April 2021, the PNP opened an investigation into the case of Darren Manaog Peñaredondo, who passed away after he was made to do 300 squat-like exercises, after local authorities caught him buying water outside his home after 6 PM. Peñaredondo, who had a heart condition, collapsed and passed away the next morning (Aben, 2021).

Homeless people were another group affected by the government's COVID-19 countermeasures. In mid-March 2020, a few days after Manila was placed under the ECQ, local authorities shut down a homeless shelter run by a faith-based organization and, in Quezon City, a cafe-converted temporary homeless shelter, claiming that these facilities violated quarantine procedures (Santos, 2020). Some businesses, however, have adapted and continue to provide assistance to the homeless. For example, bakery-converted temporary homeless shelter Popburri, delivers food to over 200 homeless people daily (Our Better World, 2020).

The ECQ has also rendered a higher proportion of young Filipinos to suffer from depression and sexual abuse. On 19 March 2021, the government issued an order mandating young Filipinos 18 year olds and younger to remain at home for minimally two weeks. These mobility restrictions have caused many youth to be plagued with anxiety and depression, with child protection units receiving an increase of reports of suicide attempts and sexual abuse (Gotinga, 2021).

## d. Singapore

To curb the escalation of COVID-19 cases, the Singaporean authorities implemented a lockdown, also known as circuit breaker, to enhance social distancing and isolation. The circuit breaker lasted for close to two months (Baker, 2020). During this period of isolation, the poor treatment of foreign domestic workers (FDWs) surfaced. For FDWs, the circuit breaker implied heavier workloads and shortened

rest hours, with the boundaries of work and rest blurred. Additionally, the right to rest days was often neglected, as FDWs were strictly not allowed to leave the house premises to mingle with friends. The increased proximity with employers further resulted in increased tension, with salary disputes as well as physical and verbal abuse cases ensuing (Wong, 2020).

According to a survey conducted amongst FDWs by The Association of Women for Action and Research (AWARE), 40% of respondents indicated fewer rest days, and 20% reported that they had no rest days, following the imposition of the circuit breaker. Stay-home measures also impacted the process of remitting money, as FDWs had lesser opportunities to leave their employers' house. This was mentally taxing, as much of their kin rely on the FDW's remittances to get by (Association of Women for Action and Research, 2020). Moreover, the circuit breaker resulted in the FDW's limited access to communication channels with agencies such as the MOM, with poor communication of working regulations and rights entitlement occurring (Antona, 2020). The Foreign Domestic Worker Association for Social Support and Training reported that the number of FDWs runaway cases more than doubled from March to April 2020, indicative of breakdowns in employer-FDW relationships. One FDW even reported that her employer barred her from entering his home as he was afraid that she would bring the coronavirus home.

The pandemic, and specifically the need for social distancing, highlighted the poor living, working, and mental conditions most migrant workers faced even before the pandemic. With regards to living conditions, an estimated 12 to 16 workers are housed in one room (Ratcliffe, 2020). Upon facing an outbreak of COVID-19 cases in the migrant worker dormitories, the Singaporean authorities further tightened social distancing and isolation measures, barring workers from exiting their designated room. NGO Transient Workers Count Too reported how workers surfaced fears of contracting COVID-19 due to the close physical proximity they have with other migrants in shared communal facilities (Chew, 2020). Additionally, state legislation reinforces how the welfare of migrant workers, even amidst a pandemic, remains neglected.

Despite food being provided for them, administrative errors in catering Chinese food for Muslims, and in arranging disproportionately small portions for the workers, indicate the poor and uncoordinated response towards ensuring the workers' minimal welfare (Paulo et al., 2020). The movement restrictions, and the mounting uncertainty FDWs face arising from job instability and

limited interactions with their families have also resulted in an escalation of mental health issues, causing many workers to attempt or commit suicide (Geddie & Aravindan, 2020), unaware on how and where to seek help from. This was compounded by the strict and tighter surveillance imposed onto the migrant workers during Phase 2 of Singapore's reopening, wherein the majority of the Singaporean population could meet in small-groups of up to five people (Zhang, 2020), but the workers were only permitted to "access the community once a month" subject to frequent testing and the wearing of contact tracing devices (Hui, 2020). As of 30 April 2021, workers are only permitted to leave the dormitory to visit designated Recreation Centres should they have a valid exit pass. Employers must also submit an essential errands form for workers to run errands (Ministry of Manpower, 2021). Reports state that digital surveillance surrounding migrant workers are unlikely to ease until the vaccination rates are increased (Heijmans, 2021), with such tracing measures likely to remain post-pandemic (Kathiravelu, 2020).

In 2021, re-infection plagued the migrant workers community, with workers who received the second vaccine dosage also testing positive (Aravindan & Lin, 2021). This suggests that the excessive and tight regulations imposed on migrant workers had little effect on mitigating the spread of the virus, and that a holistic evaluation of the workers' treatment should be incorporated into the health protocols implemented. While stringent testing measures are legitimate to curb transmissions, the principles of proportionality and non-discrimination envisaged by international human rights standards do not condone the disparate treatment of workers apart from the general population (OHCHR, 2021).

## e. Sri Lanka

Sri Lanka had implemented a nationwide curfew from 6pm on 20 March 2020 until 6am on 23 March 2020 to curb the escalation in COVID-19 cases (GardaWorld, 2020). The imposition of this curfew was unprecedented, with inadequate steps taken to supply essential goods and medicines to the population. Additionally, Sri Lanka's overall COVID-19 response has been highly militarised, with the President authorising the Police to arrest people for violating curfew (Jang, 2020). This resulted in the arrest of over 60,000 people needing essential goods for alleged curfew violations (Xinhua, 2020), despite lawmakers criticising the curfew's legitimacy due to lack of an adequate legal basis as well as lack of a dissemination transparency, reinforcing the disproportionate impact exerted onto

vulnerable communities amidst the criminalisation of COVID-19 exposure and transmission.

The militarisation of the public health response to COVID-19 has led to the blatant abuse of military power, with the military designating the North province of Sri Lanka as quarantine centres (QCs). The North province, inclusive of areas such as Oddusuddan, Vadamarachchi East, and Jaffna, are densely populated with Tamils, an ethnic minority (Tamil Guardian, 2020). Given the history of discrimination against the Tamils (World Directory of Minorities and Indigenous Peoples, 2018), and systemic ethnic profiling (Kumarasinghe, 2021), it is evinced that the designation of QCs is purposeful and politically motivated. Moreover, the fact that the military converted educational facilities into QCs, and subsequently denied their actions, highlights the blatant compromise of the Tamils' safety amidst a health crisis (Tamil Guardian, 2020). Additionally, despite the easing of travel restrictions, the harassment of Tamil journalists and politicians, the imposition of barricades and arbitrary arrests and detentions remain rife, evincing the militarisation of the pandemic response (Tamil Guardian, 2021).

With regards to the Muslim minority, the government has mandated compulsory cremations for Muslims who have died after contracting COVID-19, in violation of traditional Islamic funeral practices that involve burying the dead (Qazi, 2020). Despite WHO guidelines that permit burials, the hard government stance has deprived Muslims of their fundamental religious rights (Tennakoon, 2020).

Overcrowding in prisons and detention centres made it impossible to isolate and maintain social distancing. The quick spread of the virus led prisoners to protest over the overcrowded and unhygienic living conditions, which propelled security forces to open fire in the Mahara prison in Gampaha District, Bogambara prison in Kandy, and Anuradhapura prison. This resulted in the death of 11, one, and two prisoners respectively, with more than 100 individuals injured (United States Department of State, 2021). Coupled with the killings, and the fact that prison centres such as Mahara Prison blatantly disregarded the official capacity of 1,000, it is evident that basic human rights of prisoners have not been observed before, nor during, the pandemic.

Low-wage and productivity-based garment workers from parts of Katunayake Free Trade Zone also suffered from poor and overcrowded living conditions. On 11 October 2020, the military forcibly took these workers, alongside their spouses and children, to makeshift QCs, providing

them with less than 10 minutes to pack their bags and reportedly raiding their boarding rooms (EconomyNext, 2020). The lack of provision of protective masks, and poor dissemination of information, including failing to inform workers of the QC's location, worsened the impact of the government's uncoordinated response. Rights were further denied in separating workers from their families despite not having undergone proper COVID-19 testing, with the lack of a polymerase chain reaction (PCR) test subjecting the workers to an increased threat of contagion (Jang, 2020).



The issues highlighted in this chapter point to the mistreatment of vulnerable, undocumented, exploited, and minority groups amidst the COVID-19 pandemic, often exacerbated by securitised and militarised approaches introduced under the guise of health and pandemic-related measures. The next chapters will provide some recommendations, targeted towards preventing the exacerbation of human rights violations against over-policed communities.

## 6. Compliance with International Human Rights Standards

In analysing the application of COVID-19 health protocols and the use of executive powers – including through states of emergency – in the five countries under review, this report underscores an alarming trend arising from the governments' responses to the coronavirus pandemic. Across all five countries, the urgency of the situation propelled public officials, with little transparency, to equate the COVID-19 responses with fighting a 'war', effectively turning global public health challenges into national security threats. Consequently, individuals and communities that failed to or could not comply with COVID-19 protocols were treated as criminals or enemies, compounding the mistreatment of marginalised communities. The COVID-19 protocols implemented were primarily aimed at disciplining the population, rather than at preemptively identifying possible patients for treatment and cure. In the process, many countries excessively securitised their pandemic responses, aligning their health protocols towards pre-existing governmental agendas. The failure to comply with international health and human rights standards, such as the Siracusa Principles (that clarify the boundaries of rights limitations under the ICCPR), underscores the countries' lack of commitment towards international protocols, and an excessive focus on criminalisation of transmission and exposure to COVID-19.

### a. Rise in Securitisation of Health Protocols

The five countries under review have responded to the COVID-19 pandemic through varying degrees of securitisation, ranging from a *blended civil-military response* (Singapore), to *securitised responses* (Indonesia, Malaysia, the Philippines), to a fully *militarised response* (Sri Lanka). Both active and retired security personnel dominated, and in some cases led, national task forces in Indonesia, Malaysia, the Philippines and Sri Lanka, sidelining health experts and social service professionals. This is compounded in countries with an existing trend of securitisation and militarisation, including Indonesia, the Philippines and Sri Lanka. As previous experiences have highlighted, "pivotal events (such as humanitarian crises, epidemics, wars and now COVID-19) further entrench militaries as common actors in the health realm" (Gibson-Fall, 2021), perpetuating a problematic and dangerous securitised approach that severely overlooks health and human rights.

Governments further defended the legitimacy of such securitised and militarised measures by pointing at the "emergency" of the situation. However, such measures in the context of a national emergency were not legally subject to rights limitations stipulated under the Siracusa Principles of 1984, which are non-binding (Todrys et al., 2013). Sun (2020) buttresses how the Siracusa Principles "are difficult to operationalise in public health crises", with the uncertainty of the situation rendering the assessment of the degree in which responses are "evidence-based or arbitrary" to be extremely difficult.

The Siracusa Principles (ECOSOC, 1984) articulate that in times of emergency rights can only be restricted should the following standards be met:

- a) provided for and carried out in accordance with the law;
- b) based on scientific evidence;
- c) directed toward a legitimate objective;
- d) strictly necessary in a democratic society;
- e) the least intrusive and restrictive means available;
- f) neither arbitrary nor discriminatory in application;
- g) of limited duration; and
- h) subject to judicial review.

It is highly debatable whether most of these criteria are satisfied under the five countries' emergency laws. In relation to judicial review of such laws, while this may exist on paper, in some authoritarian contexts, courts are entirely compliant with the wishes of the ruling regimes.

Across the five countries reviewed, political opportunism was rife, with all task forces limiting human rights protections to various degrees. The authorities of the five countries have, under the guise of the pandemic, tightened media regulation and censorship, ostensibly to prevent pandemic-related misinformation. The vagueness of the laws and the immense authority wielded by incumbent parties to enforce such legislation raise questions around the legitimacy and proportionality of such restrictions. Additionally, whilst social distancing and "lockdowns" were deemed necessary to combat the COVID-19 outbreak, the population's basic needs comprising food, water, sanitation and shelter were not adequately met (Sun,

2020). In Indonesia, the urban poor's access to water worsened with lockdowns. The residents in the Philippines were not given sufficient time to procure supplies before the imposed curfew. The poor incorporation of civilian, scientific health leadership led to over-militarised responses that were insensitive to basic human needs.

Without adequate measures to address the population's basic needs, it is irrational to expect residents to abide by vaguely-worded and hastily imposed laws. The criminalisation of COVID-19 exposure and transmission, as enacted by law enforcement agencies across the five countries, is thus not substantiated by proportionate legislation. Moreover, the harsh and degrading penalties levied onto residents often lack legality, with the punishments imposed disproportionate to the crime committed, and degrading in nature. In Indonesia for example, the public shaming act of forcing violators to dig graves for the deceased severely violates fundamental human rights, and is clearly misaligned with the Siracusa Principles, which require that measures introduced in times of emergencies be "based on scientific evidence" and are not arbitrary "in application". Notably, The Siracusa Interpretative Principles further clarify that "The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse". Based on the report's overall analysis, it is debatable whether the legislation imposed is clearly defined and proportionate.

## **b. Rise in Surveillance and Privacy Violations**

The securitisation of pandemic responses also raised the issue of data privacy infringement, notably in states that have poor legal protections. Governments of all countries reviewed in this report have introduced contact-tracing apps and manual contact-tracing methods to collect individual information for purposes of reducing the COVID-19 transmission (WHO, 2020). Yet, when many such applications were launched, they remained in the preliminary and experimental stages, with countries such as Sri Lanka lacking proper digital infrastructure to support the proliferation of contact-tracing apps.

Across all five countries reviewed, the applications launched involved a government-affiliate and a third party manufacturer. A lack of transparency and accountability within some data collection frameworks caused rife

privacy violations. For example in Sri Lanka, it was possible for the identification of an individual's COVID status to be made via an "Application Programming Interface" call should one have access to an individual's National Identity Card. Additionally, identities of COVID-19 positive patients and their families were leaked in online and offline media (Bandaranayake & Natesan, 2021). In Singapore, the collection of details was exposed to being legislated for use in criminal investigations (BBC News, 2021), with the vagueness of what falls under the jurisdiction of the Criminal Procedure Code exacerbating the distrust of the population towards government. Concerns thus abound over how such sensitive information was handled, and whether adequate legislation and infrastructure is in place to prevent data leakages and unwanted sharing. None of the five countries inspire confidence in this regard.

International human rights standards have outlined the need to uphold data privacy even amidst public health emergencies. Article 12 of the UN Declaration of Human Rights (1948), whose key provisions are binding under customary international law, states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 17 of the ICCPR (1966), a binding instrument to which Indonesia, the Philippines and Sri Lanka are party to, stipulates that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence". However, it is evident that governments have leveraged the crisis to further restrict fundamental rights, with controversies and the extent of intrusivity displayed, questioning the validity of data collection and privacy amidst the pandemic (McKinsey & Company, 2020).

## **c. Vulnerable Communities Disproportionately Affected**

Whilst COVID-19 mitigation efforts have affected people across all social strata, vulnerable communities—including ethnic minorities, undocumented workers, foreign domestic workers, refugees, members of LGBTQI+ community, people in detention, homeless people, and (in this particular case) frontline public health personnel—have been exceedingly put at a disadvantaged and precarious position exposing them further to health risks, as well as discrimination.

The securitisation of the pandemic response and the introduction of intrusive surveillance methods has undeniably affected vulnerable populations in unique ways. The appointment of security officials in leading task forces has led to injudicious, rigid, and in some cases violent practices that resulted in further marginalisation of vulnerable populations, hindering the overall fight against the virus. Crucially, these vulnerable communities already suffer from poor living conditions, but the intrusive laws passed under the guise of mitigating the pandemic, further perpetuated their hardship. For example, as analysed in Chapter 3 and 5, many of the authorities overlooked the unhygienic, cramped, and overcrowded prison facilities that they detained immigrants or those violating COVID-19 measures in. This accelerated the spread of COVID-19, and in many instances, led to the countries' largest virus clusters. The criminalisation of COVID-19 transmission and exposure, further exacerbated the negative and disproportionate impact exerted on many of these vulnerable populations. The scarcity of professional medical input compounded the lack of evidence- and rights-based enforcement practices, which if properly regulated and aligned with human rights standards, could have potentially avoided outbreaks altogether. Centring human rights and health in COVID-19 control protocols is crucial in curbing its spread, and both must be followed in tandem to effectively quell the virus.

The authority wielded by law enforcement agencies also granted them the ability to execute unjust punishments on vulnerable populations disproportionately. For example, the LGBTQI+ community in the Philippines were unfairly discriminated against in the enforcement of COVID-19 protocols, with humiliating and degrading punishments broadcasted. Though the three LGBTQI+ people were caught outside past curfew, being punished and ill-treated for running an errand amidst a poorly planned lockdown, in which the population had insufficient time to procure essential supplies, highlights the unjust treatment of vulnerable populations.

Apart from the securitisation and criminalisation of COVID-19 responses and transmission respectively, the increased reliance on digital contact tracing has exacerbated the digital divide present within the countries' various social strata. In Indonesia, an estimated 90 million people lack internet access, with roughly 70 million students having been adversely affected by school or tertiary-level education shutdowns. The segregation of the urban poor became even more pronounced, with students from rural regions lacking the infrastructure and finances to support online learning, resulting in teachers

and students engaging in the risky practice of "door-to-door teaching" (The Straits Times, 2020).

In Malaysia, there is a significant divide between West and East Malaysia, with the former providing high-speed internet of up to 800 megabytes per second, and the latter having significantly slower internet speeds and completely no internet access in some regions inclusive of Sabah and Sarawak (Sia & Adamu, 2020). This has led to a low uptake of remote learning in East Malaysia, with students unable to afford internet coverage due to their economically vulnerable backgrounds (Jalli, 2020).

In the Philippines, internet affordability is relatively low compared to its counterparts, with the cost of monthly internet services (with 60Mbps Average Speed) estimated at US\$46.99 (Moneymax, 2021). Additionally, it was revealed that only 55% of Filipinos have internet access (Bueno & Pacis, 2020). In Singapore, the pandemic has underscored a wide disparity in terms of internet access, with roughly one in 10 households lacking digital access and five in 10 households in one- and two-room HDB flats having no internet access and/or lacking a personal computer. Those who have reduced access to digital devices have been termed "digital outcasts" (Ong, 2020). In Sri Lanka, the lack of overall digital infrastructure has led to the implementation of digital contact-tracing to be difficult, with it being the only country out of the five countries analysed to lack a proper application tracking system (World Bank, 2021).

Overall, the impacts exerted onto vulnerable communities are disproportionate, compared to the rest of the population amidst the health crisis. In restricting the rights of people, many governments have overlooked the fundamental protections accompanying the conditions for them to institute a state of emergency and/or legislate temporary measures.

#### **d. Legal Frameworks Do Not Provide Effective Protection**

The above-mentioned problematic elements of the COVID-19 responses are compounded by inadequate protections under related legal frameworks. Aside from non-compliance with the Siracusa principles, other international rights laws and standards were similarly contravened.

With regards to women's rights, for example, the measures imposed harboured inadequate protections for women

and young girls. OHCHR has identified a number of issues reported globally, including: women and girls' increased exposure to and confinement with their abusers, de-prioritisation of sexual and reproductive health services, and the lack of support services to victims (OHCHR, 2020). Additionally, many women are disproportionately concentrated in low-paying and informal sectors which have been severely impacted by the pandemic. This has increased their "vulnerability to trafficking and sexual violence" and overall gender-based violence (UN, 2020). In criminalising the transmission of COVID-19, the authorities have failed to ensure that the basic needs of the population are met, leaving them wageless and at risk of contracting COVID-19 due to the precarious living conditions they face (Council of Europe, 2020).

With regards to asylum-seekers, the pandemic has provided governments with enhanced authority to impose strict border closures and expulsions, in contravention of the principle of non-refoulement and the principle of non-discrimination articulated in international treaties, encompassing international refugee, human rights, and maritime law (Columbia Mailman School of Public Health et al., 2020; Lupieri, 2020). Few countries are making exceptions for people seeking asylum (UNHCR, 2020), with the countries assessed in this report implementing punitive measures against these vulnerable populations. In countries with existing camps for refugees, and in some cases, migrants, exclusionary health policies have resulted in the denial of the right to access to COVID-19 testing and treatment for these vulnerable populations. This is in direct violation of the right to health as articulated by the Committee on Economic, Social and Cultural Rights (OHCHR, 2021), which among others requires:

- access to safe and potable water and adequate sanitation;
- an adequate supply of safe food, nutrition and housing;

- healthy occupational and environmental conditions; and
- access to health-related education and information.

Additionally, it is both immoral and ineffective for governments to criminalise COVID-19 exposure and transmission, whilst blatantly denying these vulnerable populations fair access to proper treatment. As outlined in Chapter 5, some governments have even resorted to deceit and manipulation, rendering treatment targeting refugees and migrants unjust and disproportionate. International regulations indicate that states, in detaining vulnerable populations in prisons and/or detention centers, have the obligation to "ensure" and extend the "same standard of health care" to them regardless of "regardless of citizenship, nationality or migration status" (OHCHR & WHO, 2020). However, as the examples of Malaysia and the Philippines show, when such conditions are not met, the result is a worsened virus outbreak that threatens the public safety and health of the general public.

Overall, the pandemic has underscored the need for countries to uphold their commitments under international human rights and customary law. In spite of the global health emergency, the legitimacy of securitised pandemic responses is suspect and their enforcement has proved ineffective. To quell the virus, governments must recognise that a sufficient integration of health leadership, science, and rights-based regulations is imperative to achieve an effective health response. The following chapter will thus list some recommendations for relevant stakeholders.

## 7. Recommendations

To address the issues outlined in this report, the following recommendations are divided into two broad categories. First, de-securitisation, and the adoption of a health-centred approach consistent with the protection and promotion of fundamental rights. Second, increased support for vulnerable communities. These recommendations are directed at The World Health Organization and United Nations agencies, such as the Office of the United Nations Human Rights Council, Governments, and other Civil Society Organisations (CSOs). These actors have equally important roles to play in reducing the militarisation and securitisation of health protocols observed in the five countries, including efforts to support over-policed communities. The recommendations outlined below thus elaborate on the support that each stakeholder can offer.

### a. De-securitisation

#### United Nations Human Rights Council

- Focus attention on reducing the securitisation and militarisation of pandemic responses and their impact on human rights, in collaboration with all special procedures and treaty bodies;
- Propose a draft resolution on the de-securitisation and de-militarisation of pandemic responses in light of reports submitted to the Human Rights Council;
- Leverage global influence and platforms to advocate for the de-securitisation and demilitarisation of pandemic responses;
- Develop a joint framework of action in collaboration with the WHO aimed at ensuring respect for fundamental rights in health emergencies;

#### World Health Organization (WHO)

- Jointly with OHCHR, develop practical guidelines for the protection of fundamental rights while confronting public health emergencies;
- Provide guidance to member states of its Assembly on the principle of scientific and civilian oversight of emergency responses and the complementary role of enforcement agencies, consistent with the principle of democratic control of police and armed forces;
- Cooperate with the relevant government bodies to strengthen countries' public health capacity, including the prioritisation of health and its underlying determinants;
- Encourage that any Pandemic Treaty adopted, clearly incorporates and centres upon human rights.

#### Governments

- Respect international human rights laws and standards, including on health, non-discrimination, privacy and data security;
- Remove emergency laws and policies that are not in conformity with the Siracusa Principles;
- Only implement justified, proportional, legal and necessary laws that adhere to existing legislation;
- Review the composition of national and local COVID-19 task forces to ensure they integrate a balanced combination of government, civil society members, and directly relevant institutions, under the leadership of health experts, to ensure impartiality, to improve effectiveness of health responses, and to avoid the politicisation of the COVID-19 response;
- Promote the establishment of independent mechanisms that:
  - a) Monitor the proper and fair collection of data with a view to preventing potential breaches of privacy;
  - b) Review the fair implementation of policy and ensure its alignment with human rights principles;
  - c) Ensure a clear delineation of the roles that government agencies, police, security forces, and military play;
  - d) Address the virus as a public health threat and not as a public security threat;
- Engage National Human Rights Institutions to monitor and report on the actions of police and armed forces in responding to the health crisis;
- Ensure the impartiality and operation of Parliaments during the emergency.

## Civil Society Organisations

- Monitor laws, policies, and practices adopted in response to the spread of COVID-19, alerting the public and the international community to human rights violations and abuses through forums, discussions, submissions to human rights mechanisms, amongst other platforms;
- Provide insight to the general public, judicial organs, regional organisations and international organisations on policy processes, effectively increasing public participation, transparency, and accountability.

## b. Increased Support for Vulnerable Communities

### United Nations Human Rights Council

- Continue advocating for non-signatories to sign and ratify international human rights treaties;
- Use guidance provided by human rights mechanisms to specifically address the violations, discrimination against, and ill-treatment of over-policed communities;
- Ensure that pandemic-related policies adhere to the principle of non-discrimination as elaborated upon in international human rights law and standards;
- Include and support civil society's participation in multilateral discussions to allow for concerned actors to publicly confront governments on human rights violations and abuses in the context of the COVID-19 response.

### World Health Organization

- Leverage its international presence to raise awareness on the negative impacts exerted by punitive responses to the pandemic upon the human rights and health of marginalised communities;
- Ensure that countries adopt COVID-19 related policies that abide to international standards and are grounded in scientific evidence;
- Call on states to reform laws and policies that criminalise COVID-19 transmission and exposure, discriminate (either in law or in practice) against vulnerable communities, and are otherwise ineffective in confronting public health emergencies;

- Encourage States to ensure that any Pandemic Treaty negotiated envisages the necessary safeguards for the protection of vulnerable communities;

## Governments

- Ensure all laws, policies and practices adopted to respond to the COVID-19 pandemic comply with international human rights law and standards, including the principles of legality, proportionality, necessity, and non-discrimination;
- Ensure accountability for human rights violations and abuses, including gender-based violence, and access to effective, gender-responsive judicial and other remedies, as appropriate;
- Undertake a government-wide review regarding the treatment of marginalised and vulnerable communities to assess the human rights and health impacts of COVID-19 policies on these groups, and adopt necessary reforms;
- Adapt and apply law, policy and administrative orders as necessary to ensure that vulnerable communities enjoy the right to freedom of thought, conscience, religion or belief, and respect for culture and tradition;
- Amend existing vaguely-worded legislation or administrative orders to prohibit discrimination based on an individual's identity;
- Provide socio-economic support to marginalised and vulnerable communities to ensure they can live in dignity throughout the pandemic and comply with COVID-19 control laws and policies;
- Facilitate the meaningful involvement of marginalised and vulnerable communities in the development, implementation, and evaluation of the COVID-19 response, while protecting them from harassment and reprisals;
- Reduce the involvement of law enforcement agencies in the pandemic response to what strictly necessary, and with civilian oversight;
- Develop the capacity of rights holders to participate and to claim their rights, including through education, awareness-raising and the narrowing of digital divides, and establish transparent, gender-responsive and accessible mechanisms for enabling stakeholders' meaningful participation; paying particular attention to those usually excluded and most at risk of being left behind.

## Civil Society Organisations

- Generate dialogue and awareness on the mistreatment of marginalised and vulnerable communities among the general public, judicial, regional organisations and international organisations;
- Provide their expertise and expand their cause of protecting the vulnerable by organising educational meetings, seminars, and generating a bottom-up reform processes that ensure transparency and accountability;
- Create and establish a national and regional network that integrates and fosters greater collaboration amongst the relevant stakeholders to better promote the protection of vulnerable communities, including civil society, grassroots, local community actors, higher education institutions, relevant health actors, and the government;
- Build international partnerships and alliances to increase the establishment of formal human rights accountability measures, with an emphasis on the protection of vulnerable communities.



To reiterate, to mitigate the negative health and human rights impacts of responses to public health emergencies, two broad types of measures need to be observed. First, the securitisation and militarisation of health protocols should be tempered and avoided altogether. National task forces should be staffed and led by health experts and related social service professionals, while public security personnel should be assigned clear and limited roles such as providing technical assistance, setting up the necessary checkpoints, and transporting medical equipment and personnel. Second, policymakers should recognise that inequality, systemic racism, and structural discrimination are major factors leading to poor health outcomes for vulnerable communities. The right to health—which requires public health goods, services and facilities to be available in adequate numbers, accessible on a financial and non-discriminatory basis, and of good quality—must thus be prioritised for all, and for vulnerable communities in particular.

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