



고려대학교  
미국법센터

- Korea – Open Border, Open Business Policy
- Role of law: Infectious Disease Prevention Act  
Article 76-2 **mandatory location tracking of patients**
- Postulate: Identify early ‘test-worthy’ targets of testing or quarantining → acting on possible sources before spreading
- Public disclosure has been on focus but acquisition is more related to epidemiological success and privacy infringement
  - Accuracy of patients’ voluntary info on movements
  - Disclosure does not guarantee notifications to contactees.
- The world’s only non-consensual, non-judicial location tracking among democracies

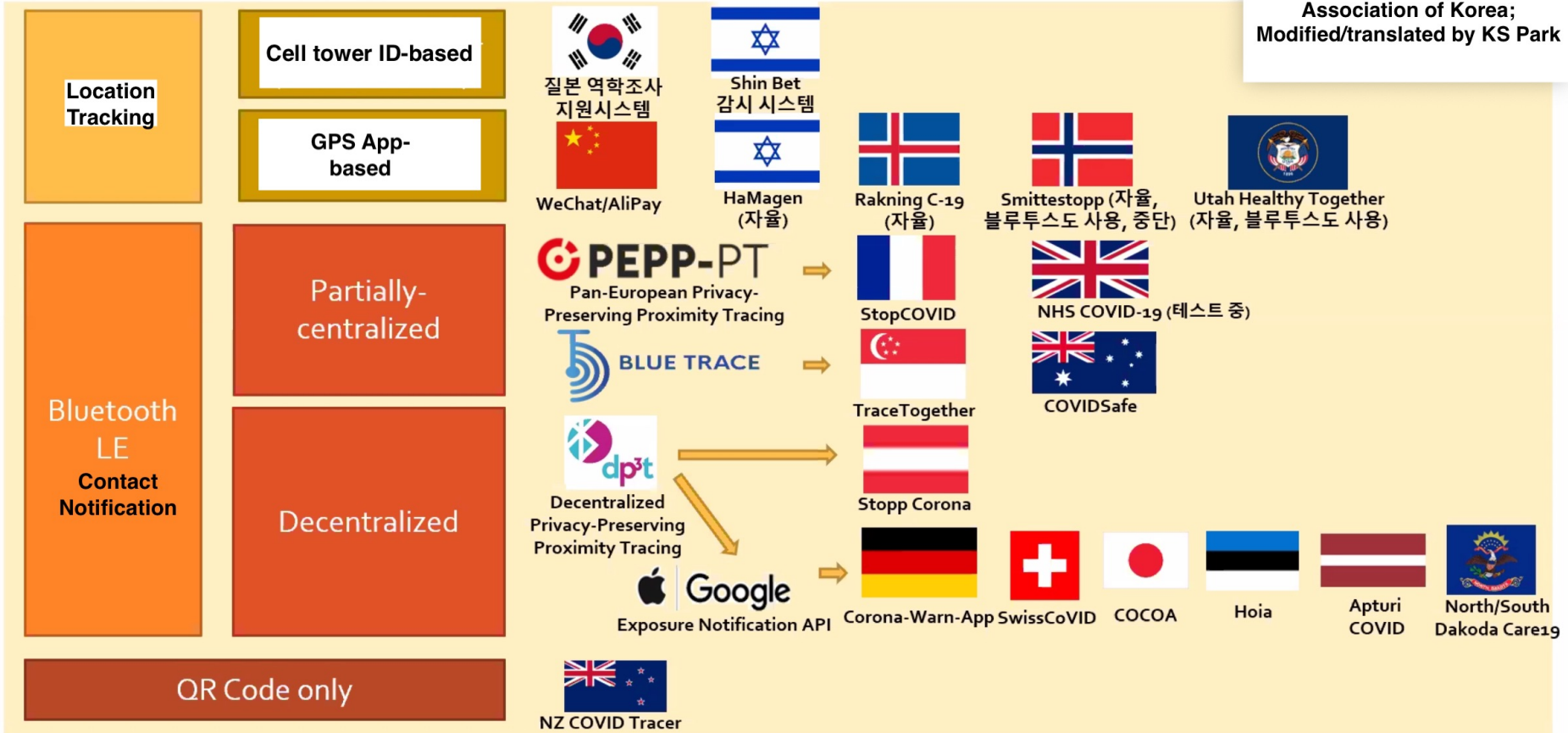
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# Location Tracking vs Contact Notification

Courtesy of Park, Sangchul at June 25, 2020 Covid-19 Webinar sponsored by AI Law Association of Korea; Modified/translated by KS Park



# Quarantine/distancing enforcement

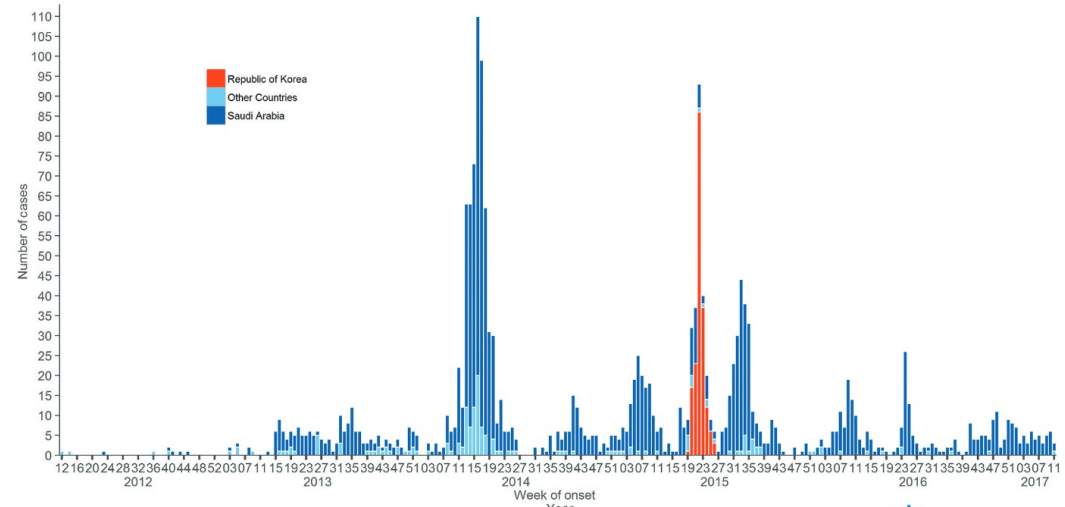
- Contact tracing : 1) location tracking of patients and 2) notifying contactees
- Quarantine/distancing enforcement: forcing ppl (individualized or aggregate) to stay at or away from some places or from one another
  - For our purposes – digital technology used for NOTIFYING authorities or others of quarantine/distancing violation → So there is an overlap between CT and QDE.
  - Case on point: Itaewon club – all 10,000 night club area visitors identified and contacted and forced into testing → repurposing for QDE?
- Article 13-2: power to test
- Article 42: power to enforce treatment and quarantine
- Article 49 Item 2 – power to ban gathering of ppl
- Article 59 – power to shut down businesses
- All backed by criminal punishment
- Legal justifications to obtain information – power to investigate crimes
- Article 34-2 – government OBLIGATION to disclose

# Types of technology used for QDE

- QR Codes for High-Risk areas
  - QR Codes are downloaded upon identity verification by approved companies like KAKAO and NAVER
  - Have to be scanned on entry by
  - Segregation: Entry records are kept by a govt agency and identity records by NAVER/KAKAO
  - Legal justifications – power to shut down business
- Self-Quarantine Apps
  - Domestic individuals found to be suspected contactees – legal justifications? Murky  
→ So based only upon consent
  - Entrants into the country - legal justification? Maybe border enforcement?
- Wrist bands
  - For violators of self-quarantine app operations

# Korean Society of Infectious Diseases' Lessons from 2015 MERS outbreak

- Full Disclosure of all Contactees – “despite side effects”
- Track all patients and contactees
- Leadership by experts on epidemiology
- → “Promise to contain MERS”



Other countries: Algeria, Austria, Bahrain, China, Egypt, France, Germany, Greece, Iran, Italy, Jordan, Kuwait, Lebanon, Malaysia, Netherlands, Oman, Philippines, Qatar, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States of America, Yemen  
Please note that the underlying data is subject to change as the investigations around cases are ongoing. Onset date estimated if not available.

• **Figure 42.1** Epicurve: global confirmed cases of Middle East respiratory syndrome–coronavirus (MERS-CoV), reported to the World Health Organization as of April 7, 2017 ( $n = 1936$ ). (Reprinted from WHO Emergencies: MERS-CoV. <<http://www.who.int/emergencies/mers-cov/en/>>.)

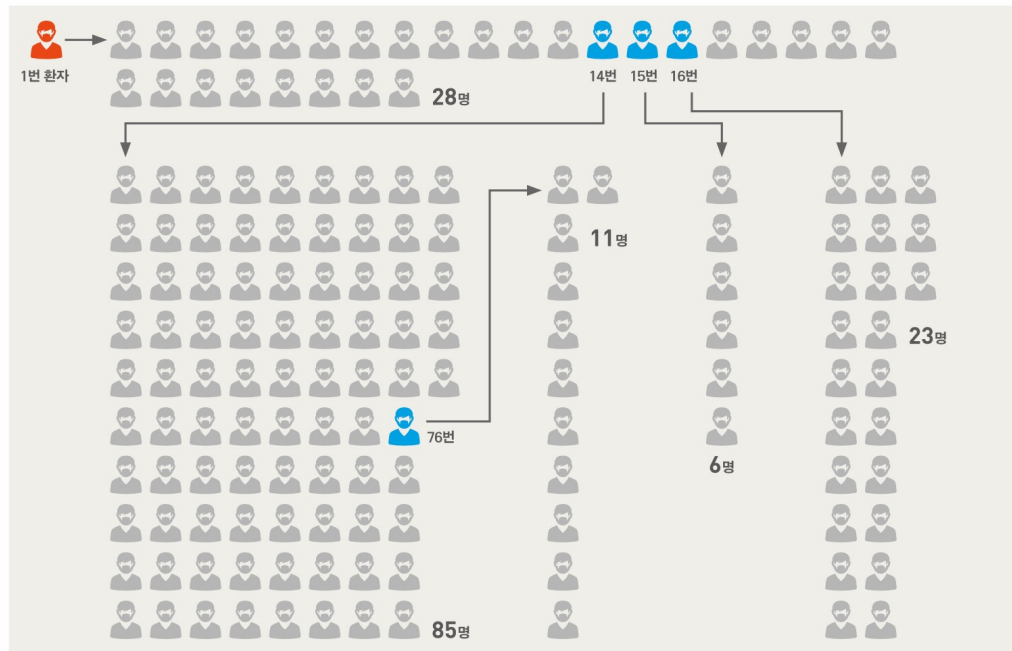
## 대한감염학회의 미발표 담화문

<p>대한감염학회가 권고한 초기 대응이 제대로 이루어지지 않아 2·3차 감염자가 속출하고 밀접 접촉자 역시 급속도로 늘어나, 이제는 새로운 대책을 마련해야 하는 상황입니다. 이에 대한감염학회는 메르스 퇴치를 위한 보다 광범위하고 선제적인 방역대책을, 즉 완전히 새로운 대응체계와 전략의 수립과 그것의 신속한 실행을 제안합니다.</p> <p><u>첫째, 메르스 유행과 관련된 모든 정보의</u></p>	<p>공개를 제안합니다. 일부 부작용이 따르더라도 메르스 접촉자들의 정확한 파악, 자발적인 확인과 검사 등이 더욱 중요한 시점기에 환자 발생 병원을 설득해 정보를 투명하게 공개해야만 합니다.</p> <p><u>둘째, 메르스 확산 저지선을 만들고 메르스 환자와 접촉자를 빠짐없이 찾아 관리할 것을 제안합니다. 가용한 감염관리 인적 자원과 모든 역량을 투입하여 집중적인 감염자 확인 작업을 광범위하게 시행하여야</u></p>	<p>만합니다.</p> <p><u>셋째, 빠르게 확산하는 메르스에 신속하고 정확한 대응을 위해 감염 전문가를 중심으로 해 지휘체계를 전면적으로 바꿀 것을 제안합니다.</u></p> <p>이상의 제언을 바탕으로 한 새로운 대응전략이 세워진다면 대한감염학회는 메르스 확산을 반드시 막아내겠다고 약속드리겠습니다.</p>
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2015년 6월 5일 대한감염학회 메르스 백서 (24-25쪽)

대한감염학회 일동 [http://www.ksid.or.kr/file/mers\\_170607.pdf](http://www.ksid.or.kr/file/mers_170607.pdf)

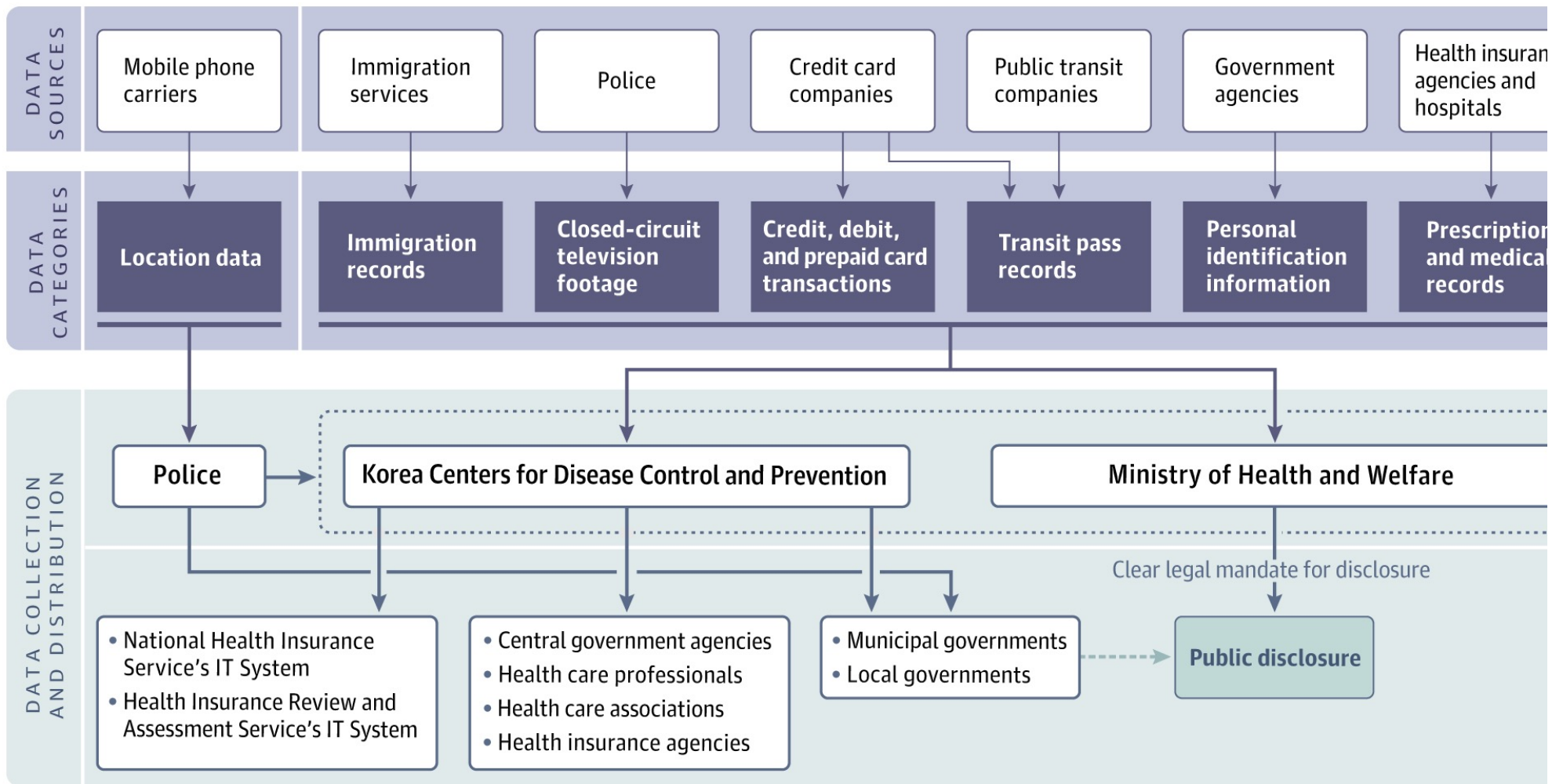
# MERS and obsession with “dishonest patients”



메르스 확산경로, 슈퍼전파자 5명이 186명중 82.3%인 153명에게 감염

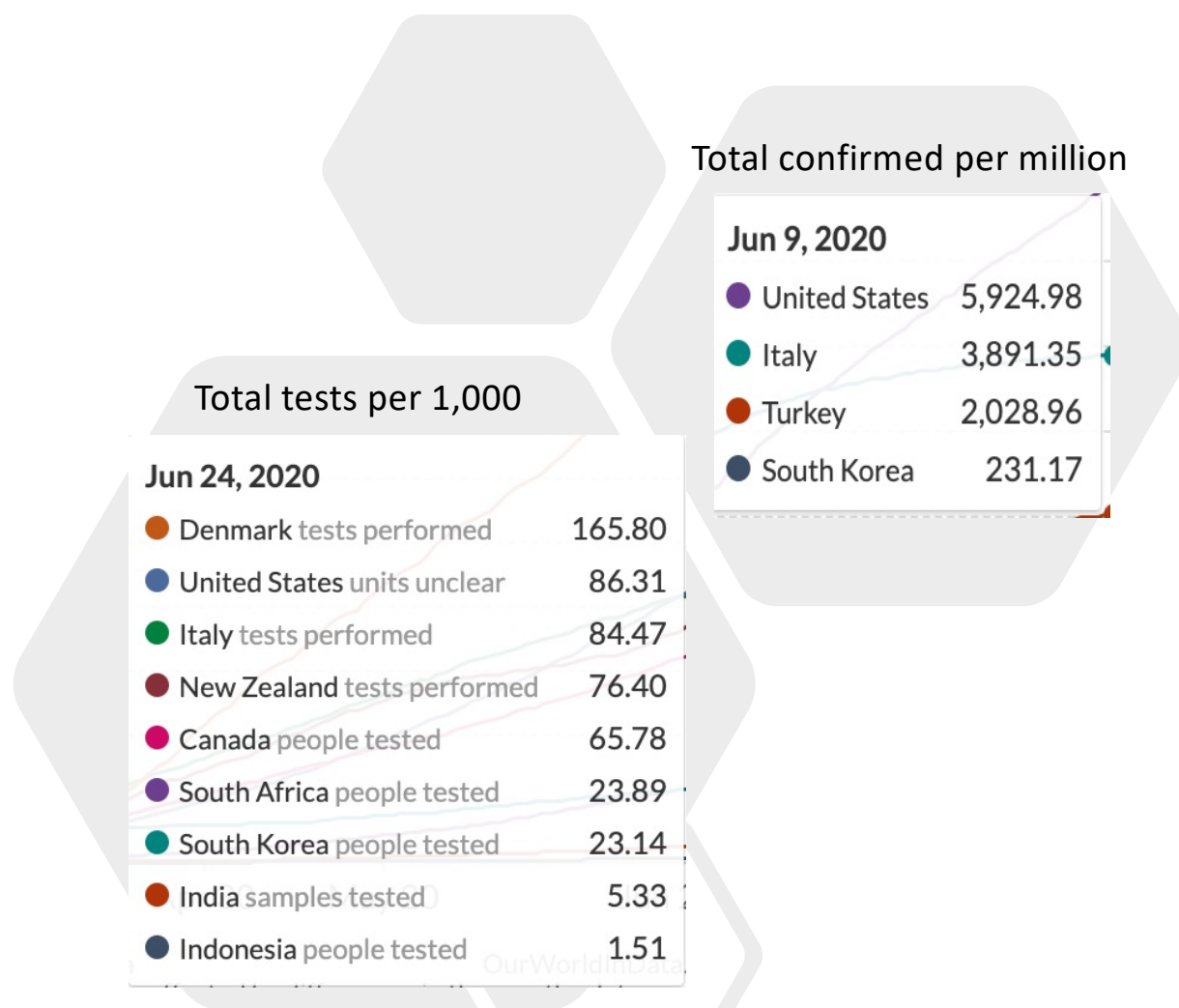
In addition, No. 35 who had attended a 1,500-people meeting and a 300-people conference was in altercation with authorities on when symptoms first appeared and he should have quarantine <https://www.nocutnews.co.kr/news/4428522>

Out of the total of 153 patients, Patients Nos. 1, 14, and 16 infected 28, 85, and 23 people respectively (90.6%). Each of them lied about their whereabouts when they came to the hospital with symptoms. No. 1 left out his trip to Saudi Arabia (the original epicenter of MERS) and Nos. 14 and 16 their visits to the hospital where No. 1 was treated and thereby infected others. <https://www.nocutnews.co.kr/news/4425249> The new law allowing mandatory tracking was passed on July 6, 2015, one month after KSID’s unpublished 3-point demand communique of June 5 was delivered to the health authorities.



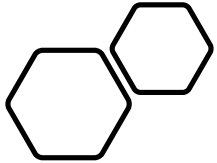


- Korea (pop. 50M) , so far about only about 1 million tested but contained down to less than 100 new/dy
- COMPARE: US (pop. 300M) done 20 million tests still not contained  
→ maybe tests too late. Quarantining only after spread.
- Korea's CDC and WHO guidelines do NOT include testing asymptomatic ppl but there are many tests in Korea. So many tested without any diagnosis at all → no statistics possible
- Proportion of asymptomatic patients in Korea – 20-30% according to KCDC (June 3, 2020) → Princess Diamond 70% → importance of quarantining early
- International comparison: It may be Quality of Tests, not Quantity – HOW EARLY?



<https://ourworldindata.org/grapher/full-list-cumulative-total-tests-per-thousand>





## 'Easy problems' to point out

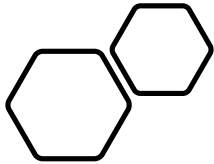
- Police as intermediaries
- Surveillance bodies:
  - health authorities – health-oriented
  - elected local government chiefs – majoritarian constituents → no independent judgment on balance between public interest and privacy

### Targets

- Patients
- Suspected patients
- **Contactees**
- **Suspected contactees**, e.g. Itaewon

### Data to be accessed by health authorities:

- Credit card records
  - medical records
  - CCTV
- 28 agencies' portal for Instant Sharing



Korean National  
Human Rights  
Commission  
(3/9/2020)  
recommendation: only  
on disclosure, not  
acquisition


Difficulty with COVID-  
19/contactee-patient  
location tracking

**Hard problem:**

non-judicial compulsory access

- American standard on “administrative search”
  - “Closely regulated industries” - firearms, drugs, mines
    - vs. building code inspection, occupational safety/health inspection, hotel guest inspection
- “binary search” doctrine – DUI/airport check
- cover for criminal investigation, not allowed

- not binary(bad)
- not closely regulated industries(bad)
- Not leading to criminal case (good)
- most similar case: fire cause inspection (warrant not needed)



Should Korea be written off as an exception? Or do we need to confront Korea?

- Korea is forging ahead unabated: QR codes on entry to clubs and noraebangs?
- Rest of the world reopening where Korea is the only country with businesses open
- Shall we at least think about adopting Korea's case – e.g., consensual or judicially approved location-tracking?
- Or shall we stop Korea from “surveillance hell”?
- Or shall we give up on international human rights standards and fall into cultural relativism?