

Critical Review of the Legal Measures Against COVID-19 in Taiwan

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Abstract. Covid-19 pandemic strikes all over the world. With a view to tackling this pandemic, a wide range of unprecedented fundamental right intrusive measures, such as large-scale lock down, electronic tracking without court decision, medical device rationing measures, etc., have been adopted and implemented. Despite the effectiveness of these measures in preventing further virus spreading, the concerns of violation of constitution law concerns would be raised after the pandemic has eased. Taiwan performed very well in tackling covid-19 from the record of 253 days without local confirmed cases in 2020 and the only 16250 confirmed cases by 4 October 2021. However, success in avoiding virus spreading may not mean the legal measures play key role. Also, if the law does play roles, it is also possible that these measures could not pass the unconstitutional tests. In order to provide a structural analysis of the related fundamental right intrusive measures, this article will begin with the introduction of the main laws and “guidelines” in combating COVID-19. Afterwards, a critical review will be provided to investigate into the institutional failure and the unconstitutional concerns from the measures.

Keywords: *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, Special COVID-19 Act, Name Based Facemask Scheme, Taiwan*

1. Introduction

Since early 2020, the world has been severely affected by the COVID-19 pandemic.

However, Taiwan was perhaps not as severely affected, having 1121 confirmed cases with twelve deaths by 29 April 2021¹ (in spite of the outbreak in mid May 2021, Taiwan has only 16,250 confirmed cases)². Additionally, Taiwan has established a record of 253 days without any local confirmed case.³ Consequently, Taiwan performs

very well in several COVID-19 safety rankings, ranking 16th in DKG’s COVID-19 Regional Safety Assessment⁴ and 2nd in Bloomberg’s COVID Resilience Ranking.⁵

According to the government’s ‘Crucial Policies for Combating COVID-19 in Taiwan’,⁶ Taiwan’s success was attributed to eight factors,⁷ the successful national health insurance system,⁸ and the seven key policy measures:⁹

- border control;

¹ <<https://sites.google.com/cdc.gov.tw/2019-ncov/taiwan>> accessed 1 December 2021; ‘Taiwan confirms 4 local, 2 imported infections, totally 868’ <<https://china.post.nownews.com/20210119-2038782>> accessed 1 December 2021.

² ‘Taiwan CDC, CECC confirms 6 more imported COVID-19 cases’, *PublishTime* (3 October 2021) <<https://www.cdc.gov.tw/En/Bulltin/Dtail/nqCeKH1DG1WjIP9Mp0yPBg?typeid=158>> accessed 1 December 2021.

³ ‘Coronavirus, Taiwan reports first domestic case of COVID-19 in 253 days’, *Focus Taiwan* (22 December 2020) <<https://focustaiwan.tw/society/202012220006>> accessed 1 December 2021.

⁴ DKV, *Taiwan: #16 Region by COVID-19 Safety Ranking* (June 2020) <<http://analytics.dkv.global/covid-regions/taiwan.pdf?fbclid=IwAR1me0TY3BEtafsOz1If38t8J5aesVAicxsPSPrUEOKVaYsW5UxRayarL0>> accessed 1 December 2021.

⁵ Bloomberg, *The COVID Resilience Ranking*, <<https://www.bloomberg.com/graphics/covid-resilience-ranking/>> accessed 1 December 2021.

⁶ MOHW, *Crucial Policy for Combating Covid-19*, <<https://covid19.mohw.gov.tw/en/mp-206.html>> accessed 1 December 2021.

⁷ SARS experience, Central Epidemic Command Center, Information Transparency, Good resource allocation, Timely border control, Smart community transmission prevention, Advanced medical technology, Good etiquette of citizens.

⁸ MOHW, *Healthcare system*, <<https://covid19.mohw.gov.tw/en/np-4777-206.html>> accessed 1 December 2021.

⁹ MOHW, *Key success factors*, <<https://covid19.mohw.gov.tw/en/np-4769-206.html>> accessed 1 December 2021.

- stockpiling masks and supplies;
- community transmission prevention;
- infection control policies for medical facilities and relevant institutions;
- inspection and testing;
- international cooperation; and
- information protection.

However, the purpose of this article is to provide an overview and critical review the legal responses against COVID-19. Since different ministries may have various legal responses to COVID-19, this article mainly covers the national responses and the MOHW (Ministry of Health and Welfare) responses.

2. Main Laws Governing Combating COVID-19 in Taiwan

2.1. Communicable Disease Control Act

2.1.1. The Existing Legal Regime

In terms of the rule of law, Taiwan came very close to declaring a state of emergency. Since the outbreak of COVID-19, many legal scholars and legislators have urged for the declaration of the state of emergency in as early as mid-March 2020.¹⁰

Article 43 of the Constitution authorizes the issuance of emergency decrees. These powers may be issued in cases of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures.¹¹ In reality, there was no need for an emergency declaration as noted before the record of more than 200 days without local cases in 2020.¹²

¹⁰ Central News Agency (CNA), *Summary of pandemic measures in counties and cities*. *Taiwan News* (12 May 2020) <<https://www.cna.com.tw/news/firstnews/202105115006.aspx>> accessed 1 December 2021.

¹¹ Article 43 of the Constitution states: 'In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President, during the recess of the Legislative Yuan, may, by resolution of the Executive Yuan Council, and in accordance with the Law on Emergency Decrees, issue emergency decrees, proclaiming such measures as may be necessary to cope with the situation. Such decrees shall, within one month after issuance, be presented to the Legislative Yuan for confirmation; in case the Legislative Yuan withholds confirmation, the said decrees shall forthwith cease to be valid'.

¹² Anton Ming-Zhi Gao, 'Taiwan's Success—A Hard-won Battle', in Rose-Liza Eisma-Osorio, Karsten Grabow, Peter Hefele and Stefan Samse (eds.), *Parliaments in the COVID-19 Pandemic: Between Crisis Management, Civil Rights and Proportionality Observations from Asia and the Pacific* (2021), 192.

¹³ Taiwan CDC, *SARS (Severe Acute Respiratory Syndrome)* <SARS (Severe Acute Respiratory Syndrome) - Taiwan Centers for Disease Control (cdc.gov.tw)> accessed 1 December 2021.

Before the COVID-19 pandemic, Taiwan was already struck by another very serious pandemic of SARS in 2003.¹³ Taiwan already had an established legal regime to tackle the threat from these diseases before the SARS crisis in the form of legislative act of the Communicable Disease Control Act (CDC Act) (promulgated very early in 1944 and the latest revision on 19 June 2019).¹⁴ COVID-19 was designated as Category 5 important (cardinal) disease on 15 January 2020¹⁵ and subject to commensurate measures. For instance, Art. 44(1) of the CDC Act provides that "patients with Category 4 and Category 5 communicable diseases shall be managed in accordance with the control measures announced by the central competent authority."¹⁶

When competent authorities conduct isolation care of patients with communicable diseases, they shall prepare isolation care notice, deliver the original to the patient or the family, and the copy to the isolation care institution in three days from the second day of mandatory isolation care.¹⁷

Under the CDC Act, there are laboratory testing and reporting requirements for relevant specimens from Category 1 to Category 5 levels. Relevant specimens of communicable diseases shall be sent to the central competent authority or its designated local competent authorities, medical institutions, academic or research institutes that are certified for laboratory testing capabilities; specimens of other communicable diseases may be laboratory-tested by health or medical institutions, academic or research institutes commissioned or recognized by

¹⁴ The following examples are the important diseases subject to the regime of this Act Amebiasis 12 June 2017; Complicated Varicella 12 April 2017; Leptospirosis 10 April 2017; Hantavirus Syndrome 10 April 2017; Ebola Virus Disease 6 April 2017; Rift Valley Fever 6 April 2017; Anthrax 6 April 2017; Marburg Hemorrhagic Fever 6 April 2017; Rubella(CRS) 6 April 2017; Middle East Respiratory Syndrome Coronavirus (MERS-CoV) 6 April 2017; Lassa Fever 6 April 2017; Measles 6 April 2017; Herpesvirus B Infection 6 April 2017; Toxoplasmosis 6 April 2017; Botulism 6 April 2017; Tularemia 6 April 2017; Scrub Typhus (Tsutsugamushi Disease) 6 April 2017; Plague 6 April 2017; Smallpox 6 April 2017. Taiwan CDC, *Important Diseases* <https://www.cdc.gov.tw/En/Category/NewPage/bg0g_VU_Ysrgkes_KRUDgQ> accessed 1 December 2021.

¹⁵ Taiwan CDC, *The Declaration of Covid-19 (Taiwan Centers for Disease Control*, 15 January 2020) <<https://www.cdc.gov.tw/Disease/SubIndex/N6XvFa1Y P9CXYdB0kNSA9A>> accessed 1 December 2021.

¹⁶ Communicable Disease Control Act (Amended Date: 19 June 2019) <Communicable Disease Control Act - Article Content - Laws & Regulations Database of The Republic of China (moj.gov.tw)> accessed 1 December 2021.

¹⁷ *Ibidem*, art. 44(2).

the MOHW.¹⁸ The results of laboratory testing must be reported to the local and central competent authorities.¹⁹ Individuals who are fully aware that they have been infected with Category 5 diseases, such as Covid-19, but fail to comply with instructions from competent authorities and further infect others, are to be sentenced to imprisonment for up to three years or a fine up to NT\$ 500,000.²⁰

Apart from these provisions that are directly related to Category 5 diseases, other measures could be adopted by relevant authorities under the Act as well. For instance, the powers granted under Art. 37 have been frequently used by local governments to adopt the following measures to tackle COVID-19:²¹

- regulate education, meeting, gathering or other group activities;
- regulate access to specific places and restrict the number of people allowed;
- regulate traffic in specific areas;
- evacuate people from specific places or areas; and
- restrict or prohibit patients or suspected patients with communicable diseases from traveling and using public transportation.

For instance, the facemask mandate in the metro is based on the open clause of this legal provision: “other disease control measures announced by government organizations at various levels.”²² A person who violates this provision will be fined NT\$ 3,000 up to NT\$ 15,000.²³

2.1.2. Related Sub-Regulations Under the Act

There were further detailed administrative orders published and/or revised to respond to the needs of COVID-19. For example, to improve the *Surveillance and Advance-Alert System*, the Regulations

Governing the Implementation of the Epidemiological Surveillance and Advance-Alert System for Communicable Diseases, which based on the legal authorization of Art. 26 of the CDC Act, were amended on 14 September 2020.²⁴ To improve testing, the Regulations Governing Laboratory Testing for Communicable Diseases and Management of Laboratory Testing Institutions, based on the legal authorization of Art. 46 of the CDC Act, were amended on 13 May 2020.²⁵

Since many citizens could be fined under Art. 37, 25, 58 or 48 of the CDC Act, the central and local governments published further rules to harmonize the enforcement of administrative fines. They are as follows:

Central government	the standards for administrative fines for violation of Article 58 of the CDC Act(違反傳染病防治法第五十八條第一項第二款、第三款及第三項規定所為之檢疫措施案件裁罰基準) (2020.12.07) ²⁶ the standards for administrative fines for violation of Article 48 of the CDC Act (違反傳染病防治法第四十八條第一項規定所為之隔離措施、第五十八條第一項第二款及第四款規定所為之檢疫措施案件裁罰基準) (2020.04.17) ²⁷
Tainan city	the standards for administrative fines for violation of Article 25 of the CDC Act (臺南市政府衛生局處理違反傳染病防治法第二十五條第二項規定案件裁罰基準) (2020.09.28) ²⁸
Taichung city	the standards for administrative fines for violation of Article 37 of the CDC Act (臺中市政府衛生局處理違反傳染病防治法第三十七條第一項第六款有關嚴重特殊傳染性肺炎防疫措施事件統一裁罰基準) (2020.04.10) ²⁹

(source: compiled by this author)

¹⁸ *Ibidem*, art. 46(1).

¹⁹ *Ibidem*, art. 46(1).

²⁰ *Ibidem*, art. 62.

²¹ *Ibidem*, art. 37.

²² *Ibidem*, art. 70.

²³ *Ibidem*, art. 70.

²⁴ Regulations Governing the Implementation of the Epidemiological Surveillance and Advance-Alert System for Communicable Diseases (Amended Date: 14 September 2020) <Regulations Governing the Implementation of the Epidemiological Surveillance and Advance-Alert System for Communicable Diseases - Article Content - Laws & Regulations Database of The Republic of China (moj.gov.tw)> accessed 1 December 2021.

²⁵ Regulations Governing Laboratory Testing for Communicable Diseases and Management of Laboratory Testing Institutions (Amended Date: 13 May 2020) <Regulations Governing Laboratory Testing for Communicable Diseases and Management of Laboratory

Testing Institutions - Article Content - Laws & Regulations Database of The Republic of China (moj.gov.tw)> accessed 1 December 2021.

²⁶ The standards for administrative fines for violation of Article 58 of the CDC Act, 7 December 2020 <<https://www.cdc.gov.tw/File/Get/ubfwWHWWsAz3coMDDyWg4w>> accessed 1 December 2021.

²⁷ The standards for administrative fines for violation of Article 48 of the CDC Act, 20 March 2020 <https://www.cdc.gov.tw/?aspxerrorpath=/File/Get/sqrAKrJg_Uq8Ki5B0HtO3g> accessed 1 December 2021.

²⁸ The standards for administrative fines for violation of Article 25 of the CDC Act <<http://law01.tainan.gov.tw/glsnewsout/LawContent.aspx?id=GL001366>> accessed 1 December 2021.

²⁹ The standards for administrative fines for violation of Article 37 of the CDC Act <<http://lawsearch.taichung.gov.tw/glsout/LawContent.aspx?id=GL003834>> accessed 1 December 2021.

2.2. Special COVID-19 Act

2.2.1. Overview of the Special COVID-19 Act

After the outbreak of the pandemic, a 'Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens (Special COVID-19 Act)' was promulgated by the parliament in February and amended in April 2020.

Of the 19 provisions in this Special Act, most of the articles deal mainly with the relief and revitalization measures, except for Art. 5, 6, 7, 8.

Firstly, Art. 5 and 6³⁰ supplement the *expropriation or requisition/compensation scheme* for the production equipment and raw materials needed, which were already provided for in Art. 54 of the CDC Act. These two provisions are exceedingly relevant for Taiwan's establishment of the first facemask legal monopoly scheme in the world during COVID-19.³¹ Under this regime, facemask manufacturing companies were obliged to produce and supply facemasks to the government. The government then used approximately 6000 pharmacy channels to distribute the masks to the market.³² All citizens were required to present a National Health Insurance card and use the name based system to buy the facemask with the fixed price and amount quota. For instance, in early February, individuals were allowed to buy two facemasks with a total price of 10 NTD every week.³³ Thus, the facemask rationing scheme was considered by the MOHW a key policy in successfully combating COVID-19. The

government provided a steady supply of disease prevention supplies to reassure the people.³⁴

Art. 7 and 8 have added more concerning *preventive and responding measures*. Art. 8 is related to the privacy and personal data protection of individuals in isolation or quarantine during the disease prevention period. Recording videos of or photographing the individual's violation of these measures, publishing their personal data, or conducting other necessary disease prevention measures or actions are allowed under this provision. Additionally, Art. 7 provides a very general legal basis for almost all combating COVID-19 measures, in that the Commander of the Central Epidemic Command Center may, for disease prevention and control requirements, *implement necessary response actions or measures*.

Apparently, the power conferred by this clause as in most cases at the time, was very general and gave wide margins of power to the executive branch. This provision was criticized by legal scholars and practitioners³⁵ and human rights groups³⁶ for the lack of legal clarity. Despite being seldom mentioned by the government as the legal basis for COVID-19 measures, it plays the role of an 'implicit' legal basis for many measures that did not have a legal basis. For instance, the government has long been used the mobile GPS to monitor the movement of the 14-day home quarantine citizens or incoming passengers from abroad. The government may use this general clause as the legal basis. Also, after the mid May outbreak in 2021, all customers are oblig-

³⁰ Article 5 of the Special COVID-19 Act: 'To produce disease prevention supplies specified in Paragraph 1, Article 54 of the Communicable Disease Control Act, where necessary, government authorities on all levels may, based on instructions of the Commander of the Central Epidemic Command Center, expropriate or requisition required production equipment and raw materials and provide appropriate compensation. The operating procedures for expropriation or requisition, methods of compensation, and other related matters in the preceding paragraph shall be established by the central competent health authority after consulting related authorities.' Article 6 of the Special COVID-19 Act: 'The management, use, proceeds, and disposal of disease prevention supplies, production equipment, and raw materials expropriated or requisitioned in accordance with Paragraph 1, Article 54, of the Communicable Disease Control Act and Paragraph 1 of the preceding article shall not be restricted by Article 11, Article 28, and Article 60 of the National Property Act or local public property management regulations.'

³¹ Anton Ming-Zhi Gao et al., 'Lessons from the facemask monopoly system in Taiwan to tackle the Covid-19 challenge', (Management and Medical Sciences Interdisciplinary Conference, October 30 - November 1, 2020).

³² Yulin Tai, Hsin Chi, Nan-Chang Chiu, Cheng-Yin Tseng, Ya-Ning Huang and Chien-Yu Lin, 'The Effect of a Name-Based Mask Rationing Plan in Taiwan on Public

Anxiety Regarding a Mask Shortage During the Covid-19 Pandemic' (22 January 2021), Observational Study JMIR Form Res, 5, 1 <<https://formative.jmir.org/2021/1/e21409>> accessed 1 December 2021.

³³ Taiwan CDC, *Name-based rationing system for purchases of masks to be launched on February 6; public to buy masks with their (NHI) cards* <Name-based rationing system for purchases of masks to be launched on February 6; public to buy masks with their (NHI) cards - Taiwan Centers for Disease Control (cdc.gov.tw)> accessed 1 December 2021.

³⁴ MOHW, *Provide a steady supply of disease prevention supplies to reassure society and the people* <<https://covid19.mohw.gov.tw/en/cp-4785-53788-206.html>> accessed 1 December 2021.

³⁵ A prosecutor attacked the legitimacy of Art. 7 of the Special Covid-19 Act. UP media, *The ignored legal troops in fighting Covid-19*, 4 April 2020 <https://www.upmedia.mg/news_info.php?SerialNo=84502> accessed 1 December 2021.

³⁶ Taiwan Association for Human Rights <when the rule of law meets the virus: do not abuse the general provisions, and only by preventing the epidemic and democracy can coexist | taiwan association for the promotion of human rights (tahr.org.tw)> accessed 1 December 2021.

ed to scan the QR code in front of the all convenience stores, shops, restaurants, etc, before entering. The legal basis for this is more likely to be this general clause as well.³⁷

2.2.2. Related Sub-Regulations Under This Act

Since the main focus of this Act is to deal with relief and revitalization aspects of the pandemic and pandemic responses, the Act was implemented with many sub-legislative implementing acts.

A nation-wide scheme of 'Triple volume coupon' was launched by the Regulation of Issuing of Triple Volume Coupon at the COVID-19 Time, based on the legal authorization of Art. 9(3) of the Special COVID-19 Act.³⁸ Under this, a citizen must pay 1000 NTD to buy the coupon with the value of 3000. It is anticipated that such a scheme is helpful to encourage economic recovery by encouraging customers to spending and shopping.

Based on the same legal basis of Art. 9(3) of the Special COVID-19 Act, different ministries also promulgated subsidy ordinances to assist the industries or affected persons as follows:

- Subsidy ordinance to assist broadcasting businesses helping to share COVID-19 re-

lated information (National Communication Council) (6 November 2020);³⁹

- Subsidy ordinances to assist affected national parks (Ministry of Interior Affairs) (12 March 2020);⁴⁰
- Subsidy ordinances to assist the affected business (Ministry of Culture) (4 May 2020);⁴¹
- Subsidy ordinances to assist affected business (Ministry of Transportation) (31 December 2020);⁴²
- Subsidy ordinances to assist affected business (Agricultural Council) (27 April 2020);⁴³
- Subsidy ordinances to assist affected business (Hakka Affairs Council) (12 March 2020);⁴⁴
- Subsidy ordinances to assist affected businesses of indigenous people (12 March 12, 2020);⁴⁵
- Subsidy ordinances to assist Public Welfare Lottery Distributors (Ministry of Finance) (14 May 2020);⁴⁶
- Subsidy ordinances to assist tobacco and alcohol related businesses (Ministry of Finance) (10 July 2020);⁴⁷

³⁷ Liao Jan, 'The privacy concerns of QR code scanning scheme' *HSU Legal* (1 July 2021) <<https://hsu.legal/article/48>> accessed 1 December 2021.

³⁸ Decree on Stimulus vouchers aimed at spurring consumption at the Covid-19 time, 16 November 2020 <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0140019>> accessed 1 December 2021.

³⁹ Subsidy ordinance to assist broadcasting businesses helping broadcast Covid-19 related information, National Communication Council, 6 November 2020 國家通訊傳播委員會對廣播電視事業協助播送嚴重特殊傳染性肺炎防疫訊息所受影響補貼辦法 (民國 109 年 11 月 06 日) <<https://nclaw.ncc.gov.tw/FLAW/FLAWDAT01.aspx?id=FL095345&keyword=>> accessed 1 December 2021.

⁴⁰ Subsidy ordinances to assist affected national parks, Ministry of Interior Affairs, 12 March 2020 內政部對受嚴重特殊傳染性肺炎影響發生營運困難國家公園事業紓困辦法 (民國 109 年 03 月 12 日): <<https://glrs.moi.gov.tw/LawContentSource.aspx?id=GL001251>> accessed 1 December 2021.

⁴¹ Subsidy ordinances to assist the affected busines, Ministry of Culture, 4 May 2020 文化部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法 (民國 109 年 05 月 04 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=H0170156>> accessed 1 December 2021.

⁴² Subsidy ordinances to assist the affected busines, Ministry of Transportation, 31 December 2020 交通部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法 (民國 109 年 12 月 31 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=K0020068>> accessed 1 December 2021.

0020068> accessed 1 December 2021.

⁴³ Subsidy ordinances to assist the affected business, Agricultural Council, 27 April 2020 行政院農業委員會對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法 (民國 109 年 04 月 27 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=M0020036>> accessed 1 December 2021.

⁴⁴ Subsidy ordinances to assist the affected business, Hakka Affairs Council, 12 March 2020 客家委員會對受嚴重特殊傳染性肺炎影響發生營運困難產業振興辦法 (民國 109 年 03 月 12 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0140025>> accessed 1 December 2021.

⁴⁵ Subsidy ordinances to assist the affected businesses of indigenous people, 12 March 2020 原住民族委員會對受嚴重特殊傳染性肺炎影響原住民族產業事業振興辦法 (民國 109 年 03 月 12 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0130044>> accessed 1 December 2021.

⁴⁶ Subsidy ordinances to assist affected the business of Public Welfare Lottery Distributors, Ministry of Finance, 14 May 2020 (財政部對受嚴重特殊傳染性肺炎影響發生營運困難公益彩券經銷商紓困辦法 (民國 109 年 05 月 14 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=G0320035>> accessed 1 December 2021.

⁴⁷ Subsidy ordinances to assist affected the business of tobacco and alcohol, Ministry of Finance, 10 July 2020, (財政部對受嚴重特殊傳染性肺炎影響營運艱困之專營菸酒批發及零售業紓困辦法 (民國 109 年 07 月 10 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=G0320036>> accessed 1 December 2021.

- Subsidy ordinances to assist affected business (Ministry of Education) (7 May 2020);⁴⁸
- Subsidy ordinances to assist affected business (Ministry of Economic Affairs) (31 August 2020);⁴⁹
- Subsidy ordinances to assist affected medical institutions and businesses (ministry of health and welfare) (20 April 2020);⁵⁰ and
- Subsidy ordinances to assist affected labourers (Ministry of Labor) (20 April 2020).⁵¹

Additionally, there were three subsidy ordinances based on other than Art. 9 of the Special COVID-19 Act:

- Regulations Governing Disease Prevention Compensation During Severe Pneumonia with Novel Pathogens Isolation and Quarantine Periods.⁵² Legal basis: Article 3(4) of the Special COVID-19 Act;
- Regulations Governing Tax Preferences for Quarantine Leave of Severe Pneumonia with Novel Pathogens.⁵³ Legal basis: Article 4(3) of the Special COVID-19 Act;
- Regulations Governing the Operational Procedures and Compensation for Expropriation of Manufacturing Equipment

and Raw Materials of Disease Prevention Supplies for Severe Pneumonia with Novel Pathogens.⁵⁴ Legal basis: Article 5(2) of the Special COVID-19 Act.

Interestingly, there is a very high intensity of rule of law and legal reservation for relief measures and budget allocation rules.

2.3. Other Laws

Apart from these legal regimes, certain laws were used to combat COVID-19 as well. For instance, Article 251 of the Criminal Law, which was never used before, has been used frequently against those who sell facemasks higher than the government-approved price as per the government-run facemask rationing scheme.⁵⁵ Facemasks were designated as ‘essential necessities’ by the cabinet. Once a product has been considered to be “essential necessities”, those who stocks up on any of the following items and then refrains from selling to the market, without justification and with the intention of raising the transaction price would be an criminal offense.

Yet, this is criticized by the human rights groups for misuse and out of concerns that it may cause ‘empty criminal law’⁵⁶, ie., the criminal charge should be on ‘clear’ legal provision with clear

⁴⁸ Subsidy ordinances to assist affected business, Ministry of Education, 7 May 2020(教育部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法 (民國 109 年 05 月 07 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=H0010068>> accessed 1 December 2021.

⁴⁹ Subsidy ordinances to assist affected busines, Ministry of Economic Affairs, 31 August 2020 (經濟部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法 (民國 109 年 08 月 31 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0140018>> accessed 1 December 2021.

⁵⁰ Subsidy ordinances to assist affected medical institutions and business, Ministry of Health and Welfare, 20 April 2020 (衛生福利部對受嚴重特殊傳染性肺炎影響醫療(事)機構事業產業補償紓困辦法(民國 109 年 04 月 20 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=L0050043>> accessed 1 December 2021.

⁵¹ Subsidy ordinances to assist affected labourers, Ministry of Labor, 20 April 2020 (勞動部對受嚴重特殊傳染性肺炎影響勞工紓困辦法(民國 109 年 04 月 20 日) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=N0020022>> accessed 1 December 2021.

⁵² Regulations Governing Disease Prevention Compensation During Severe Pneumonia with Novel Pathogens Isolation and Quarantine Periods (Amended Date: 17 June 2020) <<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050040>> accessed 1 December 2021.

⁵³ Regulations Governing Tax Preferences for Quarantine Leave of Severe Pneumonia with Novel

Pathogens (Announced Date: 10 March 2020) <Regulations Governing Tax Preferences for Quarantine Leave of Severe Pneumonia with Novel Pathogens - Article Content - Laws & Regulations Database of The Republic of China (moj.gov.tw)> accessed 1 December 2021.

⁵⁴ Regulations Governing the Operational Procedures and Compensation for Expropriation of Manufacturing Equipment and Raw Materials of Disease Prevention Supplies for Severe Pneumonia with Novel Pathogens <<https://law.moj.gov.tw/ENG/LawClass/LawSearchCNK ey.aspx?BTType=CON&pcode=L0050041>> accessed 1 December 2021.

⁵⁵ Article 251 of Criminal Code of the Republic of China: ‘A person who stocks up on any of the following items and then refrains from selling to the market, without justification and with the intention of raising the transaction price, shall be sentenced to imprisonment for no more than three years, short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no more than three hundred thousand New Taiwan Dollars may be imposed:

1. Basic provisions, agricultural products, or other food-and-drink consumer essentials.
2. Plant seeds, fertilizer, raw materials or other products required for agriculture or industry.
3. Essential necessities, other than those described in the preceding two paragraphs, as announced by the Executive Yuan.’

⁵⁶ Wang Chunyi, ‘Stockpile facemask may commit a crime: knowledge on ‘empty criminal law’ *Legispedia* (24 April, 2020) <<https://www.legis-pedia.com/article/crim e-penalty/734>> accessed 1 December 2021.

constituents in provision. It may be against the fundamental criminal law principle of no penalty without a law (or *Nulla poena sine lege; Nullum crimen, nulla poena sine praevia lege poenali*).

Finally, such persecution of this provision for those who sells higher than government price under the facemask scheme would not be helpful in encouraging the release of the stocks to alleviate the supply shortage. Certain volumes was not release into market, until the government allowing non-name based facemask on the market since June 2020. It seemed the court took very strict approach to this clause and consider 14 NTD and 12 NTD (which is higher than the government's price of 5 NTD) for violation of this clause. One was sentenced to four-month prison in a case.⁵⁷

3. Guidelines and Directions Governing COVID-19 Responses in Taiwan

3.1. New Legal Tools for COVID-19

Under Taiwan's ordinary constitutional and administrative legal system, if a measure would affect the rights and obligations of citizens, (apart from the substantive requirement of proportionate principle) the minimum requirement of a legal basis provided by law or administrative order with clear legal designation/basis, provided by law, is necessary.⁵⁸ However, due to the urgency of COVID-19, such rigid compliance with the ordinary constitutional and administrative legal system may impede the efficiency of tackling the pandemic.

Thus, several un-authorized or 'guidelines or directions' lacking legal basis that may affect the rights and obligation of citizens were promulgated by different Ministries. For instance, in order to provide a fast response guide for the medical institutes, MOHW published more than forty such guidelines and directions to regulate the medical institute on the official website.⁵⁹

The original purpose of these guidelines/directions was to regulate the operation of hospitals/institutes (öffentliche Anstalt) during COVID-19, but, unfortunately, certain measures may have indirect effects on the fundamental rights of the citizens. For instance, the testing right for asymptomatic patients was restrained. According to the 'Guideline on Self-pay application for COVID-19 testing' (before the winter program in November),⁶⁰ citizens could not qualify for self-testing if they failed to show symptoms.⁶¹ This is perhaps the most rigid testing rule in Taiwan's history and among most countries in the world.

Clearly, the original purpose was to save medical resources and avoid stressing the testing system at the beginning of the pandemic, however this also affected the citizens' right to know their health status. Even after facing the mass testing request from certain medical experts, the Chief Commander and the Minister of Welfare and Health both went public to reply to criticism of Taiwan's limited testing policy by referring to the failure of other countries'⁶² mass testing policies, asking 'why Taiwan should learn from those failed schemes?'.⁶³

⁵⁷ Tainan Local simple procedural course cases, Case No.42 (2021)(臺灣臺南地方法院 110 年度簡字第 42 號判決), <<https://db-lawbank-com-tw.nthulib-oc.nthu.edu.tw/SBAR/RESULTS.aspx?KW=%E5%9A%B4%E9%87%8D%E7%89%B9%E6%AE%8A%E5%82%B3%E6%9F%93%E6%80%A7%E8%82%BA%E7%82%8E%E9%98%B2%E6%B2%BB%E5%8F%8A%E7%B4%93%E5%9B%B0%E6%8C%AF%E8%88%88%E7%89%B9%E5%88%A5%E6%A2%9D%E4%BE%8B%E7%AC%AC%E5%8D%81%E4%BA%8C%E6%A2%9D>> accessed 1 December 2021.

⁵⁸ See also, Art. 5 of the Central Regulation Standard Act: 'The following objects shall be stipulated by a statute:

1. It is required to stipulate by a statute as the Constitution or a statute expressly stipulated.

2. Stipulation concerns the rights or obligations of the people.

3. Stipulation concerns the organization of a government agency at national level.

4. Other objects with substantial importance shall be stipulated by a statute.'

Art. 150 of the Administrative Procedure Act: 'The term 'legal order' used in this Act means an abstract prescription with external legal effects, established by an administrative authority as enabled by law in respect of general matters and applicable to a multiple number of non-specified persons.

A legal order shall specify the authority conferred by

law based on which it is established and shall not transgress the scope of such authority or divert from the legislative purposes of the enabling law.'

⁵⁹ Taiwan CDC, *Covid-19 Related Guidelines* <https://www.cdc.gov.tw/Category/MPage/I92jtdmxZO_oofPzP9HQ> accessed 1 December 2021.

⁶⁰ See e.g., Guideline on Self-pay application for Covid-19 testing, (7 October 2020, Version 37) <<https://ws.moi.gov.tw/Download.ashx?u=LzAwMS9VcGxvYWQvT2xkRmlsZS9kb3dubG9hZERfZmlsZS%2FplovmLL7msJHnnL7oh6rosrvmqLpQzddT1ZJRC0xOSjmrabmvKLogrrngo4p55Sz6KuL6KaP5a6aMTA5MTAwNy5wZGY%3D&n=6ZaL5pS%2B5rCR55y%2B6leq6LK75qqi6amXQ09WSUQtMTko5q2m5ryi6IK654KOKeeUs%2Biri%2Bimj%2BWumjEwOTEwMDcucGRm&icon=.pdf>> 開放民眾自費檢驗 COVID-19 (武漢肺炎) 申請規定 109 年 10 月 7 日第 37 版 accessed 1 December 2021.

⁶¹ E.g., to enter other countries for the compassionate reasons listed above; job requirements; short-term business travelers; to study abroad Application Form for Out-of-Pocket Polymerase Chain Reaction (PCR) Test_1090814.odt, available at: <<https://www.cdc.gov.tw/File/Get/h78rGiw8nDBMzX-3lCtXQ>> ---accessed ---1 December 2021.

⁶² E.g., Germany.

⁶³ Luo Libang, 'Why not mass testing? The chief commander of the Taiwan CECC: "Why should Taiwan

Moreover, the CDC also published certain guidelines/directions directly affecting the fundamental rights of citizens. For instance, under the 'COVID-19 Guideline: Public Gathering', mandatory measures were adopted that affect citizens' right to assembly, such as taking body temperature prior to entry and asking people with high body temperature not to participate in certain events.⁶⁴

Finally, government news announcements that abuse a citizen's rights are taken seriously in Taiwan. For instance, the controversial going abroad ban of senior/junior high and elementary school teachers and students was implemented from 17 March, 2020 by a new announcement the Ministry of Education.⁶⁵ During the pandemic, the Ministry of Education prescribed and promoted the use of the Zoom app, but the government abruptly claimed that there are security issues with it and prohibited its use on 7 April, 2020.⁶⁶ In both the news announcements, a legal basis was lacking.

These measures have not published in the government gazette either.

3.2. Art. 7 of the Special Covid-19 Act as Explicit or Implicit Legal Basis

As noted above, due to the abstract nature of Art. 7 of the Special Covid-19 Act, it could become the legal basis for all measures affecting rights and obligations during COVID-19. Additionally, due to its abstract nature, referring to this has attracted outcries of human rights groups and law societies.⁶⁷

In this regard, this legal basis was not cited very often. Nonetheless, at the time of the outbreak of COVID-19 in January and February, there was a very controversial ban on medical personnel traveling abroad. A letter was issued by CECC to all hospitals and institutions.

learn from the failure countries?" *Storm Media* (25 August 2020) <<https://www.storm.mg/article/2972168>> accessed 1 December 2021.

⁶⁴ Taiwan CDC, *Covid-19 Guideline: Public gathering* (4 March 2020) <https://www.cdc.gov.tw/File/Get/jp6pAJa7IDRIB6AbRO_-cg> 「COVID-19(武漢肺炎)」因應指引：公眾集會 修訂日期：2020/03/04 accessed 1 December 2021.

⁶⁵ MOE, *Newsletter: All teachers and students below high school are prohibited from going abroad* (16 March 2020) <https://www.edu.tw/News_Content.aspx?n=9E7AC85F1954DDA8&sms=169B8E91BB755> accessed 1 December 2021.

⁶⁶ MOE, *Zoom has information security concerns* (7 April 2020) <https://www.edu.tw/News_Content.aspx?n=9E7AC85F1954DDA8&s=868B3A6EDF9BA52D> accessed 1 December 2021.

⁶⁷ The public law professor from law school of National Taiwan University criticizes this clause. See Ming-Hsin Lin, 'The Revisit of the Constitutionality issues of the Art. 7 of the Special Covid-19 Act' (14 January 2021),

This regulation explicitly cites Art. 7 as its legal basis.⁶⁸ The violator would be fined 5000 NTD to 1 million NTD under Art. 16 of Special Covid-19 Act.⁶⁹ Yet, as there is compensation to the affected medical staff, perhaps such measures could be justified under the rule of law consideration.⁷⁰

Despite that, Art. 7 could contribute to the implicit legal basis for many measures that do not have a clear legal basis. For instance, the launch of privacy-intrusive Skynet to detect the movement of people and catch the violators of 14 days home quarantined rules in the year-end music concert may use this clause as an implicit legal basis. Despite the government's mentioning the CDC Act (and not indicating specific provision under the CDC Act) as legal basis,⁷¹ perhaps a more appropriate legal basis is Art. 7 of the Special COVID-19 Act.

However, this provision is also criticised for its lack of legal certainty and broadness and may be unconstitutional.

4. Critical Review of Taiwan's Legal Framework for COVID-19 Response

4.1. General Review

Taiwan is presently experiencing minimal confirmed cases of Covid-19 compared to the rest of the world. Perhaps this is because of the effectiveness of the government measures, or simply luck. Yet, considering the legal framework, the government's approach is very problematic regardless of the potential public health benefits.

First, the government's approach is based on an unbalanced legal framework. The use of legal measures to provide subsidies or implement recovery measures is much easier and more

407 Taiwan Law Journal, 53-68.

⁶⁸ MOWH, *Letter relating to the Medical staffs going abroad at the Covid-19 time* (17 March 2020) (醫院因應嚴重特殊傳染性肺炎(Covid-19)人員出國規定(109年3月17日函)) <<https://covid19.mohw.gov.tw/ch/cp-4847-52362-205.html>> accessed 1 December 2021.

⁶⁹ Article 16 of the Special Covid-19 Act: 'In the event of one of the following conditions, the central competent authority of the respective industry or the municipality or county (city) government shall impose a fine of no less than NT\$50,000 and no more than NT\$1 million: ... 3. Violation of response actions or measures instructed by the Commander of the Central Epidemic Command Center in accordance with Article 7.'

⁷⁰ MOHW, *The Compensation for going abroad ban of medical staffs* (27 February 2020) <<https://www.mohw.gov.tw/cp-4635-51720-1.html>> accessed 1 December 2021.

⁷¹ CNA, *Skynet is based on the legal basis of CDC Act* (2 January 2021) <<https://www.cna.com.tw/news/first-news/202101020091.aspx>> accessed 1 December 2021.

palatable than undermining people's rights and obligations. Under Taiwan's legal regime, and similar to that of continental Europe, the requirements for forming a law are greater when it affects people's rights. For instance, the use of information technology, such as GPS, to monitor on the home-quarantined individuals without permission from the courts since early 2020, is considered unconstitutional by scholars.⁷² At least, a clearer legal basis or authorisation should be necessary.

Second, such a legal framework tells a different story in terms of the low number of confirmed cases.

A typical law-abiding country would follow normal legal protocols, except during emergency situations. Under Taiwan's constitutional law, Emergency Order does exist.⁷³ Yet, in the face of the COVID-19 pandemic, this provision was not utilized. For a country with more than 2/3 number of days in a year (253/365) without locally confirmed cases, it seemed like a perfect environment to develop a legal regime, gradually and thoughtfully. However, the large numbers of guidelines/directions that continuously violated human rights, including the use of a privacy intrusive program without clear legal basis, such as Skynet (or Electronic Fence 2.0) to monitor the movement of home quarantine individuals, shows the unsophisticated nature of the Taiwanese legal framework in tackling the challenges brought on by COVID-19. The legal response from the government seemed to imply the 'emergency' situation of the pandemic in Taiwan instead.

Third, the government's measures could be considered disproportionate and not coherent with the precautionary principle. For instance, even if individuals who previously contacted a person who tested positive for COVID-19 test

negative, additional regulations are enforced by the government, such as a prohibition on visiting public eating and drinking establishments.⁷⁴ Moreover, when months passed without any locally confirmed cases, the additional directive of facemasks in eight types of public spaces was enforced.⁷⁵ Scientifically, regulation should correspond to the seriousness of the pandemic. Yet, in Taiwan, it is on the contrary.

4.2. Violation of the Existing Laws?

4.2.1. Controversial Phone Tracking

While facing the unprecedented threat of COVID-19, Taiwan developed, adopted and tested many new technologies. The most controversial type of technology with privacy intrusive features was GPS tracking of the movement of people under home quarantine. Such technology originated in Israel and was tested in Taiwan with great success.⁷⁶

However, this COVID-19 phone tracking technology was soon declared illegal by the Supreme Court of Israel for the lack of legislation in adopting such technology.⁷⁷ This year, The High Court of Justice of Israel ruled that "the Shin Bet security service must halt its digital tracking of citizens for coronavirus contact tracing in most cases, finding that it unjustifiably violated citizens' privacy rights."⁷⁸ In this regards, the constitutionality of such phone tracking should rely on the new statute to legitimize it.

In spite of the argument of several Taiwanese legal scholars⁷⁹ against the legal basis of phone tracking, the government turned a deaf ear and even wished to further develop Skynet or electronic fence version 2 to monitor its citizens.⁸⁰ This is also very likely to violate the Communication Security

⁷² See e.g., Chen Renqi, 'Electronic Fence: Pandemic expert challenges its constitutionality' *China Times* (4 January 2021) <<https://www.chinatimes.com/newspapers/20210104000360-260102?chdtv>> accessed 1 December 2021.

⁷³ Article 2(3) of Additional Articles of the Constitution of the Republic of China: 'The president may, by resolution of the Executive Yuan Council, issue emergency decrees and take all necessary measures to avert imminent danger affecting the security of the State or of the people or to cope with any serious financial or economic crisis, the restrictions in Article 43 of the Constitution notwithstanding. However, such decrees shall, within ten days of issuance, be presented to the Legislative Yuan for ratification. Should the Legislative Yuan withhold ratification, the said emergency decrees shall forthwith cease to be valid.'

⁷⁴ Keoni Everington, 'Taiwan closes all KTV bars, dance halls amid coronavirus crisis' *Taiwan News* (9 April 2020) <<https://www.taiwannews.com.tw/en/news/3913186>> accessed 1 December 2021.

⁷⁵ 'Taiwan announces eight public venues where mask-wearing is compulsory' *Taiwan News* (5 August

2020) <<https://www.taiwannews.com.tw/en/news/3981125>> accessed 1 December 2021.

⁷⁶ 'All leisure venues closing as Netanyahu tells Israel: Adjust to new way of life' *The Time of Israel* (14 March 2020) <<https://www.timesofisrael.com/pm-says-all-leisure-venues-to-shut-urges-israel-to-adjust-to-new-way-of-life/>> accessed 1 December 2021.

⁷⁷ Maayan Lubell, 'Israel's top court says government must legislate Covid-19 phone-tracking' *Reuters* (27 April 2020) <Israel's top court says government must legislate COVID-19 phone-tracking | Reuters> accessed 1 December 2021.

⁷⁸ 'Israel's Top Court Limits Digital Tracking of Covid Patients, Warning of a "Slippery Slope"' *Israel News* (1 March 2021) <Israel's top court limits digital tracking of Covid patients, warning of a 'slippery slope' - Israel News - Haaretz.com> accessed 1 December 2021.

⁷⁹ 'The legal society argue the unconstitutionality of phone tracking' *Storm Media* (17 April 2020) <<https://www.storm.mg/article/2523188?page=2>> accessed 1 December 2021.

⁸⁰ 'Electronic fence' nabs concertgoers breaching COVID-19 protocol' *Focus Taiwan* (1 January 2021)

and Surveillance Act, which is subject to the approval of the prosecutor and the court for surveillance during criminal investigations.⁸¹ Even criminal investigations require to be subject to due process; however, it is bizarre to see the government easily accessing COVID-19 phone tracking data, bypassing such due process. It also led to an ‘authoritarian’ accusation directed at the Taiwan government, by the *New York Post* with respect to the aforementioned measures.⁸²

Following Israel courts cases, without further clear legal basis and provision to serve as legal basis for such phone tracking, such phone tracking seemed to be unconstitutional.

4.2.2. The Expansion of the Use of The National Health Insurance Card

To prevent people from hiding their travel history when visiting the doctor and to prevent them from causing cluster infection in the hospitals thus exploiting a loophole in the war on the Wuhan coronavirus epidemic, Taiwanese health authorities announced that a new feature would be added to the National Health Insurance (NHI) smart cards in February 2020.⁸³ When accessing hospitals, patients had to produce their National Health Insurance Card to prove that they had no travel history to mainland China, Hong Kong, and Macau in the past 14 days.⁸⁴ Adding the travel history to the health insurance card was criticised for its lack of a legal basis. The ‘addition of non-medical-related information’ in the card was considered a clear violation of the National Health Insurance Act.⁸⁵ Article 16 of the Act explains: ‘However, the card may not store any information *not used for medical care purposes* as well as those *unrelated to the insured receiving insurance medical services*’. The question of whether such travel history would be relevant to the medical function

was thus raised.

Moreover, under the facemask ration scheme, one must show a National Health Insurance card while purchasing facemasks in order to confirm if the designated quota has been used or not. However, such card inserting process also led to the concerns of violation of clause similar to Article 16 of the National Health Insurance Act. As the face mask quota would not be generally seen as “information used for medical care purposes as well as those related to the insured receiving insurance medical services”, such use under the face mask rationing scheme is apparently a violation.⁸⁶

Perhaps inserting the card in pharmacies would be proportionate and legitimate. Yet, later on, under the new version of facemask rationing scheme, people were allowed to make facemask quota purchase in convenience stores and began to insert cards in convenience stores. Such a situation was seen as the further abuse and misuse of the NHI card.

4.2.3. Lack of Legal Basis for Measures Affecting Citizens’ Rights and Obligations

According to Taiwan’s constitutional law, Administrative Procedural Act and Central Regulation Standard Act, any measures affecting citizens’ rights and obligations should have clear legal basis or administrative orders with clear authorisation by the specific legal statute.⁸⁷ Yet, as noted above, measures against COVID-19 may not follow such regular legal practices.

First, for certain guidelines and directions, it is not easy to find the legal basis in their clauses. According to the Administrative Procedure Act, for administrative orders affecting citizens’ rights and obligations, a clear legal basis should be provided in the first paragraph of such an administrative order. However, such legal basis is often missing in the COVID-19 guidelines and directions. For instance,

<<https://focustaiwan.tw/society/202101010017>> accessed 1 December 2021.

⁸¹ The Communication Security and Surveillance Act <<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=K0060044>> accessed 1 December 2021.

⁸² ‘Life after lockdown: Electronic monitoring, fines and compulsory face masks’ *New York Post* (25 April 2020) <<https://nypost.com/2020/04/25/taiwan-gives-peek-in-to-how-life-could-look-after-coronavirus-lockdown/>> accessed 1 December 2021.

⁸³ ‘Taiwan to add travel history to health ID cards amid coronavirus outbreak’ *Taiwan News* (4 February 2020) <<https://www.taiwannews.com.tw/en/news/3870719>> accessed 1 December 2021.

⁸⁴ Sophia Yang, ‘Taiwan to add travel history to health ID cards amid coronavirus outbreak’ *Taiwan News*, (4 February 2020) <Taiwan to add travel history to health ID cards amid coronavirus outbreak | Taiwan News | 2020-02-04 17:58:00> accessed 1 December 2021.

⁸⁵ National Health Insurance Act, Amended Date 20 January 2021 <<https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0060001>> accessed 1 December 2021.

⁸⁶ Chou YS and Chia WY, ‘There is a need to have balancing thinking on human right and the needs of pandemics’ (14 February 2020) Taiwan Association for Human Rights <<https://www.tahr.org.tw/news/2604>> accessed 1 December 2021.

⁸⁷ See e.g., Article 5 of Central Regulation Standard Act: ‘The following objects shall be stipulated by a statute:

1. It is required to stipulate by a statute as the Constitution or a statute expressly stipulated.
2. Stipulation concerns the rights or obligations of the people.
3. Stipulation concerns the organization of a government agency at national level.
4. Other objects with substantial importance shall be stipulated by a statute.’

there is only a general explanation at the beginning of the Guidelines on Social Distancing without referring to any legal basis.⁸⁸ Despite the lack of an official pandemic emergency announcement to tackle COVID-19, this did not mean that there was no rule of emergency or crisis law for handling COVID-19 at the time. In order to tackle COVID-19, a 'set of guidelines', a clear legal basis which may affect the rights and obligations of people, have been widely used and adopted.⁸⁹

I. Preface: While the COVID-19 has become a worldwide pandemic, Taiwan has been in a relatively stable and safe situation, up until now. Taiwan has experienced far more imported cases than local cases. Many Taiwanese people who study or work abroad have been flocking back to the country, in response to the situations abroad. Although the peak of the returning citizens has passed and the number of imported cases has declined, asymptomatic cases or symptomatic cases not seeking medical attention still pose threats to fighting COVID-19 in Taiwan. In order to prevent the increasing risks of local transmission and keep potential spread with unidentifiable sources of infection from threatening the safety in Taiwan, it has become urgent that the "social distancing guidelines" be laid down to encourage the public to maintain social courtesy or *keep a compulsory social distance*, in stages. Therefore, for the sake of both people's rights and domestic safety, these guidelines have been drawn up for the public to adhere to.

(Source: COVID-19: Guidelines for Social Distancing, Revised on April 10, 2020, https://www.cdc.gov.tw/En/File/Get/reB429_3fV4GulfumH9Vcg)

⁸⁸ Taiwan CDC, *COVID-19: Guidelines for Social Distancing, Revised on April 10th, 2020*, <https://www.cdc.gov.tw/En/File/Get/reB429_3fV4GulfumH9Vcg> accessed 1 December 2021.

⁸⁹ Taiwan CDC, *Important Guidelines* <<https://www.cdc.gov.tw/Category/List/Lb3VfrbgbUmy51C0gtKPNa>> accessed 1 December 2021.

⁹⁰ See e.g., *Guideline on Self-pay application for Covid-19 testing*, version 37 (7 October 2020) <<https://ws.moi.gov.tw/Download.ashx?u=LzAwMS9VcGxvYWQvT2xkRmlsZS9kb3dubG9hZERfZmlsZS%2FplovmlL7msJHnnL7oh6rosrvmqLpQzdDT1ZJRC0xOSjmrabmvKLogrrngo4p55Sz6KuL6KaP5a6aMTA5MTAwNy5wZGY%3D&n=6ZaL5pS%2B5rCR55y%2B6leq6LK75qqi6amXQ09WSUQtMTko5q2m5ryi6IK654KOKeeUs%2Biri%2Bimj%2BWumjEw0TEwMDcucGRm&icon=.pdf>> accessed 1 December 2021.

⁹¹ *Application for Self-paid Covid-19 testing*, version 63 (19 March 2021) <<https://www.chshb.gov.tw/sites/default/files/202103/%E9%96%8B%E6%94%BE%E6%B0%91%E7%9C%BE%E8%87%AA%E8%B2%BB%E6%AA%A2%E9%A9%97COVID19%E7%94%B3%E8%AB%8B%E8%A6%8F%E5%AE%9A1100319.pdf>> accessed 1 December 2021.

⁹² CNA, *Taiwan bans its healthcare professionals from traveling abroad*, (23 February 2020) <<https://www.taiwannews.com.tw/en/news/3880226>> accessed 1 December 2021; Focus Taiwan, *Taiwan amends travel ban on medical personnel* (24 February 2020) <<https://focustaiwan.tw/society/202002240006>> accessed 1 December 2021.

Spill over effects of such measures would be likely, as the guidelines on hospitals would affect the patient's rights as well. For instance, one guideline in a hospital limited the right to know a person's health by limiting self-paid testing for more than six months.⁹⁰ Since the outbreak of COVID-19, to avoid the spread of hospital cluster infections, even self-paying testing could not be conducted for those without symptoms. Due to the political and legal controversy for its limit people's right to know, such rules were updated and revised regularly. The latest 63rd version was published on 19 March 2021.⁹¹

Second, for certain measures, only a *newsletter without publishing in government gazette* or measures with *unclear legal basis* may be provided. In February 2020, Taiwan announced a travel ban on its medical personnel.⁹² In March 2020, the ban was expanded to cover school teachers and students, including those in senior/junior high and elementary school. This measure was announced by the Central Epidemic Command Center (CECC) and by the Ministry of Education in a newsletter.⁹³ The Zoom ban in April can be seen as yet another example.⁹⁴ However, interestingly, in these newsletters, there was no reason given and no administrative relief explanation was provided. Such an approach could also violate the due process for administrative disposition in Administrative Procedural Act as well.⁹⁵ Also, these measures have been criticised for their lack of legal basis.⁹⁶

⁹³ Ministry of Education, *The Prohibition from going abroad for all senior/junior/elementary school students and teachers* (16 March 2020) <https://www.edu.tw/News_Content.aspx?n=9E7AC85F1954DDA8&s=377DC75FB0C50AA3> accessed 1 December 2021.

⁹⁴ Ministry of Education, *The explanation on the concerns of Zoom to internet security and the follow up measures* (教育部對 zoom 資安疑慮後續處置說明), (7 April 2020) <https://www.edu.tw/News_Content.aspx?n=9E7AC85F1954DDA8&s=868B3A6EDF9BA52D> accessed 1 December 2021.

Article 96 of the Administrative Procedure Act: 'An administrative disposition rendered in writing shall give the following particulars: ...

2. The subject matter, facts, *reasons* and legal basis of the disposition; ...

6. The statement to the effect that it is an administrative disposition and the means of remedy available in case of dissatisfaction with the administrative disposition, the time period within which remedy may be sought and the authority with which application for remedy must be filed.

The requirement set forth in the preceding paragraph shall apply mutatis mutandis to written dispositions made under paragraph 2 of the preceding article.'

⁹⁶ Heho Health, 'The lack of legal basis to restrict medical doctors and staff from going abroad: Where are the rights of medical Staff?' (法源依據不明就限制醫事人員出國! 醫師工會怒吼: 醫護人員的權利在哪裡?), (27

Third, the legal basis referred to, may not be solid enough. For instance, the facemask mandate was launched based on the legal basis of Article 37 of the CDC Act. However, as facemasks were not mentioned in the first five clauses comprising the example list of provisions,⁹⁷ and the local government could only use the very abstract open clause of “6. Other disease control measures announced by government organizations at various levels.” This could also lead to the problem of “empty” administrative penalty clause, which fine the people without clear legal indication of violation behaviour in the legal statute. It is doubtful whether this meets the criteria of the law to fine people not wearing face masks due to the empty legal authorisation under the sixth clause.

4.3. Violation of the Proportionality Principle?

In order to deal with pandemic in an efficient way, the use of overly stringent and rigid measures that violate the proportionality principle occurs frequently. For example, Article 14 of the Special COVID-19 Act provides fake news regulations. Individuals who disseminate rumours or false information regarding the epidemic conditions, causing damage to the public or others, must be sentenced to imprisonment for up to three years or criminal detention, or in lieu thereof/ in addition thereto, a fine of no more than NT\$3 million. Individuals who violate the isolation measures face a fine of no less than NT\$200,000 and no more than NT\$1 million.⁹⁸ Again, these provisions raise concerns regarding proportionality or unconstitutionality.

The expropriation scheme under the facemask rationing scheme can be seen as an example of infringement of business freedom without meeting the proportionality principle. Perhaps such a scheme could have been justified during the global shortage supply in February and March 2020. Thus, at that time, such a taking would be justified and pass the test of proportionality. Yet, after the over-supply and huge price drop in late March 2020, the rationale to intrude the business freedom and property rights had already faded. Yet, such a scheme remains imposed as of April 2021.

February 2020) <<https://heho.com.tw/archives/71025>> accessed 1 December 2021.

⁹⁷ ‘1. Regulate schooling, meeting, gathering or other group activities;
2. regulate entry and exit of people to and from specific places and restrict the number of people admitted;
3. regulate traffic in specific areas;
4. evacuate people from specific places or areas;
5. restrict or prohibit patients or suspected patients with communicable diseases from traveling by means of public transportation or entering/leaving specific places.’

⁹⁸ Art.15 of the COVID-19 Act.

Finally, the Guideline limiting the testing right of citizens can be seen as a disproportionate response as well. Perhaps this restriction of citizens’ right to know could have been justified at the outbreak of the pandemic early in 2020. The worries about floods of false positive cases paralyzing hospitals could be justified. Yet, as Taiwan had limited cases since mid-2020, such testing limitation of citizens could not be justified as it was disproportionate.

The self-paid testing option should have been gradually accessible to those who were asymptomatic since then. However, such accessibility was not available until quite late, during the Autumn and Winter Programme in 2020.

4.4. Discrimination Concerns

Discriminatory measures against the country of origin of COVID-19 and citizens with different occupations is very severe in Taiwan.

First, the 14-day home quarantine rules applied to travellers from mainland China, Hong Kong, and Macao, since 7th February, 2020. Yet, the same rule was applied to travellers from other countries since 19th March, 2020. Despite having a legal basis for such-measures and having public health justification for this, there remain discriminatory concerns regarding the travellers’ country of origin.

There were also additional discriminatory quarantine rules applying to Filipino and Indonesian workers. From 9 November 2020, asymptomatic travellers from the Philippines were required to observe a 14-day home quarantine and a 7-day self-health management set of measures.⁹⁹ Commencing on 26th July, 2020, travellers arriving in Taiwan from the Philippines had to undergo mandatory COVID-19 testing at airports and observe quarantine measures.¹⁰⁰ Taiwan also restricted the number of Indonesian workers allowed onto the island in December, 2020. There seemed to be discriminatory concerns regarding these actions. However, it is also interesting to see that the Taiwanese government highly valued the right to know the health of Filipinos by providing mass testing service for them!

⁹⁹ Taiwan CDC, *Starting from November 9, asymptomatic arrivals from Philippines are required to observe 14-day home quarantine and 7-day self-health management measures* <<https://www.cdc.gov.tw/En/Bulletin/Detail/AQsGtw9Q38RgLHzb7TgbeA?typeid=158>> accessed 1 December 2021.

¹⁰⁰ Taiwan CDC, *Starting from July 26, travellers arriving in Taiwan from Philippines must undergo Covid-19 testing at airports and observe quarantine measures*, <<https://www.cdc.gov.tw/En/Bulletin/Detail/gyyHQjWwDqMZ8lzkZBi2A?typeid=158>> accessed 1 December 2021.

Finally, citizens with different occupations were discriminated against as well. As noted above, a travel ban applied only to medical personnel in February 2020,¹⁰¹ but not for other non-medical professionals. In March, the travel ban was expanded to cover school teachers and students, including those in senior and junior high and elementary school. It is unclear why these rules did not apply to university professors, leading to the concerns of discrimination. Additionally, the fact that the compensation regime provided only for medical personnel,¹⁰² but not senior/junior/elementary school teachers and students, leads to discriminatory concerns as well.

4.5. Weak Role of the Parliament

Under normal circumstances, the aforementioned legal issues violating existing laws or the proportionality principles could be rectified by the intervention of the parliament, particularly the opposition parties. Yet, that was not the case during the COVID-19 pandemic.

From the promulgation of the Special COVID-19 Act, one could consider the important role of Taiwan's parliament in terms of response time to COVID-19 situations. In reality, the role of Taiwan's parliament did not respond well in terms of time.

Due to the special political situation in Taiwan, the ruling party account for all positions of the ministries and majority in the parliament.

Therefore, check and balance didn't function well.

As noted above, this Act does not deal with the controversial issues of COVID-19 measures, such as privacy-intrusive measures. What is worse is the provision of a very abstract and supreme legal basis for the government to launch any measures affecting the rights and obligations of citizens, according to Article 7 of the Special COVID-19 Act.

The parliament has played a limited role since, during the COVID-19 pandemic.

4.5.1. Proximate Cause in Early 2020

The proximate cause for the weak role of the parliament is related to the political situation-change early in the year 2020. Immediately before the COVID-19 outbreak early in 2020, Taiwan had a presidential and legislative election in January. The current president managed to garner a historically high 8.17 million votes and maintained the majority in Parliament with more than 61 seats out of 113 seats.¹⁰³ Such a weak opposition party situation leads to discretionary government decisions where measures are launched without a proper legal basis.

The main opposition party, KMT (Kuomintang, Chinese Nationalist Party), and other opposing parties are still learning to function as opposition parties. This may be the reason why the government has had much room to manoeuvre.

Further, the license of the main opposition media, CTI (CTI Television Inc.), a new channel, was not granted an extension and it subsequently shut down.¹⁰⁴ In this way, attacks from media companies were heavily reduced.¹⁰⁵ Finally, trust in the general commander of the CECC also played a role.

The Minister of Welfare and Health (MOWH) hosted a daily briefing on the ongoing COVID-19 situation. This gained citizens' trust. A phenomenon of societal blaming arose against those who criticised the government; they were seen to be uncooperative and not united in combatting COVID-19. All of this created an atmosphere for the government to ignore the role of the parliament in launching COVID-19 measures.

This led to the unprecedented passive role of the Parliament amidst a global threat, and may have led to a crisis in the separation of power. For instance, to monitor the government, legislators usually have the right to question government staff and have access to and/can request the data from the government.

This right is confirmed by Article 57 and 67 of the Taiwanese Constitution.¹⁰⁶ The denial of

¹⁰¹ CNA, *Taiwan bans its healthcare professionals from traveling abroad* (23 February 2020) <<https://www.taiwannews.com.tw/en/news/3880226>> accessed 1 December 2021; 'Taiwan amends travel ban on medical personnel' *Focus Taiwan* (24 February 2020) <<https://focustaiwan.tw/society/202002240006>> accessed 1 December 2021.

¹⁰² MOHW, *The Compensation for the Prohibition of Medical staff From Going Abroad* (防疫期間醫院醫事人員及社工出國與相關補償規定 自 2 月 23 日適用), 109-02-27 <<https://www.mohw.gov.tw/cp-4635-51720-1.html>> accessed 1 December 2021.

¹⁰³ 2020 Taiwanese legislative election <2020 Taiwanese legislative election - Wikipedia> accessed 1 December 2021.

¹⁰⁴ 'Taiwan to shut down China-friendly tycoon's news channel' *Reuters* (18 November 2020) <Taiwan to

shut down China-friendly tycoon's news channel | Reuters> accessed 1 December 2021.

¹⁰⁵ 'Taiwan Shuts Down Pro-China' *CTi News* (19 November 2020) <<https://international.thenewslens.com/article/143510>> accessed 1 December 2021.

¹⁰⁶ Article 57 of the Constitution: 'The Executive Yuan shall be responsible to the Legislative Yuan in accordance with the following provisions:

1. The Executive Yuan has the duty to present to the Legislative Yuan a statement of its administrative policies and a report on its administration. While the Legislative Yuan is in session, Members of the Legislative Yuan shall have the right to question the President and the Ministers and Chairmen of Commissions of the Executive Yuan.

2. If the Legislative Yuan does not concur in any important policy of the Executive Yuan, it may, by resolution, request the Executive Yuan to alter such a

access to or provision of data has been quite limited in the past, though not during the COVID-19 pandemic. As an example, after the facemask rationing scheme was launched in February 2020, the Ministry of Economic Affairs controlled all daily supplies, distribution, manufacturing, and data of facemasks.

To monitor the necessity of these measures, facemask data are important. However, neutral and non-confidential facemask flow and supply statistics were required for accurate reporting, yet the Ministry of Economic Affairs refused to provide the information to legislators in early April 2020.¹⁰⁷

Such examples only show how weak the opposition party and parliament have been in Taiwan during the COVID-19 pandemic.

Weak parliaments, opposition parties, and strong governments/president were further maintained by the re-election of the president and legislators in early 2020.

The President even received over 8 million votes, a historical high, in 2020. As there is usually a political fever ‘cooling-down’ period after the election, a cold way of handling the pandemic-related issues followed.

Citizens are usually emotional during this period.

The phenomenon of ‘post-election solidarity’ followed suit.

Country	Total tests per thousand tests per 1,000			
	Feb 20, 2020	Mar 22, 2021	Absolute Change	Relative Change
Madagascar	0.11	4.86	+4.75	+4,281%
Taiwan	0.26	7.73	+7.48	+2,909%
Nigeria	0.02	8.38	+8.36	+34,817%
Malawi	<0.01	11.11	+11.11	+1,110,600%
South Sudan	1.74	11.23	+9.49	+547%
Mozambique	<0.01	14.66	+14.65	+209,286%
Vietnam	0.01	15.10	+15.09	+125,742%
Cote d'Ivoire	0.14	18.39	+18.25	+13,127%
Tunisia	0.01	19.04	+19.03	+146,369%
Ethiopia	0.00	19.83	+19.83	
Iceland	0.00	19.99	+19.99	+4,056,7%

Figure 1: The Least Testing countries in the world

In February 2020, the government had already adopted several measures with human rights concerns, such as taking facemasks and distributing facemasks without a clear legal basis for launching such utility like price control regime. The travel ban on medical doctors and staff also raised human rights concerns. The government used the ‘empty’ criminal law to criminalise sellers who sold face masks at higher prices. The word ‘empty’ refers to the provision stipulating that ‘A person who stocks up on any of the following items and then refrains from selling to the market, without justification and with the intention of raising the transaction price, shall be sentenced to imprisonment for no more than three years, short-term imprisonment; *in lieu* thereof, or in addition thereto, a fine of no more than three hundred thousand New Taiwan Dollars may be imposed... Essential necessities, other than those described in the preceding two paragraphs, as announced by the Executive Yuan’.

The government designated the facemask as an essential item in February. For the above issues, at the beginning, legislators and legal experts¹⁰⁹

policy. With respect to such resolution, the Executive Yuan may, with the approval of the President of the Republic, put a request to the Legislative Yuan for reconsideration. If, after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office.

3. If the Executive Yuan deems a resolution on a statutory, budgetary, or treaty bill passed by the Legislative Yuan difficult of execution, it may, with the approval of the President of the Republic and within ten days after its transmission to the Executive Yuan, request the Legislative Yuan to reconsider the said resolution. If after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office.

Article 67 of the Constitution: ‘The Legislative Yuan may set up various committees.

Such committees may invite government officials and

private persons concerned to be present at their meetings to answer questions.’

¹⁰⁷ ‘MOEA refused to provide the facemask data to legislators’ (口罩數據竟蓋牌逾 2 周 立委狂批政院「鴨霸」規避監督), *Apple Online* (7 April 2020) <<https://tw.appledaily.com/property/20200407/H5NJ27AA5KTYFHMBG2RVFSBH2E/>> accessed 1 December 2021.

¹⁰⁸ ‘Hong Kong-China extradition plans explained’ *BBC News* (13 December 2019) <<https://www.bbc.com/news/world-asia-china-47810723>> accessed 1 December 2021.

¹⁰⁹ See e.g., ‘Lawyers criticized the designation of facemask as life necessities and criminalized the facemask sales; it is the abuse of “empty criminal law”’ *Eatnews* (4 February 2020) 行政院引刑法公告「口罩是生活必需品」律師批：這是對空白刑法的 ... <<https://eatnews.squarespace.com/article-1/20200204-2>> accessed 1 December 2021.

raised concerns. However, the government tried to direct these criticisms as non-cooperative measures to jeopardise the efficiency of pandemic measures, simply ignored the accusation of the rule of law and proceeded as planned.

Another factor affecting the concentration of power in the government is the *media environment*.

As Taiwan is famous for many 24-hour news channels in such a small country, new competition from the new Internet media has resulted in decreased media profit margins than previously enjoyed by the industry. As a result, there has been a tendency to rely on government-funded projects as part of their profit model in recent years. Even the anti-DPP (ruling party) media have begun to focus on promoting the success of Taiwan in combatting COVID-19. Article 10 of the Special COVID-19 Act explains: 'Where radio/television businesses or satellite broadcasting businesses are assigned to broadcast disease prevention information or programs due to disease prevention requirements in the operation period of the Central Epidemic Command Center, the competent authority of communications may relax regulations on the duration of advertisement based on the conditions of the impact. The restrictions specified in Article 31 of the Radio and Television Act and Article 36 of the Satellite Broadcasting Act shall not apply'.

Thus, it is doubtful that the media would dare to attack the government's mishandling of a situation or a lack of legal basis of the rule of law, while receiving funding from the same source.

The global norm during the pandemic is testing as much as possible to find out the sources. Yet, Taiwan government and along with media seemed to try their best to change such norm. The matters discussed combine to make the citizens of Taiwan believe that we are one of the best COVID-19 combatting countries in the world. The commander of the CECC has even criticised the mass testing model as a failure, expressing that Taiwan will not follow the failed experience of Germany.¹¹⁰ It is, however, widely accepted, that mass testing is not

wrong. The CECC has continued to argue that wasting money will lead to the collapse of the medical system and have insisted that the 14 days 'at home' quarantine rule, instead of going to a centralised facility, is sufficient. Unthinkably, a lack of science and the 'word-of-mouth' method have gained wide public support. Cities and the government are believed to be 'lowering the numbers of local confirmed cases'. Further strengthening the problem is the very high testing price for 'self-pay' testing at 7000 NTD, in a low health cost country like Taiwan. This price is criticised by opposition party legislators.¹¹¹

However, in Taiwan, such concerns do not last long to draw public attention.

4.5.2. Still, There Is Light in the Darkness

There is good news regarding the role of the Parliament in supervising vaccine purchase issues. On 18 March 2021, opposition party legislators on the Health and Environmental Committee proposed to establish an investigation team to investigate the likely scandal when purchasing vaccines. As there were several legislators of the ruling party missing on this particular day, the opposition party could successfully pass such a resolution. The right to establish a special investigation team is conferred by Article 45 of the Act on Enforcing Legislator's Duties.¹¹² However, on 22 March, the ruling party legislator of that committee decided to re-vote the case which led to a serious protest from the opposition party. On 24 March, the ruling party legislator decided to accept the proposal and proceed with the investigation team.¹¹³ However, in recent years, the government has always denied or refused to provide data to the legislator, to escape scrutiny.¹¹⁴ Hopefully, this action will act as a spark to further illuminate the role of the parliament during the COVID-19 pandemic.

¹¹⁰ 'The failure of Hamburg's mass testing scheme' *Tai Sounds* (24 August 2020) <<https://www.taisounds.com/Global/Top-News/US-Europe/uid4975355134>> accessed 1 December 2021.

¹¹¹ 'The opposition party legislators criticize Taiwan's most expensive self-paid testing scheme in the world' *New Talk* (18 February 2021) <<https://newtalk.tw/news/view/2021-02-18/537947>> accessed 1 December 2021.

¹¹² Act on Enforcing Legislator's Duties (立法院職權行使法) <<https://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0020058>> accessed 1 December 2021.

¹¹³ Lianhe Bao and Wu Zixian, 'DPP agreed to establish the Vaccine Procurement Investigation Group in the Legislative Yuan' *UDN* (24 March 2021) <<https://udn.com/news/story/6656/5340037>> access-

ed 1 December 2021.

¹¹⁴ For instance, the legislators asked for the Medication package insert of the local made vaccine heavily promoted by the ruling party and the current government. Yet the government refuse to provide out of the reason of business confidentiality. 'The final 10 days count down before starting injecting Medigen (taiwan made) vaccine: Why Medication package insert is considered as the business confidentiality' *CNews* (13 August 2021) <<https://cnews.com.tw/174210813a04/>> accessed 1 December 2021. This example also shows how serious such problem is. As Medication package insert should be provided in according to medical legislations, how come the government can refuse to provide such information to the general public?

4.6. Problematic Vertical Separation of Power

Despite the provision for local autonomy in the Constitution and the CDC Act, this line is not always clear. For example, there was a controversy over the important lock-down decisions of municipal hospitals by the Taipei city mayor during the SARS outbreak in 2003.¹¹⁵ In addition, as noted above, at the same time, compulsory facemask wearing measures were launched and implemented by special municipality mayors under Article 37 of the CDC Act, despite the establishment of the CECC at the central government level. Finally, why did the Ministry of Education, instead of the CECC, prohibit teachers and students of municipal high/junior high/elementary school from going abroad?

The unclear line between central and local authorities can be demonstrated in the following example. The local governments had the authority to regulate the operation of bars and ballrooms under Article 37 of the CDC Act, but the CECC announced measures to stop such establishments' operations on 9 April 2020 after a 'Gogo Girl' tested positive for COVID-19. However, due to the unlimited time of the order, it led to a dispute over who had the power to re-open 'Gogo Bars'.

Ultimately, implementing a lockdown for 14 days was sufficient for COVID-19 purposes. However, in Taiwan, such measures were adopted for more than 14 days, beyond the necessity of COVID-19 protocols.

However, this does not mean that local governments have not played a role in combatting COVID-19. The local governments may have had a limited role in intervening in COVID-19 issues, if the central government did not show opposite opinions or did not want to intervene in 'troubled waters'.

Facing Taiwan's low testing ability, many scholars, particularly prestigious scholars of the Public Health Department of National Taiwan University, began to fight back. These scholars

observed the inability to collaborate with the central government, which did not want to implement mass testing or even random testing to identify more cases, keeping the numbers of COVID-positive cases as low as possible. Professors began to collaborate with the local governments, specifically with the opposition party mayor of the Changhua County. The random antibody testing was conducted for several months in the middle of the year 2020. However, at the time of announcement of the report, the central government began to blame such research openly and tried to postpone the announcement of the mid-term results of such reports. Subsequently, a serious violation of such a project was found. There was a lack of an Institutional Review Board (IRB) review process¹¹⁶ and a violation of Article 22 of the Human Subjects Research Act for conducting any activity without IRB approval. The fine no less than NT\$100,000 and no more than NT\$1,000,000.¹¹⁷

The fight against limited testing policy failed in the first phase by May 2021 and before the mid May outbreak in 2021 Taiwan remains a country adopting a very limited testing policy. Only after the mid May outbreak, the CECC began to have U-turn on all testing policy. For instance, the airport mass testing policy was introduced in early July 2021,¹¹⁸ while the establishment of fast testing kiosks were allowed since mid May¹¹⁹ and the fast testing kits were allowed to sell in the pharmacies and convenience stores since mid July 2021.¹²⁰

Following the Local Government Act and the CDC Act, there seemed to be no problems. Legally speaking, a test without an IRB review is problematic. Yet, with such a review, there would be no barriers for local governments to conduct such research.

Another interesting 'fight-back' occurred during the New Year celebrations of the year-end open-door big music concerts in the city and counties. Case no. 765 ended Taiwan's record of 253 days without local cases in mid-December.¹²¹ The CECC

¹¹⁵ Coronavirus/Tsai discusses lessons learned from 2003 SARS hospital lockdown, 24 April 2020 <<https://focustaiwan.tw/politics/202004240016>> accessed 1 December 2021.

¹¹⁶ 'Coronavirus/Changhua COVID-19 study violated public health rules: CECC' *Focus Taiwan* (23 September 2020) <<https://focustaiwan.tw/society/202009230022>> accessed 1 December 2021.

¹¹⁷ The 10 thousand anti-body testing violated the Human Object Research Act (萬人抗體檢測 台大公衛·彰化衛生局確定違法/研究計畫 IRB 審查程序違反「人體研究法」 可處 10 萬~百萬罰鍰), (8 December 2020) <<https://news.ltn.com.tw/news/focus/paper/1417677>> accessed 1 December 2021.

¹¹⁸ Taiwan CDC, *In response to spread of Delta variant globally, Taiwan to tmc*. However, because the government is reluctant to expand access to testing and

even represses tighten health monitoring measures for people entering Taiwan via airport/port starting 12:00 pm on July 2, 1 July 2021 <https://www.cdc.gov.tw/En/Category/ListContent/tov1jahKUv8RGSbvmzLwFg?uaid=FEq_1cKkRDoHZTPRTAGgDQ> accessed 1 December 2021.

¹¹⁹ Coronavirus/What happens after you get a rapid Covid-19 test, 25 May 2021 <https://focustaiwan.tw/society/202105250022> accessed 1 December 2021.

¹²⁰ 'Coronavirus/Covid home test kits to go on sale in Taiwan next week: FDA' *Focus Taiwan* (19 June 2021) <<https://focustaiwan.tw/society/202106190014>> accessed 1 December 2021.

¹²¹ Taiwan CDC, *CECC confirms 3 more Covid-19 cases; two are colleagues of Case #760, and one arrives in Taiwan from Indonesia* <CECC confirms 3 more COVID-19 cases; two are colleagues of Case #760, and one arrives in Taiwan from Indonesia - Taiwan Centers for Disease Control (cdc.gov.tw)> accessed 1 December 2021.

started to tighten pandemic measures. However, the opposition mayors of Taipei and New Taipei City decided not to follow the suggestion of cancelling and proceeded with the concerts as planned. The Taipei City mayor claimed that the decision to stop such a big event should be based on scientific evidence. As there was no evidence supporting the cancellation, there was no tangible reason to stop such activities.¹²² However, mayors of the ruling party in other cities did cancel such events.¹²³ Interestingly, immediately after the Taipei year end ceremony, the Ministry of Foreign Affairs promoted such activities as being part of the success of Taiwan in combatting COVID-19.¹²⁴ One would need to consider why the different ministries of the central government held such contradictory attitudes toward the same events.

5. Conclusion

If the confirmed number of COVID-19 cases is accurate, the Taiwanese government has surely performed very well during the pandemic. Freedom of independent research in conducting random testing, there is no way to confirm if the situation is as good as the government claims. The right to know the health of Taiwanese citizens is not as accessible as those of citizens in other Asian countries such as Japan, South Korea, Singapore, and even mainland China, not to mention the more advanced Western countries. In spite of expanding the testing since mid May outbreak, Taiwan's daily testing reached peak in mid June to close to 30000 per day, but now average around 20000 per day,¹²⁵ which is quite low if compared with the 60000 tests in Singapore¹²⁶ with only 1/4 population of Taiwan.

Perhaps the Taiwanese government is very good at avoiding the coronavirus spread by 'non-

legal measures' though it may not be approved by legal measures or legislation. From the above analysis, Taiwan may not be facing an emergency in terms of a pandemic, but it appears that Taiwan has experienced an emergency in terms of a constitutional crisis during the COVID-19 pandemic.

In particular, an unprecedented 'checks and balances' crisis has ensued through government officers refusing to give the statistical data of face masks to legislators. Added to this is the wide use of unconventional legal schemes, such as 'The Guidelines', to bypass the formal tool of 'legal order under the Administrative Procedure Act which affects citizens' rights and obligations. What is worse is the citizens' and law society's oblivion of this situation or the acceptance of the use of such a lack of legal basis measures which intrudes on people's rights and obligations. During the time of writing this article, Taiwan's COVID-19 urgency and alarm has reached an unprecedented high with more than 15 local confirmed cases for consecutive days of over a week; simultaneously, the quarantine of 5000 people has been announced.¹²⁷ Taiwan's unique approach to tackle COVID-19 is under tremendous threat. For a long time, Taiwan relied on limited tests (with a very high cost of 7000 NTD) and 14 days of quarantine, with a face mask mandate to achieve the low numbers. Yet, whether such low numbers reflect the real situation of the infection has been questioned by many experts. Therefore, if the government of Taiwan were to abide by the rule of law and human rights, perhaps certain fundamental rights such as the right to know your own health status and the capacity of testing would improve. Yet, due to the claims that mass testing would waste medical resources and create too much of a burden on the medical personnel,¹²⁸ Taiwan is facing an unprecedented challenge.

¹²² 'Coronavirus/Taipei New Year's Eve countdown to go ahead as scheduled' *Focus Taiwan* (31 December 2020) <<https://focustaiwan.tw/society/202012310006>> accessed 1 December 2021.

¹²³ New Year's Eve activities, 31 December 2020 <<https://www.cna.com.tw/news/firstnews/202012240345.aspx>> accessed 1 December 2021.

¹²⁴ MOFA to broadcast Taipei 101 fireworks around world via satellite <<https://www.cna.com.tw/news/firstnews/202012240345.aspx>> accessed 1 December 2021.

¹²⁵ Google, Covid-19: Taiwan, <https://www.google.com/search?q=taiwan+covid+19+testing&rlz=1C1ONGR_zhTWTW951TW951&oq=taiwan+covid+19+testing&aqs=chrome..69i57.5423j0j4&sourceid=chrome&ie=UTF8#wp-tab=s:H4sIAAAAAAAAAAONgVuLVt9c3NMwySk6OL8zJecQYzy3w8sc9YamwSWtOXmMM4BL3TU3JTM7MS3XJLE5NLE71yU9OLMnMzxOS5mJzzSvJLkKUEpTi501RkiCiwOukEeKi4tDP1ffwCzN2IhnFxnHflqUVUImavkiVoln0zY8ndf9tG3B86G59Nbn62f9Kjp1_OmPgBUXQnzmqAAAA> accessed 1 December 2021.

¹²⁶ Google, Covid-19: Singapore, <https://www.google.com/search?q=singapore+covid+19&rlz=1C1ONGR_zhTWTW951TW951&ei=JQ5cYd70ONXrQaTu4uQCg&ved=0ahUKEwie9Yi37rLzAhXVdd4KHZPdAqIQ4dUDCA4&uact=5&oq=singapore+covid+19&gs_lcp=Cgdnd3Mtd2l6EAM6BQgAEIAEOgQIABBDoggIABCABBcxAzoLCAAQAQsQMqgwE6CagAELEDEIMBOgcIABCxAxBDOgoIABCxAxCDARBDogcIABCxAxAKSgQIQrgAULPqCFi8iAlgpIJaANwAHgAgAFuiAHGDZIBBDE5LjKYAQcGQAQAQA&sclient=gws-wiz> accessed 1 December 2021.

¹²⁷ '5,000 people to be isolated amid new hospital cluster cases in northern Taiwan' *Taiwan News* (25 January 2021) <<https://www.taiwannews.com.tw/en/news/4110967>> accessed 1 December 2021.

¹²⁸ 'Mass testing is still unnecessary in Taiwan as Covid-19 status in Taiwan is different from global Coronavirus developments' <<https://www.cdc.gov.tw/En/Bulletin/Detail/2K2hS5DverwbFczuZf9xSA?typeid=158>> accessed 1 December 2021.

